

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/2843/2020

DATE: : TUESDAY 16TH JUNE, 2021

BETWEEN:

ALHAJI ZAKARI JIBRIN

**(Suing through his Lawful
Attorney AHMED SULEMAN)**

CLAIMANT

AND

**1. THE LEGAL REPRESENTATIVES/DEFENDANTS
/ADMINISTRATORS OF THE
ESTATE OF LATE MR. NNAEMEKA
ELOBI**

2. GHANA HIGH COMMISSION

JUDGMENT

The Claimant approached this Honourable Court vide writ of summons and sought for the following reliefs against the Defendants; to wit:-

- i. A Declaration that the Certificate of Occupancy **No. FCT/ABJ/AN/2457** purportedly issued to the 1st Defendant in respect of Plot 1000, **Pope John Paul II Street Cadastral Zone A05, Maitama, Abuja**, is not capable in law in conferring or vesting any proprietary right or title on the 1st Defendant, as particulars or record of such Certificate of Occupancy, are not contained or found in the Records of the Federal Capital Territory Authority (FCDA) or at Abuja Geographical Information System (AGIS), the appropriate entities or agencies responsible for

keeping records of all genuine and authentic grants or title in lands within the Federal Capital Territory, Abuja, duly issued by the Hon. Minister, Federal Capital Territory.

- ii. A Declaration that in so far as the 2nd Defendant's root of Title is traced to the Certificate of Occupancy No. **FCT/ABJ/AN/2457** purportedly issued to the 1st Defendant in respect of **Plot 1000, Pope John Paul II Street Cadastral Zone A05, Maitama - Abuja**, particulars or record of which said Certificate of Occupancy are not contained or found in the Records of the Federal Capital Territory Authority (FCDA) or at Abuja Geographical Information System (AGIS), the appropriate entities or agencies responsible for keeping records of all genuine and authentic

grants or title in lands, within the Federal Capital Territory, Abuja, duly issued by the Hon. Minister, Federal Capital Territory, the 2nd Defendant cannot in law lay claim to the proprietary right or title over the said property.

- iii. A Declaration that the Claimant having participated in the Walk in – bid exercise for the purchase or sale of Federal Government properties, which resulted in the issuance of Certificate of Occupancy **No. 178fw-13d9z-2971r-17c8u-10**, in his favour, by the Federal Capital Territory Authority (FCDA), remains the rightful, bonafide and authentic owner of the property situate at **Plot 1000, Pope John Paul II Street Cadastral Zone A05, Maitama – Abuja.**

- iv. A Declaration that the unauthorized entry and unlawful occupation of the Claimant's property situate at **Plot 1000, Pope John Paul II Street, Cadastral Zone A05, Maitama – Abuja**, by the Defendants or any person(s) claiming through them or their servants, assignees, privies, howsoever described, amounts to trespass in law and therefore actionable.
- v. An Order of this Honourable Court evicting, forthwith, the Defendants or any person(s) claiming through them, or their servants, assignees, privies, howsoever described, claiming through them the Claimant's property situate at **Plot 1000, Pope John Paul II Street, Cadastral Zone A05, Maitama – Abuja**.

- vi. An Order of Perpetual Injunction restraining the Defendants or any person(s) claiming through them or their servants, privies, howsoever described, claiming through them from further trespassing or entering into the Claimant's property situate at **Plot 1000, Pope John Paul II Street, Cadastral Zone A05, Maitama – Abuja**, the Claimant's property situate at **Plot 1000, Pope John Paul II Street Cadastral Zone A05, Maitama – Abuja**, by the Defendants.
- vii. General damages in the sum One Hundred Million Naira (100,000,000.00) only.
- viii. Cost of this action.

At the close of exchange of pleadings, suit was set down for hearing.. Claimant called a sole witness

who tendered various documents in support of its case.

Defendants on their part equally called a lone witness who tendered documents in support of the case of the Defendants.

The case of the Claimant as distilled from the witness statement on oath of PW1 is that he applied and was successful in the walk – in bid to purchase a Federal Government property situate at **Plot 1000, Pope John Paul II Street, Cadastral Zone A05, Maitama – Abuja** and was issued a letter of offer dated 20th April, 2006 by the Ad-hoc Committee on the Sale of Federal Government property under the auspices of the Federal Capital Development Authority(FCDA).

Offer was made which was accepted by the Claimant and the purchase price in the amount of N58,000,000.00 (Fifty Eight Million Naira) was paid.

Claimant avers that he paid the assessed ground rents and was issued payment receipts, revenue collector's receipt and certificate of occupancy over the said plot/property. And upon going to the property to take possession, met an unknown person in possession thereof and had let in tenants/squatters thereby claiming to be the landlord and owner of the property.

That upon enquiry from the unlawful occupants, the name of the 1st Defendant was mentioned as the owner of the property and that he leased the property

to the 2nd Defendant who put them in possession of the said property.

That armed with this information, the Claimant quickly instructed his counsel **Messrs AuduKarimu& Co.**, to write to the Defendants unauthorized and unlawful occupants to vacate the said property.

That the 2nd Defendant through her counsel **Messrs Kenneth O. Gbagi&Associates**, replied the Claimant's Solicitors vide a letter dated 21st August, 2020.

Claimant stated that it conducted search on the property at the Ad-hoc Committee on sale of Federal Government houses and finally, he also applied for legal search on the property at the Abuja Geographical Information Systems (AGIS), which

serves as the Department of Land Administration of the FCDA, and the response from the Department of Development Control says expressly that available records in the department indicate that there was no submission of building plan approval in respect of the property. The report of the Ad-hoc Committee on sale of FGN houses stated unequivocally that the property was sold to the Claimant. In the same vein, the legal search report indicates that the certificate of occupancy was granted to the Claimant and that the property is free from encumbrances.

