

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO.FCT/HC/CV/3228/2020
ON THE TUESDAY 16th NOVEMBER, 2021**

BETWEEN:

- | | | |
|---|--|------------------------|
| <ol style="list-style-type: none"> 1. CHIEF OFILI MARTINS 2. IFEANYI CHUKWU OFILI MARTINS |  | <p>..... CLAIMANTS</p> |
|---|--|------------------------|

AND

- | | | |
|---|--|-------------------------|
| <ol style="list-style-type: none"> 1. FEDERAL HOUSING AUTHORITY 2. MRS. EBELE JUSTINA EJIOFOR |  | <p>..... DEFENDANTS</p> |
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Appearance:

N.E. Onu, Esq for the Claimants

S.P.C Ugwu Esq, for the 1st Defendant

Counsel for the 2nd Defendant absent

JUDGMENT

By an amended writ of summons and Statement of claim dated and filed on the 26th of January 2021, the Claimants commenced this suit against the Defendants and claim as follows:

- A. Declaration that the Claimant is the lawful owner of the piece and parcel of land known lying and situate at Gwarimpa 11 Estate, Abuja with allocation dated 15th July, 1998 with reference, No. FHA/OCE/GWA/LEM/64 Measuring approximately about 821.2 square meters otherwise known as plot 64, 1st Avenue, C Close, Gwarimpa 11 Estate, Gwarimpa, Federal Capital Territory, Abuja, Nigeria.
- B. A Declaration that the activities of the Defendants and her privies on the piece or parcel of land knowing and situated at Gwarimpa 11 Estate, Abuja with

allocation dated 15th July, 1998 with reference No. FHA/OCE/GWA/LEM/64 measuring approximately about 821.2 square meters otherwise known as Plot 64, 1st Avenue, C Close, Gwarimpa 11 Estate, Gwarimpa, Federal Capital Territory, Abuja, Nigeria is illegal, null and void.

- C. A Declaration that the activities of the Defendant or her privies on the piece or parcel of land known lying and situated at Gwarimpa 11 Estate, Abuja with allocation dated 15th July, 1998 with reference No. FHA/OCE/GWA/LEM/64 measuring approximately about 821.2 square meters otherwise known as Plot 64, 1st Avenue, C Close, Gwarimpa 11 Estate, Gwarimpa, Federal Capital Territory, Abuja, Nigeria Constitutes a trespass.
- D. A Declaration that the Defendant or her privies has no right whatsoever to repossess or take back the piece or parcel of land known lying and situated at Gwarimpa 11 Estate, Abuja, with allocation dated 15th July, 1998 with reference No. FHA/OCE/GWA/LEM/64 measuring approximately about 821.2 square meters otherwise known as Plot 64, 1st Avenue, C Close, Gwarimpa Estate Federal Capital Territory, Abuja, Nigeria having received the full purchase sum/price for the said Plot of Land from the Claimant and that the second Defendant shall approve and give the Claimant all his right in respect of the above property have fulfill all the above requirement as the rightful owner.
- E. 50, 000, 000. 00 (Fifty Million Naira) only as damages against the Defendant for trespass.
- F. A Perpetual injunction restraining the Defendant by herself, her servants workmen, agents, her privies etc from entering or trespassing on the said piece or parcel of Land known as Plot 64, 1st Avenue, C Close, Gwarimpa 11 Estate Federal Capital Territory, Abuja, Nigeria either by herself, her agents or privies.
- G. An Order against the Defendant to pay the Claimant the sum of 30, 000, 000 .00 (Thirty Million Naira) as general damages.
- H. An Order against the Defendant to pay the Claimant the sum of 3, 000, 000. 00 (Three Million Naira) as cost of this Litigation.

- I. 10% interest on the above claimed sums from the date of Judgment till final liquidation.

The writ was duly served on the Defendants.

In response, the 1st defendant filed a memorandum of conditional appearance dated 11th of January 2021 and a statement of defence dated 24th Of February 2021.

The 2nd defendant did not file any papers in response to this suit and neither appeared nor had legal representation even though all necessary notices were duly served on her.

Pleadings having been completed, trial commenced on the 10th of February 2021 with the claimants opening their case and calling three witnesses. (PW1-PW3)

PW1 Mr. Paul Udeh adopted his witness statement on oath dated 13th November 2020 as his evidence. In his evidence he testified that sometime in 2009 his Cousin Mr. Ofili Martins the first Claimants representing the house family members approached him that he needed a land in Abuja.

