

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

HIS LORDSHIP: HON. JUSTICE M.S. IDRIS

COURT NUMBER: 28

Date: - DATE: 12/12/2023

FCT/HC/CV/415/2021

BETWEEN:

John Uwaoma

(Suing through His Attorney

Nnamdi Charles obi)

CLAIMANT

and

MOHAMMED KARAMBA -----

Defendant

JUDGMENT

This was a suit commend vide a writ of summons dated 2nd of July, 2021 wherein the Claimant sought the following reliefs:-

A. declaration of this Honourable Court that Plot A228

Kuchiyako III Layout, KujeFCT was solely allotted to Mr. Imuran A. Buhari which he sold to the Claimant on 17th December, 2015.

(b) A declaration that Plot A228Kuchiyako III Layout, KujeFCT- Abuja pursuant to the deed of assignment and power of attorney dated 17 December, 2015, Plot A228KuchiyakoIII layout Kujebelongs to the Claimant

(c) A declaration that the Defendant purposely trespassed into the Claimant's Plot A228Kuchiyako III Layout, Kuje knowing fully well

that the plot does not belong to him and the documents he claimed he acquired claimant's plot with are fake documents.

- (d) An order of perpetual injunction restraining the Defendant, his successors-in-title, assigns, heirs and privies by whatever name called from entering into the Claimant's Plot A228Kuchiyako III Layout Kuje.
- (e) The sum Twenty Million Naira (₦20,000,000.00) only as general damage for trespass into the Claimant Plot A228Kuchiyako III Layout Kuje, FCT- Abuja.
- (j) The sum of ₦1,000,000.00 as the cost of this suit.

The Claimant avers that ever since he derived legal and valid title of Plot A228Kuchiyako III Layout, Kuje from the original allottee Imuran A. Buhari sometime in December, 2015 he has been in peaceful possession of the plot without third party encumbrances.

1. The Claimant avers that due to his instability in Nigeria he authorized his brother Nnamdi Charles Obi whom reside in Kuje as his attorney to be looking after his Plot. The power of attorney the claimant gave his brother and attorney is hereby pleaded and shall be relied on during hearing in this suit.
2. That sometime in 2017 the Claimant sent money to his brother/attorney to start molding blocks as the Claimant wants to develop his plot. The claimant brother bought two trips of sand that was hipped on the claimant plot unfortunately he could not continue due to the ill health that resulted into him going for surgery.
3. The Claimant avers that his brother/attorney is always on Plot A228Kuchiyako III Layout to ensure thieves do not tamper with the materials on the plot until sometimes in late October, 2020 the claimants brother/attorney went on the land and discovered that work was going on in the plot, he tried to stop them but they were so

engrossed in the work as if they have a target to cover. The claimant brother quickly engaged a lawyer that wrote a complaint to the Chairman Kuje Area Council and Kuje Police Station. Copies of the letter dated 4th November, 2020 is hereby pleaded and shall be relied on during hearing of this suit,

4. The Claimant states that the police went into the mater and invited the Defendant and his site engineer to their office. On getting to kuje lands office the claimant attorney Nnamdi Obi presented the Claimant document so also the Defendant but the Defendant documents was confirmed to be fake. The Defendant was asked to leave the site with his engineer and workers which he agreed to do so. The claimants land documents, deed of assignment and power of attorney are hereby pleaded.
5. The Claimant avers that the Defendant called his attorney sometime in December, 2020, saying that he is interested in purchasing Plot A228Kuchiyako III Layout and offered to pay four million naira (N4,000,000.00) but the claimant told the attorney to tell the Defendant that his plot is sold at seven million naira (N7,000,000.00TheDefendant promised to get back to the claimant's attorney but failed to do so instead he went back to site and continued building on the claimant's Plot
6. The Claimant avers that he called the Defendant to leave his plot as same is not for sale and claimant attorney has sounded it also to the Defendant's ear through several phone calls but it all fell on deaf ears. The claimant attorney went back to the police and kuje area council to complain he was asked to go and complain to the Director Development Control for it its beyond their powers or he should go to court. The photocopy of the Lawyer's letter to the Director Development control dated 22nd March, 2021is hereby pleaded and will be relied on during trial of this suit.

