

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON FRIDAY, THE 26<sup>TH</sup> DAY OF NOVEMBER, 2021**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO. FCT/HC/CV/2881/19**

**BETWEEN:**

**THE ADMINISTRATORS OF THE**

**ESTATE OF LT. GENERAL SAMUEL -----CLAIMANT**

**VICTOR MALU (DECEASED)**

**AND**

**1. THE MINISTER OF FEDERAL CAPITAL  
TERRITORY**

**2. IBRAHIM ABDULLAHI.....DEFENDANTS**

### **JUDGMENT**

On the 2/9/18 the Plaintiff filed this Writ against the Defendants Claiming the following reliefs:

- 1.A Declaration that the land described marked red in the survey map, prepared by CAD section of land survey of the FCT attached in the Certificate of Occupancy which is Plot 1683 CAD Zone A4, Asokoro District Abuja measuring 1602.59 sqm

covered by Certificate of Occupancy No. FCT/BW/1225 belongs to the Estate of Lt.Gen. Sammuel Victor Malu Deceased.

2. Perpetual Injunction restraining the Defendants personally or through their agents, assigns or privies from further trespassing or otherwise interfering with the claimant's title over Plot 1683 CAD Zone A4 Asokoro measuring 1602.59 sqm.

The Plaintiff called 2 witnesses out of the 3, one of which is the daughter and Co-administrators of the estate of the Late General. The 2<sup>nd</sup> witness is the wife of the late General. The Plaintiff tendered 6 documents in support of its claim to the Res. They are CTC of letter of Administration with supplementary Inventory list. The Original Certificate of Occupancy Letter to update the record of Plot 1683 the Res, Letter for legal search and payment for legal search –N10,000 copy of letter of complaint written to Director of Lands at AGIS etc.

After the filing of the Suit 2<sup>nd</sup> Defendant –was joined as a party to the Suit. Before then he was an unknown person. The 1 & 2 Defendants called 1 witness each. Then Etikwu Onah Esq was subpoenaed to testify to support the Defendant's assertion that though the land was initially allocated to the Plaintiff but was Plaintiff divested that interest on the 16/6/99 via Exhibit 12 in favour of the 2<sup>nd</sup> Defendant Ibrahim Abdullahi and that 2<sup>nd</sup> Defendant was later issued with Exhibit 16 by 1<sup>st</sup> Defendant

Tijani Balogun Assistant Chief Estate Officer testified for the 1<sup>st</sup> Defendant Mohammed Bako Nasir testified for the 2<sup>nd</sup> Defendant. The Defendants tendered 8 documents marked as Exhibit 10-17.

In this case the Plaintiff claimed that the late General Malu was allocated the Res Plot 1683 on 16/12/94 and Right of Occupancy was issued on 7/6/19. Until his death on 9/10/17 he did not develop same due to ill-health. That eventually took his life in 2017.

The PW1 Brenda Malu-Staudt was appointed the Administratrix of the estate of the General together with Henry Malu the son of the late General.

In 2018 after the death of the General they discovered when they wanted to develop the land that the 2<sup>nd</sup> Defendant has trespassed into the Res and parked some cars therein and had constructed a local kiosk therein. They raised alarm and as law abiding citizens decided to come to Court rather than taking laws into their hand. They tendered 9 documents in prove of ownership of the land especially the Certificate of Occupancy issued to the late General. The 1<sup>st</sup> Defendant had on their own agreed that the land was allocated to the General but that he divested the interest to 2<sup>nd</sup> Defendant as a fully built up real Estate via Exhibit 12 which is serve as Exhibit 14 and their registered said assignment to 2<sup>nd</sup> Defendant via Exhibit 10. The Defendant did not tender any document to show Building Plan approval

to show that the Plot was assigned as Built up after building plan was approved by Development Control Department. They did not tender the Building plan to show that the plot was fully developed before it was allegedly sold to the 2<sup>nd</sup> Defendant by the late General. The Defendant witnesses never witnessed the sale of the Res to the 2<sup>nd</sup> Defendant. They did not tender any approved Building Plan to show that it was fully developed before it was sold/assigned by late General.

In their Written Address the Plaintiff raised 2 issues for determination which are:

1. Whether Plaintiff has been able to prove its claim to be entitled to the Declaratory Reliefs sought.
2. Whether the Defendants have been able to prove by cogent and verifiable evidence that late General Victor Samuel Malu indeed divested himself of the interest over the Res in favour of the 2<sup>nd</sup> Defendant before his death on 9/10/17.

ON ISSUE NO.1: They submitted that at hearing that the 1 DW1 & 1DW2 proved that the land was granted to the late General by 1<sup>st</sup> Defendant as shown in Exhibit 2 the document evidencing the root of the Plaintiff's title by grant by the 1<sup>st</sup> Defendant. The Plaintiff tendered the Letter of Administration from the FCT High Court Probate Division and CTC of the supplementary inventory list which contains the items in the Estate of the General and the Certificate

of Occupancy of the Res in this case issued to him by 1<sup>st</sup> Defendant.

That the Plaintiff had established the root of Plaintiff's title and tendered the document of title evidencing the same. That the documents of title are genuine and allocated by the 1<sup>st</sup> Defendant who had the capacity to do so at that time. That providing this document is one of the way to prove Plaintiff's title to the Res as decided in the case of:

**KYARI VS. ALKALI (2001) LPELR-1728(SC)**

They also relied on the case of:

**UBA PLC VS AYINKE (2000) 7 NWLR (PT.663) 83@96**

That Defendant who allocated the land is clothed with the requisite capacity and authority to grant the land by virtue of Section 1,5 & 51(2) Land Use Act 1978 LFN

They urged Court to hold that the Claimant has adduced enough evidence to establish its claim and is entitled to the grant of the reliefs sought.

ON ISSUE NO 2: on whether the Defendants were able to prove with cogent evidence that the late General divested himself of the Res to the 2<sup>nd</sup> Defendant before he died on 9/10/17, the Plaintiff Counsel submitted the Defendant did not provide cogent evidence to show that the General divested the Res to the 2<sup>nd</sup> Defendant before he died on 9/10/17.

That he never sold the Res to any one before he died. That the Defendant did not prove the assertion that the land was sold to the 2<sup>nd</sup> Defendant with any credible evidence or testimony of their witnesses. That the letter which they tendered alleging that it was written and signed by the late General addressed to the 1<sup>st</sup> Defendant to register the Res in the favour of the 2<sup>nd</sup> Defendant is of no moment. That the testimony of the Defendant witnesses including the subpoenaed witnesses were not cogent. That their testimonies were froth with inconsistencies.

That the 1DW1 who claimed that the General issued Exhibit 10 & 12 under cross-examination told the Court on record that he was not present when those documents were made. That though he claimed that he had seen other correspondences by the General he failed to produce any document which can be compared to those Exhibits. That the 1DW1 assented but could not prove his assertion in that regard. He relied on the provision of Section 133 Evidence Act 2011.

