IN THE HIGHCOURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI ABUJA

SUIT NO.: FCT/HC/CV/459/12
DATE: 30/4/2024

BETWEEN

LAWAL MOHAMMED
(Suing Through his Attorney, ……. **PLAINTIFF**
MR. EZEKIEL PHILIP

AND

1. **HON. MINISTER OF LAND HOUSING AND URBAN DEVELOPMENT**
2. **FEDERAL HOUSING AUTHORITY**
3. **DAVID OCHE ODE**
4. **A. ARUERA REACHOUT FOUNDATION**
5. **DALCHI APARTMENTS LIMITED**

} **DEFENDANTS**

JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

By an Amended Writ of Summons and Amended Statement of Claim filed on 19th May 2019, the Plaintiff seeks the following reliefs from this Court:

1) A declaration that there exists a valid agreement between the 2nddefendant and the plaintiff for the allocation of a Commercial Plot of Land situate and known as Plot No. C73, along 522 Road, 5th Avenue, Gwarinpa Phase 2

Estate, Abuja measuring 7,898.536 square meters as evidenced by the letter of allocation dated the 20th day of September, 1999 duly and validly issued by the plaintiff to the 2nddefendant to the plaintiff and coupled with the requisite payments made by the plaintiff to the 2nd defendant to that effect, whereby the plaintiff is legally entitled to receive from the 2nddefendant a formal letter of offer in respect of the said parcel of land and also entitled to remain undisturbed exclusive possession of the said land.

2) An order of Specific Performance compelling the 2nddefendant to execute a formal letter of offer in favour of the plaintiff over and in respect of the land in issue known as plot No. C73, along 522 Road, 5th Avenue, Gwarimpa II Estate, Abuja, measuring 7,898.536 square meters.

3) A declaration that the efforts or attempts by the 2nddefendant to sub-divide the land in dispute and to re-allocate same to the 3rd and 4th Defendants and any other person(s) whatsoever, is unlawful, illegal, null and void, and of no effect whatsoever. The said efforts or attempts by the 2nddefendant to subdivide the land in dispute and to re-allocate the same as aforesaid is also contrary and tantamount to a clear violation of the terms and conditions contained in the letter of allocation dated the 20th day of September 1999 which was duly and validly issued to the plaintiff by the 2nddefendant.

4) An order of this Honorable Court setting aside any instrument, allocation paper, lease or any other document(s) whatever name so called purporting to divest or abridge the plaintiff's interest in the aforementioned parcel of land made or purportedly made in favor of the 3rd, 4th, and 5th Defendants or any other person whosoever.

5) An order of Perpetual Injunction restraining the defendants acting either by themselves or through their servants, agents or assigns from further entering into the land in issue or attempting to enter same or doing anything whatsoever to interfere with the plaintiff's possession and or title thereto.

6) An order directing the 3rd, 4th and 5thdefendants and any other person whosoever that is on the land in dispute as a result of the purported sub-division and reallocation of the same by the 2nddefendant, to vacate forthwith any portion of the aforementioned parcel of land that they may have unlawfully trespassed upon.

7) N50,000,000.00 (Fifty Million Naira) being special and general damages for breach of contract and the trespass committed on the said land by the defendants.

(a) Special damages……N5,200,000.00
(b) General damages……...N44,800,000.00
Total = N50,000,000.00

8) Cost of this suit.

The 1st and 3rd Respondents were not represented in the Suit and they did not file any process. The Suit was, however, contested by the 2nd, 4th and 5th Defendants who exchanged and delivered their pleadings. Following some amendments in their processes, particularly the pleadings as between the Plaintiff and the 5th Defendant, the Suit was eventually tried on the Plaintiff's said Amended Statement of Claim referred to above, the 2nd Defendant's Statement of Defence was filed on 2/11/2020, the 4th Defendant's Statement of Defence filed on 13/2/2015, the 5th Defendant's Further Amended Statement of Defence on 19/4/2017 and the Plaintiff's Reply to the 2nd, 4th and 5th Defendants' Statements of Defence was filed on 19/5/2014. These processes were, at different stages of the proceeding, regularized by orders of this Court. I shall now proceed to review the case of the parties as contained in their respective pleadings and evidence adduced in support before delving into the issues raised by the parties in their respective Final Addresses before the Court.

THE PLAINTIFF'S CASE

The Plaintiff averred that he is a businessman resident in Abuja within the jurisdiction of this Court and he had duly appointed one Mr. Ezekiel Philip as his Attorney to manage and superintend the management of his commercial parcel of land situate and known as No. C23, along 522 Road, 5th Avenue, Gwarinpa II, Federal Capital Territory, Abuja, and to also initiate and prosecute this suit on his behalf. The kernel of his case is that sometime in the month of September 1999, he was allocated the said plot of land measuring 4,500 square metres approximately but subject to survey, vide a letter of allocation with reference No. FHC/LEM/GWA.II/C73 dated 20th September 1999. It is his case that after he had paid the requisite survey fees to the 2nd defendant as required under the said letter of allocation, the said parcel of land was thereafter surveyed by the staff of the 2nd Defendant and whereupon the actual size of the land was measured to be 7,898.536 square metres. Proceeding further, the Plaintiff averred that part of the terms and conditions of the allocation is that the land is to be leased to him for a term of 60 years, and that, if the terms and conditions, as contained in the said letter of allocation are acceptable to the Plaintiff, the Plaintiff should pay the sum of N735,000.00 (Seven Hundred and Thirty Five Thousand Naira Only) within 60 days from the 20th day of September 1999 into the Gwarinpa Escrow accounts of the 2nd Defendant.

The Plaintiff averred that upon receipt of the said letter of allocation, he duly accepted the entire terms and conditions stated therein and promptly paid the said sum of N735,000.00 on the 5th October, 1999 into the 2nd Defendant's said account and a receipt was accordingly issued to him (the Plaintiff) by the 2nd Defendant to that effect. That it was also part of the terms and conditions in the letter of allocation that detailed terms and conditions of the said allocation will be embodied in a formal letter of offer to be issued in due course in favour of the Plaintiff by the 2nd Defendant. The Plaintiff makes the case that having paid the said sum of N735,000.00 to the 2nd Defendant, he instructed his Attorney, Ezekiel Phillip, to visit the office of the 2nd Defendant on several occasions and request for the said formal letter of offer to enable him commence construction work on the land; and it was during one of such visits that the

2nd Defendant gave a "Demand Notice for Payment of Outstanding Charges" to his Attorney. That upon receipt of this demand notice, he immediately paid the sum of N5,000,000.00 (Five Million Naira) to the 2nd Defendant, being part payment of the various fees demanded from him by the 2nd Defendant vide the demand notice, and which payment was acknowledged by the 2nd Defendant. That after he made the requisite payments, he took physical possession of the land by erecting a concrete wall fence round the land, building a gate house for the security man, drilling a borehole and planting economic trees thereon.

It is his further case that sometime in November 2011, and to his greatest surprise and amazement, he received a report from his security man who was watching over the land that some officers of the 2nd Defendant came with armed Policemen and chased him and other workmen away who were building on the land on the ground that the land belonged to someone else. That upon enquiries by his Attorney, he was informed by some staff of the 2nd Defendant that his said parcel of land had been allegedly sub-divided into four (4) plots and reallocated by the 2nd Defendant to the 3rd and 4th Defendants and another allottee; and the 3rd Defendant was making frantic efforts to sell his purported portion to a prospective buyer and which information turned out to be true as the 5th Defendant is now claiming to have purportedly acquired the 3rd Defendant's interest in the said sub-divided plot. According to the Plaintiff, the officers of the 2nd Defendant also informed him that other alleged beneficiaries of the purported sub-division of his said plot are powerful members of the society for which they felt sympathy for the Plaintiff.

The Plaintiff further stated that to his greatest surprise and chagrin, he was given another allocation dated 11th April 2011 through his Attorney for the re-allocation of a smaller portion to his said parcel of land for another Lease for a term of 60 years, i.e. Plot No. C.125 along 5221 Road, Gwarinpa II Estate, Abuja. That this letter required him to pay N7,103,957.60 (Seven Million, One Hundred and Three Thousand, Nine Hundred and Fifty Seven Naira, and Sixty Kobo) as charges for the smaller plot of land when he had previously paid all requisite charges for the entire parcel of land that was validly allocated to him by the 2nd Defendant as aforesaid. That even though he did not

apply for any commercial plot of land from the 2nd Defendant in 2011, the 2nd Defendant still keeps the entire sum of money which he had duly paid for the entire parcel of land before the purported sub-division and re-allocation of the said land. That the new allocation of Plot No. C.125 along 5221 Road, Gwarinpa II Estate, Abuja is within or included in the parcel of land that had been previously allocated to him; and the purported allottees of the other three portions of the sub-divided land (i.e. the 3rd and 4th Defendants including the 5th Defendant) had also trespassed on his land by depositing sand gravel on the land in their readiness to commence work thereon. That even though the Court had granted an order of interlocutory injunction directing the said Defendants to maintain status quo pending the determination of the Suit, they willfully disobeyed the order.

The Plaintiff also pleaded that the 2nd Defendant is obliged to execute a Deed of Sub Lease or a formal letter of offer in his favour pursuant to the letter of allocation dated 20th September 1999 after he had accepted the offer by making the requisite payments to the 2nd Defendant; and that he, the Plaintiff, has not in any way breached the conditions of the first allocation that was validly made to him by the 2nd Defendant as he promptly accepted the allocation by making all required payments to the 2nd Defendant. He concluded that the sub-division of the land in dispute by the 2nd Defendant and the subsequent re-allocation of same to the 3rd and 4th Defendants is unlawful, illegal, null and void and in violation of the terms and conditions contained in the letter of allocation of 20th September 1999. It was based on the above pleaded facts and the further averment that the Defendants destroyed the concrete wall fence and security house he said he built on the land, that the Plaintiff seeks the reliefs in reproduced earlier in this Judgment.

In his Reply to the 2nd, 3rd and 4th Defendants' Statements of Defence, the Plaintiff averred in the main that his letter of allocation dated 20th September 1999 was never revoked by the 2nd Defendant for alleged non-compliance by the Plaintiff with the condition precedent to the grant of the offer or for any reason at all; that the 2nd Defendant does not have the power to revoke the earlier allocation to him and to sub-

divide and re-allocate same to four different allottees; and the 2nd Defendant had no justifiable reason(s) for purporting to revoke his said earlier allocation.

After the delivery of pleadings and sorting out of some interlocutory applications, trial commenced on 25/6/2014 with the Plaintiff calling a sole witness, his said Attorney, Ezekiel Phillips, who testified as PW1 and adopted his Witness Statement on Oath in line with the pleadings. Ten (10) sets of documents were admitted in evidence through him in his evidence-in-chief, identified and marked as follows:

1) Power of Attorney donated by the Claimant to his Attorney, Ezekiel Philip: **Exhibit A1**;
2) A copy of the letter of allocation of a commercial plot of land at Gwarinpa II Estate, Abuja, described as No. C73, along 522 Road, 5th Avenue, Gwarinpa II, dated 20th September, 1999 issued by the 2nd Defendant to the Claimant: **Exhibit A2;**
3) A copy of the letter of allocation of a commercial plot of land at Gwarinpa II Estate, Abuja, described as Plot C.125, along 5221 Road, Gwarinpa II Estate, Abuja dated 11th April, 2011issued by the 2nd Defendant to the Claimant: **Exhibit A3**
4) A copy of the receipt issued by the 2nd Defendant to the Claimant for the sum of N5,000,000.00 (Five Million Naira) in respect of the commercial plot of land situate and located at No. C73, along 522 Road, 5th Avenue, Gwarinpa II, Abuja: **Exhibit A4;**
5) A copy of a letter of allocation of a commercial plot of land situate and located at Plot C.124, along 5221 Road, Gwarinpa II Estate, Abuja, issued by the 2nd Defendant to David Oche Ode, the 3rd Defendant: **Exhibit A5;**
6) A copy of a Demand Notice dated 25/2/2008 issued by the 2nd Defendant to the Claimant in respect of the commercial plot of land situate and located at No. C73, along 522 Road, 5th Avenue, Gwarinpa II, Abuja: **Exhibit A6;**
7) A copy of the 2nd Defendant's Deposit Slip No: 11668 dated 10/10/11 showing payment of the sum of N6,201,789.36 by the Claimant to the 2nd Defendant, to

which is attached a Zenith Bank Plc Manager's Cheque No: 05678118 for the said sum: **Exhibit A7**;

8) A copy of a receipt dated 13/05/2014 issued by the Corporate Affairs Commission for Search: **Exhibit A8;**
9) Copies of the receipts dated 14/6/2006 and 17/6/2008 issued to the Claimant by Habco Multi hydro System & Co. and Mohammed Sanusi & Co. respectively: **Exhibit A9** and **A10**.

