

**IN THE HIGH COURT OF THE FCT, ABUJA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDING AT APO, ABUJA**  
**ON TUESDAY, THE 06<sup>TH</sup> DAY OF FEBRUARY, 2024**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO: FCT/HC/CV/551/2013**

**BETWEEN:**

**1. ZAINAB B. DODO**

**2. LYNDA TOKUNBO ADEBOYE**

**CLAIMANTS**

**AND:**

**1. THE HON. MINISTER OF THE FEDERAL  
CAPITAL TERRITORY**

**2. FEDERAL CAPITAL DEVELOPMENT  
AUTHORITY (FCDA)**

**DEFENDANTS**

**JUDGMENT**

This suit has had a chequered history. It was originally filed in 2013. It has been amended twice; first in 2014 and second in 2019. It has moved through two Judges before it arrived before me. In the course of its judicial peregrination, it sojourned in the Court of the Honourable Justice V. V. M. Venda. Following the retirement of His Lordship, the file found its way to the Honourable Justice O. O. Goodluck. Upon the elevation of my learned brother to the Court of Appeal, this file arrived here. Today, the Judgment in this matter which has seen ten years and eight months of judicial activity is being delivered.

By an Amended Writ of Summons dated the 3<sup>rd</sup> of October, 2019, the Claimants brought this action against the Defendants seeking the following reliefs:-

1. *An Order of the Honourable Court that our title to Plot No. 30 within Cadastral Zone B07 Katampe District, Abuja and evidenced by Offer of Statutory Right of Occupancy issued on 27/6/05 with Old File No. KT. 1800 and New File No. 20046 is still valid and subsisting.*
2. *An Order of perpetual injunction restraining the Defendants, their agents, servants or privies however described or anybody else acting on their behalf from interfering with our title and or trespassing, disturbing our lawful use and occupation of the said Plot No. 30 within Cadastral Zone B07 Katampe District, Abuja and evidenced by Offer of Statutory Right of Occupancy issued on 27/6/05 with Old File No. KT 1800 and New File No. 20046.*
3. *An Order of perpetual injunction restraining the Defendants, their agents, servants or privies however described from withdrawing our title to Plot No. 3 within Cadastral Zone B07 Katampe District, Abuja with the intention of re-allocating same to any other person other than us.*
4. *An Order of the Honourable Court restraining the Defendants, their agents, servants or privies however and howsoever described or anybody acting on their behalf from allocating our said Plot No. 30 within Cadastral Zone B07 Katampe District, Abuja to anybody or body of persons and declaring as ineffectual, null and void whenever such allocation of our Plot No. 30 had been made.*
5. *IN THE ALTERNATIVE*

- i. *An Order of the Honourable Court mandating the Defendants to allocate an alternative land to the Claimants in Cadastral Zone B07 Katampe, Abuja or any other suitable Cadastral Zone in the FCT.*
- ii. *The sum of ₦10,000,000.00 (Ten Million Naira) being general and exemplary damages against the Defendants jointly and severally for the hardship occasioned on the Claimants as a result of the Defendants' interference with the Claimants' quiet and peaceful enjoyment of the plot duly and legally allocated to the Claimants.*
- iii. *The sum of ₦5,000,000.00 (Five Million Naira) being the cost of this suit.*

On the 13<sup>th</sup> of December, 2022 the Claimants opened their case. on that day, the 2<sup>nd</sup> Defendant testified as PW1. After she had been sworn, she adopted her Witness Statement on Oath which she deposed to on the 27<sup>th</sup> of October, 2014, that is, the first time the Writ of Summons was amended, and her Additional Witness Statement on Oath which she deposed to on the 3<sup>rd</sup> of October, 2019, that is, the second time the Writ of Summons was amended. It is her evidence that she was the lawful attorney of the 1<sup>st</sup> Claimant, the lawful allottee and holder of the property known as Plot 30 within Cadastral Zone B07 Katampe, Abuja covered by the Offer of Statutory Right of Occupancy issued on 7/06/05 with Old File No. KT 1800 now New File No. KT 20046.

