

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. 13
CASE NUMBER : SUIT NO: CV/2500/2016
DATE: : THURSDAY 23RD JANUARY,
2025

BETWEEN:

MR. GABRIEL UJAH PLAINTIFF

AND

1. HON. MINISTER OF FCT
2. FED. CAP. DEV. AUTH.
3. JAFARU KAKAH (Through His Attorney
Chukwuemeka Benedict Nwankwo) } **DEFENDANTS**

JUDGMENT

The Plaintiff commenced this action vide Writ of Summons and Statement of Claim dated and filed on 23rd January, 2018 wherein he claims as follows:

1. A Declaration that the purported notice of demolition of the plaintiff's plot is unlawful, null and void and of no effect whatsoever.
2. An order setting aside the purported notice of demolition of the plaintiff's plot by the Defendants.
3. An Order of perpetual injunction restraining the defendants from demolishing the Plaintiffs buildings/ structures on the plot.
4. N50,000,000.00 general damages.
5. Cost of this suit.

Upon service of the writ on the Defendants and after pleadings were exchanged, the suit was set down for hearing. The case of the Plaintiff as distilled from the witness statement on Oath of PW1 (Mr. Gabriel O. Ujah), is that by a Certificate of Occupancy No. MZTP/LA/2002/BN.1338 dated 27th February, 2003 he

became seized of plot 1051 lying and situate within Jikwoyi District, Cadastral Zone E20, Abuja within the jurisdiction of this Honourable Court.

The Plaintiff avers that by reason of the averment above hereof, he took immediate possession thereof and thereafter commenced development thereon with the approval of the 1st and 2nd Defendants.

Furthermore, Plaintiff avers that he had a building plan prepared for him in Triplicate by an Architect one of which he submitted to the Development Control Unit/ Department of the 2nd Defendant for approval to enable him develop the land, and which approval was given. The letter bearing/evidencing the approval are hereby pleaded and shall be found upon during trial.

Meanwhile, owing to the bulky nature of the approved building plan, only the relevant approved page(s) thereto shall be frontloaded.

The Plaintiff avers that at the instance and insistence of the 1st and 2nd Defendants that the Certificate of Occupancy be submitted for regularization of his title to the plot, he submitted or caused same to be submitted to the 1st and 2nd Defendants upon payment of necessary/relevant fees and same was

acknowledged by them and a new file No. BN 40692 was given in respect thereof. The Certificate of Occupancy and the acknowledgment aforesaid are hereby pleaded and shall be found upon during trial.

The Plaintiff avers that while developing the plot as approved the 1st and 2nd Defendants purported to stop the development in and over the said plot by affixing a demolition notice thereon on 7th September, 2016 and which demolition exercise was to be carried out within 48 hours. The said notice is hereby pleaded and shall be found upon during trial.

The plaintiff avers that in addition to the afore-pleaded notice of demolition, officials of the 1st and 2nd Defendants inscribed notice of "FCDA/DC Final Demolition" on the wall of his building under construction. The plaintiff's site manager used his camera with inbuilt memory disk to take pictures of the inscription on the wall. The pictures were recorded and saved directly into the camera's internal memory disk from where the memory disk was taken to photo studio for printing of copies. The memory disk and photographs of the buildings/structures which were taken then are hereby pleaded and shall be found upon during trial.

The plaintiff avers that the purported notice of demolition and threat of demolition of his building on the plot was done in bad faith as there is no justification whatsoever for same.

The plaintiff avers that he complied with all the requirements of the 1st and 2nd Defendants as he paid all the necessary fees demanded of him by them. The receipts of payment thereto are hereby pleaded and shall be found upon during trial.

The Plaintiff avers that owing to the approval to build conveyed by the 1st and 2nd Defendants, he invested all his entire savings, gratuity and pension in the construction/development of the building sought to be demolished by the 1st and 2nd Defendants.

The plaintiff avers that the buildings under construction as approved by the 1st and 2nd Defendants is made of 4 units of 2-bedroom flat.

That he therefore prays this Honourable Court to grant his claims/reliefs against the defendants as per his statement of claim.

PW1 tendered the following documents in evidence:

1. Certificate of Occupancy
2. Approved Building Plan

3. Regularization of title documents
4. Settlement of Building plan fees
5. Request for Settling Out Approval of Proposed Residential Development
6. Five receipts, three Bank deposit slips
7. Photographs and Memory Card
8. Demolition Notice
9. Specimen Signature

All marked Exhibits 'A', 'B', 'C', 'D', 'E', 'F', 'G', 'H' and 'I' respectively.

PW1 was then cross-examined and subsequently discharged.

Plaintiff closed its case to pave way for defence. 1st and 2nd Defendants opened their defence and called DW1 (Henry John Turi).

The case of the 1st and 2nd Defendants, as distilled from the Statement of Defence and Witness Statement on oath of DW1 as thus;

The 1st and 2nd Defendants aver that the 1st Defendant is by law, in exercising his powers, duties and responsibilities, is exercising same for and on behalf of the President, Commander in Chief of the Federal Republic of Nigeria as far as the administration and management of all the Lands comprised in the Federal Capital Territory is concerned, same having been vested in the Federal Government of Nigeria to be administered by the President through the 1st Defendant whilst the 2nd Defendant is a creation of law charged with amongst others, the responsibility for the physical planning of the Federal Capital Territory including the grant of approval for any development to be carried out within the Federal Capital Territory.

That they carry out the responsibilities thrust upon them by law through agencies and department set up by them like the Department of Development Control, the Abuja Geographic Information systems amongst several other departments and agencies.

That it is the Department of Development Control that on behalf of the 2nd Defendant, grants approval for any development that is to be, or is being carried out within the Federal Capital Territory and the approval involves both initial and stage approvals for any

type of development in the Federal Capital Territory, in carrying out its assignment, the Department of Development Control has a Development Control manual which regulates its operations.

The 1st and 2nd Defendants deny paragraphs 9, 10, 11, 12, 13, 14 and 15 of the Plaintiff's statement of claim and put the Plaintiff to the strictest proof thereof.

In response to the claims of the Plaintiff and all the paragraph of the Plaintiff's amended statement of claim already denied, the 1st and 2nd Defendants aver as follows:

That the Plaintiff submitted a design to the department of development control for building plan approval in respect of plot 1051 Jikwoyi district in which the building plan was approved.

That they were forced to serve a demolition notice because the plaintiff was building on Plot 1052 Jikwoyi District and not Plot 1051 as approved on his building plan. A copy of the layout of the two plots and a survey plan showing the level of encroachment on plot 1052 are hereby pleaded.

WHEREOF the 1st and 2nd Defendants deny all the claims of the plaintiff and urge this Honourable Court to dismiss the entire suit with substantial costs as same is without merit and frivolous.

