

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON WEDNESDAY, 2ND DECEMBER, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/3099/2018

BETWEEN

BETTERSEA LTD.

CLAIMANT

AND

HON. MINISTER, FEDERAL)

CAPITAL TERRITORY)

DEFENDANT

JUDGMENT

In the statement of claim filed along with the writ of summons on 22/10/2018, the claimant [plaintiff] claims the following reliefs against the defendant:

1. A declaration that plaintiff is the holder of Statutory Right Occupancy dated 28th November 2000, referenced [File No: MFCT/LA/MISC. 17258] over Plot No. 101 within Sector Centre F Abuja.
2. A declaration that the plaintiff's Statutory Right of Occupancy over Plot No. 101 within Sector Centre F Abuja is valid and subsisting.
3. A declaration that pursuant to the said Right of Occupancy referenced [File No: MFCT/LA/MISC. 17258] over Plot No. 101 within Sector Centre

F Abuja, the premium payable by the plaintiff on Plot No. 101 within Sector Centre F Abuja is N2,000 per square metre totalling the sum of sixteen million Naira [N16,000,000.00] for the 8,000 square metres of land covered by the said Plot No. 101 within Sector Centre F Abuja.

4. An order directing the defendant to issue the plaintiff with the requisite Bill to make payment for the premium and ground rent.
5. An order directing the defendant to issue the plaintiff with the Certificate of Occupancy over Plot No. 101 within Sector Centre F Abuja, upon the payment of the premium and ground rent by the plaintiff.
6. An order of perpetual injunction restraining the defendant whether by himself, agents or privies from revoking and or expropriating or in any manner however interfering with the rights, title of the plaintiff or possession by the plaintiff of Plot No. 101 within Sector Centre F Abuja, covered by [File No: MFCT/LA/MISC. 17258] and Statutory Right of Occupancy dated 28th November, 2000.
7. An award of the sum of N2,000,000.00 [two million Naira) as general damages against the defendant.

Alphonsus Oshiole, plaintiff's Managing Director, gave evidence as PW1. He adopted his statement on oath filed on 22/10/2018 and his further statement on oath filed on 12/3/2019. He tendered Exhibits 1, 1A, 2, 3, 4, 4A, 5, 6 &

Z.Mahmud UsmanJibril, a Senior Land Officer in Lands Department of the Federal Capital Territory [FCT], Abuja, gave evidence as DW1. He adopted his statement on oath filed on 17/12/2018 and tendered Exhibits 8 & 9.

Evidence of the plaintiff:

The PW1 stated thatpursuant to the claimant’s application, the defendant allocated or granted Plot 101 within Sector Centre F Abuja, covered by File No.MFCT/LA/MISC. 17258 to it.The defendant issued to the claimant theLand Application Forms Acknowledgment dated 6/9/1999 [Exhibit 1] and the receipt for N52,500for Land Application Formalso dated 6/9/1999 [Exhibit 1A].The Offer of Terms of Grant/Conveyance of Approval dated 28/11/2000 is Exhibit 2.Theclaimant accepted the offer; the Acceptance of Offer of Grant of Right of Occupancy dated 30/11/2000 is Exhibit 3. The defendant issueda Site Plan dated 24/3/2003 [Exhibit 4] to claimant. The receipt dated 4/11/2002 for N1,000being payment for survey site plan is Exhibit 4A. After the allocation of the Plot, the defendant put the claimant in possession of the Plot.

When the defendant commenced recertification of titles of land within the FCT, claimant filled and submitted recertification form, paid the processing fee of N10,000and submitted the original letter of Offer of Statutory Right of Occupancy todefendant. The application for recertification and re-issuance of certificate of occupancy is Exhibit 5; and the Standard Trust Bank deposit slip dated 5/4/05 for N10,000 is Exhibit 6. The duplicate copy of the Bank teller for N10,000 processing fee for re-certification got lost. He obtained a Police

Extract and deposed to an Affidavit of Loss on 19/10/2018; the Affidavit of Loss and the attached documents are Exhibit 7. The defendant has refused to issue the claimant with the bill for the payment of premium and ground rent to enable it submit building plans for approval for development of the Plot.

PW1 further stated that the defendant has been holding out that it misplaced the file and is searching for same for many years. Recently, the officers of the defendant have been showing up at the property harassing the claimant and claiming that it has no title as no bill has been paid, despite the fact the defendant has refused to issue the claimant with the bill. In line with the offer of grant of the Plot dated 28/11/2000, the premium payable is N2,000 per square metre totalling N16,000,000 for 8,000 square metres of the said Plot 101 allocated to the claimant. The defendant's acts constitute a scheme to illegally take over the claimant's right and title over the said Plot. The defendant is about to re-allocate the said Plot to another person.

In his further statement on oath, PW1 stated that the claimant submitted the statutory right of occupancy with the form for recertification and defendant issued it with the acknowledged copies of the two documents. The beacon numbers, the distances, the bearings and the coordinates of the said Plot 101 as shown on the Site Plan and other technical information are exclusively known to and kept by the defendant and were issued by the defendant to the claimant. The issue of issuing same file number can only be as a result of negligence on the part of the defendant and the claimant cannot be held liable

for the defendant's negligence. The said Plot was allocated to the claimant for commercial use. The purpose of the Plot stated on the Cadastral Imagery produced by the defendant which purports to be Transportation Terminal is not inconsistent with commercial purpose in the claimant's offer of grant.