She claimed that when she wanted to pay the ground rent for the property preparatory to developing the property, she found, upon a search at the Abuja Geographical Information Systems (AGIS) that the 1<sup>st</sup> Claimant's title had been

allocated to a third party even though there was no revocation of her allocation. She also averred that further inquiry revealed that the 1<sup>st</sup> Claimant's right of occupancy had been withdrawn owing to the purported prior subsisting title. She added that the Defendants have continued to trespass on the property while allocating same to a third party and that the actions of the Defendants were aimed at frustrating the development of the property.

In her Additional Witness Statement on Oath, the PW1 testified that the claim of the Defendants that the land was originally allocated to one Oseni Ayinla Lawal was not correct. She insisted that her allocation was lawful and subsisting.

In the course of her evidence in chief, she sought to tender a number of documents in evidence. These are the Offer of Statutory Right of Occupancy dated 27/06/2007 in favour of Zainab D. Dodo, Legal Search Report dated 14/09/2011 with revenue receipt of N10,000.00 dated 26/08/2011 in favour of one Zainab Dodo, a Power of Attorney dated 06/02/2007 between Zainab Dodo and Lynda Adebayo and a Search Report dated 5/2/2007. These were admitted in evidence and marked as Exhibits A1-A2, B1-B2, C1-C5 and D1-D2 respectively.

Under cross-examination, she said that she knew how properties were being acquired in the Federal Capital Territory, Abuja, adding that by virtue of **Exhibit B1-B2, Exhibit A1-A2** was withdrawn owing to prior subsisting title. She however said she did not know who owned the existing prior title. In further answer, she stated that from **Exhibit B1-B2** one Ayinla Lawal was the first allottee. She said

she did not know the said Ayinla. There was no re-examination. The Court thereafter adjourned to the 21<sup>st</sup> of February, 2023 for defence.

On the 4<sup>th</sup> of April, 2023, the Defendants opened their defence. The DW1, Alexander O. Daniel, adopted his Witness Statement on Oath which he made on the 8<sup>th</sup> of April, 2019. In the said Witness Statement on Oath, the DW1 averred that the plot in question was originally allocated to one Oseni Ayinla Lawal on the 9<sup>th</sup> of February, 1994 before it was eventually allocated to the 1<sup>st</sup> Claimant on the 27<sup>th</sup> of June, 2005 in error. He added that the Defendants withdrew the subsequent allocation when it became aware of the case of double allocation he swore that the name of the 1<sup>st</sup> Claimant, together with the names of persons with similar complaints were being considered for alternative allocation. He denied that a statutory right of occupancy was ever issued to the Claimants, adding that no payments were received in respect of the same property. He claimed that the Defendants rejected the payment for ground rent because there was no basis for the payment as the subsequent allocation been withdrawn, adding that there was no re-allocation to another person, as the prior allocation to Ayinla was still subsisting.

Under cross-examination, the DW1 confirmed that he was in Court to represent the Land Department, adding that he was familiar with the file of the Claimants. He confirmed that **Exhibits A1, A2 and D1** emanated from the Defendants. He confirmed that the 1<sup>st</sup> Claimant, by virtue of **Exhibit D1-D2** was owner of the property. He confirmed that the only person known to the Defendants as the owner of the property as at 5/2/2007 was the 1<sup>st</sup> Claimant. He stated that he did

not tender any document to show that there was a prior allocation, adding that the Defendants did not notify the Claimants while issuing her with **Exhibit A1**. He confirmed that the Defendants realized the double allocation, adding that Defendants did not follow the procedure for revocation of existing allocation. It was his answer to a question to that effect that the 1<sup>st</sup> Claimant was selected for allocation of alternative plot.

There was no re-examination. The Court adjourned to the 23<sup>rd</sup> of May, 2023 for adoption of Final Written Addresses.

The parties filed their Final Written Addresses. That of the Claimant was filed on the 16<sup>th</sup> of May, 2023 while that of the Defendants was filed on the 22<sup>nd</sup> of May, 2023. On the 9<sup>th</sup> of November, 2023, the parties adopted their respective Final Written Addresses.

In the Claimant's Final Written Address, learned Counsel distilled two issues for determination, to it: *(1) Whether on the preponderance of evidence adduced, the Claimants have proved a valid and subsisting title to the property described as Plot No. 30 within Cadastral Zone B07 Katampe District, Abuja (2) Whether having regard to the peculiar circumstances of this case, this Honourable Court can grant the Claimant's alternative prayers, the Claimants having successfully established the principal prayers herein.*

On his submissions on the first issue, learned Counsel cited the popular case of **Idundun v. Okumagba (1976) 9/10 SC 227 at 246-250** on the methods of proving ownership of land. He argued that though the Courts have identified five ways

through which title to land might be proved, a party who claimed ownership of land need not prove their title through all the ways identified, as only one of the method would suffice. He also submitted that a party who relied on deed of conveyance as the legal basis of ownership must produce the documents of title in order to ground their claim.

