

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI**

**COURT CLERKS: T. P. SALLAH & ORS**

**COURT NUMBER: HIGH COURT NO. 12**

**DATE: 16/12/2020**

**BETWEEN:-**

**FCT/HC/CV/2241/2019**

**HONOURABLE JUSTICE KUMAI BAYANG AKAHHS ...CLAIMANT**

**AND**

- 1. THE HON. MINISTER OF FEDERAL CAPITAL  
TERRITORY ADMINISTRATION, ABUJA DEFENDANTS**
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY,  
ABUJA**
- 3. PERSONS UNKNOWN**
- 4. NAGANDE SWATE**
- 5. ROMBEC PROPERTIES NIG. LTD**

**JUDGMENT**

The Claimant originally commenced this action vide Writ of Summons and Statement of Claim filed on 20<sup>th</sup> June, 2019 against the 1<sup>st</sup> – 3<sup>rd</sup> Defendants. Pursuant to an application brought by NAGANDE SWATE and ROMDEC PROPERTIES NIG. LTD, the two separate Applicants were subsequently joined as 4<sup>th</sup> and 5<sup>th</sup> Defendantsto the Claimant’s suit. Thus, by the order of this Court granted on 20<sup>th</sup> January, 2020 the Claimant amended his originating processes. And by the Amended Statement of Claim dated 20<sup>th</sup> January, 2020, the Claimant claims against the Defendants jointly and severally the following reliefs:-

- a. A declaration that by virtue of Right of Occupancy No. FCT/BZTP/LA/KD/1218 in respect of Plot No. MF22, Cadastral Zone 07-05, Kubwa with file No. KD 43023, the Claimant is the rightful owner of Plot MF22, Kubwa Extension III (FCDA Scheme) with File No. KD43023, Kubwa, Abuja, FCT.
- b. A declaration that the activities of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants and any person acting and/or purporting to act on their behalf in respect of Plot MF22, Kubwa Extension III (FCDA Scheme) with File No. KD43023, Kubwa, Abuja, FCT amounts to trespass to land.
- c. A declaration that any document purporting to be a document of title by which the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are claiming title and trespassing on the Claimant's land is illegal null and void.
- d. An order of this Honourable Court directing the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants and any person acting and/or purporting to act on their behalf in respect of Plot MF22, Kubwa Extension III (FCDA Scheme) covered by Right of Occupancy No. FCT/BZTP/LA/KD/1218 with File No. KD43023, Kubwa, Abuja, FCT to stop further acts of trespass on the said Claimant's land.
- e. An order of this Honourable Court revoking and/or nullifying any document purporting to be a document of title issued by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants upon which the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants may be acting either by themselves or through their agents, privies or any person howsoever called purporting to act on their behalf with respect to the Claimant's land.
- f. An order of this Honourable Court restraining the 1<sup>st</sup> & 2<sup>nd</sup> Defendants from issuing or further issuing any approval whatsoever to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants or persons purporting to be acting on their behalf with respect to the land in dispute.
- g. An order of this Honourable Court compelling the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants to pay the Claimant the sum of N20,000,000.00 (Twenty Million Naira) only, as damages for trespassing on the Claimant's land situate at Plot MF22, Kubwa Extension III (FCDA Scheme) covered by Right of Occupancy No. FCT/BZTP/LA/KD/1218 with File No. KD43023 Kubwa, Abuja, FCT.

- h. An order of this Honourable Court compelling the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants to pay the Claimant the sum of N10,000,000.00 (Ten Million Naira) only, as damages for alteration of the Claimant's land situate at Plot MF22, Kubwa Extension III (FCDA Scheme) covered by Right of Occupancy No. FCT/BZTP/LA/KD/1218 with File No. KD43023 Kubwa, Abuja, FCT without first seeking and obtaining the Claimant's consent and damaging the land in the process.
- i. The cost of this suit in the sum of N3,000,000.00 (Three Million Naira) only to be *paid by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.*

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants entered appearance and filed their joint statement of defence with leave of Court granted on 11<sup>th</sup> March, 2020. The 4<sup>th</sup> and 5<sup>th</sup> Defendants for their part filed their Statement of Defence with leave of Court and incorporated a Counter-claim by which they claimed the following reliefs against the Claimant:-

- a. A declaration that the Claimant by tampering into the land Plot MF22 Kubwa Extension III (FCDA SCHEME) of the 4<sup>th</sup> and 5<sup>th</sup> Defendant that RomanusEze is in control amount to trespass.
- b. A declaration that the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Counter Claimants is entitled to enjoy peaceful and exclusive possession of the land known as Plot MF22 Kubwa Extension III (FCDA SCHEME) trespass by the Claimant.
- c. A declaration that the land of the Claimant was the land that Dr.Nwanne forcefully driven him out i.e. on Plot BB1B Kubwa Extension and that the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Counter Claimants land was never revoke by the Hon. Minister of the FCT for any public purpose and to convey it or replace to the Claimant without taken due process of the law as could be seen at paragraph 7 of the Claimant's Amended Statement of Claim and therefore for the Claimant to enter into the property of the 4<sup>th</sup> and 5<sup>th</sup> Defendants to lay claim was unjustifiable and amount to trespass.
- d. An order of the Honourable Court holding that the 4<sup>th</sup> and 5<sup>th</sup> Defendants were the first in time on PLOT MF22 OF ABOUT

3500SQ.M KUBWA EXTENSION III (FCDA SCHEME) and therefore the Claimant must quit from the plot herein stated.

- e. An order of injunction restraining the Claimant, his heir, servants, privies, agents and whosoever named called from further trespassing into the land of the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Counter Claimants.
- f. An order for the payment of N500,000,000.00 (Five Hundred Million Naira only) as general damages to be paid by the Claimant.
- g. Any further order(s) as the Honourable Court may deem fit to make in the circumstance of this case.