When Alphonsus Oshiole [the PW1] was cross examined, he stated that Mr. Sunday Onyekelu submitted the claimant's application for land allocation. Mr. Sunday Onyekelu also accepted the offer of grant of the said Plot and collected the right of occupancy on behalf of the claimant. He [PW1] got the information that the claimant's file has been misplaced from the defendant's front desk. There is no approval for development of the Plot yet.

Evidence of the defendant:

The evidence of Mahmud Usman Jibril [DW1] is that none of the defendant's officials has ever held out to the claimant that its file was misplaced and the defendant's officials never showed up at the Plot or harassed the claimant. The claimant did not apply for land within the FCT and was not allocated the said Plot 101 by the defendant on 28/11/2000. Before an allocation of land in the FCT is made, an applicant for land shall complete an application form, pay the requisite application fees, and submit same to the authority. He will be issued with an acknowledgment wherein the documents that accompanied the application will be ticked to evidence the submission of the application form. A land application form for a company in the FCT is accompanied by a copy of certificate of incorporation, tax clearance

certificate, memorandum and articles of association, feasibility report of the project and bank draft for the payment of the application fee. None of these documents was submitted by the claimant.

Upon submission of the land application form and the accompanying documents, a file number will be generated for the applicant. The file numbers follow a chronological order and are not duplicated; thus cannot be shared by any two applicants. After processing the application, successful applicants and the plots allocated to each of them are compiled in a tabular format by the Director, Land Administration, FCT and sent to the defendant for his approval. When the defendant grants "*Ministerial Approval*", the Director of Lands Administration, FCT will issue letters of conveyance of offer of statutory right of occupancy to the successful applicants on behalf of the defendant. Allottees will be issued with right of occupancy Settlement Fees Bill for payment. None of the above procedures was followed in the case of the purported allocation to the claimant.

DW1 further stated that there is no record in the FCT Land Registry of any application for land by the claimant, no right of occupancy was issued to it by defendant's records and there was no acceptance of the right of occupancy in the records. The claimant was not among those allocated land in the FCT in the Ministerial Approval Sheet for 28/11/2000 or at any other time. In 2004, the defendant introduced the recertification programme wherein allottees of Plots in FCT were to submit their title documents for verification. All original

title documents submitted to Abuja Geographic Information Systems [AGIS] were stamped with the Authority's official stamp to show proof of collection.No site plan was issued to the claimant by the defendant as the purported site plan did not emanate from defendant. Site plans are issued upon application and payment.No payment was made to the defendant by the claimant for a site plan.

The further testimony of DW1 is that the Right of Occupancy relied upon by the claimant is totally different from those issued on 28/11/2000 in character, signatures and on the face of it.The claimant did not submit any title document to the defendant for recertification and it did not make payment to the defendant for recertification.File No. Misc. 17258 used by the claimant belongs to *Answers Investment Ltd.* and was issued to it on 10/8/1999 after it submitted a land application form to the defendant. This is contained in the Land Applications Miscellaneous for the period [Exhibit 9].Plot No. 101, Sector Centre F District, Abuja is a Public Utility as it is meant for a Railway Terminal.The Cadastral Imagery of the area [Exhibit 8] contains this fact.

During cross examination, Mahmud UsmanJibril [DW1] stated that he is not aware that other officers of the defendant went to the Plot to harass the claimant. There are records of land applications in their system from 1980s to date. He checked through the land applications made in 1999 and there is no record in the claimant's name with the File No. MISC. 17258. File No. MISC. 17265 given to *Sarth Industry Ltd.* [i.e. number 8 on Exhibit 9] was opened on

"10/13/1999". The computer is programmed according to European standard where months come before date. The File for *Sarth Industry Ltd.* was opened on 13/10/1999. The DW1 however maintained that File No. MISC. 17258 was issued to *Answers Investment Ltd.* on 10/8/1999.

DW1 further stated during cross examination that Ministerial approval sheet is not one of the documents given to a successful applicant for land in FCT; it is only for official use. There is a list containing the names of successful applicants for land allocation in FCT in 1999. He went through the list but he did not find the name of the claimant. In Exhibit 8, "*Transport Terminal*" is mentioned; "*Railway*" is not mentioned. Operation of public transportation and running of same is a commercial business venture but in Nigeria, all roads belong to Government and no road has ever been allocated to an individual or company. No body signed Exhibit 8. Plot 101 is the railway terminal while Plot 519 is rail track. Apart from Exhibit 8, there are other documents to show that Plot 101 is for railway terminal; the documents are in the record in the office.

Issues for determination:

When trial concluded, Nafisat Agbadu Hassan Esq. filed the defendant's final address on 15/9/2020. Kalu Onuoha Esq. filed the claimant's final address on 24/9/2020. The final addresses were adopted on 29/9/2020.

Learned defence counsel distilled two issues for determination. These are:

1. Whether the claimant has any valid title over Plot 101 within Sector Centre F, Abuja, the subject matter of this suit.
2. Whether on the preponderance of evidence, the claimant is entitled to his *[sic]* claims in this suit.