He submitted further that the Claimants have been able to adduce sufficient and credible evidence to the effect that the Defendants allocated the property in question to them. He referred to the exhibits tendered and admitted in evidence. He also referred to the cross-examination of the DW1 where he stated that the 1<sup>st</sup> Claimant was the only allottee of the property as at the date of issue of the said documents. It was his contention that though a claimant was required to succeed on the strength of their case and not on the weakness of the defendant's defence, the claimant was nonetheless permitted to rely on favourable evidence elicited under cross-examination. He urged the Court to find that the Claimants have proved their title to the said land.

Arguing further on the issue of revocation and subsequent re-allocation, Counsel cited several authorities to the effect that a notice of revocation must be issued pursuant to the relevant provisions of the Land Use Act before the revocation can be valid, adding that the failure of the Defendants to issue the said notice of revocation invalidated whatever revocation of the Claimants' title they purported to have made.

He submitted, on the Defendant's contention that Ayinla, the purported owner of the land ought to have been joined, that the Courts have held that non-joinder cannot defeat an action. He cited a number of authorities and the provisions of Order 13 Rule 18(1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018.

On the second issue, learned Counsel submitted that the Defendants had admitted that the 1<sup>st</sup> Claimant's allocation was valid, even though it was a case of double allocation. He argued that the justice of the case demanded that the Claimants be allocated another plot, having established their entitlement to the principal reliefs sought in the suit. He contended that alternative prayers did not translate to concession. He urged the Court to discountenance the submissions of the Defendants' Counsel on double compensation as reliefs sought in the alternative could not be considered double compensation. He urged the Court to grant the reliefs sought.

For all his submissions on the two issues distilled, learned Counsel relied on a number of decisions such as *Aigbobahi v. Aifuwa (2006) 6 NWLR (Pt. 976) 270 at 286, paras B-F; Mgborogu v. Okeke (2020) LPELR-49966 (CA) at 2 paras D; Green v. Green (1987) LPELR-1338(SC); VOWA v. FBN Plc (2016) LPELR-40537 (CA); EFCC v. Inuwa & Anor (2014) LPELR-23597 (CA); Unilorin Teaching Hospital v. Abegunde (2013) LPELR-21375 (CA); and Coomassie v. Tell Communications Ltd & Ors.*

In the Defendants' Final Written Address, learned Counsel formulated two issues for determination. These are "(1) *Whether the non-joinder of Oseni Ayinla Lawal would afford the Honourable Court the necessary facts to effectively and completely adjudicate or settle all the questions in the cause before it and thereby not fatal to the case of the Claimants; (2) Whether having regard to the claims of the Claimants and the evidence led before the Honourable Court, the reliefs of the Claimants are grantable.*"

In his argument on Issue One, learned Counsel submitted that the Claimants ought to have made Oseni Ayinla Lawal, who had a prior interest over the property, a party to the proceedings in order to enable the Court determine the suit conclusively. He contended that the non-joinder of Oseni Ayinla Lawal has rendered the suit incompetent. He relied on the case of ***PDP v. Ezeonwuka (2019) All FWLR (Pt. 987) 747 and CBN v. Interstella Communications Ltd (2018) All FWLR (Pt. 930) 442 at 548, paras E-G; Bello v. INEC (2010) All FWLR (Pt. 526) 397 at 447 and Gassol v. Tutare (2013) 53 Vol. 3 NSCQR 868 at 898 paras E-G*** in support of his arguments on the first issue.

Arguing the second issue, learned Counsel submitted that the reliefs sought by the Claimants were not grantable. He contended that the reliefs of the Claimants presupposed the existence of joint ownership of the property whereas in actual fact the evidence led in support of the reliefs was at variance with the reliefs sought. He cited the case of ***Apena v. Alleru (2014) 59 NSCQR 279 at 296, paras B-D and NJC v. Dakwang (2019) All FWLR (Pt. 1001) 779 at 804 para G*** to support his assertion that parties were bound by their pleadings. He contended

that the 2<sup>nd</sup> Claimant has not led credible evidence to support her claim of joint ownership.

