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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 8TH DAY OF OCTOBER, 2021

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

JUDGE

SUIT NO.: FCT/HC/CV/1299/18

BETWEEN:

STEVE ADIO OLUYOMBO -------- } PLAINTIFF

AND

UNKNOWN PERSON (SEIDU SULEIMAN) -------- } DEFENDANT

JUDGMENT

On the 31st day of March, 2018 Steve Adio Oluyombo instituted this case against Unknown Person. On the 20th of February, 2019 based on an application, the Unknown Person turned out to be and actually became Seidu Suleiman as per Order of this Court made on the 20th day of February, 2019.

In the Writ the Claimant sought for the following Reliefs:

(1) A Declaration that he is the rightful Allottee of the land known as Plot 723A measuring 600sqm and situate at CAD Zone 07 – 05

Kubwa Extension II (Relocation) vide allocation letter dated 13th March, 2005. (The said Plot 723A is hereafter known as the Res).

(2) A Declaration that the forceful entry, clearing and commencement of the construction on the said Res by the Defendant amounts to trespass which the said Defendant is liable.

(3) One Hundred Million Naira (₦100, 000,000.00) as Damages of trespass.

(4) One Million Naira (₦1, 000,000.00) as cost of the Suit.

(5) Order of Perpetual Injunction restraining the Defendant, his heirs, agents, workmen, privies or any person(s) acting on his behalf from further trespassing on the said Res.

Upon receipt of the Writ the Defendant filed a Statement of Defence and Counter Claim claiming the following:

(1) A Declaration that the property known and described as Plot 723A measuring 700sqm with File No. KD17211 situate at Kubwa Extension II (Relocation) Kubwa, FCT, belongs to the Defendant/Counter Claimant being the lawful and bonafide owner.

(2) A Declaration that the Defendant/Counter Claimant is entitled to continuous possession and occupation of the property known and described as Plot 723A measuring 700sqm with File No. KD17211 situate at Kubwa Extension II (Relocation) Kubwa, FCT, Abuja.

(3) An Order of Perpetual Injunction restraining the Plaintiff/Defendant to Counter Claimant, his agents, servants, privies, or howsoever called from entering the said Plot 723A Kubwa Extension II (Relocation) Kubwa, FCT, in any way interfering with the Defendant/Counter Claimant's peaceful possession of the said property.

(4) Ten Million Naira (₦10, 000,000.00) as General Damages for the untold hardship, mental trauma, humiliation and unnecessary expenses occasioned the Defendant by the Plaintiff/Counter Claimant's wrongful act.

(5) Five Hundred Thousand Naira (₦500, 000.00) as cost of the Suit.

The Plaintiff called one (1) Witness and tendered three (3) documents. The Defendant called three (3) Witnesses and tendered nine (9) documents in support of his Defence/Counter Claim.

In his case, the Plaintiff claims ownership of the Res which measure 600sqm known as Plot 723A Kubwa Extension Kubwa Relocation. That he is the rightful Allottee and Occupier of the Res. That the Res was initially allocated to one Muktari Ibrahim and re-allocated to him vide a first change of ownership dated 13th May, 2005. That the title was regularized and submitted for the re-certification with AGIS on 2nd August, 2007. That he also paid for Certificate of the Occupancy and Department Fees required of him by the Bwari Area Council. That he was in possession of the Res until January 2012 when he noticed that someone was encroaching on the land. He wrote letters to Abuja Metro Management Council for the act of trespass but that Defendant continued to trespass on the Res, hence this Suit.

He supported his claim with three (3) documents – Letter of Conveyance dated 27/5/03, Payment Receipt for Change of Ownership; Certificate of Occupancy and Letters to Abuja Metro Management Council.

On his own side the Defendant/Counter Claimant alleged and claimed and vehemently denied the Plaintiff's claims and stated that Shehu Garba, the son of Shekwogaza Garba, an indigene of the FCT, was the original Allottee of the land Plot 723A measuring 700sqm. That he enjoyed the untrammelled possession of the land through farming, planting of trees and moulding of cement blocks and bricks until the land was sold to him.

That the original Allottee was granted the land through the Conveyance of Provisional Approval dated 27/5/03. That he took steps to regularize his file and that the plot was charted and given a TDP bearing the size by the Certificate of Occupancy of FCDA at AMAC. That after the completion of all land processes, the original Allottee sold it to him the Mallam Umar Suleiman vide Deed of Assignment and Power of Attorney. That Defendant/Counter Claimant acquired the land from the said Mallam Umar Suleiman in 2017 for Three Million Naira (₦3, 000,000.00). That he had since then developed the land by construction of six (6) Bedrooms Bungalow, a Servant Quarters and a Mosque. That he is currently living in the place with his family. He attached EXH 13 – Pictures of the Houses.

That the Claimant was fully aware that he was developing the Res all these while and he never challenged or complained until the property was fully developed. He testified in person and called Jubrin Labarani and Umar Suleiman as Witnesses – DW1 & DW2. He tendered the following nine (9) documents in support:

1. Deed of Assignment & Power of Attorney made between Shehu Garba and Umar Suleiman – **EXH 4.**

2. Conveyance of Provisional Approval dated 27/5/03 issued in the name of Shehu Garba – **EXH 5.**

3. Regularization of Title of 17/2/16 – **EXH 6.**

4. Right of Occupancy with Receipts of Payments **EXH 7.**

5. Deed of Assignment & Power of Attorney made between Umar Suleiman and the Defendant – Seidu Suleiman and Evidence of Payment of Three million Naira (₦3, 000,000.00) Purchase Price – **EXH 8 & 9.**

6. Payment Receipt for the land – **EXH 10.**

7. Site Analysis – **EXH 11.**

8. Receipt for Payment of Site Analysis Report – **EXH 12.**

9. Pictures of the Bungalow developed by the Defendant/Counter Claimant – **EXH 13.**

In his Final Address the Plaintiff raised two (2) Issues for determination which are:

(1) Whether he has led sufficient evidence credible enough to entitle him to the Judgment in the absence of any valid Statement of Defence?

