

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**DELIVERED THE 29<sup>TH</sup> JUNE, 2021**

**BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI - YUSUF**

**SUIT NO.FCT/HC/CV/552/18**

**BETWEEN:**

**BOHALEE NIGERIA LIMITED**

\_\_\_\_\_

**PLAINTIFF**

**AND**

**1. JONAH CHIAMA FANNY**

\_\_\_\_\_

**DEFENDANTS**

**2. HRH EZE RUFUS ADINDU**

### **JUDGMENT**

The claimant filed a writ of summons, together with a statement of claim and other accompanying processes on the 11/12/2018. The claimant claims jointly and severally against the 1<sup>st</sup> to 5<sup>th</sup> defendants as follows:-

- A declaration that the claimant secured a valid title over the piece of land which is known as Plot No. C/36/12, measuring approximately 1273.10 square metres with Beacon Numbers: PB-5223, PB 5224, PB 52217 and PB-5218, situate at Pegi village in Kuje Area Council, Kuje Abuja, which the claimant purchased from the 1<sup>st</sup> defendant on the 6<sup>th</sup> of November, 2012

upon the consideration of Three Million, Two Hundred Thousand Naira (#3, 200,000.00).

- A declaration that the claimant is now the owner of the piece of land which is known as Plot No. C/36/12, measuring approximately 1273.10 square metres with Beacon Numbers: PB-5223, PB 5224, PB 52217 and PB-5218, situate at Pegi village in Kuje Area Council, Kuje Abuja, the claimant having purchased same from the 1<sup>st</sup> defendant on the 6<sup>th</sup> of November, 2012 upon the consideration of Three Million, Two Hundred Thousand Naira (#3, 200,000.00).
- A declaration that the 2<sup>nd</sup> defendant (and or any of the defendants) has no right whatsoever to trespass into the said plot no: C/36/12 in issue and lay claim to the same without any legal justification whatsoever with the support of the 1<sup>st</sup>, 3<sup>rd</sup> to the 5<sup>th</sup> defendants.
- An Order of this Honourable court compelling the 2<sup>nd</sup> defendant (and/or any of the defendants) to forth with vacate the said plot No: C/36/12 and remove all the developments he/they had erected on the said land and never re-enter same again as he/they do not have any legal right whatsoever to enter or lay claim to the said plot of land.
- An Order of perpetual injunction of this Honourable court permanently preventing the 1<sup>st</sup> to the 5<sup>th</sup> defendants from ever trespassing, possessing or erecting any structure on the said plot No: C/36/12 or supporting the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants or

- any other person whatsoever from ever trespassing, possessing or erecting any structure on the said land.
- Alternatively, an Order of this Honourable court compelling the 1<sup>st</sup> defendant to immediately refund the claimant the aforesaid sum of Three Million, Two Hundred Thousand Naira (#3,200,000.00) which the claimant paid the 1<sup>st</sup> defendant as the consideration for the said piece of land known as Plot No: C/36/12, measuring approximately 1273.10 square metres with Beacon Numbers: PB-5223, PB-5224, PB-52217 and PB-5218, situate at Pegi village in Kuje Area Council, Kuje Abuja.
  - An Order of this Honourable court compelling the 1<sup>st</sup> defendant to immediately pay the claimant Twenty-five (25%) interest of the said consideration of Three Million, Two Hundred Thousand Naira (#3,200,000.00) which the claimant paid the 1<sup>st</sup> defendant for the aforementioned land, from the 8<sup>th</sup> of November, 2012 until the said consideration is fully paid back to the claimant fully liquidated.
  - An Order of this Honourable court compelling the 1<sup>st</sup> defendant to pay the claimant the sum of One Million Naira (#1,000,000.00) which is the cost of erecting the foundation and the dwarf fence on the said land which was pulled down/destroyed by the 2<sup>nd</sup> defendant (and/or any of the defendants) when he/they unlawfully trespassed into the said land and took possession of same.

