

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT MAITAMA, ABUJA**

ON WEDNESDAY, 6TH DAY OF APRIL, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/1093/2016

BETWEEN

1. NAOMI N. BIGUSON
2. CHRISTIAN BENEDICT AJEMBA

} CLAIMANTS

AND

1. FEDERAL HOUSING AUTHORITY
2. PERSONS UNKNOWN
3. CLEMENT O. ADUKU
4. I. O. KILANKO

} DEFENDANTS

JUDGMENT

By writ of summons filed on 29/2/2016, the claimants [plaintiffs] instituted this action against Federal Housing Authority and Persons Unknown as the 1st& 2nd defendants. On 28/9/2016, the Court granted leave to the claimants to join Clement O. Aduku and I. O. Kilanko respectively as 3rd& 4th defendants. Pursuant to the said order of the Court for joinder, the claimants filed their amended writ of summons, amended statement of claim and other accompanying processes on 6/2/2017.

The pleadings in this case are: [i] the claimants' amended statement of claim filed on 6/2/2017; [ii] the 1st defendant's amended statement of defence filed on 24/4/2017; and [iii] the claimants' reply to the 1st defendant's statement of defence filed on 19/3/2018.

In paragraph 45 of the amended statement of claim, the claimants claim the following reliefs against the defendants jointly and severally:

- a) A declaration of the Hon.Court that the 1st plaintiff is the *bonafide* allottee and owner of House 164, 1st Avenue FHA Estate Lugbe, Abuja by virtue of instrument of allocation dated 15th July 2008 issued to the 1st plaintiff by the 1st defendant.
- b) A declaration of the Hon.Court that by virtue of instrument of allocation titled "*Letter of Allocation of a Housing Unit at Lugbe Estate, Abuja, FCT House No. 164 1st Avenue*" dated 15th July 2008 issued to the 1st plaintiff by the 1st defendant and the attendant occupation of the said House 164 by plaintiffs since 2008, the 1st defendant is estopped from referring to the said House 164 as House 166.

OR IN ALTERNATIVE TO RELIEFS [A] & [B] ABOVE:

"An order of the Hon. Court directing the 1st defendant to re-issue a new instrument of allocation to the 1st plaintiff over the present place of residence of the plaintiffs, and such re-issuance to show the proper and actual house numbering of the said present place of residence of the

plaintiffs and the 1st plaintiff to surrender/return back to the 1st defendant the original instrument of allocation issued her over house 164 as a pre-condition to collecting the original documents re-issued over the said present place of residence.”

- c) An order directing the 1st defendant to register the power of attorney between 1st and 2nd plaintiffs and to issue consent over the sale since the 2nd plaintiff has paid the mandatory ground rent fee of N125,000.00 and the consent fee of N750,000.00 to the 1st defendant.
- d) An order of perpetual injunction restraining the defendants whether acting by themselves or through their agents and privies from ejecting the plaintiffs from the present place of residence of the plaintiffs at 1st Avenue FHA Estate Lugbe, Abuja.
- e) A declaration of the Hon. Court that ejection and recovery of premises can only be carried out through due legal process laid down under the Recovery of Premises Act and the 1st defendant’s threat of forceful ejection of the 1st plaintiff as contained in the last paragraph of the 1st defendant’s letter of 17th February 2016 to the 1st plaintiff is wrongful and illegal.
- f) A declaration of the Hon. Court that the 2nd-4th defendants have no proprietary interest over Plot 164 or the plaintiffs’ present place of residence and the 1st defendant’s purported claim that Houses 164 and 166 were allocated to Clement O. Aduku and I. O. Kilankore respectively is null and void and of no legal effect whatsoever.

- g) An award of N500 million [Five Hundred Million Naira] against the 1st defendant as general damages.
- h) An award of N5 million against the defendants jointly and severally as cost of action.
- i) An award of 10% post judgment interest on the entire judgment sum from the date of judgment till same is fully liquidated.

At the trial, the 2nd claimant testified as PW1. He adopted his statement on oath filed on 6/2/2017 and his further statement on oath filed on 19/3/2018. He tendered Exhibits A, B, C, D, E, E1-E4, F, F1, G, H, H1, J, K & L.

Anthony Ejime gave evidence as the PW2. He adopted his statement on oath filed on 19/3/2018.

Iliyasu Mohammed, a Senior Estate Officer of the 1st defendant, testified as DW1. He adopted his statement on oath filed on 24/4/2017 and tendered Exhibits Defence 1 - 28. During cross examination of DW1, learned claimants' counsel tendered the 1st defendant's amended statement of defence filed on 24/4/2017 as Exhibit Defence 29.

The 2nd, 3rd & 4th defendants did not file any process and did not attend Court. However, on 12/6/2018 [when PW2 testified], Alfred N. Agu Esq. appeared with Ifeanyi Paul Madukaife Esq. for the 4th defendant.

Evidence of PW1 - Christian Benedict Ajemba [2nd Claimant]:

The evidence of PW1 in his 47-paragraph statement on oath filed on 6/2/2017 is that the 1st claimant is the first allottee of House 164 1st Avenue, FHA Estate Lugbe, Abuja comprising a 3-bedroom detached bungalow. The 1st claimant applied for allocation of house in the 1st defendant's Estate in Lugbe, Abuja. By letter dated 6/6/2008 [Exhibit A], the 1st defendant gave the 1st claimant a provisional offer of the said House 164. The 1st claimant complied with all the conditions for allocation in the letter of provisional offer and paid the necessary fees. By letter dated 15/7/2008 [Exhibit B], the 1st defendant allocated the said House 164 to the 1st claimant. In 2008, the 1st claimant assigned all her interest in the said House 164 to him and they executed a deed of assignment and power of attorney.

The 1st claimant applied to the 1st defendant for consent to assign the property to him and also wrote to the 1st defendant to register the power of attorney. The Deed of Assignment dated 9/7/2008 is Exhibit K; letter by the 1st claimant to the 1st defendant dated 10/10/2008 titled: *Consent to Assign House No. 164, 1st Avenue Lugbe Estate, Abuja* is Exhibit L. He submitted the above documents to the 1st defendant for registration and the 1st defendant's schedule officers told him to be in touch for updates on processing procedures and payment of necessary fees for registration at the due time. After some visits and the same were not ready, he travelled back to the United States of America where he resides.

Curiously, on 12/1/2016, the 1st defendant wrote a letter to them titled: “*Final Verification Notice*” wherein it made reference to a verification notice of 10/12/2015 and lied that the same was served on them. No such letter was served on them or on their tenant. From the letter of 12/1/2016, the illegalities and bad motive of the 1st defendant were obvious. He stated the particulars of illegality, malice and bad faith in paragraph 15 of his statement on oath, one of which is that the allocation to the 1st claimant was for House 164 and not House 166 as falsely and deceitfully contained in the letter. He was in Nigeria at the time of service of the letter of 12/1/2016. He went to the office of the 1st defendant in Asokoro, Abuja for verification as contained in the said letter.