PW1 was cross-examined by the learned Counsel for the 2nd, 4th and 5th Defendants. I shall refer to the relevant and material parts of his evidence both in his evidence-in-chief and under cross-examination as may be necessary in the course of this Judgment.

THE4TH DEFENDANT'S CASE

Because of the unavailability of the 2nd Defendant's witness at the time who was said to have left the 2nd Defendant's employment, the 4th Defendant was the first to present his case before the Court. It averred in its Statement of Defence that it duly applied and was allocated a plot of land known as Plot No. C122, along 522 Road, Gwarinpa II Estate, Abuja by the 2nd Defendant.That there was no previous allottee to its plot neither was there any concrete or wall fence within or around the plot when it took physical possession of it. That as at the time the plot was allocated to it, it was bushy and there was no form of human life or activity within it or around its vicinity. There was no structure or gatehouse, borehole or any economic tree within or around the plot and no security man in the plot.The 4th Defendant further stated that pursuant to the allocation of the said Plot C.122, it paid the sum of N7,105,250.00 to the 2nd Defendant upon request as charges for Premium, Capital Development Levy, Survey Fees, Annual Ground Rent and Application Fees on the land and was issued with the survey map of the plot. That its said plot measures about 1,975 square metres, and it cleared the bush therein in 2011, andpursuant to the 2nd Defendant's approval, it commenced physical development of the plot. That it has erected structures on the plot and was working on the building complextherein when the Plaintiff stopped its men from further work with the order of this Court. The 4th Defendant concluded that the Plaintiff has never been in

possession and enjoyment of the plot even up to the time he commenced this Suit; and the 4th Defendant is a *bona fide* allottee of the plot and has no notice of any previous encumbrance on the plot. The Court was urged to dismiss this Suit with substantial cost against the Plaintiff as it is vexatious and frivolous.

Like the Plaintiff, the 4th Defendant called a sole witness, Eze Emmanuel, as DW4. On 15/4/2015, he adopted his Witness Statement on Oath and tendered the following documents in evidence which were marked accordingly as exhibits:

1) A certified true copy of a document headed "Allocation of a Commercial Plot of Land at Gwarinpa II Estate, Abuja" dated 11th April 2011 in respect of Plot C.122, along 522 Road, Gwarinpa II Estate, Abuja, addressed to A. Aruera Reachout Foundation" to which is attached a receipt issued by the 2nd Defendant: **Exhibit X**;
2) Two photographs of a building under construction with a Certificate pursuant to Section 84 of the Evidence Act: **Exhibit X1**.

DW4 was cross-examined by the Plaintiff's Counsel and by the 2nd Defendant. Specific reference will be made to the material evidence elicited from this witness.

THE 2ND DEFENDANT'S CASE

The summary of the 2nd Defendant's case in its Statement of Defence is that the Plaintiff was allocated the commercial plot of land measuring 4,500 square metres subject to survey known as No. C23, along 522 Road, 5th Avenue, Gwarinpa II, Federal Capital Territory, Abuja, and the letter of allocation contained some conditions of the allocation issued to the plaintiff. That the said conditions, including the payment of development charge which details were to be determined and communicated in due course, were condition precedents to the grant of the offer. That these conditions precedent were accepted by the Plaintiff.The 2nd Defendant further pleaded that the said development charge was worked out on the 20th July 2004 and a Warning Notice in respect of the subject matter informing the Plaintiff to pay all outstanding debts was

caused to be served on the Plaintiff. On 25/2/2008, a Demand Notice for Payments of Oustanding Charges was against served on the Plaintiff as regards the matter, and the Plaintiff was given 90 days from the date on the demand notice to pay up the due balance due to the 2nd Defendant or have the plot revoked. That on 16/6/2008, the Plaintiff paid N5,000,000 leaving the balance of N6,201,789.36 unpaid. That this payment was made 20 days after the demand notice elapsed since it was received by the Plaintiff through his agent on 25/2/2008 and clause 3 of the notice took effect. That upon receipt of the revocation letter, the Plaintiff proceeded without the consent of the 2nd Defendant to pay in the 2ndDefendant's account the sum of N6,201,789.36 on 10/10/11. That the Plaintiff was never the owner of the plot of land as he failed to comply with the condition precedent to offer.There was no approval given to the plaintiff to erect any structure on the land, and as such, he was an illegal occupant and trespasser of the land. That the re-allocation of Plot C125 along 5221 Road, Gwarinpa II Estate Abuja was done in good faith and aimed at mitigating the Plaintiff's loss of Plot C73, along 522 Road, 5th Avenue, Gwarinpa II, Abuja due to his inability to comply with the condition precedent to the offer of Plot C73 to him. Finally, that the re-allocation of Plot C125 along 5221 Road, Gwarinpa II Estate to other allottees was in exercise of the 2nd Defendant's right to reallocate the land after the Plaintiff failed to comply with the condition precedent to the grant of the offer; and it is in the interest of justice to disregard the claims of the Plaintiff in the Suit.

In support of its case as captured above, the 2nd Defendant also fielded a sole witness, UdoIdongesit Sunday, who stated that he was a Civil Servant and an Assistant Chief Estate Officer in the 2nd Defendant, as DW2. On 4/2/2016, he adopted his Witness Statement on Oath sworn to on 20/6/2015 in line with the 2nd Defendant's pleading and tendered the following documents in his evidence-in-chief:

1) A letter headed "Warning Notice" dated 20/7 2004 in respect of Plot C.73, along 522 Road, 5th Avenue, Gwarinpa II, Abuja and addressed to Lawal Mohammed, No. 3 Touggourt Crescent, Wuse Zone 2, Abuja: **Exhibit X2**;
2) A letter headed "Demand Notice for Payment of Outstanding Charges" dated 25/2/08 addressed to Lawal Mohammed: **Exhibit X3**.

DW2 was cross-examined by the respective learned Counsel for the Plaintiff and the 4th and 5th Defendants. In addition to the above, a certified true copy of a "Notice of Revocation of Parcel of Land No. C73 along 522 Road, Gwarinpa II Estate Abuja" dated 11/4/2011 together with an attachment addressed to the Claimant was admitted in evidence through DW2 as **Exhibit X4.**

THE 5TH DEFENDANT'S CASE

The 5th Defendant also denied the Plaintiff's case in its Further Amended Statement of Defence and stated that except the letter dated 20th September 1999, the Plaintiff did not obtain nor acquire any interest whatsoever in the alleged Plot C73, along 522 Road, 5th Avenue, Gwarinpa II Estate, Abuja. That contrary to the said letter, no "formal letter of offer" was issued to the Plaintiff over the said plot and the plot allegedly offered to the Plaintiff was revoked by the 2nd Defendant vide a Notice of Revocation dated 11th April 2011 on the ground of the Plaintiff's failure to pay the requisite fees/levy eight years after the demand notice was served on him. It is also the 5th Defendant's case that the alleged plot does not exist in the Layout Plan of the 1st and 2nd Defendants who are the lawful authority charged with the management of lands within FHA, Gwarinpa, Abuja.

Proceeding further, the 5th Defendant averred that pursuant to a letter dated 11 April, 2011, the Federal Housing Authority Abuja allocated to the 3rd Defendant in this suit the property known as Plot C. 124 along 5221 Road, Gwarimpa II Estate. The 3rd Defendant accepted the terms and conditions of the allocation as contained in the letter of allocation by paying the requisite charges due for the land whereupon receipts dated 25/2/2012, and 12/6/2012 was issued to him. As the bonafide/lawful allottee of the said Plot, the 3rd Defendant in this suit executed an Irrevocable Power of Attorney and thereby transferred the possession of Plot C. 124 along 5221 Rd, Gwarimpa II Estate to the 5th Defendant. As the bonafide/lawful allottee of the said Plot, the 3rd Defendant duly consented and authorized the 5th Defendant to register the Deed of Irrevocable Power of Attorney aforesaid. That the 5th Defendant was accordingly put in possession

of the Plot and has since exercised diverse and maximum acts of possession including erection thereon.

It is its further case that in the exercise of the powers conferred on him by the Irrevocable Power of Attorney, the 5th Defendant in the name of the 3rd Defendant and as lawful attorney prepared and obtained building plan approval for development of Plot C. 124, along 5221 Road, Gwarimpa II, Estate Abuja. That the 5th Defendant in the name of the 3rd Defendant and as attorney paid all the necessary fees for the approval of the building plan on the Plot.The 5th Defendant further averred that at the time the land in dispute was allocated to the 3rd Defendant there was no prior existing interest on the land in dispute. When it took possession of the plot, there was no structure or gatehouse, borehole or any economic tree within or around the Plot and neither was there any security man in the Plot. It concluded that pursuant to the allocation of the said Plot C. 124, along 5221 Road, Gwarinpa II, Estate Abuja to it by the Federal Housing Authority, it has completed development of the Plot. The Court was also urged to dismiss the Suit for being frivolous and without merit.In support of its case, EmekaEzenwanne who introduced himself as the Managing Director the 5th Defendant, testified as the 5th Defendant's sole witness, as DW5. Upon adopting his witness Statement on Oath as his evidence, the following documents were admitted in evidence through him:

1) A letter of allocation of a commercial plot of land situate and known as Plot C.124, along 5221 Road, Gwarinpa II Estate, Abuja, dated 11th April 2011:**Exhibit X5**
2) 3 sets of receipts Nos. 000025778, 000027378 and 000025975 dated 25/5/2012, 12/11/2012 and 12/6/2012 issued by the 2nd Defendant to the 3rd Defendant:**Exhibit X6**
3) Acknowledgement/Receipt of Payment signed by Lawrence Onuchukwu on 22/3/2012:**Exhibit X7**
4) A copy of undated letter headed "Consent/Authority to Register Power of Attorney in Respect of Plot C.124, Along 5221 Road, Gwarinpa II Estate, Abuja – Federal Capital Territory and with Ref No. FHA/ES/GWA.II/C.124": **Exhibit X8**

5) A document dated 2/11/12 titled "Conveyance of Approval for Development Plan": **Exhibit X9**
6) A receipt No. 000026860 dated 2/10/12: **Exhibit X10**
7) Two photographs and flash disk to which is attached a Certificate of Compliance with Section 84 of the Evidence Act, 2011: **Exhibit X11**
8) A copy of Power of Attorney given by the 3rd Defendant to the 5th Defendant dated 22/3/12: **Exhibit X12;**
9) A certified true copy of "Notice of Revocation of Parcel of Land No. C73, along 522 Road, Gwarinpa II Estate, Abuja, dated 11/4/2011: **Exhibit X13**
10) A document titled "Payment Detail" with Certificate of Compliance: **Exhibit X14**

DW5 was cross-examined by the Plaintiff's Counsel and closed its case, whereupon the trial was concluded and the parties were ordered by the Court to file their respective Final Written Addresses.

2ND DEFENDANT'S FINAL WRITTEN ADDRESS

In its Final Written Address filed on 28/4/2023 and regularized by the order of court, the 2nd Defendant's Counsel, **Celine N. Ezeh,** formulated two issues for determination in paragraph 2.0 at page 3 thereof as follows:

i. **Whether a party who failed to comply with the condition precedent to the grant of a formal letter of offer of land can succeed in a claim for ownership/title to the land?**
ii. **Whether the Plaintiff has succinctly proved his case to warrant a grant of the reliefs sought?**

On issue (i) above, learned Counsel argued that the Plaintiff in relief 1 seeks a declaration that there exists a valid agreement between him and the 2nd Defendant for allocation of a commercial plot of land. That Exhibits X2 and X3 (warning notice and demand notice respectively) tendered by the 2nd Defendant are clear evidence showing the attempts made by the 2nd defendant to the Plaintiff to make due the payments of

developmental charges accrued by the Plaintiff. It is the 2nd Defendant's case that the time for the payment of the said developmental charges got expired on the 20th July 2004 due to non-compliance by the plaintiff with the terms prescribed despite warnings and demand notices made to him by the 2nd Defendant at the time stipulated. Counsel pointed out that Exhibit X2 was served on the Plaintiff on 20th July 2004 as a form of reminder which the Plaintiff woefully failed to comply with at the time prescribed. Exhibit X3 was again served on the Plaintiff on 25th February 2008 with the condition that the Plaintiff make the payment within 90 days from the date of the demand notice or have the Plot revoked. It was then submitted on the authorities of ***CORNET CUBBIT VS. FHA*** **(2022) LPELR-57507 (CA)**and ***BEST (NIG) LTD. VS. BLACKWOOD HODGE (NIGERIA) LTD.*** **(2011) LPELR 776 1**that where a contract is made subject to the fulfilment of certain terms and conditions, the contract is not formed and not binding unless and until those terms and conditions are complied with or fulfilled. That the Plaintiff's failure to make the payment due at the time stipulated in the demand notice automatically terminated his relationship with the 2nd Defendant and as such, he is not entitled to the land. The cases of ***TSOKWA OIL MARKETING CO. (NIG) LTD. VS.BANK OF THE NORTH LTD.*** **(2002) LPELR – 3268 (SC);*NIGER CLASSIC INVESTMENT LTD. VS. UACN PROPERTY DEVELOPMENT CO. PLC.*** **(2016) LPELR – 41426**and others were also cited in support.

