IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA

THIS THURSDAY, THE 17TH DAY OF DECEMBER, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: HC/CV/1499/14

BETWEEN:

1. MR IBRAHIM MOHAMMED
2. JOHN DEDA BULUS .... **CLAIMANTS**

AND

1. MINISTER, FCT ABUJA
2. F.C.D.A .... **DEFENDANTS**
3. USMAN USMAN LIMAN

JUDGMENT

The Claimants by their Further Amended Writ of Summons and Joint Statement of Claim dated 7th April, 2015 prayed for the following reliefs:

a. **A Declaration that the 2nd Plaintiff is the rightful Assignee and Beneficial Owner of Plot No. 70 measuring 2,117m2 in Cadastral Zone B08, Jahi District Abuja, FCT.**

b. **An Order of perpetual injunction restraining the Defendants and their servants, agents or representatives from interfering with the Plaintiff's quiet possession and enjoyment of said property.**

c. **The sum of N300, 000, 000. 00 (Three Hundred Million Naira only) as General Damages.**

d. **The sum of N500, 000.00 (Five Hundred Thousand Naira only) as legal fee and expenses.**

e. **10% of the judgment sum from the date of judgment until the entire amount is liquidated.**

The 1st and 2nd Defendants filed a statement of defence dated 28th May, 2014 and filed on 1st June, 2015. The 3rd defendant by his Amended statement of defence and counter claim filed on 20th November, 2017 set up a counter claim against the plaintiffs as follows:

a. **An Order of this Honourable Court dismissing in entirely the Plaintiff's claims as contained in the Further Amended Joint Statement of Claims.**

b. **A Declaration of this Honourable Court that the 3rd Defendant is the only valid, rightful and lawful Allottee of the Statutory Right of Occupancy over Plot No. 70 Cadastral Zone B08, Jahi District, Abuja, measuring 2, 117.12m2 with File No. KN 62553, the subject matter of this Suit.**

c. **A Declaration of this Honourable Court that all the rights, interests, privileges, title and ownership vested on Plot No. 70 Cadastral Zone B08, Jahi District, Abuja, measuring 2, 117.82m2 with File No. KN 62553, the subject matter of this Suit, covered by a Statutory Right of Occupancy dated 25th February, 2014 are valid and subsisting.**

d. **An Order of this Honourable Court declaring as trespass the Plaintiffs' and/or their agent(s) visit and/or continued visit to Plot No. 70 Cadastral Zone B08, Jahi District, Abuja.**

e. **An Order of perpetual injunction restraining the Plaintiffs jointly and/or severally either by themselves, their agents, privies, assigns, administrators, successors-in-title, heirs however so described claiming through them from trespassing, alienating by way of gift, selling, mortgaging, or in any way transferring or laying claim of ownership of Plot No. 70 Cadastral Zone B08, Jahi District, Abuja.**

f. **The sum of One Million Naira only (N1, 000, 000.00) as professional fees paid to Messrs Khoneks Chambers, Counsel to the 3rd Defendant/Counter Claimant for prosecuting this Suit.**

g. **The sum of Seven Million Naira only (N7, 000, 000.00) as general and punitive damages.**

The plaintiffs in response to the above processes filed:

1. Reply to the 1st and 2nd defendants statement of defence filed on 24th November, 2015, and;

2. Reply to the 3rd defendant's statement of defence and defence to 3rd defendant's counter-claim filed on 20th May, 2015.

The matter then proceeded to trial. In proof of their case, and in defence of the counter-claim, the plaintiffs called three witnesses. **Samuel Bulus**, testified as PW1. He deposed to a witness statement on oath dated 7th April, 2015, which he adopted at the hearing and tendered in evidence the following documents:

1. Offer of terms of Grant/Conveyance of approval dated 18th April, 2003 to Ibrahim Muhammed in respect of plot of about 2.117m2 (plot No. 70) within Jahi District was admitted as **Exhibit P1.**

2. Abuja Geographic Information System (AGIS) deposit slip in the name of Ibrahim Mohammed and Recertification and Re-issuance of Certificate of Occupancy acknowledgment dated 31st January, 2006 were admitted as **Exhibits P2 (1) and (2).**

3. FCTA Demands for Ground Rent dated 13th October, 2009 and 21st November, 2011 were admitted as **Exhibits P3 (1) and (2).**

4. FCTA Statutory Right of Occupancy bill dated 13th October, 2009, 15th February, 2010 and 21st November, 2011 were admitted as **Exhibits P4 (1), (2) and (3).**

5. Letter by the law firm of Victor A. Otokunrin & Co. together with the acknowledgment Receipt copy both dated 7th November, 2012 to the Minister FCT were admitted as **Exhibit P5 (1) and (2).**

6. Letter of Reminder to the Minister FCT by the law firm of Victor A. Otokunrin & Co. together with acknowledged Receipt copy both dated 20th February, 2013 were admitted as **Exhibits P6 (1) and (2).**

7. Copy of DEMOLITION NOTICE dated 30th April, 2014 was admitted as **Exhibit P7**.

8. AGIS Revenue receipt for payment of Ground Rent dated 4th May, 2010 together with a copy of Diamond Bank Managers Cheque issued in favour of AGIS dated 4th May, 2010 were admitted as **Exhibits P8 (1) and (2).**

9. Cash Receipt/Acknowledgment form by the law firm of Audu Karimu & Co. dated 12th May, 2004 was admitted as **Exhibit P9**.

10. Irrevocable Power of Attorney between Ibrahim Muhammed (Donor) and John Deda Bulus (Donee) was admitted **Exhibit P10**.

11. Deed of Assignment between Ibrahim Muhammed (Assignor) and John Deda Bulus (Assignee) was admitted as **Exhibit P11**.

12. Site Plan showing plot Jahi/B08/70 was admitted as **Exhibit P12**.

PW1 was then cross-examined by both counsel to the 1st and 2nd defendants and counsel to the 3rd defendant.

Bwari Ibrahim, a photographer testified as PW2. He deposed to a witness statement which he adopted at the hearing. He tendered in evidence the following:

1. Memory card in its casing was admitted as **Exhibit P13**.

2. Seven (7) numbered photographs were admitted in evidence as **Exhibit P14 (1-7)**.

PW2 was then crossed examined by counsel to the 1st and 2nd defendants. The 3rd defendant through his counsel chose or elected not to cross-examine PW2.

The 3rd witness for the claimants is **Saater Lorsaa** who testified as PW3. He similarly deposed to a witness deposition which he adopted at the hearing. He was cross-examined by counsel to 1st and 2nd defendants and then counsel to the 3rd defendant. With his evidence, the claimants closed their case.

The 1st and 2nd defendants on their part called only one witness, **Ezikpe Ifegwu Ugorji**, an officer with the Lands Department of 2nd defendant who testified as DW1. He deposed to a witness statement on oath dated 19th March, 2018 which he adopted at the hearing. He did not tender any document in evidence.

DW1 was then crossed examined by counsel to the 3rd defendant and then counsel to the plaintiff and with his evidence, the 1st and 2nd defendants rested or closed their case.

On the part of 3rd defendant, **3rd defendant** himself testified as DW2 and the only witness. He deposed to two (2) witness depositions dated 4th May, 2015 and 30th May, 2018 which he adopted at the hearing. He tendered in evidence the following documents:

1. Offer of Statutory Right of Occupancy to Usman Usman Liman in respect of Plot No. 70 having an area of approximately 2117.12m2 in Cadastral Zone B08 of Jahi dated 25th February, 2014 was admitted as **Exhibit D1**.

2. Letter of Acceptance/Refusal of offer of Grant of Right of Occupancy dated 27th February, 2014 was admitted as **Exhibit D2**.

3. Copy of Legal Search Report dated 10th November, 2014 and AGIS Receipt for legal search fee dated 7th November, 2014 was admitted as **Exhibits D3 (a) and (b)**.

4. Statutory Right of Occupancy bill dated 25th February 2014 was admitted as **Exhibit D4**.

5. Copy of Demand for Ground Rent was admitted as **Exhibit D5**.

6. Copy of AGIS Receipt for Ground Rent payment and Zenith Bank Plc teller were admitted as **Exhibits D6 (a) and (b).**

The 1st and 2nd defendants chose not to cross examine DW2. He was however cross-examined by counsel to the plaintiff and with his evidence, the 3rd defendant rested his case.

At the conclusion of trial, parties filed, exchanged and adopted their final written addresses.

The final address of 3rd defendant is dated 22nd November, 2019 and filed same date at the Court's Registry. In the address, two (2) issues were raised as arising for determination as follows:

a. **Whether or not the claimants have preffered sufficient evidence to entitle them the judgment of this Honourable Court.**

b. **Whether the 3rd defendant is entitled to the reliefs sought in the counter-claim**.

On the part of the 1st and 2nd defendants, their final address is dated 25th October, 2019 and filed same date at the Court's Registry. Two issues were identified as arising for determination thus:

i. **Having regards to the evidence before this Honourable Court, whether there was any valid grant of Right of Occupancy to the 1st Plaintiff in respect of Plot No. 70 Jahi District, Abuja and if yes, whether the plaintiff**

was in breach and whether upon such breach the 1st and 2nd defendants reserved the Right to revoke allocation.

ii. **Having regards to the facts of this case and evidence before the Honourable Court, whether this suit discloses a reasonable cause of action against the 1st and 2nd Defendants.**

The plaintiffs final address is dated 23rd December, 2019 and filed same date at the Court's Registry. In the address three (3) issues were distilled as arising for determination as follows:

1. **Whether the Claimants have on a balance of probability successfully established that he is entitled to the reliefs sought in his claim?**

2. **Whether the revocation of title to the disputed plot and the subsequent re-allocation to 3rd Defendant is lawful? And**

3. **Whether the 3rd Defendant has established on a balance of probability that he is entitled to the Reliefs sought on the counter claim?**

The 3rd defendant then filed a Reply on points of law to the final address of the claimants on 16th March, 2020.

I have given a careful and insightful consideration to all the issues as distilled by parties in relation to the pleadings and evidence adduced at plenary hearing. The issues may have been differently worded but they seem to me in substance to be in ***pari materia*.**

On the pleadings which has precisely streamlined the facts and or issues in dispute, the central key issue on which all parties are at a consensus adidem relates to the contested claim of ownership the claimants and the 3rd defendant made over plot No. 70 measuring approximately about 2.117m2 within Jahi District. The 1st and 2nd defendants and issuing authority of lands within the FCT contend that the allocation to 1st plaintiff was forged or a product of forgery and was then revoked and same was then allocated to the 3rd defendant.