PW1 further testified that he showed the original title documents to the 1st defendant’s officers and explained that: [i] his House number is 164 and not 166; [ii] before the 1st claimant took possession, officers of the 1st defendant confirmed to her the location of House 164 and installed beacons there; [iii] officers of FHA Branch Office Lugbe gave quit notice to the illegal squatters at the said House 164 and within one month, they all vacated and 1st claimant took vacant possession; [iv] before payment of valuable consideration and donation of power of attorney by the 1st claimant to him, he brought officers of the 1st defendant’s branch office at FHA Lugbe who again confirmed the location of House 164 as the same place where he now lives; and [v] since purchase and donation of the power of attorney, he has been in exclusive and peaceable enjoyment of the house.

After scrutinizing the original title documents, the 1st defendant's officers directed him to pay the accumulated ground rent of N125,000.00 and to pay N750,000.00 as mandatory consent fee for registration of instruments in his favour. He paid the fees. The FHA Homes Ltd. deposit slip for N125,000.00 dated 27/1/2016 is Exhibit C; the 1st defendant's document addressed to the 1st claimant dated 1/2/2016 titled: *Re: Application For Consent to Assign House No. 164, 1st Avenue, Lugbe Estate, Abuja* and the attached documents evidencing payment of N750,000 as consent fee are Exhibit D.

Christian Benedict Ajemba explained that he caused his solicitor to petition ICPC and the Managing Director/CEO of the 1st defendant on 19/2/2016 to place a caveat on House 164. Unknown to him, the 1st defendant had written a letter to them on 17/2/2016 but served on 25/2/2016 titled: *Final Notice of Eviction from House No. 166, 1st Avenue, Lugbe Estate, Abuja* [Exhibit J]. In the letter of 17/2/2016, the 1st defendant claimed to have served them similar ejection notice on 28/1/2016 but no such ejection notice was served on them. He has satisfied all the conditions for consent and registration of his interest but the 1st defendant who collected the said monies is neglecting to register his interest.

In order to perfect its wrongful act, the 1st defendant now claims that: [i] they were allocated House 164 and they wrongly moved into House 166 without check-in papers by relevant FHA officials; [ii] House 164 allocated to the 1st claimant was previously allocated to Clement O. Aduku [the 3rd

defendant]; and [iii] House 166 which was wrongly entered into was allocated to I. O. Kilanko [the 4th defendant]. After the allocation in 2008, the 1st claimant was detailed with some staff of the 1st defendant who put her into exclusive possession after FHA Lugbe office Annex ejected the illegal occupants in the House. The instruments of allocation issued to the 1st claimant by the 1st defendant did not make any reference to check-in paper or hand over note as condition or pre-requisite for possession as falsely claimed by 1st defendant.

The 1st defendant's claim that they [the claimants] are in House 166 is false. The purported Clement O. Adukuand I. O. Kilanko are fictitious persons. The claim of the 1st defendant that House 166 was allocated to I. O. Kilanko is also false. Presently, the House occupied by Wema Bank Plc. [just 2 plots away from their House 164] is also known as House 166. The problem in this case partly arose as a result of erroneous house numbering caused by the 1st defendant. The 1st defendant who led the 1st claimant into possession also led Wema Bank into possession. It was the 1st defendant who did the house numbering and claimants cannot be made to suffer unjustly for its mistake.

In the 24-paragraph further statement on oath of PW1, he testified that if the 1st defendant re-numbered the houses, it is duty bound to re-issue them a new instrument that will read House 166 while they surrender the initial instrument that reads House 164. The place occupied by Wema Bank Plc. is House 166 which was previously occupied by 4th defendant. One Anthony

Ejime was the person who lived in House 166 last before he was ejected by the 4th defendant and his agents. After the ejection of Anthony Ejime, House 166 was empty. The unscrupulous officers and staff of the 1st defendant sold the House to Wema Bank Plc. They [the claimants] have approval/permission to fence, build boys' quarters and alter the main building, which they did.

The other documents tendered by PW1 are:

- a) Certification by PW1 in compliance with section 84[2] of the Evidence Act, 2011 dated 26/2/2016: Exhibit E; the attached 4 photographs: Exhibits E1-E4.
- b) Certification by PW1 in compliance with section 84[2] of the Evidence Act, 2011 [undated]: Exhibit F; the attached ATM Bank Alert Print Out: Exhibit F1.
- c) Wema Bank Complimentary Card of Joel Hikon Hezekiah: Exhibit G.
- d) Receipt for N43,500 issued by the 1st defendant to the 1st claimant dated 3/7/2008: Exhibit H; the attached Access Bank draft for N43,500 dated 30/6/2008: Exhibit H1.

When PW1 was cross examined by the 1st defendant's counsel, he stated that in Federal Housing Authority [FHA], when a person is allocated a house, the person is checked into the house and the check-in procedure is done by staff of FHA. The check-in is for the allottee or owner and staff of FHA to be certain about the house that is to be possessed by the allottee. He saw the

check-in paper for the first time when the 1st defendant filed its processes. He was checked in by the staff of FHA but no paper was given to him. The illegal tenants occupying the house at that time were driven away by staff of FHA. He and the 1st claimant were checked into the house in 2008.

PW1 further stated under cross examination that the 1st claimant was the one that filled the form for check-in. When the 1st claimant was checked into the house, she did not sign any document. He filled a new check-in form and a new form for assessment of consent fee as he was lured to fill by staff of FHA. The House in issue was allocated to the 1st claimant as a residential house. He partitioned the House as a hotel. He did not get permission to turn the use of the House to a hotel.

Evidence of PW2 - Anthony Ejime:

In his evidence, PW2 stated that he knows House 166, 1st Avenue FHA Estate Lugbe Abuja. He also knows the claimants' present place of residence. The claimants are not residing in House 166. He was a tenant in House 166 before he was ejected by the 4th defendant, his agents and some staff of FHA from the house. The 4th defendant and his agents introduced themselves as owners of House 166, showed him documents to that effect and told him that he is an illegal occupant. After he was ejected, the house was empty for a while and was subsequently sold to Wema Bank Plc. After purchase of House 166,

Wema Bank Plc. pulled down the entire building and erected a befitting structure as its Lugbe branch. The ATM at the said branch reads House 166.

During cross examination of PW2 by the 1st defendant's counsel, he stated that he was not an illegal occupant as 4th defendant and the agents claimed. The house was rented to him by one Mr. Joseph who said he was an agent of the owner of the house. He paid electricity bill in the name of Isaac Kilanko for House 166. He knew the House number from the electricity bill he paid to PHCN. The 2nd claimant lives in the United States of America but he stays at House 164 when he is around. PW2 conceded that he has nothing in Court to prove the evidence he has given.