Learned Counsel further contended that the claim of damages of ₦10,000,000.00 (Ten Million Naira only) in addition to an order for re-allocation amounted to double compensation, adding that the Courts have always frowned at that kind of reliefs. He cited the case of ***UBA Plc v. Gostar Investment Co. Ltd (2018) LPELR-44886 (CA)***. He also insisted that the Claimants have not established their entitlement to the award of cost of ₦5,000,000.00. (Five Million Naira only). He urged the Court to direct the parties to bear their respective costs.

The above is the synopsis of the evidence and legal submissions of parties for and against the suit of the Claimants. In view of the circumstances of this case, this Court hereby distills the following issue for determination: ***“Whether the Claimants have not adduced sufficient evidence as to be entitled to the reliefs sought in the main or in the alternative.”***

Before I delve into the meat of this suit, I will say something about reliefs sought in the alternative. A relief sought in the alternative arises where a party seeks another relief in the event that the Court fails to grant the main relief sought. It is an either this or that kind of prayer. In granting reliefs that are sought in the alternative, the Court must consider a number of factors of which is the appropriate relief that will do justice to the facts before the Court. Of course, the evidence before the Court must support the relief or reliefs being sought.

The Courts in a long line of judicial pronouncements have laid down the principles guiding the grant of reliefs sought in the alternative. In the case of ***N.A.O.C. (Nig.) Ltd. v. Ebila (2016) 3 NWLR (Pt. 1498) 120 at Pp. 127-128, paras. G-A; 129 paras. C-D***, the Court of Appeal held that ***“A plaintiff can plead the reliefs he seeks separately or in alternative. A plaintiff who pleads his reliefs in alternative is in effect asking the court to grant or award any of the reliefs he proves. But he cannot be granted or awarded both reliefs. He either gets one or the other.”*** In ***Help (Nig.) Ltd v. Silver Anchor (Nig.) Ltd. (2006) 5 NWLR (Pt. 972) 196 at Pp. 211 -212, paras. G-A; 212, paras. B-C; 222, paras. E-G***, the Supreme Court explained that ***“When a party makes a claim in the alternative, the belief is that he wants either of the reliefs sought, in which case when he is granted any of the reliefs it suffices for the purpose of satisfying his claim.”*** And in ***S.P.D.C.N. Ltd. v. Amadi (2010) 13 NWLR (Pt. 1210) 82 at P. 146, paras. A-B***, it was held that ***“Where a party asks for alternative claims and the court grants one of the claims asked for, the party should be satisfied and contented with what the court gives him. He cannot complain or be heard to complain that he did not get what he prayed for.”***

The Supreme Court put the issue beyond all scintilla of equivocation when it held in ***Nwoye v. FAAN (2019) 5 NWLR (Pt. 1665) 193 at P. 217, paras. G-H*** that ***“An alternative relief arises in an “either/or” situation. If the main relief is granted, there would be no need to consider the alternative relief. If the main relief is refused, the court would be obliged to consider whether the***

*claimant is entitled to any of the alternative reliefs. The alternative reliefs are part and parcel of the claim but would only be considered where the main claim has been considered and refused.*” See also the case of *Ministry of Land & Housing, Bauchi State & Anor v. Tijjani (2021) LPELR-55039 (CA)*. In *Nwoye v. FAAN (2019) supra at 207 paras B - E* the apex Court held that “**Both the main and alternative claim cannot be granted at the same time as it will be improper to again grant alternative claim because it would amount to double jeopardy.**” In *Oforishe v. N.G.C. Ltd. (2018) 2 NWLR (Pt. 1602) 35 at p. 58, paras. A-C*, the Supreme Court held that “**Where the court grants the main reliefs claimed, it should not consider the alternative relief claimed in the suit. In this case, the court granted the main relief sought by the appellant. There was thus no need to consider the alternative reliefs. If the alternative reliefs were considered and granted it would have amounted to double compensation and that would have been wrong in law.**”