That the Defendants failed to discharge the burden of proof on them. That the late General Victor Malu sold the Res to the 2<sup>nd</sup> Defendant since the 2<sup>nd</sup> Defendant failed to do so that the onus stuck with him and that the burden of proving the sale of the Res cannot and did not therefore shift to Plaintiff to discredit their evidence.

That the 2DW2 who claimed he prepared a document for the 2<sup>nd</sup> Defendant which was to be executed between the 2<sup>nd</sup> Defendant & the late General for assignment of the Res to the 2<sup>nd</sup> Defendant stated under cross-examination that he was not present when the document was purportedly executed and that he never met the late General in person. That he never franked any Deed of Assignment executed between the 2<sup>nd</sup> Defendant and the late General Victor Samuel Malu or any other individual. That the evidence of the Etukwu Onah has no probative value as he was not able to prove by cogent and verifiable evidence that he is the maker of the Exhibit 12 as the Exhibit was neither signed by him nor was it copyrighted to him.

That the testimony of 2DW2-Mohammed Bako Nasir who claimed to be M.B.Nasir the person who purportedly as alleged by him to have witnessed execution of Exhibit 12 between the 2<sup>nd</sup> Defendant and the late General of blessed memory on the 16/6/99 is of no value. That the two names of the witnesses in Exhibit 12 are M.B.Nasir, businessman of P.O.Box 4534 Garki and Rilwan Garba of the same P.O.Box 4534.

That no Mohammed Bako Nasir of No.1 Kunle Suleiman Street Wuse II Extension Life Camp Abuja, a Staff of FCDA as at June witnessed the making of Exhibit 12 as at 16/6/1999. From all above it is obvious that the Defendants did not present any of

the parties that made Exhibit 12 or that witnessed same.

That to that extent the Defendant failed to discharge that burden to establish that Exhibit 12 was indeed made or used by late General Malu to divest himself of the interest over the Res Plot 1683. That the Defendant failed to call any of those that witnessed the signing of the document, as witness to testify before this Court as being present when the Exhibit 12 was executed divesting the General of his interest in the Res via Exhibit 12. The 2 DW2 had testified that as at 16/6/1999 he was still a civil servant, staff of FCDA. The other witness was as at that time a businessman. The 2 Defendants did not produce any of the part as that made Exhibit 12.

The Defendant failed to proof or establishes that Exhibit 12 was made by Late General Malu himself to divest his interest over plot 1683 as none of the witnesses who purportedly witnessed the signing of Exhibit 12 were called as witnesses to testify that the General divested himself of his interest over the said plot via Exhibit 12.

Again Mohammed Bako Nasir 2DW2 could not confirm to Court as stated in Paragraph 15 of his Oath that he applied for the CTC of the Exhibit 2- Certificate of Occupancy. He said he did not remember applying for the CTC of Exhibit 2. He stated in Court that he does not even know the where

about of the 2<sup>nd</sup> Defendant that he had not seen him for over 10 years. Contrary to what he said in his Oath paragraph 22, he denied anything about the recertification of the Res. That statement and testimony of 2DW2 was full of contradiction when he was cross-examined. He submitted that 2DW2 should not be relied on. He could not prove that he is the same person as M.B. Nasir who had described himself as a businessman in Exhibit 12 and not a civil servant he claimed to be under cross-examination as at the time Exhibit 12 was made. Nothing in Exhibit 12 to show that Mohammed Bako Nasir is same as M.D.Nasir who purportedly witnessed Exhibit 12.

That the Defendants have not able to proof by cogent and reliable evidence that before his death the said General divested himself of the Res. That Exhibit 10 purportedly show that it was executed by late Malu on the 9/6/1999, submitted to 1<sup>st</sup> Defendant on the 14/6/99 to purportedly assign a property described as Plot 1683 at Asokoro Extension to a person named Ibrahim Mohammed and not Ibrahim Abdullahi who is the 2<sup>nd</sup> Defendant in this Suit. But it is interesting that all the Defendants witnesses testified that the General divested himself of the interest over the plot 1683 CAD Zone A4 Asokoro District Abuja to the 2<sup>nd</sup> Defendant Ibrahim Abdullahi. That the General

If he is the maker of Exhibit 12 as it is was to divest himself of the interest over plot 1683 at Asokoro

Extension to Ibrahim Mohammed on the 9/6/1999 and not to register Exhibit 12 in favour of 2<sup>nd</sup> Defendant Ibrahim Abdullahi as the said Exhibit was yet to be made as at that time Exhibit 10 was made and submitted to the 1<sup>st</sup> Defendant.

That it is not probable that the late General sold the Plot 1683 CAD Zone A4 Asokoro District measuring 1602.59 sqm covered by Certificate FCT/BN/1225 to 2<sup>nd</sup> Defendant.

On the said 16/6/1999 and applied to 1<sup>st</sup> Defendant on 9/6/1999 to register same the instrument of Assignment Exhibit 12 which had not been executed at the time. More so Exhibit 10 was a document made to register an assignment to a certain Ibrahim Mohammed not the 2<sup>nd</sup> Defendant, Ibrahim Abdullahi.

That the 1<sup>st</sup> Defendant claim that he issued Exhibit 15 & 16 without proof to that effect as a CTC of a lost Certificate of Occupancy may only be issued after due compliance with Section 54 of Registration of title Act CAP 546 law of FCT Vol. 4

That the testimony of the 2DW2 in the paragraph 15 of his Oath that the General instructed him to apply for CTC of the Certificate of Occupancy which was admitted as Exhibit 15 and 2<sup>nd</sup> Defendant was issued Exhibit 13 which is same Exhibit 16- New Certificate of Occupancy, their assertion of the 2 witnesses to contradictory and should not be rely on. That the

Defendants did not discharge the onus on them that the General divested his interest in the said plot 1683 to the 2<sup>nd</sup> Defendant and that at the point of assignment the CTC copy of the Certificate of Occupancy was used as the Original could not be found. He submitted that the late General neither applied for Exhibit.. no sold plot 1683 CAD Zone A4 Asokoro District Abuja with Exhibit 15 as the CTC of Exhibit 1 since the General was still in custody of the Original copy of the Certificate of Occupancy that for to obtain CTC, he must comply with the provision of Section 54 of the Registration of Title Act CAP 546 Laws of the FCT Vol.4. He referred to Section 54 (a) & (b). He referred to the case of:

**AMAECHE VS. INEC (2008) 10 WRN 1 SC**

That the Defendants did not put any document before this Court to prove they complied with the provision of the said Section 54.

The Plaintiff Counsel further submitted that all documents tendered before the Court by Defendants were contrived to deceive the Court knowing that the said General was dead and it was easy for them to cook up documents as seen in Exhibit 17 where the Defendant claimed the General purportedly signed a letter even when it was obvious from Exhibit 8 and 9 that he could no longer sign his signature. That the Defendant could not produce evidence of complying with Section 54 as the Plaintiff Counsel asked then to

do. That is contrary to the provision of Section 167 (d) Evidence Act 2011. That failure of the Defendants to produce the evidence means that they evidence does not exist. He relied on the case of:

**SOLAR CONSTRUCTION SERVICE LTD VS. FCT MIN. & ORS (2018) LPELR- 46648 (CA)**

That the evidence of Etukwu Onah cannot be relied upon because he could not show any evidence to show the signature or the document Exhibit 12 to show that he prepared the document or that he was the maker. He urged the Court to discountenance the testimony as self serving and only wasting the time of the Court.