On the other hand, learned counsel for the claimant formulated these two issues for determination:

1. Whether having regard to the state of the pleadings and the evidence led by the parties, the claimant has proved its case so as to be entitled to the reliefs sought in its Writ of Summons and Statement of Claim.
2. Whether the defendant proved beyond reasonable doubt that the claimant's title documents to Plot No. 101 within Sector Centre F, Abuja are forgeries.

The claimant's reliefs 1, 2 & 3 are for declaratory orders relating to Plot No. 101 within Sector Centre F, Abuja. In relief 1, the claimant seeks a declaration that it is the holder of the statutory right of occupancy over the said Plot. The success or otherwise of the orders sought in reliefs 4, 5 & 6; and relief 7 for general damages largely depends on the decision of the Court in respect of the declaratory reliefs. It is trite law that a party seeking a declaratory order or relief must adduce credible, cogent and sufficient evidence to prove his case. He must succeed on the strength of his case and not on the weakness of the case of the adverse party. See **Arowolo v. Olowookere [2011] 18 NWLR [Pt.**

1278] 280.It is also trite law that civil cases - including actions for declaration of title to land - are determined on balance of probabilities or preponderance of evidence. See **Cyprian Onwuama v. Loius Ezeokoli [2002] 5 NWLR [Pt. 760] 353.**

In the light of the foregoing, the Court is of the view that two main issues call for resolution in this action. These are:

1. Whether the claimant has adduced credible, cogent and sufficient evidence to establish that the defendant allocated Plot No. 101 within Sector Centre F, Abuja to it.
2. Is the claimant entitled to its reliefs against the defendant?

ISSUE 1

Whether the claimant has adduced credible, cogent and sufficient evidence to establish that the defendant allocated Plot No. 101 within Sector Centre F, Abuja to it.

As rightly stated by the learned claimant's counsel, one of the five ways of proving title to land is by production of document[s] of title. See **Idundun v. Okumagba [1976] 9-10 SC 227** and **Ilona v. Idakwo [2003] 11 NWLR [Pt. 830] 53.** In FCT, the production of documents of title granted by the Honourable Minister of FCT [the 1st defendant] is the prevalent way to prove title to, or interest in, land. A party seeking declaration of title to land in FCT, Abuja has to rely on documents evidencing a grant of a right of occupancy from the

Honourable Minister of FCT. As it was held in the case of **Madu v. Madu [2008] 6 NWLR [Pt. 1083] 296**, without an allocation or grant by the Minister of FCT, there is no way any person can acquire land in FCT.

In the instant case, the claimant tendered documents - in particular Exhibits 1, 1A, 2, 3, 4 & 4A - to prove its claim that it is the holder of the statutory right of occupancy over the said Plot. As rightly stated by learned defence counsel, it is trite law that mere production of a right of occupancy or any other document of title does not automatically entitle a party to a declaration of title to land. The court must satisfy itself, *inter alia*, that the document is genuine and valid. See the case of **Ayanwale v. Odusami [2011] 18 NWLR [Pt. 1278] 328**.

Learned counsel for the defendant argued that the documents on which the claimant founded the validity of its title to the said Plot did not emanate from the defendant. The offer of statutory right of occupancy [Exhibit 2] cannot confer a valid title over the said Plot on the claimant without Ministerial Approval. The case of **Huebaner v. Aeronautical Industrial Engineering and Project Management Co. Ltd. [2006] 28 WRN 890** was cited. The claimant failed to produce the Ministerial Approval for the allocation of the Plot to it. In paragraph 6.11 of the defendant's final address, it was submitted that "... *since the Ministerial Approval precedes the statutory right of occupancy, how and where the Claimant got the Statutory Right of Occupancy is indeed a mystery as it was not from the Defendant.*"

NafisatAgbadu Hassan Esq.further argued that the claimant did not place before the Court the date of its application for land despite the defendant's contestation that the claimant did not apply to the defendant for allocation of land. The defendant debunked the validity of File No. MISC. 17258 on which the claimant premised its allocation. The said file number was opened on 10/8/1999 and belongs to Answers Investment Ltd.It was further argued that since the allocation of the Plot, the claimant neither took steps to build nor submit any building plan for approval. Learned defence counsel concluded thatthe claimant failed to lead cogent evidence to establish that the right of occupancy relied upon emanated from the defendant.

For his part, learned counsel for the claimant posited that Exhibit 2 and the other documents tendered by the claimant have the effect ascribed to them by their contents, which is that the claimant acquired a right of occupancy over the said Plot. The legal effect of the offer of grant in Exhibit 2 and acceptance of the offer vide Exhibit 3 is that there exists a binding contract for the grant or allocation of the said Plot between the defendant and the claimant. He cited the case of **Jerie [Nig.] Ltd. v. Union Bank Plc. [2000] 15 NWLR [Pt. 691] 447.** It was submitted that the claimant's right of occupancy over the Plot is valid and subsisting as there is no evidence that the same has been validly revoked by the defendant pursuant to sections 28 & 44 of the Land Use Act.