It is thus obvious that the propriety of the revocation of the allocation of the 1st claimant is a fundamental pivot on which the case of claimants and 3rd defendant rests in addition to other subsidiary issues which will all be shortly addressed.

The plaintiffs seek a pronouncement affirming their interest on the said plot 70 contending that their allocation was valid and that the purported revocation cannot be legally countenanced.

On the pleadings and evidence, the subsequent or later allocation by 1st and 2nd defendants to 3rd defendant is in respect of the same disputed plot 70. Within this factual and legal construct, the 3rd defendant has situated his counter claim seeking a pronouncement on the validity of his allocation.

All these contested issues are a direct function of whether the parties have succeeded in discharging the burden of proof placed on them by law in proof of these contending assertions within the required legal threshold.

Flowing from the above, there is thus **a claim** by plaintiffs and **counter-claim** by the 3rd defendant. 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 the plaintiff in an action must prove his case against the person counter claimed before obtaining judgment. See **Jeric Nig. Ltd V Union Bank (2007) 7 WRN 1 at 18; Shettimari V Nwokoye (1991) 9 NWLR (pt.213) 66 at 71.**

In view of this settled state of the law, both the plaintiff and the 3rd defendant/counter-claimant have the burden of proving their claim and counter-claims respectively. This being so, therefore, the issues for determination in this action can be condensed and be more succinctly encapsulated in the following issues as follows:

1. **Whether the claimants have established on a preponderance of evidence that they are entitled to all or any of the reliefs claimed.**

The issue will be predicated on a resolution of these salient questions:

- **i. Was the allocation of plot No. 70 to the 1st claimant factually and legally impugned?**

ii. **Was the allocation of the disputed plot 70 to 1st claimant validly revoked?**

iii. **Whether the Reliefs of claimants are availing?**

2. **Whether the 3rd defendant/counter-claimant has equally established on a preponderance of evidence his entitlement to any or all of the Reliefs claimed.**

The above issues in my considered opinion conveniently covers all the issues raised by parties. The issues thus distilled by court are not raised in the alternative but cumulatively with the issues raised by parties. See **Sanusi V Amoyegun (1992) 4 NWLR.**

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issues formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle. Some of the contested issues will be taken independently while others may be taken together where there is a confluence of facts and or evidence.

In furtherance of the foregoing, I have carefully read the very well written addresses filed by parties respectively. I will in this course of this judgment and where necessary or relevant, refer to submissions made by counsel and resolving whatever issue(s) arising therefrom.

ISSUE 1

1. **Whether the claimants have established on a preponderance of evidence that they are entitled to all or any of the reliefs claimed.**

The issue will be predicated on a resolution of these salient questions:

i. **Was the allocation plot 70 to the 1st claimant factually and legally impugned?**
ii. **Was the allocation of the disputed plot 70 to 1st claimant validly revoked?**
iii. **Whether the Reliefs of claimants are availing?**

At the commencement of this Judgment, I had stated that there is a claim by plaintiffs and a counter-claim by 3rd defendant. So these identified parties have the evidential burden of establishing their claims and succeeding on the strength of their cases as opposed to the weakness of the case of the other party. See **Kodilinye V Odu (1935) 2 WACA 336 at 337; Fagunwa V Adibi (2004) 17 NWLR (pt.903) 544 at 568; Nsirim V Nsirim (2002) 12 WRN 1 at 14.**

This principle is however subject to the qualification that a claimant is entitled to take advantage of any element in the case of his opponent that strengthens his own cause. What this means is that it is not enough to merely assert that the case of the opponent is weak; there must be something of positive benefit to the claimant in the case of the opponent. See **Uchendu V Ogboni (1999) 5 N.W.L.R (pt.603) 337.** Accordingly, it is important to add that where the claimant fails to discharge the onus cast on him by law, the weakness of the case of the opponent will not avail him and the proper judgment is for the adversary or opponent. See **Elias V Omo-Bare (1982) NSCC 92 at 100 and Kodilinye V Odu (supra).**

It is therefore to the pleadings which has precisely streamlined the issues and facts in dispute and the evidence that we must now beam a critical judicial search light

in resolving these contested assertions. The pleadings are even more critical here because I note sadly, that in the addresses, submissions were made at large that cannot be situated within the confines of the issues joined on the pleadings. The liberty and right to file addresses has been used here as a conduit to expand the remit of the grievance beyond that submitted on the pleadings. I will return to these points later on.

In this case, the claimants filed a **joint 36 paragraphs amended statement of claim** which forms part of the Records of court. The evidence of the three witness for the claimants is largely within the structure of the claim and the Replies filed to the defence of 1st and 2nd defendants and the defence and counter claim of 3rd defendant.

The 1st and 2nd defendants filed a 14 paragraphs statement of defence which also forms part of the Records of court and the evidence of their sole witness is similarly within the purview of the facts averred.

Finally the 3rd defendant filed a 17 paragraphs Amended defence and counter-claim which equally forms part of the Records of Court and the evidence of the 3rd defendant is similarly largely within the body of facts averred in his pleadings.

I shall in the course of this judgment refer to specific paragraphs of the pleadings, where necessary to underscore any relevant point. Indeed in this judgment I will deliberately and in extenso refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132**

Evidence Act, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these

principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

Being a matter involving disputation as to title to land, it is also important to situate the **five independent** ways of proving title to land as expounded by the Supreme Court in **Idundun V Okumagba (1976) 9 – 10 SC 221** as follows:

1. Title may be established by traditional evidence. This usually involves tracing the claimant's title to the original settler on the land in dispute.

2. A claimant may prove ownership of the land in dispute by production of documents of title. A right of occupancy evidenced by a certificate of occupancy affords a good example.

3. Title may be proved by acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant an inference that the claimant is the true owner of the disputed land. Such acts include farming on the whole or part of the land in dispute or selling, leasing and renting out a portion or all of the land in dispute.

4. A claimant may rely on acts of long possession and enjoyment of land as raising a presumption of ownership (in his or her favour) under **Section 146 of the Evidence Act**. This presumption is rebuttable by contrary evidence, such as evidence of a more traditional history or title documents that clearly fix ownership in the defendant.

5. A claimant may prove title to a disputed land by showing that he or she is in undisturbed or undisputed possession of an adjacent or connected land and the circumstances render it probable that as owner of such contiguous land he or she is also the owner of the land in dispute. This fifth method, like the fourth, is also premised on **Section 146 of the Evidence Act**.

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131.** These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title to succeed but he is eminently

entitled to rely on more than one root of title. See **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252.**

It is only apposite to add that under the relevant laws governing land tenure in the FCT, generally, apart from the proof by production of title documents issued by the Minister FCT, the other methods of proving title to land in real terms do not have much practical and legal resonance. It is also important to note at the onset that some of the critical reliefs sought both in the substantive claim and counter claim are **declaratory** in nature. This being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.** The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

The above principles identified in some detail, provides broad legal and factual template as we shortly commence the inquiry into the contrasting claims of parties.

Now from the pleadings of parties which as earlier indicated has precisely streamlined the facts or issues in dispute, both the claimants and the 3rd defendant counter-claimant appear to found their respective claim of title on production of title documents. These title documents of both parties on the evidence appear to be predicated or derived from the same source, the 1st and 2nd defendants. Within the context of laws governing land tenure in the FCT, the 1st and 2nd defendants are the issuing authorities of land allocations within the FCT. There actions in this case is therefore critical in situating the validity of the case of the claimants and that of 3rd defendant/counter-claimant.

On the pleadings and evidence, the case of the 1st and 2nd defendants is that the allocation to 1st claimant was a **product of forgery and thus revoked** and then they made the allocation to the 3rd defendant/counter claimant. This and other

contested assertions must be interrogated within the context of the pleadings and evidence led and the established legal threshold.

A convenient starting point is to understand the precise situational dynamic relating to the allocation of Plot No. 70 to Claimants and then critically the validity of the revocation of the allocation of the same **plot No. 70,** Jahi district of about 2.117m2 (hereinafter referred to as plot No. 70) to claimants and whether it is valid and can be countenanced legally. A determination of these fundamental points one way or the other will certainly have a *domino effect* or better put, impact negatively or positively on the case of the defendants, most especially the counter-claim of 3rd defendant. Let us now carefully scrutinize the relative strength and value of the narrative of parties.

Now on the pleadings of claimants the case made out is simple and straightforward. That by offer of terms of grant/conveyance of approval with Reference No MFCT/LA/ZA 315 dated 18th April, 2003, the 1st and 2nd defendants approved the grant of Right of Occupancy over the said plot No. 70 for a term of 99 years vide **Exhibit P1** to the 1st claimant.

The 1st claimant then vide **Exhibit P10**, an irrevocable power of attorney appointed the 2nd claimant as his attorney over the said plot and by **Exhibit P11**, a Deed of Assignment, the 2nd claimant became the assignee of 1st claimant over the said plot No 70. The appointment of 2nd claimant as Attorney and Assignee was said to be for valuable consideration in the sum of N1, 200, 000 paid to 1st claimant.

The 2nd claimant stated that he immediately took possession of the plot, constructed a dwarf fence, drilled a bore hole and erected a security house and that his security guard has been farming on the land since 2009 till date without any challenge from any person or quarters.

The claimants also stated that during the recertification exercise of the 1st and 2nd defendants, they participated in the exercise, paid the requisite fees vide **Exhibit P2(1)** and were issued the ministry of Federal Capital Territory Re-certification and Re-issuance of C-of-O Acknowledgment vide **Exhibit P2 (2).**

The claimants through 2nd claimant were also issued demand notices for payment of ground rent vide **Exhibits P3(1) and (2)** and statutory Right of Occupancy bills

vide **Exhibits P4(1) – (3)**. The claimants made payments for ground rents vide **Exhibits P8 (1) and (2).**

The 2nd claimant stated that he enjoyed quiet possession until 2012 when in the process of trying to pay for ground rent that his attention was drawn to a purported revocation of the plot which was never served on claimants all in an attempt to illegally deprive them of the said plot. Suspecting foul play, solicitors to the 2nd claimant wrote letters of complaints vide **Exhibits P5 and P6** to the Minster, F.C.T, but nothing positive came out of it and that sometime on 30th April, 2014, a demolition notice vide **Exhibit P7** was pasted on the plot.