DW1 tendered the following in evidence:

1. Certified True Copy of the layout of Jikwoyi
2. Certified True Copy of the Survey Plan
3. Building Plan approval

All marked Exhibits 'D1', 'D2' and 'D3' respectively.

DW1 was cross-examined and subsequently discharged.

DW2 (Chukwuemeka Benedict Nwankwo) in his statement of oath, stated that the 1st and 2nd Defendants through the Rural Land Use Adjudication Committee of the Abuja Municipal Area Council and by a letter of conveyance of provisional approval dated 2nd February, 1995 granted to the 3rd Defendant a customary right of occupancy over Plot 1052 situate at Cadastral Zone 05 - 07, Jikwoyi District, Abuja, for residential purposes. The Photostat copy of this letter of conveyance of provisional approval as dated 2nd February, 1995 is hereby attached and marked as Exhibit "DWA".

That sometime around 2005, the 3rd Defendant paid for three years development levy as well as the Certificate of Occupancy in respect of this land and was issued receipts for these payments.

The Photostat copies of this receipts are hereby attached and marked as Exhibit "DW3B".

The 3rd Defendant in 2008 applied for recertification of his title documents under the Federal Capital Territory Administration's Regularization of Land Titles and Documents of FCT Area Councils program. The acknowledgement dated 05th August, 2008 is hereby pleaded

That the 3rd Defendant became the original allottee and the beneficial owner of Plot No 1052 situate at Cadastral Zone 05 - 07, Jikwoyi District, Abuja, at all material times before the commencement of this suit by the Plaintiff.

That the said Plot 1052 situate at Jikwoyi District of the Federal Capital Territory, Abuja, is surrounded by beacons Numbers: PB7822, PB7823, PB7830 and PB7831 respectively and is measuring about 1000 Square meters (and hereinafter referred to as " the Land") as delineated in a survey plan dated 13th July, 2005. The Photostat copy of this Survey Plan No: FCT/MZTP/LA/2005/ BO1129 dated 13th July, 2005 is hereby attached and marked as Exhibit "DW3C".

That the 3rd Defendant as the original allottee by virtue of a Power of Attorney dated 2nd April, 2007 validly appointed himself,

Chukwuemeka Benedict Nwankwo, to be his lawful attorney in respect of the above Plot of land, being the subject matter of this suit by the Plaintiff. The Stamped copy of this Power of Attorney dated 2nd April, 2007 is hereby attached and marked as Exhibit "DW3D".

That as the 3rd Defendant's attorney by the terms of the Power of Attorney, he took over possession of the 3rd Defendant's plot of land i.e Plot 1052 Cadastral Zone 05 - 07 Jikwoyi District, Abuja, and immediately erected a protective high fence round the whole area of the land with a gate-house and locked it with a padlock to ward off trespassers.

That in erecting and/or constructing the fence round the Land and a gatehouse, he spent huge sums of money and materials on this land.

That the 3rd Defendant's land as hereinbefore mentioned, is completely different and distinct in all material particulars from the Plaintiff's land from the Jikwoyi District land layout.

That he does not have any knowledge of the truth of the contents paragraphs 6, 7, 9, 10, 11, 12, 13, 14, and 15 of the Plaintiffs claim in its entirety as they may be facts within the knowledge of

the Plaintiff and more so, the 3rd Defendant did not give him any such information.

That the 3rd Defendant had neither transferred his title to nor permitted/authorized either the Plaintiff or any other person to enter into and/or carry out any development or construction work on the 3rd Defendant's land i.e Plot No 1052 situate at Cadastral zone 05 - 07 Jikwoyi District, Abuja.

That the 1st and 2nd Defendants did not approve any building plan for the Plaintiff to carry out any development/construction work on the 3rd Defendant's own plot of land.

That sometime on or about 2014, he went to the 3rd Defendant's land at Jikwoyi and surprisingly discovered that someone had encroached into the 3rd Defendant's land, demolished the fenced wall and gatehouse, while workmen were on site and already erecting a building thereon without his knowledge and authority.

That upon my questioning the workmen he encountered on this plot of land, the workmen informed him that they demolished the structures on the land, were working on the site at the instance and instruction of the Plaintiff.

That in consequence of this, he caused/sent a complaint letter dated 7th April, 2014 to the Director, Development Control who is under the employment of the 1st and 2nd Defendants detailing this trespass and encroachment. This Photostat copy of this complaint letter dated 7th April, 2014 is hereby attached and marked as Exhibit "DWE".

That upon the receipt of the complaint letter above, the Development Control office of the 1st and 2nd Defendants commenced investigation into the trespass and encroachment on the 3rd Defendant's land and then invited both the Plaintiff and my good self to a meeting to resolve the situation and thereafter placed a notice of stop work over the construction work on the 3rd Defendant's land.

That after this meeting with the Plaintiff and his humble self at the Development Control office of the 1st and 2nd Defendants and notice of stop work as in above paragraph, the Plaintiff stopped further construction work in Plot 1052 Cadastral Zone 05 - 07 Jikwoyi District, which was allotted to the 3rd Defendant.

That sometime on or about 2016, the Plaintiff returned back into Plot 1052 Cadastral Zone 05 - 07 Jikwoyi District, resumed further acts of trespass and encroachment by his further continued

construction and/or development of the land despite earlier notice to stop such construction and development by department of Development Control of the 1st and 2nd Defendants.

That it was in consequence of the Plaintiff's refusal to abide by earlier advice to cease further construction and development of Plot 1052 Cadastral Zone 05 - 07 Jikwoyi District, that necessitated the further service of demolition notice and "FCDA/DC Final Notice" on the Land by the Development Control department of the 1st and 2nd Defendants to avoid further acts of trespass on the 3rd Defendants plot of land.

That the notice of demolition served on the Plaintiff by the 1st and 2nd Defendant was done in exercise of the powers vested on the 1st and 2nd Defendants under relevant laws and with utmost good faith as the Plaintiff has no justification whatsoever to abandon the location of his own plot of land i.e Plot 1051 Cadastral Zone 05 - 07 Jikwoyi District, Abuja, and jump into the location of Plot 1052 Cadastral Zone 05 - 07 Jikwoyi District, Abuja, which belongs to the 3rd Defendant.

That the alleged building plan or approval to build granted by the 1st and 2nd Defendant to the Plaintiff did not also grant the Plaintiff the approval to trespass into and build on the 3rd

Defendant's plot of land which is different from the Plaintiff's own land.

That the Plaintiff in allegedly developing his land willfully trespassed and greatly encroached into the 3rd Defendant's plot of land, demolished already constructed fenced wall and thereby caused great financial damage to the 3rd Defendant without showing any remorse despite repeated warning by the officials of the 1st and 2nd Defendants.

That the Plaintiff by his acts of willful trespass into the 3rd Defendant's land has shown total disregard for constituted authority and impunity to law and order in a manner that requires the whole sanction of this Honourable Court to protect the proprietary interests of the 3rd Defendant.