(2) Whether the Defendant/Counter Claimant is entitled to Judgment as per his Counter Claim despite the defect in the filing?

On Issue No.1, whether Plaintiff has led credible evidence to entitle him to the Judgment of this Court, he submitted as follows:

That by the 4 paragraphs Statement of Oath and Claim he had established the original of the root of his title to the Res in that it was initially or originally allocated to the Muktari Ibrahim and later reallocated to him on the Change of Ownership of the title. That he tendered the said Letter of Allocation dated 27/5/03 and the Letter of Re-allocation to him dated 13/3/05. He also attached the Site Plan. That he had attached the documents of title to AGIS for recertification and evidence of payment of the required fees and receipt of Recertification by AGIS and payment made via Bank PHB Deposit Slip dated 8/14/2007 and 2/8/2006 respectively. He also attached all the receipts and evidence of payment of necessary fees for Development, Change of Ownership and Certificate of Occupancy – Receipts No. 070117 – 070119.

That he had established the act of trespass by Defendant who upon his complaint to AMAC in letter dated 20/1/12 the Defendant stopped the trespass but later continued trespass in 2017. That upon another letter to AMAC on 22/1/16 the Defendant stopped trespass but resumed later trespass. He wrote again to Development Control in a letter of 1/12/17. That contrary to the allegation by Defendant that he did not complain of trespass, that the above letters shows that he made several written complaints to Development Control before he came to Court in 2018.

He submitted that the Defendant did not controvert any of these documents and evidence and the documents were all tendered and admitted in evidence. That since they were not controverted that the evidence and documents are deemed admitted. He relied and referred to the case of:

SPDC V. Esowe
(2009) All FWLR (PT. 467) 120 @ 132

That by the averment in the Motion filed by the Defendant, he was served the Writ on 9th August, 2018. That on 28th day of February, 2019 he filed Statement of Defence/Counter Claim without any Order of Court for Extension of Time to file the Defence out of time as required by law – Order 15 Rule 1(2) High Court Rules 2015. That failure to do so makes Court to lack requisite jurisdiction to attend to the Statement of Defence and Counter Claim were not initiated with a procedure permitted by law. He relied on the cases of:

A-G Lagos V. Eko Hotels Limited
(2019) All FWLR (PT. 1006) 643 @ 689

Madukolu V. Nkemdilim
(1962) 1 All NLR 587

That based on the above, the Counter Claim and the Statement of Defence by Defendant are null and void for non-compliance with the High Court Rules. He relied on the case of:

Ogar V. James

(2001) FWLR (PT. 67) 930 @ 948

That though Court has inherent jurisdiction to extend that but it should not do so suo motu but upon application by the party in default. That it is too late for the Court to exercise its discretion in favour of the Defendant as matter had been heard and reserved for Final Address. The Defendant Counsel's inadvertence binds the Defendant as the omission to file Notice foe Extension of Time to regularize is fundamental and not mere irregularity. He referred to the case of:

Oguefi V. Gov. Imo State & Ors
(1995) 9 NWLR (PT. 417) 53 @ 95

That the Statement of Defence and the Counter Claim filed by the Defendant out of time without leave is null and void. That Defendant therefore has no valid Defence to the Plaintiff's case since he failed to seek and obtain the Order for Extension of Time after the document was filed and his Statement of Defence six (6) months after service of the Writ on him. He urged Court to answer the first Issue in the Affirmative by entering Judgment in his favour.

On Issue No.2, whether Defendant is entitled to Judgment as per his Counter Claim despite the defects in its filing, the Plaintiff submitted as follows: He submitted that Defendant/Counter Claimant is not entitled to the Judgment because of the very obvious defects in filing of the said Statement of Defence and Counter Claims. That Defendant got the Writ on 9th August, 2018 but filed the said

Defence/Counter Claim on the 28th February, 2019 over six (6) months after receipt of the Originating Process. That he never sought nor obtained the required leave to file the Process. That even when the Defendant filed Memorandum of Appearance with leave of Court on 9th August, 2018 never sought leave to file the Defence/Counter Claims when he filed same on 28th day of February, 2019 out of time. He relied on the provision of Order 15 Rule 1(2) High Court Rules 2018.

That the said documents served on the Plaintiff by the Defendant is void by failure of the Defendant to obtain leave as required by Order 15 Rule 1. That this robs Court the jurisdiction to entertain the Suit more so when there is the use of the word "SHALL" in the Rules. That the Defence and Counter Claim are not initiated by a procedure permitted by law. He referred to the case of:

Okarika V. Samuel
(2013) LPELR – 19935

That the use of the word "shall" makes it mandatory for Defendant to obtain leave to file out of time and such responsibility cannot be waived. He relied on the case of:

Oyeyipo V. State
(1987) 1 NWLR (PT. 82) 316

That the defect in the filing of Defence and Counter-Claim and so fundamental that they are void, nullity and incurably bad. He referred to the cases of:

Ezenwayi V. UNN
(2018) All FWLR (PT. 933) 909 @ 936

Obumselu V. Uwakwe
(2009) All FWLR (PT. 286) 1994

That the Defendant has breached the law by his failure to abide by the provision of Order 15 Rule 1 (2) by not obtaining leave before filing the Defence and Counter-Claim. He urged the Court to discontinuance the Defendant's Statement of Defence and Counter-Claim and also to dismiss his Defence and the said Counter-Claim. He equally referred to the case of:

Okpala V. Nigeria Brewery Limited
(2018) All WRN (PT. 928) 1 @ 18

That where Court holds that the said Defence and Counter-Claim are not void and/or not a nullity, that Court should hold that Defendant failed to prove his Counter-Claim and his entitlement to the land in dispute.

That the Defendant had stated that he is the owner of the land and that the land measures 700sqm for the No. 47211.