I have above summarised the essence of the case made out by claimants. Now the critical issue or question in view of the contested assertions on the pleadings is what is the reaction of the **1st and 2nd defendants**, who it is all agreed are the issuing authority of land allocations in the FCT to the case made out by claimants. As stated earlier, the legality of the positions taken by them will have significant bearing on the fortunes of the cases made by both the claimants and the 3rd defendant/counter-claimant respectively.

The case made out by **1st and 2nd defendants** is similarly not complicated. Here I prefer to take my bearing from the statements of defence filed in response to the joint statement of claim of claimants. The bulk of the 14 paragraphs statement of defence of the 1st and 2nd defendants contains general denials but the meat or substance of the defence is situated within the following paragraphs:

"3. The 1st and 2nd Defendants admit paragraph 5 of the Plaintiffs Further Amended Statement of Claims, only to the extent that the 3rd Defendant is the allottee of Plot No. 70, Cadastral Zone B08, Jahi District, Abuja. The 1st and 2nd Defendants further aver that the 3rd Defendant was legally and lawfully allotted Plot No. 70 Cadastral Zone B08, Jahi District, Abuja of which an offer of Statutory Right of Occupancy dated 25th February, 2014 was issued thereof.

4. The 1st and 2nd Defendants deny paragraph 6 of the Further Amended Statement of Claims. The purported title of the Plaintiffs to the Plot in

issue is suspected to be forged. The Plaintiffs are hereby put to the strictest proof of the averment therein.

6. **The 1st and 2nd Defendants admit paragraph 23 of the Further Amended Statement of Claims only to the extent that the 1st and 2nd Defendants revoked the forged offer of Statutory Right of Occupancy to Plot No. 70 the subject matter of this Suit based on the findings that the said Right of Occupancy was forged by the Plaintiffs. Notice is hereby given to the Plaintiffs to produce the original copy of the Notice of Revocation.**

9. **The 1st and 2nd defendants deny paragraph 42 of the Further Amended Statement of Claim. In Further answer, the 1st and 2nd Defendants aver that as at the 25th February, 2014 when the 3rd Defendant was offered a Statutory Right of Occupancy, there was no valid existing title granted to any person by the 1st and 2nd defendants."**

The evidence of their sole witness as stated earlier is in line with the above averments. The case is that the allocation of 1st claimant was to use their words **"suspected to be forged"** vide paragraph 4 above, and because of the forgery, the allocation was revoked vide paragraph 6 above and then the same plot was then allocated to the 3rd defendant/counter-claimant. The key question here is whether the allegation of forgery was even properly made out on the pleadings and then established by critical evidence.

I have above stated the critical portions of the pleadings of 1st and 2nd defendants. The said bare averments would appear not to have crossed the required threshold for a serious allegation in the nature of fraud. Under the provision of **Order 15 Rule 3 (1) of the Rules of Court**, the allegation of fraud must be attended to by particulars and then creditably established by evidence. An allegation of fraud is analogous to an imputation of crime and ought to be proved beyond reasonable doubt. Fraud requires a higher degree of probability for its proof. See **Section 135 of the Evidence Act** (As Amended). See **Durbar Hotel Ltd V. Kasaba United Ltd (2017) 2 NWLR (pt.1549)**; **Famuroti V Agbeke (1991) 5 NWLR (pt.189) 1**.

In **Highgrade Maritime Services Ltd V. First Bank of Nig Ltd (1991)2 SCNJ 110,** the Supreme Court per Wali J.S.C (of blessed memory) stated thus:

"It is trite law that where fraud is alleged, it must be specifically pleaded and particulars of the fraud given to enable the party defending the allegation understand the case he is facing and prepare his defence"

Again in **Ojibah V. Ojibah (1991)6 S.C. 182**, the Supreme Court per Nnaemeka Agu J.S.C (of blessed memory) stated as follows:

"The law requires that fraud must be distinctly alleged, with all necessary particulars and distinctly proved."

In this case, it is difficult to situate what the particulars of the facts of fraud are which the 1st and 2nd defendant relies on in support of the allegation that the title document or allocation of 1st claimant was "fake" as stated by DW1 or "suspected to be forged" as pleaded. The pleadings of 1st and 2nd defendants here is completely bereft or devoid of any particular(s) of fraud thereby denying the plaintiffs access to facts to enable them situate and understand the allegation of fraud they are facing and to allow them prepare their defence and this is fatal.

The point or principle here speaks to the imperative of necessary particulars of fraud being delineated. This then underscores the point that the element of surprise must be avoided by either party who raises such allegation in his pleading.

In addition to a complete absence of particulars of fraud, the allegation was not creditably proved at all by the 1st and 2nd defendants. If no particulars of the fraud was pleaded, it goes without saying that no logical evidence could really have been proffered to support the serious allegation within the threshold of proof beyond reasonable doubt.

If the allocation of 1st claimant is **"fake"** as stated in evidence by DW1, what is in **Exhibit P1**, that denotes precisely, clearly and positively that it was forged as pleaded. What feature in Exhibit P1 was forged? The pleadings and evidence are completely silent.

It is strange that a blanket allegation of fraud is made against **Exhibit P1**, a document emanating from the same 1st and 2nd defendants without an iota or scintilla of evidence to support the allegation of fraud.

In the entirety of the **18 paragraphs witness deposition of the sole witness for the 1st and 2nd defendants**, nothing was established showing for example that Exhibit P1 issued to 1st claimant is not a genuine document or that it was altered in any manner or any material part either by erasure, obliteration, removal or otherwise or that any material addition was made to the body of the document either in terms of writing a false date, attestation, seal or other material part.

The conundrum faced by 1st and 2nd defendants is that even if DW1 has given or streamlined the above particulars in evidence, (and he did not), it would have gone to no issue since they were not pleaded. The settled principle of general application is that parties are bound by their pleadings and where evidence is presented outside the confines of the issues raised in the pleadings, such evidence goes to no issue because it would be at variance with the pleadings and would be discountenanced. See **Oluyede V Access Bank Plc (2015) 17 NWLR (pt.1489) 596**.

In the circumstances, little or no evidential value can be placed on the evidence of DW1 elicited during his cross-examination by 3rd defendant/counter-claimant. In the said cross-examination the 1st and 2nd defendants sought to create or fill the obvious deficiencies or failings in their case using the conduit of cross-examination but which cannot be situated within the structure of their pleadings.

On the authorities, neither the parties or court has the jurisdiction to go outside the confines of what was pleaded in the matter. I concede that the court may be accused of indulging in a purely academic exercise in evaluating the cross-examination of DW1 over matters not pleaded but out of abundance of caution, let us evaluate the evidence.

DW1 was led in cross-examination by counsel to the 3rd defendant on modalities for application for land in the FCT and he stated that the names of 1st claimant did not appear on the ministerial list and that his name is also not in their system. He further stated that a committee was set up for **"fake documents and that it was found out that there was no allocation in respect of plot 70."**

DW1 however agreed that he does not know the date of the report but that it was around 2010. He equally stated that he could not verify the genuineness of **Exhibit P1** standing in the witness box and that the plaintiffs title was never recertified.

It will be noted that I had earlier emphasised the importance of pleadings in the delicate exercise of the adjudicating civil trials or proceedings. I had also deliberately reproduced the critical averments in the pleadings of 1st and 2nd defendants and also referred to the witness deposition of their sole witness. No magnification glass is required here to see and say conclusively that there is absolutely nothing in the pleadings of 1st and 2nd defendants turning on the points highlighted above in the evidence elicited from DW1 during the cross-examination by 3rd defendant. For whatever it is even worth, let us again further scrutinize the key aspects of this evidence. DW1 talked about the absence of 1st claimants name in the **"ministerial list"** and their **"system"** but none of these processes was pleaded or evidence of same produced in court. We cannot suffer ourselves to be detained by bare speculative assertions.

DW1 also talked about a committee on **"fake documents"** that was set up and if true, it is difficult to situate why it was not included in their defence since they have raised the allegation of forgery, as underpinning their defence. Is it that they forgot or this is simply a desperate fabrication borne of afterthought? I incline to the latter position because if indeed such a committee ever existed, it would certainly have formed the underpinning pivot of their defence. Most importantly, who formed the committee? Who were the members? What was the term of reference? When did they sit and was 1st claimant invited? etc.

Absolutely nothing was pleaded on these critical issues and no evidence was led. No less important is that DW1 agreed that he was not a member of the committee, so what is the basis for the information he seeks to supply on the committee findings? I just wonder. As a logical corollary, where is even the **report of the committee** delineating its findings? None was furnished. Indeed as stated earlier not one single documentary evidence was tendered by the 1st and 2nd defendants in this case to support its case.

In the absence of the report of this phantom committee, there is therefore nothing to show that the 1st and 2nd defendants found that the Allocation of 1st claimant is

"fake" or that plot No. 70 has not been allocated. Indeed there is nothing to situate that his allocation was even looked at by any committee to determine its genuineness or otherwise.

This witness (DW1) clearly appears to me not to be a witness of truth and appears to be one conscripted to achieve a particular selfish and self serving purpose. To further detract from his creditability, while still been cross-examined by 3rd defendant, he stated with respect to the validity of the allocation to 1st claimant, **Exhibit P1** as follows:

"I cannot verify Exhibit P1 standing in the witness box."

This evidence on its own completely **undermines** the case of 1st and 2nd defendants predicated on forgery. If the witness of 1st and 2nd defendants cannot verify in court the document they have pleaded to be "forged" and which DW1 in his witness deposition said is "fake"; a document produced and issued by them, then one questions the value of the case presented by 1st and 2nd defendants and indeed the value of this witness (DW1). The question that has caused me some concern is whether the 1st and 2nd defendants truly defended this case with the objective of ensuring justice is served on they had other motivations?

On the whole, the case of 1st and 2nd defendants as I have demonstrated above is notable more for its conspicuous breaches of the settled principles with respect to the pleadings of the allegation of fraud and nature of proof required to prove the serious allegation. The **bottom line** here is that the validity of the allocation or offer of Grant/Conveyance of approval dated 18th April, 2003 to 1st claimant in respect of plot No. 70 of about 2.117m2 within Jahi District **(Exhibit P1)** has not been creditably impugned by 1st and 2nd defendants. In the circumstances, the allegation of fraud or that the allocation is "fake" clearly lacks value or merit and will be discountenanced without much ado.