Having said that, I shall return to the substance of this suit. The Claimants seek principally the declaratory reliefs with regards to their claim of ownership of Plot No. 30 within Cadastral Zone B07 Katampe Diistrict Abuja and which is covered by Offer of Statutory Right of Occupancy issued on 27/06/2005 with Old File No. KT 1800 and New File No. 20046. In support of their claims the Claimants tendered and the Court admitted in evidence the documents which I have enumerated earlier. The question is whether the evidence of the Claimants ground the reliefs sought. The *locus classicus* on this subject is the case of *D. O. Idundun & Ors v. Daniel Okumagba (1976) LPELR-1431(SC) at 23-26, para. D-D* cited

by Counsel, the apex Court per Atanda Fatayi-Williams, JSC laid down the law as follows:-

***“As for the law involved, we would like to point out that it is now settled that there are five ways in which ownership of land may be proved. We will now proceed to consider each of these five ways in order to see if the findings of the learned trial Judge can be seen to bring the evidence adduced in the case in hand within the ambit of any of them. Firstly, ownership of land may be proved by traditional evidence as has been done in the case in hand. In our view, not only was the evidence of the witnesses called by the appellants rightly rejected by the learned trial Judge for good and sufficient reasons, we also think that he was right in not attaching any weight to the views expressed in the books cited in support of such traditional evidence. As Lionel Brett, JSC., (as he then was), rightly in our view, once pointed out in a learned address given by him at the University of Lagos to the Nigerian Association of Law Teachers: "The Courts are not to be hypnotized by the authority of print. The crucial fact is that a book cannot be cross-examined, either as to the opinion expressed, or as to the claims of the author to have special knowledge. If the author is living, there is no reason why he should not be tendered as an expert witness, when this difficulty would vanish". No evidence was adduced to show that any of these books is generally acknowledged either in Nigeria or elsewhere as a standard work or as appropriate authority on the relevant traditional history so as to enable the Court to resort, with justification, to its aid. (See Sections 58 and 73(2) of the***

*Evidence Act, Cap. 62 and Adedibu v. Adewoyin 13 WACA 191 at page 192). Moreover, none of the authors of these books testified in support of the views stated therein and no explanation was given for this omission. For all these reasons, we share the apprehensions of the learned trial Judge about the value or weight of the traditional history as narrated by each of these authors, particularly as the authenticity and impartiality of the sources of their narratives cannot, for obvious reasons, be easily ascertained. Secondly, ownership of land may be proved by production of documents of title which must, of course be duly authenticated in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract (see Section 129 of the Evidence Act and Johnson v. Lawanson (1971) 1 All NLR p.56). As the appellants' case was not based on any document of title, this requirement, in the circumstances of this case, is not particularly apposite. Thirdly, acts of the person (or persons) claiming the land such as selling, leasing or renting out all or part of the land, or farming on it or on a portion of it, are also evidence of ownership, provided the acts extend over a sufficient length of time and are numerous and positive enough as to warrant the inference that the person is the true owner (see Ekpo v. Ita 11 NLR p.68). It is clear from the judgment in the case in hand that the learned trial Judge completely, and for good reason, rejected the evidence in support of the acts of ownership put forward by the appellants while he*

*accepted those given by the respondents. Fourthly, acts of long possession and enjoyment of the land may also be prima facie evidence of ownership of the particular piece or quantity of land with reference to which such acts are done (see Section 45 of the Evidence Act, Cap. 62). Such acts of long possession, in a claim of declaration of title (as distinct from a claim for trespass) are really a weapon more of defence than of offence; moreover under Section 145 of the Evidence Act, while possession may raise a presumption of ownership, it does not do more and cannot stand when another proves a good title (see *Da Costa v. Ikomi* (1968) 1 All NLR 394 at page 398). It cannot be gainsaid that, in the present case, not only did the learned trial Judge reject the appellants' evidence as to possession of any portion of the land in dispute, he also found that the respondents have proved by evidence, which he accepted, that they are the owners of the land in dispute. Finally, proof of possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute, may also rank as a means of proving ownership of the land in dispute (see section 45 of the Evidence Act, Cap. 62)"*

This touchstone decision has been followed in a plethora of judicial pronouncements. For instance, see the following cases: *Opoto & Ors v. Anaun & Ors* (2015) LPELR-24734(CA) at Pp. 35-39 paras. D; *Okereafore v. Nkwocha & Ors* (2014) LPELR-23296(CA) at Pp. 10-11 paras. D; *Adegbesan & Anor v. Ilesanmi* (2017) LPELR-42552(CA) at Pp. 78-79 paras. D.