7. The Claimant states that the Defendant men are working tirelessly on his plot day and night not minding the plot is not his.
8. The Claimant avers that all effort to stop the Defendant and his men from further trespassing into the Claimant plot have proved abortive. The Claimant has suffered series of emotional trauma since he learnt that the Defendant trespassed into his plot and has approached the court to seek for justice and recover his plot from the Defendant.

The Defendant on his own part filed a defence same is as follows:-

1. The Defendant admits paragraph 2 only to the extent that he partly stays at Lugbe Abuja within the jurisdiction of this court
2. The Defendant denies paragraph of the statement of claim and puts the claimant to the strictest proof thereof.
3. The Defendant in furtherance to the above paragraph states that he bought Plot No A228Kuchiyako III District, Kuje covering about 987.49sqms from one Engr. Abdullahi Usman Ajibe on the 17th August, 2021 for Three Million Six Hundred Thousand Naira Only (N3, 600,000.00). The Irrevocable Power of Attorney as well as the Deed of Assignment between the Defendant and Engr. Abdullahi Usman Ajibe are hereby pleaded and will be relied upon during trial.
4. The Defendant further avers that the said Engr. Abdullahi Usman Ajibe upon the sale of Plot No A228Kuje to the Defendant Ahuja delivered unto the Defendant the original Letter of Grant as well as the Customary Certificate of Occupancy of the said Plot No A228. A copy of the Letter of Grant as well as the Customary Certificate of Occupancy is hereby pleaded and will be relied upon during trial.
5. The Defendant further avers that the said Engr. Abdullahi Usman Ajibe delivered unto the Defendant copies of Departmental and Treasury Receipts paid on the said Plot No A228Kuje Abuja for Development

Levy, Processing and Purchase of Land Application Form For Residential, Layout Fees, Ground Rent Preparation and Registration of C of O as well as Premium Fees paid to the Kuje Area Council on Plot No A228Kuje Abuja.

6. The Defendant further avers that the said Engr. Abdullahi Usman Ajibe bought Plot No A228Kuje from one Kabiru S Ahmed vide an Irrevocable Power of Attorney as well as a Deed of Assignment dated 9th December, 2019
7. The Defendant further avers that the said Kabiru S Ahmed purchased Plot No A228 from the original allottee Mr. Imurawo. A Buhari.
8. The Defendant is not in a position to admit or deny paragraph 4 of the statement of claim.
9. The Defendant denies paragraph 5 of the claimant's statement of claim and puts the claimant to the strictest proof thereof.
10. That Defendant in response to the preceding paragraph further states that as at the time he bought Plot No A228Kuje Abuja, there was neither sand nor anything heaped on the plot of land as only economic trees were grown.
11. The Defendant further avers that there was nothing on the said plot of land showing ownership or possession by the claimant or anyone else.
12. The Defendant further avers that he was the one that compensated one Josiah Akuko who is the owner of the economic trees on Plot No A228 in the sum of One Hundred and Fifty Thousand Naira Only (N150,000.00). The agreement on compensation of land is hereby pleaded and will be relied upon during trial.