- An order of this Honourable Court compelling the 1<sup>st</sup> to the 5<sup>th</sup> Defendants to jointly and severally pay the Claimant the sum of Five Hundred Million Naira (₦500,000,000.00) as exemplary, punitive and general damages for the unlawful entrance, trespass and possession of the said land by the 2<sup>nd</sup> Defendant (and/or any of the Defendants) with the collaboration of the other Defendants from sometime in 2013 to date.
- An order of this Honourable Court compelling the 1<sup>st</sup> to the 5<sup>th</sup> Defendants to jointly and severally pay the Claimant the sum of One Million, Five Hundred Thousand Naira (₦1,500,000.00), which the claimant paid to its Counsel in this suit as the cost of (his professional legal service for) filing and prosecuting this suit on the Claimant's behalf.
- The Plaintiff also claims ten (10) percent interest of the total sum awarded in this suit against the Defendants from the date of filing this matter till this noble Court delivers the Judgment thereof and another ten (10) percent interest of the Judgment sum awarded by this noble Court from the date of the delivery of the Judgment in this suit until the said Judgment sum is fully liquidated.
- And for such further and/or other order or orders as this Honourable court may deem fit to grant in the circumstance of this suit.

Learned counsel to the claimant on the 27<sup>th</sup> of March, 2019 applied for an order of substituted service on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants and same was granted. The 4<sup>th</sup> and 5<sup>th</sup> defendants were served on the 7/02/2019. The 2<sup>nd</sup> defendant, an unknown person, was represented by one Paul Oyeyemi.

Olakunle Olaleye John testified as Pw1 on the 16/10/2019. The 2<sup>nd</sup> defendant was represented by Paul Oyeyemi; the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants were absent and unrepresented. The Pw1 adopted his witness statement on oath dated the 13/12/2018. The following documents were admitted in evidence:-

- Exhibit A1 is a letter headed Re: Demand for immediate delivery of vacant possession of plot no. C/36/12, measuring 1273, 10 sqm, Pegi Estate Kuje Area Council, Abuja, FCT or refund of the sum of #3,200,000.00 (Three Million Two Hundred Thousand Naira Consideration) with interest at 25% per annum.
- Exhibit A2 is a letter addressed to the 1<sup>st</sup> defendant and headed Re:Plot No. C/36/12 measuring 1237.10sqm, pegi estate, Kuje Area Council Abuja, FCT.
- Exhibit A3 is the irrevocable power of attorney in respect of plot no.C/36/12 in Pegi estate Kuje Area Council FCT-Abuja created by the 1<sup>st</sup> defendant in favour of the claimant dated the 6<sup>th</sup> November, 2012.
- Exhibit A4 is the acknowledgment of payment between the 1<sup>st</sup> defendant and claimant dated the 8<sup>th</sup> October, 2012.

- Exhibit A5 is the Beacon Chambers Legal Services Fee Receipt No. 0022 issued in the name of the claimant and dated the 7<sup>th</sup> November, 2018.
- Exhibit A6 is a photocopy of the claimant's Zenith Bank PLC cheque dated the 08/11/12 issued to the 1<sup>st</sup> defendant.
- Exhibit A7 is the certificate of incorporation of the claimant.
- Exhibit A8 is a power of attorney given by the 3<sup>rd</sup> defendant in favour of the 1<sup>st</sup> defendant in respect of plot no.C/36/12 in Pegi estate Kuje Area Council FCT-Abuja.