Now on the evidence, the 1st and 2nd defendants then averred as already highlighted that they then revoked the allocation because it was a product of forgery. I have already found or held that the 1st and 2nd defendants have not made out any credible case of forgery in the allocation it made to 1st claimant. The question that thus

requires attention now is whether the alleged revocation of the said allocation to 1st clamant can in the circumstances be legally countenanced?

Let me quickly underscore the point that Revocation of Right of Occupancy must be done pursuant to the provisions of **Section 28 of the Land Use Act** and the revocation must comply strictly with the provisions of the said section. See **IBRAHIM VS. MOHAMMED (2003) 4 MJSC 1 at 18G-19A.** A revocation of a right of occupancy is signified under the hand of a public officer duly authorized in that behalf and it is effective upon the notice of revocation being given to the holder of a right or certificate of occupancy. See **IBRAHIM VS. MOHAMMED (supra) at 36C.** A holder of a right of occupancy, whether evidenced by a certificate of occupancy or not, holds that right as long as it is not revoked and he will not lose his right of occupancy by revocation without his being notified first in writing. The revocation must state the reason or reasons for the revocation. Any other method may be a mere declaration of intent; it will never be notice or revocation. Indeed, it will be a nullity. See **OSHO VS FOREIGN FINANCE CORPORATION (1991) 4 NWLR (PT184) 157 at 187 and NIGERIA ENGINEERING WORKS LTD VS DENAP LTD (2002) 2 MJSC 123 at 145.**

Again, at the risk of prolixity, let me repeat the averment of 1st and 2nd defendants on the issue vide paragraph 6 thus:

"6. The 1st and 2nd Defendants admit paragraph 23 of the Further Amended Statement of Claims only to the extent that the 1st and 2nd Defendants revoked the forged offer of Statutory Right of Occupancy to Plot No. 70 the subject matter of this Suit based on the findings that the said Right of Occupancy was forged by the Plaintiffs. Notice is hereby given to the Plaintiffs to produce the original copy of the Notice of Revocation."

As stated earlier, the claimants averred that they were never aware of the purported notice of revocation and they were never served. Again the 1st and 2nd defendants who claimed to have issued such revocation notice strangely did not produce in evidence any copy of the Notice of Revocation.

They may have pleaded or given Notice to produce the original copy of the Revocation to the claimants both the claimants have stated but in their statement of

claim and even the Reply filed to the statement of defence of 1st and 2nd defendants (**vide paragraph 4**) that the said plot No. 70 was never revoked and even if revoked, which they did not concede, that they were never communicated. The question of service of the notice therefore become a matter of proof. If the claimant could not in the circumstances, tender the original since they said they were not served, the law then demands of 1st and 2nd defendants to tender **a copy or secondary evidence of the notice of revocation**.

This secondary evidence or copy as stated earlier was not produced. DW1 under cross-examination by plaintiffs agreed that he himself did not serve the notice but his organisation did. He also stated that he does not have the acknowledged copy showing it was received by claimants and he does not even know who signed the notice of revocation.

I am in no doubt that the 1st and 2nd defendants as custodians of title documents and who issued the Notice of Revocation must certainly have a copy if indeed one was issued and served as claimed.

If a copy of the Notice of Revocation was indeed issued and served, where is the evidence of the issuance and service of same? The deliberate failure of 1st and 2nd defendants to tender in evidence the Notice of Revocation they claimed they issued and proof of service of same leads to the irrestible inference or conclusion that:

1. No notice of revocation of 1st claimant allocation of Plot No. 70 was issued and;

2. The Notice was equally not served on claimants.

In **Olomoda V Mustapha (2019) 6 NWLR (Pt.1667) 36 at 52,** the Supreme Court clearly streamlined the process of revocation and emphasised the importance of service of the notice of revocation as underpinning the validity of the revocation. His Lordship Akaahs J.S.C at page 52 E-F stated thus:

"In exercising the Governor's power of revocation; there must be due compliance with the provisions of the Act; particularly with regard to giving of adequate notice of revocation to the holder whose name and address are well known to the public officer acting on behalf of the Governor. See Nigerian Telecommunications Ltd. V Chief Ogumbiyi (1992) 7 NWLR (pt.255) 543. The

purpose of giving notice of revocation of the right of occupancy is to duly inform the holder thereof of the steps being taken to extinguish his right of occupancy. In the absence of notice of revocation of the right of occupancy, it follows that the purported revocation of the right of occupancy by the office duly authorized by the Governor is ineffectual. See: A.-G., Bendel State V. Aideyan (1989) 4 NWLR (pt.118) 646; Nigeria Engineering Works Ltd. V Denap Limited (1997) 10 NWLR (pt.525) 481. "

Again, in the absence of the notice of revocation, how is the court to even begin a meaningful inquiry as to even the basis and or validity of the reasons for the revocation? That certainly cannot be done in the prevailing circumstances contrived by 1st and 2nd defendants and deliberately too, who refused to produce a copy of the Revocation produced by them and which must certainly be in their possession if indeed the revocation was truly issued.

Indeed as earlier alluded to but which needs be underscored, the refusal to tender a copy of the Notice of Revocation by the 1st and 2nd defendants allows for the invocation of the principle under **Section 167 (d) of the Evidence Act** to the effect that if indeed the notice of revocation was issued and served, its production in court would have been unfavorable to their case.

The bottom line is that there is nothing to situate any revocation in the circumstances particularly in the context of the legal process of revocation earlier highlighted. A revocation does not just hang in the air. There is therefore nothing before the court showing that there was a valid revocation or that it was done within any of the legal grounds streamlined under **Sections 28 and 51 of the Land Use Act.**

The point to underscore is that provisions such as **Section 28 of the Land Use Act** are indeed expropriatory statutes which encroach on a person's proprietary rights which must be construed ***"Fortissime Contra Preferentis"*** **(i.e. strictly against the acquiring authority but sympathetically in favour of the person whose property rights are being taken away**). Thus the law imposes a duty and the courts demand from the acquiring authority strict adherence to the formalities prescribed by the law. See **LSPDC V Foreign Finance Corporation (1987) 1 NWLR (pt.50) 413; Olomoda V Mustapha (supra)**.

As a logical corollary, the 1st and 2nd defendants as government institutions have an obligation to adhere strictly to these provisions. They can only revoke a statutory right of occupancy within the limits of the law and not outside it and do so in good faith and reasonably. If there was a revocation (and none was established), then the 1st and 2nd defendants did not keep strict fidelity to the land in revoking the Right of Occupancy of 1st claimant in this case and the failure to follow the law and procedure renders the whole exercise null and void and shall accordingly be set aside.

The implication is that the allocation of **Plot No. 70 to 1st claimant** clearly on the materials has not been factually or legally impugned in any manner at all.

The above extensive pronouncements and findings provides broad factual and legal template to now evaluate the case of the 3rd defendant/counter-claim before pronouncing on whether the reliefs on either side are availing. As stated earlier, the case of the claimants and 3rd defendant/counter-claimant are inextricably connected and the findings of facts on the substantive claim relating to the validity of the allocation of Plot No. 70 would have significant bearing on the fate of the counter-claim of the 3rd defendant which is equally predicated on validity of his claim of ownership of the same plot No. 70.

Now with respect to the **counter-claim of 3rd defendant**, I had in the substantive action stated the Reliefs sought in the counter-claim and also indicated that the counter-claimant must like the plaintiffs in the main action establish its case on same principles to entitle it to the declarations and order(s) he seeks.

The case of the 3rd defendant/counter-claimant on the pleadings and evidence is similarly straightforward. The case in substance is situated in the context of the alleged revocation of the interest of 1st claimant over Plot No. 70 covered by Exhibit P1. That he was lawfully granted a statutory Right of Occupancy dated 25th February, 2014 over Plot No. 70 Cadastral Zone B08, Jahi District measuring 2.117.12m2 vide **Exhibit D1** which he accepted vide **Exhibit D2**.

The 3rd defendant stated that at the time of the allocation to him, the said plot No. 70 was free from any encumbrance evidenced by the search report he conducted on the plot vide **Exhibits D3 (a) and (b).**

He stated that he was given a statutory Right of Occupancy bill and demand for Ground Rent vide **Exhibits D4 and D5** and that he paid for the Ground rent vide **Exhibits D6 (a) and (b)**. He stated that upon been granted the statutory right, he mobilized to site and carried out clearing and excavation and that on one of such visits, he discovered the presence of a trespasser on the plot which turned out to be the plaintiffs and their agents and that all efforts to stop their acts of trespass did not yield any positive result.

The case of 3rd defendant is that he is the only valid and lawful allottee of the said Plot 70.

In the substantive action, for reasons sufficiently explained and which I adopt in relation to the extant counter-claim, I found as follows:

1. **The allocation or offer of statutory right of occupancy in respect of Plot 70 with an area of approximately 2.117m2 at Jahi District to 1st Claimant remains valid having not been factually or legally impugned in any manner.**

2. **I found that there was absolutely no revocation of the said Plot No. 70 as no evidence of the revocation was furnished by 1st and 2nd defendants.**

3. **I also found that if there was any purported revocation, it was not issued in compliance with legal requirements, thus it was null and void.**

In the circumstances, there is no dispute or argument that the offer of terms of Grant/Conveyance of approval conveying the "Honourable Ministers approval of a Grant of Right of Occupancy in respect of Plot of about 2.117m2 (plot No. 70) within Jahi District" vide **Exhibit P1 dated 18th April, 2003 to 1st claimant** is EARLIER in time to the offer of statutory right of occupancy of Plot No. 70 having an area of approximately 2117.12m2 in Cadastral Zone B08 of Jahi" vide **Exhibit D1 dated 25th February, 2014** granted to 3rd defendant/counter-claimant.

It is correct that in law, that where two competing titles originate from a common grantor, the first in time takes priority and the trial court must in addition to finding as a fact that both parties derive title originally from a common grantor, proceed to

ascertain whether there is credible evidence, the priority of the competing titles. See **Uzor V D.F. (Nig). Ltd (2010) 13 NWLR (pt.1217) 553 at 576; Atanda V Ajani (1989) 3 NWLR (pt.135) 746; Gege V. Nande (2006) 10 NWLR (pt.988) 256.**

In this case from the pleadings and evidence, I have found that the competing claims relate substantially to the same land and indeed both claimant and 3rd defendant derive title from a common grantor, the 1st and 2nd defendants.