PW1 tendered the following documents in evidence.

- a. Letter of offer as Exhibit “1”
- b. Two Receipt dated 25th February, 2020 as Exhibit “2”
- c. Power of Attorney as Exhibit “3”
- d. Letter dated 21st August, 2020 as Exhibit “4”

- e. Search Report as Exhibit “5”
- f. Certificate of Occupancy as Exhibit “6”
- g. Revenue collection receipt as Exhibit “7”
- h. Letter dated 25th August, 2020 as Exhibit “8”
- i. Letter from FCT as Exhibit “9”.

PW1 was cross – examined and subsequently discharged. Claimant eventually closed its case.

I wish to observe that both Defendants though represented by a common Law Firm i.e Kenneth O. Gbayi& Associates, filed separate statements of defence.

The case of the Defendant as distilled from the witness statement on oath of DW1 is as thus;

That the 2nd Defendant upon the purchase of the landed property aforesaid from the first Defendant submitted the drawings, Architectural, Electrical,

Mechanical, Drawings and obtained approval from the Federal Capital Development Authority (FCDA), and that the Claimant is not the bonafide and authentic owner of the subject matter of this suit; a property lying/situate and known as **No. 30, Plot 1000, Pope John Paul II Street, Maitama, Abuja.**

Defendant stated that the claimant, has never ever been in possession and/or ownership of the subject matter in dispute (**No. 30, Plot 1000, Pope John Paul II Street, Maitama, Abuja**) in whatever and whosoever manner.

That the landed property was allocated to the 1st Defendant who sold the said landed property to the 2nd Defendant in the sum of N200,000 (Two Hundred Thousand Naira), executed the Deed of Assignment dated 22nd of August 1990, the

Certificate of Occupancy No. **FCT/ABJ/AN/2457** dated 28th February, 1990, consent letter, the Power of Attorney dated 22nd August, 1990.

2nd Defendant's witness avers that at no time did anybody lived in the property as tenants upon the purchase of the landed property from the 1st Defendant. The 2nd Defendant took steps with its Architects and Engineers to put up drawings for the property; which drawings, the Federal Capital Development Authority charged the 2nd Defendant N4.5 Million, for its approval and the building was constructed from 1989 to 1991.

That the landed property at **Plot 1000, No. 30, Plot 1000, Pope John Paul II Street, Maitama, Abuja** was allotted to NnaemekaElobi who was the only valid owner of the property; who then sold to the

2nd Defendant for the sum of Two Hundred Thousand Naira (200,000.00) only vide the receipt of purchase Nos. 039232, 039306, 035875 and 039116 all dated 4th September, 1989 also 116457 and 116515 dated 8th July, 1988, Power of Attorney dated 22nd August, 1990 and letter of consent and at no time since inception of Abuja has the property been allotted to any other person since the 2nd Defendant built on the property.

DW1 also stated that the 1st Defendant being the original person allotted the property; divested his total interest having sold to the 2nd Defendant for Two Hundred Thousand Naira (N200,000.00) only; which sales and all the documentations as contained in this suit vested ownership on the 2nd Defendant who on that basis commenced construction from

1989 to 1991 and has been in peaceful occupation of the property from 1992 till date.

Whereof the 2nd Defendant counter claims against the Plaintiff as follows:-

- a. A Declaration that the 2nd Defendant is the beneficial owner of Plot No. 1000 lying and situate at **No. 30 Pope John Paul Street, Maitama – Abuja** measuring an area of approximately **1740.22 SQ. MTRS** and covered by Certificate of Occupancy No. **FCT/ABU/AN/2457** dated 28th February, 1989 issued in the name of Nnaemeka Elobi and later assigned to the 2nd Defendant vide a Deed of Assignment dated 22nd August, 1990.
- b. A Declaration that the acts of the Plaintiff who has been disturbing and interfering with the

2nd Defendant–Counter Claimants’ right of ownership, possession and enjoyment of Plot No. 1000 lying and situate at No. 30 Pope John Street, Maitama – Abuja measuring an area of approximately **1740.22 SQ. METERS** and covered by Certificate of Occupancy No. **FCT/ABU/AN.2457** dated 5th January, 1990 issued in the name of Nnaemeka Elobi and later assigned to the 2nd Defendant vide a Deed of Assignment dated 22nd August, 1990 without any lawful justification is illegal and unlawful.

- c. A Declaration that the issue of Certificate of Occupancy No. **178fw-13d9z-2971r-17c8u-10** to the Plaintiff by the Minister of Federal Capital Territory over plot 1000 lying and situate at no. 30 Pope John Paul Street, Maitama – Abuja which is already covered by Certificate of

Occupancy No. **FCT/ABU/AN.2457** dated the January. 1990 issued in the name of NnaemekaElobi and later assigned to the 2nd Defendant vide a Deed of Assignment dated 22nd August, 1990 is ultra vires and thereby unlawful.

- d. An Order revoking the Certificate of Occupancy No. **178fw-13d9z-2971r-17c8u-10** issued in error to the Plaintiff by the Minister of Federal Capital Territory over plot 1000 lying and situate at No. 30 Pope John Paul Street, Maitama – Abuja.
- e. An Order of perpetual injunction restraining the Plaintiff, their agents, servants assign and privies from trespassing into the 2nd Defendant Counter Claimants’ land lying and situate at no. 30 Pope John Paul Street, Maitama – Abuja measuring an

area of approximately **1740.22 SQ. MTRS** and covered by Certificate of Occupancy No. **FCT/ABU/AN.2457** dated 5th January, 1990.

