IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS TUESDAY, THE 14TH DAY OF FEBRUARY 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1556/16

BETWEEN:

CITY VIEW ESTATES LIMITED .....PLAINTIFF

AND

1. **BLUEBAY GLOBAL CONCEPT LIMITED**
2. **AHMED ADEWUSI**
3. **HON. MINISTER OF FEDERAL CAPITAL TERRITORY, ABUJA**
   (Joined by Order of Court made 22/3/18)

.....DEFENDANTS

JUDGMENT

By an Amended Writ of Summons and Statement of Claim dated 30th April, 2018 and filed same date at the Court's Registry, the Claimant prayed for the following Reliefs:

1. **A declaration that the Defendants' mobilization of Bulldozers and people to portion of the Plaintiff's land situate on Plot DN2 Cadastral Zone C08, Dakwo District, Abuja measuring about 100 hectres constitutes trespass.**

2. **A declaration that the Defendants' trespass on the Plaintiff's land situate on Plot DN2 Cadastral Zone C08, Dakwo District, Abuja is illegal unlawful, malicious, reckless, mala fide and unjust.**

3. **A declaration that the Plaintiff is the rightful allotee of the entire land known as Plot DN2 Cadastral Zone C08, Dakwo District, Abuja measuring**

about 100.135 hectres vide the development lease dated 31st October, 2002 and duly registered at Federal Capital Territory Deed Registry at No.90, page 90, Vol.15 Misc.

4. **A declaration that the Development lease agreement duly executed between the 3rd Defendant - Ministry of Federal Capital Territory and the Plaintiff- City View Estate Limited (Formerly Modular Limited) on the 31st day October, 2002 in respect of Plot DN2, Cadastral Zone C08, Dakwo District Abuja measuring 100.135 hectres still subsists.**

5. **A declaration that the purported allocation or re-allocation of a portion of the said 100.135 hectres earlier granted the Plaintiff as either Plot 10 or Plot 10x to the 1st Defendant being part of Plot DN2, Cadastral Zone C08, Dakwo District Abuja despite the subsistence of the Plaintiff's right and allocation and the said Development lease agreement is null and void.**

6. **A declaration that the Plaintiff has superior title and is entitled to a peaceful and quite enjoyment and possession of the entire land referred to as Plot DN2 Cadastral Zone C08, Dakwo District Abuja measuring 100.135 hectres.**

7. **A declaration that the demolition of the Plaintiff's houses, structures, slabs and DPC at the phase 4 portion of City View Estate situate on Plot DN2 Cadastral Zone C08, Dakwo District, Abuja by the Defendants and their agents is illegal, unlawful, malicious, reckless, *mala fide* and unjust.**

8. **Specific damages in the sum N40,095,000.00(Forty Million, Ninety Five Thousand Naira Only) against the Defendant representing the cost and value of the 20 units of DPC's and structures belonging to the Plaintiff on the portion referred to as phase 4 of the estate illegally demolished by the Defendant.**

9. **General damages in the sum of N200,000,000.00(Two Hundred Million Naira Only) against the Defendant for trespassing on the Plaintiff's property/land and unlawfully demolishing about 20 units of the Plaintiff's**

properties at various levels from DPC and substructures at window sills in the estate.

10. **A perpetual injunction restraining the Defendants by themselves, their servants, agents and successors in title either directly or indirectly or in concert with any other person or agency from trespassing, entering, defacing, demolishing, allocating, re-allocating, revoking, withdrawing or interfering with the land situate at Plot DN2, Cadastral Zone C08 Dakwo District, Abuja FCT or any part of it as granted to the Plaintiff.**

11. **Legal cost of this action incurred by the Plaintiff in the sum of N1,000.000.00(One Million Naira Only).**

12. **10% interest per annum on the judgment sum from the date of final judgment until the final judgment debt is liquidated by the Defendants.**

The 1st and 2nd Defendants in Response filed an Amended Joint Statement of Defence dated 28th June 2018 and filed same date at the Court's Registry.

It is perhaps necessary to situate at the outset that this case was initially filed against **1st and 2nd Defendants**. They subsequently applied for the joinder of 3rd Defendant which was granted on 22nd February, 2018. The processes were then served on 3rd Defendant but he never put up an appearance and did not file any process all through the course of this proceedings.

Hearing then commenced. In proof of Plaintiff's case, two witnesses testified. **Calistus Ewuru**, Company legal secretary of Plaintiff testified as **PW1.** He deposed to a witness statement on oath dated 30th April, 2018 which he adopted at the hearing. He tendered in evidence the following documents:

1. **Letter by Ministry of FCT dated 24th June, 2002 was admitted as Exhibit P1.**

2. **Development Lease Agreement dated 31st October, 2002 was admitted as Exhibit P2.**

3. **Letter by Ministry of FCT dated 5th June, 2003 was admitted is Exhibit P3.**

4. **Letter from FCDA dated 14th July, 2004 was admitted as Exhibit P4.**

5. **Letter by the FCTA dated 7th December, 2006 was admitted as Exhibit P5.**

6. **Letter by the AEPB dated 1st August, 2006 was admitted as Exhibit P6.**

7. **Letters by the FCT, Abuja dated 3rd October, 2007, and 3rd March, 2008 were admitted as Exhibits P7 1 and 2.**

8. **Letters by FCDA dated 22nd July, 19th February, 2007 and 24th March, 2011 were admitted as Exhibits P8 1 – 3.**

9. **Fidelity Bank Manager Cheque was admitted as Exhibit P9.**

10. **FCDA Revenue Collectors Receipt dated 24th March, 2011 was admitted as Exhibit P10.**

11. **FCTA letter dated 5th August, 2009 was admitted as Exhibit P11.**

12. **Letter by Department of Development Control dated 21st February, 2011 was admitted as Exhibit P12.**

13. **FCTA letter dated 1st March, 2011 to City View Estate Ltd was admitted as Exhibit P13.**

14. **Letter by City View Estate dated 28th February, 2011 was admitted as Exhibit P14.**

15. **Letter by FCDA dated 11th January, 2010 to City View Estate Ltd was admitted as Exhibit P15.**

16. **Memo from the office of the Director Urban and Regional Planning FCDA was admitted as Exhibit P16.**

17. **Document titled file Report No. MISC 81997 was admitted as Exhibit P17.**

18. **Copy of Judgment in Suit No. CV/5023/11 – Between Fhamatobs Global Services Ltd V Mr. Ufon and City View was admitted as Exhibit P18.**

19. **Three letters together with a Valuation report from plaintiff to the contractors and four (4) Replies were be admitted as Exhibits P19 1-8.**

20. **Five (5) copies of digital photographs were admitted as Exhibits P20 1-5.**

21. **Letter dated 25th March, 2003 by Modular Ltd to Director Land and Resettlement was admitted as Exhibit P21.**

22. **Letter by City View Estate Ltd with an attached survey copy of site dated 29th June, 2009 was admitted as Exhibit P22.**

23. **Letter by City View Estate together with copy of Certificate of Incorporation of City View to the secretary F.C.D.A dated 1st July, 2009 was admitted as Exhibit P23.**

PW1 was then cross-examined by counsel to the 1st and 2nd Defendants.

Mfon Ekwere testified as **PW2**. He deposed to a witness statement on oath dated 8th March, 2021 which he adopted at the hearing. He tendered in evidence a Copy of a valuation report of properties at City View Estate phase IV which was admitted in evidence as **Exhibit P24.**

PW2 was then cross-examined by counsel to the 1st and 2nd Defendants and with his evidence, the **Plaintiff closed its case.**

On the part of 1st and 2nd Defendants, they called only one witness. **Ahmed Adewusi**, the 2nd Defendant appeared as **DW1**. He deposed to a witness statement on oath dated 28th June, 2018 which he adopted at the hearing. He tendered in evidence the following documents:

1. **Letter of Offer of Accelerated Development Programme within the FCT dated 8th December, 2005 to Blue Bay Global Concepts Ltd together with the site plan were admitted as Exhibits D1 a and b.**

2. **Development Lease Agreement for Mass Housing Development Scheme between FCDA and Blue Bay Global Concept Ltd was admitted as Exhibit D2.**

3. **Cash Receipt issued by FCTA together with a copy of Guaranty Trust Cheque were admitted as Exhibits D3 a and b.**

4. **Letter by FCDA dated 20th September, 2007 to M.D. Bluebay Global Concept Ltd was admitted as Exhibit D4.**

5. **Copy of Document titled acknowledgment Receipt for the last payment of compensation on Plot 10 at Dakwo District FCT was admitted as Exhibit D5.**

6. **Letter by Blue Bay Global Concept to Director Development Control and Director Urban and Regional Planning both dated 2nd October, 2008 were admitted as Exhibits D6 a and b.**

7. **Letter by Blue Bay Global Concept Ltd to the Commissioner of Police FCT Command was admitted as Exhibit D7.**

8. **Letter by FCTA to the Commission of Police, C.I.D Department FCT Command dated 12th November, 2008 was admitted as Exhibits D8.**

DW1 was then cross-examined by counsel to the Claimant and with his evidence, the 1st and 2nd Defendants closed their case.