The matter was thereafter adjourned for cross examination of the Pw1 and hearing notices were ordered to be served on the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants. On the 14/11/2019, the claimant and his counsel were present; the 2<sup>nd</sup> defendant was also present, while the other defendants were absent in court. The rights of all the defendants to cross examine the Pw1 was foreclosed and matter was adjourned for defence. On the 14/01/2020, the 2<sup>nd</sup> defendant was present, the claimant and the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants were absent. The application to foreclose the defendants was granted and matter was adjourned for adoption of written addresses. On the 20<sup>th</sup> of February, 2020, when the matter came up for adoption of written addresses, the claimant was represented by Morgan Lekwa, the 2<sup>nd</sup> defendant was represented by S. Tijani Esq; the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> were absent and unrepresented. Learned counsel to the 2<sup>nd</sup> defendant applied for an adjournment, in order to respond to the

claimant's written address and this was granted, hence matter was adjourned.

Again, the matter came up on the 9<sup>th</sup> July, 2020. The claimant was represented by David C. Maduka Esq. the 2<sup>nd</sup> defendant was represented by S. Tijani Esq. while John Brown Adebusoye Esq. represented the 4<sup>th</sup> & 5<sup>th</sup> defendants. The 1<sup>st</sup> & 3<sup>rd</sup> defendants were absent and not represented. The claimants hinted the court on the discussion he had with the 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants counsel, however I directed he put the 1<sup>st</sup> and 3<sup>rd</sup> defendants on notice and the matter was adjourned to another date. On the 13<sup>th</sup> of October, 2020, David C. Maduka Esq. represented the claimant, whilst John Brown Adegusoye represented the 4<sup>th</sup> & 5<sup>th</sup> defendants, the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> defendants were absent and unrepresented. The matter was further adjourned to another date. On the 26<sup>th</sup> January, 2021, parties were absent. D.C Maduka represented the claimant; John Brown Adegusoye represented the 4<sup>th</sup> & 5<sup>th</sup> defendants. The 4<sup>th</sup> & 5<sup>th</sup> defendants' counsel moved application with Motion No: M/6281/2020 filed on the 11/03/2020 to wit: an Order of the court granting the 4<sup>th</sup> & 5<sup>th</sup> defendants to file their memorandum of defence and statement of defence out of time; same was granted and matter was adjourned for continuation of hearing.

The matter came up again on the 1<sup>st</sup> March, 2021, parties were absent D.C Maduka represented the claimant; John Brown Adegusoye & S. O. Jimoh Esq. represented the 4<sup>th</sup> & 5<sup>th</sup> defendants. The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> defendants were unrepresented. The claimant via a notice of discontinuance filed on the 9/2/2021 applied to discontinue

the suit against the 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants, this was granted on the 1/3/2021 and the matter was adjourned for adoption of final written address. On the 8/3/2021, parties were absent; the claimant was represented by his counsel.

As it is, the claimant having discontinued the suit against the 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants; the suit is now against the 1<sup>st</sup> & 3<sup>rd</sup> defendants.

Learned counsel to the claimant settled a final written address on behalf of the claimant and filed on the 13/02/2020 wherein he nominated a sole issue for determination, to wit:

*Whether the plaintiff has proved her case before this Honourable court and is therefore entitled to the grant of the reliefs she has claimed in this suit.*

Learned counsel adopted his final written address on 8/3/2021 and matter was adjourned for judgment.

The defendants despite being served with hearing notices failed and/or neglected to defend this matter. However the fact that the defendants didn't defend or enter appearance does not mean the plaintiff will have an automatic victory. **In MTN NIGERIA COMMUNICATIONS LIMITED v. MUNDRA VENTURES NIGERIA LIMITED (2016) LPELR-40343(CA)"...the law is that evidence that is unchallenged or un-contradicted by the adverse party is good to be acted upon by the Court unless it is either irrelevant or palpably false or worthless by itself. Therefore, the mere fact that evidence is unchallenged is not tantamount to proof as such unchallenged evidence must also be credible and relevant in relation to the facts it seeks to establish. See **Cameroon Airlines V. Mike****



***Otutuizu (2005) 9 NWLR (Pt. 929) 202. See also Ishola Lawson V. Afani Continental Co Nig Ltd (2002) 2 NWLR (Pt. 752) 585; Omoregbe V. Lawan (1981) 3 SC 108; Oduola V. Coker (1981) 5 SC 197."***

I shall decide the case based on the issue formulated by the claimant.

