

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT GUDU – ABUJA**

**DELIVERED ON TUESDAY THE 29<sup>TH</sup> DAY OF JUNE 2021.**

**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**

**SUIT NO.CV /306/2018**

**DR. PAUL HUSSEINI OKEKWU AMODU ----- PLAINTIFF**

**(Suing by his lawful attorney**

**Mark Eyigebe Amodu)**

**AND**

- 1. HONOURABLE MINISTER OF THE FEDERAL  
CAPITAL TERRITORY**
- 2. FEDERAL CAPITAL TERRITORY ADMINISTRATION ----- DEFENDANTS**
- 3. ABUJA GEOGRAPHICAL INFORMATION SYSTEMS**
- 4. ABUJA MUNICIPAL AREA COUNCIL**

**JUDGMENT**

By an amended statement of claim dated and filed on the 20<sup>th</sup> January, 2020, the Plaintiff sought this Honourable Court for the following reliefs;

1. A declaration that the Plaintiff is the bonafide owner of Plot No. 242, Cadastral Zone B13, Gaduwa District covered by Certificate of Occupancy Number 145aw-aff5z-55f5r-fa32u-10.

2. A declaration that the action of the 4<sup>th</sup> Defendant acting either by themselves, agents, privies or assignee in converting the aforementioned Plot No. 242, Cadastral Zone B13, Gaduwa District covered by Certificate of Occupancy Number 145aw-aff5z-55f5r-fa32u-10 into a cemetery is unjustifiable, illegal, ultra vires and done mala fide.
3. A declaration that allowing the claimant's land to be converted to a cemetery amounts to dereliction of duty and negligence on the part of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
4. A declaration that there is no way that the Plaintiff can reasonably erect a building and live peacefully in the said Plot No. 242, Cadastral Zone B13, Gaduwa District covered by Certificate of Occupancy Number 145aw-aff5z-55f5r-fa32u-10 which the Defendants have converted into a cemetery.
5. An order directing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to allocate another plot to the Plaintiff within the same vicinity with immediate effect as a replacement for Plot No. 242, Cadastral Zone B13, Gaduwa District covered by Certificate of Occupancy Number 145aw-aff5z-55f5r-fa32u-10 which the 4<sup>th</sup> Defendant illegally converted to a cemetery.
6. General damages against the Defendant to the tune of N5,000,000.00 (Five Million Naira).

7. Exemplary damages against the defendant to the tune of N2,000,000.00 (Two Million Naira).
8. Interest on the judgment sum at the conservative rate of 28% per annum from the date of judgment until final liquidation of the judgment.
9. Such further reliefs as this Honourable court may deem fit to make in the circumstance of this case.

In support of the writ of Summons is a 23 paragraph affidavit deposed to by Mark Eyigebe Amodu, Plaintiff's lawful attorney. Attached are 12 Exhibits.

A summary of the plaintiff's case as gathered from the statement of Claim is that the Plaintiff was duly allocated Plot No. 242, Cadastral Zone B13, Gaduwa District covered by Certificate of Occupancy Number 145aw-aff5z-55f5r-fa32u-10 by the Hon. Minister of the Federal Capital Territory. That the Plaintiff has been in quite possession and currently not in arrears of payment of ground rent. That due to the age of the Plaintiff he decided to donate a power of attorney to his son Mark Eyigebe Amodu. That sometime in 2016, his son informed him that he discovered that the perimeter fence demarcating the adjoining subject matter plot has been pulled down and merged with a substantial portion of his plot and they were all converted into a cemetery. That the said Plot was allocated to the community by the 4<sup>th</sup> Defendant (Abuja

Municipal Area Council) for that purpose. That the Plaintiff's solicitor wrote several letters to the Defendants as well as the Director Urban and Regional Planning of the Federal Capital Territory and the Director of Development Control, Abuja Metropolitan Management Council. That it was only the office of the Urban and Regional Planning that responded through one of its staff, (a certain Mr. Benson) who got in touch requesting that a joint inspection of the said property be undertaken. That the Plaintiff's attorney accompanied by the plaintiff's lawyer and a surveyor in the office of the Urban and Regional Planning visited the site in September, 2017, the surveyor took pictures of the site and stated that he will put up his report and recommendations to the appropriate quarters. That that was the last meaningful communication heard from the defendants or any of their agents. That by the letter written to the defendants, the Plaintiff gave them 30 days to relocate him to another plot within the vicinity or be left with no other option than to seek redress in a court of law but the defendants have not done anything. That the Plaintiff have been living in a rented apartment and desires to put up his own structure hence his application and consequent allocation of the said plot. That the plaintiff's solicitor issued and served another thirty (30) days pre-action notice on the defendants. That the action of the defendants have caused him to suffer untold hardship, psychological trauma and emotional stress.