That the 2<sup>nd</sup> Defendant never appeared before this Court to support his claim that he purchased the Res from the late General. That no one appeared before the Court to adduce evidence. To prove how Exhibit 16 & 17 come about. That the 2<sup>nd</sup> Defendant witness had stated that he does not know the where about of the 2<sup>nd</sup> Defendant and had not seen him for over 10 years.

On the issue raised by the 1<sup>st</sup> Defendants that averment of the 2 Plaintiff witness is not paragraph 2-6 did not in their pleading the Plaintiff Counsel submitted that the 1<sup>st</sup> Defendant's argument is misconceive. That the further Statement on Oath of both Brenda Malu-Staudt of November, 2020 and the witness Statement of Oath Esther Mbarummun Malu

are evidence in support the Plaintiff's reply to the 1<sup>st</sup> Defendant defence and Plaintiff's reply to the 2<sup>nd</sup> Defendants Statement of Defence filed on 23/11/2020 in line with the Section 131 Evidence Act 2011 that whoever asserts must prove. He referred to the case:

**OLUBODIN & ORS VS LAWAL & ANOR (2008)  
LPELR-2609 (SC)**

That the 1<sup>st</sup> Defendant arguments is misconceived as averment in a reply to Statement of Defence are Pleadings too. Which must be supported by evidence. He concluded that Plaintiff has proved its case with cogent verifiable evidence that they are the owners of the Res. He urged Court to so hold.

As stated earlier the 1<sup>st</sup> Defendant called Tijani Balogun as their 1<sup>st</sup> witness. He stated he works with FCT Administration at the Land Dept. where is Assistant Chief Land Officer. He confirmed that the Plaintiff is the Original allottee of the Res. But claimed that the Plaintiff assigned his right to the 2<sup>nd</sup> Defendant –Ibrahim Abdullahi who he Claimed was issued new Certificate of Occupancy. He tendered 4 documents –Exhibit 10-13.

In their Final Address the 1<sup>st</sup> Defendant raised 3 issues which are:

1. Whether the late Victor Malu had divested himself of the interest in the Res

2. Whether from the totality of the evidence adduced the late General Malu still has interest in the Res and whether by the preponderance of evidence before the Court the Plaintiff/Claimant have established their case to be entitled to the Relief sought in this Suit?
3. Whether evidence led in a trial that was not pleaded in the Writ of summons and Statement of Claim goes to any issue and whether the Court in doing substantial Justice can place reliance on such evidence.

The 1<sup>st</sup> Defendant Counsel submitted on behalf of the 1<sup>st</sup> Defendant that though General Malu was the Original allottee in which Certificate of Occupancy was issued in 1995, by Exhibit 10 Letter of Consent, he voluntarily transferred unexpired residue of his interest to the 2<sup>nd</sup> Defendant. That Exhibit 10 was not challenged by Plaintiff when it was tendered. Tat 2<sup>nd</sup> Defendant took steps to register Exhibit 12.

Deed of Assignment dated 16/6/99 purportedly executed by between General Malu and the 2<sup>nd</sup> Defendant. That since the General did not participate in the Recertification and Regularization, it is very clear that he no longer had any subsisting interest in the Res as at 2005b when he was still healthy. He urged the Court to so hold.

That Claim that the General did not write the Exhibit 10 as he could not have signed same or written same

has no impact. That Plaintiff's could not rebut the evidence and as such the said Exhibit 10 is credible and genuine though it is a Certify True Copy. He relied on the cases of:

**NSCDC VS. OKO (2020) 10 NWLR (PT.1732) 288  
PARA D-G**

**MTN (NIG) LTD VS. CORPORATE  
COMMUNICATION INVESTMENT LTD (2019) 9  
NWLR (PT.1678) 427 @451**

That Exhibit 13 is a CTC because the General could not lay hand on the Original Certificate of Occupancy as at the time of the interest was divested to the 2<sup>nd</sup> Defendant. That Court has duty to take Exhibit 10 as genuine and duly executed by the General in 1999. He urged Court to resolve issue No.1 in the interest of the 1<sup>st</sup> Defendant.

ON ISSUE NO.2 whether General Malu interest on the Res is still subsisting, the 1<sup>st</sup> Defendant Counsel submitted the General cannot have subsisting interest on the Res since he has divested himself of the interest in the said Res. That since the Deed of Assignment was registered by 1<sup>st</sup> Defendant and the General have transferred the interest to the 2<sup>nd</sup> Defendant he had seize to have any interest in the Res going by Exhibit 16 which was issued by the 1<sup>st</sup> Defendant. He urged Court to so hold and resolve Issue No. 2 in favour of the 1<sup>st</sup> Defendant.

ON ISSUE NO.3 on Evidence led not pleaded in the Writ and Statement of Claim but relied upon, the 1<sup>st</sup> Defendant Counsel submitted that Plaintiff failed to establish their entitle to the reliefs sought. That they should have conducted a search on the status of the Res before coming to Court to seek the relief sought. That testimony of PW2 was not pleaded. He urged Court to so hold. He relied on the following cases:

**C.N.OKPALA & SONS LTD VS. NIG BREWERIES PLC (2018) 9 NWLR (PT. 1623) 16@ 27 PARA-A**

That since the Plaintiff failed to establish his claim with credible evidence they are not entitled to the Reliefs sought as there is no reasonable cause of action. He urged Court to dismiss the whole case of Plaintiff in its entirety.

The 2<sup>nd</sup> Defendant called 2 witnesses- Etukwu Onah Esq and Mohammed Bako Nasir who tendered Exhibit 14-16 Etukwu Onah is a subpoenaed witness he testified as 2<sup>nd</sup> DW1. He tendered Exhibit 12. That he was instructed to prepare Exhibit 12. He stated that though he authored Exhibit 12 he was not there when it was executed or between General Malu and the 2<sup>nd</sup> Defendant.

That the General sold the land to 2<sup>nd</sup> Defendant Ibrahim Abdullahi after he had instructed the 2<sup>nd</sup> DW1 Engr. Mohammed Bako Nasir to locate and identify the land monitored the development of the building on the land and handed over the said

property to the late General who later sold the property twin duplex to Ibrahim Abdullahi before the death of the General on 9/10/17. That he handed over all the necessary documents of title to Ibrahim Abdullahi and Deed of Assignment dated 16/6/99 was duly executed. That 2<sup>nd</sup> Defendant Ibrahim Abdullahi applied for the recertification in his name.

In their Written Address the 2<sup>nd</sup> Defendant raised 2 issues for determination which are:

1. "Whether or not the Administrators of Late General Malu can lay claims to the Plot 1683 which is the Res in this case which during his life time he has divested his interest over the Res to the 2<sup>nd</sup> Defendant via a duly executed Deed of Assignment between the said Late General Malu and Ibrahim Abdullahi, the 2<sup>nd</sup> Defendant".
2. "Whether or not the DW2 whose Evidence is at variance with the Claimants Pleadings can be relied upon by this Court".