He therefore called a friend Mr. Charles popularly known as Ebony, that his Cousin wants to buy a Land. Mr. Ebony took them to Mrs. Kate Igwe who is a Pastor and also a Staff of Federal housing Authority (FHA) Homes who manages the affairs of their Gwarimpa Estate.

That Mrs. Kate Igwe introduced them to Engineer Isma'ila Husseini and Samuel Ogaba, who said that they have a Plot of land for sale at 1st Avenue Plot 64 C Close Gwarinpa 11 Estate.

The price was negotiated for N22 Million naira only that was when they decided to conduct a legal search, Mrs. Kate said there was no need as she was part of the first transaction between present owner of the Land Mrs. Ebele Justina Ejiofor and former owner B. Achiatar. And being a Pastor and a Staff of Federal Housing Authority (FHA) they believed her and N19.5M draft was raised and cash of N3.6M totaling N23, 100, 000. 00 (Twenty Three Million, one hundred thousand Naira) only including agency fee as was instructed by Mrs. Ebele Justina Ejiofor. And the whole money was given to Mrs. Kate Igwe in her office at Federal Housing Authority (FHA).

It was Mrs. Kate Igwe that gave the details of Bank Account of Mrs Ebele Justina Ejiofor which was used in raising the draft and a cash of N3.6M was given to Mrs. Kate Igwe and one Barr. Akpobi who represented Mrs. Ebele Justina Ejiofor . That Chief Martins Ofili paid the entire necessary fee in respect of the said Plot of Land.

That after the transactions few days later his cousin's wife Mrs. Martins ofili visited the Plot and noticed some blocks in the plot of land, that his cousin contacted him and on getting to Mrs. Kate Igwe's at her office at Federal Housing Authority (FHA), she introduced another lady to them as Mrs. Ebele Justina Ejiofor different from the Ebele they saw on the day of the transaction.

That at this point we alerted the Police and Mrs. Kate Igwe, Isma'ila and Emmanuel Ogbaba were arrested because Ebele Justina Ejiofor said that her Original papers to her Plot of Land was stolen and that she did not sell her Land.

That because of the above issue Kate Igwe, Isma'ila and Emmanuel were arrested and charged to Court.

The witness was cross-examined by learned counsel for the 1st defendant and in absence of any Re-examination was discharged. Reference will be made to his testimony made under cross-examination as the need arises in this judgment.

PW2- Elder Charles Boniface Chika popularly known as Ebony, business man of 6B House 35 Gwarimpa Estate adopted his witness statements on Oath dated 13th November 2020 as his evidence in this matter.

He testified inter-alia that sometime in February 2009, he introduced Mrs. Kate Igwe and Isma'ila to Chief Martins Ofili who needed a plot of Land in Gwarimpa. He knew Mrs. Kate Igwe as a Pastor and a Staff of Federal Housing Authority in charge of Lands in Gwarimpa Estate.

That Mrs. Kate Igwe and Isma'ila and Emmanuel Okpabi told them that they have a Land for sale which is Plot No. 64, 1st Avenue, C Close, Gwarimpa 11 Estate and Mr. Martins Ofili indicated interest in the above Plot.

After all parties agreed on N22M (Twenty Two Million Naira) only and Mrs. Kate Igwe said the payment will be made in two parts i.e. 19.5 Million in draft in the name of Ebele Justina Ejiofor as the beneficiary and 3.6 Million in cash was given to Kate Igwe

on behalf of the owner Ebele Justina Ejiofor. All meetings leading to the transaction took place in Mrs. Kate's Igwe's office at Federal Housing Authority (FHA) homes whereby Ebele Justina Ejiofor and one Barr. Akpobi were introduced to them.

After Chief ofili handed the draft of 19.5 Million naira and cash sum of N3.6 Million to Mrs. Kate Igwe, the legal documents were signed and transfer. Original documents of the property was handed over to Chief Ofili and his family.

That he was surprised days after to learn that the lady they paid money to was not the true owner of the Plot. And Chief Ofili went further to find out who was paid and the bank disclosed that they actually paid to the original owner Mrs. Ebele Justina Ejiofor whose detail was provided and clarified as the beneficiary of the 19.5 million raised draft.

PW2 was cross examined by the 1st Defendant's Counsel and in the absence of any question in Re-examination was discharged. Reference will be made to his testimony under cross-examination as the need arises in this judgment.

