

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI – YUSUF
DELIVERED THE 3RD DAY OF MAY, 2023
SUIT NO: HC/CV/2794/2020

BETWEEN

DEESBEC NIGERIA LIMITED

..... CLAIMANT

(Suing through its lawful Attorney

Gouba Global Links limited)

AND

1. HON. MIN, F. C. T
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY ... DEFENDANTS

JUDGMENT

The claimant by an amended writ of summons dated and filed on the 12th February, 2021 herein claims against the defendant as follows:

1. A Declaration that the claimant is the bona fide, equitable and beneficial owner of all that piece or parcel of land known as plot 1032 Mabushi District, Cadastral Zone B06, Federal Capital Territory, Abuja, measuring about 2,755.94 No. 17a3w-90dcz- 56bbr-a064u-20 dated 19th December, 2004 with File No. 50214 and registered as No. 355 at page 355 in Volume 2 of the Land Registry Office at Abuja.
2. A Declaration that the said Certificate of Occupancy No. 17a3w-90dcz- 56bbr-a064u-20 dated 19th December, 2004 with File No. 50214 and registered as No. 355 at page 355 in Volume 2 of the Land Registry Office at Abuja, is valid.
3. A Declaration that the purported revocation/acquisition of Claimant's said land by the Defendants is illegal, unconstitutional null and void
4. An Order of Court setting aside the purported revocation/acquisition of the Claimant's said land by the Defendants
5. An Order for perpetual injunction restraining the Defendants by themselves, their officers, agents, privies or any other person howsoever

described and/or claiming through them from entering into the Claimant's said land, i.e., Plot 1032 Mabushi District, Cadastral Zone B06, Federal Capital Territory, Abuja, or attempting to enter same or doing anything whatsoever to interfere with the Claimant's title and possession thereto.

6. The sum of ₦3, 000,000 (Three Million Naira) being the cost of this litigation.

The defendant upon being served with the writ of summons filed its statement of defence and other accompanying processes on the 18/6/21.

Hearing commenced on the 2/3/22, Uche Okeke one of the Directors of the claimant's lawful attorney testified as PW1, he adopted his statement on oath of 12th February, 2021 as his evidence and tendered the following exhibits;

1. The certified true copy of the Certificate of incorporation of Deesbec Nigeria Limited marked as Exhibit A;
2. The Original Certificate of occupancy in respect of File No. MISC 50214 marked as Exhibit B;
3. Deed of Assignment between Deesbec Nig Ltd and Global Links Ltd marked as Exhibit C1;
4. Power of Attorney between Deesbec Nig Ltd and Gouba Global Links Ltd marked as Exhibit C2;
5. Valuation Certificate marked as Exhibit D.

On the 1/6/22, the Defendant, Bukar Mohammed Manjeri, a Principal Estate Officer in the Department of Lands Administration of the 2nd defendant, testified as DW1. He adopted his 20 paragraphed witness statement on oath of 18th June, 2021 and tendered the following Exhibits;

1. Request for a piece of land (Plot 1502) to construct a Police Station in Mabushi District Abuja marked as Exhibit 1.
2. Status Report on Plot proposed for the Police Station in Mabushi District are marked as Exhibits 1a, b & c.
3. Request for a piece of land (Plot 1502) to construct a Police Station in Mabushi District Abuja marked as Exhibit 2.
4. CTC of the notice of revocation of the R of O with reference file No. MISC 50214 marked as Exhibit 3

At the close of the defendant's case, and pursuant to the rules of this court, parties filed and exchanged their final written addresses.

The defendant's final written address was filed on the 21/7/22. Chukwuka J. Oliobi Esq. settled the final written address on behalf of the defendants. He formulated a sole issue for determination, to wit:

1. Whether having regard to the facts contained in the Claimant's Statement of claim and the 1st and 2nd Defendants' joint Statement of Defence and also evidence before this Honourable Court, the

Claimant has sufficiently made out a case to warrant this Honourable court to grant him the reliefs sought.
On the part of the claimant, Chinedu D. Ezeh Esq, settled the final written address of the claimant and same was filed on the 27/9/2022. Learned counsel for the claimant raised two issues for determination, that is:

1. whether the unregistered Deed of Assignment and Power of Attorney (Exhibits "C1" and "C2") made between the Claimant and its lawful Attorney (Gouba Global Links Limited) confers any right or interest over the land in dispute on Gouba Global Links Ltd.
2. Whether in the absence of evidence of service or proof of service of the letter of revocation of the land in dispute on the Claimant, the Defendant's purported revocation of the land in dispute is valid in law.