That the Res in issue is 600sqm. Again that Defendant claims that he obtained Title from Umar Suleiman and he tendered documents EXH 4, 8, 9 and he also tendered Executed Power of Attorney and Deed of Assignment but none of those documents were registered as required by the FCT Land

Administration Act. He relied and referred to the case of:

Ogunameh V. Adebayo
(2009) All FWLR (PT. 467) 189 @ 200

That the Defendant going by the said documents (Exhibits) is under obligation to register the documents. That his failure to do so is fatal to his Defence and Counter-Claim. He referred to S. 15 Land Instrument Registration Act CAP 515. He also referred to S. 15 3(1) & 15 (2). He urged Court to expunge the documents already admitted in evidence from its record.

That the testimony of the Defendant who testified as DW3 was filled with contradiction. That in paragraph 21 of his Statement of Defence and Oath he said that Shehu Garba assisted him to apply to Department Development Control for Building Plan Approval and Approval was given to him after he paid the requisite fee. But that under Cross-examination the Defendant testified that he went to the Development Control and met the Director and together with his Personal Assistance ___ Engineer Akabo visited the land. That contrary to the said testimony under Cross-examination in the Statement of Defence (paragraph 21) the DW1/Defendant did not tender any Building Plan and none was admitted in evidence as Exhibit. That Defendant failed to produce the said Plan or the documents pleaded in paragraphs 17 – 22 of the Counter-Claim as well as in paragraphs 21 – 23 of the

3rd Defendant's Witness – DW3 Witness Statement on Oath. That Defendant's failure to produce those documents means that Defendant had abandoned them. He referred to the case of:

Oyediran V. Alebiosu II
(1992) NWLR (PT. 249) 530

That EXH 11 (**Site Analysis**) submitted by the Defendant is worthless document as it was not signed by the person who purportedly prepared same. That the document has no evidential value and should therefore be expunged.

That EXH 13 (**Photocopy of Building**) does not show or has nothing to show that the Exhibit relates to the Res. That the Defendant did not tender the negative of the picture or memory card of the film. That it offends the provision of **S. 84 2 – 4 EA 2011 as amended** as there was certificate as required therein. He urged Court to expunge it and discontinuance the evidence. He referred to the case of:

Kabor V. Dickson & Ors
(2013) 4 NWLR (PT. 1345) 534

He urged Court to dismiss the Counter-Claim with huge cost. Defendant called three (3) Witnesses. He testified as DW3.

On his own part, the Defendant raised 2 Issues for determination in his Final Address; the Issues are as follows:

(1) **Whether the Claimant has proved his case against the Defendant to be entitled to the Reliefs sought in this Suit.**
(2) **Whether from the totality of the evidence, the Counter-Claimant has proved his case and is entitled to the Reliefs sought.**

On Issue No.1, the Defendant/Counter-Claimant submitted raising further question whether there was any document Deed of Transfer/Sale/Conveyance evidencing Sale/Relocation of land from Muktari Ibrahim to the Claimant same for the 1st Change of Ownership dated 13th March, 2005. Whether the 1st Change of Ownership dated 13th March, 2005 is valid or legal instrument of transfer of title to land relocation. Whether there is any evidence of consideration for payment and sale of land to Muktari, the original Allottee to Claimant. Whether the failure of Claimant to call Muktari and/or Nuhu his purported Agent to testify as to the purported sale/relocation of the Res to Claimant is fatal to Plaintiff's case in this circumstance. Also whether there is an iota of evidence before the Court showing that Plaintiff occupied and indeed in possession of the land or exercised any act of ownership throughout the period in issue. Whether there was any evidence before the Court that Plaintiff's customary title was actually regularized or recertified as claimed.

That if the above question is in the negative whether Plaintiff's customary Right of Occupancy – EXH 1 remains null and void in the clear contravention of

the Land Use Act FCT Act and FCT Land Use Regulation Laws of FCT Vol. 3 2007.

That Plaintiff failed to prove his claims as it affects the Defendant and is not entitled to Reliefs sought based on the following reasons.

That there is no evidence of sale/transfer/reallocation of title from the purported original Allottee Muktari Ibrahim or his agent Nuhu to the Claimant. That Plaintiff admitted that he never met the original Allottee. That he claimed he bought the land through Nuhu, the Surveyor representing Muktari Ibrahim. That he did not provide any document evidencing transfer from Nuhu to Claimant.

That the purported first Change of Ownership dated 13th March, 2005 by the Plaintiff/PW1 is not valid as it is not a valid instrument of transfer of title in land and cannot therefore take place of Deed of Conveyance transferring land to a party under our laws.

Again, that there is no evidence of payment of consideration flowing from Muktari Ibrahim for the purported reallocation/sale. That Plaintiff claimed he paid Three Hundred and Fifty Thousand Naira (₦350, 000.00) in cash for the land. He did not show any receipt or document evidencing the payment. He did not call Nuhu as a Witness to validate his contrived story. He failed to establish that the land belonged or was reallocated to him.

That there cannot be sale of land without consideration. That there cannot be reallocation or sale of land without payment of purchase price.

Also that Plaintiff failed to establish that he was in possession of the Res before the trespass by the Defendant. That he stated under Cross-examination that he had not done anything on the Res before the alleged trespass. He referred and relied on the case of:

Gbadamosi V. Tolani
(2010) LPELR – 3733 (CA)

The Defendant further submitted that Plaintiff's title is defective having not been recertified to bring it within the confine of Land Use Act and FCT Regulations Law against the backdrop that there is no customary Land Tenure System in FCT.

That the Customary Right of Occupancy was issued by Bwari Area Council Zonal Manager Rural Land Use Adjudication Committee and the approval was signed by Ishaq Salihu Secretary Rural Land Adjudication Committee.

That Plaintiff only tendered the evidence of payment receipt (EXH 3) but failed to tender the purported Regularization to title he claimed was dated 8th April, 2007.

He did not call any Witness from AGIS to testify and give credence that Regularization was actually carried out. That it all shows that Plaintiff never regularized his title document to the Res. That failure to do so

leave/cast doubt on the Plaintiff's claim to the title of the Res. He urged Court to so hold. He referred to the provisions of:

S. 46 (2) Land Use Act 1978
S. 18 FCT Act 2004 and the case of:

Osadebe & Anor V. Ntosi & Ors
(2013) LPELR – 20307 (CA)

He finally submitted that Plaintiff failed to prove his title to the Res and he is therefore not entitled to the Reliefs sought.

