

**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. 14**  
**CASE NUMBER : SUIT NO: CV/1818/2014**  
**DATE: : FRIDAY 23<sup>RD</sup> FEBRUARY, 2024**

**BETWEEN:**

**ARO CONTRACTORS LIMITED ..... CLAIMANT**  
**AND**

**1. HON. MINISTER OF THE FCT, ABUJA**  
**2. FEDERAL CAPITAL DEV. AUTH. DEFENDANTS**  
**3. DEVELOPMENT CONTROL, FCDA, ABUJA**  
**4. RINGS INTEGRATED VENTURES LTD.**  
**5. TOLEB INTEGRATED SERVICES LTD.**

# **JUDGMENT**

By an Amended Statement of Claim, Plaintiff sought for the following reliefs:-

1. A Declaration that the Plaintiff is and shall be entitled to its lawful allocation, occupation, rights and privileges over Plot 1041, Cadastral Zone B11, Kaura, Abuja, measuring 9157.99sqm vide the letter of grant titled "Accelerated Development Programme within Federal Capital Territory" dated the 18<sup>th</sup> day of May, 2007.
2. A Declaration that the Development Lease Agreement duly executed between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and the Claimant and registered as No. FC52 at page 52 in Vol. 20MISC of the Lands Registry in respect of Plot 1041, Cadastral Zone B11, Kaura, Abuja, still subsists.
3. A Declaration that the purported revocation/withdrawal of the allocation of Plot 1041, Cadastral Zone B11, Kaura, Abuja made to the Plaintiff was not done in accordance with the procedure permitted by law and *ipso facto* null and void and of no effect whatsoever.

4. A Declaration that prior to the Claimant's allocation of Plot 1041, Cadastral Zone B11, Kaura, Abuja under the "Accelerated Development Programme within Federal Capital Territory" dated 18<sup>th</sup> day of May, 2007 by the 1<sup>st</sup> Defendant, there was no valid allocation to 4<sup>th</sup> Defendant or any other person or person.
5. A Declaration that the grant of right of occupancy by the 1<sup>st</sup> Defendant to the 5<sup>th</sup> Defendant of Plot No. 1041, Cadastral Zone B11, Kaura, Abuja notwithstanding the subsistence of the Claimant's allocation and development Lease No. FC52/52/20MISC, and during the pendency of this suit in respect of the subject matter is unconstitutional, illegal and therefore null and void.
6. An Order compelling the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to issue the Plaintiff with an approved building plan over Plot No. 1041 in Cadastral Zone B11 Kaura District, Abuja measuring 9157.99sqm.
7. An Order compelling the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to vacate all caveat placed on Plaintiff's plot file in respect of Plot. No. 1041 in Cadastral Zone B11, Kaura District, Abuja.

8. An Injunction restraining the 1<sup>st</sup> Defendant from revoking the Plaintiff's title and or interest over Plot No. 1041 in Cadastral Zone B11, Kaura District, Abuja measuring 9157.99sqm.
9. An Order compelling the 1<sup>st</sup> Defendant to issue to the Plaintiff a certificate of occupancy over Plot No. 1041 in Cadastral Zone B11 Kaura District, Abuja measuring 9157.99sqm, as earlier agreed.
10. A Perpetual Injunction restraining the Defendants, either by themselves, their agents, privies, or any person claiming through them from interfering with, and or disturbing the Plaintiff's right to peaceful and quiet possession of Plot No. 1041, Cadastral Zone B11, Kaura, Abuja measuring 9157.99sqm.

Upon service of the Writ of Summons on the Defendants, save for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who only filed Joint Statement of Defence, 4<sup>th</sup> and 5<sup>th</sup> Defendants who filed their Statement of Defence, also counter-claimed against the Plaintiff.

On the part of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, the Statement of Claim of Claimant were generally traversed upon and denied.

In further response to the denied paragraphs aforementioned, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants stated that;

The Plaintiff was granted 1041 Cadastral Zone B11, Kaura District under the Accelerated Development Programme of the then FCT Administration, vide letter dated 18<sup>th</sup> May, 2007. The said letter is pleaded.

The said letter of Accelerated Development Program to the Plaintiff required that the Plaintiff accept same in writing within two (2) weeks by way of obtaining, signing and returning a Development Lease Agreement containing the Terms and Conditions of the offer for perfection.

The grant of offer of land under the Accelerated Development Programme as aforesaid is not a grant of a Statutory Right of Occupancy. By the Development Lease Agreement prepared by the FCT Administration containing terms and conditions of the allocation under the programme, title over the land will be given the Plaintiff only after due compliance with the terms and conditions of Development Lease Agreement.

A fundamental terms of the Development Lease Agreement signed by the parties is that the lease must reach first slab of the

building before being entitled to the grant of a Statutory Right of Occupancy. The agreement is pleaded.

The Plaintiff was also required to commence and complete development within specific period but he has failed to do so. In fact after signing the agreement, the Plaintiff didn't take any further step.

The Accelerate Development Programme has since been cancelled by the 1<sup>st</sup> Defendant and those leases that have not development, their leasehold withdrawn/revoked.

Consequently, the said Plot 1041 having an area of approximately 9531.56sqm within Cadastral Zone B11 of Kaura District was allocated to Toleb Integrated Services Limited by virtue of Offer of Statutory Right of Occupancy dated 26<sup>th</sup> May, 2015 and same was accepted by the 5<sup>th</sup> Defendant.

Whereof, the 1<sup>st</sup> – 3<sup>rd</sup> Defendants contend that the Plaintiff is not entitled to any of the reliefs claimed as per paragraph 26 (a-f) of the Statement of Claim and urges this Honourable Court to dismiss this suit with cost for being vexatious, frivolous, lacken in merit and absolute waste of the time of this Court.