On the 24/10/2022, the claimant was represented by its counsel, while the defendants were absent and not represented. Learned counsel for the claimant argued and adopted his final written address and also urged the court to deem the final written address of the defendants as adopted. Thereafter, the matter was adjourned for Judgment. In the course of writing the judgment and given the reliefs sought by the claimant vis a vis the pleadings and evidence before the court, I raised the issue of competence of parties suo motu and called on parties to address me on the composition of the claimant as constituted in this case.

On the 10th February, 2023, counsel for the claimant moved an application with motion no: M/4130/2023, wherein he sought for an amendment of the statement of claim in line with the evidence already led in the case, additional witness statement on oath and for the claimant to re-open its case as well as recall the Pw1.

Upon the grant of the reliefs sought, the Pw1 was recalled. He adopted his additional witness statement on oath of 1/2/2023. Learned counsel for the defendants elected not to cross examine the recalled witness and the matter was further adjourned for Judgment. Now, the claims sought by the claimant in the further amended statement of claim of 1/2/2023 are as follows: -

1. A Declaration that the said Certificate of Occupancy No. 17a3w-90dcz- 56bbr-a064u-20 dated 19th December, 2004 with File No. 50214 and registered as No. 355 at page 355 in Volume 2 of the Land Registry Office at Abuja issued by the 1st defendant to the claimant is valid.
2. A Declaration that by virtue of the Deed of Assignment dated 17th March, 2011 Guoba Global Links Limited acquired equitable interest and became the equitable owner of all that piece or parcel of land known as Plot 1032 Mabushi District, Cadastral Zone B06, Federal Capital Territory, Abuja measuring about 2,755.94 No. 17a3w-90dcz-

56bbr-a064u-20 dated 19th December, 2004 with File No. 50214 and registered as No. 355 at page 355 in Volume 2 of the Land Registry Office at Abuja.

3. A Declaration that the purported revocation/acquisition of claimant's said land by the defendants is illegal, unconstitutional, null and void.
4. An Order of Court setting aside the purported revocation/acquisition of the Claimant's said land by the Defendants
5. An Order of perpetual injunction restraining the Defendants by themselves, their officers, agents, privies or any other person howsoever described and/or claiming through them from entering into the Claimant's said land, i.e., Plot 1032 Mabushi District, Cadastral Zone B06, Federal Capital Territory, Abuja, or attempting to enter same or doing anything whatsoever to interfere with the Claimant's title and possession thereto.
6. The sum of ₦3, 000,000 (Three Million Naira) being the cost of this litigation.

I have taken a careful consideration of the entire evidence put forward by parties and it is my considered view that the sole issue raised by the defendants' counsel will adequately determine the case, that is;

Whether having regard to the facts contained in the Claimant's Statement of claim and the 1st and 2nd Defendants' joint Statement of Defence and also evidence before this Honourable Court, the Claimant has sufficiently made out a case to warrant this Honourable court to grant him the reliefs sought.

Now, in the case at hand, the facts and evidence placed before the court by the claimant are as follows;

The Pw1 is one of the Directors of GOUBA GLOBAL LINKS LIMITED, the lawful attorney of the claimant. He states that by an Acknowledgment of Re-certification and Re-issuance of Certificate of Occupancy Form dated 10th September, 2004, the defendants re-certified the Right of Occupancy of DEESBEC NIGERIA LIMITED over plot 1032 within Cadastral Zone B06, Abuja and was given a File No: MISC 50214; that by a Certificate of Occupancy No17a3w-90dcz- 56bbr-a064u-20 dated 19th December, 2004 with File No. 50214 and registered as No. 355 at page 355 in Volume 2 of the Land Registry Office at Abuja, the 1st defendant granted a Statutory Right of Occupancy for a term of 99 years commencing from 28th January, 1999 over the demised premises to DEESBEC NIGERIA LIMITED; see paragraph 3 of the further amended Statement of claim as well as evidence of the Pw1. The Pw1 tendered the Certificate of Occupancy and same was admitted as exhibit B. The defendants in response to the assertion had in one breadth denied this assertion and, in another breadth, admitted that the title of the claimant over

the subject matter was revoked by the 1st defendant for overriding public interest vide a revocation notice dated 03/12/2013. See paragraphs 1 & 16 of the statement of defence and defendants witness statement on oath.