That the Plaintiff is determined to deprive the 3rd Defendant of his land by continuing his further acts of development/construction work on the land if this Honourable Court does not restrain him.

That 3rd Defendant by way of Counterclaim against the Plaintiff repeats paragraphs, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 hereof.

That there is no justification for the Plaintiff to abandon the Plaintiff's own land/site on ground and encroach into the 3rd Defendant's plot of land which is very distinct in all material respects from that of the Plaintiff in the layout plan of Jikwoyi district.

That the Plaintiff by his deliberate, repeated and willful trespass into the 3rd Defendant's plot of land has caused huge financial loss to the 3rd Defendant by destroying the following items:

ITEMS OF SPECIFIC DAMAGE:

1. 4000 pieces of 9" blocks @ N50 per block = N200,000.00 only
2. 2,500 pieces of 6" blocks @N35 per block = N87,000.00 only.
3. 200 bags of cement @ N1620 per bag = N324,000.00 only,
4. 120 pieces of 1" by 12" by 12" @ N1000 each = N120,000.00
5. 150 pieces 2" by 2"by 12" hardwood @N120 each = N18,000.00
6. 100 pieces of 2" by 3" by 12' @ N200 each = N20,000.00 only.
7. 5 trips of 1/2 chippings @N52,000 each =N260,000.00 only.

8. 8 trips of River sharp sand @ N42,000.00 each = N336,000.00 only.
9. Masonry, labour/workmanship = N240,000.00 only.
10. Carpentry work/labour = N185,000.00 only

GRAND TOTAL = N1,790,000.00 only.

The Photostat copies of the various receipts of purchase of all the above items are hereby attached and marked as Exhibits "DW3F", "DW3F1", "DW3F2", "DW3F3" and "DW3F4" respectively.

That the Plaintiff by his willful development and/or construction work on the 3rd Defendant's land had caused huge damage to the proprietary and financial interest of the 3rd Defendant over the said piece of land.

That the Plaintiff failed to carry out due diligence to identify his own plot of land and had no reason whatsoever to encroach into the 3rd Defendant's land, destroyed the development thereon and carry out development/construction work thereon despite repeated warning.

That the Plaintiff by so doing has caused great damage to the 3rd Defendant and unless restrained by this Honourable Court will

continue to cause more damage to the 3rd Defendant over this piece of land.

That it will be in the interest of justice to dismiss the Plaintiff's claims against the Defendants with punitive cost as it is without any basis and more so, Plaintiff should not be allowed to benefit from his own wrong.

That it is also in the overall interest of justice to grant all the counter Claims of the 3rd Defendant against the Plaintiff.

WHEREOF, the 3rd Defendant shall be praying this Honourable Court for the following reliefs against the Plaintiff to wit:

- A. An Order of this Honourable Court dismissing the Plaintiff's claim against the Defendants in its entirety
- B. A declaration that the 3rd Defendant is the rightful owner of Plot No.1052 Cadastral Zone 05 - 07 Jikwoyi Layout, Abuja.
- C. A Declaration that the site/portion of land over which the Plaintiff is currently carrying out development/construction work is on Plot No.1052 Cadastral Zone 05 - 07 Jikwoyi Layout, Abuja, belonging to the 3rd Defendant and not Plot No. 1051.

- D. A Declaration that the act of development and/or construction as carried out by the Plaintiff on Plot 1052 which belongs to the 3rd Defendant constitutes an act of trespass.
- E. An Order of perpetual injunction restraining the Plaintiff directly or his agents, privies, etc., howsoever called from continuing or further continuing to develop and/or carry out any further construction work on Plot No. 1052 Cadastral Zone 05 - 07 Jikwoyi Layout, Abuja.
- F. An order of court mandating the Plaintiff to pay the sum of N1,790,000.00 only as special damages to the 3rd Defendant.
- G. The sum of N10,000,000.00 as general damages to the 3rd Defendant.
- H. Any other orders) that the Honourable Court may deem fit to make in the circumstances of this case.

DW2 tendered the following in evidence:

1. Conveyance of Provisional approval as dated 10th February, 1995
2. Regularization of Land Title document dated 5th August, 2008
3. Right of Occupancy Rent and Fees from AMAC

4. Three (3) Receipts issued by AMAC
5. TDP
6. Letter from Department of Development control
7. AMAC letter dated 12th January, 2015
8. Power of Attorney dated 2nd April, 2007
9. Five copies of receipts (photocopies)

All marked Exhibits "D4", "D5", "D6", "D7", "D8", "D9", "D10", "D11" and "D12" respectively.

DW2 was cross-examined and subsequently discharged.

On their part, Plaintiff filed composite Reply to the Statement of Defence of 1st, 2nd and 3rd Defendants... and also a Statement of Defence and Reply to 3rd Defendant's Counterclaim.

In his Further and Better statement on Oath; Claimant contends, that plot 1052 refers to a completely different plot in respect of which he has no interest nor dealings with and thus not privy to all the averments in paragraphs 4, 5, 6, 7, 8, 9, 10, 11 of 3rd Defendant's statement of defence. He is the owner of plot 1051 lying and situate within Jikwoyi District, Cadastral Zone 20, Abuja

within the Jurisdiction of this Honourable Court by virtue of the Certificate of Occupancy, No. MZTP/LA/2002/BN. 1338 dated 27th February, 2008.

That approval from the Development Control was as regards his land as described above. He did not carry out any building construction/development on the 3rd Defendant's land.

That he never encroached into the 3rd Defendant's land neither did he demolish 3rd Defendant's fenced wall and gatehouse. He did not put any workmen to build or erect any building on the 3rd Defendant's land. He never instructed workmen or any other person whatsoever to build or do anything whatsoever on the 3rd Defendant's land.

No investigation whatsoever was conducted by the 1st and 2nd Defendants into any purported trespass and encroachment by him on the 3rd Defendant's land as such trespass and encroachment never occurred.

Further to the above, no invitation whatsoever was extended to him by the 1st and 2nd Defendants for any meeting between parties herein as there was absolutely no cause for such a meeting prior to the institution of this matter. He never trespassed, encroached nor carried out any

construction/development on 3rd Defendant's land and thus could not have resumed any purported acts in further trespass and encroachment on the 3rd Defendant's land.

That as the owner of plot 1051, no notice whatsoever had been issued to him prior to the notice of demolition dated 7th September, 2016. He is not the owner of plot 1052. He has absolutely no reason to encroach and did not encroach or trespass on the 3rd Defendant's land. No person or authority including the Defendants herein had at any time prior to this suit advised him to cease any purported construction/development on the 3rd Defendant's land.

That the building plan approved by the 1st and 2nd Defendants is in respect of his plot 1051. He never trespassed into the 3rd Defendant's land neither did he demolish the already constructed fenced wall nor caused any financial damage to the 3rd Defendant. Plot 1052 to his knowledge is built up with a fence and has an occupant.