By an Amended Statement of Defence, 4<sup>th</sup> Defendant contested the juristic personality of the Plaintiff and further denied the paragraphs expressly denied in the Joint Defence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

It is further the Defence of the 4<sup>th</sup> Defendant that the Statutory Right of Occupancy with respect to Plot 1041 Cadastral Zone B11, Kaura District, has been in existence since 25<sup>th</sup> September, 1997, to the knowledge of the Plaintiff and that the 1<sup>st</sup> Defendant had nothing to give to the 5<sup>th</sup> Defendant by way of Allocation of Land, and that 4<sup>th</sup> Defendant had submitted Building Designs to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for Approval which had with it instrument of grant showing they were allocated the said Land in contention.

Whereof 4<sup>th</sup> Defendant/Counter-claim against the Plaintiff as follows:-

- a. A Declaration of Court that the Statutory Right of Occupancy in Plot 1041, Cadastral Zone B11, Kaura District, Abuja Federal Capital Territory measuring about 9531.56 square meters being managed and controlled by the Hon. Minister of the Federal Capital Territory, the Federal Capital Development Authority and the Development Control Department of the Federal Capital Territory belongs to,

inures and reside in the 4<sup>th</sup> Defendant/Counter-claimant by virtue of a grant of Statutory Right of Occupancy made by the Hon. Minister of the Federal Capital Territory conveyed to the 4<sup>th</sup> Defendant/Counter- claimant on the 25<sup>th</sup> day of September, 1997 by a letter of "Offer of Terms of Grant/Conveyance of Approval."

- b. A Declaration of Court that the name "Director (AGIS)" contained in the document of the Plaintiff christened "Accelerated Development Programme Within the Federal Capital Territory" dated 18<sup>th</sup> May, 2007 is not a human being or an artificial person created under statute or the Companies and Allied Matters ACT LFN 2004 whether in Nigeria or elsewhere to be able to make or sign documents for anybody including the Minister of the Federal Capital Territory and from which document the Plaintiff/Defendant under the Counter- claim can rely on to claim title to or interest in Plot 1041, Cadastral Zone B11, Kaura District, Abuja Federal Capital Territory measuring about 9531.56 square meters.
- c. A Declaration of Court that the document dated 18<sup>th</sup> May,2007 and christened "Accelerated Development

Programme Within the Federal Capital Territory" signed by "Director (AGIS)" by which the Plaintiff claims title to Plot 1041, Cadastral Zone B11, Kaura District, Abuja Federal Capital Territory measuring about 9531.56 square meters is not a Statutory Right of Occupancy known or granted under the Land Use Act LFN 2004 by the Minister of the Federal Capital Territory and as such cannot be equated, ranked, compared or stand in equal proportion or priority to the 4<sup>th</sup> Defendant/Counter Claimant's grant of Statutory Right of Occupancy from the Minister of the Federal Capital Territory made to the Counter Claimant on the 25<sup>th</sup> day of September, 1997 by a letter of "Offer of Terms of Grant/Conveyance of Approval."

- d. A Declaration of Court that the document dated 18<sup>th</sup> May, 2007 and christened "Accelerated Development Programme Within the Federal Capital Territory" signed by "Director (AGIS)" by which the Plaintiff claims title to Plot 1041, Cadastral Zone B11, Kaura District, Abuja Federal Capital Territory measuring about 9531.56 square meters immediately fades into in consequence, insignificance and is valueless in the face of the Statutory Right of Occupancy

granted to the 4<sup>th</sup> Defendant/Counter Claimant over the same Plot by the 1<sup>st</sup> Defendant.

- e. A Declaration of Court that the Plaintiff/Defendant under the Counter Claim has no interest whatsoever, right(s), holding - whether statutory or otherwise - in Plot 1041. Cadastral Zone B11, Kaura District, Abuja Federal Capital Territory measuring about 9531.56 square meters because as at the date (18<sup>th</sup> May, 2007) the "Director (AGIS)" or the Hon. Minister of the Federal Capital Territory purported to enter a Lease relationship or any other kind of relationship with the Plaintiff, the "Director (AGIS)" cannot grant same and the Hon. Minister of the Federal Capital Territory had nothing in the Plot to enter with the Plaintiff for the 4<sup>th</sup> Defendant/Counter-claimant being the prior holder of the Statutory Right of Occupancy in the Plot which has not been revoked, cancelled or withdrawn.
- f. A Declaration of Court that without the Hon. Minister of the Federal Capital Territory (1<sup>st</sup> Defendant under the Counter-claim) first lawfully revoking a prior existing statutory right of occupancy as the one held by the 4<sup>th</sup> Defendant/Counter-claimant in Plot 1041. Cadastral Zone B11, Kaura District.

Abuja since 25<sup>th</sup> September, 1997 there is no way the entity called the "Director (AGIS)" or Hon. Minister of the Federal Capital Territory himself can grant another statutory right of occupancy to any person including the Plaintiff and one Toleb Integrated Services Limited over the same Plot.

- g. A Declaration of Court that it is wrongful, illegal and inimical to the rule of law for the Hon. Minister of the Federal Capital Territory to make a grant of statutory right of occupancy to one Toleb Integrated Services Limited or any other person over Plot 1041, Cadastral Zone B11, Kaura District, Abuja as at the date and time a suit is actively pending over the self-same plot.
- h. A Declaration of Court that without a prior written approval of the Federal Capital Development Authority or the Development Control Department of the FCT there is no way any person including the Plaintiff and the Defendant/Counter-claimant can enter upon a piece of landed property including Plot 1041, Cadastral Zone B11, Kaura District, Abuja and proceed to carry out any development or improvement on the Plot.