- f. N10,000,000.00 (Ten Million Naira) Cost of action.

DW1 was cross – examined and discharged.

Learned counsel for the Defendants filed a joint written address of the 1st and 2nd Defendants and formulated the following issues for determination;

- a. Whether the Claimant can claim title to the land known as plot 1000 No. 30 Pope John Paul II Street, Maitama, Abuja based on a certificate of occupancy issued more than 30 years after the issuance of an earlier certificate of occupancy to the Defendants by the appropriate authority.

2. What is the effect of the Exhibits marked rejected on the Defendants case.

On issue one, whether the Claimant can claim title to the land known as plot 1000 No. 30 Pope John Paul II Street, Maitama, Abuja based on a certificate of occupancy issued more than 30 years after the issuance of an earlier certificate of occupancy to the Defendants by the appropriate authority;

It is the submissions of the learned counsel that the Claimant has no title to the land and their purported certificate is not worth the paper it is written on.

Counsel contended that Exhibit “D4” tendered by Gideon Quarpo was admitted without objection by the Claimant’s counsel and the document tendered was the original of the certificate of occupancy and the law is that where there is a contest over

possession of land, the party with a better title is entitled to possession and the other is a trespasser. Counsel relied on *MACAULEY VS OMIYAU (1997) 4 NWLR (Pt. 497) 94 at 103.*

Counsel contended further that the principle of *nemodat quod nonhabet* applies in this case as once a grant of right subsists in land, it can only be extinguished by a lawful revocation and not by another grant to a different person. Counsel cited *TORONTO HOSPITAL (NIG). LTD VS UKPAKA (2018) 4 NWLR (Pt. 1613) 426.*

On issue two, i.e the effect of the Exhibits marked rejected on the Defendants case;

Counsel contended that Exhibits “D5” – “D6” were wrongly rejected as the law is that admissibility of a document depends on the purpose for which it is

sought to be tendered, and that the purpose of tendering Exhibit “D7” is to show that the 1st Defendant had a contractual obligation to the 2nd Defendant and it ought to be admitted for that purpose. Counsel cited the case of *ANAEZE VS ANYASO (1993) 5 NWLR (Pt. 291) 1 at 25*.

With respect to Exhibit “D8”, an application for consent of the Hon. Minister to transfer interest/title from the 1st Defendant to 2nd, with respect to dating, the law is that the absence of a date on a document does not affect its admissibility but can only go to weight to be attached. *GLOBAL SOAP DETERGENT VS NAFDAC (2012) 5 NWLR (Pt. 1294) 511 at 535*.

On the counter claim, counsel argued that the Claimant as Defendant to the counter claim did not

file a statement of defence to the counter claim and that the implication is that, the Claimant admits all the facts adduced against them. Counsel relied on Order 18 Rule 2 of the Rules of this court.

Court was finally urged to dismiss this claim of Plaintiff and grant the counter claimant of the Defendant.

Upon service, the Claimant filed its written address wherein two issues were formulated for determination to wit;

1. Whether the Claimant proved his case in accordance with the law.
2. Whether the Defendants proved their counter – claim in accordance with the law.

On issue one, whether the Claimant proved his case in accordance with the law;

Learned counsel submit that the court is bound by the reliefs of Plaintiff and must confine itself within the ambit of the claims. Claimant's counsel contended the fact that its case is founded on the fact that;

- a. That the committee on the sale of the Federal Government Houses put up the property, the subject of this suit for sale via a bidding exercise
- b. That the Claimant bided for the property and was successful.
- c. That pursuant to his successful bid he got an offer letter from the committee.

- d. That he accepted the offer and made necessary payments for the purchase of the house.
- e. That subsequent to payments made, he got title documents in respect of the property.
- f. That in an attempt to take possession was unsuccessful.

Counsel cited and relied of *A.G FED. VS ALC LTD (2000) 10 NWLR (Pt. 675) 293 at 305 – 306.*

Learned counsel contended further that Claimant has established the burden of proof casts upon it and same shifted to the Defendant as the purported pre – existing certificate of occupancy was totally misplaced as same does not exist in the records of the land Registry (AGIS) of the Federal Capital Development Authority.

It is further the argument of learned counsel that search report tendered before this Honourable Court confirmed that the plot was registered in favour of the Claimant and therefore it means since there was no record of any existing certificate of occupancy in favour of the Defendants, the issue of its revocation before re-allocation of the plot to the claimant would not arise. ***OMIYALE VS MACAULAY (2009) LPELR 2640 SC was relied upon.***

Learned counsel also maintained in its argument that Defendants pleaded and sought to rely on the Deed of Assignment purportedly executed between them and the Power of Attorney but these documents were not registered in line with law and therefore inadmissible: ***AKINDURO VS ALAYA (2007) 15 NWLR (Pt. 1057) 312 page 330 – 331 was cited by counsel.***

Court was urged to resolve all arguments in favour of the Claimant with respect to the case of the Defendants, learned counsel for the Claimant contended that DW1 was incapable in the eyes of the law of given evidence on behalf of the 1st Defendant as there was no Power of Attorney donated to him to so testify. On the status of Exhibits “D1”, “D2” and “D3”, court was urged not to attach value to same as same have not tendered by a witness giving direct evidence or by a witness who was authorised to so do.