For ease of reference, the Claimant (and Defendant-to-Counter-Claim) will simply be referred to as the 'Claimant' while the 4<sup>th</sup> and 5<sup>th</sup> Defendants (Counter-Claimants) will simply remain the '4<sup>th</sup> and 5<sup>th</sup> Defendants' in this judgment.

It is noteworthy that the Claimant filed a Reply to the 4<sup>th</sup> and 5<sup>th</sup> Defendants' statement of defence and incorporated a defence to their counter-claim.

Pleadings having been filed and exchanged between the parties, on the 11<sup>th</sup> March, 2020, trial commenced with the Claimant himself testifying as PW1 in support of his case. One Kolajo Adetola Laribigbe testified as DW1 on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The 4<sup>th</sup> and 5<sup>th</sup> Defendants did not call any witness. Both witnesses that testified were however cross-examined by the respective Counsel to the parties. The following documents were admitted in evidence as exhibits at trial;

1. Exhibit 1:- Conveyance of Provisional Approval dated 15<sup>th</sup> May, 2001.
2. Exhibit 2:- Site Plan of Plot No. MF22 with File No. KD43023 in respect of Hon. Justice A. Akaahs.
3. Exhibit 3A:- Departmental receipt of Bwari Area Council for the sum of N45,500.
4. Exhibit 3B:- Departmental receipt of Bwari Area Council for the sum of N22,500.

5. Exhibit 4:- Registration of Land Titles and Documents of FCT Area Councils Acknowledgment dated 10<sup>th</sup> May, 2007.
6. Exhibit 5A:- Receipt of Oceanic Bank Plc.
7. Exhibit 5B:- Receipt of AGIS.
8. Exhibit 6:- Letter of the Claimant dated 21<sup>st</sup> January,2013.
9. Exhibit 6A:- Letter of the Claimant dated 8<sup>th</sup> July,2014.
10. Exhibit 6B:- Letter of the Claimant dated 1<sup>st</sup> April, 2014.
11. Exhibit 6C:-Letter of the Claimant dated 10<sup>th</sup> June,2016.
12. Exhibit 6D:-Letter of the Claimant dated 19<sup>th</sup> June, 2019.
13. Exhibit 6E:- Claimant's second letter dated 19<sup>th</sup> June,2019.
14. Exhibit 7:- Letter of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants dated 19<sup>th</sup> June,2019 with attachments to the Claimant.
15. Exhibit 8:- Certified True Copy of Motion on Notice No. M/747/2019.
16. Exhibit 9:- Original letter from FCTA Department of Land Administration dated 17<sup>th</sup> February,2020.
17. Exhibit 10:- Conveyance of Provisional Approval dated 15<sup>th</sup> May,2001 to NagandeSwate.
18. Exhibit 11:- Certified True Copy of file Report FCT44279 dated 4<sup>th</sup> July,2018.
19. Exhibit 12:- Certified True Copy of file Report on MISC83472 dated 25<sup>th</sup> June, 2020.
20. Exhibit 13:- Certified True Copy of file Report KG54742 dated 4<sup>th</sup> July,2018.
21. Exhibit 14:- Certified True Copy of file Report FCT50722 dated 4<sup>th</sup> July,2018.

At the close of evidence, on the 13<sup>th</sup> October, 2020 final written address was ordered to be filed and exchanged. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Counsel's final Written Address is dated and filed on 22<sup>nd</sup> October,2020 and filed on 23<sup>rd</sup> November,2018 while the Claimant's Counsel's final written address is dated 4<sup>th</sup> November,2020 and filed on the same date. The 4<sup>th</sup> and 5<sup>th</sup> Defendants' Counsel's final written address dated 18<sup>th</sup> November,2020 was filed on 19<sup>th</sup> November,2020 (with leave of Court) granted on 23<sup>rd</sup> October, 2020 to which the Claimant's Counsel filed a reply address on 20<sup>th</sup> November,2020. Counsel

adopted their respective addresses and the matter was adjourned for Judgment.

### **ISSUES FOR DETERMINATION:**

The 1<sup>st</sup> and 2<sup>nd</sup> Defendant's Counsel formulated a sole issue for the determination of the instant suit to wit:-

*"Whether the title documents relied upon by the Claimant confers any legal right/interest on the Claimant in the Federal Capital Territory."*

Learned Counsel to the Claimant for her part formulated the sole issue for determination as follows:-

*"Whether from the pleadings and evidence before the Court, the Claimant has proved his case to entitle him to reliefs sought in this suit."*

The 4<sup>th</sup> and 5<sup>th</sup> Defendants' Counsel on the other hand distilled his sole issue for determination of this case thus:-

*"Whether the Claimant is entitled to any claim based on the evidence adduced in the proceedings."*

The 1<sup>st</sup> and 2<sup>nd</sup> Defendant's issue addresses but only an aspect of the Claimant's claim before this Court. I shall therefore adopt the Claimant's issue as mine as a resolution of same amounts to a resolution of the 4<sup>th</sup> and 5<sup>th</sup> Defendants' issue as well. I shall however add another pertinent issue which does not fall under the issue formulated by any of the parties. The issues for determination before this Court are therefore as follows:-

1. Whether from the pleadings and evidence before the Court, the Claimant has proved his case to entitle him to reliefs sought in this suit.
2. Whether the 4<sup>th</sup> and 5<sup>th</sup> Defendants are entitled to their counter-claim.

