

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONE 2 ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE DAY OF 5TH NOVEMBER, 2020.
SUIT NO: FCT/HC/CV/3893/13

BETWEEN:

MRS. FAVOUR ITYOHUMA ----- PLAINTIFF

AND

1. MUSTADRAK CONTRACTS LIMITED

2. ABDULHAKEEM BELLO

3. PASTOR FERDINAND EZEH



----- DEFENDANTS

SAMUEL AMEH for the Plaintiff.

O. O. OLOWOLAFE for the 1st and 2nd defendants.

A. N. C. IKORO appears with S. O. ABUGU for the 3rd Defendant.

JUDGEMENT

The 1st Defendant is a company that carries on business as a developer of properties in Federal Capital Territory Abuja while the 2nd Defendant is the Chief Executive. The Plaintiff in her amended Statement of Claim filed on 6/1/2016, claimed that she was introduced to the 2nd Defendant sometimes in January, 2008 by one **Alh. Kabiru of Saraha Homes** to purchase two plots of land at Peace Court Estate, Lokogoma Abuja. She paid the sum of **₦1,000,000.00 (One Million Naira)** for a space for duplex and another **₦500,000.00 (Five Hundred Thousand Naira)** for a space for a bungalow. She further proceeded to pay the sum of **₦360,000.00 (Three Hundred and Sixty Thousand Naira)** for digging/excavation representing **₦180,000.00 (One Hundred and Eighty Thousand Naira)** each for the two plots. Another sum of **₦515,000.00 (Five Hundred and**

Fifteen Thousand) was expended for hard core, cement and iron rods for the duplex plot which plot is swampy/water logged.

She further proceeded to develop the three bedroom bungalow while sand filling the water logged duplex plot. She also paid additional sum of **₦2,000,000.00 (Two Million Naira)** to the 1st defendant for the duplex thus completing the final payment. She was thereafter hospitalized for three (3) months which prevented her from visiting the site as usual. Upon her discharge from the hospital, she went to the plot and discovered to her surprise that an unknown person had converted items like cements, hard cores and iron rods meant for the duplex left on the plot to commence foundation at a rapid pace. She promptly notified the 2nd Defendant of the development only to receive a shocker of her life when she was told by the site engineer of the 1st defendant that a wrong plot for duplex was allocated to her. Her plea to the 2nd defendant to resile his action and cause reinstatement fell on deaf ears hence the plaintiff through her counsel caused a demand notice to be issued to the 1st defendant. The 1st Defendant wrote to the plaintiff wherein they stated that from their record she paid for the duplex land in error. And that while the drama was unfolding, the 1st Defendant wrote an agreement, gave to the Plaintiff for her signature incorporating all manner of clauses geared towards exonerating the Defendants from any liability. The Plaintiff consequently filed the instant action whereof she claims jointly and severally against the Defendants as follows:

- a. A declaration that the Plaintiff indeed paid the 1st and 2nd Defendants the sum of **₦3,000,000 (Three Million Naira)** for duplex building.
- b. A declaration that the purported allocation of her Plot to the 3rd Defendant is null and void.
- c. An Order of specific performance, namely restoring the Plaintiff's land.
- d. **₦20,000,000 (Twenty Million Naira)** damages against the 3rd Defendant for trespass.
- e. An order directing the Defendants to pay **₦1,000,000 (One Million Naira)** as cost of litigation.

In proof of her claim the Plaintiff adopted her three (3) witness statements on oath dated 4th July, 2012, 12th November, 2015 and 6th January, 2016 respectively. The following documentary evidences were adduced by the Plaintiff in support of her case:

1. Receipt of **₦1,000,000 (One Million Naira)** in respect of allocation of Peace Court, Exhibit A1.
2. A receipt dated 29-08-2011 also in respect of the allocation for the sum of **₦500,000 (Five Hundred Thousand Naira)** and **₦2,000,000 (Two Million Naira)**, Exhibit A2.
3. Letter of Demand dated 4/6/2012 from the Plaintiff's Counsel, Exhibit A3.
4. Letter of Allocation of 3 Bedroom bungalow, Exhibit A4.

