IN THE HIGH COURT OF THE FEDERAL CAPITALTERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS WEDNESDAY, THE 29TH OF MARCH, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE

SUIT NO: FCT/HC/CV/521/2014

BETWEEN

MR. JEOVITA IBEH ..... CLAIMANT

AND

1. **THE HONOURABLE MINISTER FEDERAL CAPITAL TERRITORYADMINSTRATION, ABUJA.**
2. **ABUJA GEOGRAPHIC INFORMATION SYSTEM**
3. **ABUJA MUNICIPAL AREA COUNCIL, FCT.**
4. **THE MANAGING DIRECTOR JEDO ESTATE LTD ABUJA, FCT.**

DEFENDANTS

JUDGMENT

By Writ of summons and statement of claim filed on 17th November, 2014, the Plaintiff claimed for the following Reliefs:

1. **A Declaration that the rights and interest of the plaintiff over and on plot numbers 3165 and 3166 measuring about 1, 000sq meters each respectively, situate and or lying at Lugbe 1 Extension layout of the Federal Capital Territory Abuja is valid and subsisting.**

2. **An Order of injunction restraining the defendants by themselves, their Agents, servants and privies however called from further Trespass, or further dealing in any manner whatsoever with the Plaintiff rights and**

interest in and over all that Parcel of lands, the subject matter of this suit, situate, lying and being Plot Numbers 3165 and 3166 Lugbe 1 Extension Layout Abuja.

3. **An Order of Court compelling the 1st and 2nd defendants to release the Certificate of Occupancy of Plot Numbers 3165 and 3166, Lugbe 1 Extension Layout, Abuja to and in the name of the plaintiff which said plots of lands was a subject of recertification exercise carried out by the 2nd defendant in the year 2006.**

4. **The sum of Ten (10) Million Naira (N10, 000, 000) being general damages against the 4th defendant for trespass on the plaintiff plot numbers 3165 and 3166 Lugbe Extension layout.**

5. **The sum of Five Million Naira (N5, 000, 000.00) against the Defendants being the cost of the filing of this suit, including the plaintiff solicitors fees.**

The 1st and 2nd Defendants filed a statement of defence dated 26th February, 2015. The 3rd Defendant on its part filed a statement of defence dated 13th March, 2015 while the 4th defendant filed an Amended Statement of Defence dated 10th October, 2017.

In Response to the above processes of defendants, the plaintiff filed the following:

1. Plaintiff's Reply to 1st and 2nd defendants statement of defence dated 24th February, 2014.

2. Plaintiff's Reply to 3rd Defendant's statement of defence dated 13/3/2015.

3. Plaintiff/claimant further Reply to 4th Defendants Amended statement of Defence dated 10th October, 2017.

It is important to briefly state that this case initially commenced before, now retired Justice M. Balami and upon his retirement, the case was then reassigned to my court by the Honourable, the Chief Judge, FCT.

With the settlement of pleadings, hearing then commenced. In proof of his case, the **plaintiff** testified in person as **PW1**. He deposed to a witness

deposition which he adopted at the hearing and tendered in evidence the following documents:

1. Two (2) Offers of the Terms of Grant/Conveyance of Approval dated 2nd May, 2003 with "changed" on the face of the Offers were admitted as **Exhibits P1 a and b.**

2. Two (2) Regularisation of Land Titles and Documents of FCT Area Councils Acknowledgments dated 13th October, 2006 were admitted as **Exhibits P2 a and b**.

3. Two (2) Departmental Receipts (AMAC) of payments for change of ownership of plot Nos. 3165 and 3166 dated 25th April, 2000 with files nos AN 4816 and AN 4817 were admitted as **Exhibits P3 a and b**.

4. Two (2) Departmental Receipts of AMAC for form and processing fee for residential plot dated 5th June, 2003 were admitted as **Exhibits P4 a and b.**

5. Two (2) Departmental Receipts of AMAC for the payment for Certificate of Occupancy of Plot No. 3165 and Plot No. 3166 dated 7th August, 2003 were admitted as **Exhibits P5 a and b.**

6. Two (2) Development Levy Receipt for three years (2001, 2002 and 2003) dated 5th June, 2003 were admitted as **Exhibits P6 a and b.**

7. Two (2) UBA Deposit Slips dated 9th October, 2006 were admitted as **Exhibits P7 a and b.**

8. Two (2) letter of Petition to the Hon. Minister FCT dated 15th September, 2014 and 2nd October, 2014 respectively were admitted as **Exhibits P8 a and b.**

9. Cash Receipt from J.O. Agu and Associates dated 7th November, 2014 was admitted as **Exhibit P9**.

PW1 was then cross-examined by counsel to both 3rd and 4th Defendants. The 1st and 2nd Defendants were given ample opportunity to cross-examine PW1 but they chose or elected not to cross-examine him and upon application by counsel

to the plaintiff, their right to cross-examine PW1 was foreclosed. The plaintiff thereafter closed his case.

