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

THIS MONDAY, THE 8TH DAY OF MARCH 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/310/11

BETWEEN:

MRS ADEOLA OMOYEMIJU ANUNOBI.....PLAINTIFF

AND

1. **ALHAJI ALIYU MOHAMMED JUNGUDU (Chairman Ad-Hoc Committee on Sale of Federal Government House FCT, Abuja)**
2. **THE FEDERAL CAPITAL TERRITORY ADMINISTRATION**
3. **THE HON. MINISTER OF THE FEDERAL CAPITAL TERRITORY**
4. **MRS OLUTOYE JOKE PHILOMENA**
5. **ATTORNEY-GENERAL OF THE FEDERATION**

DEFENDANTS

JUDGMENT

The facts of this case are fairly straightforward, notwithstanding the volume of processes filed. The fundamental question posed by this dispute resolves around the ownership of the property situate at Block 2, Flat 19, Mombassa Street, Wuse Zone 5, Abuja, and now designated as No.4 Windhock Street, Wuse Zone 5, Abuja.

Pleadings were duly settled. The plaintiff by her Amended Writ of Summons and Amended Statement of Claim dated 21st May, 2012 claims the following Reliefs against the Defendants jointly and severally as follows:

1. **A Declaration that the Plaintiff has the 1st right of refusal to purchase the one bedroom flat premises and appurtenances thereof situate and known as Block 2 Flat 19, Mombassa Street, Wuse Zone 5, Abuja, and designated as No.4 Windhock Street, Wuse Zone 5, Abuja by virtue of the Plaintiff being the sole career civil servant that expressed interest to purchase the said premises having duly completed the application form thereof on the 30th Day of May, 2005 and having paid the sum of ₦10,000.00(Ten Thousand Naira) consideration thereof and being the sole occupant of the said premises since 2005 and the Honourable Minister of FCT approval of the said premises in favour of the Plaintiff.**

2. **A Declaration that the Plaintiff's premises aforesaid having been duly verified by the Task Force on sale of FGN Houses, FCT, Abuja which also approved the said premises and short listed same in the name of the Plaintiff for the Minister's approval, the Defendants cannot forcibly eject the Plaintiff and her household from the premises without notice and due process.**

3. **A Declaration that the action of the Defendants to have forcibly ejected the Plaintiff and her household from the said premises without notice and due process is unlawful, illegal, null and void and of no effect whatsoever.**

4. **A Declaration that the purported sale of the one bedroom flat premises known as Block 2, Flat 19 Mombassa Street, Wuse Zone 5, Abuja, by the 1st, 2nd and 3rd Defendants to the 4th Defendant is inoperative, ultra-vires, null and void and of no effect whatsoever as the purported sale was made contrary to the Federal Government approved guidelines for the sale of the Federal Government Houses in FCT Abuja.**

5. **An order setting aside the purported letter of offer and/or sale of Block 3 Flat 19 Mombassa Street Wuse Zone 5, Abuja to the 4th Defendant by the 1st, 2nd and 3rd Defendant hitherto occupied by the Plaintiff.**

6. **An order of perpetual injunction restraining the 4th Defendant and/or the other Defendants, by themselves, their agents, servants or privies or any person(s) taking instructions from them or acting on their behalf howsoever described from forcibly evicting the Plaintiff and from entering or remaining or permitting the 4th Defendant or any person whatsoever from occupying or remaining in occupation of the one bedroom flat**

premises known as Block 2 Flat 19 Mombassa Street, Wuse Zone 5 Abuja, hitherto occupied by the Plaintiff and from doing anything or continue to do anything that will permanently divest the Plaintiff of her rights to purchase the said premises in compliance with the Federal Government approval guidelines for the sale of Government Houses in FCT, Abuja.

7. **The sum of ₦10M as general damages**

8. **Cost of this litigation**

The 1st to 3rd Defendants filed a joint statement of defence dated 6th June, 2012. The 4th Defendant on her part filed her statement of defence dated 19th November, 2014. The 5th Defendant, the office of the Attorney-General of the Federation did not file any process or put up an appearance all through the course of this proceeding. The Plaintiff however filed a Reply to 1st and 3rd Defendants joint statement of defence dated 19th June, 2012 and a Reply to the 4th Defendants statement of defence dated 24th November, 2014.

Trial then subsequently commenced. In proof of Plaintiff's case, she called two witnesses. The Plaintiff herself testified as PW1. She deposed to a witness statement on oath dated 1st June 2012 which she adopted at the hearing and she tendered in evidence the following documents as follows:

1. Copy of expression of interest to purchase a Federal Government Housing Unit (HU) in Abuja FCT was admitted as **Exhibit P1.**

2. Copy of Intercontinental Bank PLC deposit slip in the sum of N10,000 was admitted as **Exhibit P2.**

3. Plaintiff's letter of offer of provisional appointment by Nigerian Tourism Development Corporation (NTDC) dated 11th December, 2001 was admitted as **Exhibit P3**

4. Plaintiff's letter of confirmation by NTDC dated 24th October, 2002 was admitted as **Exhibit P4.**

5. Pay advice documents of Plaintiff for the months January 2005 to June 2005 were admitted as **Exhibit P5(1-6)**

6. Copy of Federal Republic of Nigeria Official Gazette containing the approved guidelines for the sale of Federal Government Houses in the Federal Capital Territory to career civil servants was admitted as **Exhibit P6.**

7. Copy of Federal Republic of Nigeria Official Gazette containing the Federal Capital Territory Recovery of premises Suspension of Designated Areas, Order 2009 was admitted as **Exhibit P7.**

8. Copy of Allocation by the office of the Hon. Minister of State, FCT of one bedroom situate at Flat 19, Block 322(2) Wuse Zone 5 to one Feyisayo Okuseinde, Office of Establishment, the Presidency, Abuja dated 24th May, 1999 was admitted as **Exhibit P8**

9. Copy of eight photographs were admitted in evidence as **Exhibits P9(1-8)**

10. The certified True Copy (C.T.C) of the Report of the Joint Senate Committees on FCT and Housing on the Investigative Public Hearing into the administration of the FCT between 1999 and 2008 dated 10th July, 2008 was admitted as **Exhibit P10.**

The PW1 was then cross examined by counsel to the 1st to 3rd Defendants and counsel to the 4th Defendant. The second witness for the Plaintiff is Raymond Anunobi who testified as PW2. He deposed to a witness deposition which he adopted at the hearing. He was then cross-examined by both counsel to the 1st-3rd Defendants and then counsel to 4th Defendant.

With the evidence of PW2, the Plaintiff closed her case.

The 1st to 3rd Defendants on their part called only one witness. Kaka Samuel Senchi testified as DW1. He deposed to a witness statement on oath dated 8th June, 2012 which he adopted at the hearing. He tendered in evidence the following document:

1. Federal Republic of Nigeria Official Gazette containing the approved guidelines for the sale of Federal Government Houses in the Federal Capital Territory to career civil servants was admitted as **Exhibit D1.**

Counsel to the 4th Defendant chose not to cross-examine DW1. He was however cross-examined by counsel to the Plaintiff and with his evidence the 1st to 3rd Defendants closed their case.

On the part of 4th Defendant, she testified in person as DW2 and the only witness. She deposed to a witness deposition dated 19th November, 2014 which she adopted at the hearing. She tendered in evidence the following documents, to wit:

1. Certified True Copy (C.T.C) of letter of offer dated 18th March, 2008 to Philomena Joke Olutoye was admitted as **Exhibit D2a**

2. C.T.C of Receipt of payment to the Ad-ho Committee on sale of F.G.N Houses in Abuja, FCT was admitted as **Exhibit D2b.**

The 1st to 3rd Defendants counsel did not appear in court to cross-examine DW2 despite ample time given and the right was foreclosed. Indeed counsel for the 1st to 3rd Defendants altogether stopped coming to court inspite of service of hearing notices. DW2 was then cross-examined by counsel to the Plaintiff and in the process, a copy of paper containing her signature written in open court was admitted as **Exhibit D3.** With the evidence of DW2, the 4th defendant then closed her case.

At the conclusion of trial, only the Plaintiff and 4th Defendant filed, exchanged and adopted their final written addresses.

In the final written address of 4th Defendant settled by Michael Eleyinmi, Esq dated 20th November, 2019, one single issue was raised as arising for determination as follows:

"Whether the Plaintiff is entitled to any relief sought?"