- i. A Declaration of Court that the Plaintiff/Defendant under the Counter-claim is a trespasser into Plot 1041, Cadastral Zone B11, Kaura District, Abuja for fencing the entire Plot and building a storey building comprising a decking and about three block coach and gatehouse in the Plot without a prior written approval of the Federal Capital Development Authority and of the Development Control Department of the FCT to develop the Plot.
- j. An Order of Court rescinding, setting aside and nullifying the document titled "Accelerated Development Programme within the Federal Capital Territory" dated the 18<sup>th</sup> May, 2007 authored by "Director (AGIS)" by which the Plaintiff/Defendant under the Counter-claim is asserting rights whether by way of lease, grant or statutory right of occupancy over Plot 1041, Cadastral Zone B11, Kaura District, Abuja.
- k. An Order of Court rescinding, setting aside and nullifying the document titled "Offer of Statutory Right of Occupancy" dated the 26<sup>th</sup> May, 2015 in the name of one Toleb Integrated Services Limited authored by one Mainasara B. G. (Director of Land Administration) for the Minister of the

Federal Capital Territory while the Defendant's prior grant of Statutory Right of Occupancy is still subsisting, extant, not revoked and while this suit is actively pending in this Court over the same plot.

- i. An Order of Perpetual Injunction restraining the Plaintiff/Defendant under the Counter-claim whether by herself, agents, assigns, employees, hired hands or howsoever known from entering into Plot 1041, Cadastral Zone B11, Kaura District, Abuja Federal Capital Territory measuring about 9531.56 square meters.
  
- m. An Order of Court directing the Hon. Minister of the Federal Capital Territory whether by himself or through his agents and agencies such as the FCT Land Administration Department, the Federal Capital Development Authority, the Development Control Department and the Deeds Registrar to recognize only the 4<sup>th</sup> Defendant/Counter-claimant as the only true holder of statutory right of occupancy in Plot 1041. Cadastral Zone B11, Kaura District, Abuja, Federal Capital Territory measuring about 9531.56 square meters and accord to her all land rights known to law including but not limited to recertifying the 4<sup>th</sup> Defendant's grant.

- n. An Order of Court awarding damages for trespass against the Plaintiff in the sum of N200.000.000.00 (Two Hundred Million Naira) only in favour of the 4<sup>th</sup> Defendant/Counter-claimant.

And for such further or other Orders as the Hon. Court may deem fit to make in the circumstances of this case.

On their part, Plaintiff filed reply to the 4<sup>th</sup> Defendant's statement of defence and counter-claim.

That paragraph 1 of the 4<sup>th</sup> Defendant statement of defence sought to question the juristic status of the Plaintiff. The Plaintiff maintains that it is a juristic person, dully registered with the Corporate Affairs Commission, Abuja, and shall rely on the certified true copy of Certificate of Registration thereof at the trial of this case, same having been front-loaded.

That the Plaintiff responds to paragraph 4(a-f) of the 4<sup>th</sup> Defendant statement of Defence thus:

- a. The purported, prior existing Statutory Right of Occupancy heavily relied upon by the 4<sup>th</sup> Defendant can only rank first in priority, if the 4<sup>th</sup> Defendant is not caught up by the doctrine of "Laches and Acquiescence", as the legal doctrine

operates to divest and or extinguish the interest and or Title of First in time.

The 4<sup>th</sup> Defendant alleged to have been allotted the land in dispute by the 1<sup>st</sup> Defendant as at 1997, a period of ten (10) years before the Plaintiff allocation of 2007, and a period of six (6) years from the date of commencement of this action in 2014, making a total of sixteen years (16) years, without making any improvement on the land in dispute, and did not by way of injunction or any written protest, challenge the construction activities of the Plaintiff from fencing the entire plot of approximately 1 hectare, to foundation, lintel level and decking of one storey building, currently the physical structures on the land in disputes.

The Plaintiff responds to paragraph 6 of the 4<sup>th</sup> Defendants statement of defence and maintains that, the 4<sup>th</sup> Defendant having not in any manner, since a period of sixteen (16) years challenged, objected and or sought an injunction to stop the construction activities of the Plaintiff, but rather stood and watched it to an advanced level, cannot be protected by Equity as Equity aids the vigilant.

The Plaintiff responds to paragraph 7 of the 4<sup>th</sup> Defendant statement of defence and states that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants has not by words or in writing explained her reason for not approving the application of the Plaintiff for Building Plan. The 4<sup>th</sup> Defendant has no locus standi and or authority of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to give reasons for their action in that regard.

The Plaintiff responds to paragraph 9 of the 4<sup>th</sup> Defendant statement of defence and states that her Title and Title documents over the disputed land has records with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants even as same was confirmed by the 1<sup>st</sup> Defendant witness, one Garuba Sefia, under examination-in chief, and the amended statement of defence filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

The Plaintiff responds to paragraph 10 of the 4<sup>th</sup> Defendant statement of defence and states that the 1<sup>st</sup> Defendant can revoke a licence, lease, mortgage or any other permission or authority in writing, no matter the format, granted to any person over any plot of land in Abuja, for any justifiable reasons.

The Plaintiff responds to paragraph 11 of the 4<sup>th</sup> Defendant's statement of claim and states that she was not aware of any prior Title granted to the 4<sup>th</sup> Defendant in respect of the Plot in issue,

even as the 4<sup>th</sup> Defendant nor its agents by any manner challenged the Plaintiff constructions and building works on the disputed land for over 16 years now.

The Plaintiff equally responds to the 4<sup>th</sup> Defendant statement of defence and counter-claim thus; that,

- a. The alleged allocation to the 4<sup>th</sup> Defendant purportedly made in the year 1997, has no records with the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.
- b. The Statutory Right of Occupancy in respect of the land in dispute being paraded by the 4<sup>th</sup> Defendant did not emanate from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and therefore a forged document.
- c. That the 4<sup>th</sup> Defendant in collusion with some elements in the office of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are parading fake allocation documents being relied upon by the 4<sup>th</sup> Defendant, just to undermine and or frustrate the Plaintiff Title, for their own selfish ambition.
- d. That counsel to the Plaintiff, Okey Aniche, Esq. applied to the Lands Department of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for

certified true copy of document of Title paraded by the 4<sup>th</sup> Defendant and discovered upon enquiry that:

- i. That the 4<sup>th</sup> Defendant's allocation documents has no records with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
- ii. That there was no Ministerial Approval for any allocation to be made to the 4<sup>th</sup> Defendant with regards to the plot in dispute
- iii. That the application for the certified true copy cannot be attended to, in view of the facts stated in paragraphs a – d above.