The 2<sup>nd</sup> Defendant Counsel submitted that the Estate of the Late General Malu cannot lay claim to the Res because the Late General had on the 16/6/99 divested his interest in the Res to the 2<sup>nd</sup> Defendant by virtue of Exhibit 10 & Exhibit 12 long before he suffered a stroke and later died on 9/10/17. That by the Deed of Assignment he transferred his interest in the Res to the 2<sup>nd</sup> Defendant and which was registered by the 1<sup>st</sup> Defendant. That Plaintiff did not

impeach the testimony of 1DW1 during cross-examination and as such is credible. That Plaintiff did not contradict the evidence of 2DW2 and the document tendered as Exhibit 10-17. So those evidence are deemed to be true.

That Plaintiff merely denied that the Late General signed the Deed without presenting enough evidence to prove that the signature is not his cannot stand and therefore should not make the document to be inadmissible. That the Plaintiff are only speculative about the signature of the said General Malu on Exhibit 12. That 1DW1 said that the signature on Exhibit 12 is same with the signature of the General.

#### NOTE 1

It is imperative to state that the 1DW1 DID NOT present any other document (in file on record) to confirm what he claims. The only document he presented was the said he Exhibited in the course of proceeding.

#### NOTE 2

It is also imperative to point out that the 2<sup>nd</sup> Defendant stated in paragraph 4.13 line 5-8 of their Final Address that:

“DW2 testified that they have the list of document sold and not sold that list was never tendered by the evidence produced before this Court by both 1<sup>st</sup> & 2<sup>nd</sup> Defendant...”

The above clearly shows how contradictory the evidence of the 2<sup>nd</sup> Defendant is.

The learned Counsel for the 2<sup>nd</sup> Defendant he further stated that the Claimant has no right over Exhibit 12 based on the Deed of Assignment executed by the General on 16/6/99.

That the said Res no longer belonged to the Claimants as the interest is on the 2<sup>nd</sup> Defendant who applied for recertification and a new Right of Occupancy was issued in his name by the 1<sup>st</sup> Defendant. He urged Court to resolve the issue No.1 in 2<sup>nd</sup> Defendant favour.

ON ISSUE NO.2 on whether evidence of PW2 can be relied on. He submitted that the said evidence is at variance with the Plaintiff's claim and therefore cannot be relied on and it goes to no issue. He relied on the Supreme Court case of:

**OKIUGBEDI EDJEKPO & ORS VS. IBOYI ITHIBRI & ORS (2007) 8 NWLR (PT.1037) 635**

He urged the Court to resolve all the issues raised in favour of the 2<sup>nd</sup> Defendant and therefore dismiss the claims of the Plaintiff as it is frivolous and lacks merit and to hold that Plaintiffs are not entitled to the Res. Upon the receipt of the Plaintiff's final Address the 1<sup>st</sup> Defendant Counsel filed a Reply on points of law. The 2<sup>nd</sup> Defendant adopted same.

In the Reply the 1<sup>st</sup> Defendant submitted as follows:  
issues raised in paragraph 5.0-5.13, 6.0-6.31-6.35

That the facts the General is the Original allottee is not in issue and argument of Plaintiff in that regard is misconceived. That Plaintiff disputing the Generals signature made an impression of the crime against the Defendant on allegation of forgery. That Plaintiff did not prove same beyond reasonable doubt. He referred to the case of:

**ADELAJA VS. ALADE (1999) 6 NWLR (PT.608) 544  
PARA G-A**

On the Plaintiff claim that Defendant failed to prove that General Malu divested himself of the interest in the Res and the failure of Defendant to prove the genuine of Exhibit 10 & 12, he submitted that the onus is on Plaintiff and not on the Defendant. He relied on the case of:

**FAMUROTI VS. AGBEKE (1991) 6 SC 1@11**

On the 2<sup>nd</sup> DW1 not have met the General and who also claimed he purportedly prepared the Deed-Exhibit 10 the 2<sup>nd</sup> Defendant submitted that a Deed unlike a contract is binding upon execution by the maker. That the Deed is not invalid because of the absence of franking by 2DW2.

On the allegation/ submission that M.B.Nasir is not since as Mohammed Bako Nasir-2DW2 who assented to Exhibit 12 as per their address and occupation of

the 2 personalities, he submitted that nothing stops a person to abbreviate his name. that M.B.Nasir is same as Mohammed Bako Nasir. He urged Court to so hold.

On the Claim that that Exhibit 10 was executed before the Deed of Assignment and executed in respect Plot 1683 at Asokoro Ext. and that the Deed of Assignment was made in favour of Ibrahim Mohammed and not Ibrahim Abdullahi. He submitted that the identity of the Res is not in dispute going by the document tendered as Exhibit.

On assignment of the land to Ibrahim Mohammed and not Ibrahim Abdullahi-Exhibit 12, he submitted that Plaintiff did not place any evidence before Court to show that Ibrahim Abdullahi is different from Ibrahim Mohammed. He urged Court to discontinuance the submission of the Plaintiff in that regard.

On the letter of consent been made by the General before the date of the Deed of Assignment, he submitted that a Deed takes effect from the date of Delivery and not on the date it was executed. That it is the law that the holder of property seeks the Consent of the Hon. Minister and not the assignor. He urged Court to discountenance the argument/submission of Plaintiff on the different date.

On the Defendant's not complying with the procedure on issuance of the CTC of the Certificate of Occupancy he submitted that it is the Plaintiff that should raise the evidence in rebuttal as they contest the validity of the document. That Plaintiff failed to adduce evidence on part of S.54 Registration of titles Act.

That was violated by the Defendants. That Plaintiff failed to prove the defect in the application for the CTC purportedly filed by the Late General. He urged the Court to hold that Plaintiff failure to do so makes the document regular. He referred to S.168 Evidence Act 2011 as amended.

On failure of the 2<sup>nd</sup> Defendant not appearing in Court and the DW2 not hearing from him, the 1<sup>st</sup> Defendant Counsel submitted that the 2<sup>nd</sup> Defendant need not appear before the Court if he is ably represented in the Suit and the Writ if such witnesses can sustain and prove his case.

On the deposition of the oath of PW1 as part of pleadings he submitted that Plaintiff is held to the case put forward in pleading. He urged Court to hold that the testimony/evidence of PW1 is at variance with the pleading. He relied on the following cases in the reply.

**OLUBODE VS. OYESINA (1977) 5 SC 79**

**ADELAJA VS ALADE (1999) 6 NWLR (PT.608) 544**

**ILORI VS. ISHOLA (2018) 7SC 97 PARA A-C**

**OLALE VS. EKELENDU (1989) 7 SCNJ (PT.2)  
62@102**

**JEGEDE VS. CITICON NIG. LTD (2001) 4 NWLR  
(PT.702) 112 @ 139.**

**S.168 (1) EVIDENCE ACT**

**OKOYE VS. DUMEBI (2014) LPELR-24155 CA  
PG.117**

**ACB VS. A-G NORTHERN NIG.**

**(1967) NMLR 231@233**

**BAMGBOYE & ORS Vs. OLAREWAJU**

He urged the Court to dismiss Plaintiff's Claim and confirm the title of the 2<sup>nd</sup> Defendant in the Res.

