IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.
SUIT NO: FCT/HC/BW/CV/241/2020

BETWEEN:
VIVIANNE LIMITED --- CLAIMANT

AND

HON. MINISTER, FEDERAL CAPITAL TERRITORY --- DEFENDANT

JUDGMENT

DELIVERED ON THE 13TH JULY, 2021

The substance of the Claimant's case is that on the 15th day of December 2000, it was granted a statutory right of occupancy over Plot No. 480 within Central Business District, Abuja, and that the said statutory right of occupancy is valid and subsisting. The Defendant has been holding out that the file for the said plot of land was misplaced and therefore could not complete the recertification for the same; but the Claimant discovered that the Defendant has purportedly divided the Claimant's Plot into Plots 1494 and 1495, though the Claimant's title was never revoked, being a scheme to take over the said plot of land from the Claimant, hence the present suit.

The reliefs sought by the Claimant, as endorsed on the Writ of Summons and Statement of Claim, are as follows:

a. Declaration that the Claimant is the holder of a Statutory Right of Occupancy dated 15th December 2000, referenced [MFCT/LA/MISC. 9819] over Plot No. 480 within Central Business District, Abuja.

b. Declaration that the Claimant's Statutory Right of Occupancy over Plot No. 480 within Central Business District, Abuja, is valid and subsisting.
c. Declaration that the payment of the sum of Fifteen Million, Forty-two Thousand, One Hundred and Forty-one Naira Seventy-Eight Kobo. (N15,042,141.78) being the total assessed Rent, Fees, Premium, Survey Fees, Development Levy, etcetera for the issuance of Certificate of Occupancy is valid and subsisting and represents full and final payment by the Claimant for issuance of Certificate of Occupancy over Plot No. 480 within Central Business District, Abuja.
d. An order directing the Defendant to issue the Claimant with the Certificate of Occupancy over Plot No. 480 within Central Business District, Abuja.
e. An order setting aside the purported division of Plot No. 480 within Central Business District, Abuja into Plots 1494 and 1495.
f. An order of perpetual injunction restraining the Defendant whether by himself, agents or privies from unlawfully revoking and or expropriating or in any manner howsoever interfering with the rights, title of the Claimant or possession of the Claimant over Plot No. 480 within Central Business District, Abuja.
g. An award of the sum of Ten Million Naira (N10,000,000.00) as general damages against the Defendant.

The Claimant's evidence in support of its case comprised the two Witness Statements on Oath of its sole witness and the documents tendered without objection and admitted in evidence. The Claimant's witness testified that the Claimant applied and paid for allocation of land in the Federal Capital Territory, Abuja, and the said Application was

acknowledged by the Defendant. The Certified True Copy of the Revenue Collectors receipt for land application form and processing fee dated 28th of August 1992 was admitted in evidence and marked Exhibit PP1. The Certified True Copy of the Acknowledgment of the land application dated 28th of August 1992 was tendered and admitted in evidence as Exhibit PP2.

The Claimant's witness stated that the Claimant's application for land was successful and that on the 15th day of December 2000 the Defendant issued the Claimant with Offer of Terms of Grant/Conveyance of Approval in respect of the said Plot No. 480 within Central Business District, Abuja. The Certified True Copy of Offer of Terms of Grant/Conveyance of Approval of grant of right of occupancy was tendered without objection and admitted in evidence as Exhibit PP3.

The Claimant's witness also testified that the Claimant accepted the said Offer of Terms/ Conveyance of Approval. The Certified True Copy of the Claimant's Acceptance of the Offer of Terms of Grant/Conveyance of Approval of grant of Right of Occupancy over the said plot of land dated the 20th day of December 2000 was tendered without objection and admitted in evidence as Exhibit PP4.

The Claimant's witness further testified that pursuant to the said grant of the plot of land to the Claimant, the Defendant issued the Claimant with a Bill dated the 15th day of May 2001 for payment of the sum of Fifteen Million, Forty-two Thousand, One Hundred and Forty-one Naira Seventy-Eight Kobo (N15,042,141.78) for the Right of Occupancy Rents and Fees including the Premium for Certificate of Occupancy, Survey Fees and Development Levy, etcetera for the said plot of land. The Certified True

Copy of the said bill was tendered by the Claimant without objection and admitted in evidence as Exhibit PP5.

It was also testified by the Claimant's witness that the Claimant paid the sum of the sum of Fifteen Million, Forty-two Thousand, One Hundred and Forty-one Naira Seventy-Eight Kobo (N15,042,141.78) demanded by the Defendant and was issued a Revenue Collector's receipt dated the 15th day of May 2001, certified true copy of which was tendered in evidence without objection and admitted in evidence as Exhibit PP6.

The Claimant's witness again testified that the Claimant duly complied with the Defendant's recertification policy by submitting the requisite documents for verification and recertification and that it paid the processing fee for the same. A Certified True Copy of the recertification form was admitted in evidence as Exhibit PP7 while a Certified True Copy of the bank teller for payment of the re-certification fee was admitted in evidence as Exhibit PP8.

The testimony of the Claimant's witness is also to the effect that over the years the Defendant has not completed processing the Claimant's application for recertification of the said plot of land and has indeed been holding out that the file for the said plot of land was missing, but the Claimant discovered that the Defendant has purportedly divided the Claimant's Plot into Plots 1494 and 1495 though the Claimant's title was never revoked, being a scheme to take over the said plot of land from the Claimant.