That as a law abiding citizen and as a public servant (customs officer then but now retired), he has respect for constituted authority and he uphold the law in his conducts. He scrupulously confined his activities within the dimensions of the Plot 1051

allocated to him as shown in his survey plan. He did not trespass on 3rd Defendant's land.

That the Claimant denies each and every material allegation of fact contained in the 3rd Defendant's Counterclaim as if each were set out and traversed seriatim.

That he knows that plot 1052 is a plot of land fully developed and built up plot with a high perimeter fence around it and it has been so at least for the past 10 years with an occupant thereat. He never destroyed any of the items listed in paragraph 30 of the 3rd Defendant's statement of defence. He has no reason whatsoever to do so nor access thereto, the plot being a developed plot with an occupant therein.

That by his survey plan, he knows the dimensions of his land and his building/construction works have been confined to his own land without encroaching on the 3rd Defendant's land.

Whereof the Claimant urges this Honourable Court to dismiss the counterclaim and all the reliefs sought therein by the 3rd Defendant.

In line with procedure, **3rd Defendant** filed written address wherein two issues were formulated for determination to-wit;

- 1. Whether the Plaintiff is entitled to the reliefs he is seeking from this Honourable Court?**
- 2. Whether the 3rd Defendant has proved his counterclaims and therefore entitled to be granted the counterclaims by this Honourable Court?**

Learned counsel submits, that the Plaintiff is not entitled to any of the reliefs, as contained in his amended statement of claim, that he is seeking from this Honourable Court. This is because he has failed to make out or prove any item or leg of claim in his statement of claim and this Honourable Court is not a "Father Christmas" who could have awarded to the Plaintiff the claim he did not prove.

It very apposite at this point to draw the attention of this Honourable Court to the fact that the Plaintiff's relief centers of the legality or otherwise of the demolition notice served on him by the 1st and 2nd Defendants for development of residential building on the plot of land wherein he is carrying out his construction of the residential building and not a declaration that he is the owner of plot 1051 cadastral zone 05 - 07 Jikwoyi district Abuja, which the 1st and 2nd Defendants granted him building plan approval to build on. This distinction has become

necessary to put the reliefs of the Plaintiff in proper perspective before this Honourable Court.

Learned counsel also submits, that the Plaintiff had woefully failed to make out any case in this suit to entitle him to any of the reliefs that he is seeking from this Honourable Court. This is because both his oral and documents evidence before this Court i.e Exhibits "A", "B", "C", "D", "E", "F" and "G" respectively, that were tendered and admitted in evidence by the Plaintiff in support of his claim did not disprove the fact that the Plaintiff was developing his said residential building on plot 1052 Cadastral Zone 05 - 07 Jikwoyi district, Federal Capital Territory, Abuja, which belongs to the 3rd Defendant.

More so, the Plaintiff vide his Counsel also failed to disprove under cross-examination the evidence of the two (2) Defendants' witnesses that the notice of stop-work and demolition notices that were served on the Plaintiff by the 1st and 2nd Defendants was because the Plaintiff was wrongly developing his residential build on the 3rd Defendant's plot of land instead of on the Plaintiff's own plot of land.

Learned counsel submits, that the issue of whether or not to grant a declaratory relief is entirely at the discretion of this

Honourable Court and the exercise of such discretion must be exercised judicially and judiciously, if the court is satisfied in the circumstance of the case.

NWOKIDU V. OKANU (2010) ALL F. W.L.R (Pt. 522) 1633 especially at pages 1654 - 1655 paras. G - A was cited.

In the instant case, the Plaintiff has not made out a case worth the exercise of the discretion of this court in his favour. The Plaintiff is building a residential house on the plot of land belonging to the 3rd Defendant and we this court is urged not to exercise any discretion in his favour in the light of prevailing evidence before this court.

It is the submission of learned counsel, that the Plaintiff from the evidence before this Honourable Court has failed to show that he is entitled to the injunctive reliefs that he is seeking from this Court. This is because all the indices for the grant of an order of injunction are against him.

ADELEKE VS. LAWAL (2014) ALL F.W.L.R (Pt. 710) 1226 especially at page 1237, paras. B - F;

BUHARI VS. OBASANJO (2004) F.W.L.R (Pt. 191) 1487 especially at pages 1517 - 1518 paras. H - F were cited.

On Issue Two, Learned counsel submits, that the case of the 1st and 2nd Defendants, is that as statutory bodies with powers over all lands in the Federal Capital Territory, Abuja, they were forced to serve notice of stop work and demolition notices on the Plaintiff because the Plaintiff abandoned his own plot of land i.e Plot 1051 Jikwoyi District, to rather start developing Plot 1052 Jikwoyi District, which belongs to the 3rd Defendant.

It was on the basis of the service of the notice of stop work and demolition notices as served by the 1st and 2nd Defendants on the Plaintiff that made the Plaintiff to take out a writ of summons to challenge the legality or otherwise of these acts of the 1st and 2nd Defendants.

And it is in consequence of this suit of the plaintiff, that the 3rd Defendant as an interested party applied to be joined and was actually joined as a party to this case thereby filing a statement of defense and counter claim against the suit of the Plaintiff.

Learned counsel further submits, that counterclaim has been held to be *"an independent action, the trial or success of which does not depend on the success or failure of the original suit. It is substantially a cross-action and not merely a defense to the Plaintiff's case. It is to be treated for all purposes for which*

justice requires it to be treated as an action which is not pivoted on another action."

TOTAL NIG. PLC. VS. MORKAH (2002) 9 N.W.L.R (Pt. 773) 492 ratio 5 at page 517 paras. G-H was cited.

In the instant case, although the Plaintiff allegedly filed what he called "a Composite Reply to the Statement of Defense of 1st, 2nd and 3rd Defendants Statement of Defense and Reply to 3rd Defendant's Counter Claim," the Plaintiff therein acknowledged that Plot 1052 Jikwoyi District rightly belonged to the 3rd Defendant and failed to contradict or respond to the statement of defense of the 1st and 2nd Defendants to the effect that the 1st and 2nd Defendants served notice of stop work and demotion notices on the Plaintiff because the Plaintiff abandoned his own plot of land i.e Plot 1051 which he was given approval to build on, and rather went into a wrongful voyage into Plot 1052 Jikwoyi District, which belonged to the 3rd Defendant, to develop. It is our contention that by this admission that Plot 1052 Jikwoyi District belonged to the 3rd Defendant and failure to contradict the statement of defense of the 1st and 2nd Defendants, the Plaintiff had admitted the contents of the 3rd Defendant's counter claim.