Under Issue No. 2 in the claimant's final address, Mr.KaluOnuohareferred to paragraphs 4, 15, 16, 18 & 20 of the statement of defence; and stated that from

the averments in these paragraphs, the defendant's defence is that the documents tendered by the claimant are forgeries. He noted that paragraph 5.19 of the defendant's final address shows that the defendant has raised forgery as its defence. He referred to Adelaja v. Fanoki [1990] 2 NWLR [Pt. 131] 137 to support the view that the person challenging the existence of a document has the duty to prove beyond reasonable doubt that the document so proved to exist is a forgery. Learned claimant's counsel stressed that since the defendant has alleged that the documents relied upon by the claimant were forged, the burden shifted to him to prove that the documents are forgeries. He relied on A.P.C. v. P.D.P. [2015] 15 NWLR [Pt. 1481] 1.

Let me first state the position of the law on burden of proof in civil cases. Section 133[1] & [2] of the Evidence Act, 2011 provide:

- 1) *In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.*
- 2) *If the party referred to in subsection [1] of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.*

From the above provisions, it is clear that in civil cases, the claimant has the first or initial burden to prove the existence or non-existence of a fact relied upon in support of his [or its] claims. However, the burden of proof in civil cases is not static; it shifts from one party to the other depending on the state of the pleadings. In **Olaiya v. Olaiya [2002] 8 NWLR [Pt. 782] 652**, it was held that the burden of proof may shift depending on how the scale of evidence preponderates. See also **Ebong v. Ikpe [2002] 17 NWLR [Pt. 797] 504**.

In the instant case, the claimant has tendered documents especially Exhibits 1, 1A, 2, 3, 4 & 4A to prove that the defendant allocated the said Plot to it. For clarity, Exhibit 1 is a letter dated 6/9/99 from the Ministry of FCT to the claimant titled: *Land Application Form*. Exhibit 1A is the receipt for N52,500 dated 6/9/99 being "*payment for land application form and commercial processing fee*". Exhibit 2 is the Offer of Terms of Grant/Conveyance of Approval dated 28/11/2000 issued by the Ministry of FCT to the claimant. Exhibit 3 is the claimant's Acceptance of Offer of Grant of Right of Occupancy within the FCT, Abuja dated 30/11/2000. Exhibit 4 is Plan showing Plot No. 101 at Sector Centre F, FCT, Abuja dated 24/3/2003. Exhibit 4A is the receipt dated 4/11/2002 being "*payment for survey site plan*".

I hold the considered view that from the contents of Exhibits 1, 1A, 2, 3, 4 & 4A and by the provision of section 133[1] of the Evidence Act, the claimant has adduced evidence "*which ought reasonably to satisfy the Court*" that the fact sought to be proved has been established i.e. the fact that the defendant

granted the said Plot to it. Thus, by virtue of section 133[2] of the Evidence Act, the burden has shifted to the defendant to adduce evidence to disprove the above fact.

In the statement of defence, especially paragraphs 4, 15, 16, 18, 20, 23 & 24, the defendant pleaded facts to impugn the credibility or genuineness of the documents tendered by the claimant and to disprove the claimant's evidence that the said Plot was granted to it by the defendant. The allegations in these paragraphs are:

- I. That the claimant did not apply for allocation of land.
- II. That no right of occupancy was issued or granted to the claimant by the defendant on 28/11/2000 or any other date as there was no ministerial approval for the grant.
- III. That there was no acceptance of the right of occupancy.
- IV. That File No. MISC 17258 claimed by the claimant belongs to Answers Investments Ltd.
- V. That no site plan was issued to the claimant.
- VI. That claimant did not submit any title document to the defendant for recertification.
- VII. That the said Plot was not allocated to the claimant because it is for railway terminal.

As rightly stated by learned claimant's counsel, the implication of the said averments is that the documents relied on by the claimant are forged and/or fake. The submission in paragraph 5.19 of the defendant's final address shows that the defendant has raised forgery as his defence. In the said paragraph 5.19, Nafisat Agbadu Hassan Esq. submitted that:

"From the totality of the evidence led at the trial, the defendant has been able to show that this is a pure case of forgery as the title document produced by the Claimant did not emanate from the Defendant. The Defendant has proved this beyond reasonable doubt. We submit that beyond reasonable doubt is not proof beyond all doubt."

At this juncture, let me refer to two judicial authorities to buttress my view that in the light of the documents tendered by the claimant and the defendant's allegation of forgery, the burden has shifted to the defendant to adduce evidence to prove that the documents relied upon by the claimant are forged or are not genuine. This is crucial in view of the arguments of the defence counsel in paragraphs 5.14 & 5.16 of the defendant's final address that the burden of proof on the claimant never shifts; and that the defendant's assertion is *"a negative assertion that places the burden on the Claimant."* In the case of **Aderounmu & Anor. v. Olowu [2000] LPELR-141 [SC] @ 12, B-E**, His Lordship, Ayoola, JSC held:

"... where in a claim for declaration of title to land the defendant alleges that the document relied on by the plaintiff for the title he seeks is a forgery, the

burden is on the defendant who so alleges to prove that fact. Notwithstanding the general onus which rests on the plaintiff to prove his entitlement to the declaration he claims, the evidential burden of proving certain facts occasionally shifts to the defendant. Such is the burden of proving the allegation that the document which the plaintiff relies on is a forgery."