The Plaintiff's attorney Mark Eyigebe Amodu testified as the sole witness and tendered 12 Exhibits, after having adopted his witness statement on Oath as his testimony in the case. The twelve (12) Exhibits were admitted and marked as follows:

1. Letter of authority to manage property dated 5/1/2009 signed by Plaintiff, Exhibit PW1.
2. Original Certificate of Occupancy dated 7/4/2007 in favour of Paul Hussein Okekwu Amodu, Exhibit PW2.
3. Original Revenue Collection Receipt No. 000196152 for the sum of N86, 614.32 (Eighty Six Thousand, Six Hundred and Fourteen Naira Thirty Two Kobo) being payment for grand rent by Plaintiff, Exhibit PW3.
4. Original Revenue Collection Receipt No. 000045252 for the sum of N9, 861.55 (Nine Thousand, Eight Hundred and Sixty One Naira Fifty Five Kobo) being payment for grand rent by Plaintiff, Exhibit PW4.
5. Demand for ground rent notice in the sum of N9, 861.55 (Nine Thousand, Eight Hundred and Sixty One Naira Fifty Five Kobo) from AGIS dated 13<sup>th</sup> October, 2009 addressed to the Plaintiff, Exhibit PW5.
6. 2 page letter written by Ayuba Abdul & Associates, a firm of solicitors dated 9/5/2016 addressed to "The Director of Lands, Abuja Geographical Information System, Exhibit PW6.

7. 2 page letter written by Ayuba Abdul & Associates, a firm of solicitors dated 9/5/2016 addressed to “The Director Development Control, Abuja Metropolitan Management Council, Exhibit PW7.
8. 2 page letter written by Ayuba Abdul & Associates, a firm of solicitors dated 9/5/2017 addressed to “The Hon. Minister of the FCT, Exhibit PW8
9. 2 page letter written by Ayuba Abdul & Associates, a firm of solicitors dated 9/5/2017 addressed to “The Director Urban and Regional Planning, Exhibit PW9.
10. Pre-action notice from Ayuba Abdul & Associates dated 22/10/2018 addressed to “The Hon. Minister of the FCT, Exhibit PW10.
11. Pre-action notice from Ayuba Abdul & Associates dated 22/10/2018 addressed to “The Director of Lands, Abuja Geographical Information System, Exhibit PW11.
12. Pre-action notice from Ayuba Abdul & Associates dated 22/10/2018 addressed to “The Chairman, Abuja Municipal Area Council, Exhibit PW12.

At the end of the examination in chief the Plaintiff was cross examined by the defendants and Plaintiff closed his case. Case was then adjourned for defence.

The 1<sup>st</sup> to 3<sup>rd</sup> Defendants filed its Statement of Defence and opened its defence on the 10<sup>th</sup> of December, 2019 and called a sole witness, Olufadi Olabisi Simbiat the Principal Town Planning Officer at the Department

of Lands Administration of the 2<sup>nd</sup> Defendant as DW1 who adopted her witness statement on oath and the summary of facts as stated in the witness statement on oath is that since the creation of the Federal Capital Territory (FCT) in 1976, the ownership of the entire FCT became vested in the Federal Government of Nigeria, to the exclusion of any other person or authority. That the Federal Government of Nigeria through the president acting as the Governor of the Federal Capital Territory exercise its right of ownership and control over land in the FCT through the Minister of the Federal Capital Territory. That it is only the Minister of the Federal Capital territory that has the right to allocate and revoke land within FCT. That the said right to allocate and revoke land in the FCT being a statutory responsibility cannot be delegated as far as land in Gaduwa or anywhere within the FCT is concerned. That the Claimant was allocated a Statutory Right of Occupancy regarding Plot No. 242, Cadastral Zone B13, Gaduwa District. The 1<sup>st</sup>-3<sup>rd</sup> Defendant have neither trespassed, converted, subdivided nor revoked the Claimants title over the subject matter of this suit being Plot No. 242, Gaduwa District, Abuja. That the need to relocate the Claimant to another plot within the same vicinity or anywhere else in the Federal Capital Territory does not arise as the Claimants title over Plot No. 242, Gaduwa District is still subsisting and has not been revoked. That the 4<sup>th</sup> Defendant does not have the right or power to allocate or revoke any plot within the Federal Capital Territory as such power is the sole statutory responsibility of the 1<sup>st</sup>

Defendant. That the 1<sup>st</sup>-3<sup>rd</sup> Defendants have not hindered the possession and enjoyment of the Claimant's property and neither have they trespassed on the subject matter plot of this suit.

The 1<sup>st</sup> to 3<sup>rd</sup> witness tendered a certified true copy of Certificate of Occupancy No. KG 10045 dated 2/4/2007 in favour of the Claimant and same was admitted and marked Exhibit DW1. The witness was cross examined by all parties and 1<sup>st</sup> to 3<sup>rd</sup> Defendants closed their case.