The final written address of Plaintiff was settled by P.A Onuigbo, Esq and four(4) issues were raised as arising for determination to wit:

" **a. Whether the purported sale of the one(1) Bedroom Flat Premises known as Block 2 Flat 19 Mombasa Street, Wuse Zone 5, Abuja, now designated as No.4 Windhock Close, Wuse Zone 5, Abuja, hitherto occupied by the Plaintiff and notwithstanding the Plaintiff's application to purchase same by the 1st to 3rd Defendants to the 4th Defendant does not contravene the extant provisions of the Approved Guidelines for the sale of Federal Government Houses in the FCT, Abuja, to Career Public Servants public notice No. 1 dated 1st April, 2005 and the Letter of Offer issued to the 4th Defendant and dated 18th March, 2008 as per Exhibits P6 and D2A, are**

not liable to be set aside in line with clause 9 of the Approved Guidelines for the Sale of Federal Government Houses in Abuja.

b. Whether the Plaintiff's occupation of the said Block 2 Flat 19 Mombasa Street Wuse Zone 5 Abuja now designated as Block 2 Flat 19 Windhock close, Wuse Zone 5, Abuja as the sole career civil servant after the death of her elder sister of the full blood, Feyisayo Okusiende in 2005 officially allocated to the premises to the knowledge of the 1st -3rd Defendants and the Plaintiff's take over(sic) the payment of the official rent deductions and utilities in the premises to the coffers of the Federal Government through the 2nd and 3rd Defendants as per Exhibit P5 which is evidence of the last six months' deductions of Rent and Utilities in respect of the premises, the Plaintiff has not acquired an equitable interest in the said premises to entitle the Plaintiff's exercise the first right of refusal to purchase the said premises having complied with other requirements as contained in the Approved Guidelines for Sale of Federal Government Houses in FCT, Abuja.

c. Whether the 1st – 4th Defendants forcible eviction of the Plaintiff and her family from the Block 2 Flat 19 Mombasa Street, Wuse Zone 5, Abuja by breaking into the premises hitherto under locks and keys and throwing away the Plaintiff's matrimonial properties outside into the rain and destroyed some of the Plaintiff's matrimonial properties worth thousands of naira in the bid to gain possession of the premises without any formal notice to vacate the premises and without recourse to the Recovery of Premises Act, 2004 after the Plaintiff has been in the said premises and sole occupant from 2005 till the said eviction in September, 2011, is not wrongful to which the Plaintiff can recover for damages.

d. Whether the Plaintiff by the totality of evidence adduced in the suit proceedings has not proved her case as required by law on the preponderance of evidence to be entitled to all the reliefs claimed in this suit."

I have set out above the issues formulated by parties. However, having regard to the pleadings and evidence led by parties, the fundamental issue to be resolved revolves around plaintiff's entitlement to exercise the first right of refusal to purchase the disputed one bedroom flat. The exercise of this right is regulated by precisely defined and streamlined guidelines. The key question here is whether she fulfilled the requirements of the guidelines: that really is the crux of this dispute. The four(4) issues raised by Plaintiff are clearly therefore not succinct. They are

unnecessarily lengthy and verbose and this only serves to detract from the critical or material issue or question which calls for the most circumspect of consideration. Issues 1 and 2 raised by Plaintiff can only properly and legally be situated if her legal right or issues bordering on her legal right to exercise first right of refusal to purchase the disputed flat is first established. Issue 3 can similarly be determined within the purview of the contested issue of the same exercise of right of first refusal to purchase the flat. The four(4) issues thus raised by Plaintiff can be determined or situated within the dynamics of whether the Plaintiff has fulfilled all the necessary legal requirements to entitle her to the right of right refusal to purchase the disputed flat within the confines of the guidelines. These issues can therefore be streamlined for ease of treatment and understanding of the contested assertions in this case.

In the court's considered opinion, the sole issue raised by 4th Defendant which in substance is similar to issue 4 raised by Plaintiff is apt, succinct and straight to the point. I intend to however slightly modify same into two broad issues for clarity and ease of appreciation. It seems to me therefore that the issues raised by parties can be subsumed conveniently into the following two issues:

1. **Whether the plaintiff has on a preponderance of evidence fulfilled the requirements governing the sale of the disputed flat?**

   This issue would be predicated on the following key questions:

   a. **What are the parameters or requirements governing the sale.**

   b. **Did the plaintiff fulfill or meet these requirements and;**

2. **Whether the plaintiff is entitled to all or any of the reliefs claimed?**

The above issues and the questions are not raised as alternatives to the issues raised by parties, but the issues canvassed by parties can and shall be cumulatively considered under the above issues. See **Sanusi V Amoyegan (1992) 4 N.W.L.R (pt.237) 527.** The issues thus raised will be taken together as it has in the court's considered opinion brought out with sufficient clarity and focus, the pith of the contest which has been brought to court for judicial adjudication.

This point I must emphasise at the outset because in law, it is now a general principle of wide application that whatever course the pleadings take, an examination of them at the close of pleadings and trial should show precisely what are the issues between the parties upon which they must prepare and present their

cases and which remain to be resolved by court. Any issue outside the template of the pleadings can only but 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 proceed to determine this case based on the issues I have raised and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel.

Now to the **substance**. I will take the two(2) issues together.

I had at the beginning stated the claims of Plaintiff. I had also emphasised the importance of the pleadings of parties as precisely streamlining the issues and or facts in dispute. It is therefore to the pleadings and the evidence that we must now beam a critical judicial search light in resolving the contested assertions.

In this case, the Plaintiff filed a (31) thirty one paragraphs Amended Statement of Claim which forms part of the Record of court. The evidence of the two witnesses are largely within the structure of the claim and the Replies filed by Plaintiff in this case.

The 1st to 3rd Defendants filed a (19)nineteen paragraphs joint statement of defence which also forms part of the Record of court and the evidence of their sole witness is largely within the purview of the facts averred.

The 4th Defendant on her part filed an (11) eleven paragraphs defence and her evidence is similarly largely within the body of the facts averred therein.

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.

It is also important to note at the onset that the nature of the substantive **Reliefs 1-4** claimed by Plaintiff on which the other reliefs are predicated are declaratory reliefs. 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 to underscore 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 precisely situate certain common grounds flowing from the pleadings and evidence. First, it is common ground among parties and which I wholly accept that the disputed one bedroom flat or property subject of the extant dispute is part of the Federal Government residential houses in F.C.T which the Federal Government approved for sale to career public or civil servants and the general public. It is also not in dispute that the Federal Government approved

guidelines for the sale of these houses and this is contained in the Federal Republic of Nigeria Official Gazzette No. 82 of 15th August, vol. 92. Both parties happily tendered this same gazette particularly the Public Notice No1 titled **"Approved Guidelines for sale of Federal Government Houses in the FT to Carrier Civil Servants"** to underscore its importance as a key element regulating the exercise and to situate or ground the validity of their contentions. The address of parties bordering on ways of proving title to land, equitable interest or title clearly has no factual or legal resonance where there is a clear guidelines regulating the entire exercise. The guidelines therefore provides the necessary barometer to evaluate the validity of any complaint(s)

The Plaintiff tendered the gazette or guideline as **Exhibit P6,** while the 1st to 3rd Defendants tendered same in evidence as **Exhibit D1.** The case of the Plaintiff in substance is rooted firmly on this gazette and is simply that she has the right of first refusal to purchase the said flat having complied with the requirements of the gazette and that any other offer or sale to another party other than her will in the circumstances lack legal validity.

On the other side, the case of 1st to 3rd Defendants and indeed 4th Defendant is similarly firmly rooted in this gazette to the effect that the Plaintiff is unknown to them and that she clearly did not comply with the clear requirements of the guidelines and accordingly they offered the flat to the 4th Defendant through a walk in bid acting still within the confines of the guidelines.

Now it is critical to state that there are two public notices in the gazette No. 82, vol. 92; though they overlap, they however cover different and distinct scenarios. The first is the PUBLIC NOTICE NO 1 titled **"Approved Guidelines for Sale of Federal Government Houses in the F.C.T to Career Civil Servants".** The second guideline is PUBLIC NOTICE NO 2 titled **"Approved Guidelines for the Sale of Federal Government Houses to the General Public and Political Office Holders".**

In this case, we are concerned with the first Public Notice No1 which is what parties tendered and are relying on. Indeed the application of the guidelines to the case made out by Plaintiff will be structured and specific to the portion of the guidelines streamlining the requirements that would entitle her to exercise the right of first refusal to purchase the disputed plot. On the evidence, she stated that she did not **participate in the walk in bid exercise or open auction** which was

offered to Nigerians in respect of houses whose right to purchase are not exercised. Her case in substance is not concerned with that aspect of the guidelines.

The pleading and evidence of Plaintiff which I will shortly evaluate will provide answers on the critical question of compliance with the guidelines and how then this impacts on the reliefs sought. I only need again underscore the point at the risk of prolixity that parties are obviously bound **by the terms of this gazette containing the guidelines** as they provide a clear template to regulate the exercise. As a logical corollary, a valid complaint, for example, of a refusal to be accorded a right of first refusal to purchase must be factually and legal situated within the contextual framework or regime of the gazette. Indeed any contract or transaction that falls outside the purview of this template or gazette, would be compromised and lack legal validity. See **Solanke V Abed & Anor (1962) NSCC (vol5) 160, Fasel Services Ltd V. NPA (2009) 40 WRN 54.** The bounden duty of court in the event that there is a dispute as in this case is to give effect to the terms of the guidelines as contained therein. There is no discretion to exercise or any liberties to dance around the provisions to the extent that they are clear and unambiguous.