PW3 –Chief Ofili Martins a Christian, civil servant of No. 3 Wuse 14 Road Gwarinpa adopted his witness statement on Oath as his oral evidence in this matter. He testified that sometime in 2009, his family needed a Plot in Abuja. That his cousin introduced him to one Mr. Ebony who later introduced them to Mrs. Kate Igwe at Federal Housing Authority Homes.

That Mrs. Kate Igwe introduced them to Isma'ila and Mr. Ebony and they were told by Mrs. Kate Igwe that someone gave her a Plot of Land to sale which is Plot No. 64 1st Avenue, C Close, Gwarimpa 11 Estate Abuja.

After seeing the above Land they negotiated the price from N25 Million to N22 Million Naira only and also agency fee of N1.1 Million which all amounted to 23.1 Million Naira only.

That when they wanted to conduct a legal search, Mrs. Kate Igwe told them that she was part of the transaction between the present owner Mrs. Ebele Justina Ejiofor and the former owner Mr. B. Achiatar, who transferred title to the Land to the 2nd defendant via Deed of Assignment dated 10/2/2004. That they believed Mrs. Kate

Igwe being a Pastor and a Staff of Federal Housing Authority (FHA). That they made payment in the owners name as on the title document.

Mrs. Kate Igwe said the owner Mrs. Ebele Justina Ejiofor said that she wants them to raise a draft of 19.5 Million, and then cash of 3.6 Million and they did as instructed.

On the day of the transaction Mrs. Kate Igwe introduced one lady Mrs. Ebele Justina Ejiofor and one Barr. Akpobi as Ebele Justina Ejiofor's lawyer.

That after the cash of 3.6 Million and the draft of 19.5 Million was handed over, their title document was handed over to them. That they then left their separate ways.

That few days later, his wife went to the property and saw unknown people and blocks on the Land.

That he called Mrs. Kate Igwe immediately and went to her office on getting to her office she introduced to him a different lady from the first lady that they were introduced to as Ebele Justina Ejiofor.

At this point he alerted the Police they were arrested and later taken to Court.

That the said Ebele Justina Ejiofor he met in Mrs. Kate Igwe's office told him that she was the owner of the Plot No 64, 1st Avenue, C Close, Gwarimpa 11 Estate Abuja and that she had lost the title document of her Land and did not sell her Plot to anyone, that was why he ran to the Police and Kate, Isma'ila and Emmanuel Ogaba were arrested and charged to Court that he still went on fact finding to know who was the beneficiary of N19.5 Million draft raised and N3.6 cash Million he paid in respect of the Plot. That he engaged Barr. Ndiwe Esther who instituted the matter in Court.

The Court ordered G.T. Bank to disclose the beneficiary of the account and, also provided the detail used in opening the said beneficiary account. The detail provided by the Bank showed that Ebele Justina Ejiofor is the Original beneficiary of the N19.5 Million draft raised.

That they indeed made payment to the Original owner of the Plot. That since 2009 till date, Federal Housing Authority (FHA) refused to grant approval for fencing or building in the said Plot. It was the instruction of Ebele Justina Ejiofor the former owner.

That he has been paying rent in respect of the above Property which he purchased in good faith from the original owner. That he prays the Court to Declare and grants all their prayers as stated in their statement of claim before this Court. The following documents were tendered and admitted in evidence without objection:

1. Deed of assignment dated 10th February, 2004 between the Original Allottee (Mr. B. Achiatar) and 2nd Defendant.
2. Bank statement of account of the 1st Claimant and cash receipt of full payment of Bank 2009.
3. Deed of assignment dated 18th March 2009, between Justina Ebele Ejiofor and Ifeanyi Chukwu .O. Martins.
4. Letter of offer dated 7th June 2004.
5. Copy of application for consent dated 10th February, 2004.
6. Consent letter written by Federal Housing Authority to .B. Achiatar to assign dated 27th October, 2004.
7. Allocation paper with survey plan No. FHA/GW/X/L 59413.
8. Payment receipt for fencing issued by the 1st Defendant dated 8th February 2002.
9. Payment receipt for granted rent issued by the 1st Defendant dated 7th February, 2002.
10. Payment receipt for consent fee issued by the 1st Defendant dated 21st February, 2007.
11. Payment receipt for premium issued by the 1st Defendant (FHA) dated 22nd March, 2000 in respect of Plot No. 64, 1st Avenue, C Close, Gwarimpa 11 Estate.
12. Single receipt evidence payment for fencing, building plan and Survey plan issued by 1st Defendant FHA dated 8th February, 2002.
13. Receipt for part payment C LT dated 7th February, 2002.