Plaintiff puts the 4<sup>th</sup> Defendant on notice and challenge her to produce or caused the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to produce the following documents for Court inspection:

- a. The original copy of the 4<sup>th</sup> Defendant's plot policy file with all the endorsement and processes in respect of the plot in dispute which shall contain:
  - i. The original copy of the Ministerial approval signed by the Minister in favour of the 4<sup>th</sup> Defendant in respect of the plot in dispute.

- ii. The original copy of the land application of the 4<sup>th</sup> Defendant duly accepted and acted upon by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as at the date of reference.

The Plaintiff states that the 4<sup>th</sup> Defendant has no valid title, or root of Title to the disputed land and therefore has no locus standi to defend or counter claim in the instant suit.

Plaintiff then urged the Court to dismiss the Counter-claim of the 4<sup>th</sup> Defendant.

On the part of the 5<sup>th</sup> Defendant/Counter-Claimant, paragraphs 4 and 5 of the Amended Statement of Claim were denied and in reply, 5<sup>th</sup> Defendant stated as follows:-

The 5<sup>th</sup> Defendant made an application to the Department of Lands of the Federal Capital Development Authority (FCDA) on the 4<sup>th</sup> of July, 2014 and a file was opened as MISC/127607. A certified true copy (CTC) of the acknowledgement of Application is hereby pleaded and same shall be relied on at the hearing of this suit.

On the 25<sup>th</sup> of May, 2015 an Offer of Statutory Right of Occupancy was issued to the 5<sup>th</sup> Defendant in respect of Plot 1041 Cadastral Zone B11 of Kaura District measuring

approximately 9531.56M<sup>2</sup> . A copy of the said offer is hereby pleaded and same shall be relied on by the 5<sup>th</sup> Defendant during trial.

The 5<sup>th</sup> Defendant accepted the offer on the 13<sup>th</sup> of November, 2015. A certified true copy of the acknowledgment copy of the letter of acceptance is hereby pleaded and same shall be relied on at the hearing of this suit.

The 5<sup>th</sup> Defendant applied to the office of the 2<sup>nd</sup> Defendant for the site plan of Plot 1041 Cadastral Zone B11 of Kaura District on the 17<sup>th</sup> of November, 2015, and same was duly issued to the 5<sup>th</sup> Defendant. A copy of the site plan is hereby pleaded and same shall be relied on at the hearing of this suit.

The 5<sup>th</sup> Defendant was issued with a certificate of occupancy Bill and the sum of N1,000,000.00 (One Million Naira) only was paid as deposit for the Certificate of Occupancy Bill on the 20<sup>th</sup> November, 2015 being the condition precedent for the processing of the Certificate of Occupancy. The receipt issued to the 5<sup>th</sup> Defendant by the Federal Capital Territory Administration, Abuja Geographic Information System (AGIS) is hereby pleaded and same shall be relied on during trial.

That when the 5<sup>th</sup> Defendant went to the site to take physical possession of the land, the 5<sup>th</sup> Defendant discovered an encroachment on the said plot and applied to the 3<sup>rd</sup> Defendant for the removal of the structure and in exercise of their Statutory Powers, the 3<sup>rd</sup> Defendant wrote to the Department of Land Administration for the confirmation of the status of the plot.

The 5<sup>th</sup> Defendant avers that on the 10<sup>th</sup> of March, 2016, the 2<sup>nd</sup> Defendant wrote a letter to the 3<sup>rd</sup> Defendant confirming the fact that the land was allocated to the 5<sup>th</sup> Defendant. The acknowledgement copy of the letter by the 5<sup>th</sup> Defendant to the 3<sup>rd</sup> Defendant dated the 24<sup>th</sup> November, 2015, requesting the removal of the illegal structures on the landlord the certified true copy of the letter by the 2<sup>nd</sup> Defendant to the 3<sup>rd</sup> Defendant requesting a confirmation of the Status of Plot No. 1041 Kaura (B11) District are hereby pleaded and they shall be relied on during trial.

The 3<sup>rd</sup> Defendant commenced the process of removal of the structures by marking the structure and serving notices on trespassers to the land.

The 5<sup>th</sup> Defendant avers that, at the time the grant was made by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, Plaintiff had no title as all the

conditions precedent to the grant were not met or fulfilled by the Plaintiff or any other party except the 5<sup>th</sup> Defendant.

The 5<sup>th</sup> Defendant avers that the request for grant for the purposes of accelerated development by the Plaintiff had been cancelled by the 1<sup>st</sup> Defendant on the 5<sup>th</sup> day of May, 2009 before the grant of Statutory Right of Occupancy to 5<sup>th</sup> Defendant by the 1<sup>st</sup> Defendant.

The Defendant avers that the accelerated development programme of the 1<sup>st</sup> Defendant which formed the basis of the Development Lease Agreement entered into between the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was cancelled on the 5<sup>th</sup> day of May, 2009 in a notice titled "Federal Capital Territory Administration" and the 5<sup>th</sup> Defendant shall rely on the said notice and same is hereby pleaded.

5<sup>th</sup> Defendant/Counter-Claimant denied paragraphs 6, 7, 8 and 9 of the Statement of Claim and in reply stated that;

Plaintiff entered into a Development Lease Agreement with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and one of the conditions contained in the Lease Agreement is that disputes arising from the lease Must First be referred to an Arbitrator before instituting an action in Court which the Plaintiff never did, and that Plaintiff failed to comply

with the conditions in the Lease Agreement which are conditions precedent to the grant of right or Certificate of Occupancy.