Evidence of DW1 –Iiyasu Mohammed:

In his 35-paragraph statement on oath, DW1 stated that 3rd& 4th defendants are not fictitious persons; they are existing persons. Both of them have proper instruments of allocation as itemized in paragraph 5 of his statement on oath. On 18/1/2016, the 1st claimant wrote to the 1st defendant for consent to assign House 164, 1st Avenue FHA Estate Lugbe, Abuja to the 2nd claimant and the Irrevocable Power of Attorney donated by the 1st claimant to the 2nd claimant. The consent has not been granted as House 164 was already allocated to Clemet O. Aduku[3rd defendant] before it was allocated to the 1st claimant. The 1st claimant did not submit authority to register power of attorney to the 1st defendant. Amaka, who, at that time, was a tenant in House 166 1st Avenue

FHA Estate, Lugbe, Abuja collected the letter of 10/12/2015 from him but refused to sign the acknowledgment copy because she said she is not the owner of the house.

After the letter of 10/12/2015, the 1st defendant wrote 3 other letters to the occupants of House 166; i.e. letters dated 12/1/2016, 28/1//2016, and 17/2/2016. The 1st defendant does not engage in any illegality, neither does it have bad motive. He called the 2nd claimant with the phone number given to him by the then tenant at House 166. After several calls, the 2nd claimant came to the 1st defendant's office with the 1st claimant's documents. The 2nd claimant was informed that the House he is occupying is House 166 and not House 164. The 1st defendant's staff demanded for the 1st claimant's check-in letter which the 2nd claimant did not have but the 1st claimant later applied. A check-in letter was subsequently discovered in the 1st claimant's file with 1st defendant, which had some irregularities as follows:

- a) as the Senior Estate Officer [SEO], his [DW1] name is supposed to be written under the space: "*Allottee checked in by*" and he is supposed to sign, but the check-in letter of the 1st claimant does not contain his name and signature; and
- b) the space where "*Authorized by*" is provided for in the check-in letter is supposed to be signed by Mrs. Sarah Ogiefa but that space was signed by the 1st claimant.

DW1 further testified that no staff of 1st defendant checked in the claimants officially to the present house where they are occupying, which is House 166. No authorized officer of the 1st defendant directed the 2nd claimant to pay accumulated ground rent or consent fee as the 2nd claimant is still officially unknown to the 1st defendant as the purported new owner of House 164. The demand notice of N125,000.00 purportedly paid by the 1st claimant was not authorized or signed by anyone in the 1st defendant's office and the sum of N750,000.00 paid for change of ownership/consent of House 164 has not been processed. The 1st defendant's letter of 28/1/2016 titled: *Notice of eviction from House No. 166 1st Avenue Lugbe Abuja* was received by the 2nd claimant at House 166 but he refused to sign the acknowledgment copy.

The further evidence of Iliyasu Mohammed is that House 166 was in the process of demolition/reconstruction by claimants when the Town Planning Section of the 1st defendant marked it and later sealed it up. House 166 is allotted to I. O. Kilanko [the 4th defendant]. There is no erroneous house numbering in this case. 1st defendant never made any mistake in the house numbering in 1st Avenue, Lugbe Estate, Abuja; there is only one House 166. DW1 tendered 28 exhibits marked Exhibits Defence 1 - 28, which are:

EXHIBITS	DOCUMENTS
Defence 1	4 th defendant's application for allocation of FHA house
Defence 2	4 th defendant's allocation letter from 1 st defendant dated 4/9/1996

Defence 3	Payment of Capital Development charge by 4 th defendant dated 28/1/2002
Defence 4	FHA receipt to 4 th defendant dated 25/4/1995
Defence 5	4 th defendant's letter to 1 st defendant dated 29/1/2002
Defence 6	1 st defendant' letter to 4 th defendant dated 28/1/2002
Defence 7	Document titled: <i>Payment Advice</i> issued by 1 st defendant to 4 th defendant dated 1/2/2002
Defence 8	Receipt issued by 1 st defendant to 4 th defendant dated 1/2/2002
Defence 9	4 th defendant's letter to the 1 st defendant dated 14/5/2003
Defence10	1 st defendant's letter titled: <i>Checking in of owner-occupier</i> dated 14/5/2003
Defence 11	Receipt issued by 1 st defendant to 4 th defendant dated 1/2/2002
Defence 12	Site Report on Inspection of House No. 166/168 & 170, 1 st Avenue Lugbe Estate, Abuja carried out on 11/12/2015 and attached Site Report of Inspection carried out on 1512/2015
Defence 13	Letter from City Law Firm to Chairman ICPC dated 11/8/2015
Defence 14	Document titled: Complete Lugbe Schedule, Sector A-F
Defence 15	1 st defendant's letter to the occupant, House No. 166 1 st Avenue, Lugbe Estate, Abuja dated 10/12/2015
Defence 16	1 st defendant's letter to the occupant, House No. 166 1 st

	Avenue, Lugbe Estate, Abuja dated 12/1/2016
Defence 17	1 st defendant's letter to the 1 st claimant dated 17/2/2016
Defence 18	1 st defendant's letter to the occupant, House No. 166 1 st Avenue, Lugbe Estate, Abuja dated 28/1/2016
Defence 19	1 st claimant's letter to 1 st defendant titled: <i>Application for Letter of Check In</i> dated 10/1/2016
Defence 20	1 st defendant's letter titled: Letter of Checking In of Owner-Occupiers
Defence 21	1 st claimant's letter to the 1 st defendant titled: Consent to Assign House No. 164, 1 st Avenue, Lugbe Estate, Abuja dated 10/10/2008
Defence 22	Document dated 17/2/2016 evidencing payment of N750,000 as Consent Fee by the 2 nd claimant to the 1 st defendant and attached 1 st defendant's letter to the 1 st claimant dated 1/2/2016
Defence 23	Irrevocable Power of Attorney donated by 1 st claimant to 2 nd claimant dated 9/7/2008
Defence 24	Certificate of Compliance Pursuant to Section 84 Evidence Act 2011 [As Amended] signed by Iliyasu Mohammed [DW1] dated 29/10/2019
Defence 25	Demand Notice for Payment of Outstanding Charges on House No. 164, 1 st Avenue, Lugbe Estate, Abuja issued by 1 st defendant to the 1 st claimant dated 26/1/2016.
Defence 26	Pictures of House No. 166, 1 st Avenue, Lugbe FHA Estate, Abuja sealed and locked on 25/2/2016

Defence 27	Quit Notice on House 166 issued by the 1 st defendant
Defence 28	Layout Map

During cross examination of DW1 by the claimants' counsel, he stated that this office carried out an investigation based on a petition written by the 4th defendant to ICPC against the 1st defendant. In their report, they did not find that the house claimed by the 4th defendant was re-allocated to Wema Bank. When DW1 was shown the report [Exhibit Defence 12], he admitted that from their investigation report, the property complained of by the 4th defendant is presently occupied by Wema Bank. In 2003, he checked the 4th defendant into the property where Wema Bank is. FHA has power to renumber plots or houses. There is no check-in clause in Exhibits A and B. They sealed the house where the claimants are occupying. They did not have a court order to seal the house.