On the other hand the defendant filed a memorandum of appearance, statement of defence and one witness statement on Oath dated 14th October, 2020 and filed same date.

After the close of the claimant case the defendant opened its defence by leading one witness DW1 and the DW1 adopted her witness statement on Oath, where she testified that the claimant did not apply for allocation of land in the FCT Abuja and was not allocated Plot No. 480 within Central Business District, Abuja by the defendant. The witness further testified that the defendant did not issue any bills for payment to the claimant and that the claimant did not make any payments to the defendant and did not file any forms for recertification nor make any payment for the same.

The defendant closed it case with one witness.

The claimant counsel at the close the case filed and adopted his final written address in which counsel formulated two issues for determination Viz:

1. Whether having regard to the state of pleadings and the evidence led by the parties, the Claimant has proved its case on the balance of probabilities so as to be entitled to the reliefs sought in its Writ of Summons and Statement of Claim?
2. Whether the Defendant has proved beyond reasonable doubt that the documents tendered by the Claimant are forgeries?

On issue whether having regard to the state of pleadings and the evidence led by the parties, the Claimant has proved its case on the balance of probabilities so as to be entitled to the reliefs sought in its Writ of Summons and Statement of Claim?

Counsel submitted that the standard of proof in land matters is the same as that for other civil cases. And referred the Court to the cases of Owuana v. Oparaji [2002] 5 NWLR (Pt. 760) 353; also reported in (2002) LPELR - 3702 (SC) at pp. 13-14, where the Supreme Court held:

"It must be recognised, however, that a claim for a declaration of title is none other than a civil case and by the general principle governing civil matters, proof is upon the balance of probabilities or preponderance of evidence... What has been firmly established as the law is that the plaintiff, in order to succeed in his claim for a declaration of title, must bring forward cogent evidence which must tilt the imaginary scale in his favour. He is not expected to prove his case beyond reasonable doubt as in criminal cases, nor is there a midway in the standard of proof between criminal and civil in such a claim. All that is required is that the evidence produced by the plaintiff to support title must be such that can support a declaratory relief and which, in the end, when placed on the scale of justice, will tilt it in his favour".

Counsel also cited the cases of Kaiyaoja v. Egunla (1974) 12 SC 55 at 60- 61 (1974) NSCC (Vol.9) 606 at 609. Adeleke v. lyanda [2001] 13 NWLR (Part 729) 1; (2001) LPELR - 114 (SC), pp.25-26.

To buttress this argument Counsel further submitted that in order to prove that the Claimant was granted a statutory right of occupancy by the Defendant, the Claimant pleaded paragraphs 1 to 4 of the Statement of Claim and adopted paragraphs 3 to 6 of its Witness Statement on Oath. The Claimant also tendered without objection Exhibits PP1, PP2, PP3 and PP4.

In Idundu v. Okunmagba (1976) 9-10 SC 227 the Supreme Court set down five ways of proving title to land, namely:

i. By traditional evidence;
ii. By documents of title;

iii. By various acts of ownership and possession numerous and positive to warrant inference of ownership;
iv. By acts of long possession and enjoyment; and
v. By proof of possession of adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

The law is that proof by one method suffices. And cited the Cases of Uka v. Irole [2002] 7 SCNJ 137 at 163, and Balogun v. Akanji [1988] 1 NWLR (Part 70) 301.

More so counsel submitted that the Claimant has traced its root of title to a grant from the Honourable Minister of the FCT. The Claimant has shown that it applied for allocation of land in the FCT and paid the application fee (Exhibits PP1 and PP2).

The Claimant has also shown that its Application for land was successful and that the Defendant granted the Application by issuing the Claimant with the Offer of Terms of Grant/Conveyance of Approval with Ref No: [MFCT/LA/MISC. 9819] dated 15th December 2000 (Exhibit PP3); and that the Claimant accepted the Offer of Terms of Grant/Conveyance of Approval on the 20th day of December 2000 (Exhibit PP4). The Claimant's evidence also showed that it complied with the Defendant's recertification policy (Exhibits PP7 and PP8).

Counsel submitted that in Adun v. Obayuwana [2016] All FWLR (Part 819) 1135 at 1157 it was held that when a document is duly pleaded and admitted in evidence the document become the best evidence of its contents and therefore speaks for itself. He also referred this Honourable Court to B. Stabilini & Co. Ltd v. Obasi [1997] 9 NWLR (Pt. 520) 293;

and Skye Bank Plc v. Akinpelu [2010] All FWLR (pt. 526) 460.SANKEY v. ONAFIFEKE [2014] All FWLR (Part 749) 1034; (2013) LPELR - 21997 (CA), pp. 24-25.

In EBEM v. NSEYEN (20160 LPELR - 40122 (CA), p. 22, the Court of Appeal restated that position of the law that documentary evidence (exhibits) are the hanger on which oral evidence would be hung for assessment or evaluation and cannot be contradicted by such oral evidence. also refer this Court to the case FCDA V. KUDA ENG. & CONST. CO. LTD (2014) LPELR - 22985 (CA), pp. 61-62, where it was held:

> " Oral evidence may not be employed by any of the parties to contradict, alter, add to or vary the contents of Exhibits "B", "C" and "P" which constitutes the foundation of the legal relationship between the parties.