13. The Defendant admits paragraph 6 of the statement of claim only to the extent that he was invited by the Kure Police Station sometimes in December, 2020 on issues relating to Plot No A228, Kuje Abuja.
14. The Defendant categorically denies paragraph 7 and 8 of the statement of claim puts the claimant to the strictest proof of facts stated therein.
15. The Defendant further states that he was only invited to the Kuje Police Station where the Claimant reported the matter and at no time was his title documents on Plot No A228 declared to be fake.
16. The Defendant further states that dissatisfied with the method of investigation adopted by the Kuje Divisional Police Headquarters, he wrote to the Commissioner of Police FCT Command to take over the investigation of the matter.
17. The Defendant further states that the Commissioner of Police FCT Command decided in his wisdom to take over the matter and from the Kuje Police Station.
18. The Defendant further states that the Commissioner of Police FCT Command asked the Kuje Police Station to transfer the case file to him which they did.
19. The Defendant further avers that he reappeared before the FCT Command but the Claimant who was the complainant refused to present himself at the FCT Command for investigation after repeated invitations extended to him.
20. The Defendant avers that the Claimant as stated above abandoned his complaint before the police.

21. The Defendant further avers that ever since the claimant abandoned his complaint with the police in December 2020, he did not take any other step until he filed this matter in July 2021.
22. The Defendant further avers that he therefore continued with his construction on Plot No A228, Kuje Abuja and same has reached an advanced stage now A photograph of the said building is hereby pleaded and will be relied upon during trial.
23. The Defendant avers that he has spent over Thirty Million Naira (N30, 000,000.00) to date in constructing the structures on Plot No A228.
24. The Defendant denies paragraph 9, 10 and 11 of the statement of Claimant states that Plot No A228 belongs to him having validly purchased same for value.

The Claimant filed an amended reply to the Defendants' statement of defence dated the 21st November, 2021

The Claimant in reply to paragraph 4, 5, 6 and 7 of the statement of defense state that the Defendant is aware the documents he claimed to have purchased plot A228Kuchiyako III are fake documents. It is the same documents given to the Defendant by Engr. Abdullahi Usman Ajibe tracing the origin of his title to Kabiru S. Ahmed over claimant plot that the Kuje Area Council has since informed the Defendant are cloned and should be disregarded before issuing its letter of 6th October, 2021, Kuje Area Council letter dated 6th October, 2021 is hereby pleaded and shall be relied upon during hearing

The claimant reply further to paragraph I above states that due to an error in paragraph 1 (ii) in Kuje Area Council letter of

6th October, 2021, the council issued another letter dated 31 October, 2022 correcting the mistake which confirmed that the Plot A228 was allocated to Imuran A. Buhari and the Defendant documents with C of O should be disregarded. The claimant puts the Defendant to strictest proof of the genuity of his documents thereof. The Kuje Area Counsel letter of 31 October, 2022 and Claimant lawyer letter of 13th May, 2022 are hereby pleaded and shall be relied upon during hearing of the suit.

The claimant in reply to paragraph 7 of statement of defense states further that he bought plot A228 from Imuran A. Buhari whose documents the council reaffirms are the documents that are found in the council data base as stated in paragraph 2 of the Kuje Area Council letter of 6 October, 2021 and paragraph 1 (ii) of 31st October, 2022.

The Claimant in reply to paragraph 9 10 and 11 of the statement of defense reiterates that two trips of sand was hipped on the claimant plot which the claimant attorney intended to mold blocks for the claimant

The Claimant deny paragraph 12 of the statement of defense and state that the original allottee that transferred the land to him has already settled the owners of the economic trees on the plot and the trees were cut down before he sold to the claimant. That as at the time the claimant wanted to start molding blocks there were no economic trees on the plot and nobody has ever came to disturb him on that and puts the Defendant to strictest proof thereof.

That in reply to paragraph 13 and 15 of statement of defense, the claimant state that the Defendant presented the documents

at the Kuje land office in the presence of the claimant attorney and the policeman from Kuje Police Station, the Defendant documents were confirmed to be fake that he should leave the site with his workers which he did

The Claimant in reply to paragraph 14 of the statement of defense reiterate that the Defendant acknowledged purchasing fake land from Engr. Abdullahi Usman and pleaded passionately with the claimant attorney to plead with the claimant to accept the sum of Four Million Naira but the claimant refused.

