

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO- JUDGE
DELIVERED ON THE 8TH DAY OF DECEMBER, 2020**

SUIT NO: FCT/HC/CV/4286/11

BETWEEN:

**KINGSBERRY ESTATES LIMITED.....CLAIMANT/DEFENDANT TO
COUNTERCLAIM**

AND

1. FELIX HYATT

**2. ALISABATU ALKALI..... DEFENDANTS/
COUNTERCLAIMANTS**

**3. MINISTER, FEDERAL CAPITAL
TERRITORY.....DEFENDANT**

DR. BOLANLE OLAWALE

**BABALAKIN SAN..... PARTY JOINED TO THE
DEFENDANT IN THE
COUNTERCLAIM**

- **O. OSHOBI SAN WITH B.B. LAVAL ESQ; O.I. ARASI ESQ AND O. BEN OMOTEHINSE ESQ FOR THE CLAIMANT**
- **S.M. NWOSU WITH O.K. EKENNAIYE (MRS); TAMUNOTONYE KALIO (MRS); M.E. EUGENE (MRS) AND S.M. NWOSU (JNR) ESQ FOR THE 1ST AND 2ND DEFENDANTS**
- **A.O. OLATUNJI (MRS) WITH FUNMI AJAYI ESQ**
- **DR. A.I. LAYONU SAN WITH I.V. IVHADOR FOR THE 3RD DEFENDANT TO THE COUNTERCLAIM AND 2ND COUNTERCLAIMANT**

JUDGMENT

In this Judgment, there are Three Separate Claims and it is initially important to list out the Sequence of Events before setting out the Respective Claims. At the outset, the Claimant, Kingsberry Estates Limited filed an Action solely against the 1st Defendant, Mr. Felix Hyat.

The Final Pleadings reflected the fact that the Claimant amended his Processes to file against Three Defendants, namely: Mr. Felix Hyat, as the 1st Defendant, Alisabatu Alkali, as the 2nd Defendant and, the Honourable Minister of the Federal Capital Territory, as the 3rd Defendant.

In response to the Claim, the 1st and 2nd Defendants filed their Amended Statement of Defence as well as a Counterclaim, making it the Second Action before this Court. The 3rd Defendant in this Action also duly filed and served their Statement of Defence.

The Claimant then commenced and completed its Case on the 14th of March 2013 after the testimony of Two Witnesses.

The 1st and 2nd Defendants commenced their Defence on the 29th of April 2013 and began with the Testimony of their First Witness, who was Cross-Examined by Learned Counsel to the Claimant and 3rd Defendant.

In the midst of the Defence of the 1st and 2nd Defendants, there was an Application to join a 3rd Party, Dr. Bolanle Olawale Babalakin SAN, to the Action as a 3rd Defendant to the Counter-Claim of the 1st and 2nd Defendants.

The Court then gave a Considered Ruling permitting the Joinder to enable all Issues to be Decisively and Conclusively determined.

Dissatisfied with the Ruling, Learned Counsel to the 1st and 2nd Defendants appealed to the Court of Appeal, and based on the Report on Appeal made on the 17th of February 2016, this Court was informed that the Court of Appeal held that the Case should proceed to Completion.

By the 9th of November 2016, all Parties had regularized their Processes and Hearing Continued.

As regards the State of Pleadings, the Claimant's 3rd Amended Statement of Claim dated and filed the 10th day of June 2014, seeks the following Reliefs against the Defendants: -

- 1. A Declaration that the Claimant is the Valid/Legal Owner of the property situate at Plot 2378, Cadastral Zone A06, No. 33 Limpopo Street, Maitama District, Abuja.**
- 2. A Declaration that the Claimant is the person entitled to possession of the Property situate at Plot 2378, Cadastral Zone A06, No. 33 Limpopo**

Street, Maitama District, Abuja (the Property).

- 3. An Order mandating the 1st and 2nd Defendants to deliver up Possession of the Property forthwith to the Claimant.**
- 4. A Declaration that the continuous holding over of the Property by the 1st and 2nd Defendants amounts to Trespass.**
- 5. An Order of Perpetual Injunction restraining the 1st and 2nd Defendants, their Family Members, Servants, Privies, Agents or any Person claiming through or under them from encroaching/trespassing on Plot 2378, Cadastral Zone A06, No. 33 Limpopo Street, Maitama Abuja.**
- 6. An Order mandating the 3rd Defendant to issue and deliver to the Claimant a new Certificate of Occupancy with respect of the Property.**
- 7. The Sum of N10, 000, 000.00 (Ten Million Naira) against the 1st and 2nd Defendants being General Damages for Unlawful holding over of the Property.**
- 8. Cost of this Action.**

In response, the 1st and 2nd Defendants filed an Amended Joint Statement of Defence and Counter-Claim dated the 23rd of February 2016, wherein they Counter-Claimed against the Claimant as follows: -

- 1. A Declaration that the 2nd Defendant acquired an Equitable Title Over Plot 2378 Cadastral Zone A06, Maitama District, Abuja also known as No. 33 Limpopo Street, Maitama Abuja covered by Certificate of Occupancy No. 2078w-1253c-6e8dr-def8u-10 dated the 31/08/2005;**
- 2. A Declaration that the 2nd Defendant is the Person entitled to the Grant of the Consent of the Honourable Minister, Federal Capital Territory, Abuja and the Grant of a Statutory Right of Occupancy over the said Plot 2378 Cadastral Zone A06, Maitama District, Abuja;**
- 3. A Declaration that the Registration of the Purported Deed of Assignment between the Claimant and one Evelyn Aliyu Abubakar is null and void and of no effect whatsoever;**

- 4. A Declaration that the Consent granted by the 3rd Defendant and based on the purported Deed of Assignment between the Claimant and one Evelyn Aliyu Abubakar is null and void and of no effect whatsoever.**
- 5. An Order of Perpetual Injunction restraining the Claimant, its Servant, Agent, Privies from trespassing into the 1st and 2nd Defendants' Plot 2378 Cadastral Zone A06, Maitama, Abuja or in any other manner whatsoever, from disturbing, interrupting and interfering with the 1st and 2nd Defendants' peaceful and quiet possession of Plot 2378 Cadastral Zone A06, Maitama District, Abuja also known as No. 33 Limpopo Street, Maitama Abuja.**
- 6. General Damages in the Sum of N5, 000, 000.00**

The 3rd Defendant, the Honourable Minister, FCT, filed his Amended Statement of Defence on the 19th of February 2016, dated the 17th of February 2016, seeking no Remedies.

The Claimant, on the 6th of November 2012, filed an Amended Reply and Defence to the 1st and 2nd Defendants' Statement of Defence/Counter-Claim dated the same date. In turn, the 1st and 2nd Defendants/Counter-Claimants filed a Reply to the Claimant as well as the 3rd Defendant's Defence dated and filed on the 20th of November 2012.

Following the Joinder of Dr. Bolanle Olawale Babalakin SAN, as the 3rd Defendant to the 1st and 2nd Defendants' Counter-Claim, he, then filed his Defence to their Counter-Claim dated the 19th of April 2016. In it, he Counter-Claimed against them, that is, the 1st and 2nd Defendants seeking the following, namely: -

- 1. A Declaration that the Counter-Claimants in the 1st Counter-Claim viz. Felix Hyat and Madam Alisabatu Alkali are not entitled to and are not vested with any Proprietary Interest or Legal or Equitable Title in the Property known as Plot 2378, Cadastral Zone A06, No. 33 Limpopo Street Maitama District, Abuja.**

In the Alternative,

A Declaration that any Interest, Legal, Equitable or of whatever nature vested in the Counter-Claimants in the 1st Counter-Claim viz Felix Hyat and Madam Alisabatu Alkali over the Property known as Plot 2378, Cadastral Zone A06, No. 33 Limpopo Street Maitama District, Abuja, is held for, on behalf of and for the benefit of the 3rd Defendant as Resulting Trustees for the said 3rd Defendant.

- 2. A Declaration that the 3rd Defendant having validly passed its Interest in Plot 2378, Cadastral Zone A06, No. 33 Limpopo Street Maitama District, Abuja ('Property') to Kingsberry Estate Limited and the said Kingsberry Estate Limited having registered its Interest and perfected its Title in the Property, Kingsberry Estate Limited is the bona fide valid, lawful and legal owner of the Property.**
- 3. An Order of Injunction mandating the Counter-Claimants in 1st Counter-Claim viz. Felix Hyat and/or Madam Alisabatu Alkali to deliver up possession of the Property forthwith to Kingsberry Estates Limited.**
- 4. A Declaration that the continuous holding over of the Property by the Counter-Claimants in the 1st Counter-Claim viz. Felix Hyat and Madam Alisabatu Alkali amounts to Trespass.**
- 5. An Order of Injunction perpetually restraining the Counter-Claimants in the 1st Counter-Claim viz. Felix Hyat and Madam Alisabatu Alkali, their Family Members, Servants, Privies, Agents or any Person claiming through or under them from encroaching/trespassing on the Property.**
- 6. The Sum of N50, 000, 000.00 (Fifty Million Naira) (jointly and severally) against the Counter-Claimants in the 1st Counter-Claimants viz. Felix Hyat and Madam Alisabatu Alkali being General Damages for unlawful holding over of the Property and Breach of Trust.**
- 7. Cost of the Action.**

In response, 1st and 2nd Defendants filed a Joint Reply to the Statement of Defence and Defence to the Counter-Claimant of Dr. Bolanle Babalakin SAN

dated and filed on the 21st of June 2016, as well a Witness Statement on Oath deposed to by the 2nd Defendant.

In turn, the 3rd Defendant to the 1st and 2nd Defendants' Counter-Claimant/2nd Counter-Claimant (hereinafter referred to as Dr. Babalakin SAN or 2nd Counter-Claimant) filed a Reply to the 1st and 2nd Defendants' Defence to His Counter-Claim on the 4th of November 2016, dated the 1st of November 2016.

Subsequently, the 1st and 2nd Defendants via a Motion on Notice dated and filed on the 16th of May 2018, Amended their Joint Reply to the Statement of Defence and their Defence to 2nd Counter-Claim dated the 16th of May 2018.

At this point, it is important to note that on the 30th of November 2020, Learned Silk representing the Claimant moved a Motion on Notice for Leave to **Amend their Statement of Claim** filed on the 10th of June 2014. From their Affidavit in Support at **Paragraphs 4, 5 and 6**, they averred in essence that upon a recent review of the facts and surrounding circumstances of the case, it was necessary for them to include Certain Vital Facts, which already formed part of the Evidence before the Court and being material, it was imperative to amend their Processes in order to properly place facts before the Court.

Learned Counsel representing the Honourable Minister of the Federal Capital Territory, as well as Learned Silk representing the 2nd Counter-Claimant, had no Objection to this Amendment sought.

Learned Counsel representing the 1st and 2nd Defendants, in response, challenged the Amendment at this Late Stage and after a Considered Ruling, the Court disallowed the Amendment.

Now, it is expedient to set out and illustrate the Pleadings by Chart to fully explain the Routes taken by each Party in the Three Suits before the Court.

ILLUSTRATIVE DIAGRAM OF THE SUIT

1ST ACTION

KINGSBERRY
ESTATES LIMITED
(CLAIMANT)

2ND ACTION 3RD PARTY

FELIX HYAT
ALISABATU ALKALI
(1ST AND 2ND
DEFENDANT/
1ST
COUNTER-CLAIMANT)

FELIX HYAT & ALISABATU
ALKALI
(1ST
COUNTER-CLAIMANTS)

3RD ACTION

BOLANLE LAWAL
BABALAKIN
(3RD DEFENDANT TO
THE 1ST
COUNTER-CLAIM/
2ND
COUNTER-CLAIMANT
)

HON. MIN. OF THE
F.C.T
(3RD DEFENDANT)

KINGSBERRY ESTATES LTD
(CLAIMANT/
1ST DEFENDANT TO THE 1ST
COUNTER-CLAIM)

FELIX HYAT &
ALISABATU ALKALI
(1ST AND 2ND
DEFENDANTS TO
THE 2ND
COUNTER-CLAIM)

HON. MIN. OF THE
F.C.T
(3RD DEFENDANT
/2ND DEFENDANT TO
THE COUNTER-CLAIM)

PARTY JOINED

BOLANLE LAWAL
BABALAKIN
(3RD DEFENDANT/
2ND
COUNTER-CLAIMANT)

From the above illustration of the Three Claims before the Court, it can be seen that the Pathway to Determination of all Issues is very Straightforward and Clear BUT the Routes taken are Circuitous, to say the least.

Now, there is no doubt from the facts as presented in all the Pleadings before this Court, that the Issues in the Three Claims and what is at Stake, are closely intertwined and interwoven. Therefore, where Common Questions arise for Determination in the Claim and Counter-Claim(s), the determination of those questions in respect of them, disposes of the others and the questions do not have to be considered a second time. This is grounded by the Principle held in the Case of **ADEROUNMU VS OLAJIDE OLOWU (2000) 2 SCNJ 180 OR (2000) 4 NWLR PT 652 PAGE 253.**

Parties also led Simultaneous Evidence in One Stream and therefore, the Court will determine the Three Actions in One Stream.

The Singular Issue across the Three Actions simply is, **WHICH** of all the Parties before the Court is entitled to the Legal or Equitable Title/Ownership and Valid Possession of Plot 2378, Cadastral Zone A06, No. 33 Limpopo Street, Maitama District, Abuja?

The Resolution of this Vital Question will inevitably settle the Three Actions before the Court. It is only when this is determined, that the Court's attention would then be drawn to the Other Claimed Reliefs for Holding Over, Trespass, Damages and Costs.

During the Trial Proceedings, **the Claimant** summoned Two Witnesses who testified in its regard.

PW1, Mr. Mohammed Ciroma, a Director in the Claimant's Company adopted his Witness Statements on Oath dated the 24th of May 2012 and that dated the 13th of November 2012. He stated that the Claimant became the Owner of the Property, Subject Matter of this Action vide a Duly Signed, Sealed and Delivered Deed of Assignment, which was registered as **No. FC198 PAGE 198 VOL. 27 MISC** in the Federal Capital Territory Land Registry Office Abuja under the control and direction of the Minister of the Federal Capital Territory.

Prior to this Assignment, the Claimant had caused their Solicitors to conduct a Legal Search over the Property with the Abuja Geographic Information Systems (hereinafter referred to as "AGIS"), who confirmed in their Letter dated the 24th of June 2010 that Ms. Evelyn Aliyu Abubakar was the Valid Title

Holder.

The Execution of this Assignment was between the Claimant and Ms. Evelyn Aliyu Abubakar, who became a Valid Title Holder over the Property vide a **Certificate of Occupancy No. 2078w-1253c-6e8dr-def8u-10**, dated the 31st of August 2005 and registered as **8564/8564/43** in the Lands Registry Office in Abuja. It had a commencement date of the 22nd of September 1992.

Ms. Evelyn Abubakar then, pursuant to a demand for Ground Rent by the Federal Capital Territory Administration (hereinafter referred to as "FCTA"), paid her Ground Rent on the 11th of August 2010, through AGIS.

Upon payment by the Claimant of all requisite fees and further, upon the fulfilment of Conditions Precedent, the Minister of the Federal Capital Territory duly approved this Assignment and his Approval was conveyed through a Letter of Consent dated the 22nd of July 2010.

Another Search was conducted by their Solicitors to confirm the Current Status and Registered Interest on the Property after the Purchase of the Property and Perfection of its Title, and AGIS in a Letter dated the 4th of February 2011, confirmed the Claimant as the Only Registered Interest/Title Holder on the Property.

Following the Transfer of Title over the Property, the Claimant attempted to take Possession but discovered that the 1st Defendant and his family members were in occupation. They then confronted Ms. Evelyn, who informed them that the 1st Defendant was occupying the Premises with her consent but with an agreement to vacate the Property as soon as it was sold.

The Claimant then issued and served on the 1st Defendant, a Notice of Owner's Intention to Recover Possession of the Property dated the 28th of January 2011 but since this Notice lapsed, the 1st Defendant had refused, neglected and failed to quit the premise and deliver Peaceful Possession of the Property to them. According to PW1, the Claimant is desirous of taking over Possession of the Property, which it had lawfully and validly purchased from Ms. Evelyn and is also entitled to the Reliefs as set out in the Statement of Claim.

PW1 identified the following Documents, which were tendered into Evidence as follows: -

1. The Claimant's Certificate of Incorporation admitted as **Exhibit A**;
2. A Deed of Assignment admitted as **Exhibit B**;
3. A Letter of Approval/ Letter of Consent admitted as **Exhibit C**;

4. A Receipt of Consent/Assignment admitted as **Exhibit D**;
5. A Demand for Payment of Ground Rent admitted as **Exhibit E**;
6. A Receipt of Payment of Ground Rent admitted as **Exhibit F**;
7. A Search Report dated 24th of June 2010 admitted as **Exhibit G**;
8. Another Search Report dated 4th of February 2011 admitted as **Exhibit H**;
9. A Notice of Owner's Intention to Recover Possession admitted as **Exhibit I**;
and
10. PW1 was then referred to **Paragraphs 10 and 11** of his Witnesses Statement on Oath dated 13th of November 2012, bearing "No Mortgage" as contained in a Letter from the Corporate Affairs Commission, which was admitted as **Exhibit J** but liable to be expunged upon an Objection raised by Learned Counsel representing the 1st and 2nd Defendants.

Now, this **Exhibit J** is a Letter from the Corporate Affairs Commission dated the 4th of April, 2012, which sought to discuss the Verification of a Mortgage in respect of Jones Tech. Learned Counsel Nwosu Esq., argued that the Document was not frontloaded and it was made *lis pendens*.

From the Contents of the Letter, it can be seen that it was addressed to the Legal Firm representing the Claimant, who had made an earlier inquiry about a Mortgage or Charge on the Disputed Property. The timing of the 1st Letter dated the 21st of March 2012 to the Corporate Affairs Commission was clearly within the time of these Proceedings before this Court and was instigated by a Party Interested. Therefore, it is not a harmless Document because it seeks to establish certain facts, relative to the Outcome of this Case. The Court relies on the Principles laid down in **W.D.N. LIMITED VS OYIBO (1992) 5 NWLR PART 239 PAGE 77 at PAGES 95, 96; AND ABDULLAHI VS HOSHIDU (1999) 4 NWLR PART 638 at PAGES 645 - 647**, wherein His Lordship **PATS-ACHOLONU, JCA**(as he then was), held that by the Provisions of **Section 91(3) of the Evidence Act**, Documents made during the Pendency of an Action for the purpose of the Action and particularly after Pleadings have been filed, should not be admitted on the grounds that they lack Evidential Value and would be tantamount to stealing a match against an Opponent. Further, the other factor is that it was not pleaded and accordingly, **Exhibit J**, is hereby expunged.

Under Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants, S.M. Nwosu Esq, Mr. Ciroma stated that the Claimant's Principal Offices were in Lagos and Abuja, and the Abuja Office doubled as its Head Office. According to this Witness, he was not the only Director in the Claimant's Company, as there was also Ms. Lawale Opawunmi Ramata Agwai, whose name probably must have changed following her marriage.

PW1 agreed meeting Ms. Evelyn, whom he described, and was also present when the Deed of Assignment was executed even though he neither signed nor witnessed it.

For the Purchase of Property, most of the Claimant's Transactions were carried out through Banker's Draft acquired from either First Bank, Zenith Bank or Guaranty Trust Bank. In this instance, the Property in question was paid through a Banker's Draft but he could not say which of these Banks was used. S.M. Nwosu Esq tendered through PW1, a Certified True Copy of the Initial Writ of Summons filed by the Claimant, which was admitted into Evidence as **Exhibit K**.

He agreed inspecting the Property before it was purchased and at the time of purchase, the 1st and 2nd Defendants were in possession. According to Mr. Ciroma, he did not have the Original Certificate of Occupancy because it got lost. He stated that the Lost Certificate was not reported nor was an Affidavit of Loss deposed thereto nor was a Public Notice posted in that regard. However, whilst the Deed of Assignment is still in the Claimant's Custody, the Certificate of Occupancy got lost after obtaining both the Consent and Deed of Assignment.

Shown **Exhibit C**, he stated that the Claimant's Lawyers received the Approval in this Exhibit and the Fees as informed in **Exhibits D and F** were personally paid by the Claimant. Shown both **Exhibits B and C**, Mr. Ciroma stated that **Exhibit B** revealed Ms. Evelyn's Address to be No. 40 Lapai Road, Kaduna whereas the Claimant's Lawyers used their own address as that of Ms. Evelyn as informed by **Exhibit C**.

Also shown to Mr. Ciroma were **Annexures 4, 5 and 6** in **Exhibit K**, the Initial Writ of Summons, being a Letter from Skye Bank written to the 2nd Defendant dated 11th of January 2008, a Letter from Jones Tech to Skye Bank dated 15th of January 2008 and a Banker's Draft dated 11th of January 2008. He responded by saying these Documents predated the existence of the Claimant's Incorporation and did not know how some documents were secured such as the Cheques from Skye and Zenith Bank. When shown the Deed of Assignment, he stated that it was undated.

He was not aware that Ms. Evelyn was given Consent to Register and Mortgage the Property. He believed she would be willing to testify before the Court, but had not personally contacted her since the Suit commenced.

He denied asking the Defendants to Produce the Original Certificate of Occupancy and also did not know that it was missing but believed that he could trace the Method of Payment to Ms. Evelyn.

There was No Cross-Examination by the 3rd Defendant and there was also No Re-Examination of this Witness.

PW2, Mr. Haruna Saadu Aliero, a Subpoenaed Witness working as a Programme Analyst I with the Federal Capital Territory Administration under AGIS tendered the following Documents, namely: -

1. The Subpoena admitted as **Exhibit L**;
2. A Copy of the Application for Re-Certification admitted with an Overruled Objection as **Exhibit M**; and
3. Ms. Evelyn's Letter seeking Consent admitted as **Exhibit N**.

To Register Consent, his Establishment requires an Applicant to Submit Proof of Payment of Ground Rent over the years as well as the Original Certificate of Occupancy for Sighting.

As regards Search, a written application is made requesting for this service and there is a requirement for the sighting of the Original Offer or Original Certificate of Occupancy. AGIS then verifies the Genuineness of the Documents by confirming some security features on the Document with their Systems' Scanned Copy of the Offer or Certificate of Occupancy, in order to avoid issuing Search Reports and granting Consent to wrong persons, thereby eliminating instances of fraud, cloned or forged documents.

Under Cross-Examination by Learned Counsel to the 1st and 2nd Defendants, he answered in the affirmative that Ms. Evelyn's Letter as informed by **Exhibit N**, was not written to the Minister but to the Claimant, with her address stated as No. 44 Lafayette Road, Kaduna. Further, this Exhibit was not dated and had no acknowledgement date and there was no Letter written by Ms. Evelyn to the Minister seeking for Consent.

The Usual Practice was for the Seller to apply for the Consent, who was then required to pay the Consent Fee.

According to him, his Establishment had the Original Copy of the Application for Recertification in **Exhibit M** but could not say whether its Photocopy was similar to that of the Certificate of Occupancy unless a comparison could be made from their System. The Recertification was not dated but it was

received.

When shown **Exhibit C**, this Witness could not comment on this Exhibit, as it was handled by another Unit.

Aside of **Exhibit N**, there were No other Documents submitted seeking for the Minister's Consent. On the issue of proper identification of Ms. Evelyn's signature, he stated that on collection of the Certificate of Occupancy, she had to bring either her International Passport or National Identity Card, which would have been compared with the Application for the Certificate of Occupancy.

Finally, he did not sight the Original Certificate of Occupancy when the Deed of Assignment was presented for the Payment for Plot Dues, as anyone could pay it.

There was No Cross-Examination by Learned Counsel to the 3rd Defendant and there was No Re-Examination of this Witness. With the Close of the Evidence of these Two Witnesses, the Claimant closed its case on the 29th of April 2013.

The **1st and 2nd Defendants** opened their Case on the same 29th of April 2013, with the Evidence of Mr. Bayo Oladeinde Atunrase, as **DW1**, a Commission Agent, who adopted his Undated Witness Statement on Oath. He stated that sometime in January 2008, he was engaged by Jones Tech-International Limited to search and negotiate the sale of the Property in issue with Prospective Buyers. He was given the keys of the Vacant Property and in the ordinary course of his business, the 2nd Defendant approached him with interest to purchase the Property and negotiations commenced.

During their negotiations, he informed the 2nd Defendant that the Property belonged to Jones-Tech International Limited, who acquired the Property from the Original Owner, Evelyn Aliyu Abubakar and had deposited the Original Certificate of Occupancy as Security for a Credit Facility with Skye Bank Plc.

He then introduced the 2nd Defendant to Jones-Tech International Limited and it was agreed that the 2nd Defendant would pay the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) by Banker's Draft in the name of Jones-Tech International Limited, who in turn, would instruct Skye Bank Plc. to release and surrender the Title Deeds including the Original Certificate of Occupancy in order to offset its Credit Facility.

Skye Bank Plc. complied and released the Original Title Deeds to the 2nd Defendant. Jones-Tech International Limited in favour of the 2nd Defendant, executed a Power of Attorney and Deed of Assignment, which he signed as

witness.

According to him, neither Evelyn Aliyu Abubakar nor Jones-Tech International Limited negotiated in respect of any other subsequent sale or transaction with the Claimant, after the Sale in 2008 for the Subject Matter.

He then tendered the Deed of Assignment for Identification Purposes.

Under Cross-Examination by Learned Counsel to the Claimant, he initially acknowledged the mistake in his name as being a typographical error. He was engaged by Jones-Tech International Limited, who is a friend to the First Owner of the Property, to sell the Property in 2007 but actual negotiations began in January 2008.

He explained that before the Property was sold, it was a Five Bedroom Duplex with Two Room Boys Quarters but after a restructure by the 2nd Defendant, the Property is now a Six Bedroom Duplex.

He met the 2nd Defendant when she came to inspect the Property the second time. He introduced the 2nd Defendant to Barrister James of Jones-Tech International Limited in Lagos sometime in January 2008, who informed him that Jones-Tech International Limited had deposited the Title Deeds with Skye Bank Plc., having obtained a Facility from them. He did not sight the Certificate of Occupancy but knew it existed.

He and others were present when the Payment was made in Skye Bank's Office in Ikoyi but could not remember the Date and could only say everything happened between January and February 2008. He stated that the 2nd Defendant sent a Lawyer and another person to accompany him to Skye Bank in Lagos, where the Payment was made. According to him, the Bank released the Certificate of Occupancy with a Letter around 6:30pm to 7:00pm.

According to this witness, he knew the Original Owner, who never told him one-on-one that the Property was sold to Mr. Williams or anyone else. All he knew was that the Property was empty after the Sale.

When questioned, he stated it was not his duty to conduct a Search at AGIS and he did not consider it necessary to do so.

Under Cross-Examination by Learned Counsel to the 3rd Defendant, he agreed that he is a Partial Agent and insisted it was he who conducted negotiations

for the Property. The Property had been priced at N180, 000, 000.00 (One Hundred and Eighty Million Naira) but after negotiations, the Parties settled at N150, 000, 000.00 (One Hundred and Fifty Million Naira).

He knew that Alhaji Aliyu Abubakar owned the Property because he had once used it as an Office and he had visited him at the Property several times before he moved out to another location. Therefore, since he was going to be the Buyer, there was no need to conduct a Search and he did not advise the 2nd Defendant to do so.

When questioned whether the Minister's Consent was obtained for Jones-Tech International Limited, he answered that he was not in a position to speak on their behalf and did not know whether the Minister was aware of the Mortgage between Jones-Tech International Limited and Skye Bank Plc.

Under Re-Examination, he stated that Evelyn Aliyu Abubakar is the daughter of Alhaji Aliyu Abubakar, and her picture appeared on the Certificate of Occupancy.

By the next date for Hearing, Dr. Babalakin SAN had been joined through an Order of Court. The Hearing continued with the Recall for Cross-Examination of DW1, Mr. Bayo Oladeinde Atunrase by Layonu SAN representing the 2nd Counter-Claimant.

Under this Cross-Examination, Mr. Bayo Atunrase stated that he knew the Consequences of making false statements before the Court. He stated that he had never met Evelyn Abubakar and when questioned on his averment in **Paragraph 10** of his Witness Statement on Oath, he stated that he is not in touch with Evelyn but in touch with her father, Alhaji Aliyu Abubakar. He agreed that he omitted to state the name of Alhaji Aliyu Abubakar and also agreed that he did not state their relationship. According to him, "family" as stated in Paragraph 10 includes the father.

He also agreed with Learned Silk that he never saw the Certificate of Occupancy until he got to Lagos. He also saw the Photograph of Evelyn on the Certificate of Occupancy at the Bank for the first time during the process of the transaction. The transaction had been completed by then.

He stated further that a Representative of the 2nd Defendant, named Mr. Yusuf and a Lawyer accompanied him to Lagos. He then turned round to say that the 2nd Defendant and no lawyer accompanied him. He did not notice any unusual

thing relating to the Sale of the Property.

According to him, there were correspondences indicating an Offer, Acceptance amongst others, but he did not have it in his possession before the Court. He had met the 2nd Defendant in Year 2007. He stated that all the transactions took place in early 2008 but not beyond March of 2008. He could not remember whether the negotiations took place in Late 2007 from the Month of October or whether it was concluded by February or March of 2008. He had no Letter of Engagement from Jones-Tech International Limited and there was no Re-Examination.

The Next Witness for the 1st and 2nd Defendants was Madam Alisabatu Alkali, the **DW2**, who testified on Oath, that her Maiden Name was Alisabatu Alkali whilst her Married Name is Alisabatu Hyat. She is a Retired Chief Nursing Officer and presently, she is into business.

She acknowledged being the 2nd Defendant in this Case and had made a Witness Statement on Oath dated the 21st of June 2016, which she signed in a Court in Maitama. According to her, she could recognize her Signature on it and prayed the Court to accept it as her evidence in this Case.

Essentially, she testified that DW1, introduced her to the Property and she raised the Purchase Price from Three (3) Sources, namely: (a) Friendly Loans from friends and relatives both in Nigeria and Abroad (United States and Europe); (b) Disposal by Sale of her Family Landed Properties; and (c) Personal Income and Savings.

She paid the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) as Purchase Price through a Zenith Bank Plc. Draft NO. 00005748 dated the 11th of January 2008, which she raised in the name of Jones Tech International Limited.

Referred to **Paragraphs 10, 11, 17 and 18** of the 1st and 2nd Defendants' Amended Joint Statement of Defence filed on the 17th of February 2016, her response was that, she executed the Pleded Power of Attorney and Deed of Assignment and these were her Receipts of Payment for the Property.

Alisabatu in her **Paragraph 18(a)** of her Witness Statement on Oath stated that the Original Allottee, Evelyn Aliyu Abubakar, also executed a Deed of Assignment and Power of Attorney in favour of Jones Tech International Limited and had therein acknowledged the Payment of the Purchase Price paid by Jones Tech International Limited.

In **Paragraphs 18(b) and (c)**, she sought to explain by justifying how there

were Two Deeds of Assignment between herself and Jones Tech by stating that after the Initial Execution and after going through the Documents, her Lawyers advised that the Consideration paid should be specified in the Deed otherwise it would not be acceptable for Registration. She conveyed this information to Jones Tech who rectified the Document. She also added that this was also done between Jones Tech and Evelyn.

The Power of Attorney and the Deed of Assignment were tendered and after a sustained Objection raised from Learned Silks representing the Claimant and the 2nd Counter-Claimant, the Deed of Assignment was marked, "**Tendered but Rejected**", whilst the Power of Attorney was admitted into evidence "Subject to Registration", as **Exhibit O**.

Alisabatu recognized a Certified True Copy of a Certificate of Occupancy in the name of Evelyn Aliyu Abubakar and the Signature therein, stating that this Copy related to N0. 33 Limpopo Street and tendered same, which was admitted into evidence, without any Objection, as **Exhibit P**.

She had agreed with Jones Tech to pay this Purchase Price into their Account with Skye Bank in order to discharge their Equitable Mortgage and for her to collect the Title Documents. A Letter was written by Jones Tech to the Bank authorizing Release upon Payment.

Alisabatu confirmed in **Paragraph 16** that Skye Bank had agreed in their Letter to release the Original Certificate of Occupancy to her. As to the whereabouts of the Original of this Letter, she stated that her village people packed it away when herdsmen attacked her village and could not lay her hands on the Original. She recognized a Copy of this Letter by its Address, which was tendered and with an Overruled Objection, the Skye Bank Letter was admitted into evidence, as **Exhibit Q**.

Further, in **Paragraph 16**, Skye Bank acknowledged receipt of the Sum of One Hundred and Fifty Million Naira (N150, 000, 000) through a Letter and DW2 stated that she came with a Photocopy of that Letter but the Original was at home.

Referred to **Paragraphs 12 and 14**, wherein a Zenith Bank Cheque in the Sum of One Hundred and Fifty Million Naira (N150, 000, 000) was pleaded, DW2 stated that the Original of the Bank Draft was with the Bank but its Photocopy was with her in Court. According to her, she took both the Bank Draft and the Skye Bank Letter to her village and was still sorting them out.

Upon the receipt of the Value of her Zenith Bank Draft by Skye Bank, the Bank released the Original Certificate of Occupancy to her and she has been in CONTINUOUS POSSESSION of same since then. Therefore, the fact that this Document had been in her continued possession, both the Claimant, who purchased the Property in 2010 and Dr. Babalakin SAN, could not have seen or had it in their possession.

Alisabatu contended further that the 3rd Defendant in granting Consent to the Transaction between the Claimant and the Original Allottee, never called for or sighted the Original Certificate of Occupancy, thereby acted contrary to the established standard practice of the Department of Lands. This, she stated occurred because the Claimant deceived the 3rd Defendant by presenting Documents purportedly made by Evelyn Abubakar and by receiving Correspondences on her behalf, without her knowledge and consent.

According to her, the Claimant deceived the Minister of the Federal Capital Territory into believing that they acquired good title capable of being registered and transferred from the Original Owner. They also failed to furnish any Valuable Consideration to either Evelyn Aliyu Abubakar or to Jones Tech International Limited.

The Claimant, had upon discovering that she was yet to register her Title Deeds with AGIS, took steps to confer on themselves the Title to the Property by advancing Dubious Documents and by employing illegal means.

Alisabatu testified that after the purchase of the Property, she embarked upon a comprehensively thorough renovation and maintenance of the Property, expending over Twenty-Five Million Naira (N25, 000, 000). She had also instructed her Solicitors to perfect the Title Deeds with the Lands Department (AGIS) and only realized when the Claimant showed up, that the Perfection of her Title Documents was yet to be done.

Finally, under her Evidence-in-Chief, she prayed the Court to actualize the ownership of the house to her favour and to grant her Reliefs.

Under **Cross- Examination by Learned Counsel representing the 3rd Defendant**, DW2 stated that she did not conduct any Legal Search on the Property in dispute. As regards whether there was a Power of Attorney and Deed of Assignment between her and Evelyn Abubakar, DW2 stated that Evelyn Abubakar, the Owner of the Property, sold the Property to Jones Tech,

who then sold the Property to her and she did not think both the Power of Attorney and Deed of Assignment were Registered.

DW2 agreed that there was a Power of Attorney and Deed of Assignment between her and Jones Tech, which were also Not Registered because of this Case.

Further, she paid the Sum of One Hundred and Fifty Million Naira (N150, 000, 000) for the Property in Dispute in Year 2008. When asked why she did nothing to perfect the Agreement for over Five (5) Years, DW2 corrected this computation of time by stating that it was for about Three (3) and she was in the process of getting of money for the Registration.

According to her, when she was away, she was informed that some people came and were forcing the Security Men out of the house.

When asked whether she paid Ground Rents to AGIS, DW2 answered that she paid Tenement Rates but not Ground Rent. Further, she had never been issued Bills for Ground Rent but needed to consult her File.

Under **Cross-Examination by Learned Silk representing the Claimant**, questions were asked as to her State of Origin, Religion, Educational Background, Marital Status, Work Experience, Business Ventures and including the Positions held by her Husband, the 1st Defendant.

It was DW2's testimony that she had travelled several times outside Nigeria and knew how to drive. She agreed having a Driving Licence, National Identity Card and a Permanent Voter's Card but none of these Identity Cards were in Court. Her Birth Certificate and International Passport were also not in Court because she never anticipated questions that would warrant their production.

According to DW2, her Father's name is Alkali and during her work with the Civil Service, she used the name, "**Elizabeth Alkali**", which is synonymous with the Hausa Variant, "**Alisabatu Alkali**". She got married to Mr. Felix Hyat on the 1st of April 1978 at Saint Augustine Catholic Church- Tudun Wada in Kaduna State and upon marriage, she bore the name, "**Elizabeth Hyat**".

When referred to Year 2008, DW2 stated that she delved into the business of Ginger, Soyabeans and Honey and owned a Provision Stores as well as a Chemist jointly owned with her Cousins, Hajiya Saudatu, situated in Nwaboro and Malali of Kaduna State. She did not currently have a Registered Business.

As regards the Process of Obtaining a Bank Draft, DW2 stated that she employed the assistance of someone to enable her secure a Draft. She explained that she did not have a Bank Account with Zenith Bank but approached a friend, Hajiya Aisha Abdullahi, working with the Bank at the Yakubu Gowon Branch, where they jointly filled out a Form for Monies to be paid into Skye Bank's Account.

She then collected the Bank Draft issued in favour of Skye Bank, which Skye Bank acknowledged and issued her a Copy. According to her, as at Year 2008, she maintained a Banking Account with Union Bank Plc. and First City Monument Bank (FCMB) Plc. but none of these Accounts were used to purchase the Property in question.

When asked, DW2 stated that she never had any meeting with Jones Tech but interfaced with Jones Tech through Bayo adding that her meetings were only with Bayo and her Cousin, Late Barrister Gideon. She had also never met with Jones Tech.

According to her, the Transaction was between Bayo, the DW1, Jones Tech and herself and she paid the Purchase Price personally.

On the question of whether she sold a property to acquire the property in dispute, DW2 stated that she had a Plot in Kafanchan and in Kaduna. She also had some Plots in Bwari and in Abuja, particularly in Mpampe, which she later sold off towards the end of 2007 but she did not keep a Copy of the Right of Occupancy. She could not say what year she sold the Land in Mpampe. As for the Kafanchan Property, she did not have any Document to show ownership but noted that due to a crisis, most of her properties were burnt and she did not register her interest in the Mpampe and Kaduna Properties.

According to her, she acquired the property in dispute through Personal Monies, adding that she collected the Sum of Ninety Million Naira (N90, 000, 000) in Cash, after selling her properties. Other Monies were sourced from friends, relatives and loans from her sisters, which explains her inability to register the acquired property on time.

When asked, DW2 stated that upon retirement from the Kaduna State Civil Service in Year 2005, her last salary was between Forty Thousand Naira (N40, 000) and Forty-Five Thousand Naira (N45, 000) but she needed to consult her Pay Slips. In answer to a follow-up question, DW2 stated that she sourced from her businesses, the Twenty-Five Million Naira (N25, 000, 000), which was utilized to restructure the property in dispute.