On the same premises, the right of 1st and 2nd defendants to lead evidence in support of their defence was equally foreclosed. The 1st and 2nd defendants literally refused to appear in court despite service of hearing notices all through the course of this proceedings.

The 3rd defendant on its part through counsel indicated that they will not be calling any evidence and rested their case on that of plaintiff. The 4th defendant on its part also called one witness. **Ado Abdullahi**, the Personal Assistant (P.A) of the Chairman of 4th defendant testified as **DW1**. He deposed to a witness statement on oath dated 13th October, 2020 which he adopted at the hearing. He tendered in evidence the following documents:

1. Six (6) Certified True Copies (CTC) of Offer of Terms of grant/approval to Jedo Investment Co. Ltd with "changed" on the face of the offers to various plots at Lugbe 1 Extension with attached Title Deed Plans (T.D.P) and receipts for payment of Certified True Copies were admitted as **Exhibits D1-D6** respectively.

2. Six (6) Regularization of land titles and documents of FCT Area Councils acknowledgments over the six plots granted to Jedo Investment Co. Ltd together with a document titled "Re: Certified True Copies" were admitted in evidence as **Exhibits D7 (1-7).**

DW1 was then cross-examined by both counsel to 3rd defendant and plaintiff and with his evidence, the 4th defendant closed its case.

At the conclusion of trial, parties filed, exchanged and adopted their final written addresses.

The final address of 4th defendant is dated 27th January, 2022 but filed on 2nd February, 2022 at the Court's Registry. In the address, two (2) issues were raised as arising for determination as follows:

1. **Whether in view of the state of evidence and pleadings in this matter, the claimant has made out a case on the balance of probability to entitle him to judgment.**

2. **Whether based on the pleadings and evidence adduced in this suit, the claimant is entitled to an award of damages in his favour.**

On the part of the 3rd defendant, their final address is dated 8th February, 2022 but filed on 9th February, 2022. Two issues were equally identified as arising for determination:

a. **Whether the claimant has disclosed a reasonable cause of action against the 3rd defendant in this suit.**

b. **Whether the claimant is entitled to his claims/reliefs sought against the 3rd defendant.**

On the part of the claimant, three (3) issues were raised as arising for determination:

i. **Whether the claimant has made out a case against the defendants to entitle him to a declaration that plot numbers 3165 and 3166 measuring about 1000 sq. meters each situate and or lying at Lugbe 1 Extension layout of the FCT is valid and subsisting in the name of the Claimant/Plaintiff?**

ii. **Whether the claimant from the evidence before this court has established a case of trespass against the 4th defendant over and on plot numbers 3165 and 3166 situate and or lying at Lugbe 1 Extension layout of the FCT Abuja?**

iii. **Whether from the pleadings of the parties, oral and documentary evidence adduced before the court, the claimant is entitled to damages against the defendants?**

The claimant equally filed a Reply on points of law to (1) The 4th defendant's final address filed on 7th February, 2022 and (2) The 3rd defendant's final address on 17th February, 2022.

I have set out above the issues raised by parties. Except for the question of whether a reasonable cause of action was disclosed against 3rd defendant which will be treated as a threshold issue, all the other issues raised may have been differently worded, but they seem to me in substance to be in *pari materia*.

Accordingly in the courts considered opinion, the issues raised by parties can be considered under the following single issue formulated by court as follows:

Whether the claimant has on a preponderance of evidence established that he is entitled to all or any of the Reliefs claimed?

The above broad issue is not raised as an alternative to the issues raised by parties, but the issues canvassed by parties can, as stated earlier, be conveniently and cumulatively treated under the above sole issue. See **Sanusi V. Amoyegun (1992)4 N.W.L.R (pt.237)527.**

The issue thus raised by court has brought out with sufficient clarity and focus, the pith of the contest which has been brought for adjudication and it is on the basis of this issue, that I will now proceed to consider the evidence and submissions of counsel.

In furtherance of the foregoing, I have carefully read the final written addresses filed by parties and I shall in the course of this Judgment and where necessary make references to the submissions made by counsel.

Before going into the substantive question raised, let me quickly deal with the threshold issue raised by counsel to the 3rd defendant that no reasonable cause of action was disclosed against 3rd defendant. The claimant argued to the contrary.