**Whether from the pleadings and evidence before the Court, the Claimant has proved his case to entitle him to reliefs sought in this suit.**

The Claimant's case is presented by his pleadings and his evidence as PW1. In giving evidence at trial, the Claimant adopted both his witness statements on oath deposed to on 20<sup>th</sup> January, 2020 and 7<sup>th</sup> December, 2020 as his oral testimony in support of his case. It is the Claimant's case that in 2001, he obtained the approval of the Honourable Minister of the FCT (the 1<sup>st</sup> Defendant) for a Customary Right of Occupancy over Plot No. MF22 Kubwa Extension III (FCDA SCHEME), which is covered by Right of Occupancy No. FCT/BZTP/LA/KD/1218 (now renumbered KD43023) and bounded by beacon Nos. PB1259, PB1260, PB1261 and PB1262. The letter of Conveyance of Provisional Approval dated 15<sup>th</sup> May, 2001 and Site Plan of Plot No. MF22 were admitted in evidence as Exhibits 1 and 2 respectively. The Claimant paid N45,500 and N22,500 to the Bwari Area Council for certificate of occupancy and development levy. Exhibits 3 and 3A are Developmental Receipts admitted in evidence. The Claimant testified that the said plot of land (Subject Matter of this suit) was granted to the Claimant in 2001 as a replacement for another Plot No. BB1B Kubwa Extension which had been granted to the Claimant in 1994 but trespassed upon by one Dr. Nwanne. That the 1<sup>st</sup> Defendant issued directives in 2007 for the regularization of land titles and documents in the Federal Capital Territory and the Claimant participated in the exercise pursuant to which he was given Exhibit 4 being an acknowledgment dated 10<sup>th</sup> May, 2007 by which his file number was changed from KD1218 to KD43023. While the Claimant was waiting for his Certificate of Occupancy, a further directive was issued for all plot owners to pay N100,000 as revalidation application fee and submit land documents for the Accelerated Area Councils Title Regularization and Re-Issuance Scheme (AACTRRS). It is the Claimant's testimony that he complied with this directive by submitting his land documents and paying the sum to the Abuja Geographic Information System (AGIS). Exhibits 5 and 5A were admitted as evidence of payment.

It is further the Claimant's case that in January, 2013, he discovered some encroachment on his land (i.e. the Subject Matter) by persons who erected an illegal fence thereon. That he had dug the foundation upon which the 4<sup>th</sup> and 5<sup>th</sup> Defendant's said fence was built. The Claimant complained vide a letter dated 21<sup>st</sup> January, 2013 (admitted in evidence as Exhibit 6) to the Development Control department of the 2<sup>nd</sup> Defendant who demolished the said fence after giving considerable notice. The Claimant thereafter applied to the Director ACCATRRS vide Exhibit 6A for revalidation of his plot pursuant to which the Claimant received text messages that the process will require further scrutiny. The Claimant was in the process of clearing the Subject Matter and erecting a fence when one Romanus Eze approached him with allegations of owning the land but did not provide anything to substantiate this claim. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants however again trespassed on the Subject Matter and erected a fence and gate-house thereon. The Claimant then wrote series of letters to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants which were admitted in evidence as Exhibits 6B, 6C, 6D and 6E at trial. It is the Claimant's case that in 2016, a Task Force Team on Land Appeals and Petitions was set up and the Committee made recommendations to the 1<sup>st</sup> Defendant that the Claimant should retain his title to the Subject Matter. Copies of the said recommendation was made available to the Claimant vide Exhibit 7. That the Land Use Allocation Committee's findings was that the 4<sup>th</sup> Defendant (with file No. MISC4965) and 5<sup>th</sup> Defendant (with file No. 83472) also submitted for regularization of title to the same Subject Matter causing multiple allocations which accounted for a delay in the regularization of the Claimant's title to the Subject Matter. That the Committee however recommended that since the Claimant's application for regularization of title was first, he should be allowed to retain title to the Subject Matter. That the 1<sup>st</sup> Defendant thus wrote the Claimant informing him of his approval for the Claimant to retain title to the Subject Matter. That the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants encroached on the Claimant's land (the Subject Matter), erected a fence and commenced digging foundation to build thereon. That his interest



being first in time makes him the rightful and bonafide owner of the Subject Matter. He testified that he has suffered enormous damage as a result of the Defendants' actions.

In his further testimony, the Claimant said that no one was ever granted any title to the Subject Matter by the 1<sup>st</sup> Defendant. He averred that the 4<sup>th</sup> and 5<sup>th</sup> Defendants in an affidavit in support of their motion for joinder (Exhibit 8) had earlier averred that the 5<sup>th</sup> Defendant bought the Subject Matter directly from the 4<sup>th</sup> Defendant. That the purported letter of Conveyance of Provisional Approval relied upon in the 4<sup>th</sup> and 5<sup>th</sup> Defendants' motion for joinder has since been marked 'Cancelled' by the issuing authority i.e. the Bwari Area Council. Exhibit 10 was admitted in evidence in proof. That during the regularization exercise, the Land Use Allocation Committee found the Claimant's title to be first in time. Exhibit 9 was admitted in further proof.

Thus, having state briefly, the facts and evidence of the claimant's case I will now proceed to briefly consider the facts and evidence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. In their statement of defence, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants essentially admitted most of the Claimant's averments in his Amended Statement of Claim. In support of their statement of defence, DW1 adopted her witness statement on oath of 4<sup>th</sup> March, 2020 as her oral testimony in this case. She testified on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the Claimant is the original allottee of the Subject Matter having been granted a Customary Right of Occupancy over same by the Bwari Area Council. That the Claimant subsequently submitted his title documents with the 1<sup>st</sup> Defendant for regularization and recertification pursuant to which he was given a letter of acknowledgment dated 10<sup>th</sup> May, 2007 with new file number KD43023. She testified that the regularization of the Claimant's title to the Subject Matter is being done and will soon be completed. The Claimant was thus issued a letter from the Department of Land Administration of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants conveying the 1<sup>st</sup> Defendant's approval that he should retain title to the Subject Matter while the regularization is being done. That the structures complained of by the Claimant was demolished by

the Department of Development Control as illegal having been satisfied that the Claimant had valid title to the land. It is DW1's testimony that there is no other adverse title over the Subject Matter in view of the Land Use Allocation Committee's recommendation conveyed to the Claimant vide the Department of Land Administration's letter. That the activities of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, as well as any other persons, on the Subject Matter would thus amount to trespass as no other person has any valid claim to the Subject Matter. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants however deny causing any damage to the Claimant and testified that they did not do any act capable of causing such.

After I have considered the brief facts and evidence of the case of the Claimant and that of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as I said earlier parties had filed and exchange final written address.