On the Question of who collected the Certificate of Occupancy of the Property in Dispute, DW2 stated that her Cousin, Barrister Gideon Morik and Bayo went to Lagos, where they collected the Certificate of Occupancy on her behalf.

Referred to her Witness Statement on Oath wherein she had averred that there was an Equitable Mortgage on the Property in Dispute, DW2 explained that the Certificate of Occupancy was deposited with Skye Bank, who had granted a Loan Facility to Jones Tech. Jones Tech had then informed her that the Certificate of Occupancy would only be released upon payment of the Loan Facility.

Referred her Latest Witness Statement on Oath and asked what she understood by "Valuable Consideration", DW2 stated that the Earlier Deed of Assignment did not contain the Purchase Sum for the Property and it was not long after the Transaction was concluded and when this Suit arose, that her Lawyer informed her that another Deed of Assignment needed to be made that would capture the Purchase Sum. DW2 later flipped by stating that she could not remember when the New Deed of Assignment was made but agreed with Learned Silk that this New Deed of Assignment, was made when the Transaction was concluded.

According to DW2, before this Certificate was delivered to her, the name of Evelyn Abubakar was forwarded to someone, who assured them that the Certificate belonged to Evelyn. When the Certificate was eventually brought to her, she discovered that Evelyn Abubakar owned the Property, which she sold to Jones Tech. She had never met Evelyn Abubakar but took the Certificate of Occupancy to AGIS to ascertain its genuineness. Upon being satisfied with the Genuineness of the Certificate, she then instructed her Lawyer to perfect Title, but her failure to supply the money, delayed the Perfection.

Referred again to her Witness Statement on Oath and told to explain why the 1st Defendant, her husband, being a Minister, considered it inappropriate to purchase a Property, DW2 explained that the 1st Defendant did not make up his mind on owning any Property and more so, he was shuttling between Abuja and Kaduna every week. Since she was doing nothing, she came to Abuja and started the negotiations for the purchase of the Property in Dispute.

Under **Cross- Examination by Learned Silk representing the 2nd Counter-Claimant**, DW2 stated that her Marriage is blessed with Children and some of her Children's Surnames were either "**Hassan**" or "**Hyat**" but not

"**Alkali**". She started her Nurse Training with Kaduna State in 1970 and on account of Length of Service, she retired after putting in Thirty-Five (35) Years.

DW2 stated that apart from her Declaration of Age, which bore the Name, "**Elizabeth Alkali**", other Documents bore the Name, "**Elizabeth Hyat**". From the Date of her Birth to Year 1978, she used the Name, "**Alkali**" but thereafter, she started using the Name, "**Hyat**". Further, during her Years in Government Service till Retirement, her Government Records bore the Name, "**Elizabeth Hyat**", adding that she also used the Name, "**Alkali**" to do personal things.

When asked, DW2 stated that the Name "**Elizabeth Koku Hyat**" featured on both her International Passport and Driving Licence. On whether she had any Official Document featuring the Name, "**Alisabatu Alkali**", she stated that her Primary School Certificate bore this Name, which she used when purchasing Personal Property. Further, when asked whether she had any Official Document featuring the Name, "**Alisabatu Alkali**", after her Marriage, DW2 stated that she had no such Document, but only Transaction Documents.

According to DW2, the Ninety Million Naira (N90, 000, 000.00) she raised from the Sale of her Properties and the balance which she sourced from friends and relations, now totalling the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00), were not lodged in her own Personal Bank Account.

DW2 agreed with Learned Silk that she convey in Cash the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) to Zenith Bank, Yakubu Gowon Branch in Kaduna, where her friend assisted her in securing a Draft.

On the question of how the Skye Draft was obtained, DW2 was referred to her earlier testimony wherein she had testified that she maintained an Account in Union Bank and FCMB. She was then asked why she did not utilize either her Bank Accounts to raise the Draft, opting rather to transact with the Zenith Bank, a Bank where she DID NOT maintain an Account, DW2 replied that she was helped and she trusted the person that helped her.

Concerning the Skye Bank Draft issued from Zenith Bank, DW2 stated that she handed over the Sum of One Hundred Fifty Million Naira (N150, 000, 000.00) in Cash to her friend, Aisha Abdullahi, a Staff of Zenith Bank, who concluded the Draft Transaction and brought the Draft to her, adding that Skye Bank later acknowledged Receipt and handed over to her a Copy.

When asked, DW2 stated that she surrendered the Entire Title Documents for her Properties to a Buyer, who paid her the Sum of Ninety Million Naira (N90, 000, 000.00) in **Cash**. When asked to furnish Proof of these Transactions, she stated that needed to crosscheck but was unsure whether any Copy could be found.

By an Order of Court, the **1st and 2nd Defendants reopened** their case by recalling DW2, who adopted her Witness Statement on Oath dated the 7th of October 2011, which she recognized by her Signature.

Referred to **Paragraph 6 of the Amended Joint Statement of Defence and Reply**, she recognized Several Documents bearing her Maiden Names in the: -

- 1. Photocopy of Primary 7 School Leaving Certificate issued by the Evangelical Church of West Africa;**
- 2. Marriage Certificate;**
- 3. An Indigenization Certificate; and**
- 4. Statutory Declaration of Age.**

These Documents were tendered into evidence to which Learned Counsel representing the 3rd Defendant had no Objection.

Learned Silk representing the Claimant and Learned Silk representing the 2nd Counter-Claimant, opposed the tendering of these Document and after a Response by Learned Counsel representing the 1st and 2nd Defendants, the Court ruled provisionally admitting these Documents into Evidence as **Exhibits R, R1, R2 and R3** pending Counsels' address in their Final Written Addresses.

Under **Cross-Examination by Learned Silk representing the Claimant**, DW2 stated she had Two Signatures, which she scribbled in her Maiden Name and Marital Name. In the Witness Box, she wrote out her Two Signatures, which was tendered and admitted into evidence without any Objection as **ExhibitR4**. The First Signature was marked **R4(1)** whilst the Second Signature was marked **R4(2)**.

Referred to her Two Witness Statements on Oath dated the 7th of October 2011 and 21st of June 2016, which bore the name of Alisabatu Alkali, DW2 stated the Two Signatures belonged to her. She attributed the discrepancies in the Two Signatures to mistake, adding that sometimes she could forget and use the other Signature.

On a Comparative Analysis of **Exhibit R4 (1)** and her Witness Statement on Oath dated the 7th of October 2011 on the one hand against **Exhibit R4(2)** and her Witness Statement on Oath dated the 21st of June 2016 on the other hand, DW2 maintained the point that all the Signatures therein belonged to her adding that her Signature was not stable.

Another analysis was made between **R4 (2)** with her Witness Statement dated the 21st of June 2016 and **Exhibit O**, DW2 initially stated that all Three Signatures were the same but later agreed that they were not the same but added that these Three Signatures belonged to her.

Asked to replicate the Signature in **Exhibit O**, DW2 did so and same was tendered and admitted into evidence as **Exhibit R5**.

Reference was made to the Signatures in a Power of Attorney frontloaded along with the 1st Statement of Defence of the 1st and 2nd Defendants and the Deeds of Assignment both dated 21st of January 2008 attached to the Amended Joint Statement of Defence of the 1st and 2nd Defendants dated 21st of October 2011, and DW2 was told examine same.

Learned Counsel representing the 1st and 2nd Defendants objected to that examination on the premise that following an Amendment of the 1st Statement of Defence, that Statement of Defence and the Frontloaded Documents attached thereto were no longer relied upon by them and where reference would be had to them, Learned Silk for the Claimant would have to initially apply to tender same.

Learned Counsel representing the 3rd Defendant on her own part had no response, whilst Learned Silk representing the 2nd Counter-Claimant stated that the 1st Statement of Defence formed part of the Record of the Court and moreover, the Credibility of the Witness was in Issue.

Learned Silk for the Claimant in his responds, adopted those Submissions and the Objection was overruled and the Witness was told to examine the said Documents.

DW2 was referred to the Signatures in the Power of Attorney and Deed of Assignment attached to the Statement of Defence dated 19th of July 2011 but filed on the 7th October 2011 and to compare them with **Exhibit O**. In response, DW2 stated that all the Signatures belonged to her and it was her Marital Name that was used to endorse **Exhibit O**.

The 1st Statement of Defence was admitted into evidence as **Exhibit R6**.

Under Cross-Examination by Learned Counsel representing the 3rd

Defendant, DW2 stated she had been living in Abuja since 2007. Apart from the Property in Issue, she had a landed property in Bwari Area Council and had bought and sold off other properties.

DW2 stated she was conversant with the processes of buying and selling a Property in Abuja and the First Step was to approach an Agent. In this instance, she approached her Lawyer, who verified the genuineness of the property before she went ahead to purchase. Her Lawyer informed her of a Search evidenced in a Report showing that the Property had no encumbrance.

When asked whether she had any evidence to back up this claim, DW2 stated that all the Search Papers were in the Custody of her Lawyer.

According to DW2, she had never met Evelyn Aliyu Abubakar, the Allottee of Plot 2378 but only knew the Person from whom the property was bought. DW2 stated that she entered into occupation of the Property in 2008 and had paid Tenement Rate to the Abuja Municipal Area Council (AMAC) but not Ground Rent. She believed Ground Rent and Tenement Rate were the same and had she been expected to pay Ground Rent, AGIS would have availed her with the bills.

When confronted with the question that she did not pay the Ground Rent because she did not own the property, DW2 answered that it was not so.

Under **Cross-Examination by Learned Silk representing the 2nd Counter-Claimant**, DW2 stated that she is a Retiree and had worked in the Civil Service for over Thirty-Five (35) Year. During her years of service, she used the Name, "**Elizabeth Hyat**" while at other times, she used the Name, "**Alkali**", and there were Official Documents to back up this Name.

DW2 identified in **Exhibit R6**, a Power of Attorney, the Stamp of the Commissioner for Oaths, the Assessment and a Signature, she claimed was hers using her Maiden Name. On whether she presented herself to the Appropriate Official before signing, DW2 stated that she did not go to Court to Sign but one of her Lawyers, Late Barrister Gideon Morik, her brother, appended his signature because he did the transaction. She could not say whether Late Barrister Morik personally signed it or delegated somebody else to sign on his behalf.

Further, Late Barrister Morik would normally take the Documents for processing and whenever he required her signature or told to go elsewhere to sign, she would avail herself and sign. According to her, she presented herself

twice before the Maitama High Court, where she signed some Documents but could not remember on what day she made the first visit.

Referred again to **Exhibit R6**, the Power of Attorney, DW2 stated it was filed before the Kaduna State High Court.

Shown **Exhibit O**, another Irrevocable Power of Attorney, she agreed the Two Signatures manifest in **Exhibits R6 and O** belonged to her. The First Signature was in her Maiden Name whilst the Second Signature was in her Marital Name. Further, **Exhibit R6** and **Exhibit O** were exact same in terms of Figures, Receipt Numbers, Assessment and the Details of the Commissioner for Oaths. However, **Exhibit O** differed from **Exhibit R6**, by having Two Different Signatures, whilst **Exhibit R6** has one Signature.

In the light of the above response, when asked whether her Lawyer had informed her that it was Court Practice to have Two Identical Documents that differed in terms of Signatures, DW2 stated she made no such enquiry from her Lawyer nor did her Lawyer inform her about it.

On the Question of the Type of Naira Denomination the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) was conveyed to the Zenith Bank Kaduna Branch of Yakubu Gowon Way, where one Aisha Abdullahi issued her a Bank Draft, DW2 testified that she conveyed this Sum in Cash using Different Naira Denominations.

Presently, she had lost contact with Aisha Abdullahi and did not know her whereabouts. According to her, this Cash conveyed was in One Thousand Naira (N1, 000) Denominations, which was stashed in the boot of a Toyota Saloon Car.

When asked, DW2 agreed that Five (5) Wraps of N1000 would equal Five Hundred Thousand Naira (N500, 000) but could not say whether 300 Bundles would make up the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00).

On the Question of Identity, DW2 identified her Maiden Names, "**Alisabatu**" in **Exhibit R** and as "**Elizabeth**" in **Exhibit R3**, explaining that both Names were the same, as "**Alisabatu**" was the Hausa Version of "**Elizabeth**", the English Version.

Juxtaposing **Exhibit R2**, her Marriage Certificate with **Exhibit R1**, the Indigene Certificate, as against her Earlier Testimony on her Maiden and Marital Names, Learned Silk demonstrated to DW2 that the Name,

"**Alisabatu**" did not feature in the Two Exhibits except the names "**Elizabeth Koku**" and "**Elizabeth Koku Hassan Hyat**".

She agreed with Learned Silk that from Year 1970 to 2005, spanning Thirty-Eight (38) Years, her Marital Name was, "**Elizabeth Koku Hyat**".

Further, from Year 1967 to 2008, the name "**Alisabatu Alkali**" did not feature anywhere and when asked why after Forty-One (41) Years the name later surfaced, DW2 alluded to her earlier testimony where she had pointed out that she used the name, "**Alisabatu Alkali**" when she bought a Property in Kafanchan, which she later sold in 2011 due to riot. According to her, this was the same name used in purchasing the Property in Issue.

As to the whereabouts of the Documents evidencing the purchase of the Property in Kafanchan, DW2 stated that the man from whom she purchased the property from, had passed away. She then approached his children, who had further sold off the property to Third Parties. She and the children of the deceased later went to Court, where an Affidavit was obtained.

On whether she had obtained any Official Title Document for the property in Kafanchan, DW2 contradicted herself by stating that the man from whom she purchased the Kafanchan property had handed over a Deed of Assignment and a Certificate of Occupancy to her.

Further, on whether Late Gideon brought a Receipt or any Document evidencing payment for the Property, DW2 stated that what was given to her was a Bank Draft and a Letter from Skye Bank. She did not register the Property in Issue because she had informed her Lawyer to process the Registration but he failed to do until sometime later, when she discovered a Notice to Quit was pasted on the Property.

DW2 agreed with Learned Silk that, "**Alisabatu Alkali**", was the Name she intended to use to perfect her Title in **Exhibit O** as well as in other Documents but did not have any other Document or form of Identification evincing this Name for the purposes of registering with AGIS.

No further questions were asked and there was no Re-Examination.

The 1st and 2nd Defendants called their Next Witness, Mr. James Tomomewo, as **DW3**, a Lawyer/Businessman and an Executive Director/Shareholder working with Jones Tech International Limited in Lagos. He identified his Signature in his Witness Statement on Oath dated the 25th of February 2016 and adopted it as his evidence.

His Evidence-in-Chief essentially was that Alhaji Aliyu Abubakar and his daughter, Evelyn Aliyu Abubakar assigned their interest in the Property as well as surrendered the Original Certificate of Occupancy to their Company, Jones Tech.

Jones Tech furnished Consideration for the Property and payment was acknowledged vide a Deed of Assignment and upon purchase, Jones Tech took over possession and posted Security Guards.

Subsequently, Jones Tech deposited the Certificate of Occupancy with Skye Bank Plc. as Collateral for an Overdraft Facility. Thereafter, in a bid to pay off their Overdraft Facility, they desired to sell off their Property and engaged one Bayo Oladeinde Atunrase, as their Lawful Agent to negotiate and sell- off their Property.

Sometime in 2008, Bayo Oladeinde Atunrase introduced the 2nd Defendant, as a Prospective Buyer who offered to purchase the Property at the Purchase Price of One Hundred and Fifty Million Naira (N150, 000, 000), which offer Jones Tech accepted after her negotiations with Bayo Oladeinde Atunrase. It was agreed that Purchase Price would be paid into Jones Tech's Account with Skye Bank Plc. in order to offset their Overdraft Facility. It was further agreed that Jones Tech would write to Skye Bank Plc. authorizing them to release the Original Certificate of Occupancy to the 2nd Defendant.

The 2nd Defendant then paid the Sum of One Hundred and Fifty Million Naira (N150, 000, 000) by Bank Draft into the Account of Jones Tech and in turn, Skye Bank wrote to the 2nd Defendant acknowledging receipt of the Draft as well as agreeing to Release the Certificate of Occupancy to her.

Upon receiving Value of the Bank Draft, the Original Certificate of Occupancy was released to the 2nd Defendant and she was put into quiet and peaceful possession of the Vacant Property.

According to Mr. Tomomewo, at the time Jones Tech acquired the Property, there was No Encumbrance or Charge on the Property and at the time their Interest was transferred to the 2nd Defendant, the only Charge on the Property was the Equitable Mortgage made out in favour of Skye Bank, which debt, the 2nd Defendant paid off.

Finally, he stated that on several occasions, he had interacted with both

Alhaji Aliyu Abubakar and his daughter, Evelyn Aliyu Abubakar and had brought to their knowledge the Claimant's Claim. They both informed him that at no time did they transact with the Claimant in regard to the Property.

Under **Cross-Examination by Learned Silk representing the Claimant**, he could not remember when he became a Director in Jones Tech but Mr. Eno Joseph Williams, registered Jones Tech sometime in Year 1992 and both became Directors in the Company.

According to him, Jones Tech was registered as a General Contractor, which later ventured into Exploration and Production Consultancy. Subsequently, an Arm of the Company dovetailed into Property Development, which he superintended.

He knew Alhaji Aliyu Abubakar, who was his friend and had met Evelyn Abubakar. Shown the Certified True Copy of the Certificate of Occupancy, DW3 agreed that the Holder was Evelyn Abubakar and the name of Alhaji Abubakar did not feature in the Certificate.

DW3 could not remember who deposited the Certificate of Occupancy with Skye Bank nor could he say whether he personally deposited the Certificate of Occupancy with Skye Bank. He could not also recall whether he accompanied Mr. Williams to the Bank to deposit the Certificate with the Bank.

On whether Jones Tech had issued a Letter of Offer or a Letter of Acceptance, DW3 stated that he could not remember because the transaction took place over Twelve (12) Years ago. He could only say there were correspondences that were exchanged before and when the transaction was consummated. However, he needed to go through his Company Records to determine whether there were any correspondence titled as, "Letter of Acceptance".

On the Mode of Payment, DW3 agreed that Alhaji Abubakar and Evelyn Abubakar, his Daughter sold the property to his Company. The Company paid Alhaji Abubakar and Evelyn Abubakar through Cheques or Electronic Transfer but not in Cash. DW3 could not say whether Electronic Transfer Services were available in 2008 but stated that staggered payments through Cheques were paid in the Sums of Eighty Million Naira (N80, 000, 000) and Thirty Million Naira (N30, 000, 000). He then added that, he needed to confer with his Records. DW3 could not remember the exact date the 1st payment of Eighty Million Naira (N80, 000, 000), was made because that payment dragged on for about a year but added that the Last Payment was made in February 2007.

Further, he needed to confer with the Records to determine whether the name of Alhaji Abubakar or Evelyn Abubakar was used for the issuance of the Two Cheques. DW3 could not say whether the Cheque was a Jones Tech Cheque or a Banker's Cheque and he could not also say from which Bank the Cheques were drawn. Shown **Exhibit P**, the Certified True Copy of the Certificate of Occupancy, DW3 stated that the Title Holder was Evelyn and the name of Alhaji Aliyu Abubakar could not found therein.

On the next Adjourned Date, DW3 stated that he had checked his Records but could not find Copies of either the Cheques or Drafts. He also could not find a Copy of the Bank Statement in order to ascertain whether the name of Alhaji Abubakar or Evelyn was used to issue the Cheques. When asked, he stated that he did not go to the Bank to ask for the Statement. When challenged on his failure to obtain the Statement from the Bank, DW3 could only say that from the Deed of Assignment, Alhaji Abubakar acknowledged receipt for the purchase of the property from Jones Tech.

Learned Silk applied to have it noted on Record that DW3 did not go to the Bank to crosscheck and in response, DW3 stated that it never crossed his mind that he needed to crosscheck with the Bank because the only person from whom a complaint of non-receipt of the payment could be obtained from, was Alhaji Abubakar.

Shown **Exhibit R6**, the Power of Attorney dated the 27th of February 2007, DW3 stated that the name of Alhaji Abubakar did not feature in the Exhibit, the Consent of the Minister of the FCT was not obtained nor was the Exhibit Registered.

When asked whether at the time the transaction was consummated, he personally represented Jones Tech, DW3 stated that he and Mr. Williams did the transaction together.

Referred to his Earlier Testimony, DW3 agreed that DW2 was introduced to Jones Tech through their Agent, Mr. Bayo (DW1) but could not say whether that introduction was physical. Further, several meetings had transpired inbetween which accounted for his failure to remember the sequence of events that led to the meeting with the DW2. According to him, Mr. Bayo initially introduced two men to him and it was later in the course of the transaction, he met DW2 in person. DW3 could not remember the date Mr. Bayo came with these men to their Office adding that, it was not on that date,

Jones Tech received payment, because couple of meetings had taken place inbetween.

On the question of the Date Jones Tech received payment from the 2nd Defendant, DW3 referred to a Bank Draft attached to **Exhibit R6**, the Power of Attorney.

Shown the Date of the Bank Draft being the 11th of January 2008, DW3 stated that Zenith Bank, Kaduna issued it. Learned Silk postulated the possibility of the 2nd Defendant making payment in Lagos on the same day she obtained a Bank Draft in Kaduna. DW3 referred Learned Silk to the Documents filed by them wherein Jones Tech had agreed with the 2nd Defendant to make the payment directly into the Jones Tech's Account and not to their Office. Further, he did not know who lodged the Draft in their Account nor could he confirm whether the Bank Draft was drawn from the Account of the 2nd Defendant.

On whether Jones Tech's Bank confirmed payment in **Exhibit Q**, DW3 stated that the Letter in this Exhibit was addressed to the 2nd Defendant. Shown **Page 11 of Exhibit R6**, DW3 agreed that it contained a Letter that emanated from Jones Tech to Skye Bank, Akin Adesola Branch, instructing the Bank to release Title Documents to the 2nd Defendant upon payment. He believed the Title Documents were released on the basis of **Exhibit Q**, which did not happen in his presence, but the 2nd Defendant had confirmed to him receipt of the Title Documents.

DW3 stated that the Letter in **Page 11 of Exhibit R6**, the Power of Attorney, was authored on the 15th of January 2008 and it was possible for Jones Tech and the 2nd Defendant to have executed the Conveyance before the date in the Letter.

Shown **Pages 13 to 16 of Exhibit R6**, between Jones Tech and Alisabatu Alkali, the 2nd Defendant, particularly **Page 16**, he identified the Signature of the 2nd Defendant, which was witnessed by Mr. Bayo. He also identified his Signature and that of Mr. Williams, which were executed on behalf of Jones Tech. Shown **Page 14 of Exhibit R6**, the Power of Attorney and the Deed of Assignment in **Page 17**, DW3 identified the Dates in these Documents evidencing the Dates of Transfer to be 21st of January 2008.

Highlighting the above dates and asked to explain the possibility of handing over Title Documents before Final Payment, DW3 stated that they drafted the

Documents, signed and handed them over to Skye Bank. According to him, since parties did not know exactly when payment would be made, they had agreed that the Documents would be dated after payment. This was done to give confidence to the Buyer that Documents would not be withheld once payment is made.

When asked, DW3 could not remember whether the 2nd Defendant signed after she made payment or whether she signed in his presence. However, he then stated that Mr. Bayo brought the Documents after DW2 had signed. DW3 agreed that he and the 2nd Defendant, before she made payment, had signed and the Documents were handed over to the Bank with an instruction not to release until money was paid. DW3 identified the Documents to include the Power of Attorney, Deed of Assignment and a Certificate of Occupancy.

Referred to **Page 16 of Exhibit R6**, the Power of Attorney, particularly the Oaths Section, DW3 read it stating that it was before the Commissioner for Oaths, High Court of Kaduna dated 21st of January 2008. According to DW3, he signed only One Power of Attorney and One Deed of Assignment.

Shown the Signature of Evelyn Abubakar in **Exhibit M**, an Application Form for Reissuance of a Certificate of Occupancy submitted by Evelyn Abubakar, and told to reconcile that signature with **Page 22 of Exhibit R6**, DW3 stated that the Signatures in the Two Exhibits did not appear to be the same.

Finally, he did not know when he met the 2nd Defendant but had met her in Lagos.

Under **Cross-Examination by Learned Counsel representing the 3rd Defendant**, DW3 stated he was officially registered as a Director of Jones Tech in 2011 and the Directors were the Company's Direct Allottees. Jones Tech had an Office at No 16A Vaal Street, Maitama as well as other properties in Abuja and it was on the account of this Abuja Office, the property in issue was sold.

DW3 stated he knew Evelyn Abubakar, the daughter of Alhaji Abubakar casually and could not remember how old she was at the time they met. He knew Alhaji Abubakar very well and had related with Alhaji Abubakar's younger brother, Late Suleiman, with whom a Search was conducted at the Lands Registry with a Report issued. However, he would not know whether the Search Report was before the Court.

Further, DW3 did not know whether there were any attempts to register with the Lands Registry, the Power of Attorney and Deed of Assignment between Jones Tech and Evelyn Abubakar or between Jones Tech and the 2nd Defendant. But he knew it was the Law that when a property is assigned, the Consent of the Minister must be obtained.

According to DW3, the property was used as a Collateral and when asked whether the Mortgage Transaction was registered at the Lands Registry and whether the Consent of the Minister had been obtained, DW3 stated that the Documents were merely deposited with the Bank, as an Equitable Mortgage.

Under **Cross-Examination by Learned Silk representing the 2nd Counter-Claimant**, DW3 agreed that Jones Tech took a Facility from Skye Bank, for which purpose, the Original Certificate of Occupancy for No 33 Limpopo Street was deposited and he would not know whether Skye Bank conducted a Search before doling out this Facility.

DW3 agreed the name on the Certificate of Occupancy was Evelyn Abubakar. He, however, considered it possible for a Bank to oblige its Customer a Facility secured on a Collateral or a Title Document not bearing its Customer's name. According to him, it could happen in Banking Practice once a Customer can satisfactorily demonstrate to his Bank that he had obtained the Owner's Mandate.

In this instance, the Certificate of Occupancy bore the name of Evelyn Abubakar, which was deposited with the Bank including Title Documents executed by her father, Alhaji Abubakar, who acted for and on her behalf. DW3 added that his Witness Statement on Oath backed up this testimony. DW3 reiterated that Jones Tech had informed the Bank of the purchase the property and had supplied to the Bank, the Power of Attorney and Deed of Assignment, even though these Documents did not operate as a Letter of Authority. According to DW3, he could not testify as the incompetence of the Bank and was not aware of any discrepancy in his testimony.

As regards the Three (3) Adjournments granted to the Defence, being an opportunity to go through his Records pertaining to this transaction, DW3 stated that he did not confer with Records because he was dealing with other Operations.

DW3 could not still remember how many times he had met the 2nd Defendant or how many times they met before the transaction was consummated. He only could remember Mr. Bayo (DW1), introducing Prospective Buyers

including Alisabatu Alkali, whom he introduced in writing.

DW3 confirmed Mr. Bayo introducing Two Gentlemen, whose names he could not remember and their purpose of visit, concerned the purchase of the property in issue. He did not interact with them or knew whether they had any relationship with the 2nd Defendant, who eventually purchased the property.

On whether he would be shocked to discover that the 2nd Defendant, in her testimony, had denied meeting Jones Tech and which of these contrary assertions should be believed, DW3 stated that he had no reason or motive to lie in relation to this property, adding that within the period the property in issue was sold, other properties were also sold.

DW3 disagreed with the proposition that only Mr. Williams was involved with the transaction, stating that he was in charge of all that transpired, whilst Mr. Williams was aware and present at all occasions. According to him, he initially acted as Company Secretary of Jones Tech and in relation to this transaction, he was Director/Secretary and had signed on behalf of Jones Tech, as Secretary, because that was how the Documents were couched. Further, as at 2008, he was no longer Secretary but a Director adding that he could not remember the Date he obtained directorship.

Confronted with a **Certified True Copy of CAC Form 7** of Jones Tech International, DW3 noted the filing date as November 2011 and also noted the date of Resolution as the 23rd of August 2011. When told that his appointment as Director was after the transaction was consummated, DW3 agreed but stated that he had always been a Director before this Form was formally filed, and had acted in that capacity. Further, he denied misleading this Court into believing that he was Director when this transaction was consummated.

The CAC Form 7 of Jones Tech was tendered and without any Objection same was admitted as **Exhibit S**.

No further questions were asked and there was no Re-Examination.

DW4, Okechukwu Megwa, a Legal Officer from Skye Bank Head Office now Polaris Bank, on Subpoena, tendered into evidence his Subpoena, which was admitted into evidence without any Objection as **Exhibit T**. He also tendered into evidence: -

1) The Statement of Account for Jones Tech International Limited from 1st

January 2008 to 31st December 2008 together with a Certificate of Compliance dated the 9th of April 2019; 2) A Copy of a Manager's Cheque in the Sum of One Hundred and Fifty Million Naira (N150, 000, 000) from Zenith Bank Plc. dated the 11th of January 2008 in favour of Jones Tech International Limited; and 3) Original Skye Bank Deposit Slip/Teller in the Sum of One Hundred and Fifty Million Naira (N150, 000, 000) for Jones Tech International Limited.

Learned Counsel representing the 3rd Defendant did not object to the admissibility of these Documents.

Objections were made by Learned Silks representing the Claimant and 2nd Counter-Claimant, who argued that the Certificate of Compliance did not meet the requirement of **Section 89 of the Evidence Act**, on the grounds that the Certificate was not contained in the Bank's Letterhead, there was no Stamp or Signature of the Issuer. According to Learned Silk representing the Claimant, further address in regard to the Cheque would be made in his Written Address.

In response, Learned Counsel representing the 1st and 2nd Defendants contended that these arguments were matters of weight but not admissibility.

The Court then ruled admitting these Documents into evidence as **Exhibits Ua- the Certificate of Compliance; Ub- the Statement of Account; Uc- the Manager's Cheque; and Ud- the Deposit Slip/Teller.**

As regards whether **Exhibit Uc** was captured in **Exhibit Ub**, DW4 stated that there was a Credit in the Sum One Hundred and Fifty Million Naira (N150, 000, 000) into Jones Tech on the 15th of January 2008, whose Value was contained in **Exhibit Uc**, the Manager's Cheque. Further, **Exhibit Ud**, the Deposit Teller was what was used to pay in the Manager's Cheque in **Exhibit Uc**.

Under Cross-Examination by Learned Counsel representing the 3rd Defendant, DW4 stated that he did not know the purpose for which this Sum was paid.

Under Cross-Examination by Learned Silk representing the Claimant, DW4 stated that he joined his Bank in September 2013 but was not in its employ when the transaction occurred. He is stationed at the Regional Legal Office of the Bank, whose address is at N0. 31 Aguiyi Ironsi Street, Maitama Abuja whilst the Head Office of Skye Bank is situated at N0.3 Akin Adesola Street,

Victoria Island- Lagos.

When asked, DW4 stated that he would not be able to decipher the Identity of the Person from whose Bank Account the Manager's Cheque in **Exhibit Uc** emanated from.

There were no questions from Learned Silk representing the 2nd Counter-Claimant and neither were there questions asked in Re-Examination.

The 1st and 2nd Defendants summoned as **Witness No. 5**, another Subpoenaed Witness, **Alhaji Aliyu Abubakar, DW5**, a Businessman based in Lagos and Abuja, whose resides in N0. 6 Gana Street, Maitama Abuja and who on Oath stated that he had made a Witness Statement on Oath on the 14th of June 2019. He identified his Witness Statement by his Signature and Passport Photograph and adopted it as his evidence.

Shown **Exhibit B**, a Deed of Assignment, Alhaji Abubakar stated that he did not know this Document and same did not originate from himself or his daughter, Evelyn Abubakar. He also did not know about **Exhibits D, E, F, G and H** or **Exhibit C**, the Approval of Consent from the Minister. Further, the Signature in **Exhibit N**, the Letter of Consent, was not his daughter's signature even though her name was written therein. In his Statement, he referred to his daughter's information that she did not execute any or sign any consent letter, deed of Assignment or Power of Attorney from the Claimant or the 2nd Counter-Claimant. She also did not collect the sum of N80, 000, 000.00 or 150, 000, 000.00 from either Kingsberry or Babalakin in respect of the Property.

This Witness also alleged Forgery on the part of the Claimant and 2nd Counter-Claimant and set out the Particulars of Forgery, capping it all with the statement that Evelyn Aliyu Abubakar **NEVER** had access to the Title Documents.

Under **Cross-Examination by Learned Counsel representing the 3rd Defendant**, Alhaji Abubakar stated that he had been living in Abuja for the past Twenty-Eight Years and owns a Company called A.A. Oil, a Telecom Company and had ventured in Properties for about Twenty Years.

Concerning this dispute, Alhaji Abubakar stated he had sold the Property in Issue to a friend and did not know what eventually went wrong. A close friend of his, Chief Babalakin, in the company of a Lawyer, came to his Office Two or Three Years ago, narrating to him, issues he was having with a Property he, Alhaji Abubakar, had sold to someone else. After the narration, he advised

Chief Babalakin to settle since he had already sold the Property.

Referred to **Paragraph 7 of his Witness Statement on Oath**, Alhaji Abubakar stated that he did not register any Executed Deed of Gift with the Lands Department. According to Alhaji Abubakar, when Evelyn Abubakar arrived to Nigeria from Canada, he informed her that he bought a Property in her name, and at an appropriate time, when she intends to either use it or sell it, she should inform him.

Further, Alhaji Abubakar claimed that he signed all the Signatures concerning this Property but he did not sign **Exhibit M**, the Recertification of the Certificate of Occupancy issued by AGIS.

According to him, Evelyn Abubakar was about Twenty-Eight to Thirty Years of ago and she was not fictitious.

Under **Cross-Examination by Learned Silk representing the 2nd Counter-Claimant**, whilst reserving his Objections for Final Address with regards to the Witness Statement on Oath, referred Alhaji Abubakar to **Paragraph 13 of the Witness Statement**. Alhaji Abubakar stated that Evelyn Abubakar was his daughter, she was legally residing in Canada and she was officially the Owner of the Property.

Under **Cross-Examination by Learned Silk representing the Claimant**, who also reserved his Objections for his Final Address, he referred Alhaji Abubakar to the Signature contained in the Witness Statement to which this Witness agreed that it was his Signature and had signed this Witness Statement in his Office.

His Re-Examination was disallowed and on that note, the 1st and 2nd Defendants closed their Case.

The **3rd Defendant** opened their case by calling **Mr. Adeloje Adepoju Abiola**, a Staff of the Lands Department under the Federal Capital Development Authority, who recognized his Witness Statement on Oath dated the 15th of October 2019 and adopted it.

In it, he stated that from the Records at his disposal and from what he knew about the Subject-Matter, the 1st and 2nd Defendants were unknown to the 3rd Defendant.

On the 25th of October 1990, Evelyn Aliyu Abubakar through her Solicitor, Ike

Nweje & Co., made an Application to the 3rd Defendant for Consent to Mortgage the Property to Citizens International Bank Limited. Approval was granted on the 5th of December 2000 but it was not Registered.

He stated that the Claimant is the Lawful Owner of the Property in Dispute as contained in the Deed of Assignment registered as F.C. 198 Page 198 Volume 27 MISC, which evidenced a Transfer of Title between them and Evelyn Aliyu Abubakar.

According to him, the Source of the 1st and 2nd Defendants' Ownership to the Property in Dispute was unknown.

Under **Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants**, Mr. Abiola stated that he started work in the FCDA on the 16th of September 2009, he was in the Lands Department and not in the Registration Department of the FCDA and he did not know one Haruna Aliero Sa'adu.

His Schedule of Duty did not include Registration of Titles but he knew the Process of Transferring Title as well as Registration of Developed Properties. The Process took a period of about One to Two Months, commencing with a New Buyer presenting all Documents at his disposal to an Estate Valuer in his Office, who visits the Site to value the Property.

Previously, it was the practice to present only Photocopies of these Documents to the Estate Valuer. After the sighting exercise, the Minister grants Approval to the Deed of Assignment. Usually, the Buyer applies for the Minister's Consent and was also liable to pay the Consent Fees.

In this instance, he was not conversant with the transaction on Plot 2378 or involved in the Registration of Title for this Plot because he was not a Valuer. He was conversant with what was contained in their Database and had seen the Valuation Report that was Registered on the 1st of July.

On whether there was Two Registrations for the Plot in question, Mr. Abiola stated that from their Office Records, he saw only a Deed of Assignment and Report of Valuation between Evelyn Aliyu Abubakar and Kingsberry Estates.

Shown **Exhibits A to J**, Mr. Abiola stated that Kingsberry's Solicitors applied for Consent. When asked whether his Office had in their File, the Original of the Letter in **Exhibit N**, Mr. Abiola answered that he did not have the hard copy of this Exhibit, but its soft copy contained in their database. Further, **Exhibit N** was addressed to Kingsberry and not to the Minister and Evelyn

addressed the Letter from Plot 40 Lapa Road GRA, Kaduna. Shown **Exhibit C**, the Consent Approval, Mr. Abiola stated that this Exhibit was addressed to Evelyn in care of Babalakin & Co (the 2nd Counter-Claimant).

Mr. Abiola made no comment as to why his Office replied to Evelyn's Letter using a different address. Further, there was no Letter personally written by Evelyn to the Minister nor did any Letter emanate from her from her address in Kaduna, to his Office.

This witness reiterated the point that it was the New Buyer that paid for the Consent and confirmed the Search Reports in **Exhibits G and H**. According to him, anybody could conduct a Search and this Search Report was directed to the address supplied by Babalakin & Co, which address was captured in their System.

Further, the same address was used in **Exhibit M**, the Application for Recertification and when asked, he stated there was no Record evidencing Babalakin & Co., were acting in favour of Evelyn Abubakar. As regards the Transaction for Registration between Kingsberry and Evelyn, he nor his Office never sighted the Original Certificate and had never met with Evelyn in the course of this transaction.

Under **Cross-Examination by Learned Counsel representing the Claimant**, Mr. Abiola stated he would not know whether the Minister wrote to Evelyn and vice versa. Since he was not involved in the transaction, he never met Evelyn. Mr. Abiola estimated about Twenty Applications for Consent could be made weekly, which translates into Thousands yearly. Between 2009 till date, over Ten Thousands of Applications for Consent would have been made, which are all contained in the System adding that he could not have a mental picture of all the Applications.

Under **Cross-Examination by Learned Silk representing the 2nd Counter-Claimant**, Mr. Abiola stated that from his knowledge and experience, it was usual for Lawyers to act for Parties in these transactions, and from his Records, Evelyn Abubakar did not raise any Complaints pertaining to this transaction.

No further questions were asked, there was no Re-Examination and the 3rd Defendant applied to close their case.

The **2nd Counter-Claimant** opened his Case by calling, Alhaji Yusuf Aliyu Ahmed, the Personal Assistant to the Former Minister of Aviation, Mr. Felix

Hyat (the 1st Defendant), who on Oath adopted his Witness Statement having identified it by his Signature.

In Sum, his evidence was that he had worked with Mr. Felix Hyat and his family for several years and only knew his wife as “Elizabeth Hyat”, and at no point was the name, “Alisabatu Alkali”, used to describe her.