On the counter claim of the Defendants, counsel equally argued that, the counter – claim of the Defendants are declaratory in Nature and therefore must be proved as required by law, as admission has no place in declaratory relief. ***OKEREOCHA VS***

***MIN. OF COMM. & TOURISM (2001) 1 NWLR
(Pt. 693) 126 at 139.***

The Defendant upon service of the Claimant written address filed a reply wherein, the Defendant stated that section 1 of Evidence Act, 2011 which governs admissibility of evidence and section 175 of the Act makes it clear that all persons are competent to testify.

Counsel argued that once declaratory reliefs are sought as in this case, the claimant must succeed on his case and not on the weakness of the Defendant's therefore all documents tendered must be in aid of the claimant's case, and that by Exhibit "1", time is of the essence and time to accept the offer was paramount.

Counsel also contended that by production of certificate of occupancy by the Defendants, it is obvious that the Defendants are owners of the property in question.

Court was finally urged to dismiss the case of the Claimant and grant the counter claim of the Defendant.

Court:-

It is instructive to state from the onset that the principal reliefs sought by the Plaintiff against the Defendants are declaratory in nature. The law is settled in this area of jurisprudence. A Plaintiff such as in this case, who seeks declaration of right, must succeed on the strength of his case and not on the weakness or absence of the defence.

Indeed, a declaratory relief is one that seeks the pronouncement of the court as to the status of a named matter, thing or situation. ***NWAGU VS FADIPE (2012) LPELR 7966 CA.***

By the endorsement and claim of Plaintiff he seeks a declaration that the certificate of occupancy No. **FCT/ABJ/AN/2457** purportedly issued to the Defendant in respect of Plot 1000, Pope John Paul II, Street Cadastral Zone A03, Maitama, Abuja, is not capable in law in conferring or vesting any proprietary right as record of such certificate of occupancy are not contained or found in the Records of Federal Capital Territory Authority and others reliefs as captured in the preceding part of this Judgment.

Judicial pronouncement is ad-idem that declaratory relief are never granted based on admission or on default of filing defence. ***MOTUNWASE VS SORUNGBE (1988) WNLR (Pt. 92) 90.***

Where the court is called upon to make declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleadings that he is entitled.

The imperativeness of this arise from the facts that the court has discretion to grant or refuse to grant such declaration. ***SAMESI VS IGBE & ORS (2011) LPELR 4412.***

The forgone authority remains good law and binds this court as well.

Claimant in an effort to satisfy this Honourable court to enter judgment in its favour called a sole witness who adopted his witness statement on oath and tendered some documents to establish that indeed, the parties is the owner of the land in question and to convinced court to enter judgment in his favour.

Whereas 1st and 2nd Defendants filed their statement of defence and counter claim with a sole witness statement on oath of one Gideon Kwame Quarcoowho adopted the said witness statement on oath in urging the court to dismiss the action and grant their counter claim.

From the totality of parties' case, i.e both oral and documentary before the Honourable court, the issue whether Claimant has provedits case on the balance

of probability has been formulated for determination by this court.

On whether the Plaintiff in the case in view is entitled to the reliefs claimed or not, it becomes most expedient to ascertain the root of title of the Plaintiff first and foremost.

There are five ways of proving ownership to land that are recognized by judicial decision. One or more of the mode are usually used in proof. They are:-

- a. Traditional evidence
- b. Production of documents of title
- c. By proving acts of ownership numerous and positive enough to warrant an inference that the person is the owner.
- d. Act of long possession and

e. By proof of possession of connected or adjacent land. ***AKAOSE VS NWOSU (1997) 1 NWLR (Pt. 482) 478 at 492 paragraphs B – D.***

It is instructive to state here that both the Claimant and the Defendants tendered various title documents to show their respective nexus to the subject matter of litigation.

I pause here to state the law as regards the importance of documentary evidence. It has been held by plethora of court decisions that documentary evidence is the yardstick or a hanger by which the veracity of oral testimony or its credibility is put to test. ***OGBEIDE & ANOR VS OSIFO (2006) LPELR 627 (CA).***

I must state here that, the court is under obligation to interpret every document accurately Not to add or subtract from the content of the document.

In *FAGUNWA VS ADIBI (2004) 17 NWLR (Pt. 903) 544 at 567 paragraph D-E the Supreme Court per Tobi JSC held as follows:-*

“A trial judge must consider relevant exhibits tendered along with oral evidence, he cannot take oral evidence and throw away documentary evidence which the primary evidence under section 94(1) of the Act.”

The Claimant tendered the following documents in evidence.

1. Offer letter dated 20th April, 2006.
2. Sales receipt dated 25th February, 2020

3. Power of Attorney dated 20th August, 2020
4. Solicitors letter dated 21st August, 2020
5. Search Report dated 24th August, 2020
6. Certificate of Occupancy dated 18th May, 2020
7. Revenue Collector receipt dated 4th June, 2020
8. Letter from Abuja Municipal Area Council dated 19th November, 2020.
9. Letter from FCTA date 19th November, 2020 all were admitted in evidence as Exhibits “1” to “9” in that order.

On the part of the 2nd Defendant, the following documents were tendered;

- a. Offer of residential Plot/Conveyance of Approval dated 28th February, 1989.

- b. Acceptance letter dated 28th February, 1989.
- c. Revenue Collector Receipt dated 4th September, 1989.
- d. Official Receipts.
- e. Power of Attorney
- f. Deed of Assignment
- g. Acknowledgment of payment
- h. Application for consent.