In their final address, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted vide their Counsel that the statement of the law is that ownership of all lands comprised in the FCT is vested in the Government of the Federal Republic of Nigeria. He contended that the Honourable Minister of the FCT (i.e. the 1<sup>st</sup> Defendant) is the privileged sole authority through whom the Federal Government exercises vested statutory authority or power to administer lands in the FCT. He relied on the provisions of Sections 297(2) and 302 of the Constitution of the Federal Republic of Nigeria, Section 18 of the Federal Capital Territory Act and the Land Use Act. Counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants contended that it is clear from evidence before this Court that the Claimant derived his alleged title over the Subject Matter from the Bwari Area Council vide Exhibit 1 and not from the 1<sup>st</sup> Defendant who is, by law, the sole authority to allocate land within the FCT. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants however gave their approval by Exhibit 7 for the Claimant's title to be regularized and he should retain title to the Subject Matter. Counsel contended that the document speaks for itself and no oral testimony can vary same. Counsel posited that the Claimant is now the actual allottee of the plot by virtue of Exhibit 7, having been granted approval by the 1<sup>st</sup> Defendant. He emphasized that the position of the law is that 'customary' title is alien to the FCT and all lands therein are 'urban lands' of which right to allocate

and revoke is a statutory responsibility that cannot be delegated and can only be exercised by the 1<sup>st</sup> Defendant. He contended that this implies that the purported title of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants over the Subject Matter is alien, null and void. He relied on the cases of **MADU V. MADU (2008) 2 SCNJ 245 and ONA V. ATANDA (2000) 5 NWLR (PT. 656) P. 285**. He submitted that the Bwari Area Council has no power to allocate land in the FCT vested in the Federal Government. He urged this Court to hold that the purported letters of allocation to the Claimant and the 3<sup>rd</sup> – 5<sup>th</sup> Defendants do not confer any legal title or interest over the Subject Matter but the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' approval communicated to the Claimant does.

On the otherhand, in her final address, Counsel to the Claimant submitted that although the 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> Defendants admitted the Claimant's claim by failing to defend same, the law is settled that the Claimant must succeed on the strength of his own case for declaration of title to land and not on the admission of the Defendants. She relied on the case of **NRUAMAH & ORS V. EBUZOEME & ORS (2013) LPELR-19771(SC)**. Counsel cited the case of **AJIBOYE V. ISHOLA (2006) LPELR-301(SC)** on the five methods of proving title to land and contended that the Claimant in this case relied on proof by title documents particularly Exhibits 1 and 2. That the Claimant also tendered receipts of payment and letters to and from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants i.e. Exhibits 4, 5, 5A, 6C, 6D, 6E and 7. She contended that the Land Use Allocation Committee's finding in Exhibit 7 that the Claimant's title was first in time recommended for regularization is in consonance with the maxim that where there are two competing interests, the first in time prevails. She cited a plethora of cases on this maxim and posited that the 1<sup>st</sup> Defendant further reemphasized the Claimant's title over the Subject Matter vide Exhibit 10 (sic) dated 17<sup>th</sup> February, 2020 (Exhibit 9 actually) amidst the competing titles. She argued that Exhibit 10 (sic) does not fall under documents rendered inadmissible by reason of having been made during or in anticipation of litigation under Section 83(3) of the Evidence Act, 2011. She contended that this is because the author of Exhibit 10

(sic) wrote same in an official capacity with no personal interest in the Subject Matter. She posited that the evidence before this Court is that of all the titles granted by the Bwari Area Council in the Subject Matter and, it was the Claimant's title that was regularised and confirmed by the 1<sup>st</sup> Defendant. That the 3<sup>rd</sup> – 5<sup>th</sup> Defendants' purported titles were not regularized by the 1<sup>st</sup> Defendant. She stated that it is only the 1<sup>st</sup> Defendant that has power to allocate or grant Right of Occupancy with respect to any land in the FCT and she relied on the provisions of Section 5 of the Land Use Act, Section 297(2) and 302 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) and Section 18 of the Federal Capital Territory Act. She also cited the cases of **MADU V. MADU (2008) LPELR-1806(SC), BILL & BROTHERS LTD & ORS V. DANTATA & SAWOE CONSTRUCTION CO. (NIG) LTD & ORS (2015) LPELR-24770(CA) and ERIBENNE V. UG & ANOR (2007) LPELR-4172(CA)** learned Counsel submitted that the Claimant has sufficiently proved his entitlement to the declaration of title to the Subject Matter and the relief ought to be granted. She argued that when Exhibits 1, 7 and 10 (sic) are read together, this Court will come to this conclusion that the Claimant is entitled to the declaration. It is Counsel's further submission that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, to whom the burden of proof then shifted, have however failed to discharge the burden as the 4<sup>th</sup> & 5<sup>th</sup> Defendants who filed a statement of defence, failed to lead any evidence and thus abandoned their defence. She relied on a plethora of cases including **THE ADMIN. & EXEC. OF THE ESTATE OF ABACHA V. EKE-SPIFF & ORS (2009) LPELR-3152(SC)**. She submitted that the Claimant's case thus stands unchallenged and this Court is entitled to rely on the Claimant's evidence. She contended that the 4<sup>th</sup> and 5<sup>th</sup> Defendants' claim to title to the Subject Matter must fail while the Claimant's, which is earlier in time, must succeed. Learned Counsel then contended that the Claimant's evidence of acts of long possession of close to 19 years in addition to his title documents, is sufficient proof of his ownership over the Subject Matter. She submitted that the Claimant has clearly established his title over the Subject Matter and ought to be declared the rightful owner.

On the claim for trespass, the Claimant's Counsel submitted that there is evidence of acts of trespass by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants before this Court and they have not denied same i.e. that they dug foundation and erected a fence thereon. She posited that the law is settled that any unlawful and unauthorised entry into the land wherein the Claimant enjoys exclusive possession amounts to trespass. She relied on the case of **ARCHIBONG V. UTIN (2012) LPELR-7907(CA)**. She posited that having established exclusive possession of the Subject Matter and the acts of trespass by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants thereon, the Claimant is entitled to the award of damages against them. She urged this Court to grant the relief seeking award of damages for trespass. She finally urged this Court to find in favour of the Claimant and grant the reliefs sought in the Amended Statement of Claim.