That his failure to regularize the title of the Res in line with the Land Use Regularization Laws renders his title and claims incompetent and void. He urged Court to so hold.

On Issue No. 2, whether Defendant is entitled to his Counter-Claim to be declared as owner of the Res, he submitted that he established ownership of the Res by production of documents of title. That he called three (3) Witnesses. That DW1 had identified the land as Plot 723A measuring 700sqm. That DW1 had averred and testified that the original Allottee Mr. Shehu Garba sold the land to Umar Suleiman who in turn sold the land to Seidu Suleiman following the execution of Deeds of Assignment and Power of Attorney for valuable consideration. That he, prior to the sale, he had took steps, conducted search after visiting the land, conducted search at AGIS to ensure that there was no encumbrances before he paid for the land. That the Plaintiff did not challenge these

vital paragraphs of the Oath of the DW1. That under Cross-examination DW1 established that the purchase price of Three Million Naira (₦3, 000,000.00) was paid same Fifty Thousand Naira (₦50, 000.00) which was paid in cash to Umar Suleiman.

That Umar Suleiman as DW2 also confirmed the EXH 4 as the only document – Agreement between him and Shehu Garba and that he confirmed other documents given to him by Shehu.

That the DW2 tendered the Deed of Assignment and Power of Attorney between him and the Shehu Garba. That DW2 also confirmed that Shehu Musa was moulding block in the Res before the land was sold to him. That he went to Ministry of Lands Abuja with his brother Sani Abdullahi (before purchasing the land) for confirmation of the genuineness of the land before purchasing the land.

That Plaintiff never Cross-examined the DW2 on the moulding of block by Shehu at the Res or on the issue of Search DW2 conducted with his brother Sani Abdullahi.

That the DW3 – Defendant on his own testimony showed how he became the lawful owner of the Res. That he tendered EXH 5 – 13 in support. That EXH 8 & 9 – Deed of Assignment and Power of Attorney evidenced the sale of the Res to him by Umar Suleiman for a consideration of Three Million Naira (₦3, 000,000.00). That the DW2 confirmed and

admitted collecting consideration for the land and execution EXH 8 & 9 in favour of the Defendant. That Defendant also conducted Search before paying the purchase price of Three Million Naira (₦3, 000,000.00) to Umar Suleiman. That Plaintiff did not Cross-examine the Defendant on those vital issues.

That DW3/Defendant through his testimony shows that EXH 5 is a Customary Right of Occupancy. That he led oral and document evidence to show that the defect or impediment was corrected.

That by tendering EXH 6 he shows that the title was regularized on 17th February, 2016. That he complied with the FCT Land Use Regulation Law and therefore possesses better title to land than the Claimant. He urged Court to so hold.

That the Defendant/Counter Claimant is the lawful owner of the land having acquired same for value from proper source without Notice or encumbrances. That he had gone ahead to develop same, building six (6) bedroom Bungalow, a Servant Quarter and a Mosque on the land. Again that he is currently living on the land with his family.

In response to the Claimant's Final Address the Defendant responded thus:

On Issue of the Defendant not obtaining leave to file out of time, Defendant submitted that he filed within time as it was initially the Unknown Person that was served. That he only be came the Defendant after the Court gave Order of 20th February, 2019 via Motion

M/8969/18. That he filed his Statement of Defence and Counter-Claim eight days after and adopted same on 17th February, 2020 without any objection from the Plaintiff. That he entered appearance within time.

That in this case, the Court granted leave for the Unknown Person to be served and by Court Order of 20th February, 2019 and he filed Statement of Defence on 28th February, 2019. That by so doing, his Processes were very proper before this Court. He urged the Court to so hold.

He further submitted that the Claimant's failure to raise the purported regularity promptly constitutes a waiver. Besides, that the same Plaintiff filed a Reply to the said Statement of Defence and Counter-Claim. That Plaintiff can no longer raise that issue or complain about it at Final Address. He relied on the case of:

S & D Construction Company Limited V. Ayoku & Ors
(2002) LPELR – 6074 (CA)

That even if the Defendant failed to seek leave to file out of time that the Processes should not be treated as null and void as the Plaintiff erroneously claims/argued.

That Order 56 (1) provides for payment of penalty but did not provide for penalty for entering appearance out of time. Besides, non compliance with the Rules is mere irregularity and such cannot nullify the

Proceedings. That an application to Set Aside Proceeding for irregularity must be by Summons or Motion and must be raised timeously and not at point of Final Address. He referred to Order 15 Rule 1 & 2. He urged Court to dismiss and discontinuance the argument of the Plaintiff as it was without any legality and is belated and lacking in merit.

That Plaintiff has not proven his case to be entitled to the Reliefs/Claims sought. That he cannot rely on the weakness of the case of the Defendant to earn his claims. He referred to the case of:

Anyafulu & Ors V. Meka & Ors
(2014) LPELR – 22336 (SC)

He urged Court to hold that the Defendant's Processes were not irregular.

On the Deed of Assignment and Power of Attorney – EXH 8 & 9 not being registered, he submitted that Plaintiff Counsel's argument does not follow in this regard. That the issue before this Court in this case in which the EXH 4, 8 & 9 were tendered bothers strictly on issue of Sale of Land from Original Allottee and Umar Suleiman to the Defendant and not on establishment of title as erroneously canvassed by the Plaintiff Counsel.

That it is settled law that registrable instruments which are not registered can be pleaded and admissible in evidence to prove payment of purchase price/money between parties. He referred to the cases of:

Dr. S.U. Isitor V. Mrs. Magareth Fakarode
(2007) LPELR – CA/K/8105

Obiem V. Okeke
(2006) 16 NWLR (PT. 1005) 225 @ 239 – 241

That from the foregoing, it is clear that EXH 4, 8 & 9 need not be registered to be admissible in evidence before they serve as proof of valid transaction for payment of Three Million Naira (₦3, 000,000.00) from original Allottee – Shefu Garba and Umar Suleiman to the Defendant for the purchase of the Res and not for proof of title to the Res.