As at 2008 when the claimants entered into the house, he was not the Senior Estate Officer and Sarah Ogiefa was not in charge of checking-in of allottees into the houses. In 2008, he was not part of the team that did check-in in Lugbe FHA Estate. The sums of N125,000 [for ground rent] and N750,000 [for consent to assign and transfer of ownership] paid by the 2nd claimant have not been processed because they were paid after this case started and he has not been issued receipts of payment. He will not be surprised that the electricity bills on the house occupied by Wema Bank read House 166. The initial

building where Wema Bank is presently located was demolished and a new building was erected by Wema Bank. DW1 gave evidence on the Layout of the Estate tendered as Exhibit Defence 28; his evidence on Exhibit Defence 28 will be referred to later in this Judgment.

Issues for Determination:

At the end of the trial, Joseph OluwarotimiOjo Esq. filed the 1st defendant's final address on 4/11/2020. K. C. Muoemeka Esq. filed claimant's final address on 26/2/2021. On 23/6/2021, Joseph OluwarotimiOjo Esq. filed 1st defendant's reply on points of law. On 12/1/2022, Temitope Ayodele-Ogunjide Esq. adopted 1st defendants' final addresses; while K. C. Muoemeka Esq. adopted the claimant's final address.

Learned counsel for the 1st defendant posed five issues for determination, viz:

1. Whether the 1st plaintiff is entitled to a declaratory relief that the 1st plaintiff is the *bonafide* allottee and owner of House 164, 1st Avenue FHA Estate Lugbe Abuja by virtue of instrument of allocation dated 15th July, 2008.
2. Whether the plaintiffs are entitled to an order directing the 1st defendant to register the Power of Attorney between the 1st and 2nd plaintiffs and issue consent over the purported sale of House 164 to the 2nd plaintiff.

3. Whether plaintiffs are entitled to an order of perpetual injunction restraining the 1st defendant from ejecting the plaintiffs from House 166 which is their present place of residence.
4. Whether the plaintiffs are entitled to an award of N500,000,000.00 as general damages.
5. Whether the plaintiffs are entitled to cost of this action against the 1st defendant.

On the other hand, learned counsel for the claimants formulated one issue for determination, which is:

Whether the plaintiffs have proved their case on a balance of probabilities so as to entitle them to the judgment of the Court.

The claimant's reliefs [a], [b], [e] & [f] are declaratory reliefs. Relief [a] is a declaration that the 1st plaintiff is the *bonafide* allottee and owner of House 164, 1st Avenue, FHA Estate, Lugbe, Abuja by virtue of instrument of allocation dated 15/7/2008 issued to her by the 1st defendant. No doubt, the success or otherwise of the other reliefs sought by the claimants will largely depend on the decision of the Court on the declaratory reliefs especially relief [a].

It is a settled principle of law that a party seeking a declaratory order or relief must adduce credible and sufficient evidence to prove his case. He must succeed on the strength of his case and not on the weakness of the case of the

adverse party. See Arowolo v. Olowookere [2011] 18 NWLR [Pt. 1278] 280. However, where the evidence of the defendant supports the claimant's case, he is perfectly entitled to rely on such evidence. See Anyi & Ors. v. Akande & Ors. [2017] LPELR-41973 [CA]. It is also trite law that civil cases are determined on balance of probabilities or preponderance of evidence. See Cyprian Onwuama v. Loius Ezeokoli [2002] 5 NWLR [Pt. 760] 353.

It is also noteworthy that by virtue of section 133[1] & [2] of the Evidence Act, 2011, in civil cases, the claimant has the first or initial burden to prove the existence or non-existence of a fact relied upon in support of his claims. However, the burden of proof in civil cases is not static; it shifts from one party to the other depending on the state of the pleadings. See Olaiya v. Olaiya [2002] 8 NWLR [Pt. 782] 652. Where the claimant gives evidence which ought reasonably to satisfy the Court that the fact sought to be proved is established, the burden will shift to the defendant to disprove that fact.

In the instant case, it is not in dispute that by the letter titled: *Provisional Offer of a Housing Unit at Lugbe Estate, FCT, Abuja* dated 6/6/2008 [Exhibit A], the 1st defendant informed the 1st claimant that she has been offered "House No. 164, 1st Avenue, Lugbe Estate, Abuja" upon the terms and conditions stated therein. One of the terms is that the disposal price is the sum of N3,794,000.00. It is also not in dispute that by the Letter of Allocation of a Housing Unit dated 15/7/2008 [Exhibit B], the 1st defendant wrote to the 1st claimant that:

“Further to your application for a 3-Bedroom Bungalow With Courtyard [SAT C] in our Lugbe Estate, Abuja; and in consideration of your payment of the sum of N3,794,000.00 [...] only, being full purchase price thereof, it is hereby confirmed that House No. 164, 1st Avenue, at Lugbe Estate, Abuja, FCT, has been formally allocated to you under Staff Housing Scheme for residential purpose on leasehold basis for a term of Ninety-Nine [99] years with effect from 1st day of January, 2008.”

The Letter of Allocation [Exhibit B] further stated that the allocation is subject to the terms and conditions set out in paragraph 2[i] to [xii].

The claimants’ case is that after the allocation of House No. 164 to the 1st claimant in 2008, she was detailed with some staff of the 1st defendant who put her into exclusive possession after the 1st defendant’s Lugbe office Annex ejected the illegal occupants in the House. The claimants’ position is that the house they occupy since 2008 is House No. 164, 1st Avenue, Lugbe Estate, Abuja.

On the other hand, the case of the 1st defendant is that: [i] the said House No. 164 was allocated to Clemet O. Aduku [the 3rd defendant] before it was allocated to the 1st claimant; [ii] the house where the claimants are occupying is House No. 166 and not House No. 164; [iii] House No. 166, 1st Avenue, Lugbe Estate, Abuja where claimants are occupying was allotted to I. O. Kilanko [the 4th defendant]; and [iv] no officer of the 1st defendant led the claimants into possession of House No. 166.

In the light of the forgoing, the Court is of the considered opinion that three issues call for determination in this action, namely:

1. Whether the 1st defendant has proved its assertion that House 164, 1st Avenue, Lugbe Estate, Abuja was allocated to Clement O. Aduku [the 3rd defendant] before it was allocated to the 1st claimant.
2. Whether, from the evidence before the Court, the House occupied by the claimants is House No. 164, 1st Avenue, Lugbe Estate, Abuja or House No. 166, 1st Avenue, Lugbe Estate, Abuja allocated to the 4th defendant.
3. Are the claimants entitled to their claims?

ISSUE 1

Whether the 1st defendant has proved its assertion that House 164, 1st Avenue, Lugbe Estate, Abuja was allocated to Clement O. Aduku [the 3rd defendant] before it was allocated to the 1st claimant.

In proof of the assertion that House 164 was allocated to Clement O. Aduku [the 3rd defendant], the DW1 tendered the document titled: *Complete Lugbe Schedule, Sector A-F* [Exhibit Defence14], which has the name of the 3rd defendant as number 48 in respect of 1st Avenue, House 164.