It is settled principle of general application that in deciding whether there is a reasonable cause of action, the determining factor is the Statement of Claim. The Court needs only to look at and examine the averments in the Statement of Claim of the Plaintiff. See **Ajayi V Military Admin. Ondo State (1997) 5 NWLR (pt.504) 237; 7up Bottling Co. Ltd V. Abiola (2001) 29 WRN 98 at 116**. The reference therefore by counsel to 3rd defendant to elements of the substantive case, the evaluation of the evidence of PW1 and the allusion to the fact that documents pleaded were not tendered and the issues of failure to prove wrongful conduct of 3rd defendant at trial e.t.c are matters I am afraid which goes well beyond the remit of matters for consideration when the issue is the reasonability of a cause of action. Indeed, the final address of counsel, however beautifully couched, cannot form the basis on which to determine if there is a reasonable cause of action.

The **answer** to the question of whether the statement of claim discloses a reasonable cause of action is to be found in the statement of claim itself and not in an address of counsel or other extraneous document.

In considering whether there exists a reasonable cause of action, it is sufficient for a Court to hold that a cause of action is reasonable once the Statement of Claim in a case discloses some cause of action or some questions fit to be decided by a Judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out. **See A-G (Fed.) V A.G Abia State & ors (2001) 40 WRN 1 at 52; Mobil Producing Nig. Unltd V LASEPA (2003) 1 MJSC 112 at 132**.

What then is a cause of action, which has to be reasonable failing which the Court would strike out the pleadings? The phrase cause of action has been given different definitions in a plethora of cases by our courts. It is however soothing that the array of definitions bear the same meaning and connotation. See the cases of **Egbe V Adefarasin (1987) 1 NWLR (pt.47) 1 at 20; Omotayo V N.R.C (1992) 7 NWLR (Pt.234) 471 at 483**.

In **Akibu V Oduntan (2000) 13 NWLR (pt.685) 446 at 463**, the Supreme Court defined cause of action as:

"A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

(a) The wrongful act of the Defendant which give the Plaintiff his cause of complaint, and
(b) The consequent damage."

In so far as can be evinced from the Statement of Claim, the fact or combination of facts on which the Plaintiff has premised his right to sue seem to be as pleaded in paragraphs 6-20 of the Statement of Claim. The wrongful act of the Defendants and the damage suffered by the Plaintiffs has been clearly set out in the said paragraphs of the Statement of Claim. The case made out is simply that claimant applied for land from 1st defendant through 3rd defendant and was allocated. That the plots were initially in the name of certain persons and he paid 3rd defendant for change of name and he was issued receipts. He also

stated that since he took possession, he has paid development levies to 3rd defendant and also paid moneys to the same 3rd defendant been fees for Certificate of Occupancy and that he also paid processing fees. Claimant further stated that he participated in the regularization exercise carried out by 2nd defendant. The claimant contends that despite these defined steps taken to secure his plots, the 4th defendant has trespassed and taken possession of these plots and has erected structures on the plot and despite his written complaints to the 1st defendant, which he said were copied to all defendants, nothing has been done about his complaints.

The complaint here is that 3rd defendant formed part of the institutions that allocated the disputed plots to him and that he made payments to the 3rd defendant and was issued receipts. These lands allocated to him was appropriated and he complained to defendants who did not respond. The issues here amongst others is whether the 3rd defendant allocated the said plots to the plaintiff as contended? If they allocated the plots as claimed, on what basis is the 4th defendant laying claim to the same or part of the plots? Therein lies the necessity of joining 3rd defendant to this action to answer to the claims or assertions made against it. The statement of claim may be said to be inelegant or to lack finesse in terms of clear precise delineation of the complaints against defendants but the bottom line is that on the basis of the claim as framed, the 3rd defendant which forms part of allocating authority or the body through which the claimant allegedly applied for the allocation should be able to respond to the questions of whether it participated in the allocation and charged and received fees on the same allocations from claimant which is now being trespassed upon allegedly by 4th defendant. Whether indeed the **3rd defendant** can make the allocation is not decisive at this point.

A statement of claim is said to disclose a reasonable cause of action when it sets out the legal right of the Plaintiff and the obligations of the Defendant. It must further set out the action constituting the infraction of the Plaintiff's legal right or the failure of the Defendant to fulfill his obligation in such a way that if there is no proper defence, the Plaintiff will succeed in the relief or remedy which he seeks. See **Nwaka V Shell (2003) 3 MJSC 136 at 149, Ibrahim V Osim (1988) 3 NWLR (pt.82) 257 at 271-272.**

After a careful consideration of the Statement of Claim, I am satisfied that it has clearly set out the legal rights of the Plaintiff and the obligation of the

Defendants. It has further set out the failure of the Defendants to meet its obligations. The Statement of Claim clearly discloses a reasonable cause of action. It discloses questions fit to be decided by a Court. At the risk of prolixity, any perceived weakness of the Plaintiff's case is not a relevant consideration when the question is whether or not the Statement of Claim has disclosed a reasonable cause of action.