### **COURT**

In civil cases, the Plaintiff is required to prove or establish his case on balance of probabilities. That Balance of probability is reflected as balance of truth. When facts/evidence are weighted in the ever imaginary scale of justice, it reflects balance of truth. Once that happens the balance of truth then becomes Balance of Justice.

It is common knowledge that cases are won on preponderance of evidence as civil matters. Such evidence must be admissible, relevant and credible. It must also be conclusive. It must command such

credible probability in line with the circumstance of the case before the Court. When such facts are placed on the ever imaginary judicial scale which is the scale of truth and scale of justice, it will automatically repel, sieve out and expel any and all false and unwholesome, contradictory evidence tendered in the course of the proceeding. What will remain in that sacred judicial scale are pure, unadulterated credible evidence. So what goes into that scale are the value credibility, qualitative and probative essence of Evidence. Any evidence which is contradictory or disbelieved has no probative value and cannot get into the said Judicial Scale. Where such improbable evidence exists it will not go into the scale of justice. It will be dismissed because probability is the surest road to the Shrine of truth and Justice. It is only when that happens that it is said that a case has been decided on balance of Justice. See the following cases:

**ONWUKA VS. EDIOLA (1989) 1 NWLR (PT.96)182 @208/209**

**DANIEL & ORS VS. OSAKWE & 7 ORS (1989) 3 NWLR (PT.107) 101 @ 113-114**

In order to succeed any party/Claimant or Counter Claimant who asserts the truth or existence of a fact must prove it. Speculative observation cannot take the place of or substituted for proof of facts asserted. No Court relies on speculative assertive assertion and

no Judgment is based on mere speculation of facts or documents because findings made, based or predicated on speculation cannot stand the test of the day and most upon on appeal be destroyed. See the case of:

**ADEBEST TELECOM NIG. LTD VS. UNIION BANK  
(2010) 1 NWLR (PT.1175) 360-CA**

It has been held several case and had been globally judicially noted that in any tussle on ownership of land documents speak louder than the voice and memory of man. Anyone who claims ownership must present before the Court credible consistent and regular documents to back up the testimony of witnesses. Where a claim or counter claim to a parcel of Land is froth with inconsistencies in the testimony of the witness and irregularities in the documents presented, such claim or counter-claim will fail as the case may be. In land matters documents speak. Where such documents speak consistently without wavering, the Court must listen and hold that the party that had presented such document backed up with the testimony of a credible witness has won the case and has established the claim or the counter-claim as the case may be. In that case Judgment will be entered accordingly based on that merit.

In this case, the Plaintiffs claim that the Late General Samuel Victor Malu did not divest his right to the 2<sup>nd</sup> Defendant –Ibrahim Abdullahi in the Res-Plot 1683

CAD Zone A04 Asokoro District. That the Administrators still have the Original Certificate of Occupancy. The 1<sup>st</sup> & 2<sup>nd</sup> Defendants have repeatedly claimed that the Late General divested his interest in the land via a Deed of Assignment made on the 16/6/99. That as such the Res belongs to the 2<sup>nd</sup> Defendant to who they have Reissued a Certificate of Occupancy through application for Recertification. The 2<sup>nd</sup> Defendant attached the Deed of Assignment evidence of Recertification and the new Reissued and certificate of occupancy made in the name of the 2<sup>nd</sup> Defendant.

The Court had summarized the stance of all the parties for and against. The question before this Court is: Did the late General actually divest his interest in the land in that the Claimants, who are the Administrators of his Estate, have no right to lay claim on the Res and that the Res is not part of their inheritance? Or that the General never divested his interest in the land/Res and that the claim of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants are based on calculated mischief?

It is the humbly view of this Court that the Late General Victor Malu never Divested his interest in the land-Plot 1683 CAD Zone A04 Asokoro District Abuja, measuring 1602 sqm<sup>2</sup> to the 2<sup>nd</sup> Defendant Ibrahim Abdullahi or to anyone.

The above view is based on the fact that there is no evidence to show that the Certificate of occupancy

was missing at any time or any publication to that effect. The Plaintiffs still have the original Certificate of Occupancy. It is the law that before another Certificate of Occupancy is reissued on a parcel of land which has a Certificate of Occupancy, there must be clear evidence of what happened to the previous. There must be evidence of cancellation of the previous Certificate of Occupancy before another can be reissued. The Plaintiffs had presented the Original Certificate of Occupancy issued to the Late General Malu on the 7/6/95. There was no evidence that Certificate of Occupancy was lost or missing at any time. It was never cancelled.

The DW2 had informed this Court that as at when they purported Deed of Assignment was executed, that the General could not lay hands on the original Certificate of Occupancy and that he said it was missing. But if actually the document was missing there should have been a publication and request to get at least a CTC. Such request must have been in writing not verbal because issues concerning land documents are done in writing not orally or verbally. Yes, the Defendants presented a CTC of a Certificate of Occupancy but there should have been evidenced by the Defendants that such CTC was applied for. The Plaintiff claimed that the said plot were undeveloped save the skeletal presence where the 2<sup>nd</sup> Defendant packed same vehicles there on. The

Defendants through 2DW2 had claimed that there was building fully developed- twin duplex.

The 1<sup>st</sup> & 2<sup>nd</sup> Defendant never showed pictures of the buildings and never presented before this Court the Approvals obtaining from Department of Development Control of the 1<sup>st</sup> Defendant authorizing the building of the twin-duplexes. Failure to show that cast big doubt in the testimony and evidence of the Defendants in that regard. They did not tender any document to evidence the construction. This Court does not believe that there was construction in the Res as the Defendants claim. This Court believe the Plaintiffs that there was trespass by the 2<sup>nd</sup> Defendant who placed some vehicles in the Res.

The 2<sup>nd</sup> Defendant could not show concrete evidence of payment of the sum of N38, 000,000 million from Bank of the North by the 2<sup>nd</sup> Defendant or any account from which the money was paid or transferred into.

The Defendant's attached a purported letter of consent to transfer /Assign the said plot. The letter was dated 9/6/99. The letter was titled.

"Application for Assignment of my property on Plot No. 1683 at ASOKORO EXTENSION (emphasis mine)

To start with the Res in issue is Plot 1683 CAD Zone A04 ASOKORO DISTRICT and NOT Asokoro

Extension. Again in the said purported Letter/Application it was clearly stated:

“I would like you to assign my house which has been developed on Plot No. 1683.”

To start with the Defendants had claimed that there are twin Duplexes. But in the letter it was singular “my house” where it ought to have been my houses. If this document is anything to go by it means that it was a house and not 2 houses that were been assigned.

Again a look at the same opening paragraph shows that it was like the Hon. Minister that was to do the Assignment instead of the General. It stated thus:

“I would like you to assign my house”

This shows that it is not the General that assigned or was assigning. This casts doubt on the so called Deed of Assignment.