The claimant in reply to paragraphs 16, 17, 18 and 19 of statement of defense states that he is not aware the Defendant reported the matter to the Commissioner of Police FCT Command and no invitation letter was sent to him or through his lawyer ever since his compliant to Kuje Area Council and Kuje Police ended.

Further to the preceding paragraph, the claimant state that he was surprised when his brother and attorney told him that he received a call from someone that said he is a policeman that his attention is needed but refused to mention his name or the place claimant attorney is needed. The claimant asked his attorney to forward the contact to his lawyer to contact the person. But immediately the claimant lawyer called the line and introduced herself, inform the call receiver why she called, the man said she will get back to her. The man no longer takes claimant lawyer calls and claimant deny abandoning his complaint as stated in paragraph 20 of statement of defense.

The claimant in reply to paragraph 21 and 22 of the statement of defense states that Kuje Area Council went and marked the plot on the 9th July, 2021 asking the Defendant to stop work

but the Defendant refused. Picture evidence of the marked plot are hereby pleaded and shall be relied upon during hearing.

The Claimant deny paragraphs 23 and 24 of the statement of defense and states that the Defendant is aware plot A228Kuchiyako 111 Layout, Kuje Abuja belongs to the Claimant and went ahead to illegally trespassed on claimant plot and destroyed same.

The Claimant through its attorney Mr. Obi Nnamdi Charles opened his case on the 10th February, 2022 adopted his written statement on oath. The Defendant's Counsel having objected to the admissibility of the following document same were admitted in evidence and marked as follows accordingly:-

1. Letter of complaint of trespass on plot A228Kuchiyako 111 Layout dated 24th November, 2020 address to Chairman Kuje Area Council Exhibit.
2. Response to the letter dated 6th October, 2021 exhibit 2
3. Complaint of trespass dated 23rd March, 2021 addressed to the Director Development Control Exhibit 3
4. Deed of assignment between Imuran A. Buhair and John Uwaoma Exhibit 4.
5. Irrevocable power of attorney between the parties concerned exhibit 5
6. Power of attorney donated by John Uwaoma exhibit 6
7. Sale agreement between Imuran A. Buhair and John Uwaoma exhibit 7
8. Regularization of title right of occupancy data form offer of terms of grant exhibit 8
9. Pictures of the building marked stopped exhibit 9.

PW1 finally urge the Court to grant the reliefs sought by the same. During cross examination PW1 answered that exhibit 2 was signed by

Director Administration on behalf of the Honourable Chairman. Also PW1 answered that he was the one who purchased the land in question from Imuran A. Buhair exhibit 8 was dated 19th January, 2007 according to PW1, furthermore PW1 said he noticed the trespass on the land in 2020. During cross examination PW1 answered exhibit 8 terms of grant was signed on behalf of the Honourable Minister FCT. He further asserted during cross examination that when PW1 reported the matter to the police it was confirmed that the document of the Defendant were faked no document of such was given to PW1 by the Police. PW1 said he got the document in July, 2021 while the matter was pending in Court when asked whether he followed the application for regularization PW1 replied that he does not do anything about regularization. On 24th May, 2012 Defendants Counsel went on with his cross examination. PW1 answered that exhibit 8 regularization of land title was issued by Kuje area Council, PW1 further said on top of exhibit 8 it was written FCTA. He argued that when they purchased the land they were issued with exhibit 8 PW1 also in his answer during cross examination argued that exhibit 8 was not signed. During further question PW1 answered that he could not remember whether any document presented to PW1 by the Police that the document presented by the site engineer of the Defendant was fake. After the close of the claimants case same applied to amend paragraph 1, 2 and 3 of the Claimant's reply to Defendants statement of defence, leave of the Court to file additional written statement on oath and additional document to be tendered in Court attached as exhibits 2 and 3 and leave of the Court to recall PW1 to give evidence to capture the additional document to rely on in this suit. Having not objected by the Defendants Counsel. Same were accordingly granted by the Court. Before further cross examination to recall PW1. Having identify the two documents above by the Claimants Counsel and having not objected by the defence same were admitted in evidence and marked as follows:-

1. Re – complaint of trespass on plot A 228 Kuchiyako III District Kuje dated 31st October, 2022 exhibit 10
2. Re-complaint of trespass on Plot A228 dated 13th May, 2022 exhibit 11.