Also, in the case of Okeke & Anor. v. Eze [2013] LPELR-22455 [CA], the plaintiff/respondent claimed ownership of the parcel of land in dispute but the 1st defendant informed him that Exhibits ME2 & ME3 [which he relied upon] were not genuine as the signature on the conveyance was fraudulently procured. One of the issues before the Court of Appeal was on the burden of proof. His Lordship, Amina Augie, JCA [now JSC] held at **pages 35-36**:

"The Appellants contend that since the 1st Defendant denied issuing or signing the Exhibits ME2 and ME3, the burden shifted to the Respondent to prove that the said Exhibits are not forged. But the Respondent argued that the onus is on the Appellant and referred us to Tewogbade V. Obadina [supra] ... The law is clear and this Court has stated times without number that where forgery of a document is alleged, there is no initial burden on the Plaintiff to prove due execution but the primary burden is on the Defendant who alleged forgery to prove the forgery alleged by him". There we have it in addition to the trite law that he who asserts must prove, where forgery of document is in issue, the primary burden is on the Defendant who alleges forgery which is a crime to prove the forgery alleged by him ..."

In the instant case, the defendant has the burden to prove that the documents relied upon by the claimant are not genuine or are forged. The Court will now consider the averments or allegations raised in paragraphs 4, 15, 16, 18, 20, 23 & 24 of the statement of defence in order to determine whether the defendant has proved that the said documents are not genuine or are forged.

[I] That the claimant did not apply for allocation of land.

Exhibit 1A is the Federal Capital Development Authority [FCDA] revenue receipt number 417118 dated 6/9/1999 issued to the claimant. The receipt shows that claimant paid N52,500 for land application form. The defendant did not adduce any evidence to show that the receipt is not that of FCDA or that the receipt is different from the revenue receipts issued by FCDA as at 6/9/1999. Also, the defendant did not allege that the signature on Exhibit 1A is not the signature of the staff of FCDA assigned to issue such receipts for land application forms as at 6/9/1999.

Exhibit 1 dated 6/9/1999 issued by Ministry of FCT to the claimant is an *“acknowledgement of receipt of your duly completed application forms”* together with the documents listed in the letter. Since, by this letter, the claimant submitted the completed application form to the defendant, the claimant is no longer expected to be with the form. The defendant did not allege that the signature on Exhibit 1 is not the signature of the staff of the Ministry of FCT assigned to sign such letters as at 6/9/1999. The defendant did not produce similar letters issued on 6/9/1999 to show that the signature on those letters is

different from the signature on Exhibit 1. During cross examination, DW1 stated that there are records of land applications in their system from 1980s to date and in particular, there are records of land applications made in 1999. The DW1 did not produce that record to support his evidence that there is no record of application in the claimant's name with File No. MISC 17258.

In the circumstances, the Court cannot rely on the *ipsi dixit* of DW1 to reach a decision that the claimant did not apply for allocation of land. The Court holds that from Exhibits 1 & 1A, the claimant applied for allocation of land on 6/9/1999.

[II] That no right of occupancy was issued or granted to the claimant by the defendant on 28/11/2000 or any other date as there was no ministerial approval for the grant.

Exhibit 2 dated 28/11/2000 - signed by Mallam M. S. U. Kalgo, Director, Land Planning & Survey [For: Honourable Minister] - referred to the claimant's application for right of occupancy within the FCT and conveyed the Honourable Minister's approval of the grant of the said Plot to the claimant. The defendant alleged that there was no Ministerial Approval for the grant. DW1 confirmed during cross examination that Ministerial Approval Sheet is not one of the documents given to a successful applicant for land in FCT; it is only for official records. The effect of this evidence is that the claimant is not expected to be with the Ministerial Approval Sheet or List.

In paragraph 20 of the statement of defence, defendant pleaded Ministerial Approval List of 28/11/2000 to show that the said Plot was not allocated to the claimant. The defendant also pleaded a right of occupancy issued to an allottee on 28/11/2000 to prove that the right of occupancy relied upon by the claimant [Exhibit 2] “is totally different from those issued on the 28th of November, 2000 both in character, signatures and on the face of it.” However, the defendant did not tender any of these documents. I agree with Mr. Kalu Onuoha that this is an appropriate case to invoke and apply the presumption in section 167[d] of the Evidence Act, which provides that the Court may presume that:

[d] evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

The Court holds that if the defendant had produced the said documents which he pleaded and which are in his possession, they would have been unfavourable to his case. See the case of **Gambari & Anor. v. Saraki & Ors.** [2009] LPELR-4182 [CA]. The documents would have proved that Exhibit 2 emanated from the defendant and that the defendant allocated the said Plot to the claimant. The documents would have also disproved the defendant’s allegation that Exhibit 2 is fake or forged.