He had been actively involved in Property Transactions, usually acting as a Middleman and had introduced the Property in issue to Dr. Babalakin, persuading him to purchase the property. He had also notified Dr. Babalakin of Mr. Felix Hyat’s desperate search for a Property and had advised Dr. Babalakin to let the property to Mr. Felix Hyat after its purchase to provide accomodation for himself and his family.

According to him, Dr. Babalakin agreed to this proposition and directed him to negotiate with the Vendor, Jones Tech International Limited, for the Sale. It is his position that Dr. Babalakin exclusively furnished Consideration for the Property, thereby purchasing it in the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00).

It was this Witness, who personally handled all the negotiations with Mr. E. J. Williams, the alter ego of the Vendor and it was he, who attended all the meetings pertaining to the purchase of the property. As part of his discussions with Mr. Williams, he had indicated that the Bank Draft be raised in favour of Jones Tech International Limited and paid into their Account with Skye Bank Plc., who had Custody of the Certificate of Occupancy.

It was also this Witness, who personally went to a Zenith Bank Branch in Kaduna to arrange for and pick up the Draft for the purchase, from the funds provided by Dr. Babalakin.

According to him, neither Mr. Felix Hyat nor Alisabatu Alkali were at anytime involved in the negotiations or discussions for the purchase of the Property and neither of them interfaced with Jones Tech International Limited prior to the purchase of the Property.

Alhaji Yusuf stated that further to the directions of the Vendor, he took the Bank Draft to the Skye Bank Plc.’s Office in Lagos to make payment. Upon confirmation of the Bank Draft and Value, Skye Bank Plc., released the Certificate of Occupancy covering the Property to him.

He stated that he acted for and on behalf of Dr. Babalakin in all negotiations

and meetings with the Vendor leading up to the Purchase of the Property.

Having concluded the Transaction, and in view of the difficulty experienced by Mr. Felix Hyat to secure a befitting residential accommodation in Abuja, Dr. Babalakin decided to allow Mr. Felix Hyat reside in the premises as a Rent Paying Tenant. There was an understanding that Mr. Felix Hyat will either move out of the Property upon securing a suitable alternative accommodation or purchase the property from Dr. Babalakin subsequently, when Mr. Felix Hyat was able to raise an agreed Purchase Price.

Because of Mr. Felix Hyat's express desire to purchase the Property, he held onto the Title Documents pending a completed purchase by Mr. Felix Hyat. However, Mr. Felix Hyat put intense pressure on him to release the Title Documents to him, because he wanted to use the Documents to secure a Loan from a Bank in order to pay Dr. Babalakin for the property.

He was however shocked and disappointed to find that Mr. Felix Hyat refused to either move out of the Property or furnish Consideration for its purchase. He had also refused to pay any Rent. Therefore, when this became clear, Dr. Babalakin requested for his Title Documents and was shocked to find out that he, Alhaji Yusuf, had delivered it to Mr. Felix Hyat for safekeeping.

Alhaji Yusuf had tried to no avail to retrieve the Title Documents from Mr. Felix Hyat and stated that a Complaint was lodged with the Nigeria Police Force, which led to the invitation of Mr. Felix Hyat and himself to the Police Station. They both made Statements and both admitted that the Property belongs to Dr. Babalakin. He was aware that Mr. Felix Hyat at the Police Station, undertook to vacate the Property and relinquish possession to Dr. Babalakin after the wedding of his child.

All attempts by him to recover the Official File from the Police proved fruitless and he learnt about the death of the Investigating Officer.

Under **Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants**, Alhaji Ahmed testified that as Personal Assistant, his Schedule of Duty extended to the 1st Defendant's domestic and personal affairs, if assigned. There were Letters that equated to Letters of Appointment including Minutes/ Identity Cards that backed up his Role but there were no Written Approvals for Domestic Duties.

He had known the 1st Defendant for over Twenty-Two Years as a

Commissioner and Chairman Local Government, and they were close during Makarfi's Administration. He did not know nor was he present when the 1st Defendant got married but he knew the wife, whom he identified in Court. He did not know her Maiden Name but knew her as, "**Elizabeth Hyat**".

According to him, he was 100% involved in the transaction of the property in issue stating that Dr. Babalakin gave him One Million, Two Hundred Thousand US Dollars (\$1, 200, 000.00). This Sum was converted into Naira through a Bureau de Change in Kaduna with an instruction to raise a Draft in the Naira Equivalent.

It was his testimony that A.A. Oil introduced him to Mr. Williams, the Managing Director of Jones Tech, from whom he bought the Property. An Agreement dated the 6th of December evidenced the property he bought from Mr. Williams.

According to him, the 1st Defendant, Mr. Felix Hyat, gave him the instruction to insert a Name but he could not recall the name he affixed in the Agreement. Further, he did not keep a Copy of that Agreement but had handed it over to the 1st Defendant. He agreed there was a Receipt of Payment stating that Mr. Williams had mortgaged his house to Skye Bank and it was he, who scribed on it, "**ORIGINAL RECEIVED BY ME**", which he also handed over to the 1st Defendant, Mr. Felix Hyat.

Alhaji Ahmed could not remember attesting or signing the Deed of Assignment because there were pre-existing discussions and emphasized that he collected the Document from Skye Bank.

As regards whether he bought the property on behalf of the 1st Defendant or Dr. Babalakin, Alhaji Ahmed stated that he bought the property for both of them and he was their intermediary.

When asked, Alhaji Ahmed did not know whether Babalakin's Law Firm was representing Kingsberry. He agreed showing the Documents in his custody to Dr. Babalakin and later giving it to Mr. Felix Hyat, to secure money from the Bank to pay for the property.

He believed Dr. Babalakin had in his custody the Copies of the Certificate of Occupancy and Receipts and added that the Originals had always been with the 1st and 2nd Defendants.

Alhaji Yusuf Ahmed could not answer the question of how the

Original Certificate of Occupancy moved from Evelyn Abubakar to Kingsberry because he did not know either of them. Further, the Bearer on the Certificate of Occupancy was a Lady but he could not remember her name.

According to this Witness, Babalakin SAN did not sign the Deed of Assignment he secured from Mr. Williams and he could not remember who witnessed it because it was a very long time ago. He also could not remember who the Buyer was adding that he was given the Document in an envelope, which, as a Middleman, he convey to Mr. Williams to sign. Further, to the best of his knowledge, Babalakin SAN was not a Party to the Deed of Assignment and therefore, did not sign any Deed of Assignment.

When Babalakin SAN gave him the Sum of One Million, Two Hundred Thousand US Dollars (\$1, 200, 000.00), he did not issue out any Acknowledgement Receipt nor did the Bureau de Change that converted the money, issue him with any Receipt. Further, the Draft that was raised from Zenith Bank, Yakubu Gowon Road Branch, was in favour of A.J. Williams' Company with the remaining balance of the Foreign Exchange paid into his Intercontinental Bank Account. Alhaji Yusuf Ahmed stated that he could not remember the name of the Payee because the transaction was Twelve Years ago.

Furthermore, his transaction all took place in one day and did not know whether Skye Bank, the Mortgagee, had written to him or either to Hyat or Babalakin in respect of the Mortgaged Property because he was an errand boy. Babalakin SAN did not consent to his handing over of the Documents to Mr. Hyat. It was Mr. Hyat, who pressured him into surrendering the Documents.

Prior to handing over the Documents, the 1st Defendant and his family were already residing in the house and he did the renovation using the balance of the Foreign Exchange. When Mr. Hyat entered into the Property, he did not enter as Tenant. According to him, Babalakin give him more than the Sum of One Million, Two Hundred Thousand US Dollars (\$1, 200, 000.00), which was loaned to Mr. Felix Hyat.

Referred to his Witness Statement in relation to Mr. Bayo, Alhaji Yusuf Ahmed stated that Mr. Bayo was not the Agent in charge of the Property but one Abubakar, who was paid his Agency Fees. Mr. Bayo was introduced to him by the Accountant of A.A. Oil and Mr. Bayo was instructed to accompany him to Lagos to conclude the deal.

Under **Cross-Examination by Learned Silk representing the Claimant**, Alhaji Yusuf Ahmed reiterated the point that he purchased the Property for both Chief Babalakin and Mr. Hyat. There was a Verbal Agreement between them to secure a house for Mr. Hyat and his family to move in. Previously, an Application was put through to the Federal Housing Authority, who issued a House Allocation in Gwarinpa, but this fell through due to time factor and myriads of demands from the Federal Housing Authority.

According to this Witness, he initiated the discussion with Chief Babalakin to loan them money because they did not have the Collateral to secure a loan from the Bank. There was a Mutual Understanding between Chief Babalakin and Mr. Hyat that where Mr. Hyat failed to pay back the money, he would vacate the house.

After their discussions with Chief Babalakin, the following morning, Chief Babalakin gave him the money and upon receipt, he informed Mr. Hyat, who instructed him to convert the money and do the purchase from Kaduna. He travelled to Kaduna with the money, secured the money in a Printer Cartridge Pack, but because the transaction with the Bureau de Change took time, he further instructed that a Draft be raised with the balance of the Foreign Exchange paid into his Bank Account.

According to him, Mr. Hyat gave him a Name to insert into the Agreement and upon enquiry, Mr. Hyat told him the Name belonged to one of his Cousins or Relations.

Apart from that, Alhaji Yusuf Ahmed reiterated that the name of the wife of Mr. Hyat was "**Elizabeth Hyat**" and he did not know her by any other name.

Further, he was never a Civil Servant even though he had worked with the Ministry of Aviation and was aware that Civil Servants could not run a business. He knew Mrs. Hyat worked in the Hospital owned by the Kaduna State Government but did not know whether she had a business.

On the question of arrest, Alhaji Yusuf Ahmed stated that when their Initial Verbal Agreement fell through, Chief Babalakin kept mounting pressure on him and accusing him of conniving with Mr. Felix Hyat. Chief Babalakin gave him Seven Day's Ultimatum to pay or surrender the house. He was later detained in Kaduna Force Headquarters and confronted on the whereabouts of Mr. Hyat. He was released on Conditional Bail to produce the Mr. Hyat. Mr. Hyat then assured Chief Babalakin that he would vacate the house after his

daughter's wedding. The Police Commissioner wrote a Report and since then, he had assumed the Case was all over.

Finally, Alhaji Yusuf Ahmed confirmed the Company Name of the Seller of the Property to be Jones Tech.

Under Re-Examination, Alhaji Yusuf Ahmed stated that it was the 1st Defendant that gave him Documents to convey to Lagos.

The 2nd Counter-Claimant's **Next Witness** was Alhaji Sharif Zailani Shanono, the Managing Director/Chief Executive Officer of Maigishiri Multi- Service Limited and Sharifideen Bureau de Change both situated in Kaduna, Kaduna State. Through an Interpreter, Alhaji Shanono testified-in-Chief that he made Two Witness Statements on Oath dated the 17th and 21st of September 2020, which he identified.

In the 1st Witness Deposition, Alhaji Shanono stated that sometime in January 2008, Dan Bala introduced him to Alhaji Yusuf, who needed the Naira Equivalent of the Sum of One Million, Two Hundred Thousand Dollars (\$1, 200, 000). Thereafter, he was to raise a Draft in favour of Jones Tech International Limited and then transfer the residue of the Foreign Exchange into Alhaji Yusuf's Intercontinental Bank Account.

Alhaji Shanono approached Zenith Bank where a **Draft with Number 02862489** was raised, which he handed over to Dan Bala for onward delivery to Alhaji Yusuf. According to him, his Statement of Account evidenced where the Zenith Bank Draft was raised in favour of Jones Tech International Limited.

Further, he had never met neither Alisabatu Alkali nor Elizabeth Alkali Hyat nor interacted with any 3rd Party in regard to the delivery of the Draft except Alhaji Yusuf.

In his 2nd Witness Deposition, Alhaji Shanono stated that the Initial Statement of Account attached to the aforesaid First Witness Disposition was not comprehensive enough. He sent a request to his Bank, who furnished him with a New Comprehensive Statement of Account, by sending it to his email. This New Comprehensive Statement of Account emanated from Maigishiri Multi-Service Limited's Account with Zenith Bank, from which the Draft was raised in favour of Jones Tech International Limited.

Upon adopting these Witness Depositions, Learned Counsel representing the

1st and 2nd Defendants submitted that he had Objections to these aforesaid Depositions, which would be addressed in his Written Address.

Referred to his 1st and 2nd Witness Statements on Oath, Alhaji Shanono identified the Zenith Bank Draft, the Zenith Bank Statement of Account printed from his Email and the Certificate of Compliance, which were tendered into evidence. There were no Objections from Learned Counsel representing the 3rd Defendant or from Learned Silk representing the Claimant.

However, Learned Counsel representing the 1st and 2nd Defendants submitted that his Objections would be contained in his Written Address. The Zenith Bank Draft, Zenith Bank Statement of Account and the Certificate of Compliance were admitted into Evidence as **Exhibit V1, V2 and V3** respectively.

There was no Cross-Examination of this Witness neither by Learned Counsel representing the 3rd Defendant nor by Learned Silk representing the Claimant.

Under Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants, Alhaji Shanono stated that it was on the day of his testimony that the Statement of Account in **Exhibit V2** was generated, and sent into his Email therefore, Zenith Bank did not stamp the Statement of Account.

According to him, he had no business transactions with Jones Tech Limited or Dr. Babalakin and when asked, he did not know how the Sum of One Million, Two Hundred Thousand US Dollars (\$1, 200, 000) came about.

He knew Yusuf Aliyu when he went to his house to collect this Sum and had never known him except for this transaction and Alhaji Yusuf never supplied him with his own Bank Account.

Further, he did not know the reason for the Draft, adding that both the handing over of the Dollars and the Instructions thereto, were all verbal in nature. Upon collecting the Dollars, he sold the Dollars and deposited the proceeds into his Account from where a Draft was raised.

Referred to Paragraph 2 of his 1st Witness Statement on Oath, Alhaji Shanono stated that Illiya Dan Bala introduced Alhaji Yusuf Aliyu to him through whom he was balanced the Sum of Two Hundred Thousand Naira (N200, 000) to cover the shortfall after the One Million, Two Hundred Thousand US Dollars (\$1, 200, 000) was converted into its Naira Equivalent.

Alhaji Shanono denied being granted a Loan or Overdraft by his Bank in order to secure this Draft. No further questions were asked.

Under Re-Examination, Learned Silk Layonu stated that **Paragraph 2 of Shanono's 1st Witness Statement on Oath** would be considered his Written Address.

The **Last Witness** was the 2nd Counter- Claimant himself, Dr. Bolanle Olawale Babalakin SAN whose Pleadings were contained in his Defence to the 1st Counter-Claim, 2nd Counter-Claim and in his Reply to the 1st Counter-Claim's Statement of Defence dated and filed on the 19th of April 2016 and dated 1st but filed on the 4th of November 2016 respectively. These Pleadings were also set out in Two Witness Statements on Oath, which Dr. Babalakin adopted on the 21st of September 2020.

Dr. Babalakin alleged that he is a Legal Practitioner as well as an Investor having business interests in different sectors of the Nigerian Economy. He denied all the Averments put forward in the 1st Counter-Claim, stating that they were false, distorted, a misrepresentation and concocted manipulations contrived with the intention of misleading this Court and further, he specifically denied **Paragraphs 7, 8, 9, 10, 11, 12, 13, 16, 17, 18 and 19**.

Dr. Babalakin contended that he furnished consideration, paid for and purchased the property in dispute, which he later sold off to the Claimant. He stated that: -

In the course of his interactions and business relations with the Federal Ministry of Aviation, he had interactions with the 1st Counter- Claimant, Mr. Mr. Felix Hyat, the Federal Minister through series of Appointments, Meetings and Official Engagements. These interactions were held in Mr. Mr. Felix Hyat's Office or in his Hotel Suite at Rockview Hotel, Abuja where he was resident.

Following a conversation with Yusuf Aliyu Ahmed, Mr. Felix Hyat's Personal Assistant, he got to know Mr. Felix Hyat was in dire need of and was desperately in search of a Residence for himself and his family. But before this conversation, he had wanted to purchase the property in dispute for investment purposes with no intent for immediate use.

He then sought the assistance of Yusuf Aliyu, whom he engaged to conclude all negotiations, meetings and reach a Sale Agreement with the Vendor. Yusuf

Aliyu and other Associates were to also conduct a detailed physical inspection of the property, which inspection was done and he was given a feedback.

Upon concluding negotiations, he furnished the Dollar Equivalent of One Hundred and Fifty Million Naira (N150, 000, 000), as consideration for the property to Yusuf Aliyu, who made payment and the Certificate of Occupancy, was handed over to Yusuf Aliyu by the Vendor.

Due to Mr. Felix Hyat's continued difficulty in securing a befitting Residence, he let Mr. Felix Hyat into temporary possession of the property. There was a Gentleman's Agreement that Mr. Felix Hyat, upon securing an alternative residence, he would deliver- up possession or purchase the property off him or give- up possession, in the event of he was unable to purchase the property.

Mr. Felix Hyat expressed his gratitude to him and indicated his willingness to purchase the property upon raising sufficient funds. Therefore, it was based on this Gentleman's Agreement that he made no effort towards perfecting his interest in the property and with a further instruction that Yusuf Aliyu holds onto the Certificate of Occupancy.

Sometimes in 2009, he requested the Purchase Price of the Property from Mr. Felix Hyat, who had been in possession for over a year, to enable him invest the proceeds in other ventures. Several months down the line, Mr. Felix Hyat made no financial commitment, whereupon he sold-off his interest to Kingsberry Estates Limited for valuable consideration.

In his discussions with Kingsberry, Kingsberry became aware that the Certificate of Occupancy was still in the name of the Original Allottee, Evelyn Aliyu Abubakar, which fact was confirmed through a Legal Search. Therefore, in order to perfect interest at the Land Registry, Kingsberry knew it became necessary to contact and execute a Formal Document of Transfer with Evelyn Aliyu Abubakar.

Upon execution, Kingsberry proceeded to perfect her Legal Title at the Abuja Land Registry as well as obtain the relevant Statutory Consent and these transactions took place without the knowledge of the 1st and 2nd Counter-Claimants.

In view of the continuous holding over of possession by the 1st and 2nd Counter-Claimants, Kingsberry considered that the appropriate step to be taken, was to evict Mr. Felix Hyat by commencing a Recovery of Premises Suit

for which a Notice of Owner's Intention to Recover Possession was served on him. This was Kingsberry's initial belief but he later became shocked, scandalized and embarrassed when Kingsberry informed him that the 1st and 2nd Counter-Claimants had counter-claimed for a Declaration of Title over the property.

He then lodged a Formal Complaint with the Nigerian Police and Mr. Felix Hyat made Statements to the Nigerian Police, undertaking to pay him the Purchase Price of the Property.

He knew as a fact that the 1st and 2nd Counter-Claimants never purchased from nor furnished consideration over the Property to him or any other person nor acquired any Interest, Legal or Equitable, from Evelyn Aliyu Abubakar or anyone else. He only knew the fact that Kingsberry acquired Legal Title from Evelyn Aliyu Abubakar through an Executed Deed of Assignment, which Interest had been registered. Further, Kingsberry had furnished valuable consideration for the Property and had never colluded with anyone or Fraudulently registered its Interest at the Land Registry.

Consequently, he urged the Court to dismiss with Substantial Costs, the 1st Counter-Claim for being frivolous, vexatious, misconceived and lacking in merit.

In his Reply, Dr. Babalakin denied **Paragraphs 5, 6, 7, 8, 9, 10 and 11** of the 1st Counter-Claim's Statement of Defence stating that he and the Law Firm of Babalakin & Co. maintained Separate Identities. Kingsberry was not his Client and he maintained no business relationship with them. Kingsberry, of their own volition, briefed Babalakin & Co., to register their Title with AGIS. Further, he denied the allegation that himself or a Lawyer in the Law Firm of Babalakin & Co. substituted the Address of Evelyn Abubakar or intercepted Correspondences from AGIS that were meant for Evelyn Abubakar.

He reiterated the fact that he provided Yusuf Aliyu Ahmed with the funds and all other necessary considerations including all incidental expenses relating to the purchase of the property. He only permitted the 1st Counter-Claimant and his family into possession because upon Felix Hyat's Ministerial Appointment, he had desperately been in search of a befitting residence.

Under **Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants/Counter-Claimants**, Dr. Babalakin stated that he is the Senior Partner in Babalakin & Co., a Large Law Firm with many Partners and to the

best of his knowledge, Oshobi SAN and others worked in the same Law Firm.

According to him, Babalakin & Co., was a large Law Firm and Lawyers could take up matters within the Firm. When asked, he would not know whether Oshobi SAN settled the Pleadings of Kingsberry, the Claimant. Shown the Writ of Summons, he agreed it was the Law Firm that settled and signed the Claimant's Pleadings and it was not unusual for the Law Firm to act as Kingsberry's Solicitors.

Further, he would not know whether the Law Firm was aware of his Personal Interests in the property adding that the Law Firm, was a Seventy Man Law Firm and it was not expected that as a Senior Partner, he would know everything that was going on in the Firm.

On the question of whether Kingsberry acquired Interests in the Property from him, Dr. Babalakin answered in the affirmative stating that the property was acquired for Valuable Consideration, which does not necessarily need to be in Cash. Learned Counsel, Nwosu Esq., insisted on knowing the nature of the Valuable Consideration, but according to Dr. Babalakin, he needed not to disclose the nature of the Valuable Consideration, as Kingsberry and himself were satisfied with the transaction, and there were no complaints.

As regards the Documents evidencing his transaction with Kingsberry, Dr. Babalakin stated that he believed there were Documents but he never handed over Title Documents to them.

According to him, Alhaji Yusuf, his Agent, bought the property but he did not hand over to him the Title Documents for reasons contained in his Witness Statement on Oath. Alhaji Yusuf collected money from him and brokered the transaction, including the discharge of the Mortgage that was over the property and Mr. Hyat did not know about the property. According to Dr. Babalakin, he was the Owner of the property in dispute and nobody denied his ownership.

Therefore, he need not possess a Power of Attorney or Perfect his Title over the Property because it was a Cost-Saving Measure especially when a person intends to resell. In this instance, he never perfected his Title because he intended to resell the property in dispute.

On the question of whose name Alhaji Yusuf bought the Property, Dr. Babalakin stated that Alhaji Yusuf must have bought the Property in his own

name or in the name of one of his Companies.

When asked, Dr. Babalakin could not recall seeing the Title Documents for the property but knew that Evelyn was the Original Title Holder. Further, he could not say who was in possession of the Property but it was Alhaji Yusuf that put Mr. Hyat in possession and who remained in possession. Mr. Hyat was to buy the property from him within a year but he never did.

Under **Cross-Examination by Learned Counsel representing the 3rd Defendant**, Dr. Babalakin stated that he would not know whether Mr. Felix Hyat registered any Interest with the Honourable Minister of the Federal Capital Territory.

No further questions were asked, and there no Cross-Examination by Learned Silk representing the Claimant nor was there any Re-Examination.

At the Close of the Evidence on the 21st of September 2020, the Court was notified by Learned Silk representing the Claimant, of an intention to amend their Pleadings in line with the Evidence led and ALL Parties also agreed to file their Final Written Addresses for Adoption and treat the Amendment and Adoption simultaneously.

Learned Silk representing the 2nd Counter-Claimant, in his Address, raised the following Two Issues for Determination: -

1. ***Whether the Counter-Claimants are entitled to the Reliefs sought in the Amended Joint Statement of Defence and Counter- Claim dated 23rd February, 2016;***
2. ***Whether any Interest in the Property, Legal or Equitable, purported to be held by the Counter- Claimants is held for and on behalf of and for the benefit of the 3rd Defendant to the Counter- Claim as Resulting Trustees.***

On his own part, Learned Counsel representing the 1st and 2nd Defendants filed on the 13th of October, 2020 his Final Written Address dated 12th October 2020, wherein he formulated the following Issues for Determination, namely:

1. ***Whether the Claimant's Suit and the Subsequent Counter-Claim by the 3rd Defendant to the Counter-Claim of the 1st and 2nd Defendants, Dr. Bolanle Olawole Babalakin SAN, constituted a GROSS ABUSE OF***

JUDICIAL PROCESS.

- 2. Whether Dr. Bolanle Olawale Babalakin SAN, breached the Rules of Professional Ethics for Legal Practitioners when halfway into the hearing of this Suit, wherein his Law Firm, Babalakin & Co., represents the Claimant, he applied to be joined as the 3rd Defendant to the Counter-Claim of the 1st and 2nd Defendants/Counter-Claimant took the Witness Stand and called witnesses and thereby exposed himself and his witnesses to cross-examination by his Law Firm, Babalakin & Co.**
- 3. Whether the 3rd Defendant to the Counter-Claim of the 1st and 2nd Defendants, Dr. Bolanle Olawale Babalakin SAN, has the Legal Locus Standi to commence the 2nd Counter-Claim against the 1st and 2nd Defendants.**
- 4. Whether the Honourable Court has jurisdiction to grant the Prayers contained in the Counter-Claim of the 3rd Defendant to the Counter-Claim of the 1st and 2nd Defendants, Dr. Bolanle Olawale Babalakin SAN.**
- 5. Whether the Claimant by Credible Evidence proved its Claim as to be entitled to the Reliefs sought.**
- 6. Whether the 3rd Defendant to the Counter-Claim of the 1st and 2nd Defendants (Dr. Bolanle Olawale Babalakin SAN) proved its Claim as to be entitled to the Reliefs sought.**

In response, Learned Silk representing the Claimant in his Final Written Address raised the following Issues for the Court's Determination, namely: -

- 1. Whether the Claimant has been able to establish that it a Bona Fide Purchaser for Value without Notice of any Prior Equitable Title in the Property?**
- 2. Whether the 2nd Defendant acquired or could have acquired any cognizable Equitable Title/Interest in the Property from Jones-Tech?**
- 3. Whether the 2nd Defendant was able to prove any Interest/Title in the Property via Credible Evidence and in accordance with the Law?**
- 4. Whether the Entire Evidence led by the 1st and 2nd Defendants is inconsistent, contradictory and unreliable?**

On their part, Learned Counsel representing the 3rd Defendant, the Honourable Minister, in their Final Written Address raised the following Issues for the Court's Determination, namely: -

- 1. Whether the Counter-Claim of the 1st and 2nd Defendants/**

Counter-Claimants discloses any cognizable Cause of Action against the 3rd Defendant in this Suit?

2. Whether on the Preponderance of Evidence, the 1st and 2nd Defendants/Counter-Claimants are entitled to their Counter-Claim in this Suit?

To all these Addresses, Learned Counsel to the 1st and 2nd Defendants as well as Learned Silk to the 2nd Counter-Claimant filed their Respective Replies.

PRELIMINARY ISSUES

Before proceeding to analyze the Issues, the Court will make Specific Findings in respect of the Strong Contentions raised on the Identity of the 2nd Witness for the 1st and 2nd Defendants, Madam Alisabatu Alkali. Rulings were also reserved in respect of the Admissibility of her Identification Documents; the Bank Statements of Alhaji Sharif Zailani Shanono; and the Consideration of the Alhaji Aliyu Abubakar's Witness Statement on Oath.

On the 19th of February 2019, the **Admissibility of the following Documents** sought to be tendered by Learned Counsel to the 1st and 2nd Defendants were challenged by Learned Silks representing the Claimant and the 2nd Counter-Claimant: -

1. A Statutory Declaration of Age;
2. A Kachia Local Government Certificate of Indigenization;
3. A Document indicating an Extract from Register NO. 11 belonging to the Archdiocese of Kaduna; and
4. A Photocopy of an Evangelical Churches of West Africa School Document.

Learned Counsel representing the 3rd Defendant, the Honourable Minister, had no Objections whatsoever to their Admissibility into evidence.

On his own part, **Learned Silk representing the Claimant** generally challenged these Documents on the Ground that the Documents identified by Madam Alisabatu Alkali were not contained in any of her Statements contrary to **Order 34 Rule 1 Sub-Rule 3 of the FCT (Civil Procedure) Rules 2018**.

On the part of **Learned Silk representing 2nd Counter- Claimant**, he adopted the Submissions of Learned Silk to the Claimant adding that the Documents should be rejected, unless Learned Counsel to the 1st and 2nd Defendants can

specifically point to the Paragraphs in her Witness Statements where the Documents were pleaded.

By way of a Composite Response, **Learned Counsel representing the 1st and 2nd Defendants** responded to the issue of **Order 34 Rule 1, Sub Rule (3) of the FCT HIGH COURT (CIVIL PROCEDURE) RULES 2018**, stating that the Primary Rules of Pleadings is that Every Material Document which a Party intends to rely on in the Course of Trial, must have Facts relating to the Documents pleaded, as Parties do not plead Evidence but Facts. Referring to Paragraph Four (4) of the Amended Joint Statement of Defence and also Paragraph Six (6) of the 1st and 2nd Defendants' Amended Joint Reply to the Statement of Defence of the 3rd Defendant to the Counter Claim dated the 25th of February 2016, and the 16th of May 2018 respectively, he argued that these facts in the documents were pleaded.

Further reference was also made to **Paragraph 2** of the 2nd Defendant's Witness Statement on Oath dated the 21st of June 2016, and **Paragraph 3** of her Witness Statement dated the 7th of October 2011, wherein she deposed to the fact, that the "1st Defendant was her Lawfully wedded Husband". The combination of these Averments and the Specific Pleadings sufficiently satisfies the Requirements of **Order 34 Rule 1 Sub Rule 3** of the Rules, and he urged the Court to hold that the 1st and 2nd Defendants have sufficiently provided facts that would justify the admission of the Documents sought to be tendered into Evidence. The essence of Pleadings is to put the other Party on Notice and not to spring up surprises. The Claimant and the 3rd Defendant to the Counter Claim cannot ask for these documents, and then turn around to reject the same Documents. It is to meet the end of Justice that they requested for these Documents. He therefore urged the Court to disregard the Objections, and admit the Documents into evidence.

Now, the Court upon a careful appraisal of the Pleadings, is satisfied that the Foundation of these Documents were successfully pleaded by the 1st and 2nd Defendants in their Pleadings and without further ado, finds this Line of Objection untenable.

In specific regard to the Disputed Documents Provisionally Admitted as **Exhibits R to R3** by the Court for Ruling on their Admissibility in this Judgment, the Court holds that the Best Evidence Rule is the Evidential Rule providing that, to prove the Content of a Writing, or Recording, or Photography, a Party must produce the Original unless it is unavailable, in which case Secondary Evidence may be admitted. It is the Best Evidence that

the Nature of the Case or Document will allow, see the Case of **OMYCHUND VS BARKER (1745) 1 ATK 21 @ PG 49**.

Section 86 (1) of the Evidence Act 2011 defines Primary Evidence as the Document itself produced for the Court's Inspection, and **Section 88 of the same Act** states that Documents must be proved by Primary Evidence except in certain Cases. See the following Cases **FAGBENRO VS AROBADI (2006) ALL FWLR PT 310 PG 1575 AT 1598; SALAMI VS SAVANNAH BANK (1990) 2 NWLR PT 130, PG 106 AT PG 135; AND EZEMBA VS IBENEME (2004) 7 SC (PT 1) PG 45, (2004) 14 NWLR PT 894 AT PG 617**.

Now, as regards the argument as to whether these Document qualify as Public Documents, it is clear that **SECTIONS 102 AND 103 OF THE EVIDENCE ACT 2011** classified Documents into Public and Private in this manner: -

Section 102: The following documents are Public Documents- (a) Documents forming the Official Acts or Records of the Official Acts – (i) of the Sovereign Authority (ii) of Official Bodies and Tribunals (iii) of Public Officers, Legislative, Judicial and Executive, whether of Nigeria or Elsewhere; (b) Public Records kept in Nigeria of Private Documents.

In other words, the Document must be an Official Act made by an Official Body, which Records of it are kept by the Office. However, the mere fact that it is kept in a Public Office does not make it a Public Document. It must be shown that a Public Servant in the discharge of his Official Duty prepared it.

Reference is made to the Cases of **BAYO VS NJIDDAH (2004) 8 NWLR PART 876 PAGE 544, PER OGBUINYA, JCA AT PAGES 73-74, PARAS E-D; AND ACN VS LAMIDO & ORS (2011) LPELR-9174 (CA)**.

As concerning its Secondary Evidence, it is trite that it is only a Certified True Copy of a Public Document Properly issued by a Public Office, who made it, that is admissible into Evidence. A Certify True Copy of the Document and no other must be provided. Reference is made the Case of **MINISTER OF LANDS WESTERN NIGERIAN VS AZIKWE (1969) 1 ALL NLR PG 49 per ADEKEYE JSC** wherein His Lordship citing the Cases of **GOODWILL & TRUST INVESTMENT LIMITED ANOR VS WITT & BUSH LIMITED (2011) 8 NWLR PT 1250, 500 @541; SHELL PETROLEUM DEV CO. LTD VS NWOLU (1991) 3 NWLR PT 180 @496; SHOBANKE VS SARKI (2006) ALL FWLR PT 292 @131 Per NIKI TOBI in HON. JUSTICE E.O. ARAKA VS HON. JUSTICE DAN IGWE 15 NSCQR 150 @PG 165-166**.

As regards **Section 103:** All Documents other than Public Documents are

Private Documents, which must be proved by Production of Original Primary Evidence and in their absence, by laying the Necessary Foundation explaining away the Non-Production of the Original before Court.

Regarding the **Statutory Declaration of Age**, Oshobi SAN argued that **Exhibit R3** was a Public Document and the Proper Document to be tendered was its Certified True Copy and he urged the Court to reject them.

Layonu SAN on his own part argued that the Statutory Declaration of Age, manifestly purports to have been sworn before a Commissioner for Oath and submitted that if not for the lack of diligence on the part of the 1st and 2nd Defendants, they could easily have obtained the Certified True Copy of the Document, and the Court is not to help an Indolent Party.

Nwosu Esq., in response submitted that what is before the Court is the Original of the Document.

Now, as held in the Case of **IDI VS STATE (2017) LPELR-42587 (SC) EKO, JSC AT PAGES 40-42, PARAS F-C**, the Primary Evidence of a Document is the document itself produced for the inspection of the Court. His Lordship held that there seemed to be some erroneous impression, or misconception, that the Evidence Act outlaws the production of the Original of a Public Document. **Section 88 of Act** is permissive of Secondary Evidence of the contents of a document, only when the Primary Evidence is not available. In any case, Section 88 of the Act does not outlaw Primary Evidence. **Section 89 (e) of Act** does not categorically state that the only admissible Public Document is the Secondary Evidence of it. Further reference is made to the Cases of **ANAGBADO VS FARUK (2018) LPELR-44909 (SC) PER KEKERE-EKUN JSC; ONUBRUCHERE & ANOR VS ESEGINE (1986) 1 NSCC PAGE 343 AT PAGE 350; AND CHIEF GREAT OVEDJE OGBORU & ANOR VS DR. EMMANUEL EWETAN UDUAGHAN & 2 ORS (2010) ELC PART 1938 PAGE 1 (CA)**.

A close look at this Document will show that it is an Original Statutory Declaration of Age deposited to before a Commissioner for Oaths and without more, is found to be admissible in line with the above Cited Authorities and therefore, remains as **Exhibit R3** for the purposes of this Judgment.

Turning to the **Kachia Local Government Certificate of Indigenization**, Oshobi SAN argued that this Document was Public Document, for which the Defence ought to have tendered its Certified True Copy and he urged the Court to reject them.

Layonu SAN, on his own part, contended that the Kachia Local Government Certificate of Indigenization Document, was a Record of a Local Government, and the Law is clear that by the Provisions of **Section 106 (d) of the Evidence Act**, this Document qualifies as a Public Document, and it ought to be certified, and in this instance he urged the Court to reject it.

Nwosu Esq., as regards the Certificate of Indigenization, agreed with the Learned Silk on **Section 102 of the Evidence Act**, that the Certificate qualifies as a Public Document. The Point of Departure is what is admissible when the Primary Document is available, and stated that there will be no room for certification. It is only when the Original is not available that one can now fall back on **Section 89 of the Evidence Act** to look for the Certified True Copy. In this instance, the 2nd Defendant had both the Certified True Copy and the Original, and in order to foreclose Objections, the 2nd Defendant preferred to tender the Original. He finally on this Point, urged the Court to discountenance the Objection against the Certificate of Indigenization.

As earlier decided in the instance of the Declaration of Age, the Certificate of Indigenization is an Original Document and needs no Certification in line with Decided Cases and to all intents and purposes, remain **Exhibit R2** for the purposes of this Judgment.

As regards the Original **Extract Register No. 11 belonging to the Archdiocese of Kaduna**, Oshobi SAN contended that the Document ought to be tendered through its Maker pursuant to **Section 83 of the Evidence Act**, and he urged the Court to reject the Document.

Layonu SAN, on his own part, argued that this Document purports to be Evidence or Proof of Marriage; however, it is manifest on the face of the Document that this is not a Marriage under the Marriage Act, and at best, is a Customary/Native Marriage. Once is not a Marriage under the Act, to prove the Marriage, a Certified True Copy should have been tendered. According to him, it is, at best, a Church Blessing, which must still be proven by Witnesses. If the intention is to use it as proof of Marriage, **Section 102 (b) of the Evidence Act** would be invoked and he argued further that there is no means of verifying the Document.

Nwosu Esq., in response to the Marriage Certificate not being a Public Document, nor a Marriage under the Marriage Act, contended that the Certificate evidencing that Marriage could not be a Public Document as it speaks for itself. The Document stated where it emanated from, and it did not

purport to emanate from any department. The Marriage Certificate also did not represent itself to have been issued under the Marriage Act, and to that end it is Private Document of the Church that issued it. There is no way by Oral Evidence to elevate the Document to be what it is not. Since the Original is before the Court, the Document is admissible and he urged the Court to admit it, whether Customary Marriage or otherwise.

Now, a careful look at this Extract, will show that it was issued by the Diocese of Kaduna and is an Original Document and therefore, its admissibility will flow the above Line of Reasoning in regard to tendering Originals of **Private Documents** and will for all intents and purposes, remain as **Exhibit R1**.

Concerning **Exhibit R**, the **School Leaving Certificate**, it is a Photocopied Document issued out by the Evangelical Churches of West Africa School. In it, it certified that the Bearer Alisabatu Alkali aged 15 had successfully completed Class Seven (7) in the year 1967, and it was endorsed by the Manager of the School and signed by its Headmaster. The Court notes that there is No Date on the face of this Document other than Year 1967.

Oshobi SAN submitted that the Document was a Photocopy of the Evangelical Churches of West Africa School and that it is a Public Document. He urged the Court to take Judicial Notice of the fact that All Mission Schools in 1976 were taken over by the Government under the Administration of General Murtala Mohammed. To that extent, it emanates from a Government Agency, for which a Certified True Copy ought to be tendered in Court, and he urged the Court to reject it.

Dr. Layonu SAN, on his own part, argued that the Photocopy of the Evangelical Churches of West Africa School Document was a Testimonial, a Public Document and a Record of an Institution. The Document sought to be tendered, is a mere Photocopy for which Certification ought to have been made. There is no Imprimatur by way of the Stamp by the Church, or elsewhere and that necessitates an Enquiry.