During cross examination when confronted by the defendant's Counsel that who is D.DAyubaand on exhibit 10 PW1. He does not know who is D.DAybaPW1 admitted that same land belongs to Area Council PW1 also answered during cross examination that Area Council Kuje has the power to issue title to land. In his further answer re- call PW1 said he does not know that it was the Defendant whopaid for compensation in respect of the land in question. No re- examination.PW1 was discharge PW2subpoenaed witness said exhibit 1 and 2 emanated from their office. In his further testimonyPW2 said exhibit 2 had an error on the name during the typing Imuran A. Buhair while exhibit 10 that was when the correction was made to Imuran A. Buhair which is the one they have in their data base. In his evidence PW2 said they discovered that during their meeting in respect of the complaint made by the Claimant that the Applicant Imuran A. Buhair with file No. KAC/FCDA/LP& 07431 was the original allottee while the 2nd party Imuran A. Buhair with Certificate of Occupancy are done document and same should be disregarded PW2 said the plot was marked stopped on the 9th July, 2021. He also admitted that if he see the two documents of the two parties contesting the plot used during investigation of ownership he can identify same by their names. During cross examination PW2said he acted based on exhibit 3 and 11. PW2 answered that they have a data based of all the allottee of plots of land in Kuje. He further admitted that Area Council have the power to issue plot of land within the FCT. HoweverPW2 agreed that any allocation of land issued by Area Council is not final. He also agreed that the comprehensivedata based of all plots of land is now withFCDA, PW2 said not all land in FCT are urban land they have city, town and villages. He also agreed that exhibit 8 needs further clarification and confirmation

by AGIS exhibit 8 was signed by Shola Salami on behalf of the Minister PW2 admitted that they have stop issuing letter of grant because the office does not have such power anymore. Exhibit 10 was issued by our office PW2 the grant is still valid it has not been revoked. After the close of Claimant's case the Defendant chose not to open a defence instead apply for a date to file their final written address.

On the 11th July, 2022 the Claimant 's Counsel filed a motion dated 22nd June, 2023 with motion No. M/1155/2023 same was brought pursuant to order 43 rules of this Court seeking for the joinder of the original allottee in the name of Imuran A. Buhair as the 2nd Defendant and also an order seeking the leave of the Court to amend the writ of summons and statement of claim also same attached the amended copy marked as A1 and A2. In support is an affidavit deposed to be Ijeoma Mercy Nlewdim attached is a written address Counsel move in terms.S.A Usman in reaction to the motion filed, filed a written address dated 30th June, 2023 and urge the Court not to grant same.

I have considered the above position for and against issue of joinder is a - discretion of the Court which must be exercised judicially and judiciously in my mind the party sought to be joined is not a necessary party neither is he a proper party this is because for the affidavit evidence it becomes obvious that same ought not to be join as a party. This is an issue of title the party sought to be joined is a predecessor in title. The best is for him to be call as a witness while the Claimant failed to do that accordingly the application for joinder is hereby refused ruling delivered on the 1st November, 2023 application filed 7thApril, 2022 with motion No. M/7771/2021 dated 8th November, 2021 is hereby granted. The Defendant having not filed a counter affidavit made me to so hold. In his final written address the Defendant raised three issues for determination:-

1. Whether the Claimant was able to prove its claims to entitle it to a declaration of title.

2. Whether the issue of forgery of the documents levied against the Defendant was properly raised specifically pleaded and proved by the Claimant.
3. Whether there is a valid claim reply to the statement of defence before the Court.