The fact that the learned counsel to the 3rd defendant perceives and has indeed submitted that the plaintiff's action is bound to fail is no ground to strike the action out. No.

ISSUE 1

Whether the claimant has on a preponderance of evidence established that he is entitled to all or any of the Reliefs claimed?

Now at the commencement of this judgment, I had stated the claims of the plaintiff which incorporate amongst others, the key Reliefs for title, trespass, injunction and damages for trespass. The implication of claiming these defined 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 NWLR (pt.1050) 1 at 53; Mafindi V Gendo (2006) All FWLR (pt.292) 157 at 165 F-G**.

The claimant clearly has the evidential burden in law to establish his claims on settled legal threshold and succeeding on the strength of his case as opposed to the weakness of the case of the adversary. The 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 plaintiff filed a 20 paragraphs statement of claim which forms part of the Record of Court. The plaintiff also filed Replies to the defences filed. The evidence of the plaintiff was largely within the structure of the averments made.

The 1st and 2nd defendants filed a statement of defence which forms part of the Record of Court. As indicated earlier, no witness was produced to lead evidence in support.

On the part of the 3rd defendant, they filed a 5 paragraphs statement of defence which similarly forms part of the Record. They elected or chose not to lead evidence.

The 4th defendant filed a 14 paragraphs Amended Statement of Defence which also forms part of the Record of Court. The evidence of their sole witness was largely 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.

Let me however equally state at the outset to avoid creating any confusing situation, that the failure of the 1st and 2nd defendants and the 3rd defendant to lead evidence in support of their respective **pleadings** meant that those pleadings will essentially be deemed as abandoned. It is trite law that averments in pleadings must be substantiated and proved by evidence. It will therefore be wrong for any court to treat an averment in pleading without evidence as evidence of matters averred therein. See **Aregbesola V Oyinlola (2011) 9 NWLR (pt.1253) 458 at 594; Omo-Agege V Oshojafor (2011) NWLR (pt.1234) 341 at 353 G-H**.

Before proceeding any further, let me state the 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.**

It is also important to note that one of the fundamental key Reliefs sought by claimant and on which other Reliefs appear to be predicated is a **Declaratory Relief**. This being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.** The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

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

Now from the pleadings of claimant, he appears to found his claim of title on production of title documents. It may perhaps then be necessary to locate the situational facts and basis of the case of claimant and there is no better take off point than the pleadings itself. I will similarly situate the defence of 4th defendant from the pleadings and then resolve the contested assertions.

Now the relevant paragraphs of the case of plaintiff as disclosed in his statement of claim are as follows:

"6. Plaintiff avers that in 2003 or thereabout, he applied for allocation of 2 (two) plots of land to the 1st Defendant through the 3rd Defendant and was duly re-allocated plot Numbers 3165 and 3166 situate at Lugbe 1 Extension layout, FCT, Abuja and measuring approximately 1, 000sq. meters in size respectively. The two(2) letters of offer of terms of grant/conveyance of Approval in the name of the Plaintiff dated 2/5/2003 respectively are pleaded, and shall be relied upon at the trial of this suit.

7. **Plaintiff states that plot Numbers 3165 and 3166 was initially in the names of ASABE ABU and MOHAMMED ABOJE before being changed and re-allocated to the Plaintiff by the 1st defendant through the 3rd defendant. The two letters of offer in their respective Names before being changed dated 29/6/1998 are pleaded, and shall be relied upon at the trial.**

8. **Plaintiff further avers that he paid the sum of N2, 500 each to the 3rd defendant in of the two (2) plots for the change of ownership and was duly issued receipts. The two (2) receipts of payment of change of ownership of Plot Nos. 3165 and 3166 in the name of plaintiff issued by the 3rd defendant dated 25/4/2003 respectively are pleaded, and shall be relied upon at the trial of this suit.**

9. **Plaintiff states that since he took possession of the two/2 plots of land, he paid Development Levy(s) to the 3rd defendant in the sum of N150, for three (3) years (2001, 2002 and 2003) and was issued with two (2) receipts for the two/2 plots of lands. The two (2) receipts of payment for two plots of land in the sum of N150 each issued by the 3rd defendant dated 5/6/2003 respectively are pleaded, and shall be relied upon at the trial.**

10. **Plaintiff further avers, that he caused to be paid to the 3rd defendant the sum of N10, 100 each for the two plots of lands being fee for Certificate of Occupancy. The two (2) receipts of payment in the sum of N10, 100 each dated 7/8/2003 respectively issued to the Plaintiff by the 3rd defendant are pleaded and same shall be relied upon at the trial of this suit.**

11. **Plaintiff further states, that he caused to be paid to the 3rd defendant the sum of N1, 100 each as processing fees for the two plots of land respectively. The two (2) receipts of payment evidencing this transaction dated 5/6/2003 respectively are pleaded and shall be relied upon at the trial of this suit."**