That It is apposite at this point to draw the attention of this Honorable Court to the unchallenged evidence of the 1st and 2nd Defendants as contained in paragraphs 8(a & b) of their amended statement of defense and paragraph 11 of their amended witness statement on oath, (both of which were deemed properly filed vide the order of this court as made on 13th July, 2021) as well as evidence adduced under cross-examination from the 1st and 2nd Defendant sole witness by 3rd Defendant's Counsel on 16th February, 2022, to the effect that it was because the Plaintiff was building on Plot 1052 Jikwoyi District which belonged to the 3rd Defendant, that forced the 1st and 2nd Defendants to serve the notice of stop work and demolition notices on the Plaintiff. This unchallenged vital piece of evidence which emanated from the 1st and 2nd Defendants had disproved any deposition of the Plaintiff that he did not encroach and destroy anything on the 3rd Defendant's plot of land.

The above oral and documentary evidence of the 1st and 2nd defendant is a further corroboration of the 3rd Defendant's evidence that the Plaintiff encroached upon and destroyed a built-up fence and gate house erected by the 3rd Defendant in plot 1052 Jikwoyi district which belongs to the 3rd Defendant.

It is the law that a piece of evidence that was neither denied nor challenged is to be accepted as the truth of what it states and thus, we urge this Honorable Court to accept it as the truth and act upon same as such.

CAPPA AND D'ALBERTO LTD. VS. DEJI AKINTILO (2003) All F.W.L.R (Pt. 160) 1565 ratio 6 at pages 1581 paras. C - D was cited.

In the instant case, the Plaintiff Counsel did not cross-examine the 1st and 2nd Defendants witness in any manner whatsoever on this issue of the Plaintiff's encroachment into and building on Plot 1052 Jikwoyi district. This failure gives credence to Defendant's counter claim as it relates to the 3rd Defendant's items of specific damages.

In conclusion; learned counsel submits that in the determination of the disputes between the parties in this case, this Honourable Court should ensure that its decision is confined to the pleadings and evidence as adduced before it on the issues raised by the parties. Thus, this court is recommended the decision of the Supreme Court in ***AFRICAN CONTINENTAL SEAWAYS LTD VS. NIGERIA DREDGING ROAD AND GENERAL WORKS LTD (1972) 5 SC 235 AT 250*** wherein the apex Court stated

that: "The court itself is as much bound by the pleadings of the parties as they are by themselves. It is no part of the duty or function of the court to enter upon any inquiry with the case before it other than to adjudicate upon the specific matters in dispute, which the parties have raised by their pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defense not made by the parties."

That on the basis of all their above arguments, this Honorable Court is urged to hold that the Plaintiff failed to prove any of his claims against the defendants and thus, is not entitled to any of the reliefs he is claiming before this Honourable Court. Therefore, this court is urged to dismiss the entire claims of the Plaintiff with substantial cost against the Plaintiff and in favour of each of the Defendants.

Finally, this Honourable Court is urged to further hold that the 3rd Defendant has proved his counter claims before this Court against the Plaintiff and grant all the reliefs as claimed in the counter claim with punitive cost against the Plaintiff.

In line with law and procedure, counsel for the 1st and 2nd Defendants filed their written address wherein four (4) issues were formulated for determination to-wit;

- 1. Whether or not, the evidences adduced by the Plaintiff before the Court has proved his ownership of purported Plot No. 1051 nor 1052 all situate and being within Jikwoyi District Federal Capital Territory Abuja. With purported Customary Certificate of Occupancy Ref No: MZTP/LA/2002/BN.1338 dated 27th February, 2003 issued by Abuja Municipal Area Council Zonal Planning Office.***
- 2. Whether the demolition Notice served on the Plaintiff was legal, legitimate, valid and subsisting on the illegal development/structure of the Plaintiff in this suit.***
- 3. Whether the Plaintiff is entitled to the perpetual injunction claimed in the Suit.***
- 4. Whether the Plaintiff is entitled to the sum of N50,000,000.00 (Fifty Million Naira) only as General Damages.***

On issues 1 and 2, it is the submission of learned counsel, that the person vested with power to allocate land within the Federal Capital Territory Abuja is the President Commander in Chief of the Federal Capital Territory Abuja who now delegate his Power through the Minister of the Federal Capital Territory Abuja. It also a trite law that deligatus non portet delegia (that you cannot delegate the power that was delegated to you).

Learned counsel also submits, that a simple perusal of the purported Customary Certificate of Occupancy Ref No: **MZTP/LA/2002/BN.1338** dated 27th February, 2003, is very clear that the said allocation was not made by the 1st and 2nd Defendants and the Rural Land adjudicating committee is also not known by the 1st and 2nd Defendants, fact speaks for itself, counsel also submits that for a Plaintiff to succeed in an action before a Court of law, he must proffer credible and quality evidence to entitle him to judgment since the evidential burden of proof is cast upon him by the provisions of Sections 135 – 137 of the Evidence Act, 2011.

Learned counsel further submits, that the Plaintiff opted for the second and third modes of establishing title i.e by production of documents of title. Counsel refer this Court to the case of

OGUNJEMILA VS. AJIBADE (2010)11 NWLR (Pt. 1206)
Page 564.

It is the submission of learned counsel, that after the Plaintiff's refusal/neglect to show up at the office of the agent of 1st and 2nd Defendants, cause the issuance of Stop Notice to the Plaintiff and finally to Demolition Notices as enshrined under Section 47 and 61 of the Nigerian Urban and Regional Act (1992 No. 88).

Counsel submits, that the Claimant does not acquire a Statutory Title from the 1st and 2nd Defendants and urge the Honourable Court to discountenance the reliefs sought by the Claimant, affirm the Demolition Notice served on the Claimant and further answer the issue in the 1st and 2nd Defendants' favour

On issue 3, learned counsel submits, that the Plaintiff is not entitled to the injunctive relief sought, Plaintiff has not proved his title to the property in dispute before the Honourable Court. The Plaintiff has not also proved act of trespass against the Defendants. It therefore means that an Order of injunction is not necessary against the Defendants, over allocation that was not made by the 1st and 2nd Defendants by way of restrain the Defendants from committing act(s) of trespass to the Plaintiff's purported property.

The law is well known that where a party has not established the ownership of any plot of land is not necessary for an Order of Injunction to be obtained to protect the possession in him. In other words, once there was no finding over the purported allocation for trespass an injunction must not be granted. Counsel refer the Court to ***UGOCHUKWU M. MGBEAHURU in Land Disputes & Litigations Practice, 2017 at 358 and the Case of ANABARAONYE VS. NWAKAEHI (1997) 1 NWLR (Pt. 482) 374.***

Learned counsel further submits, that no matter the length of time the Plaintiff spent in illegal possessions it cannot metamorphose to legal possession and that this Court has the duty to put the illegal possession to an end by way of perpetual injunction.