On issue 1 the Counsel on behalf of the defence argued that the Claimant had failed to discharged the evidential burden placed on him in proving his title cited several instances. Claimant must succeed on its **strength of his case and not on the weakness or admission of his opponent** see ***OKEREKE VS UMAHI (2016) 11 NWLR (pt 1524) page 438 paragraph B OGBORU VS OKOWA (2016) 11 NWLR (pt 1522) page 84 q 123 paragraph F.***

Counsel further submit that where a party is in physical possession of the land the law presumes him to be the owner see ***DASISEL VS ISHAGA (1996) 1 NWLR (pt 426) pg 626-633-634 paragraph C. ALHAJI ISIEAKAYAKUBU EMPI VS OMOLAloje (2006) All FWLR (pt 802) page 113 exhibit 8.*** The Claimant failed to establish title because the issuing authority of the said offer of terms of grant/conveyance of approval Kuje Area Council is without any legal vires/authority to issue any allocation of land with FCT see section 193) of the FCT Act section 297 (1) (2) and section 219 of the 1999 Constitution see also section 49 (1) and 51 (2) of the LUA see ***FHA VS EKPUNOBI & ORS 2021 LPELR 55741.*** SECTION 18 OF THE FCT Act Cap F6LFN facts admitted need no further prove section 123 of the Evidence Act the Right of Occupancy dated 16th May, 2000 is the root of title of the claim same further clarification verification regularization from the FCTA to make it valid see ***SKEN CONSULT NIG, VS UKEY 1981 SCPLASMACFY VS U.A.C LTD 1962 AC 152.***

the issues raised by both parties are interwoven I therefore deem it proper to raise one single issue for determination by the Court "whether the claimant has prove his title to entitlehim to the reliefs sought.

From the facts of this case it is obvious that the Claimant drives his title from one Imuran A. Buhair it is nowtrite law that a Plaintiff who relies on such proof of claim for declaration of title to law must lead evidence to show the root of his title and this includes how he becomes the ownership of the land in question see **NKADO VS OBIANI& ANOR (1979)LPELR 2043 SC**. In this case PW1 and PW2 of the Claimant traced the Claimants title to Imuran A. Buhair they graphically gave evidence towards that direction in describing the land during examination PW1 and 2 gave satisfactory account of how the Claimants becomes the owner of the land. However during cross examination PW1 and 2 were unable to state categorically the circumstance that led to that although they gave some convincing evidence regarding that, nevertheless all the cases cited by the Claimants are well considered by the Honourable Court and the exhibits tendered. I am of the view that the fact stated by PW2 cannot assist the Claimant case on the issued of forgery same have not been exhibited neither was evidence led to that. I must also state in this judgement that I have agreed with the Claimant. However neither in his pleadings nor in his witness statement on oath clearly showed that exhibit 8 was signed on behalf of the Minister FCTthat must be proved section 18 © of the FCT Act cap 503. Section 12 (4) of the FCTA subsidiary legislation Cap 503. See also section 2(1) (a) (b) of the Land Use Act to allow Kuje Area Council to contract and manage land within its jurisdiction and therefore land allocated by Kuje Area Counsel is valid section 12 95) of the FCTAct subsidiary legislation Cap 503.

The said Act is deemed as the Act of the Hon. Minister FCT. The document tendered must be scrutinized analyzed as a hanger to oral testimony see **PASHAMNU VS ADEKOYA 91974)6 SC 83 . OMEGA**

BANK PLC VS OBC 150 (2002) 16 NWLR (Pt 794)483. The grant of conveyance of approval speaks for itself it cannot be altered E8 was made pursuant to the delegated power of the Minister of FCT to Chief Executive of Sectariate and Agencies under his office PW2 while testifying told the Court that the document of the Defendant was not contained in their data base we therefore urge the Court to discountenanced all the issues raised by the Defendant.