On the evidence, I have found that the contention of the grantor (1st and 2nd defendants) that the allocation to 1st claimant was "forged" and "revoked" was not legally availing. In the circumstances a **Right of Occupancy such as Exhibit D1 cannot in law** be granted over an existing **Right of Occupancy; Exhibit P1** without revoking the first and prior existing Right of Occupancy (Exhibit P1).

The principle of *Nemo dat quod non habet* has resonance in this case; you cannot give or allocate what you don't have. See **Egbuta & ors V Onuna (2007) 10 NWLR (pt.1042) 263.** In this case, I have found that there was no proved revocation at all of 1st claimant's allocation and even if there was any purported revocation, the revocation of the Right of Occupancy of 1st claimant lacked legal validity and was unlawful meaning that the allocation to 1st claimant remained valid. In such circumstances, the 1st defendant was is no position to allocate the same plot to any other person or body.

On the whole, there is no cogent evidence before me that the Right of Occupancy granted 1st claimant vide **Exhibit P1** was legally revoked or otherwise extinguished. In accordance with the law, it remains valid and existing and has established claimants right to the land in dispute. By the same token, the validity of the allocation having been affirmed by court, there is no room for any allocation to any other person or body. The implication of this holding or decision is that the allocation or offer of statutory Right of Occupancy to 3rd defendant/counter-claimant stands compromised abinitio and lacking legal validity.

The law obviously does not countenance concurrent possession of the same land by two persons who claim adversely to each other, therefore possession resides in the person with better title and such a person can maintain an action against the

whole world except there is another true owner. See **Enilolo V. Adegbesan (2000)2 N.W.L.R (pt.698)611 at 619; Balogun V. Agbesanwa (2001)17 N.W.L.R (pt.741)118 at 140-141.** The Claimants have thus established their legal title to the said **Plot No. 70** and there is a legal presumption, in their favour that they are the party in exclusive possession. See **Carrena V Akinlase (2008) 14 NWLR (pt.1107) 262 at 281 F-H.**

The findings above in both the substantive action and the counter-claim provides basis to answer the questions of whether the Reliefs sought by the claimants and counter-claimant are availing.

Before streamlining the final orders, I note that extensive submissions were made by **learned counsel to the 3rd defendant** on issues that completely have no bearing with the facts or issues streamlined on the pleadings.

Again, at the risk of prolixity the case of 3rd defendant/counter-claimant can be situated within the context of these averments in his Amended Statement of Defence/Counter-Claim thus:

"4. In response to paragraph 5 the Further Amended Statement of Claim, the 3rd Defendant avers that he was rightfully and lawfully granted Statutory Right of Occupancy dated 25th February, 2014 over Plot No. 70 Cadastral Zone B08, Jahi District, Abuja, measuring 2, 117.12m2 with File No. KN 62553, the subject matter of this Suit. Said Statutory Right of Occupancy dated 25th February, 2015 is hereby pleaded and shall be relied upon at the trial of this case.

5. The 3rd Defendant avers that he consequently accepted said Statutory Right of Occupancy by a letter of Acceptance dated 27th February, 2014. Said Letter of Acceptance 2015 is hereby pleaded and shall be relied upon at the trial of this case. The 1st and 2nd Defendants are hereby given Notice to produce the original copy.

9. In particular response to paragraphs 6, 12 and 13 of the Further Amended Statement of Claims, the 3rd Defendant avers that when he was granted the

Statutory Right of Occupancy over the subject matter of this Suit, same was free from any encumbrance.

10. The 3rd Defendant avers that he subsequently conducted a Legal Search on the said plot whereof the 1st issued him a Legal Search Report dated 13/08/14 showing no encumbrance on the plot. Said Legal Search Report is hereby pleaded and shall be relied upon at the trial of this case.

11. The 3rd Defendant avers that the 1st Defendant issued him a Statutory Right of Occupancy bill dated 25/02/2014. Said Statutory Right of Occupancy bill is hereby pleaded and shall be relied upon at the trial of this case.

12. The 3rd Defendant also avers that he paid to the 1st Defendant the sum of N31, 756.80 (Thirty-one Thousand Seven Hundred and Fifty-six Naira Eighty Kobo) being Ground rent for the subject matter of this Suit. Revenue Collector's Receipt in said sum is hereby pleaded and shall be relied upon in the course of trial of this case.

13. The 3rd Defendant avers that subsequent upon being granted the Statutory Right of Occupancy over said plot, he mobilized to site and carried out clearing and excavation but on one such visits to the plot, the 3rd Defendant much to his chagrin, discovered the presence of a trespasser on said plot which turned out to be Plaintiffs and their agents.

14. The 3rd Defendant avers that he has made all attempts at stopping the Plaintiffs and/or their agents from further trespassing on the 3rd Defendant's plot all to no avail.

15. The 3rd Defendant further avers that he is the only valid, rightful and lawful Allottee of the Statutory Right of Occupancy over Plot No. 70 Cadastral Zone B08, Jahi District, Abuja, measuring 2, 117.12m2 with File No. KN 62553, the subject matter of this Suit."

In the counter-claim, the above averments were simply adopted and the Reliefs sought then highlighted. No more.

The above averments are clear. There is nothing in the pleadings of 3rd defendant turning on the following points over which extensive submissions were made by counsel to the 3rd defendant/counter-claimant in the final address thus:

1. **Validity of the Power of Attorney and Deed of Assignment between 1st and 2nd claimants and failure to obtain governors consent.**

2. **The question of acceptance by 1st claimant of Exhibit P1 the offer of statutory right of occupancy and**

3. **Breach of Contract of Exhibit P1.**

Now I had earlier in this judgment referred to the settled position that the pleadings of parties remains the sole template which streamlines and situates the issues that remain to be resolved by court. Anything outside it cannot have any significance in the context of the dispute.

As stated earlier, parties including the court are bound by and confined to the issues precisely raised and streamlined on the pleadings. The address of counsel, however well written or articulated is no conduit to expand the remit of the dispute or issues as joined on the pleadings. The submissions on the above points and indeed some few others in the address of 3rd defendant raised outside of what was properly pleaded cannot have any traction now as it will amount to a belated attempt at expanding the remit or boundaries of the dispute and also amount to stealing a match on the adversaries and taking them by surprise and such course of action would be unfair and indeed prejudicial. The fundamental underpinning philosophy behind filing of pleadings is for parties to as it were properly streamline the facts in dispute allowing the party or parties on the other side to know the case they are to meet in court. See **Bunge V. Governor of Rivers State (2006) 12 NWLR (pt.993) 573 at 598-599 H-B; Balogun V Adejobi (1995) 2 NWLR (pt.376) 131 at 15 C**. Civil litigation is not a game of chess or hide and seek and as such all cards as it is stated in popular parlance must be laid on the table and there is no room for surprises.

In the case of **Adeniran V. Alao (2001)118 N.W.L.R (pt.745)361 at 381 to 382;** the Supreme Court stated thus:

“Parties and the court are bound by the parties’ pleadings. Therefore, while parties must keep within them, in the same way but put in other words, the court must not stray away from them to commit itself upon issues not properly before it. In other words, the court itself is as much bound by the pleadings of the parties as they themselves. It is not part of duty or function of the court to enter upon any inquiry into the case before it other than or adjudicate upon specific matters in dispute which the parties themselves have raised by their pleadings. In the instant case, the question of due execution of Exhibit 1, the deed of conveyance relied on by the appellant, was never an issue on the pleadings of the parties. The trial court and the Court of Appeal were therefore wrong in treating same as an issue in the case. The Court of Appeal lacked the jurisdiction to determine the point of due execution which was not before it.”

Counsel to the 3rd defendant has here sought to argue his case outside the structure of the case properly pleaded and presented on the pleadings and on which evidence was led; that approach is clearly faulty as cases are not decided on the address of counsel however well written or articulated. See **Royal Exchange Ass. Nig. Ltd & 4 ors V. Aswani Textile Ind. Ltd (1992) 2 NWLR (pt.176) 639 at 675**.

To avoid accusations of been unduly pedantic, let me out of abundance of caution address some of these points. On the question of absence of governors consent as affecting the validity of both the power of attorney and Deed of Assignment, I am not enthused by these submissions and really find it difficult to situate the application of Section 22 (1) and 26 of the Land Use Act to the facts of this case. The point must be made clear that a power of attorney such as **Exhibit P10** is not an instrument that transfers or alienates any landed property. While it is conceded that it is often erroneously used or utilised as such, it is merely an instrument delegating powers to the Donee to stand in position of the Donor and to do the things he could do. I cannot put it any better than to quote, ***Ipsissima verba,*** the useful words of Pats Acholonu (JCA) (as he then was and of blessed memory) in **Ndukauba v. Kolomo (2001) 12 N.W.L.R. (pt 726) 117 at 127 par F.G,** where he stated as follows:

“It is erroneously believed in not very enlightened circles particularly amongst the generality of Nigerians that a Power of Attorney is as good as a

lease or an assignment. It is not whether or not coupled with an interest. It may eventually lead to execution of an instrument for the complete alienation of land after the consent of the requisite authority has been obtained."

In the same vein, let me add that even before the pronouncement above, the Supreme Court in **Ude V. Nwara (1993)2 N.W.L.R (pt.278)638 at 644** instructively stated as follows:

"A power of attorney merely warrants and authorizes the donee to do certain acts instead of the donor and so it is not an instrument which confers, transfers, limits charges or alienates any title to the donee, rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. So even if it authorises the donee to do any of these acts to any person including himself, the mere issuance of such a power is not per se an alienation or parting with possession. So far as it is categorized as a document of delegation, it is only after, by virtue of the Power of Attorney, the donee leases or conveys the property, the subject of the power, to any person including himself that there is alienation."

Similarly in **Ezeigwe V Awudu (2008) 11 NWLR (pt.1097) 158**, the Supreme Court per Onnoghen JSC (as he then was) stated as follows:

"Even if Exhibit A could be relied upon, it does not deprive the respondent of her title to the property; the document being nothing other than an irrevocable Power of Attorney – not a conveyance. In fact Exhibit "A" being an irrevocable Power of Attorney allegedly donated by the Respondent to the Appellant is a clear evidence or confirmation of the fact that title to the land in dispute resides in the Respondent, the donor of that power. The only document that could have proved any passing of that title to the Appellant would have been a conveyance or an assignment, none of which was said to have existed nor tendered in evidence in the case."