5. Agreement between the 1st Defendant and the Plaintiff dated 3rd December, 2007, Exhibit A5.

Under cross-examination by Learned Counsel for the 1st Defendant, the witness confirmed Exhibits A1, A2, and A3 as the only receipts for payments made towards the acquisition of the property to the 1st Defendant. That the payments were made upon an offer made by the Defendants to her. And the offer was made in writing. She confirmed that Exhibit A4 is in respect of a 3 bedroom bungalow, that there is no document relating to the duplex she paid for. She was however making payment for both the duplex and the bungalow. She stated that there was no initial agreement but the receipt is there. When asked if there is nowhere in the receipts where these documents were mentioned, she answered that it was what they wrote there. When further asked if the documents show the description or identification of any property for which A1, A2 and A3 relates in the Exhibit A4, she said; *'This is what they gave me.'*

Also under cross-examination by the Counsel to the 3rd Defendant, the Plaintiff testified that there was no written letter from the 1st and 2nd Defendants that there was a mistake in showing her the property because when the digging started, the 1st and 2nd Defendants were there. She is not aware that the 3rd Defendant had a document showing that he paid for the res in question. She is aware that Exhibit A5 is between her and the 1st and 2nd Defendants. The witness read out the 2nd schedule in Exhibit A5 and was asked if she was satisfied that the transaction between her and the 1st and 2nd Defendant was in respect of Block F only

and not Block G. she said it was Block G and F that were agreed upon right from the beginning. That she entered into the agreement on her own. That it was when she came out from the hospital that she was informed by a boy that someone have started building on the land and she ran to the developer. That when they gave her Exhibit A5, she read the document. When asked that when she saw Block F whether she suspected a foul play, she stated that she asked the 2nd Defendant for the Duplex, but said they would give her and later said it was a mistake. That she cannot remember that the management wrote to her stating that all money paid by her would be consolidated to cover the bungalow. That the cost of the bungalow was **₦2,500,000 (Two Million, Five Hundred Thousand Naira)** as at that time and **₦3,000,000 (Three Million Naira)** for the Duplex, and she paid **₦3,500,000 (Three Million Five Hundred Thousand Naira)**. When asked why she did not ask the management in respect of the duplex since the money covered that of the Duplex, she said; *'He refused even when I went to give him the balance for the bungalow.'* When further asked that from the letter dated 10th April, 2012 written to her, to consolidate the payment in respect of the Bungalow why did she not take the bungalow. She responded that the agreement was for both bungalow and the duplex. Testifying further the witness confirmed lodging a complaint at Apo Police Station sometime in 2013. But she knew nothing about what happened between the 3rd Defendant and the police, that it is the 2nd Defendant that she needs her land from. The PW1 was not re-examined.

The witness for the Plaintiff, **Kato Abaya** adopted his witness statement on oath on the 15th March, 2018 as his Evidence in Chief. Under cross-examination by Counsel for the 3rd Defendant, he claimed that he knew the Plaintiff for about ten (10) years. He was engaged by the 3rd Defendant as a bricklayer in the course of building her house. He laid the foundation, and poured hardcore because the place was swampy. He was trying to help her put up a duplex. The duplex was at the foundation stage. He confirmed that 'they have finished the house' and can identify it. That where she helped her pour hardcore is still Block F. He helped her build Block G before Block F. *'The Block F is bungalow.'* He said. That the Plaintiff has not moved into the house. The Plaintiff closed her case with the evidence of the PW2 and applied that the 1st and 2nd Defendants be foreclosed from cross-examining the PW2.

It is on record that the Counsel for the 1st and 2nd Defendants wrote a letter to the Court, seeking for an adjournment; however the Court did not find the reasons adduced for the adjournment satisfactory, hence the application was turned down and matter was adjourned for defence.

The 1st and 2nd Defendants filed a joint Statement of Defence/Counter-Claim dated 10th May, 2016. The 1st and 2nd Defendants claimed that one **Adesanya Olugbenga David** was duly allocated Block G, Plot G26, 3rd Avenue in December, 2007. That the Plaintiff paid the non-refundable sum of **₦5,000 (Five Thousand Naira)** and applied to be allocated a 3 bedroom detached bungalow at Peace Court Estate. That in line with the application, a 3 bedroom bungalow known as Block F, Plot 6, 2nd Avenue was duly allocated to him. The Defendants further averred that on the

18th day of January 2008 and 23rd day of January 2008, the Plaintiff paid the sum of ~~₦1,000,000~~ **₦1,000,000 (One Million Naira)** and ~~₦500,000~~ **₦500,000 (Five Hundred Thousand Naira)** and ~~₦2,000,000~~ **₦2,000,000 (Two Million Naira)** to the 1st Defendants. And in the process of reconciliation of records between the Administration Department and the Account Department, it was discovered that the Plaintiff was also making payment for a plot for duplex without an offer letter and this necessitated the 1st Defendant's letter of April 2012. After the reconciliation and pursuant to a meeting between the management of the 1st Defendant and the members of Peace Court Estate House Owners Association Exco, it was resolved that a final agreement be forwarded to all the allottees hence the letter dated 13th February 2012, addressed to the Plaintiff with a contract agreement over the three bedroom bungalow.