As stated earlier despite service of the originating court processes and hearing notice at different times during the course of this proceedings, the 3rd Defendant never appeared or filed any process and on application by learned counsel to the Plaintiff, the right of 3rd Defendant to defend this action was foreclosed.

Accordingly, the court ordered for the filing of final addresses at the conclusion of trial.

The final address of 1st and 2nd Defendants is dated 23rd March, 2020 and filed same date. In the address, one issue was raised as arising for determination:

"Whether based on issues joined, the Claimant has proved her case to be entitled to judgment in this suit?"

The final address of claimant is dated 12th April, 2022 and filed on 13th April, 2022 at the Court's Registry. In the address, two issues were raised as arising for determination:

1. **Whether from the totality of the evidence before this Honourable Court, the Claimant has not made out a case as to entitle her to the reliefs sought?**

2. **Whether the claimant has not made out a case to be entitled to the award of damages in this case?**

The 1st and 2nd Defendants then filed a Reply on points of law dated 6th May, 2022 and filed same date at the Court's Registry.

I have given a careful and insightful consideration to all the issues as distilled by parties in relation to the pleadings and evidence adduced at plenary hearing. The issues may have been differently worded but they seem to me in substance to be in ***pari materia*.**

On the pleadings which has precisely streamlined the facts and or issues in dispute, the central issue has to do with the contested claim of ownership of certain plots said to have been allocated by the Minister F.C.T. These contested assertions or claims have to be established within established legal threshold. All other Reliefs or claims are predicated on proof of this allocation or title and or possession of same. This being so, the issues formulated by parties can be condensed and more succinctly encapsulated in the following single issue:

Whether the Claimant has established on a preponderance of evidence that they are entitled to all or any of the Reliefs claimed?

The above issue in my opinion conveniently covers all the issues raised by parties. The issue thus distilled by court is not raised in the alternative but cumulatively

with the issues raised by parties. See **Sanusi V Amoyegun (1992) 4 NWLR (pt.237)527.**

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issue formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle.

In furtherance of the foregoing, I have carefully read the very well written addresses filed by parties. I shall in the course of this judgment, where necessary or relevant, refer to submissions of counsel and resolving whatever issue(s) arising thereform.

ISSUE 1

Whether the Claimant has established on a preponderance of evidence that they are entitled to all or any of the Reliefs claimed?

At the commencement of this judgment, I had situated the **claims** and **reliefs of claimant** pivoted on ownership of plot DN2 Cadastral Zone C08, Dakwo District Abuja measuring about 100.135 hectares vide the **Development Lease dated 31st October, 2002.** Indeed the Reliefs sought incorporate Reliefs for title, trespass,

injunction and damages for trespass among other Reliefs. The implication of these set of Reliefs as presented is to put the title of the subject of dispute at the fulcrum of the Court's inquiry. See **Odunze V. Nwosu (2007)13 N.W.L.R (pt.1050)1 at 53; Mafindi V. Gendo (2006)AII F.W.L.R (pt.292)157 at 165 F-G.**

The Claimant therefore has the evidential burden of establishing these claims and succeeding on the strength of the case presented as opposed to the weakness of the case of the adversary or the other party. **Kodilinye V Odu (1935) 2 WACA 336 at 337; Fagunwa V Adibi (2004) 17 NWLR (pt.903) 544 at 568; Nsirim V Nsirim (2002) 12 WRN 1 at 14.**

This principle is however subject to the qualification that a claimant is entitled to take advantage of any element in the case of his opponent that strengthens his own cause. What this means is that it is not enough to merely assert that the case of the opponent is weak; there must be something of positive benefit to the claimant in the case of the opponent. See **Uchendu V Ogboni (1999) 5 N.W.L.R (pt.603) 337.** Accordingly, it is important to add that where the claimant fails to discharge the onus cast on him by law, the weakness of the case of the opponent will not avail him and the proper judgment is for the adversary or opponent. See **Elias V Omo-Bare (1982) NSCC 92 at 100 and Kodilinye V Odu (supra).**

It is therefore to the pleadings which has precisely streamlined the issues and facts in dispute and the evidence that we must now beam a critical judicial search light in resolving these contested assertions.

In this case, the claimants filed a **34 paragraphs Amended Statement of Claim** which forms part of the Records of court. The evidence of the two witnesses for the claimant is largely within the structure of the claim.

The 1st and 2nd Defendants filed a **35 paragraphs joint Amended Statement of Defence** which equally forms part of the Record of Court. The evidence of the sole witness is similarly within the purview of the facts averred.

I shall in the course of this judgment refer to specific paragraphs of the pleadings, where necessary to underscore any relevant point. Indeed in this judgment I will deliberately and in extenso refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as

well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;
2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

Being a matter involving disputation as to title to land, it is also important to situate the **five independent** ways of proving title to land as expounded by the Supreme Court in **Idundun V Okumagba (1976) 9 – 10 SC 221** as follows:

1. Title may be established by traditional evidence. This usually involves tracing the claimant's title to the original settler on the land in dispute.
2. A claimant may prove ownership of the land in dispute by production of documents of title. A right of occupancy evidenced by a certificate of occupancy affords a good example.

3. Title may be proved by acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant an inference that the claimant is the true owner of the disputed land. Such acts include farming on the whole or part of the land in dispute or selling, leasing and renting out a portion or all of the land in dispute.

4. A claimant may rely on acts of long possession and enjoyment of land as raising a presumption of ownership (in his or her favour) under **Section 146 of the Evidence Act**. This presumption is rebuttable by contrary evidence, such as evidence of a more traditional history or title documents that clearly fix ownership in the defendant.

5. A claimant may prove title to a disputed land by showing that he or she is in undisturbed or undisputed possession of an adjacent or connected land and the circumstances render it probable that as owner of such contiguous land he or she is also the owner of the land in dispute. This fifth method, like the fourth, is also premised on **Section 146 of the Evidence Act**.

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131.** These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title to succeed but he is eminently entitled to rely on more than one root of title. See **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252.**

The above principles identified and streamlined in some detail, provides broad legal and factual template as we shortly commence the inquiry into the contrasting claims of parties.

A **convenient starting point** is to understand the **situational facts and nature of the dispute** and there is no better take off point in this case than the pleadings of parties. I had earlier emphasised the preeminent position of the pleadings as defining and streamlining the issues in dispute. Let us therefore allow the pleadings to speak on the issue of the allocation and the plot in dispute.

The relevant averments in the Amended Statement of Claim of Claimant are as follows:

" **5 The Plaintiff avers that it is the owner/allottee/leaseholder and infact the developer of CITY VIEW ESTATE (formerly Mldular Estate) situate on Plot DN2, Cadasral Zone C08, Dakwo District, Abuja since 2002, which has developed the greater portion of the land and still developing: The said land is not revoked and has never been revoked till date neither is the Plaintiff in any breach.**

6 The Plaintiff was put into peaceful possession of the land by the Minister and Ministry of the Federal Capital Territory and had enjoyed full control and possession of the land since 2002.

7 The Plaintiff's entry into the land in 2002 was based on grant by the Federal Capital Territory in favour of Plaintiff for purposes of the Mass housing estate.

8 The Plaintiff avers that the Federal Capital Territory granted to the Plaintiff the entire land backed with a Development Lease over the parcel of land measuring 100.135 hectares situate in Dakwo District which the Plaintiff has been in undisturbed and uninterrupted possession of since 2002.