The 5<sup>th</sup> Defendant avers that the Plaintiff failed to procure the necessary building and other Governmental Approvals from the Department of Development Control and other Agencies before erecting the structures on the Land contrary to the requirements of the Development Lease Agreement entered between the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

5<sup>th</sup> Defendant contended that the Plaintiff failed to comply with the condition in the Development Lease Agreement and that the said Accelerated Development Program was canceled by the 1<sup>st</sup> Defendant before Plaintiff could comply with the conditions.

5<sup>th</sup> Defendant then counter claimed as follows:-

That the 5<sup>th</sup> Defendant/Counter-claimant is praying this Honourable Court for the following reliefs:

- a. A Declaration that the 5<sup>th</sup> Defendant/ Counter-claimant is the beneficial owner and holder of title over plot 1041 Cadastral Zone B11. Kaura District, Abuja measuring approximately 9531.56m<sup>2</sup> covered by Certificate of Occupancy issued by the Minister of the Federal Capital Territory, Abuja.

- b. A Declaration that the allocation and title documents paraded by the Plaintiff over plot 1041 Cadastral Zone B11, Kaura District, Abuja measuring approximately 9531.56m<sup>2</sup> are invalid and void.
- c. A Declaration that the 5<sup>th</sup> Defendant/ Counter-claimant's right over plot 1041 Cadastral Zone B11. Kaura District, Abuja measuring approximately 9531.56m<sup>2</sup> is valid and subsisting.
- d. A Declaration that the activities of the Plaintiff on the 5<sup>th</sup> Defendant/Counter-claimants plot is illegal and amounts to trespass.
- e. An Order of Perpetual Injunction restraining the Plaintiff from further trespass on the 5<sup>th</sup> Defendant/ Counter-claimant landed property known as Plot. No. 1041 Cadastral Zone B11. Kaura District, Abuja measuring approximately 9531.56m<sup>2</sup>
- f. General Damages of ₦10,000,000.00 (Ten Million Naira) only

At the close of pleadings, case was set down for hearing.

The Plaintiff's sole witness who tendered documents aforementioned equally stated in his evidence that, Plaintiff was

granted Plot No. 1041 in Cadastral Zone B11 Kaura District, Abuja measuring 9157.99sqm by the 1<sup>st</sup> Defendant sometime in the year 2007, under the "Accelerated Development Programme" initiative of the 1<sup>st</sup> Defendant.

That the Plaintiff accepted the offer for the grant or allocation by complying with the requirements of the offer.

That the Plaintiff, pursuant to the averment in paragraphs 2 and 3 above, executed a Development Lease Agreement with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for the development of the Plot in issue.

That since the Plaintiff was required, under the Accelerated Development Policy of the 1<sup>st</sup> Defendant to commence urgent Development of the plot in issue, she mobilized to site, fenced the entire plot of land and built a storey building comprising a decking and about three block coach, a gate house to provide shelter for the security personnel attached to the plot.

That the Plaintiff was committed to commence development on the entire plot to a housing estate, within a period of six (6) months and as envisaged by the Accelerated Development Programme of the 1<sup>st</sup> Defendant which formed the basis for the grant and allocation.

That the Plaintiff subsequently caused its engineers to draw the architectural, structure, electrical and mechanical drawings which she forwarded to the Defendants with an application for Building Plan approval completed in a prescribed form issued by the 3<sup>rd</sup> Defendant.

That the 1<sup>st</sup> Defendant was required, and as agreed, to issue the Plaintiff with a Certificate of Occupancy over the land in issue, upon evidence of her meaningful development on the land.

That the Plaintiff, in a bid to meet up with the target for the Accelerated Development Policy, mobilized funds and lodged same in a bank since 2007, while awaiting approval from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants before commencing construction work.

That up till now, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have refused and or neglected to approve a building plan for the Plaintiff for no lawful justification, even as the Plaintiff has made several appeals to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to issue it with a building approval so that he can commence construction works on the land, to no avail.

That in the months of May and June, 2014 respectively, the Plaintiff made further appeal to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for building plan approval, which they declined, hence the instant suit.

That the refusal by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to issue the Plaintiff with a building plan approval has frustrated its efforts in meeting up with the Accelerated Development Policy, as it could not build houses on the said land without approvals from the 1<sup>st</sup> – 3<sup>rd</sup> Defendants.

That the Plaintiff spent huge sum of money to pay for engineering services and the architectural drawings which formed part of the documents submitted to 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in an application for building plan approval.

That the Plaintiff also spent huge amount of money to fence the entire plot including the structures already built on the land.

That upon enquiry, it was gathered from the officials of the Defendants at AGIS that the 1<sup>st</sup> Defendant is planning to revoke the Plaintiff plot and reallocate same to other persons whom the 1<sup>st</sup> Defendant has interest.

That sometime in the month of February, 2015, the officials of the Defendants invaded the Plaintiff's plot and took photographs and started pegging the surroundings of the Plot.

That the Plaintiff made enquiries from the Lands Department of the Defendants and discovered that a caveat had been placed on

the Plaintiff's Plot file by the Defendants which read thus: "Title Withdrawn and Cancelled".

That the refusal by the Defendants to issue the Plaintiff with an approved building plan, and the caveat placed on its plot was to frustrate its efforts on the land in issue, so that they can re-allocate same to other persons of their interest.

That the refusal by the 1<sup>st</sup> – 3<sup>rd</sup> Defendants to issue the Plaintiff a building approval has caused it great economic loss since 2007 till date, as its business targets and fortune in form of turn-over on investment have been jeopardized.

That the Plaintiff's title and or Rights over the plot in issue has not been revoked, nor any notice of revocation issued it in accordance with the Land Use Act.

That the claims of the 4<sup>th</sup> Defendant over the plot in issue is frivolous and unfounded, as there was no allocation made to it in respect of the Plot in issue, by the 1<sup>st</sup> Defendant.

That the purported allocation made to the 5<sup>th</sup> Defendant by the 1<sup>st</sup> Defendant over the plot in issue, was made during the pendency of the instant suit, and several years after the Plaintiff's allocation.

