IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS MONDAY, THE 12TH DAY OF OCTOBER, 2020.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1654/09

BETWEEN:

SPRINGFIELD HOSPITAL & CLINIC LIMITED .....PLAINTIFF
(Suing by her lawful Attorney, Ekocorp plc
under an irrevocable Power of Attorney dated
21/5/1995 and registered in the Land Registry Office Abuja.)

AND

1. **HON. MINISTER OF FCT**
2. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
3. **SHELTARCH ASSOCIATES LIMITED** ⎬ **DEFENDANTS**
4. **PAMO CLINICS AND HOSPITALS LIMITED**
5. **NEWTON SPECIALIST HOSPITAL LIMITED**

JUDGMENT

This is a matter with a peculiarly interesting history. It is a case involving ownership of land within the FCT to be settled on fairly well settled principles of law. When the matter was filed by plaintiff, it was against three defendants and 3rd defendant was "person unknown". Hearing then commenced and plaintiff called

his first two witnesses. At that point, **Sheltarch Associates Ltd** applied to join the action as a defendant and also applied for recall of plaintiffs' witnesses. The application was granted. Unfortunately PW1 for the plaintiff fell seriously ill and subsequently died; so the matter had to literally start all over with the production of a new PW1 by the plaintiff.

The defendants in the course of trial increased to four and then to five and with each increase, the flow of the case was invariably affected. Various interlocutory applications were filed at different times for amendment of pleadings, recall of witnesses, calling of additional witnesses etc. There was also the associated delays or adjournments occasioned by failure to get witnesses and documents which affected the trajectory of the case. Even after adoption of final written addresses and the matter adjourned for Judgment, the plaintiff again filed an interlocutory application to reopen its case and to further amend its pleadings; and recall also another witness to bring in a fresh document. After what I will term as dislocations in the normal trial trajectory of a trial process, we have now finally arrived at this point culminating in the final judgment.

Let us start by streamlining the pleadings duly filed and exchanged. By a further Amended statement of claim dated 20th December, 2016, but filed on 3rd February, 2007, the plaintiff claims against the defendants jointly and severally as follows:

a. **A Declaration that the purported revocation of the right of the plaintiff on Certificate of Occupancy No MISC: 5827, Plot No. 1318, Cadastral Zone A06, Maitama, Abuja by letter dated 28th February, 2006 is null, void and of no effect.**

b. **A Declaration that the 2nd plaintiff is entitled to a grant over the land measuring 1.78 Ha and not only a fragment of 5.223.77 M^2.**

c. **A Declaration that the interests of the plaintiffs are still subsisting in the land and they are the one with sufficient interest in same as plaintiff has complied with the terms of contracts as contained in the certificate of occupancy.**

d. **A Declaration that 1st and 2nd defendants have waived their right to contend that Ekocorp Plc is not a lawful Attorney of Spring Field Hospital & Clinic Ltd, by reason of issuing Certificate of Occupancy dated 25th day of November, 2005, in the name of Ekocorp Plc over a smaller part of the land in dispute.**

e. **An Order of the Honourable Court, restraining the 1st and 2nd defendants from granting to another person other than the plaintiff, interest in plot No. 1318 Cadastral Zone A06, Maitama, Abuja and if any person or persons has, been so granted, an order declaring such as null, void and of no effect.**

f. **An Order of the Honourable Court, ordering the 1st and 2nd defendants to issue a new Certificate of Occupancy over all the plot in the name of Ekocorp Plc, having registered Power of Attorney to that effect by the 2nd Defendant and all necessary fees paid, and no other fees under any disguise to be paid by the plaintiffs to the defendant for the issuance of Certificate of Occupancy to cover the whole land measuring 1.78 Hectares.**

g. **An Order of the Honourable Court cancelling and ordering removal and or demolition of any purported issuance of certificate of occupancy, building plans, or development on the said plot in favour of any person or persons other than those of the plaintiff or agents.**

SPECIAL DAMAGES

h. **(i) The sum of N370, 589, 460 being special damages for the value of property demolished by the 2nd defendants and 10% Per annum from 2007 till the judgment is given, and 10% thereafter.**

(ii) The sum of N13 Million Naira only being the cost and professional fees paid for instituting this action.

GENERAL DAMAGES

i. **The sum of N50 Million Naira damages for the act of trespass, destruction of medical equipment and building materials by the 1st and 2nd defendants.**

The 1st and 2nd Defendants filed their joint Amended Statement of Defence dated 13th October, 2017 and filed same date in the Registry of Court.

The 3rd defendant on its part filed its statement of defence dated 5th April, 2011.

The 4th defendant filed its 2nd further Amended statement of defence dated 8th December, 2016 and set up a counter-claim against plaintiff as follows:

a. **A Declaration that the 4th Defendant/Counter-claimant is the holder of Statutory Right of Occupancy over Plot 4577 Cadastral Zone A06, Maitama Abuja covered by Certificate of Occupancy No: 20e0w-defaz-6adr-17318-6u1, with File No FCT/ABU/MISC/103529 dated the 28th day of May, 2009 and registered as No. 41101 at Page 1 in Volume 206.**

b. **A Declaration that the 4th Defendant/Counter claimant's title over property above is subsisting and valid.**

c. **An Order of perpetual injunction restraining the Plaintiff and/or any other persons, their privies, officers or whosoever, acting on their behalf from committing acts of trespass on Plot 4577 Cadastral Zone A06, Maitama, Abuja.**

d. **The cost of this Suit.**

The 5th defendant also filed a statement of defence dated 4th November, 2017 and set up a counter claim against both the **plaintiff** and the **3rd defendant** thus:

a. **A Declaration of this Honourable Court that the 5th Defendant/Counter-claimant is the lawful and valid allottee of all that portions and areas of land covered by and designated as Plot 5044 Cadastral Zone A06, Maitama, Abuja FCT, covered by Certificate of Occupancy No. 214w-1C723-6043r-bb4u-6u1, with File No. MISC 126820, measuring approximately 5,713.56M^2.**

b. **A Declaration of this Honourable Court that neither the 3rd Defendant nor the Plaintiff is the lawful and valid allottee of any or all that portions and areas of land covered by and designated as Plot 5044 Cadastral Zone A06, Maitama, Abuja-FCT, covered by Certificate of Occupancy No. 214w-**

1C723-6043r-bb4u-6u1, with File No. MISC 126820, measuring approximately 5,713.56M^2.

c. **An Order of perpetual injunction, restraining the 3rd defendant, its privies, agents, officers and any other person, persons or body from interfering or continuing to interfere in whatsoever manner inconsistent with the title and interest of the 5th defendant/counter claimant in and over all that portions and areas of land covered by and designated as Plot 5044 Cadastral Zone A06, Maitama, Abuja-FCT, covered by Certificate of Occupancy No. 214w-1C723-6043r-bb4u-6u1, with File No. MISC 126820, measuring approximately 5,713.56M^2.**

d. **An Order of perpetual injunction, restraining the plaintiff, its privies, agents, officers and any other person, persons or body from interfering or continuing to interfere in whatsoever manner inconsistent with the title and interest of the 5th defendant/counter claimant in and over any or all that portions and areas of land covered by and designated as Plot 5044 Cadastral Zone A06, Maitama, Abuja-FCT, covered by Certificate of Occupancy No. 214w-1C723-6043r-bb4u-6u1, with File No. MISC 126820, measuring approximately 5,713.56M^2.**

e. **Any other Order of Relief(s) this Honourable Court may deem fit to make in the circumstance.**

f. **N5, 000, 000. 00 (Five Million Naira Only) Costs.**

The plaintiff filed the following processes in response:

1. **Plaintiff's Reply to 4th defendant's Amended statement of defence and defence to the Counter claim filed on 24th January, 2014.**

2. **Plaintiff's Reply to 5th defendant's statement of defence and defence to the counter claim dated 5th March, 2018 and filed same date at the Court's Registry.**

The 3rd defendant similarly filed a **statement of defence to the 5th defendant's Counter-Claim dated 15th February, 2018 and filed on 27th February, 2018.**

In proof of its case, the plaintiff called three (3) witnesses. I will however briefly recount all those who testified for plaintiff for **purposes of clarity**. I had earlier alluded to the fact that one **Abdulmumini Ayinla** (now late), then company Secretary/Legal Adviser of Ekocorp Plc testified as PW1 for the plaintiff. His unfortunate demise in the course of hearing and the joinder of defendants to the case who called for his recall necessitated the calling of another witness to give evidence on aspects he had earlier testified on. His evidence in real terms was then jettisoned, in view of the obvious inability of plaintiff to produce him for purposes of cross-examination by some of the defendants. In the circumstances his evidence was not available to be used to support any position as done by learned counsel to the plaintiff in the final address. It is settled principle that a court should never act on the evidence of a witness whom the other party wants to cross-examine, but who cannot be reproduced or located for cross-examination. The implication of such a witness not making himself available for cross-examination is that all his evidence goes to naught. In **Isiaka V. the State (2011) ALL FWLR (pt.583)1966,** the Court of Appeal stated as follows:

"The platform on which the lower court placed his reasoning for the conviction is weak and unjustifiable. A court or tribunal should never act on the evidence of a witness whom the other party wants to cross-examine, but cannot be reproduced or located for cross-examination after he must have been examined in chief. The most honourable thing for the lower court would be that the evidence of PW3 who tendered Exhibit 5 should have been expunged from the record of the lower court or the lower court should not have attached any weight to it because the essence of cross-examination is to test the veracity and accuracy of the witness and not just a jamboree or merry making. A witness who fails to make himself available for cross-examination should know that his evidence goes to naught."

The second witness who testified for plaintiff as PW2 is one **Abioye Adeshina**, a staff of **FCDA** who was subpoenaed. His evidence is that he works with the Department of Development Control charged with the statutory duties of granting development permits, removal of illegal structures, shanties and ensuring orderliness of land use in the FCT.

He stated that before permission is given to develop land, building plan in conformity with the land use of the plot in question must be submitted. That the building plan contains the architectural, mechanical, electrical and structural

drawings. Further that they have district officers who head the planning unit of each district assisted by site officers and that if such drawings meet up with planning requirements, development permit is then granted to such developer. Furthermore, that where the requirements are not met, they write to inform the developer who has 90 days to amend and re-submit. That the district officer of each district is responsible for the removal of illegal structures within his district.

PW2 stated that he knows **Plot 1381** but he was not in charge of Maitama district at the time in question but that he was part of the team that removed the illegal structures on it. That police operatives were with them when they carried out the demolition.

PW2 looked at the building plan of plaintiff and said it was an approved building plan and that he was not aware of any other approved plan. He also further stated that when there is a change of ownership, a power of attorney should be registered so that when a new Certificate of Occupancy comes out, it will bear the name of the registered owner. With the conclusion of his evidence, PW2 was discharged.

With the joinder of 4th defendant on record to the action, an application was made to recall this witness for purposes of cross-examination by parties.

Under cross-examination by 1st and 2nd defendants, PW2 agreed that the Minister can revoke any land not **developed within 2 years**. He also agreed that the Minister cannot demolish any property not built within two (2) years without recourse to the development control department of FCT and that it is the department that can remove such illegal structure. Furthermore, that an uncompleted building on a land can be removed by the Minister through the development control department.

The 3rd defendant chose not to cross-examine PW2.

Cross-examined by counsel to the 4th defendant, PW2 stated that he knows the disputed plot but is not aware that it was allocated in 1991 as he is not a land officer. He is also not aware that the allocation was revoked but he knows the problems with the land. He said he was there when the building on the land was demolished and that it was an uncompleted structure. That he is not aware whether the structure was legal or illegal.

The next witness who testified for the plaintiff was **Omolayo Sunmonu**, the new company Secretary/Legal Adviser of Ekocorp Plc, who came in to testify following the death of, **Mr. A. Ayinla**, the former company secretary and legal adviser during the course of trial. I chose to identify her as **PW1** in the proceedings.

She deposed to a witness statement on oath dated 12th June, 2012 which she adopted at the hearing and tendered in evidence the following documents:

1. AGIS deposit slip No. 01312 in the sum of N10, 000 dated 10th February, 2012 was admitted as **Exhibit P1.**

2. FCT document titled: Regularisation/valuation bill was admitted as **Exhibit P2.**

3. AGIS deposit slips Nos: 42297, 42298 and 42299 were admitted as **Exhibits P3 a, b and c.**

4. FCT Abuja demand for Ground Rent was admitted as **Exhibit P4.**

5. Certificate of Occupancy dated 25th November, 2005 issued in the name of Ekocorp Plc was admitted as **Exhibit P5.**

6. Letters written by the law firm of A.A. Adewoye & Co dated 23rd October, 2007, 13th February, 2008, 11th March, 2008 and 3rd July, 2008 were admitted as **Exhibit P6 a, b, c and d.**

7. Letter by the FCTA to the law firm of A.A. Adewoye was admitted as **Exhibit P7.**

PW1 was then duly cross-examined by counsel to the 1st and 2nd defendants and in the process, the following documents were tendered through PW1 as follows:

1. Copy of Irrevocable Power of Attorney between Springfield Hospital and Clinics Ltd and Ekocorp Plc was admitted as **Exhibit P8.**

2. Copy of Certificate of Occupancy with MISC 5827 over plot 1318 with 1.78 Ha issued to Springfield Hospital and Clinic Ltd dated 22nd July, 1991 was admitted as **Exhibit P9.**

3. Copy of a document showing two (2) pictures of an uncompleted building was admitted as **Exhibit P10.**

4. Copy of Notice of Revocation of Right of Occupancy No. MISC 5827 dated 28th February, 2006 was admitted as **Exhibit P11.**

PW1 was then cross-examined by counsel for both 3rd and 4th defendants respectively and she was then discharged.

On application **by plaintiff** which was not opposed, **PW1, Omolayo Sunmonu**, the company secretary and legal adviser was recalled to give further evidence. She deposed to an additional witness deposition dated 6th May, 2014 which she adopted at the hearing. She was then cross-examined by counsel to the 1st and 2nd defendants and also counsel to the 4th defendant. Counsel to the 3rd defendant elected not to cross-examine PW1 again.

The next witness for the plaintiff who testified as **PW3** is one **Rotimi Ibidun**, a site clerk who deposed to a witness statement on oath dated 20th April, 2016 which he adopted at the hearing. He tendered in evidence an approved building plan of Ekocorp Plc with eight (8) sheets dated 8th January, 1997 which was admitted in evidence as **Exhibits P12 (1-8.)**

PW3 was cross-examined by counsels for 1st and 2nd defendants, 3rd defendant and then 4th defendant.

Learned counsel to the plaintiff then tendered from the Bar a **Certified True Copy** of Certificate of Occupancy No. FCT/ABU/MISC/5827 issued to **Springfield Hospital and Clinics dated 22nd July, 1991** with the receipt for payment of fees for the certified true copy which was admitted as **Exhibit P13**. With the admission of this document, the **plaintiff then finally closed its case**.

The 1st and 2nd defendants on their part called only **one witness**, **one Ezikpe Ifegwu Ugorji**, a staff with FCDA department of land who testified as **DW1**. He

deposed to a witness statement on oath dated 13th October, 2007 which he adopted at the hearing. He tendered in evidence, the following documents:

1. Certified True Copy (C.T.C) of Notice of Revocation dated 28th February, 2006 was admitted as **Exhibit D1.**

2. Letter by the plaintiff to the Minister FCT dated 9th May, 2006 was admitted as **Exhibit D2.**

DW1 was then **cross-examined by counsel to the 5th defendant** who tendered the certified true copies (C.T.C) of the following documents:

1. C.T.C of Notice of Revocation of Right of Occupancy No. MISC 5827 dated 28th February, 2006 was admitted as **Exhibit D3.**

2. C.T.C of Right of Offer of Statutory Right of Occupancy to Newton Specialist Hospital Ltd dated 13th October, 2014 was admitted as **Exhibit D4.**

3. C.T.C of Certificate of Occupancy to Newton Specialist Hospital Ltd dated 18th December, 2014 was admitted as **Exhibit D5.**

4. Copy of GPS or Satellite Image of part of Maitama district, Cadastral Zone A06 was admitted as **Exhibit D6.**

5. C.T.C of documents from Corporate Affairs Commission in respect of **Ekocorp Plc** comprising application form for post incorporation verification, Receipts of payment, form of annual returns, appointment of company secretary/legal adviser, 2005 Annual Report and Accounts and Admission form for the 13th Annual General meeting of Ekocorp Plc were admitted as **Exhibit D7 (1-19).**

Counsel to the 4th defendant then cross-examined DW1 and before doing so, he similarly tendered the certified true copies (C.T.C) of the following documents:

1. C.T.C of Title Deed Plan (TDP) of Plot 4577 dated 28th May, 2009 was admitted as **Exhibit D8.**

2. C.T.C of Notice of Revocation of Right of Occupancy MISC 5827, receipt of which was acknowledged by A.O. Ayinla was admitted as **Exhibit D9.**

3. C.T.C of copy of offer statutory right of occupancy dated 22nd May, 2009 with MISC 103520 to Pamo Clinic and Hospital Limited was admitted as **Exhibit D10.**

4. C.T.C of copy of statutory Right of Occupancy bill to Pamo Clinic and Hospital Ltd dated 22nd May, 2009 was admitted as **Exhibit D11.**

5. C.T.C of copy of receipt issued by AGIS dated 26th May, 2009 for Right of Occupancy bill (including all fees) was admitted as **Exhibit D12.**

6. Copy of certificate of occupancy to Pamo Clinic and Hospital Ltd with file No. MISC 103620 dated 28th May, 2009 was admitted as **Exhibit D13.**

7. Copy of deposition by Abdulmumeen Oladimeji Lawal titled "loss of Certificate of Incorporation of Ekocorp Plc Ikeja, Lagos RC No. 61775" was admitted as **Exhibit D14.**

8. C.T.C of form of Annual Returns of Ekocorp Plc for 2008 was admitted as **Exhibit D15.**

9. C.T.C of Copy of Board Resolution of Ekocorp Plc was admitted as **Exhibit D16**.

10. C.T.C of copy of Application for C.T.C of Certificate of Incorporation for Ekocorp Plc dated 18th May, 2005 was admitted as **Exhibit D17.**

11. C.T.C of C.A.C particulars of person who is the secretary of a company for Ekocorp Plc was admitted as **Exhibit D18** and finally,

12. C.T.C of Receipt issued by FCTA to Pamo Clinic & Hospital Ltd for Building Plan was admitted as **Exhibit D19.**

Counsel to the **3rd defendant equally tendered the following documents from the Bar** before cross-examining DW1 as follows:

1. C.T.C of Offer of Statutory Right of Occupancy to Sihmat Ventures Ltd dated 13th January, 2006 with new file No. MISC 85559 was admitted as **Exhibit D20**.