As stated earlier, the burden was on the plaintiff who lay claim to the disputed plots **3165** and **3166** to creditably prove the above averments or assertions by evidence within the legal threshold earlier highlighted. Let us now critically

situate the evidence led in the light of the relevant paragraphs of the pleadings highlighted above. The plaintiff in paragraph 6 above and his evidence stated that he applied for allocation of 2 plots of land to the 1st defendant through 3rd defendant but these applications were not tendered. The 3rd defendant joined issues with plaintiff in its defence with respect to these applications and under cross-examination by counsel to the 3rd defendant, when questioned about the applications he stated that he does not have copies of the applications because it was done some years back. The plaintiff never took steps to either subpoena the land or policy file of the plots or an official of AMAC to add credibility to the narrative that he applied for the lands in question through 3rd defendant. There was thus before the court, no evidence of this applications but the plaintiff stated that after the applications and to use his words he **"was duly re-allocated plot numbers 3165 and 3166 situate at Lugbe 1 Extension layout FCT Abuja measuring approximately 1000sq meters."** The allocations were tendered in evidence as **Exhibits P1a and P1b** and titled **"changed"** in the name of plaintiff and they were made by the Zonal Manager AMAC on behalf of the Minister FCT. There is nothing either in the pleadings or evidence of what this **"changed"** on the face of the allocations precisely mean or denote and the court cannot speculate but the allocations conveyed the minister's approval of a statutory right of occupancy over the plots covered by the allocation to the plaintiff.

Now in **paragraph 7**, the plaintiff stated that the two plots numbers 3165 and 3166 were **"initially in the names of ASABE ABU and MOHAMMED ABOJE before being changed and reallocated to the plaintiff by the 1st defendant through the 3rd defendant."**

Now again, in evidence, there is nothing to support the averments in paragraph 7. If the plots were initially in the name of certain persons, it meant there was already an allocation of statutory Right of Occupancy to them. No evidence of these allocations was tendered. If there was already an existing allocation to these identified persons as stated by claimant, was the allocation revoked or cancelled before the allocation of these plots to plaintiff? Again the plaintiff was curiously silent on these critical averments underpinning the very basis of his case.

The plaintiff may have stated that the plots were re-allocated but apart from the word "changed" on the allocation papers, there is really nothing before court to

situate that **Exhibits P1a and P1b** were initially in the names of **Asabe Abu** and **Mohammed Aboje** as pleaded before been changed and re-allocated to plaintiff. The instruments or the allocating papers **Exhibits P1a** and **P1b** speak out for itself. No additions or interpolations can be made to it to suit a particular purpose. See **Section 128 (1) of the Evidence**.

The court has not been really furnished with the factual and legal basis to situate the allocations relied on, particularly here where the averments were contested by the adversaries. There is nothing under the Land Use Act legally supporting an allocation situated as "**changed**", particularly in the context of the unclear facts presented by claimant.

If there was a revocation of the existing statutory Right of Occupancy allocations in this case, which the minister may seek to do, this however can only be done on defined legal grounds within the purview of **Section 28 of the Land Use Act**. There however has to be a defined delineation situating the revocation. No such revocation was situated both in the pleadings and evidence of claimant.

The point to underscore is that once there is a lawful revocation, then the land may be re-allocated. The law is settled that a statutory right of occupancy, deemed or actual, existing over a parcel of land must first be properly revoked or nullified before another one can be issued in its place. See **Mu'azu V Unity Bank Plc (2014) 3 NWLR (pt.1395) 312; Adole V Gwar (2008) 1 NWLR (pt.1099) 562**.

The law or principle is equally well settled that where a statutory right of occupancy as in this case is issued when another statutory right exist and has not been revoked, the later statutory right of occupancy becomes a worthless document because there cannot exist concurrently two title holders over one and the same piece of land. One must of necessity be invalid and the invalid one must be the later right granted without first revoking the former one. See **Mu'azu V Unity Bank (supra); Dantsoho V Mohammed (2003) 6 NWLR (pt.817) 457.**

I have highlighted these principles to demonstrate the complete lack of clarity in the case of plaintiff. The claimant never used the word or phrase "**Revoked**." If there was a "**change**" as stated, who authorized the change? Does the "**change**" mean the same thing as a revocation? What are the legal parameters

of these "**change**" on both allocations to enable the court situate its legality. Was the "change" by the 1st defendant through the 3rd defendant as pleaded in paragraph 7? Where is the evidence to support such averment? None was proffered. Does the 3rd defendant have even such powers under the Land Use Act (LUA) to effect such change? It is really difficult to legally situate the validity of a process where defined persons were allocated a plot of land and then it is "**changed**" and re-allocated to another persons by certain unidentified person.