Nwosu Esq. submitted that the Primary School Leaving Certificate or Testimonial is a Private Document. It came from a School owned by a Church. There was nothing on the face of the Document showing that the School from where it emanates from, is owned by any Government Department or that the School was acquired or managed under any Government. These are all facts extraneous to the Document. The Court has not been referred to any Law that

says the Testimonial from any Private School must be in a Particular Format.

According to him, all the other issues are as to weight; whether there is a sufficient Stamp, or whether the Name of a Principal, or an Address were stated and this Document goes as to Weight and not Admissibility. It would amount to stretching the Rules of Admissibility to suggest that the Document or Holder of a Document or the Maker or Issuer of the Document can only tender a Certificate issued to him by another Person/Authority into Evidence.

Now, Exhibit R, is a Photocopied Document, which bore no Official Stamp and there was no foundation laid as to the whereabouts of the Original of this Document. There is also nothing before the Court to indicate that the Evangelical Churches of West Africa School, was initially a Private School, but subsequently taken over by the Government. To all intents and purposes, it is a Private Document for which the Original ought to have been tendered but was not. Its Admissibility would only be as to the Weight the Court would place on it when treating the Main Issue for Determination. To all intents and purposes, this Document remains as **Exhibit R**.

Apart from the above, another Consideration for the Court to decide is that concerning the Admissibility of the **Payment of the Purchase Price** reflected in the Bank Statement of Alhaji Sharif Zailani Shanono as well as the Zenith Bank Draft, which arguments were reserved for this Judgment.

According to Nwosu Esq., the evidence contained in the Witness Statement on Oath of Alhaji Sharif Zailani Shanono, relates to Matters not covered by the Pleadings of Dr. Bolanle Olawale Babalakin SAN. He had not pleaded that he purchased the Property from Jones Tech International Limited and had not pleaded that the Draft he relied on, was in fact a Draft bought through Alhaji Sharif Zailani and did not in fact, lay claim to the Ownership of the Zenith Bank Draft relied upon by the 2nd Defendant.

Further, there were no Pleadings relating to the Bank Statement of Maigishiri Multi Service Limited and Sharifideen Bureau de Change Nigeria Limited and these constituted an Element of Surprise to the 1st and 2nd Defendants, who did not join issues with Babalakin SAN on the Ownership of the Zenith Bank Draft.

Also challenged is the fact that the Bank Statement of Maigishiri Multi Service Limited was inadmissible for the following reasons: -

- a) That it was not pleaded and facts thereto, were not pleaded;

- b) The Document was unsigned by Zenith Bank or any Officer of the Company;
- c) That the Certificate of Compliance, which accompanied the Bank Statement in **Exhibit V2** did not meet the Mandatory Requirement of **Sections 84(1) and (2) of the Evidence Act 2011 (As Amended)** for the reasons that Alhaji Sharif admitted generating the Bank Statement from a Business Centre on the same day he testified before the Court, and that Computer did not belong to him, but to the Business Centre and therefore, he was not in a position to satisfy the Conditions prescribed in **Sections 84(2)(a), (b), (c) and (d) of the Evidence Act**.

Therefore, Learned Counsel to the 1st and 2nd Defendants submitted that the Evidence of Facts not Pled, goes to no Issue and the Unsigned Documents was useless and worthless for all purposes and was inadmissible in evidence. The circumstances of the Conversion of the Foreign Exchange into Naira, was not corroborated by the contents in the Bank Statement.

The Response of both Learned Silks are on Record.

Now, it is Trite that Pleadings are Statements in a Summary Form, which state only the Material Facts to be relied on, and not the Evidence by which they are to be proved. Parties are bound by their Pleadings and are obliged to plead all facts on which his case is based. The overriding intention is to see where the Parties differ, so that each side may be fully alive to the questions in issue, in order to bring forward appropriate evidence. Reference is made to the Case Law Authorities of **AKANNU VS ADIGUN (1993) 7 NWLR PART 304 PAGE 218; HONIKA SAWMILL VS HOFF (1994) 2 NWLR PT 326 PAGE 252; ACB VS ALHAJI GWAGWADA (1994) 4 SCNJ 268; AND METALIMBEX VS LEVENTIS (1976) 6 SC PAGE 471.**

It is also clear that Averments in Pleadings do not amount to Evidence and subject to Admission by the Other Party they must be proved by Evidence at the Trial. Reference is made to the Cases of **OBIMIAMI BRICKS VS ACB LTD (1992) 3 NWLR PART 229 PAGE 293; AND OLAREWAJU VS AFRI BANK PLC (2001) 7 SCNJ 493.**

Therefore, Documents necessary to prove a Fact Pled, need not be Pled. They can be used and tendered as Evidence of Facts Pled. **OLASEINDE VS ACB (1990) 7 NWLR PART 161 PAGE 180; ADEDIRAN VS NEPA (2002) 13 NWLR PART 786 PAGE 30; MONOPRISE VS OKEWUA (1995) 2 NWLR PART 383 PAGE 325.**

From a close look at the Two Pleadings of the 2nd Counter-Claimant, it can be seen in **Paragraphs 3(a), 4, 6, 7, 9 and 10** in the **Defence to the 1st Counter-Claim** and also **Paragraphs 1, 2 and 4 of the 2nd Counter-Claim** that he averred that he furnished the Consideration, paid for and purchased the Property in Dispute. Further, in **Paragraphs 4 and 5 of the 2nd Counter-Claimant's Reply to the Statement of Defence of the 2nd Counter-Claim**, the 2nd Counter-Claimant, pleaded that he furnished the Consideration to Yusuf Aliyu Ahmed for the purchase of the property and bore all incidental expenses relating to the property.

By this, it can be seen that the 2nd Counter-Claimant pleaded provision of the Funds used to purchase the Property, the Actual Payment as well as authorizing one Yusuf Aliyu Ahmed to conclude negotiations and meetings with the Vendor. The 2nd Counter-Claimant never mentioned **WHO** the Vendor was, and so not mentioning the name of the Vendor to be Jones Tech International Limited, is irrelevant to the fact that he bought from a Vendor, whoever that may be. It was up to him then to prove by evidence, how he authorized Yusuf Aliyu Ahmed, how he provided the funds and how he paid the Purchase Price for the House.

Therefore, Learned Counsel's submission on this Contention of Pleadings is found untenable.

Learned Counsel to the 1st and 2nd Defendants had also challenged the Bank Statement of Alhaji Shanono Zailani on the basis of it being Unsigned by Zenith Bank Plc., or any of its Staff and also the Certificate of Compliance did not emanate from the Business Centre from which he printed his Bank Statement sent to him from the Bank.

Now, it is in evidence that Alhaji Shanono Zailani had testified *viva voce* and through his Statement on Oath that he requested for his Bank Statement, which he received via **Email Correspondence**. He had also printed out the Statement on the Morning of the Trial. According to the Evidence, he had printed out this Email Statement of Account from a Business Centre and had tendered a Certificate of Compliance, not from the Business Centre that had printed out the Statement, but from his own Office. He had used his Personal Company HP Compaq DC and HP LaserJet Printer and had issued a Personal Certificate of Compliance.

Learned Silk Oshobi SAN on this point argued in his Written Address that the Statement by Alhaji Shanono that he printed from a Business Centre was a slip

of tongue. In short and sharp, he should go and tell that to the Marines, who are waiting patiently by their Ships in the Harbour, ready to sail away.

Now, this Witness had earlier frontloaded an Abridged Statement of Account, which was Signed and Stamped by Zenith Bank Plc. However, it was not tendered into evidence. What was tendered was the Lengthy Statement of Account he downloaded from his Email.

Nwosu Esq. had argued about the Non-Compliance with the Provisions of **Section 84 of the Evidence Act**.

It is clear that Computers are used to Generate, Store and Dispense or Circulate Data only. It can be defined in terms of a Set of Characteristics that illustrates how it functions. It receives an input, processes a communication channel, produces an output, stores the information and ultimately, controls what it does.

A Computer is **only one** of several Mediums through which Information can be extracted. Nwosu Esq., has aptly set out the Requirement for Computer Generated Evidence and that brooks no Objection. It goes without saying therefore, that in this Case, the Certificate of Compliance ought to have been furnished from the Business Centre Alhaji Shanono printed out his Bank Statement from, and not the Certificate he presented, which he personally endorsed.

Had the Email been Computer Generated, his Objection and all Counter-Arguments would have been relevant and may have sailed through.

The Question to ask is, whether the foundation for Admissibility of an Email is grounded under **Section 84 of the Evidence Act?**

To operate an Email Account, an Account Holder must register with one or more Domain Names such as Yahoo, Gmail, AOL or Hotmail. His personal information would be obtained from him and he will feed in a Password, which would act as his Electronic Signature. Access to this Account can only be by the Account Holder himself, and none other, including the Officials/Operators of the Domain Names.

To be able to access this Domain, say Gmail, the intending Account Holder would have to first login through his Internet Service Provider and connect to Gmail's Domain, which via Satellite, is in Space. Logging in will be to the Satellite Domain and it is worth noting that a Computer is not the only way to

access an Email Account. Technology is such that Electronic Devices such as Wireless Devices, Printers and Mobile Phones could also access and their foundations for Admissibility would be in the Realm of Electronically Generated Evidence and NOT Computer Generated Evidence.

To this end, the Test for Admissibility of this Electronically Generated Document is in its Authenticity, Integrity of the Email, its Reliability, Proximity of the Contents to the Evidence led, the Login Access through Electronic Signature, the Internet Protocol Address, the Domain Name, the Extraction of the Information, the Trustworthiness of the Medium of Extraction and the Relevance of its Contents to the Proceedings.

These are all Relevant Factors in proving the Admissibility of an Email and the Judge is to take into account the peculiar circumstances of each Case and will be determined according to the nature of the Evidence to be authenticated and where the Evidence is to be found. In majority of cases, Oral and Circumstantial Evidence will be sufficient to provide for the Authenticity of most Documents in Digital Format. Email is Digital and that is why it is called Electronic Mail (E-Mail). Without having Internet Access that connects the Application, a Person cannot access the Domain. Through the Speed of the Internet, an Email can be Sent to and Received by, say, Five Thousand (5000) Individuals in a split second.

The Foundation therefore, is in Space and in practice; Primary Evidence containing Digital Data is not physical and cannot be tendered into Evidence.

In regard to the Content of an Email, attention must first be drawn to the Provisions of **Section 153 (2) of the Evidence Act 2011**, which provides the Presumption as to Electronic Messages.

If the Document was sent into his Email Box, the mere fact that he was able to key in his Password to access his Email, amounts to an Electronic Signature. The mere fact that the Contents of the Bank Statement tallies with the Evidence of Alhaji Shanono both in his Witness Statement on Oath and that rendered orally before the Court, and the fact of the Proximity of the message as well as its Relevance Requirement, shows that Admissibility Questions were satisfied.

Further, the fact that the Bank Statement was Unsigned and Unstamped, pale into insignificance, when weighted against its Relevance to the Issues in controversy between the Parties and it remains an Exhibit before the Court.

The Questions of Weight, Credibility and Sufficiency would be for the Judge to determine and as aptly said by **LORD BLACKBURN** in **LORD ADVOCATE VS LORD BLANTYRE (1879) 4 APP CASES PAGE 770 AT PAGE 792**, "*The Weight of Evidence depends on Rules of Common Sense.*"

Learned Counsel Nwosu Esq., further contended that a **Document made by an Interested Party during the Pendency of a Suit**, is not admissible in evidence. He also pointed out the Contradictions in the evidence of all the Witnesses for the 2nd Counter-Claimant, as to the Difference in the Conversion into Naira of the Foreign Exchange and urged the Court to discountenance the Documents.

Now, as regards the Contention in respect of **Exhibit V2**, that it was made during the pendency of the Trial, the Supreme Court in **OGIDI VS IGBA (1999) 6 SCNJ 107**, held that the General Rule and the Law is that a Document made by an Interested Party during the Pendency of a Suit is inadmissible. Reference is also made to **Section 83 (3) of the Evidence Act, 2011**, which states that, "*Nothing in this Section shall render admissible as evidence, any Statement made by a Person 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 Keyword in this Section is "Person Interested" and this has been severally explained in the Cases of **OJUKWU VS MILITARY GOVERNOR OF LAGOS STATE (1985) 2 NWLR PART 10 PAGE 806; ALIYU VS ADEWUYI (1996) 4 NWLR PART 442 PART 284; GBADAMOSI VS KABA TRAVELS LTD. (2000) 8 NWLR PART 668 AT PAGE 243**, as follows: -

"The Test of Interest to determine a Person Interested is whether the Person could have been joined as a Party to the Suit. A Person Interested includes, a Person affected or likely to be affected or aggrieved or likely to be aggrieved by the Proceedings."

In this instant case, Alhaji Shanono had earlier frontloaded along with his 1st Witness Statement on Oath, his Copy of his Zenith Bank Statement of Account, which was Stamped and Signed on the 17th of September 2020, capturing the Period of the 9th of January 2008 to the 15th of January 2008.

The Contested Statement of Account is as seen in **Exhibit V2**, which was an Expanded Version of the above Statement and had deposed in a Statement on Oath dated the 21st of September 2020, that upon discovering that the Statement he received from the Bank was not comprehensive enough, had requested for a more Comprehensive Statement of Account. This was sent to

him through his Email Address. On the 21st of September 2020, the day of his testimony before the Court, he explained this fact, adding that he only retrieved the Statement that day. The Account Number, Name and Details of the Bank are the same and the only difference is that the Statement covered the period from the 2nd of January 2008 to the 31st of January 2008.

In the Case of **TSEGBA & ANOR VS REGISTERED TRUSTEES OF MISSION HOUSE & ANOR (2018) LPELR-44242 (CA)**, when determining the Admissibility of an Exhibit from an Expert Witness, the Court of Appeal Coram **EKANEM, JCA AT PAGES 24-25, PARAS B-D** held that, the Expert Witness was not caught by **Section 91 (3) (now Section 83(3) of the Evidence Act 2011)**, as he had no temptation to depart from the Truth as he saw it, nor be swayed by Personal Interest. No evidence was elicited to question his interest beyond his professional expertise. Further Cases in support are the Cases of **EVON VS NOBLE (1949) 1 KB PAGES 222, 225; MARITIME SERVICES LTD VS 1ST BANK (1991) 1 NWLR PT 167 PAGE 290 AT 307; WEST MINISTER DREDGING VS OGAN OYIBO (1992) 5 NWLR PT 239 PAGE 77; APENA VS AIYETOBİ (1989) 1 NWLR PART 95 PAGE 85; NIGERIA BOTTLING CO. PLC VS UBANI (2014) 4 NWLR PART 1398 PAGE 421 AND CPC VS OMBUGADU (2013) 18 NWLR PART 1385 PAGE 66. In PETERSIDE VS WABARA (2011) 6 NWLR PART 1243 PAGES 328, 337, OGWUNWUMIJU, JCA (as she then was), stated that; "The attitude of the Court is settled that a Surveyor, like an Expert in any other field of knowledge ... is not an "Interested Person" in respect of the Admissibility of the Document ... made by him during the Pendency of the Action."**

Alhaji Shanono is not a Party in this Action and has no Visible Interest to testify in support of either One Party or the other. He was in Court to tender his Bank Statement and to explain how he came about the funds in his Account. The Account Details are the same, and it is clear that it was an Expanded Version of the Earlier Frontloaded Statement. It is also important to remember that the Statement of Account had been computed in the ordinary course of the Bank's Business and was not created specifically for the purposes of this Trial.

I therefore see no prejudice occasioned to any Party by the inclusion of **Exhibit V2** into the Proceedings, even though it was obtained during the Trial.

There was the Contention made by Nwosu Esq., as to the **Circumstances of the Conversion of the Foreign Exchange into Naira**, and the fact that this Conversion was not corroborated by the Contents in the Bank Statement of

Alhaji Shanono admitted as **Exhibit V2** in the Account Name of Maigishiri Multi Service Limited, 10 Club Road Kaduna.

Now, the Court observes that the stated Account Number is 1011142141 and is in regard to Transactions from the Period of 01/01/2008 to 31/01/2008.

It can be clearly seen that on the 11th of January 2008, a Manager's Cheque was issued in favour of JONES TECH in the Sum of One Hundred and Fifty Million Naira (150,000,000.00), and the Account went into a Deficit in the Sum of -N147, 597, 113.95.

Evidence was not led, but the Court notes from the Exhibit, that on the same date of the 11th of January 2008, Cheque Lodgments into this Account were made in the Sum of N107, 700, 000.00 and N35, 940,000.00, bringing down the Debit Balance to the Sum of -N9, 277,113.95.

Based on the facts discernable from the Statement in **Exhibit V2**, it is clear that what was issued out of this Account in favour of Jones Tech in the Sum of One Hundred and Fifty Million Naira (150,000,000.00) was an Overdraft.

The point here is, whether Overdraft or Loan Facility, is irrelevant to the fact that the said Amount of Money emanated and exited from the Account managed by Alhaji Shanono and there is no dispute on this fact. Therefore, **Exhibit V2** remains admissible as an Exhibit before this Court.

As regards **Alhaji Aliyu Abubakar's Witness Statement on Oath dated the 14th of June 2019**, the Court notes that under Cross-Examination by Akoni SAN representing the Claimant, he stated that the Signature in his Witness Statement on Oath was his, but he had signed it in his Office. This shows that he did not sign his Statement before a Commissioner for Oaths.

Oshobi SAN argued that non-compliance with the Mandatory Requirement of the Law with regard to Oath Taking rendered the Witness Statement on Oath of Alhaji Aliyu Abubakar incompetent and incapable of supporting any Evidence in Court. He made reference to the Cases of **UNION BANK PLC. VS OGEH (2018) LPELR- 46701 (CA); ISHAQ & ANOR VS INEC & ORS (2008) LPELR- 4336 (CA) AND ANATOGU VS IWEKA II (1995) 8 NWLR PART 415 PAGE 457**. Therefore, the Court should disregard Nwosu Esq's Submissions in Paragraph 4.1457, wherein he submitted that Kingsberry had Notice of all Existing Charges against the Property in Dispute.

Nwosu Esq., in his Submissions stated that non-compliance with the **Oaths Act** would not render the Testimony of a Witness in Judicial Proceedings

ineffectual. He referred also to **Section 114 of the Evidence Act** as well as the Cases of **DASFUNJO VS AJIBOYE (2017) LPELR-42354 (CA)**, which followed the Case of Authority of **ANITOGU VS IWEKA II (1995) 8 NWLR PART 415 PAGE 457**. According to him, DW5 had adopted his Witness Statement on Oath and the fact that he admitted signing his deposition before it was taken to the Commissioner for Oaths, would not nullify his Evidence.

Layonu SAN, argued in essence that the Witness Statement was incompetent and the Averments therein are Hearsay, and placed reliance on the Cases of **ONUJABE VS IDRIS (2012) 2 NWLR PART 1284 AT PAGE 285 (CA)** and **OKOBIEMEN VS UBN (2019) 4 NWLR PART 1662 AT PAGE 265**. According to him the Law is very clear and unequivocal that failure to swear to an Affidavit before a Commissioner for Oaths, is not a mere Irregularity as to form, but defect as to substance. The Life of an Affidavit is the Declaration on Oath before the Commissioner for Oaths.

Now, a Witness Statement on Oath is a Formal Sworn Statement of Fact, signed by the Deponent and witnessed as to the veracity of the Deponent's Signature by the Taker of Oaths, such as the Commissioner for Oaths or Notary Public. It has been accepted that a Judge or Magistrate could also take such Oaths.

Section 6 of the Oaths Act 1964 states that, *“Every Commissioner for Oaths or Notary Public before whom any Oath or Affidavit is taken or made under this Act, shall state truly in the Jurat or Attestation, at which Place and on what Date the Oath or Affidavit is taken or made.”*

It is a misguided argument to state that it is not necessary for a Deponent to sign before the Oath Taker. The Concept of Oath Taking involves: - a) The Deponent making a Statement in Writing; b) The Document is taken to a Commissioner for Oaths or any Person duly authorized to take the Oath; c) The Commissioner for Oaths requires the Deponent to swear on a Holy Book particular to the Deponent's Faith or a Mere Declaration for a Deponent whose Faith forbids him to Swear; d) The Commissioner for Oaths then asks the Deponent to verify what has been stated; and e) The Deponent afterwards signs in the presence of the Commissioner for Oaths who witnesses that the Affidavit was sworn to in his presence. This explains the phrase ***“Before me”*** usually signed by the Commissioner for Oaths. Any arrangement other than the above amounts to a nullity.

Section 117 (4) of the Evidence Act is also clear on this, it provides as follows: - *"An Affidavit, when sworn shall be signed by the Deponent or if he cannot write or is blind, marked by him personally with his mark, in the presence of the Person before whom it is taken."*

Signatures signed outside the presence of the Commissioner for Oaths, fall short of the Requirement of the Statute, and as such, the Document purported to be sworn before the Commissioner for Oaths is not legally acceptable in Court. See further, the Case of **CHIDUBEM VS EKENNA & 12 ORS (2008) LPELR-3913; (2009) ALL FWLR (PT. 455) 1692**, where it was held as follows: - The Law is that the Deposition on Oath must be signed in the presence of the Person authorized to administer Oaths." Failure to do so is not a defect in form as envisaged by **Section 113 of the Evidence Act 2011**. Rather, it is a Fundamental and Statutory Error, which renders the Statement to be intrinsically incompetent and inadmissible. Reference is made to the Cases of **BUHARI VS INEC (2008) 12 SCNJ PAGE 1 AT PAGE 91; ABALAKA VS MINISTRY OF HEALTH (2006) 7 NWLR PART 978 AT PAGE 17 (CA); ADELEKE VS ANIKE (2006) 16 NWLR PART 1004 PAGE 131; ONYECHI EROKWU VS JACKSON N. EROKWU (2016) LPELR-41515; MARAYA PLASTIC LIMITED VS INLAND BANK PLC (2002) NWLR PART 109 AT PAGE 120; OLANIYAN VS OYEWOLE (2010) LPELR-9109 (CA); AND BROSSETTE MANUFACTURING NIGERIA LIMITED VS M/S OLA ILEMOBOLA LIMITED & ORS (2007) LPELR-809 (SC)**.

Therefore, based on the above Principles and Authorities, the failure of not Signing before a Commissioner for Oaths is fatal and cannot be waived, and the Statement of Alhaji Aliyu Abubakar adopted by him, is hereby expunged, having failed the Statutory Test of Authenticity and Admissibility.

Therefore, the Court will only consider his Oral Evidence before the Court, any Document he tendered and his Evidence elicited under Cross-Examination.

Now, after a very careful consideration of all the Issues raised across board, the Court will formulate the following **Five Issues** as necessary for the Just Determination of these Three (3) Consolidated Cases, namely: -

- 1. Whether the Counter Claim of the 1st and 2nd Defendants/Counter Claimants discloses any cognizable Cause of Action against the 3rd Defendant in this Suit.***

2. ***Whether the Claimant's Suit and the Subsequent Counter-Claim by Dr. Bolanle Olawole Babalakin SAN, constitutes a GROSS ABUSE OF JUDICIAL PROCESS.***
3. ***Whether the Second Counter-Claimant, Dr. Bolanle Olawale Babalakin SAN, has the Legal Locus Standi to commence the 2nd Counter-Claim against the 1st and 2nd Defendants, and flowing from this, Whether this Court has jurisdiction to grant his Prayers in the Second Counter-Claim.***
4. ***Whether Dr. Bolanle Olawale Babalakin SAN, breached the Rules of Professional Ethics for Legal Practitioners when halfway into the hearing of this Suit, wherein his Law Firm, Babalakin & Co., represents the Claimant, he applied to be joined as the 3rd Defendant to the Counter- Claim of the 1st and 2nd Defendants/Counter-Claimant took the Witness Stand and called witnesses and thereby exposed himself and his witnesses to cross-examination by his Law Firm, Babalakin & Co.***
5. ***Whether there was the Establishment of Reliable, Consistent and Uncontradictory Evidence in regard to the Three Competing Claims made by All Parties in this Action, having regard to the Questions of Fraud, Resulting Trust and Bona Fide Purchaser for Value without Notice in order to determine WHO was vested with Legal or Equitable Right/Interest to the Property in Issue.***

As regards the **First Issue**, Learned Counsel representing the 3rd Defendant, the Honourable Minister, strongly contended that there was no Reasonable Cause of Action instituted by the 1st and 2nd Defendants/1st Counter-Claimants, as against the 3rd Defendant. This is because from the Totality of the Averments contained in their Statement of Defence/Counter-Claim, it can be seen that their Claim arises from a Mortgage Transaction and the purported Transfer of Title between them and Jones Tech International Limited as well as Skye Bank Plc., was not Registered. They also failed in their Pleadings to state that they registered any of their Transactions with the 3rd Defendant.

According to Counsel, there was no Wrongful Act mentioned against the 3rd Defendant and they were not privy to the Transactions between the Parties of which the 3rd Defendant was unaware.

Now, SHROUD'S JUDICIAL DICTIONARY defines Reasonable Cause of Action as the Entire Set of Circumstances giving rise to an Enforceable Claim.

S. GALADIMA JSC AT PAGE 248 in the Case of CHRISTIANA I. YARE VS NATIONAL SALARIES, WAGES AND INCOME COMMISSION (2013) NSCQR VOLUME 54 PAGE 235, held that, there must be: -(a) A Cause of Complaint; (b) A Civil Right or Obligation fit for Determination by a Court of Law; and (c) A Dispute in respect of which a Court of Law is entitled to invoke its Judicial Powers. His Lordship made reference to **Sections 6(1), (2), (3) and (4) (a) and (b) of the 1999 Constitution As Amended.**

NIKI TOBI, ISC (of blessed memory), in RINCO CONSTRUCTION COMPANY LTD VS VEEPEE INDUSTRIES LTD & ANOR (2005) LPELR-2949 (SC) AT PAGE 14 PARAGRAPHS E - G defined Reasonable Cause of Action as follows: - "Reasonable Cause of Action means a Cause of Action with some chances of success. For a Statement of Claim to disclose a Reasonable Cause of Action, it must set out the Legal Rights of the Claimant and the Obligations of the Defendant. It must then go on to set out the facts constituting infraction of the Claimant's Legal Right or Failure of the Defendant to fulfill his Obligation in such a way that if there is no Proper Defence, the Claimant will succeed in the Relief or Remedy he seeks."

His Lordship OKORO, JSC in the Case of BARBUS & CO. (NIG) LTD & ANOR VS OKAFOR-UDEJI (2018) LPELR-44501 (SC) AT PAGES 12-13, PARAS A-D, held inter alia that, "The mere fact that the Case is weak, and not likely to succeed, is no ground for striking it out or dismissing it." See also the Cases of **YUSUF & ORS V AKINDIPE & ORS (2000) 8 NWLR PART 669 PAGE 376; SPDC NIG LTD & ANOR V X.M. FEDERAL LTD & ANOR (2006) 16 NWLR PART 1004 PAGE 189.**

After a careful perusal of the Statements of Claim and Reliefs sought by the Parties before this Court, it can be deciphered that the presence of the 3rd Defendant was important to the Three Actions. The Claimant had sought for the Court to mandate the 3rd Defendant to issue and deliver a New Certificate of Occupancy with respect to the Property, whilst the 1st and 2nd Defendants had sought for Two Declaratory Orders against them.

The 1st Declaration sought was that the 2nd Defendant is entitled to the Grant of the Minister's Consent over the Property in Issue and another Declaration voiding the Consent already granted the Claimant as well as voiding the Deed of Assignment.

From the above, it is obvious that the 1st and 2nd Defendants have a Reasonable Cause of Action against the 3rd Defendant and the likelihood of a Successful Outcome is not a determining factor to the Principle. The point here is that, the Decision of this Action, would bind the 3rd Defendant to either go- ahead and Issue a New Certificate of Occupancy to the Claimant or to void the Consent already granted.

The fact that the 1st and 2nd Defendants failed to Register the Mortgage Transaction or any Instrument with the 3rd Defendant is irrelevant to the fact that there is a Right of Action against them.

Therefore, without further ado, this Issue is resolved in favour of the 1st and 2nd Defendants.

In this Judgment, the **Second Issue** and the **Third Issue** raised by Learned Counsel representing the 1st and 2nd Defendants, will be determined in One Steady Stream for avoidance of Repetition of Decided Principles and Facts.

Learned Counsel representing the 1st and 2nd Defendants submitted that a Suit binds Parties and their Privies and argued that the Processes filed by Dr. Babalakin against the 1st and 2nd Defendants, who were already defending this Suit of Kingsberry Estate Limited, amounted to an **Abuse of Judicial Process**. This is because the Pleadings and Evidence from both Dr. Babalakin and Kingsberry were essentially the same and were unchallenged. According to Counsel, Dr. Babalakin divested his interest in the Property in Dispute to the Claimant and therefore, since Kingsberry was prosecuting the Suit, the entry of Dr. Babalakin constituted a Multiplicity of Actions by the same Parties and/or their Privies in respect of the same Subject-Matter. Kingsberry had already sought for the Reliefs claimed by Dr. Babalakin, and this amounts to seeking Multiple Reliefs for the same Party in respect of the same Subject Matter by

the same Parties and their Privies.

Learned Counsel to the 1st and 2nd Defendants comprehensively set out the Reliefs sought by Dr. Babalakin and noted that he did not seek any Relief for himself but only for the benefit of the Claimant, who through their Law Firm, Babalakin & Co, already had Dr. Babalakin as their Senior Counsel.

Further, Dr. Babalakin as well as Kingsberry knew at the time of instituting this Action, that Dr. Babalakin no longer had any Subsisting Legal Interest in the Property and he further cited the Case of **AJAM VS SPDC (NIG) (2008) 10 NWLR PART 1094 (CA) PAGE 66 AT PAGE 91 AND USMAN VS BABA (2004) 4 WRN CA PAGE 47 AT PAGE 64.**

As regards the Abuse constituted by the Claimant, Learned Counsel contended that Kingsberry despite having full knowledge that they derived Title from Dr. Babalakin, the Senior Counsel in the Law Firm of Babalakin & Co., still went ahead to engage his Law Firm.

This was with the intent to circumvent the Proper Administration of Justice, especially when they caused a Writ to be issued with Supporting Documents, disclosing an Assignment from Evelyn Aliyu Abubakar instead of from Dr. Bolanle Olawale Babalakin SAN.

Learned Counsel for the 1st and 2nd Defendants, further claimed that having assessed the Weight of the Claimant's Evidence and after the commencement of their Defence, Dr. Babalakin then decided to participate in this Action with the sole purpose of harassing and annoying the 1st and 2nd Defendants. He cited the Case Authorities of **OGUNSANYA VS AKANDE (2010) LPELR-4696(CA); OBU VS J.O. OLUMBAMISE PRINTERS LTD (2013) LPELR-20145 (CA); AJAM VS SPDC (NIG) (2008) 10 NWLR PART 1094 PAGE 66 AT PAGE 91 (CA).**

As regards **Locus Standi and Jurisdiction**, Learned Counsel Nwosu Esq's position is that Dr. Babalakin has no Locus Standi to prosecute his 2nd Counter-Claim before the Court, on the premise that: -

1. He has no Independent Reliefs accruing to himself except that relating to Kingsberry;
2. He has also said that the Claimant has also independently pursued the Reliefs Dr. Babalakin seeks and therefore, in effect his own Sets of Reliefs is a Surplusage;
3. He has also said that the Claimant and even the 3rd Defendant, the

Minister, was not made a Party to his own Counter-Claim and therefore, could not be bound by the Decision of this Court in his regard;

4. He further argues that there is no Justiciable Issue between Dr. Babalakin and the 1st and 2nd Defendants because the Question of Title and Possession relate solely between the Claimant and the 1st and 2nd Defendants.
5. Finally, he has said that this Court lacks jurisdiction to make an Order in favour of Persons, who are not joined as Parties in the 2nd Counter-Claim.

In response, Learned Silk representing the Claimant, counter-argued the Issue on Abuse of Judicial Process by stating that this Same Issue had earlier been raised and decided by this Court when considering the Joinder Application. Therefore, the 1st and 2nd Defendants are caught by the Doctrine of Issue Estoppel and/or Res Judicata. This Court is *functus officio* to reconsider this question, as it would amount to sitting on Appeal over its own Decision. See the Cases of **ELIAS VS ECOBANK NIG PLC (2017) 2 NWLR PART 1549 PAGE 175 AT PAGES 195, 196 PARAS H-A; OGBORU VS IBORI (2005) 13 NWLR PART 942 PAGE 319; SUN INSURANCE VS L.M.B.S. LIMITED (2005) 12 NWLR PART 940 PAGE 608; UKACHUKWU VS UBA (2005) 18 NWLR PART 956 PAGE 1; UBENG VS USUA (2006) 12 NWLR PART 994 PAGE 244; AND ONYEKWELI VS INEC (2009) 6 NWLR PART 1136 PAGE 13.**

Learned Silk further submitted that it was incorrect to state that 2nd Counter-Claimant did not seek any Reliefs for himself and referred to **Reliefs (a); (f); and (g)**, which he contends, are directly for the benefit of the 2nd Counter-Claimant. Further, **Reliefs (b); (c) and (d)** indirectly are for his benefit in that, he would not incur any liability to indemnify the Claimant for any defect in his Title/Interest.

Discussing the Principles of Abuse of Court Process, he argued that it related to a Singular Party instituting Multiplicity of Suits against the Same Opponent in respect of the Same Matter and Issues, which clearly was not the case in this Instant Suit.

In the 2nd Counter-Claim, the Parties are distinct with Independent Interests and their Claims do not border on the Same Issues. Whilst the Initial Suit principally sought to enforce the Claimant's Legal Title to the Property, the 2nd Counter-Claim principally seeks to enforce the Resulting Trustee created over the Property for the benefit of the 2nd Counter-Claimant. The few Similar Reliefs contained in both Suits are Consequential Reliefs in the

2ndCounter-Claim, which he argued, the Court was entitled to grant whether sought for or not.

Finally, on this Issue, Learned Silk submitted that the Law is Trite that if a Party interested in an Action fails to join to protect his interest and stands by to let others fight his battles for him, he would be estopped from re-litigating the Issue if the outcome is against his interest. Reference was made to the Case of **TUKUR VS UBA (2013) 4 NWLR PART 1343 PAGE 90.**

As regards the Issue of **Locus Standi and Jurisdiction**, Learned Silk representing the Claimant referred to his Earlier Submissions on the First Issue and again stated that this Issue had been determined by this Court in its Ruling for Joinder. The Court had held whilst joining Dr. Babalakin, that sufficient interest was disclosed to warrant his Joinder.

It is his argument that this Court is functus officio to countenance this argument anew. Even if some of the Reliefs do not benefit Dr. Babalakin, his Locus Standi would still not be affected as regards the Reliefs that directly benefit him.

According to Learned Silk, Dr. Babalakin has a Legal and Inalienable Right and Duty to protect himself from Potential Legal Liability to Indemnify the Claimant in the instance the Court enters Judgment in favour of the 1st and 2nd Defendants. Reference was made to the Cases cited by Defence Counsel of **ISAMOTU A. ASHIRU VS ADETOUN OLUKOYA (2006) LPELR-580 (SC); AND YEKINI ADEDOKUN OYADARE VS CHIEF OLAJIRE KEJI (2005) 1 SC PART 1**, to state that they were irrelevant with distinguishable facts.

Now, to constitute a **Gross Abuse of Judicial Process**, it was severally held in the Supreme Court Cases of **OGAR & ORS VS IGBE & ORS (2019) LPELR-48998 (SC) EKO, J.S.C. PAGES 17-19, PARAS D-E; NWEKE VS FRN (2019) LPELR-46946 (SC) OKORO, J.S.C. PAGES 22-25, PARAS E-E; AJAOKUTA STEEL CO LTD VS GREENBAY INVESTMENT & SECURITIES LTD & ORS (2019) LPELR-46929 (SC) PER MUHAMMAD, J.S.C. PAGES 31-32, PARAS C-F; AND NWOSU VS PDP & ORS (2018) LPELR-44386 (SC) PER AUGIE, J.S.C. PAGES 22-23, PARAS D-F**, that, "The Concept of Abuse of Court Process, relying on Numerous Decided Authorities, is imprecise. It involves Circumstances and Situations of Infinite Variety and Conditions. The Common Feature of Abuse of Judicial Process... is the Improper Use of Judicial Process to interfere with the Due Administration of Justice. Multiplicity of Actions on

the Same Subject Matter against the Same Opponent on the Same Issue is one of them...So also Litigating or Re-litigating over the Same Issue which, by Operation of Law and on the Principle of Res Judicata, a Party is Barred or Estopped from Re-Opening also is an instance of Abuse of Judicial Process.”

In A.G. FEDERATION VS A.G. OF ABIA STATE & 35 ORS (2002) NSCQR 163, His Lordship A.G. KARIBI-WHYTE JSC AT PAGES 545, 546, held that, “The Critical Factors in the determination of whether an Action is an Abuse of the Judicial Process are Considerations of the Circumstances for bringing the Suit, the Reasons for doing so, the Grounds relied upon for instituting the Action and the Desirability for instituting the Action. The Abuse does not lie in the exercise of the Right of Action *per se*, which is Constitutionally Guaranteed. It is in the Improper, Irregular and Unconscionable Manner of the exercise of the Right, which is Oppressive, Reckless and Vindictive. The Overriding Consideration is the Complete Absence of a Right and the Inconveniences, Inequities involved in the Aims and Purposes for the institution of the Action, which constitutes the Abuse.”

It is important to set out the Historical Background of this Case.

On the 22nd of March 2011, Kingsberry Estate Limited filed a Writ of Summons against Mr. Felix Hyat only for Recovery of Possession. On the 4th of July 2011, Mr. Felix Hyat filed a Motion on Notice for Joinder of Mrs. Alisabatu Alkali and the Honourable Minister of the Federal Capital Territory. In the Supporting Affidavit, Mrs. Alisabatu Alkali claimed Ownership of the Property.

Originating Processes reflecting this Joinder were amended and by a Second Amended Statement of Claim dated the 24th of April 2012, the Claimant’s amended the Reliefs they sought. Subsequently, an Application dated the 2nd of July 2013 was brought to join Dr. Babalakin as a Defendant to the 1st and 2nd Defendants’ Counter-Claim. This Application was after the Closure of the Claimant’s Case and during the Hearing of the Defence.

Ruling on this Contested Application was delivered on the 28th of February 2014 whereupon the 1st and 2nd Defendants appealed against the Decision of this Court.

Upon the Joinder of Dr. Babalakin, he filed his Defence to the Counter-Claim of the 1st and 2nd Defendants on the 19th of April 2016 and in it, he Counter-Claimed against them. They then filed a Joint Reply to the Statement

of Defence and Defence to the Counter-Claim of Dr. Babalakin on the 21st of June 2016, thereby Joining Issues with Dr. Babalakin, who, to this Process, filed a Reply.

It was important to set out the above Sequence to illustrate the fact that Issues were joined between the 1st and 2nd Defendants and Dr. Babalakin.