9 The said Development Lease Agreement between the Ministry Federal Capital Territory and the Plaintiff was duly registered at Federal Capital Territory Deed Registry at No.90 Page 90, vol.15 Misc.

10 The Plaintiff avers that a plan showing the entire area of Plot No. DN2 Cadastral Zone C08 Dakwo District, FCT Abuja granted the Plaintiff was equally made, attached and forms part of theLease Agreement which comprises an irregular shaped, fairly undulating and well-drained parcel of land stretching east-westwards along the primary access road and measuring approximately 100.135 hectares. It is particularly delineated by beacon stone Nos: PB01 C8; PB02 C8; PB3 C8; PB4 C8; PB5 C8; PB6 C8; PB6 C8;PB7 C8; PB8 C8; PB9 C8; PB10 C8; PB11 C8; PB12 C8; PB13 C8; PB14 C8; PB15 C8; PB16 C8; PB17 C8; PB18 C8; PB19 C8; PB20 C8; PB21 C8; PB22 C8; PB23 C8; PB24 C8; PB25 C8; PB26 C8; PB27 C8; PB28 C8; PB29 C8; PB30 C8; PB31 C8; PB32 C8; PB33 C8; PB34 C8; PB35 C8; PB36C8; PB37 C8; PB38 C8; PB39 C8; PB40 C8; PB41 C8; PB42 C8; PB43 C8; PB44 C8 as shown on the attached Survey Plan prepared by FCDA Land Surveyors.

11 The Plaintiff pleads and will rely on all documents, lease agreement, survey plans and correspondence relating to the grants and/or approvals on the estate development on the land since 2002 and subsequent approvals till date.

12 The Plaintiff duly accepted the allotment of the land/grant by FCDA in 2002 and has fulfilled all conditions of the grant and had also subsequently updated and obtained all necessary extension relating to the original grant and had paid all fees, ground rents dated 5th February, 2008 by Federal Capital Territory through Abuja Geographic Information System (AGIS) and Copy of Fidelity Bank Plc's Manager cheque no: 00110463, dated 31st January, 2008 for the payment of the demanded ground rent to FCDA by the Plaintiff, Compensation, due and accruable upon the said land now known as City View Estate. The Plaintiff hereby pleads all such relevant documents and correspondence and shall rely on them at the trial.

13 The Plaintiff avers that they had exercised the following acts of possession and ownership over the whole Estate including the portion trespassed by the Defendant as follows. (All such documents and complaints and responses are pleaded and would be relied upon during trial)

a. Compensated villagers and other squatters on the land.
b. Cleared the entire land and commissioned topographical and other surveys on the entire land.
c. Graded the land and put in public utilities such as roads, water, electricity, drainages, boundary walls and fencing.
d. Construction of finished units of bungalow at some portion of the land.
e. Construction of entrance gates, slabs and other sub-structure on the disputed area of the land together with advanced but unfinished structures which the Defendant demolished.
f. Warding off intruders, squatters from the said land and
g. Maintained security and surveillance since 2002 till date.

14 That certain officers or insiders had wrongly in the past re-allocated portions of the land owned and held by the Plaintiff and all such previous attempts in the past were reversed by the Ministry upon the complaints of the Plaintiff which we hereby plead.

15 That the Defendant-Blue Bay Global Concepts Limited irregularly about the year 2006 to 2009 obtained another irregular allocation on portions of Phase 4 of the Plaintiff's land which is at the centre of the Plaintiff's estate. The Plaintiff petitioned and the irregular allocation to the Defendant (blue bay) was cancelled and revoked by FCDA on 21st December, 2009 and they vacated the site for the Plaintiff. the Plaintiff hereby pleads such documents of withdrawal or revocation and shall rely on same.

21. The Plaintiff avers that the land in dispute herein is located about the middle or centre of the entire hectares of land held by Plaintiff-City View Estate Limited."

The above averments and the case projected by Claimant with respect to ownership is very clear.

Now in response, the **1st and 2nd Defendants** pleaded the following relevant averments in the joint Amended statement of defence as follows:

" **3. Paragraphs 5, 6, 7, 8, 9, 10 and 11 of the Statement of Claim are blatant falsehood and are therefore denied.**

4. The 1st and 2nd Defendants aver that following the invitation of the Honourable Minister of the FCT to the general public and private estate developers to participate in the Federal Capital Mass Housing Program/Scheme, the 1st Defendant applied and Plot 10x, Cadastral Zone C08, Dakwo District, Abuja measuring approximately 10.00 hectares was duly allocated to her. The offer/allocation letter in respect of the said allocation is hereby pleaded.

5. The 1st and 2nd Defendants aver that following the allocation of the said plot of land to the 1st Defendant, a Development Lease Agreement was duly executed between the 1st Defendant and the Honourable Minister of the FCT the Defendants shall rely on the said Development Lease Agreement at the trial of the suit.

6. Upon allocation of the said plot to the 1st Defendant, the Honourable Minister of the FCT demanded and the Plaintiff paid an allocation fee of N2,000,000.00(Two Million Naira) only to the latter. A copy of the receipt evidencing this payment is hereby pleaded.

7. The 1st and 2nd Defendants aver that upon receipt of a letter of allocation, the 1st Defendant submitted her Mass Housing Detailed Land Use Plan to the Honourable Minister of the FCT for approval. After due consideration of the 1st Defendant's application, the Honourable Minister of the FCT approved the submitted Mass Housing Detailed Land Use Plan. The letter written to the 1st Defendant by the Honourable Minister, FCT approving the said Land Use Plain is hereby pleaded.

15. Paragraph 12 of the statement of claim is false and is hereby denied. The Plaintiff never exercised any act of possession on plot 10x, Dakwo District, Abuja duly allocated to the 1st Defendant. There was no development whatsoever on the said plot of land when it was allocated to the 1st Defendant.

17. The 1st and 2nd Defendants deny paragraph 15 of the statement of claim and aver that the allocation of Plot 10x, Cadastral Zone, C08 Dakwo District, Abuja to the 1st Defendant was regularly done and has never been cancelled and revoked by the FCDA.

20 The 1st and 2nd Defendants deny paragraph 18 of the statement of claim and aver that they never invaded the Plaintiff's land neither did they destroy the Plaintiff's landscaping, land reclamation and properties worth over N1,000,000.00(One Million Naira).

24. The 1st and 2nd Defendants deny paragraph 21 of the statement of claim and aver that the land in despite is located outside the entire hectares of land held by the Plaintiff.

30 The 1st and 2nd Defendants deny paragraph 30 of the statement of claim and aver that the Plaintiff is not and has never been in uninterrupted,

lawful, actual, peaceable, exclusive and undisturbed possession of plot 10x, Dakwo District, Abuja duly allocated to the 1st Defendant.

32 Paragraph 32 of the statement of claim is false and is hereby denied. The 1st Defendant was lawful(sic) allocated Plot 10x, Dakwo District, Abuja given possession of same by the Honourable Minister of the FCT."

Again the above counter positions projected by the **1st and 2nd Defendants** with respect to its own plot is equally clear. The plot claimed by Claimant is Plot **DN2, Cadastral Zone C08, Dakwo District**. It contends that the plot claimed by 1st and 2nd Defendants forms part of this plot. The **1st and 2nd Defendants on the other hand states that the land they occupy was properly allocated to them and does not form part of the land claimed by Claimant.** These contested assertions consequently now become a matter of proof within accepted legal threshold.

Now in proof of these **contested** issues and to situate its allocation, the Claimant placed reliance on a **Development Lease Agreement** over a parcel of land at Plot DN2 Cadastral Zone C08, Dakwo District which was admitted as **Exhibit P2.**

Before dealing with the application of the contents of **Exhibit P2,** it appears necessary to first deal with the question of admissibility of the **Exhibit P2** and indeed **Exhibits P1, P3-P17** raised by counsel to the 1st and 2nd Defendants. Any findings made with respect to this **Exhibit P2** will *mutatis mutandis* affect all the other documents since the basis of the objection are the same covering all these other documents.

The summary of the objection made is that these **Exhibits** are all photocopies of public documents emanating from the **Federal Capital Territory Administration**. It was contended that being secondary evidence of public documents, they have to be certified and the certification must be done by someone in the F.C.T office in custody of the original copy within the purview of **Section 104 of the Evidence Act.**

That in this case, the certification was purported to have been done by an **unnamed person** in the **FCT High Court** who is certainly not an officer having custody of the original Development Lease Agreement and other documents and he

was therefore not competent to certify the said document and that they are all inadmissible and should be marked tendered and rejected. The case of **WITT & Busah Ltd V. Godwill & Trust Investment Ltd & Anor (2004)8 N.W.L.R (pt.874) 179** was cited.