2. C.T.C of Certificate of Occupancy to Sihmat Ventures Ltd dated 4th June, 2009 was admitted as **Exhibit D21.**

Counsel to the plaintiff similarly adopted the same style as other counsel in the matter as he tendered the following certified true copies of the following documents from the Bar before cross-examining DW1 as follows:

1. C.T.C of Certificate of Incorporation of Ekocorp Plc was admitted as **Exhibit D22 a.**

2. C.T.C of Certificate of Incorporation of Springfield Hospitals and Clinics Ltd was admitted as **Exhibit D22 b.**

With the evidence of DW1, the 1st and 2nd defendants closed their case.

The **3rd defendant** on its part also called one witness, **Mrs. Victoria Ogbeni**, a Director in 3rd defendant who testified as DW2. She deposed to two (2) witness statements on oath dated 6th April, 2011 and 27th February, 2018 which she adopted at the hearing. She identified and stated the contents of **Exhibits D20** (Offer of Statutory Right of Occupancy to Sihmat Ventures) and **D21** (Certificate of Occupancy to Sihmat Ventures) already in evidence which was given to them on purchase of the disputed property from **Sihmat Ventures**. She further tendered in evidence the following documents, to wit:

1. Legal search report issued by FCTA, AGIS dated 5th October, 2009 to Sihmat ventures was admitted as **Exhibit D23.**

2. Two (2) receipts issued by Sihmat Ventures dated 4th November, 2009 and 26th May, 2010 together with the Power of Attorney between Sihmat Ventures and 3rd defendant were admitted as **Exhibits D24 a and** b and **Exhibit 25.**

3. F.C.T.A AGIS Receipt dated 22nd June, 2010 was admitted as **Exhibit D26.**

4. Five (5) copies of pictures with the certificate of compliance were admitted as **Exhibit D27 (1-5) and D27 (6).**

She then urged the court to dismiss both the plaintiff's claims and the 5th defendants counter-claim.

DW2 was then cross-examined by counsel to the 5th defendant and counsel to the plaintiff. Counsels to the 1st and 2nd defendants and the 4th defendant elected not to cross-examine DW2 and with her evidence, the 3rd defendant closed its case.

The **4th defendant/counter-claimant similarly called one witness**. Dr. Charles Amanze, vice chairman of 4th defendant testified as DW3. He deposed to a witness statement dated 8th October, 2016 which he adopted at the hearing. He identified and described the contents of **Exhibits D8-D19** already tendered in evidence and which forms part of the Records of Court. All the other defendants chose not to cross-examine DW3 for the 4th defendant but he was duly cross-examined by counsel to the plaintiff and with his evidence, the 4th defendant/counter-claimant closed its case.

The **5th defendant and also a counter claimant** similarly called one witness, **Dr. Godwin Nnadozie** who testified as DW4. He deposed to two (2) witness depositions both dated 5th December, 2017 which he adopted at the trial. He tendered in evidence the following documents:

1. Application for grant/re-grant of statutory right of occupancy acknowledgment and the Revenue Collectors Receipt issued by FCTA both dated 4th April, 2014 were admitted as **Exhibits D28 a** and **b.**

2. The statutory right of occupancy bill dated 13th October, 2014 and the Revenue Collectors Receipt issued by AGIS dated 27th October, 2014 were admitted as **Exhibits D29 a** and **b.**

3. Legal search report and the Revenue Collectors Receipt issued by FCTA, AGIS both dated 14th December, 2016 were admitted as **Exhibits 30 a** and **b.**

4. The Demand for Ground Rent and Revenue collectors Receipt issued by FCTA AGIS both dated 16th February, 2016 were admitted as **Exhibits D31** and **b**.

DW4 similarly in evidence identified and described or stated the contents of **Exhibits D1-D7** already in evidence and which forms part of the Records of Court. He then urged the court to dismiss the case of plaintiff and grant there counter-claim.

DW4 was then cross-examined by counsels to the 1st and 2nd defendants, 3rd defendant and plaintiff. The 4th defendant did not cross-examine DW4 and with his evidence, 5th defendant/counter-claimant closed their case.

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

The final address of the 5th defendant/counter-claimant is dated 3rd December, 2019 and filed on 4th December, 2019 at the Court's registry. In the address, two (2) issues were formulated as arising for determination as follows:

(i) Whether the plaintiff still has a subsisting right of occupancy over the whole of Plot 1318 Cadastral Zone A06, Maitama, Abuja to entitle it to the reliefs claimed.

(ii) Whether it is the 3rd defendant or the 5th defendant that has proved a better title to that portion of land measuring 5,713.56m^2 known as Plot 5044 Cadastral Zone A06, Maitama, Abuja.

On the part of 4th defendant/counter-claimant the final address is dated 3rd December, 2019 and filed same date at the Court's Registry. The 4th defendant also formulated two (2) issues as arising for determination thus:

1. **Whether the interest of the Plaintiff in Plot 1318 Cadastral Zone A6, Maitama with File No: MISC 5827 was duly revoked in accordance with the provisions of the Land Use Act, 1978, therefore extinguishing all rights of the Plaintiff over the said property.**

2. **Whether the 4th Defendant/Counter claimant has the valid and subsisting title over Plot 4577 Cadastral Zone A06, Maitama Abuja measuring about 5,441.45m^2.**

The 3rd defendant's final address is dated 5th October, 2019 but filed on 7th October, 2019. Three (3) issues were distilled as arising for determination as follows:

a. **Whether given the state of pleadings and evidence (presented by the parties to this suit), the plaintiff has been able to establish that its interest covered by the Certificate of Occupancy No: FCT/ABU/MISC 5827 was not lawfully and justifiably revoked.**

b. **Whether the 5th defendant defence and counter-claims presented in this suit are not incompetent, vexatious, abusive of the process of this Honourable Court and invalid under the doctrine of *Lis Pendes*.**

c. **Whether the 3rd defendant interest covered by the Certificate of Occupancy No. 85559 has been impeached or invalidated by any facts presented in this case.**

On the part of 1st and 2nd defendants, their final address is dated 13th January, 2020 but filed on 14th January, 2020. In the address four (4) issues were formulated as arising for determination namely:

1. **Whether by the pleadings and the evidence led by the claimant a case for wrongful revocation of Right of Occupancy of Plot 1318 Cadastral Zone A06 Maitama, was made out against the 1st and 2nd Defendants.**

   Put Differently,

   Whether the 1st and 2nd Defendants validly exercise the power of revocation vested in them by law in the revocation of the Right of Occupancy granted to the plaintiff in this case.

2. **Whether if this court resolves issue 1 above in favour of the 1st and 2nd Defendants, the consequential reliefs sought in paragraphs 41 (b), (c), (d), (e), (f) and (g) of the Plaintiff's Further Amended Statement of Claim are not otiose.**

3. **Whether considering the circumstances of this case the claimant can maintain the clams for special and general damages against the 1st and 2nd defendants.**

   Assuming (but not conceding) that these claims are maintainable, whether the claimant has made out a case to entitle him to award of damages.

4. **Whether the claim by the Plaintiff for cost and professional fees for instituting this action is not outlandish and incompetent.**

The plaintiff's final address is dated 23rd December, 2019 but filed on 24th December, 2019. Three (3) issues were distilled as arising for determination as follows:

1. **Whether or not, from the totality of the evidence before the court, the plaintiff had discharged the onus of proof placed upon him by law on the preponderance of evidence led on record to warrant a grant of the reliefs sought in this suit.**

2. **Whether the purported revocation is valid in law**

3. **Whether the 3rd, 4th and 5th Defendants are entitled to the parcels of land claimed.**

The 5th defendant/counter-claimant filed a Reply on points of law to the plaintiffs' address dated 3rd February, 2020 but filed on 11th February, 2020. The 4th defendant/counter-claimant also filed a Reply on points of law in response to the plaintiff's address filed on 5th February, 2020. The 1st and 2nd defendants similarly filed a Reply on points of law to the plaintiffs address dated 13th January, 2020 but filed on 14th January, 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 issues and or facts in dispute, the central key issue on which all parties are at a consensus adidem relates to the

claim of ownership made by plaintiff to **plot 1318** Cadastral Zone A6, Maitama with file No: MISC 5827 and whether it was duly revoked in accordance with the provisions of the Land Use Act, thereby extinguishing any or all rights that plaintiff may have over the land. The plaintiff essentially seek for a pronouncement affirming their ownership of this plot contending that the purported revocation of same cannot be legally countenanced. All the other reliefs sought by plaintiff and indeed the case to the contrary made by all the defendants and the counter-claims made can be considered within the context of the critical question of the validity or otherwise of the revocation of **plot 1318.**

On the pleadings, and the evidence, it is to be noted that the subsequent allocations of land made to 3rd to 5th defendants all fall within this disputed **plot 1318**. Within these factual and legal construct, the 4th and 5th defendants have situated their counter-claims seeking a pronouncement on the validity of their allocations. Adding an interesting dynamic to the questions raised is that the **3rd and 5th defendants** appear to lay claim to the same parcel of land within the larger disputed plot 1318. Indeed the counter-claim of 5th defendant is against both plaintiff and 3rd defendant. Perhaps in recognition of this challenge, the 3rd defendant wants a pronouncement on whether its interest covered by Certificate of Occupancy No. 85559 has been impeached or invalidated by any facts presented in this case.

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 in this case **a claim** by plaintiff and **counter-claim** by both the 4th and 5th defendants. It is trite law that for all intents and purposes, a counter claim is a separate, independent and distinct action and the counter claimant(s) 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 4th and 5th defendants/counter-claimants 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 plaintiff has established on a preponderance of evidence that it is entitled to all or any of the reliefs claimed.**

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

i. **Was the allocation of the disputed plot 1318 validly revoked?**
ii. **Did the alleged further demand and payments of ground rents alter the legal effect of the revocation of plot 1318?**
iii. **Whether the Reliefs of plaintiff are availing?**

2. **Whether the 4th defendant/counter-claimant has established that it has a valid and subsisting title over plot 4577 Cadastral Zone A06, Maitama Abuja.**

3. **Whether the 5th defendant/counter-claimant has equally established that it has a valid and subsisting title over plot 5044 Cadastral Zone A06, Maitama Abuja.**

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 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 plaintiff has established on a preponderance of evidence that it is entitled to all or any of the reliefs claimed.**

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

i. **Was the allocation of the disputed plot 1318 validly revoked?**
ii. **Did the alleged further demand and payments of ground rents alter the legal effect of the revocation of plot 1318?**
iii. **Whether the Reliefs of plaintiff are availing?**

At the commencement of this judgment, I had stated that there is a claim by plaintiff and counter-claims filed by both 4th and 5th defendants respectively. 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 that the evidence that we must now beam a critical judicial search light in resolving these contested assertions.

In this case, the **Plaintiff** filed a lengthy 40 paragraphs Amended statement of claim which forms part of the Records of court. The evidence of key witnesses and even the additional deposition by PW1 for the plaintiff is largely within the structure of the claim and the replies filed to the counter-claim of 4th and 5th defendants.

The **1st and 2nd defendants** filed a 20 paragraphs defence which forms part of records of court and the evidence of their sole witness is largely within the purview of the facts averred.

The **3rd defendant** on its part filed a 27 paragraphs statement of defence which is also part of the Records and the evidence of their sole witness is similarly within the body of facts averred in their defence.

The **4th defendant/counter-claimant** filed a voluminous 70 paragraphs defence and counter claim which also forms part of the records of court. The sole witness similarly and largely gave evidence within the context of the facts averred in there pleadings.

Finally, the **5th defendant/counter-claimant** similarly filed a voluminous 61 paragraphs defence and counter-claim which also forms part of the Records of court and the evidence of there sole witness also largely falls within the purview of the facts as averred to sustain the defence and the counter claim.

As stated earlier, the plaintiff filed Replies to both the defence and counter-claims of 4th and 5th defendants. The 3rd defendant filed a defence to the counter-claim of 5th defendant.

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 state that under the relevant laws governing land tenure in the FCT, apart from proof by production of title documents issued by the Minister FCT, the other methods of proving title to land in real terms lack factual or legal resonance.

The above provides broad legal and factual template as we shortly commence the inquiry into the contrasting claims of parties.

It is also important to note the point at the onset that the nature of the reliefs both parties in the claim and counter-claim seek are substantially **declaratory** in nature. That 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).

A **convenient starting point** is to understand the precise situational dynamic relating to the validity of the revocation of the allocation of **plot 1318** to plaintiff and whether it is valid and can be countenanced legally. A determination of this fundamental point 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-claims of 4th and 5th defendants. Let us now carefully scrutinize the relative strength and value of the narrative of parties.

Now on the pleadings of parties there is no real dispute on this point that sometime in 1991, the plaintiff, **Springfield Hospital and Clinic Ltd** was allocated a parcel of land known as **Plot 1318 Cadastral Zone A06, Maitama Abuja** measuring 1.78 hectares and covered by **Certificate of Occupancy (C/O) No. FCT/ABU/MISC 5827**. **Exhibit P13**, the Certified True Copy of the Certificate of Occupancy dated 22nd July, 1991 under the hand of the then Minister FCT, unequivocally confirms this allocation.

It is critical to underscore the point at the outset that the Certificate of Occupancy as between the issuing authority and the beneficiary constitutes or serves as the basis for the mutual reciprocity of legal obligations between the parties. An acceptance by an allottee of the offer of plot(s) of land binds him to terms and conditions specified in the Certificate of Occupancy. See **Obi V Minister, FCT (2015) 9 NWLR (pt.1465) 610**. Indeed by virtue of the provision of **Section 9(4) of the Land Use Act**, the terms and conditions of a Certificate of Occupancy granted under the Act and which has been accepted by the holder are enforceable against the holder and his successors in title. See **Obi V Minister, FCT (supra)**. The Certificate of Occupancy in this case was granted to the plaintiff subject to certain specific terms and conditions as contained in the Certificate of Occupancy or Exhibit P13. I will return to this point later.

Now the case of plaintiff is that it appointed **Ekocorp Plc** as its attorney in 1995 to take over and manage the said **Plot 1318**. The 1st and 2nd defendants in **paragraph 7** of its defence admitted this averment relating to the appointment of Ekocorp as

an attorney and dealt with them as such. In the circumstances, I will let sleeping dogs lie and not say much on the inchoate or incomplete document of two pages called **"irrevocable power of attorney"** tendered through PW1 as **Exhibit P8** which clearly is a photocopy of a public document and same was not certified or the original copy produced. Whether this will impact the relief(s) claimed by plaintiff in any manner in view of the threshold of proof for **declaratory reliefs** earlier highlighted we shall soon see.

On the pleadings and evidence, the plaintiff then applied for a building approval which it said was approved vide letter dated **8th January, 1997**. This letter though pleaded was however not tendered in evidence to enable court situate the terms of the approval. The plaintiff however tendered the plan vide **Exhibit P12 (1-8)** dated 8th January, 1997 signed and stamped by officials of a department in the 1st and 2nd defendants offices. Indeed PW2, the **subpoenaed witness** from the Department of Development Control of 1st and 2nd defendants confirmed unequivocally that the building plan of plaintiff was approved. Equally significant is that the stamp on each of the page of the plan reads **"signed and approved"** indicating that the building plan by the plaintiff was approved and there is no counter evidence before me indicating otherwise or that it was not approved.