The claimant's witness continued, that by exhibit C1, a Deed of Assignment dated the 17th March, 2011 DEESBEC NIGERIA LIMITED being the beneficial owner and holder of Right of Occupancy assigned the subject matter to GOUBA GLOBAL LINKS LIMITED; that DEESBEC NIGERIA LIMITED also executed exhibit C2 an Irrevocable Power of Attorney on the 14th March, 2011 in favour of GOUBA GLOBAL LINKS LIMITED in respect of the subject matter. The Pw1 states that exhibits C1 and C2 are pleaded as evidence of transaction between the claimant and its lawful attorney. Going further, the Pw1 states that by virtue of exhibit C1, GOUBA GLOBAL LINKS LIMITED went into possession of the subject matter and has been in possession of same till date, exercising its equitable rights as the beneficial owner of the unexpired residue in the subject matter; that GOUBA GLOBAL LINKS LIMITED fenced the subject matter; the Pw1 stated that he was shocked when he went to conduct a search at the 2nd defendant's office sometime in 2015 and discovered that the subject matter has been revoked/ acquired by the defendants; that the claimant was not served with any Notice of Revocation of the land by the defendants as mandatorily required by law; that as at 2014, the value of the subject matter was ₦180,000,000.00. He pleaded exhibit D, the valuation certificate of the subject matter; that the defendants cannot whimsically and justifiably deny the claimant and its assigns the enjoyment of their legal rights and interests; that due to the developments around the area where the subject matter is located, the value of the subject matter has now appreciated to over ₦250, 000,000.00. He urged the court to grant the reliefs sought.

Basically, the defendants denied the assertions of the claimant and put the claimant to the strictest proof, save for the fact that the subject matter was revoked for overriding public interest.

It is the submission of counsel for the defendants that the land instruments were not registered by the Department of Lands, thus the lawful attorney. i.e Guoba Global Links Ltd has no right to claim title to the subject matter in issue; that the PW1 did not also controvert the evidence of DW1 where he stated that they do not have records of the Deed of Assignment and Power of Attorney made between the Claimant and Gouba Global Links Ltd as it was not registered by the Department of Lands and that Gouba Global Links does not have the right to claim title to the Plot in issue as its interest in the

subject Plot was not registered at the Lands Department of the 2nd Defendant and that the Claimant has the legal burden of establishing its claim. The "onus probandi" rest on it as he is the party that will fail if no evidence is led at all. He referred to section 131 of the Evidence Act, VEEPEE INDUSTRY LIMITED (2008) 13 NWLR (Pt 1105) 486 and also ARASE VS ARASE (1981) 5 SC 33@ 37 and UGBO ABURIME (1993) 2 NWLR pt 273, 101, UMEOJIAKO VS EZENAMU0 (1990) 1 SCNJ 181 @189. He therefore urged the Hon. Court to dismiss the suit.

On the other hand, Counsel for the Claimant submits that the authorities relied on by the defendants are not applicable to the instant case. Learned counsel for the claimant argued that the defendants are not challenging the authenticity of the exhibits as pleaded by the claimant; that the defendants are also not challenging the title of Deesbec Ltd over the subject matter as can be gleaned from the pleadings and evidence of the defendants. He cited OGBIRI V N.O.A.C LTD (2010) 14 NWLR (PT. 1213) 208 AT 224 and some other authorities to support his argument that fact admitted are the best evidence

He argued that the Defendant's grouse or quarrel is only on the effect of alleged non-registration of the documents. Learned counsel posed a question, that whether an unregistered registrable instrument such as Exhibits C1 and C2 are inadmissible in law and confers no right whatsoever on their holder. He then referred the court to these authorities OKOYE v. DUMEX NIG. LTD & ANOR. (1985) 6 S.C, ABU v. KUYABANA (2002) 4 NWLR (Pt. 758) 599 at 615D-E, AGWUNEDU v. ONWUMERE (1994) 1 NWLR (Pt. 321) 375; (1994) 1 SCNJ 106; BABALOLA v. ARIMORO (1973) NSCC 108 at 13; AKINGBADE v. ELEMOSHO (1964) 1 All NLR 146; FAKOYA v. ST. PAUL'S CHURCH, SHAGAMU (1966) 1 All NLR 74 and OKON v. OKON (2014) LPELR 22648 (CA) and urged the court to hold that an unregistered registrable instrument is admissible if the purpose is to show that there was a transaction between the grantor and grantee or to prove an equitable right.