Now because of the critical importance of the guidelines in the resolution of this dispute, it is imperative at this stage to refer to relevant paragraphs of the guidelines and then situate their legal import.

For our present purpose, paragraphs 6, 8, 9 and 12 of Public Notice 1 of the gazette are relevant and provides as follows:

Conditions for Sale

6 The houses will be sold on "as is, where is" basis at the evaluated price with the current occupants having the first right of refusal to purchase within thirty days of offer. The said right to purchase is neither transferrable, assignable nor alienable in any way or form.

8 Sale of houses will be advertised and application fees of N10, 000.00 (Ten Thousand Naira only) must accompany each FREE application form, payable at designated banks. The banks will remit all proceeds to a dedicated account in the name of the Federal Government of Nigeria with the Central Bank of Nigeria.

9 All houses whose rights to purchase are not exercised will sold in an open auction whereby all Nigeria citizens shall be given equal opportunity. A simple auction with a bid bond by way of bank draft from a first class bank

equal to ten percent of bid value. All bids without a bid bond stand disqualified. The highest bidder shall be automatically declared the winner, along with the second highest bidder as the reserve bidder, with the bid bond being retained and treated as non-refundable 10 percent deposit. All other bid bonds shall be returned to unsuccessful bidder(s).

Payments terms and conditions

12 All purchasers must complete Application Forms with receipt of payment of N10,000 in favour of the Federal Capital Territory Administration, along with the following:

- **Letter of initial employment into the Public Service of the Federation.**
- **Letter of last appointment/promotion in the Public Service of the Federation.**
- **Letter of allocation of quarters by an Appropriate Authority.**
- **4 No. high resolution colour Passport Photographs and;**
- **Proof of last (6) Six Months Rent Deduction.**

The above paragraphs appear to me clear and unambiguous. By clause 6 above, the houses are to be sold to career civil servants who are current occupants who enjoy the right of first refusal to purchase the property within thirty days of the offer. In situating that you are a current occupant of a particular premises of the Federal Government and a carrier civil servant, clause 12 above comes in handy having streamlined in mandatory terms documents that must be attached to the application form satisfying certain basic requirements earlier alluded to. The word used in clause 12 is **"must"** which in law is a word of absolute obligation and admits of no discretion. See **See Titilayo Anibi V Jimoh Shotimehin (1993) 3 N.W.L.R (pt.282) 461, Boniface Ezeaduka V Peter Maduke & Anor (1997) 8 N.W.L.R (pt.518) 635 at 656.**

As stated earlier, the Plaintiff did not purchase the disputed flat through an open auction covered by clause 9 above. Indeed by clause 9, where houses whose right

to purchase are not exercised, this will then be sold in an open auction whereby all Nigerian citizens shall be given equal opportunity o participate in the exercise.

Let as now evaluate the pleadings and evidence, both oral and documentary to determine whether the case of Plaintiff can be validly situated within the purview of the law or precisely the Public Notice No1 and or guidelines regulating the sale to carrier civil servants and there is no better template or take off point than her own pleadings.

In paragraphs 1, 4-13 of the amended statement of claim, the Plaintiff pleaded as follows:

"**1. The Plaintiff (NEE OKUSEINDE) is a Civil Servant under the employ of Nigerian Tourism Development Corporation, Federal Secretariat, Area 1 Garki, Abuja and of the rank of Principal Accountant and the sole occupant of Block 2, Flat 19 Mombassa Sreet, Wuse Zone 5, Abuja and resides in the said premises with her husband, Mr. Raymond Anunobi and the three children of their marriage.**

4 The Plaintiff avers that the said Block 2, Flat 19, Mombassa Street, Wuse Zone 5, Abuja occupied by the Plaintiff and her household is a one bedroom flat premises with appurtenances thereof and was initially occupied by the Plaintiff's late elder sister, Feyisayo Okuseinde of the office of Establishment, the Presidency, Abuja and who was officially allocated the said premises by the Ministry of the Federal Capital Territory, Office of the Honourable Minister of State, Abuja, pursuant to a letter of approval for allocation of Residential accommodation thereof dated 24 May 1999 hereby pleaded.

5 The Plaintiff avers that the Plaintiff joined her late said elder sister Feyisayo Okuseinde in the said flat premises in 2001 when the Plaintiff was offered appointment by the Nigerian Tourism Development Corporation and continued to live with the said elder sister in the premises until the Plaintiff's elder sister's death in 2005.

6 The Plaintiff avers that soon after the untimely death of her elder sister aforesaid, the Federal Government introduced the monetization policy and decided to sell Government Houses to Civil Servants in Abuja and

Constituted the Ad-hoc Committee on Sale of Government Houses, FCT, Abuja to that effect.

7 The Plaintiff avers that when the Federal Government Houses were advertised for sale, the Plaintiff promptly expressed her interest in respect of the said premises by paying the sum of N10,000.00(Ten Thousand Naira) thereof as required and accordingly completed and submitted the requisite forms thereof, names, Expression of Interest to purchase a Federal Government Housing Unit (H.U.) in Abuja, FCT on 30th May, 2005 hereby pleaded. Equally pleaded is the deposit slip for the payment of the said N10,000.00(Ten Thousand Naira) thereto.

8 The Plaintiff avers that as part of the requirement for the purchase of the Federal Government Houses in Abuja, the Plaintiff's Office, Nigerian Tourism Development Corporation formally wrote a letter to the Permanent Secretary, Housing Department, Head of Service of the Federation Abuja on 27th January, 2005 introducing the Plaintiff as a bona fide staff of the Tourism Corporation and asked the Head of Service of the Federation to consider the allocation of residential accommodation to the Plaintiff hereby pleaded.

9 The Plaintiff avers that pursuant to the above, some staff of the Head of Service of the Federation came to the said premises for verification and subsequently the Taskforce on Sale of FGN Houses, FCT, Abuja, verified the same flat premises and shortlisted the Plaintiff's name as the sole applicant to purchase the said premises in a list of houses and applicants thereto forwarded to the Honourable Minister of the Federal Capital Territory, Abuja, for approval.

10 The Plaintiff avers that her name appeared in the said list in two places, namely, Nos.8 and 46 as the sole Applicant for the said premises hereby pleaded.

11 The Plaintiff further avers that the Honourable Minister of the Federal Capital Territory, Abuja has since approved the said list and asked the Ad-hoc Committee on the sale of FGN Houses in Abuja to offer the various houses to the Applicants therein including the Plaintiff.

12 The Plaintiff avers that the Ad-hoc Committee is yet to issue letters of allocation to prospective applicants as contained in the said list and the Plaintiff, like the others, is waiting for the said allocation letter from the Ah-hoc Committee aforesaid till date.

13 The Plaintiff avers that she has been in a quiet and peaceable undisturbed possession of the said one bedroom flat premises with her husband and children since 2005 until the 27th day of September, 2011 when the respondents forcibly evicted the Plaintiff and her household from the premises."

The Defendants joined issues with the above averments. The 1st to 3rd Defendants on the evidence are the parties that superintended the sale exercise and in their joint defence pleaded as follows:

"**4 That the allocation of the said Flat 19, Block 322(2) Mombassa Street, Wuse Zone 5, Abuja is not transferable. The said allocation paper is hereby relied upon and notice is hereby given to the Plaintiff to produce same at the hearing as the 1st to 3rd Defendants will rely on it at the hearing of this suit.**

5 The 1st and 2nd Defendants state that neither the Plaintiff nor the 2nd witness at any time came to their office to notify them that the Plaintiff had taken over the flat, and in any event, the 1st – 3rd Defendants could not have sanctioned such and could not have told the Plaintiff to make any expression of interest to purchase the house under that category she applied as a career civil servant, since the house was not allocated to her and is not transferable.

6 In further response, the 1st – 3rd Defendants state further that assuming but not conceding that the Plaintiff submitted expression of interest form, it is only a civil servant who meets all the requirements as stipulated in the approved guidelines for the sale of Federal Government Houses in FCT that will be entitled to exercise first right of refusal to purchase the house he/she was occupying and subsequently receives an offer letter to purchase the house. More so, the Defendants state that the payment of N10,000.00 application fee claimed by the Plaintiff is non-refundable application fee

and not part payment for the property, and the payment of such amount does not mean automatic qualification for invitation for bidding.

7 In further reply to paragraph 8 of the Plaintiff's statement of claim, the 1st-3rd Defendants state that there are some conditions/requirements stipulated in the guidelines and which an applicant must meet before invitation for bidding could be extended to him or her viz:

> ***Letter of appointment/promotion in the Public Service of the Federation. Letter of allocation of quarters by an appropriate authority. 4 Nos. High resolution colour passport photographs and; proof of last six(6) month's rent deduction.***

The official gazette containing the above guidelines is hereby pleaded and will be relied upon at the hearing.