The defendants in particular the 1st and 2nd defendants the issuing and regulatory authorities in the F.C.T said the development(s) carried out on the said **"plot was illegal and not in compliance with the relevant laws"**. They further averred that the defendant was not issued with any **"setting out approvals"** by 2nd defendant.

Now the sole witness for the 1st and 2nd defendants simply repeated the contents of the pleadings without streamlining clearly in evidence how the construction of the plaintiffs building on part of Plot 1318 was illegal and the relevant laws or building regulations allegedly violated and the fact that the property or building was not supervised. Nothing was also put forward denoting or showing the requirements of "setting out" as a requirement for building a property and what it means or entails. Since the court is in no position to speculate, this aspect of the pleadings by 1st and 2nd defendants pertaining to "setting out" particularly with respect to what constitute the "setting out" and "non compliance with relevant laws" is deemed as abandoned in the absence of evidence to support the averments.

Let me quickly add that the other **defendants** who made similar complaints that no building plan and setting out approvals was issued to plaintiff did not lead or proffer any scintilla of evidence in support of these averments. In any event since they are all private companies and don't work with the issuing authorities and indeed do no issue these approvals, it is really difficult to situate the basis of the complaints that building and setting out approvals were not issued to plaintiff before it commenced construction work on site. These averments by all the other defendants, to wit 3rd, 4th and 5th defendants must also necessarily be deemed as abandoned.

It is trite law that pleadings, however strong and convincing the averments may be, without evidence in proof thereof go to no issue. Through pleadings, the adversary and the court know exactly the points in dispute. Evidence must then be led to prove the facts relied on by the party to sustain the allegations raised in the pleadings, failing which they must be discountenanced as unsubstantiated. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 F-G; Odunsi V Bamgbala (1995) 1 NWLR (pt.374) 641 at 656 – 6577 H-A.**

Most importantly, this witness or DW1 for the 1st and 2nd defendants himself said he does not work in the **Departmental of Development Control** which is the department according to PW2, a staff on subpoena from the department charged with the statutory duty of granting development permits, removal of illegal structures, shanties and ensuring the orderliness of land use and control among other duties.

If DW1 does not work in the **Department** specifically mandated or charged with issuance of building approvals and monitoring of developments in the FCT, then he ought to provide some template or basis for the evidence he is giving with respect to the alleged violations of building regulations pertaining to the building of plaintiff. No such basis or source of his information was given and this detracts from the value of his testimony. His evidence with respect to setting out, construction of the building without supervision are simply speculative opinions lacking basis or foundation.

What further detracts from the credibility of DW1 on these contentions is that his evidence is at variance with the evidence of PW2, Abioye Adeshina, who as stated earlier, was subpoenaed. **PW2** is a staff of 1st and 2nd defendants and works

directly with the **Department of Development Control of the FCDA, the body according to him responsible** for issuing of building permits and approvals and the supervision of developments or construction in the FCT. This witness confirmed that the **building plan** for the plaintiffs building was approved and that for a developer to develop his plot, what is required was for the submission of a building plan which comprise architectural, electrical and mechanical drawings. That they have district officers who head the planning unit of each district assisted by site officers and that if the drawings meet up with planning requirements, **development permit** or **approval** is granted.

There was nothing in evidence by **PW2** indicating that the plaintiff violated planning regulations or that approval for the building plan was not issued or that requirements of setting out approval were not complied with. Similarly no district officer or site officer of the district where plot 1318 is located was produced to lend credence to the case made out by 1st and 2nd defendants that plaintiff built without supervision or if any building regulations or setting out approvals requirements were breached. The case of 1st and 2nd defendants and indeed all the other defendants on the issue of lack of issuance of building and setting out approval lacks credibility and is accordingly discountenanced.

Now it must be noted as stated earlier that the grant of **Certificate of Occupancy** to plaintiff in 1991 was predicated on certain key conditions which is binding. Some of the key conditions, amongst others contained in the Certificate of Occupancy to Springfield Hospital and Clinic Ltd **Exhibit P13** are **Clauses (4)** and **(5)** as follows:

"(4) Within two years from the date of the commencement of this right of occupancy to erect and compete on the said land the buildings or other works specified in detailed plans approved or to be approved by the Federal Capital Development Authority, or other officer appointed by the President, such buildings or other works to be of the value of not less than N1, 000, 000 (One Million Naira) and to be erected and completed in accordance with such plans and to the satisfaction of the said Federal Capital Development Authority or other officer appointed by the president.

(5) To maintain in good and substantial repair to the satisfaction of the Federal Capital Development Authority or other officer appointed by the President all buildings on the said land (whether now erected or to be erected in pursuance of sub-clause (4) hereof).”

The case of defendants and in particular 1st and 2nd defendants is anchored substantially on none compliance with the terms of the allocation particularly the grounds streamlined above which resulted in the revocation of the allocation to plaintiff and the subsequent redesignation and reallocation of portions of the revoked plot to the defendants. The plaintiff argued to the contrary that there were no violations of the terms. The question now is did the plaintiff comply with these and other conditions as contained in the Certificate of Occupancy which as stated earlier constitutes the basis for the mutuality of reciprocity of legal obligations between the issuing authorities, 1st and 2nd defendants and the plaintiff?

Let us perhaps situate the case of the plaintiff on this critical point. Now on the pleadings, there is not dispute that the certificate of occupancy **Exhibit P13** was issued on 22nd July, 1991. If the erection and completion of the building approved is to be done within 2 years as contemplated by Clause (4) above, then by simple arithmetic, the **completion of the building** in this case should be sometime in July 1993. The trajectory of the narrative here shows or discloses that even at this early stage, clause (4) was observed more in breach.

Now in this case there is nothing in the pleadings of plaintiff or evidence with respect to when it applied for a building approval. Paragraph 8 of the claim is silent on this point but talks only of submission of the plan which by paragraph 9 was approved in 1997. There is therefore here nothing before court explaining the failure to take immediate steps to secure building approval to allow for compliance with clause (4). On the basis of this ambivalent posture of plaintiff, what is clear is that the 1st and 2nd defendants cannot be blamed for any delay with respect to the approval of the building plan. In any case, on the pleadings no complaint was raised or made by plaintiff against 1st and 2nd defendants with respect to approval of their building plan, so we leave it at that.

By paragraphs 10 and 11, the plaintiff said it commenced development and that they were at an **“advance stage of completion”**. There is again no clarity as to when the building commenced but if it is taken that the building commenced in

1997 after the approval of the building plan, the key question here is whether the building was erected and completed as envisaged by the terms of the **Certificate of Occupancy**? The answer however one wants to look at the case of the plaintiff can only be in the negative. The plaintiff in paragraph 11 used the phrase **"at an advanced stage of completion"** which is a clear indication that the building has not been completed. **Exhibit P10**, the pictorial representation of the building or what was on ground shows clearly that the building is still been erected and certainly not completed and clearly the building does not occupy the entire **1.78 hectares** of Plot 1318. Indeed as contended by the 3rd to 5th defendants, this pictorial representation shows only an uncompleted development of a part of the large parcel of land allocated to plaintiff. There is nothing before court by plaintiff indicating that the development it said it was carrying out covered the entire **1.78 hectares of land** it was allocated. The picture however speaks for itself.

Indeed the new Company Secretary of plaintiff, **Omolayo Sunmonu** who testified as PW1 under cross-examination by 4th defendant acknowledged this fact of failure to complete erection of the building in the following unambiguous terms:

Q. From 1991 to 2016, your building was still under construction?

A. Yes, but other factors contributed to it.

Now there is nothing in the pleadings of plaintiff streamlining what these **"factors"** are that contributed to the failure to erect and complete the building. All that the plaintiff averred in paragraphs 12-20 are the facts of certain payments it made at different times without stating the reasons, if any, why it failed to complete the building nearly 15 years after the allocation and before the revocation in 2006. If there is obvious none compliance with **clause (4)** relating to erection and completion of an approved building, then it follows as a logical corollary that the plaintiff could then not comply with **clause (5)** to keep the property in **"good and substantial"** repair to the satisfaction of the issuing authorities. Here too, the plaintiff was equally in breach of this clause.

The case of the 1st and 2nd defendants on the pleadings and evidence of DW1 and re-echoed by all the other defendants is that the grant made to plaintiff was subject to the terms contained in the Certificate of Occupancy and that plaintiff was in breach. That the building vide exhibit P10 was clearly uncompleted and in

violation of the terms of the certificate of occupancy and that infact the building was **"an abandoned structure"** and had become a "habitat for miscreants" and had to be "removed" vide paragraph 9 of the 1st and 2nd defendants defence and the witness deposition of their witness.

On a clear confluence of facts on the evidence, there is no dispute that more than 15 years after the allocation to plaintiff, there was clearly none-compliance with the clauses pertaining to erection and construction of a completed building and maintaining the property in good and substantial repair.

This undoubted state of affairs led to the **revocation of the allocation of plaintiff** vide **Exhibit D1**, the notice of revocation of **Right of Occupancy No: MISC 5827** which the plaintiff has challenged on clear grounds in the pleadings which I will shortly highlight and address. I prefer to first reproduce the entire contents of the revocation letter which all parties similarly tendered. It reads thus:

"NOTICE OF REVOCATION OF RIGHT OF OCCUPANCY NO. MISC 5827

I have been directed to refer to the above Right of Occupancy and inform you that the Minister of Federal Capital Territory has in the exercise powers conferred on him under Section 28 (5)(a)&(b) of the Land Use Act, 1978 revoked your rights, interest and privileges over plot 1318 within Maitama District (A06) for your continued contravention of the terms of development of Right of Occupancy.

You are by this notice informed to retain developed part of the plot and to note that title covered by MISC 5827 is extinguished. A new title covering the developed part shall be issued in due course.

SIGNED
ONI, O.A.
HIGHER ESTATE OFFICER
FOR: THE MINISTER

SPRINGFIELD HOSPITAL AND CLINIC LTD.
C/O EKOCORP PLC
THE EKO HOSPITAL, 31 MOBOLAJI BANK ANTHONY WAY, LAGOS"

The content of the above letter of revocation is clear.

On the authorities, when an allottee fails to develop a plot allotted by a Certificate of Occupancy within two years, the Governor or Minister responsible may revoke the plot for such failure. He may, instead of revoking it immediately, delay the revocation. He may also instead of revoking it, impose a penal rent on the allottee for failure to so develop. Whichever path he chooses, he is empowered legally to do so. See **Obi V Minister, FCT (supra).**

Let me also underscore the point that Revocation of a 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.**

Now the complaint of the plaintiff with respect to the revocation can be situated within paragraphs 21-23 of the Amended statement of claim as follows:

"21. Based on the demand for ground rent letter of 1st and 2nd defendants dated 6th March, 2006, and consequential payment by plaintiff which was received by 1st and 2nd defendants (sic) cannot act on the purported letter of revocation dated 25th February, 2006. Their right has been waived and estopped to act on the purported letter of revocation.

22. The plaintiff avers that after the payments of the bills referred to in the foregoing paragraphs; the plaintiff was waiting patiently to collect the new Certificate of Occupancy having fulfilled all conditions for the re-certification.

- **That the 1st and 2nd defendants does not have the statutory power to offer part of the parcel of land belonging to the plaintiff as its right on the parcel of land still subsists.**

- **That the constitutional right of fair hearing of the plaintiff was grossly violated by the 1st and 2nd defendants in the process of the purported revocation and allocation of parts of its land to the 4th defendant.**

- **That there were enough notice board and signs which were conspicuously displayed on the land in question stating that the land belongs to the plaintiff. The defendant sis not carry diligent search encroaching on plaintiff's plot.**

23.The plaintiff avers that it was a rude shock to it to be informed that portions of the plot were revoked by the 1st defendant. The said letter of Revocation dated 28th February, 2006 is hereby pleaded as same shall be relied upon at the trial."

In the **Replies** filed in response to the statement of defence and counter claim of both 4th and 5th defendants, the plaintiff stated that it was not **served** the Notice of Revocation.

The above pleadings are clear with respect to the clear complaints of the plaintiff in relation to the Notice of Revocation. The basis of the complaints here is rooted basically on (1) That the Notice was not legally and properly issued; (2) That the actions of 1st and 2nd defendants in issuing bills which were paid amounts to waiver and estoppel which according to plaintiff prevented the 1st and 2nd defendants from relying on the revocation. The third and final plank of the challenge to the revocation is that the constitutional right of fair hearing of plaintiff was violated in the process and that they were not served.

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.

I note that some of the submissions of counsel to the plaintiff in his address contending that no reason for the revocation was stated; failure to comply with pre-conditions for a valid revocation and the proper signatory to the revocation are all matters clearly not pleaded or facts properly furnished in the pleadings to provide basis to raise the issues which now form a major plank of the plaintiffs address.

These submissions outside the template of matters raised on the pleadings 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."

To however avoid accusations of been unduly pedantic particularly since the plaintiff has raised or pleaded the improper issuance of the revocation, let us now

situate the validity or otherwise of the revocation and the complaints made within the purview of the applicable statutory provisions.

I had earlier stated verbatim the contents of the letter of Revocation vide Exhibit D1. At the risk of prolixity, the revocation was done pursuant to the specific provisions of **"…Section 28(5) (a) and (b) of the Land Use Act"** and for the reason clearly **identified** thus: **"… for your continued contravention of the terms of development of Right of Occupancy."** This reason for me is clear and sufficiently adequate and the notice is unambiguous about the source of the Ministers power to revoke. In the case of **Ekundayo & Anor V FCDA & Anor (2015) LPELR – 24512**, the Court of Appeal considered a similar notice of revocation as Exhibit D1 and it held that it was in compliance with the requirements of **Section 28 (5) (a) and (b) of the Land Use Act** and thus valid. The submissions by counsel to the plaintiff that the notice of revocation here is a **"letter of intention to revoke"** clearly lacks substance and contradictory in terms. If it was a letter of intention as conceived by plaintiff, then it meant logically there was no revocation, so the question then is why the present challenge to the revocation notice?

There is nothing in the Land Use Act particularly under the specific provision of **Section 28 (5) (a) and (b)** pursuant to which the plot of plaintiff was revoked providing for letter of intention to revoke, neither does it provide for service of an advance notice of a letter of revocation as suggested by counsel to the plaintiff. There cannot be any interpolations to a clear provision to suit any purpose. The contention that the right of fair hearing was breached particularly in relation to the clear provision of **Section 28 (5) (a) and (b)** has absolutely no legal traction and must be discountenanced.

Sections of 28 (5) (a) and (b) under which the Minister acted provides as follows:

"The Governor may revoke a statutory right of occupancy on the ground of –

(a) a breach of any of the provisions which a Certificate of Occupancy is by Section 10 of the Act deemed to contain;

(b) a breach of any term contained in the Certificate of Occupancy or in any special contract made under Section 8 of this Act."

The above provisions are clear and unambiguous. In the interpretation of the provision of a statute, where the ordinary, plain meaning of words used are very clear and unambiguous, effect must be given to those words, without resorting to any intrinsic or external aid: See **Okotie-Eboh V Manager (2004) 18 NWLR (pt.905) 242**; except where such construction would lead to some absurdity or would be repugnant to the intention to be collected from the parts of the statute. See **Buhari V Obasanjo (2005) AFWLR (pt.273) 1 at 133-134 H-A; Olanrewaju V Gov. of Oyo State (1992) 9 NWLR (pt.265) 355 at 362 C-D**.

Flowing from the above, a Governor or Minister as in this case has the powers to revoke a Certificate or Right of Occupancy where there is a violation of the above provisions of **Section 28 (5) (a) and (b)** as done here. See **Olomoda V Mustapha (2019) 6 NWLR (pt.1667) 36 at 51 A-B.**

As stated earlier, **Section 28** provides and regulates the process of revocation. I had earlier streamlined the process. Let me however again underscore some critical elements. Under **Section 28 (6),** the revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice shall be given to the owner. The title of the holder of a right of occupancy under **Section 28 (7) of the Land Use Act** shall be extinguished on receipt of him of a notice given under **subsection (6)** of this section or on such later date as may be stated.

The word used under **28 (6) and (7)** is shall which is a word of command or a mandatory word and imposes a clear duty. It denotes obligation and gives no room to discretion. See **Environmental Dev. Construction & Anor V. Umara Associates Nigeria (2000)4 N.W.L.R (pt.652)293 at 303.**

Section 44 of the Act then provides clear modalities for service of notices as follows:

Any notice required by this Act to be served on any person shall be effectively served on him -

"a. By delivering it to the person on whom it is to be served; or

b. By leaving it at the usual or last known place of abode of that person; or

c. **By sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or**

d. **In the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office; or**

e. **If it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises."**

In this case and on the evidence, **Exhibit D1** was properly issued by a **public officer** for and on behalf of the Minister. Beyond the bare submissions of learned counsel for the plaintiff in the address, there is absolutely no pleadings on the issue of the character or status of who signed Exhibit D1 and neither was evidence led at trial to show and in the process prove that the person who signed or signified the revocation was not a public officer duly authorised by the minister. The provisions of **Section 146 (1) and (2) of the Evidence Act** on presumption as to the genuineness of the C.T.C of Exhibit D1 has resonance and application as follows:

"146(1) The court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorised in that behalf to be genuine, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such document."