The Defendant pleaded EXH 4, 8 & 9 to show that the transaction took place and that he paid the consideration and that he had interest (equitable) in the Res. That EXH 8 shows the amount paid. That to that extent the Plaintiff's submission on that is wrong. He urged Court to discontinuance and dismiss same and uphold the Exhibit and hold that the documents were pleaded and are for evidence of payment and therefore need no registration.

On the Site Analysis not signed, the Defendant submitted that the document was signed. That Plaintiff Counsel wanted to mislead the Court.

On EXH 13 (Picture of the House) not showing that it relates to the Res and that it did not comply with the provision of S. 84 EA 2011 as amended, they submitted that it is the duty of the Plaintiff Counsel to prove that EXH 13 does not relate to the land. That it is clear in law that whoever asserts must prove.

That the photos were tendered to show that the Defendant has developed the land in issue – Six (6) Bedroom Bungalow, Servant Quarters and a Mosque and that he is currently living in the Res with his family. That the Plaintiff had alluded that the Defendant had constructed a building in the Res the last time he went there.

That it is false argument that negative of a photo must be tendered as Plaintiff Counsel erroneously claimed. Again that it is not a must that photo must be related to land before it can be admitted in evidence.

But most importantly that Defendant tendered Certificate of Compliance alongside the photographs which were admitted in evidence as EXH 13. That the Plaintiff Counsel inspected the document before it was admitted in evidence.

He urged Court to retain the EXH 13 in evidence and hold that the Defendant is entitled to his Counter-Claim as he has proved his case and discontinuance the submissions of the Plaintiff in the Defence to Counter-Claim and dismiss his case in the main holding that it lacks merit and the Plaintiff failed to prove his claims.

That the Defendant proved his Counter on Balance of Probability and that he has successfully discharged his Counter-Claim. He urged Court to dismiss the Plaintiff's claims in its entirety.

COURT:

The Court had detailedly analysed and summarised the stances of the Claimant and the Defendant both of who are claiming ownership of the Res. The question before this Court is, has the Plaintiff by his testimony and documentary evidence before this Court established ownership of the Res? Or has the Defendant/Counter-Claimant been able to establish ownership of the Res through his Counter-Claim through the testimonies of DW1 – DW3.

It is the humble view of this Court that the Plaintiff – Steve Adio Oluyombo has established his case and ownership of the Res Plot 723A CAD Zone 07 – 05 Kubwa II Extension Layout. He has also established that the Defendant Seidu Suleiman is a trespasser as his action in the Res is pure trespass. The said Plaintiff is therefore entitled to his claims, the Court will determine in the cause of this Judgment.

The Defendant was not able to establish his Counter-Claim in this case. Having trespassed into the Res. The Court therefore declares that the Plaintiff – Steve Adio Oluyombo is the rightful Allottee of the said parcel of land – Plot 723A situate CAD Zone 07 – 05 Kubwa II Extension Relocation, Abuja. Measuring 600sqm^2.

The decision of this Court is based on the following reasons:

The Plaintiff, going by documents presented, was first in time, notwithstanding that the Defendant had developed and claims to be living in the Res already. That does not make him the rightful owner and Allottee.

A closer look at the document presented shows that the Plaintiff's title dated back to 27th May, 2003 from Muktari Ibrahim – Conveyance of Provisional Approval when the said Muktari Ibrahim relinquished his right to the Plaintiff. The said Plaintiff was issued with a document showing Change of Ownership made in his name – Steve Adio Oluyombo. That document was marked as EXH 1.

The Plaintiff attached a photocopy of the TDP – Right of Occupancy showing the size, full beacons of the Res. It also shows the File Number and the Plot Number of the Res – Plot 723A. That document was checked and passed by the appropriate authority. It came into being after the change of ownership as shown in EXH 1 and in the name of the Plaintiff.

A closer look at the Receipts attached and tendered by the Plaintiff show that he paid for the Development and Processing Fee in 2006. He paid for the Certificate of Occupancy later on the 30th of June, 2006. He paid for the change of ownership indicating that it was originally in the name of Muktari Ibrahim.

The Plaintiff was able to lay and trace the foundation of his title from inception and he backed it up with document. In all the Receipts, the Plot Number and

purposes for the payments were clearly marked and stated. In the document the size of the Res was clearly stated just as they were stated in the Conveyance of Provisional Approval and the Offer Letter.

Again a closer look at the Receipt for payment of Regularization shows that the Plaintiff was equally first in time. He made payment for Regularization on the 2nd August, 2006. That shows that he had already paid for Regularization before the Defendant. The evidence of receipt of payment was clearly shown in the stamp on the Receipt and Deposit Slip from AGIS. By virtue of the date of payment the Plot in issue was already in the process of Regularization before the Defendant made the purported filing for Regularization on 17th February, 2016. As at that time the Plaintiff's application was already pending before AGIS. Though the Defendant attached the purported AGIS Regularization Acknowledgment Receipt, this Court shall not and does not attach any judicial weight to the said document.

A closer look at the Receipt (Land Fees) attached by the Defendant shows that a single receipt EXH 2 was for the payment of Certificate of Occupancy, Land Form and Development Levy. All these were lumped together and were paid. On the 22nd of February, 2007 almost a year after the Plaintiff had applied for Regularization. It is not a secret that all those payments came under different subheads. This casts a big doubt in the genuineness and authenticity of

the said document – EXH 2 tendered by the Defendant.

Again the said EXH 2 was paid for by Shehu Garba who since 2nd February, 2005 had donated the Power of Attorney to Umar Suleiman to do all things pertaining to the land in his name. He Shehu had equally executed a Deed of Assignment which had divested his right to the ownership of the Res.