Again a further look at the letter of consent which the Defendants anchored on and made a heavy weather about shows that the so called assignment was to be in favour of.

“ Ibrahim Mohammed” and not to Ibrahim Abdullahi, the 2<sup>nd</sup> Defendant.

But that fundamental difference in name further watered down the evidence and claim of the Defendant to the Res. It is evidently clear that the 2<sup>nd</sup>

Defendant in this Suit who is laying claim to the Res via the purported Deed of Assignment is not even the person whom they claimed the Letter of consent was meant for. There is no argument or submission that can transform “Ibrahim Mohammed” to “Ibrahim Abdullahi.” So to the extent of that fundamental inconsistency this Court cannot attach any judicial weight to the Letter of Consent. Any submission on that document is dismissed. This Court therefore holds that the Late General Malu never gave or wrote any letter of consent to divest his interest in the Res-Plot 1683

Again the letter ended with thus:

“All relevant documents are attached for your kind consideration”.

This means the purported Deed of Assignment executed on the 16/6/99. It is imperative to point out that the Deed of Assignment was executed on the 16/6/99. By that it means that as at the time the letter of consent was purportedly written that the Deed had not been signed. That also means that by the dating that the Deed was signed 7 days after the letter of consent to assign the Res was written. This further casts doubt in the said letter and the so called Deed of Assignment. This Court does not believe the documents based on the inconsistencies. The Deed ought to have been executed before the letter. But from the above it was not executed before

the said letter. If there was consent to assign, it was not for 2<sup>nd</sup> Defendant, it was for Ibrahim Mohammed. It is clear that the 2<sup>nd</sup> Defendant name is Ibrahim Abdullahi and not Ibrahim Mohammed. So the consent to assign is not for the 2<sup>nd</sup> Defendant. This inconsistency further makes the letter and the claim of the Defendants worthless and of no judicial essence or value.

Throughout the length and breadth of the documents presented before this Court, there is nothing to show that Ibrahim Abdullahi, the 2<sup>nd</sup> Defendant is same as Ibrahim Mohammed.

Again a look at the document Re-certification and Reissuance of Certificate of occupancy shows that the 1<sup>st</sup> Defendant, FCT acknowledged the receipt of original Certificate of Occupancy and not the CTC of the Certificate of Occupancy which the 1<sup>st</sup> & 2<sup>nd</sup> Defendant Claimed that they were issued with. In the said Recertification Acknowledgment it stated.

“This is to acknowledge the receipt of ORIGINAL Certificate of Occupancy for Brigadier-General Sammuel .V. Malu.”

From the above it shows that the said document indicated that it received the ORIGINAL Certificate of Occupancy. Meanwhile the Defendants had stated and tendered the purported CTC of the Certificate of Occupancy which they claimed was given to the 2<sup>nd</sup> Defendant as Certified by the 1<sup>st</sup> Defendant. They

have claimed that the Original was missing hence the CTC but they never tendered any document that it was missing or that request was made for a CTC yet they had stated in the Recertification that they received the original Certificate of Occupancy. All these are very contradictory. It makes even the Recertification Acknowledge to be doubted and incredible as evidence to support the Defendants claims.

Again a look at the documents attached to the Recertification Acknowledgement shows that the Deed of Assignment attached was dated 16/12/99 where the Deed of Assignment tendered before the this Court was executed and dated 16/6/99. The contradictions in the dating further watered down the claim of the Defendants and makes document not to have any credibility. No judicial weight is attached to it. So any claim or submission made based on that document has no merit and is therefore dismissed. So this Court holds.

It is clearly shows that the original Certificate of Occupancy was issued as far back as 7/6/95. There was no evidence that it was revoked or reissued or missing or an application for CTC made by the General stating that the where about of the original copy of the Certificate of Occupancy is unknown. It is also on record before this Court that the purported CTC of the Certificate of Occupancy as tendered by the 2<sup>nd</sup> & 1<sup>st</sup> Defendants was certified on the 8/7/99.

This means that the CTC of the Certificate of Occupancy was issued long after the so called letter of consent was written.

This then means that all the relevant documents purportedly attached to the letter of consent does not include the CTC of the Certificate of Occupancy and the Deed of Assignment going by the dating.

Again the Deed of Assignment submitted for Reissue of Certificate of Occupancy and Recertification Acknowledged tendered were executed on 16/12/99; that is 5 months after the purported Deed of Assignment which the Defendants anchored heavily on. The said Acknowledgment did not even state the Old file Number of the Res. It only shows the new file number.

Again a closer look at the Certificate of Occupancy issued in the name of the 2<sup>nd</sup> Defendant dated 20/2/2009 shows that the commencement date for the said Certificate of Occupancy is 16/12/91. This means that the said Certificate of Occupancy pre-dates even the date and life of the Original Certificate of Occupancy from which the Re-issued Certificate of Occupancy took life or emanated from. That commencement date on the Re-issued Certificate of Occupancy is fundamental anomaly and an error which cast doubt on the said document. The original Certificate of Occupancy was issued on 7/6/95 and was to commence from 1994. The present Certificate

of Occupancy commencing from 16/12/91 is abnormal. This Court holds that the document lacks credibility and it therefore has no judicial value and has no judicial weight attached to it. So this Court so holds.

It is also imperative to state that the oral testimony of the 1<sup>st</sup> & 2<sup>nd</sup> Defendant witnesses were froth with inconsistencies and contradictions.

On the part of the 2DW1 Etukwu Onah Esq, he testified that the 2<sup>nd</sup> Defendant instructed him to prepare a Deed of Assignment. That he did and handed the 2<sup>nd</sup> Defendant a Draft of the Deed. That 2<sup>nd</sup> Defendant only came back to him after a very long time. That he said that the reason for the long delay was because the Original of the Certificate of Occupancy could not be found and that (the 2<sup>nd</sup> Defendant was in the process of applying for CTC. The 2DW1 never heard from the 2<sup>nd</sup> Defendant on the document since then, until a few days before he was subpoenaed to testify in this case.

When the 2DW1 was shown the purported Deed of Assignment he said that he was instructed to prepare a Deed but that the Deed was executed. Deed shown to him was not what he prepared because he only prepared a Draft Deed not an executed Deed. He confirmed that he doesn't know the Assignor of the Deed- General Malu. That he was instructed to draft a Deed on the instruction of the 2<sup>nd</sup> Defendant who is

the Assignee. That he never meet the assignor and never saw the executed Deed before he was sent a soft copy by the 1DC-Agbohese Esq.

Under cross examination he confirmed that he prepared a draft deed and handed it over to the 2<sup>nd</sup> Defendant. That he never saw the executed hard copy until in Court that day and never saw the 2<sup>nd</sup> Defendant until that day in Court. That it was only CTC of the document that is shown to him in Court. "That the only prepared document based on instruction of the 2<sup>nd</sup> Defendant. He confirmed that what he was shown in Court was a photocopy not the Original. That he prepared a document devoid of all the stamps and markings of CTC.