There is nothing before me to really impugn the genuineness of **Exhibit D1** particularly relating to the officer who signed the document and the official character he claimed in the document. At the risk of prolixity the address of counsel is no substitute for pleadings and evidence.

The revocation as already alluded to then clearly stated the reason for the revocation which is for the plaintiff's **"continued contravention of the terms of the development of the Right of Occupancy"**. The notice was then served on the plaintiff and same was received as indicated on the notice by one **A.O. Ayinla on 8th May, 2006** at 4.35 pm and he signed.

Again, beyond the bare averment that the notice of revocation was not served, the plaintiff did not lead or proffer credible evidence to impugn the service of the notice on A.O. Ayinla, the then company secretary who accepted service of the notice on 8th May, 2006 on behalf of the plaintiff.

All that PW1, **Omolayo Sunmonu** the new company secretary/legal adviser of Ekocorp Plc said in her further deposition is that she diligently looked into the files relating to the property but that there was no copy of the revocation signed by the then Company Secretary, **A.O. Ayinla.**

This evidence did not amount to or in any way controvert the issuance and most importantly the receipt of the notice by **A.O. Ayinla**, the then company secretary of plaintiff. The plaintiff never at anytime impugned or show that the **A.O. Ayinla** who received the revocation on 8th May, 2006 is not their company secretary at the material time. Absolutely no case was made suggesting for example that the **A.O. Ayinla** who received Exhibit D1 was a fraud or a clone. Exhibit D1 showing receipt of the revocation cannot now be altered by bare pleadings or even oral evidence to suit a particular purpose. See **Section 128 of the Evidence Act**. Most importantly, a perusal of the signature of **A.O. Ayinla** on the notice of revocation **Exhibit D1** and the documents filed at the Corporate Affairs Commission by plaintiff vide **Exhibits D7, D14 – D18** show clearly and conclusively that the signature are one and the same indicating that it is the same **A.O. Ayinla**, the late company secretary of the plaintiff who received the notice of revocation on behalf of the plaintiff which is proper service within the purview of **Section 44 (d) of the Land Use Act** cited above. I only add that a Court or Judge is by virtue of **Section 101 of the Evidence Act** empowered to make his comparison of handwriting or

signature in issue as I have done here and not necessarily rely on expert evidence. See **Ozigbo V C.O.P (1976) 1 NMLR 273 at 279; Lawal Ejidike (1997) 2 NWLR (pt.487) 319 at 340**.

As stated above it is only after proper and effective service of the notice of revocation **as done in this case** that the title of a holder of a right of occupancy can be said to have been extinguished. **Section 28 (7)** needs be repeated to the effect that **"the title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the notice."**

To again **accentuate** this clear fact that the plaintiff was served and aware of the reason for the revocation and which further goes to show clearly that PW1 was not truthful on the matter, they immediately on 9th May, 2000 just a day after the receipt of the revocation applied for a review of the revocation vide **Exhibit D2**. Let me at length reproduce the contents of the letter thus:

"RE: NOTICE OF REVOCATION OF RIGHT OF OCCUPANCY NO MISC 5827

The above refers.

We hereby write to seek a review of revocation of Right of Occupancy on the property covered by MISC 5827 as indicated in the letter dated 28th February, 2006 (marked as No. 1).

When we started the process of regularisation of Certificate, we made sure we did so within time (see Acknowledgment of our application dated 3rd March 2005 marked No. 2).

We were given a bill for processing and to pay the sum of N14,823,574,40 for regularization of the old Certificate of Occupancy before 21st December 2006 (see letter dated 23rd August 2005 marked No. 3). We complied timeously (see attached receipts marked Nos. 4&5).

Thereafter, efforts were made to collect the new Certificate uptill 6th March 2006 when we were addressed to pay the Ground Rent totaling N1,376,729.90 (see Demand Notice dated 6th March 2006 marked No. 6). We complied

within the time by paying the said sum of N1,376,729.90 (see receipt dated 31st March 2006 and marked No. 7).

Surprisingly, on 8th May 2006 when we reported at Abuja Geographic Information Systems (AGIS) to collect the recertified Certificate (which we confirmed to be ready) we were told that the Honourable Minister had revoked the undeveloped part of the property since 28th February, 2006 (whilst the deadline for payment of Ground Rent in respect of the whole property was 5th April 2006, see the Demand Notice marked No. 6).

We share in your efforts and dream at developing the FCT, and we are ready to contribute our quota. We have reached a peak in the discussions with our bankers and partners who were eagerly waiting for the new Certificate of Occupancy to resume construction works on the Hospital project. Indeed, our request for approval for additional developments on the project is presently with the FCDA.

We shall appreciate if the Honourable could reconsider the revocation order, which just came to our knowledge, to enable us resume construction.

We anxiously await your most compassionate positive response.

SIGNED
DR. S.F. KUKU OFR MD PhD
Chairman, JCMD

SIGNED
A.A.A. OBIORA FRCS
Joint Chief Medical Director"

The above letter speaks for itself and it seeks to respond to the basis of the revocation. The letter commences by saying **"we hereby seek a review of revocation of Right of Occupancy on the property covered by MS 5827 as indicated in the letter dated 20th February, 2006 (marked as No.1)".** The letter ended with … **"we shall appreciate if the Honourable Minister could reconsider the <u>revocation order</u>, which just came to our knowledge, to enable us resume construction."**

These paragraphs clearly and completely further undermines any claim or pretentions to absence of service of the revocation on plaintiff and confirms again that PW1 was being economical with the truth when she claimed she **"diligently"** searched their file and that there was no copy of the revocation letter signed by A.O. Ayinla.

I incline to the view that it was because they were served through the company secretary that plaintiff replied immediately through the upper echelon of plaintiff vide **Exhibit D2 (supra)** which was signed by Chairman, JCMD (Dr. S.F. Kuku OFR, MD PhD) and the joint Chief Medical officer (A.A.A. Oblora FRCS) to underscore the seriousness and importance they attached to the Revocation letter they received a day earlier.

The body or content of the letter show that the plaintiff knew that it was only the **"undeveloped part of the property"** that was revoked and also alluded to knowledge of reasons why it was revoked when they said they shared the **"efforts and dream of developing the FCT"** and that they had **"reached a peak in the discussions with our bankers and partners who were eagerly waiting for the new Certificate of Occupancy to resume works on the Hospital project."**

The letter again confirms again that construction works on the project was yet to be concluded and indeed the project seem or appear to have been suspended or put in abeyance. Therefore any claims that the plaintiff complied with the **terms of developing** the plot within two years as contained in the Certificate of Occupancy would lack substance and fail. There is really nothing in this letter, **Exhibit D2** giving any cogent explanation as to why development of the plot granted in 1991 and for which building approval was given at least in 1997 a combined period of nearly sixteen (16) years was not completed as enjoined under the terms of the grant as contained in the Certificate of Occupancy.

There is really no basis to situate or justify the complaints by plaintiff of failure to adhere to due process in the process of the revocation of the Right of Occupancy over **Plot 1318** including the complaint of lack of fair hearing. Now even on this question of fair hearing, it is difficult to properly situate what this complaint really entails. There is neither facts or details supplied either in the pleadings or evidence streamlining clearly the manner in which the alleged breach of fair hearing occurred.

I had earlier dealt with aspects of the complaint on fair hearing but out of abundance of caution, I have carefully read again the provisions of **Section 28 of the Land Use Act** and it certainly does not donate the proposition sought to be canvassed that before a right of occupancy is revoked under **Section 28 (5) (a)** and **(b)** that the holder must first be heard. Indeed on the authorities, **Section 28 (5)**

vest in the 1st Defendant the discretion to revoke where the terms and conditions contained in the certificate has been breached by the holder. In **Ekundayo & Anor V FCDA & Anor (supra),** it was instructively stated as follows:

"Fair hearing is a constitutional entitlement of all litigants at all times; having said that there does not appear to be any particular requirement of fair hearing in the Land Use Act with regard to revocation as a result of failure to comply with terms in the right of occupancy, as in this case; the respondents particularly, complied with Section 28 (6) and (7) with regard to notice as per Exhibit G, and that in the considered opinion of this Court suffices to all intents and purposes. Since the respondents are satisfied that there is a breach by the holder of a right as in this case the respondents are entitled to exercise their statutory powers; subject only to the issuance of notice of revocation of title and service of such notice."

The above pronouncement is clear.

In **Omodara V Mustapha (supra) at 52 E**, the Supreme Court stated clearly that the interpretation to be given to **Section 28 (5) of the Land Use Act** on the power of the Governor to revoke the right of occupancy of the person in breach of a condition or covenant is not a mandatory one but rather permissible. The Apex Court in this case 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. "

The above case succeeded at the Apex Court on the clear failure to serve the **notice of Revocation** on the Appellant who had changed his address and on the evidence notified the Respondent years before the revocation was done. The dispatch or service of the notice of revocation to a former address of the Appellant was held to lack legal validity and indicates or shows non-compliance with strict requirements for Revocation of title.

The above scenario clearly as I have demonstrated did not play out in this case.

The point made is true 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)**.

The requirements of **Section 28** and in particular **(5) (a) and (b)** cannot be extended or stretched beyond what it says to cover what it never contemplated to suit any particular purpose. There is really nothing demonstrated by plaintiff on the pleadings and evidence denoting how and in what manner the 1st defendant breached the requirements of **Section 28 (5) (a)** and **(b)** under which the Minister revoked Plot 1318.

Even on the pleadings, earlier highlighted, the plaintiff appears to subtly recognise the fact of revocation and the circumstance behind it but contends that because certain bills were served on them by 1st and 2nd defendants and payments were made vide paragraphs 18-21 of the claim, that the right of 1st and 2nd defendants to revoke has been **"waived and estopped"**.

The payments alluded to by plaintiff are in respect of the following:

1. That the 1st and 2nd defendants issued them with a Regularisation of title bill on 23rd August, 2005 in the sum of N14, 825, 578.40 which according to them was for purposes of procurement of certificate of occupancy of the plot in the name of plaintiff. The bill was tendered as **Exhibit P2**.

I have carefully gone through this exhibit and what it shows is simply assessments made on the property by the 1st and 2nd defendants to be paid by the owner of the building and these forms part of the terms and conditions of the Certificate of Occupancy (C/O). **Clause (2)** of **Exhibit P13**, the Certificate of Occupancy reads thus:

"To pay and discharge all rates, assessment, and impositions whatsoever which shall at any time be charged, assessed, or imposed on the said land or any part thereof or any building thereon, or upon the occupier or occupiers thereof."

The above is again clear and self explanatory.

There is nothing in **Exhibit P2** showing that the bill was given **"to enable the certificate of occupancy to come out in the name of the plaintiff as against the name of the power of attorney donated to plaintiff"** as averred in paragraph 17 of the claim. It is trite law that the contents of Exhibit P2 cannot be altered or interpolations made to suit a particular purpose. See **Section 128 of the Evidence Act**. Most importantly the exhibit or bill dated **23rd August, 2005** was also issued prior to the revocation of plaintiff's interest on the disputed plot, so one wonders how waiver or estoppel arises in the circumstances.

2. The second bill plaintiff relied on is the demand for ground rent dated 6th March, 2006 in the sum of N1, 376,729.90 vide **Exhibit P4**.

This charge or bill also clearly forms part of the assessments and impositions which forms part of the contractual relationship or allocation vide clause (2) highlighted above. The payment of ground rent forms part of the usual impositions made on building in the FCT. Indeed the plaintiff in paragraph 19 described the bill **"as payment of outstanding ground rent on the property"** which recognises that the payments are not new but represents impositions plaintiff has not paid. **Exhibit P4** shows clearly that the ground rents covers the year 2003 to 2006 representing rates or assessments on the plot plaintiff has not yet paid. The witness for the 1st and 2nd defendants described **these payments** as akin to payment of an indebtedness.

Again it is important to point out that **Exhibit P4** preceded the service of the revocation notice on plaintiff which was on 8th May, 2006 meaning that by

operation of law when the demand notice for ground rent or Exhibit P4 dated 6th March, 2006 was issued, plaintiff still had title to the disputed plot.

The bottom line is that the issuance of these bills and the payments are clearly a consequence or product of terms and conditions of the grant and one then wonders how **waiver** and or **estoppel** operates to divest or prevent the 1st and 2nd defendants from demanding compliance with the conditionalities of the grant which demands of plaintiff complete development of the plot within a clear time frame and it is legally and factually difficult to see how waiver and estoppel can be availing in this case.

In any event and this is important, plaintiff has not either in the pleadings or evidence made out a case that the payment of these fees/rent is the only term and condition of the grant or that the other terms and conditions of the grant were exclusively dependent on the fact of payment of these fees and rents so that the demand for ground rent amounts to a waiver of all other breaches that may arise in respect of the other terms and conditions of the grant. This submission with respect clearly lacks basis. The terms of the grant as stated earlier provides the basis for the mutual reciprocity of legal obligations and parties are bound by all the terms.

Let me still however out of abundance of caution say some few words on what **"waiver"** entails. In law **"waiver"** in ordinary parlance means voluntary surrender of some known right or privilege. The Supreme Court described it as **"… a simple and un-technical concept… that presupposes that the person who is to enjoy a benefit or who has the choice of two benefits is fully aware of his right to the benefit or benefits, but he either neglects to exercise his right to the benefit or where he has a choice of two, he decides to take one…"** See **Auto Import Export V Adebayo (2005) 19 NWLR (pt.959) 44; Ekundayo & Anor V. FCDA & Anor (2015) LPELR – 24512 (CA).**

Let me underscore certain points which further undermines completely the contention of waiver.

Firstly, on the facts and evidence, it has not been shown or precisely streamlined by plaintiff that the 1st and 2nd defendants enjoy a benefit or that they have a choice

of two benefits and aware of same, that they neglected to exercise their right to the benefit, or where they have a choice of two, they decided to take one but not both.

Secondly, for waiver to have application, the plaintiff must have established, and this it did not do, that the 1st and 2nd defendants against whom the doctrine is raised is not under a legal disability that contradicts the alleged voluntary abandonment of a right or privilege in question. If at all, there is any privilege here, the clear provision of **Section 28 of the Land Use Act** contradicts the voluntary abandonment of same.

Thirdly, the 1st and 2nd defendants must be aware or have knowledge of the act or commission which constitute the waiver and they must have taken unequivocal steps to adopt or recognise the act or omission. Here it is difficult to situate how payments of bills and outstanding rent forming part of the conditions of the grant made as far back as 1991 can possibly tantamount to an act of waiver.

Finally waiver must be in respect of a private right for the benefit of a particular person or party in contradistinction to a public right as in this case intended for public good or affairs. See **Fasade V Babalola (2003) 11 NWLR (pt.830) 26; A.G Bendel State V A.G Fed. (1981) 10 SC at 54, Amori V Elemo (1983) 1 SCNLR 1 at 13 and Noibi V Fikolati (1987) 1 NWLR (pt.52) 619 at 632.**

As a logical corollary and flowing from the above, it is again difficult or impossible to situate any legal template stopping the 1st and 2nd defendants on the basis of payment of outstanding legal impositions from exercising the legal right to revoke in accordance with the clear and express provisions of the Land Use Act.

At the risk of sounding prolix, the payments made by plaintiff are all part of terms and conditions of the grant vide **Exhibit P13**, the Certificate of Occupancy. The payments were, therefore not made by plaintiff to their detriment because of the conduct or representation of the 1st and 2nd defendants; the payments was and has always been a condition or part of the conditions of the grant. The plaintiff in making the payments were simply living up to the commitments under and demanded by the grant or the Certificate of Occupancy. The provisions of **Sections 18 and 32 of the Land Use Act** completely undermines any claim of waiver or estoppel in the following clear terms:

"18. ACCEPTANCE OF RENT NOT TO OPERATE AS A WAIVER OF FORFEITURE.

Subject to the provisions of Sections 20 and 21 of this Act, the acceptance by or on behalf of the Governor of any rent shall not operate as a waiver by the Governor of any forfeiture accruing by reason of the breach of any covenant or condition, express or implied, in any certificate of occupancy granted under this Act.

32. DEBT DUE TO GOVERNMENT NOT EXTINGUISH BY REVOCATION.

The revocation of a statutory right of occupancy shall not operate to extinguish any debt due to the Government under or in respect of such right of occupancy."

The above provisions are abundantly clear. Waiver or estoppel have no application in this case.

The bottom line is that the plaintiff as demonstrated above has not shown or established that the 1st and 2nd defendants and issuing authorities did not comply with the clear provisions of the law on revocation of a Right of Occupancy No. MISC 5837 with Plot No. 1318. In this case and at the risk of sounding prolix, the revocation was premised on clear streamlined conditions within the confines of **Sections 28 (5) (a) and (b) of the Land Use Act**. It was signified under the hand a public officer duly authorised in that behalf and the revocation became effective when it was given or served on the company secretary of the plaintiff and holder of the right of occupancy. The Right of Occupancy granted plaintiff over **Plot 1318** stands therefore legally revoked or extinguished.