Plaintiff urge this Court to grant the reliefs sought.

PW1 was cross-examined and accordingly discharged.

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants gave their joint evidence through DW1.

DW1 tendered documents and denied the claims of the Plaintiff.

DW1 further gave evidence that Plaintiff was granted Plot 1041 Cadastral Zone B11, Kaura District under the Accelerated Development Programme of the then FCT Administration, vide letter dated 18<sup>th</sup> May, 2007. The said letter is hereto attached as Exhibit "D1".

That the said letter of Accelerated Development Program to the Plaintiff required that the Plaintiff complete same within two (2) weeks by way of obtaining, signing and returning a Development Lease Agreement containing the terms and conditions of the offer for perfection.

That the grant of offer of land under the Accelerated Development Programme as aforesaid is not a grant of a Statutory Right of Occupancy. By the Development Lease Agreement prepared by the FCT Administration containing terms and conditions of the allocation under the programme, title over

the land will be given the Plaintiff only after due compliance with the terms and condition of Development Lease Agreement.

That a fundamental term of the Development Lease Agreement signed by the parties is that the lease must reach first slab of the building before being entitled to the grant of a Statutory Right of Occupancy.

That the Plaintiff was also required to commence and complete development within specific period but he has failed to do so. In fact that signing the agreement, the Plaintiff didn't take any further step.

That the Accelerated Development Programme has since been cancelled by the 1<sup>st</sup> Defendant and those leases that have not developed, their leasehold revoked.

That the Plaintiff is not entitled to any of the reliefs claimed as per paragraph 21(a-c) of the Statement of Claim and urges this Honourable Court to dismiss this suit with cost for being vexatious, frivolous, lacking in merit and an absolute waste of the time of this Court.

DW1 was cross-examined and discharged.

On the part of 4<sup>th</sup> Defendant, DW2 who tendered documents also gave evidence on behalf of the 4<sup>th</sup> Defendant/Counter-Claimant where he stated, that he knows the 1<sup>st</sup> Defendant apart from his being the person in charge of the administration of the Federal Capital Territory, Abuja as stated by the Plaintiff, is also the person that grants Statutory Rights of Occupancies over land to all person(s) who make application to him for the purpose and does so like any of the Governors of one of the 36 States of the Federal Republic of Nigeria but under a delegated power from the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria.

That the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants apart from being statutory bodies are the regulators of all building designs and issue approvals for development of all Statutory allocations made or granted by the 1<sup>st</sup> Defendant and without such approval, a person including all the parties in this suit cannot put up any improvement, whatsoever, on the disputed Plot or any Plot of land.

That he knows that Plot 1041 Cadastral Zone B11, Kaura District, Abuja measuring about 9157.99 square meters cannot be granted to the Plaintiff by the 1<sup>st</sup> Defendant or to the 5<sup>th</sup> Defendant or any other person because the 4<sup>th</sup> Defendant has a prior existing

statutory grant from the 1<sup>st</sup> Defendant over the Plot which has not been revoked. This prior existing grant to the 4<sup>th</sup> Defendant by the 1<sup>st</sup> Defendant which was duly accepted is shown to the Court together with the 4<sup>th</sup> Defendant's acceptance of same.

That he knows that the Land Use Act under which the 1<sup>st</sup> Defendant derives his powers to grant interest in land does not give the 1<sup>st</sup> Defendant the power to grant "Accelerated Development Programme" to any person but Statutory Rights of Occupancy for all purposes which is what the 1<sup>st</sup> Defendant specifically granted to the 4<sup>th</sup> Defendant on the 25<sup>th</sup> day of September 1997. The entity: "Director (AGIS)" that purportedly signed the purported letter of grant to the Plaintiff on the 18<sup>th</sup> May, 2007 is not a person whether human or artificial and as such the letter has no origin as to its maker and as such is ineffectual.

That he knows that the period granted as a policy of the Federal Capital Territory Administration that the 1<sup>st</sup> Defendant presides over in all valid "Accelerated Development Programme" lease contract is six months for the allottee, assuming without conceding that the Plaintiff's lease under the programme is in order, to enter upon the specified land and develop same to full

completion within three months failing which the lease lapses or if some is complied with, a letter of offer covering a statutory grant over the affected Plot would be issued.

The Plaintiff cannot on the basis of a "Development Lease Agreement" move into a Landed Property including Plot 1041 Cadastral Zone and Kaura District, and Abuja already earlier granted to the 4<sup>th</sup> Defendant and carry out improvements thereon by way of clearing same, fencing same and building a storey building without the prior written approval of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The 4<sup>th</sup> Defendant aver that the Plaintiff trespassed into the 4<sup>th</sup> Defendant Plot 1041, Cadastral Zone B11, Kaura District, and Abuja and shall rely on paragraphs 8, 9, and 18 of the "Amended Statement of Claim" as facts and evidence of trespass by the Plaintiff into the 4<sup>th</sup> Defendant's land.

That he had submitted Building Designs to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for approval together with the instrument of grant to Plot 1041, Cadastral Zone B11, Kaura District, Abuja for Building Design Approval whereof the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants issued the 4<sup>th</sup> Defendant a document titled Conveyance of Development Approval. It is because the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are aware of the existence of the 4<sup>th</sup> Defendant that they cannot issue to the

Plaintiff any approval to develop the Plot, but can only issue a caveat on any application made by the Plaintiff.

That the Plaintiff should mention the nameless and faceless persons in the 1<sup>st</sup> Defendant's office that told the Plaintiff that the 1<sup>st</sup> Defendant "is planning to revoke" the Plaintiff's Plot or the faceless and nameless persons that invaded the Plot, took photographs and pegged the surroundings of the Plot and mentioned in their Statement of Claim.

That the Plaintiff does not have a Title File in the Land Registry of the 1<sup>st</sup> Defendant as the Plaintiff has no title over the disputed Plot. The inscription "Title Withdrawn and Cancelled" as placed in the purported lease file of the Plaintiff must be due to the realization of the 1<sup>st</sup> Defendant and his agents and agencies of the prior grant of the 4<sup>th</sup> Defendant which has not been revoked.