All were admitted in evidence and marked Exhibits “D1” to “8” except Power of Attorney and Deed of Assignment which were both marked rejected for the reason adduced in the ruling rejecting the said instruments.

I shall therefore, examine these documents to ascertain who has a better title to the land in dispute in the course of this Judgment.

I however need to state at this juncture that the Federal Capital Territory came into being by Decree no 6 of 1976, with 4th February, 1976 as the commencement date.

Section 297 (2) of the 1999 constitution of the Federal Republic of Nigeria as amended vests absolute ownership of land within the Federal Capital Territory in the Federal Government of Nigeria.

The said provision is in agreement with section 1(3) of the Federal Capital Territory Act 2004.

For ease of reference, I shall attempt to reproduce the said sections 297 (2) of the 1999 constitution of

Federal Republic of Nigeria as amended and 1(3) of the FCT Act.

Section 1(3) FCT Act.

“The area contained in the capital Territory shall, as from the commencement of this Act, cease to be a portion of the states concerned and shall henceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Federal Capital Territory shall likewise vest absolutely in the Government of the Federation.”

Section 297(2) of the 1999 constitution.

“The Ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria.”

Question.. Who then has the power to grant title to land within the Federal Capital Territory?

For all intents and purposes, the intention of the law makers on the status of Federal Capital Territory is deliberate.

What Government and the drafters of the Federal Capital Territory Act intended was for a verse expanse of land devoid of any form of cultural or hereditary inclination to be set aside for the development of the capital city.

No little wonder, even the original inhabitants who had occupied their ancestral lands were merely paid

compensation and asked to move on, regardless of the fact that generations were buried on such lands. See section 6 of the Federal Capital Territory Act.

A certificate of occupancy properly issued and where there is no dispute that the document was properly issued by a competent authority raises the presumption that the holder of the documents is the owner in exclusive possession of the land.

The certificate also raises the presumption that at the time it was issued, there was not in existence a customary owner whose title has not been revoked. It should however be noted that the presumption is rebuttable because if it is proved by evidence that another person had a better title to the land before the issuance of the certificate of occupancy the said

certificate of occupancy stands revoked. See *MADU VS MADU (2008) 2-3 SC (Pt. 11), 109.*

Whereas the Claimant tendered Exhibit “1” and Exhibit “6” which are letter of Offer and Certificate of Occupancy in his name, the Defendant/counter claimant tendered Exhibit “D1” and Exhibit “D4” which are letter of offer and certificate of occupancy in the name of 2nd Defendant.

To establish its nexus with the property, the subject matter of litigation, 2nd Defendant tendered Exhibit “D5” and “D6” which are Power of Attorney and Deed of Assignment respectively.

Eventhough the said Power of Attorney and Deed of Assignment have been marked rejected at the point of being tendered hence lack the competence to be re-considered by way of evaluation and

consideration of evidence, I shall state the correct position of the law as it relates to Deed of Assignment as conclusive proof of ownership of land.

A Deed of Assignment would be considered proof of ownership of property if it is;

1. Valid
2. Executed, stamped and registered
3. The vendor has the authority and capacity to make the assignment and
4. The assignor has what he proposes to assign.

Above was the position of Supreme Court (SC) in the case of ***UMEH BOTHERS CO. LTD. VS. OSENI (2019) 12 NWLR (Pt. 1686) 183 – 376 ratio***

5.

I have seen Exhibit '4' i.e.solicitors reply letter dated the 21st August, 2021 written on the letter headed paper of One Kenneth O. Gbagi& Associates addressed to One AuduKaumu of AuduKaumu& Co. Paragraph 2 of the said letter captured my attention and hereby reproduce same for the purposes of understanding the kernel of this legal embroglio.

“Our client who applied for a landed property to construct their residences, a property situated at House 30, Plot 1000, Pope John Paul 11 Street, Maitama, Abuja was allocated to the Ghana Government.The Ghana Government took appropriate steps to obtain building permits and constructed the aforesaid property for their own use”.

I am minded arising from Exhibit 'A' i.e 2nd Defendant's solicitor's letter to ask the following questions:

1. Was the land in question allocated to Ghana Government by the FCT Minister!

If yes, how then is the 2nd Defendant (Ghana High Commission) relying on an alleged purchase of the said land from One Nnaemeka Elobi now deceased and relying on an alleged Power of Attorney and Deed of Assignment!

Where is the evidence of approval of building permits obtained by the 2nd Defendant from the authorities conceived as alleged in paragraph 3 of Exhibit '4' under consideration!

Where is the approved drawings of the said property!

I am compelled to ask the afore-questions in view of the peculiar nature and status of land in the FCT.. unlike lands in other States other than Abuja, the issue of deemed grant as opposed to right grant can easily be raised with ancestral history of occupation being traced.

The only title known in the Federal Capital Territory (FCT) is allocation by the FCT Minister Pursuant to Section 18 of FCT Act. Ghana High Commission vide its solicitor's letter contended that it was allocated the said land by Government and that it eventually obtained permits to build and indeed did built the structure on the land.

However, the available evidence before the Court suggests a contrary position. 2nd Defendant through its sole witness tendered Exhibits “D1 – D8” which

were all mentioned in the preceeding part of this Judgment.