The 4<sup>th</sup> Defendant (AMAC) opened its case on the 3/3/2020 and called its sole witness Musa Murtala, a Land Officer in the Works Department of the 4<sup>th</sup> Defendant as DW2 who adopted his witness statement on oath and the summary of facts as stated in the witness statement on oath is that

the 4<sup>th</sup> Defendant is a creation of the constitution of the Federal Republic of Nigeria 1999 and subject to any other law made for it by the National Assembly. That upon the creation of the Federal Capital territory, Abuja in 1976, the Federal Capital Territory Act No. 6 of 1976; as well as section 18 of the FCT act CAP 59 Laws of the Federation 1990 and the 1999 constitution of the Federal Republic of Nigeria; vested absolute ownership of all Lands within the FCT to the Federal Government of Nigeria. The 4<sup>th</sup> Defendant denies paragraphs 1, 2, 3 and 4 of the Plaintiffs statement of claim and averred that the reason for the denial is that since the creation of the Federal Capital Territory, Abuja in 1976, it is only the Honourable Minister that has

the power to allocate land within the Federal Capital Territory. Similarly, that section 18 of the FCT Act, Cap 59 Laws of the Federal 1990 and the 1999 Constitution of the Federal Republic of Nigeria, vests absolute ownership of all lands within the FCT in the Federal Government of Nigeria. That the 4<sup>th</sup> Defendant denies out-rightly Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 of the Plaintiff's Statement of Claim and that the reason for denying the above mentioned paragraphs is that the said plot of land 145aw-aff5z-55f5r-fa32u-10 does not exist in the Land Registry of the 4<sup>th</sup> Defendant. That the 4<sup>th</sup> Defendant denies paragraphs 20 and 21 of the Plaintiff's Statement of Claim, the reason being that since the 4<sup>th</sup> Defendant have no power to allocate any land within the Federal Capital Territory, it also has no power to issues letter of Revocation on any land within the FCT. The 4<sup>th</sup> Defendant therefore urges, this Honourable Court to discountenance all the Plaintiff's prayers for the simple reason that their averments are frivolous, malicious and incurably defective. The 4<sup>th</sup> Defendant finally urges this Honourable Court to make a substantial cost of Five Million Naira (N5, 000, 000.00) against the Plaintiff for wasting the time of the 4<sup>th</sup> Defendant. The witness was cross examined and case was adjourned to 23/4/2020 for adoption of final written address.

The Plaintiff and the 1<sup>st</sup> to 3<sup>rd</sup> Defendants finally adopted their final written addresses on the 3<sup>rd</sup> of February, 2021 while the 4<sup>th</sup> Defendant

adopted its final written address on the 9<sup>th</sup> of February, 2021 and case was adjourned for judgment.

The Plaintiff's final written address was dated and filed on the 7/12/2020 wherein learned counsel raised a sole issue for determination to wit;

“Whether based on the facts and materials before the court, the Plaintiff has proved his case on preponderance of evidence entitling him to the reliefs sought in his Amended Statement of Claim”.

Learned counsel cited Section 7 of the 1999 Constitution (as amended) on the functions of the Local Government Council and Section 4 of the Federal Capital Territory Act Laws of the Federation of Nigeria 1990 on the functions and powers of the authority. Counsel also submitted that parties are in agreement as to certain facts which are (a). that the Plaintiff is the beneficial owner of Certificate of occupancy no. 145aw-aff5z-55f5r-fa32u-10 dated 7/4/2007 issued by the then Hon. Minister of the Federal Capital Territory, measuring 1,110.44 square metres, situate at Plot N0. 242, Cadastral Zone B13, Gaduwa District as inferred from the pleadings of the Plaintiff and the 1<sup>st</sup> to 3<sup>rd</sup> Defendants and (b). that the land in question is now a cemetery and was fenced by the 4<sup>th</sup> Defendant (evidence elicited from the DW2 under cross examination). Therefore, facts admitted needs no further proof. Counsel raised three (3) questions that beg for answer to wit;

- a. Are the 1<sup>st</sup> to 3<sup>rd</sup> Defendants negligent in their duty in allowing the Plaintiff's land to be converted to another use other than that on the certificate of occupancy?
- b. Can the Plaintiff be reasonably expected to live in a land that has been used as a cemetery?
- c. If the answers to (a) above is in the positive and (b) above is in the negative, what is the quantum of damages expected to be awarded to the Plaintiff?

In answer to the first question, counsel submitted that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were negligent in their duty of not ensuring that the Abuja master plan is strictly followed as far as the Plaintiff's land is concerned referring the court to paragraphs 3 (a), (b), (c) and (d) of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants joint statement of defence. Also, that had the 1<sup>st</sup> to 3<sup>rd</sup> Defendant been diligent in carrying out their duty, there is no way the 4<sup>th</sup> Defendant or any other person or authority would have allocated the land to be used as a cemetery and urge the court to answer the question in the positive and hold that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants were negligent in carrying out their statutory duties/responsibilities. On the second question (b) learned counsel submitted that an allottee of any land or premises is entitled to quiet, peaceful enjoyment and possession of his property. That families of the dead buried on the land would definitely have emotional attachments to the dead and it is common to see members of the family of the departed visit grave site periodically to pay respects to the dead. Counsel submitted that the assertion by the