Counsel submitted that Exhibits PP1 - PP8 have the effect ascribed to them by their contents and cannot be contradicted by the Defendant s bare denials. The said documents show that the Claimant acquired a right of occupancy over the plot of land in issue by virtue of its acceptance of the offer of terms and grant/ conveyance of terms of grant made to it by the Defendant and relied on the contents of Exhibit PP3 as well as Sections 5 (1) (a) and 52 of the Land Use Act. He further relied on Dzungwe v. Gbishe [1985] 2 NWLR (Part 8) 528; Adebiyi v. Williams [1989] 1 NWLR (Part 99) 611; Ofoeze v. Ogugua [1996] 6 NWLR (Part 455) 451; and Olohunde v. Adeyoju [2000] 10 NWLR (Part 676) 562.

Counsel urged the Court to hold that the Claimant has proved that it is the holder of statutory right of occupancy over the said plot of land and that her title is valid and subsisting. And urged the Court to grant all the injunctive reliefs sought by the claimant and award general damages to the Claimant.

On Issue 2: Whether the Defendant has proved beyond reasonable doubt that the documents tendered by the Claimant are forgeries?

Section 135 of the Evidence Act, 2011, provides:

> "(1) If the Commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt."
>
> (2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action."

While Section 140 of the Evidence Act provides:

> **"When a fact is especially within the knowledge of any person, the burden of proving that fact is upon him."**

In Jules v. Ajani (1980) 5-7 SC 96; (1980) LPELR - 3123 (SC), pp. 19-20, it was held:

> "The point is that the Appellant having raised the issue of Exhibit A being a forgery the burden was on him to prove that assertion."

The Defendant disowned all the documents tendered by the Claimant and alleged that the said documents were forgeries. In Adelaja v. Fanoki [1990] 2 NWLR (Part 131)137 at 153, Karibi-Whyte, J.S.C., said:

> "I shall now refer to the denial of the second respondent that the Alade family sold the disputed land or any land to Victor Oludemi, which is the crux of their defence to the claim...The contention tantamounts to a denial of the existence of Exhibit "A". In my opinion where the complaint is that no such document exists, the proof of the existence of the document will be conclusive as to its validity, except where the person challenging the existence of the document is able to show further that the document so proved to exist is a forgery. It is in such a circumstance well settled that the onus of such proof rests on who alleges - see S.137 (2) Evidence Act. In such a case since crime is alleged, the burden is on him who alleges to prove it beyond reasonable doubt."

Also cited the cases of Okunrinjeje v. Ajikobi (2018) LPELR-44850 (CA), pp.72- 76. In A.P.C. v. P.D.P. [2015] 15 NWLR (Part 1481) 1 at 66 – 67. More so counsel submitted that the Defendant did not make any attempt to clear the doubt raised by the presumption of innocence. The Defendant did not demonstrate the alleged forgery in the open court during the trial. The Court was not afforded the benefit of seeing what title documents that emanate from the Defendant actually look like, and the difference between them and those tendered in evidence by the Claimant. The Defendant had a duty to prove the allegation of forgery beyond reasonable doubt. It is respectfully submitted that this grave omission on the part of the Defendant is fatal to its allegation of forgery. Counsel refer the Court to Nigerguards Ltd v. Usoroh [2010] 12 NWLR (Part 1208) 207 at 221 and 224 The State v. Azeez [2008] All FWLR (Pt. 424) 1423 at 1455; Egesimt a v. Onuzurike [2003] FWLR (pt. 128) 1410; and Alake v. State [1992] 11/12 SCNJ (Pt II) 177 at 184.

Counsel urged the Court to disregard the oral testimony that the name of the Claimant is not in the Defendant's records. This is because the oral testimony is inadmissible secondary evidence of a public document. Again, this Honourable Court was denied the opportunity of examining the said records to ascertain the veracity of the conclusion reached by DW1 that the documents tendered by the Claimant are forgeries based on the Defendant's records. By withholding the records from the Court, the Defendant wants this Court to speculate as to the contents of the records on which the allegation of forgery is predicated. Counsel urged the Court to refuse the Defendant's invitation to speculate on such a crucial issue as allegation of forgery, and that the Defendant did not proffer any reliable evidence to substantiate the allegations of forgery In Famuroti v. Agbeke (1991) 6 SC 1 at 11, it was held that the mere ipse dixit of a witness (as in the instant case) will not suffice to prove forgery beyond reasonable doubt. We rely on section 135 (1) and (2) of the Evidence Act. We also rely on Torno Internazionale Nig. Ltd v. FSB Ltd Bank Plc (2013) LPELR - 22616 (CA), p.39.

In conclusion counsel urged the Court to hold that on the balance of probabilities or preponderance of evidence, the Claimant has proved that it has a right of occupancy over the plot of land in issue; and that the said right of occupancy is still valid and subsisting. And alsohold that the Defendant failed to prove its allegation of forgery beyond reasonable doubt.

The defendant also filed and adopted its final written address. In the said final written address the defendant formulated two (2) issues for determination viz:

A. Whether land can be allocated to any person in the Federal Capital Territory without the due approval and authorization of the Defendant.