One more important point to make on Exhibit 2 is that Mallam M. S. U. Kalgo who signed the document was not called to testify that he did not issue or sign the document. The defendant did not give any explanation for the failure to call Mallam M. S. U. Kalgo to testify. The position of the law is that in a

case of forgery, it is necessary to invite the person whose signature is alleged to have been forged. Failure to invite him or her to accept or deny his or her signature is fatal to the case of the person alleging that the signature is forged. In Ibrahim & Anor.v. Dogara&Ors. [2015] LPELR-40892 [CA], it was held that indeed, in proving forgery of signature and certificate, the person whose signature is alleged to have been forged is an indispensable and vital witness and the case is fatal without his evidence. See also the case of Alake v. The State [1992] 11-12 SCNJ 177.

In the instant case, I hold that the failure of the defendant to call Mallam M. S. U. Kalgo- who signed Exhibit 2 - as a witness to accept or deny his signature on the document is fatal to the allegation that Exhibit 2 is fake or forged or that it did not emanate from the defendant. The decision of the Court is that Exhibit 2 emanated from the defendant and that the defendant allocated the Plot in issue to the claimant.

[III] That there was no acceptance of the right of occupancy.

PW1 tendered Exhibit 3 dated 30/11/2000, which is the claimant's acceptance of the offer of grant of right of occupancy. Exhibit 3 has the stamp of the "DeptOf Land, Planning & Survey" acknowledging receipt of the document on 30/11/2000. The defendant did not allege that the stamp on the document is not the stamp of the said Department or that as at 30/11/2000, acceptance letters were not received by the said Department. I hold that the claimant accepted the offer of grant or allocation of the said Plot vide Exhibit 3.

[IV] That File No. MISC 17258 claimed by the claimant belongs to Answers Investment Ltd.

Exhibits 1 & 2 issued by the defendant to the claimant have “*Our Ref: MFCT/LA/MISC. 17258*” which is the claimant’s file number. The Site Plan of the said Plot 101 [Exhibit 4] has “*FILE NO. MISC 17258*” as the claimant’s file number. The claimant’s acceptance of offer of grant [Exhibit 3] contains the said file number. DW1 tendered the document titled: Land Applications Miscellaneous [Exhibit 9] to disprove the fact that the said file number belongs to the claimant and to show that the file number was opened on “*10/8/1999*” and belongs to Answers Investment Ltd.

Firstly, I agree with the claimant’s counsel that Exhibit 9 was not signed by anyone. It is trite that an unsigned document commands no judicial value and it has no efficacy or evidential value. See the cases of **Omega Bank [Nig.] Plc. v. O.B.C. Ltd. [2005] 8 NWLR [Pt. 928] 547** and **Ikeli & Anor. v. Agber [2014] LPELR-22653 [CA]**. I also agree with Mr. Onuoha that the certification of Exhibit 9 by Nura I. Abdullahi, a staff of the defendant, does not cure the defect inherent in the document. Thus, the Court cannot rely on Exhibit 9.

Secondly, the evidence of DW1 is that the “*computer is programmed according to European standard where months come before date.*” This evidence accords with common sense and reasoning because numbers 8 to 27 on Exhibit 9 have “*10/13/1999*” as the date of the applications for land. DW1 was asked during cross examination when File No. MISC 17265 was given to Sarth Industry

Ltd. [i.e. number 8 on Exhibit 9] as the date reads "10/13/1999". DW1 relied on the "European standard where months come before dates" and stated that the file number for Sarth Industry Ltd. was opened on 13/10/1999. It follows from the said "European standard" that the said File No. MISC17258 was opened on 8/10/1999 and not 10/8/1999 as stated by DW1.

The crucial point from the above is that by Exhibits 1 & 1A, the case of the claimant is that File No. MISC 17258 was opened for it on 6/9/1999. DW1 did not tender the record of land applications and file numbers assigned to the applicants on 6/9/1999, which, by his evidence, is in the defendant's records. Exhibit 9 does not show the record of land applications and the file numbers assigned to the applicants on 6/9/1999. In line with section 167[d] of the Evidence Act, 2011, I hold that if the defendant had produced the record of land applications and the file numbers assigned to the applicants on 6/9/1999, the document would have been unfavourable to his case. Therefore, Exhibit 9 is not helpful to the defendant to disprove the fact in Exhibits 1 & 2 that the claimant's file number is MISC 17258.

Thirdly, I had earlier stated that Exhibit 1 issued to the claimant is an "acknowledgement of receipt of your duly completed application forms" together with the documents listed in the letter while Exhibit 1A is the claimant's receipt for land application form. If Answers Investment Ltd. applied for allocation of land and File No. MISC 17258 was opened for it on "10/8/1999" as claimed by the defendant, the defendant ought to have the record of

the letter [similar to Exhibit 1] issued to Answers Investment Ltd. and the receipt [similar to Exhibit 1A] issued to it. During cross examination, DW1 was asked of these documents. His answer given by Mahmud Usman Jibril was that: *"I did not come across these documents."* This evidence points to the fact that these documents are not in the records of the defendant. I hold that the defendant failed to disprove that File No. MISC 17258 belongs to the claimant.

[V] That no site plan was issued to the claimant.

Exhibit 4 dated 24/3/2003 is the Site Plan for the said Plot in the name of the claimant. First of all, the defendant did not adduce evidence to show that the signature on Exhibit 4 is not known to it; or that the signature is not that of its staff authorized to sign and issue site plans as at 24/3/2003.