The 2nd Defendant's Counsel submitted that by virtue of **Section 4(1)(f)** and **(3)** and **Section 7 of the Federal Housing Authority Act, vol. 6, LFN 2004** which empowers the Minister to give the Board directives of a general or special nature with respect of any of the functions of the Authority under the Act and makes it a duty of the Board to comply with such directions, the allocation made by the 2nd Defendant to the 3rd and 4th Defendants is valid and subsisting. On the order of perpetual injunction sought by the Plaintiff, Counsel submitted that it cannot be granted without the Plaintiff leading sufficient evidence in proof of his claim. That even if the party seeking the claim averred in the statement of claim that he is in physical or constructive possession, and that the adverse party infringed on his possessory right, it is a mere naked averment as the law is clear that where there is a claim for possessory title, the claimant must first

prove his title to the land, relying on ***KACHIA V. YAZID*** **(2001) 17 NWLR (PT. 742) 431 AND** ***CHIROMA VS. SUWA*****(1986) 1 NWLR (PT. 19) 751**. It is further submitted that the Plaintiff having failed to adduce proof of a better title to Plot No. C73, along Road 522, 5th Avenue, Gwarinpa Phase II Estate, Abuja over the 3rd, 4th and 5th Defendants is not entitled to the order of injunction sought and the Court was urged to so hold. On the further order sought by the Plaintiff directing the 3rd, 4th and 5th Defendants and any other person that is on the land in dispute to vacate same, it was submitted that the evidence tendered by the 3rd and 4th Defendants clearly shows that they were duly allocated the plots of land by the 2nd Defendant and as such, the order for vacation against them cannot hold.

On the question whether a letter of allocation without more is sufficient proof of grant of title to the holder, learned Counsel further referred the Court to the authority of ***BELLO VS. SANDA*****(2011) LPELR – 3705 (CA)** on the factors to be considered by the Court and submitted that the letter of allocation granted by the 2nd Defendant to the Plaintiff (**Exhibit A2**) does not have the effect as claimed by the Plaintiff of giving him title because he failed to fulfil the conditions at the time stipulated. In conclusion, the Court was urged to hold that the Plaintiff has no genuine grievance against the 2nd Defendant and is not entitled to any of the claims against it.

On Issue (ii) which is whether the Plaintiff has succinctly proved his case to warrant a grant of the reliefs sought, it is Counsel's submission that a plaintiff must succeed on the strength of his own case and not on the weakness of the defendant's case, relying on ***ADEYERI VS. OKOBI*****(1997) LPELR – SC 277/1990**. It was argued in the main that while Exhibit X2 (Warning Notice) was issued on 20th July 2004 to the Plaintiff and there was no response in the form of payment, Exhibit X3(Demand Notice) was against issued to the Plaintiff on 25th February 2008 and he then paid the sum of N5,000,000.00 on 13th June 2008. That this payment was made almost four (4) years from the date Exhibit X2 was served on him and twenty (20) days after Exhibit X3 was issued to him. Furthermore, that the receipt of payment of the balance of N6,201,789.36 tendered by the Plaintiff is dated 10th October 2011, which is 3 years after the issuance of Exhibit X3 to the Plaintiff, contrary to the 90 days period

stipulated in the demand notice. It was then submitted that from the above evidence and authorities, it is clear that the Plaintiff clearly failed to prove his claim. That it is expected by the Plaintiff would adduce sufficient proof of his title by producing documents of title and by acts of possession amongst the six ways of proving title. That while the Plaintiff alleged trespass against the Defendants, he has the onus to prove same. On the Plaintiff's claim of special and general damages, Counsel submitted that the Plaintiff ought to have led credible evidence (attachment of photographs) of the fence, security post and borehole he drilled before or after they were destroyed. That where a party fails to testify in support of facts in his pleadings, those facts are deemed abandoned. In conclusion, the Court was urged to discountenance the reliefs sought by the Plaintiff as he failed to adduce credible evidence in support of his claim. ***IDUNDUN VS.OKUMAGBA*(1976) 10 S.C. 227; *UGOJI V. ONUKOGU*(2006) 15 WRN 1 SC** and ***U.B.N. PLC. VS. AYODARE& SONS (NIG). LTD.* (2007) All FWLR (Pt. 383) 1 SC** were cited in support of the above contentions.

4TH DEFENDANT'S FINAL WRITTEN ADDRESS

The 4th Defendant filed its Final Written Address on 27/3/2023 and formulated a sole issue for determination in paragraph 4.0 at page 4 thereof, thus:

Whether considering the facts and circumstances of this case and having regard to the pleadings and evidence before this Honourable Court, the Claimant has been able to prove his case to be entitled to the reliefs sought.

Arguing the sole issue, the 4th Defendant's learned Senior Counsel, **ObinnaAjoku, SAN** leading other Counsel first submitted that it is trite law that to succeed in a declaration of title to land, the claimant must prove his ownership of the land or title through any of the five (5) ways recognized by law, as decided in ***IDUNDUN VS. OKUMAGBA*(1967) 9 – 10 S.C. 227**and others. Learned Senior Counsel pointed out that by paragraph 6 of the Amended Statement of Claim the Plaintiff relied solely on production of documents to prove ownership of the land in dispute and also tendered **Exhibit A2** in that regard. It was submitted that from the averment in the said

paragraph 6 of the Amended Statement of Claim, the plot allocated to the Claimant is 4,500 square metres subject to survey. That the size of the plot allocated to the Plaintiff is inchoate until actual survey is carried out by the 2nd Defendant, relying on the meaning of "subject to" and "survey" as defined in ***ADELEKUN VS. FAHM*(2014) LPELR – 23085 (CA)** and the ***Blacks Law Dictionary, 11th Edition.***It was further submitted that it is the duty of the Plaintiff to prove with certainty the actual size of the land allocated to him by the 2nd Defendant, and this he can only do by production of the survey plan and not by mere assertion in paragraph 7 of his Amended Statement of Claim when the 4th Defendant averred and led evidence that there was no previous allottee to its plot and no form of human activity and fence on the plot when the 2nd Defendant allocated the land to it.

Further relying on the authoritiesof ***ANEJI VS. ODWONG* (2016) LPELR – 41382 (CA)** and otherson the burden imposed on a claimant in an action for declaration of title to land to establish the identity and location and boundaries of the land before he can succeed, learned Senior Counsel submitted that PW1 admitted under cross-examination that he did not have the survey plan of Exhibit A2 with him in Court. That the evidence of PW1 that the size of the plot is 7,898.536 square metres should be discountenanced as no survey plan was tendered to support the evidence and is evidence is contrary to the pleadings and evidence adduced by the 2nd Defendant's witness (DW2) that the size of the Plot is 4,500 square metres and he does not know whether the portion of land subdivided into four (4) was the original plot allocated to the Plaintiff.Learned Senior Counsel then compared the total size of the plot pleaded by the Plaintiff and submitted that having failed to ascertain the exact area of his purported plot, the Plaintiff has not proved his case to be entitled to the reliefs sough and the proper order to be made by the Court is that of dismissal of the suit. Counsel further argued that Exhibits A6 and X3 tendered by the Plaintiff and the 2nd Defendant cannot take the place of the survey plan that was specifically stated in Exhibit A2 will ascertain the size of the plot, but which is not before the Court. The Court will not speculate on a document not before it, it was submitted, relying on number of authorities.

Learned Senior Counsel further argued in the alternative that, assuming without conceding that the Plaintiffs plot size is 7,898.536 square metres, the 2nd Defendant revoked the Plaintiff's Exhibit A2 vide Exhibits X4 and X13 tendered through DW2 and DW5 respectively. That by virtue of Section 44 of the Land Use Act, the notice of revocation need not be served on the Plaintiff personally as averred in paragraph 3 of the Plaintiff's reply to the 2nd, 4th and 4th Defendants' Statement of Defence. That the word "or" used in Section 44 of the land Use Act which stipulates five ways of serving revocation notice is construed as disjunctive or denoting an alternative: ***UGWU VS. ALABOC*(2016) LPELR – 41510 (CA)**. That by leaving the revocation notice at the usual or last known place of abode of the Plaintiff as stated in the Plaintiff's Exhibits A2, A3 and A6, the dispatch and delivery of Exhibits X4 and X13 at the said address by the 2nd Defendant's dispatch officer, Mr. Ujah, was good service, and the presumption of regularity pursuant to Section 168 of the Evidence Act inures in favour of Mr. Ujah. Further relying on ***OBAYIUWANA VS. MINISTER OF FCT* (2009) LPELR – 8202 (CA),**it was submitted that by Section 28(7) of the Land Use Act, the Plaintiff's right over the land was extinguished on delivery of **Exhibits X4** and **X13** at his last known place of abode.

On the Plaintiff's claim for general and special damages for the Defendants' alleged acts of trespass, learned Senior Counsel submitted that the Claimant led no evidence in proof of the special damages. That he had no approval to commence any development on the land and never controverted the evidence of the 4th Defendant that there was no activity or fence at the time it took possession of the land allocated to it by the 2nd Defendant. That Exhibits A9 and A10 tendered by the Claimant never stated that the alleged works were done in the land of the 4th Defendant. It was finally submitted that the 4th Defendant entered the land under the bona fide claim of right having been allocated the land by the 2nd Defendant, and being the rightful owner of the land, no person including the Plaintiff can maintain an action for trespass against it, relying on ***ACCELERATED EDUCATIONAL SERVICES LTD. VS. EKOP*(2012) LPELR – 19693 (CA)** and others. The Court was, in conclusion, urged to dismiss the Suit for being unmeritorious.

THE CLAIMANTS FINAL WRITTEN ADDRESS

The Claimant filed two Final Written Addresseson 17/10/2023 and 21/11/2023. His learned Counsel, **Sunny O. Ake, Esq.,** leading **Chris Ubogu, Esq.**, however, adopted the subsequent address filed on 21/11/2023 wherein he formulated four (4) issues for determination in paragraph 7.01 thereof, thus:

1) **Whether, in view of the facts, as pleaded and proved by the Claimant and the 2nd Defendant in this case, can it be said that, the Right of Occupancy over plot No. C73, along 522 Road, 5th Avenue, Gwarinpa II Estate, Abuja; which the 2nd Defendant, had validly allocated to the Claimant, vide the 2nd Defendant's Letter of Allocation, dated the 20th day of September, 1999 (Exhibit "A2"), was properly or validly revoked by the 2nd Defendant, vide the 2nd Defendant's purported Notice of Revocation, dated 11.4.2011?**

2) **Whether, having regard to the peculiar facts of this case, can it be said that, the 2nd Defendant, acted legally, when it purportedly sub-divided into four different plots of land, the parcel of land, known as plot No. C73, along 522 Road, 5th Avenue, Gwarinpa II Estate, Abuja; which the 2nd Defendant, had previously allocated to the Claimant, vide the 2nd Defendant's Letter of Allocation, dated the 20th day of September, 1999 (Exhibit "A2"), when the Claimant's Right of Occupancy over the said parcel of land, has not been validly or properly revoked by the 2nd Defendant?**

3) **Whether, having regard to the peculiar facts of this case, can it be said that, the 3rd and 4th Defendants, and by extension, the 5th Defendant, including the other allottee, whose name is not known to the Claimant, has acquired any valid interest, in the different plots of land, which were allegedly allocated to them by the 2nd Defendant, out of the plot of land, known as plot No. C73, along 522 Road, 5th Avenue, Gwarinpa II Estate, Abuja; which the 2nd Defendant, had validly allocated to the Claimant, vide the**

2nd Defendant's Letter of Allocation, dated the 20th day of September, 1999 (Exhibit "A2"), when the Claimant's Right of Occupancy over the said parcel of land, has not been validly or properly revoked by the 2nd Defendant?