As regards the Question of Multiplicity of Actions, it is important to note that a Counter-Claim constitutes a Separate, Independent and Distinct Cross-Action within the Same Proceedings, wherein the Counter-Claimant needs to prove his Claim on the same Burden of Proof against the Opposite Party against whom the Counter-Claim is made. It is triable within the Main Claim except where its Nature is different. A Counter-Claim does not depend on the Outcome of the Main Claim and may not necessarily fail merely because the Main Claim succeeds. Reference is made to the Cases of **JERIC NIG VS UNION BANK PLC (2000) 12 SCNJ 184 OR (2000) 15 NWLR PT 691 PAGE 447; NARMDESE TRUST LTD VS NIG INTER-CONTINENTAL MERCHANT BANK LTD (2001) 4 SCNJ 208.**

Bowen, LJ in AMON VS BOBBETT (1889) 22 QBD 543 AT PAGE 548 had held that a Counter-Claim by its Nature, is a "Sword" and not a "Shield". Further reference is made to the Cases of **ATIBA IYALAMU SAVINGS & LOANS LTD V. SUBERU & ANOR (2018) LPELR-44069 (SC); OROJA & ORS V. ADENIYI & ORS (2017) LPELR-41985 (SC); OYEBOLA V. ESSO WEST AFRICA (1996) 1 ALL NLR P.170; OGBONNA V A.G. IMO STATE (1992) 1 NWLR (PT. 220) P.647; KWAJAFFA VS B.O.N. LTD (1999) 1 NWLR PT.587 423; MAOBISON INTERLINK ASSOC. LTD VS U.T.C. (NIG) PLC (2013) 9 NWLR (PT 1359) 197; (2013) LPELR- 20335 (SC) AT 12 B - D PG 34, PARAS B-F AND POTTER DABUP VS HARUNA BAKO KOLO (1993) LPELR-905 (SC).**

It is equally important to note that a Counter-Claim to a Counter-Claim is cognizable in Law as held in the Case of **NAL MERCHANT BANK VS ONU (2001) 5 NWLR PT 705 PAGE 11.**

The Issue of the Cause of Action cannot be separated from the Issue of the import of a Counter-Claim. Yes, indeed, a Counter-Claim is a Separate and Independent Action, but as earlier stated, as long as the Claims are triable within the Main Claim, and as long as the Nature of the Claim is essentially the same as that of the Main Case, all grievances and reliefs sought can be determined in one steady stream. The outcome of all the Claims, whether

Main or Counter-Claim(s), are not contingent on each other as each arm of the Claim would swim or sink with the Value of the Evidence led in their regard.

Therefore, to successfully anchor an Objection on the basis of Multiplicity of Suits, it is expected that the 1st and 2nd Defendants prove that the Reliefs sought by the Claimant and the 2nd Counter-Claimant are exact same and not independent of each other in any fashion.

In the 2nd Counter-Claim of Dr. Babalakin, Declaratory Orders were sought and it is important to note that Declaratory Orders are not Executory. They merely proclaim the Existence of a Legal Relationship or a State of Affairs or what is likely to be, in connection with the Subject Matter of the Declaration. They contain no Specific Order(s) to be carried out by, or enforced against, the Defendant. This was aptly stated by **IDIGBE JSC** in the Case of **CHIKE ARAH AKUNNIA VS THE ATTORNEY GENERAL, ANAMBRA STATE OF NIGERIA & ORS (1977) NSCQR VOL. 1977 AT PAGE 117.**

The Declaration claimed, must relate to some Legal Right or to a Legal Interest of which the Law would take Cognizance and therefore, the Claimant must show that he has an Interest or Right, which forms a foundation for that Declaration. See the Cases of **NIXON VS ATTORNEY GENERAL (1930) 1 Ch. 566 AT PAGE 574; OLAWOYIN VS ATTORNEY GENERAL NORTHERN NIGERIA (1961) 2 NSCC PAGE 165 AT PAGE 169; AND INTERNATIONAL TEXTILES INDUSTRIES NIGERIA LIMITED VS DR. ADEMOLA OYEKANMI ADEREMI & 4 ORS PER UWAIFO JSC (1999) 8 NWLR PART 614 PAGE 268.**

It is equally important to note, that Declaratory Reliefs cannot be granted without Oral Evidence from the Party seeking the Declaration and even where the Defendant, expressly admits the facts in his own Pleadings, the Claimant must still prove his Case due to the Equitable Nature of this Relief. See the Case of **CHIEF L.L.B. OGOLO VS JOSEPH T. OGOLO (2006) NSCQLR VOL. 25 AT PAGE 423.**

Therefore, based on the above Principles, any Party that seeks a Declaratory Relief must be prepared to justify his Claim in Court by leading Positive and Direct Evidence and cannot sit back and watch from afar.

Learned Counsel representing the 1st and 2nd Defendants' argument is that Dr. Babalakin sought no Independent Reliefs for himself.

Now, Juxtaposing the Eight (8) Reliefs sought by the Claimant with that of the

Seven (7) Reliefs sought by the 2nd Counter-Claimant, the Court notes that the Claimant in their Third Amended Statement of Claim, had sought for Declarations for Title, for Possession and for Trespass. They had also sought for Perpetual Injunction, a Mandate to the Minister of the Federal Capital Territory to deliver a New Certificate of Occupancy, General Damages of Ten Million Naira (N10, 000, 000.00) and Cost.

There was nowhere mentioned or claimed any Relief for Dr. Babalakin, as they were only concerned with their own contentions.

Dr. Babalakin, in his own 2nd Counter-Claim, and specifically in his Alternative Relief in **(a)**, sought for a Declaration that the 1st and 2nd Defendants held the Property occupied by them, on his own behalf and for his benefit as Resulting Trustees.

The 2nd Relief under **(b)** seeks for a Declaration amongst other things, that **he, Dr. Babalakin, validly** passed his Interest in that Property to Kingsberry.

The 6th Relief under **(f)** was where he sought for General Damages for Unlawful Holding Over of the Property and for Breach of Trust, which incidentally bore a different Cost of Fifty Million Naira (N50, 000, 000.00) sought and the 7th and Final Relief sought in **(g)**, was for Cost of the Action.

The Court is of the Considered Opinion that all these Reliefs gives the 2nd Counter-Claim a Right to approach this Court for Redress. The Interests of both the Claimant and the 2nd Counter-Claimant are different and a Platform in Law is automatically created for the Right to approach this Court for Redress.

In view of the History of this Case, which started as a Simple Claim for Possession before metamorphosing into Ownership of Property, the Goal Post was clear and the end was in sight. Upon the Counter-Claim by the 1st and 2nd Defendants for Ownership, the Goal Post had moved and therefore, it is within reasonable contemplation that Root of Ownership of both sides must be advocated, grounded and proved by all the Parties, to the best of their abilities.

Therefore, the Court would not consider the Late Entry of Dr. Babalakin as Harassment, as the Claimant had to review their Presented Case and Justify their Claim to Ownership more comprehensively to trace their Root of Title.

As regards the Issue of Locus Standi, the Principle in the Case of **NYAME VS FRN (2010) 3 S.C. PART 1 PAGE 78 AT PAGE 87**, still holds true today. Special Interest in the Subject Matter must be ascertained and more importantly, Sufficient or Special Interest in the Performance of a Duty sought to be enforced must be Evident, especially where that Interest would be adversely affected. The Principle is trite and bears no repetition.

Learned Counsel to the Claimant had argued that this Question of Locus Standi had already been determined by this Court in an Earlier Ruling for Joinder and therefore, constituted Issue Estoppel and or Res Judicata.

Now, it is clear as held in the Supreme Court Case of **APC VS PDP & ORS (2015) LPELR-24587 SC PG 116 PARAS B-D PER RHODES VIVOUR J.S.C.**, where His Lordship held that the Rule of Estoppel is a Rule of Evidence, and the Matter, which will found an Issue Estoppel, may be of Law, Fact, or Mixed Law and Fact. Once a Specific Point has been *distinctly put in issue and has been determined with Certainty*, the Court will not allow that Issue to be Re-Litigated by the Same or Different Parties. See also **OGUNDARE, JSC PAGES 45-46 PARAS G-A** in the Case of **ABISI & ORS VS EKWEALOR & ANOR (1993) LPELR-44 (SC)**.

Further, in the case of **TIJANI IKOTUN VS OBA SAMSON OYEKANMI & ANOR (2008) LPELR-1485 (SC), (2008) 10 NWLR PT 1094 AT 100, CHUKWUMA-ENEH JSC**, held that the Res, Parties and Claims in the Present Suit need not necessarily be the same as those in the Previous Proceedings before Issue Estoppel is founded.

The Supreme Court also in **OSHOBOJA VS AMIDA (2009) 18 NWLR PART 1172 PAGE 188 AT PAGES, 204 209 PARAS E-H, PER MUKHTAR JSC** explained the Latin Maxim, "*Nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa*", to say that, "There is a well-established Principle of Law which applies both in Civil and Criminal Cases, that no Man or One, shall, or should be, or ought to be vexed twice on the Same Ground or for One and the Same Cause of Action or the Same Issues. This Principle is rooted in Public Policy. See further the Cases of **ARO VS FABOLUDE (1983) 1 SCNLR PAGE 58; OMOKHAFFE VS ESEKHOMO (1993) 3 NWLR PART 309 PAGE 58; ADOMBA VS ODIESE (1990) 1 NWLR PART 125 PAGE 165; FIDELITAS SHIPPING CO., LTD VS V/O EXPORTCHLEB (1966) 1 QB PAGE 630 AT PAGE 640; (1965) 2 ALL ER PAGE 4 AT PAGE 8, LORD DENNING M.R.** This was clearly analyzed by **STEYN J** in the case of **SPEEDLINK VANGUARD VS**

EUROPEAN GATEWAY (1987) QB PAGE 206; (1986) 3 ALL ER PAGE 554.

As a reminder for Learned Counsel representing the 1st and 2nd Defendants, the Court in its Ruling, held in sum, thus: **“The Crux of this Ruling, is basically weighing Two Conflicting Rights, which are, the Right to be Heard and the Right of the Defendants not to suffer Prejudice as a result of the Undue Advantage of the Claimant possibly having a Second Bite at the Cherry. It is Trite Law that a Party, may at any time before Judgment, or even on Appeal, apply to be joined in the Proceedings once he perceives that the Decision of the Court will affect him or her one way or the other. Such a Party must show that the Decision of the Court would directly affect his Legal Rights or Pecuniary Interest.”**

The Court in its Conclusion, granted Leave of Court to Dr. Bolanle Olawale Babalakin SAN, to be joined as a Defendant to the 1st and 2nd Defendant/Counter-Claimants.

The purpose of the Joinder by the Court in this instance was to completely and thoroughly determine the Sole and Common Issue of Ownership of the Property in Question without the need to institute Multiplicity of Actions before this Court or other Courts thereby risking the possibility of an Abuse of Court Process.

The Court needed to see a Total Picture of the Issues closely intertwined and interwoven that unarguably raised the Same Common Questions for Determination.

The **Facts** of the Case cannot be recounted without any of the Parties before the Court, both in the Main and in the 1st Counter-Claim referring to Dr. Babalakin. If the Account of One Party is to be believed, Dr. Babalakin was the Foundation that **anchors** their Case. If the Account of the Other Party is to be believed, Dr. Babalakin is still the Foundation that would be referred to in **challenge**.

The issue the Court considered was, whether Dr. Babalakin would be affected by any Decision this Court arrived at? Whether there was a possibility of financial liability along the line, if a refund to Kingsberry became necessary? and finally, Whether any Right, Equitable or Legal, of his that was affected?

To this end, this Court finds that it has Jurisdiction to entertain and determine the Issues in this Trial in the way it is being prosecuted.

As regards the **Fourth Issue** on Record, which is *“Whether Dr. Bolanle Olawale Babalakin SAN, breached the Rules of Professional Ethics for Legal Practitioners when halfway into the hearing of this Suit, wherein his Law Firm, Babalakin & Co., represents the Claimant, he applied to be joined as the 3rd Defendant to the Counter- Claim of the 1st and 2nd Defendants/Counter-Claimant took the Witness Stand and called witnesses and thereby exposed himself and his witnesses to cross-examination by his Law Firm, Babalakin & Co.”*

According to Learned Counsel representing the 1st and 2nd Defendants, there was a Breach of the Rules of Professional Ethics, which is an Abuse of Court Process, as the Conduct of Counsel is called to question, especially when he knows that he may be required to give evidence. Reference was to **Rules 20 and 47 of the Rules of Professional Conduct for Legal Practitioners 2007.**

Further, Dr. Babalakin admitted to being a Senior Partner in the Law Firm of Babalakin & Co., and the fact that his Law Firm represented the Claimant in the Sale Transaction with Evelyn Abubakar and perfected the Transaction through their actions, there was a breach. He pointed out that Dr. Babalakin purchased the Disputed Property and knew his Law Firm was representing the Claimant when he subsequently applied to be made a Party in this Suit. By this, and by the fact of his Witness Statements on Oath, the probability of him being called to give evidence and be cross-examined was high.

This is because both Dr. Babalakin and his Law Firm were Party, Witness and Counsel in the Consolidated Suit. He relied on the Case of **OKATTA VS THE REGISTERED TRUSTEES OF THE ONITSHA SPORTS CLUB (2007) LPELR-8347 (CA); ANYIKA VS UZOR (2006) 15 NWLR PART 1003 PAGE 560; HON. BALA VS DIKKO (2013) 4 NWLR PART 1344 PAGE 52 and HORN VS RICHARDS (1963) 2 ALL NLR OR NWLR AT 67.**

Further, Learned Counsel argued that in instituting the 2nd Counter-Claim, Dr. Babalakin changed the Storyline and Root of Title in clear distinction through its Pleadings and Evidence of the Claimant, in an effort to occasion a Miscarriage of Justice, all for the benefit of the Claimant. This was also a clear breach of **Rule 47 of the Rules of Professional Conduct** and referred to the Case of **ITEAOGU VS LPC (2009) 17 NWLR PART 1171 PAGE 614 AT PAGE 620.**

In Reply, Learned Silk representing the Claimant submitted that the Doctrine

of Issue Estoppel and Res Judicata also caught this Issue and therefore, this Court is functus officio to effectively sit on Appeal over its own Decision.

However, without conceding, he argued that at the time the Law Firm of Babalakin & Co., accepted the Instructions to represent the Claimant in this Suit, the Firm did not and could not have had a reason to believe or expect that the 2nd Counter-Claimant would be called as a Testifying Witness. Learned Silk pointed out that Dr. Babalakin did not feature in any of their Pleadings nor was he called as a Witness in their regard. He was only a Party to the 1st and 2nd Defendants' Counter-Claim as well as the Counter-Claim, which to all intents and purposes, is a Separate and Distinct Action. He cited the case of **AFRICAN SONGS LIMITED VS ADEGEYE (2019) 2 NWLR PART 1656 PAGE 335**.

Further, he contended that there was nothing in the Rules of Professional Ethics that mandated a Counsel already involved in a Matter to withdraw as Counsel if subsequent and unanticipated events led to Counsel in his Firm being called as a Witness.

Now, it is important to realize that this is not the first time this Line of Objection has come up. This Question was answered partially in a Considered Ruling delivered on the 28th of February 2014, for which an Appeal was instituted and subsequently, the Matter was referred back to this Court for Continuation of Trial.

The Objection then was: -**“Whether this Application brought by the Principal Partner in the Law Firm representing the Claimant/ Respondent does not constitute a Gross Abuse of Judicial Process?”**

The Court in that Ruling had held that, ***“The Second Issue to be settled is, whether the Applicant, who is Principal Partner in the Law Firm representing the Claimant, can apply to be joined as a Party.***

...Except in the Situation where the Applicant would announce Appearance before the Court for the Claimant, the Applicant has every Right to Apply to be joined as a Party. The Law Firm of Babalakin & Co., which the Applicant is a Principal Partner, is not a Legal Entity. It is not known to our Law that a Partner or Principal Partner in a Law Firm cannot be joined as a Party in Proceedings

wherein the Law Firm represents one of the Parties. What the Law frowns at is that a Counsel should not put himself in a position where he cannot properly function as a Counsel. **SEE ADEFULU VS OKULAJA (1998) 5 NWLR (PART 550) 435 SC.** It is improper for a Counsel to accept a Brief, where it is clear that the Services to be rendered, flow out of, or are closely connected with the Previous Services he had rendered to the Opposing Side. **See KOLAWOLE VS ALBERTO (1989) 1 NWLR (PART 98) 382 SC.**

The Instant Application does not fall within any of the Exceptions. Moreover, the emphasis is for a "Counsel" or "Legal Practitioner" and not a Law Firm."

The only slight difference between the Above Objection and this Present One is the fact that Dr. Babalakin actually during Trial, took to the Witness Stand and was subjected to Cross-Examination.

Now, a close scrutiny of **Rule 20 of the Rules of Professional Conduct for Legal Practitioners 2007** reveals that it regulates the instance of a Lawyer acting as Witness for his Client and in essence, mandates him not to accept Representation, if it was reasonable to know that he may be called as a Witness. It also sets out under **Sub-Rule (2)** Circumstances where he or a Member of his Firm may testify on behalf of a Client.

Further, where it is believed that he would be a Necessary Witness, the Rules states that neither he nor his Firm **MAY** conduct the Trial. The Rules also advised a withdrawal from the Conduct of the Trial in **Sub- Rule (3)** and added that his Firm shall not continue Representation, even though the Lawyer may testify in regard to **Sub-Rule (2)**.

Sub Rule (5) appears to provide a Leeway for Counsel who learns or is obvious that he or a Lawyer in his Firm may be called as a Witness other than on behalf of his Client, he **MAY** continue the Representation until it is apparent that his Testimony *is or may be* prejudicial to his Client.

As regards **Rule 47(1)** on Instigating Controversy or Litigation, it states that a Lawyer shall not foment strife or instigate Litigation and, except in the case of Close Relations or of Trust, he shall not, without being consulted, proffer advice to bring a Lawsuit.

Learned Silk, representing the Claimant, had argued that this Court is a Wrong Venue for the ventilation of the 1st and 2nd Defendants' grievances pertaining to the Breach of the Rules of Professional Ethics. Although, a Duty was imposed in **Rule 55(2)** for every Lawyer to report a Breach to the

“Appropriate Authorities”, for necessary Disciplinary Action, **Sections 10 and 11 of the Legal Practitioners’ Act CAP L 11 LFN 2007** makes the Legal Practitioners’ Disciplinary Committee, the Appropriate Authority to lodge such Complaints. Reference was made to the Case of **AHMED VS AHMED (2013) 15 NWLR PART 1377 PAGE 329 PARAS A-H.**

Now, the Court, faults this submission. There are a number of Case Law Authorities where Courts have restrained Counsel from acting for a Party. In instances where a Counsel previously acted in respect of a Subject Matter, he would not be heard to represent the Opposing Interest. See **ONYEKE VS HARRICLEM (NIG) LIMITED (1998) 7 NWLR PART 556 PAGE 64.** In **ANATOGU VS IWEKA II (1995) 8 NWLR PART 415 PAGE 547, UWAIS JSC,** held that: - *“Generally, the Courts are not to prevent Litigants from employing the Services of Counsel of their Choice. However, a Person must not be allowed to employ the Services of a Counsel, nor should a Counsel accept a Brief where it is clear that the Services to be rendered flow out of or are closely connected with the Previous Services he had rendered to the Opposing Side. The Jurisdiction to restrain Counsel from acting for the Antagonist of his Client, stems from the Principle that a Man ought to be restrained from doing any Act contrary to the Duty that he owes to another, and that the Jurisdiction will be exercised at the instance of the Former Client.”* See also the Cases of **ONIGBONGBO COMMUNITY VS MINISTER OF LAGOS AFFAIRS (1971) 2 NCLR 186 at 192; AND ONYEKA & ANOR V. OGBONNA & ORS (2013) LPELR-20718 (CA) PAGES 24-25 PARAS A-F.**

From the above Authorities, it is clear that any Court has Jurisdiction to inquire into, and where necessary, restrain a Counsel from appearing for a Party where there is Conflict of Interest. This Inherent Power of the Courts has nothing to do with the Statutory Jurisdiction of the Legal Practitioners Disciplinary Committee in matters relating to Allegations of Professional Misconduct.

Learned Silk representing the Claimant had also contended that the Alleged Breach was irrelevant to the Issues for Determination in this Suit, was of no moment and was a mere academic exercise. Flowing from the above Authorities, this Contention is a misguided one.

If there is indeed a Breach, that Breach would be material to this Case.

Learned Counsel for the 1st and 2nd Defendants had contended that where a Counsel would be a Necessary Witness at the Trial, neither he nor his Law

Firm should accept Representation as held in **OKATTA VS REGISTERED TRUSTEES (2007) (SUPRA)**. It is clear that a Legal Practitioner cannot be Party to a case and at the same time, appear as Counsel for another Party in the same case, since there cannot be a Mixture of Two Characters. I agree that a Counsel should only wear one hat in Court and should not act as a Counsel and a Witness in the same case, as held in **HORN VS RICKARD (1963) NNLR PAGE 67 AT PAGE 69**.

Now, in the Cases of **AKUNA VS EZIKPE (2001) 8 NWLR PART 716 PAGE 547; AND WILLIAMS VS NWOSU (2001) 3 NWLR PART 700 PAGE 376**, the Supreme Court **Per OBASEKI JSC** held that, "A Legal Practitioner who is a Defendant to an Action can only appear on his own behalf as a Defendant... He cannot represent and conduct the Case of a Co-Defendant. As a Litigant he cannot appear in Two Capacities, i.e. First in his Person, and Secondly, as Legal Practitioner in the Same Case. A Mixture of the Two Characters is not permitted." See also **FAWEHINMI VS NIGERIA BAR ASSOCIATION (NO.1)**, which followed **NEWTON VS RICKETTS 9 HLC PAGE 710, NEW BRUNSWICK & ANOR VS CONYBEANE**, and relied on by **NDUKWE -ANYANWU JCA** in the Case of **ACN & ORS VS INEC & ANOR (2013) LPELR-20803 (CA) PAGES 8-10 PARAS C-B**.

What the Law frowns at is that a Counsel should not put himself in a position where he cannot properly function as a Counsel.

Reference is made to the Case of **ADEFULU VS OKULAJA (1998) 5 NWLR (PART 550) 435 SC**. It is improper for a Counsel to accept a Brief, where it is clear that the Services to be rendered, flow out of, or are closely connected with the Previous Services he had rendered to the Opposing Side. See further the Case of **KOLAWOLE VS ALBERTO (1989) 1 NWLR (PART 98) 382 SC**.

However, the Questions to be asked are: -Whether the above Principles are applicable to the Circumstances of this Case; and whether there was any Conflict of Interest?

The Facts of this Present Case is that Kingsberry Estate Limited engaged Babalakin & Co., to Perfect their Title Documents and thereafter, secure Possession of the Property they had purchased. It was not in contemplation at this time, that Dr. Babalakin would feature as a Witness when Kingsberry engaged Babalakin & Co.

At the time of the Engagement of Babalakin & Co., there was no Question of

Contested Ownership. The Question of Ownership only arose when the 1st and 2nd Defendants, upon being served with a Writ for Possession, changed the Goal Post, resulting in the Hotly Contested Issue of Ownership, and necessitating each Party to be responsible for proving Root of Title to the hilt.

The Entry of Dr. Babalakin SAN into this Action is on the premise of Resulting Trustee, Protection of his Pecuniary Interest and his Participation in the activities regarding the Subject Matter.

In this Instance, Babalakin SAN was not in a Situation where he had earlier been personally briefed and neither did the Evidence reveal that he had obtained information from the Opposing Party. Further, he never testified in favour for or against the Evidence of Kingsberry and he was not Cross-Examined by them. He did not feature in any of the Pleadings filed by the Parties before his Joinder and was only a Party to the 1st Counter-Claim and his Own Claim.

In this Case, even though it is the Same Trial, the Claimant engaged Babalakin & Co., to represent their Interest as to Ownership and it is clear that Babalakin SAN, a Senior Partner in the Law Firm, has his Own Separate Personal Interest to protect. The Courts have held that a Party who is a Legal Practitioner can appear for himself as any other Person and this is his Constitutional Right. In **ATAKE VS AFEJUKU (1994) 9 NWLR PT 368 PAGE 379**, it was held that a Litigant who is a Legal Practitioner has a Right to Counsel of his choice in accordance with **Section 36 of the 1999 Constitution**.

Dr. Babalakin SAN therefore engaged a Separate and Independent Counsel of his Own Choice, dissociating himself from his Firm and did not represent the Claimant when he testified as a Witness. He only represented himself and did not work against the Interest of the Claimant, who is a Client to his Law Firm. It is important to comprehend that Dr. Babalakin did not act as a Lawyer in his Own Cause or in any other Party's Cause.

Dr. Babalakin SAN, even though a Lawyer ought to be treated as any other Natural Person on the basis of his Legal/ Equitable Interests and is entitled to ventilate before a Court of Law, the Legal Rights he seeks to protect. He has Fundamental Rights enshrined under the Constitution, which can never be superseded by any Rules that a Person has an Inherent Freedom to associate freely and engage a Counsel of his Choice in consonance with **Rule 18** and the Cases of **AKUNA VS EZIKPE (2001) 8 NWLR PT 716 PAGE 547, WILLIAMS VS NWOSU (2001) 3 NWLR PT 700 PAGE 376; AND ACN & ORS V. INEC**

&ANOR (2013) LPELR-20803 (CA)_PAGES 8-10 PARAS C-B.

Likewise, Kingsberry has the Fundamental Right to engage the Services of a Legal Representation of their Choice.

Finally, the Court takes cognizance of **Rule 17** of the **Rules of Professional Conduct**, which prevents a Counsel from having Conflict of Interest by advocating adverse positions on the same matter during his Representation. Reference is made to the Case of **AZUBUIKE VS STATE (2017) LPELR-42485 (CA) PAGES 14, 15 PARA D**; and holds that there is no Conflict of Interest present in this Suit.

Therefore, this Issue raised by Learned Counsel to the 1st and 2nd Defendants is fully determined and found to be unmeritorious.

The **Fifth and Final Issue** for determination is, *Whether there was the Establishment of Reliable, Consistent and Uncontradictory Evidence in regard to the Three Competing Claims made by All Parties in this Action, having regard to the Questions of Fraud, Resulting Trust and Bona Fide Purchaser for Value without Notice, for the purposes of determining WHO was vested with Legal or Equitable Right/Interest to the Property in Issue.*

OGUNBIYI JSC, in AJIBULU VS AJAYI (2013) LPELR-21860 (SC) AT PAGES 21-22 PARAS D-B, held that, "It is well settled in our Legal System that Proof of Title must be established through one of the Five Ways as laid down in the case of **IDUNDUN VS OKUMAGBA (1976) 9 - 10 SC PAGE 223** which are as follows: -

1. By Traditional Evidence;
2. By Documents of Title;
3. By Various Acts of Ownership and Possession, numerous and positive to warrant inference of Ownership;
4. By Acts of Long Possession and Enjoyment of the Land; and
5. By Proof of Possession of Adjacent Land to the Land in Dispute, in such circumstances, which render it probable that the Owner of the Adjacent Land is the Owner of the Land in Dispute.

The burden placed on the Claimant is to prove at least One of the Five Ways

and not conjunctively. The Same Principle was also applied in the cases of **GRACE MADU VS DR. BETRAM MADU NSCQR VOL. 33 (2008) PAGE 931 AT PAGE 934, PER ADEREMI JSC; MOGAJI VS CADBURY LTD (1985) 2 NWLR PART 7 PAGE 373; ALLI VS ALESINLOYE (2000) 6 NWLR PART 40 PAGE 117; OLOHUNDE VS ADEYOJU (2000) 10 NWLR PART 676 PAGE 562; AND ADESANYA VS ADEROUNMU (2000) 9 NWLR PART 672 PAGE 370.**

In this instant case, the Proof of Ownership adduced by each Party was on Proof of Documents of Title. The Documents of Title, such as a Certificate of Occupancy and Deed of Assignment, are clear evidence of Title and of a Transaction between the Parties thereto. Once granted, a person is entitled to hold same to the exclusion of any other person, unless and until the Certificate of Occupancy is set aside. See the Cases of **GANIKON VS UGOCHUKWU CHEM IND LIMITED (1993) 6 NWLR PART 297 AT PAGE 55; OSAZUWA VS OJO (1999) 13 NWLR PART 686 PAGES 121, 634, 286; EZENNAH VS ATTA (2004) 4 MJSC PAGE 1.**

In the Case of **AKINDURO VS ALAYA (2007) LPELR-344 (SC) ADEREMI JSC PAGE 15 PARAS C-G**, held that, "The Guiding Principles on Proof of Title by Document of Title are well adumbrated by this Court in **ROMAINE VS ROMAINE (1992) 4 NWLR PART 238 PAGE 650 at PAGE 662** to the effect that Production and Reliance as an Instrument of Grant of Title, inevitably carries with it, the need for the Court to inquire into some or all of a number of questions including: -

- (1) Whether the Document is Genuine and Valid;
- (2) Whether it has been Duly Executed, Stamped and Registered;
- (3) Whether the Grantor had the Authority and Capacity to make the Grant;
- (4) Whether in fact the Grantor had in fact what he purported to Grant; and
- (5) Whether it has the Effect claimed by the Holder of the Instrument."

Before the Court, by way of Title Documents, accepted into Evidence or rejected are: -

- The Certified True Copy of the Certificate of Occupancy belonging to Evelyn Aliyu Abubakar dated the **31st day of August 2005** admitted as **Exhibit P**;
- An Undated Deed of Assignment between Jones Tech International Limited and Madam Alisabatu Alkali, which was marked, "Tendered But Rejected";
- A Deed of Assignment dated the 21st day of January 2008 between Jones Tech International Limited and Madam Alisabatu Alkali, which

was also marked, “Tendered But Rejected”;

- An Undated Irrevocable Power of Attorney created by Jones Tech International Limited in favour of Madam Alisabatu Alkali, which was admitted into Evidence as **Exhibit O**, which was resubmitted and accepted after due payment of Stamp Duties.
- An Irrevocable Power of Attorney dated the 27th of February 2007 between Evelyn Aliyu Abubakar and Jones Tech International Limited, admitted into Evidence as part of Documents in Bundle of **Exhibit R6**;
- An Undated Deed of Assignment between Evelyn Aliyu Abubakar and Kingsberry Estate Limited admitted into Evidence as **Exhibit B**.

To all these Title Documents, the **Claimant** claims entitlement to Legal Title of the Property in Question on the basis of being a Bona Fide Purchaser for Value without Notice and also, on the Deed of Assignment executed between Kingsberry Estate Limited and Evelyn Aliyu Abubakar as well as Approval of Consent by the Minister to this Assignment dated the 22nd of July 2010 and admitted into evidence as **Exhibit C**.

The **1st and 2nd Defendants**, on their own part, claimed Ownership from Jones Tech International Limited through an Unregistered Power of Attorney admitted as **Exhibit O** as well as payment of the Purchase Price for the Disputed Property.

The **2nd Counter-Claimant** relied on the Equitable Doctrine of Resulting Trustee, to claim that he furnished the Consideration for the Purchase of the Disputed Property and the 1st and 2nd Defendants were Resulting Trustees. Therefore, he had the Right to sell to the Claimant.

All Competing Parties presented Documentary Evidence in support of their Claims with Divergent Stories on how they obtained it. The Key, therefore, is the Money Trail and the Question of an Enforceable Acquired Right, whether Legal or Equitable. The Money Trail is important but without an Acquired Right to Title, the Money Trail hits a Dead End. You cannot purchase what is not there to sell and so, the Money paid works hand-in-hand with the Right to Title. The Grantor must have had the authority, capacity and right to divest the Title in the first place. Reference is made to the Case Law Authority of **MAJOR MURITALA GBADAMOSI & 2 ORS VS H.R.H. OBA TIJANI ADETUNJI AKINLOYE & 2 ORS (2013) NSCQR VOLUME 55 AT PAGE 75**.

At the get go, it is Crucial to examine the various Enabling Laws and Statutes that govern the Grant, Conveyance and Acquisition of Land, whether Statutory

or Otherwise in the Federal Capital Territory. Under **Section 5 of the Land Use Act**, the Minister of the Federal Capital Territory is statutorily empowered to Administer all Lands in the Federal Capital Territory by virtue of the Delegation from the President of Nigeria to him in **Section 302 of the 1999 Constitution As Amended; Section 51(2) of the Land Use Act 1978 and Section 18 of the Federal Capital Territory Act CAP F6 Law of the Federation 2004.**

As held in the Supreme Court Decision of **GRACE MADU VS DR. BETRAM MADU (2008) 6 NWLR PART 1083 PAGE 296 AT PAGES 324, 325 PARAS H-C**, inter alia, No Person can Acquire any Land in the Federal Capital Territory without an Allocation or Grant by the Minister.

By **Section 22 (1) of the Land Use Act 1978**, it states that, "It shall not be lawful for the Holder of a Statutory Right of Occupancy granted by the Governor, to alienate his Right of Occupancy or any part thereof by Assignment, Mortgage, Transfer Of Possession, Sub-Lease or otherwise howsoever without the Consent of the Governor first had and obtained."

This Section clearly prohibits the Holder of a Statutory Right of Occupancy from alienating his Right of Occupancy or any Part thereof by Assignment, Mortgage, Transfer of Possession, Sub-Lease or otherwise, *WITHOUT* the Consent of the Governor first had and obtained. Reference is further made to **A.I. KATSINA-ALU JSC AT PAGES 1161- 1162 in the Case of BROSSETTE MANUFACTURING (NIG) LIMITED VS M/S OLA ILEMOBOLA LIMITED & 3 ORS (2007) NSCQR VOLUME 30 AT PAGE 1137; AND AYODELE ILORI & 3 ORS VS ALHAJA RISIKAT ISHOLA & ANOR (2018) VOLUME 73 NSCQR PAGE 1565.**

By **Section 22 (2) of the Land Use Act**, it states that, "The Governor when giving his Consent to an Assignment, Mortgage or Sub-Lease may require the Holder of a Statutory Right of Occupancy to submit an Instrument executed in evidence of the Assignment, Mortgage or Sub-Lease and the Holder, shall, when so required, deliver the said Instrument to the Governor in order that the Consent given by the Governor under **Subsection (1)** of this Section may be signified by endorsement thereon.

The Legal Consequence of not complying with the above Sections is that, the Agreement or Deed of Assignment is Inchoate or at best a Mere Escrow till the Consent of the Governor is obtained. Being a Mere Escrow, the Deed of Assignment can pass no Legal Interest and Title to the Property, until the

Consent is obtained. Further Reference is made to the Case of **ANAMBRA STATE HOUSING DEVELOPMENT CORPORATION VS EMEKWUE (1996) 1 SCNJ PAGE 98 AT PAGES 132-133. NIKI TOBI JSC AT PAGE 1168** of this Judgment stated that an Instrument executed in evidence of the Alienation by way of Assignment, Mortgage of Sub-Lease must be submitted to the Governor.

Further still, by **Section 26 of the Land Use Act**, “Any Transaction or any Instrument which purports to confer on, or vest in, any Person any Interest or Right over Land, other than in accordance with the Provisions of this Act shall be Null and Void.”

Section 22, therefore, is Mandatory and failure to comply will nullify the Transaction or Instrument. See further the Cases of **AWOJUGBADE LIGHT INDUSTRIES LIMITED VS CHINUKWE (1995) 4 NWLR PART 390 AT PAGE 379; DR. N.A. IRAGUNIMA VS RIVERS STATE HOUSING AND PROPERTY DEVELOPMENT AUTHORITY & 2 ORS (2003) NSCQR VOLUME 14 PAGE 601.**

Therefore, the Court must now note, **which** of the Parties, obtained the Minister’s Consent.

Exhibit C, dated the 22nd of July 2010, is the Notification of Approval of Consent by the Honourable Minister of the Federal Capital Territory to assign the Property in Issue to Kingsberry Estate Limited on the satisfaction of Payments of Listed Fees and the submission of a satisfactory Deed of Assignment.

It is clear from **Exhibit B**, that the Deed of Assignment executed between Evelyn Aliyu Abubakar, as the Assignor and Kingsberry Estates Limited, as the Assignee, was Registered at the Lands Registry on the 26th of August 2010.

In their Written Address, Learned Counsel representing the Honourable Minister of the Federal Capital Territory stated that the Minister never allocated Title in No. 33 Limpopo Street, Maitama, Abuja to the 1st and 2nd Defendants and neither did he approve the Transfer of Title to them at any point in time. Therefore, their Source of Ownership over the Property was unknown and unfounded.

According to him, Kingsberry is the Legal Owner having Registered their Deed of Assignment, as **No. FC 198 PAGE 198 VOL 27 MISC in the Federal Capital Territory Land Registry.**

By this acknowledgement from the Honourable Minister of the Federal Capital Territory, who is the **ONLY** Authority to Recognize, Attest and Validate Legal Entitlement and Ownership of the Property, the Legal Owner in their Records, is Kingsberry Estates Limited.

However, the Question/Challenge to the Validity of the Consent is Part of the Issues in the 1st and 2nd Defendants' Contentions before this Court, as each Party in these Consolidated Actions, vie for the Right to the Title. Therefore, the Court must of necessity, examine the Presentation of Evidence and Exhibits already set out above, taking into account the Contradictions and Inconsistencies rendered by each Contending Party in their Respective Claims.

Each Claim would now be analyzed in succession starting with the Case presented by Kingsberry, then unto the 1st and 2nd Defendants and finally, that of the 2nd Counter-Claimant.

As regards the **Case of the Claimant, Kingsberry Estates Limited**, they claimed in their Amended Statement of Claim that they had purchased the Property from Ms. Evelyn Aliyu Abubakar and executed a Deed of Assignment. Ms. Evelyn Aliyu Abubakar had become a Valid Title Holder over the Property vide a Certificate of Occupancy No. 2078w-1253c-6e8dr-def8u-10, dated the 31st of August 2005 and registered as 8564/8564/43 in the Lands Registry Office in Abuja, which had a commencement date of the 22nd of September 1992.

She then pursuant to a Demand for Ground Rent by the Federal Capital Territory Administration (hereinafter referred to as "FCTA"), Abuja Geographic Information Systems (AGIS), paid her Ground Rent on 11 August 2010. Upon payment by Kingsberry of all Requisite Fees and further, upon the fulfilment of Conditions Precedent, the Minister of the Federal Capital Territory duly approved this Assignment and his Approval was conveyed through a Letter of Consent dated the 22nd of July 2010.

Another Search was conducted by their Solicitors to confirm the Current Status and Registered Interest on the Property after the Purchase of the Property and Perfection of its Title, and AGIS in a Letter dated 4 February 2011, confirmed Kingsberry as the Only Registered Interest/Title Holder on the Property.

Kingsberry denied that at no material time to this Action, did Jones Tech International Limited ever acquire, hold any Interest, mortgaged to Skye Bank Plc. or pay any Consideration to Evelyn Abubakar in respect of the Power of Attorney. Further, they alleged that Skye Bank Plc. was never in possession of

the Title Deeds of the Property and was never in a position to release the Title Documents of the Property to the 2nd Defendants upon the alleged payment of the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00).