The power of attorney here clearly only authorizes the donee to carry certain acts on behalf of the donor and is not an instrument of transfer of title.

Now with respect to the Deed of Assignment, in meaningfully applying the extant provisions of the Land Use Act, I agree that two broad stages must be recognised that ultimately leads to the vesting of title to a purchaser in land transaction. The first stage is the contract or agreement stage. At this stage of entering into a contract for sale of land, no alienation takes place and this is up to the point of arriving at a binding contract and as such no consent of the Governor is required as a legal prerequisite at this stage.

The second stage involves alienating or transferring the vendor's right of occupancy and which is done by a conveyance or deed and because this stage invariably involves the vesting of title in the purchaser, consent of the Governor must, as a legal prerequisite, be sought and obtained. See the cases of **Awojugbgbe Light Industries Ltd V. Chinukwe (1995) 4 NWLR (Pt.390) 379, International Textile Industries (Nig.) Ltd V. Aderemi (1999) 8 NWLR (pt.614) 268, Owoniboys Technical Services Ltd V. Union Bank of Nigeria Plc (2003) 15 NWLR (Pt.844) 545, Olowu V. Building Stock Ltd (2010) 2 NWLR (Pt.1178) 310, Mustapha V. Abubakar (2011) 3 NWLR (Pt.1233) 123**.

In other words, it is not correct to say that failure to obtain the prior consent of the Governor before a Sale Agreement is executed means that the sale is null and void. See the cases of **Iragunima V. Rivers State Housing and Property Development Authority (2003) 12 NWLR (Pt.834) 427, Ornozeghian V. Adiarho (2006) 4 NWLR (Pt.969) 33, Brossette Manufacturing Nig. Ltd V. Messrs Ola Ilemobola Ltd (2007) 14 NWLR (Pt.1053) 109, and Mohammed V. Abdulkadir (2008) 4 NWLR (pt.1076) 111**. Indeed, there must be a valid and subsisting contract for alienation of a right of occupancy in existence before the question of obtaining the consent of the Governor to the transaction can arise. See the case of **Dahiru Ltd V. Trade Bank Nigeria Plc (2009) 13 NWLR (pt.1159) 577**.

Thus the Deed of Assignment cannot be null and void by virtue of the fact that he parties are yet to obtain the consent of the Minister of FCT to the transaction and it appears to me not material that the document was executed in 2006 because there is no time sensitive criteria for the obtaining of consent to the transaction. See the case of **Pharmatek Industrial Projects Ltd V. Trade Bank Nigeria Plc (2009) 13 NWLR (pt.1159) 577**.

The bottom line is that both the Power of Attorney and Deed of Assignment in this case were properly admitted in evidence and nothing has been put forward in the context of the pleadings and evidence impugning there validity.

The only remark to add on this point is that even if it is assumed that the transaction between 1st and 2nd claimants was void, that does not by any stretch of the imagination impugn on the allocation to 1st claimant which the court has held to be valid. If the allocation is **valid**, there cannot legally be talk of any allocation of the same plot to 3rd defendant. The issue of the application of the provision of **Section 22 of the Land Use Act** is therefore of no consequence in the circumstances to the clear extent that it does not change or alter the dynamics with respect to the validity of the allocation of 1st claimant and adds nothing of value to the case made out by 3rd defendant with respect to his claim of ownership of Plot No. 70.

The second point has to do with the contention that the 1st plaintiff did not accept the offer of the statutory Right of Occupancy, Exhibit P1 made by 1st and 2nd defendants. I really here do not understand the basis of this contention. The 3rd defendant is not the 1st and 2nd defendants. He equally does not work with them and certainly did not make the offer to 1st claimant.

If the 1st and 2nd defendants did not make any case that the 1st claimant did not accept the offer, then it is not open to the 3rd defendant through the conduit of his address to make such contentions. This issue appears to me entirely academic and of no consequence in the trajectory of this case.

Let me just add that on the unchallenged evidence before the court, it is clear that the 1st and 2nd defendants made a demand for ground rent as shown in Exhibit P3, 1-2, acknowledged payment of ground rent by issuing revenue collectors' receipts as shown vide Exhibit P8, 1-2, issued statutory right of occupancy bill (Exhibit P4, 1,2,3) and issued a Re-certification and Re-issuance of C of O acknowledgment (Exhibit P2, 1-2). As a general rule, an offer which requires the acceptance to be expressed or communicated in a specified way may only be accepted in that way. But even if the prescribed method of acceptance is not complied with, the offeror would no doubt be bound if he had acquiesced in a different mode of acceptance and had so waived the stipulated mode. See Chitty on Contracts, Vol. 1, General

Principles, Articles 2-063 and 2-066, P.153. The **key parties** to Exhibit P1, have clearly since moved beyond the stage of acceptance. The 3rd defendant is a complete stranger to this transaction, unfortunately, and therefore however it conceives the relationship of 1st claimant and 1st and 2nd defendants has no bearing whatsoever with the relationship of these independent parties. Essentially, acceptance of an offer may be demonstrated by the parties' conduct as well as by their words or by documents that have passed between them. See the cases of **FGN V. Zebra Energy Ltd (2002) 18 NWLR (pt.798) 162 (SC) and Majekodunmi V N.B.N. (1978) 3 SC 82**. In the instance case, the testimonial evidence of PW1 and the documentary evidence before the court showing that the 1st and 2nd defendants made a demand for ground rent as shown in Exhibit P3 (1-2) acknowledged payment of ground rent by issuing revenue collectors' receipts as shown in Exhibit P8 (1-2), issued Statutory Right of Occupancy Bill acknowledgment (Exhibit P2, 1-2), constitute overwhelming evidence of acceptance of the offer made by the 1st and 2nd defendants to the 1st Claimant.

On the question or complaint of alleged change of date of issuance of title in respect of Plot 70 from 18th April, 2003 to 16th September, 2006 as not been pleaded, and accordingly that Exhibits P3 and P4 containing these dates be discountenanced as not been pleaded, I think that these submissions borders on technicality of the extreme kind. On the pleadings, there is no dispute on the identity of the disputed land. The identity of land will be in dispute if the defendant in his statement of Defence make it so by specifically disputing either the area or size covered or the location as described in the statement of claim. See **Adenle V Olude (2003) FWLR (pt.157) 1074 at 1086 par. C-E**.

The defendant here never raised any issue on the pleadings on the identity of the disputed land. Secondly, there is no dispute on the date of allocation of the disputed plot. There is no doubt that the offer or allocation to 1st plaintiff is dated 18th April, 2003. The specifics of the particulars of the plot allocated are all contained in Exhibits P2, P3 and P4 all issued by the 1st and 2nd defendants. The same issuance date of 18th April, 2003 is contained in Exhibit P2, the re-certification and re-issuance of C-of-O acknowledgment.

The demand for Ground rent bill, **Exhibit P3** and the statutory Right of Occupancy bill, **Exhibit P4** may have date of issuance as 16th September, 2006 but how does

that then change the character or nature of the demand notice and the Right of Occupancy bill? The name of 1st claimant, the plot of land No. 70, the plot size of 2117.12 and the district are clearly delineated. There is therefore no confusion as to the Plot No. 70 in Jahi District, the subject matter of the extant dispute. What is interesting is that claimants paid these ground rent vide **Exhibits P8 (1) and (2)** and it was received by 1st and 2nd Defendants.

Again if anybody is to impugn the validity of **Exhibits P3 and P4** as not related to the land in dispute, it does not lie in the 3rd defendant's mouth to do so. Nobody was brought from the 1st and 2nd defendants accounts office to speak to this demand notices and statutory bill issued. Indeed the witness for the 1st and 2nd defendants under cross-examination concedes that he does not work in the accounts department of 1st and 2nd defendants. If there was any error in the dates stated in those exhibits, the fault cannot be placed on the claimants. Indeed by the confluence of evidence adduced, both oral and documentary, parties are clearly adidem on the identity of the disputed land. Any errors with respect to dates cannot therefore be fatal. See **Babatola V. Aladejana (2001) 12 NWLR (pt.728) 597 at 614 C.**

Finally, the 3rd defendants argued in the final address that '**the maker of Exhibit P1 was not called to testify and consequently Exhibit P1 is a worthless document and no evidential value should be attached to it'**. Now, Exhibit P1 is a letter or document of the 1st and 2nd Defendants. It is an offer letter of Plot No. 70 measuring 2 ,117m2 in Cadastral Zone B08, Jahi District – Abuja, FCT to the 1st Claimant. That letter is a public document. In the case of **Alhaji Adelodun Umoru & ors V. Alhaji Memudun Jimoh Orire & Anor (2010) LPELR – 9065 (CA)**, it was held by the Court of Appeal per Agube JCA that to prove a public document in Court there is no need to call the maker. Also in the case of **Gboyega Bakare V Federal Republic of Nigeria (2016) LPELR – 41361 (CA)**, the Court of Appeal Per Daniel-Kalio stated thus: **"with regard to Exhibit P2, it is a public document. It is admissible and can be relied upon even when the maker is not called."** See also Per Daniel-Kalio, JCA in the case of **ABU V. Ahmed (2017) LPELR – 43179 (PP.25-26, Paras. F-E) (CA)**.

The same principle applies to **Exhibits P2 (1)** and **(2), P3 (1)** and **(2), P4 (1)(2)** and **(3)** and **P12** which are all public documents. They can therefore be properly

tendered and admitted. See the cases of **LSDPC V. Iteogu (2009) 17 NWLR (pt.1171) 614 at 634; Matori V Bauchi (2004) All FWLR (pt.197) 1010**. To further accentuate this position **Section 106 (1) of the Evidence Act, 2011** provides clearly that public documents of any kind may be proved by the original. The emphasis and the point to underscore is that the document must be an original of a public document. It is clear that these provisions provide strictly for the tendering of a public document and how it is to be done.

The allusion to Section 83 (1) of the Evidence Act and maker made by learned counsel to the 3rd Defendant is therefore with respect clearly misconceived and has no application. That at best is a general provision dealing with documentary evidence generally and cannot override the specific provisions of Section 106 (1). Indeed because the provision of Section 83 (1) is a general provision, it provides latitude under Section 83 (2) for the court to exercise its discretion in the interest of justice and allow for the document to be admitted where undue delay and expenses will be involved. To therefore extend this principle and expect the Minister FCT to appear in court for the thousands and thousands of land cases in Abuja will be stretching this provision beyond limits that are acceptable and in the process do incalculable harm to the intent or purpose of the provision.