4) **Whether, the Claimant is entitled to damages against the Defendants, for the various acts of trespass committed by the Defendants on the Claimant's parcel of land, that is known as plot No. C73, along 522 Road, 5th Avenue, Gwarinpa II Estate, Abuja?**

On Issue No. 1 above, the Plaintiff referred to the doctrine of privity of contract and argued that it is only the 2nd Defendant and him (the Claimant) that are parties to the contract that resulted "in the grant of the Right of Occupancy over plot No. C73, along 522 Road, 5th Avenue, Gwarinpa II Estate, Abuja; by the 2nd Defendant and in favour of the Claimant", vide the 2nd Defendant's Letter of Allocation in **Exhibit A2**. That the law is now settled that it is only parties to a contract that can sue or be sued on the contract and not a stranger, relying on ***URSREICHE VS. NIGERIAN BANK OF COMMERCE & INDUSTRY*****(2016) All FWLR (Pt. 832) 1664**. Furthermore, that it is only a party to a contract that can seek a cancellation or abrogation of the contract. Therefore, since the 4th and 5th Defendants in this case are not parties to the contract between the Claimant and the 2nd Defendant in Exhibit A2, they cannot seek contend as they seek to do that the Claimant's "Right of Occupancy" over the said Plot had been purportedly terminated or revoked by the 2nd Defendant. It does not lie in their mouth to do so as they are total strangers to the contract, further relying on ***NANGIBO VS. OKAFOR*** **(2003) FWLR (PT. 171) 1529 SC.**

Leaving this point, learned Counsel submitted that the settled position of the law is that where a defendant in a suit alleges the revocation of the Right of Occupancy of the Claimant, as in the instant case, the allegation itself presupposes the existence of the Right of Occupancy prior to its alleged or purported revocation by the defendant. That in such a case, there would be no more evidential burden placed on the shoulders of the Claimant to prove the existence of the said Right of Occupancy, as in this case. That it

is the 2nd Defendant who is alleging that the Claimant's Right of Occupancy over the Plot that would lose if no evidence is adduced in this regard, relying on **OSHODI v. BALOGUN (2016) LPELR – 40580 (CA)** and **DUMEZ NIGERIA PLC. v. ADEMOYE (2014) LPELR – 23518 (CA)**.Proceeding on this footing, it was submitted that the burden to prove that the Revocation Notice in Exhibit X4 or X13 was actually and truly delivered to or served on the Claimant is on the 2nd Defendant who would fail if no credible evidence was adduced in that regard. That it is manifestly clear from the facts pleaded and proved that the 2nd Defendant failed woefully to discharged this heavy burden placed on it by law. According to the Claimant, this is because while the alleged Notice of Revocation in Exhibits X4 or X13 is dated 11th April 2011, it was allegedly collected by one Ujah on 11th May 2011 and allegedly served on one Mohammed Shehu (and not on the Claimant) on 18th May 2011. It was contended that it is legally impossible or impermissible for the 2nd Defendant to have allegedly revoked the Claimant's Right of Occupancy over the Plot on 11th April 2011 with the Notice of Revocation dated 11th April 2011 which was still in the office of the 2nd Defendant until 11th May 2011 when same was allegedly collected for dispatch by one Ujah and the document was eventually allegedly received or collected by Mohammed Shehu on 18th May 2011. It was further submitted that the 2nd Defendant failed to prove the service of the Notice of Revocation more so because the Claimant expressly pleaded in paragraph 3 of his Reply to the 2nd, 4th and 5th Defendant's Statements of Defence and paragraph 6 of his Additional Witness Statement on Oath that the said Notice o Revocation in Exhibits X4 or X13 was not personally served on him or on his said Attorney. That since the 2nd Defendant failed to call the person who purportedly received the Notice, Mohammed Shehu, to explain to the Court, the Court is not in a position to know who he is. That as at 11 April 2011 when the 2nd Defendant claimed to have revoked the Claimant's Right of Occupancy, the Claimant was yet to be served with Exhibits X4 or X13 as mandatorily required by law. The Court was therefore urged to hold that the purposed revocation of the Claimant's Right of Occupancy is ineffectual, null and void and of no legal effect whatsoever. Several authorities were cited in support, including **Section 44 of the Land Use Act, 1978; *EGBA VS. CHUKWUOGOR*(2004) 6 NWLR (Pt. 869) 382; *NIGERIA ENG.***

WORKS LTD. VS. DENAP LTD. **(2001) 18 NWLR (PT. 746) 726;** ***OSHO VS. FOREIGN FINANCE CORPORATION*** **(1991) 4 NWLR (PT. 184) 153.**

It was further contended that even if the 2nd Defendant had been able to prove to the Court that the Claimant has breached any of the terms and conditions of the grant, which the 2nd Defendant could not do, that is not enough to revoke the Claimant's Right of Occupancy over the plot without serving the notice of revocation on him personally. That in the instant case, the Claimant has been able to prove by coherent and credible evidence that he had fully and completely paid the sum of N11,936,789.36 which was demanded from the Claimant by the 2nd Defendant, which money the 2nd Defendant acknowledged receiving and is still with the 2nd Defendant up to this moment.Quoting part of the decision of the Court of Appeal in ***ADEKUNLE VS. GOVERNOR OF LAGOS STATE*** **(2020) LPELR – 49587 (CA)**on the legal requirement for service of notices of revocation on a holder of a right of occupancy under the Land Use Act, the Claimant urged the Court to resolve Issue 1 formulated by him in his favour.

Arguing Issue Nos. 2 and 3 together, learned Counsel for the Claimant posited that the law is that revocation of a right of occupancy ought to precede a subsequent grant of same and not the other way round, and he relied on **Section 5(2) of the Land Use Act;** ***DANTSOHO VS. MOHAMMED*** **(2003) 6 NWLR (Pt. 817) 457.** It was submitted that insofar as the 2nd Defendant has not validly or effectively revoked the Claimant's Right of Occupancy, it had no power whatsoever to sub-divide the said Plot into four different plots and to re-allocate some portions thereof to the 3rd and 4th Defendants and the third allotteewho is not known to the Claimant. It was further submitted that since the 2ndDefendant has validly granted the said plot of land to the Claimant vide Exhibit A2, and the grant is still subsisting in favour of the Claimant, the 2nd Defendant had nothing left in the said plot to be sub-divided and re-allocated to any subsequent allottees. The Claimant's Right of Occupancy, it was argued, is good against any other right; and any attempt by the 2nd Defendant to grant another right of occupancy over the same plot to a third party or parties will be merely illusory and invalid. That it is settled law that an acquiring authority cannot divest one citizen of his interest on a

property and vest same in another citizen as the 2nd Defendant had attempted to do in the instant case. Reliance was placed in this regard on the cases of ***ILONA VS. IDAKWO*****(2003) FWLR (PT. 171) 1715;** ***ABDULLAHI VS. SANI*** **(2014) 17 NWLR (PT. 1435) 1;** ***MALAMI VS.OHIKHUARE*****(2019) 7 NWLR (PT. 1670) 132;** ***CIL RISKS ASSET MANAGEMENT LTD. VS. EKITI STATE GOVERNMENT*** **(2020) 12 NWLR (PT. 1738) 203**and many others. In sum, the Court was urge to resolve the said Issue Nos. 2 and 3 in favour of the Claimant/Plaintiff.

On Issue No. 4, learned Counsel for the Claimant defined the meaning of trespass as held in ***OKOLO VS. DAKOLO*** **(2006) 14 NWLR (Pt. 1000) 401** and other cases and submitted that trespass is maintainable against a wrongdoer even without proof of actual damage. That the Claimant has expressly pleaded and proved by credible and unchallenged evidence that he has been in exclusive possession of the plot of land, i.e., plot No. C73, along 522 Road, 5th Avenue, Gwarinpa II Estate, Abuja until April 2011 when the 2nd Defendant unjustifiably interfered with his possession by claiming to have sub-divided the plot into four different plots and re-allocated same to subsequent allottees. That he has also led credible and unchallenged evidence of some specific losses suffered by the Claimant as shown in the receipts in Exhibits A9 and A10. Therefore, the Claimant is entitled to the general and special damages sought. In conclusion, Counsel urged the Court to resolve this issue in the Claimant's favour and grant the Claims in the Suit.

5TH DEFENDANT'S FINAL WRITTEN ADDRESS

The 5th Defendant's Final Written Address was filed on 21/11/2023 and also deemed properly filed by the order of court. Its Counsel, **Chinedu Ezeh, Esq.,** formulated three (3) issues for determination in paragraph 3 at page 6 thereof, thus:

1) **Whether from the totality of the pleadings and evidence adduced, there exists a valid grant/allocation of Plot No. C23 and situate along 522 Road, 5th Avenue, Gwarinpa II, Abuja (the land in dispute) to the Claimant by the 2nd Defendant.**

2) **Whether from the totality of the pleadings and evidence adduced, the offer of allocation of Plot No. C23 and situate along 522 Road, 5th Avenue, Gwarinpa II, Abuja, made by the 2nd Defendant to the Claimant was validly revoked by the 2nd Defendant.**

3) **Whether the Claimant is entitled to the Reliefs sought in the Amended Statement of Claim.**

Arguing the 3 issues together, learned Counsel first pointed out that it is not in dispute that the basis/foundation of the Claimant's case is this Suit is his pleading in paragraphs 6–9 of the Amended Statement of Claim that sometime in September 1999, he was allocated the land in dispute vide a letter of allocation dated **20th September 1999** (that is, **Exhibit "A2"**). Upon receipt of the said letter of allocation, *"he duly accepted the entire terms and conditions stated therein and promptly paid the said sum of N735,000.00 on the 5th October, 1999 into the 2nd defendant's said account and receipt No. RC 15592 was accordingly issued to the plaintiff by the 2nd defendant to that effect."* Counsel submitted that it is based on this supposition that he accepted the offer of allocation of the land in dispute made to him by the 2nd Defendant by paying the above stated sum that the Claimant contends that a valid agreement/contract existed between him and the 2nd Defendant, and for which an order of specific performance should be granted as prayed in the principal **Reliefs 1** and **2** sought.It was submitted, with due respect, that this contention by the Claimant, which is the foundation of their Claim, stem from a complete misconception of the nature of Exhibit "A2" and the obligations created therein. That it is a basic principle that documents are to be interpreted holistically and not in isolation. See **ONI VS. GOV., EKITI STATE (2019) 5 NWLR (Pt. 1664) 1 SC**. Thereafter, Counsel reproduced the full contents of Exhibit A2 and submitted that in formulating his case and in contending that it accepted the allocation of the land in dispute simply by paying the sum of N735,000 to the 2nd Defendant as stated in paragraph 3 of Exhibit "A2" above, the Claimant fell into the error of reading the paragraph in isolation. On the authorities, he ought to have read the entire document holistically because the words in a document must first be given their simple and ordinary meaning and under no circumstances may additional

words be imported into the text, citing**UNION BANK v. OZIGI (1994) LPELR-3389(SC).**

Proceeding on this footing, it was submitted that from a close, holistic and dispassionate examination of the contents of Exhibit "A2" reproduced above, it is crystal-clear that **paragraph 2** thereof states the "conditions of allocation" of the land in dispute by the 2nd Defendant to the Claimant, meaning that the allocation was conditional or subject to "conditions". That it is also very clear that one of the "conditions of allocation" in paragraph **2(f)** is that the Claimant would be required **"to pay a development charge**" the details of which would be communicated to him in due course. The Court was urged to hold that contrary to the Claimant's imagination that what he accepted by paying the sum of N735,000 to the 2nd Defendant was the allocation of the land, it is clear from a calm and intimate reading of **paragraph 3** that what the Claimant accepted was **"these terms and conditions"**, i.e., the terms and conditions stated in paragraphs 2(a)–(f) and not the allocation itself. That it is clearly stated in paragraph 3 that this payment was for specific purposes, i.e., for "premium, application and survey fees payments for the plots"; and it is upon the payment of the fee for the above stated purposes, that the following **paragraph4** of Exhibit "A2" states that a "formal letter of offer" would be issued to the Claimant in due course by the 2nd Defendant. Learned Counsel further submitted in this regard that since what the Claimant accepted in paragraph 3 of Exhibit "A2" is the "terms and conditions" stated in paragraph 2 and not the allocation of the land in dispute, the Claimant was bound to fulfil/satisfy all the "conditions of allocation" in paragraph 2, including the condition in paragraph 2(f) that required him to also pay **"a development charge"**, before he could be said to have validly accepted the allocation and before it could be said that there exists a valid agreement between the him and the 2nd Defendant with respect to the land in dispute. Still on this footing, Counsel posed the question as towhether having validly accepted the terms and conditions in paragraph 2(a)–(f) of Exhibit "A2" by paying the amount stated in paragraph 3 thereof to the 2nd Defendant, the Claimant fulfilled/satisfied all the "conditions of allocation"?