1<sup>st</sup> to 3<sup>rd</sup> Defendants that the Plaintiff's title is still subsisting though true is not practicable as the plaintiff cannot have and enjoy quiet peaceful possession of the property as he is not ready to commune with the dead. Counsel further submitted that there is no way that the Plaintiff can build his house on a cemetery and be expected to live thereon peacefully and urge the court to so hold. Finally, on the 3<sup>rd</sup> question counsel submitted that having established that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants are liable in negligence and dereliction of duty by allowing the Plaintiff's land to be converted to a cemetery by unauthorized persons, we submit that the Plaintiff is entitled to damages. Learned counsel submitted that by the amended statement of claim, the Plaintiff prayed this honourable court inter alia for "An order directing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to allocate another plot to the Plaintiff within the same vicinity with immediate effect as a replacement for Plot No. 242, Cadastral Zone B13, Gaduwa District covered by Certificate of Occupancy Number 145aw-aff5z-55f5r-fa32u-10 which the 4<sup>th</sup> Defendant illegally converted to a cemetery", that the above prayer succinctly covers what the Plaintiff is entitled to according to the Principle of restitution in integrum in the award of damages. Counsel urged the court to enter judgment in favour of the Claimant as per his reliefs in his amended statement of claim. Counsel relied on the following authorities;

- i. **JOSEPH V. STATE (2017) LPELR-44599**

- ii. **JOLASUKI V. BAMGBOYE (2011) ALL FWLR (PT. 598) 203 AT 215**
- iii. **MAKWE V. NWUKOR & ANOR (2001) LPELR-1830 (SC)**
- iv. **FRIDAY V. NIGERIAN ARMY (2016) LPELR-41604 (CA)**
- v. **UBA PLC & ANOR V. I. U FOOD LIMITED & ANOR (2018) LPELR-45397 (CA)**
- vi. **OKORO V. OKORO (2011) ALL FWLR (PT 572) PG 1749 @ 1773 AT PG 1787 PARAS B-D**
- vii. **N.P.S V. I.E.C LTD (2007) 32 WRN P. 100 @ LINE 10-20**
- viii. **MIRCHANDANI V. PINHEIRO (2001) 3 NWLR (PT 69) PG 573 @ 578 PARA F-G.**

The 1<sup>st</sup> to 3<sup>rd</sup> defendants in their final written address, raised two (2) issues for determination to wit;

- i. Whether the sole power of the Hon. Minister for the Federal Capital Territory to administer land in Federal Capital Territory is shared between the Federal Capital Territory and Abuja Municipal Area Council (AMAC).
- ii. Whether the Plaintiff has disclosed any reasonable cause of action against the 1<sup>st</sup> to 3<sup>rd</sup> Defendants.

On the first issue learned counsel submitted that their answer is no, that the Minister has the sole power to administer land within the Federal Capital Territory as such responsibility of the Hon. Minister for the Federal Capital Territory has long been settled by certain

unambiguous laws and judicial pronouncements. Counsel also submitted that unlike the states of the federation where by virtue of the land Use Act there exists both customary and statutory right of occupancy designated as rural and urban areas, the Federal Capital Territory has only statutory right of occupancy for being designated as urban area. Consequently, this means that all land designated as urban area cannot be legally allocated by the Local Government Area Council (Abuja Municipal Area Council) as Section 1(a) of the Land Use Act 2004 empowers and vests only on the Governor (herein Hon. Minister) to grant statutory right of occupancy. Counsel further submitted that the purported allocation by the 4<sup>th</sup> Defendant Abuja Municipal Area Council is impossible to achieve because only the Hon. Minister for the Federal Capital Territory has the sole power to allocate, revoke or subdivide any land within the Federal Capital Territory Abuja and urge the court to hold that only the Hon. Minister for the Federal Capital Territory has the power to administer land within FCT to the exclusion of any other person and authority as in this case Abuja Municipal Area Council.

On the second issue learned counsel submitted that the answer to the issue is categorically in the negative. That this suit as presently constituted does not disclose any reasonable cause of action against the 1<sup>st</sup> to 3<sup>rd</sup> Defendants. Counsel submitted that a cursory look at the statement of claim paragraphs 10 & 11 and the witness statement on oath shows that this suit is predicated on alleged trespass and

conversion of the Plaintiff's plot by the 4<sup>th</sup> Defendant in this suit. In conclusion counsel submitted that the Plaintiff is not entitled to any of the reliefs sought against the 1<sup>st</sup> to 3<sup>rd</sup> Defendants as the entire evidence adduced by the Plaintiff on the purported trespass has no nexus with the 1<sup>st</sup> to 3<sup>rd</sup> Defendants and urge the court to dismiss this suit against the 1<sup>st</sup> to 3<sup>rd</sup> Defendants for non-disclosure of any reasonable cause of action, gold digging, vexatious, lacking in merit and abuse of court process. Counsel cited the following authorities in support;