Another observation is that the said single Receipt tendered by the Defendant shows that the payment was for BZTP/LA/2002/KD/1885. But strangely in the original Right of Occupancy – EXH 3 TDP attached to it shows that the Right of Occupancy is for BZTP/LA/KD/1885. There was no number between LA and KD. The Number 2002 which appeared in the receipt is lacking in the Right of Occupancy TDP. That document was also checked and passed on the 6th day of May, 2011 long before after the Plaintiff's own was checked. The said TDP presented by the Defendant has no judicial weight. So this Court cannot attach any weight to it. The Defendant's submission on it to claim and establish his Counter –Claim does not stand. It is not meritorious. To that extent the Counter-Claim fails.

It is equally strange that the Defendant should attach such original document when he had claimed that he had made an application to the AGIS for Regularization. It is common knowledge that once an application for Regularization is made that all

originals are submitted to the AGIS pending the Regularization. So the Defendant, having the original document and tendering them in Court when he is still awaiting Regularization is strange. It cast doubt on the said document.

So this Court holds that the same Principle of first in time applies in this case. The TDP – Right of Occupancy tendered by the Plaintiff was first in time just like application for Regularization. The Defendant's was on 17th February, 2016 years after the Plaintiff had done so.

It is clear that Plaintiff tendered photocopies of documents. He laid proper foundation and told the Court that he had submitted the originals to AGIS awaiting Regularization. He also said that he lost some of his documents in the cause of time. The marking in the document by AGIS puts no one in doubt about the genuineness of the Plaintiff case and documents tendered.

There was letter – Offer of Term of Grant/Conveyance of Approval which heralded the approval of the Right of Occupancy issued/granted to the Plaintiff. That is not so for the Defendant. The Defendant only attached the TDP and nothing more. The Plaintiff has the statutory Right of Occupancy.

It is strange that notwithstanding that the Shehu Ibrahim had diverted his right to Umar Suleiman who equally divested his right to the Defendant, the same Shehu Ibrahim's name featured in all the document

of title. For all intent and purposes, Shehu Ibrahim relinquished his power and right over the Res since 2nd May, 2005 as the Defendant claims.

A look at the signature of Shehu Ibrahim in the AGIS Acknowledgment Receipt shows that it is fundamentally different from the signatures he signed in the Deed of Assignment and Power of Attorney executed and donated to Umar Suleiman. The Defendant never established the reason for several signatures to show that all belong to the same Shehu Garba.

In this case, the Plaintiff is claiming ownership of Plot 723A measuring about 600sqm^2. The Defendant had through the proceeding in this case as evidenced in the documents & DW Oaths before the Court, claimed that the Res is 700sqm^2 and not about 600sqm^2. But a closer look at the TDP where the size and co-ordinates of the Res are written shows that the size of the Plot is as the Plaintiff said about 600sqm^2, 594.44m^2 – approximately 600sqm^2. That is exactly the same size shown in the TDP submitted by the Defendant. So this Court finds it difficult to understand why the Defendant is claiming a Res measuring approximately 700sqm^2 when they have tendered a document showing the Res as approximately 600sqm^2.

It is the law that a party who claims ownership in land should be able to state the size of the land he

claims ownership about. The Defendant did not do so in this case.

In this case, the Plaintiff has been able to state precisely the size of the Res by both documents tendered and his oral testimony. The Defendant had not been able to do so. The Defendant's inability to do so cast doubt in the testimonies of his three (3) Witnesses who all stated that the size of the Res is 700sqm^2 and not 600sqm^2. This Court holds that the extent of that inconsistency, the Defendant has not been able to identify the size of the Res and his testimony and those of his Witnesses are not credible and has no evidential value to that extent.

It is the law that any party who tries to claim ownership of land must be able to present before the Court genuine documents of title. Again, any unregistered Registrable Instrument must be Registered if it is to be tendered in Court to prove ownership of any land in dispute. None Registration of such document makes that document to be worthless in that regard. Such Registrable documents include Deed of Assignment and Power of Attorney.

In this case, the Defendant did not register the two Deeds of Assignment and the Powers of Attorney tendered in this case. That makes the document have no weight. See the case of:

Abu V. Kuyanbana
(2002) 4 NWLR (PT. 758) 599

See also the provision of SS.2 and 3 Land Registration Act. Failure to Register those documents – Instruments makes them not be credible judicially. They are therefore REJECTED. The Court reverts their admissibility.

The Defendant failed to tender the evidence of payment of payment of the purchase prices for the Res. Shehu Ibrahim who testified as a Witness in this case could not show evidence of receipt of the ₦1.4 Million he claimed was paid to him by Umar Suleiman.

Seidu Suleiman on his own part could not show the evidence of the receipt of the said purchase price paid by the Defendant. The Defendant tendered some Receipts or Tellers. But those Tellers were all showing payment made to a company Atanya Chapter Nigeria Limited – payments made between 24th November, 2017 – 30th November, 2017. There was no Acknowledgment Receipt or document to show that the money was meant for and received by the Shehu Ibrahim. The DW1 had claimed that he was paid the said money by Seidu but no evidence to show that Atanya Chapter Nigeria Limited belongs to him or that he eventually transferred or Atanya transferred the money to the account of the Umar Suleiman. That casts big doubt in the testimony of the DW1 who also claims that Umar Suleiman is his brother. The difference in surname is worrisome in the circumstance of this case.

Since there was no evidence to show that Umar received the money from the Defendant there is therefore no evidence to show that there was consideration paid for the land. That bunch of document is not credible and it has nothing to do with the Res in this case.

An unsigned document has no evidential value. So says the Courts. This is echoed and re-echoed in the case of:

SPDC V. Olarewaju
(2002) 16 NWLR (PT. 792) 38 @ 65

The Defendant tendered EXHs 11 Site Analysis and Location Plan made in November 2017. That document was not signed by the maker. It was not dated. There was no official stamp. It was made for the same Shehu Ibrahim in November 2017, the same Shehu Ibrahim who had since 2nd February, 2005 divested and relinquished his right to ownership of the Res to Umar Suleiman who in turn had relinquished and divested his right in the Res to the Defendant since the 1st day of December, 2017 via the Deed of Assignment and Power of Attorney tendered in this case.