Making submissions to the contrary in his final address, learned Counsel to the 4<sup>th</sup> and 5<sup>th</sup> Defendants submitted that the approval of conveyance of customary right of occupancy over the Subject Matter (Exhibit 1) is not known to law and as such cannot be used as a title document. He relied on the case of **MADU V. MADU (2008) 6 NWLR (PT. 1083) P. 296**. Counsel posited that it is only a statutory right of occupancy issued by the Minister of FCT that qualifies as title document and the Claimant cannot rely on receipts and AGIS regularization as title documents. He reiterated that only a statutory right of occupancy issued by the 1<sup>st</sup> Defendant is known to law in the FCT and not customary right of occupancy. He cited the cases of **MADU V. MADU (SUPRA) and ONA V. ATENDA (SUPRA)**. He contended therefore that Exhibit 1 cannot operate as a document of title upon which trespass and injunctive orders can be sought against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants. He submitted that the Claimant's case must therefore fail and be dismissed. He Further submitted that all the exhibits tendered and admitted in evidence cannot ground title or possession as they are not known to law. He contended that Exhibit 1 is not a valid instrument of title and mere presentation of regularization of Area Council does not

mean the documents have been regularized to become a statutory right of occupancy. On the Claimant's claim of trespass, learned Counsel to the 4<sup>th</sup> and 5<sup>th</sup> Defendants submitted that such claim for trespass cannot be sustained as an individual cannot acquire land in the FCT through customary right of occupancy. It is his position that Exhibits 1, 6 and 6E are not known to law and therefore cannot ground trespass on the part of the 4<sup>th</sup> and 5<sup>th</sup> Defendants as the Claimant is not in exclusive possession of the Subject Matter. He concluded his address by urging this Honourable Court to dismiss the Claimant's entire claim as being frivolous, unmeritorious and unfounded.

Replying the 4<sup>th</sup> and 5<sup>th</sup> Defendants on points of law, the Claimant's Counsel submitted that the Claimant's claim for title to the Subject Matter does not rest on Exhibit 1 alone but on Exhibits 7 and 10 (sic) which ought to be read together, particularly as they have not been contradicted by the Defendants. She reiterated that having been regularized, the Claimant's title can no longer be traced to the Bwari Area Council but to the 1<sup>st</sup> Defendant and it is tantamount to a grant by the 1<sup>st</sup> Defendant. She contended that the Court in the cases of **MADU V. MADU (SUPRA) and ONA V. ATENDA (SUPRA)** did not consider the effect of regularization of title to land as in the instant case. She urged this Court to discountenance the 4<sup>th</sup> and 5<sup>th</sup> Defendants' submissions and find in favour of the Claimant as per his claim.

In the resolution of the issue at hand, let me first quickly address the issue of the 4<sup>th</sup> and 5<sup>th</sup> Defendants' defence.

In the instant case, the 4<sup>th</sup> and 5<sup>th</sup> Defendants filed a statement of defence (with leave of Court) which they called their 'Further Amended Joint Statement of Defence'. This is curious as the 4<sup>th</sup> and 5<sup>th</sup> Defendants had, before then, not filed any competent statement of defence before this Court which could have been amended. Nevertheless, although they had the opportunity to do so, the 4<sup>th</sup> and 5<sup>th</sup> Defendants failed to call any witness or evidence in support of the statement of defence when the time

came for them to do so. I was thus constrained to make an order foreclosing the right of the 4<sup>th</sup> and 5<sup>th</sup> Defendants to call witness (es) in their defence.

The law is trite on the effect of a statement of defence where a Defendant fails to give evidence at trial. The law is that the 4<sup>th</sup> and 5<sup>th</sup> Defendants are deemed to have abandoned their statement of defence in the circumstances. See the cases of **AIR FRANCE V. OKWUDIAFOR (2010) LPELR-3664(CA) and MANSON V. H.E.S. (NIG.) LTD (2007) 2 NWLR (PT. 1018) P. 211. See also the case of DUROSARO V. AYORINDE (2005) 8 NWLR (PT. 927) P. 407** wherein the Supreme Court posited that failure to lead evidence in support of averments contained in a statement of defence amounts to an abandonment of the statement of defence and it would be deemed as such.

Having said the above, the first relief sought by the Claimant in his Amended Statement of Claim is one for declaration of title to land the Subject Matter of this suit.

On the onus of proof on a party seeking declaration of title to land, it has been held that such a party must succeed on the strength of his own case rather than rely on the weakness of the defence. See the cases of **HENSHAW V. EFFANGA (2009) 11 NWLR (PT. 1151) P. 65 and EDEBIRI V. DANIEL (2009) 8 NWLR (PT. 1142) P. 15. In the case of DIM V. ENEMUO (2009) 10 NWLR (PT. 1149) P. 353** the Supreme Court held that *until the onus is successfully discharged by the plaintiff, the Court is not obliged to look at the Defendant's case.*

Further to the above, the position is that a plaintiff seeking for a declaration of title to land bears the onerous duty in law to adduce credible and admissible evidence in establishment of such title. – see the case of **MADAM LANTOUN OJEBODE & ORS V. AKEEM AKANO & ORS (2012) LPELR-9585(CA).**

Thus in this case, it is irrelevant to the Claimant's claim for declaration of title that the 3<sup>rd</sup> Defendant did not file any defence

to his claim or that the 4<sup>th</sup> and 5<sup>th</sup> Defendants abandoned their defence. The Claimant has a duty to prove his case to the satisfaction of this Court.