On issue 4, learned counsel submits, that the Plaintiff is not entitled to damages in this case. Building on the argument the preceding issue and the evidence referred to therein, it becomes clear from the evidence that the Plaintiff have refused to stop work even after obtaining injunctive Order restraining all the parties from doing any further act on the subject matter of the suit. The continuation of further act on the subject matter of this

suit even when there was an injunctive Order restraining all the parties from doing any further act indicated that the Plaintiff was in the habit of refusing to complying even when the matter is before the Honourable Court. Counsel urge this Honourable Court to consider the act of Plaintiff disrespectful, unlawful, illegal and null and void. The case of ***ACMEL (NIG) LTD. VS. F.B.N PLC. (2014)6 NWLR (Pt. 1402) 158 at 198, Paragraph B – E.***

The law is very trite that Courts always frowns at self help and they are greeted with condemnation of the act of the Plaintiff and refused to award damages to Plaintiff. The Court of Appeal held in ***ISA VS. GAMANDI (2014) LPELR – 23239 (CA)*** while relying on the Supreme Court decision.

Learned counsel contends, that the guiding principle of law is awarding/refusing general damages is for the Court to look at the evidence adduced by the Plaintiff and to making a finding whether the Plaintiff suffered injury as a result of the Defendant's conduct so as to exercise its discretion in awarding/refusing damages.

It is for the above reason, counsel submits, that the Plaintiff is not entitled to damages. Counsel urge the Honourable Court to hold in favour of the 1st and 2nd Defendants.

In conclusion, counsel urge this Honourable Court to refuse all the Plaintiff's reliefs and dismissed the suit with punitive cost against the Plaintiff.

On their part, Claimant filed written address wherein two issues were formulated for determination to-wit;

- 1. Whether the Claimant from the facts and evidence led in this is entitled to a grant of the reliefs sought by him from this Honorable Court.***
- 2. Whether the 3rd Defendant is entitled to grant of the reliefs sought in his Counter Claim.***

On issue 1, learned counsel submits, that the Claimant is entitled to the grant of the reliefs sought in his Amended Writ and Statement of Claim on the basis of the fact that the Claimant has proved his case before this Honorable Court. It is trite that it is a fundamental principle of evidence that he who alleges must proof. Refers to Section 131(1) of the Evidence Act. The thrust of the Claimant's case is that the Demolition Notice (Exhibit "H") issued by the 1st and 2nd Defendants to him was issued in bad faith.

By Exhibits "A" (Certificate of Occupancy in respect of Plot 1051), Claimant became seized of Plot 1051 and as stated in paragraphs 7, 8, 9, 13 and 14 of his pleading and his written evidence, he commenced construction works on his plot of land but was stopped when the 1st and 2nd Defendants issued Exhibit "H" which is the "Demolition Notice" dated 7th September, 2016 and inscribed "**FCDA/DC Final Demolition**" on the walls of the Claimant's construction works as evidenced by Exhibit "G".

Furthermore, Exhibits "G" and "H" settles the question as to which of the plots between Plot 1051 and Plot 1052 the Claimant was carrying construction on. That it is the law that a document speaks for itself and one cannot read into a document what is not contained therein. ***IKEMEFUNA & ORS VS. LONDIOR & ORS (2018) LPELR-44840(CA)*** was cited. Exhibit "H" clearly shows that the Plot No for the building sought to be demolished is Plot 1051 and Exhibit "G" shows the inscription "**FCDA/DC Final Demolition**" by the 1st and 2nd Defendants on the walls of the Claimant's building on his plot (1051).

With regard to Exhibit "D1" tendered by the 1st and 2nd Defendants, we submit that it apparent on the face of the document that the DW1 is not the maker of the said document

and as a consequence the court is by law mandated not to attach any probative value to the said document. DW1 as per his witness statement on oath (now written evidence) stated that he is a senior technical officer (Planning) of the Department of Development Control. On the face of Exhibit "D1" it is stated that survey by: Survey Unit, Department of Development Control with the signature thereon different from that appended by DW1 on his written evidence and we urge the Court to attach no probative value to it. ***BELGORE VS. AHMED (2013) 8 NWLR (Pt.1355) PAGE 6- AT 100 Paragraphs E-F*** was cited.

On issue 2, learned counsel submits, that the Claimant herein reiterates his submissions above in relation to the fact that he did not encroach on Plot 1052 as asserted by the 3rd Defendant.

That beyond the mere ipsi dixit of the 3rd Defendant, there is no proof whatsoever that the Claimant encroached on the 3rd Defendant's land which had a high fence and according to the Claimant was already built up.

Learned counsel further 3rd Defendant's paragraphs 4.2.7, 4.2.8, 4.2.9, 4.2.11 and 4.2.12 are a rehashing of the incorrect assertion that the Claimant was served quit notices and demolition notices and that the Claimant did not controvert these allegations made

by the 1st and 2nd Defendants. At no time did the Claimant admit that he was served quit notices as repeatedly canvassed by the 3rd Defendant. This Honorable Court is urged to abide by the evidence in this matter and disregard this line of unsubstantiated argument put forward by the 3rd Defendant particularly as the 3rd Defendant vehemently makes these assertions without reference to the pleadings, written evidence and the oral evidences of witnesses. 3rd Defendant's Counsel cannot - with respect - use his address to distort or amend the evidence on record. Refers to ***ARCHIBONG V. EDAK (2006) 7 NWLR (PT. 980) 485;***

OYERINDE V. ACCESS BANK PIC (2014) LPELR-23461 were cited.

Learned counsel also submits, that it is to be noted that 3rd Defendant's claim for damages in relation to the items destroyed are specific damages and it is trite that specific damages must be specifically pleaded and strictly proved. While the 3rd Defendant specifically pleaded the alleged damages, he offered nothing credible by way of strict proof of the items allegedly destroyed. ***AKITI VS. OYEKUNLE (2015) LPELR-24681 PP 25-27*** ***PARAS F-A*** was cited.

Learned counsel further submits, that the 3rd Defendant having not established trespass on the one hand and destruction of his property on the other hand, he is not entitled to any of the reliefs sought in his Counter-Claim. The 3rd Defendant as Counter-Claimant is seeking declaratory reliefs and the law is that such reliefs are not granted even on admission by the defendant particularly where the Claimant (Counter Claimant in this instance) fails to establish his entitlement to the grant of such relief by the court. ***OKUSANYA & ORS V. ADETONA & ORS (2018) LPELR-44876 PP 24-26 PARAS B-C*** was cited.

In conclusion, learned counsel submits that the Claimant has established by the evidence adduced vide his pleading, written evidence and documents admitted that the Demolition Notice issued to him were done in bad faith and without justification. He has furnished the court with sufficient evidence to entitle him to the grant of the reliefs sought. The Counter-Claimant on the other hand has not provided credible evidence to enable the court grant the reliefs sought by him and this court is urged to dismiss same as lacking in merit and without substance.

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 founded in this area of jurisprudence. A party such as in this case, who seek declaration of right, must win on the strength of his case and not on the weakness or absence of the defence.