That the Statutory Right of Occupancy in Plot 1041, Cadastral Zone B11, Kaura District, and Abuja from the 1<sup>st</sup> Defendant to the 4<sup>th</sup> Defendant has been in existence since 25<sup>th</sup> September, 1997 to the knowledge of the Plaintiff.

that the 1<sup>st</sup> Defendant has nothing to give to the 5<sup>th</sup> Defendant in Plot 1041, Cadastral Zone B11, Kaura District, Abuja for the following reasons:

- a. No Statutory Right of Occupancy can arise including that made to the 5<sup>th</sup> Defendant by the 1<sup>st</sup> Defendant while this action is actively pending in this Court.
- b. The statutory holding in the Plot by the 4<sup>th</sup> Defendant is prior in time to that of the Plaintiff and the 5<sup>th</sup> Defendant without any revocation whatsoever of the 4<sup>th</sup> Defendant's grant.
- c. The 1<sup>st</sup> Defendant is a party to this action and cannot, while this action is pending, make any allocation of the same Plot to 3<sup>rd</sup> party including the 5<sup>th</sup> Defendant

That the allocation of the Statutory Right of Occupancy to the 4<sup>th</sup> Defendant/Counter-Claimant which was conveyed to the Defendant/Counter-Claimant under the hand of one S. Abdulrahim (Director of Lands) for the 1<sup>st</sup> Defendant was accepted by the Counter-claimant, the offer letter is shown to the Court together with the acceptance of same.

That when the 1<sup>st</sup> Defendant (FCT Minister) commenced the recertification of all land titles in the Federal Capital Territory in 2004, the 4<sup>th</sup> Defendant was unaware of same until in 2013 when the Chief Executive Officer (CEO) of the 4<sup>th</sup> Defendant visited Abuja and made demand at the Land Administration Department

of the 1<sup>st</sup> Defendant, which in this year is being called the "Abuja Geographic Information Systems" (AGIS), to be given the Ground Rent Bill in respect of the Plot to offset, and was told that the 1<sup>st</sup> Defendant commenced the process of recertification of all land titles since 2004 and that the 4<sup>th</sup> was late to participate in the exercise and must seek the 1<sup>st</sup> Defendant's permission to be allowed to partake in the late recertification of the Applicant's title.

That the 4<sup>th</sup> Defendant then made application to the 1<sup>st</sup> Defendant to be allowed to partake in the late recertification of her title but since the application to the 1<sup>st</sup> Defendant in 2013. The 4<sup>th</sup> Defendant has not received the expected approval or consent of the 1<sup>st</sup> Defendant and only being asked to come today or tomorrow. The letter the 4<sup>th</sup> Defendant/Counter-claimant wrote is shown to the Court.

That in December 2015, the 4<sup>th</sup> Defendant/Counter-claimant paid a visit the land by her alter ego and Chief Executive Officer together with him and to their surprise they noticed that there was an attempt by somebody to develop the disputed Plot which stopped and they were alarmed by this and went to the 2<sup>nd</sup> Defendant's office in Wuse Zone & where they were informed by

one Nkole that the Plot was leased, at one time, to the Plaintiff under the Accelerated Development Program policy of the Federal Capital Territory which policy has now been abrogated and that before the abrogation of the policy, the Plaintiff did not comply with any term of the Development Lease Agreement contemplated by the lease to the Plaintiff for not seeking approval of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to develop the disputed property and not developing same.

That he then visited the Land Administration Department of the 1<sup>st</sup> Defendant to verify the authenticity of the assertion by the 2<sup>nd</sup> Defendant's agent that the plot was leased to the Plaintiff and was informed by one Edward in the AGIS that the Statutory Right of Occupancy in the Plot was granted to one Toleb Integrated Services Limited (the 5<sup>th</sup> Defendant) by the 1<sup>st</sup> Defendant on the 26/05/2015 and that before the allocation to the 5<sup>th</sup> Defendant, there is a case in Court filed by Aro Contractors Ltd (Plaintiff) in respect of title to the Plot. The document evidencing the lease of the Plot to the Plaintiff is shown to the Court evidencing together with the grant to the 5<sup>th</sup> Defendant.

The 4<sup>th</sup> Defendant/Counter-claimant trespassed at various times and dates into the disputed Plot and raised structures therein

without a statutory right of occupancy or the consent, knowledge or at all of the 4<sup>th</sup> Defendant or the prior written approval of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

That he prays the Court to dismiss the Plaintiff's claims and grant the Counter-claim of the 4<sup>th</sup> Defendant as prayed for in the Counter-claim before the Court.

DW2 was cross-examined and discharged.

DW3 for the 5<sup>th</sup> Defendant; who tendered documents stated in their evidence, that the aforementioned also 5<sup>th</sup> Defendant/ Counter Claimant was allocated Plot No. 1041 Cadastral Zone B II, Kaura District, Abuja, measuring approximately 9531.56 square meters by the 1<sup>st</sup> Defendant, which is the authority vested with powers to allocate land to individuals and corporate entities.

That on the 25<sup>th</sup> of May, 2015, an offer of statutory Right of Occupancy was issued 1 to the 5th defendant in respect of plot 1041 Cadastral zone B11 of Kaura District measuring approximately 9531.56M<sup>2</sup>. A copy of the said offer is hereby pleaded and same shall be relied on by the 5<sup>th</sup> Defendant during trial.

That the 5<sup>th</sup> Defendant accepted the offer on the 13<sup>th</sup> of November, 2015. A certified true copy of the acknowledgment copy of the letter of acceptance is hereby pleaded and same shall be relied on at the hearing of this suit.