- *Whether the Plaintiff has proved her case before this Honourable court and is therefore entitled to the grant of the reliefs she claimed in this suit.*

In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See **Section 133(1) of the Evidence Act 2011**. Again **Section 132 of the Evidence Act 2011** provides:-

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. See **MTN NIGERIA COMMUNICATIONS LTD v. OLAJIRE A. ESUOLA (2018) LPELR-43952(CA)**

The Claimant's claim in this suit is primarily one for a declaration of title to land and the law is that where a plaintiff seeks for a declaration of title to land he shall succeed on the strength of his case rather than rely on the weakness of the defence. The plaintiff bears the onerous duty in law to adduce credible and admissible evidence in establishing title. See **PRINCE FOLORUNSO SULAIMAN OYELEDUN v. MR. ALANI ADEWUYI (2017) LPELR-43256(CA)**

The five (5) ways of proving or establishing title to land is as stated in the case of **BABAH MAIKANTI & ORS v. 7UP BOTTLING COMPANY PLC (2013) LPELR-20297(CA)** as follows:

*"...Thus in Nnadozie v. Omesu (1996) 5 NWLR (pt. 446) it was held that: "It is settled law that there are five different ways the proof of one of which suffice, of proving ownership of any land in Nigeria, viz: by (1) Traditional evidence (2) production of document of title duly authenticated unless they are documents twenty years old or more produced from proper custody. (3) Acts of possession in and over the land in dispute extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons in possession are the true owners. (4) Acts of long possession and enjoyment of other land so situated and connected with the land in dispute by locality or similarity that the presumption under s.46 of the Evidence Act applies and the inference can be drawn that what is true of one piece of land is likely to be true of the other piece of land. (5) Proof of possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner to the land in dispute."*

It is settled law, that in an action for declaration of title to land, the burden is on the claimant to proffer credible evidence which must satisfy the Court that he is entitled to the declaration sought. Generally, the declaration will be granted or refused on the strength of the evidence adduced by the claimant. In other words, in discharging the burden cast on him in an action for declaration of title, the claimant must rely on the strength of his own case. Thus, any weakness on the

Defendant's case, even an admission by such Defendant will not relieve the claimant of that onerous burden, save where the weakness or admission operates to support the claimant's case, in which case the claimant may rely on it. It therefore means that in an action for declaration of title to land, the burden of proof rests squarely on the claimant, and where he fails to discharge that burden to the satisfaction of the Court, the Court will dismiss his claim.

The main gist of the claimant's case is that Plot No. C/36/12 measuring approximately 1273.10 square metres with beacon numbers: PB- 5223, PB- 5224, PB- 52217, PB- 5218, situate at Pegi village in Kuje Area Council, Kuje, Abuja was originally allocated to the 3<sup>rd</sup> defendant by the 4<sup>th</sup> and 5<sup>th</sup> defendants. That the 3<sup>rd</sup> Defendant later on the 6<sup>th</sup> November, 2021 sold the aforesaid plot No. C/36/12 to the 1<sup>st</sup> Defendant at the consideration agreed by both parties and upon the execution of an irrevocable Power of Attorney both dated 2<sup>nd</sup> April, 2021 via which the 3<sup>rd</sup> Defendant transferred the title of the said land in issue to the 1<sup>st</sup> Defendant. The Pw1 continued that the 1<sup>st</sup> defendant discouraged the claimant from conducting legal search on the land; that the 1<sup>st</sup> defendant sold the said plot to the claimant for consideration; that the claimant and the 1<sup>st</sup> defendant executed an irrevocable power of attorney dated the 6<sup>th</sup> November, 2012. The Pw1 testified further, that the claimant discovered few months after the sale that the land in issue has been unlawfully encroached or trespassed into by the 2<sup>nd</sup> defendant.