On the other side of the aisle, the Claimant contends that by virtue of the provisions of **Sections 102, 104 (1-3) and 105 of the Evidence Act,** the staff of the High Court is a public officer who could properly certify the documents since they were documents tendered in court in the course of another proceeding and thus admissible. It was contended that the case of **Witt & Busah Ltd (supra)** is inapplicable to the facts of this case.

Now in this case, it is not in dispute that the **Development lease agreement Exhibit P2** emanates from the F.C.T Administration and undoubtedly a public document within the meaning of **Section 102 of the Evidence Act.**

The Evidence Act makes it abundantly clear in **Section 88** that documents shall be proved by primary evidence except in cases hereafter mentioned in the Act. The first recourse in proving a document is the primary Evidence and it is only where the primary evidence is not available that recourse may be had to secondary evidence.

Now with respect to a public documents, **Section 89(e) and 90(c)** states that where the original is a public document within the meaning of **Section 102,** then only a certified copy of document, but no other secondary evidence is admissible.

The Evidence Act then streamlines the process of this certification, by whom and its modalities. **Section 104(1) and (2)** provides thus:

"104. (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees prescribed in that respect, together with a certificate written at the foot of such copy that it is a true copy of such document or part of it as the case may be.

(2) Such certificate as is mentioned in subsection (1) of this section shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies."

The above provisions are very clear and unambiguous. **Section 104(1)** situates clearly that the certification is to be effected by (i) a **"public officer having the custody of a public document"** which any person has a right to inspect shall give that person on demand a copy or it on (ii) payment of the legal fees prescribed in that respect and (iii) **together with a certificate written at the foot of such a copy that it is a true copy of such document or part of it as the case may be.**

Section 104(2) then situates further that the certificate mentioned in **Section 104(1)** shall (i) **be dated and subscribed by such officer with his name and his official title and (ii) shall be sealed whenever such officer is authorized by law to make use of a seal.**

Any document that falls below the above mandatory threshold is inadmissible as a Certified True Copy of a public document. See **Emmanuel V. Umana (2016) LPELR-40033 (SC); Omisore V. Aregbesola (2015)15 N.W.L.R (pt.1482)205 at 294.**

Now to the **specifics** of the present objection. As stated earlier, **Exhibit P2** is a document of the Federal Capital Territory. The **Exhibit or the Development Lease Agreement** may have been tendered as argued by counsel to the Claimant in another case but contrary to the submissions canvassed, the **Registrar of the court** who sought to certify **Exhibit P2** is not the pubic officer having custody of the document and is certainly in no position to certify at the foot of the document that it is a true copy of the original or any part of the original within the purview or confines of **Section 104(1) of the Evidence Act (supra).**

This must be so because, **the Registrar** is not in custody of the original and cannot speak to its contents or speak about its integrity, veracity or credibility. He can only speak as to what was tendered in his court. No more. Such a document cannot enjoy, for obvious reasons, the presumption of genuineness under **Section 146(1) of the Evidence Act** which would have ordinarily been accorded such certified copy. For purposes of clarity. **Section 146(1)** provides thus:

"146. (1) The court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized in that behalf to be

genuine, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf."

On the whole, **proper custody** in so far as public documents are concerned means the **custody of any official** who in the ordinary cause of his official duties is authorized to deliver certified copies of it to any member of the public. The **late learned Author Aguda Akinola in his book Law and Practice Relating to Evidence in Nigeria at Page 279** stated that it is unnecessary to prove the legal appointment of the official who has certified the copy, it been sufficient to show that he is *defacto* the custodian of the document.

A certified copy of a public document must be shown to have been certified from proper custody. In **Witt and Busch Ltd V. Goodwill & Trust Inv. Ltd (2011)8 N.W.L.R (pt.1250)500 S.C,** a purported certified copy of a certificate of incorporation was issued by the Registrar of the Lagos High Court and not by the Corporate Affairs Commission (CAC). The Supreme Court held that it was not a certification in any true legal sence because the Registrar of the Lagos High Court does not have proper custody of the certificate of incorporation. The **document so certified was held to be inadmissible and of no probative value**. I incline to the view that proper certification of a public document is not a mechanical exercise to be performed by just anybody. It has to be by a public officer who has custody of such public document. Otherwise, the objective of demanding for a C.T.C to assure of the authencity and integrity of the document will be defeated.

Let me perhaps underscore the reasons for **authenticating** public documents by a designated official to enable its admissibility as follows:

1. **To obviate the necessity of calling officials to court to testify as to the genuineness of copies made from original documents or records of a public nature.**

2. **To preserve those original documents or records, from been removed from their proper place of custody through requests that they be tendered in court.**

See **Onochie V. Odogwu (2006)6 N.W.L.R (pt.975)65 at 89 E-G.**

To achieve the above objectives, Certification of the Public document cannot just be done by anybody.

It is to be underscored at the risk of prolixity that in law certified copies are by statute deemed to be originals. Where there is no certification or proper certification, the presumption of regularity will not be attached to such document. See **Tabik Investment Ltd V. G.T.B Plc (2011)17 N.W.L.R (pt.1276)240 at 262 D-C**

Flowing from the above, it is clear that **Exhibits P1, P2, P3, P4 P5, P6, P7, P8(1-3), P10, P11, P12, P13, P14, P15, P16 and P17** are all secondary evidence of public documents of the F.C.T.A purported to have been **certified by an unnamed staff of the High Court** who clearly does not have proper custody of these documents and are therefore inadmissible and lack any probative value in the circumstances.

Let me quickly add that I note that **two of the exhibits to wit**: P2 and P16 will appear to indicate that they are photocopies of a certified copy. Let me quickly state that the basis of the objection and the arguments canvassed on both sides was not on whether a photocopy of a Certified True Copy is admissible in evidence. That was not the bone of contention. Accordingly not been a defined issue, it should be discountenanced. I however note that counsel to the claimant **cited one or two authorities** which dealt with the point. Out of abundance of caution, let me say one or two things on the issue.

I concede that the question of whether a photocopy of a certified copy is admissible is an area that continues to generate controversy in legal circles. I will refer to a few of these decisions. In **Minister of Lands, Western Nigeria V. Azikiwe (1969)AII N.L.R 49,** the Apex Court stated that a photocopy of a certified copy is inadmissible. See also the cases of **Owonyin V. Omotosho (1961)1 AII NLR 304; Ojo V. Adejobi (1986)1 SC 479; Jadesinmi V. Okote Eboh (1996)2 N.W.L.R (pt.429)128** where the same principle was restated.

The Court of Appeal in **Shell V. Nwolu (1991)3 N.W.L.R (pt.180)496; Anaka V. Egbue (2003)33 W.R.N 1** equally restated the principle that a photocopy of Certified True Copy is inadmissible.

Now it is equally true that in the decisions of the same Court of Appeal in **Raymond Iheonu V. Obiukwu (1994)1 N.W.L.R (pt.322)594 at 603-604 and I.M.B V. Dabiri (1998)1 N.W.L.R (pt.533)284 at 297 G-H,** the position was that the photocopy of a Certified True Copy of a public document needs no further certification under **Section 111(1) of the Evidence Act 1990** similar to **Sections 104(1) and (2) of the Evidence Act 2011.**

Now bearing in mind that a Certified Copy is merely a type of secondary evidence just as a photocopy is a type of secondary evidence, the propriety of treating a photocopy of a C.T.C as a Certified Copy clearly will be of doubtful validity particularly in this modern age with people very shrewd and knowledgeable in misusing these gadgets for ulterior purposes.

In **Ogboru V. Uduaghan (2011)2 N.W.L.R (pt.1232)608 at 574-575 H-C,** the Court of Appeal underscored the imperative for a photocopy of a Certified True Copy to be re-certified as follows:

"The answer is that in this age of sophisticated technology, photo tricks are the order of the day and secondary evidence produced in the context of Section 97(2)(a) of the Evidence Act could be doctored and therefore not authentic. Photo tricks could be applied in the process of copying the original document with the result that the copy, which is the secondary evidence, does not completely and totally reflect the original and therefore not a carbon copy of the original. The court has not the eyes of an eagle to detect such tricks."