On issue 2 for a claimant to succeed in an action for trespass the Claimant must prove that he enjoys the exclusive power and that the Defendant actually introduced or trespass into his property. It is settled that tort of trespass is against the person in possession see ***LAGOS STATE COLLEGE OF EDUCATION VS EDWIN (2004) LPELR SC 48/1999 IDUNDUN VS OKUNAGBS 1976 6-10 SC.*** the evidence of PW1 has substantially establish that finally the Claimant's Counsel has use credible evidence entitled to all the reliefs sought and therefore urge the Court to grant all the reliefs sought

Having reproduced the position of both sides aforesaid substantially power of attorney does not confer title to land. The Claimant ought to have called Imuran A. Buhair as a witness why the Court refused to join him because he is predecessor in title. Although all legal requirement have not been established regarding the issue of title nonetheless the equitable title automatically surifice. However I am of the view that the Claimants the power of attorney has not been duly registered as required by law. The title to the subject matter can validly be said to have been transferred to the Claimant based on the principle of doctrine of equity if same were duly registered although cases of title to land can best be described based on the power of delegation in area Council here in FCT. By virtue of section 299 (a) of the 1999 Constitution the FCT Minister by virtue of section 147 and 302 of the Court shall exercise power donated to the President in respect of the FCT.

One has attempt from the forgoing to prove the enabling law and explain the inter relationship of the Grant office visa a vis the Minister FCT. Although the Defendants have raised an issue that the motion filed by the Claimant for reply to the Defendant statement of defence has not been moved and same shall be considered by this Court as abandoned process nonetheless that would not change the position of the Court this was principally based on the evidence and the exhibit tendered. The Right of Occupancy was signed on behalf of the Minister therefore same is valid and subsisting.

Going by the Land Use Act the deed of assignment ought to have been registered so also the power of attorney. It is the law that such document particularly if not duly registered same cannot confer title.

To my mind the title document remains with Imuran A. Buhair. Having not complied with the requirement of the law by the Claimant based on evidence adduced by the Claimant's Counsel there is no way this Court can give judgment on behalf of the Claimant there is no where nether in the statement of claim nor in the statement of defence where the Claimant stated clearly that exhibit 8 was signed by the Minister. I agree totally with the Claimant's Counsel that such delegation in some circumstances is always allowed as can be seen from the cases cited above. However in my opinion having not pleaded and having not contended in PW1 deposition made me not to grant the reliefs sought and other reason stated above. All the reasons advanced based on facts and law cannot assist the Defendants case either on issue 2 serious allegation involving crime and fraud must be proved by specifically pleading same particularized and proved strictly see **FABUMI VS AGBE (1985)5 SC 28 ADESANYA VS OTUEWU (1993) 1 SCNJ 77. ONWUCHELOR VS NDIC (2002)2SCNJ 175**. The Claimant has made heavy weather in his pleadings on the fact that the title document of the Defendant are fake and cloned document see exhibit 10. There

should not be room for speculation the Claimant must prove such allegation see **ODOM VS PDP (2015)6 NWLR (pt1556) P565 paragraph C-D**. the law is trite that every evidence that is in conflict with the party's pleadings should be expunged and discountenanced as it goes to no issue. The test and standard to prove forgery has long been settled by the Supreme Court in the case of **ALAKE VS STATE 9 NWLR (pt 265) at 26 .AGWU VS EZE (2012) 1 LRECN 436 – 497- 498 E** .PW2 who led evidence on the issue of forgery did not tender the alleged forged document and the Court cannot be dragged into reason of speculation exhibit 10 did not even mentioned the name of the Defendant there is no evidence to prove the fact that the defendant know the said alleged document to be forged. But only for same to state that the document of the 2nd Party is not on their data base see **MOHAMMED VS WAMAKO (2018) ALL FWLR (PT 937) 1608 at 1631 D-F SC**.