After a careful consideration of the evidence of the Pw1 vis a vis the statement of claim, it is clear that the claimant's claim of title to the land

is predicated on the production of documents. The claimant pleaded in paragraphs 7, 8, 9, 10, 11, 12, 13 & 14 of the statement of claim as follows:-

7. The claimant avers that the land in issue which is lying, situate and known as Plot No. C/36/12, measuring approximately 1273.10 square meters with Beacon Numbers: PB-5223, PB-5224, PB-52217 and PB-5218, situate at Pegi, Village in Kuje Area Council, Kuje, Abuja, was originally allocated to the 3<sup>rd</sup> Defendant by the 4<sup>th</sup> and 5<sup>th</sup> Defendants.
8. The claimant avers that the 3<sup>rd</sup> Defendant later on the 6<sup>th</sup> of November, 2012, sold the aforesaid Plot No. C/36/12 to the 1<sup>st</sup> Defendant at the consideration agreed by both parties and upon the execution of an irrevocable Power of Attorney both dated 2<sup>nd</sup> April, 2012, via which the 3<sup>rd</sup> Defendant transferred the title of the said land in issue to the 1<sup>st</sup> Defendant.
9. The claimant avers that subsequently the Claimant developed interest in the land in question and approached the 1<sup>st</sup> Defendant in that regard. However, before the Claimant could negotiate on the land with the 1<sup>st</sup> Defendant, the Claimant first informed the 1<sup>st</sup> Defendant of her decision to conduct a search on the land in order to ascertain the authenticity of same. The 1<sup>st</sup> Defendant strongly discouraged/dissuaded the Claimant from conducting a search on the land on the basis that the land is genuine, consequently the Claimant was misled by the 1<sup>st</sup> Defendant's persuasion but now seriously regrets it considering the present situation as it relates to the land.

10. The Claimant and the 1<sup>st</sup> Defendant negotiated on the value of the said land and arrived at the sum of Three Million, Two Hundred Thousand Naira (₦3,200,000.00) as the consideration for the sale of the said land to the Claimant by the 1<sup>st</sup> Defendant.
11. The Claimant then issued the 1<sup>st</sup> Defendant a Zenith Bank Plc Cheque dated the 8<sup>th</sup> of November, 2012, through which she paid the 1<sup>st</sup> Defendant for the afore stated land and the 1<sup>st</sup> Defendant in turn issued the Claimant an Acknowledgement of Payment (erroneously dated 8<sup>th</sup> October, 2012 instead of 8<sup>th</sup> November, 2012) of the aforesaid sum of Three Million, Two Hundred Thousand Naira (₦3,200,000.00). Copies of the aforesaid Claimant's Cheque and the Acknowledgement of Payment are hereby pleaded and shall be tendered in evidence and relied upon during the hearing of this suit.
12. The Claimant and the 1<sup>st</sup> Defendant then executed an irrevocable Power of Attorney dated 6<sup>th</sup> November, 2012, via which the 1<sup>st</sup> Defendant transferred the title of the said land in issue to the Claimant, on the basis of which the Claimant is now the owner of the said land. A copy of the said Irrevocable Power of Attorney is hereby pleaded and shall be relied upon at the trial of this suit.
13. The claimant avers that upon the sale and handing of the possession of the land in issue to the Claimant by the 1<sup>st</sup>

Defendant, the land in question has an already built foundation and dwarf fence built all around the perimeters of the land.

14. That the Claimant discovered few months later that the land in issue has been unlawfully encroached or trespassed into by the 2<sup>nd</sup> Defendant who has pulled down the foundation and the perimeter fence built at the land and has in its stead erected his own fence all around the land.