The 1st and 2nd Defendants further averred in the counter-claim that despite the consolidation of all payments made by the plaintiff, the plaintiff is still indebted to the tune of **₦1,225,000 (One Million Two Hundred and Twenty Five Thousand Naira)** in respect of 3 bedroom bungalow known as Block F, Flat 6, 2nd Avenue Peace Court Estate. That despite several demand and appeal the plaintiff have refused to clear the indebtedness.

The 1st and 2nd Defendants thereby counter-claim as follows:

- i. A declaration that the plaintiff of action purportedly making payment for a plot for duplex without an allocation letter was irregular, null and void.

- ii. A Declaration that the consolidation of all payments made by the Plaintiff by the 1st Defendant was proper and justified.
- iii. An Order directing the Plaintiff to pay to the 1st Defendant the sum of **₦1,225,000.00 (One Million Two Hundred and Twenty-Five Thousand Naira)** to the 1st Defendant.
- iv. An Order mandating the Plaintiff to execute the contract agreement between her and the 1st Defendant in respect of the 3-Bedroom Bungalow known as Block F, Plot 6, 2 2nd Avenue, Peace Court Estate.
- v. The sum of **₦2,000,000.00 (Two Million Naira)** being general and exemplary damages.
- vi. Cost of action.

The witness to the 1st and 2nd Defendants **Ahmed Badmus** (DW1) adopted his witness statement on oath in support of joint defence and the counter claim. Exhibits DW1-DW7 were admitted by the court through the witness.

The 3rd Defendant on his part testified as DW2 in support of his amended statement of defence in his adopted witness statement on oath that he lives in Block G26, 3rd Avenue Peace Court Estate, and bought the piece of land from the original allottee **Adesanya Olugbenga David**, he paid for exaction fee and the contrary to the assertion of the plaintiff of the plot was neither swampy nor water logged before or after he bought it. He claimed that when he set out to build his house on the plot, there was no condition or controversy as to which property he paid for. The DW3

further stated in his statement on oath that he paid the sum of **₦10,000,000 (Ten Million Naira)** to the original allottee who caused a conveyance documents to be prepared between them.

The Deed of Assignment and the Irrevocable Power of Attorney were created sometime in 2011. That a new agreement was also prepared between him and the 1st Defendant, the agreement was back dated 3rd December 2007, thus putting him in the original position of the seller. The 1st Defendant thereafter executed a provisional letter of offer in his favour. And that the 1st Defendant unknowingly agreed to wake available his financial station with them thus showing that the payment he made dated back to 3/12/2007 which was the date when the original allottee begin to pay his own money. He contended that the plaintiff has not sufficiently described and identified the plot of land she purportedly paid for. The 3rd defendant therefore claims against the plaintiff as follows

- (1) An order of the Court declaring the 3rd defendant as the owner of Block G26, 3rd Avenue Peace court Lokogoma Abuja.
- (2) An order of perpetual injunction restraining the plaintiff, her agents, privies, successors-in-title and assigns from interfering with and disturbing the 3rd Defendant's peaceful and quiet occupation and enjoyment of Block G26, 3rd Avenue, Peace Court, Lokogoma, Abuja.
- (3) The sum of **₦20,000,000 (Twenty Million Naira)** only representing general damages for trespass and unwanted interruption.

(4) The sum of ~~₦~~**2,000,000 (Two Million Naira)** only representing the cost of this litigation.