14. Allocation of paper resident No 64, C Close, Gwarimpa 11 Estate dated 15th July 1998.
15. Consent letter to execute by Director Federal Housing Authority (FHA) to assign Plot No 64, 1st Avenue, dated 6/03/2007.
16. Receipt for payment of balance of purchase price for Plot No 64, 1st Avenue, by Claimant to .B. Achiatar dated 23rd June 2004.
17. Application for consent by .B. Achiatar Director, Federal Housing Authority (FHA) to assign Plot No. 64, to Mrs. Ebele Justina A. dated 10th February, 2004.
18. An Order of Lower Court directing GTBank Plc to provide the beneficiary of the draft issued for the Land and the beneficiary details dated 26th July 2018.
19. Particulars of the account opening details of the 2nd Defendant.
20. Copies of draft/evidence of payment made in favour of the 2nd Defendant dated 18th March 2009.
21. Copy statement made by Mrs. Kate Igwe to the Police dated 22nd February, 2010.
22. Copy of statement of Isma'ila dated 28th August 2009.
23. A charge show dated 29/08/2011.
24. Copy of the amended charge in furtherance of the prosecution of 2nd Defendant by the Police dated 14/10/2019.

The above documents admitted in evidence were marked as Exhibits PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11, PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW19, PW20, PW21, PW22 and PW23, PW24 respectively.

PW3 was cross examined by the 1st Defendant's Counsel. Reference will be made to his testimony under cross-examination when the need arises in this judgment.

PW3 was discharge and the claimants closed their case.

In their defence, the 1st defendant called one witness.

DW1: - I. Idongesit Sunday Udo, of Federal Housing Authority, Julius Nyeveve Street Asokoro, Abuja FCT, adopted his witness statement on oath as his evidence on this matter. He testified

That he is a chief estate officer, property management, Federal Housing Authority (**FHA**).

That part of his job schedule includes but not limited to ensuring compliance with necessary procedures which include the supervision of the perfection of title documents at **FHA**.

That he has the consent and authority of the 1st defendant to depose to this oath.

That the said land with reference NO FHA/OCE/COWA/LEM/64 measuring approximately 821.2 metres, known as plot 64, 1st avenue, C close, Gwarimpa 11 Estate, Federal Capital Territory, Abuja was allocated to Mr. B Archiatar by the Federal Housing Authority.

That the alleged meeting as claimed by the claimants on the instance of one Mrs. Kate Igwe in her office at Federal Housing Authority has nothing to do with Federal Housing Authority neither does she represent the authority.

That the alleged transaction between the claimants and Mrs Kate Igwe was personal and did not involve the federal housing authority.

That assuming but not conceding that there was a meeting between the claimants and the 2nd defendant, the said meeting of the claimants and Mrs. Kate Igwe. An Ex staff of the authority was personal and does not represent their interest or that of our organization, the Federal Housing Authority.

That their organization was not aware of the said transactions between the claimants, the 2nd defendant and the Mrs. Kate Igwe and never participated in any form whatsoever.

That the 2nd defendant wrote a petition to the Nigeria police force headquarters alleging that the claimants forged document in respect of the said plot.

That the Nigeria Police Force Headquarters caused an investigation to commence and wrote to the Federal Housing Authority requesting that the organization furnished details and particulars of the allottee.

That the Federal Housing Authority replied to the request by the Nigeria Police Force in a letter dated 17th February, 2011 giving details of the said plot.

That the 2nd defendant further wrote a petition to the Nigeria Police Force FCT command still alleging conspiracy, forgery, fraud, and obtaining money by false pretence.

That the Nigeria Police Force FCT command commenced investigation activities in a letter dated 18th of August, 2011.

That the Federal Housing Authority responded to the said investigation activities in a letter to the Nigeria Police Force dated the 24th day of August, 2011.

That when the Federal Housing Authority received a letter from the Nigeria Police Force in respect of the said plot, the Authority stopped every activities on the property file pending the outcome of the Police investigation.

That the Federal Housing Authority is yet to received any report of investigation in respect of the said plot.