- a. SECTION. 277(2) OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)
- b. SECTION 18 OF THE FEDERAL CAPITAL TERRITORY ACT
- c. OKOYODE V. F.C.D.A. (2006) ALL FWLR (Pt. 298) 1200
- d. ENGR. YAKUBU IBRAHIM & ORS V. SIMON I. OBAJE (2005) (PT. 282) ALL FWLR 19 AT 1976-1977
- e. ONA V. ATENDA (2000) 5 NWLR (PT. 656) 244
- f. MADU V. MADU (2008) NWLR (PT. 1083) 296 AT 324 & 325
- g. A.G FEDERATION V. A.G ABIA STATE & ORS (2001) 11 NWLR PT 725 PG 689 @ PG 733 PAR as A-B
- h. RINCO CONSTRUCTION CO. V. VEEPEE IND. LTD (2005) 9 NWLR (PT 929) 85 @ 96 ETC

Likewise, the 4<sup>th</sup> Defendant filed its final written address on the 26/1/2021 as stated earlier and same was adopted. However, going

through the address this Hon. Court observed that the said address is not in line with the facts of this case. For example;

1. The claim as distilled from the address is in relation to Plot No. 1056, Jikwoyi Extension Abuja, FCT Cadastral Zone 0507 measuring 1,517.09sqm, situated at Jikwoyi layout, Abuja, demarcated by Beacons Nos: 2260, PB 2261, PB 2268, PB 2259 and PB 2260 as against Plot No. 242, Cadastral Zone B13, Gaduwa District covered by Certificate of Occupancy Number 145aw-aff5z-55f5r-fa32u-10 as endorsed in the amended statement of claim.
2. The documentary evidence tendered by the Plaintiff is totally different from the ones analysed by the 4<sup>th</sup> Defendant in its final written address.

This is a clear unedited case of copy and paste, a very lazy approach unexpected of a legal practitioner. This is not funny as it shows a high level of unprofessionalism from the office of the 4<sup>th</sup> Defendant (Abuja Municipal Area Council) and definitely not an attitude expected of a legal practitioner. For emphasis, it is important to keep in mind that a lawyer is expected to manage all phases of litigation from inception to judgment and the case must be presented with utmost devotion. This court is highly disappointed with Ibe Alex Esq. the counsel that signed the 4<sup>th</sup> Defendant written address. This court will discountenance with the so called 4<sup>th</sup> Defendant final written address.

The issue for determination is “whether defendant has been able to prove its case for the prayer sought?”

It is not in doubt that all land within the Federal Capital Territory is vested in the President of the Federal Republic of Nigeria. It is equally not in doubt that under the Land Use Act the president has delegated his powers as to land in the Federal Capital Territory to the FCT Minister. It is uncontroverted that the FCT minister in turn has conferred legal right over the subject matter to the Plaintiff by issuing plaintiff with a Certificate of Occupancy No: 145aw-aff5z-55f5r-fa32u-10 over the subject matter plot. Hence the only way that land duly allocated to the plaintiff by the FCT minister through a Certificate of Occupancy can be withdrawn is by way of revocation. From facts of this case, it is unchallenged and uncontroverted that the said plot of land has not been revoked, rather the said plot of land according to the records of 1<sup>st</sup> – 3<sup>rd</sup> defendant is an empty plot of land duly allocated to the plaintiff and plaintiff remains the bona fide owner of the said land.

According to the 1<sup>st</sup> – 3<sup>rd</sup> defendant, they are not aware that the subject matter has been converted to a cemetery as the FCT Minister never allocated the land as a cemetery nor was the land ever revoked and converted to a cemetery. The 4<sup>th</sup> defendant Abuja Municipal Area Council (AMAC) whom plaintiff is accusing of converting the place to a cemetery has likewise given evidence that it has no power to allocate land within the FCT neither does it have power to revoke title to land as that power exclusively lies with the FCT Minister flowing from the

president of the Federal Republic of Nigeria, hence AMAC (4<sup>th</sup> Defendant) claims it has no clue how the subject matter plot became a cemetery but confirmed categorically under cross examination that the said land is currently being used as a cemetery.

In essence, all defendants, Honourable Minister of the Federal Capital Territory, Abuja Geographical Information Systems, Federal Capital Territory Administration and Abuja Municipal Area Council all claimed they have no clue as to how plaintiff's land became a cemetery and are of the view that the land still belongs to plaintiff and no other person has exclusive rights over the land save for the plaintiff as evidenced from the records of the land in custody of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The well known Latin maxim "ubi jus ibi remedium" comes to play in the peculiar circumstance of this case. The maxim simply interpreted means where there is a right, there is a remedy; in essence where one's right as in this case the plaintiff, has been breached, invaded or destroyed, the law 'MUST' provide a remedy. The plaintiff had purchased a land and paid all necessary fees and subsequently issued with a Certificate of Occupancy over the subject matter. The said land according to evidence of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants belongs to the plaintiff, in other words the plaintiff is the exclusive title holder of the land and the plaintiff has reversionary interest over the land.