As stated earlier, this was a case in which the plaintiff ought to have summoned or subpoenaed officials of AMAC or the FCT Lands Department to give evidence to give clarity and credibility to the narrative of claimant. The claimant could also have obtained a legal search report from AMAC or FCDA to give clarity to these contested positions. The plaintiff unfortunately did not lead any iota of evidence situating an allocation to the 2 persons he named in the pleadings; he did not situate any cancellation of their allocation before the "change" to his name. The failure to call these staffs with necessary requisite expertise and evidence of the processes involved in this type of "changed" allocations has served to undermined greatly the probative value of the case and evidence presented by claimant.

The plaintiff may have vide **Exhibits P3a** and **P3b** paid for "change of ownership" of the plots at AMAC but what these receipts show is that somebody must have owned the plot first before the change of ownership. The question that arises and which is not out of place on the basis of these receipts is this: was this change a product of sale or alienation of title from someone to the plaintiff? If it is, where is the evidence of the sale or transfer or alienation of title which will logically provide basis for the change of ownership? If the "change" was also a product of a cancellation of an existing original allocation, where is the cancelled allocation?

Again the court will not want to speculate, but these evidentiary challenges has again undermined the case of plaintiff.

The plaintiff may equally have paid certain fees and levies to AMAC for example payments for certificate of occupancy and development levies vide Exhibits P5a and b and P6a and 6b, but to the clear extent that this challenged root of title has not been established, these receipts add no significant value to his case.

In law, it is settled that where a party traces root of title to a particular source in this case the 1st defendant through AMAC and this title is challenged, the party must not only establish his title but must satisfy the court as to the title of the source from whom he claims. In **Adole V Gwar (2008)11 N.W.L.R (pt.1099)562 at 592 B-C,** the Supreme Court stated as follows:

"As to whether or not the appellant as plaintiff proved title to the plot of land in issue by the production of Exhibit 2, I am in agreement with the respondent's submission that the appellant did not prove his root of title. This is because, this court has held repeatedly that once a party pleads and traces his root of title to a particular source and the title is challenged, to succeed, the party must not only establish his title to the land in issue, he must also satisfy the court as to the title of the source from whom he claims."

Flowing from the above, where the title of a grantor has been put in issue as done by defendants here, the production of documents of title without more is not sufficient proof of title. It is the duty of claimant to go further and plead and clearly trace the root of title of the Grantor. See **Olukoya V Ashiru (2006) A FWLR (pt.322) 1479 at 1506 A-E.**

Another challenge to the case of plaintiff is also with respect to the plots claimed. It is to be noted that in law before a declaration of title to land is decreed, the land to which it relates must be ascertained with certainty. In other words, definite and precise boundaries of the land claimed must be clear and unambiguous. See **Onu V Agu (1996) 5 NWLR (pt.451) 652 at 662 E**,

The onus was on the claimant for declaration of title to prove with precision and certainty the identity of the land. See **Kyari V Alkali (2001) 11 NWLR (pt.724) 412**.

Now 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 defence or the cross-examination of the adversary and his witness. See **Ilona V Idakwu (2003) 11 NWLR (pt.830) 53 at 85.**

Now the 4th Defendant in paragraphs 5 and 8 of the defence averred that it owns a large parcel of land in Lugbe Extension measuring about 30 hectares and that its allocations or the plots of land allocated to it are entirely different from that

of plaintiff; that the plot numbers are different and that the purpose for which they were granted are also not the same.

The defendant in evidence tendered certified true copies of offer of terms/conveyance of approval of the Ministers approval of Right of Occupancy over Plots ED5252, ED5251,ED5248, EE5249, ED5250 and ED5253. Each of the plots is about 5 hectares at Lugbe 1 Extension layout. The allocations also has "changed" on it without any explanation as to what it means. The purpose of the allocation was for Estate Development. The letters of allocation of each of the plots with the Title Deed Plan (TDP) and Receipt for payment of CTC were tendered for each of the plots and admitted as **Exhibits D1-D7.**

Apart from the letters of allocation tendered vide **Exhibits P1a** and **P1b** the plaintiff, did not lead any iota of evidence situating a defined area with definite and precise boundaries. No plan or survey plan was attached to the allocations or a plan tendered showing clear defined boundaries particularly here where the allocations of 4th defendant all have a Title Deed Plan (T.D.P) attached to it. Again it is curious that no effort was made to get the Title Deed Plan from AMAC or FCDA or for the plaintiff to secure a surveyor to produce a clear plan of the disputed plots with defined delineated boundaries.