8 That the Plaintiff failed to provide the requirements in b and d above.

9 The Plaintiff, having failed to meet the conditions precedent, was therefore not entitled to a right of first refusal, neither was she entitled to be given an offer letter.

11. In further reply to paragraph 11 of the Plaintiff's statement of claim, the 1st – 3rd Defendants state that the Plaintiff was duly informed upon enquiry at the office of the 2nd Defendant that she did not qualify to be issued an offer letter.

12. The Defendants in further reply to paragraphs 16 and 17 of the Statement of Claim, state that the Plaintiff's properties are in her possession, and her assertions in the above paragraphs are merely speculative, and whipping up of sentiments, out of nothing.

13. The Defendants state clearly that the said flat had been sold through a walk in bid sale exercise to one Mrs. Olutoye, Joke Philomena who has made full and final payment and the said property handed over to her; copies of letter of offer, Expression of Interest Form, and receipts of

payment and hand over form are hereby pleaded and will be relied on at the hearing of this suit."

The 4th Defendant as stated earlier filed a defence joining issues with the averments made by Plaintiff. I have set above and in extenso, the salient averments in the respective pleadings of particularly that of Plaintiff and the 1st to 3rd Defendants. I have alluded to this point already but it bears repeating that 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 revolves throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings.

Now on the pleadings and evidence, it is not in dispute that the flat described as Block 2, Flat 19 Mombassa Street now known as No.4 Windhock Street Wuse Zone 5, Abuja Flat was allocated to one **Feyisayo Okuseinde(now late) of the office of the presidency by the FCT Office of the Minister of State and not the Plaintiff.** The Plaintiff described the said Feyisayo as her elder sister who she stayed with her from 2001 when she was offered employment with the Nigerian Tourism Development Corporation. The Plaintiff indeed agreed under cross-examination that the allocation of the flat was to her late elder sister.

The allocation to the said Feyisayo Okiseinde was tendered in evidence as **Exhibit P8.** The allocation is specific and clearly speaks for itself. It is not a joint allocation but an allocation to a defined personality, the late **Feyisayo Okuseinde**.

In clause 4 of the allocation to the late Feyisayo Okuseinde vide **Exhibit P8,** the following appears:

"4: Remarks: FRESH ALLOCATION
Note: Unauthorized transfer, subletting or exchange of this Accommodation/Allocation will lead to immediate revocation, and recovering of this accommodation from you. Please, notify the appropriate authority on all Housing problems."

The above clause 4 is clear and self explanatory. Now if as contended, the Plaintiff stayed with her sister uptill the time she died, the critical point to note is that the fact of staying in the premises and the death of her elder sister does not without more alter the legal status of the allocation from her sister to her or transmute the allocation to automatically become that of Plaintiff. There is absolutely nothing on

the evidence showing that this flat was at anytime allocated to the Plaintiff or that when her senior sister died, she took steps to have the flat transferred or re-allocated to her. It is logical to hold that if the property was allocated by the office of the Hon. Minister of State, F.C.T., it is the same F.C.D.A that should re-allocate the premises to the Plaintiff or any other person. At the risk of sounding prolix, there is on the evidence no such **reallocation of the Flat to the Plaintiff at any time.**

Now if the original allottee of the flat, plaintiffs elder sister died in 2005, the 1st – 3rd defendants have stated both in the pleadings and evidence that the plaintiff did not take any steps to inform them that she had taken possession of the flat. This evidence was not in any way challenged or impugned by the plaintiff. The plaintiff in her paragraph 3 of the reply to the 1st – 3rd defendants defence averred that she continued in occupation after the death of her sister to the knowledge of 1st – 3rd defendants. She did not however state how or when they became aware. The relevant question here is if no steps was taken to properly inform the 1st – 3rd Defendants of this development, how will they then know or be aware?

Under cross-examination by 1st – 3rd defendants, plaintiff stated that she applied for the property from the office of the Head of Service and it was approved. Unfortunately here neither the **application** nor **approval** was tendered. This logically leads to the conclusion that no approval was applied for or obtained. The failure to present these documents allows for the invocation of the principle under **Section 167 (d) of the Evidence Act** to the effect that if indeed their application and approval existed, there presentation in court would have been unfavourable to the case of the plaintiff.

The bottom line is that there is absolutely nothing on the evidence to **situate the allocation of the disputed flat to the plaintiff.** There is equally nothing to show that after the demise of her sister, she took steps to inform the 1st – 3rd defendants and owners of the flat or property that she was now in possession and for the necessary re-allocation to her to be effected.

I shall again return to this point in this judgment, but this critical holding will no doubt impact one way or the other, as we situate the application of the guidelines on sale of Federal Government House as it affects the case made by plaintiff.

Again, on the pleadings and evidence, the exercise to sell the Federal Government Houses commenced in 2005. Indeed under cross-examination, by 1st – 3rd defendants, plaintiff stated that **"her sister had started the process to purchase the property before she died"** and that she then expressed interest to purchase the property sometime in 2005. The expression of interest form for career public servants only which plaintiff submitted was tendered as **Exhibit P1.**

The point to again note is that the filling of expression of interest form by Applicant does not mean that she has been allocated the flat and so not much should be made of it. The filling of the form is simply the beginning of a process as earlier streamlined in the guidelines governing the sale.

As stated earlier, but at the risk of sounding prolix, the guidelines particularly Clauses 6, 8 and 12 donates the clear position that where a public officer who has been allocated a Federal Government Quarters and is a current occupant and must be one who has been paying rent over at least a period of the preceding last six (6) months prior to the commencement of the exercise and is interested in the sale exercise, he or she must then take steps to buy the application or expression of interest form and attach all necessary and mandatory requirements as stated in clause 12 and submit to the Adhoc Committee in charge of the sale exercise.

They (Adhoc committee) will then in turn carry out the necessary evaluation of the form to ensure compliance before they offer the property to the public servant for sale on terms. On the pleadings and evidence, it is clear that this stage was not even reached at all with plaintiff. No offer was made and there could not have been any acceptance to situate any contract over the flat.

What we are left with is to scrutinize or evaluate the application made to situate whether she even made out any case to allow her to be offered the first right of refusal to purchase the flat. Again let's take our bearing from the pleadings of plaintiff. In paragraphs 7 – 12, she pleaded as follows:

7 **The Plaintiff avers that when the Federal Government Houses were advertised for sale, the Plaintiff promptly expressed her interest in respect of the said premises by paying the sum of N10,000.00(Ten Thousand Naira) thereof as required and accordingly completed and submitted the requisite forms thereof, names, Expression of Interest to purchase a Federal Government Housing Unit (H.U.) in Abuja, FCT on 30th May, 2005 hereby pleaded. Equally pleaded is the deposit slip for the payment of the said N10,000.00(Ten Thousand Naira) thereto.**

8 The Plaintiff avers that as part of the requirement for the purchase of the Federal Government Houses in Abuja, the Plaintiff's Office, Nigerian Tourism Development Corporation formally wrote a letter to the Permanent Secretary, Housing Department, Head of Service of the Federation Abuja on 27th January, 2005 introducing the Plaintiff as a bona fide staff of the Tourism Corporation and asked the Head of Service of the Federation to consider the allocation of residential accommodation to the Plaintiff hereby pleaded.

9 The Plaintiff avers that pursuant to the above, some staff of the Head of Service of the Federation came to the said premises for verification and subsequently the Taskforce on Sale of FGN Houses, FCT, Abuja, verified the same flat premises and shortlisted the Plaintiff's name as the sole applicant to purchase the said premises in a list of houses and applicants thereto forwarded to the Honourable Minister of the Federal Capital Territory, Abuja, for approval.

10 The Plaintiff avers that her name appeared in the said list in two places, namely, Nos.8 and 46 as the sole Applicant for the said premises hereby pleaded.

11 The Plaintiff further avers that the Honourable Minister of the Federal Capital Territory, Abuja has since approved the said list and asked the Ad-hoc Committee on the sale of FGN Houses in Abuja to offer the various houses to the Applicants therein including the Plaintiff.

12 The Plaintiff avers that the Ad-hoc Committee is yet to issue letters of allocation to prospective applicants as contained in the said list and the Plaintiff, like the others, is waiting for the said allocation letter from the Ah-hoc Committee aforesaid till date.

Now in evidence, apart from the **expression of interest form tendered**, absolutely no evidence of any kind was tendered to support the averments in the above stated paragraphs. If there was any letter from the office of the plaintiff to the office of the Head of Service to consider the allocation of residential accommodation to the plaintiff, this letter was not tendered. Nobody was called from the office of the

plaintiff to give evidence of the existence of any such letter written to the office of the Head of Service.