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

By the endorsement and claim of Claimant, he seeks declaration that the purported notice of demolition of the Plaintiff's plot is unlawful, null and void, and of no effect whatsoever...and other reliefs as clearly captured in the preceding part of this Judgment.

Judicial pronouncements are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence ***MOTUNWASE VS SORUNGBE (1998) NWLR (Pt. 92) 90***.

Where the court is called upon to make a 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 pleading that he is entitled.

The imperativeness of this arises 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.

The Plaintiff in an effort to satisfy this Honourable court to enter judgment in his favour called one witness and tendered some documents to establish that indeed, he was building on the plot allocated to him without any form of encroachment on another land...and to convince the court to enter judgment in his favour.

Whereas 1st and 2nd Defendants filed their statement of defence with a sole statement on oath of one Mr. John Henry Turi who adopted the said witness statement on oath and tendered some documents in urging the court to dismiss the entire suit with substantial costs as same is without merit and frivolous.

On their part, 3rd Defendant equally called a sole witness in the person of Chukwuemeka Benedict Nwankwo who adopted his witness statement on oath and tendered some documents, and urge 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 the Plaintiff has proved his case on balance of probability*** has been formulated for determination.

On whether the Plaintiff in the case in view is entitled to the reliefs claimed or not, it has become 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 trite position of the law that where a claim for trespass coupled with a claim for perpetual injunction is in issue, it automatically puts title of the parties in issue. ***MORENIKEJI VS ADEGBOSIN (2003) 25 WRN VOL. 25.***

I need only 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 section 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."

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

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

More elucidating is the fact that 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 of their ancestors were buried on such lands. Section 6 of the Federal Capital Territory Act is instructive in this regard.

There is no gain saying that the issue of deemed grant which is a product of the Land Use Act, 1978 was deliberately made inapplicable to lands within the Federal Capital Territory from the construction of the preamble to the Land Use Act and Section 49 of the same Act.

The Land Use Act must not be read in isolation. Were the Land Use Act meant to apply to Federal Capital Territory, the original inhabitants would have been granted deemed grant and remained on their various lands within the Territory.

It therefore presupposes that where the language and intent of an enactment or contract is apparent, a trial court must not distort their meaning.

See ***OLATUNDE VS. OBAFEMI AWOLowo UNIVERSITY (1998) 5 NWLR (Pt. 549) 178.***

Poser.. Was it the Federal Capital Territory Minister?

It is clear from the preamble to the Land Use Act (LUA) and the provision of section 1 of the Land Use Act (LUA) that the provision of the Act are meant to vest all land in the territory of

each state, excluding land vested in Federal Government or its agencies, in state governors who would hold same in trust for the people of the said state.

It follows therefore, that in line with position expressed in the preamble and section 1 of Land Use Act (LUA), section 49 (1) of Land Use Act (LUA) specifically excludes the application of the said Act to title to land held by the Federal Government or any agency of the Federal Government at the commencement of the Act.

In the same analysis, it is most crystal clear from both the preamble to the FCT Act and section 1(3) of the Act that all land comprised in the Federal Capital Territory vest absolutely in the Federal Government of Nigeria.

For the purpose of clarity, I shall re – produce the preamble to the Land Use Act (LUA) 1978 and FCT Act respectively.

Preamble to FCT Act

"An Act to establish for Nigeria, a Federal Capital territory and to provide for the constitution of a Federal Capital Development Authority for the purpose of exercising the various powers set out in

this Act, to execute other projects connected therewith, to provide for the laws applicable to that Territory and for appeals from the Upper Area Court and the law applicable thereto; and to provide for the delegation to the Minister of Federal Capital Territory of the executive powers vested in the President and those vested in him and the Government of a State under the applicable laws.”

Preamble to Land Use Act

“An Act to vest all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Government of the State, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non – urban areas are conferred on Local Government.”

It is instructive to note the settled fact that ownership of land in the Federal Capital Territory, Abuja vests absolutely in the Federal

Government of Nigeria, who through the Federal Capital Territory Minister grant statutory rights of occupancy to any person/persons.

It follows, naturally and legally speaking, therefore, that ownership of land within the Federal Capital Territory vests in the Federal Government of Nigeria who through the Minister of Federal Capital Territory vest same to every citizen individually upon application.

If therefore, there is no non – urban land in the Federal Capital Territory, it presupposes that the only title validly and legally acceptable within the Federal Capital Territory is the statutory allocation by the Federal Capital Territory Minister.

From the foregoing therefore, it is clear that no Area Council Chairman/Administrator within the Federal Capital Territory has the power to vest any title on land to any person or group of persons as no such land within the Federal Capital Territory exist as non – Urban Land where customary title could be conferred.

Consequently, to the extent of non – compliance with the statutory provision, of law, any of such allocation so made, is null, void and unconstitutional, the allocations to both Plaintiff and the 3rd Defendant/Counter Claimant, inclusive.

The duty of Court is to interpret and give adequate and as close as possible accurate and ordinary meaning of the words used. At best, both Plaintiff and 3rd Defendant are trespassers on the land in question.

Having held that both Plaintiff and 3rd Defendant are both trespassers and therefore not entitled to the land in issue and could not have been the beneficial owners in that respect, I shall now gravitate to the evidence on record showing where the problem, if any, yes.

This is so because even as trespassers, they are entitled to the protection of law.

Permit me to note from outset that the claim of Plaintiff is not on Plot 1052 but Plot 1051.

I also need to state that the documents tendered in evidence by both Plaintiff and 3rd Defendant/Counter Claimant confirms the fact that Plots 1051 and 1052 exist separately.

I pause here to state the law as regards the importance of a documentary evidence. It has been held by a number of court decision that documentary evidence is the yardstick or a hanger

by which to assess the veracity of oral testimony or its credibility.
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.

The implication of tendering Exhibit, including documentary evidence before a court of law was captured by MUKHTAR JCA (as he then was) in ***JOHN M. BUBA VS THE STATE (1992) NWLR (Pt. 215) 1 at 168*** as thus;

"Exhibits are not tendered and admitted in court for the fun of it. They are for the purpose albeit to assist in determining the relevance of the Exhibits to the case. Secondly, once this form part of the record they must be examined, scrutinised and assess for the just determination of the case, if they are not scrutinised as they apply to the facts of the case, then of what use are they admitted admittance in evidence."

Similarly 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."

I shall therefore, take a look and peruse through the documents tendered in evidence.