It follows that plaintiff ought to enjoy quiet possession of the subject matter. Unfortunately, plaintiff discovered that the subject matter plot

has been converted to a cemetery allegedly by the 4<sup>th</sup> defendant (AMAC). The 4<sup>th</sup> defendant in its defence has stated that it has no powers to revoke or allocate land within the FCT as that power exclusively lies with the FCT minister who is the 1<sup>st</sup> defendant in this suit. Although 4<sup>th</sup> defendant confirmed that it is aware that the said land is being used as a cemetery, 4<sup>th</sup> defendant also feigned ignorance as to how it became a cemetery. From the evidence of all defendants (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants) the land belongs to the plaintiff and plaintiff has exclusive possession of the land notwithstanding that same has not only been converted to a cemetery but is constantly being used day to day to bury the dead. This is the Federal Capital Territory (FCT) where customary land or indigenes are not permitted to own or sell land except same has been allocated to them by the FCT Minister on behalf of the President of the Federal Republic of Nigeria.

In this queer situation, who is to blame for the conversion of the land to a cemetery? Is it proper for the Plaintiff to accept defence of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants that the cemetery land belongs to him and take possession of the cemetery? How did the subject matter become a cemetery? In answer to the above question, I will start with the functions of each of the defendants.

The 1<sup>st</sup> defendant is the FCT Minister who has the sole duty to allocate or revoke land within the FCT and it is unchallenged that the FCT Minister duly allocated the subject matter to the plaintiff free from

encumbrance. It is also unchallenged that the FCT Minister never revoked the said land nor allocate same for the purpose of being used as a cemetery. The FCT Minister has the power to grant statutory rights of occupancy, demand rent for lands within the FCT and issue Certificate of Occupancy.

The FCT Minister is in charge of the entire development of Abuja and heads 2 (two) important Agencies that directly oversee land management, these agencies are the 2<sup>nd</sup> and 3<sup>rd</sup> defendants (that is FCTA and AGIS).

The Federal Capital Territory Administration (FCTA) was established under **Section 3 of the FCT Act** and its responsibilities as spelt out in the Act includes but not limited to the following: The establishment of infrastructure services in accordance with the master plan of the FCT, to oversee the infrastructural and physical development of the FCT by ensuring that it conforms to the master plan of the FCT – in essence the FCTA is in charge of all the overall development of Abuja as to management, design, planning, and development-control and development. It also has the exclusive powers to purchase or acquire or take over any property in furtherance of its activities. In essence, it is the duty of the FCTA to ensure that the master plan of Abuja is maintained and it also has the powers to acquire or take over any property which fails to abide by the terms of which it was granted. Abuja Geographical Information Systems (AGIS) which is the 3<sup>rd</sup> defendant simply has the functions to computerize all land records in

the FCT administration. AGIS is responsible for the establishment and maintenance of an accurate record of land holdings, site development, land use activities and monitoring of land transactions. Abuja Municipal Area Council (AMAC) being the 4<sup>th</sup> defendant do not allocate land neither do they have the powers to revoke land. AMAC has the duty to collect rates, radio and television licenses, establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirmed.

From the above, while it is the responsibility of the FCT Minister to Allocate and revoke land within the FCT and also issue title documents over duly allocated lands, it is also the duty of the FCT Minister through the office of the 2<sup>nd</sup> defendant (FCTA) to ensure that lands within the FCT adhere strictly to the purpose for which it is allocated and have the mandate to interfere, halt, acquire or take over any land which fails to conform to the purpose for which it was allocated. The FCT Minister through the office of the 3<sup>rd</sup> defendant (AGIS) keeps all records of land and it is charged with the responsibility of keeping accurate records of land holdings within the FCT, while the 4<sup>th</sup> defendant (AMAC) from the above laid out functions has the duty to establish and maintain cemeteries and likewise collect rates/levies for burials in the said cemeteries.

In proof of plaintiff's title over the land, plaintiff tendered Exhibit PW2 which is the Certificate of Occupancy No. 145aw-aff5z-55f5r-fa32u-10 issued to the plaintiff and duly signed by the FCT Minister. The said Certificate of Occupancy was signed by the FCT Minister on the 7<sup>th</sup> day of April, 2007 for a term of 99 years commencing from the 3<sup>rd</sup> day of June, 2002. The Certificate of Occupancy was issued under special terms and conditions clearly stated therein: Clause 9 in the Certificate of Occupancy states:

9. Not to alienate the Right of Occupancy hereby granted or any part thereof by sale, assignment, mortgage, transfer of possession, sub-lease or bequeath, or otherwise howsoever without the prior consent of the Minister.

10. To use the said land only for Residential Land Use.

11. Not to contravene any of the provisions of the Land Use Act No. 6 of 1978 and to conform and comply with all rules and regulations laid down from time to time by the Federal Capital Development Authority.