Again, if anybody came from the office of the Head of Service for verification and subsequently that the task force on sale of Federal Government Houses verified the flat and shortlisted the plaintiff as the sole applicant to purchase the flat in a list of houses sent to the Minister for approval, there was absolutely nothing in evidence to support these averments. Nobody who participated in the alleged verification was produced to say what they did and there is nothing to show that plaintiff's name was shortlisted as the sole applicant to purchase the disputed flat and indeed nothing was presented to show that any list was forwarded to the Minister as alleged. Furthermore, no list was tendered showing where the name of plaintiff appeared and was approved by the minister, wherein he asked the Adhoc committee to offer the disputed flat to plaintiff.

The bottom line is that these averments not backed up by critical evidence of value will be deemed in law as abandoned. It is trite law that facts deposed to in pleadings must be substantiated and proved in evidence, in the absence of which the averments are deemed as abandoned. See **Aregbesola V Oyinlola (2011) 9 NWLR (pt.1253) 458 at 594 A-B.**

Indeed the point must be that in law pleadings, however strong and convincing the averments may be, without evidence in proof goes to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must be led to prove the facts relied on by the party to sustain allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 F-G.**

In any event the averments in paragraphs 8 -11 above cannot take the place or be a substitute for the guidelines encapsulated in **Exhibit P6**. In the same vein, there is nothing in the guidelines and no portion of it was referred to by plaintiff to support the averment made by plaintiff in the Replies filed vide paragraphs 4 and 5 to the effect that it is part of the approved guidelines that in the event of death of an official occupant of a Federal Government apartment, either prior or during the bidding exercise, the "relative" of the official occupant who is a civil servant can validly apply for the purchase of the premises if he or she can pay for the flat.

Even if there was such provision and as a matter of fact, there is none, the **"relative"** must equally fulfill all the requirements of the Guidelines. As earlier alluded to, **clause 3 of the Guidelines** makes it abundantly clear that it is the

guidelines that are applicable to sale of houses to all public officers as in the extant case. It is too late in the date to make additions or alterations or interpolations to the clear wordings of the guidelines to suit a particular purpose. See **Section 128 of the Evidence Act**. Without any evidence of value to support any allocation or approval to plaintiff of the disputed flat, we are now left with the expression of interest form filled by her vide **Exhibit P1** which she received on payment of N10, 000 vide **Exhibit P2**. Clause 12 of the guidelines as stated earlier contains what must be attached to the expression of interest form. I need not repeat the streamlined requirements.

The case of the 1st – 3rd defendants in their defence is that the plaintiff did not fulfill the requirement of the guidelines. Now on the evidence, the plaintiff may have tendered (1) copy of the form with four (4) passport photographs; (2) letter of employment vide Exhibit P3; and (3) confirmation of appointment vide Exhibit P4, but there is absolutely nothing in evidence as averred in paragraph 8 of the defence of 1st – 3rd defendant to situate any letter of allocation to the flat or premises in question and equally there is nothing in Exhibit P1 showing she attached proof of last six (6) months rent deduction.

As already demonstrated in the judgment, the **plaintiff was never at any time allocated this flat**. On the evidence, it was her elder sister that was allocated the flat and when she died the plaintiff clearly took no steps to regularize her stay and is therefore not in position to attach or provide the letter of allocation to the quarters which is an essential element of the guidelines.

I am in no doubt that the plaintiff knew that she was never allocated the flat. In Exhibit P1, the expression of interest form she filled, the column with respect to the date of allocation of the housing unit was left vacant. The failure in my view to fill this important column is revealing. It is a clear indication of the realization that the plaintiff clearly at that point understood that she was in no position to lay claim to exercise a right of first refusal over what was not allocated to her hence the failure to fill this column. If this column was not filled abinitio, meaning no house was identified that could be subject of any allocation, what then will the adhoc committee even work or put another way, how will they even be in a position to consider such application without a clear identified flat or property? I just wonder.

If there is no letter of allocation to plaintiff and no step(s) was taken to regularize her stay in the premises after the demise of her sister; there cannot legally and factually be any pretension to been a current occupant within the purview of clause

6 of the guidelines having the right of first refusal to purchase the property within 30 days of the offer. If there is nothing to situate occupation of the flat in question, then there will be clear challenges in meeting with the requirements as we will again further show.

Again by **Exhibit P1**, the expression of interest form of plaintiff, the column for proof of six (6) months rent deduction was not filled at all and left vacant. It is clear and I hold that the requirement of attaching proof of rent deduction was not fulfilled. It is equally logical to hold that it is clearly not possible for the plaintiff to have fulfilled this six (6) months rent deduction requirement as at 30th May, 2005 when she submitted the form because she was never allocated the flat and so rent deductions could not logically be made on a flat to which a person was not allocated.

The plaintiff may have tendered in evidence her pay advice for the months January to June 2005, **(Exhibit P1 (1-6))** but these do not show that the rent deductions is even in respect of the disputed flat. As stated earlier, it seems improbable if not impossible that rent deductions will be made over a flat not allocated to a person. Again nobody was brought from the office of the plaintiff to situate that the deductions made on the pay advice was in relation to the disputed flat.

What is interesting in this case is that the plaintiff pleaded and stated that she will rely on payments for electricity bills, water bills in her pleadings, vide paragraph 12 of the Reply to 1st – 3rd defendants defence to situate her entitlement to be offered Right of first refusal, but as is the case of plaintiff, none of these receipts were tendered.

Most importantly, the pay advice **(Exhibit P1(1-6))** tendered by Plaintiff cannot logically be in respect of the disputed **flat** because if the original allottee, her elder sister died only in January 2005, it meant rent could not have even been deducted from plaintiff's salary in January in respect of a house allocated to a different person. Again it is interesting to note that the form of plaintiff was completed and submitted on **30th May, 2005**. This is borne out clearly by the averment in paragraph 7 of the statement of claim and paragraph 8 of the witness deposition of plaintiff thus: **"that when the Federal Government Houses were advertised for sale, the plaintiff promptly expressed her interest in respect of the said premises by paying the sum of N10, 000 (Ten Thousand Naira) thereof as required and accordingly completed and submitted the requisite forms thereof, namely Expression of Interest to purchase a Federal Government**

Housing Unit (H.U) in Abuja FCT on 30th May, 2005 hereby pleaded…" If her sister died in January 2005, it again meant that the plaintiff was in no position to fulfill the **six months rent deduction requirement** if she submitted her form as expressly admitted by her on 30th May, 2005. In addition, if after her sister's death in January 2005, steps were taken by her as stated in her pleadings to have the allocation transferred to her which she was not able to prove in evidence, the logical implication is this process to regularize her allocation certainly would have taken time.

I had earlier referred to the unproven averments, in plaintiff's statement of claim where (1) she stated that her office made an application to regularize her occupation of the flat at the office of the Head of Service; (2) she talked about the verification exercise carried out by the office of Head of Service and task force of the committee on sale of the houses which she said led to the preparation of a list approved by the minister.

As stated earlier, these averments were all not proved and no time line was streamlined in her pleadings as to when these actions took place. Taken on face value however, there is no doubt that these actions did not take place in one day in January 2005 after the death of plaintiff's sister. It certainly took time. There is in the circumstance no reasonable ground to situate how plaintiff would have met the 6 months rent deduction threshold for a form she filled and submitted on **30th May, 2005,** just five months into the year 2005.

On the whole, the case of plaintiff suffers from significant evidentiary difficulties. I am in no doubt that by a confluence of facts as demonstrated, the plaintiff clearly could not and infact did not meet up with the requirements of the guidelines to enable her have the first right of refusal to purchase and to logically continue with the process of the sale exercise. Indeed if there is clear non-compliance with the guidelines as established here, it was not possible for the committee to make an offer of the flat to her as contemplated by clause 6 of the guidelines. If no offer was made, there clearly was nothing for her to accept and on which to make payments to situate a contractual relationship between parties over the flat.

Let me quickly add that in law, a contract is an agreement between two or more parties which creates reciprocal legal obligations to do or not to do a particular thing. To bring a contract to fruition where parties to the contract confer rights and liabilities on themselves, there must be mutual consent and usually this finds expression in the twin principles of offer and acceptance. The offer is the

expression of readiness to contract on terms as expressed by the offer and which if accepted by offeree gives rise to a binding contract.

It should be pointed out clearly that the offer itself is not the contract in law but the taking of preliminary steps that may or may not ultimately crystallize into a contract where the parties eventually become ad-idem and where the offeree signifies a clear and unequivocal intention to accept the offer. See **Okubule Vs Oyegbola (1990)4 N.W.L.R (pt. 147) 723.**

Putting it more succinctly, the basic elements in the formation of a contract are:

1. The parties must have reached agreement (offer and acceptance)

2. They must intend to be legally bound, that is an intention to create legal relation.

3. The parties must have provided valuable consideration.

4. The parties must have legal capacity to contract.

See Alfotrim Ltd Vs A.G Fed (1996)9 NWLR (pt.475) 634 SC; Royal Petroleum Co. Ltd. Vs FBN Ltd (1997)6 NWLR (pt.570) 584: UBA Vs. Ozigi (1991)2 NWLR (pt.570)677.