In proving his case, Plaintiff tendered the following document in evidence;

1. Certificate of Occupancy as Exhibit "A"
2. Approved Building Plan as Exhibit "B"
3. Regularization of title documents as Exhibit "C"
4. Settlement of Building plan fees as Exhibit "D"
5. Request for Settling Out Approval of Proposed Residential Development as Exhibit "E"
6. Five receipts, three Bank deposit slips as Exhibit "F"
7. Photographs and Memory Card as Exhibit "G"
8. Demolition Notice as Exhibit "H"

9. Specimen Signature as Exhibit "I"

Whereas all the Defendants tendered the following;

1. Certified True Copy of the layout of Jikwoyi as Exhibit "D1"
2. Certified True Copy of the Survey Plan as Exhibit "D2"
3. Building Plan approval as Exhibit "D3"
4. Conveyance of Provisional approval as dated 10th February, 1995 as Exhibit "D4"
5. Regularization of Land Title document dated 5th August, 2008 as Exhibit "D5"
6. Right of Occupancy Rent and Fees from AMAC as Exhibit "D6"
7. Three (3) Receipts issued by AMAC as Exhibit "D7"
8. TDP as Exhibit "D8"
9. Letter from Department of Development control as Exhibit "D9"
10. AMAC letter dated 12th January, 2015 as Exhibit "D10"
11. Power of Attorney dated 2nd April, 2007 as Exhibit "D11"

12. Five copies of receipts (photocopies) as Exhibit "D12"

It is the case of the Plaintiff, that while developing the land, officials of the 1st and 2nd Defendants inscribed notice of "FCDA/DC Final Demolition" on the wall of his building under construction and served him "Demolition notice" i.e Exhibit "H".

Plaintiff stated that the Notice was served in bad faith and without justification, he having complied with all the requirements including payment of necessary fees demanded of him by the 1st and 2nd Defendants. That the 1st and 2nd Defendants having granted approval, the Plaintiff committed financial resources into the construction and development of the building sought to be demolished.

On their part, 1st and 2nd Defendants contended that they did not in any way admit that neither Plots 1051 nor 1052 within Jikwoyi District Federal Capital Territory Abuja, belong to the Plaintiff and did not issue any building approval to the Plaintiff over the purported Plot No. 1052 within Jikwoyi District Federal Capital Territory Abuja.

On the part of the 3rd Defendant (Jafaru Kaka), one Chukwuemeka Benedict Nwankwo who gave evidence as DW2 and who represented the original allottee of Plot No. 1052,

tendered Exhibit "D11" (Power of Attorney) as the legal authority permitting him to so stand in the place of the 3rd Defendant and Counter Claimant.

I will therefore pause at this point to state the law as it is with respect to the status of the said Power of Attorney i.e Exhibit "D11".

In paragraph 4(2) of the Power of Attorney, the Donor appointed the Donee with express powers which I hereby reproduce, as follows:-

Paragraph 4

NOW THEREFORE by the Power of Attorney which is given for a consideration (receipt whereof the Donor acknowledge) the (Donor) hereby irrevocably appoint CHUKWUEMEKA NWANKWO (DONEE) as his true and lawful Attorney, to execute on his behalf of the following conditions, namely:

Paragraph 4(3)

To sell, lease, let, assign, change, mortgages, devise, pledge or otherwise dispose of the plot and/or all

development charges thereon, as and when he deems fit.

From above wordings, it is clear that the said Attorney is now the owner of the said Plot 1052, which again makes the transaction registable pursuant to Section 15 of the Land Instrument Registration Laws, Laws of the FCT Abuja Cap 515.

The said Section 15 of the Law is hereby reproduced for ease of reference;-

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 proper office as specified in Section 3 of this Act.

I have seen the said Power of Attorney which has on it the stamp of Federal Inland Revenue Service (FIRS) dated the 6th September, 2017.

I make bold to say that the said document which affects land in Abuja - FCT was not presented to the Land Registry for registration upon payment of the applicable fee.

The consequence of non-registration is to refuse same in evidence, but now that it has been tendered in evidence, I am under an obligation to jettison same.

Accordingly, the said Power of Attorney is hereby expunged from the record of this Court.

I rely on the case of ***ATANDA VS. COMMISSIONER FOR LANDS AND HOUSING KWARA STATE (1998)3 NWLR (Pt. 68) 164 (SC)***

Indeed the expunged Power of Attorney, is akin to an umbilical cord of a mother and foetus, without which the foetus cannot survive.

Having severed the only link between the original allottee and the alleged Attorney, all evidence so given in that capacity goes to no issue and is hereby struck-out as he remains a persona non grata and a meddlesome interloper. I so hold.

I now gravitate to the claim of the Plaintiff which have been well produced in the preceding part of this Judgment.

Plaintiff who gave evidence as PW1, tendered Exhibits "A", "B", "C", "D", "E", "F", "G", "H" and "I" to show that he is the allottee of the said Plot No. 1051 laying and situate at Cadastral Zone 05 – 07 Jikwoyi District, Abuja. There is no adverse evidence suggesting otherwise.

The claim of Plaintiff is purely against the 1st and 2nd Defendants, simpliciter. The law relating to pleadings and evidence is settled. Without evidence in support of pleading, such pleadings is deemed abandoned.

See ***SANI ABACHA FOUNDATION VS. UBA (2010) NSCQR Vol. 41 Page 360 (4866).***

I have no difficulty, at all, entering Judgment for the Plaintiff in view of the illuminating evidence... I hereby enter Judgment in favour of the Plaintiff, as follows:-

1. A Declaration **is hereby made** that the purported notice of demolition of the Plaintiff's Plot is unlawful, null and void and of no effect whatsoever.
2. An Order setting aside the purported notice of demolition of the Plaintiff's plot by the Defendants is **hereby granted**.

3. An Order of Perpetual Injunction restraining the 1st and 2nd Defendants from demolishing the Plaintiff's buildings/ structures on the plot is **hereby granted**.

The next to be considered is the relief for general damages which is usually within the personal assessment by the Court after taking into account facts of the case.

See ***DANGOTE CEMENT PLC. VS. PETER ASOM AGER & 1 OR ELC (2024) 7878 (SC) (Page 1)***.

In the Court's general assessment, the sum of **N3,000,000.00 (Three Million Naira)** is considered adequate compensation for the unnecessary and unwanted stress against the 1st and 2nd Defendants.

On the said counter-claim of the 3rd Defendant/Counter Claimant, in view of the fact that the Plaintiff's claim relates to Plot 1051 and not Plot 1052 which 3rd Defendant/Counter Claimant counter claimed, now that the said counter claim is bereft of any evidence arising from the holding of the Court on the status of the Donee i.e Chukwuemeka Benedict Nwankwo who has been declared unfit to give evidence on account of the fact that the instrument authorising him to act as Attorney was not registered, the counter claim ought to be struck-out.

Having been orphaned by lack of evidence, same is hereby struck-out.

***Justice Y. Halilu
Hon. Judge
23rd January, 2025***

APPEARANCES

F.O. Akoh, Esq. – for Claimant.

E.I.P. Odo, Esq. with F.U. Oraekeyi, Esq. – for the 3rd Defendant.

Other Defendants not in Court and not represented.