The plaintiff filed defence to the 1st and 2nd Defendants defence and counter-claim. The evidence in support is encapsulated in the Plaintiff's second and third witness statements on oath as adopted by him. The 3rd Defendant (DW3) adduced documentary evidence in support of his evidence. The documents were marked as Exhibits F1-F19 respectively. At the close of cross-examination of DW2 by counsel to the Plaintiff, the defence closed its case and parties were ordered to file and exchange their final written addresses. The plaintiff's final written address and reply were dated 22nd January 2020 and 4th February 2020 respectively, while the 1st and 2nd defendants' joint written address was dated 29th January 2020. The counsel for the parties adopted their final written addresses on 12th day of February 2020 and the case was adjourned to 6th April 2020 for judgment. However due to the intervening lock-down as a result of the corona virus pandemic all activities at the courts were suspended. I have gone through all the issues formulated by the parties in their respective written addresses, these issues can be succinctly encapsulated in a sole issue to wit " whether the plaintiff has proved its case based on preponderance of evidence and balance of probabilities"

Upon a calm consideration of the testimonies of the witnesses for parties and the written submission of Learned Counsel for the respective parties, it is not in doubt that the case of the plaintiff in a summary is the allegation that she paid for two plots of land at the 1st and 2nd Defendants' Estate, precisely Peace Court Estate, Lokogoma, Abuja and

was denied allocation of one of the plots. The said plot she alleged was allocated to the 3rd Defendant. She relied on her receipts for payment admitted as Exhibits. From the defence of the 1st and 2nd Defendants, it is very clear that both defendants admitted that the Plaintiff made payments for two plots, one duplex although according to them the payment was made without their consent whatever that means, and one bungalow. Their defence was that there was no offer letter issued to the Plaintiff in respect of the duplex.

The 1st and 2nd Defendants further stated that the payments made by the plaintiff were consolidated for the 3 bedroom bungalow. This to me is also an admission by the 1st and 2nd Defendants that the Plaintiff paid for both bungalow and duplex and payments consolidated for a bungalow. The 1st and 2nd Defendants clearly relied on Exhibit DW1, the letter of offer which was issued to the Plaintiff and claimed that the letter is the root title or foundational document between the Plaintiff and the 1st and 2nd Defendants. To me this argument is not in tandem with the law and facts presented before the court. The receipt issued to the Plaintiff is the foundational document evidencing the transaction between the parties.

A memorandum of purchase of land evidenced by a receipt confers title on the purchaser notwithstanding that there was no formal agreement. Furthermore it is worthy of note that none of the three (3) purchase receipts issued to the plaintiff by the 1st and 2nd Defendants (Exhibit A1, A3 and A3) had on its face the description or location of the land purchased by the plaintiff. Therefore the 1st and 2nd Defendants cannot hide under the provision of Section 4 of the Statute of Fraud to state that

the land transaction between them and the plaintiff was not reduced into writing. Equity and law will not allow them to perpetrate fraud or injustice on the plaintiff under the guise that the transaction was not reduced into writing. It is the duty of the court to protect unsuspecting purchasers of land from greedy and unconscionable developers.

On the purport of purchase receipt in land transaction, the Court of Appeal held in the case of **ALH. IBRAHIM T. AMINU V MRS. ELIZABETH O. OGUNYEBI & ANOR (2004) 10 NWLR PCA 882 457 @ 479** that a receipt for purchase evidenced that there was an agreement for sale in that the consideration for such sale was paid by the purchaser. On the effect of payment for land **Ogebe JCA** also held:

“It is law that where a purchaser of land has paid the purchase price to the vendor, the position is that he has acquired an equitable interest on that land.”

One of the issues formulated for determination by the 1st and 2nd Defendants is whether the Claimant has shown by any shred of admissible evidence that she is entitled to Block G26, 3rd Avenue, Peace Court Estate. I will answer this in the affirmative and also support my view with the uncontradicted evidence of the Plaintiff when she stated in her adopted witness statement on oath that; ***“That sometimes in January 2008, the 2nd Defendant took me to the Plot designated as Block G26, 3^{rs} Avenue Peace Court Estate, Lokogoma District, Abuja and showed it to me and accepted the sum of ₦3,000,000 (Three Million Naira) only from me later as part payment for the plot and helped me to dig the***

foundation before the building of the same with concrete.” This piece of evidence was not contradicted by the 1st and 2nd Defendants and the 3rd Defendant’s Counsel while cross-examining the Plaintiff. This also aptly answered the poser of Learned Counsel to the 3rd Defendant in his written address where he argued that the Plaintiff was not able to give the identity of the land (Block G26) he claimed he purchased from the 1st and 2nd Defendants. To also show that there was no good faith on the part of the 1st and 2nd Defendants, Exhibit A1 showed that the Plaintiff made an initial payment of **₦1,000,000 (One Million Naira)** in respect of allocation, leaving a balance of **₦2,000,000 (Two Million Naira)**. This money was paid on the **18th January, 2008** while the receipt was issued on **29/08/2011**. By a letter dated **April 10, 2012**, the 1st Defendant informed the Plaintiff of the following facts:

“Dear Madam,

RE-ALLOCATION OF 3 BEDROOM BUNGALOW BLOCK F, PLOT 6, 2ND AVENUE AT PEACE COURT ESTATE PLOT 50 CADASTRAL ZONE C09, LOKOGOMA DISTRICT, ABUJA.

You will recall that the above mentioned Plot was allocated to you at an offer Price of Two Million Five Hundred Thousand Naira only (₦2,500,000) in 2007, out of which only Five Hundred Thousand Naira was paid in respect of the Plot. However our records shows that you have been making payments on a duplex to the tune of Three Million Naira (₦3,000,000) without an offer letter.

We therefore wish to inform you that your payments are being consolidated as payment for the bungalow which you have since been allocated. Please visit our accounts department for reconciliation of payment made to receive details of your outstanding in respect of this bungalow.

Thank you.”

The 1st and 2nd Defendants did not give any reason why the Plaintiff was not issued with an offer letter despite their admission that she was making payment on a duplex. Furthermore having consolidated the payments made by the Plaintiff for the bungalow which was **₦2,500,000 (Two Million Five Hundred Thousand Naira)** the 1st and 2nd Defendants also failed to explain what the extra **₦1,000,000 (One Million Naira)** paid by the Plaintiff was meant for. These receipts were document of the 1st and 2nd Defendants and they cannot be allowed to resile from the contents thereof. In the absence of any satisfactory explanation as to what the sum of **₦1,000,000 (One Million Naira)** in Exhibit A1 was meant for by the 1st and 2nd Defendants, it is deemed that Exhibits A1 and A3 were payments for Block G26, a duplex in Peace Court Estate.

I equally discovered while going through the content of Exhibit A5, the agreement between the 1st and 2nd Defendants and the Plaintiff that this document was skewed by the 1st and 2nd Defendants to give the semblance that it was only Block F, Plot 6, 3rd Avenue Peace Court that was allocated to the Plaintiff as contained in the second schedule of the agreement. Unfortunately for the 1st and 2nd Defendants, they were

clever by half. The receipt clause in Paragraph 3 clearly revealed the imprudence of the 1st and 2nd Defendants when it states that; *“in consideration of the sum of ~~N~~**2,500,000 (Two Million Five Hundred Thousand Naira)** the receipt of which the seller hereby acknowledges and in observance of the covenant on the part of the purchaser, the seller shall assign the property to the purchaser.”* When this clause is juxtaposed with the receipts (Exhibit A1, A2 and A3) issued to the Plaintiff, one will discover that the sale agreement preceded the issuance of the receipt. The 1st and 2nd Defendants acknowledged the receipt of the money that was not paid to them in the agreement. This is incredible. The agreement was backdated to **3rd December, 2007** same date with Exhibit A7 (offer letter) while payments were made on the **18th and 23rd January, 2008**, and the last payment was confirmed on **1/9/2011**.

The inconsistencies observed on the said Exhibit A5 and the receipt confirmed and strengthen the case of the Plaintiff in her evidence in chief where she said; *“That while this drama was unfolding, the 1st Defendant caused an agreement to be drafted and given to me for my signature incorporating all manner of clauses geared towards exonerating the defendants from any liability.”* The said Exhibit A5 speaks against the 1st and 2nd Defendants, it lacks probative value and it is hereby expunged from the record of the Court.

On whether the plaintiff has sufficiently established by credible evidence that the 1st and 2nd Defendants fraudulently dealt with her in allocating a 3 bedroom bungalow Block F and not duplex Block G26. From the manipulation, and the alteration with the inconsistencies in the

documents tendered by the Plaintiff, there is nothing more to prove that there was deceit and lack of good faith on the part of the 1st and 2nd Defendants and I so hold.