On the whole, on the basis of the decisions of the Supreme Court, the law is that photocopies of Certified True Copies of public documents are not admissible and only re-certified copies or certified copies of public documents are admissible in evidence. The concurring decision of **Ogbuagu, J.S.C (of blessed memory)** in the case of **Mogaji V. Nigerian Army (2008)AII FWLR (pt.420)603** often cited as authority for the proposition that a photocopy of a Certified True Copy is admissible and requires no further certification is with the greatest respect, an obiter dictum, not based on any defined or streamlined issue in the said case on appeal.

Finally on this issue, it is important to state that the law is settled that where a document or documents have been improperly received in evidence, both the trial

court and the Appeal Court have the power to expunge it from their record. See **Chigbu V. Tonimas (Nig) Ltd (1999)3 N.W.L.R (pt.593)115; Agbaje V. Adigun (1993)1 N.W.L.R (pt.269)261.**

The fact that inadmissible evidence was not objected to at the stage of tendering the document(s) is immaterial as an inadmissible document cannot be admitted by consent or failure to object at the point of tendering. See **F.R.N V. Usman(2012)8 N.W.L.R (pt.1301)141, Abdullahi V. State (2016)LPELR-43753(CA)**

As I round up on this issue, it is important to call on counsel to always strive to get the best available evidence to support contested assertions in any case. The opportunity was there to get the **Certified True Copies from proper custody** within jurisdiction. I really cannot fathom why counsel chose or elected not to go to the F.C.T.A to get certified copies of documents needed to effectually prosecute the case of Claimant. If it was a gamble, it has as a strategy, not worked out. I leave it at that.

On the whole and for the avoidance of doubt, the documents identified and streamlined above are all inadmissible and will lack probative value in the circumstances. The unavailability of these documents would in the circumstances have served to wholly undermine or compromise the case of Claimant in the absence of critical documentary evidence to back up its claims. In the event however that I am wrong, I will still proceed out of abundance of caution to consider the substance of the case using these same documents. The value of taking this step is that in the event, there is an appeal, the Superior Court of Appeal will have the benefit of the views of the lower court on all matters.

We now come back to substance of the issues raised by the pleadings. I had earlier streamlined the relevant averments in the pleadings of parties and the case made out respectively. I had also indicated that by the nature of the claims made, the question **of title** has been made a critical thrust of the dispute. I had also earlier situated the principles to guide the resolution of this dispute. **The issue now is one of proof of the contested assertions.**

As again already pointed out, the Claimant placed reliance on a **Development Lease Agreement** over a parcel of land at Plot DN2 Cadastral Zone C08, Dakwo

District, hereinafter referred to as the disputed plot which was tendered and admitted as **Exhibit P2.**

Now because the case of the **Claimant of title** is rooted on this document, it is perhaps necessary to situate its proper legal import and whether it confers what the Claimant contends it confers on it.

Now **Exhibit P2** is clearly a **Development Lease Agreement** between the **Ministry of the Federal Capital Territory and Modular Ltd** (now City Estates Ltd)

This **lease** agreement obviously provides the basis for the mutual reciprocity of legal obligations between the parties. It is settled principle that where parties have embodied the terms of their contract or relationship in a written document, they are bound by the terms and extrinsic evidence is not admissible to add to, subtract from, vary or contradict the terms of the written agreement. See **Section 128(1) of the Evidence Act 2011; Nigeria Dynamics Ltd V. Maimadu Ibrahim (2002)8 NWLR (pt.768)63.**

Let us now determine the nature or interest conferred by **Exhibit P2.** For purposes of clarity and ease or understanding, I will quote extensively certain important provisions of **Exhibit P2** as follows:

"DEVELOPMENT LEASE

THIS DEED is made the 26th day of August 2002 BETWEEN THE MINISTRY OF THE FEDERAL CAPITAL TERRITORY of Area 11 Garki, Abuja (hereinafter called the 'LESSOR' which expression whenever the context so admits shall include its successors-in-title and assigns) of the one part AND MODULAR LIMITED a company incorporated in Nigeria and having its registered office at No. 280 Addis Ababa Crescent Wuse Zone 4 Abuja (hereinafter called the 'LESSEE' which expression wherever the context so admit shall include its successors-in-title and assigns) of the other part.

WHEREAS:

(i) The Lessor is the title holder in respect of land at the Dakwo District of the Federal Capital Territory, Abuja (which description is more

particularly recited in schedule hereto) and it intends to develop same into a full-scale residential housing complex.

(ii) Under the Federal Capital Territory Mass Housing Development Scheme, the Lessor intends to develop the Land in question into full scale residential housing Complex.

(iii) Pursuant to the Agreement reached between the Parties, details of which are contained in File No.MFCT/LA/2002/MISC 20,195 the Lessor has agreed to grant to the Lesse a term of three years in and over the aforesaid property on the terms and condition hereinafter contained.

NOW THIS DEED WITNESSETH as follows:

1. **For the period of three years from the 31st day of October 2002 the Lessee shall have the license and authority to enter upon that piece or parcel of land measuring 100,135 hectares situate at Dakwo District within the Federal Capital Territory more particularly described on the Survey Plan hereto annexed for the purpose of erecting buildings and executing works in accordance with the stipulation hereinafter contained and for no other purpose whatsoever.**

2. **In accordance with the agreement, the Lessee agrees to perform and observe the following stipulations.**

(i) To hold the said premises a tenant for the time being to the Lessor subject to the rent, covenants and stipulations so far as applicable as if a lease thereof had been actually granted upon the conditions set forth in the schedule hereto and so that the Lessor shall have all the remedies by distress or otherwise for rent in arrears that are incidental to the relationship of landlord and tenant but so that nothing herein contained shall be construed as creating a demise or any greater interest in the Lessee than that granted herein for a period not exceeding three years.

(ii) Within the period of 36 months from the date hereof to erect over in and complete for immediate occupation in substantial and workmanlike manner with the best materials of their several kinds and in conformity in every aspect with the plans elevations sections and specifications previously approved by reference and under the inspection and direction to the satisfaction in all respect of the Architect and/or Engineer and/or Engineer for the time being of the Lessor on the said piece of land 1850 units of housing of the type set out in the approved plan and all proper and suitable drains sewers connection and other infrastructure, conveniences and appurtenances so that the ground on which each building is built shall be in conformity with the Development Control manual of the Federal Capital Development Authority AND to remove and replace any materials brought on the premises or used in any of the said buildings or works which the said Architect and/or Engineer shall require to be removed as being inferior or unfit and to make good any workmanship which he shall consider imperfect…

3. It is hereby mutually agreed that until the Lessee has completely performed the aforesaid agreement to execute the works in accordance with the conditions and stipulations contained in clause 2 hereof the Lessor shall possess the rights and powers following:

(i) The right for himself his duly authorized agent or surveyor at all reasonable times to enter upon the said premises to view the state and progress of the said buildings and works to inspect and test the materials and workmanship and for any other reasonable purpose including the constructing, repairing or cleansing of any sewer or drain from any adjoining land of the Lessor.

(ii) After the expiration of this lease, if the Lessee shall fail to complete erecting structures on the parcel of Land granted, the Lessor shall grant an extension of a period of six months after the expiration of which the Lessor shall take over so much of the undeveloped portion of Land and pay the Lessee for the improvement thereon if any, but

without prejudice to any right of action or other remedy of the Lessor for the recovery of any rent or money due to him from the Lessee or in respect of any breach of this agreement…

5. **Within twenty-eight days of the substantial completion of the development of any portion of the estate to the satisfaction of the Architect and/or Engineer, (to be evidenced by a certificate to that effect,) the Lessor shall grant a letter of offer to any person designated by the Lessee. On full completion of the development, the Lessor shall thereafter grant a Certificate of Occupancy directly to the purchaser. Whenever the Estate shall have been completed and there are no prospective buyers, the Lessor shall grant title Deeds for the time being in respect of so much of the unsold portion to the Lessee.**

6. **It shall be the responsibility of the Lessor to provide Primary and Arterial Infrastructures to the property whereas the Lessee shall provide Secondary and Tertiary Infrastructure to the Estate."**

I have at length above situated some of the terms of **Exhibit P2** above and it projects clearly that the relationship between parties subject of **Exhibit P2** is simply a **leasehold relationship**.