Secondly, PW1 rightly stated in paragraph 9 of his further statement on oath that the Beacon numbers, the Distances, the Bearings and the Coordinates of the said Plot 101 as shown on the Site Plan [Exhibit 4] are exclusively known to the defendant. There is no evidence by the defendant that the details on the Site Plan do not represent the correct survey details of the Plot.

Thirdly, DW1 testified in paragraph 19 of his statement on oath - in line with the averment in paragraph 19 of the statement of defence - that the claimant did not make payment to the defendant for a site plan. Exhibit 4A is the FCDA revenue receipt for N1,000 being payment for survey site plan. The

defendant did not discredit the revenue receipt and did not adduce evidence to cast doubt on the signature on Exhibit 4A. For the reasons I have given, I hold that the defendant was not able to disprove the fact that the survey plan[Exhibit 4] emanated from, or was issued by, his office.

[VI] That the claimant did not submit any title document to the defendant for recertification.

Exhibit 5 is the claimant's Application for Recertification and Re-issuance of Certificate of Occupancy while Exhibit 6 is the evidence of payment of the sum of N10,000 described as "Processing fees - Recertification". Exhibit 5 has stamp of "FCC RECERTIFICATION" with a signature and date [i.e. 5/4/05] acknowledging receipt of the form. The offer of the right of occupancy issued to the claimant [Exhibit 2] also has the stamp of "FCC RECERTIFICATION" with a signature and date [i.e. 5/4/05] acknowledging receipt of the letter of offer. The defendant did not discredit the stamp and the signature on Exhibits 2 & 5. I hold that the defendant was not able to disprove the fact that the claimant submitted its Application for Recertification and Re-issuance of Certificate of Occupancy [Exhibit 5] together with the Offer of Terms of Grant/Conveyance of Approval [Exhibit 2] to his office.

[VII] That the said Plot was not allocated to the claimant because it is for railway terminal.

In paragraph 24 of his statement on oath, DW1 stated that the said Plot is a public utility as it is meant for a railway terminal. He tendered what he referred to as Cadastral Imagery of the area as Exhibit 8. The evidence of the DW1 during cross examination is that nobody signed Exhibit 8. As rightly stated by learned counsel for the claimant, Exhibit 8, which is unsigned, has no evidential value and the fact that it was certified by Nura I. Abdullahi will not cure the defect in it. DW1 also stated during cross examination that apart from Exhibit 8, there are other documents to show that the said Plot is for railway terminal. The defendant did not produce those documents, which, according to DW1, are in the records in their office. The Court cannot rely on *their ipxi dixit* of the DW1 as proof that the said Plot validly allocated to the claimant is for railway terminal.

I must add that even if the defendant's assertion that the said Plot is for railway terminal is true, it will not affect the claimant's right and interest over the Plot. As rightly stated by Kalu Onuoha Esq., the claimant's title over the Plot remains valid and subsisting until it is validly revoked by the defendant in accordance with section 28 of the Land Use Act.

Having considered the seven allegations raised by the defendant, I hold that the defendant failed to prove the allegation that the documents relied upon by the claimant are not genuine or are forged. Therefore, I resolve Issue No. 1 in favour of the claimant and hold that the claimant has adduced credible,

cogent and sufficient evidence to establish that the defendant allocated the said Plot 101 within Sector Centre F, Abuja to it.

ISSUE 2

Is the claimant entitled to its reliefs against the defendant?

In reliefs I & 2, claimant seeks a declaration that it is the holder of statutory right of occupancy dated 28/11/2000 over the said Plot 101; and that its right of occupancy over the Plot is still valid and subsisting. In the light of the decision of the Court under Issue No. 1, these reliefs have merit and are hereby granted.

In relief 3, the claimant seeks a declaration that pursuant to the said right of occupancy dated 28/11/2000, the premium payable on the said Plot is N2,000 per square metre; making a total of N16 million for the 8,000 square metres of land comprised in the said Plot. The offer of right of occupancy [Exhibit 2], which was accepted by the claimant clearly stated that the premium for the said Plot is N2,000 per square metre. In the absence of any evidence to the contrary, I hold that the sum payable as premium for the Plot is as stated in Exhibit 2. Thus, this relief is granted.

Relief 4 is an order directing the defendant to issue the claimant the requisite bill to enable it make payments for premium and ground rent; while relief 5 is an order directing the defendant to issue the claimant with the certificate of

occupancy upon payment of the premium and ground rent for the said Plot. In respect of relief 4, Mr. Onuoha stated that the claimant is prepared to pay for ground rent for the Plot but the defendant refused or neglected to issue the bills and demand notices so that it will be easy to dispossess the claimant of the land and reallocate same to another person.

On relief 5, learned claimant's counsel submitted that upon payment of the fees for the issuance of certificate of occupancy, defendant has an obligation to process and issue the certificate of occupancy over the Plot to the claimant. He cited the case of **Iragunima v. Rivers State Housing & Property Development Authority [2003] 12 NWLR [Pt. 834] 427**. I hold without much ado that these reliefs have merit as they flow from the declaratory order granted in relief 3. Reliefs 4 & 5 are granted.

In relief 6, the claimant seeks an order of perpetual injunction restraining the defendant from revoking or expropriating or interfering with its title, right or possession of the said Plot.