Before answering the question, learned Counsel referred to the submission by the Claimant's learned Counsel that by the doctrine of privity of contract, it is only a party to a contract that can sue or be sued on the contract and is only entitled to ask for its

cancellation or abrogation. He argued that the submissions are erroneous and fly in the face of the pleadings and evidence adduced by the parties in this case because, in the first place, it was the Claimant that joined the 4th and 5th Defendants as parties in this case. That it is the Claimant's case in the Statement of Claim that the 2nd Defendant unlawfully sub-divided the land in dispute and allocated same to the 4th and 5th Defendants. He submitted that to the extent that the Claimant conceded that the said Defendants are necessary parties in whose absence the Suit cannot be effectually and completely determined, and to the extent that the Claimant seeks direct and specific reliefs against them in **Reliefs 4–7** in the Statement of Claim, they are entitled to make submissions on the validity *velnon* of the alleged allocation of the land in dispute to the Claimant. Counsel further clarified that contrary to the Claimant's imagination, the 4th and 5th Defendants in this Suit are not seeking to cancel or repudiate the alleged allocation made by the 2nd Defendant to the Claimant in Exhibit "A2", and they did not file any counter-claim. That from their Statements of Defence, their case is that there was no valid allocation of the land in dispute to the Claimant and there is no valid agreement between the Claimant and the 2nd Defendant in that regard. That even if there was, such an agreement/allocation was validly revoked.

Turning back to the question whether the Claimant complied with the "conditions of allocation" as stipulated in paragraph 2 of Exhibit "A2", learned Counsel submitted in line with the 2nd Defendant's case that the Claimant failed to comply with the conditions as requested by not paying the sum of N11,936,789.36k being the outstanding charges (Development Charge) as required in paragraph 2(f) of Exhibit "A2" within **90 days** from that date or have the Plot revoked, as requested in **Exhibits X2** and **X3.** It is Counsel's further submission that it is in evidence that upon receipt of the demand notice through his Agent, the Claimant did not pay anything until 16/6/2008 when it paid the sum of N5,0000,000 to the 2nd Defendant – that is, 20 days after the deadline stated in the demand notice elapsed, leaving the balance of N6,201,789.36 unpaid (See **Exhibit "A4"**). That, indeed, the Claimant admitted this much in **paragraphs 12** and **15** of the Amended Statement of Claim that he only made part payment of amount required of him as a condition. Under cross-examination by the Plaintiff's Counsel, the 2nd Defendant's witness (**DW2**) confirmed that the Claimant only made part payment of the development charge. It was then contended that since the Claimant admitted, and it is in evidence, that the Claimant only paid part

of the Development Charge and did not make the complete payment for same as and when due, he failed to fulfil the "conditions of allocation" stipulated in paragraph 2(f) of Exhibit "A2". This being so, there was no valid agreement consummated between him and the 2nd Defendant to warrant or justify the institution of this action and the grant of the reliefs sought in the Statement of Claim. Reference was made to the cases of ***ATIBA IYALAMU SAVINGS & LOANS LTD VS. SUBERU*** **(2018) LPELR-44069 (SC)**and ***BPD CONST. & ENG. CO. LTD. VS. F.C.D.A.*****(2017) 1 S.C. (Pt. II) 125; (2017) 10 NWLR (Pt. 1572) 1**on the principle that where a contract is made subject to the fulfillment of certain terms and conditions, the contract is inchoate and not binding until those terms and conditions are fulfilled. It was thus submitted that Exhibit "A2"does not qualify as a valid agreement between the Claimant and the 2nd Defendant; and it did not pass any interest on the Claimant as an acceptance must correspond to the terms of the offer otherwise it would amount to a counter offer or such other thing else, relying on ***OKUBULE VS. OYAGBOLA*****(1990) 4 NWLR (Pt. 147) 742**. The Court was urged to find that rather than accept the terms contained in Exhibit "A2", the Claimant went ahead to make staggered and incomplete payments which did not correspond to the offer. That by his actions, the Claimant rejected the offer and terms in Exhibit A2, and instead, made a counter-offer by acting on his own terms outside the agreement of the parties. Learned Counsel also placed heavy reliance on the decision of the Court of Appeal in ***OLASEINDE VS. FEDERAL HOUSING AUTHORITY*****(2015) LPELR-24532(CA)**which is said to substantially on the same facts as the instant case and thereby directly applicable in this case. That having not crystallised into a valid agreement, the 2nd Defendant was not bound by any agreement; and it was not bound to even issue a notice of revocation to the Claimant or tender same in evidence in the circumstance.

Furthermore, learned Counsel drew the Court's attention to the Demand Notices dated 25/2/2008 in Exhibit A6 tendered by the Claimant and Exhibit X3 tendered by the 2nd Defendant. It was submitted that the 2nd Defendant's witness (DW2) confirmed under cross-examination that Exhibits A6 and X3 are the same save for some missing part of Exhibit A6, and that both documents were written on 25/2/2008. That from the said evidence elicited from DW2, it is clear that the Claimant's case that he was not served with the Demand Notice in Exhibit "A2" or "X3" is either false or he had set out to mislead the Court. This is because while the copy of the Demand Notice he tendered as

Exhibit "A6" which was addressed to him appears not to have been endorsed, the copy of the same document tendered by DW2 bears a clear endorsement that it was acknowledged by one Mohammed Balawuyi at the Claimant's address. It was submitted that Court is entitled in the circumstance to find that on a close examination of the documents, there was an attempt by the Claimant to cover part of the endorsement made on Exhibit "A6" because if it was never received by the Claimant or his agents as he claimed, the Claimant would not be in possession of the document he tendered in Court. That a person who misleads the Court by his processes has no right to approach the Court and he can be summarily thrown out at any stage of the litigation", relying on unreported decision in **Appeal No: CA/A/57/2018, OKONKWO v. PDP & ORS. delivered on 7th May, 2018.** According to Counsel, this is more so because, as shown in the evidence above, DW2 confirmed that *"Ex. 6 is not CTC from our office file."*The Court was urged to prefer the evidence adduced by the 2nd Defendant on this issue, particularly as the documentary evidence in **Exhibit "X3**" tendered by the 2nd Defendant was not challenged nor controverted.

Furthermore, and on the Claimant's arguments under Issue 1 of his Final Written Address,learned Counsel submitted that it appears that the Claimant has misconceived the nature and effect of the case he presented in Court. That contrary to the Claimant's conjectures, and from an examination of the facts pleaded in the Amended Statement of Claim and the reliefs sought therein, the Claimant's case has nothing to do with the grant of a Statutory Right of Occupancy to him or his entitlement to a Statutory Right of Occupancy. That in fact, there is nowhere in the Statement of Claim and the reliefs sought that the term "Statutory Right of Occupancy" was pleaded or even mentioned. It was also submitted that by the principal reliefs sought in this Suit, the Claimant only seeks a declaration to the effect that "there exists a valid agreement between the 2nd defendant and the plaintiff for the allocation" of the land in dispute; and for an order of specific performance of the alleged agreement. All other reliefs are ancillary and incidental to these principal reliefs. Learned Counsel further invited the Court to find, in this connection, that **Exhibit "A2"** which is the alleged letter of allocation tendered by the Claimant and which is the foundation of the Suit, does not purport or pretend to be an offer of allocation or grant of a Statutory Right of Occupancy; and it does not purport or pretend to have been issued by the Minister of the FCT who is the only person empowered by law to grant a Statutory Right of Occupancy over lands in the

FCT or on his behalf. That *ex facie,* Exhibit "2 states that the land mentioned therein **"is to be leased for a term of 60 years certain**" and was signed by the Ag. Managing Director/Chief Executive of the 2nd Defendant, then Mr. R. O. Adebayo. The document, therefore, speaks for itself on its nature and status. It is not a Right of Occupancy, customary or statutory.Relying on the cases of ***YOYE VS.OLUBODE* (1974) 10 S.C. (REPRINT) 145** AND ***UBA VS. OZIGBO* (2022) 10 NWLR (PT. 1839) 431 AT 461**where the Supreme Court reiterated that address of counsel is not substitute for evidence and that counsel cannot use his address to introduce evidence which was not adduced by the party during trial, 5th Defendant's Counsel submitted that since there is no issue of the existence of a Statutory of Occupancy pleaded in the Statement of Claim, and no issue or evidence was joined or adduced by the parties on same, all the arguments contained in the Claimant's Final Address to the effect that he was entitled to a Notice of Revocation in line with the provisions of the Land Use Act are irrelevant, misplaced and liable to be discountenanced by this Court. ***AJAO VS. ALAO* (1986) 12 S.C. (REPRINT) 134** AND ***INTERCONTRACTORS NIG. LTD. VS. N.P.F.M.B*. (1988) 1 N.S.C.C. 759** were cited in support of the principle that an irrelevant matter goes to no issue and the court cannot base its judgment on such matters.

Learned Counsel further submitted that since it is in evidence, and the Claimant admitted that he did not pay the outstanding balance of the Development Charge as requested in **Exhibit "X3"** within time, with the result that there was non-compliance with "the condition for allocation", the Claimant was not entitled to the notice of revocation as "there was no contract and no valid allocation to them", relying on **OLASEINDE VS. FHA (supra).**Arguing in the alternative, it was submitted that even if, which is denied, the Claimant was entitled to a notice of revocation, the revocation would not be pursuant to the provisions of the Land Use Act but pursuant to Exhibit "X3". That even if, which is denied, the Claimant's case concerns the existence of a Statutory Right of Occupancy which must be revoked and served on the grantee in the manner prescribed by the Land Use Act, the notices of revocation in Exhibit "X4" and "X13" complied with the requirement of the Act because the notices were served on the Claimant's last known place of abode as shown in Exhibits A2, X3 and X4. That contrary to the Claimant's contention, the modes of service in this provision are independent and there is no need personal service where an alternative mode is

employed; that Section 28(7) of the Land Use Act does not connote only personal service. Reliance was placed on ***OBAYIUWANA* VS. *MINISTER, F.C.T. &ORS.*(2009) LPELR-8202(CA)**AND***OLOMODA VS. MUSTAPHA*(2019) LPELR – 46438 (SC).**That since it is not in dispute that this was the address provided by the Claimant as his usual or last known place of abode, service of Exhibit "X4" on him at the same address is good and proper service.

It is further submitted that contrary to the Claimant's suggestion in his Final Address that the 2nd Defendant still retained the balance of the outstanding development charge he paid outside the time given to him, the 2nd Defendant clearly asked the Claimant in **Exhibit "X4"** to come for a refund of any such payment. Yet, he failed to do so and decided to go to Court.It was also submitted that the 2nd Defendant having complied with Section 44(b) of the Land Use Act, the 2nd Defendant was under no further mandatory obligation to personally serve the notice of revocation on the Claimant or his attorney. That the right of a title holder under the Land Use Act is deemed extinguished upon a proper service of a notice of revocation. **Section 28 (7) of the Land Use Act** and ***SOKOTO L.G. VS. AMALA*(2001) 8 NWLR (Pt. 714) at 239**were relied upon. ThatExhibit "X4" having been properly served in accordance with the law, it validly revoked any right which Exhibit "A2" might have attempted to convey to the Claimant on the established ground that the Claimant failed to accept and or comply with the terms of the offer which would have crystallized into a binding allocation of Land.

It was also argued in the alternative by learned Counsel that the Demand Notice in Exhibit X3 which was served on the Claimant in accordance with Section 44(b) of the Act clearly gave him 90 clear days within which to comply with the demands of the 2nd Defendant, failing which his allocation will be revoked. The Court was urged to agree that the consequence of non-compliance with that exhibit was undoubtedly revocation. Hence, the revocation took effect upon non-compliance thereof with no further need to serve a notice revoking the allocation on the Claimant as alleged or at all. On the Claimant's entitlement to the reliefs sought, it was submitted on the authority of **OLASEINDE VS. FHA (supra)**that since there was no valid contract of agreement between the parties, the remedy cannot lie because where there is no

contract, there cannot be a breach. Finally, and on the issue of possession and trespass raised by the Claimant, it was submitted that by unchallenged evidence of DW2 no approval was granted to the Claimant by the 2nd Defendant to build on or commence work on the land. The Claimant did not tender any such building plan approval. The Court was urged to hold instead that consistent with the 2nd and 4th Defendants' case, the 5th Defendant adduced overwhelming evidence, both oral and documentary, that the 2nd Defendant duly revoked the purported allocation to the Claimant as there was non-compliance with the condition precedent for the validity of the agreement and duly granted same to the 4th and 5th Defendants, as shown in **Exhibits "X5" – "X12"**, Exhibit "X9" being the Building Plan Approval granted to the 5th Defendant. That where documentary evidence supports oral evidence, the oral evidence becomes more credible, relying on ***DICKSON VS. SYLVA*** **(2016) 7 S.C. (PT. VI) 165;** ***ODUTOLA VS. MABOGUNJE*** **(2013) 7 NWLR (PT. 1354) 522**and others. Therefore, the Court is entitled in the circumstance to believe and act on the above evidence, both oral and documentary, adduced by the Defendants through their respective witnesses; and reject the evidence adduced by the Claimant which were disproved at trial.