On issue 3 there is no valid reply to the statement of defence filed by the Claimant. The Claimant was out of time to reply and that necessitated the filing of an application for extension of time dated 8th November, 2021. The Claimant never moved their application nor drew the attention of the Court to it. The consequential effect in law is that same is deemed abandoned see **CONSOLIDATED BREWERIES VS AYSOWIEREI 2001 15 NWLR (PT 736)424. GIDIYA VS SANUN (2023) 5 NWLR (PT 1876)1**.

There is no reply to statement of defence as such every pleadings and evidence address through such pleadings go to no issue Counsel urge the Court to so hold Counsel urge the Court to dismiss the case of the Claimant the reply to statement of defence goes to no issue on the otherhand the Claimants Counsel in its final address on behalf of the Claimant where same raised the following issue for determination:-

1. Whether the Claimant has proved titled that he is entitled to be declared the bonfide owner of the property.
2. Whether the Claimant can be declared as the party in possession of the property and therefore entitled to reliefs B,C,D,E and F.

On issue one Counsel submit that Imuran A. Buhair part seeking to be joined in this matter as 2nd Claimant obtained valid title where the Minister FCT or Kuje Area Council conveyed the approval of grant of certificate of Right of occupancy dated 16th May, 2000 before transferring the interest on the land to the claimant by executing power of attorney and deed of assignment exhibit 8 which comprises acknowledgement of regularization of land. Title and documents of FCT Area Council Cadastral Map TDP – data form and customary right of occupancy were validity issued to Imuran A. Buhair. Party seeking to be joined in this matter to determine the valuation of exhibit 8 Counsel refer the Court to section 1 of Land Use Act 1978 and section 29 of the Land Use Act see section 299 (a) Constitution and 302 of the constitution.

It is trite and settled that in Civil cases proof of a matter is on the part who asserts a fact, he has to prove same and the standard of proof is the preponderance of evidence on the balance of probabilities. See the case of ***LONGE VS FBN (2006) 3 NWLR (PT 9967) P. 228. DAVIDO VS NNPC (1982) NWLR (PT538)P. 355. KALA VS POTISKUR (1998) 3 NWLR P. 540.***

A Claimant is not allowed in law to rely on the weakness of the opposite party in order to succeed, but has to rely on the strength of his own case. ***IMAN VS SHAFF(2005) 5NWLR (PT 914) P.80 . in UDE VS NWARA (1993) 2 NWLR (PT277) 638.***

A power of attorney is not an instrument which confers, transfer limits charge or alienate any title to the donee, rather it could be a valid whereby these acts could be done by the donee for and in the name of

the donorto a third party. So even if it authorized the donee to do any of these acts to any person including himself the mere issuance of such a power is not per se an alienation or party with power.

On the issue of trespass the law is that a claim in trespass is not dependent on proof of title to land see ***BALOGUN VS AKAJI (2005)LPELR 722 SC*** the claim for trespass is not dependent on the success of a claim for declaration of title. Both are quite separate and independent of each other see ***OLUW—VS EMOLA (1967) NLR 339***.From the combine effect of the above authorities and case cited the Claimant failed to establish any of the reliefs sought reason can be seen from the cases cited above. Consequently, I hereby non suit this case for want of sufficient evidence all the reliefs sought by the Claimant are also hereby refused. I would like to add where satisfactory evidence is not given bythe Claimant or Defendant to the satisfaction of the Court, the judge my suomotu or instead non suit the Claimant case.

In considering whether to grant a non-suit instead of dismissal, the Court has to weight all the facts all the facts and circumstance of the and see whether thescale of justice has tilted on the side of a non-suit or on the side of dismissal, the Court has to do what is fair and just to the parties in the circumstance of the case.

**HON. JUSTICE M.S
IDRIS
(Presiding Judge)**

Appearance

A.UHaji:- For the Defendant