Learned defence counsel posited that by the provisions of the Land Use Act, the defendant is statutorily empowered to allocate and revoke lands in FCT. It was submitted that the claimant's claim for an order of perpetual injunction is misconceived because an order of injunction cannot be issued to restrain the exercise of statutory functions. The case of **Olagunju v. Adesoye [2009] 9 NWLR [Pt. 1146] 225** was referred to.

For his part, learned counsel for the claimant argued that by section 15[a] of the Land Use Act, claimant is entitled to quiet possession of the said Plot. He submitted that the claimant is entitled to an order of perpetual injunction to prevent the defendant from doing any unlawful act that will affect the claimant's right and interest over the Plot.

Section 15[a] of the Land Use Act provides that during the term of a statutory right of occupancy, *"the holder shall have the sole right to and absolute possession of all the improvements on the land"*. Usually, the grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by the Court. The essence of its grant is to prevent permanently the infringement of those rights being complained of and to obviate the necessity of bringing multiple suits on the issue in future. See **A.G. Kwara State & Anor. v. Kolawole [2018] LPELR-44982 [CA]**.

However, the issue raised by Nafisat Agbadu Hassan Esq. is whether the defendant, who has the power of control and management of all land in FCT, can be restrained perpetually with regards to the Plot in issue in view of his power to revoke a right of occupancy under section 28[1] of the Land Use Act. The Court of Appeal considered this issue in **A.G. Kwara State & Anor. v. Kolawole [supra]**. At *pages 29-30*, His Lordship, Hamma Akawu Barka, JCA, who delivered the Leading Judgment, held:

“... I think that the argument by the appellants makes a lot of sense. In the first place, a holder of a certificate of occupancy is a limited owner to a term of 99 years, and most importantly, the Governor has a right of revocation for overriding public interest. In the event, the land under consideration is needed in the public interest which overrides private interest; can the Court rightly restrain the Governor in the performance of that statutory duty placed on him? The obvious answer is in the negative. I consider the question posed in the light of the decision in the case of Akinduro vs. Alaya [2007] LPELR-344 [SC] per Aderemi JSC, ... that it is improper to grant an order of perpetual injunction at the instance of a limited owner when the owner of the absolute interest is not a party to the case, and in our own context, I would say when the absolute owner has a statutory power of revocation in the public interest. I agree with the learned counsel for the appellants in the circumstance that it was wrong of the lower Court granting an order of perpetual injunction against the appellants which had the effect of divesting him of the performance of his statutory duty. To that extent the argument by the respondent that the order is a consequential order meant to protect and to forestall future actions, cannot be right.”

Since the claimant’s statutory right of occupancy over the Plot is valid and subsisting, it follows that it has all rights of ownership and possession over the Plot as preserved under section 15[a] of the Land Use Act. However, in paragraph 4.1.18 of claimant’s final address, Kalu Onuoha Esq. recognised that the claimant’s statutory right of occupancy is subject to the power of the

defendant to revoke rights of occupancy over plots in the FCT by virtue of section 28 of the Land Use Act. In the light of the decision in the above case, the order of perpetual injunction to restrain the defendant from revoking the claimant's right of occupancy over the said Plot 101 is refused.

Finally, in relief 7, the claimant, Bettersea Ltd., claims the sum of N2 million as general damages against the defendant. The view of the learned defence counsel is that the claimant did not adduce any credible evidence to prove its claim for general damages. On the other hand, the position of the claimant's counsel is that the claimant is entitled to the award of general damages even where no actual loss is proved.

There is no doubt that the defendant has denied the claimant the use, benefit and enjoyment of the said Plot based on the allegation that the Plot was not allocated to it. In the circumstance, I am of the considered opinion that the claimant is entitled to award of general damages, which I assess as the sum of N1,000,000.00.

Conclusion:

I enter judgment in favour of the claimant against the defendant as follows:

1. A declaration that claimant is the holder of Statutory Right Occupancy dated 28th November 2000, referenced [File No: MFCT/LA/MISC. 17258] over Plot No. 101 within Sector Centre F, Abuja.

2. A declaration that the claimant's Statutory Right of Occupancy over Plot No. 101 within Sector Centre F, Abuja is valid and subsisting.
3. A declaration that pursuant to the said Right of Occupancy referenced [File No: MFCT/LA/MISC. 17258] over Plot No. 101 within Sector Centre F, Abuja, the premium payable by the claimant on Plot No. 101 within Sector Centre F, Abuja is N2,000 per square metre totalling the sum of N16,000,000.00 for the 8,000 square metres of land covered by the said Plot No. 101 within Sector Centre F, Abuja.
4. An order directing the defendant to issue the claimant with the requisite Bill to make payment for the premium and ground rent in respect of the said Plot No. 101 within Sector Centre F, Abuja.
5. An order directing the defendant to issue the claimant with the Certificate of Occupancy over Plot No. 101 within Sector Centre F, Abuja, upon the payment of the premium and ground rent by the claimant.
6. N1,000,000.00 as general damages.
7. Cost of N200,000.00.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

1. IfunanyaOranubaEsq. for the claimant; with M. U. OkekeEsq.
2. R. J. GoyolEsq. for the defendant.