It is the law, through a long line of cases that an unregistered registrable instrument, though, is not admissible to prove title, is admissible to prove payment of money and coupled with possession of land by the purchaser, it may give rise to equitable interest. *FBN PLC. VS OKELEWU & ANOR (2013) LPELR 20155 (CA).*

The land instrument Registration Law, Cap 515, LFN Abuja has the following provisions;-

Section 3(1)

“There shall be in the FCT, Abuja, a land registry with an office or offices at such place or places as the minister may, from time to time direct.”

Section 3(2)

“The registry shall be the proper office for the registration of all instruments including power of Attorney affecting land.”

Section 15

“No instrument shall be pleaded or given in evidence in a court as affecting a land unless the same has been registered in the lands in question.”

Why did 2nd Defendant fail to register Exhibits “D5” and “D6” i.e the Power of Attorney and the Deed of Assignment in evidence same being its nexus with the subject matter!

What then shall be the value of the said Power of Attorney and Deed of Assignment in law bearing in

mind the provision of the land Registration Act, LFN, Abuja 1990, specifically section 3(2) and 15?

The implication of 2nd Defendant's sin is that the said Exhibits "D5" and "D6" shall be expunged, supposing they were admitted erroneously in evidence.

I hereby do expunge same from the document tendered in this court.

Question...where then stands the 2nd Defendant especially that the said Nnemeka Elobi (1st Defendant) was not called to testify in this case neither was DW1 (Gideon Kwame Quarpo) who testified shown any evidence that he had the authority from the estate of the Deceased to give evidence on its behalf.

Like the foetus which shall suffocate and die arising from the fact that the umbilical cord which is foetus source of oxygen, carbondioxide, 2ndDefendant shall suffer same fate.

Indeed, a certificate of Occupancy is only prima facie evidence of title to land or excusive possession of land. Consequently, if it is successfully challenged, it can be nullified. ***OTUKPO VS JOHN & ANOR (2012) LPELR 20619 (SC).***

The Claimant tendered Exhibit “1” which is a letter of Offer dated 20th April, 2006 in the name of ZakariJibrin. The said letter is from the office of Minister of Federal of Capital Territory, Abuja.

The said letter is in respect of all that property known as a Duplex situated at plot 1000, Pope John Paul Street, Maitama, Abuja FCT including and not

limited to the party walls, roofs, plumbing and electrical, sewage and other system, together with all appurtenances, rights, of way, easements, reversionary rights and privileges related thereto.

The said offer letter was accepted on the 24th April, 2006.

It is instructive to Note that the Offer Letter (Exhibit “1”) made reference to an application and subsequent successful walk in Bid to purchase the property owned by the Federal Government of Nigeria.

It is instructive to state that the official Gazette No. 82, Vol. 92 for the sales of Federal Government Houses, has the following provisions, paragraph 6 of the Official Gazette No. 82, Vol. 92 is hereby reproduced;-

“The Houses will be sold on as is, where is basis at the evaluated price with the current occupants having the first right of refusal to purchase within thirty days of offer. The said rights to purchase is neither transferable assignable nor alienable in any way or form.”

Paragraph 8

“Sale of houses will be advertised and application fees of N10,000.00 (Then Thousand Naira) only must accompany each application form, payable at designated Banks. The banks will remit all proceeds to a dedicated accounted in the name of the Federal Government of Nigeria with the Central Bank of Nigeria.”

Paragraph 9

“All houses whose right to purchase are not exercise will be sold in an open Auction whereby all Nigeria citizen shall be given equal opportunity.”

It is the contention of the Claimant that he participated in the work in Bid and won and was given all the necessary documents.

Claimant in further proof of it case tendered Exhibit “2” which is a Federal Government Revenue Receipt of the Ad-Hoc Committee on sale of Federal Government Houses in Abuja FCT with the property value of N58,000,000.00 which said amount was paid.

Claimant equally tendered Exhibit “5” which is a legal search report with Federal Capital Territory

Administration Department of Land Administration.
In the said legal search under other comment it has
the following:-

*“This Certificate of Occupancy (C of O) dated
18th May, 2020 was granted to ZakariJibrin
over property situated at dwelling plot No.
1000, Floor 08, parcel 1000, Pope John Paul
Street and conveyed as at the date of this
report.”*

From above, it is obvious that Exhibit “6” which is
Certificate of Occupancy in respect of the subject
matter is allotted to the Claimant. It is also in
evidence vide Exhibit “7” that Claimant paid ground
rent in respect of the subject matter.

Indeed in order to succeed in a claim to title to land,
a party who holds a certificate of Occupancy as the

Defendants in this case, will need to show his root of title, through his vendor or seller who must show valid title to the land over which he purchased, this is because certificate of occupancy can only be valid if title originates from a true owner of government saddled with the responsibility of effecting such a grant.

Defendant tendered Exhibit “D1” and “D4” which are letter of offer of terms of grant/conveyance of Approval and Certificate of Occupancy respectively to show that the land, the subject matter belongs to them. The Claimant tendered search report as Exhibit “5”. The said search report confirmed that the plot in dispute was registered in favour of the claimant. It means therefore that sincethere is no record of any certificate of occupancy in favour of the Defendants, the issue of its revocation before re-

allocation of the plot to the Claimant would not arise as only existing certificate of occupancy could have been revoked. ***OMIYALE VS MACAULAY (2009) LPELR 4640 SC.***

The Defendant equally stated in paragraph 16 of their statement of defence that the 2nd Defendant assumed ownership of the land situate at plot 1000 Maitama, Abuja and thereby constructed and completed a building on the land in 1992 as what is known today as No. 30plot 1000 Pope John II Street, Maitama, Abuja.