2ND DEFENDANT'S REPLY ON POINTS OF LAW

In its Reply on Points of Law filed on 28/11/2023, the 2nd Defendant argued that as regards the purported letter of revocation purportedly issued by the 2nd Defendant to the Plaintiff, the revocation letter, though issued by the 2nd Defendant, has no legal basis since there was no contract following the non-compliance with the condition precedent to the contract. That the principle of law is that you cannot put something on nothing and expect it to stand. There being no contract between the 2nd Defendant and the Plaintiff, the issue of being served or not been served with a notice of revocation does not arise.The cases of ***ONWUBIKO VS. MKPONG*** **(2011) LPELR – 4791 (CA)** AND ***GOMBE STATE VS. GADZAMA*****(2014) LPELR – 23423 (CA)** were cited in support.

4TH DEFENDANT'S REPLY ON POINTS OF LAW

In its Reply on Points of Law filed on 21/11/2023, the 4th Defendant reacted to paragraphs 8.03 – 8.05 of the Claimant's Final Written Address and submitted that it never contended that the contract between the Claimant and the 2nd Defendant be

cancelled or abrogated. That the 2nd Defendant having exercised the powers conferred on it by Sections 28 of the Land Use Act in revoking the Claimant's Plot, the 4th Defendant has the *locus standi* to canvas the exercise of the statutory functions conferred on the 2nd Defendant. Furthermore, that it is judicially settled that a person's right over a parcel of land can be extinguished either by revocation of the right by the issuing authority or the grant is declared void and set aside by a court of law, relying on ***MADU VS. MADU*(2008) 6 NWLR (Pt. 1083) 296**. From the above, therefore, the doctrine of privity of contract is inapplicable in this case and the authorities cited by the Claimant's Counsel in support are also inapplicable.

Still on this point, learned Senior Counsel for the 4th Defendant submitted that the letter of revocation in **Exhibit X4** tendered by the 2nd Defendant is a document before the Court and all the parties are free to comment on it and draw inferences and conclusions at the address stage, relying on ***BUHARI VS. INEC* (2008) 19 NWLR (Pt. 1120) 246**. Finally, it was submitted that Exhibit A2 which was granted to the Claimant pursuant to Sections 5 and 9 of the Land Use Act is the Claimant's only document of title, while Exhibit A6 is not a document of title and is dependent on Exhibit A2 and cannot abrogate Exhibit A2. Exhibit A6, which was issued pursuant to Section 5(1) (c) of the Land Use Act, is a demand notice and cannot metamorphose into a document of title.

Now, I have taken this time to capture the case of the parties as presented in their pleadings so as to appreciate the divergent issues joined by them and to ascertain where the weight of the law and the legal and evidential burden of proof on the parties lie. I have also taken a hard and critical look at evidence, both oral and documentary, adduced by the parties in support of their respective cases. Having gone this whole hog, it is my considered view that the sole issue for determination formulated by the 4th Defendant's learned Senior Counsel, Obinna Ajoku, SAN, is apt, concise and sufficient to address and dispose of the real issues in controversy between the parties; that is:

Whether considering the facts and circumstances of this case and having regard to the pleadings and evidence before this Honourable Court, the Claimant has been able to prove his case to be entitled to the reliefs sought.

I, therefore, adopt the said issue in resolving the issues agitated by the parties in this Suit. After all, a Court has the power to adopt the issues as formulated by either of the parties and can also reformulate issues by itself, the important thing being the fact that the real complaints in the suit are brought out, considered and determined. See ***CHIGERE VS. OMEMMA&ORS*** **(2021) LPELR-56552(CA)**at **Pp. 53-54 paras. A**.

In resolving this issue, I think it is important to examine the state of the pleadings and determine the exact nature of the case made by the Plaintiff/Claimant in the Amended Statement of Claim. This is because both the court and the parties are bound by the pleadings. See ***ENANG VS. ADU*** **(1981) 11 – 12 S.C. (REPRINT) 17 AT 23;** ***WEMA BANK PLC VS. ARISON TRADING & ENGINEERING COMPANY LTD & ANOR*** **(2015) LPELR-40030 (CA) AT 39 PARAS. A;** ***AYANBOYE*** **VS.** ***BALOGUN*****(1990) 5 NWLR (Pt. 151) 392 at 413 SC**. This being the position, the law insists that none shall exceed the bounds of the matter pleaded and import into the dispute causes or matters not pleaded. See ***EMMANUEL VS. INEC*** **(2023) LPELR-61367(CA) at 17.**In the instant case, I have carefully examined the case of the parties as contained in their pleadings and I agree with the 5th Defendant's learned Counsel, Chinedu Ezeh, Esq., that from the reliefs sought in the Amended Statement of Claim and the facts pleaded in support therein that the Plaintiff's case in this Suit has nothing to do with the grant of a Right of Occupancy to the Plaintiff by the 2nd Defendant or the Plaintiff's entitlement to a grant of a Right of Occupancy. I also agree that by the principal reliefs sought in this Suit, the Plaintiff only seeks a declaration to the effect that "there exists a valid agreement between the 2nd defendant and the plaintiff for the allocation" of the land in dispute; and for an order of specific performance of the alleged agreement.

Clearly, the foundation of the Plaintiff's case is **Exhibit A2,** which is the letter of allocation of a commercial plot of land at Gwarinpa II Estate, Abuja, described as No.

C73, along 522 Road, 5th Avenue, Gwarinpa II, dated 20th September, 1999 issued by the 2nd Defendant to the Claimant and pleaded in paragraph 6 of the Amended Statement of Claim. I have also taken a hard look at the said Exhibit A2 tendered by the Plaintiff in proof of his case and I find that the document is not, and does not pretend to be, a right of occupancy over the said Plot, either statutory or customary. On its own face, Exhibit A2 states that the said plot of land "is to be leased for a term of 60 years certain" and it was not signed by or on behalf of the Minister of the Federal Capital Territory (FCT) empowered by law to grant a right of occupancy over lands within the FCT to persons or on his behalf; rather, it is signed by the Ag. Managing Director/Chief Executive of the 2nd Defendant (Federal Housing Authority), then Mr. R. O. Adebayo. Mr. R. Adebayo did not sign the document for the Minister; he signed for the 2nd Defendant that has no legal authority to grant a right of occupancy by or for itself. In the light of these, I do not see how and why the Plaintiff wants this Court to find that the 2nd Defendant granted it a right of occupancy or that it is entitled to a right of occupancy by virtue of Exhibit A2.I do not see how and why he wants this Court to hold that Exhibit A2 transmogrified or metamorphosed into a right of occupancy. In search of basis for such conclusion, I also read through the averments in the Amended Statement of Claim and I must agree with the 5th Defendant's Counsel that there is nowhere in the statement of claim a right of occupancy was pleaded, discussed or even mentioned by the Plaintiff. In case my vision was not correct and I am wrong, I also adverted to the statements of defence filed by the respective Defendants to ascertain whether the parties joined issues in their pleadings on the existence of any right of occupancy over the said plot granted by the 2nd Defendant in favour of the Plaintiff. Again, I did not see nor find anywhere in the statements of defence and the Plaintiff's reply to them the parties pleaded or joined issues on the existence of any right of occupancy granted by the 2nd Defendant in favour of the Plaintiff. From my understanding, the central issue joined and contested by the parties in this Suit is whether there is a valid contract or agreement existing between the Plaintiff and the 2nd Defendant pursuant to Exhibit A2; and whether Exhibit A2 was validly revoked by the 2nd Defendant on the facts pleaded. In view of these findings, I find and hold that the parties did not plead nor join issues on the existence of any right of occupancy in favour of the Plaintiff and that any

argument or suggestion in that regard is made outside the pleadings and isthereby irrelevant. An irrelevant issue is no issue and the Court has a duty to ignore same. See ***AJAO VS. ALAO (SUPRA)*** AND ***INTERCONTRACTORS NIG. LTD. VS. N.P.F.M.B.*** **(*supra*)** cited by the 5th Defendant's Counsel.

I further note, in this regard, that Issue Nos. 1, 2 and 3 formulated by the Plaintiff's learned Counsel, Sunny O. Ake, Esq., are predicated on the supposition that Exhibit A2 granted "the Right of Occupancy over plot No. **C73, along 522 Road, 5th Avenue, Gwarinpa II Estate, Abuja.**" References are made therein to the "Claimant's Right of Occupancy over the said parcel of land". I also note that in his submissions under the said Issue Nos. 1, 2 and 3, the Plaintiff's learned Counsel strenuously argued along the line that the Plaintiff has a valid "Right of Occupancy" over the land by virtue of Exhibit A2. Hence, it was argued with considerable zeal that the plea of revocation involves acknowledgment "of the existence of a Right of Occupancy" prior to the act of revocation; and that the 2nd Defendant's alleged failure to serve the Notice of Revocation on the Plaintiff in accordance with the provisions of the Land Use Act rendered the alleged revocation null and void, etc. It is even more curious that contrary to these submissions, the Plaintiff did not tender any Right of Occupancy in evidence because the parties did not plead nor join issues on the existence of same. In view of my earlier finding that the parties did not plead nor join issues on the existence of any right of occupancy in favour of the Plaintiff or his entitlement to same, it follows, as rightly submitted by the 5th Defendant's Counsel, that all the issues, submissions and authorities canvassed by the Plaintiff based on the provisions of the Land Use Act regulating the procedure for grant and revocation of a right of occupancy and on the existence of a right of occupancy in favour of the Plaintiff, are irrelevant in these proceedings and are liable to be discountenanced by the Court. I so discountenance them. By the same token, I also discountenance all the submissions made in the 4th Defendant's final written address on the ways of proving title to land under our Jurisprudence, as well as all the submissions made in the 4th and 5th Defendants' final addresses to the effect that the provisions of the Land Use Act regulating the procedure for revocation of a right of occupancy over land are apply in the instant case. In the case of ***GTB VS. FOCUSED EXPERIENTIAL***

MARKETING LTD **(2021) LPELR-53188 (CA) at** 38, the Court of Appeal re-echoed thus:

> *"It is trite that parties are not allowed to raise issues of facts in the address of their Counsel which were not raised or agitated on the pleadings as address of Counsel does substitute for pleadings – Buraimoh Vs. Bamgbose (1989) All NLR 669, OkwejiminorVs. Gbakeji (2008) 5 NWLR (Pt 1079) 172, Ayanwale Vs.Odusami (2011) LPELR-8143(SC)."*

In *EJIOFOR VS. OKAFOR* (2007) LPELR-4959 (CA) at 7-8^{A-A}, the appellate Court also reiterated that *"adjudicatory duty of a Court is restricted to the determination of issues properly raised in the pleadings of the parties before it. A Court ought not to have considered a point or an issue not raised in the pleadings."*

On the Plaintiff's submissions based on the doctrine of privity of contract to the effect that the 4th and 5th Defendants are strangers to the contract between it and the 2nd Defendant *"that resulted in the grant of the Right of Occupancy over Plot No C73, along 522 Road, 5th Avenue, Gwarinpa II Estate, Abuja"* and therefore cannot seek for the cancellation or abrogation of the contract or *"make such submissions before this Honourable Court",* I think, with due respect to the Plaintiff's Counsel, that the argument lacks substance and constitutes a distraction. I say so because it cannot be open to argument that it is the Plaintiff that joined the said 4th and 5th Defendants as parties to this Suit and brought them to Court. It is also not in dispute that in Reliefs 3, 4 and 5 sought by the Plaintiff in the Amended Statement of Claim, the Plaintiff seeks declaratory and injunctive reliefs to the effect that the attempts by the 2nd Defendant to sub-divide the subject plot and re-allocate same to the 4th and 5th Defendants is unlawful, null and void and of no effect; that an order be made setting aside any instrument, allocation paper, lease or any other documents purporting to divest the Plaintiff's interest in the subject land made in favour of the 4th and 5th Defendants; and an order me made directing the 4th and 5th Defendants to vacate the land or any portion of it forthwith. In other words, the Plaintiff has made specific and direct allegations in

the statement of claim against the 4th and 5th Defendants. I agree with the 4th and 5th Defendants that on the facts of this case, as shown above, they are necessary parties to the Suit and are entitled to be heard on the claims directly and specifically made against them by the Plaintiff. See **Section 36(1) of the 1999 Constitution, as amended; *PEENOK INVESTMENTS LTD VS. HOTEL PRESIDENTIAL LTD* (1982) 12 SC 1; *GREEN VS. GREEN* (1987) 3 NWLR (PT. 60) 480; (1987) 2 NSCC 1115; *AGBEKONI VS.. KAREEM* (2008) All F.WLR (Pt. 406) 1970 at 1988.** Having made specific and direct claims against them, the Plaintiff has disclosed a cause of action against the 4th and 5th Defendants necessitating their defence. See ***MULIMA VS. USMAN* (2014) 16 NWLR (Pt. 1432) 160 at 198.**It is also my view that from a holistic reading and correct appreciation of the case of the 4th and 5th Defendants, they are not seeking to revoke, cancel or abrogate the transaction between the Plaintiff and the 2nd Defendant as erroneously submitted by the Plaintiff's Counsel. Their case, in my humble opinion, is that the land in issue was validly revoked by the 2nd Defendant and was validly re-allocated to them. They could not be seeking to revoke or cancel or abrogate a transaction which they say had already been revoked. The doctrine of privity of contract does not apply here. I so hold.