The point to underscore is that a claimant in an action for declaration of title can discharge the onus of showing with certainty the area of land he claims by filing a **survey plan** reflecting the features and precise boundaries thereof. Let me just quickly add that the filing of a survey plan will not be necessary or 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 place. See **Agbeje V Ajibola (2002) 2 NWLR (pt.750) 127 at 147**. **This is not the situation here**. The production of a survey plan was both a factual and legal imperative in this case in view of the contested assertions by parties. Apart from **Exhibits P1a** and **P1b** tendered by plaintiff which as stated earlier contained no defined area or a TDP attached to it, the plaintiff did not file any survey plan showing the features and boundaries of the disputed plots. He did not also in evidence give a description such that any surveyor acting on such description can produce a survey plan of the land in dispute. See **Awote V Owodunni (1987) 2 NWLR (pt.57) 367 at 371 E-G.**

The bottom line here again is that the plaintiff has not factually situated his entitlement to any piece of land with ascertainable boundaries. Furthermore as

rightly alluded by 4th defendant, while the purpose for its allocation is **commercial**, for estate development, that of claimant is **residential** again denoting a fundamental difference in the reason for the allocations. The plaintiff also averred that he took possession of the disputed plots but unfortunately, again in evidence no iota of any acts of possession was demonstrated. There is no pleadings or evidence of any acts of possession. There is for example nothing pleaded to show whether he put anything on the land or farmed on it or even put anybody in possession. Indeed in certain circumstances, surveying of land and placing survey pillars constitute evidence of possession.

I only need add that it is not necessary, in order to establish possession for claimant to take active steps such as enclosing the land or cultivating it but there has to be something tangible to situate acts of possession since the court cannot construe possession in a vacuum. See **Basil V Fayebe (2001) 11 NWLR (pt.725) 592 at 616-617**.

Now the plaintiff in **paragraph 14** averred that sometime in August 2014, he went to site where the two plots are located and was shocked to find that 4th defendant has trespassed and taken possession of the said plots and erected structures up to roofing level.

Again on the evidence, there is really no credible evidence to situate the complaints above. As stated earlier, nothing was produced delineating the precise boundaries of the plots claimed by claimant and there is nothing before court situating that the plots claimed by 4th defendant forms part of the plots claimed by claimant or that they are the same and there is equally nothing before the court showing that the completed constructions works carried out by 4th defendant was on the plots allegedly allocated to plaintiff.

Again at the risk of prolixity, no survey plan of any kind was tendered and nobody was produced from either AMAC of FCT to lend weight to the contentious allegations made and whether claimant was in the right with respect to the allegations made and the court cannot act on the basis of challenged speculations or guess work.

The law is settled that a claimant can maintain an action against the whole world except the true owner. **Trespass** is actionable at the instance of the person in possession of the land. The slightest possession by the claimant

enables him to maintain an action on trespass against the Defendant if he cannot show a better title. See **Monkom V Odili (2010) 2 NWLR (pt.1179) 419 at 451 A-B.**

The plaintiff as demonstrated has not creditably established that he has title to the disputed plots; that he is in possession and that the plots defendants built on forms part of his plot. In any event, in law, where title pleaded has not even been proved as in this case, then it will even be unnecessary to consider acts of possession. See **Registered Trustees of the Diocese of Aba V Nkume (2022) 1 NWLR (pt.749) 726 at 738**. It is thus obvious from the analysis above that the claim for an order for injunction restraining acts of trespass and or further acts of trespass and damages for trespass are all fatally compromised in the absence of evidence to situate a defined parcel of land and then acts of trespass by the 4th defendant.

Again, the bottom line as demonstrated is that, on the basis of the unclear and fluid facts presented by claimant, it is really difficult to situate the factual and legal validity of the allocations made vide **Exhibits P1a** and **P1b** and the Reliefs sought. It will be noted that I had not given any traction or value to the regularization of land titles acknowledgment tendered by both claimant and 4th defendants vide **Exhibits P2a** and **2b** and **Exhibits D7 (1-7).** The 4th defendant indeed averred in paragraph 9 of its defence that the acknowledgment authenticated the 4th defendant as the beneficial owner of the plots allocated to it. I am not sure this averment has any value. No evidence was led to support the averment. The sole witness for 4th defendant does not work with AMAC or FCT and is only a Personal Assistant of the Chief Executive of 4th defendant and clearly in no position to give evidence authenticating a document from FCTA.

The only thing to add here is that the acknowledgments are obviously not documents evidencing title and therefore has no real value in the determination of the question of the genuineness of any title document such as presented by parties.

The exhibits in any event contain a clear and unambiguous disclaimer that the acknowledgment does not in anyway validate the authenticity of the documents presented by parties. That all documents are subject to further verification for authenticity. There is absolutely nothing either on the pleadings or evidence validating the authenticity of these documents. I need not say more.

Before I round up, I note that the 4th defendant in the final written address made interesting submissions with respect to the genuineness or otherwise of the documents of title of claimant and the related issue of whether the proper authority made the allocations of claimant.