All these five ingredients are autonomous units in the sence that a contract cannot be formed if any of them is absent. In succinct terms, for a contract to exist in law, the above five constituent elements must be present. See **Orient Bank (Nig) Plc V. Bilante Int Ltd (1998)8 N.W.L.R (515)37 at 76.**

The bottom line here is that if the evidence evaluated has conclusively shown that the clear and unambiguous terms of the Federal Government Guidelines on sale of Federal Government Houses to civil servants, **Exhibit P6** was not complied with by plaintiff, her case that she is entitled to right of first refusal appear compromised. If there is nothing to situate lawful allocation of quarters by an appropriate authority, which is the foundation of any claim for right of first refusal in addition to the other requirements, as in this case, then any claims situated around right of first refusal will lack legal validity. Unfortunately, I do not accept that there is room to dance around the clear **guidelines** on sale. If the requirements of the guidelines was not met by plaintiff as in this case, it was open to the 1st – 3rd defendants to offer the property or deal with it within the template of the

Guidelines. Clause 9 of the guidelines makes it clear that all houses whose right to purchase are not exercised will be sold in an open auction whereby all Nigerian Citizens shall be given equal opportunity.

I therefore hold that the answer to issue (1) and sub issues (a) and (b) as to whether the plaintiff met and or fulfilled the requirements governing the sale of the flat is answered in the negative. The plaintiff has on the evidence clearly not complied with the guidelines allowing her to exercise a right of first refusal.

Having resolved these issues, let me now address issue (2) as to whether the claims of plaintiff are availing.

I note again that Reliefs (a) – (d) are all declaratory reliefs. I also note that plaintiff's counsel has made extensive submissions on the alleged failure of defendants to produce and lead evidence on the expression of interest form used by the 4th defendant in the exercise that led to the sale of the flat and that same be construed as an admission in favour of plaintiff. I had earlier stated the import of declaratory reliefs. Let me perhaps in extenso underscore the nature of declarations which places premium on the party seeking it to establish same by credible and convincing evidence.

Now on the authorities, declarations are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. Indeed it would be futile when Declaratory reliefs are sought to seek refuge on the proposition that there were admissions by the adversary on the pleadings. The authorities on this principle are legion. I will refer to a few.

In **Vincent Bello V. Magnus Eweka (1981)1 SC 101 at 182,** the Supreme Court stated aptly thus:

"It is true as was contended before us by the appellants counsel that the rules of court and evidence relieve a party of the need to prove what is admitted but where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence not by admission in the pleading of the defendant that he is entitled to the declaration."

The law is thus established that to obtain a declaratory relief as to a right, there has to be credible evidence which supports an argument as to the entitlement to such a

right. The right will not be conferred simply upon the state of the pleadings or by admissions therein.

In **Helzgar V. Department of Health and Social Welfare (1977)3 AII ER 444 at 451; Megarry V.C** eloquently stated as follows:

"The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what, it has found to be the law after proper argument, not merely after admissions by the parties. There are no declarations without argument. That is quite plain."

I may also refer to the observations of Nnamani J.S.C of blessed memory in **Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262 (1988)5 N.W.L.R (pt.92)90** as follows:

"The court of Appeal relied on the decision of this court in Lewis & Peat (N.R.I.) Ltd V. Akhimien (1976)7 SC 157 to the effect that an averment which is not expressly traversed is deemed to be admitted. Admittedly, one does not need to prove that which is admitted by the other side, but in a case such as one for declaration of title where the onus is clearly on the plaintiff to lead such strong and positive evidence to establish his case for such a declaration, an evasive averment...does not remove the burden on Plaintiff. See also Eke V. Okwaranyia (2001)12 N.W.L.R (pt.726)181; Akaniwo V. Nsirim (2008)9 N.W.L.R (pt.1093)439; Maja V. Samouris (2002)7 N.W.L.R (pt.765)78 at 100-101."

The point from the above **authorities** is simply that declarations are not made because of the stance or position of parties in their pleadings but on proof by credible and convincing evidence at the hearing.

In **Relief (1) the plaintiff seeks a declaration that the Plaintiff has the 1st right of refusal to purchase the one bedroom flat premises and appurtenances thereof situate and known as Block 2 Flat 19, Mombassa Street, Wuse Zone 5, Abuja, and designated as No.4 Windhock Street, Wuse Zone 5, Abuja by virtue of the Plaintiff being the sole career civil servant that expressed interest to purchase the said premises having duly completed the application form thereof on the 30th Day of May, 2005 and having paid the sum of ₦10,000.00(Ten Thousand Naira) consideration thereof and being the sole**

occupant of the said premises since 2005 and the Honourable Minister of FCT approval of the said premises in favour of the Plaintiff.

It is clear on the basis of the evidence as demonstrated that this Relief must fail in view of the clear non-compliance with the guidelines on sale of Federal Government Houses. If plaintiff has not shown that she was allocated any Federal Government flat with clear evidence of prior of six (6) months rent deduction, there is no basis to situate the contention of Right of First Refusal to purchase the flat by plaintiff. The filling of the expression of interest form alone is not the basis for the making of an offer but the fulfillment of the conditions of the guidelines. There is no such fulfillment of the guidelines and there is no evidence of any approval by the Minister FCT for the allocation of the plot to plaintiff. Relief (1) is not availing.

Relief (2) seeks a declaration that the Plaintiff's premises aforesaid having been duly verified by the Task Force on sale of FGN Houses, FCT, Abuja which also approved the said premises and short listed same in the name of the Plaintiff for the Minister's approval, the Defendants cannot forcibly eject the Plaintiff and her household from the premises without notice and due process.

As demonstrated, this Relief must fail for want of evidence to sustain it. There is no evidence here at all to situate any verification exercise and the approval and short listing of the name of Plaintiff for minister's approval. Relief (2) fails.

Relief (3) seeks a declaration that the action of the Defendants to have forcibly ejected the Plaintiff and her household from the said premises without notice and due process is unlawful, illegal, null and void and of no effect whatsoever.

Now trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of that owner is an act of trespass actionable without any proof of damages. See **Ajibulu V. Ajayi (2004) 11 N.W.C. R (pt 885) 458 at 48)**. The claim for trespass is therefore rooted in exclusive possession. All a plaintiff suing in trespass needs to prove or show in order to succeed is to show that he is the owner of the land or that he has exclusive possession.

On the evidence, the plaintiff may not have been allocated the premises but she was living in it together with her elder sister before her demise and continued with occupation after her death and by paragraphs 14 – 21 of her pleading, she clearly

averred to facts that she was unlawfully ejected without been served the requisite notices.

Now in response to the above averments, the 1st – 3rd defendants pleaded as follows:

"**14. That the Plaintiff has continued in illegal occupation of the said property despite all notices given her to vacate the premises.**

15. That the Plaintiff had earlier on filed Suit No: HC/CV/2160/2009 against the 1st and 3rd Defendants, but she abandoned prosecution of same after the court granted her an interlocutory injunction against the Defendants until it was struck out by the court for want of diligent prosecution on the 25th of February, 2010.

16. That the purchaser needed to be put in possession of her acquired property, hence the eviction of the Plaintiff.

17. That the eviction was carried out in line with the Federal Capital Territory Recovery of Premises Suspension of some Designated Areas Order, 2009. Official Gazette No.48, volume 96 page B203 published on the 3rd July, 2009, 2009. The said Gazette is hereby attached as Annexure FCDA 3.

18. That the said gazette clearly exempts the application of the Recovery of the Premise Act from certain areas in FCT, Wuse inclusive to enable the Defendants recover their property from recalcitrant and illegal occupiers like the Plaintiff.

19. That the Defendants do not need to obtain any court order before the Plaintiff can be evicted from the property."

The 1st – 3rd defendants here clearly admitted the eviction and accordingly no issue was joined on this assertion. An admission in pleadings basically puts an end to proof. See **Akaninwo & ors V Nsirim & ors (2009) 9 NWLR (pt.1093) 439.** Since proof presupposes a dispute and since admission drowns the element of dispute, proof becomes superfluous. The 1st – 3rd defendants have unequivocally admitted that they evicted plaintiff from the premise or flat in question.

The only question now is for the 1st – 3rd Respondents to show that the eviction was carried out pursuant to a court order or in a manner envisioned by law. The 1st – 3rd Defendants in this case did not tender any process donating that notices were served and possession obtained on the basis of a court order. I have no difficulty in agreeing with learned counsel to the plaintiff that neither the agents of 1st defendant or indeed anybody can resort to the marshal of the force to forcibly eject the plaintiff as was brusquely done in this case in complete disregard of the law. **See Gov. of Lagos State & Ors V. Ojukwu (1986)1 NWLR (pt.18) 621.**

The contention that the Federal Capital Territory Recovery of Premises suspension of Designated Areas Order 2009, **Exhibit P7**, somehow provides legal cover for the actions of 1st – 3rd defendants is completely misplaced. First, the Order has a specific operational time frame of about five months from **2nd July, 2009 to 31st December, 2009.** In this case, paragraph 13 of the statement of claim states clearly that the eviction was on 27th September, 2011 clearly outside the operational time frame of Exhibit P7. The 1st – 3rd Respondents only provided or made a general denial on when plaintiff was ejected; they never stated when the eviction was effected and they were clearly in a better position to do so having effected the eviction.