He submits that under cross-examination of the Pw1 by the Defendants' Counsel, the Pw1 confirmed in line with its pleading that upon purchasing the land vide these documents, Gouba Global Links Ltd. (whom the witness represented) went into possession of the land and has carried out several acts of possession thereon, including erecting a fence and a security house thereon, as well as taking the building design to the Department of Development Control of the Defendants for approval; that they had to stop when he realized that the land had been purportedly revoked; that the evidence as to possession was not controverted nor impugned by the

Defendants under cross-examination. He urged the court to resolve in favour of the claimant.

Now, in determining the status of exhibits C1 and C2; starting with exhibit C2 i.e irrevocable power of attorney made on 14th March, 2011, the claimant states that exhibit C2 was tendered, as proof of evidence of transaction between the claimant and the attorney. The law is clear that a power of Attorney merely warrants and authorizes the donee to do certain acts in the stead of the donor and so it is not an instrument which confers, transfers, limits, charges or alienates any title to the donee: rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. So even if it authorizes the donee to do any of these acts to any person including himself, the mere issuance of such a power is not per se an alienation or parting with possession. So far, it is categorized as a document of delegation: it is only after, by virtue of the power of attorney, the donee leases or conveys the property, the subject of the power, to any person including himself then there is an alienation. See GREGORY OBI UDE v. CLEMENT NWARA & ANOR (1993) LPELR-3289(SC)

Also, the Black's Law Dictionary defines an attorney as *"one who is designated to transact business for another as a legal agent or the means through which an instruction is given via a power of attorney. A power of attorney is a formal instrument which on person empowers another to represent him or act in his stead for certain purposes. It may confer general or particular powers."*

Guided by the above, it then means, that a power of attorney, empowers an agent to perform an act on behalf of the principal and as can be discerned from the further amended process, the claimant, DEESBEC sued through its lawful attorney known as Gouba Global Links Limited and upon a careful consideration of the submissions for and against on this issue as well as the pleadings and evidence placed before the court by the claimant, I must state that the argument of the defendants with regards to exhibit C2 is totally misconceived. Paragraph 4 of the further amended statement of claim of 1.2.2023 states thus; by a Deed of Assignment dated 17 March, 2011 DEESBEC NIGERIA LIMITED as the beneficial owner and holder of Right of Occupancy assigned the demised premises to GOUBA GLOBAL LINKS LIMITED to "hold same unto the Assignee for all the residue unexpired of the term of years created by the Certificate of Occupancy hereinabove described absolutely freed and discharged..." DEESBEC NIGERIA LIMITED also executed an irrevocable power of attorney dated 14th March, 2011 in favour of GOUBA GLOBAL LINKS LIMITED in respect of the demised premises.

At the trial, the claimant will found on the Certificate of Occupancy, power of Attorney and Deed of Assignment pleaded above as evidence of the transactions between the parties. [underlined for emphasis]

The pleadings and evidence of the claimant is quite clear on the status of the exhibit C2 and as stated in paragraph 4, the instrument exchanged between the donor and donee. i. e exhibit C2 is evidence of transaction between them and nothing more. Exhibit C2, merely allows the donee, to act in the stead of the donor. See GREGORY OBI UDE v. CLEMENT NWARA & ANOR (supra). I therefore find and hold that exhibit C2 was properly admitted and same shall be countenanced with in the course of the Judgment, where necessary.

Going further, with regards to exhibit C1, i.e Deed of Assignment, First off, the day and month the document was made is not stated on the document. It reads thus; This Deed of Assignment datedday of2011 between DEESBEC NIGERIA LIMITED on one part AND GOUBA GLOBAL LINKS LIMITED, on the other part. The contention of the defendants is that exhibit C1 was not registered with the 2nd defendant and as such the donee has no recognizable right to the subject matter in question. Again, the assertion of the defendants was not denied by the claimant. The claimant states that exhibit C1 was pleaded to show evidence of transaction between the donor and the donee; that following the execution of exhibit C2, GUOBA GLOBAL LINKS LTD took possession of the subject matter and has been in possession of same till date in the exercise of its rights as the beneficial owner of the unexpired residue in the plot; that it fenced the plot of land. Given the above evidence, it is clearly not in doubt that GUOBA GLOBAL LINKS is claiming ownership of the subject matter vide the undated exhibit C2 issued to it by the claimant; there is no evidence that the claimant applied for and obtained the consent of the 1st defendant as provided for in s. 22(1) Land Use Act. see also s.26 Land Use Act. Specifically, s.22 provides thus: It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained: Provided that the consent of the Governor-

- (a) shall not be required to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor; See MRS. ROSEMARY ONWUSOR v. YAHY MAINA & ORS (2021) LPELR-53368(CA)

Also, s.26 Land Use Act states that any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void.