The position of the law is that a plaintiff seeking declaration of title to land must prove title to that land claimed in one of the following ways in order to succeed:-

- (1) by traditional evidence;
- (2) by the production of documents of title duly authenticated;
- (3) by acts of persons claiming land such as leasing, entering etc. which acts must extend over a sufficient period of time;
- (4) by acts of long possession and enjoyment of land
- (5) by proof of possession of connected or adjacent land.

See the cases of ***IDUNDUN V. OKUMAGBA (1976) 1 NWLR PT. 200 P. 210, EDEBIRI V. DANIEL (SUPRA) and NWOKOROBIA V. NWOGU (2009) 10 NWLR (PT. 1150) P. 553.***

Successful proof by way of only one of the 5 methods would be sufficient to discharge the burden on the claimant for declaration of title. See the case of ***OLAGUNJU V. ADESOYE (2009) 9 NWLR (PT. 1146) P. 225.***

The Claimant in this case tendered documents in proof of his allegation of title to the Subject Matter.

In ***MADU V. MADU (2008) 6 NWLR (PT. 1083) P. 296*** the Supreme Court restated its position in ***LAWSON V. AJIBULU (1997) 6 NWLR (PT. 507) P. 14*** that in a claim for declaration of title to land, the production of documents of title alone is not sufficient to discharge the onus on the plaintiff to prove the title he claims.

It is trite position of law that the mere production of title documents in a case such as this does not **ipso facto** entitle a party to declaration of title. The Court has a duty to look at the title documents of parties in order to ascertain the validity and



effect of same before granting declaration of title. This Honourable Court is therefore entitled, in fact has a duty, to consider the validity and effect of the documents of title which the Claimant has tendered and relied on for his allegation of title in the Subject Matter. – See the case of **ROMAINE V. ROMAINE (1992) 4 NWLR (PT. 238) P. 600** where the Supreme Court per Nnaemeka-Agu, J.S.C. (delivering the lead judgment) held thus:-

*"I may pause here to observe that one of the recognised ways of proving title to land is by production of a valid instrument of grant: see **IDUNDUN V. OKUMAGBA (1976) 9-10 S.C.246; PIARO V. TENALO (1976) 12 S.C. 31, P37; NWADIKE V. IBEKWE (1987) 4 N.W.L.R. (PART 67) 718.** But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance upon such an instrument inevitably carries with it the need for the Court to inquire into some or all of a number of questions, including:-*

- (i) Whether the document is genuine and valid;*
- (ii) Whether it has been duly executed, stamped and registered;*
- (iii) Whether the grantor had the authority and capacity to make the grant;*
- (iv) Whether the grantor had in fact what he purported to grant; and*
- (v) Whether it has the effect claimed by the holder of the instrument."*

See also the cases of **AKINDURO V. ALAYA (2007) 15 NWLR (PT. 1057) P. 312** and **W.A.C. LTD. V. YANKARA (2008) 4 NWLR (PT. 1077) P. 323.**

Now, from the available evidence before this Court, it is not in dispute that the Bwari Area Council granted a customary right of occupancy over the Subject Matter to the Claimant vide Exhibit 1

dated 15<sup>th</sup> May,2001. It is not in dispute that the Claimant submitted his title documents to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for regularization which was acknowledged via Exhibit 4. It is not in dispute that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants issued Exhibit 7 dated 19<sup>th</sup> June,2019 to the Claimant approving the retention of his title over the Subject Matter and the regularization of said title. It is not in dispute that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants further wrote Exhibit 9 to the effect that out of five submissions for regularization of title to the Subject Matter, only the Claimant's was regularized with the approval of the 1<sup>st</sup> Defendant and as such the Claimant is the rightful holder in respect of the Subject Matter.

The question now is what is the effect of all these documents on the Claimant's claim of title to the Subject Matter?

I have looked at Exhibit 1. It is indeed a conveyance of a grant of Customary Right of Occupancy in the Subject Matter to the Claimant by the Bwari Area Council of the FCT. All the parties in this case are in agreement that the law (as it is) in the FCT does not recognize a grant of 'Customary Rights of Occupancy' in the FCT particularly by Area Councils as it is only the Honourable Minister of the FCT (the 1<sup>st</sup> Defendant) that has the power to grant interests in land in the FCT. They are quite right and I believe there is no need to over-flog this well settled position of the law. – see the provisions of **Section 49 of the Land Use Act, Sections 297 and 302 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** and **Sections 1 and 18 of the Federal Capital Territory Act**. See also the authorities of **ONA V. ATENDA (supra) MADU V. MADU (SUPRA)** and **ERIBENNE V. UG & ANOR (2007) LPELR-4172(CA)** which are to the effect that customary right of occupancy does not exist in the FCT as ownership of the land comprised in the Federal Capital Territory, Abuja is vested in the government of Nigeria and only the Minister of FCT (i.e. the 1<sup>st</sup> Defendant in this case) has the authority to grant interests or rights of occupancy in land comprised in the FCT.

The effect of this is that any interest granted by the Area Councils of the FCT in land located in the FCT is invalid or at best inchoate. The 1<sup>st</sup> Defendant is not bound by such a grant and can make his own grant in respect of such land.

The matter does not however end there. This case suffers some exceptional peculiarities. The undisputed fact before this Court is that the Claimant submitted his title documents granted by the Bwari Area Council in respect of the Subject Matter to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for regularization. Exhibit 4 is an acknowledgment of same.

It is a notorious fact, of which this Honourable Court can take judicial notice, that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants embarked on the exercise of regularization of land titles and documents of FCT Area Councils. The implication is that the 1<sup>st</sup> Defendant who has authority to grant interest in land comprised in the FCT could choose to treat interests granted by the Area Councils in such lands as merely inchoate and consequently validate same thus making a grant in respect of same. It is an absolute discretion of the 1<sup>st</sup> Defendant.

Thus, unless and until the 1<sup>st</sup> Defendant issues a document in confirmation of the vesting of a right of occupancy in respect of the Subject Matter upon the Claimant, the customary right of occupancy issued by the Bwari Area Council vide Exhibit 1 is insufficient to entitle the Claimant to the ownership of the Subject Matter.