In paragraphs 3.26-3.30 of 1st defendant's final address, Joseph OluwarotimiOjoEsq. argued that the Complete Lugbe Schedule, Sector A-F [Exhibit Defence14] shows that House 164 was allocated to the 3rd defendant since 1996. He cited the case of Zaccala v. Edosa [2018] 6 NWLR [Pt. 1616] 528 to support the principle that where the equities are equal, the first in time prevails. He also referred to Ojo v. Kanalu [2005] 18 NWLR [Pt. 958] 523 and submitted that documentary evidence is the best evidence.

In paragraph 2.16 of claimants' final address, K. C. MuoemekaEsq. argued that Exhibit 14 *"cannot pass for valid title and allocation. No letter of provisional offer was tendered. No letter of allocation was tendered. No receipt for payment of fees was tendered. Nothing to show that the condition precedent to be fulfilled before allocations are made was complied with. In-fact, the 3rd defendant himself did not appear before my lord to defend or make a counter claim. ..."*

Joseph OluwarotimiOjo Esq. in paragraph 1.6 of the 1st defendant's reply on points of law submitted that the above submissions of the claimant's counsel *"cannot take the place of evidence no matter how well written. The 1st Defendant my Lord has tendered in evidence the complete schedule of allocation for sector A-F FHA Estate Lugbe Abuja."*

The Court agrees with learned counsel for the claimants that the 1st defendant did not present any credible evidence - like letter of provisional offer, letter of allocation or receipt of payment - to prove the assertion that House 164 was

allocated to the 3rd defendant. Exhibit 14 is not a document of title and is not proof that House 164 was allocated to the 3rd defendant.

Learned counsel for the claimants is also correct that the 3rd defendant did not attend Court to prove that House 164 belongs to him. The Court holds that the 1st defendant did not prove its assertion that House 164 was first allocated to the 3rd defendant before it was allocated to the 1st claimant. Even if it is correct that the 1st defendant allocated any house to the 3rd defendant, the 1st defendant did not allege that the house occupied by the claimants, which is in issue in this action, is the house allocated to the 3rd defendant. Therefore, the principle that where the equities are equal, the first in time prevails is not applicable in this case.

ISSUE 2

Whether, from the evidence before the Court, the House occupied by the claimants is House No. 164, 1st Avenue, Lugbe Estate, Abuja or House No. 166, 1st Avenue, Lugbe Estate, Abuja allocated to the 4th defendant.

Before I refer to the submissions of both learned counsel, it is necessary to restate that the claimants' case is that the house they are occupying is House 164 which was allocated to 1st claimant in 2008. The 1st defendant's case is that the house the claimants are occupying is House No. 166, which was allocated to Isaac O. Kilanko [the 4th defendant]. The DW1 tendered documents such as Exhibits Defence 1, 2, 3, 4, 9 & 10 to prove that House 166 was allocated to the

4th defendant. The 4th defendant's letter of allocation of House 166 [Exhibit Defence 2] is dated 4/9/1996.

Joseph OluwarotimiOjoEsq. properly identified the issue in controversy in this case in paragraph 3.2 of 1st defendant's final address when he stated: "... the issue in this case is not whether the Plaintiffs are the owners of House 164, 1st Avenue, FHA Estate Lugbe, Abuja or not, rather the issue is whether the Plaintiffs are on House 166 1st Avenue, FHA Estate Lugbe, Abuja."

Submissions of Learned Counsel for the 1st Defendant:

Learned counsel for the 1st defendant argued that the claimants have failed to prove ownership of the house in which they presently reside, which is House 166. The 2nd claimant has been informed severally that he is not in House 164 but in House 166. Counsel posited that assuming the claimants are in House 164, they are clearly in breach of the terms and conditions as stated in the letter of allocation dated 15/7/2008. It is clear from the evidence that claimants altered and reconstructed the whole building which was done without prior approval of FHA and a violation of the terms and conditions in clause 2[i], [ii], [iii] & [iv] of the letter of allocation, which provide:

- i. *Pay a ground rent of N8 only per square metre per annum in advance, commencing from January 2008 subject to revision every Ten [10] years or as the Federal Housing Authority [FHA] may decide from time to time.*

- ii. *Not use any or whole of the premises allocated for any other purpose except Residential and the occupation of same either as an office, shop, light industry or any other use not in accordance with the user clause of this allocation, would automatically attract forfeiture of the allocation.*
- iii. *Not to construct servant quarters, perimeter fences or any other structure around or within the demised premises without prior approval of the Authority being sought and obtained, in writing, the violation of which shall attract demolition, penalty or both.*
- iv. *Not to alter or cause to be altered the external design or structure of the property. Internal alteration may, however be effected only after prior approval of the FHA being sought and obtained in writing.*

Mr. Joseph OluwarotimiOjo then submitted that the hands of the claimants are not clean as they are in breach of the terms in the instrument of allocation. He who comes to equity must come with clean hands and the claimants cannot benefit from their illegal act. The cases of **Oti v. EFCC [2002] 14 NWLR [Pt. 1743] 48** and **Tonimas Nig. Ltd. v. Nze Bernard Chigbu [2020] 6 NWLR [Pt. 1720] 237** were referred to. It was argued that the claimants' alternative relief to reliefs [a] & [b] have admitted that they are presently not occupying House 164 and facts admitted need no further proof. Also, the claimants were never checked into House 166, 1st Avenue, Lugbe Estate, Abuja by the officials of the 1st defendant.

Submissions of Learned Counsel for the Claimants:

In paragraph 2.25 of the claimant's final address, Mr. Muoemeka highlighted the evidence elicited from DW1 during cross examination and submitted that these pieces of evidence support the claimants' case that they are occupying House 164 and not House 166 allocated to the 4th defendant, which is now occupied by Wema Bank. He cited the case of **Gagi v. Paye [2003] 8 NWLR Pt. 823] 585** to support the principle that evidence elicited from a witness during cross examination is relevant and admissible.

The claimants' counsel further stated that the 1st defendant has made "*empty emphasis*" on check-in letter and claimed that the claimants entered into the wrong house. He referred to the evidence of PW1 that the claimants were led into possession by the FHA officials at Lugbe site office after they ejected the illegal squatters in the house and they [the claimants] have been in possession of the house since 2008. It was submitted that there is nothing in Exhibits A & B requiring the issuance of any check-in letter as pre-condition. The reliance on check-in letter is belated, post-contractual and inapplicable. Exhibit B mentioned all necessary terms to the exclusion of check-in letter. He referred to **Amaka v. A.G., Ondo State [2012] LPELR-8478 [CA]** to support the view that the express mention of one thing is the exclusion of others.