According to them, the only Registered and Recognizable Transaction on the Property was between the former owner Evelyn Aliyu Abubakar and themselves. The 1st and 2nd Defendants were mere Occupants of the Property, based on an Arrangement with Evelyn Abubakar.

On the 30th of November 2020, Oshobi SAN representing Kingsberry sought to amend their Statement of Claim filed on the 10th of June 2014 to include the following Paragraphs that: -

- 1) The 1st Defendant is a Former Minister of State for Aviation under the Administration of President Umaru Musa Yar'adua;
- 2) The 3rd Defendant to the 1st Counter-Claim is a Lawyer, Senior Advocate of Nigeria and an Entrepreneur from whom the Claimant acquired Equitable Title to the Property that is the Subject- Matter of this Suit;
- 3) Prior to the Execution of the Deed of Assignment, the Claimant had acquired the Equitable Title/Interest of the 3rd Defendant to the 1st Counter-Claim in the Property, who did not register his Title/Interest in the Property;
- 4) The 3rd Defendant to the 1st Counter-Claim subsequently referred the Claimant to Evelyn Aliyu Abubakar for execution of relevant transfer of Title Documents over the Property; and
- 5) The Claimant states that pursuant to the Transaction, the Former Owner applied to the 3rd Defendant for his Consent to the Transaction.

By this Proposed Amendment, Kingsberry had sought to correct the Administration under which Mr. Felix Hyat served under and had sought to describe the Status of Dr. Babalakin SAN. More fundamentally, they had sought to trace the Root of their Title through Dr. Babalakin SAN, which was patently absent in their Initial Pleadings. They also sought to recognize the Equitable Title/Interest of Dr. Babalakin SAN, who did not register his Interest. According to these Pleadings, they had approached Evelyn Abubakar on the counsel of Dr. Babalakin SAN to perfect their Title with her.

The Court in a Considered Ruling disallowed this Amendment on the Grounds that it would substantially change the Case of the Claimant at this Stage of Address. Nwosu Esq. had persistently alleged that Kingsberry had by Conduct

accepted the fact that they purchased from Dr. Babalakin SAN and not directly from Evelyn Abubakar.

The Inconsistency noted in their Case is, that the PW1, Mr. Ciroma, in his Examination-in-Chief, described Ms. Evelyn Aliyu Abubakar and claimed to be present when the Deed of Assignment was executed between Kingsberry and Ms. Evelyn Aliyu Abubakar. It is noteworthy that he neither personally signed nor witnessed the Deed of Assignment.

He had claimed that the Original Certificate of Occupancy was lost, but he did not report it, or file any Affidavit of Loss. More importantly, Mr. Ciroma claimed that the Certificate of Occupancy got lost **AFTER** obtaining both the Consent and Registration of the Deed of Assignment. This witness was trying to create an impression that Kingsberry had in their possession of Certificate of Occupancy before the Registration and Consent with the Minister of the Federal Capital Territory, which is strange due to the fact that Kingsberry then subsequently requested for the same Certificate of Occupancy from DW2, who had testified as to its loss whilst in her Custody. This Statement by Ciroma is found to be inconsistent.

Mr. Ciroma did not know that the Disputed Property was subject to an Equitable Mortgage and more importantly, he knew the Property was paid through a Banker's Draft but he could not say which of the Banks was used. As a Representative of Kingsberry, he ought to have known from which Bank and ought to have known the Mode of Payment.

Despite the fact that **Exhibit K**, Kingsberry's Initial Pleadings was tendered through him, he denied being aware of the Documents indicating the Mortgage Loan, the Presence of Skye Bank Plc., and Jones Tech and the mention of Madam Alisabatu Alkali. He could only say that these Documents predated the Existence of Kingsberry.

Further, Kingsberry's Second Witness, Mr. Haruna Aliero, stated that to register Consent, his Establishment needed the Applicant to submit Proof of Payment of Ground Rent over the years as well as THE ORIGINAL CERTIFICATE OF OCCUPANCY for sighting. This Statement presupposes that the Minister must have sighted the Original Certificate of Occupancy.

The next important question to determine is whether Kingsberry Estates Limited was a **Bona Fide Purchaser for Value without Notice** as claimed by them and all Arguments and Counter-Arguments in this respect are on Record, and there is little point in restating them.

In **BEST NIGERIA LIMITED VS BLACKWOOD HODGE NIGERIA LTD (2011) LPELR-776 (SC) FABIYI, JSC AT PAGE 28 PARAS E-F** held that "A Bona Fide Purchaser for Value is one who has purchased the Property for Valuable Consideration without Notice of any Prior Right or Title, which if upheld, will derogate from the Title which he has purported to acquire."

In the Case of **NAPOLEON S. ORIANZI VS THE ATTORNEY GENERAL OF RIVERS STATE & 3ORS (2017) 70 NSCQR PAGE 1131**, A Bona Fide Purchaser for Value of a Legal Estate without Notice takes priority over an Equitable Interest. It is Settled that a Purchaser, who needs to make a Thorough Search of the Register, is fixed with Notice of Rights contained in the Instrument registered under the Various Land Instrument Registration Laws in Nigeria. Therefore, only a Bona Fide Purchaser of a Legal Estate for Value without Notice will take priority over someone who had acquired a Prior Equitable Interest over the same Property. Reference is made to the Case of **EDOKPOLO & CO. LIMITED VS OHEHEN (1994) 7 NWLR PART 358 PAGE 511; ANIMASHAUN VS OLOJO (1990) LPELR-491 (SC) PER OBASEKI, JSC PAGE 17 PARAS B-E**, which went further to describe what "Bona Fide", "Purchaser" and "For Value" meant.

Now, it is important to determine whether Kingsberry was indeed a Bona Fide Purchaser for Value without Notice, having regard to the Point of Sale between themselves and Dr. Babalakin SAN.

The Claimant had stated that it purchased the Property from Evelyn Aliyu Abubakar as seen in **Exhibit B**, whereupon she acknowledged receipt of the Consideration for the Property and transferred her unencumbered Legal Title to the Claimant. Oshobi SAN had stated that assuming without conceding that Evelyn Abubakar sold to Jones Tech, who then sold to the 2nd Defendant, the Interest acquired therein was an Equitable Interest, which must give way to a Subsequent Purchaser for Value without Notice. He contended that the 2nd Defendant could not have acquired Title from Jones Tech because Jones Tech did not also have any Title since it acquired its interest from Alhaji Aliyu Abubakar, the person who on Record was never the Owner of the Property.

Nwosu Esq., on the other hand, challenged the above on the premise that the 2nd Defendant's acts of possession coupled with Consideration, defeated the Claimant's Legal Title, and that the Claimant had Notice of their Interest and therefore, obtained Legal Title by Fraud.

Dr. Babalakin SAN, the 2nd Counter-Claimant testified that there was a Sale Transaction between Kingsberry and himself. It is worthy of note, that there was no evidence of this Sale, except by his Action in giving the go-ahead to Kingsberry to Perfect their Legal Title and the Subsequent Action taken by Kingsberry to perfect the Title.

The Time of Sale is not specified and remains unknown. The Doctrine of Bona Fide for Value without Notice dictates knowledge of another Interest at the Point of Sale. Therefore, the Court will examine the facts and evidence tendered to understand the Sequence of Events and Circumstances surrounding the Purchase.

From the facts, Dr. Babalakin SAN was said to have bought the Property on the 11th of January 2008. The Court was told that there was a One Year Grace Period for Mr. Felix Hyat to Purchase or Vacate the Property. From the Exhibits tendered, it can be seen that Kingsberry performed their First Search at AGIS on the 24th of June 2010 as seen in **Exhibit G**. There was a Demand for Ground Rent on the 6th of July 2010 as in **Exhibit E**. This time sequence was followed by **Exhibit C**, the Approval for Consent dated the 22nd of July 2010. Evidence of Payment of Ground Rent and Assignment Fees can be seen in **Exhibits F and D** respectively both made on the 11th of August 2010. The Last Search Report conducted on the Property was done on the 4th of February 2011 and this informs **Exhibit H**.

After the happenings of Events in **Exhibits G, E, C, F, D and H**, Kingsberry, on the 28th of January 2011 served on the 1st Defendant, a Notice of Intention to Recover Premises and this was admitted into evidence as **Exhibit I** before the Court.

Under Cross Examination by Nwosu Esq., Mr. Ciroma was shown **Annexures 4, 5 and 6** in **Exhibit K**, the Initial Writ of Summons, being a Letter from Skye Bank written to Madam Alisabatu dated 11th of January 2008, a Letter from Jones Tech International Limited to Skye Bank dated 15th of January 2008 and a Banker's Draft dated 11th of January 2008. He responded by saying all these Documents predated the existence of the Kingsberry's Incorporation and he did not know how some Documents were secured, such as, the Cheques from Skye Bank Plc. and Zenith Bank Plc. When shown the Deed of Assignment, he noted that it was undated.

From the above extract of Mr. Ciroma's testimony, it is clear that he was unaware of any transaction regarding Jones Tech when referred to the Documents in **Exhibit K**.

However, in **Exhibit K**, it can be seen that the Kingsberry had frontloaded a Bundle of Documents in their Writ of Summons, which included a Letter from Skye Bank to Madam Alisabatu, another Letter from Jones Tech to Skye Bank Plc. and a Manager's Cheque in favour of Jones Tech. This presupposes knowledge of a Contrary Claim to the Property.

It is worth noting that Kingsberry Estates Limited was incorporated on the 23th of July 2008. It was incorporated Six (6) Months Later after Jones Tech International Limited had received Payment of the Purchase Price of the Disputed Property from Madam Alisabatu Alkali and further, after they had Executed a Power of Attorney and Deed of Assignment between themselves. Prima facie, it is safe to assume that before Kingsberry's perfection of Title with the Honourable Minister, Madam Alisabatu Alkali's Interests in the Disputed Property had pre-existed and it was first in time. Madam Alisabatu Alkali's Interests then becomes a litmus test of establishing whether Kingsberry was indeed a Bona Fide Purchaser for Value without Notice of her Interests in the Disputed Property.

From the Sequence of Events listed above, and juxtaposing it with the Case of the 1st and 2nd Defendants, it can be seen that this Present Action before the Court was filed on the 22nd of March 2011. It is also worth noting that after the 2nd Defendant claimed she bought the Disputed Property on the 11th of January 2008, there was no reference to her Person or her Activities until the Eviction Notice dated the 28th of January 2011.

Kingsberry had joined issues with the 1st and 2nd Defendants on these Contentions and as rightly stated by Nwosu Esq., the Parties were bound by their Pleadings. Since they are bound, Contrary Extraneous Evidence goes to no issue. See the Cases of **AISHA JUMMAI ALHASSAN & ANOR VS MR. DARIUS DICKSON ISHAKU & 2 ORS (2016) ELC 2163 PAGE 1 (SC); SAVANNAH VENTURES VS W.A.B. LTD (1997) 10 NWLR PART 524 PAGE 274; ATANDA VS AJANI (1989) 3 NWLR PART 111 PAGE 551. U.A. KALGO JSC AT PAGE 536** in the case of **S.O. IGBINOKPOGIE GUOBADIA VS GEORGE OGEDEGBE (2001) NSCQLR VOLUME 8 PAGE 522** held that Parties to any Action in Court are bound by their Pleadings and anything outside their Pleadings cannot be considered.

Since Kingsberry had claimed not to be aware of the Existence of the Mortgage Loan with Skye Bank Plc., they cannot now acknowledge it.

They did not Cross-Examine Dr. Babalakin SAN on his Trace of Title to Jones Tech International Limited, when they had the opportunity to do so. This is especially when their Documentary Evidence in **Exhibit B** indicates the Valuable Consideration of Eighty Million Naira (N80, 000, 000.00) being paid to Evelyn Aliyu Abubakar as opposed to Dr. Babalakin SAN. This is probably why the Draft in the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) was attached to their Pleadings, as opposed to a Draft or Cheque in the Sum of Eighty Million Naira (N80, 000, 000.00).

The Court finds that there can be several scenarios regarding their knowledge or ignorance of the Existing Interest. There maybe the fact that when they bought from Dr. Babalakin SAN and up until their Registration at the Lands Registry, and even up until they filed their Action before the Court, they did not know of Madam Alisabatu's Interest and only got to know of it when they wanted to take possession. It can be argued that had Kingsberry known of the existence of the 1st and 2nd Defendants Interests, they would not have denied the existence of Jones Tech's Interests or Overdraft, the Mortgage or denied that that Skye Bank Plc. was in the Custody of the Title Documents.

There may also have been the scenario where subsequent to the sale, they were given Documents to aid their Registration, which evinced the presence of the 1st and 2nd Defendants' Interest and finally, they may have known of the presence of the 1st and 2nd Defendants at the Point of Sale.

Kingsberry's Pleadings stated one thing while their Evidence and Conduct during the Trial, stated another and presupposed that they were not in the dark.

All that is not clear before the Court, as insufficient evidence was led by Kingsberry to avail them of being named as a Bona Fide Purchaser for Value without Notice and the Court cannot begin to conjecture, which of the scenarios was the applicable one.

The Case of the 1st and 2nd Defendants, as presented by their Witnesses would be analyzed to discern the Veracity and Consistency of their Claims. The 1st Witness, Mr. Bayo Atunrase, testified that upon approach by Alisabatu Alkali, he negotiated with her and informed her about the pending Loan/Debt Portfolio of Jones Tech with the Bank. He subsequently introduced her to

Jones Tech, whereupon the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00), was agreed as the Purchase Price for the Property in Question. It was also agreed during the negotiations, that Jones Tech would instruct Skye Bank Plc., to release the Title Documents to her, when she settles their Credit Facility with the Bank.

Subsequently, payment was made and Skye Bank Plc. released the Original Title Documents to Alisabatu Alkali and he signed, as a Witness, the Transfer Documents between Jones Tech and Alisabatu.

Now, it is important to note that this Witness was uncertain as to the Dates and Circumstances of meeting Alisabatu Alkali. He had initially stated in his Witness Statement on Oath dated 7th of October 2011, that Jones Tech engaged him sometime in **January of 2008**. However, under Cross-Examination by Layonu SAN, he stated that he was engaged in **Year 2007**, the Year he met Alisabatu Alkali, and had added that all the Transactions took place, not later than March of 2008. He could not remember whether negotiations for the Property took place in Late 2007 from the Month of October or whether it was concluded by February or March of Year 2008.

By this, he had moved his position from an assertive one to an uncertain one, in that he had earlier stated that he was engaged in Year 2008 by Jones Tech only to state under Cross-Examination that he was engaged in Year 2007. By his Written Statement, he had said to the Court that he met Alisabatu Alkali in 2007, even before his engagement by Jones Tech in 2008. Now, by way of observation, this Witness did not present any Letter of Engagement as an Agent from Jones Tech and had alluded to other Agents engaged in marketing the Property.

Mr. Bayo Atunrase stated that he introduced Alisabatu Alkali to one Barrister James of Jones Tech in Lagos, sometime in January 2008 and had met her when she came to inspect the Property the second time. The identity of the person, who took her to the Property the first time, was not disclosed and certainly, it could not have been a Representative of Jones Tech.

His assertions as to the introduction of Alisabatu Alkali to Barrister James of Jones Tech was sharply contradicted by DW2, Alisabatu Alkali, under Cross-Examination by Oshobi SAN, when she stated that she **NEVER** had a meeting with Jones Tech. According to her, she only had a meeting with Bayo and her Cousin.

DW3, Mr. James Tomomewo, on his part, stated that Mr. Bayo Atunrase, initially came to him with two Male Persons and it was much more later that he got to meet Alisabatu physically and this was a time before she paid the Purchase Price for the Property in Lagos.

The Three Narrations of how DW1, DW2 and DW3 met does not tally. It is worthy to note the contradictions in evidence when Alisabatu denied meeting with Jones Tech whilst Mr. Tomomewo stated that he met her in Lagos.

During the course of Bayo Atunrase's testimony, he knew the Original Owner of the Property to be Evelyn Aliyu Abubakar and not Alhaji Aliyu Abubakar. This Original Owner DID NOT notify him that the Property was sold to Williams of Jones Tech or anyone else. He also knew that the Property was empty after the Sale. However, under further Cross-Examination by Layonu SAN, he believed the Original Owner to be Alhaji Abubakar and then stated that, he had never met Evelyn Aliyu Abubakar nor spoken to her. Throughout his Witness Statement on Oath, he had referred to Evelyn, as the Original Owner and never once did he mention her father, Alhaji Abubakar. He later tried to explain his failure to state Alhaji Abubakar's name, and why he did not mention his relationship with Evelyn, by grouping the said Alhaji under the blanket of "Family".

As regards the **LegalSearch** conducted on the Property, during Alisabatu Alkali's Cross-Examination by Funke Audu Esq., Learned Counsel representing the Honourable Minister, she had stated that she did not conduct a Legal Search on the Property but was informed by her Lawyer that after the Search, the Property was in good shape. Further, she stated that she did not pay any Ground Rent on the Property but only Tenement Rate. She had also never received nor requested for the Bill for Payment of Ground Rent from the Lands Department in AGIS, as she thought they were one and the same. Under Cross-Examination by Oshobi SAN, she initially testified that she conducted a Legal Search but later, stated that she did not. It is noteworthy that, when Mrs. Funke Audu Esq. questioned Mr. Tomomewo, he stated that Jones Tech conducted a Legal Search on the Property, when purchasing it but it is noted that, the Formal Search Report was not produced before the Court.

Now, for the fact that Layonu SAN and Oshobi SAN queried Alisabatu Alkali's **Identity**, the Court would briefly discuss the Identity Issues at this Stage to determine **WHO** Jones Tech in fact dealt with. Was it Madam Alisabatu Alkali or was it the DW2 on Record?

DW2, as Madam Alisabatu Alkali, had laid claim to this Name, when she took her Oath and adopted her Undated Witness Statement on Oath filed on the 21st of June 2016. Under Cross Examination by Oshobi SAN and Layonu SAN, her Identity became a Fact in Issue on the basis that she was not Alisabatu Alkali and if indeed she was Alisabatu Alkali, she should establish this fact by furnishing Documentary Proof.

Now, pitting the Name “Alisabatu Alkali” against **Exhibits R, R1, R2 and R3**, the name “Alissabatu Alkali” featured **ONLY** in **Exhibit R**, the Evangelical Churches of West Africa School Testimonial, issued out in Year 1967, and the name was spelt with a “Double S”.

According to her, she used this name, “Alisabatu Alkali” when she sold off her Mpampe and Bwari Landed Properties towards the end of 2007 but she did not keep Copies of the Rights of Occupancy. She also used this name when she purchased a Property in Kafanchan, which she sold in 2011. The man from whom she bought the Kafanchan Property, had passed away with the Property resold to a 3rd Party and in consort with his children, she had obtained an Affidavit. However, in the same breath, she stated that the Deceased handed over a Deed of Assignment and Certificate of Occupancy to her.

If indeed, she used the name Alisabatu Alkali for buying Properties **ONLY**, then it should have been easy for her to submit the Photocopies of Title Documents she claimed to possess for her Properties in Mpampe and Bwari Area Council both in the Federal Capital Territory as well as in Kafanchan, to vindicate her assertion.

Exhibits R1 and R2, which are the Church Marriage Certificate, and the Local Government Certification of Indigenization all testified to her name being “Elizabeth Koku Alkali”. **Exhibit R3**, the Original Statutory Declaration of Age, declared by her Father, the only Person that should know exactly what name she bears, reads “Miss Elizabeth Alkali”. There is nowhere the name “Alisabatu” featured and there was no Parental Confirmation that his daughter bore the added name, “Alisabatu or Alissabatu”.

Exhibit R, the School Testimonial on its own part, which had the name, “Alissabatu Alkali” did not connect to “Elizabeth”, “Alisabatu” or “Koku” and there is no Photographic or Passport Evidence attached to this Testimonial to vindicate the stance that the Court was dealing with one and the same person.

Further, the 2nd Counter-Claimant’s Witness, Alhaji Yusuf Aliyu Ahmed, the

Personal Assistant to the Former Minister of Aviation, Mr. Felix Hyat testified under Cross-Examination by Nwosu Esq., that he knew Mr. Felix Hyat for about Twenty-Two (22) Years when he was a Local Government Chairman and even before he became a Commissioner. He testified that, even though he did not have an Appointment Letter but only an Identification Card of the Ministry, his Schedule of Duties had no limitations and he had performed Domestic Duties for Mr. Felix Hyat. He did not know her by her Maiden Name and acknowledged the DW2, as the wife of Mr. Felix Hyat. He only knew her, as “Elizabeth Hyat”, and there was never a time the Name, “Alisabatu Alkali”, was used to describe her.

Under Cross-Examination by Oshobi SAN, Alhaji Yusuf reaffirmed the fact that for Twenty-Two (22) Years he knew the family, he had never known the DW2 by any other name except, “Elizabeth Hyat”. He then stated that it was Felix Hyat, who supplied him with a Name to be inserted into the Agreement, which Name, Mr. Felix Hyat had told him, belonged to one of his Cousins or Relations.

From all the above, the Identity of the DW2, who presented herself as Elizabeth is truly uncertain. There were no positive ties between DW2 and Madam Alisabatu Alkali and if, Alisabatu means the same as Elizabeth, it was expected that she adduced Evidence from an Expert Witness versed in the Hausa Language and Culture, to testify that the Name was a Hausa Variant. This she failed to do.

However, tendered and admitted into evidence were **Exhibits R4 and R5**, Specimens of her Abridged and Long Signatures, which she wrote in the Witness Box. The Signature in **Exhibit R5** and in the Substituted **Exhibit O**, are similar and the Court will exercise the benefit of doubt in her favour and presume that Elizabeth Hyat and Alisabatu Alkali are one and the same person. Had the Signatures been different, the DW2 would have failed to establish any connections to the Documents and the handing over of the Title Documents upon Payment, because she claimed never to have met any Jones Tech’s Official whilst Jones Tech, on their own part, had claimed to have met one Alisabatu Alkali before she made payment in Lagos. In effect, she was saved by the whiskers!!!

The next important factor to determine is the **Question of Title Documents and their Possession.**

Now, Mr. James Tomomewo, an Executive Director with Jones Tech, stated that his Company furnished consideration for the Property to the Original

Owner and was given the Title Deeds wherein they entered into possession. According to him, there was an Executed Deed of Assignment and Power of Attorney between them. He also knew that in the Deed of Assignment, Alhaji Abubakar and not Evelyn Abubakar acknowledged that he took the Money for the purchase of the Property.

When questioned by Mrs. Funke Audu Esq., Learned Counsel to the Minister, Mr. Tomomewo stated that no attempt was made to register the Power of Attorney and Deed of Assignment executed between Jones Tech and Evelyn Aliyu Abubakar. Further, he did not know whether an attempt was also made to register the Title Documents relating to Alisabatu at the Lands Registry.

Mr. Tomomewo knew the Law that any Mortgage must be registered with the Lands Registry and further knew, that upon Assignment of an Interest in a Property, the Consent of the Minister must be obtained. In regard to the question of whether the Minister gave his Consent to the Mortgage Transaction between Jones Tech and Skye Bank Plc., he replied that Jones Tech merely deposited the Certificate of Occupancy as an Equitable Mortgage.

Further, Mr. Tomomewo, during his testimony, could not remember Several Key Details, amongst which, were: - **1)** Whether Jones Tech wrote a Letter of Acceptance to Evelyn Aliyu Abubakar; **2)** Whether he was the Person who deposited the Certificate of Occupancy with Skye Bank Plc.; **3)** Who actually deposited the Certificate of Occupancy with the Bank or whether he went in the company of Mr. Williams to deposit the Certificate of Occupancy; **4)** the Mode of Payment for the Purchase to Alhaji Aliyu Abubakar and Evelyn Aliyu Abubakar, whether it was by Cheque, by Transfer but could only say, that it was not by Cash; **5)** According to Mr. Tomomewo, Jones Tech had initially paid the Sum of Eighty Million Naira (N80, 000, 000) and then subsequently paid the Sum of Thirty Million Naira (N30, 000, 000) and he would only know specific details, if the Company's Statement of Account was checked; **6)** He did not know in which Name their Payment for the Property was made out to; and **7)** He could also not remember which Bank(s) the Cheques were drawn on and whether the Payments were drawn out and paid from Jones Tech's Cheques or whether they were paid directly to the Owner by Bank Draft.

It is also worth noting, that despite the Adjournments granted to Mr. Tomomewo to confer with their Company Records, he failed to do so each time, knowing fully well, that he was still in the Witness Box and this was after he had made an undertaking to check his Records. When this fact was pointed

out to him, he responded that he did not confer with Records because he was dealing with other Operations.

The Court is surprised that Mr. Tomomewo was not abreast of the answers to the above because from **Exhibit S**, the Corporate Affairs Commission **Form 7**, it can be clearly seen that as of the **30th of May 2000** and as of the **23rd day of August 2011**, he was the Company Secretary and not a Director, as claimed. As Company Secretary, these Documents should have been at his fingertips, because his Office is the Secretariat for all Official Documents of Jones Tech International Limited. It is important to note that during Cross-Examination, this Witness had stated that both Mr. Williams and himself did all the transactions.

Turning to his Company's Relationship with the 2nd Defendant, Alisabatu Alkali, Mr. Tomomewo could not remember the Sequence of Events leading up to his first meeting with her. He, however, acknowledged signing the Power of Attorney alongside Mr. Williams on the 21st of January 2008. The Deed of Assignment in **Exhibit R6**, was also dated the same date. When questioned further, he stated that he deposited the Certificate of Occupancy and other Documents of Transfer with Skye Bank **BEFORE** Jones Tech wrote the Authorizing Letter of Release of the Title Documents on the 15th of January 2008.

When it was pointed out to him that the Document of Transfer read, the 21st of January 2008, whilst the Letter of Instruction read the 15th of January 2008 and when questioned on how this was possible, he stated that when they drafted and signed the Documents and gave it to the Bank, it was impossible for the Parties to know when payment would be made. Therefore, the Parties agreed that the Documents be dated after Payment was made, because they needed to give confidence to the Buyer.

According to him, it was possible to hand over Title Documents before the Final Payment. He did not know whether the Conveyance was signed before, during or after the Letter authorizing Skye Bank to release the Title Documents to Alisabatu. He added that Jones Tech had pre-signed and handed over the Transfer Documents to Skye Bank. He could only say that Skye Bank subsequently released the Title Deeds to Alisabatu after payment by her of their Overdraft Facility.

Now, if, as Mr. Tomomewo says, that Parties had agreed that the Date on the Transfer Documents should bear the Date of the Actual Receipt of the Funds,

he needed to have demonstrated how the Deposited Title Documents were retrieved from the Bank, how Parties reassembled to affix the Date or if there were no re-convergence, **WHO** was the Person that actually **INSERTED** the Date on the Title Documents kept in the Custody of the Bank **PRE** the 15th of January 2008.

This is preposterous to say the least. The evidence on Record is that the Draft was obtained on the 11th of January 2008, it was deposited into Jones Tech's Account with Skye Bank on the 15th of January 2008 and Actual Value was derived therefrom on the 21st of January 2008.

How the Parties knew beforehand the Actual Clearance Date of the Draft yet to be received, and to have inserted this **Specific Date** of the 21st on the 15th, can only be attributed to one of them being "an Angel", a term, Mr. Tomomewo himself had used to describe how he could not possibly have known who went to the Bank to deposit the Draft. The Court will borrow that term in this instance!!!

Another Issue is when Mr. Tomomewo was shown the Power of Attorney in **Exhibit R6** at the **Bottom of Page 16**; heread out that the Power of Attorney was executed before the Commissioner for Oaths in **KADUNA** on the 21st of January 2008. To this question, he could only say that he signed the Transfer Documents once, which was an answer at large that did not answer the question.

According to Mr. Tomomewo, the Transfer Documents drafted by Alisabatu's Personal Attorney, was not signed in his presence, as she had already signed the Documents before Mr. Bayo brought them to Jones Tech. He agreed that Jones Tech divested their Rights to the Property **BEFORE** Alisabatu made payment.

Exhibit P, the Certified True Copy of the Certificate of Occupancy now comes into view and a review of the Evidence would be conducted to discern who actually had possession of it.

Starting with Mr. Tomomewo, he stated that Jones Tech had deposited the Title Deeds of the Property in Issue to Skye Bank Plc., as Collateral for an Overdraft Facility thereby creating an Equitable Mortgage. They had subsequently instructed the Bank vide a Letter dated the 15th of January, 2008 to release the Title Documents to Madam Alisabatu Alkali and this Letter is contained in the Bundle of **Exhibit R6**.

Mr. Bayo Atunrase, in his Witness Statement on Oath, averred that Skye Bank Plc. released the Original Title Deeds to the 2nd Defendant. Strangely, this runs contrary to his Oral Testimony under the same Cross-Examination, that **he** was the person, who picked up the Certificate of Occupancy in the company of Alisabatu's Lawyer when Skye Bank Plc. released the Certificate of Occupancy around 6:30 to 7:00pm, with a Letter. He further contradicted himself under Cross-Examination by Oshobi SAN, when he stated that he did not sight the Original Certificate of Occupancy, but knew it existed. He rendered three (3) diverse versions in regard to the Certificate of Occupancy.

Alisabatu Alkali, the DW2, on her part had stated that her Cousin, Barrister Gideon and Bayo, the DW1, went to Lagos, where they collected the Certificate of Occupancy on her behalf. However, it is noted that Mr. Bayo Atunrase stated to the contrary, that a Representative of Alisabatu named Mr. Yusuf as well as a Lawyer accompanied him to Lagos. Oddly, he turned round to state that, no Lawyer accompanied him to Lagos, but that it was actually Alisabatu, who accompanied him.

The Court is at a loss as to which of the two obviously distinct accounts to believe, whether that of Mr. Bayo Atunrase, the DW1 or that of Mrs. Alisabatu Alkali, the DW2.

Alhaji Yusuf Aliyu Ahmed, a Witness in Support of the 2nd Counter-Claimant, averred in his Adopted Witness Statement on Oath that he took a Bank Draft to Skye Bank Office in Lagos on the direction of the Vendor and upon Confirmation and Payment, the Certificate of Occupancy was released by Skye Bank Plc., to him. He was in possession of the Title Documents on behalf of Dr. Babalakin SAN, on the understanding that he would deliver the Title Documents to Mr. Felix Hyat when he purchases the Property from Dr. Babalakin. Upon intense pressure put on him by Mr. Felix Hyat to release the Title Documents to him so as to secure a Loan from a Bank, to pay Dr. Babalakin for the Property, he then released the Title Documents to Mr. Felix Hyat for safekeeping. All subsequent attempts to retrieve these Documents from Mr. Felix Hyat failed. Based on a Complaint made to the Nigeria Police Force, both Mr. Felix Hyat and himself were invited to the Police Station, where they made Statements in which they both admitted that the Property belonged to Dr. Babalakin SAN.

The Witness for Kingsberry, Mr. Ciroma, had stated that the Original Certificate of Occupancy got lost after registering the Deed of Assignment and

obtaining the Consent of the Honourable Minister but he did not make any Report to the Police.

Now, this claim by Mr. Ciroma is strange in view of the fact that the Original was safely in the Custody of Mr. Felix Hyat and how he would have gotten another Original is best left to his own imagination. What is conceivable to believe is that, he had a Copy.

Nwosu Esq., had argued that the Payment of Purchase Price coupled with Possession gives rise to an Equitable Title upon a Purchaser, which is capable of defeating Subsequent Purchasers. He relied on the Cases of **ISAMOTU VS ADETOUN OLUKOYA (2006) LPELR 580 (SC); AND DANTATA VS DANTATA (2001) 26 WRN PAGE 104 AT PAGES 117, 118 (CA).**

Layonu SAN in his Final Written Address stated that the Law is Settled that even where there is a Presumption of Ownership of Land in favour of a Person in Possession, such Possession is not Conclusive in the face of a Better Title and mere Occupation of the Property as well as Possession of the Certificate of Occupancy, is not Conclusive Proof of Title and he cited the Case of **KUPOLATI VS MTN (NIG) COMMUNICATIONS LIMITED (2020) 13 NWLR PART 1740 PAGE 1 (SC)** on the Judicial Discretion to be exercised in this Case.

Oshobi SAN on his own part in his Final Written Address argued that the Certified True Copy of **Exhibit P**, did not qualify and cannot be used as Proof of any Interest in Land because, being a Certified True Copy, it is accessible to the Public and can be obtained by any Interested Party at AGIS. The 2nd Defendant ought to have tendered the Original Certificate. He cited the Case Law Authorities of **ADEBO VS OMISOLA (2005) 2 NWLR PART 909 PAGE 149 AT PAGE 172 PARAS D-F PER ADEREMI JCA; AND BOYE IND. LIMITED VS SOWEMIMO (2009) 10 NWLR PART 1148 PAGE 136 AT PAGE 151 PARAS B-D PER SALAMI JCA**, to argue on the efficacy of a Certificate of Occupancy as Proof of Title. Further, the Certificate was not in the name of the 2nd Defendant but in the name of Evelyn, the Predecessor-in-Title.

Now, it is clear that the Original Certificate of Occupancy is in the Possession of the 1st and 2nd Defendants, as seen through the Evidence of Alhaji Yusuf, Bayo Atunrase, the Authority Letter to Release Title Documents written by Jones Tech to the Bank, as contained in the Bundle of **Exhibit R6** as well as **Exhibit Q**, the Letter written by Skye Bank Plc. to Madam Alisabatu Alkali, dated the 15th of January 2008, wherein they acknowledged her Draft and

confirmed that they will release the Title Documents once they receive Value and without recourse to Mr. E.J. Williams of Jones Tech.

Having determined Possession of the Original of the Certificate of Occupancy, the next question must be in regard to the **Proof of Entitlement to the Property** and the Court would start with the **Foundation of the Legal Ownership and Title to the Property in Controversy**.

The 1st and 2nd Defendants had relied on **Exhibits O, P** and the Bundle of Documents in **Exhibit R6** to justify their Entitlement to the Disputed Property.

It was stated on Record that Alhaji Abubakar executed a Deed of Assignment and Power of Attorney in favour of Jones Tech International Limited even though, his name and details did not feature in any of the Documents, as Owner. That is perhaps, why it was not produced before the Court. He admitted when shown **Exhibit R6**, the Power of Attorney, that his name, Alhaji Aliyu Abubakar, did not feature therein.

The Power of Attorney and the Deed of Assignment transferring Title from Evelyn Aliyu Abubakar to Jones Tech International Limited now comes to the fore. The Deed of Assignment was not exhibited and neither was it tendered. All that is before the Court as Proof of their Relationship is as contained in the Bundle of **Exhibit R6**, that is, the Power of Attorney dated the 27th Day of February 2007. In it, there was no Consideration stated as having passed between the Parties. Incidentally, in the Court's File is another Power of Attorney in the same regard, seemingly appearing identical but vastly different in the Format of Writing and also in the insertion of the Consideration of the Sum of One Hundred and Ten Million Naira (N110, 000, 000.00). Nwosu Esq. had to have weighed his options between the Two Powers of Attorney and opted for the one before the Court. Since the Document containing the Figure was not tendered into evidence, the Court will not place any probative value on it.

Oshobi SAN made heavy weather that Jones Tech did not execute any Deed of Assignment or Power of Attorney with Evelyn Aliyu Abubakar and also, the fact that there needed to have been another Power of Attorney executed between Evelyn and her father authorizing him to deal in her regard. Therefore, he concluded that there was no premise for an Equitable Mortgage arising in respect of the Title Deeds.

Now, it is clear that Skye Bank Plc., relied on Documents to grant the Overdraft/Loan Facility to Jones Tech International Limited and must have done Due Diligence and been satisfied with what they were presented with. If not so, then their Professional Competence would be questioned. Skye Bank Plc., are the only Body to query the Validity of the Deed of Assignment and Power of Attorney presented by Jones Tech to them.

The only other person to query these Documents would be the individual who actually made the Payment. There is an arising presumption that the Bank was satisfied with the Agreement between Evelyn Aliyu Abubakar and Jones Tech before he or she made Payments to discharge the Mortgage.

Therefore, Kingsberry not being a Party to the Arrangement, and in fact, not even being in existence at the time of the Equitable Mortgage, has no justification, and no moral or legal platform to query the Validity of the Equitable Mortgage.

Also encased in the Bundle of **Exhibit R6**, is another Power of Attorney and Deed of Assignment between Jones Tech and Madam Alisabatu Alkali. Nwosu Esq. sought to tender these Documents and Oshobi SAN raised an Objection to its Admissibility on Three (3) Grounds, namely that: -

1. The Document was created in Anticipation of Litigation and whilst Litigation was pending;
2. The Document is manifestly different from the Document originally frontloaded, which did not contain any Valuable Consideration. The Document had been materially altered after the fact; and
3. Lack of Registration, as the Document ought to have been accessed for Stamp Duty and stamped on the face of it.

Layonu SAN aligned himself with the above Submissions, adding that: -The Documents are not only in violation, but were overreaching because they were not frontloaded. The Documents were made in a bid to correct the Earlier Omission and this was to the prejudice of the Claimant.

Further in his Reply Address, he had contended that the Deed of Assignment in **Exhibit R6**, was earlier tendered but rejected and therefore, does not exist before the Court for its determination of the Case. He referred to the Cases of **EMOKPAE VS STANBIC IBTC P.M. LIMITED (2015) 17 NWLR PART 1487 AT PAGE 57; AND ACB VS GWAGWADA (1994) 5 NWLR PART 342 PAGE 25.**Layonu SAN recalled their Objections to the Admissibility of the Power of

Attorney and the Deed of Assignment between Jones Tech and Alisabatu Alkali, which was that they were made in the course of the proceedings by persons interested contrary to **Section 83(3) of the Evidence Act**.

There were Two Sets of Documents produced during the Trial with One Set alleged to have been made during the course of the Trial. Mr. Tomomewo under Cross-Examination, admitted to signing **ONLY** one Set of Documents between Jones Tech and Alisabatu. Oshobi SAN contended that if Mr. Tomomewo had admitted to signing one Set of Document, the Subsequent One had to have been made during and in anticipation of the Suit. He urged the Court to reject both Documents relying on the Case of **ANAGBADO VS FARUK (2019) 1 NWLR PART 1653 AT PAGE 292**.

In response, NwosuEsq., submitted that the 1st and 2nd Defendants amended their Statement of Defence and Counter Claim, and one of the Documents was frontloaded, whilst the other was frontloaded with the 1st Statement of Defence. The Defendants in both the Amended Statement and Witness Statement on Oath had explained the circumstances under which the Two (2) Sets of Documents were frontloaded. Further, he submitted in regard to the issue of the Document executed during the pendency of this Application, by saying that this goes to the Credibility of the Document. He also submitted that the issue of Stamp Duties was one that the Court had discretion to admit, subject to the Stamp Duty affixed.

In a Considered Ruling, the Court held in summary, that the Deed of Assignment be marked, as “Tendered but Rejected”. The Power of Attorney submitted alongside the Deed of Assignment was held to be Admissible, Subject to Registration and it was admitted as **Exhibit O**.