Furthermore as to whether the 1st and 2nd Defendants/Counter-Claimants have made out a case to be entitled to the grant of their Counter-Claim; as rightly argued by the counsel for the 1st and 2nd Defendants/Counter-Claimants, a counter-claim is an independent action with a life of its own. Its success does not depend on the success of the Plaintiff's claim. Therefore a Counter-Claimant who is a Plaintiff in the counter-claim, also has the duty to prove its case on preponderance of evidence and balance of probabilities. The Counter-Claimant in paragraph 5 of their counter-claim averred; *'that after records were reconciled all payments made by the plaintiff were consolidated as payment for the bungalow and the plaintiff's statement of account showing all payments made to the 1st and 2nd defendants/Counter-Claimants were made available to her.'* In Paragraph 6 they averred; *'that despite the consolidation of all payment made by the plaintiff, the plaintiff is still indebted to the tune of **₦1,225,000 (One Million Two Hundred and twenty Thousand Naira)** only in respect of the 3 bedroom bungalow known as Block F, Plot 6, 2nd Avenue, peace court Estate.'*

What is the proof, the 1st and 2nd Counter-Claimants tendered a statement of account dated 18th October 2012 through their witness. Under cross-examination, when the witness was asked how much the Plaintiff was supposed to pay for the bungalow, he said it should be **₦3,000,000 (Three Million Naira)** for that plot. He was further queried;

*'But she paid you a total of **₦3,500,000 (Three Million Five Hundred Thousand Naira)** when you knew she was supposed to pay **₦2,500,000 (Two Million Five Hundred Thousand Naira)**? He answered; 'To the best of my knowledge on the account there are other charges, the administrative charge, which is **₦350,000 (Three Hundred and Fifty Thousand Naira)** and legal fee 5% of the cost of the Plot and infrastructural fee which is **₦1,500,000 (One Million Five Hundred Thousand Naira)** and that is what account for excess.'* When asked whether the **₦1,000,000 (One Million naira)** that was overpaid by the plaintiff has been returned, he said; *'Not to the best of his knowledge.'* He was further asked; *'In your counter-claim, you are making an unfounded claim of **₦1,225,000 (One Million Two Hundred and Twenty Five Thousand Naira)** against the plaintiff, if the plaintiff overpaid you by **₦1,000,000 (One Million Naira)** and you claimed that the plaintiff is owing you **₦1,225,000 (One Million Two Hundred and Twenty Five Thousand Naira)** How much should you be claiming from her?'* He answered; *'I believe that, that is what she should pay if we check the credit and debit.'* He was asked to show how he arrived at **₦1,225,000 (One Million Two Hundred and Twenty Five Thousand Naira)** He said; *'Paragraph 21 of my Witness Statement on oath and to further buttress it is Exhibit Dw6.'*

The 1st and 2nd Defendants through their witness DW1 led feeble evidence in support of their counter-claim. One thing is certain, that from the so-called consolidation of account which the 1st and 2nd Defendants claimed they did, the 1st and 2nd Defendants are still holding on to the

sum of ~~₦~~**1,000,000 (One Million Naira)** from the plaintiff which they have failed to explain what it was meant for.

I agree with the submission of Learner Counsel to the Plaintiff that the 1st and 2nd Defendants failed to show satisfactorily how they arrived at the sum of ~~₦~~**1,225,000 (One Million Two Hundred and Twenty Five Thousand Naira)** claimed as being owed by the Plaintiff. There is nothing in their averment or pleadings to explain these claim, and the position of their witness did not support their claim. I found the counter-claim to be unproven and it is hereby dismissed.

With respect to the 3rd defendant, Learned Counsel in his written submission hinged his argument on three grounds; (1) that the plaintiff is not able identify precisely the land allocated to her. He argued that where the issue of identity of land is not ascertained by a party, there can be no order for declaration of title. He further argued that the plaintiff was not in possession of the property.

On the issue of identity of the land, I have already dealt with it in the earlier part of this judgment. Let me also reiterate that the Plaintiff in her Evidence in Chief which was not controverted by the Defendants claimed that having been shown the plot by the 1st and 2nd Defendants she commenced development of the said plot. She further reported the 3rd Defendant to the police for trespassing in the plot. The 3rd Defendant also admitted been invited by the police, and is also counter-claiming for being invited by Lugbe Police at the request of the Plaintiff. The Plaintiff in paragraphs 5, 10, 15, 21 and 24 of her 3rd statement on oath dated

22/11/2016 further identified plot G26 as the plot on which the 3rd Defendant trespassed. That the Plaintiff commenced development on the plot is an act of actual possession and I so hold.