It is instructive to state here that, in their respective pleadings and oral testimony of DW1, no building plan approval was tendered. Claimant tendered Exhibit “8” titled “Re- request for Certified True

Copy of Building Plan Approval with respect to plot 1000, Cadastral Zone A05 Maitama, District.”

From the above Exhibit, it was clearly stated that available records in the Department indicate that there was no submission of building plan approval in respect of the above mentioned plot.

The implication therefore is that the case of the Claimant has been supported by that of Defendants and therefore court is bound to act on same. ***IRIRI VS ERHURHOBABA (1991) 2 NWLR (Pt. 173) 252 of 255.***

It can easily be deduced from what has played-out that 1st Defendant never had any land to have sold to the 2nd Defendant. The latin, maxim, nemo dat quod nonhabet is applicable here.. you can't give what you don't have.

I need to further observe here that though the Estate of the 1st Defendant filed a separate statement of defence, the sole witness who deposed to the witness statement on oath therein by name Richard Anim was never called to adopt the said witness statement on oath in support of the said defence of the 1st Defendant.

The implication in law is that the 1st Defendant's pleadings is deemed abandoned. This is so because pleadings are the body and soul of any case in skeleton form and are only built and solidified by the evidence in support thereof. Where a Defendant, as 1st Defendant here on his own volition refused to call evidence in support of his pleadings, the said statement of defence is deemed abandoned and become lame duck that cannot fly.

In law abandoned pleading become moribund and no reasonable court has the jurisdictional competence to revive dead pleading.. I rely on the authorities of *JOLAYEMI VS. ALAOYE (2000) 12 NWLR (Pt. 887) 322*; *DUROSARO VS. AYORINDE ALL FWLR (Pt. 260) 167*; *MANSON VS. H.E.S (Nig.) LTD. (2007) ALL FWLR (358) at 1084 Paras D – F (CA)*.

Accordingly, the said statement of defence of 1st Defendant having been abandoned is hereby struck-out.

As I stated from the preceding part of this Judgment, only the FCT Minister has the power to allocate land in the entire of the FCT Abuja.

Claimant who became seized of the subject matter vide Federal Government Policy on the sale of FGN

Houses which was properly gazetted, in the absence of any superior evidence and or argument is the rightful owner of the subject matter in dispute.

I make bold to re-iterate the ageless position of the law with respect to hearsay evidence which is testimony given by a witness who relates not what he knows personally but what others have told him or what he had heard said by others.

DW1 has made reference to the subject matter of dispute upon which he claimed was assigned to the 1st Defendant (now Deceased), and has equally given evidence on facts known only – to the knowledge of the 1st Defendant. Any such evidence given by DW1 not been direct evidence with respect to the issue in question is hearsay and inadmissible. All such evidence touching on how the 1st Defendant (now

deceased) came about the land is hereby jettisoned and accordingly discountenanced with.

Sections 37 and 38 of Evidence Act are instructive.

The onus of proof is nothing more than an onus to prove any issue or the various issues arising from the pleadings.

It is only and where issues of facts arise from the pleadings of the parties that one can then determine what those issues are and on whom the onus of proof lies. A Plaintiff can discharge the onus of proof in his pleading.

I find solace for this in the case of ***OLALE VS. EKWELENDU (1989) NWLR (Pt. 115) 326 (SC)***.

Claimant has discharged the onus placed on him and how he came about the subject matter. Indeed where

a fact is alleged and proven, the onus of adducing further evidence automatically shifts to the Defendant who shall fail if such evidence was not adduced. I rely on the case of *KUMBUL VS. UMEH (2013) LPELR – 20787 (CA)*.

The Estate of the 1st Defendant who allegedly claimed it was allocated the said land with no such record found at the applicable land registry at Federal Capital Development Authority (FCDA) or Abuja Geographical Information Systems (AGIS) was missing in action.. 2nd Defendant which claimed to have bought the said land could not have had the support of the law in recognition in the absence of registration of their interest pursuant to the extant provision of the law as stated in the earlier part of this Judgment.

Defendants, especially 2nd Defendant had the duty and responsibility in law of dragging the authorities of the Federal Capital Development Authority (FCDA) to court to give evidence on the subject matter and possibly bring the policy file in view of the fact that Claimant led and tendered search report which revealed the fact that there was no such evidence of Defendants' record at the lands registry which could have been the more reason why 2nd Defendant could not have registered the alleged Deed of Assignment and Power of Attorney which were rightly struck-out.

They are at best meddlesome interloper and mere busy body. Clearly, Defendants are squatters for all intents and purposes on the subject matter.

The subject matter belongs to the Federal Government of Nigeria (FGN) which through her policy she sold to the Claimant who has established a better title.

Claimant is clearly entitled to Judgment of this Court.

I hereby enter Judgment in favour of the Claimant and the following declarations are accordingly hereby made, as follows;

- i. That the Certificate of Occupancy No. **FCT/ABJ/AN/2457** purportedly issued to the 1st Defendant in respect of Plot 1000, **Pope John Paul II Street Cadastral Zone A05, Maitama, Abuja**, is not capable in law in conferring or vesting any proprietary right or title on the 1st Defendant, as particulars or record of such

Certificate of Occupancy, are not contained or found in the Records of the Federal Capital Territory Authority (FCDA) or at Abuja Geographical Information System (AGIS), the appropriate entities or agencies responsible for keeping records of all genuine and authentic grants or title in lands within the Federal Capital Territory, Abuja, duly issued by the Hon. Minister, Federal Capital Territory is **hereby granted.**