The claimant led evidence in line with the pleadings in paragraphs 9 to 16 of the witness statement on oath. From the evidence before the court, it is clear that the claimant is placing reliance on exhibits A3 & A8 the irrevocable power of attorney dated 6<sup>th</sup> November, 2012 and power of attorney dated 2<sup>nd</sup> April, 2012 to prove title.

It is trite that the production of a document of title is not conclusive proof of title to land. The court has a bounden duty to inquire into the following:

- (a) Whether the document is genuine and valid
- (b) Whether the document has been duly executed, stamped and registered.
- (c) Whether the grantor had the authority and capacity to make the grant.
- (d) Whether the grantor had in fact what he purported to grant.
- (e) Whether it had the effect claimed by the holder of the document.

See **JOLASUN V BAMGBOYE (2010) 18 NWLR (PT. 1225) 285.**

Section 6 and 15 of the Land Registration Act Cap 515 LFN provide thus:

(6) Subject to the provisions of this Act, every instrument executed after the commencement of this Act shall be registered.

(15) No instrument shall be pleaded or given in evidence in a court as affecting a land unless the same has been registered in the proper office as specified in Section 3 of this Act.

Let me begin with the exhibit A8, that is, the irrevocable power of attorney given to the 1<sup>st</sup> defendant by the 3<sup>rd</sup> defendant. Can exhibit A8 be held to be a valid document?

The claimant pleaded as well as gave evidence that the 3<sup>rd</sup> defendant derived his title from the 3<sup>rd</sup> & 4<sup>th</sup> defendants. It is on record that the claimant before the adoption of his final written address discontinued the suit against the 4<sup>th</sup> & 5<sup>th</sup> defendant. A careful look at the exhibit A8 shows clearly that it was/is not registered and the law is that failure to register a registrable instrument which purports to prove title is inadmissible in law. An unregistered land instrument cannot be pleaded or tendered in evidence and where it is admitted without objection to its admissibility, it stands to be expunged from the court's record. See **OREDOLA OKEYA TRADING CO. (NIG) LTD v. AG KWARA STATE & ANOR (1992) LPELR-2755(SC)**. From the evidence before the court, it is not in doubt that exhibit A8 was tendered to establish how the title to the land in question was transferred from the 3<sup>rd</sup> defendant to the 1<sup>st</sup> defendant and having not registered same as required by the law, I hold that it is inadmissible and same is hereby expunged from the court record.

My findings above, brings me to the issue of exhibit A3 which the claimant relies on to give him title to the land in question. The exhibit A3 derives its root from Exhibit A8 and having expunged exhibit A8 from the court's record, it appears the foundation of the claimant's root of title is shaky. The question that crops up is - Can the 1<sup>st</sup> defendant donate a nonexistent power to another, in this instance the claimant? The answer is certainly no. A person can only give what he has! See FASORO & ANOR v. BEYIOKU & ORS (1988) LPELR-1249(SC) *"When therefore a Plaintiff pleads Sale and Conveyance as his root of title, he either succeeds in proving the Sale or Conveyance or he fails. Where he succeeds, he wins and where he fails his case ought to be dismissed: see **AKERELE V. ATUNRASE (1969) 1 ALL N.L.R. 201."***

Paragraph 12 of the statement of claim states:

The claimant and the 1<sup>st</sup> defendant then executed an irrevocable power of attorney dated 6<sup>th</sup> November, 2012 via which the 1<sup>st</sup> defendant transferred the title of the said land in issue to the claimant, on the basis of which the claimant is now the owner of the said land.

The plaintiff's first & second claims as contained in the statement read thus:

- A declaration that the claimant secured a valid title over the piece of land which is known as Plot No. C/36/12, measuring approximately 1273.10 square metres with Beacon Numbers: PB-5223, PB 5224, PB 52217 and PB-5218, situate at Pegi village in Kuje Area Council, Kuje Abuja, which the claimant purchased from the 1<sup>st</sup> defendant on the 6<sup>th</sup> of November, 2012



upon the consideration of Three Million, Two Hundred Thousand Naira (#3, 200,000.00).