Now the 1<sup>st</sup> and 2<sup>nd</sup> Defendants vide Exhibit 7 approved the retention of the Claimant's title over the Subject Matter and the regularization of same. By their Exhibit 9, they confirmed the regularization of the Claimant's title to the Subject Matter. His title to the Subject Matter having been regularized by none other than the 1<sup>st</sup> Defendant, the Claimant thus has a subsisting right of occupancy over the Subject Matter. It is a statutory right of occupancy because that is the nature of right of occupancy which the 1<sup>st</sup> Defendant can grant over land in the FCT. – see provisions

of the Land Use Act and the FCT Act. For purposes of clarity, exhibit 7 the letter of the Honourable Minister to the Claimant, at paragraph 1 states as follows:-

"I have been directed to refer to the above subject matter and inform you that the Minister of Federal Capital Territory has approved that you retain your title over Plot No. MF 22 within Kubwa Extension III (Federal Capital Development Authority FCDA Scheme) acknowledge for regularization vide file No. KD 43023 based on the extant policy of first in time."

Thus, by exhibit 7, the 1<sup>st</sup> Defendant i.e. the Minister of FCT has evoked his powers conferred on him by sections 1 and 18 of the FCT Act, sections 297 and 302 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and section 49 of the Land Use Act, to convey approval of plot MF 22 within Kubwa Extension III (Federal Capital Development Authority (FCDA) Scheme) to the Claimant. The instrument of conveyance as to the manner and form it should be is entirely at the discretion of the 1<sup>st</sup> Defendant, the Minister of the Federal Capital Territory. In the instant case, exhibit 7 is the document conveying approval of the subject matter of this suit to the Claimant by the 1<sup>st</sup> Defendant.

Thus, pursuant to all the foregoing, I hold the view that the Claimant has established his title to the land Subject Matter of this case by title documents and I so hold. He is entitled to the declaration of title sought vide the first relief i.e. relief (a) of the Amended Statement of Claim and it is accordingly granted as prayed.

Now interests in land cannot validly exist in different persons in the same piece of land at the same time. The Claimant has established his title to the Subject Matter in this case. No other title has been established before this Court to defeat the Claimant's title to the Subject Matter. Consequently, the law cannot recognize any other interest in the Subject Matter in any other person such as the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in this suit. It follows that any document issued to persons other than the Claimant purporting to be document of title or approvals in respect of legal title to the Subject Matter I hold the view that

they are unconstitutional, null and void and of no effect whatsoever and I so hold. The Claimant is thus entitled to the third, fifth and sixth reliefs i.e. reliefs (c), (e) and (f) of the Amended Statement of Claim and they are accordingly granted as prayed.

The Claimant alleges trespass against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants. He *inter alia* seeks injunctive reliefs and damages. It is now trite law that a claim for trespass and injunction is independent of the claim for declaration of title. Thus, the Claimant's case of trespass does not really depend on his claim for declaration of title. It is settled law that a plaintiff can succeed on a claim for damages for trespass and injunction even where his claim for a declaration of title fails because a claim for trespass primarily goes to possession. See the Supreme Court's decision in the cases of **OSAFILE V. ODI (1994) 2 NWLR (PT. 325 P. 125** and **SALAMI & ANOR V. LAWAL (2008) LPELR-2980)(SC)**. See also **IZUOGU V. IBE & ANOR (2018) LPELR-44347(CA)**. I therefore disagree with the 4<sup>th</sup> and 5<sup>th</sup> Defendants' submission that the Claimant's claim for trespass is based on his title documents and, as such, tied to his claim to declaration of title.

Trespass to land is an unjustified interference or intrusion with exclusive possession of another person over land /property. A person in possession of land or the owner can maintain an action in trespass against anyone who cannot show a better title. See the cases of **TUKURU V. SABI (2013) 10 NWLR (PT. 1363) P. 442** and **EGWA V. EGWA (2007) 1 NWLR (PT. 1014) P.71**. The law thus places the burden of proof on the Claimant to establish exclusive possession of the land in question or right to such possession in order to succeed in the suit. See the cases of **EKONG ARCHIBONG V. UTIN J. UTIN (2012) LPELR-7907(CA)**, **OFU OSADIM V. CHIEF E. E. TAWO (2009) LPELR-8209(CA)** and **ODUM V. UGANDEN (2009) 9 NWLR(P.T. 1146) P. 281**. The standard of proof required to establish the allegation of the tort of trespass is proof on the preponderance of evidence or the balance of probabilities. See the Supreme Court cases of **AMADI V. ORISAKWE (2005) 7**

**NWLR (PT. 924) P. 385 and EZEMBA V. IBENEME (2004) 14 NWLR (PT. 894) P. 617.**

In the instant case, it is not in dispute that the Claimant had originally dug the foundation upon which the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants (later in January, 2013) erected an illegal fence on the Subject Matter. It shows that the Claimant was in actual physical possession of the Subject Matter before the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants carried out their acts on same. It is not also in dispute that the Claimant complained of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' acts to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants pursuant to which the Development Control department of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants demolished the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' illegal fence. These are evidence of acts of possession in favour of the Claimant. The Claimant certainly has established that he has been in exclusive possession of the Subject Matter. His evidence, which is unchallenged, is that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants again trespassed on the Subject Matter and erected a fence and gate-house thereon. The circumstances clearly show that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, by their actions, trespassed on the Subject Matter in the exclusive possession of the Claimant. What the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants would need to plead and prove to avoid liability for trespass therefore would be ownership of the Subject Matter or better title to same. The Supreme Court has held that even a trespasser in possession can successfully maintain an action in trespass against all the world except the true owner. – see the case of **BELLO SALAMI & ANOR. V. ALHAJI ADETORO LAWAL (2008) 14 NWLR (PT.1108) P. 546.**

The 3<sup>rd</sup> Defendant did not file a statement of defence while the 4<sup>th</sup> and 5<sup>th</sup> Defendants abandoned theirs. There is no defence to the Claimant's claim of trespass which he has successfully established. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants have not established that they are the rightful owners of the Subject Matter so as to justify their acts of trespass. They have failed to discharge the onus of proof which shifted to them in the circumstances. Thus, therefore by the undisputed evidence before me, I hold the view that the Claimant has successfully established trespass on the

preponderance of evidence and I so hold. The claimant is therefore entitled to the second relief i.e. relief (b) of the Amended Statement of Claim and it is accordingly granted as prayed.