Learned counsel for the claimants referred to the evidence of DW1 during cross examination that the 4th defendant was checked into House 166 which is

now occupied by Wema Bank and his evidence that from the layout [Exhibit Defence28], Wema Bank is occupying House 168. He then asked: [i] how is the same house bearing House 168 instead of House 166?; and [ii] how can FHA check the 4th defendant into House 166 and after Wema Bank took over, the same house turned to House 168 in the new layout?

K. C. Muoemeka Esq. also referred to the evidence of DW1 during cross examination that the 1st defendant can re-number houses and alter the layout. He reasoned that this evidence implies that 1st defendant must have tampered with the initial layout by re-numbering the houses to cover up the liability in re-allotting the 4th defendant's House 166 to Wema Bank. He noted that the 4th defendant's petition to ICPC was that the 1st defendant re-allotted his house to someone. This explains why the houses in the layout were re-numbered; House No. 166 was re-numbered as House No. 168 and the claimants' House No. 164 was re-numbered as House No. 166 "*just to cover up their trash.*"

Mr. K. C. Muoemeka also posited that the evidence of PW2, ATM print-out and staff complimentary card of Wema Bank support the claimants' case that they are occupying House 164 and that Wema Bank is in House 166. Based on the above submissions, counsel concluded that the claimants have proved that they are occupying House No. 164 and not House No. 166.

Decision of the Court:

In order to determine whether the house occupied by the claimants is House 164 allocated to the 1st claimant or House 166 allocated to the 4th defendant, let me first refer to some pieces of evidence elicited from DW1 during cross examination. As I had said, some of these pieces of evidence were highlighted by K. C. Muoemeka Esq. in paragraph 2.25 of the claimants' final address. When DW1 was cross examined, he stated that:

- a) House 166 was allocated to the 4th defendant by the 1st defendant and in 2003, he checked-in the 4th defendant into House 166. The said House 166 is presently occupied by Wema Bank
- b) The initial building where Wema Bank is presently located was demolished and a new building was erected by Wema Bank.
- c) The 1st defendant has power to re-number plots or houses.
- d) His office carried out an investigation based on the petition written by the 4th defendant to ICPC against FHA [i.e. Exhibit Defence 13] claiming that FHA re-allocated his house to someone.
- e) From their investigation report [Exhibit Defence 12], the property or house complained of by the 4th defendant is presently occupied by Wema Bank.

The Court agrees with claimants' counsel that the above pieces of evidence support the case of the claimants that the house they are occupying is House 164 while the house allocated to 4th defendant, which is presently occupied by

Wema Bank, is House 166. In his reply on points of law, the 1st defendant's counsel argued that it was the 1st claimant who checked herself into House 166, pulled down the structure and erected a new one without the approval of the 1st defendant. With due respect, the view that the 1st claimant pulled down the structure on House 166 and erected a new one is not supported by the evidence before the Court.

Secondly, the ATM print-out [Exhibit F1] and the Wema Bank complimentary card of Joel Hikon Hezekiah [Exhibit G] support the case of the claimants that Wema Bank is located in House 166, 1st Avenue, Lugbe Estate, Abuja.

Thirdly, the evidence of PW2 supports the claimants' case that they are not occupying House 166. The evidence of PW2 is that he was a tenant in House 166 before he was ejected by the 4th defendant, his agents and some staff of FHA from the house. After he was ejected, the house was empty for a while and was later sold to Wema Bank Plc.

In his reply on points of law, the 1st defendant's counsel submitted that PW2 is an unreliable witness, who was "*cajoled*" by the 2nd claimant to come to Court to testify in his favour. The Court has no basis to hold that PW2 is an unreliable witness especially as his evidence that House 166 belonged to the 4th defendant but later occupied by Wema Bank Plc. is similar to the evidence of DW1. I hold that the evidence of PW2 is reliable.

Fourthly, the comment made by Alfred N. Agu Esq. [who appeared for the 4th defendant] when he was called upon to cross examine PW2 on 12/6/2018 is

also relevant to the issue under focus. Alfred N. Agu Esq. said: *“I do not intend to cross examine PW2 because his evidence supports the case of the 4th defendant.”*The claimants’ counsel submitted that Alfred N. Agu Esq. *“told the Court that the evidence of PW2 supports the case of the 4th defendant and represents the truth.”*

In the 1st defendant’s reply on points of law, Joseph OluwarotimiOjo Esq. argued that the comments made by Alfred Agu Esq. who claimed to be counsel for the 4th defendant is not helpful to the Court. Alfred Agu Esq. did not file a memorandum of appearance or any other process in this case. At best, he could only be seen but cannot be heard. He referred to Order 9 rule 1 of the Rules of the Court on the need to file a memorandum of appearance. He referred to **Dambam v. Lele[2000] 11 NWLR [Pt. 678] 413;** and submitted that rules of court are meant to be obeyed.

The Court is of the humble view that the comment made by Alfred Agu Esq., counsel for 4th defendant, is an approval of the evidence of PW2 and supports the claimants’ case that they are not in House 166. The Court will not disregard the view of counsel for the 4th defendant merely because he did not file a memorandum of appearance. Even if the Court disregards the comment of Alfred Agu Esq., the 4th defendant did not cross examine PW2. The effect is that the evidence of PW2 that he was the tenant of the 4th defendant in House 166 is deemed admitted by the 4th defendant.

The fifth point is that the evidence elicited from DW1 when he was cross examined in respect of the layout of the Estate [Exhibit Defence28] supports the case of the claimants. DW1 stated that:

- a) Immediately after the property in dispute, there is an empty plot of land on the right designated as a Police station. After the Police station, there is a stream that forms part of green area.
- b) There is a plot close to the stream allocated by FHA; the house was not built by FHA. The said plot was not in the first layout produced when the Estate was built. Wema Bank shares common fence with the said plot allocated near the stream.
- c) FHA has power to allocate plots and redesign the layout to include new plots carved out. FHA has power to renumber plots or houses.
- d) From the Police station in Exhibit Defence28, going to the right, there is House No. 928. After House 928, there is a space. After the space, there is House 168 where Wema Bank is currently located.
- e) By the immediate left of the Police station, there is House 166 where the claimants are occupying.

From the above evidence of DW1, it is evident that Exhibit Defence28 was not the initial layout of the Estate. Also, the house occupied by the claimants [which is number 166 in Exhibit Defence28] is by the immediate left of the Police station while Plot 928 is by the right of the Police station followed by a

space and thereafter the House where Wema Bank is located [which is numbered 168 in Exhibit Defence28]. Thus, it is clear that the house occupied by the claimants since 2008 is different from the house where Wema Bank is located. For the sake of emphasis, the house numbered 168 in Exhibit Defence28 is the same House 166 originally allocated to the 4th defendant and where he was checked into by DW1 in 2003.

It is reasonable to infer that the 1st defendant renumbered the house occupied by the claimants from 164 to 166 in the layout of the Estate [Exhibit Defence28], which was not the first or initial layout. Now, will the change of the numbering of the house occupied by the claimants from 164 to 166 defeat or adversely affect their claim of ownership of the house? My answer is an emphatic no. I hold that since the numbering or renumbering of houses in the Estate is the prerogative and internal affair of the 1st defendant, it will not affect the claimants' right of ownership of the house.