B. Whether the Claimant has proved her case to entitle it to the reliefs claimed.

It is settled law that the ownership of all land in the entire area comprising the Federal Capital Territory (which includes Central Business District) is vested in the Federal Government of Nigeria with mandate given the Defendant by the President of the Federal Republic of Nigeria to administer same for the development of the Capital City.

Section 1(3) of the Federal Capital Territory Act Cap 503LFN 2004.

He also referred the Court to Section 2(1) of the FCT Act and Section 51(2) of the Land Use Act. Also Section 297(2) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended).

Cited the case of ONA Vs. ATANDA (2000) 5 NWLR Pt 656 Pg 244, particularly per Akintan J.C.A at page 268 para H, per Mustapha J.C.A at page 270 para G, per Bulkachuwa J.C.A at pages 271-272 para D, all to the effect that:

a) All lands in the Federal Capital Territory are vested absolute!" in the Government of the Federation.

b) Any occupier of land in the Federal Capital Territory, who is not in occupation of the land by virtue of a grant issued by the Federal Government through the Minister of FCT, is in illegal occupation of same. cited ONA Vs ATANDA (supra) @ 275 (C-D) and GRACE MADU VS DR BETRAM MADU (2008) LPELR - 1806 (SC) where the court held that it is only the Minister of the Federal Capital Territory that can grant Statutory Right of Occupancy over lands in Federal Capita Territory, by virtue of

Section 18 of the FCT Act, therefore that no land can be statutorily allocated to any person in the Federal Capital Territory without the due approval and authorization of the Minister of the Federal Capital Territory, Defendant in this case. And urged the court to so hold.

Having referred the court to the paragraphs of the Statement of Defence and also the Witness Statement on Oath of Prisca Okpulor who testified as DW1 in this case and also her oral testimony before the court we therefore urge the Court to hold that there was no due approval and authorization by the Defendant over Plot No. 480within Central Business District, Abuja to be allocated to the Claimant.

Counsel further submit that the Defendant also stated categorically in paragraph 12 of its Statement of Defence and paragraph 13 of the Witness Statement on Oath of DW1 that the Claimant did not at any point submit originals of the documents it claimed to have submitted to the Defendant's agents in its Statement of Claim, as it is not the practice of the agents of the Defendant to collect originals of title documents or other land documents from allottees during recertification. The Defendant also stated that its agents did not issue any acknowledgement letter to the Claimant as proof of evidence of the submissions it claims to have done. Counsel then submitted that the above piece of evidence has not been controverted in anyway by the Claimant, whether in its pleadings nor under cross-examination, and as such the position of the Law is that an unchallenged or uncontroverted evidence will be deemed admitted and the court can rely on same, see Okike vs. L.P.D.C (2005) 15 NWLR (pt. 949)7471 S.C.

Counsel submitted that the mere fact that the Claimant tendered Certified True Copies of the said purported documents and same were admitted in evidence, does not automatically imply that the court should rely on the said certified documents in its judgment. Counsel urged the court not to attach any weight whatsoever to the said Exhibits PP1 - PP8, and to discountenance and expunge same from its records. And hold that the Exhibits PP1 - PP8 are of no moment and discountenance same and dismiss relief 4 of the Claimant.

ISSUE TWO:

Whether the Claimant has proved her case to entitle it to the reliefs claimed.

In arguing this issue, counsel adopted it earlier submissions in respect of his first issue for determination and urged the court to hold that the Claimant in this case has not discharged the burden of proof placed on her in this matter to warrant the granting of her prayers.

In addition counsel submitted that it is a settled principle of law that he who asserts must prove. See sections 131- 133 OF THE EVIDENCE ACT, 2011. In this case, it is the Claimant that has the legal burden of establishing her claim. The "onus probandi" rests on the Claimant as its the party that will fail if no evidence is led at all, this is the evidential burden of proof, and the doctrine of burden of proof is encapsulated in the latin maxim "ei qui affirm at non ei qui, negatincumbit probatio" (that is "the burden of proof lies on the one who alleges and not on him who denies"). See ARASE Vs A LASE (1981) 5 SC 33 @ 37, ELEMO Vs OMOLADE (1968] NML 259, OSAWARU Vs EZEIRUKA (1978) 6 - 7 SC, 135 C 145 UMEOJIAKO Vs EZENAMUO (1990) 1 SCNJ 181 © 189 and

UGBO Vs ABURXME (1993) 2 NWLR pt 273, 101.. SEE also SECTION 133(1) OF THE EVIDENCE ACT, 2011.

It is also trite law that cases in land matters are won on their merit i.e. strength of the Claimant's case and not weakness or absence of Defence. Cited OLUKUNLADE Vs SAMUEL (supra), and IDUNDUN Vs OKUMAGBA (supra), that the duty is on the party seeking such a relief to adduce evidence that he is entitled to that relief: Counsel cited the case of ADEMOLA Vs SEVEN UP BOTTLING CO. PLC (2004) 8NWLR pt 874, 134 @ 148-149 (G-D).

Conclusively counsel submitted that the Claimant having failed to adduce credible evidence in support of its claims is not entitled to the declaratory reliefs being sought, and urged the court to so hold and dismiss reliefs 1, 2 and 3 of the Claimant and dismiss the claimant's claims in entirety as same are lacking in merit.