- A declaration that the claimant is now the owner of the piece of land which is known as Plot No. C/36/12, measuring approximately 1273.10 square metres with Beacon Numbers: PB-5223, PB 5224, PB 52217 and PB-5218, situate at Pegi village in Kuje Area Council, Kuje Abuja, the claimant having purchased same from the 1<sup>st</sup> defendant on the 6<sup>th</sup> of November, 2012 upon the consideration of Three Million, Two Hundred Thousand Naira (#3, 200,000.00).

It is further stated in exhibit A3 thus

NOW THIS POWER OF ATTORNEY WITNESSES is made irrevocable with a consideration and the DONEE is entitled to be granted statutory Right of occupancy with File No: IM-20327 dated the 23<sup>rd</sup> day of August, 2005.

The witness did not plead or prove how the 3<sup>rd</sup> defendant became the owner of the said plot; he also didn't bother to trace the root of the 1<sup>st</sup> and 3<sup>rd</sup> defendant to confirm the authenticity of the land in question. In paragraph 7 of the statement of claim, he stated thus: The claimant avers that the land in issue which is lying, situate and known as Plot No. C/36/12, measuring approximately 1273.10 square meters with Beacon Numbers: PB-5223, PB-5224, PB-52217 and PB-5218, situate at Pegi, Village in Kuje Area Council, Kuje, Abuja, was originally allocated to the 3<sup>rd</sup> Defendant by the 4<sup>th</sup> and 5<sup>th</sup> Defendants. There is however no document to buttress the assertion of the claimant.

Again there is no evidence that legal search was conducted by the claimant. It appears the claimant transacted with the 1<sup>st</sup> defendant at his own peril. The claimant had a legal duty to conduct legal search on the said land before he jumped into the transaction; this he failed to do. An unregistered land instrument cannot confer title to a person, even where the evidence is unchallenged. If such is allowed to happen, then it means every dick and harry can lay claim on any land at a flash of an unregistered document. The law is trite that it is not enough for a claimant seeking declaration of title to land to lead evidence to trace his title to a particular person; he must present sufficient and credible evidence to establish the root of that person's title.

In the present case no document be it letters of offer and acceptance, right of occupancy and or certificate of occupancy were pleaded or tendered by the claimant; not even a copy of the statutory right of occupancy referenced in exhibit A3 [right of occupancy with File No: IM-20327] was pleaded or placed before the court and it is quite interesting to note that the claimant discontinued the suit against the 4<sup>th</sup> & 5<sup>th</sup> Defendants, who would have been in the best position to place before the court credible and cogent evidence or testify on who the rightful owner of the land in question is.

I further adopt my earlier argument as per the issue of non registration of a registrable instrument. The evidence before the court as well as the content of the power of attorney shows that the power of attorney in question was tendered to prove title of the property in question. See **PASTOR J. AKINLOLU AKINDURO v. ALHAJI IDRIS ALAYA (2007) LPELR-344(SC)** "*Land Instruments Registration Law has substantially universal*

*contents in all the States in Nigeria. Under Section 2 of the Law the word "INSTRUMENT" is defined to mean a document affecting land in the state whereby one party usually called the grantor confers, transfers, limits, charges or extinguishes in favour of another party called the grantee any right or title to or interest in the state. Going by Section 15 aforesaid, an unregistered document affecting land must not be pleaded and neither is it admissible in evidence. See Ogunbambi v. Abowaba 13 WACA 222: Olowoake v. Salawu (2000) 11 NWLR (Pt.677) 127 and Adesanya v. Aderonmu (2000) 6 SC. (Pt.11) 18; (2000) 9 NWLR (Pt. 672) 370. And if such a document is pleaded a trial Judge upon an application made to it, must strike out paragraphs of pleadings where such unregistered document is pleaded. See Ossai v. Nwajide & Anor (1975) 4 Sc. 207. Even where the unregistered document was mistakenly admitted in evidence; part of the evidence relating to that unregistered document should be expunged for reason of lacking evidential value."*

**See DR JOSEPH C. OKOYE v. DUMEZ NIGERIA LIMITED & ANOR (1985) LPELR-2506(SC)**

I find that the exhibit A3 which the claimant holds to establish his title was not registered as required by law and same is hereby expunged from the court record.