Therefore, the claimant has a bounden duty to prove that exhibit C1 was executed in accordance with the law and where it is shown that the consent of the 1st defendant was not applied for and obtained, the assignment of a certificate of occupancy; the effect is that the transaction is rendered null and void and therefore not capable of transferring any right or interest. See CALABAR CENTRAL COOPERATIVE THRIFT & CREDIT SOCIETY LTD V EKPO (2008) 2-3 SCNJ 307; OLALOMI IND. LTD V NIG. IND DEVT BANK (2009) 10 NWLR (PT. 1167)

Also, the law is that the production of instrument or document of title is not conclusive proof of title to land. It carries with it the need for a court to inquire into the following:

- (a) Whether the document is genuine and valid;
- (b) Whether the document has been duly executed, stamped and registered;
- (c) Whether the grantor had the authority and capacity to make the grant;
- (d) Whether the grantor had in fact what purported to grant; and whether it had the effect claimed by the holder of the document.
See *Oveneyiti v Akinkugbe* (2010) 4 NWLR (pt. 1184) 265

There is no evidence whatsoever that the consent of the 1st defendant was applied for and obtained which clearly negates the provisions of s. 22 & 26 of the Land Use Act and this clearly negates the provisions of s. 22 & 26 of the Land Use Act. The established fact is that DEESBEC NIGERIA LIMITED had no authority and or capacity to assign the subject matter to GOUBA GLOBAL LINKS NIG LTD without applying and obtaining the consent of the Minister.

Going further, despite the pleadings and evidence of the Pw1 that exhibit C1 was produced to show evidence of transaction between the parties, it does not appear so considering the entire evidence adduced and the reliefs sought, particularly the relief 2 claimed. It is clear that exhibit C2 was tendered not only to give validity to the transaction between the claimant and its attorney and against the defendants in this case; its effect is to further grant ownership of the subject matter to the donee, GOUBA GLOBAL LINKS NIG. LTD. And by the provisions of Land Use Act herein stated, exhibit C2 is null and void, having failed to execute same in accordance with the provisions of the law. See *Alhaji Aminu Jubrillah Abdullahi & Orsv. Mrs. Christiana Iyabo*

Adetutu(2019) LPELR-47384(SC);while ruling on it ,the court declared as follows:

“The arguments under this issue are almost ubiquitous arguments in land matters. I must note right away that the admissibility or otherwise of an unregistered registrable instrument depends on the purpose for which it is being sought to be admitted.....an unregistered instrument, sought to be tendered for the purpose of establishing or proving title to land or interest in land, would be inadmissible under section 15 of the Land Instruments Registration Law.....”

Therefore, an unregistered registrable Land Instrument is only admissible in evidence to prove the existence of a transaction and (or) payment of money, but not admissible to prove title to land. The facts and circumstances of this case are such that exhibit C1 is inadmissible and same is hereby expunged, having been improperly admitted. Thus, I find and hold that GUOBA GLOBAL LINKS NIG. LTD has no right over the subject matter. Relief 2 hereby fails.

With regards to the search and possession pleaded by the claimant, the Pw1 in its pleadings and evidence, states that upon the execution of exhibit C1, the Guoba Global Link Ltd went into possession of the subject matter and has been in possession of the subject matter till date in its exercise of its rights as the beneficial owner of the unexpired residue in the plot; that the subject matter in issue was fenced; that the Pw1 was shocked when he conducted a search at the 2nd defendant's office sometime in 2015 and discovered that the subject matter had been revoked or acquired by the defendants. Under cross examination, the Pw1 stated thus;

Under cross examination, the Pw1 stated thus;

Q: From your evidence before the court, it is obvious that the subject matter was not directly allocated to your company. GOUBA GLOBAL LINKS LIMITED

A: Yes, it was not directly allocated to Gouba;

Q: It is therefore safe to state that you do not know the history of the allocation;

A: that is not true, because through the process of search and traditional search conducted before the conveyance, we became fully aware of the history behind the said plot;

Q: It is true that the exhibits C1 and C2 are not registered with the 2nd defendant

A: Yes, they are not yet registered with the 2nd defendant

Q: From your evidence before the court, you stated that the subject matter was assigned to Guoba sometime around March, 2011 between then and now, did your company take any step to develop the matter

A: Yes, upon the conclusion of the transaction, we took immediate steps to enter into possession and fenced the said property with concrete blocks, and also security house. While the design of the project intended for the plot was ongoing the design was concluded and submitted to the development control for approval before proceeding with the construction. We only had to stop when we realized on a search in AGIS, the plot was purportedly revoked.