Hence therefore, it is trite position of the law that once there is a finding for trespass, an injunction must be granted so as to protect the possession in a party. See the Court of Appeal decision on **OYEDOKE V. THE REG. TRUSTEES OF C.A.C. (2001) 3 NWLR (PT. 701) P. 621**. The Claimant is therefore entitled to the order sought vide the fourth relief i.e. relief (d) of the Amended Statement of Claim. Consequently, it is hereby ordered that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants to henceforth stop further acts of trespass on the Subject Matter belonging to the Claimant.

By the seventh relief of the Amended Statement of Claim, the Claimant seeks N20 Million as damages against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants for trespassing on the Subject Matter. The law is that proven tort of trespass attracts general damages for which strict proof is not required. See the Court of Appeal's decision in the case of **OYENEYIN V. AKINKUGBE (2001) 1 NWLR (PT. 693) P. 40**. The Claimant is therefore entitled to some quantum of damages against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants for their acts of trespass as per. relief (g) of the Amended Statement of Claim. Accordingly, the sum of N7,000,000.00 is hereby awarded to the Claimant as general damages for trespass against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.

The Claimant however also seeks, vide the eight relief of the Amended Statement of Claim, a further sum of N10 Million as damages against the same 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants for alteration of the Subject Matter without the Claimant's consent. It would appear from this relief that the Claimant has sought compensation under two heads of claim for the same acts of trespass against the same Defendants. Having granted the Claimant compensation for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' act of trespass under relief (g), it would amount to double compensation to award the Claimant a further sum as damages

under the eight relief i.e. relief (h) for the same acts of trespass. The rule against double compensation prevents a party from claiming under two heads using different names and a Court is duty bound to scrutinise the claims so as to avoid double compensation. See the case of **Z. P. IND. LTD. V. SAMOTECH LTD. (2007) 16 NWLR (PT. 1060) P. 315**. The eight relief i.e. relief (h) of the Amended Statement of Claim must be refused and it is hereby refused and dismissed accordingly.

The law is settled that cost follows the event. The Claimant who is the successful party in this action is therefore entitled to cost to be awarded at the discretion of this Court. See the case of **OKAFOR V. LEMNA CONSTRUCTION CO. LTD & ANOR (2018) LPELR-46001(CA)**. The Claimant has sought for cost of N3 Million specifically against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants. As I said cost follows events and the claimant is entitled to an amount against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants as cost in the circumstances. Accordingly, the sum of N500,000.00 is hereby awarded to the claimant as cost against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.

Pursuant to all the forgoing, the issue for determination is hereby resolved partly in favour of the Claimant and against the Defendants (particularly the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants) in this case.

### **Whether the 4<sup>th</sup> and 5<sup>th</sup> Defendants are entitled to their counter-claim.**

It is trite law, that for all intents and purposes, a counter-claim is a separate, independent and distinct action and the counter-claimant, like all other plaintiffs in an action, must prove his claim against the person counter-claimed against before obtaining judgment on the counter-claim. See the case of **JERIC (NIG.) LTD V. U.B.N. PLC (2000) 15 NWLR (PT. 691) P. 447**. It was held in the case of **OSUMILI & ANOR V. CNPC/BGP INTERNATIONAL (2019) LPELR-46950(CA)** that counter-claimant MUST lead evidence in proof of his counter-claim.



The onus thus falls on the 4<sup>th</sup> and 5<sup>th</sup> Defendants in the instant case to prove their entitlement to the reliefs they claim in their Counter-claim by cogent and satisfactory evidence. The 4<sup>th</sup> and 5<sup>th</sup> Defendants however failed to adduce any form of evidence in support of their counter-claim. This is detrimental to their counter-claim. – see the case of **BAYO & ANOR V. SULYMAN & ORS (2019) LPELR-47380(CA)**.

In **A.-G., BAYELSA STATE V. A.-G., RIVER STATE (2006) 18 NWLR (PT. 1012) P. 596** the Supreme Court held that in civil cases, it is incumbent on a party who is claiming a relief against his opponent to prove what he asserts, for unless he provides good and credible evidence to discharge the burden of proof placed on him by the law, his case is bound to fail.

In the circumstances, the 4<sup>th</sup> and 5<sup>th</sup> Defendants' counter-claim fails. The second issue is thus resolved in favour of the Claimant and against the 4<sup>th</sup> and 5<sup>th</sup> Defendants.

In conclusion, the Claimant's claim succeeds in part. Reliefs (a), (b), (c), (d), (e), (f), (h) and (i) are hereby granted while relief (g) is refused and accordingly dismissed.

Further, the 4<sup>th</sup> and 5<sup>th</sup> Defendants counter claim fails and it is accordingly dismissed as well.

In conclusion, I say, that is the judgment of this Honourable Court.

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**HON. JUSTICE D. Z. SENCHI**  
**(PRESIDING JUDGE)**  
**16/12/2020**

Parties:- Claimant present in Court  
1<sup>st</sup> and 2<sup>nd</sup> Defendants Absent  
4<sup>th</sup> and 5<sup>th</sup> Defendants represented by Romanus Eze, (Director)

KaunaPenzin: - With me areKigaiZontung, Daniel Iduh and Elizabeth Atta for the Claimant.

A.B.Z Dada: - For the 1<sup>st</sup> and 2<sup>nd</sup>Defendants.

U.U Umeanoun: - For the 4<sup>th</sup> and 5<sup>th</sup>Defendants with me are Joy Desmond and Rex Ugoegbu.

**Sign**  
**Judge**  
**16/12/2020**