Having found the revocation to have legal validity, it follows that the 1st and 2nd defendants as the issuing authorities were on firm ground to have redesigned the revoked plot and to re-allocate to parties including the plaintiff. It is difficult on the evidence to reasonably justify the non-development of this huge expanse of land of **1.78 hectares** allocated to plaintiff for several years in the light of the competing demand for land by Nigerians in the FCT and the imperative of developing the FCT to standards comparable worldwide.

The plaintiff in their letter to the Minister FCT vide **Exhibit D2**, stated that they share in the efforts and dream of the 1st defendant at developing the FCT. It is difficult to situate or reconcile this **"shared dream"** with the failed actions of the plaintiff to fully develop the plot allocated since 1991.

It is in this light that the complaints of the 1st and 2nd defendants that the plot was abandoned to miscreants and the steps taken by them to redesign the plot, allowing the plaintiff to keep the portion containing its uncompleted building and allocating the other portions to other Nigerians willing and able to carry out developments must be understood.

Now the point to make clear is that **Exhibit D1**, the notice of revocation was not a partial revocation as seem to be canvassed by counsel to the plaintiff. It was a complete and total revocation. The heading of **Exhibit D1** states as follows: **"NOTICE OF REVOCATION OF RIGHT OF OCCUPANCY NO. MISC 5827".** The contents of the exhibit which I had earlier reproduced in this judgment amplified this clear point. I need not repeat the contents again.

It is true that the **revocation** letter stated that the plaintiff should **retain the part of the plot developed** by them but this does not in any way derogate from the fact of the revocation. The revocation letter made the point clearer when it stated thus: **"…note that title covered by MISC 5827 is extinguished. A new title covering the developed part shall be issued in due course."**

On the evidence, upon revocation, the 1st and 2nd defendants according to DW1, redesigned the revoked plot, allowed the plaintiff to retain the part of the plot it had already partially developed and allocated the other parts to the defendants. The complaints raised with respect of some of the allocations to some of the defendants, I shall deal with shortly when I consider the respective counter claims of parties.

The above extensive pronouncements and findings on the very critical elements of the complaint or grievance of plaintiff provides broad factual and legal template to address now the question of whether the **Reliefs** sought by plaintiff are availing. Indeed these pronouncements would also provide template to determine the validity of the **counter-claims** of defendants.

In addressing the reliefs of plaintiff, it may be necessary to restate that the **substantive reliefs** on which the other orders sought are predicated are declaratory reliefs. As stated earlier, declaratory reliefs are special claims which must be established by producing cogent and reliable evidence in support putting the court in a commanding height to grant the reliefs sought. Declarations cannot be granted on speculations or guess work.

Relief (a) seeks for a Declaration that the purported revocation of the right of the plaintiff on Certificate of Occupancy No MISC: 5827, Plot No. 1318, Cadastral Zone A06, Maitama, Abuja by letter dated 28th February, 2006 is null, void and of no effect.

Having found, as demonstrated above, that the **Revocation of Plot No. 1318** in this case has legal validity, and done in compliance with the law, it follows that **Relief (a)** cannot be availing.

Relief (b) is for a Declaration that the **2nd plaintiff** is entitled to a grant over the land measuring 1.78 Ha and not only a fragment of 5.223.77 M^2.

This Relief clearly projects lack of clarity in the case of plaintiff. There is no **2nd plaintiff** in this case and again it is too late to expand the remit of the grievance or to now enlarge the parties subject of the extant dispute. Paragraphs (1), (6) and (7) of the further amended statement of claim of plaintiff reads as follows:

"1. The Plaintiff is a Limited liability company registered in Nigeria, based in Jimeta, Yola and carries on business as Health Services providers and Hospital managers. By an Irrevocable Power of Attorney the plaintiff irrevocable appointed EKOCORP PLC cover the parcel of land covered by C of O No. FCT/ABU/MISC.5827.

6. The Plaintiffs avers that by an Irrevocable Power of Attorney dated the 21st day of May 1995 the plaintiff was appointed the lawful attorney of Springfield Hospital and Clinic Limited for a valuable and adequate consideration to take over and manage the said Plot in whatever manner the Attorney may deem fit.

7. The plaintiff avers that the said Irrevocable Power of Attorney dated 21st May, 1995 was duly registered with the 2nd Defendant. The said Power of

Attorney is hereby pleaded and the 2nd Defendant put on notice to produce the original at the trial of this suit."

The above paragraphs projects some ambivalence on the positions of Springfield and Ekocorp in relation to the revoked plot. Springfield Hospital and Clinic Ltd as plaintiff is used interchangeably with Ekocorp Plc, the attorney as if they are one and the same. There appears here to be some confusion with respect to the status of an attorney in relation to the Donor of the Power of Attorney.

As stated earlier on in this judgment, a photocopy of an incomplete document called the **"irrevocable power of attorney"** was tendered through PW1 as **Exhibit P8**. The 1st and 2nd Defendants admitted in their defence this appointment of Ekocorp as the lawful attorney of Springfield Hospital and Clinic Ltd which was why I indicated earlier on that I would simply act on the basis of what was produced and then see how it impacts plaintiffs case. Because of the incomplete nature of the document, it is difficult to even situate its terms. Furthermore there is nothing on the document disclosing or showing that it was even **registered** with the 1st and 2nd defendants. In real terms, no evidence was produced or furnished to support the averments in paragraphs 1, 6, and 7 (supra).

Whichever way we view this **Exhibit P8**, the point to make clear is that a power of attorney 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."

A power of attorney therefore provides no legal basis to grant **Relief 2** as couched. Most importantly, there cannot be a declaration outside the purview of the case as

streamlined in the pleadings and evidence. The revocation in this case vide **Exhibit D1** and the notice to retain the developed part was to **"Springfield Hospital and Clinic Ltd"** even though it was **"c/o (care of) Ekocorp Plc."**

Most importantly, having found that the entitlement of plaintiff to plot **No. 1318** has been validly revoked, there cannot legally be a declaration that the 2nd plaintiff is entitled to a grant over the revoked land and not only a part of it. Relief (b) fails.

Relief (c) is for a Declaration that the interests of the plaintiffs are still subsisting in the land and they are the one with sufficient interest in same as plaintiff has complied with the terms of contracts as contained in the certificate of occupancy.

Again having found that the interest of plaintiff in Plot 1318 has been validly revoked for failure to keep to the development requirements and or conditions of the grant, this relief too is not availing. Indeed on the evidence, the plaintiff through the company secretary, PW1 clearly admitted to failure on their part to fulfill the conditions of the grant on complete development of the allocated plot due to "certain factors" which she did not elaborate on. This admission against interest of plaintiff in addition to the abundance of evidence already analysed which shows none compliance with the terms of the grant undermines this relief. Relief (c) thus fails.

Relief (d) is for a Declaration that 1st and 2nd defendants have waived their right to contend that Ekocorp Plc is not a lawful Attorney of Spring Field Hospital & Clinic Ltd, by reason of issuing Certificate of Occupancy dated 25th day of November, 2005, in the name of Ekocorp Plc over a smaller part of the land in dispute.

This Relief appears to me entirely academic. The substantive issue in this case relates to declaration of title over **plot 1318**. No more. Any other issue with no bearing to this critical and fundamental point must carry little weight, if any in the circumstance. Indeed no issue was joined by 1st and 2nd defendants with respect to the appointment of Ekocorp as lawful attorney to Springfield Hospital and Clinic Ltd.

In response to the averment relating to the appointing of Ekocorp as a lawful attorney pleaded in paragraph 6 of the claim, the 1st and 2nd defendants averred in response as follows:

"7. The 1st and 2nd Defendants admits paragraph 6 of the Amended Statement of Claim only to the extent that the Plaintiff was appointed Lawful Attorney of Springfield Hospital and Clinic Ltd, but shall at the trial contend that at the time the Power of Attorney was purportedly donated to the Plaintiff the subject matter/interest over which the Plaintiff was appointed was under threat of revocation for failure to comply with the statutory terms contained in the Certificate of Occupancy. At the trial the 1st and 2nd Defendants shall rely on Notice of Revocation dated 28th February, 2006 issued to the Plaintiff."

The above is clear. Having admitted or conceded Ekocorp was lawfully appointed as lawful attorney of Springfield Hospital and Clinic, Relief (d) is clearly a non issue and is accordingly **struck out**.

Relief (e) is for an Order of the Honourable Court, restraining the 1st and 2nd defendants from granting to another person other than the plaintiff, interest in plot No. 1318 Cadastral Zone A06, Maitama, Abuja and if any person or persons has, been so granted, an order declaring such as null, void and of no effect.

With the failure of the substantive declaratory reliefs and in particular having found that the revocation of right of occupancy over **Plot 1318** was valid, nothing then stopped 1st and 2nd defendants from redesigning the plot and re-allocating same to any person or body including plaintiff as happened in this case. There is therefore no legal basis to stop the re-allocation of the revoked plot or to declare that if any re-allocation was made, that it is null and void. Relief (e) also fails.

Relief (f) is for an Order of the Honourable Court, ordering the 1st and 2nd defendants to issue a new Certificate of Occupancy over all the plot in the name of Ekocorp Plc, having registered Power of Attorney to that effect by the 2nd Defendant and all necessary fees paid, and no other fees under any disguise to be paid by the plaintiffs to the defendant for the issuance of Certificate of Occupancy to cover the whole land measuring 1.78 Hectares.

Here again, the **Registered Power of Attorney** on which the relief appear to be predicated was not tendered in evidence and this undermines the relief abinitio. As stated severally in this judgment, 1st and 2nd Defendants may have acknowledged the appointment of an attorney but the **Registered Power of Attorney** was never

tendered to even allow court determine its contents and the court clearly has no jurisdiction to speculate. Most importantly, with the failure of **Reliefs (a) – (c) and (e)**, this Relief must also necessarily fail. The grant of a new certificate of occupancy over the entire revoked parcel of land to Ekocorp Plc clearly has no legal basis. If the plaintiff had perhaps complied with all the clear terms and conditions of the grant vide Exhibit P13, there may not have been a legally cognisable revocation. This however is not the case here. The revocation then provided the issuing authorities room to re-allocate within the ambit of the law. Relief (f) is equally not availing.

Relief (g) is for an Order of the Honourable Court cancelling and ordering removal and or demolition of any purported issuance of certificate of occupancy, building plans, or development on the said plot in favour of any person or persons other than those of the plaintiff or agents.

Again with the failure of **Reliefs (a) – (c), (e)** and **(f),** this **Relief (g)** has no legal or factual foundation and must collapse. As long as the revocation of Plot 1318 was not found to be legally faulty, this relief clearly must also fail.

This then leads me to the final **Reliefs (h), (i) and (ii) and (i)** on special and general damages. Let me however situate briefly the legal premises and or basis for the grant of the reliefs before dealing with whether they are availing in the context of the findings already made. In dealing with these specific reliefs, I may be compelled to again refer to the legal basis for grant of each specific claim.

Now in law, general damages flow from the wrong complained of and is usually awarded to assuage loss suffered by the plaintiff from the alleged act(s) of the defendant complained of. Put another way, general damages are the kinds implied by law in every breach of **legal rights**, its quantification however being a matter for the court. See **Corporative Development Bank Plc V. Joe Golday Co. Ltd (2000)14 N.W.L.R (pt.688)506; UBA V. BTL Ind. Ltd (2001)AII F.W.L.R (pt.352)1615.** The emphasis here is on breach of legal rights and not fanciful or imagined rights.

The Supreme Court in **Lar V. Strling Astaldi (Nig) Ltd (1977)11-12 SC 53 at 63** defined general damages as such damages as may be given when the judge cannot point out to any measure by which they may be assessed, except the opinion and

judgment of a reasonable man. **Elf Petroleum Nig. V. Umah (2006)AII F.W.L.R (pt.343)1761.**

In awarding damages in an action founded on breach of contract, the rule to be applied is ***restitution in integrum,*** that is in so far as damages are not too remote, the plaintiff shall be restored, as far as money can do it to the position in which he would have been if the breach had not occurred. See **Okongwu Vs N.N.P.C (1989)4 N.W.L.R (pt. 115) 296 SC; Oshin & Oshin Ltd Vs Livestock Feed Ltd (1997)2 N.W.L.R (pt. 486) 162 at 165 CA.**

On the other hand, special damages have been defined as damages of the type as the law will not infer from the nature of the act; they do not flow in the ordinary course; they are exceptional in their character and therefore, they must be claimed specially and strictly proved. See **A.T.E. Co. Ltd V M.L. Gov. Ogun State (2009) 15 N.W.L.R (pt.1163) 26 at 71; Ekennia V Nkpakara & 2 ors (1997) 5 SCNJ 70 at 90.**

The Apex Court in **X.S (Nig.) Ltd. Vs. Tasei (W.A) Ltd**. **(2006)15 N.W.L.R. (pt.1003) 533 at 552 B-E; 552 E-G** Mohammed J.S.C. stated as follows:

"With regard to how to plead and prove special damages, the law is quite clear that special damages must be specifically pleaded and proved strictly…In this respect, a plaintiff claiming special damages has an obligation to plead and particularise any item of damage. The obligation to particularise arises not because the nature of the loss is necessarily unusual, but because the plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible"

Also in **Neka BBB Manufacturing Co. Ltd V A.C.B. LTD (2004) 2 NWLR (pt.858) 521** the Apex Court stated thus:

"A damage is special in the sence that it is easily discernable. It should not rest on a puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions."

I shall apply the above principles to the facts of the case predicated on the pleadings and evidence led.

Relief (h) seeks for special and general damages in the following terms:

Special damages:

i. The sum of N370, 589, 460 being special damages for the value of property demolished by the 2nd defendants and 10% Per annum from 2007 till the judgment is given, and 10% thereafter.

ii. The sum of N13 Million Naira only being the cost and professional fees paid for instituting this action.

General damages:

i. The sum of N50 Million Naira damages for the act of trespass, destruction of medical equipment and building materials by the 1st and 2nd defendants.

I start with (i) above on special damages. I have here carefully analysed the pleadings and the basis for this relief appears to be situated on the following paragraphs of the statement of claim as follows:

"10. The plaintiff avers that upon the receipt of the building plan approval from the 2nd defendant, the plaintiff commenced development on the plot in accordance with the building plan duly approved and under the supervision of the 2nd defendant.

11.The plaintiff avers that construction of her (three) stories building (comprising of laboratory, theatre room, wards, labour room and offices) were at an advanced stage of completion.

37.The plaintiff avers that it spent well over N400 Million to develop the hospital building to the stage it was before the wicked act of demolition by the 1st and 2nd defendants.

38.The plaintiff avers that even the 1st and 2nd defendants by themselves valued the hospital building on the plot subject of this action at N370, 589, 460 and the plaintiff was directed (sic) to 4% thereof as regularisation fee and that the plaintiff did not violate any of the conditions of the grant of the C of O."

Now on the evidence, there really is no dispute that there was an **uncompleted building** built by plaintiff on part of the revoked plot. The letter of Revocation **Exhibit D1**, recognises this reality. **Exhibit P10** even if not particularly clear, is a fair pictorial representation of what was on the ground.

On the pleadings, again there is no dispute by 1st and 2nd defendants vide paragraphs 8 and 9 of there defence and the evidence that it demolished the said building which it described as an **"abandoned structure"** which had become a habitat for miscreants and built contrary to relevant laws.

Now beyond the unproven contention that the development on the plot was illegal and not in compliance with the relevant laws which I had earlier held to lack substance, there is really no basis to legally situate the validity of the demolition undertaken by 1st and 2nd defendants.

I had earlier held that there was an **approved building plan** for the building vide Exhibit P12 (1-8). The 1st and 2nd defendants subpoenaed witness from department of Land Control, Abioye Adeshina who testified as PW2 confirmed that the plan for the building was approved and that there is no other building plan approval beside that approved for the plaintiff. Similarly there is nothing on either the pleadings or evidence of 1st and 2nd defendants showing compliance with the clear requirements of the law vide **Sections 47, 48, 50, 53, 55, 56, 57, 61, 62 and 63 of the Nigeria Urban and Regional Planning Act, 2004** relating to issuances of relevant Notices etc before the demolition was carried out. I shall deal in-depth with these requirements when I treat the issue of general damages. All these clear failings on the part of the 1st and 2nd defendants compromises any claim or even pretention to the contention that the demolition was legal.

To finally knock off the bottom of or the contention that the building was an illegal construction, the notice of revocation vide **Exhibit D1** acknowledges and or reinforces the ownership of the part of the plot developed by plaintiff in the following clear terms:

"… you are by this notice informed to retain developed part of the plot and to note that title covered by MISC 5827 is extinguished. A new title covering the developed part shall be issued in due course".