Let me quickly state that I have carefully read the pleadings of 4th defendant and no where were these issues precisely streamlined and defined as issues in dispute. Indeed in the address, the 4th defendant recognized this reality and stated as follows:

"We concede that having not challenged the genuiness (sic) of Exhibit P1 (a and b) via our pleadings, we leave the issue of the genuineness (sic) or otherwise of the document to be resolve by the court."

Despite this admission, they went ahead to extensively address the issue. Counsel to 4th defendant may enjoy the luxury of such exercise but the court has no such luxury and cannot waste precious judicial time to address issue(s) not defined on the pleadings.

I had at the beginning of this judgment underscored the importance of pleadings and how it streamlines the issues in dispute. Any issue outside what is streamlined in the pleadings cannot be the business of the court.

If the 4th defendant wanted a pronouncement by court on those issues, then it must be defined in the pleadings and evidence led. That appears to me to be a factual and legal imperative. Our superior courts have made this position abundantly clear. In **Adeniran V. Alao (2000)18 N.W.L.R (pt.745)361 at 381-382,** the Supreme Court per Uwaifo JSC instructively stated as follows:

"Parties and the court are bound by the parties' pleadings. Therefore, while parties must keep within them, in the same way but put in other words, the court must not stray away from them to commit itself upon issues not properly before it. In other words, the court itself is as much bound by the pleadings of the parties as they themselves. It is not part of duty or function of the court to enter upon any inquiry into the case before it other than to adjudicate upon specific matters in dispute which the parties themselves have raised by their pleadings. In the instant case, the question of due execution of Exhibit 1, the deed of conveyance relied on by the appellant, was never an issue on the pleadings of the parties. The trial court and the Court of Appeal were therefore wrong in treating same as an

issue in the case. The Court of Appeal lacked the jurisdiction to determine the point of due execution which was not before it."

Two more points on this issue. (1) The 4th defendant's case has been that the plots of lands allocated to it and the purpose is different completely from that allocated to plaintiff. If that is the position, on what basis does it seek to impugn the genuineness of the documents of claimant bearing in mind that it did not call any witness from AMAC or FCTA, the issuing authority to impugn the integrity of the allocations to claimant. An **address** of counsel however well written is no substitute for **pleadings** and **evidence** that has to be demonstrated and tested at the trial or hearing.

(2) It is interesting that the documents of title of 4th defendant is also from AMAC and has the strange nomenclature "changed" also on it. The conveyance of the minister's approval was here too done through AMAC, just as in the case with plaintiff. The only difference is that unlike plaintiff who averred that the allocations to him was made to certain persons and then changed or re-allocated to him, the 4th defendant stated that it was directly allocated by the Minister FCT. I leave it at that. That only point to add is that the 4th defendant has no Counter-Claim. Therefore the limitations that glaringly affected claimants case did not impact their case; the burden remained on claimant to prove that he is entitled to the Reliefs sought and since the substantive Relief on which the other reliefs sought is declaratory, it has to be creditably established with cogent evidence. Unfortunately, this threshold was not crossed by plaintiff in this case.

On the whole, the single issue raised is resolved against claimant. Having carefully considered the evidence on record, the court has not been put in a commanding height by cogent, credible and convincing evidence that he is entitled to the declaratory Relief on title with respect to **Plots 3165** and **3166** at Lugbe 1 Extension layout, Lugbe. The law is settled that where evidence of title is not satisfactory, and conclusive, a party will not succeed at trial. See **Nnbuife V Nnigwu (2001) 9 NWLR (pt.719) 710 at 727.**

In the final analysis and for the avoidance of doubt, **Relief (1)** relating to declaration of title is not availing. **Reliefs 2** and **4** praying for orders of injunction restraining further acts of trespass and damages for trespass equally fail for a complete absence of evidence to situate trespass against 4th defendant. With the failure of Relief 1, Relief 3 seeking for an order for release of

Certificate of Occupancy of Plots 3165 and 3166 at Lugbe 1 Extension layout predicated on successful proof of legal title will in the circumstances not be availing. The legal principle being once the principal is taken away, the adjunct is also taken away. See **Adegoke Motors V Adesanya (1989) 3 NWLR (pt.109) 250 at 269**. The final **Relief 5** for cost including Solicitors fees also must fail with the failure of all outstanding Reliefs claimed by plaintiff.

The Plaintiff's action accordingly wholly fails and it is dismissed.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***Julius O. Agu, Esq., for the Claimant.***

2. ***Olalekan I. Oladapo, Esq., for the 1st and 2nd Defendants.***

3. ***D.D. Tunyon, Esq., for the 3rd defendant.***

4. ***Aliyu D. Hussaini Esq., for the 4th Defendant.***