Having stated the facts of the case above and all the argument canvassed by both parties, and also x-rayed all the documents tendered and admitted in evidence the main crux of the case is;

1. Whether the claimant has adduced credible, cogent and sufficient evidence to establish that the defendant allocated Plot No. 480within Central Business District, Abuja to it and
2. Whether the claimant is entitled to the reliefs sought against the defendant.

Now I will proceed with my consideration of the issue formulated, it is trite law that in a claim for a declaration of title to land the standard of proof required of the Plaintiff/Claimant is on a balance of probabilities. See the cases of GOBA Vs. ALGONI (2020) LPELR 4 9489. ADEREMI Vs.

ADERIBE (1960) NMCR 400 at 402 and PUAL NWADIKE & OR Vs. CLETUS IBEKWE & ORS (1987) NWLR (Pt.67) pg 718.

In the light of the foregoing, the pertinent question is whether the claimant has established his claim. In order to answer this question recourse has to be made to the available evidence adduced by the claimant before the court.

The Claimant's evidence in support of its case comprised the two Witness Statements on Oath of its sole witness and the documents tendered without objection and admitted in evidence by this Honourable Court. The Claimant's witness testified that the Claimant applied and paid for allocation of land in the Federal Capital Territory, Abuja, and the said Application was acknowledged by the Defendant. The Certified True Copy of the Revenue Collectors receipt for land application form and processing fee dated 28th of August 1992 was admitted in evidence and marked Exhibit PP1. The Certified True Copy of the Acknowledgment of the land application dated 28th of August 1992 was tendered and admitted in evidence as Exhibit PP2.

The Claimant's witness stated that the Claimant's application for land was successful and that on the 15th day of December 2000 the Defendant issued the Claimant with Offer of Terms of Grant/Conveyance of Approval in respect of the said Plot No. 480 within Central Business District, Abuja. The Certified True Copy of Offer of Terms of Grant/Conveyance of Approval of grant of right of occupancy was tendered without objection and admitted in evidence as Exhibit PP3.

The Claimant's witness also testified that the Claimant accepted the said Offer of Terms/Conveyance of Approval. The Certified True Copy of the

Claimant's Acceptance of the Offer of Terms of Grant/Conveyance of Approval of grant of Right of Occupancy over the said plot of land dated the 20th day of December 2000 was tendered without objection and admitted in evidence as Exhibit PP4.

The Claimant's witness further testified that pursuant to the said grant of the plot of land to the Claimant, the Defendant issued the Claimant with a Bill dated the 15th day of May 2001 for payment of the sum of Fifteen Million, Forty-two Thousand, One Hundred and Forty-one Naira Seventy-Eight Kobo (N15,042,141.78) for the Right of Occupancy Rents and Fees including the Premium for Certificate of Occupancy, Survey Fees and Development Levy, etcetera for the said plot of land. The Certified True Copy of the said bill was tendered by the Claimant without objection and admitted in evidence as Exhibit PP5.

It was also testified by the Claimant's witness that the Claimant paid the sum of the sum of Fifteen Million, Forty-two Thousand, One Hundred and Forty-one Naira Seventy-Eight Kobo (N15,042,141.78) demanded by the Defendant and was issued a Revenue Collector's receipt dated the 15th day of May 2001, certified true copy of which was tendered in evidence without objection and admitted in evidence as Exhibit PP6.

The Claimant's witness again testified that the Claimant duly complied with the Defendant's recertification policy by submitting the requisite documents for verification and recertification and that it paid the processing fee for the same. A Certified True Copy of the recertification form was admitted in evidence as Exhibit PP7 while a Certified True Copy of the bank teller for payment of the re-certification fee was admitted in evidence as Exhibit PP8.

The testimony of the Claimant's witness is also to the effect that over the years the Defendant has not completed processing the Claimant's application for recertification of the said plot of land and has indeed been holding out that the file for the said plot of land was missing which is a cover for the intention to illegally take the said plot of land from the Claimant.

As rightly stated by the learned claimant counsel, in order to prove that the claimant was granted a statutory right of occupancy by the defendant, the claimant pleaded in paragraphs 1 – 4 of the statement claim and adopted paragraph 3 – 6 of its witness statement on oath and also tendered without objection exhibit PP1 Revenue collection Receipt for land form and processing fee; PP2 land application forms (acknowledgment receipt) PP3 offer of Terms of grant/conveyance of approval and PP4acceptance of offer of grant of right of occupancy with the Federal Capital Territory Abuja, all tendered without objection by the defendant who was accorded with all the right to object to but did not. And it is a trite law that the rule still remains inviolate that where objection has not been raised by the opposing party to the reception in evidence of a document or other evidence, the document will be admitted in evidence and the opposing party cannot after words be heard to complain about it admission see the case of ALADE Vs. OLUKINDE (1978) 2 SC pg 183 at 188-9 and ETIMES & ORS Vs. EKPE & ORS (1983) 14 NSCC pg 56-96.

The learned counsel for the defendant argued that the documents on which the claimant founded the validity of its title to the said plot did not emanate from the defendant that is the PP1, PP2, PP3 and PP4 and cannot confer a valid title over the said plot. The defendant in paragraph

4:8.0 in line 7 the defendant states that **"The curious question is that since the claimant is not in the record of the defendant as such unknown to the defendant, how else could the claimant have gotten its purported title if not from dubious means."**

Having said all above Let me pause here and first state the position of the law on burden of proof in civil cases.