Q: Bottom line is that you have not developed the plot

A: not completely developed. We remain in possession till date.

There is no evidence to buttress the fact that the subject matter was fenced or has a security house. Possession of a parcel of land means no more than physical control of the said land either directly or through servants or agents. See *ISERU V. CATHOLIC BISHOP OF WARRI DIOCESE* (1997) LPELR-1543(SC).

Possession in law means the occupation or physical control of land either personally or through an agent or servant. In order to establish possession, a Claimant shall prove acts which may include cultivation of the piece of land, erection of a building or a fence and demarcation of the land with pegs at its corners. See *MRS. LYDIA OMOWARE THOMPSON & ANOR v. ALHAJI JIMOH AROWOLO* (2003) LPELR-3240(SC); *MWO BENSON NJIMOGU v. MR PATRICK OKPE* (2022) LPELR-57425(CA). Thus, the mere ipsi dixit of the claimant's witness, without placing credible evidence is untenable in law. The established fact here is that the claimant failed to place concrete evidence to support the claims of possession and search.

Going further, learned counsel for the defendants submits that the Claimant failed to prove its case against the Defendants; that from the totality of the paragraphs in the pleadings and the evidence (both documentary and oral) before this court, the Claimant does not have any valid title over the subject plot, as same has been validly revoked by the Defendants in accordance with the provisions of the Land Use Act, 2004. He submits that section 28 of the Land Use Act 2004 and many judicial authorities such as *DANTSOHO V.*

MOHAMMED (2003) 6 NWLR pt. 817, 457 482 483 (H-D), have laid down grounds for the revocation of a statutory Right of Occupancy.

Learned counsel for the defendants submits that the reason stated in the revocation letter issued to the Claimant was "overriding public interest". In other words, the claimant's title over the plot was purportedly revoked because the subject Plot fell into the land carved out in the Abuja Master Plan for a Police Station in Mabushi District. He referred to the provision of s. 28 (1) of the Land Use Act 2004 which provides that a Statutory Right of Occupancy can be revoked for overriding Public interest.

He submits that it is also the duty of the party seeking a declaratory relief to adduce evidence that he is entitled to that relief and the court has the discretion to grant or refuse the declaration; that the success of a claimant in such an action depends entirely on the strength of his case not on the weakness of the defence. Counsel further argued that in the present case, the Claimant having failed to adduce enough evidence in support of its claim is not entitled to the declaratory reliefs. He referred to ADEMOLA VS SEVEN UP BOTTLING CO PLC (2004) 8 NWLR PT 874p1340148-14(G-D). He stated that the Claimant in paragraph 11 of her relief asked this court for an order of perpetual injunction against the Defendant. Therefore, counsel submits that a relief of perpetual injunction can only be granted after full trial and where the applicant has established his right and an actual or threatened infringement of that right; that, an order of perpetual injunction is only granted to protect a Claimant's established right. Counsel cited U. B. A. PLC VS. OKEKE (2004) PI 872, 973 (F-G) 412 (G-H) and ADENIRAN VS ALAO (1992) 2 NWLR PT 223, 350 372 and urged the court to dismiss the Claimant's claim as it lacks merit.

On the other hand, Counsel for the Claimant argued that the claimants are not challenging or questioning the powers of the 1st defendant to revoke titles to land or the power of the 1st defendant to grant alternative allocation to persons whose titles to land have been revoked. However, the grouse of the claimant is that the defendants failed to comply with the requirement of the law as to service of revocation notice as mandatorily required by law. Learned counsel for the claimant argued that it is elementary that before there can be a valid revocation of title to land in Nigeria, the notice of revocation must be served on the holder of the right of occupancy as required by the Land Use Act 1978. He relied on CIL RISK & ASSET MANAGEMENT LTD V EKITI STATE GOVT (2020) 12 NWLR (PT. 1738) 203 AT 294 and some other authorities to buttress his argument on the issue of service of revocation of notice in accordance with the law.

Arguing further, counsel states that the onus is on the defendants to prove that the claimant was served with the revocation notice.