In this case, the Claimants seek to prove their title by way of production of documents of title duly authenticated and executed. In proving the title of the 1<sup>st</sup> Claimant, the PW1 testified that the 1<sup>st</sup> Defendant allocated the property to the 1<sup>st</sup> Claimant. The Offer of Statutory Right of Occupancy dated the 27<sup>th</sup> of June, 2005 in support of this averment was tendered in Court through the PW1, admitted by this Court and marked as **Exhibit A1-A2**. In establishing how the property got to her, the PW1 tendered a Power of Attorney which was executed on the 6<sup>th</sup> day of February, 2007. This Power of Attorney was tendered through the PW1, admitted by this Court and marked as **Exhibit C1-C5**. The 1<sup>st</sup> Claimant by this Power of Attorney donated her rights and liabilities over the said property to the 2<sup>nd</sup> Claimant. A Search Report issued on the 5<sup>th</sup> day of February, 2007 showed the 1<sup>st</sup> Claimant as the owner of the property. This Search Report is in evidence as **Exhibit D1-D2**. It is this Search Report that gave the 2<sup>nd</sup> Claimant the confidence to proceed with the transaction which culminated into **Exhibit C1-C5**. In a twist of events, however, the Defendants, by virtue of **Exhibit B1-B2**, claimed that **Exhibit A1-A2** has been “withdrawn due to prior subsisting title”.

It is obvious, from the evidence before this Court that there was an allocation of the property in question to the 1<sup>st</sup> Claimant who subsequently assigned same to the 2<sup>nd</sup> Claimant. In fact, the DW1 under cross-examination had responded thus *“The documents were issued by the Defendants to the 1<sup>st</sup> Claimant. By **Exhibit D1-D2**, only Zainab Dodo the 1<sup>st</sup> Claimant is the owner of Plot No. 30 subject matter of this suit. Yes, as at 5/2/2007 the only person known to the Defendants is the Claimant as the allottee of Plot 30.”* This evidence elicited from the DW1 under

cross-examination reinforces the case of the Claimants. The Claimants are at liberty to use same.

Declaratory reliefs are not granted as a matter of course; the Claimant who seeks declaratory reliefs must succeed on the strength of their own case. In ***Amobi v. Ogidi Union Nigeria (2023) 1 NWLR (Pt. 1864) 153 S.C. at 182-183, paras. F-C***, the Supreme Court held that ***“A claimant seeking declaratory reliefs has the legal burden to establish his claim. He must succeed on the strength of his case and not on the weakness of the defendant’s case. In other words, the claimant must plead and prove his claims for declaratory reliefs on the evidence called by him without relying on the evidence called by the defendant. The burden of proof on the claimant in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant, where the plaintiff fails to establish his entitlement to the declaration by his own evidence. A claimant must prove to the satisfaction of the court that he is entitled to the declaratory relief sought. He cannot point fingers at any weakness, omission, or default on the part of the defendant. He stands or falls on the strength of his case; if his case is strong, he wins, and if his case is weak, he loses.”***

In ***Juwahan & Ors v. Oguntoye & Ors (2023) LPELR-59600(CA) at Pp. 72 paras. D*** the Court per Lokulo-Sodipe, JCA held that ***“It is also a trite position of the law that a plaintiff when claiming a declaration of title to land must succeed on the strength of his own case and not on the weakness of the***

***defendant's case and that for a plaintiff to succeed in a claim for declaration of title to land, the Court must be satisfied as to: (i) the precise nature of the title claimed, that is to say, whether it is title by virtue of original ownership, customary grant, conveyance, sale under customary law, long possession, or otherwise and; (ii) evidence establishing title of the nature claimed.***

It is my considered view that the Claimants have been able to establish that the property in question was validly allocated to the 1<sup>st</sup> Claimant by the 1<sup>st</sup> Defendant. They have also shown that the 1<sup>st</sup> Claimant executed a Power of Attorney to the 2<sup>nd</sup> Claimant in respect of the property. The veracity of this evidence was not impeached during cross-examination. The only attempt to a defence by the Defendants was their claim that they found out, after the allocation to the 1<sup>st</sup> Claimant, that the property had earlier been allocated to one Oseni Ayinla Lawal. The Defendants did not tender any documentary evidence in support of this claim. They sought to rely on the powers of the 1<sup>st</sup> Defendant to revoke allocations of land. **Exhibit B1-B2** merely states that the 1<sup>st</sup> Claimant's allocation was withdrawn due to prior subsisting title. It did not state the name of the holder of the prior subsisting title.