It is strange that a man who had executed Deed of Assignment and donated Power of Attorney should still be parading around the parcel of land so donated after 12 years.

It is equally very strange that Umar Suleiman who took over ownership from the Shehu Ibrahim and who

had equally donated Power of Attorney to Defendant and divested his interest in the Res is nowhere to be found in the stream of journey of the land in issue. Meanwhile, he purportedly donated the land to the Defendant on the 1st December, 2017. Meanwhile, the Site Plan Analysis was done on November 2017 before the Power was donated and the Deed executed.

Those documents have no worth and the testimonies of the Defendant in that regard lacks credibility. So this Court holds. To that extent, the Counter-Claim cannot stand as it is not established.

Application for Regularization was filed by the same Shehu on the 17th February, 2016 when Umar Suleiman had since 2nd February, 2005 being in charge of the Res by virtue of the Deed and Power of Attorney. From all indication, the Defendant's storyline in this case does not add up. It is froth with inconsistencies and irregularities. So this Court holds.

Even EXH Receipt from FCT dated 7th December, 2017 shows that it was the same Shehu that paid the money for processing fee thereon. Meanwhile, the payment was made six (6) days after the Defendant had became the Attorney of Umar Suleiman and after the Deed of Assignment was executed between the Defendant and Umar Suleiman.

The Receipt attached and tendered by the Defendant to show and support the Site Analysis story shows that it was paid by the TPL Kolawole RTP 2912

payment for SAR TOREC Stamp Code 122676. This document has no co-relation with the Res. It was issued by Instute of Town Planners Abuja Chapter. The only relationship to the Res is that it has the Plot Number of the Res on it. Most importantly, the document it is purportedly referred to was not signed by the maker of the document. Even the payment made to AMAC on 6th December, 2017 and Receipt of 7th December, 2017 were all related to Shehu Ibrahim.

Strangely the Deeds of Assignment of 2005 from Shehu and the Power of Attorney as well as the Deed and Power of Attorney by Umar were not dated. The only resemblance of date are seen at the signature pages of the documents. Meanwhile, the respective signature pages had stated thus:

> **"In witness whereof the Assignor and Assignee/Donor and Donee hereupon set their heads and seal the day and year first above written."**

To the extent of that fundamental Anomalies in both the Deed and the Power of Attorney, those documents were not dated. Nobody knows when the Deed was executed and Power of Attorney donated. To that extent, the documents are worthless.

Again it is strange that in the Deed of Assignment and the Power of Attorney that it was the signature of the Assignee that came first in the signature page of the Deed. So also in the Power of Attorney donated by

Umar Suleiman to the Defendant – Seidu Suleiman. The same "ever-present" or should I say "Omni-present" Jibrin Labaran who witnessed for Shehu Garba in 2005 in both Deed and Power of Attorney in 2005 also witnessed for the Defendant – Seidu Suleiman in 2017, who he claims is his younger brother. The same Labaran had told Court that the Defendant paid for the land through him. But evidence on the payment receipt shows that the Defendant made some payment to Ajanya Chapter Nigeria Limited and not to Jibrin Labaran. Based on that, DW1 – Jibrin Labaran is not a Witness of truth. His testimony cannot be trusted and relied on. So this Court holds.

Again, on the issue of outstanding balance of Fifty Thousand Naira (₦50, 000.00), he had contradicted his oral evidence with his Oath. He said that the Fifty Thousand Naira (₦50, 000.00) is still outstanding but in his oral testimony he said that the money was paid to complete the Three Million Naira (₦3, 000,000.00) purchase price. He did not show evidence that the purchase price was paid by the Defendant through him. He did not show any evidence of Search which he allegedly said he conducted at AGIS. He, like the Defendant, could not show any approved plan or evidence of application for Plan Approval issued before the Defendant commenced the construction of the purported house at the Res.

On the part of the DW2 – Umar Suleiman, who bought from Shehu Garba and sold to Seidu

Suleiman. He had like the other Defendant's Witnesses stated that the land measures about 700sqm^2 but the document they attached, tendered and relied on shows that the land is approximately 600sqm^2 and not 700sqm^2. The said DW2 also told the Court that he went for Search but did not present before the Court any evidence of the Legal Search Report. He told Court that he fenced the Res before he sold it to the Defendant but there was no evidence led to confirm that.

The DW3 did not say that there was any fence in the Res. On his own testimony, he, DW3 said that there was bushes and he cut the trees and cleared the land before the construction of the Res. The Court observed that Umar Suleiman who thumb-printed the Statement on Oath and the Deed and Power of Attorney did not need an interpreter when he testified in Court. He spoke and understood English Language very well. This Court finds it difficult to believe that a man who thumb-printed all documents he presented before the Court including his Oath could speak fluent English and need no interpreter. More so, going by the illiterate Jurat in those documents. The Court doubts the authenticity of the documents and his testimony, whether the man who testified in Court is the same man who was presented as an illiterate going by the Jurat. This Court does not believe that he is a Witness of truth or that the person who claimed to be Umar Suleiman is not same as Umar

Suleiman. He is not a Witness of truth. So this Court holds.

On the part of the DW3 who is the Defendant, it is very clear that he is not a Witness of truth. It is unheard of that he was not able to lay before the Court the foundation and root of his claim to the Res. He had admitted under Cross-examination that Shehu Ibrahim applied and paid for the Regularization, the Site Analysis, the Right of Occupancy as well as the Conveyance of Provisional Approval. Meanwhile, the Deed of Assignment and Power of Attorney were not registered as required by S. 2 & 3 Lang Registry Act.

The Defendant had told the Court that he paid for the Res but there is no evidence to show that the payment purportedly made was for the purchase of the Res or that it was paid to Umar Suleiman. The document evidenced only payment made to Ajanya Chapter Nigeria Limited and not Umar Suleiman.