Now in law, a **leasehold relationship or interest** exist between two or more parties where one party gives out or lets out his property to another person to use for a period and usually, though not always, in consideration of payment of rent. It is a contract for the exclusive possession and profit of land for some definite period. See **Prudential Assurance Co Ltd V. London Residuary Body (1992)2 A.C 286.** In a lease, the consideration flowing from the Lessor to the Lessee is the demised premises. The consideration paid by the Lessee is the rent and the observance of any condition or covenant in the lease. The **title to the land is not conveyed, only the use and occupation of the property is in issue; the property reverts back to the Lessor after the expiration of the term**. This feature is significant for it distinguishes a lease from a freehold which is characterized by uncertainty of term; it is essential in leases that the term is certain. **The right of the Lessor to the reversion of the demised premises is essential because if the**

intention is to absolutely transfer the interest, it will amount to an assignment and not a lease. Some of the features of a lease may be set out as follows:

1. It is the demise of premises or property for exclusive use and occupation.
2. In consideration, rent is usually but not necessarily paid by the user of the property.
3. The parties may agree on specific terms to regulate their relationship. These terms are often referred to as covenants either on the Lessor's or Lessee's part.
4. The relationship is for a fixed period.
5. There is a right of reversion of the property to the lessor.

Exhibit P2 essentially situates in substance the features of a lease identified above. As a logical corollary, it follows that **Exhibit P2** does not **convey title to the disputed land to the Claimant** but only allowed for the use and occupation of the disputed plot with a clear right of reversion.

Indeed **Exhibit P2** in different paragraphs or clauses accentuates this position. I will at the risk of prolixity refer to certain clauses again. In the **Recital or introductory** part of the lease in clause (i), the Lessor (FCT) indicates that it is the **title holder** and in clause (iii) the lessor states clearly that it has agreed to grant to the lessee (claimant) a term **of three years in and over the aforesaid property on the terms and conditions** hereinafter contained. Indeed in clause (1) of the deed, it was indicated that the lessee (claimant) **" shall have licence and authority to enter upon that piece or parcel or land measuring 100.135 hectares situate at Dakwo District."** In clause 2 (1), the lessee (claimant) agreed **"to hold the premises as a tenant for the Lessor subject to the rent and covenants and stipulations so far as applicable as if a lease thereof had been actually granted**…" **In** clause 5 **of the agreement, the Lessor (Claimant) covenanted that within "twenty-eight days" of the substantial completion of the development of any portion of the estate to the satisfaction of the Architect and/or Engineer (to be evidenced by a certificate to that effect), the Lessor shall grant a letter of offer to any person designated by the Lessee. On full completion of the development, the lessor shall thereafter grant a certificate or occupancy directly to the purchaser. Whenever the estate shall have been completed and there are no prospective buyers, the Lessor shall grant title**

deeds for the time being in respect of so much of the unsold portion to the Lessee.

The above terms are clear and unambiguous.

As stated earlier, parties are held bound by **Exhibit P2** and by all its terms and conditions. There is really no room for departure from what is stated therein. See **Jeric (Nig) Ltd V. Union Bank Nig Plc (2000)15 N.W.L.R (pt.691)447 at 462-463 G-A; 466e.**

I have read all the **Exhibits** tendered vide **Exhibit P1, P3, P4, P5, P6, P7(1 and 2), P8(1-3), P9, P10, P11, P12, P13, P14, P15, P16, P17, P19, P21, P22, P23, P24** and indeed all the documents tendered and there is nothing to situate any **letter of offer** or **Certificate of Occupancy** to evidence allocation of the disputed plot. All the documents tendered by Claimant are all effectively aimed or targeted at actualizing the lease agreement covered by **Exhibit P2.** No more. These documents tendered do not constitute and cannot constitute a different transaction or relationship outside the purview of **Exhibit P2,** the lease agreement between parties.

Indeed by **Exhibits P5** dated 7th December, 2006 and **Exhibit P7(1)** dated 3rd October, 2007, the **lessor** was here effectively granting an extension of the Lease terms sought by Claimant. In **Exhibit P7(1),** the extension was couched in the following terms:

"I am to refer to yours on the above subject dated 20th December, 2006 and please to inform you that the Minister FCT, has graciously granted you additional six(6) months to the earlier lease term as requested."

To undermine any **claim of title** by Claimant, the F.C.T, the **recognized allocating authority** by its letter to the claimant dated 1st March, 2011 stated as follows:

"The managing Director

City View Estate Ltd

No.7 Kabale Close, Fidelity Place

Off Sultan Abubakar Way Wuse Zone 3

Abuja.

RE: ISSUANCE OF CERTIFICATE OF OCCUPANCY FOR CITY VIEW ESTATE LTD

1. **I am directed to refer to your request on the above subject matter referenced issue C/O/CVE/01/01 of 14th October, 2010 and inform you that you currently enjoy a Development Lease under Mass Housing Programme which is not a title.**

2. **Resultantly, you are not entitled to a Certificate of Occupancy, as titles will be vested on the different beneficiaries who will be issued certificates on application by the Developer.**

3. **Please accept the assurances of our highest regards.**

The above representation by the allocating authority is clear. **Nothing needs be added to it.**

By **Exhibit P2,** the duration of the lease was for **three years from the 31st day of October, 2002**. I have carefully again gone through the documents tendered by Claimant and the only documents pertaining to an extension of the lease are those vide **Exhibit P5 and P7** earlier identified. **Exhibit P5** did not grant any extension while **Exhibit P7(1)** dated 3rd October, 2007 only granted an extension of **additional six(6) months**. There is nothing on the evidence precisely situating whether the lease agreement was further extended or even if it subsist. If further extensions were obtained as pleaded in **paragraph 12**, these approval of extensions were not tendered in proof. Those averments will as a consequence be deemed as abandoned. There is on the evidence no clarity on the question of extension of the lease agreement and whether there was any further extension or even its present status so I prefer to keep my peace. What the evidence however discloses **without any ambiguity** is simply a leasehold agreement between parties as demonstrated at length already.

The claim of **ownership** or **grant** pleaded was not proven as distinct from the consequences of a lease agreement. I will return to this point later on again.

Now on the evidence, by **Exhibit P2** as earlier alluded to, the lessee or Claimant is said to have **"licence and authority to enter upon that piece of land measuring 100.135 hectares situate at Dakwo District within the FCT more particularly described on the survey plan annexed."** Now the survey plan forming part of **Exhibit P2** is completely illegible and unclear and there is not much that can be made of it in the circumstances. Such an illegible material cannot be of any probative value.

Learned counsel to the Claimant has in **paragraph 10** of the claim and in some detail delineated the beacon numbers shown on an **"attached survey plan" which was pleaded.** No such survey plan was however tendered. If the beacon numbers delineated are from the survey plan attached to **Exhibit P2,** I am afraid the plan does attached, does not bear or show those numbers.

A judge cannot sit down out of court on his own and examine a document to sort out a case of a party. A party in sorting out its case cannot however make out a case in an address which is in conflict with or which is not in tandem with the evidence on record or demonstrated in open court.

The bottom line is that the survey plan pleaded in **paragraph 10** was not tendered in evidence. That paragraph is equally declared as abandoned. The lease in this case may be in respect of a parcel of land measuring **100.135 hectares situate at Dakwo District** but there is nothing in evidence showing with certainty **the area of the land claimed or over which the leasehold covers reflecting the feautures with clear and precise boundaries.**

As stated earlier, it must not be forgotten that even if the question of title has been found not to be legally availing, **the case of claimant bothers on title** and in an action for declaration of title, the claimant has the onus of showing with certainty the area of the land he claims by filing a survey plan reflecting the feautures and precise boundaries thereof. However the filing of a survey plan is not necessary in all cases. Where there is no difficulty in identifying the land in dispute, a declaration may be made without it being based on a survey plan. See **Agbeje V. Ajibola (2002)2 N.W.L.R (pt.750)127 at 147 C-F.**

In law, the burden of proof of identity of land will not exist when the identity is not a question in issue. The question of identity will only arise when the Defendant

raises it in his statement of defence or the cross-examination of the adversary and his witnesses. See **Ilona V. Idakwo (2003)11 N.W.L.R (pt.830)53 at 85 D-G.**

In this case on the pleadings of **1st and 2nd Defendants earlier identified**, contrary to the case made out by Claimant that the plot allocated to 1st and 2nd Defendants forms part of the plot covered by its leasehold, their case is that their own land is outside the entire hectares of land held by Plaintiff (see paragraph 22 of the Defence).