He wants this honourable court to dismiss the claimant's claims for non – disclosure of any cause of action against their organization and declare same to be frivolous and lacking in merit.

The following documents were tendered through the DW1 and admitted in evidence without objection and marked Exhibits D1, D2, D3 and D4 respectively.

1. Investigation activity dated 18/01/2011.
2. Reply by the federal Housing Authority (FHA) to Police dated 17/02/2011.
3. Investigation activity to Federal Housing Authority (FHA) dated 18/08/2011.

4. Reply for Federal Housing Authority (FHA) to Nigerian Police dated 21/08/2011.

Under cross-examination by learned claimant's counsel, he testified that he has been working with Federal Housing Authority (FHA) for 23 years; he is an Estate officer in charge of Property Management. He knew Mrs. Kate Igwe as a Staff of Federal Housing Authority (FHA) homes. A subsidiary of FHA and it deals with mortgage. He was not aware of the transaction since it was not documented in the subject file of this case.

DW1 was discharged and the defence of 1st defendant was closed.

The matter was adjourned to 12/07/2021 for the 2nd Defendant to enter her defence. Hearing notice was served on the 2nd defendant. However, the 2nd Defendant who had not filed any defence failed to enter her defence on the adjourned date and the Court foreclose the defence of the 2nd Defendant.

The 1st defendant and the claimants having filed and exchanged their final written addresses, they, and through their respective Counsel adopted same on the 22nd of September 2021 and judgment was reserved for today.

In the final written address learned Counsel for the Defendant formulated the following issues for determination.

1. ***“whether or not the claimants have a cause of action in this suit”***
2. ***“Whether the 1st Claimant has the Locus Standi, to institute this case against the 1st Defendant”.***
3. ***“whether the absence of consent of the Federal Housing Authority to assign from the 2nd defendant to any of the claimants vitiates their alleged claim to title”***

The Learned counsel argued this issue succinctly in urging the court to hold that the 1st Claimant has no Locus Standi to institute this suit against the first Defendant and dismiss the suit.

The claimants on the other hand formulated a sole issue for the determination of the court, to wit:

“Whether the claimants have led evidence to prove their case against the defendants in this suit to be entitled to the reliefs sought?”

Learned counsel for the claimants argued the sole issue succinctly in urging the court to resolve the issue in favour of the claimants and grant all the reliefs.

In the 1st defendant’s reply on point of law, the issue for determination formulated in the claimant’s final written address was adopted.

I have carefully read and digested the said final written addresses of counsel for the parties. I have also given due consideration to the evidence adduced by the parties in support of their respective cases. The cardinal issue that calls for determination is whether or not the claimants have made out a case to justify a grant of the reliefs sought in the statement of claim.

As I have noted earlier in this Judgment, the 2nd Defendant Mrs. Ebele Justina Ejiofor, though served and given the facility to Defendant this matter, failed to avail herself of the facility.

The fact of the Claimant’s case is simply that one Mrs. Kate Igwe a Staff of FHA, which administers the Estates where the property in question Plot 64, 1st Avenue, C Close, Gwarimpa 11 Estate, FCT, introduces the Claimants to the property and the agreed consideration was paid to the 2nd Defendant/owner of the property. That payment was paid on draft sum of N19, 500, 000. 00 and a cash sum of N3, 600, 000. 00 which included an agency fee of N1, 100, 000. 00. The original documents were given to the Claimants. However, that latter, they noticed some development in the property and when they acoasted Mrs. Kate Igwe she introduced them to another lady as Mrs. Ebele Justina Ejiofor different from the one they met before and informed them that Mrs. Ejiofor lost her original papers. An investigation of who received the draft sum revealed for the Claimants that they paid the real Mrs. Ejiofor/2nd Defendant.

It must be said that none of this facts were contradicted. The three Claimants witnesses were consistent on the facts which were all pleaded. The Claimants

reported Mrs. Kate Igwe to police and the police have been on the issue prosecuting Mrs. Kate Igwe and others on the sale.

By the content of Exhibits PW1 Deed of Assignment dated 21/6/2004 where titles to the property were transferred to the 2nd Defendant, 2 Exhibits, PW6 consent letter to assigned dated 27/10/2004, it is clear that when the Claimants bought or paid for the property the 2nd Defendant had titles.

All these being the case what then is the connection with the 1st Defendant (FHA)?