The learned counsel to the Plaintiff drew the attention of the court to the Exhibits tendered by the 3rd Defendant in respect of the disputed Plot G26 which he alleged was allocated to one **Adesanya Olugbenga David**, the original allottee whom he bought from. I agree with the Learned Counsel for the Plaintiff that these documents were tampered with, they also contradict each other and therefore unreliable and lack probative value. Exhibit FE1, had on the face of it description of the plot as Plot G26, the 6 was altered from 7 to 6, obviously the Plot No. was 27 and not 26. Exhibit FE9 read; *'the sum of Three Hundred Thousand Naira only received from **David O. Adesanya** being payment for further deposit on House G10.'* Exhibit FE2 was also altered from G27 to G26 and christened *'Transfer Fee for Plot G26'* received from **Ezeh Chukwuemeka Ferdinand** the 3rd Defendant. Exhibit FE6, further deposit at Peace Court Estate G27; *'received from Adesanya Olugbenga David.'* Furthermore on Exhibit FG14, the Irrevocable Power of Attorney donated by Adesanya Olugbenga David to the 3rd Defendant showed that what was transferred to the 3rd Defendant as shown in the schedule is Plot G27. This document contradicts Exhibit FE12 the Contract of Sale wherein what was transferred to the 3rd Defendant is described as; *'Block G Plot G26, 3rd Avenue Peace Court Estate, Lokogoma, Abuja.'* Whereas in Exhibit F13, the Deed of Assignment between Adesanya Olugbenga David and Eze Ferdinand Emeke (3rd Defendant), in the schedule thereof, the property

transferred was; *'Block G26, 3rd Avenue Peace Court Estate Lokogoma, Abuja.'* And to cap it, the agreement between the 1st and 2nd Defendants showed that the 2nd Defendant sold the Plot G26 to the 3rd Defendant and not Adesanya Olugbenga David. This Agreement according to the 3rd Defendant in his evidence was backdated to 3rd December 2007.

Who actually sold the Plot to the 3rd Defendant? Is it the 1st and 2nd Defendants or the said Olugbenga David as claimed? As rightly argued by the Plaintiff's counsel, how could the 3rd Defendant enter into an agreement with the 1st and 2nd Defendants in 2007 before buying from the said Olugbenga David in 2011? I agree with the observation of Learned Counsel to the Plaintiff that those documents were mere subterfuge and meant to deceive the Court. The Claim of the 3rd Defendant to the said Plot G26 is based on falsehood and therefore cannot stand.

On whether the 3rd Defendant can be declared a trespasser, I do not have any stress in declaring the 3rd Defendant a trespasser. I endorse the argument of the Plaintiff's Counsel that if the 3rd Defendant bought the Land in 2011 and was living on it in 2010, he was clearly a trespasser. I agree with him that from the receipt tendered by the Plaintiff, the first payment of **₦1,000,000.00 (One Million Naira)** for the Plot was made on the 18th of January, 2008. And from that time this Plot was no longer available to be sold to any other person. The Plaintiff was in possession of the Plot, the 1st Defendant having received the sum of **₦180,000 (One Hundred and Eighty Thousand Naira)** for digging foundation on the Plot. In a claim for trespass, the Plaintiff must prove that he is in exclusive

possession of the land or has the right to possession. Once the Plaintiff can establish possession to the land his action for trespass succeeds. The Defendant can only succeed if he can show a better title. See the case of **AMAKOR V OBIEFUNA (1974) LPELR 452 SC, AKOLEDUUNO & ANOR V OJUBUTU & OR (2012) LPELR 8579 CA, UZOIJER V UZOCHUKWU (2018) LPELR 44262 CA**, I found the ratio of **Oredola JCA** as he then was very apt on what trespass is and what needs to be proved to succeed in a claim for trespass. The Court stated;

*“Generally trespass means unlawful interference or disturbance by a person to another’s landed property without his permission. That is the unlawful interference (notwithstanding how slight) to a party’s possession by another who cannot show a better title to land. See **FAGUNWA V ADEBI (2004) 17 NWLR (PT. 903) 544, OLAGBEMIRO V AJAGUNGBDE (1990) NWLR PT 136, 76 and OGUNLEYE V ONI (1990) 2 NWLR (PT. 135) 745. Trespass has been defined by Oxford Advanced Dictionary 7th Edition, International Students Edition Page 1578 to mean ‘To enter land or building that you not have permission or right to enter.’ Thus to establish a claim in an action for trespass the plaintiff is required to prove the following with credible evidence:***