As for Exhibits P10 and P11, PW1 gave evidence that he is the younger brother and the authorised agent/representative of the 2nd claimant and he was personally involved in all the process that led to the assignment of the land, the subject matter of this suit to the 2nd claimant by the 1st claimant. See Paragraph 2 of the witness statement on Oath of PW1 dated 7th April, 2015. This piece of evidence which was not challenged in any material way by the Defendants in cross-examination forms the needed link between PW1 and the Claimants. PW1 also personally signed Exhibit P10 as a witness to the 2nd Claimant. It is therefore not true as argued by the 3rd Defendant that PW1 has not established any link between him and the documents. In law, it is not hearsay to narrate what one was told in so far as the evidence does not seek to establish the truth of what the witness was told but the fact that he was so informed. The information is perceivable by the hearing organ and evidence of a witness who was directly informed is not hearsay unless it otherwise seeks to prove the truth of what the witness was told. In this case the evidence of PW1 is not hearsay and it was rightly admitted.

I have above out of abundance of caution addressed the important points raised by 3rd defendant but it is difficult to situate how this advances the case of the 3rd defendant especially in view of the issues which have material bearing with the success or failure of the claim and counter-claim. If the allocation to 1st claimant has not been impugned, there cannot be an allocation to 3rd defendant of the same plot. It as simple as that. No amount of submissions can alter this reality.

As stated earlier, the above extensive pronouncements and findings on the very critical elements of the complaint or grievance of the claimants and counter-claimant provides broad factual and legal template to address the questions of whether the Reliefs sought by claimants and counter-claimants are availing. We commence with the Reliefs of **Claimants**.

Relief (a) seeks for a Declaration that the 2nd Plaintiff is the rightful Assignee and Beneficial Owner of Plot No. 70 measuring 2,117m2 in Cadastral Zone B08, Jahi District Abuja, FCT.

Now on the evidence as demonstrated, I had found that the allocation **Exhibit P1** was to the 1st claimant. That allocation in respect of plot No. 70 remains valid. It is also in evidence that the 1st claimant appointed 2nd claimant as his attorney vide the Irrevocable Power of Attorney admitted as **Exhibit P10** and also became his assignee vide the Deed of Assignment admitted as **Exhibit P11**.

It was on the basis of these documents that 2nd claimant moved to the land, fenced same and put a security gate and drilled a bore hole. He similarly received the bills related to the plot and paid the ground rent and has on the evidence being in possession. As stated earlier, these critical pieces of evidence were not on the evidence seriously challenged or controverted. The relevant question here is whether these documents (Exhibits P10 and P11) and the various acts of possession enures or provides basis to hold that the 2nd claimant is the Assignee and the beneficial owner of plot No. 70?

I had earlier comprehensively explained the legal import of a power of attorney as an instrument of delegation which does not divest the owner of title to the plot. See **Ndukauba V Kolomo (supra)**; **Ude V Nwora (supra)**.

Let me perhaps here again restate what the Supreme Court in **Ezeigwe V Awudu (supra)** stated as follows:

"Even if Exhibit A could be relied upon, it does not deprive the respondent of her title to the property; the document being nothing other than an irrevocable Power of Attorney – not a conveyance. In fact Exhibit "A" being an irrevocable Power of Attorney allegedly donated by the Respondent to the Appellant is a clear evidence or confirmation of the fact that title to the land in dispute resides in the Respondent, the donor of that power. The only document that could have proved any passing of that title to the Appellant would have been a conveyance or an assignment, none of which was said to have existed nor tendered in evidence in the case."

The power of attorney here clearly only authorizes the donee to carry out certain acts on behalf of the donor. The powers conferred here were specific. Indeed the extant Power of Attorney **Exhibit P10** in **Clause 6** underscores that the donor remains the owner of the plot until the necessary approval is obtain from the "appropriate authority" to sanction any alienation as follows:

"To apply in the Attorney's name or otherwise to the appropriate authority for the approval of the said authority of any sub-lease, sale, conveyance, mortgage, certificate of occupancy, Assignment or other agreements or transactions touching the property and subject to such consent, to execute, sign, seal and deliver in my name thereof in respect of the property to any person or persons who may be entitled thereto."

The above clause is **clear** and **self explanatory**. This clause is clear evidence or confirmation of the fact that title of the property resides or remains with the Donor of the Power until the donee take specific actions to **transfer to himself** or **another**.

In this case, a Deed of Assignment may have been prepared vide **Exhibit P11** but no steps was taken to transfer legal title by getting necessary approval from the "appropriate authority" as stated in **Exhibit P10**. **Exhibit P11** clearly was not registered and so was not tendered as evidence of transfer of title but as evidence of the transaction between parties. **Section 15 of the Land Registration Act**

makes it abundantly clear that a Registrable instrument such as **Exhibit P11** which is not registered cannot be pleaded or tendered in evidence for purpose of establishing title. This perhaps explains why the plaintiff in paragraph 10 of the statement of claim pleaded the purport for pleading the said Deed of Assignment in the following terms:

"The 2nd Plaintiff state that he became the Assignee of Ibrahim Muhammed, the 1st Plaintiff in relation to the Plot of Land, the subject matter of this suit vide a Deed of Assignment executed in his favour by Ibrahim Muhammed, the 1st Plaintiff. The Plaintiff pleads and shall rely on the said Deed of Assignment executed by Ibrahim Muhammed in his favour which serves as evidence of the transaction at the trial of this suit."

The only point to add is that the application of this provision of Section 15 now has very limited application if any at all, in a matter to do with admissibility of an instrument affecting land with the pronouncement of the law lords in the case of **Moses Benjamin & 2 ors V. Adokiye Kalio & Anor (2018) 15 NWLR (pt.164) 38** which has now donated the position that Section 15 is inconsistent with the provisions of the Evidence Act and that failure to Register a document affecting interest on land and tendered to prove title does not affect its admissibility in evidence.

There is equally a recent decision of the same Supreme Court in **Abdullahi & ors V. Adetutu (2019) LPELR-47384 (SC)** where the same Apex Court would appear to have reinstated and maintained the old order to the effect that a registrable instrument tendered to prove title, and not merely as receipt or payment of land is inadmissible if not registered. There has been a lot of debate in legal circles on this issue and which of the authorities represents the position of the law now. There has been no full address on this issue in this case, so I prefer to keep my peace and proceed with caution until there is a definitive pronouncement providing clarity on the issue by our Superior Courts. This court must however still proceed with the task at hand.

In the circumstances, who then is a beneficial owner? In **Alli V Ikusebiala (1985) NWLR (pt.4) 630**, the Supreme Court per Karibi Whyte JSC (of blessed memory) explained the meaning of beneficial owner thus:

"The expression "beneficial owner" are conveyancing terms of important legal significance … where a person is described as a "beneficial owner" it means such owner enjoys completely all the rights and privileges legally possible for an owner to have in respect of such land."

As a logical corollary, the failure to register the Deed of Assignment here (Exhibit P11) or put another way, the non-registration of a registrable land instrument affects only the legal or statutory title, not the equitable one. The legal title may be imperfect but the equitable title of the owner is available. See **Nonkom V Odili (2010) 2 NWLR (pt.1179) 419 at 441 D-H**. Put another way, where a registrable instrument is not registered but is coupled with taking immediate possession, such instrument may be used to prove equitable title or interest in the property.

The law is indeed settled that where a purchaser of land or lessee is in possession of land by virtue of a registrable instrument such as Exhibit P11 which has not been registered and has paid purchase price or rent, to the vendor, the purchaser has acquired equitable interest which is as good as the legal estate and can only be defeated by a purchaser for value without notice. See **Nsiegbe V Mgbebemena (1996) 1 NWLR (pt.426) 607 at 622.**

The 3rd defendant cannot on the evidence be said to be a purchaser for value without notice. The 1st and 2nd defendants may have allocated 1st claimants plot No. 70 predicated on the purported revocation of 1st claimants title but that revocation, the court has found to be invalid. Flowing from the above, Relief (1) has merit but cannot be granted on terms as sought as demonstrated above but an order recognizing the equitable internet must enure consequentially. I recognise that a court has no jurisdiction to make or grant a relief not sought but this does not mean that a court cannot make an order which is an offshoot of the main relief sought and which owes its existence to the main Relief. See **Adediji Adedoyin V Doyin Sonuga & ors (1999) 13 NWLR (pt.635) 355 at 363**.

A consequential order in law is an order necessarily flowing directly and naturally from and inevitably consequent upon it. It must be giving effect to the judgment already given, not by granting a fresh and unclaimed or unproven relief: **Dr. M.T.A. Limam V. Alhaji Shehu Mohammed (1999) 9 NWLR (pt.617) 116 at**

134, (S.C.) citing **Akinbobola V. Plisson Fisko Nig. Ltd & Ors (1991) 1 NWLR (pt.167) 270 at 288, (S.C.)**.

Let me further underscore the point by adding that a consequential order is an order founded on the claims of the successful party. It is merely incidental to a decision properly made but one which gives effect to the decision. It is also an order which flows necessarily, naturally, directly and consequentially from a decision of judgment delivered by a court in a matter. It arises logically and inevitably by reason of the fact that the order in question is per-force obviously and patently consequent upon the decision given by the court and does not need to be specifically claimed as a distinct or separate head or item of relief. See **Aisagbonbuomwan Ogbahon V. The Registered Trustees of Christ's Chosen Church of God & Anor (2002) 1 NWLR (pt.749) 675 at 701, (C.A) See also Liman V Mohammed (1999) 9 NWLR (pt.617) 116**.

Relief (b) seeks for an order of perpetual injunction restraining the Defendants and their servants, agents or representatives from interfering with the Plaintiff's quiet possession and enjoyment of said property.

Having found that the revocation of 1st claimant title has no legal validity and also recognised the equitable interest of 2nd claimant, this order is availing to assure of the integrity of their quiet possession and enjoyment of the said property. **Relief (b)** is availing.