Section 133[1] &c [2] of the Evidence Act, 2011 provide thus:

1) In civil cases, the burden of first proving 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.

2) If the party referred to in subsection [II of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.

See the cases of GOBA VS ALGONI (supra).UNION BANK VS RAVIH ABDUL& CO (2018) LPELR-46333(SC). AGU VS NNAJI (2003) FWLR PT139 PG1537,ONWUAMA VS EZEOKOLI (2002) 5 NWLR PT 760 PG 353.

From the above provisions and cases cited above, it is clear that in civil cases, the claimant has the first or initial burden to prove the existence or non-existence of a fact relied upon in support of his [or its] claims. However, the burden of proof in civil cases is not static; it shifts from one party to the other depending on the state

of the pleadings. In Ofaiva v. Olaiva (2002) 8 NWLR Pt. 7821pg 652, it was held that the burden of proof may shift depending on how the scale

of evidence preponderates. See also Ebong v. Ikpe (2002) 17 NWI.R Pt. 7971 pg504.

In the instant case, the claimant has tendered documents especially Exhibits pp1, pp2, pp3, pp4 & to prove that the defendant allocated the said Plot to it. For clarity, Exhibit PP1 Revenue collection Receipt for land form and processing fee; PP2 land application forms (acknowledgment receipt) PP3 offer of team of grant/conveyance of approval and PP4 acceptance of officer of grant of right of occupancy with the Federal Capital Territory Abuja, pp5 Right of Occupancy Rent Thus, by virtue of section 113[2] of the Evidence Act, the burden has shifted to the defendant to adduce evidence to disprove the above facts.

In the statement of defence, especially paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, the defendant pleaded facts to impugn the credibility or genuineness of the documents tendered by the claimant and to disprove the claimant's evidence that the said Plot was granted to it by the defendant.

The defendant's averment simply that the documents relied on by the claimant are forged and/or fake. The submission in paragraph 4.8.0 line 7 of defendant's final address also shows that the defendant has raised forgery as his defence.

> "From the totality of the evidence led at the trial, the defendant has been able to show that this is a pure case of forgery as the title document produced by the Claimant did not emanate from the Defendant. The Defendant has proved this beyond reasonable doubt.
>
> At this juncture, let me refer to two judicial authorities to buttress my view that in the light of the documents tendered by the

claimant and the defendant's allegation of forgery, the burden has shifted to the defendant to adduce evidence to prove that the documents relied upon by the claimant are forged or are not genuine. This is crucial in view of the arguments of the defence counsel in paragraphs 5.4.0, 5.5.0 & 5.6.0 of the defendant's final address that the burden of proof on the claimant never shifts; and that the defendant's assertion is "a negative assertion that places the burden on the Claimant."

In the case of Aderounmu & Anor. v. Olowu(2000) LPELR-141 (SC)I @ 12, B-E, His Lordship, Ayoola, JSC held:

> "... where in a claim for declaration of title to land the defendant alleges that the document relied on by the plaintiff for the title he seeks is a forgery, the burden is on the defendant who so alleges to prove that fact. Notwithstanding the general onus which rests on the plaintiff to prove his entitlement to the declaration he claims, the evidential burden of proving certain facts occasionally shifts to the defendant. Such is that burden of proving the allegation that the document which the plaintiff relies on is a forgery."

Also, in the case of Okeke & Anor. v. Eze (2013) LPELR-22455 (CA) the plaintiff/respondent claimed ownership of the parcel of land in dispute but the 1st defendant informed him that Exhibits ME2 & ME3 [which he relied upon] were not genuine as the signature on the conveyance was fraudulently procured. One of the issues before the Court of Appeal was on the burden of proof. His Lordship, Amina Augie, JCA [now JSC] held pages 35-36:

"The Appellants contend that since the 1st Defendant denied issuing or signing the Exhibits ME2 and ME3, the burden shifted to the Respondent to prove that the said Exhibits are not forged. But the Respondent argued that the onus is on the Appellant and referred us to Tewogbade Obadina [supra]... The law is clear and this Court has stated times without number that where forgery of a document is alleged, there is no initial burden on the Plaintiff to prove due execution but the primary burden is on the Defendant who alleged forgery to prove the forgery alleged by him". There we have it in addition to the trite law that he who asserts must prove, where forgery of document is in issue, the primary burden is on the Defendant who alleges forgery which is a crime to prove the forgery alleged by him ..."

In the instant case, the defendant has the burden to prove that the documents relied upon by the claimant are not genuine or are forged. At this juncture I will now consider the averments or allegations raised in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14 of the statement of defence in order to determine whether the defendant has proved that the said documents are not genuine or are forged.

5. The Defendant states further to the paragraph that it did not at any time allocate Plot No. 480 within Central Business District, Abuja to the Claimant on 15/12/2000 or on any other date. The Defendant nor its agents did not at any point convey the purported Offer of Conveyance of Statutory Right of Occupancy dated 15/12/2000 to the Claimant. That the claimant did not apply for allocation of land.