There is here dispute as to the **area of land claimed** and in such circumstances, the question of ascertaining its area does arise. In this case, on the evidence, the Claimant has clearly not established with certainty the precise area of land covered by the **leasehold** and how the land claimed by 1st and 2nd Defendants forms part of the land claimed by Claimant.

On the evidence, no independent surveyor or a surveyor from the issuing authority was produced in court to define the boundaries of the land covered by the leasehold to Claimant with certainty and how the allocation to 1st and 2nd Defendants impacts on it and the court cannot speculate. In land disputes of this nature, the mere mention of names without more is not enough for identification of land. See **Babatola V. Aladejana (2001)12 N.W.L.R (pt.728)597 at 614.**

A **different scenario or dynamic** would have played out where parties by evidence adduced, both oral and documentary are *adidem* on the identity of the land in dispute. In such situation, the fact that different names are ascribed to it or that the area where it is located is called different names is not fatal. See **Ojo V. Azam (2001)4 N.W.L.R (pt.702)57 at 68C.**

Now in the face of the fluidity on the part of the claimant with respect to the parcel of land covered by the lease hold **Exhibit P2,** the 1st and 2nd Defendants tendered **Exhibit D1a** which conveyed the approval of grant of Plot No 10 in Cadastral Zone C08, Dakwo District measuring 10.00 hectares. A site plan over the said plot was tendered as **Exhibit D1b.** A **development Lease Agreement** for Mass Housing Scheme was equally executed between FCDA and 1st Defendant vide **Exhibit D2.** The development lease agreement also contained same terms as contained in **Exhibit P2.** Its legal import will accordingly not be any different from that accorded **Exhibit P2.**

By **Exhibits D3a and b, D4 and D5,** the 1st and 2nd Defendants equally took steps to actualize the leasehold agreement.

Now there cannot be two parties claiming possession of the same land concurrently. If the leasehold of **1st and 2nd Defendants** covered part of the leasehold of claimant, then it has to be a matter for evidence; not just any kind of evidence but credible evidence.

In paragraphs 14 and 15 of the claim, the Claimant pleaded as follows:

"14: That certain officers or insiders had wrongly in the past re-allocated portions of the land owned and held by the Plaintiff and all such previous attempts in the past were reversed by the Ministry upon the complaints of the Plaintiff which we hereby plead.

15: That the Defendant-Blue Bay Global Concepts Limited irregularly about the year 2006 to 2009 obtained another irregular allocation on portions of Phase 4 of the Plaintiff's land which is at the centre of the Plaintiff's estate. The Plaintiff petitioned and the irregular allocation to the Defendant (blue bay) was cancelled and revoked by FCDA on 21st December, 2009 and they vacated the site for the Plaintiff. The Plaintiff hereby pleads such documents of withdrawal or revocation and shall rely on same."

Now in evidence, nothing was presented to situate or support the above averments. No evidence of any kind was tendered to support the allegation that certain officers or insiders had wrongly in the past reallocated portions of land owned and held by Plaintiff and that all such attempts were reversed. The question is who are these officers? What part of the portions of Claimant's land did they allocate and to whom? Where is the evidence of the reversal of such allocations by the ministry? These are simply bare averments lacking evidence and they will be deemed as abandoned. If the 1st and 2nd Defendants irregularly obtained their own allocation at the center of Plaintiff's estate, again where is the evidence to situate this irregularity? One would have expected that a staff from the issuing authority would have been summoned to situate this irregularity or to impugn the allocation to 1st and 2nd Defendants vide **Exhibit D1 and D2.**

I find it strange that no attempt was made by Claimant to call or summon an official of the F.C.T.A who entered into these various lease agreements to give

clarity and insight with respect to the relative strength and position of parties in terms of the allocations said to have been made by them. Their input on the contested assertions may have been helpful and perhaps even decisive, one way or the other.

Indeed **Exhibit P16** tendered by Plaintiff shows clearly that both **Claimant and 1st Defendant** are all participants of the mass housing project along with other developers. This exhibit or report is from the office of the Director, Urban and Regional Planning. It is titled subject: **" Inventory of Mass Housing Developers on site as at 14th May, 2009 by Department of Urban and Regional Planning."** In this inventory, the claimant's name appears under Dakwo District. Under **Plot no,** it was indicated **"old allocation"** and under **Remark column**, it was indicated as **"45% developed".**

In the same **inventory,** a list of allottees not on site as at **14th May, 2009** by the Department of Urban and Regional Planning was equally attached. Under Dakwo District, the name of **1st Defendant appears**. The plot no allocated was **"10"** and the size(ha) was indicated to be **"10".**

This Exhibit it must be stated was **tendered by Claimant** and came from the **issuing authority**. It is a document that carries value and weight in the circumstances.

What this document show undoubtedly is that both **Claimant** and **1st Defendant** participated in development of mass housing programme for the F.C.T and allocations were made to both parties. If the land covered by the leasehold to 1st Defendant was part of or forms part of the leasehold to Claimant, this **inventory** did not say so and this is telling.

I have read **Exhibit P17** said to contain a report over file No: MISC 81997 and one really finds it difficult to situate what to make of it. The Report has no maker and was not signed and has no identified source. An unsigned document in law has no value at all. The principle is settled. See **Bello V. Sanda (2012)1 NWLR (pt.1281)219.**

In addition, the Report deals with **Asokoro District Cadastral** Zone A04 which has no nexus with the **disputed land** in this case which is in Dakwo District. This Exhibit does not in any way aid the case of Claimant. The same finding applies to

Exhibit P16, a judgment in which the extant 1st Defendant did not feauture. Interestingly in **Exhibit P13,** the memo earlier referred to, the said Phamatobs Global Services Ltd that filed the Court action subject of Exhibit P18 did not feature at all with respect to any leasehold allocation at Dakwo District. It is really difficult to situate the relevance of this judgment in the context of the clear facts of this case. Though no longer decisive, since the facts or evidence are not clear, it may be relevant to refer to the response of FCTA when 1st Defendant wrote a petition to the Commissioner of Police vide Exhibit D7 complaining of criminal trespass against claimant who in turn wrote to the F.C.T.A for their reaction. In the response to the police vide **Exhibit D8,** the F.C.T.A stated as follows:

"… With reference to your request no. AR:3000/FCT/X/LEG/VOL.24/3, the following information is hereby submitted:

a. **The original allotee of Plot No. 10X Cadastral Zone C08, Dakwo District is Bluebay Global Concept Limited with File No. MISC 81997.**

b. **The allocation was for a private housing estate (Mass Housing).**

c. **The plot is approximately 10 hectares in size and was allocated on 9th December, 2005.**

d. **We have no records to show that plot No. 10X is revoked from the allotee. However issues of Mass Housing have been suspended pending submission of report by the FCT Mass Housing Monitoring Committee. Attached are some relevant documents to assist you in findings.**

Above submitted for your action, please.

Signed

Tijjani U. Sanusi

Company Secretary/Legal Adviser"

The above letter is also clear and speaks for itself with respect to the leasehold 1st Defendant enjoys over their own plot 10. I leave it at that.

The bottom line as we have demonstrated at length is that the Claimant has not been able to creditably establish that the leasehold allocation to 1st Defendant forms part of the leasehold allocation granted to it by the same allocating authority and this is fatal.

The above pronouncements and findings on the very critical elements of the complaints or grievances of Claimant provides broad factual and legal template and basis to now address whether the Reliefs sought by Claimant are availing. It equally bears repeating even at the risk of prolixity more than half of the Reliefs sought are in the nature of declarations which have to be creditably established by cogent and satisfactory evidence. It is not granted based on speculations or conjectures and it is not established by admissions of parties. See **Fabunmi V. Agbe (1985)1 NSCC Vol. 16 Page 322 at 340.**

Reliefs (1) and (2) already produced at the beginning of this Judgment are essentially Reliefs for Trespass.