Relief (c) seeks for N300, 000, 000 (Three Hundred Million Naira) as General Damages. There is no real clarity as to the basis of the Relief. The relief here on the pleadings appears to be predicated on trespass. Now trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of that owner is an act of trespass actionable without any proof of damages. See **Ajibulu V. Ajayi (2004) 11 N.W.C. R (pt 885) 458 at 48)**

The claim for trespass is therefore rooted in exclusive possession. All a plaintiff suing in trespass needs to prove or show in order to succeed is to show that he is the owner of the land or that he has exclusive possession.

On the evidence, there is no doubt that the 2nd claimant on the pleadings and evidence has proved his equitable interest and has been in exclusive possession

evidenced by the overt acts of construction of a fence, drilling of a bore hole and the security house built on the plot.

Now apart from the evidence that a notice of demolition was placed on the plot and the allegation in paragraph 35 of the claim that unknown trespassers have been coming to the land without his knowledge and consent and laying unfounded claims to the land, subject matter of this suit, there is however crucially no evidence explaining the nature of the unjustified interference by the defendants or how they disturbed the possessory right of claimants for which the claimant is entitled to General Damages. The defendants cannot be liable for actions of certain **"unknown persons."**

I only need to add that even if trespass has been established and here, it was not, i do not see from the paucity of pleadings and evidence on the point, how the sum of **₦300,000,000** (Three Hundred Million Naira) claimed as damages can even be justified. There is absolutely no basis for it.

General damages are not awarded as a matter of course, but on sound and solid legal principles and not on speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

Now because of the huge amount claimed as damages for trespass, it may be apposite to just add that on the authorities, damages in a case for trespass should be nominal to show the courts recognition of the plaintiff's proprietary right over land in dispute. If the plaintiffs in this case wanted more damages, they should claim it under special damages which they should properly plead and prove. See **Madubuonwu V. Nnalue (1992)8 N.W.L.R (pt.260)440 at 455 B-C; Armstrong V. Shippard & Short Ltd (1959)2 AII ER 651.** The relief for damages for trespass in the humongous amount claimed therefore fails.

Relief (d) seeks for the sum of N500, 000.00 (Five Hundred Thousand Naira only) as legal fee and expenses.

The claimants tendered **Exhibit P9** as evidence of fees paid to the solicitors in the sum of **N500, 000**. The claim for solicitors fees is in the nature of special damages. What is the jurisprudence on this type of Relief?

Let me however state that in law, costs are no more than an indemnity to the successful party to the extent that he is justly damnified for costs reasonably incurred in the ordinary course of the suit or matter having regard to its nature but not to any extra-ordinary or unusual expenses incurred arising from rank, position or wealth or character of either of the parties or any special desire on his part to ensure success. See generally the book **Civil Procedure in Nigeria (2nd Edition) by Fidelis Nwadialoat pages 752-753**. Indeed the learned author in the same book at **page 753** posited and referred to a decision in **Smith Vs Butler (1875) LR 19Eq.475** where it was held that any charges merely for conducting litigation more conveniently may be called luxuries and must be paid by the party incurring them.

I now come to the question of whether a claim for solicitors fees is one that can be granted under the present state of Nigerian Law. In **Guinness Nigeria Plc V Nwoke (2000) NWLR (pt.689) 135 at 150**, the Court of Appeal held unequivocally that a claim for solicitors fees is outlandish and should not be allowed as it did not arise as a result of damage suffered in the course of any transaction between parties. After this decision, there are however now a plethora of cases from the Court of Appeal which appear to have adopted a clear radical position contrary to that espoused in the **Nwoke** case. These later decisions postulates or recognises that a claim for solicitors fees forms part of Nigerian Legal Jurisprudence and where established can be granted. See the cases of **International Offshore Construction Ltd & ors V Shoreline Liftboats Nig. Ltd (2003) 16 NWLR (pt.845) 157; Divine Ideas Ltd V Umoru (2007) All FWLR (pt.380) 1468, Lonestar Security Ltd (2011) LPELR – 4437 (CA).**

It appears to me apposite here to specifically refer to the case of **Naude V Simon (2014) All FWLR (pt.75) 1878**, where the Court of Appeal made these interesting pronouncements when endorsing the point that a claim for solicitors fees is in the realm of special damages and is cognisable under Nigerian Law. In the said case, one of the issues submitted to the court for determination, was whether the trial court was right in awarding costs of charges incurred by the Respondent in the prosecution of its case against the appellants. In determining this issue in the

affirmative, the Court of Appeal considered the earlier cases that held that a claim for solicitor's fees are unethical and unrecoverable and held that they do not represent the current position of the law. The Court per **Akomolafe-Wilson JCA at pp. 1904-1906H-H** stated as follows:

"The authorities cited by the appellants' counsel in my view have been overtaken by more recent authorities that permit the payment of solicitor's fees as expenses for litigation in Nigeria. The principle of law is that a successful party is entitled to be indemnified for costs of litigation which includes charges incurred by the parties in the prosecution of their cases. It is akin to claim for special damages. Once the solicitor's fee is pleaded and the amount is not unreasonable and it is provable, usually by receipts, such a claim can be maintainable in favour of the claimant… Having regard to the above recent cases, it is no more in doubt that damages for cost, which includes solicitor's fees and out of pocket expenses, if reasonably incurred are usually paid by courts if properly pleaded and proved. In short, the decision of this honourable court in the cited cases Ihekwoaba V ACB Ltd and Guinness (Nig.) Plc V Nwoke, where this court held that the payment of solicitor's fees as damages is not supported in this country does not represent the present state of mind of the courts in this country. In more recent times, it is common for solicitors to include their fees for prosecution of cases and pass same to the other party as part of claims for damages, which have been awarded by the courts once the claims are proved."

I had specifically referred to this very clear pronouncement for the important reason that it specifically referred to the Court of Appeal cases of **Nwoke (supra)** and that of **Ihekwoaba V ACB Ltd (1998) 10 NWLR (pt.571) 590** which is in agreement with the decision in **Nwoke** and her lordship Akomolefe-Wilson J.C.A stated that these cases do not **"represent the present state of the mind of the courts in this country."**

The cases unfortunately "**on the present state of the minds of court with respect to claim for solicitors fees"** may not with the greatest respect be availing in view of the pronouncement of the Apex Court which affirmed the position in **Ihekwoaba's case (supra)** on the impropriety of a claim for solicitors fees. In **Nwanji V Coastal Services Ltd (2004) 36 WRN 1 at 14-15**, His noble Lordship

Samson Odenwigie Uwaifor JSC expounded the law on this point in the following graphic and instructive terms:

> ***"There is the award of N20,000.00 as professional fees allegedly paid by the respondent in respect of Fougerolle's case. It was fees said to have been paid by the Respondent to defend a suit brought against it by Fougerolle in regard to non-delivery of the goods in question. I can find no basis for this award… Secondly, it is an unusual claim and difficult to accept in this country as things stand today because as said by Uwaifo, JCA in Ihekwoaba V ACB Limited (1998) 10 NWLR (pt.571) 590 at 610-611:***
>
> ***"The issue of damages as an aspect of solicitor's fees is not one that lends itself to support in this country. There is no system of cost taxation to get a realistic figure. Costs are awarded arbitrarily and certainly usually minimally. I do not therefore see why the appellants will be entitled to general or any damages against the auctioneer or against the mortgage who engaged him in the present case, on the ground of solicitor's costs paid by him."***

It is needless to say that the above decision is binding on the Court of Appeal and all subordinate or lower courts to the Apex Court under the doctrine of stare decisis. See **Osakwe V FCE (Technical) Asaba (2010) 10 NWLR (pt.1201) 1.** I also note that this decision was not referred to in the decisions of the Court of Appeal which gives an indication that their conclusions may have been different if their attention was drawn to it. Before rounding up, it is important to draw attention to the case of **Rewane V Okotie-Eboh (1960) NSCC (vol.1) 135 at 139** where the Supreme Court per Ademola CJF, page 135 at 139 stated thus:

"Costs will therefore be awarded on the ordinary principles of genuine and reasonable out of pocket expenses and normal counsel cost usually awarded for a leader and one or two juniors"

I am not sure that this pronouncement can be over stretched to apply to a claim of solicitors fees as special damages. The pronouncement was not made in the context of legal fees as special damages expended by a litigant which is passed on

to the adversary. The cost the court was referring too here is the usual cost or indemnity the courts award to a successful party for costs reasonably incurred in the course of the suit or proceedings but not to any extra-ordinary or unusual expenses incurred arising from rank or position or wealth or character of either of the parties or indeed any special desire on his part to ensure success.

Even if I am wrong with respect to the correct import of the said decision in **Rewane V Okotie-Eboh (supra),** it is clear that the decision of **Nwanji V Coastal Services Ltd (supra)** is clearly a later decision and in law where there are conflicting decisions, lower courts are bound by the latter or last decision of the Supreme Court. See **Osakue V F.C.E (Technical) Asaba (supra)**. On the whole, I am bound to kowtow to the said decision of the Supreme Court. I therefore entertain no reluctance whatsoever in disallowing the head of claim without much ado.

Relief (e) for 10% of the Judgment sum from the date of Judgment until the entire amount is liquidated in the circumstances must fail. There is no judgment sum to provide basis to grant **Relief (e).**

In the final analysis and in summation, I accordingly make the following orders:

<u>ON PLAINTIFFS CLAIMS</u>

1. **It is hereby declared that the 2nd plaintiff has equitable title or interest over Plot No. 70 measuring 2.117m2 in Cadastral Zone B08, Jahi district Abuja, FCT.**

2. **The Defendants and their servants, agents or representatives are restrained from acts capable of affecting the lawful and subsisting interest of claimants over plot No. 70, measuring 2.117m2 in Cadastral Zone B08, Jahi District Abuja, FCT as guaranteed under the Land Use Act and the 1999 Constitution.**

3. **Reliefs (c), (d) and (e) fail.**

4. **I award cost assessed in the sum of N50, 000 in favour of Claimants payable by 1st and 2nd Defendants.**

ON 3RD DEFENDANT'S COUNTER CLAIM

The 3rd defendant's counter claim fails in its entirety and is hereby dismissed.

…………………………….

Hon. Justice A.I. Kutigi

1. **Abdulkarim A. Esq. and Yusuf Abdullahi Esq. for the Claimants.**
2. **E.E. Urua Esq. with M.O. Agbon Esq. and Pamela Adeghe for the 1st and 2nd Defendants.**
3. **Mohammed Abdul Esq. with Odera Vickram Esq. and Abdulsalam Saleh, Esq. for the 3rd Defendant/Counter-Claimant.**