By Exhibit PW4 (Letter of offer of the plot of Land) and Exhibit 6 (Consent Letter to assigned) the 1st Defendant is the Land holder/Guaranty authority of the Estate. In the statement of Defence, it was averred in paragraph 17 that the 1st Defendant owing to police investigation in respect of the property stopped working activities on the property pending the outcome of police investigation.

It is clear, as day and night that the 1st Defendant was not privy to the purported transfer of titles between the Claimants and the 2nd Defendant as evidence by Exhibit PW3 (Deed of Assignment) dated 18/03/2009.

Having found that the above facts are well established I shall look at the issues raised in the address of the 1st Defendant.

On the 1st issue raised, to wit:

Whether or not the Claimants have cause of action in this suit?

The Learned 1st Defendant's Counsel submitted that this suit disclosed no cause of action against the 1st Defendant.

I found that this contention is untenable in the face of averments in paragraph 18 of the statement of Claim where it is averred inter – alia that ***“The 1st Defendant has refused to grant building approval and other consent to the Claimants”*** and paragraph 17 of the statement of defence, wherein the 1st Defendant gave reason for the refusal to act.

Cause of action has been described in case law as the futility of the factual situation in a case which entitles a party to a relief or reliefs that constitute the phrase Cause of Action.

The Claimants relief D seeks a declaration that, among other things,

“The 2nd Defendant shall approve and give the Claimant all his rights in respect of the above property having fulfilled all the above requirements as the rightful owner”.

I must say now that I found the excuse of the 1st Defendant that police has not determined the rightful owner or title holder to the property strange and even dubious. The responsibility of the police does not extend to ascertaining title of suspect or conflicting parties even if there is a matter to investigate. Declaration of title within the FCT is the exclusive jurisdiction of the High Court of the FCT and not the police. I expect Counsel to know this.

In view of the forgoing I must resolve the 1st issue against the 1st Defendant. The Claimant has disclosed a cause of action against the 1st Defendant.

On the 2nd issue to Wit:

“whether the 1st Claimant has the Locus standi to institute this civil action against the 1st Defendant?”

It is clear from the averments on the statement of claim and the testimonies of the Claimants’ witnesses that the property was acquired for the Claimants, i.e. not just for the 2nd Claimant whose name is on the Deed of assignment. The Claimants have shown sufficient interest in the suit as joint owners of the property.

It is the contention of the 1st Defendant that the Claimants, especially the 1st Claimant have not satisfied the Criteria to have locus standi. That is, whether he could have been joined as a party in the suit and that if not joined will suffer some injury or hardship arising from the litigation.

Like I have found earlier, the statement of claim contains averments showing sufficient interest of both claimants to warrant the institution of this suit. See EZE V A.G. RIVERS STATE (2018) LPELR – 45621 (CA) & DANIEL V. INEC & ORS (2015) LPELR – 24566 (SC).

It is my understanding that the property was acquired for the family to a family land as the 1st Defendant wants the Court to believe.

It is also the contention of the Counsel for the 1st Defendant that the Deed of Assignment dated 18/03/2009 between the 2nd Claimant and the 2nd Defendant is not registered which makes same inadmissible in evidence by the provision of the LAND REGISTRATION ACT CAP 5.5 LAWS OF THE FCT AND SECTION 22(4) of the STAMP DUTY ACT CAP 552 LAWS of the FCT. That even where such document is wrongfully admitted in proof of title Court is obliged to expunge same or ascribe no probative value to it.

I hold the view that, the question this court must address at some point is whether title have passed from the 2nd Defendant to the 2nd Claimant and by extension the 1st Claimant. I shall consider what value if any to attach to Exhibit PW1 & PW3.

On the issue of Locus Standi, I hold that the Claimants have Locus Standi to institute this action against the 1st Defendant.

On the 3rd issue, to Wit:

Whether the absence of consent Of the FHA to assign from 2nd Defendant to any of the Claimants vitiates their alleged claim of title ?

Learned Counsel for the 1st Defendant submitted that there was no application for consent to assign interest from the 2nd Defendant to any of the Claimants as such the FHA cannot grant any approval. Counsel placed reliance on section 18 of FCT Act Cap 128, LFN 1990 which is similar to section 22 of the Land Use Act.

I agree with Learned Counsel here that whereas nothing prohibits persons with title from agreeing with prospective buyers and reducing such agreement into writing for presentation to the relevant authority for consent, without the consent, title cannot be validly transfer thus, the FHA cannot be mandated to give approval to an applicant without valid title. I so hold. See *IYUA V. PAUL & ANOR* (2019) LPELR – 47266 (CA).