The 2DW1 stating that it was the 2<sup>nd</sup> Defendant that instructed him to prepare the Deed means and implies that the General never had a hand in the instruction to prepare the Deed. It means that the said Deed prepared based on the instruction of the 2<sup>nd</sup> Defendant was not regular. It is the General who should have instructed the Lawyer or person of his choice to prepare the Deed and not for the 2<sup>nd</sup> Defendant to do so.

The 2DW1 had stated that he never met and was never instructed by the General to prepare or draft the Deed. Again he had stated under cross examination that he prepared the Draft and was not notified when the Deed was executed. That the only time he saw the Deed was a CTC shown to him

during Trial of the case save the soft copy sent to him by Counsel for the 1<sup>st</sup> Defendant. He said in examination in chief:-

“All I know is that I prepared the document based on the instruction of the 2<sup>nd</sup> Defendant.

The 2DW1 also said that:

“The 2<sup>nd</sup> Defendant gave me instruction based on sale of land between him and the General”

The above confirms that the Deed the 2DW1 prepared was based on sale of land and not house as the 1<sup>st</sup> & 2<sup>nd</sup> Defendants claimed. Again the 2<sup>nd</sup> Defendant never took back the draft to him. He said that the delay was based on unavailability of Certificate of Occupancy and that he was in the process of applying for the CTC of the Certificate of Occupancy. That after that he never saw or heard from the Defendant or anything about the Deed.

The 2DW2 testimony before this Court was equally froth with contradictions and inconsistencies.

To start with the 2DW2 claimed that he built 2 houses-Duplexes in the land -Res. But the 2DW1 said that his instruction was on the sale of Land.

The 2DW2 stated that he witnessed the Deed and that he was still in the employer of the 1<sup>st</sup> Defendant in the Engineering Department yet he witnessed the Deed as a Businessman .

He had told the Court in his testimony in chief and in paragraph 15 of his statement on oath that General Malu instructed him to apply for CTC of the Certificate of Occupancy. But under the fiery furnace of the cross examination he told this Court he could not remember whether he or Malu applied for the CTC of the Certificate of Occupancy herein.

Question: "In paragraph 15 of your Oath you said that General Malu instructed you to apply for CTC of the Certificate of Occupancy?"

Answer: "To be honest I cannot remember whether I am the one that applied for the CTC or General Malu applied for it."

When he was asked.

Question: "Where is Ibrahim Abdullahi?"

Answer: "I do not know where he is. But I know he is a District Head in Matazu in Katsina State. I learnt he is living in Kaduna. But I do not know his House".

He further told the Court under cross examination that:

"I last saw him about 3-4 years ago. I was told he lives in Kaduna."

The above shows clearly that the averment of the 2DW2 in his Oath should not be believed. Meanwhile he is in Court to stand as it were for the same 2<sup>nd</sup> Defendant whom he said he knew and on whose side

he has testified in this Court. His testimony in that regard has no credibility. He is not a witness of truth.

He had told Court that he was aware of the recertification as applied by the 2<sup>nd</sup> Defendant. They had claimed and attached the document –new Certificate of occupancy. He had stated that he was aware of the application for Recertification and the Recertification and Issuance of the new Certificate of Occupancy in the name of the 2<sup>nd</sup> Defendant. But under Cross-examination he stated thus (see paragraph 22-24 of 2DW2 Oath)

Question: In paragraph 22-24 you talked about recertification process of the Res.

Answer: I do not know anything about Recertification. It was not me that did the Recertification Application.

The above further shows that the 2<sup>nd</sup> Defendant is not a witness of truth. Meanwhile the person who witnessed the purported executed Deed signed as M.B. Nasir. Meanwhile, the name of the 2DW2 is Mohammed Bako Nasir. He could not present before this Court any document where he had signed as M.B.Nasir. He could not also convince this Court that M.B.Nasir is same as Mohammed Bako Nasir. After all M.B.Nasir can as well be Musa Baba Nasir or Mahmud Bashir Nasir.

From all indication the 2DW2 is not a witness of truth. This Court does not believe him. The totality of the testimony of the 2<sup>nd</sup> Defendant witness are not credible and this Court does not attach any weight to it judicially. The Court does not equally attach any weight on the documents they presented before this Court-Exhibit 12-16.

It is the Law that any party who asserts must prove. Again to win a case and have judgment entered in ones favour the party must establish his case with very credible evidence in form of testimonies of the witnesses and the documents presented to support the case. The Plaintiff must discharge that onus before it can shift to the Defendant. Failure to do so may lead to the Court holding that the Plaintiff has not established its case and is not entitled to its Claims.

In this case this Court holds that going by the totality of the testimony of the PW 1&2 and the documents that they tendered, that the Plaintiff had established their case in that Late General Samuel Victor Malu did NOT DIVEST his interest in the Res. That he never signed or executed the purported Deed of Assignment and he never wrote any Letter of Consent to divest his interest and right over the Res as the 1 & 2 Defendants are deceptively saying in this case.

The Plaintiff's tendered the original Certificate of Occupancy issued to the late General on 7/6/95.

There was no evidence that the document was lost or got missing at any time.

There was no Letter/Application for issuance of CTC of the Certificate of Occupancy. The Defendant could not present any letter or Newspaper publication to that effect. The 1 & 2 Defendant accented that there was a Deed, a CTC of the Certificate of Occupancy a letter of consent and that all these showed that the Plaintiff have no right over the Res, but they could not prove that. The plaintiffs were able to present the original Certificate of Occupancy to show that the said document was among the property bequeathed to them by the late General Malu. The plaintiff presented before this Court the Letters of Administration (without Will) Issued to them by the Probate Registry of the FCT High Court. They also presented a supplementary inventory of the Letter of Administration granted to them in which the Res Plot 1683 Asokoro District was listed. In addition they had attached the letter heralding the said Certificate of Occupancy. They gave the Defendants notice to produce the Letter/Application showing that the original Certificate of Occupancy was missing or misplaced. They equally gave Defendants notice to produce any Newspaper publication to that effect. The 1<sup>st</sup> & 2<sup>nd</sup> Defendants were not able to do so. The Plaintiff ably rebutted, controverted and challenged the purported Deed of Assignment and proved that there was no justification for the Deed because it was

not executed by the Late General Malu. The PW2 had stated that her husband was meticulous and kept documents properly in that he separates the documents of property he had sold and kept photocopies of same in a separate place from those he had not sold. This Court believes her.

The Plaintiff have also established that there are no buildings in the Res as the Res was not developed. The Defendants in contradictory and inconsistent testimonies of their witness could not present before this Court the building plan approval or even the approved plan or application to show that there was actually building approved and constructed at the Res. The Defendants failed to discharge that onus when the plaintiffs shifted it to them. The Plaintiff showed that the General had always been in possession of the original Certificate of Occupancy and never divested same to 2<sup>nd</sup> Defendant or anyone. Hence the plaintiffs proved that they are the rightful owners of the said Res. So this Court hold.

The Defendant that claimed that there were buildings could not show the pictures or any evidence of material purchased or fee paid for the construction of the building or even any building plan or Bill of quantities. The 1<sup>st</sup> Defendant could not present the approval they gave for the construction of the twin duplex.