The question that remains is whether the withdrawal was lawful. Section 28(1) of the Land Use Act provides that "***It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.***" Subsections (2), (3), and (5) of the section delineates the circumstances that constitute overriding public interest and also provide for other circumstances under which a validly allocated land can be revoked. The subsections provide thus:-

***“(2) Overriding public interest in the case of a statutory right of occupancy means–***

***(a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder;***

***(b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;***

***(c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.***

***(3) Overriding public interest in the case of a customary right of occupancy means–***

***(a) the requirement of the land by the Government of the State or by a Local Government in the State in either case for public purpose within the State, or the requirement of the land by the government of the Federation for public purposes of the Federation;***

***(b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;***

***(c) the requirement of the land for the extraction of building materials;***

***(d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.***

***(5) The Military Government may revoke a statutory right of occupancy on the ground of –***

***(a) a breach of any of the provisions which a certificate of occupancy is by section 10 deemed to contain;***

***(b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8;***

***(c) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Military Governor under subsection (3) of section 10.”***

On the other hand, subsections (4), (6) and (7) stipulate the procedure that must be followed in the process of revocation. The said subsections provide that:-

***“(4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the (Head of the Federal Military Government) if such notice declares such land to be required by the Government for public purposes.***

***(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder.***

***(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him or a notice given under subsection (5) or on such later date as may be stated in the notice.***

In other words, no revocation is valid if the revocation fails to comply with the provisions of section 28 of the Land Use Act. As to the manner of how notices contemplated in the Act shall be served, section 44 of the Act provides that

***“Any notice required by this Act to be served on any person shall be effectively served on him –***

***(a) by delivering it to the person on whom it is to be served; or***

***(b) by leaving at the usual or last known place of abode of that person; or***

***(c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or***

***(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending to in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office;***

***(e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it***

***can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.”***

Where such revocation is to happen, the owner of a property is entitled to the payment of compensation. That is the entire purport of section 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 as well as section 29 of the Land Use Act. I have reproduced the provisions of section 44(1) of the Constitution. I shall reproduce the provisions of section 29 of the Land Use Act. The said section states thus:-

***“(1) If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of section 28 or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.***

***(2) If a right of occupancy is revoked for the cause set out in paragraph (c) of subsection (2) of section 28 or in paragraph (b) of subsection (3) of the same section the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals Act or the Mineral Oils Act or any legislation replacing the same.***

***(3) If the holder or the occupier entitled to compensation under this section is a community the Governor may direct that any compensation payable to it shall be paid –***

***(a) to the community; or***

***(b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or***

***(c) into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community.***

***(4) Compensation under subsection (1) of this section shall be, as respects –***

***(a) the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked;***

***(b) building, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer;***

***(c) crops on land apart from any building, installation or improvement thereon, for an amount equal to the value as prescribed and determined by the appropriate officer.***

***(5) Where the land in respect of which a right of occupancy has been revoked forms part of a larger area the compensation payable shall be***

***computed as in subsection (4) (a) above less a proportionate amount calculated in relation to that part of the area not affected by the revocation but of which the portion revoked forms a part and any interest payable shall be assessed and computed in like manner.***

***(6) Where there is any building, installation or improvement or crops on the land to which subsection (5) applies, then compensation shall be computed as specified hereunder, that is as respects –***

***(a) such land, on the basis specified in that subsection;***

***(b) any building, installation or improvement or crops thereon (or any combination or two or all of those things) on the basis specified in that subsection and subsection (4) above, or so much of those provisions as are applicable, and any interest payable under those provisions shall be computed in like manner.***

***(7) For the purposes of this section, "installation" means any mechanical apparatus setup or put in position for use or materials set up in or on land or other equipment, but excludes any fixture in or on any building."***