I shall now look at the case against the 2nd Defendant. The Claimants raised a sole issue for determination to Wit:

Whether the Claimants have led evidence to prove their case against the Defendants in this suit to be entitled to the reliefs sought ?

Given that the 1st 4 reliefs of the Claimants' statement of Claim are declaratory in nature, it is settled that in a claim for declaratory reliefs, the Claimant must proof his entitlement, by cogent and credible evidence. The Claimant must rely on the strength of his own case and not the weakness of the defence or failure of the Defendant to enter any defence (as in this matter concerning the 2nd Defendant) See EKPO V. GTB PLC & ANOR (2018) LPELR – 46079 (CA).

The Claimant case against the 2nd Defendant is that they have agreed through Kate Igwe and others that the property in question own by the 2nd Defendant and the Claimants have paid the sum of N22, 500, 000. 00 as consideration for the Land and agency fee of N1, 100, 000. 00. An agreement was executed and original documents were transferred to the Claimants. And the 2nd Defendant actually received the consideration. These facts were provided in the testimonies of the 3 Claimants witnesses; P20 Evidence of payment made in favour of the 2nd Defendant dated 18/3/2009, P2, GTB statement of Account of the 1st Claimant, P3 Deed of Assignment between the 2nd Claimant and the 2nd Defendant. P19 prove among other things that 2nd Defendant received the money in her GTB bank Account with Account No. 0025189590.

None of the facts was contested, challenge or contradicted. The 2nd Defendant neither filed pleadings to countermand the case of the Claimants and neither did she led evidence to challenge or contradict the testimony of Claimants witnesses. The effect of the failure to file pleadings or to lead evidence is that the case of the Claimants stand unchallenged and is deemed admitted and established See FATIMEHIN V. LAWANI (2014) LPELR -23476 (CA)

When is a contract of sale of property or land said to be concluded? The Supreme Court in PER O.O. ADEKEYE JSC in MINI LODGE & ANOR V. CHIEF OLUKA OLUKA & ANOR (2010) 41 (PART 1 NSCQR AT 38 stated thus:

“A contract of sale exist where there is a final and complete agreement of the parties on essential terms of the contract, namely the parties to the contract, the property to be sold, the consideration for the sale and the nature of interest to be granted. Once there is agreement on these essential terms, a contract of sale of Land or property is made and concluded”.

Consequent upon, the evidence before this Court is unchallenged and the authority in MINI LODGE, CASE (SUPRA),

I hereby find that the Claimants have established their case against the 2nd Defendant thereby deserving of the reliefs sought.

In all, it is the finding of the Court that the case against the 1st Defendant fails for reasons already stated in this Judgment and same is hereby dismissed.

However, the Claimants case succeeds against the 2nd Defendant.

Accordingly, I make the following orders.

1. I declare that the Claimants are the lawful owner of the piece and parcel of land known and lying at Gwarimpa II Estate Abuja with allocation dated 15/07/ 1998 with references No. FHA/OC8/GWA/LEM/64 MEASURING APPROXIMATELY ABOUT 821.2 Square meters otherwise known as plot 64, C Close, 1st Avenue, Gwarimpa 11 Estate, Federal Capital Territory, Abuja, Nigeria.
2. A declaration that any activities of the 2nd Defendant and her privies on the piece or parcel of land know as plot 64, 1st Avenue, C Close, Gwarimpa II Estate, FCT Abuja is illegal null & void.
3. A declaration that the 2nd Defendant or her privies has no right whatsoever to reposses or take back the piece or parcel of land known as plot 64, 1st Avenue, C Close, Gwarimpa II Estate, FCT, Abuja. Having transferred title papers upon receipt of consideration from the Claimants.
4. A perpetual injunction restraining the 2nd Defendant by herself, her servants, workman, agents, her privies from entering or trespassing on the said piece or parcel of Land known as plot 64, 1st Avenue, C Close, Gwarimpa II Estate, FCT, Abuja.
5. An order against the Defendant to pay to the Claimants the sum of N2, 000, 000. 00 only as general damages.
6. An order for 10% interest on the above sum from the date of Judgment till final liquidation.

This is the decision of the Court.

Signed
Hon. Judge
16/11/2021.

We are grateful.

Ndiwa: - Grateful.

Signed
Hon. Judge
16/11/2021.