Exhibit pp1 is the Federal Capital Development Authority [FCDA] revenue receipt dated 28/8/1992 issued to the claimant. The receipt shows that

claimant paid N52,500 for land application form. The defendant did not adduce any evidence to show that the receipt is not that of FCDA or that the receipt is different from the revenue receipts issued by FCDA as at 28/8/1992. Also, the defendant did not allege that the signature on Exhibit pp1 is not the signature of the staff of FCDA assigned to issue such receipts for land application forms as at 28/8/1992.

Exhibit pp2 dated 28/8/1992 issued by Ministry of FCT to the claimant is an "acknowledgement of receipt of your duly completed application forms" together with the documents listed in the letter. Since, by this letter, the claimant submitted the completed application form to the defendant, the claimant is no longer expected to be with the form. The defendant did not allege that the signature on Exhibit pp2 is not the signature of the staff of the Ministry of FCT assigned to sign such letters as at 28/8/1992. The defendant did not produce similar letters issued on 28/8/1992to show that the signature on those letters. Also exhibit pp3 is an offer of terms of Grant\Conveyance of Approval dated 15th December 2000and exhibit pp4 is a letter of acceptance of the Offer of Grant of Right of Occupancy, as stated that there are records of land applications in their system from 1990s to date and in particular, there are records of land applications made in 2000. The DW1 did not produce that record to support her evidence that there is no record of application in the claimant's name with File No. MISC.9819

In the circumstances, the Court cannot rely on a dogmatic and unproven statement of DW1 to reach a decision that the claimant did not apply for allocation of land. The Court holds that from Exhibits pp 1, 2, 3 & 4 the claimant applied for allocation of land on 28/8/1992 also got approval dated 15/12/2000.

6. The Defendant states that none of its agencies issued any file number known as File No. [MFCT/LA/MISC. 9819] and as such the Defendant never granted title over Plot No. 480 within Central Business District, Abuja or any plot whatsoever to the Claimant.

The DW1 did not produce that record to support her evidence that there is no record of application in the claimant's name with File No. MISC. 9819.

7. The Defendant states that they did not issue the purported revenue collector receipt for land application form dated 28/8/1992 and Land application form acknowledgment purportedly issued by the Defendant or its agents.

8. In specific response to paragraph 4 of the Statement of Claim, the Defendant states that the Claimant had no title/Offer to purport to accept on 20/12/2000 as it has nothing before the court to show that it was validly granted a Statutory Right of Occupancy over the said Plot No. 480 within Central Business District, Abuja by the Defendant. The Claimant is further put to the strictest proof of the averment thereof.

On the two averments of the defendant statement of defence I will adopt my earlier findings and answer to paragraph 5 and 6 above.

9. In specific response to paragraph 5 of the Statement of Claim, the Defendant states that its agents did not at any point in time issue any Bill for Right of Occupancy Rent and Fees including Premium for Certificate of Occupancy, Survey Fees and Development Levy fees dated 15/05/2001 to the Claimant, whether in respect of the Plot No. 480 within Central Business District, Abuja or any plot whatsoever.

The claimant tendered Exhibit PP5 Right of Occupancy Rent duly signed by one U.M. Baffa chief Deeds REG Lands. On this averment the failure

of the defendant to call U.M. Baffa who signed Exhibit pp5 - as a witness to accept or deny his signature on the document is fatal to the allegation that Exhibit pp5is fake or forged or that it did not emanate from the defendant. However, the defendant did not tender any of these documents. I will invoke and apply the presumption in section 167[d] of the Evidence Act, which provides that the Court may presume that:
the evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

See the case of Gambari & A. v. Saraki & Ors. (2009) LPELR-4182 1CA1. The documents would have proved that Exhibit pp5 and pp6 emanated from the defendant and that the defendant allocated the said Plot to the claimant. It is necessary to invite the person who's signature is alleged to have been forged. Failure to invite him or her to accept it or deny his or her signature is fatal to the case of the person alleging that the document is forged. In Ibrahim & Anor. v, Dogara & Ors, (2015) LPELR-10892 (CA).

It was held that indeed, in proving forgery of signature and certificate, the person whose signature is alleged to have been forged is an indispensable and vital witness and the case is fatal without his evidence. See also the case of Alake v. The State (1992) 1112 SC177.
10. The Defendant in specific response to paragraph 6 OF the Statement of Claim states that the Claimant did not at any point in time pay the sum of (N15,042,141.78)Fifteen Million, Forty-two Thousand, One Hundred and Forty-one Naira Seventy-Eight Kobo only to the Defendant or its agents as Requisite Rent and Fees, Development Levy, etc for the Preparation and issuance of Certificate of Occupancy in respect of the subject plot or any plot whatsoever and the defendant never issued any

revenue collector receipt dated 15/05/2001 to the claimant in the above stated sum.

The crucial point from the above is that by Exhibits PP6 the case of the claimant is that the defendant issued him a bill via exhibit pp5 and claimant paid the bill and the defendant issued with a receipt dated 15/05/2001.

Therefore, it is not helpful to the defendant to disprove the fact that Exhibits PP5 and PP6 emanated from the defendant by a mere assertion. Oral testimonies would not take the place of documentary evidence

First of all, the defendant did not adduce evidence for the reasons I have given, I hold that the defendant was not able to disprove all the document tendered by the claimant were issued by, his office.