From evidence before me, plaintiff's land has been converted to a cemetery, from evidence of DW2 on behalf of AMAC under cross examination said:

“The cemetery has been existing for long because of the existence of the original inhabitants in that area”.

Hence it can be safely deduced that the said land is not being used as a private cemetery but a public cemetery for the use of the public. From evidence before me, it is also unchallenged that the said land was allocated to the plaintiff devoid of any form of encroachment. It therefore goes without saying that the use of the land as a public cemetery for the use of the public to bury their dead upon a land allocated strictly for residential use cannot and ought not to escape the watchful eyes of the 1<sup>st</sup> and 2<sup>nd</sup> defendant whose duty it is to ensure and maintain that land within the FCT is used for the purpose for which it is created.

From evidence of DW1 under cross examination:

Q: 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants has a mandate to maintain the Abuja master plan.

A: True.

From the above answer, when an encroachment is detected, it is the duty of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to rectify same and return it to its original use/purpose. Unfortunately, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants failed to do so. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants being a creation of the constitution of the Federal Republic of Nigeria has a legal duty as conferred on it by the constitution to ensure that plaintiffs land is used only for the purpose for which it was allocated i.e. Residential purpose.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants also have the duty to enter into land and take over, halt or seal up any property that fails to adhere to its purpose of allocation. In essence, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have the legal

duty to ensure that all terms and conditions as spelt out in the Certificate of Occupancy are obeyed to the letter. Claimant in this suit is alleging that 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants' action in allowing claimants land to be used as a cemetery amounts to dereliction of duty and negligence on their part. Proof of negligence is a question of fact and in proof of negligence 3 (three) conditions must be satisfied.

1. The defendant owes a duty of care to the claimant.
2. The duty of care was breached
3. The claimant suffered damages arising from the breach.

These 3 (three) conditions must be proved by preponderance of evidence and balance of probabilities to succeed an action for negligence. See **ABUBAKAR VS JOSEPH (2018) 13 NWLR (pt. 1104)307**. As I have stated earlier, negligence is a question of fact and not of law hence proof of negligence is on facts pleaded and proved and it is the duty of the claimant to lead credible and cogent evidence on the act of negligence alleged. Plaintiff in this case has discharged its burden of proof on preponderance of evidence that plaintiff is the original and only allottee of the subject matter, that the subject matter is now being used for the use of the public as a cemetery, that the 1<sup>st</sup> and 2<sup>nd</sup> defendants owe the plaintiff the duty as spelt out under the FCT Act to ensure that land within the FCT is not used for any other purpose other than to which it is allotted. That plaintiff had been consistent in paying his ground rent to the defendant and has not failed to adhere to any of the terms and conditions in the Certificate of Occupancy. That defendant had been

collecting ground rents and other taxes from the plaintiff in respect of the land on the premise that it is a residential property not minding that the land had been converted to a cemetery by “unknown persons”. That defendant failed in its duty to keep up with the functions and responsibility to which it was created.

Defendants on its part (1<sup>st</sup> and 2<sup>nd</sup> defendants) in their defence maintained that they were not aware that the land had been converted to a cemetery as the plaintiff title to the said plot had not been revoked. This excuse of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants is not tenable neither is it grounded in law or fact. It is obvious that defendants has been negligent in its duty of care. The black’s Law dictionary 9<sup>th</sup> edition defines negligence as “the failure to exercise the standard of care that a reasonable prudent person would have exercised in a similar situation, any conduct that falls below the legal standard established to protect others against unreasonable risk of harm”. In **LUFTHANSA GERMAN AIRLINES VS. BALLANYE (2013) I NWLR (pt. 1336) 527**, the SC per **KALGO JSC** stated:

*“The general principle is that the tort of negligence arises when a legal duty owed by the defendant to the plaintiff is breached and to succeed in an action for negligence the plaintiff must proof by the preponderance of evidence or the balance of probabilities that (a) defendant owed him a duty of care (b) the duty of care was breached (c) the defendant suffered damages arising from the breach”*

See ANYAH VS IMO CONCORDE HOTELS LTD (2002) 18 NWLR (pt.799) 377.

I am of the view and I also hold that on a balance of probabilities and preponderance of evidence, the plaintiff has been able to prove that 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants act of allowing the claimant's land to be used and continued use of the said land as a cemetery amounts to dereliction of duty and negligence. Moreover, defence of the 1<sup>st</sup> – 3<sup>rd</sup> defendants is unjustifiable and not sustainable in the circumstances of the case and I also hold that there is no way plaintiff can reasonably be expected to erect a building inside a cemetery and live peacefully in the said plot.

The 4<sup>th</sup> Defendant AMAC is the agency in charge of establishing and maintaining cemeteries, amongst other functions, within the FCT. It therefore follows that before any burial can take place in any cemetery in the FCT, the 4<sup>th</sup> defendant has to give its approval. 4<sup>th</sup> defendant in its evidence in chief has maintained that it does not have the powers to allocate land nor revoke same within the FCT and that there was no way 4<sup>th</sup> defendant could have allocated the subject matter land to be used as a cemetery.