- (1) *That he is in possession.*
- (2) *That his possession was interfered with or disturbed by the defendant.*
- (3) *That the interference or disturbance was without his permission and*

(4) *That he has a better title to the land than that of the Defendant.*

The 3rd Defendant by his claim of ownership to the property has put his title to Plot G26 in issue. It is trite that one of the ways of proving ownership to landed property is by production of documents. The documents put forward by the 3rd defendant as earlier observed are untenable having been doctored and manipulated, they cannot be relied on in proving the title of the 3rd Defendant to the Plot in question. The document cannot confer ownership of the property on the 3rd Defendant. At best the 3rd defendant with his defective and altered documents and having been put in possession has acquired an equitable interest in the land. In the same vein, the Plaintiff have also paid for the same Plot G26 and issued with a receipt and also put in possession by the 1st and 2nd Defendants, has equally acquired equitable interest on the land. However based on the doctrine of priority the Plaintiff's interest supersedes that of the 3rd Defendant being the first in time. It is trite that where equities are equal, the first in time prevails.

It is however pertinent to state that the 1st and 2nd Defendants were wrong to have sold the same Plot to the 3rd Defendant. It was also fraudulent of them to have used altered document to sell the Plot to the 3rd Defendant. The Plot belongs to the Plaintiff and not the 1st and 2nd Defendants again. The law is trite that no one can validly give what he does not have. This is expressed in the Latin maxim of *Nemo dat quod*

non habet. See the case of **ELEMA V AKENZUA (2000) 6 SC (PT. 11126)** @37 where the Court held;

“Thus the doctrine nemo dat quod non habet is to the effect that a person cannot give what he does not have. Therefore a vendor cannot subsequently sell land which he already sold to another person.”

I agree with the Plaintiff’s Counsel that the 3rd Defendant is a trespasser at Block G26, 3rd Avenue, Peace Court Estate, Lokogoma, Abuja. The 3rd Defendant’s Counter-Claim fails and it is hereby dismissed.

The Learned Counsel to the 3rd Defendant argued in his reply on point of law to the Plaintiff’s final address that assuming without conceding that the 3rd Defendant bought the same Plot G26 from the original allottee, the 3rd Defendant can only be treated as bonafide purchaser for value without notice. The issue of whether the 3rd Defendant is a bonafide purchaser without notice will only arise if the 3rd Defendant had acquired a legal interest in the property without notice of the equitable interest created by the 1st and 2nd Defendants with respect to the plaintiff’s property. The defence of the 3rd Defendant being a bonafide purchaser without notice of the prior equitable interest cannot avail him.

Furthermore, I find it difficult to believe the 3rd Defendant that he was not aware of any encumbrances in the land. Does it mean that he did not observe all the contradictions in the number of the Plot as stated in the Deed of Assignment, Contract of Sale and the receipt issued to the original allottee? See Exhibit FE6. It is either the 3rd Defendant was not

diligent on the transaction or colluded with the 1st and 2nd Defendants to cook-up the title documents.

Also as to whether the Plaintiff was able to prove that the 1st and 2nd Defendants were fraudulent, there is no better proof than the altered and manipulated documents which were tendered by the Defendants. The documents speak for themselves. They are not authentic and not valid to confer legal title on the 3rd Defendant. The action of the 1st and 2nd Defendants is highly reprehensible, unconscionable and condemnable.

Finally, I hold that the Plaintiff has been able to prove her claim based on preponderance of evidence and is thus entitled to the reliefs sought. And I hereby declare as follows:

1. That the Plaintiff indeed paid the 1st and 2nd Defendants the sum of **₦3,000,000 (Three Million Naira)** for duplex building.
2. That the purported allocation of her Plot to the 3rd Defendant is null and void. And it is consequently ordered as follows.
 - (a)The 1st and 2nd Defendants are to restore the Plaintiff's land immediately.
 - (b)The sum of **₦5,000,000 (Five Million Naira)** is hereby awarded as damages against the 3rd Defendant.
 - (c)The Defendants are to pay jointly and severally the sum of **₦1,000,000 (One Million Naira)** as cost of litigation.

SIGN

**HON. JUDGE
5/11/2020**