11. The Defendant states in response to paragraph 7 of the Statement of Claim that the Claimant did not fill any Recertification form in respect of the subject plot or any plot at all and did not at any point in time pay the sum of N10,000.00 (Ten Thousand Naira) only or any sum whatsoever to the defendant or its agent as recertification fee. Exhibit PP7 is the claimant's Application for Recertification while Exhibit 8 is the evidence of payment of the sum of N10,000 described as "Processing fees - Recertification". Exhibit pp 8 has stamp of "FCC RECERTIFICATION" with a signature and date acknowledging receipt of the form. The offer of the right of occupancy issued to the claimant [Exhibit 2] also has the stamp of "FCC RECERTIFICATION" with a signature and date acknowledging receipt of the letter of offer.

The defendant did not discredit the stamp and the signature on Exhibits PP 7 & 8. I hold that the defendant was not able to disprove the fact that the claimant submitted its Application for Recertification [Exhibit 7 &

8 together with the Offer of Terms of Grant/Conveyance of Approval to his office.

The case of the claimant is fortified by the fact that all her exhibits are certified true copies of public documents.

See section 102 of the Evidence Act 2011.

Section 146(1) of the Evidence Act 2011 enjoins the court to presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized in that behalf to be genuine, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The claimant tendered the certified true copies and which without any objection by the Defendant were admitted in evidence during the trial. These certified true copies must therefore be accorded the same legal significance and importance as the originals.

See AICE Investment Co. Ltd v. Fidelity Bank (2015) LPELR – 25753 (CA), p.25. Kawu v. Minister, FCT (2016) LPELR – 41142(CA), pp. 9-11

Having considered the above allegations raised by the defendant, I hold that the defendant failed to prove the allegation that the documents relied upon by the claimant are not genuine or are forged. Therefore, I resolve Issue No. 1 in favour of the claimant and hold that the claimant has adduced credible, cogent and sufficient evidence to establish that the defendant allocated the said Plot No. 480 within Central Business District, Abuja to it.

On issue two 2

Whether the claimant is entitled to reliefs against the defendant?

In reliefs I & 2, claimant seeks a declaration that it is the holder of statutory right of occupancy dated 15/12/2000 over the said Plot No. 480 within Central Business District, Abuja; and that its statutory right of occupancy over the Plot is still valid and subsisting. In the light of the decision of the Court under Issue No. 1, these reliefs have merit and are hereby granted.

In relief 3, the claimant seeks a Declaration that the payment of the sum of (N15,042,141.78) Fifteen Million, Forty-two Thousand, One Hundred and Forty-one Naira Seventy-Eight Kobo only being the total assessed Rent, Fees, Premium, Survey Fees, Development Levy, etcetera for the issuance of Certificate of Occupancy is valid and subsisting and represents full and final payment by the Claimant for issuance of Certificate of Occupancy over Plot No. 480 within Central Business District, Abuja. In the light of the decision of the Court under Issue No.1, the relief is granted.

Relief 4, An order directing the Defendant to issue the Claimant with the Certificate of Occupancy over Plot No. 480within Central Business District, Abuja is hereby granted.

5.The Defendant whether by himself, agents or privies are restrained from unlawfully revoking and or expropriating or in any manner howsoever interfering with the rights, title of the Claimant or possession of the Claimant over Plot No. 480 within Central Business District, Abuja.

6. An award of the sum of Ten Million Naira (N10,000,000.00) as general damages against the Defendant.

In view of the fact that for Relief 6 the claimant did not adduce any credible evidence to prove its claim for general damages. Relief 6 is hereby refused.

Being satisfied that the claimant has proven his case, I enter judgment in favour of the claimant against the defendant. I declared as follows:

a. That the Claimant is the holder of a Statutory Right of Occupancy dated 15th December 2000, referenced [MFCT/LA/MISC. 9819] over Plot No. 480 within Central Business District, Abuja.
b. That the Claimant's Statutory Right of Occupancy over Plot No. 480 within Central Business District, Abuja, is valid and subsisting.
c. That the payment of the sum of N15,042,141.78 (Fifteen Million, Forty-two Thousand, One Hundred and Forty-one Naira Seventy-Eight Kobo)being the total assessed Rent, Fees, Premium, Survey Fees, Development Levy, etcetera for the issuance of Certificate of Occupancy is valid and subsisting and represents full and final payment by the Claimant for issuance of Certificate of Occupancy over Plot No. 480 within Central Business District, Abuja.
d. The Defendant are ordered to issue the Claimant with the Certificate of Occupancy over Plot No. 480 within Central Business District, Abuja.
e. The purported division of Plot No. 480 within Central Business District, Abuja into Plots 1494 and 1495 is null and void and have no legal effect and it hereby set aside.
f. The Defendant are restrained whether by himself, agents or privies from unlawfully revoking and or expropriating or in any manner howsoever interfering with the rights, title of the Claimant or

possession of the Claimant over Plot No. 480 within Central Business District, Abuja.

This the Judgment of the court which I reserved to be delivered today.

APPEARANCE

Ifunanya Oranuba Esq.
M.U. Okeke Esq. } for the claimant.

C.J. Oliobi Esq.
L.A Asholu Esq. } for the defendant.

Sign
Hon. Judge
13/07/2021