In his effort to persuade the Court to hold that the claimants are occupying House 166, counsel for the 1st defendant relied on the evidence of DW1 that the 1st claimant was not checked into House 164; rather, she checked into House 166. Counsel relied on the evidence of PW1 during cross examination that: [i] when a person is allocated a house in FHA, he is checked into the house by staff of FHA; and [ii] the check-in is for the allottee or owner and staff of FHA to be certain about the house to be possessed by the allottee.

The evidence of PW1 is that after the allocation of House 164 in 2008, the 1st claimant was detailed with some staff of the 1st defendant who put her into possession after FHA Lugbe office Annex ejected the illegal occupants in the House. The 1st defendant did not challenge or controvert the evidence of PW1 that FHA staff ejected the illegal occupants in the House and put the 1st claimant into possession.

In paragraph 22 of the statement of defence, the 1st defendant averred that “*a check-in letter was later discovered in the 1st Plaintiff’s file with the 1st defendant, which had some irregularities.*” DW1 tendered the check-in letter as Exhibit Defence 20. In paragraph 22[a] & [b] thereof, the particulars of irregularities were pleaded. The evidence of DW1 in paragraph 15 of his statement on oath is in support of the above averments. According to DW1, the irregularities are as follows:

- a) As the Senior Estate Officer, his name is supposed to be written under the space: “*Allottee checked in by*” and he is supposed to sign, but the check-in letter of 1st claimant does not contain his name and signature.
- b) The space where “*Authorized by*” is provided for in the check-in letter is supposed to be signed by Mrs. Sarah Ogiefa but that space was signed by the 1st claimant.

The evidence of DW1 under cross examination is that as at 2008 when the claimants entered into the house, he was not the Senior Estate Officer in FHA

Lugbe and he was not part of the team that did check-in. Sarah Ogiefa was not in charge of checking-in of allottees into the houses. Therefore, I am of the view that the irregularities pleaded by the 1st defendant have not been proved because DW1 is not in a position to deny that the 1st claimant was checked into House 164 in 2008. To my mind, the 1st defendant's officers in charge of checking-in allottees in FHA Lugbe Estate as at 2008 are necessary or vital witnesses to testify that they did not check-in the 1st claimant into House 164 in 2008 after removing illegal squatters from the said House 164.

Also, it is not in dispute that the 1st claimant moved into the house in 2008. If the 1st claimant was not checked into the house by officers of the 1st defendant as alleged, one wonders why the 1st defendant did nothing from 2008 till 10/12/2015 when it wrote the letter, Exhibit Defence 20, addressed to the Occupant of House No. 166, which it said was served on the occupant of the house occupied by the claimants.

It is also worthy of note that the 1st claimant's check-in letter [Exhibit Defence 20] was certified by the Executive Director, Business Development of the 1st defendant on 23/3/2016. This means that Exhibit Defence 20 forms part of the official records of the 1st defendant. That being the case, I hold that the 1st defendant cannot challenge/impugn the credibility or validity of a document which forms part of its official records.

Now, assuming the 1st defendant is correct that 1st claimant was not checked into House 164 by its officials, I hold the respectful opinion that this will not invalidate the claimants' ownership of House 164. This is because, as rightly argued by the claimants' counsel, the terms and conditions of the allocation of House 164 to the 1st claimant are set out in the Letter of Allocation [Exhibit B]. In the said Exhibit B, check-in letter is not a condition for allocation or possession of House 164 by the 1st claimant. I agree with Mr. K. C. Muoemeka that check-in letter, which is extraneous to the terms and conditions of the allocation, cannot defeat the allocation of House 164 to the 1st claimant.

The other submission put forward by the 1st defendant's counsel is that the 1st claimant breached the terms and conditions of the allocation in that she altered and reconstructed the whole building without prior approval of FHA. The claimants' counsel argued that this issue did not arise during trial and fee for alteration was paid and the receipt of payment for alteration approval was tendered as exhibit.

It seems to me that this submission of the 1st defendant's counsel is not based on the case of the 1st defendant in its pleadings. The 1st defendant's case is not that the 1st claimant has forfeited, or is not entitled to, her allocation of House 164 because she breached the conditions and terms in Exhibit B. If I may be prolix for emphasis, the crux of the 1st defendant's case is that the claimants are not entitled to the house they are occupying because it is House 166 and

not House 164. Therefore, this submission is not relevant or helpful to the 1st defendant's case.

Be that as it may, PW1 tendered FHA receipt dated 3/7/2008 issued to the 1st claimant [Exhibit H] for N43,500 being payment for wall fence, BQ, alteration and setting out on House No. 164, 1st Avenue, Lugbe. I hold that since the 1st defendant had collected money for alteration of the House, it will not be proper for it to complain of the alteration or reconstruction of the House.

From all that I have said, the decision of the Court on Issue 2 is that the claimants have proved that the house they are occupying is House 164 and not House 166 allocated to the 4th defendant, which is where Wema Bank is presently located.

ISSUE 3

Are the claimants entitled to their claims?

In the light of the decisions of the Court in respect of Issues 1 & 2, the declaratory orders sought by the claimants in reliefs [a] & [b] are granted. The declaratory order sought in relief [f] is granted in part to the extent that the 2nd-4th defendants have no proprietary interest over House 164, 1st Avenue, FHA Lugbe Estate, Abuja, which is the claimants' present place of residence. Flowing from the above declaratory reliefs, the order for perpetual injunction in relief [d] is granted.

In relief [c], the claimants seek an order directing the 1st defendant to register the power of attorney between 1st&2ndclaimants and to issue consent over the sale of the said House since the 2ndclaimant has paid the mandatory ground rent fee of N125,000 and the consent fee of N750,000 to 1st defendant.

Learned counsel for the 1st defendant argued that during the purported sale, the claimants did not get or obtain the approval of the 1st defendant. He relied on clause 2[vi] in the Letter of Allocation issued to the 1stclaimant dated 15/7/2008 [Exhibit B], which provides that the 1stclaimant shall:

[vi] Not mortgage, subject, assign, transfer or part with possession of the housing unit or any part thereof however without the consent of the Federal Housing Authority first sought and obtained in writing, provided that such consent shall not be unreasonably withheld.