- ii. That in so far as the 2nd Defendant's root of Title is traced to the Certificate of Occupancy No. **FCT/ABJ/AN/2457** purportedly issued to the 1st Defendant in respect of **Plot 1000, Pope John Paul II Street Cadastral Zone A05, Maitama - Abuja**, particulars or record of which said Certificate of Occupancy are not contained or

found in the Records of the Federal Capital Territory Authority (FCDA) or at Abuja Geographical Information System (AGIS), the appropriate entities or agencies responsible for keeping records of all genuine and authentic grants or title in lands, within the Federal Capital Territory, Abuja, duly issued by the Hon. Minister, Federal Capital Territory, the 2nd Defendant cannot in law lay claim to the proprietary right or title over the said property is **hereby granted.**

- iii. That the Claimant having participated in the Walk in – bid exercise for the purchase or sale of Federal Government properties, which resulted in the issuance of Certificate of Occupancy No. **178fw-13d9z-2971r-17c8u-10**, in his favour, by the Federal Capital Territory

Authority (FCDA), remains the rightful, bonafide and authentic owner of the property situate at **Plot 1000, Pope John Paul II Street Cadastral Zone A05, Maitama – Abuja** is **hereby granted.**

iv. That the unauthorized entry and unlawful occupation of the Claimant's property situate at **Plot 1000, Pope John Paul II Street, Cadastral Zone A05, Maitama – Abuja**, by the Defendants or any person(s) claiming through them or their servants, assignees, privies, howsoever described, amounts to trespass in law and therefore actionable is **hereby granted.**

v. An Order of this Honourable Court evicting, forthwith, the Defendants or any person(s)

claiming through them, or their servants, assignees, privies, howsoever described, claiming through them the Claimant's property situate at **Plot 1000, Pope John Paul II Street, Cadastral Zone A05, Maitama – Abuja** is hereby granted.

- vi. An Order of Perpetual Injunction restraining the Defendants or any person(s) claiming through them or their servants, privies, howsoever described, claiming through them from further trespassing or entering into the Claimant's property situate at **Plot 1000, Pope John Paul II Street, Cadastral Zone A05, Maitama – Abuja**, the Claimant's property situate at **Plot 1000, Pope John Paul II Street Cadastral Zone A05, Maitama – Abuja**, by the Defendants is hereby granted.

Next relief is that of general damages in the sum of N100,000,000.00. (One Hundred Million Naira).

General damages means what the law presume to have accrued from the wrong complained of for the reason that they are its immediate, direct and proximate result or such necessarily results from the injury, or such as did in fact result from the wrong, directly and proximately and without reference to the special character, condition or circumstances of the Claimant. General damages are such as the court may give when the judge cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man.

Guided by reasons and sense of fairness, I hereby award the sum of N20,000,000.00 (Twenty Million Naira) as general damages

Next is the counter claim of the Defendants.. counter claim as we all know is a distinct action which Defendant for purposes of convenience join with their Defence.

Having failed to establish any known legal nexus to the subject matter which though is non-existent on record, like a pack of birthday cards, the roof collapses on their heads.

2nd Defendant/Counter Claimant sought for declaratory reliefs against the Claimant which shall succeed on the strength of the evidence so led in prove of same. Even though certificate of occupancy and other title documents were tendered by 2nd Defendant to show the fact that they are owners of the property by reason of purchase from the 1st Defendant, 2nd Defendant who alluded to the fact

and gave evidence that it later processed, paid and obtained building approvals from the relevant authorities failed to tender such approvals in evidence.

What more,... the alleged Deed of Assignment and Power of Attorney which were tendered by DW1 were rejected in evidence Pursuant to the reason adduced thereof,thereby severing the umbilical cord from the placenta which certainly shall lead to suffocation and death of the foetus.i.e the 2nd Defendant in this case. The case of the 2nd Defendant has even been worsened by the fact that 1st Defendant who allegedly sold the subject matter to them abandoned its pleadings which has been struck-out. 2nd Defendant is therefore left with the responsibility of establishing his legal connection to the subject matter, a duty it has not just failed but

woefully failed to establish having not been able to lead any credible evidence and therefore cannot be entitled to the reliefs sought in its counter claim.

The situation 2nd Defendant has found itself can be best described in the words of Prof. George O. Amadi as follows:-

“A sensible way of becoming sensible is to distil sense from nonsense and add sense to another sense extracted from another nonsense.. this is a recurring decimal which confronts us in the struggle to make sense out of our existence.”

The 2nd Defendant is Ghana High Commission. I am taking aback as to how Ghana High Commission will be involved in such a scandalous and embarrassing situation.. why and why would Ghana High Commission be speaking from both sides of its

mouth on how it came about the subject matter i.e land! This is so sad.

Indeed the plight of 2nd Defendant has been left in limbo to wither away as a judicial gate-crasher that has by provisions of law been consigned to a forlorn heap of legal fossil.

I will recommend, and I hereby recommend that the how and manner Defendants came unto the subject matter be investigated by the Nigerian Police and authorities of the FCT Administration.. I say this because from Exhibit 'D2' the said ElobiNnaemeka (Deceased's) address was FCDA Department of Planning and Survey Abuja.. this is to stem corruption in public service.. I say no more.

On the whole, 2nd Defendant's counter claim fails and is hereby dismissed.

*Justice Y. Halilu
Hon. Judge
16th June, 2021*

APPEARANCES

M.A Ebute, SAN. For the Claimant with Ibrahim Idris Esq. and Mayowa Ajileye Esq.

Defendants not in court and not represented.