In law, the cardinal rule of pleading in defence is to ensure that definite and positive statement of fact(s) contained in the statement of claim are directly denied or stated not to be admitted or admitted unequivocally or specifically. The object of any defence in my view should show precisely how much of the claim the defence admits or denies in clear and specific terms. I find support for this by the clear provision of **Order 17 Rule 2 of the Rules of Court 2018** which provides as follows:

"Where a party in any pleading denies an allegation of fact in the pleadings of the opposing party, he shall not be evasive, but answer the point of substance.

If an allegation is made with diverse circumstances, it shall not be sufficient to deny it in those circumstances."

The implication of this type of general denial in law given by 1st – 3rd Respondents with respect to when the forceful eviction was carried out meant that there is no valid denial and the facts pleaded in the claim with respect to when plaintiff was evicted is deemed as admitted. See **Olale V Ekwelendu (1989) 4 NWLR (pt.115) 326 at 360. Exhibit P7** therefore clearly has no application in this case.

The plaintiff may not have been allocated the flat but the **Recovery of Premises Act** does not discriminate against a person in occupation and so the requirements of the said law must be observed. The Recovery of Premises Act in **Section 7** provides as follows:

"… when and so soon as the term or interest of the tenant of a premises, held by him at will or for any term either with or without being liable to the payment of any rent, ends or is duly determined…"

The Act also defines tenant as **"includes any person occupying premises under a bonafide claim to be the owner of the premises."**

What this provisions highlights is that the law frowns against self help in matters of eviction. The dangerous contention in paragraph 19 of the 1st – 3rd defendants defence that they don't need a court order to evict must be taken as a completely misplaced enthusiastic contention lacking legal validity. The only recognizable law for **Recovery of Possession in the F.C.T is the Recovery of Premises Act, Cap 504 LFN (1990) Abuja**. The law is still an extant law or legislation. There is therefore no place for the dangerous proposition that a Government institution created by law and bound by law can ignore the same law in the discharge of its statutory duties. If any institution must keep strict fidelity to the rule of law, it is the Government and its agencies.

It only suffices to say that in a democratic setting like ours, where the rule of law and constitutionality reign supreme, an eviction must be based on service of requisite notices and order of a competent court. Anything outside the legal and constitutional process would be tainted with illegality. Tenants or occupiers of premises may sometimes be people with difficult dispositions, but that is no excuse not to follow laid down process for evictions. I call in aid here the pertinent observations of Anagolu JSC (of blessed memory) in the case of **Elochin (Nig) V. Mbadiwe (1986)1 N.W.L.R (pt.14)47** where his Lordship instructively stated as follows:

"The laws of all civilised nations have always frowned at self help if for no other reason than that they engender breach of peace. It is no doubt annoying, and more often than not, frustrating, for a landlord to watch helplessly his property in the hands of an intransigent tenant who is paying too little for his holding, or keeps the premises untidy, or is irregular in his payment of rents or is otherwise an unsuitable tenant for the property. The temptation is very

strong for the landlord to simply walk into the property and retake immediate possession. But that is precisely what the law forbids."

See also **Gov. Of Lagos State V. Ojukwu (supra) 621.** The act(s) of the 1st and 2nd defendants in forcefully evicting plaintiff from the premises in dispute is hereby deprecated by the court. Accordingly, Relief (3) is availing.

Relief (4) seeks for declaration that the purported sale of the one bedroom flat premises known as Block 2, Flat 19 Mombassa Street, Wuse Zone 5, Abuja, by the 1st, 2nd and 3rd Defendants to the 4th Defendant is inoperative, ultra-vires, null and void and of no effect whatsoever as the purported sale was made contrary to the Federal Government approved guidelines for the sale of the Federal Government Houses in FCT Abuja.

In the light of the decision of the court on **issue (1)** particularly the finding that the plaintiff did not fulfill the requirements of the guidelines to situate her right of first refusal to purchase the flat in question or to be offered the flat in question to purchase, it would appear that the basis of the Relief (4) has been undermined *abinitio.*

If the court had found favour with the contention that the plaintiff was lawfully entitled to the right of first refusal or the right to be offered the flat or indeed that she had complied with the requirements of the guidelines, then there will be validity to further undertake an inquiry with respect to the sale to 4th defendant. There is on the other side no **counter-claim by 4th defendant** to provide additional basis to scrutinize the case made by her on the sale.

The crux or fulcrum of the case of plaintiff is entirely predicated on her entitlement to having first right of refusal to purchase the disputed flat. All other reliefs revolves around this pivotal issue. On the evidence, I found that she did not meet the legal requirements to enable the offer or allocation of the flat to her. In that context and peculiar dynamics, it may amount to an academic exercise to consider or look into the sale of the flat to 4th defendant since it will have no bearing on the claim of entitlement by plaintiff.

Out of abundance of caution, let us again situate whether on the evidence the plaintiff has even made a case to entitle her to the declaration sought in Relief (4). As stated repeatedly, the burden is on plaintiff to prove her entitlement to this declaratory Relief by credible evidence.

Now in paragraphs 26 and 27 of her claim, the plaintiff pleaded as follows:

26. The Plaintiff further avers that according to the said Government approved Guidelines only houses whose right to purchase are not exercised will be sold in an open auction whereby all Nigerians such as the 4th Defendant will be given equal opportunity to bid. The said official gazette for Government approved Guidelines for the said of Federal Government Houses in Abuja is hereby pleaded.

27. The Plaintiff avers that whereas the Plaintiff's Expression of interest form to purchase the premises aforesaid was dated 30th May, 2005 and officially acknowledged by the committee for the sale of Federal Government Houses in Abuja on 10th day of June, 2005, the 4th Defendant's Expression of interest form to purchase the said flat premises is dated 14th September, 2011 and officially acknowledged on 7th September, 2011, a period of six years interval. The 4th Defendant's expression of interest form is hereby pleaded. Notice is hereby given to the 4th Defendant to produce the original copy of the said form

In paragraph 26 above the plaintiff rightly alluded to the legal position as contained in **clause 9** of the guidelines which provides thus:

"All houses whose rights to purchase are not exercised will be sold in an open Auction whereby all Nigerian citizens shall be given equal opportunity. A simple Auction System by way of competitive bidding shall be employed. All bids must be submitted with a bid bond by way of bank draft from a first class bank equal to ten percent of bid value. All bids without a bid bond stand disqualified. The highest bidder shall be automatically declared the winner, along with the second highest bidder as the reserve bidder; with the bid bond being retained and treated as non-refundable 10 percent deposit. All other bid bonds shall be returned to unsuccessful bidder(s)."

Since the plaintiff recognises that the sale to the 4th defendant can only be by open auction, any challenge to any sale must be situated within the confines of clause 9 above. Now in paragraphs 26 and 27 above, the case presented by plaintiff appears confusing especially in the absence of evidence to support the averments. Reference is made to the expression of interest form filled by 4th Defendant. Indeed the form of 4th defendant which was said to be dated 14th September, 2011

and receipt acknowledged on 7th September, 2011 was pleaded by plaintiff but was not tendered.

If the case of plaintiff is that 4th defendant filled an expression of interest form, no form was put in the evidence to enable the court evaluate its contents vis-à-vis the guidelines and the court cannot speculate. The 1st – 3rd defendants and 4th defendant may have pleaded and not tendered the same expression of interest form but as stated earlier, it is not the defendants that are seeking the declaratory relief so the burden was on plaintiff to prove creditably and by evidence that the sale was outside the context of the guidelines. It is not a matter for address of counsel.

Learned counsel to the plaintiff has tried so much to construct a case not based on the structure of the pleadings and most importantly the evidence led. Cases it must be stated are decided on the basis of pleadings and evidence led in support and not by address of counsel. Address of counsel is no more than a handmaid in adjudication and cannot take the place of hard facts required to constitute credible evidence. No amount of brilliance in a final address can make up for lack of evidence to prove and establish or disprove and demolish points in issue. See **Iroegba V M.V Calabar Carrier (2008) 5 NWLR (pt.1079) 147 at 167; Michika Local Govt. V National Population Commission (1998) 11 NWLR (pt.573) 201**.