Joseph Oluwarotimi Ojo Esq. submitted that the condition for the allocation has been breached by the claimants as the consent of the 1st defendant is to precede the Deed of Assignment. Counsel stressed that in flagrant disregard of the terms and conditions contained in the instrument of allocation, the 1stclaimant sold her allocation of House 164 to 2ndclaimant without obtaining the written consent of the 1st defendant. He further submitted that a party cannot make a claim in his illegality or benefit from his own wrong; citing the case of **Adedeji v. Obajimi [2018] 16 NWLR [Pt. 1644] 146.**

On the other hand, learned counsel for the claimants stated that clause [vi] of Exhibit B provides that consent should not be unreasonably withheld. He

argued that although consent was not approved before the property was transferred, evidence has shown that the 2nd claimant has paid in full for consent. Thus, it will be unreasonable and inequitable for the 1st defendant to withhold consent after collecting money for consent. It was submitted that without first applying for consent, parties can execute deed of assignment and thereafter present same for Governor's consent. The case of Abubakar v. Junaid [2002] LPELR-49959 [CA] was relied upon. K. C. Muoemeka Esq. concluded that the Court has power to enforce the proviso in clause [vi] of Exhibit B and to compel the 1st defendant to register the Deed of Assignment.

Now, the evidence of PW1 is that in 2008, the 1st claimant assigned all her interest in the said House 164 to him and they executed a deed of assignment and power of attorney. The 1st claimant applied to 1st defendant for consent to assign the property to him [PW1] and also wrote to 1st defendant to register the power of attorney. The Deed of Assignment dated 9/7/2008 is Exhibit K while the letter by the 1st claimant to the 1st defendant dated 10/10/2008 titled: *Consent to Assign House No. 164, 1st Avenue Lugbe Estate, Abuja* is Exhibit L. He submitted the above documents to the 1st defendant for registration. I pause to note that PW1 did not tender the said power of attorney.

PW1 tendered the deposit slip dated 27/1/2016 [Exhibit C] for N125,000.00 as evidence of payment of ground rent for House 164. He also tendered Exhibit D as evidence of payment of consent fee of N750,000.00. In paragraph 27 of the statement of defence, the 1st defendant averred that the "*demand notice of*

N125,000.00 [...] purportedly paid by the 1st plaintiff was not authorized or signed by anyone in the 1st defendant's office and the said N750,000.00 [...] payment for change of ownership/consent of House 164, 1ST Avenue FHA Estate Lugbe Abuja has not been processed." Notwithstanding this averment, the point remains that the 2nd claimant paid the sum of N125,000.00 to the 1st defendant.

Part of the documents tendered as Exhibit D is a letter dated 1/2/2016 issued by 1st defendant to the 1st claimant. The letter referred to the 1st claimant's application for consent to assign the said House 164 to the 2nd claimant and informed her that *"the following charges have to be settled before approval can be given."* Consent fee was stated as N750,000. The 2nd claimant paid N750,000 on 10/2/2016. I have referred to the letter dated 1/2/2016 to show that 1st defendant demanded for consent fee, which was paid by the 2nd claimant.

Clause [vi] of the letter of allocation [Exhibit B] provides that consent to assign or transfer the said House 164 *"shall not be unreasonably withheld"* by the 1st defendant. Since consent fee of N750,000 has been paid by 2nd claimant to the 1st defendant as prescribed, will it be reasonable or justifiable for the 1st defendant to withhold consent?

The argument of the 1st defendant's counsel is that the consent of FHA ought to precede the Deed of Assignment. The question is whether the Deed of Assignment is invalid or void on the ground that the consent of FHA was not first obtained. I am guided by the decision in the case of **Abubakar v. Junaid**

[supra] where the Court of Appeal considered the issue whether a deed of assignment executed before obtaining the Governor's consent is void.

The Court of Appeal held that a holder of statutory right of occupancy can enter into negotiations and subsequent written agreement to assign the same which at that stage being inchoate does not require the consent of the Governor and it is not contrary to the law as it is to be eventually submitted to the Governor for consent. This is followed by the second stage in the transaction, to wit; forwarding the deed to the Governor for consent. Thus, the absence of prior consent of the Governor before a deed of assignment is executed does not render the assignment null and void. See also the cases of Iragunimav. Rivers State Housing and Property Development Authority [2003] 12 NWLR [Pt. 834] 427 and Ecotrade Ltd. v. Macfoy & Ors. [2015] LPELR-25205.

In line with the above decision, I hold that in the instant case, the fact that the Deed of Assignment between the 1st & 2nd claimants [Exhibit K] was executed before the 1st claimant applied for the consent of FHA to assign will not render the transaction void or illegal. Since consent fee has been paid by the 2nd claimant to the 1st defendant, I hold that it will be unreasonable and unjustifiable for FHA to withhold consent. Relief [c] has merit and is granted.

In relief [h], the claimants seek an award of N500 million against the 1st defendant as general damages. The 1st defendant's counsel submitted that the claimants have not established that the 1st defendant is a trespasser on House

166 where they are presently occupying. The viewpoint of the claimants' counsel is that general damages need not be specifically pleaded and proved; it is awarded where the Court is satisfied that the claimant has suffered loss, pain or injury. The award is to fairly compensate for the loss.

The evidence of the claimants is that they have been in occupation/possession of House 164 since 2008. I have taken into account the fact that by letter dated 17/2/2016 [Exhibit J], the 1st defendant advised the 1st claimant to vacate the premises not later than 7 days and threatened that failure to comply with the request will result to forceful ejection from the premises. The 1st defendant did not carry out the threat before the claimants filed this action. It is my respectful view that there is no basis to award general damages against the 1st defendant as prayed by the claimants. This claim is refused.

Conclusion:

I enter judgment in favour of the claimants. I make the following orders:

1. A declaration that the 1st claimant is the *bonafide* allottee and owner of House No. 164, 1st Avenue, FHA Estate, Lugbe, Abuja by virtue of the instrument of Allocation dated 15/7/2008 issued to the 1st claimant by the 1st defendant.
2. A declaration that by virtue of the instrument of allocation titled: "*Letter of Allocation of a Housing Unit at Lugbe Estate, Abuja, FCT House No. 164*"

1st Avenue" dated 15/7/2008 issued to the 1st claimant by 1st defendant and the occupation of the said House 164 by the claimants since 2008, the 1st defendant is estopped from referring to the said House 164 1st Avenue, FHA Estate, Lugbe, Abuja as House 1661st Avenue, FHA Estate, Lugbe, Abuja.

3. A declaration that the 2nd-4th defendants have no proprietary interest over House 164, 1st Avenue, FHA Estate, Lugbe, Abuja which is the claimants' present place of residence.
4. An order directing the 1st defendant to issue consent over the sale of House 164 1st Avenue, FHA Estate, Lugbe, Abuja by the 1st claimant to the 2nd claimant since the 2nd claimant has paid the ground rent fee of N125,000 and consent fee of N750,000 to the 1st defendant. 1st defendant shall grant or issue consent as aforesaid on or before 6/7/2022.
5. An order of perpetual injunction restraining the defendants whether acting by themselves or through their agents and privies from ejecting the claimants from their present place of residence at 1st Avenue FHA Estate Lugbe, Abuja.
6. Cost of N300,000.00 payable by the 1st defendant.

HON. JUSTICE S. C. ORIJ
[JUDGE]

Appearance of Counsel:

1. K. C. Muoemeka Esq. for the claimant.
2. Temitope Ayodele-Ogunjide Esq. for the 1st defendant; with AniefokEkanem Esq.