There is no nexus between the Res and Ajanya Chapter Limited. Beside, the DW1 had testified that the money was paid directly to him and he transferred it to the said Umar Suleiman. This Court holds that the Defendant is not a Witness of truth.

The Site Analysis the DW1 anchored on was not executed. It was not signed and the endorsement is that of the Nigeria Institute of Town Planners. Besides, the Site Analysis was done for Shehu Ibrahim and not for the DW3, the same Shehu Garba

who had since 2005 divested his interest in the land to Umar Suleiman – the DW2. The Court had held that an unsigned document has no value or worth. So this Court holds in this regard.

The said Site Analysis was never frontloaded which means that there was mischief to overreach the Plaintiff. That document is of no value and any submission made on it has no value too. So this Court holds.

The reason for the Zenith Bank Receipt was not indicated. So the Receipt Teller has no value. So this Court holds. The Teller could be for payment of anything. The picture tendered has nothing to prove that it is the same as the Res in this case.

It is imperative to state that whoever alleges that there was an act of trespass against his parcel of land should be able to prove that he had quiet enjoyment of the Res before the trespass. He should also show that the action of the intruder was a trespass. The Plaintiff had done that in this case. He had stated both on Oath and in his testimony in chief and under Cross-examination that the Defendant trespassed into the land.

The Plaintiff had stated how he had acquired the land and had quiet enjoyment until the Defendant came in. He had stated how he made several written complaints to the FCT Admin who allocated the land. These complaints are captured in the EXH 2 – the Acknowledgment copies of the Letters of Complaint

on the act of trespass by the Defendant. The first letter was written on the 20th January, 2012. The second letter was written to the same AMMC on the 22nd January, 2016 and the last was written on the 1st of December, 2017. In each of the first two (2) letters he referred to an earlier letter written on the same subject. Each letter described the level and stage of trespass.

The letter of 20th January, 2012 described the illegal Block Industry and the big underground tank. The letter of 22nd January, 2016 shows further act of trespass – illegal development of Bungalow. In the letter of 1st December, 2017 the Plaintiff complained of "another attempt to start another illegal development ongoing on the Res Plot 723A."

In all these letters the Plaintiff requested for intervention by the AMMC to stop the trespass and demolition of the "illegal structure." In all these letters he attached photocopies of the title documents to the Res and photocopies of the previous letter(s). But most dishearteningly, the AMMC ignored him and could not come to his rescue. There are glaring evidence that the AMMC recorded and Acknowledged Receipts of these letters of Complaint.

The letter of 1st December, 2017 was copied to the Resident Planner at Kubwa Planning Office. It was after all attempt for Government to intervene that the Plaintiff ran to the Court as his last hope.

By these letters the Plaintiff had established that there was trespass.

Again, he had testified that the Defendant had constructed house in the Res. This the Defendant had confirmed in his testimony and evidence before this Court. The pictures attached confirmed the allegation of trespass.

This Court holds that the Plaintiff was able to establish that the Defendant trespassed into the Res and by his construction of the building disrupted the Plaintiff's quiet enjoyment of the Res.

Most importantly, the Plaintiff had pointed out that the Defendant halted the construction and wanted to settle with him. But all attempt to settle failed because the Plaintiff believed that his case is meritorious and that the Res belongs to him and that he will get justice from the Court.

It is baffling that a man who counter-claims ownership of the Res, who has spent money in construction of Bungalow, should be ready to negotiate settlement with the Plaintiff – the Plaintiff in this case. The question is, why should the Defendant negotiate settlement when he claims to have all the requisite land documents to the Res? The simple answer is because he knows that his claim of ownership to the Res is on a very shaky ground.

The Defendant confirmed that he knew the Plaintiff, met and talked with him on several occasions. He did not disclose what or why he met and talked with the

Plaintiff. Defendant is aware of Mr. Nuhu and Haruna. The averment of the Defendant in paragraph 22 of his Oath confirmed that the Plaintiff challenged the Defendant over the construction of the Bungalow by stating that Mr. Eddie Jarri of the Development Control invited him on allegation of trespass. So also the other meetings with Umar Suleiman and Shehu with the same Kubwa District Officer over the Res. Those meetings obviously addressed the Defendant act of trespass over the Res. It is strange that the Defendant who between 2012 to 2017 attached photocopies of his title documents not present same to the same office where he had laid Complaint of Trespass. This Court holds that the Defendant is not a Witness of truth in this case. The Defendant even confirmed the Plaintiff's steadfastness on his claim to the Res in paragraph 25 of his Oath. The Defendant never subpoenaed the MTN to get the SMS messages. The mention of the ordeal with the Police further confirms that the Plaintiff challenged the Defendant act of trespass long before he resorted to Court.

From the totality of the evidence before this Court as fully analysed above, it is very obvious that the Plaintiff had established his title to the Res in this case through his oral testimony and the documents he tendered before this Court. He has shown that he was first in time. He had also clearly established that the Defendant trespassed and continued to trespass into the Res. He laid and traced the original of his title to the Res.

The Defendant was not able to establish his Counter-Claim as has been analysed above. He trespassed into the Res and he knows it notwithstanding that he had developed and constructed a Bungalow in the Res.

"Buyer beware, is a common parlance."

The Plaintiff, having established his title and act of trespass against the Defendant, he deserves the Reliefs in this case.

This Court therefore Order that the Plaintiff is the rightful Allottee of the Res – Plot 723A measuring 600sqm^2 situate at CAD Zone 07 – 05 Kubwa II Extension Relocation.

The forceful entry, clearing and commencement of construction and development on the said Plot 723A by the Defendant – Seidu Suleiman is an act of Trespass.

The Defendant is to pay to the Plaintiff the sum of Fifty Thousand Naira (₦50, 000.00) as damages suffered by the said act of Trespass.

The Defendant is also to pay the sum of Thirty Thousand Naira (₦30, 000.00) to the Plaintiff as cost of the Suit.

This is the Judgment of this Court.

Delivered today the ___ day of _________ 2021 by me.

____

K.N. OGBONNAYA
HON. JUDGE