If the sale to 4th defendant was through a walk in bid as parties in this case all agree, there is nothing either in the pleadings or evidence of plaintiff to show the parameters for the auction, and the bid made by 4th defendant. There is similarly nothing on the evidence to show whether the property was even advertised abinitio and whether other Nigerians bidded for it. Who was the reserved bidder or second highest bidder? Therefore, even if the sale to 4th defendant was open to be questioned, it will be difficult to do so within the context of the guidelines regulating the sale and in such unclear circumstances. As stated earlier, it is not for counsel to seek to impugn the sale via the conduit of a final address. Evidence must first be presented situating the critical elements of the walk in exercise which then provides the materials to make a final address. A final address cannot therefore hang in the air or exist in a vacuum.

In the absence of clear evidence to situate the walk in bid or auction exercise, it will be difficult to make conclusive findings on the issue as sought by plaintiff. This explains why I at length stated the requirements where declarations are sought in law.

It is true that the case of defendants is that 4th defendants bought through a walk in bid. Apart from the letter of offer and the receipt of payment tendered by 4th defendant vide **Exhibits D2 a and b,** nothing was furnished by either 1st – 3rd defendants or 4th defendant either in the pleadings or evidence to show the precise modalities of the sale, but as stated severally in this judgment, it was for the plaintiff to prove her entitlement to the declaratory Reliefs sought.

However I note that **Exhibit D2a to 4th defendant is dated 18th March, 2008** while the payment vide **Exhibit D2b is dated 19th September, 2011**. This payment made nearly 3 years after the offer appears to be a clear contravention of the terms of offer – **Exhibit D2a**. There is here again neither pleadings or evidence to explain this lacuna and one then wonders how 1st – 3rd defendants in all honesty seek to justify this transaction. It is such patently contradictory and inconsistent approaches to issues of this nature by the 1st – 3rd defendant and its agencies that feeds the allegation of unfairness and arbitrariness in the sale exercise. The conduct of the Adhoc Committee on sale in this respect is clearly less than salutary, but as stated earlier, this has nothing to do with the plaintiff proving by credible evidence her entitlement to the declaratory reliefs sought. This unfortunately the plaintiff could not do. I only dealt with this issue advisedly to make the point that Agencies of Government owe it as a duty, to act fairly and justly in all its actions without fair or favour, ill will or affection and unfettered by any primordial or indeed any prejudicial considerations. On the whole however, for reasons earlier demonstrated, **Relief (4)** accordingly fails and is dismissed.

With the failure of Relief (4), **Relief (5)** has no foundation to stand on and fails.

Relief (6) equally fails with the failure of Reliefs 1, 2, 4 and 5 and is dismissed.

Relief (7) is for N10, 000, 000 as general damages. Because of the way and manner this case was presented, I will make some brief prefatory remarks on the nature of not only general damages but also special damages which this case presents features of as I will soon show but which was not claimed.

There is a distinction between the two specie of damages as different principles apply to their claim, pleadings relating to them, proof required and their assessment. 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 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 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. See also **Elf Petroleum Nig. V. Umah (2006)AII F.W.L.R (pt.343)1761.**

Special damages on the other hand 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."

Having provided the above template, let me first deal with the specific claim of General damages. On the evidence, there is no doubt that the eviction done here was clearly without recourse to law and due process and in my opinion sufficiently serious especially coming from a Government Institution. The plaintiff may not have been allocated the flat but on the evidence she was staying there with her family. She was not served with relevant Quit notices by anybody or an order of

court for possession. She went to work only to find out that she and her family no longer have accommodation and her properties thrown out and left to the elements. The challenge of getting decent accommodation at affordable rates is well known in the F.C.T. The dislocation and injury to her feelings and pride in the circumstances cannot be glossed over or wished away. The actions of the 1st – 3rd defendant here are in my opinion aggravated in nature, unnecessary and utterly oppressive. **See Odiba V. Muemue (1999)10 NWLR (pt.622)174 and Odiba V. Azege (1998)9 N.W.L.R (pt.566)370.** I only need add on this point that institutions of government have an abiding obligation to ensure that their actions are carried out with scrupulous fidelity to the rule of law, propriety and constitutionality. There is therefore absolutely no latitude for high handedness in the discharge of statutory duties.

Now despite my strong observations above, I am unable to see on the pleadings and evidence the basis or premise for the sum of N10,000,000 claimed as general damages ostensibly for trespass. While it is true that general damages are awarded for proved acts of trespass, it would be inappropriate for a court to award damages without giving any reason as to how it arrived at what in its opinion amounted to reasonable damages. It is to be noted that damages are not awarded as a matter of course but on sound and solid legal principles and not an speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out of extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

Now I note that in the pleadings of plaintiff, she pleaded as follows in the following paragraphs:

"**15. The Plaintiff avers that she immediately alerted the Plaintiff's husband and before the Plaintiff or her husband could reach the premises, ten men who looked like thugs have broken into the premises and removed all the Plaintiff's property and those of her husband and children from the premises and scattered them outside the premises and destroyed some of the property in the process as the thugs recklessly, forcibly and hurriedly threw the properties outside and put another keys to the flat premises. A photograph of some of the properties thrown outside the premises was taken and is hereby pleaded.**

16. **The Plaintiff avers that her husband's JVC HD Digital Handy Cam Video Camera valued at N186,000.00(One Hundred and Eighty Six Thousand Naira) and cyber space digital still camera valued at N70,000.00(Seventy Thousand Naira) were both destroyed by the Respondents thugs aforesaid.**

17. **The Plaintiff avers that the Plaintiff's matrimonial furniture, beds, seats, cabinet, shelves, television stand worth huge sums of money were all destroyed as the said thugs roughly forced them out of the premises and the Plaintiffs jewelleries and the Plaintiff's husband's gold wedding ring missing in the process. The Plaintiff will rely on the receipts and any other documents relating to the properties destroyed at the trial of this suit hereby pleaded."**

The 1st – 3rd defendants denied the above averments and stated that no properties of plaintiff were destroyed. The above are clearly pleadings in the realm of **special damages** but no such relief was claimed here.

As stated earlier, such reliefs apart from been averred must then be strictly proved. Now the plaintiff may have made the above averments but as it is with the case of plaintiff, no clear evidence was proffered in proof of the above averments. The plaintiff may have tendered photographs vide **Exhibits P9 (1-8)**, but these photographs only show a cupboard and some unclear broken wood. No more. It is difficult to situate this as evidence of the properties of plaintiff, her husband and children which was taken out of the house and "scattered" or "destroyed". Where is evidence of the destroyed matrimonial furniture, beds, cabinet, television stand, plaintiffs jewelries etc said to have been destroyed? Receipts of these items allegedly destroyed were pleaded but nothing was tendered. Strangely even the plaintiff's husband gold wedding ring was said to have gone missing during the process of the eviction. Now if the plaintiff and her husband were not at home when the eviction took place, how could his wedding ring which he ought to be wearing get missing in the process of eviction? Or is it that on the day in question, he did not wear the ring? I just wonder.

Furthermore, where for example is the evidence of the digital handy cam video and the cyber space digital camera said to have been destroyed. Nothing was put forward by plaintiff to situate the existence and value of these alleged destroyed items. The plaintiff who has the advantage of being able to base her claims upon a

precise calculation must give defendant access to the facts which make such calculation possible.

There is really nothing here to situate actual or particular losses which are exactly known and can be accurately measured. So that even if special damages was claimed and it was not, a court of law cannot grant what has not even be claimed and established by evidence. A court of law qua justice has no duty to speculate. A court can only properly act on the basis of what a party has pleaded and to obtain only such relief that was prayed for on the basis of pleadings and creditably established by evidence. See **Ajikanle V Yusuf (2000) 2 NWLR (pt.1071) 301**.

The bottom line is simply that if the plaintiff wanted damages in the huge amount claimed, she should have made a claim in special damages which then must be strictly proved. The alleged destruction of plaintiff's properties during the eviction was not creditably established.

On the whole, I incline to the view that the sum of **₦500, 000** is awarded as general damages for the trespass and eviction not effected in accordance with the law. This appears to me fair and reasonable in the circumstances.

The final Relief (7) is for cost of the action which is dependent on the provision of Order 56 Rule 3 of the Rules of Court. The plaintiff should be entitled to some measure of cost having partly succeeded in its action.

In the final analysis, the plaintiff's action succeeds only in part. For the avoidance of doubt, I accordingly make the following orders:

1. **Reliefs 1, 2, 4, 5 and 6 fail and are accordingly dismissed.**

2. **It is hereby declared that the eviction of the plaintiff from the disputed flat by 1st – 3rd defendants and or their agents is in the circumstances wrongful.**

3. **I award N500, 000 (Five Hundred Thousand) only as General Damages payable by 1st – 3rd defendants to the Plaintiff for trespass and the wrongful eviction.**

4. **I award cost assessed in the sum of N35, 000 payable by 1st – 3rd defendants to the plaintiff.**

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Hon. Justice A.I. Kutigi

Appearances:

1. **P.A. Onuigbo, Esq. for the Plaintiff.**

2. **Ezekiel O. Ituma, Esq. for the 1st – 3rd Defendants.**

3. **Michael Eleyinmi, Esq. for the 4th Defendant.**