The contention therefore in the pleadings by the 1st and 2nd defendants that they were not aware of the building of plaintiff on the plot or that it was illegally developed contrary to "relevant laws" clearly holds no water and is discountenanced. Having clearly informed the plaintiff to retain the developed plot, any demolition can only be effected or done in compliance with relevant laws which did not happen in this case.

Having found that the demolition clearly has no legal basis, the question now to address is whether the claim of **N370, 589, 460** claimed as **special damages** for the value of the property demolished was proven or established on the basis of the legal threshold earlier highlighted.

As earlier stated but it needs be re-emphasised even at the risk of prolixity that special damages are not such that the law will infer from the nature of the act; they do not flow in the ordinary course; they are exceptional in their character and therefore, they must be claimed specially and strictly proved.

In **Neka B.B.B. Manufacturing C. Ltd V. ACB Ltd (supra)** the Apex Court per Pat-Acholonu JSC (of blessed memory) stated thus:

"A damage is special in the sence that it is easily discernable. It should not rest on a puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions."

I have carefully again read paragraphs 10, 11, 37 and 38 of the further Amended statement of claim of the plaintiff and it is difficult to situate the particularisation of the items of damage necessary to sustain the claim of **N370, 589, 460**. In paragraph 37 of the claim, all plaintiff stated is that it spent over **"400 Million to develop the hospital building to the stage it was before the wicked act of demolition…"** and no more. There is nothing on the pleadings streamlining any item of damage, the value of any such item(s) and the facts providing basis to not only the adversary but also the Court to allow for a fair computation of the amount claimed. The same argument equally holds true for paragraph 38 of the pleading which simply states that the 1st and 2nd defendants valued the "building on the plot subject of this action at N370, 589, 460" and no more. The parameters for this valuation was nowhere streamlined.

As stated earlier and perhaps it needs to be reiterated, the Supreme Court in **X.S (Nig.) Ltd. Vs. Tasei (W.A) Ltd**. **(Supra)** per Mohammed J.S.C. stated as follows:

"With regard to how to plead and prove special damages, the law is quite clear that special damages must be specifically pleaded and proved strictly…In this respect, a plaintiff claiming special damages has an obligation to plead and particularise any item of damage. The obligation to particularise arises not because the nature of the loss is necessarily unusual, but because the plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible"

Now even if out of caution, I accept the above mentioned paragraphs of the claim as having met the requirements of proper pleadings for a claim in special damages, the next hurdle is that of strict proof. In law, **strict proof** does not mean unusual proof, it however implies that sufficient facts must be furnished to allow for computation of the claim. In **Neka BBB Manufacturing Co. Ltd V ACB Ltd (supra)**, the Supreme Court stated thus:

"The term "strict proof" required in special damages means no more than the evidence must show the same particularity as it is necessary for its pleading. It should therefore normally consist of evidence of particulars losses which are exactly known as accurately measured before trial. Strict proof does not mean unusual proof… but simply implies that a plaintiff who has the advantage of being able to base his claim upon a precise calculation must give the defendant access to the facts which make such calculation possible."

In this case, beside the rehash of what was stated in the pleadings, there is absolutely no clear discernable evidence to support the claim of special damages. The plaintiff did not tender any scintilla of evidence showing how it spent **"well over N400 Million to develop the hospital building to the stage it was before the wicked act of demolition."** It was strange here that there is absolutely no evidence of value from anyone who clearly knows or ought to know what must have gone into the construction of the uncompleted building. To accentuate this lack of clarity on the value of the building, in the petition to the Senate Committee on FCT, National Assembly written by the law firm of **A.A. Adewoye & Co**, solicitors to the plaintiff vide **Exhibit P6 (c)**, it was stated therein that the building

was **"valued at N750 Million".** No valuation report was annexed or attached to this letter and none was tendered so the court won't say more.

There are even conflicting and or contradictory averments on the pleadings and evidence about the precise or correct value or valuation of the destroyed building. The plaintiff in paragraph 37, alluded to spending **"well over N400 Million"** to develop the building. There is here no certainty on the amount spent. In Exhibit P6 (c), the building was valued at **"N750 Million"** and then in the bill, Exhibit P2, plaintiff averred that AGIS valued the property at **"N370, 589, 460.00"**. This apparently conflicting valuations makes it imperative on plaintiff to produce clear and cogent evidence to allow for the grant of special damages.

Unfortunately on the evidence, this hurdle was not crossed. Indeed the site manager of plaintiff who testified as PW3 deposed to a seven (7) paragraphs witness deposition stating in substance only the fact of destruction of the building. There was nothing by him stating the facts that would provide a basis to compute the amount in special damages claimed. Apart from the building plan he tendered, no other evidence was produce delineating specifics of losses which are known and can be fairly and accurately measured. There is therefore nothing on the side of the plaintiff showing on what clear template that they are basing their claim of special damages which will then give the defendants and the court access to the facts which made such a computation possible. The plaintiff as stated above in paragraph 38 stated that the 1st and 2nd defendants valued the uncompleted building at the sum of **N370, 589, 460**. It is correct that this amount appeared in the title regularisation bill tendered as **Exhibit P2** but beyond this document, which was signed by an undisclosed person and said to emanate from FCT Abuja, nobody was presented by plaintiff to speak to this document with respect to the parameters for this valuation. The point must be underscored that the bill is not a **valuation report**. It is logical to hold that for any sums to have been inserted in Exhibit P2, it certainly has to be a product of a valuation done by certain persons. Who are these persons? Where is the report they prepared? What is the basis or parameters for this valuation? This Relief literally begs for answers to these questions to provide a template for the court to consider and grant the relief.

All that can be garnered from the evidence of **DW1** for the 1st and 2nd defendants particularly under cross-examination by plaintiff is that he may be aware of Exhibit

P2 but he never said he prepared it and that perhaps explains why he was not asked any question with respect to the contents and specifically the basis for the alleged valuation in it. The bottom line is except the court decides to dabble into the unwieldy realm of speculative and hearsay evidence, this exhibit without more provides no clear basis to grant the amount claimed as special damages.

The critical point to underscore here and which gravely undermines **Exhibit P2** as a basis to grant special damages is that it is relying solely on figures said to have been supplied by the 1st and 2nd defendants. No official of the 1st and 2nd defendants was however called to testify as to this figures and how it was arrived at and this is fatal. I am not sure that the special damages claimed can be predicated on a mere document said to have been prepared by an unidentified person.

Documents tendered and admitted may speak for themselves but they would not be of assistance to the court in the absence of admissible oral evidence by someone who can explain their purposes or import. See **Gayol V INEC (No.2) (2012) 11 NWLR (pt.1311) 218; Alao V Akano (2005) 11 NWLR (pt.936) 160.**

Therefore merely producing Exhibit P2 without examining any witness on the material part of the document meant that only the shell of the document was produced in the proceedings without allowing the court an insight to the evidential kernel of the document. The document in the circumstances has precisely no evidential value to support the claim of special damages and is therefore divested of any probative value. See **Enemuo V Din (2002) 25 WRN 93 CA.**

The bottom line is that special damages claimed in this case has not been creditably established. I had earlier referred to the illuminating pronouncement of **Pats Acholonu J.S.C (of blessed memory) in Neka BBB Manufacturing Co. Ltd V A.C.B Ltd (supra)** and this bears repeating: **"A damage is special in the sence that it is easily discernable and does not rest on puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions."**

At the risk of sounding prolix, the court has not been furnished with clear evidence of particular losses exactly known and that can fairly and accurately be measured. A court of law qua justice has no duty to speculate. A court can only properly act on the basis of what has been demonstrated and tested in court with clarity and not to act on unverified and unascertained projections or to conjecture figures not

based on a clear empirical and factual template. The law is settled that a party is allowed to establish what he pleaded and to obtain only such relief that was prayed for on the basis of the pleadings and creditably established by evidence. See **Ajikande V Yusuf (2000) 2 NWLR (pt.1071) 301.**

Now with respect to **Relief (h) (ii)** claiming **N13 Million naira** being the cost and professional fees paid for instituting this action, there appears to be two arms to this relief. One is the question of **professional** fees which is a relief in the realm of special damages to be proved on the usual standards earlier established. Now, besides the relief as claimed, there is neither pleadings or evidence showing if any professional fee was charged and paid and nothing was tendered in evidence to support such averment. In the absence of clear evidence showing the cost of professional fees charged and paid, this arm of the relief must fail.

The second arm relating to cost of action is a matter at the discretion of court and guided by the provisions of **Order 56 Rules 3 and 4 of the Rules of Court**. Whether the court will summarily exercise its discretion in this case and grant cost will only come after a determination of the party in the right and then entitled to be indemnified for the expenses he has been put in the proceedings.

This then leads us to the claim of General Damages. The Relief prays for the sum of **N50 Million** naira damages for the act of **trespass**, **destruction of medical equipments and building materials**.

In law trespass 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.L. R (pt 885) 458 at 475.**

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

Now in this case and on the evidence, I had found that though the land originally allocated to the plaintiff was validly revoked, the 1st and 2nd defendants however vide **Exhibit D1** the letter of revocation informed the plaintiff that they however can still retain the **developed part** and that a new title covering the developed part shall be issued and this was done vide **Exhibit P5**.

Indeed on the evidence, the sole witness for the 1st and 2nd defendants categorically stated that after the revocation, the plot originally granted to plaintiff was then **redesigned** and **partitioned** into **three plots** and reallocated to three beneficiaries and the plaintiff was one of them.

There is therefore no argument or dispute that the plaintiff was allowed to retain the portion of the land which it had partly developed and was therefore in possession of same. The issuing authorities, 1st and 2nd defendants unequivocally affirmed this position as already demonstrated.

In the circumstances, the marshalling of any kind of force by the 1st and 2nd defendants to the plot as averred in paragraph 26 of the claim of plaintiff to demolish the uncompleted property without any justifiable legal basis constitutes an act of **trespass** or an **unjustified interference** by 1st and 2nd defendants to the possessory right of plaintiff over the developed portion they were allowed to retain.

As stated earlier in this Judgment, the 1st and 2nd defendants witness categorically asserted in paragraph 9 of his deposition that they demolished the building in question. The subpoenaed witness from the department of Development Control similarly confirmed the demolition by them. Also on the record, there was nothing given in evidence aside empty oral assertions showing compliance with the legal processes or steps before a proper demolition is effected within the purview of the law.

There is no dispute for example that under extant legislation, to wit. **Nigerian Urban and Regional Planning Act, 2004 (NURP Act)** requisite notices are amply provided for under **Sections 47, 48, 50, 53, 55, 56, 57, 61, 62** and **63 of the Act**, which ought to be served before demolitions are carried out.

It may be necessary to perhaps explain what these statutory notices entail within the confines of Nigerian Urban and Regional Planning Act. I will limit myself to, and summarise the essence of the relevant provisions as applicable but in doing so, it is critical to point out that a **statute** must be read as whole to decipher its true meaning. In construing a statute, every word or clause in an enactment must be read together; not in isolation but with reference to the context and other clauses in the statute in order, as much as possible not only to reach a proper legislative intention, but also to make a consistent meaning of the whole statute. See

Oyayemi V. Commissioner of Local Govt. Kwara State (1992) 2 SCN 266 at 280; Artra Ind. Nig. Ltd V N.B.C.I (1998) 3 SCNJ 97 at 115.

Now it is clear that by **Section 47 of the N.U.R.P Act**, the control development department is expected to serve an **enforcement notice** where a **development** is commenced without its approval. Under the **Section 91** of the interpretation section of the Act, enforcement notice includes **"stop notice, contravention notice and demolition notice."Section 48(1)** states that the enforcement notice may direct the developer to either **alter, vary, remove, discontinue** a development. S**ection 50** provides in express and mandatory terms by the issue of the word **"shall"** what an enforcement notice under **Section 47** should contain and these are:

a. Be in writing and communicated to the developer.

b. State the reasons for the proposed action of the control department;

c. Consider any representation made by a developer or on behalf of a developer.

Indeed before even the issuance of an enforcement notice, **Section 53** mandates the control department where an unauthorized development is been carried out or where the development does not comply with a development permit to issue a stop-work order which shall precede service of the enforcement notice on the owner or occupier. The word used here is **shall** which again is a word of command.

A stop work order under **Section 55** of the Act is expected to inform the developer of the work required to be stopped and **Section 56** provides a time line of 21 days within which the developer is expected to comply with the requirements of the land.

It is equally important to point out that a stop work order shall cease to have effect if within 21 days of the issue, the enforcement notice is not served vide **Section 57** except the period of time within which a stop work order shall remain in force is extended.

I have given a lengthy expose on what the statutory notices under the N.U.R.P Act entail to provide greater clarity on what is expected of the 1st and 2nd defendants in

circumstances as presented by this case. In simple terms, where there is an unauthorized development, a stop work order must be issued followed by an enforcement notice which may be a stop notice, contravention notice or demolition notice. The word used in **Section 91** is **"includes"** which suggests that the notices mentioned under Section 91 are not exhaustive. In law includes means to comprise as a part of. It is used in order to enlarge the meaning of the words and phrases occurring in the body of a statute. It is not restrictive but has an element of enlargement or elongation. See **Peterside V. I.M.B (Nig.) Ltd (1993) 2 N.W.L.R (pt.278) 712 at 719**. Indeed the word includes has the effect of extending the scope of the concept covered by the terms mentioned. See **Jirgbagh V U.B.N Plc (2001) 2 N.W.L.R (pt.696) 11 at 30; Artra Ind. (Nig.) Ltd V N.B.C.I (1997) 1 N.W.L.R (pt.483) 574 at 591.**

There is nothing furnished by the 1st and 2nd defendants in this case showing compliance with the requirement of service of the required notices on the plaintiff as required by law and compliance with specific time sensitive criteria of these notices.

There is clearly here no justifiable basis for the intrusion and violation of plaintiff's possessory right of the part of the plot it was allowed to hold by 1st and 2nd defendants and the destruction of the building on it.

I am in no doubt here that trespass has been credibility established and the plaintiff will be entitled to damages. Now on the issue of destruction of medical equipment and building materials, there is no sym-metry or consistency in the case made out by the plaintiff in its pleadings and the evidence led at trial and this undermined this complaint.

In paragraph 26 of the claim, the plaintiff pleaded that during the demolition, **"the building was reduced to rubbles, while all equipment and machinery on site were utterly destroyed."** There is nothing in the pleadings identifying or determining precisely and clearly the alleged destroyed hospital equipments and building materials.

In addition contrary to this position averred in the pleadings, the evidence produced by the plaintiff tells a different story. The letters tendered by plaintiff and written by their lawyers to the 1st and 2nd defendants tells a completely

different narrative. In the letter of appeal vide **Exhibit P6a dated 23rd October, 2007 to the Minister FCT** and written not long after the demolition by the law firm of **A.A. Adewoye & Co**, solicitors to the plaintiff, the point was made categorically clear that no hospital equipments were destroyed in the demolished building as the said equipments were stored in a warehouse. Let me perhaps quote what learned counsel said in the letter:

"…the equipment meant for the Hospital is now in a warehouse, where huge amount of money is being spent on it for safe keeping after paying heavily on demurrage…"

The above is clear and self explanatory.

The position was again reiterated in the petition dated 11th March, 2008 written by the same law firm to the Senate Committee on the FCT of the National Assembly vide **Exhibit P6(c**) about a year after the demolition and the solicitors again stated thus:

"… presently, equipment for takeoff of the hospital is gathering dust at the warehouse after paying heavily on demurrage…"

The above letter is also clear. In all these letters, no complaint was made of destruction of any or **"all equipment and machinery on site"**; the evidence therefore led by the plaintiff themselves is clearly at variance and inconsistent with the duly pleaded facts. It is trite law that where evidence is not led in proof of pleaded facts or where the evidence led is at variance with pleaded facts as in this case, that amounts to a failure of proof of the pleaded facts.

Furthermore in law, a party must be consistent in the case he makes and he cannot therefore make or take wholly contradictory positions at the same point on a point in issue. Where a party presents diametrically opposed positions as in this instant situation, the court is not bound to choose any of them. See **Ajide V. Kelani (1985)3 N.W.L.R (pt.12)248 at 269 and 271; Abubakar V. Yar'dua (2008)9 N.W.L.R (pt.1120)1.**

In addition, it is clear that going by the pictorial representation of the uncompleted building vide **Exhibit P10**, that it is logical and reasonable to hold that there is no way delicate hospital equipments could have been stored in such an uncompleted building. There is no doubt on the evidence that no clear case of destruction of

hospital equipments and materials was established and in the circumstances, general damages cannot be availing for destruction of some unascertained and unidentified medical equipments and building materials.