Now that exhibits A3 & A8 have been expunged from the court's record, it seem the case of the claimant has crumbled like a pack of cards as there is no foundation which the claim of the claimant with regards to title can stand. The exhibits A1, A2, A4, A5, and A6 & A7 cannot confer title on the claimant and I so hold. A claim for trespass

can only be maintained where the claimant has established title to the land. See **DR (CHIEF) F.A.Z ADEKANYE v. GRAND SERVICES LTD (2007) LPELR-4047(CA)**. A claim for trespass would succeed where a claimant has established his actual possession of the land allegedly trespassed on by the defendant. In this case, the claimant having discontinued the suit against the 2<sup>nd</sup> 4<sup>th</sup> & 5<sup>th</sup> Defendants' reliefs' iii, IV & V are deemed abandoned and hereby struck out accordingly.

The claimant in his alternative prayers prayed the court for the following:

An Order of this Honourable court compelling the 1<sup>st</sup> defendant to immediately refund the claimant the aforesaid sum of Three Million, Two Hundred Thousand Naira (#3,200,000.00) which the claimant paid the 1<sup>st</sup> defendant as the consideration for the said piece of land known as Plot No: C/36/12, measuring approximately 1273.10 square metres with Beacon Numbers: PB-5223, PB-5224, PB-52217 and PB-5218, situate at Pegi village in Kuje Area Council, Kuje Abuja

Having taken a careful consideration of the facts and documents presented before the court, particularly exhibit A4 wherein the 1<sup>st</sup> defendant admitted receipt of the sum of #3, 200, 00.00, I hold that the claimant is entitled to the said sum and nothing more! The claimant had a duty to conduct search in respect of on the land in question to ascertain its authenticity as well as register the power of attorney he purportedly entered into with the 1<sup>st</sup> defendant, he however failed to do any of the two. It is my view that the claimant is not entitled to the 25% interest claimed. Thus relief vii fails and is dismissed.

On relief viii, which is an Order of this Honourable court compelling the 1<sup>st</sup> defendant to pay the claimant the sum of one million naira (#1,000,000.00) which is the cost of erecting the foundation and the dwarf fence on the said land which was pulled down/destroyed by the 2<sup>nd</sup> defendant (and/ or any of the defendants) when he/they unlawfully trespassed into the said land and took possession of same. Having held earlier that the claimant cannot maintain an action of trespass against the 1<sup>st</sup> defendant, I also find that he is not entitled to this relief; the claimant failed to adduce credible evidence to buttress his assertion.

Reliefs ix, x, xi & x also fails for lacking in evidence and accordingly dismissed.

In effect, only relief vi succeeds, whilst the other claims fail and are dismissed accordingly. For the avoidance of doubt, I enter Judgment as follows:

- The 1<sup>st</sup> defendant is directed to refund forthwith to the claimant the sum of Three Million, Two Hundred Thousand Naira only (#3,200,000.00) being the sum acknowledged by the 1<sup>st</sup> defendant in exhibit A4 (acknowledgement of payment) dated the 8<sup>th</sup> October, 2012.
- Reliefs i, ii, iii, iv, v, vii, viii, ix, x, xi & x are dismissed.
- Cost of the suit is assessed #100,000 (one hundred thousand naira) only and to be paid by the 1<sup>st</sup> defendant.

**ASMAU AKANBI-YUSUF**  
**(HON. JUDGE)**

**APPEARANCES:**

David . C Maduka Esq for the Claimant

Defendants absent and not represented