4<sup>th</sup> Defendant under cross examination stated as follows;

Q: - the 4<sup>th</sup> defendant is saddled with the responsibility of establishment and maintenance of cemetery within the FCT?

A: - True.

Q: - So, I'll be correct that the 4<sup>th</sup> defendant is aware of the existence of that cemetery?

A: - Yes. The cemetery has been existing for long because of the existence of the original inhabitants in that area”

4<sup>th</sup> defendant in its evidence has stated that it is aware that the said land is being used as a cemetery. The plaintiff is seeking for a declaration that the action of the 4<sup>th</sup> defendant in converting the said land to a cemetery is illegal and unjustifiable. 4<sup>th</sup> defendant in its defence simply stated that it has no powers to allocate or revoke land hence it could not have converted same to a cemetery. I'll re-iterate again that the said land is being used as a public cemetery. It is also worthy to note that 4<sup>th</sup> defendant in its evidence stated that it is aware that the said land is being used as a cemetery. In this circumstance, it is only logical that 4<sup>th</sup> defendant being aware that the place is being used as a cemetery, and 4<sup>th</sup> defendant being the only authorised body within the FCT to maintain cemeteries cannot be said to have shut their eyes while indigenes go there in droves to bury their dead.

There is a world of difference between allocating a land to be used as a cemetery (which automatically comes with approval of a land to be used as cemetery) and converting a land to a cemetery. By the word conversion it simply means “being used for purposes other than the use in which it is allocated”. The question that comes to fore is whether the 4<sup>th</sup> defendant converted the land to a cemetery? The 4<sup>th</sup> defendant is a creation of the constitution of the Federal Republic of Nigeria; I agree

that 4<sup>th</sup> defendant does not have the power to allocate nor revoke land within the FCT, 4<sup>th</sup> defendant is in charge of cemeteries and have stated under oath that it is aware that the said land is being used as a cemetery.

It is only logical reasoning that 4<sup>th</sup> defendant being an agency of government who is alive to its responsibilities and an agency of government that discharges its functions with a great duty of care is definitely answerable and accountable for any activities carried out on any cemetery as all cemeteries are within the central power and management of the 4<sup>th</sup> defendant. Claiming ignorance of the activities of the cemetery would be an act of irresponsibility on the part of the 4<sup>th</sup> defendant and fortunately 4<sup>th</sup> defendant has indeed admitted that it is aware that the land is being used as a cemetery.

The act of the 4<sup>th</sup> defendant continually allowing the subject matter to be used as a cemetery, maintaining the said cemetery and controlling activities and management of the said cemetery amounts to conversion of the land to a cemetery not minding that 4<sup>th</sup> defendant did not allocate the land for the purpose of a cemetery nor revoke the title of the claimant.

The mere act of controlling and managing the said land as a cemetery and continually allowing the said land to be further used as a cemetery amounts to converting the said land to a cemetery and I therefore hold such act of 4<sup>th</sup> defendant as unjustifiable, illegal and ultra vires.

Consequently, it is hereby DECLARED AS FOLLOWS;

1. That the Plaintiff is the bona fide owner of Plot No. 242, Cadastral Zone 13, Gaduwa District covered by Certificate of Occupancy number 145aw-aff5z-55f5r-fa32u-10.
2. That the action of the 4<sup>th</sup> Defendant acting either by themselves, agents, privies or assign in converting the aforementioned plot No. 242, Cadastral Zone 13, Gaduwa District covered by Certificate of Occupancy number 145aw-aff5z-55f5r-fa32u-10 is unjustifiable, illegal and ultra vires.
3. That allowing the Claimant's land to be converted to a cemetery amounts to dereliction of duty and negligence on the part of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
4. That there is no way the Plaintiff can reasonably erect a building and live peacefully in the said plot No. 242, Cadastral Zone 13, Gaduwa District covered by Certificate of Occupancy number 145aw-aff5z-55f5r-fa32u-10 which Defendants have converted into a cemetery.

IT IS HEREBY ORDERED THAT: -

5. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants shall allocate another Plot of land to the Plaintiff within the same vicinity with immediate effect as a replacement for Plot No. 242, Cadastral Zone 13, Gaduwa District covered by Certificate of Occupancy number 145aw-aff5z-55f5r-fa32u-10 which was converted to a cemetery.

6. General damages in the sum of N5,000,000.00 (Five Million Naira) Only is hereby issued against all the Defendants.
7. Interest on damages are alien to our jurisprudence and hereby refused.
8. Exemplary damages is hereby refused.

**Parties:** Absent

**Appearances:** I. A. Benard for the Claimant. M. B. Gishiwari for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Ibe Alex Okechukwu for the 4<sup>th</sup> Defendant.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**

**JUDGE**

**29<sup>TH</sup> JUNE, 2021**