In the circumstances, the plaintiff is certainly entitled to some measure of damages however limited only to the **proved act of trespass** which led to the unfortunate and unjustified demolition of the uncompleted building of plaintiff. Now even though on the evidence, the value of the demolished uncompleted building was not determined and proved, the Supreme Court in **Lar V. Strling Astaldi (Nig) Ltd (1977)11-12 SC 53 at 63** defined general damages as such damages as may be given when the judge cannot point out to any measure by which they may be assessed, except the opinion and judgment of a reasonable man. **Elf Petroleum Nig. V. Umah (2006) AII F.W.L.R (pt.343)1761.**

In assessing the damages to be awarded here, in the context of the unfortunate and illegal demolition effected by 1st and 2nd defendants, I have situated the principle that 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.**

Also 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 plaintiff as 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.**

In this case the relief for special damages claimed in this case however unfortunately failed in the face of obvious dearth of proper pleadings and most importantly credible and cogent evidence. But I am in no doubt as earlier indicated that by the depressing facts of this case, particularly the narrative leading to the brusque and unlawful trespass into the plot of plaintiff and the demolition of its uncompleted building that damages necessarily must enure in plaintiffs favour.

At the risk of prolixity, the plaintiff has no doubt built, even if an uncompleted but huge building on part of the original plot allocated at considerable expense. **Exhibit P10**, the pictorial representation shows what has so far been built. The value of the uncompleted building may have not been creditably established but there cannot be any doubt that a lot must have spent to bring the structure to that level. The 1st and 2nd defendants apart from collecting due fees and ground rents from plaintiff vide **Exhibits P2** and **P4** but by **Exhibit D2** they unequivocally allowed the plaintiff to retain the portion of the plot it had already developed. Again at the risk of prolixity, the notice of revocation contains the following:

"You are by this notice informed to retain developed part of the plot and to note that title covered by MISC 5827 is extinguished. A new title covering the developed part shall be issued in due course" (underlining supplied)

There was therefore no justifiable basis for the trespass and destruction of the uncompleted building carried out and done in complete disregard of due process and requirements of the law as earlier demonstrated. The demolition here was utterly oppressive and highhanded. The question that begs for an answer is simply having allowed plaintiff to retain, the portion of the land they had developed, why then demolish the property? Would common sence not have prevailed here and instead give plaintiff a clear time line to now complete the building instead of demolishing same? I just wonder.

In the circumstances, and on a calm view of the depressing facts of this case particularly on trespass, I am of the view that the sum of **N30, 000, 000** be and is awarded to plaintiff as a consequence of the trespass accompanied by the intolerable and unacceptable demolition of the uncompleted building of plaintiff by 1st and 2nd defendants on the portion of land they were allowed to retain by the same 1st and 2nd defendants. This order incorporating damages for the act of destruction is consequential on the successful claim of trespass. It arises inevitably by reason of the fact that it is tied to the proven fact or reality of trespass and need not be specifically claimed as a distinct or separate head or item or relief. See **Dr. M.T.A. Liman V Alhaji Shehu Mohammed (1999) 9 NWLR (pt.617) 116 at 134; Ogbahon V R.T.C.C.C.G & Anor (2002) 1 NWLR (pt.749) 675 at 701**.

This appears to me to be a fair and reasonable recompense in the circumstances. Let me just add to avoid any confusion that it is correct that I had earlier referred to

an authority which donates the position that damages for trespass should be nominal to show the courts recognition of the plaintiffs proprietary interest or right over the land and that if a party wants more damages, it should be claimed under special damages and then proved. The point to however underscore is that the term nominal damages does not mean small damages but circumstances and justice in each case dictates the quantum of damages to be awarded.

In **Barau V Cubitts (Nig) Ltd (1990) 5 NWLR (pt.152) 630 at 649 – 650**, the Court of Appeal adopting the position in the **Mediana (1900) AC 113 at 116** defined nominal damages as follows and I will quote the noble law lords in extenso as follows:

"A technical phrase which means that you have negatived anything like real damage but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you the right to the verdict or judgment because your legal right has been infringed. But the term 'nominal damages' does not mean small damages. The extent to which a person has a right to recover what is called by the compendious phrase damages, but may be also represented as compensation for the use of something that belongs to him, depends upon a variety of circumstances, and it certainly does not in the smallest degree suggest that because they are small, they are necessarily nominal damages".

See also **Badmus V Abegunde (1999) 11 NWLR (pt.627) 493 at 505; Nwankwo V Shitta-Bey (1999) 10 NWLR (pt.621) 75 at 84**.

On the whole, the case of plaintiff only partially succeeds. The **final orders of court** on plaintiff's case shall be streamlined at the end of the entire judgment.

Having determined the case of the plaintiff, I now proceed with the counter-claims of the defendants, in particular the 4th and 5th defendants. I start with the 4th defendant.

As stated earlier, in resolving the counter-claims of defendants, the decision of the court in the **substantive claim of the plaintiff** relating to the ownership of the entire land revoked would impact or have significant bearing on the fate of the counter-claims of 4th and 5th defendants.

Now with respect to the **counter-claim of 4th 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 plaintiff in the main action establish its case on same principles to entitle it to the declaration and order(s) it seeks. I need not repeat myself again. Let me quickly add that it was only the plaintiff that joined issues with 4th defendant in respect to its counter-claim. The 1st and 2nd defendants did not join issues at all with the counter-claim.

Before dealing with the substance of the counter-claim of 4th defendant, let me quickly dispose off the submissions of learned counsel to the plaintiff in the written address that 4th defendant is not a registered company and thus cannot be allocated a plot of land.

Again I have read the pleadings of parties and no where did the plaintiff raised the question of registration or status of 4th defendant as a precisely defined issue. The address, again is no substitute for proper pleadings or evidence and it is now too late in the day to expand its remit.

The exercise of attaching the **Certified True Copy** of the Certificate of Incorporation of 4th defendant by counsel to the 4th defendant in his Reply address on points of law to the plaintiffs final address as its response to the issue is therefore an utterly redundant exercise and of no utility value at this point. Since no issue was joined on the question of incorporation of 4th defendant, it is a none issue and accordingly discountenanced.

The case of the 4th defendant/counter-claimant on the pleadings and evidence is straight forward. The case in substance is to be situated in the context of the revocation of the interest of plaintiff in **Plot 1318** Cadastral Zone A06 Maitama Abuja measuring 1.78 hectares covered by Certificate of Occupancy No. FCT/ABU/MISC 5827. The land re-allocated to the 4th defendant and indeed all the other defendants forms part of this revoked plot.

In the substantive claim, for reasons sufficiently explained and which I adopt in relation to this extant counter-claim, I held that the revocation of **plot 1318** vide letter dated 28th February, 2006 and received by the then company sectary of plaintiff A.O. Ayinla vide Exhibit D1 was valid and legally situated. To the clear extent that on the evidence, nothing was presented creditably impugning the

revocation, then there was really no legal barrier or impediment preventing the 1st and 2nd defendants and issuing authorities of lands in the FCT from allocating this plot or any part of it to deserving applicants.

Now on the evidence, after the revocation of **Plot 1318**, the 4th defendant was then granted an offer of Statutory Right of Occupancy dated 22nd May, 2009 in respect of **Plot 4577** Cadastral Zone A06 Maitama with an area of approximately 5,441.45 square meters vide **Exhibit D10**. The 4th defendant then made all necessary payments sequel to the allocation and it was issued a Certificate of Occupancy dated 28th May, 2009 over Plot 4577 vide **Exhibit D13**. **Exhibit D11** is the Statutory Right of Occupancy bill issued to 4th defendant dated 22nd May, 2009 in the sum of N5, 512, 479 (Five Million, Five Hundred and Twelve Thousand Four Hundred and Seventy Naira) which it paid vide **Exhibit D12**. The 4th defendant equally paid the sum of N3, 081, 458 (Three Million and Eighty One Thousand Four Hundred and Fifty Eight Naira) for building plan processing fees and House No. vide **Exhibit D19**.

The 4th defendant was handed vacant possession of the plot and on the evidence they stated that they had expended huge sums of money in the planning towards development of the property for the purpose of building its clinic but that they had to put this plan on hold because of the extant court proceedings.

Now on the evidence, beside the contention of plaintiff that the revocation of Plot 1318 (which plot 4577 forms part of) was illegal and which the court found to the contrary, the case of the 4th defendant relating to the allocation of Plot 4577, Cadastral Zone A06 Maitama District was not in any way seriously challenged or controverted by any of the other parties in this case. The 1st and 2nd defendants, the issuing authorities never disputed or challenged the allocation to the 4th defendant. Indeed the sole witness for the 1st and 2nd defendants under cross-examination stated clearly and unequivocally that after the revocation of Plot 1318, it was redesigned and partitioned into three plots and re-allocated to **Ekocorp (plaintiff), Pamo Clinic** (4th defendant) and **Newton Specialist** (5th defendant).

As stated earlier vide the revocation letter **Exhibit D1**, the plaintiff was allowed to retain the portion it has already developed showing clearly that it is not the entire 1.78 hectares that was developed by plaintiff. There is therefore no question that the allocation to the 4th defendant was over a **vacant plot** and it was properly done

or effected after the initial allocation to plaintiff was revoked. The bottom line is that there is therefore absolutely no issue raised either as to the genuineness or validity of the allocation to 4th defendant. In the circumstances, I have no difficulty in holding that by a confluence of title documents tendered vide **Exhibits D10, 11, 12, 13, 18** and **19** that the 4th defendant was lawfully and statutorily allocated **plot 4577** with 5, 441, 45m^2. These surfeit of documentary evidence tendered particularly the certificate of occupancy with File No. MISC 103420 dated 28th May, 2009 and signed by the then Minister FCT speak clearly to this allocation for a duration of 99 years.

It is true that on the authorities, a certificate of occupancy is not conclusive evidence of a right or valid title to the land. It is at best only a prima facie evidence of such right and may in appropriate cases be effectively challenged and rendered invalid, null and void. See **Ololunde V Adeyoju (2000) 10 NWLR (pt.676) 562 at 587 C-D; Ilona V Idakwo (2003) 11 NWLR (pt.830) 53 at 84 E-G**. There has been no credible or effective challenge to the allocation to the 4th defendant on the evidence in this case.

At the risk of sounding prolix, this established statutory allocation to 4th defendant/counter-claimant has clearly not been factually or legally impugned in any manner. In law it is recognised that production of title document is one way of proving ownership of land as already alluded to. See **Idundun V. Okumagba (supra); Raphael V. Ezi (2015)12 N.W.L.R (pt.1472)39 and Ilona V. Idakwo (supra).**

I have no difficulty in holding that the **4th defendant/counter-claimant** has established within the threshold as allowed by law that it is the holder of the statutory Right of Occupancy over **Plot 4577**, Cadastral Zone A06 Maitama Abuja. A party is in law entitled to succeed for declaration of title where evidence of title is satisfactory and conclusive as in this case. See **Nnabuife V. Nwigwu (2001)9 N.W.L.R (pt.719)710 at 727.**

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 4th defendant/counter-claimant has thus established its legal title to the said **Plot 4577** and there is a legal presumption, in its favour that it is the party in exclusive possession. See **Carrena V Akinlase (2008) 14 NWLR (pt.1107) 262 at 281 F-H.**

The **Counter-Claim of 4th defendant** has considerable merit and the issue raised for determination in relation to the 4th defendant's counter-claim is answered in the affirmative. All the **reliefs sought are availing** and shall be streamlined at the end of this Judgment.

The next issue to address relates to the **Counter-Claim of 5th defendant** filed against both the **plaintiff** and **3rd defendant** on record. Here too the 5th defendant must creditably prove its entitlement to the reliefs sought. I had at the inception produced the Reliefs sought in the counter-claim of 5th defendant.

The case of the **5th defendant** on the counter-claim and on which it seeks a pronouncement that it was duly allocated is in respect of **Plot 5044** Cadastral Zone A06 Maitama district with an area of approximately 5,713,56 square meters. The Certificate of Occupancy over this Plot dated 13th October, 2014 was tendered during cross-examination of DW1 for the 1st and 2nd defendants and it was admitted as **Exhibit D4**.

The 5th defendant then averred that this **same portion of land appear to be what 3rd defendant lays claim too** but contends that the Certificate of Occupancy of 3rd defendant is non-existent, invalid and fraudulently obtained. The 3rd defendant in its defence to the counter-claim of 5th defendant contends that it is the allocation to 5th defendant/counter claimant of Plot No. 5044 that is invalid as it was done during the **pendency** of this suit. That on their part, they properly bought their own **plot No. 3199** from a third party **Sihmat Ventures** who was properly allocated the said plot by the 1st and 2nd defendants vide **Offer of Statutory Right of Occupancy dated 13th January, 2006 (Exhibit D20)** and the **Certificate of Occupancy dated 4th June, 2009 (Exhibit D21).**

In paragraph 8 of the defence of 3rd defendant to the 5th defendant's counter-claim, it was averred therein that **"plot 5044 purportedly allocated to the 5th defendant**

during the pendency of this suit curiously has the same boundary marks/numbers or beacon and dimension and is bounded by similar plots as the 3rd defendants plot 3199".

Now on the evidence, there is no real clarity beyond the contested assertions showing that **plot 5044 claimed by the 5th defendant** Counter-claimant is the same with **Plot 3199,** which **3rd defendant** claimed was duly allocated to the entity they bought from. What is baffling in this case is that the 1st and 2nd defendants who are the issuing authority of lands in the FCT did not file any process joining issues with the 5th defendant/counter-claimant. They equally did not file any process streamlining any position with respect to the positions advanced by the 3rd and 5th defendants. Stranger still is that neither the 3rd or 5th defendants felt compelled or deemed it necessary to summon someone from the 1st and 2nd defendants to shed critical light and insight on these apparent, conflicting and confusion situation relating to the allocations to both of them. The 3rd and 5th defendants may have called one witness each who gave oral evidence in support of their respective cases but none of these two witnesses who gave conflicting evidence works with the 1st and 2nd defendants and certainly did not prepare or issue the title documents both parties relied on. The value of the evidence of these two witnesses in the circumstances would clearly lack much significance in the context of attempts made by them to impugn the integrity of the title documents issued to either or both of them by the issuing authorities.

All that the **1st and 2nd defendants** said through its witness during cross-examination is that upon the revocation of plaintiffs **Plot 1318**, this same plot was redesigned and re-allocated to the **plaintiff**, the **4th defendant** and the **5th defendant.** The name of the **3rd defendant** was never mentioned by DW1 as one of the new allottees or one of the beneficiaries. When he was however shown the **Certified True Copies** of title documents 3rd defendant was relying on and emanating from their offices, his lame and surprising response was that he was in no position to affirm or impugn the integrity of the documents. It is also important to state that the 3rd defendant never raised or filed a counter-claim seeking a pronouncement or relief(s) on the validity of its ownership of **plot 3199**. Despite the absence of a claim or a specific relief related to this plot, it has however in its final address raised as one of the issues for determination, issue (c) as follows:

Whether the 3rd defendant interest covered by the Certificate of Occupancy No. 85559 has been impeached or invalidated by any facts presented in this case.

This unclear and detailed setting prefaced above by court makes it imperative to consider in the overall interest of justice, the contested assertions by both 5th defendant counter-claimant and the 3rd defendant with respect to the disputed plot. The questions that arises include **(1) Has any of the parties made out a case situating ownership of Plots 3199 and 5044? (2) Are the plots 5044 and 3199 even one and the same? (3) If they are, who has a better right of possession between the two parties?** I shall interrogate the relative positions made by parties in the context of the case made out in the pleadings, evidence and the applicable legal principles and then resolve the counter-claim of 5th defendant.

In this case on the pleadings before me, both the 5th defendant who seeks a specific relief or claim on plot 5044 and the 3rd defendant who has no specific claim or relief to any plot before me appear to found their claims of title on production of title documents. As stated earlier, it is trite law that a claimant can base his title to land in dispute by production of documents of title. See **Ilona V Idakwo (supra).**

In the present scenario, the case of 3rd defendant is simply that they bought plot **No. 3199** Cadastral Zone A06 Maitama District with File No. MISC 85559 from **Sihmat Ventures** who were duly allocated the plot by the issuing authorities sometimes in 2009 without any knowledge of any encumbrance or adverse claim whatsoever.

In evidence they tendered the following important documents of title thus:

1. C.T.C of Offer of Statutory Right of Occupancy with File No. MISC 85559 dated 12th January, 2006 in respect of Plot No. 3199 was admitted as **Exhibit D20.**

2. Certificate of Occupancy with File No. MISC 85559 in respect of plot 3199 dated 4th June, 2009 was admitted as **Exhibit D21.**

3. Legal search Report issued by FCDA showing particulars of title of SIHMAT VENTURES LTD was admitted as **Exhibit D23.**

4. Two letters on the letter head of the law firm of Adamu Ahmed Ibrahim & Co. dated 4th November, 2009 and 26th May, 2010 both titled "Receipt" admitted as **Exhibits D24 a and b**.