There is another issue which I consider to be preliminary and needs to be sorted out. It is the 4th Defendant's contention that a plaintiff in a case of declaration of title to land must prove the identity of the land in dispute before he can succeed. Learned Senior Counsel forcefully argued that since the total size of the Plaintiff's purported land as shown in Exhibit A2 is 4,500 square metres subject to survey, and there is no evidence by way of composite survey plan to show that the survey had been done to support the Plaintiff's claim that the land was subsequently surveyed and the total size of the four plots is 7,898.536 square metres, it means that the Plaintiff does not know exact size of the original plot allocated to him. That having failed to ascertain the exact area of his purported plot, this Court should dismiss the Suit. With due respect to learned Senior Advocate for the 4th Defendant, I have deeply reflected on these submissions and came to the conclusion that that they not well-taken. Apart from my earlier finding that the instant Suit has nothing to do with declaration of title to land or ownership of land by virtue of a right of occupancy, the law is settled that a survey plan is not a necessity

where the parties are not in doubt as to identity of the land in dispute. In ***OLUJINLE VS. ADEAGBO*** **(1988) 1 NSCC 625 at 631.**In the instant case, the pleading and evidence adduced by the Plaintiff's witness (PW1) that the land in issue was subsequently survey and measures 7,898.536 square metres, is supported and corroborated by the evidence of the 2nd Defendant's own witness under cross-examination by the Plaintiff's learned Counsel that the Demand Notice in Exhibit X3 *"was issued when the land was surveyed"* and that *"the size of the plot on X3 after survey is 7,898.536 square metres".* This is an admission against interest against the 2nd Defendant who issued Exhibit A2, and the law takes it that "such a statement usually represents the truth in the matter in controversy and is admissible". See ***NWAWUBA VS. ENEMUO*** **(1988) 1 NSCC 930 AT 939;** ***ARTRA IND. (NIG.) LTD. VS. N.B.C.I.*** **(1998) 3 S.C. 98.** THIS ISSUE NEEDS NO FURTHER PROOF. SEE***IKULUGHAN VS. OKULU*****(2021) LPELR-56103(CA)AT 30**.

Having disposed of these preliminary issues, it is now time to consider the important question that is worth over a billion dollars in the present Nigerian economy. It is the radical question whether the transaction between the Plaintiff and the 2nd Defendant in Exhibit A2 constitutes a valid contract or agreement between the parties. As shown above, while the Plaintiff contends that Exhibit A2 created or creates a valid agreement or contract between the parties for which he is entitled to the reliefs sought; the 2nd, 4th and 5th Defendants contend that Exhibit A2 did not culminate in or constitute a valid agreement for which the Court is urged to dismiss the Suit. The job of this court, as a court of trial, is to determine which of the contentions from the opposing sides is correct and justified in law and in fact. Being that the said Exhibit 2 is the foundation upon which the Plaintiff erected his claims, and it has a direct bearing on the issues raised, I would offer no apology to reproduce the contents of the document below:

"Lawal Mohammed
No. 3, Touggourt Crescent
Wuse Zone 2,
Abuja.
Dear Sir/Madam,

ALLOCATION OF A COMMERCIAL PLOT OF LAND AT GWARINPA II ESTATE , ABUJA

Following your application for land in Abuja, it is confirmed that approval has been give for you to be allocated Parcel No. C73, along 522 Road, 5th Avenue, Gwarinpa II.

2. Among the conditions of allocation are the following:-

a. You are required to pay an application fee of N10,000.00;
b. The land has an area of 4,500 square metres approximately subject to survey;
c. Survey fees payable stand at N50,000.00;
d. The land is to be leased for a term of 60 years certain:
e. Premium payable is at the rate of N150.00 per square metre, and the ground rent reserved is N10.00 per square metre per annum, subject to periodic reviews;
f. You will be required to pay a development charge, the details of which shall be determined and communicated to you in due course.

3. If you accept these terms and conditions, you are required to forward a bank draft in favour of Federal Housing Authority, payable into Gwarinpa Escrow accounts to the tune of N735,000.00…being the premium, application and survey fees payments for the plots within 60 days from the date of this letter.

4. Detailed term and conditions of this disposal will be embodied in a formal letter of offer to be issued in due course by the Executive Director (Lands and Estate Management Division), who should be contacted henceforth on this matter.

Yours faithfully,

Mr. R.O. Adebayo,
Ag. Managing Director/Chief Executive,
Federal Housing Authority."(Underlining for emphasis)

It is good and established law that the duty of the Court in interpreting clear and unambiguous words of a document or Statute is only to ascribe to the words their plain meaning and no more. Neither the Court nor the parties can import into the document what is not specifically included nor can the parties subtract anything therefrom as parties are presumed to intend what they have in fact said or written in the document. See ***SOBA VS. MOHAMMAD*(2016) LPELR-45503(CA) AT 11-13,PARAS. D-D; *U.B.N. LTD. VS. OZIGI* (1994) 3 NWLR (PT. 333) 385 AT 400; (1994) LPELR-3389(SC);*NWAKIRE VS. C.O.P.* (1992) 5 NWLR (PT. 241) 289 AT 308–309; *F.G.N. VS. AKINDE* (2013) 7 NWLR (Pt. 1353) 349 at 371.**

In the instant case, the wording of the paragraphs in Exhibit A2 are clear and both the parties and the court are precluded from adding or removing anything from it. Upon a painstaking and holistic reading of Exhibit A2, I do not agree with the Plaintiff's learned Counsel in paragraph 8 of the Amended Statement of Claim and in their written address that by paying the sum of N735,000.00 as provided in paragraph 3 of Exhibit A2 above, the Plaintiff accepted the terms of conditions of the offer of allocation of the land in issue. I am at one with the 2nd and 5th Defendants that by making the said payment, the Plaintiff merely accepted the "terms and conditions" of the grant as stated in 2(a) – (f) of Exhibit A2, including the condition in paragraph (f) thereof relating to payment of a development charge, the details of which shall be determined and communicated to the Plaintiff in due course. In simple terms, the portion of Exhibit A2 reproduced and underlined above shows that what the Plaintiff accepted was "these terms and conditions", i.e., the terms and conditions stated in paragraphs 2(a)–(f) and not the allocation itself. This is my considered and firm construction of the obligations of the parties created in Exhibit A2.To hold otherwise will amount to this Court adding or subtracting from the clear terms employed in Exhibit A2and to re-writing that document which is not and should not be the duty of

the Court. **SEE *SOBA VS. MOHAMMAD (SUPRA); AFROTEC VS. MILA* (2000) 82 LRCN, 3459, 3512.**

The subsidiary question that then rears its head in the circumstance is: whether having accepted "these terms and conditions" by making the payment of N735,000.00 as stated in paragraph 3 of Exhibit A2, including the condition to pay a development charge, the Plaintiff fulfilled the condition to be entitled to a formal letter of offer from the 2nd Defendant as stated and contemplated in paragraph 4 of Exhibit A2. It is the Plaintiff's case that he was not served with the 2nd Defendant's Demand Notice dated 25/2/2008for the payment of development and it was only in the month of June 2008 when he sent his Attorney to the office of the 2nd Defendant to request for the formal letter of offer that same *"was given to his said Attorney by a staff of the 2nd Defendant".* (See paragraphs 12 of the Amended Statement of Claim and paragraph 2 of the Plaintiff's Reply to the 2nd, 4th and 5th Defendants' Statements of Defence). It is against this background that the Plaintiff tendered ExhibitA6 which is the copy of the Demand Notice he said was given to his Attorney by a staff of the 2nd Defendant. In opposition to this stand, the 2nd Defendant tendered the same Demand Notice as Exhibit X3 addressed to the Plaintiff which also has an endorsement on its foot that the original copy was collected by one Moh'd Babanlawi. As rightly noted by the 5th Defendant's Counsel, the Plaintiff's witness (PW1) confirmed under cross-examination that *"Ex. X3 was received by somebody i.e. Mohammed Balawuyi"*on the same 25/2/2008; that *"There is indication to that on it"*;that *"X3 and A6 are the same save for the missing part of A6"*; and that *"X3 and X6 were both written on 25-2-08".*Apart from the missing endorsement in Exhibit A6, the Court finds as a fact that in both Exhibits A6 and X3, the sum of N9,478,243.20k is stated as the Capital Development Levy and part of the outstanding charges due for payment from the Plaintiff; while the sum of N11,201,789.36k is stated as the total payment (credit balance) due to the 2nd Defendant. PW1 also confirmed these figures under cross-examination. The Court also finds that the Plaintiff was required in paragraph 3 of Exhibit A6 and X3 to forward the above balance due to the 2nd Defendant, including the development charge, within 90 days from the date of the demand notices being 25/2/2008.

The Plaintiff further contends that *upon receipt* of the demand notice from his Attorney in June 2008, he immediately paid the sum of N5,000,000 to the 2nd Defendant as *part payment* of the outstanding sum vide Exhibit A4, which is the 2nd Defendant's receipt dated 13th June 2008. Subsequently, he paid the outstanding balance of N6,201,789.36k vide Exhibit A7, which is a Zenith Bank cheque dated 10th October 2011 – that is, about three years after the part payment in Exhibit A4.(See paragraphs 13 and 16 of the Amended Statement of Claim).Without necessarily going into the comparison between the demand notices in Exhibits A6 and X3 tendered by the Plaintiff and the 2nd Defendants, the Court finds from the pleading and evidence adduced by the parties that the payment of the outstanding charges in Exhibits A2 and X3, including development charge, is a condition precedent for the validity of the letter of allocation issued by the 2nd Defendant to the Plaintiff in Exhibit A2. As noted by the 5th Defendant, the 2nd Defendant's witness (DW2)confirmed in line with the Plaintiff's case that the Plaintiff only made part payment of the development charge. He also confirmed under cross-examination that *"Payment of the Development Charge is a condition for allocation of the plot to the plaintiff"*and that the part payment in *"A4 is not sufficient payment for the demand in X3."*

Even if one is to accept the Plaintiff's contention that the demand notice was not served on him or on anybody authorized by him to receive same on 25/2/2008 as contended by the 2nd Defendant, the Plaintiff's pleading and admission that he received the demand notice and immediately paid the sum of N5,000,000 to the 2nd Defendant on 13th June 2008 (vide Exhibit A4) is fatal to his claims. His pleading and admission that he completed the payment on 10th October 2011 (vide Exhibit A7) is also fatal to his claims. The reason is not far to seek. Firstly, while the payment of N5,000,000 made by the Plaintiff on 13th June 2008 may well be within the 90 days period stipulated in the demand notice, it does not constitute compliance with the demand notice which required him to make the full payment of N11,201,789.36k (being the outstanding balance due from him as contemplated in Exhibit A2) within the period of 90 days from the date of the notice. Secondly, the payment of N6,201,789.36k by the Plaintiff to the 2nd Defendant vide Exhibit A7 on 10th October 2011 (which was supposed to be the complete payment) was made way beyond the period of 90 days

stipulated by the 2nd Defendant and thus cannot constitute compliance with the demand notice. The Court finds that there is no evidence on record to show or establish that the Plaintiff made full payment of the outstanding charges of N11,201,789.36k, including the development charge, within the period of 90 days from June 2008 when he claimed he received the demand notice. The Plaintiff having admitted that he only made part payment within the stipulated time in Exhibit X3 and not the full payment requested, the Court is inclined to hold and I hold that a condition precedent in Exhibit A2 was not met or fulfilled by the Plaintiff. Therefore, there can be no basis for the enforcement of the transaction as same did not crystallise, culminate in or eventuate into a valid contract. See ***INDUSTRIAL AND GENERAL INSURANCE CO. LTD. VS. ADOGU*** **(2010) 1 NWLR (PT. 1175) 337*; SHORELINE LIFTBOATS (NIG.) LTD. VS. PREMIUM INSURANCE BROKERS LTD.* (2012) LPELR-9795 (CA) AT 7-9**.