The 1<sup>st</sup> Defendant, though vested with the powers to revoke an allocation of land, must not exercise such powers arbitrarily. If the allocation is not revoked on the ground of overriding public interest, then, it must be for the reason of fraud, misrepresentation, mistake or any other vitiating element. Before he reaches a decision one way or the other, the holder of the allocation must be allowed to

prove that their allocation is valid. See *Abba v. Abba Aji (2022) 11 NWLR (Pt. 1842) 535 S.C. at 577 – 578, paras G – E.*

I harbor no hesitation, therefore, in arriving at the inescapable conclusion that the purported withdrawal of the 1<sup>st</sup> Claimant's allocation was unlawful as it did not follow the stipulations in section 28 of the Land Use Act. Further to this, there is no evidence of prior allocation of the property to the said Oseni Ayinla Lawal.

I shall not fail to contention of learned Counsel for the Defendants that the failure of the Claimants to join Oseni Ayinla Lawal is fatal to their case. I do not agree with them. A Claimant is at liberty to sue whoever against whom they believe they have a cause of action. At the time the Claimants in this suit instituted this action, their cause of action was against the Defendants who had withdrawn their allocation of the property. From the evidence before me, there was no adverse claim on the property to warrant the Claimants joining as Defendants to this suit persons other than the present Defendants. According to the evidence of the PW1, it was at the point of payment of ground rent that she was informed that her allocation had been withdrawn. That was when the cause of action accrued. At this point, too, Oseni Ayinla Lawal was unknown to the Claimants. It was the Defendants who mentioned Oseni Ayinla Lawal for the first time. It is my considered view, therefore, that the non-joinder of Oseni Ayinla Lawal is not fatal to the case of the Claimants. Order 13 Rule 18(1) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 provides that “**No proceedings shall be defeated by reason of misjoinder or nonjoinder of**

***parties, and the court may deal with the matter in controversy so far as regards the rights and interest of the parties actually before him.”***

Having placed the evidence of the Claimants and the Defendants on the imaginary scale of justice, it is in view of this that I have no doubt that the Claimants have placed more evidence on their side of the scale. Accordingly, the reliefs sought by the Claimants in the main are hereby granted as follows:-

- 1. THAT the title of the 1<sup>st</sup> Claimant’s title to Plot No. 30 within Cadastral Zone B07 Katampe District, Abuja and evidenced by the Offer of Statutory Right of Occupancy issued on 27/6/05 with Old File No. KT. 1800 and New File No. 20046 is still valid and subsisting.**
- 2. THAT an Order of perpetual injunction is hereby made restraining the Defendants, their agents, servants or privies however described or anybody else acting on their behalf from interfering with the title of the 1<sup>st</sup> Claimant, or trespassing, or in any way disturbing her lawful use and occupation of the said Plot No. 30 within Cadastral Zone B07 Katampe District, Abuja and evidenced by Offer of Statutory Right of Occupancy issued on 27/6/05 with Old File No. KT 1800 and New File No. 20046.**
- 3. THAT an Order of perpetual injunction is hereby made restraining the Defendants, their agents, servants or privies however described from withdrawing the title of the 1<sup>st</sup> Claimant to Plot No. 3 within Cadastral Zone B07 Katampe District, Abuja with the intention of re-allocating**

same to any other person other than the either the 1<sup>st</sup> Claimant or the 2<sup>nd</sup> Claimant.

4. THAT an Order of the Honourable Court of perpetual injunction is hereby made restraining the Defendants, their agents, servants or privies however and howsoever described or anybody acting on their behalf from allocating the said Plot No. 30 within Cadastral Zone B07 Katampe District, Abuja to anybody or body of persons other than the 1<sup>st</sup> Claimant or the 2<sup>nd</sup> Claimant.
5. THAT an Order is hereby made declaring null, void and of no effect whatsoever the purported withdrawal of the 1<sup>st</sup> Claimant's allocation and the purported allocation to one Oseni Ayinla Lawal or any person for that matter of the said Plot No. 30.

This is the Judgment of this Court delivered today, the 06<sup>th</sup> day of February, 2024.

**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**06/02/2024**

**APPEARANCES:**

**FOR THE CLAIMANT**

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**Omotayo B. Idoko (Miss)**

**Sandra Ekemkpo, Esq.**

**Tominsin Olokeogun Esq.**

**J. O. Anetekhai, Esq.**

**FOR THE DEFENDANT:**

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**Frank Achilike, Esq.**