5. Power of Attorney given by Sihmat Ventures Ltd in favour of Sheltrach Associates Ltd was admitted as **Exhibit D25.**

6. Revenue Receipt issued to Sihmat Ventures Ltd by AGIS being payment for power of attorney was admitted as **Exhibit D26.**

Now the above documents either individually or collectively do not clearly denote or show a transfer of legal title or interest in plot 3199 to **Sheltrach Associates Ltd, the 3rd defendant on record in this case by the said Sihmat Ventures.**

The letter of offer and certificate of occupancy (Exhibit D20 and D21) bear the name of **SIHMAT VENTURES LTD**. The legal search report (Exhibit D23) by FCDA discloses title in **SIHMAT VENTURES LTD**. The documents titled "Receipt" on the letter head of the law firm of **Adamu Ahmed Ibrahim & Co**. (Exhibits D24 a and b) only describes payment made by **SHELTARCH ASSOCIATES LTD to SIHMAT VENTURES LTD** in respect of a "property described in the schedule of the Agreement dated November 3, 2009". This **agreement** was not annexed to the receipts or tendered in evidence and so except additions or interpolations are made to the Receipts to suit a particular purpose, there is no clarity as to the property the subject of the receipts. See **Section 128 of the Evidence Act**.

Finally there is the **power of attorney** (Exhibit D25) wherein **SIHMAT VENTURES LTD** as donors of Plot 3199 appointed **SHELTARCH ASSOCIATES LTD** to act as its attorney and they agreed to act as attorney to carry out certain acts as streamlined clearly in the Power of Attorney.

I have carefully read the terms of the Power of Attorney and it is difficult to situate how it can be legally construed as an instrument of transfer of legal title between **SIHMAT VENTURES LTD** and the **3rd defendant** on Record.

The 3rd defendant in paragraph 22 of its defence pleaded thus:

"That subsequent to the purchase of the said property, the 3rd defendant took steps on 29th July, 2010 to perfect her title over the said property by applying to register the power of attorney donated to her by the former owners of the property, M/S Sihmat Ventures Ltd."

The 3rd defendant did not however proffer any credible evidence in support of the above averments disclosing the perfection of its title or even the registration of the power of attorney. In law, in the absence of evidence to support these averments, the paragraph relating to perfection of "her title" is deemed as abandoned. There is nothing in **Exhibit D25**, the **power of attorney** showing any **registration** or disclosing the particulars **of registration with the Deeds and Lands registry department of the FCDA**. This then makes it imperative to again say some words to underscore the true legal import of a Power of Attorney. Despite pronouncements by our superior courts, there is still some confusion as to whether a power of attorney transfers title both in the camp of the legally enlightened and the unenlightened. The case of 3rd defendant on ownership rooted substantially on this power of attorney accentuates this confusion and misunderstanding of the correct legal import of a power of attorney.

As stated earlier in the substantive judgment, a **Power of Attorney** is not an instrument that transfers or alienates any landed property. I had earlier quoted the useful words of Pats Acholonu (JCA) (as he then was and of blessed memory) in **Ndukauba v. Kolomo (supra)** 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 (supra) (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. The powers conferred here were specific. Indeed this power of attorney on its own completely compromises or undermines the position taken or asserted by the 3rd Defendant on Record that it is the owner of Plot 3199.

Clause 'd' of the Power makes this position abundantly clear on what the donee is to do thus:

"To let, sublet, mortgage, convey or assign the property or anything therein to themselves or any person, or enter into negotiation and agreement for the purpose of letting, subletting, mortgaging or assigning the property to either themselves or any person." (underlining supplied).

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**. See **Ezeigwe V Awudu (supra)**. There is nothing in this case that

pursuant to the Power, the 3rd defendant took steps to **transfer legal title of the property to itself** or **another**. The fundamental element(s) to situate a legal transfer of title to 3rd defendant is conspicuously missing in this case. The fact therefore that this power of attorney was given to 3rd defendant on record does not divest the owner of plot 3199, **SIHMAT VENTURES LTD** of the power to deal with the property in the manner it deems fit. Indeed in law, it can sell the plot after the execution of the power of attorney, as long as the donee has not sold or executed his power of sale and that is where a power of sale forms part of the power of attorney as in this case. See **Ude V Nwara (supra); Ajuwon V Adeoh (1990) 2 NWLR (pt.132) 271 at 294.**

The bottom line is that while the pleading of 3rd defendant may have alluded to a sale transaction between **SIHMAT VENTURES LTD** and **SHELTARCH ASSOCIATES LTD**, there is no legal evidence to situate a legal transfer of title to 3rd defendant. The **copious and grave complaints of 5th defendant** on its pleadings is in respect of the allocation to **SIHMAT VENTURES** which is not a **party** in this case.

As logical corollary, in the absence of **SIHMAT VENTURES**, the clear original and subsisting allottee of **plot 3199** in this case, it cannot be right or fair to make pronouncements behind its back, as it were, on fundamental questions raised regarding the allocation including (1) The question of the propriety of the offer of statutory right of occupancy to **SIHMAT VENTURES LTD** dated **13th January, 2006** which was done even **before the revocation of plaintiffs plot 1318 on 28th February, 2006** (Exhibit D1) which plot 3199 clearly forms part of. As a logical corollary to this question, can Sihmat Ventures be legally allocated any portion of Plot 1318 yet to be revoked? (2) The issue of whether **plots 3199** and **5144** are the same and whether or not **SIHMAT VENTURES** was not part of the entities reallocated plaintiffs revoked plot when the documents emanating from 1st and 2nd Defendants offices show otherwise and (3) The grave allegations that the documents of title of **SIHMAT VENTURES** were fraudulently obtained.

The law is settled that the court cannot make pronouncements on critical issues involving a party not before the court or subject of a present action before the court and who has not been given an opportunity to put its own side of the story. The

Right to be heard or fair hearing is an inalienable right which goes to the core of a fair resolution of any dispute.

The absence of **SIHMAT VENTURES** in this case has served to severely delimit any pronouncement this court can properly make with respect to plot 3199 and the 3rd issue raised by 3rd defendant as arising for determination. The court is aware that the case of **3rd defendant** and the **complaint of 5th defendant** relating to the disputed plot 3199 has been left in a fluid and unclear state, but the court cannot properly undertake a meaningful inquiry and make binding and conclusive pronouncement(s) in the absence of a key and material party to the conflict. This then perhaps explains why the 3rd defendant did not file a Counter Claim to seek a definitive pronouncement regarding its ownership of **plot 3199**. I say no more.

This then logically leads us to the case of the **5th defendant/counter claimant**. Again at the risk of prolixity, the counter claim of 5th defendant and the portion of land claimed equally forms part of **plot 1318** revoked from plaintiff.

As severally stated earlier on, after this **revocation** which the court found to be availing and in order, the plot was redesigned and reallocated. The sole witness for the 1st and 2nd defendants maintained that the **5th defendant** was one of the beneficiaries. Again the substance of the reliefs 5th defendant/counter-claimant seeks especially **Reliefs A** and **B** and on which the other reliefs are predicated are declaratory reliefs which as stated earlier must be established by cogent and credible evidence and is not dependent on admissions or the stance or disposition of the adversary.

The case of the **5th Defendant/Counter Claimant** again is fairly straightforward. Sometimes in **2014**, it applied to the 1st and 2nd defendants for a parcel of land and it was duly allocated **plot 5044** and after it made all necessary payments, a valid Certificate of Occupancy was issued and it took vacant and effective possession of same. The case of the 5th defendant is essentially anchored on the following key documents:

(1) Offer of Statutory Right of Occupancy to Newton Specialist Hospital Ltd dated 13th October, 2014 was admitted as **Exhibit D4.**

(2) Certificate of Occupancy to Newton Specialist Hospital Ltd dated 16th December, 2014 over plot 5044 was admitted as **Exhibit D5.**

(3) Receipt for land application fees and application for grant/re-grant of a statutory right of occupancy acknowledgment dated 27th October, 2014 and 4th April, 2014 were admitted as **Exhibit D28 a and b.**

(4) Receipts for payment of statutory right of occupancy bill and the statutory right of occupancy bill dated 13th October, 2014 were admitted as **Exhibits D29 a and b.**

(5) Legal search report and receipt of payment both dated 14th December, 2016 were admitted as **Exhibits D30 a and b.**

(6) Demand for ground rent bill and receipt of payment both dated 16th February, 2016 were admitted as **Exhibit 31 a and b.**

Here again, the 1st and 2nd defendants who it is agreed are the **issuing authority** of land allocations within the FCT did not file any process in opposition or join issues with the 5th defendant/counter claimant. The 3rd defendant who was joined to the counter-claim by 5th defendant however filed a defence joining issues with 5th defendant/counter-claimant.

As earlier alluded to, the defence of the 3rd defendant is simply that **plot 3199** was properly allocated to Sihmat ventures who they bought from and that the plot of land known as plot 5044 and claimed by 5th defendant is actually the 3rd defendant's plot 3199 which was allocated to the 5th defendant during the pendency of the extant action and thus illegal.

The Court may have not been able to properly determine whether the two plots of land are the same in the absence of clear evidence and the party whom title legally enures to in respect of **plot 3199** but this does not impact in any way or derogate from the duty of court to determine the issues raised by the counter-claim of 5th defendant on the established principles and legal threshold.

Now I have carefully evaluated the documents of title of 5th defendant highlighted above and there is no doubt that all the documents tendered and in particular the allocations to wit, offer of **statutory right of occupancy dated 13th October,**

2014 (Exhibit D4) and the **Certificate of Occupancy dated 16th December, 2014 (Exhibit D5)** were clearly issued during the currency of the extant suit or action.

The point must be underscored at the risk of prolixity that **this 2009 action** involves the revocation of title over **plot 1318**. **Plot 5044** subject of the counter-claim of 5th defendant on the evidence clearly falls within the said **plot 1318** which is the subject matter of this action in which the **1st and 2nd defendants** as issuing authorities are listed as defendants.

On the records, the **1st and 2nd defendants** have actively participated in this proceedings from the inception questioning the validity of their action(s) in revoking plaintiffs title over **plot 1318** and therefore in the circumstances it is difficult to situate the legal validity of their actions in allocating **plot 5044** from the disputed plot 1318 to **5th defendant** during the pendency of this present action or when the action was **"lis pendens"** which simply means a **pending law suit**. See **Abhulimen V Namme (1992) 8 NWLR (pt.258) 172 at 211**. **"Lis pendens"** is the jurisdiction, power or control by a court over a property while a legal action is pending. See **Ezomo V N.N.P.C Plc (2007) All FNLR (pt.368) 1032 at 1056 A-B.** What the doctrine of **lis pendens** means is that the law does not allow the litigant, parties or gives to them during the currency of the litigation involving any property, rights in such property so as to prejudice any of the litigation parties. See **Okafor V The Administrative, General and Public Trustee Anambra State & Anor (2006) 12 NWLR (pt.993) 12 C-D.** Put another way, the doctrine operates to prevent the effective transfer of any property in dispute during the pendency of that dispute. It is quite irrelevant whether the purchaser or allottee has notice – actual or constructive. The doctrine is really designed to prevent the vendor from transferring any effective title to the purchaser or allottee by depriving him (the vendor) of any rights over the property during the currency of the litigation or the pendency of the suit. That being so, the principle of ***nemo dat quod non habet*** will apply to defeat any allocation sale or transfer of such property made during the currency of the litigation. See **Osagie V Oyeyinka (1987) 3 NWLR (pt.59) 144 at 156, (S.C.); Combined Trade Ltd. V ASTB Ltd. (1995) 6 NWLR (pt.404) 709 at 717, (C.A.); Umoh V Tita (1999) 12 NWLR (pt.631) 427 at 435 – 436, (C.A.).**

The 1st and 2nd defendants have been parties to the extant action from the very beginning and **participated actively**. They were thus fully aware of the

proceedings and acted in complete disregard of the court proceedings. What makes the doctrine of **"Lis pendens"** applicable as already alluded to but which needs to be emphasised is not even whether they were aware (and in this case they are aware), the doctrine of **"lis pendens"** operates by the operation of the law and operates independent of the wills of parties. See **Olori Motor Co. Ltd & ors V U.B.N Plc (2006) 10 NWLR (pt.989) 586.**

The actions of the **1st and 2nd defendants** to, as it were, attempt to pool the rug off the feet of the court by seeking to allocate part of the disputed **plot 1318** to a third party during the pendency of this action is **wrongful** and must be deprecated in the strongest of terms. As Government institutions, they are certainly not above the law. Indeed as Government institutions guided by the Rule of law, they owe strict fidelity to the cause of justice and the Rule of law and one of the key components is respect for the integrity of the judicial process and ensuring that once a matter is in court, all parties must as a matter of obligation defer to the comforting authority of the court in resolving the dispute.

Any interest thus granted during the pendency of this action is clearly of doubtful validity and must necessarily be subject to the outcome of this litigation. See **Enyibros Foods Processing Co. Ltd & Anor V N.D.I.C & ors (2007) 3 S.C (pt.11) 175.**

In the circumstances, it is difficult to accord validity to actions of **1st and 2nd defendants** taken during the pendency of this action in allocating **plot 5044** to 5th defendant and in utter or complete disregard of the judicial process. I accordingly hold that the allocation is compromised abinitio and lacking legal validity.

The issue thus raised in respect of the 5th defendants counter-claim is answered in the negative. The substantive declaratory **Relief (a)** seeking a declaration that the 5th defendant/counter-claimant is the lawful and valid allottee of plot 5044 accordingly fail and is not availing. All the other **Reliefs (b) – (f)** predicated on the success of **Relief (a)** accordingly also fail and are not availing. It is a well known legal truism, that you cannot put something on nothing and expect it to stand.

Before streamlining the final orders, it is important to call attention and demand of the **1st and 2nd defendants** to show circumspection in the discharge of their duties

particularly as it relates to land allocations within the FCT. The confusion generated by this case and the problems caused bordering on conflicting allocations can be avoided if there is some modicum of departmental synergy and cooperation between the various agencies in the FCDA. It is difficult to fathom how allocations can be made of apparently the same plot to two different entities. Stranger still, they are given title documents from the same issuing authority which does not creditably impugn the integrity of any of the title documents issued from the same source. Furthermore it is difficult to rationalize how **Certified True Copies of documents** would be produced from a department in the FCDA and for another official from another department of the same FCDA to appear in court and attempt to impugn the integrity of the same document(s). If the title documents of one or both parties are not genuine, why then issue Certified True Copies? Do the officials know the legal import of certification of documents? If it is a case of double allocation for example, is it not 1st and 2nd defendants as the issuing authorities that are in an informed and better situation or position to explain what happened and what remedial actions to take? How then does the court situate or understand their reticence in contentious matters such as concerns 3rd and 5th defendants?

It is similarly disheartening that there will be a dispute in court over a plot of land in which the **FCDA** and the **Minister** are parties and represented by Counsel from the legal department, yet actions will be taken by the Minister relating to the same land in disregard of court proceedings. The question then is whether the heads of these institutions are aware of the legal proceeding and kept informed by the legal department or they simply ignore the advice of the legal department?

Furthermore, it is difficult to fathom the present situation where a department of the same FCDA will validate ownership of a plot of land and the building on it and another department will proceed to demolish the same without regard to due process.

All these clear aberrations are avoidable with better coordination among the agencies of FCDA which appears to me to be the necessary panacea to at least reduce if not completely abate the high volume of contentious litigations the courts in the FCT deal with on a daily basis. I say no more.

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

<u>ON PLAINTIFF'S CLAIMS</u>:

1. **Reliefs (a), (b), (c), (d), (e), (f), (g), h(i) fail and are dismissed.**

2. **Relief (d) is struck out.**

3. **I award/grant the sum of N30, 000, 000.00 (Thirty Million Naira only) as General Damages against 1st and 2nd Defendants and payable for the acts of trespass and the associated unlawful demolition of the uncompleted building on the portion of the plot plaintiff retained.**

4. **I award cost of N50, 000.00 in favour of plaintiff payable by 1st and 2nd Defendants.**

<u>ON 4TH DEFENDANT'S COUNTER-CLAIM:</u>

1. **It is hereby declared that the 4th Defendant/Counter-Claimant is the holder of Statutory Right of Occupancy over Plot 5577 Cadastral Zone A06, Maitama Abuja covered by Certificate of Occupancy with File No. FCT/ABU/MISC/103520 dated 28th May, 2009 and Registered as No. 41101 at Page 1 in Volume 206.**

2. **It is hereby declared that the 4th Defendant/Counter-Claimant's title over the property covered by Certificate of Occupancy with File No. FCT/ABU/MISC/10352 is subsisting and valid.**

3. **An Order of Perpetual Injunction is granted restraining the Plaintiff and/or any other person(s), their privies, officers or whosoever acting on their behalf from committing acts of trespass on Plot 4577 Cadastral Zone A06, Maitama, Abuja.**

<u>ON 5TH DEFENDANT'S COUNTER CLAIM:</u>

The 5th Defendant's Counter Claim fails in its entirety and it is hereby dismissed.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. **Ademola Adewoye, Esq., with Samuel Nwokere Esq., for the Plaintiff.**

2. **P.T. Akan, Esq., with K.J. Omang, Esq., for the 1st and 2nd Defendants.**

3. **O.M. Uwaifor, Esq., for the 3rd Defendant.**

4. **Audu Anuga, Esq., with Ginika Ezuike (Miss) and Ochanyi Ochigbo, Esq., for the 4th Defendant/Counter-claimant.**

5. **A.C. Ozioko, Esq., for the 5th Defendant/Counter-claimant.**