The evidence before the court, shows that there exists a Certificate of Occupancy issued to Deesbeec Nig. Ltd by the 1st defendant; see paragraph 3 of the amended statement of claim as well as the evidence of the Pw1. See also exhibit B tendered by the claimant. In the case here, the ownership of all lands comprised in the Federal Capital Territory, Abuja is vested in the Government of the Federal Republic of Nigeria. See s. 297 (2), 299 (a), (b) (c) CFRN and by virtue of s.302 of Constitution the President has the power to appoint for the Federal Capital Territory, Abuja a Minister who shall exercise such powers and perform such functions as may be delegated to him by the President from time to time. See also section 1 (1), (2) & (3) FCT ACT.

Also, s. 5 of the Land Use Act, where it provides that it shall be lawful for the Governor-

- (a) when granting a statutory right of occupancy to any person; or
 - (b) when any person is in occupation of land under a customary right of occupancy and applies in the prescribed manner; or
 - (c) when any person is entitled to a statutory right of occupancy, to issue a certificate under his hand in evidence of such right of occupancy.
- (2) Such certificate shall be termed a certificate of occupancy and there shall be paid therefore, by the person in whose name it is issued, such fee (if any) as may be prescribed.

It is therefore, the responsibility of the 2nd defendant to allocate land in the Federal Capital Territory to who so ever applies for land. The defendants didn't dispute the existence of exhibit B. see paragraph 16 of the statement of defence and defendants witness statement on oath. Thus, facts admitted need no further proof. See s.123 of the Evidence Act. The established fact is that exhibit B, the Certificate of Occupancy was issued under the hand of the 1st defendant on the 19th day of December, 2004 to Deesbec Nigeria Limited.

Having established the existence of exhibit B and that same was issued by the defendants to the claimant, DEESBEC NIGERIA LIMITED, the questions now are- when was exhibit B revoked? Was the notice of revocation issued and served on the claimant? I am quick to say, that the notice of revocation couldn't have been served on the donee, as there is no evidence that any

land instrument was registered with the defendants on its behalf and this was equally not denied by the claimant. The claimant clearly states that the purported land instruments were tendered as proof of evidence of transaction between the claimant and its attorney.

In the case of NIG. ENGINEERING WORKS LTD V. DENAP (2001) LPELR- 2002(SC) AT 30-32 (F-B) the Supreme Court per KALGO, J.S.C stated the conditions precedent to the exercise of the power of the Governor to revoke right of occupancy as follows: "The powers of the Governor to revoke any right of occupancy must be exercised in the overriding interest of the public and more importantly the holder of the right of occupancy being revoked must be notified in advance of the revocation. The notice to the holder must state the reason or reasons for the revocation and this will give the holder the opportunity to make any representation he or she wishes to make. Where the notice was not given or notice given was inadequate or not given in compliance with the provisions of the Act, the act of the exercise of revocation under Section 28 of the Act will be null and void.

The claimant in evidence states that it discovered through its attorney that the subject matter had been revoked and that no revocation notice as required by law was served on the claimant.

Here, the defendants' states that a revocation notice was served on the claimant and in support of their assertion, tendered exhibit 3, the notice of revocation of Right of Occupancy with reference File No: MISC 50214 to buttress their facts and evidence.

Who is right and who is wrong?

The law is quite clear on the fact that he who assert must prove. S. 131 of the Evidence Act. It is not in doubt that the Minister in the instant case has the right to revoke a Certificate of Occupancy for public purposes; however, such power must be exercised in due compliance with the provisions of the Land Use Act, particularly with regard to giving adequate notice of revocation to the claimant whose name and address are well known. The reason or purpose of giving notice is to duly inform the holder of a right of occupancy about the steps being taken to extinguish his right and in the absence of adequate service of the notice of revocation of claimant's right of occupancy the purported revocation of his right of occupancy is null and void. See Section 44 (a), (b) and (c) of the Land Use Act which relates to Service of Notice provides: - "Any notice required by this Act to be served on any person shall be effectively served on him. (a) by delivering it to the person or who it is to be served. (b) by leaving it at the usual or last known

place of abode or (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode. See USMAN KAYODE OLOMODA v. MR. OLANIYI MUSTAPHA & ORS (2019) LPELR-46438(SC)

In this case, the Dw1 under cross examination was asked thus;

Q: Show him exhibit 3- can you show the court, whether it was served on the claimant

A: I believe it was served on him.