It cannot be otherwise because the position of the law, as rightly submitted by learned Counsel for the Defendants, is that where a contract is made subject to the fulfillment of specific terms and conditions, the contract is not formed and not binding unless and until those terms and conditions are fulfilled. See ***BEST (NIG) LTD. VS. BLACKWOOD HODGE (NIGERIA) LTD.*** **(SUPRA);** ***TSOKWA OIL MARKETING CO. (NIG) LTD. VS. BANK OF THE NORTH LTD.*** **(SUPRA);** ***ATIBAIYALAMU SAVINGS & LOANS LTD VS. SUBERU*** **(supra)**cited by the 2nd and 5th Defendants. I have taken the liberty to read and digest the authority of ***OLASEINDE VS. FEDERAL HOUSING AUTHORITY*** **(supra)** which was commended to the Court by the 5th Defendant's Counsel and which also involved the 2nd Defendant herein. The Court finds that the case is relevant and directly applicable in this case. In that case, the 1st respondent/defendant had offered a temporary allocation of a certain property to the appellants/plaintiffs under a housing scheme and it requested the appellant to pay the sum of N600,000 for the property within a stipulated time frame. Instead of making the full payment within the stipulate time, the appellants only made part payment of N10,000 to the 1st respondent and could not make the complete payment as requested. While the temporary allocation was still pending and without any notice of revocation served on the appellants, the 1st respondent issued letters of allocation to the 2nd - 15th

Defendants. In the Suit filed by the appellants to enforce the offer of allocation earlier made to them on the ground that there existed a valid agreement between them 1st respondent for which an order of specific performance ought to be granted by the Court, the trial Court dismissed the claims as there was no contract between the parties to enforce. In the resulting appeal, the Court of Appeal reviewed all relevant authorities, including the provisions of the Federal Housing Authority Act, and held affirmed the decision of the trial Court. The Court of Appeal concluded that:

> "In this matter, the offer from the Federal Housing Estate Authorities of N600,000 for the allocation was not accepted by the 1st Defendant in that the Appellants paid N10,000. It therefore did not crystallize into a contract…The payment of N10,000 was at best a counter-offer which was not accepted…Having not entered into a valid contract with Federal Housing Estate Authority, the Respondents are not bound by any agreement/contract. There is no evidence of having signed any document upon terms, most importantly as consideration was yet to pass. See ISHENO v. JULIUS BERGER NIG PLC [2008] 6 NWLR (Pt.1084) 582."

The Court of Appeal made it abundantly clear in that case that "in the absence of any ad idem, this Court is unable to give effect to the alleged issue of ownership/allocation under contention."

On the Plaintiff's contention that the plea of revocation by the Defendants involves the acknowledgment or presumption "of the existence of a Right of Occupancy" prior to the act of revocation, the answer is simple. I have earlier held that the authorities cited by the Plaintiff in this regard are irrelevant and not applicable in this case because the parties herein did not plead nor join issues on the existence of any right of occupancy in favour of the Plaintiff over the land in issue. Therefore, the question of the effect of revocation or plea of revocation of a right of occupancy does not arise in this case. Secondly, and more importantly, in view of the finding of this Court that A2 did not crytallise, culminate in or eventuate into a valid contract, the legal presumption

canvassed by the Plaintiff does not arise. In the case of ***CORNET &CUBBIT LTD VS. FHA* (2022) LPELR-57507 (CA) AT 54-57**which also involved the 2nd Defendant herein and which was cited by the 2nd Defendant in paragraph 3.8 of its final address and by the 5th Defendant in the "5th Defendant's Additional Authority" filed on 25/1/2024, the Court of Appeal held that this legal presumption canvassed by the Plaintiff is a general principle that can be rebutted where it is shown, as in this case, that no contract ever existed between the parties by reason of the failure of a party to failure of the appellant to fulfill a condition precedent in the contract. On the facts of this case, the Court of Appeal had this to say in that case:

> "It is true that as a general rule, a plea of revocation raises a presumption that the revoking authority acknowledges the existence of a valid title prior to the act of revocation. The reason for this position of the law is simply that if no grant were in existence, there would be nothing to revoke in the first place - Ex nihilo nihil fit - out of nothing comes nothing. See Osho V. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157 @ 189.However, *where, as in the instant appeal, it has been overwhelmingly and sufficiently demonstrated by the unchallenged evidence and it has been so held firmly that the Appellants neither acquired nor proved any valid title to the Plot in dispute because of the non-issuance of a formal offer embodying the detailed terms and conditions of the grant by reason of their failure to fulfil the condition precedent in Exhibit P1, I hold that the presumption predicated on the provisions of Section 7 of the States Land Act was effectively rebutted, dislodged and does not avail the Appellants*."

It was also the decision of the Court of Appeal in that case that in such a circumstance, the issue of revocation of the non-existent contract between the parties becomes a mere surplusage as there was nothing to revoke in the first place. In the words of the learned Justices of the Court of Appeal:

> "I believe strongly, and I so hold, that on the face of non-existent valid title to the Plot in dispute *the mere act of revocation, which to me is a*

mere surplusage as by way of ex abudanticautela - for the avoidance of doubt - can neither create a non - existent title nor confer validity on an invalid title of the Appellants. *I hold firmly therefore, the revocation of Exhibit P1 vide Exhibit P10 by the 1st Respondent was valid and it indeed effectively revoked, whatever interest, if any, of the Appellants on Plot 365, 39 Road, Gwarinpa II Estate, Abuja as was impeccably and unimpeachably found by the Court below."*

The Court of Appeal also concluded on similar facts that the subsequent re-allocation of the land in issue to third parties was valid in the circumstance.

"So, having found that the Appellants, particularly the 1st Appellant neither had any valid title nor proved any form of title, whether legal or equitable, to Plot 365, 39 Road, Gwarinpa II Estate, Abuja, was the re-allocation of Plot 365, 39 Road, Gwarinpa II Estate, Abuja to the 3rd Respondent by the 1st Respondent valid in law? I have already found, just as the Court below had rightly found and held, that the revocation of the allocation of Plot 365, 39 Road, Gwarinpa II Estate, Abuja to the 1st Appellant by the 1st Respondent vide Exhibit P10 was valid, *it would follow therefore, that by virtue of Exhibit P10, dated 4/8/2011 effectively putting an end to the prior, at best equitable interest of the 1st Appellant to Plot 365, 39 Road, Gwarinpa II Estate, Abuja, the said Plot 365, 39 Road, Gwarinpa II Estate, Abuja had become unencumbered and thus available once again for the 1st Respondent to re-allocate to the 3rd Respondent, as it did vide Exhibit D14, without any hindrance from the Appellants. I hold therefore, Exhibit D14, issued on 17/8/2011 was valid and effectively re-allocated the Plot 365, 39 Road, Gwarinpa II Estate, Abuja to the 3rd* Respondent by the 1st Respondent."

Without a doubt, the above binding authorities put paid to the main issues raised by the parties in this case. It is therefore my firm view that notwithstanding the fact that the parties hotly contested the issue of the validity of the Plaintiff's alleged contract by the

2nd Defendant vide Exhibits X4 and X13, the issue is a "cosmetic surplusage" as the alleged contract did not crystallise and is non-existent. There was nothing to revoke. The maxim is *"Ex nihilo nihil fit"* - meaning "from nothing, comes nothing."See ***S.S.A.U.T.H.R.I.A.I. VS. OLOTU (No. 1)*** **(2016) 14 NWLR (Pt. 1531) 1 at 5**.The legal mantra is that "one cannot put something on nothing and expect it to stand, it will certainly collapse…If an act is void, then it is in law a nullity, it is not only bad but incurably bad." See ***MACFOY VS. UAC*** **(1961) 3 WLR 405 at 1409**, per Lord Denning, MR, as endorsed in ***APENE VS. BARCLAYS BANK OF NIGERIA LTD.*** **(1977) 1 S.C. (Reprint) 30 at 38.**It is in this context that I accept and endorse the 2nd Defendant's contention in its Reply address that the revocation letter has no legal basis since there was no contract following the non-compliance with the condition precedent to the contract by the Plaintiff. It is also in this context that I find, in line with the evidence of DW2 under cross-examination by the 5th Defendant's Counsel, that the 2nd Defendant did not issue a formal letter of offer to the Plaintiff as stated in paragraph 4 of Exhibit A2*"because it cannot be issued without compliance with the terms and conditions in A2."*

On the Plaintiff's subtle contention in paragraph 8.17 of its final address that the 2nd Defendant still retains the monies he had paid to it in Exhibit A4 and A7 *"up to this moment"*, I do not thing that that fact will affect or detract from the above findings and conclusions of the Court that there is no valid contract or agreement between the parties arising from Exhibit A2. The Plaintiff is not precluded from resorting to other legal means and procedures to recover the said monies if he so desires. Although the Court has found that and held that the letter of revocation in Exhibits X4 and X13 was unnecessary and a surplusage on the facts of this case, a look at it shows the 2nd Defendant's directive to the Plaintiff to call at its office *"for a refund of money paid previously".* This is by the way. I make no finding on the document.

Having now resolved all the issues raised and contested by the parties, the inevitable conclusion this Court is prepared to draw from the pleadings and evidence on record is that the Plaintiff is not entitled to the principal Relief 1 sought in the Amended Statement of Claim which seeks to declare that there exists a valid agreement between

the Plaintiff and the 2nd Defendant in Exhibit A2. Being that Reliefs 1 and 3 are the principal reliefs and the fate of the following Reliefs 2, 4, 5, 6, 7 and 8 is dependent on the success of Reliefs 1 and 3, it does appear to me that those other reliefs are merely incidental, accessory or ancillary reliefs that cannot stand on their own. As Oputa, J.S.C. stated in the leading case of ***TUKUR VS. GOVT OF GONGOLA STATE*** **(1989) 4 NWLR (Pt. 117) 517,** the legal maxim here is *"accessorium sequitur principale"* which means that "an accessory thing goes with the thing to which it is accessory. Having found that the main Reliefs 1 and 3 have failed and that the sub-division and re-allocation of the land in issue to the 2nd and 3rd Defendants was proper and valid in the circumstance, the ancillary claims/reliefs in Reliefs 2, 4, 5, 6, 7 also fail and cannot be granted. See ***MCDONALD SCIENTIFIC EMPORIUM LTD VS. ACCESS BANK*** **(2021) LPELR-53301 (CA) AT 29;** ***DIMKIT GLOBAL CONCEPT LTD VS. ATUTAEME*** **(2023) LPELR-60867 (CA) AT 17-18.**

Even if the Court is minded to consider the ancillary reliefs, for whatever they may be worth, I agree with the 5th Defendant's submission that where there is no contract, as found in this case, there cannot be a breach. Therefore, an order of specific performance cannot lie as a remedy. See ***OLASEINDE VS. FHA (supra)***. On the relief for general and special damages for trespass sought by the Plaintiff, the 4th and 5th Defendants denied the Plaintiff's claim of his having been in possession of the land and pleaded that there was no structure, gatehouse, borehole or economic trees nor security man in the plot when they (the 4th and 5th Defendants) took possession of the plot and erected their own structures thereon. In other words, that they are *bona fide* purchasers for value without notice of any prior encumbrance on the plot. (See paragraphs 8, 9, 11 and 12 of the 4th Defendant's Statement of Defence and paragraphs 7, 8 and 9 of the 5th Defendant's Further Amended Statement of Defence). Although the parties joined issues on this, I agree with the 4th Defendant's learned Senior Counsel that the Plaintiff did not adduce any credible evidence to prove the fact of his having been in possession of the land or his entitlement to the special damages as claimed. The law is that the burden of proof rests on the party who would fail if no further evidence is adduced. See ***MAKANJUOLA VS. AJILORE*****(2001) 12 NWLR (PT 727) 416*****;*** ***UNION BANK OF NIGERIA PLC VS. ISHOLA*****(2001) 15 NWLR**

(PT 735) 47*; ISHOLA VS. FOLORUNSHO*(2010) 13 NWLR (PT.1210) 169*; HADYER TRADING MANUFACTURING LTD VS. TROPICAL COMMERCIAL BANK* (2013) LPELR-20294 (CA) AT 47-49. The receipts which the Plaintiff tendered to show that he expended money on the plot for borehole etc., (i.e., Exhibits A9 and A10) does not state or show that the payments therein were with respect to or in connection with any activity on the plot. Apart from this, the Defendants contended and gave evidence that because there was no valid contract between the Plaintiff and the 2nd Defendant arising from Exhibit A2, the 2nd Defendant did not give or grant any building plan approval to the Plaintiff to go into possession of the plot. Again, the Plaintiff did not adduce any credible evidence to shown that it duly applied for and was granted a building plan approval. In the absence of any direct, credible and sufficient evidence to establish the alleged acts of possession, the Court cannot speculate on the issue. See ***JOHN HOLT PLC.* VS. *ALLEN* (2014) 17 NWLR (PT. 1437) 443 AT 463; *KODE VS. YUSSUF* (2001) 4 NWLR (PT. 703) 392**. IN SHORT, THE COURT HAS NO JURISDICTION TO DO SO.SEE ***SALIU VS. STATE* (1984) 10 SC (Reprint) 104 at 113.**

In the light of the above findings and conclusions based on the pleadings and evidence before the Court, the sole issue for determination is resolved in favour of the Defendants. The Plaintiff's case fails. The Suit deserves to be dismissed and it is hereby dismissed for lacking in merit. The parties are to bear their respective costs.

Signed
S. B. Belgore
(Judge) 30/4/2024