Therefore, any Reference to **Exhibit R6** must be made **WITHOUT** regard to the Deed of Assignment embedded therein, which has been specifically singled out and categorically rejected.

In respect of Alisabatu Alkali, when shown in **Exhibit R6**, the Power of Attorney, the Stamp of Commissioner for Oaths, the Assessment and the Signature, she claimed it was hers using her Maiden Name. She stated that she did not go to Court to sign the Power of Attorney but one of her Lawyers, the Late Barrister Gideon, appended his Signature because he did the transaction. She could not say whether the Barrister personally signed it or delegated someone else to sign it on his behalf.

According to her, the Late Barrister Gideon normally took the Documents for Processing and would only draw her attention when she needed to sign. She had presented herself twice before the Maitama High Court for her Signature but she could not remember the timing of her First Visit.

Thereupon, she was confronted with the said Power of Attorney in **Exhibit R6**, and asked to read. She then acknowledged that it was filed before the Kaduna State High Court.

Her statement that the Power of Attorney was filed before the Kaduna State High Court belied her assertion that she had signed before the Maitama High Court, Abuja. There was not even one occasion mentioned a High Court in Kaduna and if indeed she had executed before the Commissioner for Oaths in Kaduna, she surely would have remembered. She instead stated that she visited Maitama High Court twice.

Mr. Tomomewo had earlier testified that he met Alisabatu before she paid the Purchase Price for the Property in **LAGOS**. This could only mean that the Execution of the Documents should have been at a High Court in Lagos State and not in **Kaduna** State.

Now, Nwosu Esq., had with the permission of the Court been allowed to Register this Power of Attorney between Jones Tech and Alisabatu Alkali, and when subsequently done, it was submitted to the Registrar of this Court vide a Letter dated the 4th of November 2020, as a Replacement of **Exhibit O**.

It is worthy of note that **Exhibit O** and the Power of Attorney in **Exhibit R6**, purport to be the same Document. However, the Court notes that they have distinguishing features such as: - 1) That in **Exhibit R6** is dated whilst **Exhibit O** is undated; 2) the Formats are different, **Exhibit O** had typed in details whilst the Power of Attorney in **Exhibit R6**, was handwritten; 3) **Exhibit O** had the Consideration in the Sum of One Hundred and Fifty Million Naira (N150, 000,000) paid to Jones Tech whereas that in **Exhibit R6**, did not have such details; 4) in the Donee's Signature Column, that in **Exhibit R6** had Only One Signature, whereas **Exhibit O** had a Longer and Different Signature.

Whilst one may be tempted to hold that there were Two Separate Executed Irrevocable Powers of Attorney, the point still remains that these Two Irrevocable Powers of Attorney, were executed before the **SAME** Commissioner for Oaths, on the **SAME** Date (as indicated by the Commissioner's Signature) and by the **SAME** Receipt Reference Number

096418. Whilst it is also probable that Two Irrevocable Powers of Attorney were presented to the same Commissioner for Oaths on the same Date, it is difficult to explain how they bore the same Receipt Numbers.

Therefore, the likelihood of the Execution before the Commissioner for Oaths being the **SAME**, is very remote and a near impossibility. It is even difficult to say that **Exhibit R6** is a Copy of **Exhibit O** for the simple reasons of the above disparities.

Another noteworthy issue is the fact that Alisabatu kept on referencing her Cousin, Barrister Gideon as being the Person who performed all Legal Services in respect to this Transaction, but the Court notes that the only Document of Title, that is, the Irrevocable Power of Attorney was prepared by N.A. Onyemechalu Esq. and not by Gideon Esq. This just shows her inconsistency and affects her credibility before this Court. There is also the strangest admission by Madam Alisabatu Alkali that her Lawyer, Barrister Gideon signed **Exhibit O** and she did not know whether he signed it personally or delegated someone else to sign on her Maiden Signature on her behalf. This is simply mind blowing because it shows there was no Legal Execution of **Exhibit O**.

Now, DW2 presented Two Deeds of Assignment and Two Powers of Attorney before the Court. If, as she testified, the Second Set was prepared upon realization of the non-inclusion of Consideration, then it is reasonable to expect that, that with the Consideration ought to have been frontloaded with her Pleadings. Even so, this still, contrasts with the assertion of Mr. Tomomewo that he signed only once. The Execution of this **Exhibit O**, with or without the Consideration stated therein, had to have been made subsequent to the 1st Set of Documents in **Exhibit R6**.

Whether or not permission was granted for the Payment of Stamp Duties of **Exhibit O**, is neither here nor there to the fact that **Exhibit O** is not a Replica of what was in **Exhibit R6**.

This brings the Court to the **Question of Payment**, which was a Prerequisite to the Release of the Title Documents to Alisabatu Alkali. Both the 1st and 2nd Defendants as well as Dr. Babalakin SAN claimed to have made Payment in the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) and both relied on **Exhibits UC** and **V1**, the Copies of the Bank Draft issued out in favour of Jones Tech International Limited dated the 11th of January 2008.

The Court will therefore analyze the Claims by the 1st and 2nd Defendants as well as treat that of Dr. Babalakin on the Question of Payment.

Now, it is worthy of note that the only time on Record that anyone represented Alisabatu's interest before Jones Tech, was during the Process of Payment for the Property. Mr. Tomomewo could not remember the Date of this Payment by Alisabatu but he had categorically stated that it was on the Date of Payment, as contained in the Draft. When questioned, he did not know who personally lodged the Draft of One Hundred and Fifty Million Naira (N150, 000, 000.00) into the Bank Account of Jones Tech. He also did NOT know from whose Bank Account the Funds originated and were drawn from, nor could he confirm whether it was Alisabatu that provided the Funds used in purchasing the Bank Draft. He also could not confirm whether Skye Bank Plc. handed over the Title Documents to Alisabatu directly and stated that he needed to check his Records and an Adjournment was granted.

At the next adjourned date, Mr. Tomomewo, reported that he could not find a Copy of the Bank Statement and neither could he say, in whose name the Payment Cheque was issued out in, adding further that he did not go to the Bank to request for any Statement in order to crosscheck, despite the adjournment granted to him.

In answer to the question of the possibility of a Draft being issued out in Kaduna on the 11th of January 2008 and the fact of travelling to Lagos to make payment on the same date to Jones Tech by Alisabatu, Mr. Tomomewo referred to the Agreement he had with Alisabatu to pay the money directly into their Bank Account and NOT to their Office. He had also stated that this Agreement he had with Alisabatu could be Oral.

Alisabatu on her own part, had laid Claim to the Zenith Bank Draft 00005748 in **Exhibit UC**, and stated that she elicited the assistance of her friend, Aisha Abdullahi, a former Staff of Zenith Bank Plc., Kaduna Branch in Yakubu Gowon Way. It was this friend, who assisted her in taking the Payment for the Property made in Cash, filling-in the Form and converting it into a Bank Draft, which her Cousin, Barrister Gideon, and Bayo then conveyed to Lagos. Questioned further as to the whereabouts of Aisha Abdullahi, she claimed to have lost contact with her and did not know her whereabouts.

Questioned on why she did not use any of her own Bank Accounts in Union Bank Plc., and FCMB Plc., to issue the Draft, she replied that she collected Ninety Million Naira (N90, 000, 000.00) in Cash after selling all her properties

as well as Monies she obtained from friends, relations and loans from her sisters.

When questioned as to the Source of her Funds, she stated that she sold off her properties in Kafanchan, some Plots of Land in Kaduna and Abuja towards the ending of 2007. She could not however remember when she sold her land at Mpampe and she did not keep a Copy of the Title Documents. When asked for evidence to show that she possessed the properties in Kaduna, she replied that a crisis occurred in her village and her possessions were packed but she would check if there were other documents left intact. She had also not registered her interest in any of these stated properties. According to her, her last salary was in the Sum of Forty Thousand Naira (N40, 000.00).

Under Cross-Examination by Layonu SAN, she stated that she sold her Kafanchan property after the riots of 2011. This is so strange, so unbelievable that she could forget so soon her earlier statement that she sold this property in 2007. The Court is at a loss, as to which account to hold as sacred.

Layonu SAN further questioned her on the Denomination of Monies used for the Purchase Price of the Property paid into Zenith Bank Plc. She initially stated that she conveyed the Sum in Naira in the boot of a Saloon Car, using Different Denominations. She did not remember the Type and Model of the Car she used, but she thought it was a Toyota. Almost under the same breath, she stated that the Purchase Price was conveyed in One Thousand Naira (N1, 000) Denominations. She did not know that she would have needed to take 300 Bundles of Five Hundred Thousand (500, 000) into the Bank.

When asked whether the Late Barrister Gideon gave her a Receipt or any Document evidencing Payment for the Property in Dispute, she stated that she was given a Copy of the Bank Draft and a Letter from Skye Bank Plc.

Now, it would have been so easy for Madam Alisabatu Alkali to produce Aisha Abdullahi or any other Staff of Zenith Bank in Court to verify and corroborate the part she played in the Process of Obtaining the Draft and to produce evidence of the Record of such Transaction. She was a Crucial Witness, who would have confirmed that Alisabatu Alkali indeed had a Cash Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) even though she may not have been able to confirm that the money was conveyed in the boot of a car. Any Staff of Zenith Bank Plc. could have produced their Staff Register or Payroll Evidence to show without any doubt that Aisha Abdullahi was once their Staff.

It is also unclear from her explanations why she did not use any of her own Personal Bank Accounts with Union Bank Plc. and FCMB Plc., to issue the Draft. Whether the Payment was made in Cash or otherwise, was totally irrelevant to the fact that she ought to have made the Payment through her Account. Even if, she wanted to pay directly in Cash, it is expected that she would have paid directly into a Skye Bank Plc., in Kaduna, than going to Zenith Bank Plc. and saved herself the journey of going to Lagos. The question to be asked here is, why Zenith Bank Plc.? She did not say she owned an Account with Zenith Bank Plc., as Alhaji Shanono did, with Hard Evidence.

As regards the Sale of her Properties in Kafanchan, Kaduna and Abuja, there was also no Hard Evidence of the Sales, whether through Photocopies of her Title Documents or through Receipts of Monies paid to her or from her own Personal Bank Statements.

There is also the issue of Remittances of Funds from Relations Abroad, Loans from Sisters and the Like, assisting her with coming up with the Purchase Price. There was yet again no Hard Evidence such as Bank Statements of her Sisters here in Nigeria, or from her Relatives domiciled abroad, and there was also no Evidence of Transfer of the Funds by Money Orders from the International Locations of her Relatives.

Further, she could also have produced Evidence of Annual Returns on her Ginger, Honey, Soybeans Businesses including that of the Pharmacy to justify a likelihood that she contributed from her own Earnings towards the renovations. All the Court has is her Assertion that her last Paycheck was in the Sum of Forty Thousand Naira (N40, 000.00) per Month.

It is also in evidence that Alisabatu Alkali did not register her interest because she was sourcing for Funds to register her Interest with the Lands Registry. The Cost of this ought to have been a walk in the park for her, after coughing out the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) within a Year.

Further, to prove Payment by Alisabatu, **DW4**, Mr. Okechukwu Megwa, a Legal Officer from Skye Bank Plc. now Polaris Bank, a Subpoenaed Witness on the request of the 1st and 2nd Defendants, tendered into evidence the Statement of Account for Jones Tech from the 1st of January 2008 to the 31st of December 2008, the Copy of the Manager's Cheque dated the 11th of January 2008 and the Deposit Slip in question, which were admitted into Evidence as **Exhibits UB, UC and UD** respectively. **Exhibit UA**, the Certificate of Compliance was

admitted with an Overruled Objection raised from Oshobi SAN and Layonu SAN.

It was expected that this Witness would throw light into her Payment Process. He may not know the Purpose for the Funds, but as a Representative of the Receiving Bank, he was expected to know from where and from which Account, the Funds originated from. That is the very least!!

The Subpoenaed Documents brings to the fore an interesting poser of how the Draft was lodged into Jones Tech's Account. Juxtaposing the Lodgment Voucher in **Exhibit Ud** with that of Skye Bank Plc.'s Acknowledgement Letter in **Exhibit Q**, it will show that it was the Relationship Officer of Skye Bank, Nkechi Obi that deposited the Draft into the Account of Jones Tech. It was expected that this Sum in the Draft should have been paid in by either a Staff of Jones Tech or by any of the Representatives of the Parties before the Court.

In all of the Evidence led and Documents tendered by the 2nd Defendant, there is yet to be Evidence that shows a Positive Link between Alisabatu and the Zenith Bank Draft Number 00005748 dated the 11th of January 2008 and therefore, her claim to providing this Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00), as Payment to Jones Tech for the Property in Controversy, is very weak.

Turning to the Claim of **Dr. Babalakin SAN that he made payment**, the Court notes that during Bayo Atunrase's testimony before the Court, he had stated that a Representative of Alisabatu named Mr. Yusuf as well as a Lawyer accompanied him to Lagos, where the Payment was made in Skye Bank's Office in Ikoyi. Under Cross-Examination by Layonu SAN, this Witness stated that Alisabatu Alkali did not accompany him to Lagos.

It is worth noting at this point, that the only "**Yusuf**" on Record is "**Alhaji Yusuf Aliyu Ahmed**", the Personal Assistant of Mr. Felix Hyat, residing in Kaduna, who was called as a witness for the 2nd Counter-Claimant, Dr. Babalakin SAN.

He stated that he counseled Dr. Babalakin to render assistance to Mr. Felix Hyat by purchasing the Disputed Property for Let to Mr. Felix Hyat. Acting as a Middleman between Mr. Felix Hyat and Dr. Babalakin SAN, he had negotiated with Mr. E.J. Williams of Jones Tech and then arrived at an agreed Purchase Price of One Hundred and Fifty Million Naira (N150, 000, 000.00).

According to him, Dr. Babalakin SAN, exclusively furnished this Consideration in the Sum of One Million, Two Hundred Thousand US Dollars(\$1, 200, 000.00) the Equivalent Sum for the Naira Amount demanded. He could say all the above, because he personally handled the negotiations through Meetings and it was he who personally went to Zenith Bank Plc., Kaduna Branch to arrange, pickup and convey this Draft to Skye Bank Plc., in Lagos and finally, he received the Certificate of Occupancy from the Bank.

The Individual from whose Account this Sum was deducted from in the person of Alhaji Shanono, testified that he was given the Sum of One Million, Two Hundred Thousand US Dollars (\$1, 200, 000.00) by Alhaji Yusuf Aliyu in order to convert the Dollars into Naira and make out a Bank Draft in favour of Jones Tech International Limited's Account with Skye Bank Plc. The Entry and Deduction of this Sum was very evident from the Statement of Account in **Exhibit V2** demonstrating that the Account of his Company was debited on the 11th of January 2008, with the Transaction Description, "**MC ISSD JONES TECH INT LTD**".

Whether the Account was in Debit Balance or Credit Balance or whether it was even an Overdraft or a Loan, as argued by Nwosu Esq., is totally irrelevant to the fact that the Purchase Price Money was paid out from Alhaji Shanono's Account with Zenith Bank Plc., in Yakubu Gowon Way Branch in Kaduna.

Alhaji Shanono testified that he was given the above Dollar Sum by Alhaji Yusuf Aliyu in Kaduna and further Alhaji Yusuf testified that he was given the Purchase Price by Dr. Babalakin SAN. Dr. Babalakin SAN testified that he gave the Dollar Equivalent to Alhaji Yusuf. This Payment Chain/Link was unbroken and corroborated.

Competing with this Unbroken Chain is the Claim by Madam Alisabatu Alkali and the Court finds that she was not able to satisfactorily prove the Source of the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) and further, was unable key-in to the Zenith Bank Draft 00005748 made payable to Jones Tech International Limited. Jones Tech, who was expected to validate that she was the person who made the payment to them, claimed that they did not know from where or from whom the Money originated from. The Witness from the Skye Bank Plc., also did not validate her Claims, as he too, did not know from where and from whom the Funds originated from. Therefore, her Claim to Payment being initially weak is found to be dead on arrival.

Alhaji Yusuf then informed Dr. Babalakin SAN about the collection of the Certificate of Occupancy from Skye Bank Plc., but he was told to hold onto the Documents pending the decision of Mr. Felix Hyat to pay for the Property within a Year or Purchase another Property and Vacate the Disputed One.

Alhaji Yusuf had also rendered uncontroverted evidence that he was pressured by Mr. Felix Hyat to release the Title Documents to him because he needed it to secure a Bank Loan to payback Dr. Babalakin SAN and had further instructed him to insert the Name of Alisabatu Alkali, whom he identified as a Close Relation.

Now, the only Person to controvert this piece of evidence rendered by Alhaji Yusuf was none other than Mr. Felix Hyat himself but he was patently absent throughout the Proceedings. Dr. Babalakin SAN himself had testified as to the funding of the Purchase Price by the Cash Sum of One Million, Two Hundred Thousand US Dollars (\$1, 200, 000.00) he gave to Alhaji Yusuf as well as paying Incidental Expenses in relation to the Disputed Property. More importantly, he had testified as to a Gentleman's Agreement cementing the intentions of both himself and Mr. Felix Hyat as set out in the evidence. There was nowhere in their Agreement that featured the name of Alisabatu Alkali and there was no evidence that Dr. Babalakin met her when he released the Funds to Alhaji Yusuf. Mr. Felix Hyat again, did not deny the Gentleman's Agreement.

The only challenge was made by Nwosu Esq., who queried the Evidence rendered by Dr. Babalakin SAN during the rendition of his testimony before the Court, as being Hearsay. When Dr. Babalakin testified about all he knew about the Disputed Property, it was hearsay evidence as he heard all from Alhaji Yusuf Aliyu. He urged the Court to expunge his evidence citing **Sections 37(a) and 38 of the Evidence Act** as well as the Case of **JUBRIN VS FRN (2018) LPELR- 43993 (CA)**.

How this is Hearsay is beyond comprehension, because Dr. Babalakin SAN was recounting what he was directly told and not through a Third-Party Channel. Moreover, there was in existence a relationship of Principal and Agent between Dr. Babalakin SAN and Alhaji Yusuf.

Alhaji Yusuf, during his testimony before this Court had categorically stated that he acted as Agent of Dr. Babalakin SAN as well as, was a Middleman in the Sales Transaction. Therefore, any conversation between the Two, could not amount to Hearsay Evidence. Furthermore, Layonu SAN is correct in his

referral to **Section 37 of the Evidence Act**, which defines Hearsay as a Statement, Oral or Written, made otherwise than by a Witness in a Proceedings.

The Money Trail ends with a Single Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) encased in a Zenith Bank Plc. Draft.

The unshaken evidence before the Court is that the Payment of the Purchase Price for the Disputed Property was made vide the Zenith Bank Draft 00005748 in the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00). This is the **ONLY** Draft replete in **ALL** the Pleadings of **ALL** the Parties before the Court and constitutes the **ONLY** Evidence of Payment for the Disputed Property. This Sum in the Draft, originated from the Account of Alhaji Shanono, as clearly seen from his Company's Maigishiri Multi Service Limited Zenith Bank Statement of Account, which aptly demonstrated that the Sum was raised in favour of Jones Tech International Limited. It is also worthy of note that the Representative of Jones Tech did not deny receipt of this Sum into their Account with Skye Bank Plc.

Further, both Alhaji Shanono and Alhaji Yusuf confirmed their business interactions in respect of the Dollars handed over to Alhaji Yusuf by Dr. Babalakin SAN. The Draft 00005748 relied on by Alisabatu does not justify the evidence she led in regard to the Payment. On the contrary, it nailed her because she could not connect the dots to Alhaji Shanono and his Company's Account. As regards the Question of Payment, the Court is satisfied that none other than Dr. Babalakin SAN furnished the Payment for the Purchase of the Disputed Property.

Now, furnishing the Payment of the Disputed Property is one thing, buying from the Right Source is another thing entirely.

Turning to the Case as presented by the **2nd Counter-Claimant, Dr. Babalakin SAN**, he alleged that the 1st and 2nd Counter-Claimants are in possession of the Disputed Property as Resulting Trustees for his benefit. Layonu SAN had referred to the Black's Law Dictionary, 2014, 10th Edition at Page 1746 as well as the Cases of **REGISTERED TRUSTEES, B.C.S VS EDET (2016) 5 NWLR PART 1505 PAGE 387 (CA); AND JOLUGBO VS AINA (2016) ALL FWLR PART 859 PAGE 864.**

According to him, Dr. Babalakin did not sight the Certificate of Occupancy because he had asked Alhaji Yusuf Aliyu to handle everything concerning the Purchase of the Property, adding that Mr. Felix Hyat did not provide the Funds for which the Property was bought and this was corroborated by Alhaji Yusuf's evidence that he acted absolutely on behalf of Dr. Babalakin SAN in the transaction leading to the Purchase of the Property.

Layonu SAN further referred to the testimony of Alhaji Sharif Shanono the Bureau de Change Operator, who also tendered a Comprehensive Statement of Account evidencing the fact that the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) was deducted from his Account on the 11th of January 2008. He also tendered a Copy of the Bank Draft raised in favour of Jones Tech. This Witness had corroborated the evidence of Alhaji Yusuf Aliyu, when he confirmed receiving the Sum of One Million, Two Hundred Thousand Dollars (\$1, 200, 000.00) in Cash from him. He had taken this Sum to the Foreign Exchange Market to convert to Naira and had raised a Bank Draft, all under the instruction of Alhaji Yusuf Aliyu.

Layonu SAN pointed out that the 1st and 2nd Counter-Claimants did not lead any iota of evidence to deny that Alhaji Yusuf was the Personal Assistant to Mr. Felix Hyat, neither did they deny his narration regarding Mr. Felix Hyat's stay at the Rockview Hotel and the fact that he was in dire need of an accommodation. Further, they did not lead any evidence to deny his testimony that Mr. Felix Hyat demanded the Certificate of Occupancy from Alhaji Yusuf on the pretext that he wanted to use the Certificate to obtain a Loan from the Bank to repay Dr. Babalakin SAN. There was also no denial that they were both invited by the Police at the instance of Dr. Babalakin SAN and more importantly, that whilst at the Police Station, Mr. Felix Hyat in the presence of the Police, undertook to vacate the Property after his daughter's Marriage Ceremony.

Layonu SAN also referred to the Cases of **MANEKE VS MANEKE (2020) 13 NWLR PART 1741 PAGE 311 PER PEMU JCA; AND AUTA VS GUTA (2004) 4 NWLR PART 864 PAGE 463**, to illustrate his contention that where a Party fails to call a Vital Witness in support of his Case, it will be prejudicial to their Case and therefore, the failure to call Aisha Abdullahi and Mr. Felix Hyat was fatal to their Counter-Claim.

Finally, he urged the Court to weigh all the evidence on a scale to determine the quality and probative value of the evidence led, citing the cases of **A.R.**

MOGAJI & ORS VS MADAM RABIATU ODOFIN & ORS (1978) 4 SC REPRINT PAGE 67; AND AWODU VS DANIEL (2005) 2 NWLR PART 909 PAGE 199.

Nwosu Esq., in response to the 2nd Counter-Claimant, urged the Court to note that Dr. Babalakin SAN was not seeking Reliefs for himself but for Kingsberry, which was novel in Law. According to him, Alhaji Yusuf Aliyu made it clear that the Property was not bought in the name of Dr. Babalakin SAN but in the names supplied to him by Mr. Felix Hyat and further, that Dr. Babalakin SAN was not a Party in the Sales Transaction and did not sign any Sale Agreement or Deed of Assignment with Jones Tech. He was therefore never in possession of the Title Deeds or physical possession of the Property and Jones Tech did not have any business relationship or transaction with him.

Therefore, he did not acquire any interest in the Property and he cited the Case of **BELLO SALAMI & ANOR VS ALHAJI ADETORO LAWAL (2008) 6-7 SC PART II PAGE 242; ASHADE VS ASHADE (2014) LPELR- 244; AND IBEKWE VS NWOSU (2011) 9 NWLR PART 1251 PAGE 17 PARAS C-F**, which held that interest in Land, cannot be transferred unless made in writing.

Assuming without conceding that Dr. Babalakin SAN gave Alhaji Yusuf Aliyu the Sum of One Million, Two Hundred Thousand US Dollars (\$1, 200, 000.00), he had stated that it was a Gentleman's Agreement for a Loan, which was to be repaid by Mr. Felix Hyat. He queried whether a Loan, even if not repaid, could confer any Title on Dr. Babalakin SAN without more, and there was no incidence of creating an Interest in Land evidenced in writing. Further, he argued that Madam Alisabatu, the 2nd Defendant was not shown to be a party to the Gentleman's Agreement and therefore, she was not bound by same.

Nwosu Esq. had argued in his Written Submission that Dr. Babalakin had stated that the Gentleman's Agreement was that he put Mr. Felix Hyat into possession on the understanding that Mr. Felix Hyat would purchase the Property off him. When he was unable to pay, he sold same to Kingsberry. He cited as different, the oral version of the Gentleman's Agreement as narrated by Alhaji Yusuf when he stated that the loan of One Million, Two Hundred Thousand US Dollars (\$1, 200, 000.00) was given on the understanding that Mr. Felix Hyat will repay the loan or forfeit the Property to Dr. Babalakin SAN. He referred to the Cases of **WUSU & ORS VS DAVID & ORS (2014) LPELR- 22426 (CA); AND OKAFOR VS THE STATE (2005) LPELR- 7566 (CA).**

Now, the Court does not see any difference in the Two Narrations and the difference is between Six and a Half-Dozen.

As regards the issue of Pleadings, Nwosu Esq., contends that the Evidence of Alhaji Sharif Shanono were not covered by Dr. Babalakin's Pleadings and further, his Pleadings did not contain the fact of purchase from Jones Tech, as well as the fact that the Draft was bought through Alhaji Shanono and no claim was made by Dr. Babalakin to the ownership of the Zenith Bank Draft relied upon by Alisabatu. Further, there were no Pleadings relating to the Bank Statement of Maigishiri Multi Service Limited and also to Sharifideen Bureau de Change and all these constituted an element of surprise to the 1st Counter-Claimants. Therefore, he argued that these facts go to no issue.

According to Nwosu Esq., the Reliefs sought by Dr. Babalakin SAN were legally incapable of being granted because there was no evidence in writing of the transaction between Jones Tech and Dr. Babalakin SAN as well as no evidence of the Written Agreement or Purchase Receipt between Dr. Babalakin and Kingsberry. Even though Dr. Babalakin claimed there was a Written Agreement with Kingsberry, it was not put in evidence, and neither did Kingsberry nor Dr. Babalakin SAN plead it. Further, information regarding the Purchase Price paid by Kingsberry was withheld, and their Agreement was not produced before the Court. Therefore, the Court must hold this evidence to be unfavourable to the Claim of Dr. Babalakin SAN and he cited **Sections 128(1) and 245 of the Evidence Act 2011** as well as the Cases of **ABUBAKAR VS WAZIRI & 3 ORS 9 SC 41/2005**.

Finally, he submitted whilst urging the Court to dismiss the Claims of Dr. Babalakin SAN in harsh words with punitive costs, that the Alternative Relief was not sustainable having regard to the Pleadings and Evidence adduced by him.

Layonu SAN in his Reply Address on the question that the 2nd Counter-Claimant failed to plead the Manager's Cheque tendered through Alhaji Shanono thereby springing up a surprise and ambush, referred to **Paragraph 6** of Dr. Babalakin SAN's Defence to the 1st Counter-Claim/2nd Counter-Claim. Therein it was expressly and unequivocally pleaded that Dr. Babalakin SAN furnished the equivalent of One Hundred and Fifty Million Naira (N150, 000, 000.00) as consideration for the Dispute Property. A Party in a Suit need not specifically plead a Document before it is accepted into evidence, as long as facts relating to the Document had been pleaded and he

referred to the Cases of **OKAGBUE VS ROMAINE (1982) 5 SC PAGE 133; AND FBN PLC VS TSOKWA (2004) 5 NWLR PART 866 PAGE 271 (CA).**

As regards Dr. Babalakin SAN's Interest in the Disputed Property, he had copiously demonstrated that his Pecuniary Interest will be directly affected by the Proceedings before this Court and would be liable to indemnify Kingsberry where the 1st and 2nd Defendants succeed in their Counter-Claim. He stated as misconceived the contention in regard to the Reliefs claimed by Dr. Babalakin SAN before the Court, and referred to the 1st Relief sought to state that he had shown Special and Sufficient Interest in the outcome of the Suit, and the fact that he also claimed Resulting Trust. He had also stated that the Final Address of the 1st and 2nd Counter-Claimants was fraught with disingenuous misrepresentations and inconsistencies, and stated that at no time during the Trial did Dr. Babalakin SAN make a turnaround to admit that the Disputed Property was actually sold and assigned by the Original Allottee, Evelyn Aliyu Abubakar to Jones Tech, as claimed by the 1st and 2nd Counter-Claimant.

Now, by Order 15 Rule 2 of the Civil Procedure Rules 2018 of this Court, Pleadings are only mandated to be in a Summary Form of Material Facts in which a Party relies on and are not the evidence by which they are to be proved. In other words, Parties are to state Material Facts and not Evidence. The question of whether a particular fact is material or not, depends on the special circumstances of each case.

It is Trite that Pleadings are mere Notice of the Case a Party intends to present before the Court, and the Averments therein do not amount to Evidence. Subject to an Admission by the Other Party, Averments must be proved by Evidence at the Trial. It is therefore the duty of a Party to call evidence to support his Averments, for which failure to do so, will constitute an abandonment of the Pleadings. Reference is made to the Cases of **OBIMIAMI BRICKS VS ACB LTD (1992) 3 NWLR PT. 229 PAGE 293; OLAREWAJU VS AFRI BANK PLC (2001) 7 SCNJ 493; MAGNUSSON VS KOIKI (1993) 12 SCNJ 14, AJUWON VS FADELE AKANNI (1993) 12 SCNJ 32.**

It is also clear that Documents to prove a fact pleaded, need not be pleaded. They can be used and tendered as evidence of facts pleaded. **O.H.M.B. VS B.B. APUGO & SONS LTD (1995) 8 NWLR PART 416 PAGE 750; CONSORTIUM M.C.V. VS NEPA (1992) 6 NWLR PT 246, PAGE 132, 142; MONOPRISE VS OKEWUA (1995) 2 NWLR PT 383 PAGE 325.** Therefore, the Non-Pleading of

the Draft and the Statement of Account of Alhaji Shanono's Company Account is not fatal as it is found to be Evidence in support of Pleadings.

Nwosu Esq., had attempted to distort the purpose of the Purchase Money by claiming that it was advanced as a Loan, but had led no Evidence during Trial as to any Loan Agreement between Dr. Babalakin SAN and Mr. Felix Hyat. His Written Address, no matter how brilliant, cannot convert his Argument into Evidence. The Only Person that could confirm a Loan Agreement is Mr. Felix Hyat himself, who was again, patently absent.

By his Submissions that Madam Alisabatu Alkali was not bound by the Gentleman's Agreement, is a Subtle Admission of Counsel that there was indeed in existence, a Gentleman's Agreement.

As regards the Issue of Reliefs not sought by Dr. Babalakin SAN, this contention has been adequately dealt with Supra in the Judgment and there is no need to restate it.

In respect of the contention that there was no Evidence and Pleadings of any Written Transaction between Dr. Babalakin SAN and Jones Tech on the one hand, and between Dr. Babalakin SAN and Kingsberry on the other hand, this Written Contract did not need to be specifically pleaded. As long as Evidence was led on it, based on the fact of a Right claimed in the Pleadings. It is clear that by **Paragraphs 9, 10, 12, 13, 14, 15, 16, 17 and 22** of his Defence to the 1st Counter-Claim and **Paragraphs 1, 2 and 4** of his 2nd Counter-Claim and **Paragraphs 4 and 6** of his Reply Pleadings, he had laid sufficient foundation for his Claims to entitlement and relationships with all the Parties.

Now, as regards the **Doctrine of Resulting Trust**, it is based upon the unexpressed but presumed intention of the True Owner. It is a Presumptive Trust. There are Two Sets of Circumstances when Resulting Trust arises as held in the Case of **WESTDEUSCHE LANDESBANK GIROZENTRALE VS ISLINGTON LONDON BOROUGH COUNCIL (1996) 2 ALL E.R. PAGE 961 PER LORD BROWNE-WILKSON, HOUSE OF LORDS (NSCQR VOL. 33 (2008) PAGE 936): -**

“(a) Where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property, which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B; the money or property is held on trust for A (if he is a sole provider of the money) or

in the case of joint purchaser by A and B, in shares proportionate to their contributions.

(b) Where A transfers property to B on express trusts, but the trusts declared, do not exhaust the whole beneficial interest.”

Both types of resulting trust are based solely on the presumed intention of the settler. Where the settler has expressly or by necessary implication abandoned any beneficial interest in the trust property, there is no resulting trust. The intention, as such situation presumes, is that the property should be held on trust by the third party transferee. The same principle applies where the purchase money is provided partly by the person to whom the property is transferred and partly by another or others. In such cases, the transferee holds the property in trust of all the persons who contributed to paying for it, with each having beneficial interest proportionate to the amount of purchase money he advanced.”

In MRS. CHINYE A EZENNAH VS ALHAJI MAHMOUD I. ATTA (2005) SMC VOL. 2 AT PAGE 24 PER S.U. ONU JSC, held that *“there are no hard and fast rules about what amounts to Resulting Trust, especially as it relates to Land. Where it arises, the Claimant of the piece of land must prove by hard and concrete evidence that he actually owned and/or was entitled to the land, but voluntarily or involuntarily opted that the Title Deed or Deed of Assignment be made in favour of another in anticipation of a marriage or whatever the case maybe.”*

Resulting Trust is a Trust that can be readily deduced as being implicit in the conduct of the Parties, but without any express intent. See the Case of **LIFEMARK CORP VS NEWIT Jx. App. 14 Dist, 655 SW. 2d 310, 316**, where it was held to arise where a Person makes or causes to be made, a Disposition of Property, under circumstances which raise an inference that he did not intend that other Person taking or holding the Property, to have the Beneficial Interest therein, unless this inference is rebutted, or the Beneficial Interest is otherwise effectively disposed of.

There must be in existence, sufficient facts to show the circumstances that would give rise to this Equitable Principle, which must demonstrate in no uncertain terms, the condition that would ground its Presumption, i.e., the failure of the condition, of which one would readily infer a Resulting Trust. See further the Cases of **MADU VS MADU (2008) 6 NWLR PART 1083 PAGE 296 PER I.T. MUHAMMAD JSC; GERHARD HUEBNER VS AERONAUTICAL**

INDUSTRIAL ENGINEERING & PROJECT MANAGEMENT CO. LIMITED (2017) LPELR- 42078 (SC) AT PAGES 54-57 PARAS E-D, PER AUGIE JSC; COKER VS COKER (1964) LLR PAGE 188; OBIKA VS OBIKA (2018) LPELR- 43965 PAGES 20-22 PARAS F-E (CA); AND REGISTERED TRUSTEES OF BROTHERHOOD OF THE CROSS AND STAR VS EDET (2015) LPELR- 40272 (CA) PAGES 10-16 PARAS F-C.

It is important to recognize that the Alternative Claim for Resulting Trustees was targeted solely at the 1st and 2nd Counter-Claimants and None Other. Dr. Babalakin SAN did not raise this flag in relation to Jones Tech International Limited or even, Evelyn Aliyu Abubakar. Therefore, if per chance, Title is found to reside in Jones Tech, all Parties before this Court claiming Title have lost out.

Therefore, the Resulting Trust would only be applicable in this Case, if and only if, the 1st and 2nd Counter-Claimants are found to be Legally Entitled to the Ownership of this Disputed Property, which would be considered after the Allegations of Fraud are treated.

To arrive at this Determination, Kingsberry and Dr. Babalakin SAN must scale through the hurdle of Fraudulent Allegations of their Documentations and Transactions.

As regards the Fraud Allegations, this is a Criminal Offence and the fact that they are Specifically Alleged in a Civil Action, has not absolved them of the legally imposed Burden of Proof in Criminal Actions. This Burden by **Section 135(1) of the Evidence Act** is discharged Beyond Reasonable Doubt. See the Cases of **EZENWA VS OKO (2008) 3 NWLR PART 1075 PAGE 617 AT PAGES 631; ABDULRAHMAN VS ODUNEYE (2009) 17 NWLR PART 1170 AT PAGE 220; UDEMBA VS MORECAB NIG LTD (2003) NWLR PART 800 PAGE 1; OWAMADE VS ACIB LTD (1997) 1 NWLR PART 480 PAGE 123; IMONIKHE VS UNITY BANK PLC (2011) 5 SCNJ PAGE 73; ASHABI EYA & ORS VS OLAPADE & ANOR (2011) 5 SCNJ PAGE 98.**

DW5, Alhaji Aliyu Abubakar, the Father of Evelyn Abubakar stated that he bought the Property as a Gift for his Daughter and acknowledged Evelyn Aliyu Abubakar to be the Official Owner of the Property. During his Examination-in-Chief, he denied **Exhibit B**, the Deed of Assignment, as emanating from his daughter or himself. He also did not know **Exhibits D, E, F, G AND H or even, C and N**. In **Exhibit N**, the Letter of Consent, he stated

that he did not know the Signature therein but knew the Name to be that of his daughter.

Under Cross-Examination by Funke Audu Esq., DW5 confirmed that he did not register any Executed Deed of Gift with the Lands Registry. Headmitted signing ALL the Signatures concerning this Property except **Exhibit M**, the Recertification issued by AGIS.

It is also worthy of note that Alhaji Aliyu Abubakar made Oral Allegations of Fraud/Forgery committed in the Procurement of the Documents used by Kingsberry to Perfect their Title.

In this regard, Nwosu Esq., made Several Allegations, which the Court summarized into **Eleven (11) Allegations** in total, and with specific regard to the Evidence led by this Witness, he stated that: -

- 1) Evelyn Aliyu Abubakar did not apply for Consent to Assign to Kingsberry;
- 2) Through Kingsberry's Solicitor, Babalakin & Co., an Application for Consent was made;
- 3) All the Documents presented by Kingsberry to the Honourable Minister for Registration were fraudulent and Evelyn Aliyu Abubakar could not have signed the Deed of Assignment in **Exhibit B**, as she was away in Canada and had no knowledge, nor was any Sum of Eighty Million Naira (N80, 000, 000.00) paid to her.

At this point, it is important to turn to **Exhibit M**, which is the Certified True Copy of the Application for Recertification and Re-issuance of Certificate of Occupancy. It bears Evelyn Abubakar's Passport Photograph and based on the Presumption of Regularity under **Section 168(1) of the Evidence Act 2011 (As Amended)**, attests to the fact that she personally signed this Application. Therein, she introduced her Attorney, Chima Henry Ebere, as seen by the Entry in No. 11(e), who also signed the Attorney's Column. It can also be seen in Entry No. 10 that the Certificate of Occupancy, when Recertified, was to be handed over to her Attorney at Suite 208, 2nd Floor, N.C.W.S. Building, Area 11 Garki, Abuja. It will also be recalled that Alhaji Aliyu Abubakar distanced himself from **Exhibit M**, the Application Form for the Certificate of Occupancy signed by Evelyn Aliyu Abubakar when he stated that he did not sign it.