Going by the above, it is simply the duty of the defendants to produce evidence of service of exhibit 3. On the face of exhibit B, i.e the certificate of occupancy, there is the address of the claimant stated as 5 Ndola Square Damcar Complex, Wuse Zone 5, Abuja and it is not in evidence that the claimant has changed address. I have carefully gone through the exhibit 3; I do not hesitate to state that no weight can be attached to it. There is no evidence of acknowledgment on same. As stated earlier, the claimant is an incorporated company whose address is stated on exhibit B. Therefore, where the defendants intend to revoke a Right of Occupancy or Certificate of Occupancy, it behooves on them to give adequate notice to the claimant as required by law. It is crystal clear that the defendants in this case failed to abide by the law. Accordingly, exhibit B issued to the claimant, DEESBEC NIGERIA LIMITED remains valid. Accordingly, reliefs 1, 3 & 4 succeed.

Relief 2 fails for reasons earlier adduced.

On the fourth relief, that is an Order of perpetual injunction restraining the Defendants by themselves, their officers, agents, privies or any other person howsoever described and/or claiming through them from entering into the Claimant's said land, i.e., Plot 1032 Mabushi District, Cadastral Zone B06, Federal Capital Territory, Abuja, or attempting to enter same or doing anything whatsoever to interfere with the Claimant's title and possession thereto. The Court of Appeal had this to say in the case of THE GOVERNOR OF IMO STATE & ORS v. DELU ENTERPRISES NIGERIA LTD (2021) LPELR-54724(CA) *"I have earlier in this judgment highlighted the purpose of the Land Use Act. It is also clear there from that the administration and control of land within the geographical space of Imo State, is vested in the Governor. Furthermore, it is clear from a holistic reading of the said Land Use Act that the Governor can discharge his powers under the Land Use Act, by himself or through public officers of his choice. The injunction granted in this case as argued by the Appellants will clearly derogate from the powers of the Governor to administer and control all the land in Imo State that is vested in him. The*

injunction would appear to prevent the Governor from ever and for whatever reason dealing with the land in dispute in the instant case. I am of the considered view that the fact that the revocation the Appellant carried out in the circumstances that resulted in the bringing of the instant case and which has been held to be a nullity, does not strip the Governor of the power of embarking on the revocation of the certificate of occupancy in respect of or over the same land in dispute afresh, adhering strictly to the relevant provisions of the Land Use Act and/or the acquisition of the land covered by the Respondent's certificate of occupancy for overriding public purpose in contradistinction to the enforcement as it were, of the terms and conditions in the said certificate as has been unsuccessfully done in the instant case due to the non-service of a proper notice of revocation. The lower Court in my considered view did not consider the consequences that slamming an order of perpetual injunction will have on the exercise by the Governor of his powers under the Land Use Act, in its automatic granting of the Respondent's claims/reliefs based on its singular finding in respect of the nullity of the revocation the Appellants undertook. This is more so as the order of injunction granted is not in aid of any specific or express claim in trespass. Indeed, the Appellants having parcellated the land in dispute as averred by the Respondent and also having re-allocated the parcellated plots, one cannot but wonder what the granting of an order of perpetual injunction is designed to achieve; if not to remove or excise as it were, the land covered by the Respondent's certificate of occupancy from the whole of the land in Imo State that the Governor of Imo State is by the Land Use Act duty bound to administer and control. No order of Court stripping the Governor of his powers under the Land Use Act should be allowed to stand."

Guided by the above, it is clear that by virtue of s.28 Land Use Act, it shall be lawful for the Minister to revoke a right of occupancy for overriding public interest and as such cannot be restrained from exercising the powers; in so far it is done in accordance with the provision of law. Thus, relief 5 fails.

For the avoidance of doubt, judgment is given in favour of the claimant, DEESBEC NIGERIA LIMITED as follows:

1. It is hereby declared that the said Certificate of Occupancy No. 17a3w-90dcz- 56bbr-a064u-20 dated 19th December, 2004 with File No. 50214 and registered as No. 355 at page 355 in Volume 2 of the Land Registry Office at Abuja issued by the 1st defendant to the claimant is still valid.
2. GOUBA GLOBAL LINKS LIMITED has no right of title or claim in respect of the subject matter against the defendants.

3. The revocation notice dated 3/12/2013 issued by the defendants in respect of the subject matter is hereby declared null and void and same is hereby set aside.
4. Relief 5 fails in its entirety
5. There is no order as to cost. Parties should bear their costs.

ASMAU AKANBI – YUSUF

(HON. JUDGE)

APPEARANCE:

C. D Okafor Esq. for the Claimant

Defendant absent and not represented.