Now trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of that owner is an act of trespass actionable without any proof of damages. See **Ajibulu V. Ajayi (2004) 11 N.W.C. R (pt 885) 458 at 48)**

The claim for trespass is therefore rooted in exclusive possession. All a plaintiff suing in trespass needs to prove or show in order to succeed is to show that he is the owner of the land or that he has exclusive possession.

Now on the evidence, I have situated the Leasehold Agreement that the Claimant has and the time sensitive duration of the Agreement for **3 years** commencing in 2002. I had also found that there was an extension sometime in October 2007 vide **Exhibit P7(1)** for 6 months, but on the facts there is no certainty or clarity as to the continued existence of the leasehold agreement covered by **Exhibit P2.**

On the evidence, the leasehold may have been over a piece of land measuring 100.135 hectares situate a Dakwo but I found the land to which this hectares relate to was not established with certainly. In other words, definite and precise boundaries of the land claimed were not streamlined with clarity and unambiguously in evidence. The need for a Claimant to prove with precision and

certainty and without inconsistency, the identity of the land he claims cannot be over-emphasised in law.

In the face of this fluid situation, the 1st Defendant pleaded that it was allocated a distinct and different plot from that of Claimant and tendered in evidence a different **leasehold agreement** relating to a certain plot 10 vide **Exhibits D1(a and b) and D2.** These documents were not challenged or impugned. All the documents tendered by **Claimant** which I evaluated extensively supports or recognizes the leasehold of 1st Defendant over **Plot 10** and that 1st Defendant participated in the mass housing development scheme initiated by the FCTA. None of the documents situate that the leasehold of 1st Defendant is in the Plot covered by the leasehold of the Claimant. Indeed nobody was produced from the relevant allocating authority to say or lend voice to the allegation of Claimant that the allocation to 1st Defendant was on the parcel of land forming the leasehold of Claimant.

The question then is where is the slightest interference here and on whose portion of land? If there is wrongful invasion of a right to exclusive possession, then the ownership and or exclusive possession of a particular land has to be established and the wrongful interference and the person or body responsible equally established.

The point to underscore is that trespass to land is actionable at the instance of the person in possession of the land. He can sue even if he is neither the owner of the land or a privy of the owner. This is because exclusive possession gives the person in possession the right to retain such possession and to undisturbed enjoyment of it against all the wrongdoers except the person with a better title. Anybody who disturbs his possession can be sued on trespass. See **Ogbimi V. Niger Construction Ltd (2006)6 NWLR(pt.986)474, (pt.317)350 at 411 D-H.**

In this case, in the face of clear established leasehold granted over two different plots vide **Exhibits P1 and D1 and D2,** it is difficult in such unclear situation to situate trespass. To the clear extent that there is really no evidence to show or situate that **Exhibits D1 and D2,** the leasehold of 1st Defendant forms part of **Exhibit P1** and or that 1st Defendant unlawfully interfered with the possessory rights of Claimant, then the case for trespass, I am afraid, is compromised.

If 1st Defendant moved into the portion of the plot leased to Plaintiff as distinct from their own leasehold plot which 1st Defendant strenuously denied, the unanswered question is where is the evidence to situate or show that they invaded the Claimant's land armed with thugs and destroyed their properties worth millions of naira? Unfortunately, no credible evidence was supplied to situate any destruction of structures of Claimant by 1st Defendant and the court cannot speculate. If Claimant reported or invited the police as averred in paragraph 21 and reported acts of forceful entry, trespass and malicious damage, the question is what did they do? What were their findings if any? Did they prepare any report? Where is the report? etc. All these questions were left unanswered by Claimant and again the court cannot speculate. The bottom line is that on the basis of the evidence led, the case of trespass cannot fly.

On the whole, **Reliefs (1)** and **(2)** are not availing**.**

Relief (3) seeks a declaration that the Plaintiff is the rightful allotee of the entire land known as Plot DN2 Cadastral Zone C08, Dakwo District, Abuja measuring about 100.135 hectres vide the development lease dated 31st October, 2002 and duly registered at Federal Capital Territory Deed Registry at No.90, page 90, Vol.15 Mis.

On the basis of the findings already made, it is clear **Exhibit P2** only establishes leasehold relationship for 3 years. Indeed in **Exhibit P2** it was indicated that the Claimant shall **"have licence and authority"** to enter into the land for three years commencing in 2002. I also referred to an extension in 2007 vide **Exhibit P7(1)** which was for only six months. There is nothing in the documents tendered situating any further extension.

I also referred to **Exhibit P13** where the issuing authority informed Claimant unequivocally above the nature of the relationship. The allocating authority or lessor stated that the Claimant **"enjoys a development lease under the Mass Housing Programme which is not a title".** That the Claimant **"is not entitled to a certificate of occupancy, as titles will be vested on the different beneficiaries who will be issued certificates on application by the developer."**

I need not add to the above clear and positive pronouncement. In such very fluid and unclear circumstances, it will be difficult to grant the relief as sought in **Relief (3).** It fails.

Relief (4) similarly will fail in the present unclear situation of uncertainty as to whether the lease agreement still subsists. As stated severally, the lease was for only 3 years starting in 2012. By **Exhibit P7(1)** dated 3rd October, 2007**,** it was extended for only 6 months. There has been no further extension on the evidence before me. To seek for a prayer that the lease still subsist will appear in the circumstances to have no foundation. It fails.

Relief (5) also must fail. There is absolutely nothing in evidence to support that the leasehold allocation to 1st Defendant was from or forms part of the **leasehold allocation to Plaintiff**. Indeed by **Exhibit P16** tendered by Claimant and analysed already, a memo from the office of the Director Urban and Regional Planning FCDA situates clearly **different leasehold relationship to both Claimant and 1st Defendant.** If the leasehold to 1st Defendant was part of the leasehold to Claimant, the issuing authority would have said so. They never did. **Relief 5** fails.

Relief (6) equally fails following the failure of **Relief (5).** No issue of superiority of title inures to any party here. There are **2 different leasehold relationships** entered into by the F.C.T.A. They never said one was superior to the other. I say no more. **Relief 6** fails.

Relief (7) must equally fail having found already that no trespass was established against 1st Defendant. If there were any demolitions on the leasehold plot of Claimant, no credible evidence was supplied situating the demolition and the link with 1st Defendant. These matters cannot be left to speculations or conjectures.

With the failure of Reliefs 1, 2 and 7, Relief 8 must fail too. To the clear extent that the damages said to have arising from the destruction was not linked to 1st Defendant, the claim for special damages must fail.

With all the reliefs on trespass failing, **Relief 9** for general damages for trespass clearly lacks any foundation and must fail too. With the failure of all **substantive Reliefs, Reliefs 10, 11** and **12** for perpetual injunction, legal cost and interest must all equally fail. The principle is once the principal is taken away, the adjunct also must necessarily fail.

It is thus obvious that with or without the documents tendered by Claimant, the case is unfortunately fatally compromised. I had found all the documents tendered as inadmissible but out of abundance of caution I still evaluated same but these did not help or further the case of Claimant.

The case of Claimant clearly was elaborately constructed on the pleadings but unfortunately lacked evidence to back up the averments which were vehemently contested by the 1st and 2nd Defendants. The law is settled that pleadings, however strong and convincing the averments may be, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must be led to prove the facts relied on by the party or to sustain allegations raised in pleadings. **Union Bank Plc V. Astra Builder (W/A) C2010) 5 N.W.L.R (pt. 1186)1 at 27 F-G**

The whole trial process and whatever its imperfection(s) is evidence driven. A case must be supported by evidence of quality and which is also cogent and credible. No court can treat an averment or averments in pleading without evidence as evidence of matters averred therein. This case unfortunately suffered from a chronic absence of credible evidence to support the allegations made.

On the whole, the single issue raised is answered or resolved against the Plaintiff. Having carefully considered the evidence on record, the court has not been put in a commanding height by cogent, credible and convincing evidence to grant any of the Reliefs claimed by Plaintiff.

In the final analysis, the Plaintiff's case having failed in its entirety is hereby dismissed.

……

Hon. Justice A.I. Kutigi

Appearances:

1. **Casmir C. Igwe Esq., with Ngozi C. Igwe (Mrs) and Maryline Iya Ogbeor for the Plaintiff**

2. **Chidi Nwankwo, Esq., for the 1st and 2nd Defendants**