Now, there is an Irresistible Legal Presumption that even though **Exhibit M** was undated, it preceded **Exhibit P**, the Certificate of Occupancy issued by the Honourable Minister to Evelyn Aliyu Abubakar on the 31st day of August 2005.

The Court notes that this Document is a Certified True Copy emanating from the Public Custody of the **Deeds Registrar** of the Department of Land Administration FCT Land Registry.

In it, the Name of the Applicant is “EVELYN ALIYU ABUBAKAR”. Her Passport Photograph is affixed on the Right-Hand Side of the Form. She stated that she was not the Original Title Holder having purchased it by Assignment and this is perhaps, why she needed to apply to Recertify and be issued with a New Certificate of Occupancy in her Name. Her Signature is seen on the Document as well as the Signature of her Agent/Attorney, who was to act in her stead to receive the Certificate of Occupancy, when issued.

Therefore, Evelyn Aliyu Abubakar in the absence of any Evidence to the Contrary, is taken by this Court to be the person who actually filled out this Form and more importantly, who signed it. The Honourable Minister must have acted on her Application and it can be clearly seen in the Reissued Certificate of Occupancy in **Exhibit P**, that it had the SAME Passport Photograph as that of the Application in **Exhibit M**. There is, therefore, a Presumption of Regularity and Continuity of Official Processing. Further, it is worthy of note that Evelyn Aliyu Abubakar was not produced before the Court to deny that the Signature in **Exhibit M** was not hers and there was no Comment from Alhaji Aliyu Abubakar and other Defendants, as to who actually signed **Exhibit M**.

The importance and value of **Exhibit M** is that at the time of this Application to recertify and reissue, no Transaction, no Sale, no Mortgage or whatever, was in sight by any of the Parties before the Court. It was Green and Virgin. The Court would therefore recognize that Signature affixed in **Exhibit M**, to be the Signature of Evelyn Aliyu Abubakar.

In **Exhibit N**, a Certified True Copy of the Letter under the Letterhead Paper of Evelyn Aliyu Abubakar to the Manager of Kingsberry Estate Limited, this same Signature was still evident in it. This could only mean that Evelyn Aliyu Abubakar and none other, executed both **Exhibits M and N**, in the absence of contrary Evidence.

Turning to the various Allegations of Fraud, Nwosu Esq., **Initial Allegation** challenged Kingsberry by referring to their Claim that they were given the Title Deeds but had lost them.

To this allegation, Kingsberry responded that it was incorrect to state that the Original Certificate of Occupancy was not sighted before Consent was given. Oshobi SAN argued that there is no Law that made it mandatory to present an Original Certificate of Occupancy for sighting at AGIS, and is at best, an Administrative Practice. He referred to the Testimony of Adeloje Adepoju Abiola, a Staff of AGIS, the Witness for the Minister.

Now, the Court finds that it was Dr. Babalakin's Evidence as well as that of Alhaji Yusuf Aliyu that Mr. Felix Hyat collected the Title Documents. This means that there was no way that the Original Document will be in either Dr. Babalakin or Kingsberry's Possession. From **Exhibit C**, the Approval of Consent to Assign dated the 22nd of July 2010, written to Evelyn Aliyu Abubakar, in care of Babalakin & Co., by the Honourable Minister of the Federal Capital Territory Administration, it can be seen that the Approval for Consent was subject to the Satisfaction of Certain Conditions, particularly in **Paragraph 2(f)**, "*Submission of Satisfactory Deed of Assignment (including Counterpart) within Four Months from the date of this Letter, for Stamping and Registration.*"

There was also the Requirement that Payment of Certain Administrative Fees be made payable to AGIS and settled by a Certified Bank Draft. There is nowhere in the Conditions for Consent that required the presentation before the Minister, of the Original or even a Copy of the Certificate of Occupancy.

It is worthy of note that Madam Alisabatu Alkali had laid Evidentiary Foundation in her Oral Testimony before this Court, that the Original Certificate of Occupancy got lost during a Village Crisis, which validated the Evidence of Alhaji Yusuf Aliyu, to the effect that the Original Certificate of Occupancy was in the custody of Mr. Felix Hyat.

Therefore, this dispels Kingsberry's claim that the Original Certificate of Occupancy was in their custody during the Registration Process but got lost. In any event, this Allegation does not ipso facto qualify as Fraud.

The Second Allegation concerns the fact that Evelyn Abubakar, did not make any Application for Consent to the Minister.

In Response, Oshobi SAN stated that it is incorrect to hold that Evelyn did not interact with the Federal Capital Development Authority (hereinafter referred to as "FCDA"), as evidence on record is clear in that regard. According to him, the mere fact that Evelyn Abubakar directed that Correspondences be sent to the Address of the Solicitors to the Transaction, did not in any way, derogate from her involvement in the Process of perfecting her Assignees' Title to the Property. Only Evelyn Abubakar could deny that she applied for Consent or Authorized Kingsberry and/or its Lawyers to apply for Consent, and she was not called as a Witness to rebut this fact.

Layonu SAN in Response submitted that the FCDA's Witness attested to the fact that the relevant Land Registration Department of the FCDA followed all the Due Processes required for the Grant of the Minister's Consent, as well as, for the Registration of the Deed of Assignment. According to him, the 1st Counter Claimants under Cross-Examination, did not contradict the FCDA's Procedure for certifying the compliance by Kingsberry in securing the Minister's Consent, and neither were they able to prove that the Deed of Assignment executed between the Original Title Holder and Kingsberry was invalid.

Now, Exhibit N, the only document before the Court regarding Consent was given by Evelyn Abubakar and it was addressed to Kingsberry. This document was tendered by a Subpoenaed Witness from the FCDA showing that it emanated from their File. Therefore, this Consent Letter in **Exhibit N**, having been duly certified by the Proper Authority, shows without doubt that it emanated from the Custody of the Minister, and was accepted by him.

The Third and Fourth Allegations is that Kingsberry through its Solicitors, Babalakin and Co. applied for the Consent, and not Evelyn Abubakar herself, and further, the Consent Fees were not paid by Evelyn Aliyu Abubakar but by the Office of Babalakin & Co. To this, Oshobi SAN's response was that Parties do not apply for Consent directly, but in reality, engage Lawyers to do so for them and usually is done by the Lawyer of the Purchaser who has an Interest in Registration.

Now, based on **Exhibit C**, the Approval of Consent dated the 22nd of July 2010 addressed to Evelyn Aliyu Abubakar C/O of Babalakin and Co, in **Paragraph 1**, it states, *"I am directed to refer to 'your request' on the above captioned (APPROVAL OF CONSENT TO ASSIGN PLOT 2378 MAITAMA (A06) DISTRICT, FILE NO. KD 10378 TO KINGSBERRY ESTATE LIMITED) and convey the FCT*

Minister's Approval to assign the Property in favour of Kingsberry Estate Limited".

The above extract can be clearly seen to be addressed to Evelyn Aliyu Abubakar, which arouses a Presumption that she had earlier requested for Consent.

From **Exhibit C**, it can be seen that subject to the Grant of Approval, the Total Sum of N11, 726, 000.00 was the required Fees to be paid. The Court notes that the Claimant's 2nd Amended Statement of Claim had attached to it, Payment Receipts from the Abuja Geographic Information System (AGIS), with payments in the Sum of N1, 726, 600.00 and N10, 000, 000.00, both received from 'Evelyn Aliyu Abubakar as 'ASSIGNMENT FEES' on the 11th of August 2010. The Court further notes, that one of these Receipts in the Sum of N1, 726, 600.00 was tendered into evidence and marked as **Exhibit D**, but the Second Receipt was not tendered into evidence.

There is a Presumption of Regularity in that the Total Fees had to be paid by Evelyn Aliyu Abubakar before Consent would be granted. The bottom line here is that the Minister accepted **Exhibit N**, and all other Documents, and if he did not have a Headache about doing so, *no one else should drink Panadol on his behalf*.

The Fifth Allegation is that PW2, Mr. Haruna Saadu Aliero, a Program Analyst with the 3rd Defendant, clearly stated the Process of applying for Consent and Registration of Title. According to Nwosu Esq. the Process was not followed by the Claimant.

In response, Oshobi SAN argued that in Practice, it is the Purchaser that applies for Consent and goes on to pay all the Requisite Fees because he is the Person with an Interest to protect, and also one with something to lose, and not the Vendor. In any event, this fact was buttress by Adeloje Adepoju Abiola, a Witness from the Honourable Minister.

Mr. Aliero stated that in order to Register and apply for Consent of the Minister, an Applicant needed to submit Proof of Payment of Ground Rent over the years, as well as the Original Certificate of Occupancy for Sighting. Under Cross-Examination, he stated further that the Usual Practice was for the Seller to apply for the Consent, and he was also required to pay the Consent Fee. Mr. Adeloje Adepoju Abiola stated otherwise.

Now, the Court notes the Two Conflicting Accounts rendered by Two Separate Witnesses from the same Establishment, which can only mean they both have no clue as to the Process they testified about. Aside of their incompetence, it only shows they were both dancing to the tune of Two Separate Pipers. The Court will now be guided by the Black and White of **Exhibit C**, itself.

Exhibit C was clearly addressed to Evelyn Aliyu Abubakar, in reply to her request for the Minister's Consent. The Document did not indicate which of the Parties it was to make the first approach for Approval, whether Buyer or Seller.

As regards the Sixth Allegation, Nwosu Esq. pointed out and questioned Dr. Babalakin's Statement that neither himself nor his Firm acted as Counsel or Agent to Evelyn Aliyu Abubakar, and queried how the Honourable Minister's Letters and Correspondences, meant for Evelyn Aliyu Abubakar, were addressed in care of Babalakin & Co.

On this, the Court notes that the Documents tendered by Kingsberry in proof of their Perfection of Title also had amongst them Documents for Kingsberry in care of Babalakin & Co. as well as Evelyn Aliyu Abubakar. This is not a significant Objection as it is feasible to imagine that in the Perfection of their Title Documents before the Minister, Documents relating to Evelyn Aliyu Abubakar, which were in their possession, would likely be received by Babalakin & Co who were acting as Solicitors on the behalf of Kingsberry Estates Limited.

As regards the **Seventh and Eighth Allegations** that it was fraudulent for Dr. Babalakin to have sold the Disputed Property, which he purportedly bought from Jones Tech to Kingsberry, without the Knowledge and Consent of Jones Tech, and had gone on to direct Kingsberry to Evelyn Abubakar for the execution of another Deed of Assignment, which Deed was presented to the Minister for Consent and Registration. Kingsberry's Title ought to have been derived from Dr. Babalakin SAN, from whom they acquired Title as opposed to Evelyn Abubakar.

In response, Oshobi SAN submitted by referring to the 1st and 2nd Defendants' Statement that Evelyn Abubakar sold the property to Jones Tech in 2007 and if there were any Party guilty of Fraud, it would be the person who sold the property to Jones Tech on behalf of Evelyn without evidence of her authorization. Whatever interest Jones Tech claimed they had in the Property, had already been transferred to Dr. Babalakin when they accepted the

Purchase Price of the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00). It was therefore strange for the 1st and 2nd Defendants to have asserted that Dr. Babalakin SAN ought to have informed Jones Tech before selling his Interest at a time when Jones Tech no longer had any Interest whatsoever.

Now, Dr. Babalakin had stated before the Court that he bought the Property with the intention to resell, and did not see the necessity to Register and obtain Consent in his Name, since he would eventually sell to another buyer. This evidence remained unchallenged, and the allegations of Fraud on this point were not proved by Credible Evidence.

Further, Dr. Babalakin SAN having believed that he purchased outrightly from the Vendor through his Agent, had no need to seek permission before acting in any regard to the Property.

Moreover, to allege Fraud, the Burden of Proof is established Beyond Reasonable Doubt and not on the Balance of Probabilities. This proof, Nwosu Esq. failed to establish.

As regards the **Nineth Allegation**, which was that since the Law required Jones Tech to Register the Title from Evelyn Aliyu Abubakar, it was expected that the necessary Consent Fees will be paid by Evelyn or Jones Tech, if the Evelyn agreed. Thereafter, another Consent Fees ought to have been paid by Jones Tech in Assigning their interest to Dr. Babalakin. Then from Dr. Babalakin to the Claimant, there ought to be another Consent Fee. Nwosu Esq., alleged that there was a circumvention of the payment of Consent Fees and Registration of Title from one Assignee to another, and this ran contrary to the Provisions of **Section 22 of the Land Use Act**.

In response, Oshobi SAN stated there was no Law mandating a Purchaser of a Property to register his or her interest in a Property, more so where there is an intention to sell, and the initial Vendor had not indicated any unwillingness to execute the Transfer of Title Documents to a Subsequent Purchaser.

The Court's Decision on this point, will be seen in the final determination of Title.

As regards the **Tenth Allegation**, Nwosu Esq., alleged that the Claimant failed to adduce Credible Evidence to show that they furnished Consideration to Evelyn Abubakar for the purchase of the Disputed Property. The Allegation of the 1st and 2nd Defendants is that no consideration was paid to them and the

Deed of Assignment did not emanate from Evelyn Abubakar. Further, Kingsberry did not adduce evidence of the payment of the Sum of Eighty Million Naira (N80, 000, 000.00), which clearly indicates that Kingsberry did not buy the Property from Evelyn.

In response, Oshobi SAN submitted that it did not lie in the mouth of the 1st and 2nd Defendants to contend that Kingsberry did not pay any money to Evelyn for the purchase of the property. It was only Evelyn Abubakar that could make such claims.

Now, from the Evidence as seen in **Exhibit B**, the Deed of Assignment between Evelyn and Kingsberry, the stated Purchased Price was Eighty Million Naira (N80, 000, 000.00), and Evelyn Abubakar is yet to deny the above stated facts. To allege Fraud in this respect without any Proof is a careless statement indeed. This is also likened to the stated Purchase Price of One Hundred and Ten Million Naira (N110, 000, 000.00) where there is no evidence of this Transaction before the Court.

The **Eleventh Allegation** is a continuum of the **Tenth** and was in regard to the Payment Sum for the Disputed Property. Nwosu Esq. alleged that Jones Tech initially purchased the Property for the Sum of One Hundred and Ten Million Naira (N110, 000, 000.00) in 2007, while Dr. Babalakin bought the same Property for the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) in 2008. Therefore, he submitted that it was ridiculous and unbelievable that Kingsberry would purchase the Property for the Sum of Eighty Million Naira (N80, 000, 000.00) in 2010.

Layonu SAN made a general response that the spurious and unsavory Allegations were never proved during Trial, and the Law is settled that allegation of a Crime in Civil Proceedings must be specifically pleaded with particulars and strictly proved.

Now, in the first place, Nwosu Esq., did not prove positively that Jones Tech bought the Property in the Sum of One Hundred and Ten Million Naira (N110, 000, 000.00) from Evelyn Abubakar in 2007. Mr. Tomomewo during his Evidence under Cross-Examination could not remember anything about this particular Transaction and when given time to produce evidence, failed to do so. In any case, whatever Price a Seller chooses to sell his Property is his business and none other. After all, the Property was reported to have been gifted in the first place. This shows that Evelyn Abubakar got the Property for

free and no one questioned that. The Seller could as well trade the Property for a Bowl of Icecream. It is his unquestionable prerogative.

Having concluded that the Fraud Allegations were unfounded and unproved, the **Next Step** and perhaps the **Final Step**, is to determine upon whom the Title rested. Title Documents in this context, are the Certificate of Occupancy in **Exhibit P**, the Deed of Assignment in **Exhibit B** and the Power of Attorney in **Exhibit O**.

It is the Deed of Assignment that constitutes the Instrument that legally transfers the Right of Occupancy from one Party to the other. It is clear by **Section 2 of the Lands Registration Act, CAP 515, LFN 2004** and the Case of **ORUBEBE VS FRN (2017) LPELR-42877 (CA)** that an Instrument is a Document affecting Land, which Confers, Transfers, Limits, Charges or Extinguishes Interest in Land, and in conjunction with a Power of Attorney, under which the Instrument may be executed, Legal and Equitable Title will then be conveyed. Without an Executed Deed of Assignment accompanying it, a Power of Attorney on its own strength cannot confer Title.

In the Case of **UDE VS NWARA & ANOR (1993) LPELR-3289 (SC) PER NNAEMEKA AGU, JSC PAGES 32-33 AT PARAS A-B**, "A Power of Attorney merely warrants and authorizes the Donee to do certain acts in the stead of the Donor and so, is not an Instrument which Confers, Transfers, Limits, Charges or Alienates any Title to the Donee. Rather, it could be a Vehicle whereby these Acts could be done by the Donee for and in the name of the Donor to a Third Party. So even if it authorizes the Donee to do any of these Acts to any Person including himself, the mere issuance of such a Power, is not *per se* an Alienation or parting with Possession. So far, it is categorized as a **Document of Delegation**; it is only after, by virtue of the Power of Attorney, the Donee leases or conveys the Property, the subject of the Power, to any person including himself, then there is Alienation. The fact that a Power of Attorney was given by the Donor of his Power to alienate the Property, does not divest the Donor of the Power to deal with the Property, so long as the Donee had not exercised such Powers. Reference is made to **GREGORY & BIUDE VS CLEMENT NWARA & 1OR (1993) NWLR PT 278, AT PAGE 638 AT 297, PER A.B. WALI (JSC); AUGUSTA CHIME & 4 ORS VS MOSES CHIME & 3ORS (2001) NSCQLR VOL 5 PAGE 275**.

It is very clear that the Certified True Copy of the Certificate of Occupancy in **Exhibit P** dated the 31st day of August 2005, bears the name Evelyn Aliyu Abubakar. It is arguable that Evelyn Aliyu Abubakar, through a Power of Attorney, passed on an Irrevocable Power of Attorney to Jones Tech International Limited on the 27th day of February 2007 as seen in the Bundle of **Exhibit R6**.

Amongst the Powers conferred on them were the Power to Sell, Alienate, Deal in any manner, Execute Documents in connection with the Sale and more importantly, do ANY Lawful Act she was entitled to do in regard to the Property, subject only to the Provisions of the **Land Use Act of 1978** or any Amendment thereof.

Based on the above, Jones Tech had the Right to Sell the Property. From all the Facts, Evidence both Documentary and Oral, as well as the Surrounding Circumstances, it is clear that Madam Alisabatu Alkali, Dr. Babalakin SAN and even Kingsberry Estates by Conduct, all directly and indirectly trace their Title to or through Jones Tech.

The **ONLY BUT** here is, that Jones Tech could not confer Equitable or Legal Title *simpliciter*, except by the Execution of a Deed of Assignment with the Parties and with the Consent of the Honourable Minister, which would have absolutely transferred Legal Rights. Jones Tech could only bind Evelyn Abubakar, by the Powers bestowed by her on them, to an Equitable or Legal Right by the Mere Power of Attorney. Had Jones Tech produced the Deed of Assignment, that was not even registered, then Jones Tech could only transfer an Equitable Right on their own Merit. Moreover, this Deed of Assignment, which could very easily have been tendered into evidence, was not produced at all. There was neither a Primary nor Secondary Evidence of it before the Court and there was also no evidence of its Registration with the Lands Registry. The absence of this Deed of Assignment, without more, connotes the absence of an Alienation/Conveyance, whether Legal or Equitable.

Now, it is clear that this Power of Attorney between Evelyn Abubakar and Jones Tech in the Bundle of **Exhibit R6**, before the Court, was not Registered with the Lands Registry, and there was no Consent or Payment of Stamp Duty evident on the face of it. Therefore, it could not possibly confer any Interest except an Agency. Reference is made to the Case of **NASR VS ROSSEK (1973) 6 SC PAGE 121**, where his Lordship **FATAYI-WILLIAMS JSC** held that, "A

Power of Attorney creates the Relationship of Principal and Agent between the Donor and the Donee.”

In this instance, Jones Tech had Possession of the Certificate of Occupancy as well as Actual Possession of the Property, and it is clear that it took out an Overdraft Loan through this Created Agency. It would be presumed going by **Clause 5** of the Power of Attorney between Evelyn Abubakar and Jones Tech in **Exhibit R6**, that Jones Tech acted on behalf of Evelyn Abubakar when they deposited her Title Deeds with Skye Bank Plc., as Security for obtaining an Overdraft Loan Facility. This is because Legal Ownership cannot be gained by Jones Tech without the Execution of a Deed of Assignment. The Two must go together.

It is clear also by Case Law Authority from the Apex Court that the absence of an Apparent Intention makes the Deposit of Title Deeds equivocal that it is for Safe Keeping. But once the delivery of the Title Deeds is accompanied with a Clear Intention that the Title Deeds should be taken or retained as a Security, for a Loan, as in this instance, it amounts to the Creation of an Equitable Mortgage. See the Cases of **BRITISH AND FRENCH BANK LIMITED VS AKANDE (1961) ALL NLR PAGE 849; YARO VS AREWA CONSTRUCTION LIMITED (2008) ALL FWLR PART 400 PAGE 603; AND CARTER VS WAKE (1877) 4 Ch.D PAGE 605.**

This could only mean that Skye Bank Plc., accepted to grant the Loan on the basis of the Agency, which empowered Jones Tech to borrow, sell and act with the Property in the manner contained in their Power of Attorney, either in their Name or, in the name of the Owner of the Property, who remained Evelyn Aliyu Abubakar.

The Power of Attorney created would not have permitted Jones Tech to bestow Title in their Own Name but only in the name of Evelyn Aliyu Abubakar. It could only confer authority to deal with the Property and that is exactly what Jones Tech did, in **Exhibit O**.

Now, Nwosu Esq., has re-submitted a Registered Power of Attorney in **Exhibit O**. This again only recognizes Alisabatu’s Power to act as an Agent of Jones Tech and nothing else. Had Jones Tech executed a Registered Deed of Assignment with Evelyn Abubakar, then Equitable Title would have passed to them, and they in turn, could pass it onto Alisabatu Alkali. However, there is no evidence of this before the Court. In **Exhibit O**, there is no recital referring to any executed Deed of Assignment, but only to an Agreement. There is also

the point that Madam Alisabatu whilst testifying viva voce had stated that **Exhibit O** was made much later, after the first set in **Exhibit R6**. Nwosu Esq.'s explanation was that **Exhibit O** was only to evidence Payment. If so, then it evidences nothing because the non-inclusion of the Purchase Price in the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) as Consideration Clause cannot be an Omission, Oversight or Mistake. In any event, the Court has already made a pronouncement that Madam Alisabatu did not make pay the purchase price for the Disputed Property.

In the Case of **OLORUNFEMI VS NATIONAL EDUCATIONAL BANK LIMITED (2003) 5 NWLR PART 812 PAGE 1, MUSDAPHER, JCA (AS HE THEN WAS) AT PAGE 20 PARAS F-G**, held that, "In my view a Donee of a Power of Attorney has no authority to Appoint, another Agent without the Express Authorization in the Power of Attorney. The Latin Maxim *Delegatus Non Protest Delegare* applies, which means that an Agent acting under a Power of Attorney should as a General Rule, act in the Name of the Principal. A Deed executed in pursuance of such a Power is properly executed in the Name of the Principal. If the Deed is executed in the name of the Donee alone, without showing that the Donee was acting as an Agent, the Donor may not be held liable. See further the Case of **VANDEPITTE VS PREFERRED ACCIDENT INS. COM OF NEW YORK (1933) AC 70 AT 79**.

Therefore, being an Agent, Jones Tech cannot delegate to another Agent, which in this Case is Alisabatu Alkali because they cannot Sub-Delegate. All Jones Tech could do is to act within the Scope of their Powers contained in the Power of Attorney bestowed on them by Evelyn Abubakar. They could sell, alienate, deal in any manner, execute documents in connection with the Sale and could do any Lawful Act within the ambits of the Law.

In the Case of Dr. Babalakin SAN, Jones Tech under their Power to Sell as contained in the Power of Attorney received the Purchase Price released by Dr. Babalakin and therefore, Dr. Babalakin had Beneficial Interest with Jones Tech and since the Title had not Legally and Equitably changed hands, they had a direct Beneficial Right with Evelyn Abubakar herself and no one else. So, under their Power to Sell, Jones Tech could bind Evelyn Abubakar to the Sale with Dr. Babalakin SAN and having received undisputed Valuable Consideration from him, remain bound.

From the testimony of Mr. Tomomewo, Jones Tech did not know from which Bank Account the Funds emanated from and it could have come from

anywhere. Mr. Bayo Atunrase, Alisabatu Alkali's Main Witness had named Dr. Babalakin's Agent as being present when payment was made to Skye Bank Plc. in Lagos.

In this instance, a Resulting Trustee was not created in favour of Jones Tech or the 1st and 2nd Counter-Claimants. This is because there was an Outright Sale to Dr. Babalakin SAN by Jones Tech on the Express Authority of Evelyn Abubakar in her Power of Attorney. Dr. Babalakin under the Gentleman's Agreement was not obliged to convert the Title of the Property into his name since he had bought it either to sell to Mr. Felix Hyat or to retain it as an Investment Property.

It is clear that when Mr. Felix Hyat failed to fulfill his side of the Gentleman's Agreement, Dr. Babalakin, after discharging the Overdraft Facility of Jones Tech, sold off his Equitable Interest in the Property to Kingsberry Estate Limited for an Undisclosed Sum and it was stated that both sides were satisfied with the Valuable Consideration furnished. It was held in the Case of **MOHAMMED VS MOHAMMED & ANOR (2011) LPELR-3729 (CA) Per OGUNWUMIJU, JCA (AS SHE THEN WAS) AT PAGE 40 PARAS A-B**, held that, "Consideration must be Sufficient while it need not be Adequate."

It is important to state and safe to assume that Alhaji Yusuf Aliyu, being Mr. Felix Hyat's Personal Assistant for over Twenty-Two (22) Years, should owe his loyalty to his Boss, Mr. Felix Hyat and not to an Outsider that did not employ him or pay him any Salary or Dividend. Alhaji Yusuf however pitched his tent with Dr. Babalakin SAN working perhaps against his own personal interest to enjoy a continuing relationship with the Hyat Family.

It is also important to note here that a Most Crucial Witness was not summoned to testify and that Witness was none other than Mr. Felix Hyat himself. Since Alisabatu Alkali's identity became an issue, it was expedient for Mr. Felix Hyat to have appeared before the Court to give a Firsthand Report of his Relationship with Dr. Babalakin SAN, Mr. E.J. Williams of Jones Tech International Limited and of the Payment Arrangements. This is because Madam Alisabatu Alkali and especially Nwosu Esq. referred to his Public Status, as a Public Officer. He needed to refute the fact of the Gentleman's Agreement with Dr. Babalakin SAN and confirm to the Court whether the Sum of One Hundred and Fifty Million Naira (N150, 000, 000.00) advanced by Dr. Babalakin SAN was a Loan Arrangement or not. The silence and absence of Mr. Felix Hyat, in these proceedings, was resoundingly loud!!!

In conclusion, it is clear that the Relationship that existed between Evelyn Abubakar and Jones Tech International Limited in Year 2007 was that of Principal and Agent. Title had not been transferred and perhaps that explains why the Title Deed still remained in her name. Indeed the Law requires that once a Sale of Land is conducted, the Parties ought to seek the Consent of the Honourable Minister, but in this instance, the Transaction between Jones Tech and Evelyn Abubakar was not an Outright Sale, and as such, need not to be registered. In the same vein, the transaction between Jones Tech and Dr. Babalakin SAN, which ought to have been registered, was not done because he had interest to further sell the Property.

Jones Tech International Limited could only act under their Agency. Had there been an Instrument of Deed of Assignment between Evelyn Abubakar and Jones Tech International Limited, then Jones Tech International Limited could have transferred Equitable Title to Madam Alisabatu Alkali. All that transpired between them was a Power of Attorney, and by the Principle of “you cannot give what you do not have”, as held in the Case of **UAC VS MACFOY (1961) 3 ALL ER PAGE 1169 AT PAGE 1171**, Jones Tech could not bestow any Interest when they did not possess or own the Disputed Property.

Jones Tech International Limited did delegate their Delegated Powers, which does not fall under the Exceptions that made such Powers enforceable. Therefore, Jones Tech International Limited is found to have under the Express or Implied Authority of Evelyn Abubakar, taken out an Overdraft Loan Facility, which was Equitable, not for Jones Tech’s Benefit, but for the Benefit of Evelyn Abubakar. Had the Power of Attorney in the Court’s File been tendered as an Exhibit by the 1st and 2nd Defendants, which showed a Consideration of One Hundred and Ten Million Naira (N110, 000, 000.00), then it can be said that the Overdraft was to the benefit of Jones Tech. What is before the Court for consideration, had no Monetary Consideration, and therefore, the presumption is that the Money was meant for Evelyn Aliyu Abubakar.

Upon Payment and satisfaction of the Purchase Price requirement by Alhaji Yusuf acting on behalf of Dr. Babalakin, it can be said that Dr. Babalakin SAN acquired an Equitable Interest in the Property. Therefore, he could only transfer his Equitable Interest to Kingsberry Estates and advice them to deal direct with the only Recognized Legal Owner of the Disputed Property.

From the Analysis noted above, in respect of **Exhibit M** and **Exhibit N**, and even from the Testimony of Mr. Tomomewo that he had met Evelyn Aliyu Abubakar severally with her Father, which connotes her presence, it can be seen that from **Exhibit B**, the Deed of Assignment was executed between Evelyn Abubakar and Kingsberry Estate Limited.

Learned Counsel to the Honourable Minister, R. J Goyol Esq. had recanted the Powers of the Minister, especially with regard to approving the Transfer of Title to Land in the FCT. He had stated that the Minister never allocated nor approved any Transfer of Title to the 1st and 2nd Defendants, and in fact did not know their source of ownership to the Property, and therefore failed to establish their Right to the Disputed Property. The Minister only recognized Kingsberry Estates Limited as the Legal Owner.

Therefore, in the absence of the Proof of the Allegations of Fraud beyond Reasonable Doubt, the Deed of Assignment between Evelyn Abubakar and Kingsberry Estates Limited is held by this Court to be duly executed, valid and binding.

Having done the needful by the Registration, and by obtaining the Approval of the Consent of the Honourable Minister of the FCT granted as seen in **Exhibit C**, Kingsberry Estates Limited is found by this Court to have Legal Ownership of the Disputed Property. The Court has no reason to disagree with the Honourable Minister of the FCT on this contention.

Therefore, Legal Title and Possession is vested in Kingsberry Estates Limited. As regards the Claim of Continuous Holding Over amounting to Trespass, it has been held that Trespass is the unjustified intrusion by one Person upon Land in possession of another. See **OGUNBIYI VS ADEWUNMI (1985) 5 NWLR PART 59AT PAGE 144 SCNJ AT 156; OKAGBUE VS ROMAINE (1982) 5 SC 133 AT 148; ADETONO & ANOR VS ZENITH INTERNATIONAL BANK PLC(2011) LPELR-8237 (SC) Per NGWUTA JSC PAGE 41 PARAS A-B.**

In **WORDS AND PHRASES LEGALLY DEFINED (2nd Ed) VOLUME 5 AT PAGE 222**, the word "Trespass" is given the following definition". "Trespass is a wrongful act, done in disturbance of the possession of property of another, or against the person of another, against his will. To constitute a trespass the act must in general be unlawful at the time when it is committed.... Whoever is in possession, may maintain an action of trespass against a wrong doer to his possession." "Every unlawful entry by one person on the land in the possession of another is a trespass for which an action lies ... (and) a person

trespasses upon land if he wrongfully set foot on, or rides or drives over it...or pulls down or destroys anything permanently fixed to it or wrongfully takes minerals from it. **OMORHIRHI & ORS VS ENATEVWERE (1988) LPELR-2659 (SC) PER WALI, J.S.C PAGE 14 PARAS C-G.**

It is undeniable that the 1st and 2nd Defendants have been in Possession of the Subject Matter of this Action without any Legal Rights and their Possession constitutes an infraction of Kingsberry's Right to Exclusive Possession of the Property, and the Tort of Trespass are certainly established against them. See the Cases of **BROWNE VS DAWSON (1840) 113 ER PAGE 95; PHILIPS VS OGUNDIPE (1967) 1 ANLR 258; MBANEFO VS AGBU & ANOR (2014) LPELR-22147 (SC) Per CHUKWUMA-ENEH, JSC.**

In regard to the Claim for Perpetual Injunction made by all the Parties, the essence of granting it on the Final Determination of the Rights of the Parties, is to prevent permanently the infringement of those Rights and to obviate the necessity of bringing multiplicity of Suits in respect of every repeated infringement. Therefore, the grant of this Injunction is a Consequential Order, which should naturally flow from the Declaratory Order, sought and granted by the Court. Reference is to **GOLDMARK (NIG) LTD & ORS VS IBAFON COMPANY LTD & ORS (2012) LPELR - 9349 (SC) PER ADEKEYE JSC AT PAGE 65 PARAS B-D; AFROTEC VS MIA (2001) 6 WRN PAGE 65.**

On the Reliefs of Damages, it is clear that the Primary Object of Award of Damages is to compensate the Claimant or Counter-Claimant for the harm done to him. See the Case of **ADIGUN VS AG, OYO STATE (1987) 1 NWLR PART 53, 678 @ 708 PARAGRAPHS E - F 721 PARAGRAPH G; UBN PLC VS AJABULE & ANOR (2011) LPELR-8239(SC) Per FABIYI, J.S.C AT PAGE 32, PARASC-E** General damages are said to be damages that the Law presumes and they flow from the type of wrong complained about by the victim. They are compensatory damages for harm that so frequently results from the tort for which a party has sued; that the harm is reasonably expected and need not be alleged or proved. They need not be specifically claimed. They are also termed direct damages; necessary damages.

Now, it is clear from the Court's determination above, that the Party liable to be compensated is not the 1st and 2nd Defendant but Kingsberry Estates, who had purchased the Disputed Property since 2010, and to that end they were deprived of the benefit of their Purchase.

As regards the Claims for Cost made by Kingsberry Estates and Dr. Babalakin SAN, it has been severally held that a Successful Party should not be denied Costs. **GKF INVESTMENT (NIG) LTD VS NITEL PLC (2009) LPELR - 1294 (SC); UNION BANK OF NIGERIA LTD VS NWAOKOLO (1995) 6 NWLR PART 400 PAGE 127.** The Award of Cost is within the discretion of the Court and it is awarded on Fixed Principles not on Whimsical Personal Basis of Individuals or the Court, and must be exercised Judicially and Judiciously in the interest of Justice. Further reference is made to **HACO LTD VS DAPS BROWN (1973) 4 SC 149.**

In conclusion therefore, the Court finds in this Three Consolidated Actions as follows: -

- 1. A Declaration of Court is made that the Claimant is the Valid/Legal Owner of the property situate at Plot 2378, Cadastral Zone A06, No. 33 Limpopo Street, Maitama District, Abuja.**
- 2. A Declaration is further made that the Claimant is the person entitled to possession of the Property situate at Plot 2378, Cadastral Zone A06, No. 33 Limpopo Street, Maitama District, Abuja (the Property).**
- 3. An Order of Court is made mandating the 1st and 2nd Defendants to deliver up Possession of the Property within Three Months to the Claimant.**
- 4. A Declaration is made that the continuous holding over of the Property by the 1st and 2nd Defendants amounted to Trespass.**
- 5. The Court hereby grants an Order of Perpetual Injunction restraining the 1st and 2nd Defendants, their Family Members, Servants, Privies, Agents or any Person claiming through or under them from encroaching/trespassing on Plot 2378, Cadastral Zone A06, No. 33 Limpopo Street, Maitama Abuja.**
- 6. The Court further Orders the 3rd Defendant to issue and deliver to the Claimant a new Certificate of Occupancy with respect of the Property.**
- 7. The Sum of N5, 000, 000.00 (Five Million Naira) against the 1st and 2nd Defendants being General Damages for Unlawful holding over of the Property.**

8. Cost of One Million Naira (N1, 000, 000.00) Action is hereby awarded.

In respect of the Counter-Claim of the 1st and 2nd Defendants: -

- 1. The Court declines to make a Declaration that the 2nd Defendant acquired an Equitable Title Over Plot 2378 Cadastral Zone A06, Maitama District, Abuja also known as No. 33 Limpopo Street, Maitama Abuja covered by Certificate of Occupancy No. 2078w-1253c-6e8dr-def8u-10 dated the 31/08/2005;**
- 2. A Declaration of Court is not made that the 2nd Defendant is the Person entitled to the Grant of the Consent of the Honourable Minister, Federal Capital Territory, Abuja and the Grant of a Statutory Right of Occupancy over the said Plot 2378 Cadastral Zone A06, Maitama District, Abuja;**
- 3. A Declaration is made that the Registration of the Deed of Assignment between the Claimant and one Evelyn Aliyu Abubakar is valid and of full effect;**
- 4. The Court declines to Declare that the Consent granted by the 3rd Defendant based on the Deed of Assignment between the Claimant and one Evelyn Aliyu Abubakar is null and void and of no effect.**
- 5. Having failed to establish any Legal Rights, an Order of Perpetual Injunction will not be made restraining the Claimant, its Servant, Agent, Privies from trespassing into the 1st and 2nd Defendants' Plot 2378 Cadastral Zone A06, Maitama, Abuja or in any other manner whatsoever, from disturbing, interrupting and interfering with the 1st and 2nd Defendants' peaceful and quiet possession of Plot 2378 Cadastral Zone A06, Maitama District, Abuja also known as No. 33 Limpopo Street, Maitama Abuja.**
- 6. The Court declines to award General Damages in favour of the 1st and 2nd Defendants**

In respect of the 3rd and Final Action filed by the 2nd Counter-Claimant,

- 1. A Declaration is made that the Counter-Claimants in the 1st Counter-Claim viz. Felix Hyat and Madam Alisabatu Alkali are not entitled to and are not vested with any Proprietary Interest or Legal or Equitable Title in the Property known as Plot 2378, Cadastral Zone**

A06, No. 33 Limpopo Street Maitama District, Abuja.

- 2. A Declaration of Court is hereby made that the 3rd Defendant having validly passed its Interest in Plot 2378, Cadastral Zone A06, No. 33 Limpopo Street Maitama District, Abuja ('Property') to Kingsberry Estate Limited and the said Kingsberry Estate Limited having registered its Interest and perfected its Title in the Property, Kingsberry Estate Limited is the valid, lawful and legal owner of the Property.**
- 3. Since Possession has already been granted to Kingsberry Estates, this Prayer becomes superfluous in this Action.**
- 4. The same applies as in Relief 3 to this Prayer for Declaration in Trespass.**
- 5. Perpetual Injunction having been granted in the First Action is settled and bears no repetition.**
- 6. The Sum of N5, 000, 000.00 (Five Million Naira) (jointly and severally) is awarded against the Counter-Claimants in the 1st Counter-Claimants viz. Felix Hyat and Madam Alisabatu Alkali being General Damages for unlawful holding over of the Property and Breach of Trust.**
- 7. Cost of One Million Naira (N1, 000, 000.00) for the Action.**

HON. JUSTICE A.A.I. BANJOKO

JUDGE