The Plaintiff presented a document which was written by an impersonator/imposter who presented himself as the late General to show how some people had gone ahead to take undue advantage of the General's fatherly nature and kindheartedness to prove the kind of mischief that people can do and had actually done.

The Plaintiff were able to show and establish that the 1<sup>st</sup> Defendant were more interested in the Res and has fueled the trespass by 2<sup>nd</sup> Defendant. This Court believed them. The Plaintiff had tendered letters and reminders which they wrote to AGIS, a foremost agency of the 1<sup>st</sup> Defendant requesting to conduct search on the Res. The 1<sup>st</sup> Defendant did not respond to the said letter. Even when the Plaintiff paid the statutory fees for Legal search the 1<sup>st</sup> Defendant refused to allow them to conduct the search yet they retained the fees paid for the search.

The refusal to allow plaintiff to conduct the legal search confirms that the action of the 1<sup>st</sup> Defendant had actually fuelled the act of trespass by the 2<sup>nd</sup> Defendant. So this Court hold. Again a look at the 1<sup>st</sup> Defendant's Reply to the Final Address shows that it spent the several pages to defend the action/trespass orchestrated by the 2<sup>nd</sup> Defendant. One wonders why the 1<sup>st</sup> Defendant was crying more than the bereaved as if it has a vested interest in the Res. The 1<sup>st</sup> Defendant has no right to deny the Plaintiff access to search the file of the Res.

The PW1 Brenda Malu-Staudt was able to establish that the original documents of title of the Res was retrieved from her late father's safe. That all properties gifted by his Dad were kept in one file. That the photocopies in one file while the ones not sold or gifted were kept in a different file in the safe. That it was after they opened the safe that they discovered several other documents of properties which were not included in the original inventory of property which were later covered by the supplementary inventory to the letter of Administration.

The Res was among the 6 documents of Title for different properties belonging to the late General captured in the supplementary inventory. The Res was not an isolated case. She was able to show that the Res was not divested but bequeathed to the Plaintiffs.

The PW2 was able to show that the signature of the Late General changed after he suffered stroke. He tendered documents signed by the General, the International Passport of the General and the letter which was forged by an Army officer. There was also the letter written authorizing the MTN to allow his daughter – Brenda to activate his number. All these documents concretized the testimony of the PW1 & PW2.

In their examination in Chief and Cross-examination the PW1 & PW2 were able to show they establish that the General was incapacitated and could not write with his right hand and could only write unintelligibly with his left hand. They showed that he had a different signature going by the signature in those documents. There was even the Affidavit made by the said General at the FCT High Court to confirm that his signature changed.

The submission of the Defendants that the Letters written to the military and testimony of PW2 should be discarded is deceptively erroneous. To start with the letter is not a public document per se because it was addressed to someone. Again the Oath and testimony of PW2 are in tandem with the Plaintiffs' claim because they all show and further confirms that the said land, the Res, in this case was never divested by the General. It shows that she was aware of the existence of the Res and knows the habits and behavioral tendencies of the late General who was her husband for 41 years. She is in the best position to testify in this suit. She stated that her late husband had the habit of neat and accurate handling of documents.

To start with a man of that caliber who is well lettered and rose to the rank of Lt. General in the Nigeria Army could not have been so careless to misplace documents like Certificate of Occupancy of his landed property in a choice District in the FCT.

Again if actually the property was developed as the Defendants claimed, there would have been evidence of receipts for payment of the purchase made and money paid and expenses incurred during the course of the construction of the Building. Most importantly he would have paid the 2DW2 for the construction or for the supervision for the construction of the 2 duplexes. This Court finds it difficult to believe that the General did not “dash” or gift any money to the 2DW2 for all his work. There is no how the 2DW2 would have done the construction of the buildings “pro bono”.

The whole process for attaching the International Passport was to show that the signature of the General changed over time because of the stroke he suffered. The Plaintiff Counsel had stated that it was his mistake to have failed to frontload the right passport which should expiration date as 2021 having been issued after the one tendered bearing the date of 2016.

It is trite that mistake of Counsel should not be unleashed on the Plaintiff. The document is relevant as it shows that the signature in both the one tendered and the one which ought to be tendered shows that the signature of the General changed overtime.

The testimony of the PW2 confirms that people tried to take and actually took undue advantage of the

General. This is because the Letter- Exhibit 7 was purportedly signed by the General on 4/11/14 could not have been signed by him because long before then since 2008 until his death in 2017 the General could not sign his regular signature as shown in the International Passport, the Affidavit , letter to MTN, medical report Exhibit 7-10. These document are very relevant and had aided this Court to determine the issues in this dispute which is whether the Late general Samuel Victor Leo Malu actually divested his interest in the Res the subject matter in this case.

During cross-examination the PW2 stated when she was asked:

Question: “Tell Court why you were in Court.

Answer: I am here to let Court know about the Res. There are documents that my husband keep which were not sold. There are others kept in a different place which were sold. The Plot 1683 was among the ones NOT SOLD. After his burial we went to Asokoro to find out about the land we discovered that there were some people in the Res. We went to find out because we have the original document as we were very sure that he did not sell the land.”

The PW2 concluded in cross examination by 2<sup>nd</sup> Defendant Counsel thus:

Question: “so it is correct to say Plot 1683 CAD A04 Asokoro was included in the supplementary

Inventory from Probate Division of the FCT High Court after you STUMBLED on the old Certificate of Occupancy in respect of Plot 1683?”

Answer: “No we did NOT just stumble on the document the Original Certificate of Occupancy. The document is kept in one place there among other document.”

Under Re-examination on the structure found in the Res she said when asked:

Question: “You said under cross examination the Res is bare land and you saw a structure and a security man who was staying there at the Res. What kind structure is there?”

Answer: Like I said before initially I saw kiosk and later when we went there again we saw containers.”

The above seals the deal for the Plaintiff. It showed that the land in issue was never divested by General Malu. It also rebutted the claim of the 1 & 2 Defendants that there were completed structures in the Res.

Based on the credible evidence of PW1 & 2 this Court holds that the Plaintiffs were able to establish that the Late General Malu never divested his ownership or interest in the Res. Again there was no evidence laid to show that any complaint was made or notification given or publication made indicating that the Original Certificate of Occupancy of the Res was

missing at any time. There is no reason for seeking for a CTC of the said Certificate of Occupancy. There was even no application for payment for the CTC. So any purported Certificate of Occupancy cannot stand. That's why this Court rejects the CTC and the purported Deed of Assignment tendered by the Defendant. There was no cause for that. Again the so called re-issued Certificate of Occupancy is not credible since the original Certificate of Occupancy was never missing. Beside, the purported reissued Certificate of Occupancy was even to commence from 16/12/91 several years before the Original Certificate of Occupancy was issued.

This Court holds that there is merit in the case of the Plaintiff and this Court hereby grants their claim as sought.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_\_ day of \_\_\_\_\_ 2021 by me.**

---

**K.N. OGBONNAYA  
HON. JUDGE**