That the 5<sup>th</sup> Defendant applied for the site plan of plot 1041 Cadastral Zone B11 of Kaura District on the 17<sup>th</sup> of November, 2015 and it was duly issued to the 5<sup>th</sup> Defendant. A copy of the Site plan is hereby pleaded and same shall be relied at the hearing of this suit.

That the 5<sup>th</sup> Defendant in line with the established procedure at the office of the 2<sup>nd</sup> Defendant paid the sum of ₦1,000,000.00 (One Million Naira) only for the Certificate of Occupancy and a receipt dated the 20<sup>th</sup> November, 2015 was issued to the 5<sup>th</sup> Defendant being the condition precedent for the processing of the drawing plan in respect of the said plot. The receipt issued to the 5<sup>th</sup> Defendant by the Federal Capital Development Authority (FCDA) is hereby pleaded as same shall be relied on during trial.

That 5<sup>th</sup> Defendant discovered an encroachment on the said plot and applied to 3<sup>rd</sup> Defendant for the removal of the structure and in exercise of their statutory powers, the 3<sup>rd</sup> Defendant wrote to

the department of land administration for the confirmation of the status of the plot.

That on the 10<sup>th</sup> of March, 2016, the 2<sup>nd</sup> Defendant wrote a letter to the 3<sup>rd</sup> Defendant confirming the fact that the land was allocated to the 5<sup>th</sup> Defendant. The letter by the 5<sup>th</sup> Defendant to the 3<sup>rd</sup> Defendant requesting the removal of the illegal structures on the land is hereby pleaded and same shall be relied on during trial.

That at the time the 5<sup>th</sup> Defendant/Counter-Claimant applied and was allocated Plot. No. 1041 Cadastral Zone B II. Kaura District Abuja, it conducted a search for the purpose of discovering any encumbrance or adverse claimant, but the search report conducted shows there was no any form of encumbrance or adverse claim.

That when the 5<sup>th</sup> Defendant went to the site to take physical possession of the land, the 5<sup>th</sup> Defendant discovered an encroachment on the said plot and applied to the 3<sup>rd</sup> Defendant for the removal of the structure and in exercise of their statutory powers, the 3<sup>rd</sup> Defendant wrote to the department of land administration for the confirmation of the status of the plot.

That on the 10<sup>th</sup> of March, 2016, the 2<sup>nd</sup> Defendant wrote a letter to the 3<sup>rd</sup> Defendant confirming that fact that the land was allocated to the 5<sup>th</sup> Defendant. The acknowledgment copy of the letter by the 5<sup>th</sup> Defendant to the 3<sup>rd</sup> Defendant dated the 24<sup>th</sup> November, 2015 requesting the removal of the illegal structures on the land and the certified true copy of the letter by the 2<sup>nd</sup> Defendant to the 3<sup>rd</sup> Defendant requesting a confirmation of the Status of Plot No. 1041 Kaura (B11) District are hereby pleaded and they shall be relied on during trial.

That the accelerated development programme of the 1<sup>st</sup> Defendant which formed the basis of the Development lease agreement entered into between the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was cancelled on the 5<sup>th</sup> day of May, 2009 in a notice filled "Federal Capital Territory Administration" and the 5<sup>th</sup> Defendant shall rely on the said notice and same is hereby pleaded.

That the 5<sup>th</sup> Defendant/ Counter-claimant later became aware of the Plaintiff adverse claim and after being joined in the case upon its application, the 5<sup>th</sup> Defendant/ Counter-claimant realized that the Plaintiff entered into a development lease agreement with the 1<sup>st</sup> Defendant.

That one of the conditions of the lease agreement is that disputes arising from the agreement MUST FIRST be referred to an arbitrator before instituting an action in Court which the Plaintiff never did.

That the plaintiff failed to comply with the conditions in the lease agreements which are conditions precedent to the grant of right or Certificate of Occupancy.

That the plaintiff failed to procure the necessary building and other governmental approvals from the Department of Development Control and other agencies before erecting a fence on the land contrary to the requirements of the Development Lease Agreement entered into between the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

That the Lease Agreement entered into by the Plaintiff and 2<sup>nd</sup> Defendant had a 6 (six) month life span and same had determined before a grant was made to the 5<sup>th</sup> Defendant.

DW3 was cross-examined and discharged.

At the close of the respective cases of parties, final written addresses were fielded in order of procedure.

On their part, Claimant filed written address wherein two (2) issues were formulated for determination to-wit;

- 1. Whether the Claimant has proved her case on the preponderance of evidence to be entitled to judgment in the suit.***
- 2. Whether the 4<sup>th</sup> and 5<sup>th</sup> Defendants have proved their respective counterclaims.***

**On issue 1**, learned counsel submits, that according to the evidence of the claimant's sole witness (PW1), Plot 1041, Cadastral Zone B11, Kaura, Abuja was granted to the Claimant for leasehold development through a letter of grant admitted in evidence as Exhibit "C". The conditions for acceptance of the grant as stated on the face of Exhibit "C" were to the effect that the grantee must accept the grant by collecting, signing and returning a development lease Agreement containing the terms and conditions of the offer of grant within two (2) weeks from the date of the grant.

Learned counsel further submits, that Claimant led both oral and documentary evidence to prove that it satisfactorily met the 1<sup>st</sup> Defendant's conditions for acceptance of the grant. This Court is commended to Exhibit "A" which is executed copy of the

development lease agreement. Exhibit "A" is a positive uncontroverted evidence that the claimant collected, signed and returned the Development Lease Agreement as prescribed by the 1<sup>st</sup> Defendant and registered by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as No. **FC52/52/Vol.20MISC**. No evidence whatsoever was led to the contrary by the Defendants. The Claimant's mode of acceptance was also in line with the position of the Court of Appeal in ***ORIENT BANK (NIG) PLC. VS. BILANTE INT'L LTD. (1997)8 NWLR (Pt. 515)3 at 77 Paragraphs C – D*** where the Appellate Court in restating the acceptable mode of acceptance of an offer held as follows:

***"...In general two main rules govern the acceptance of an offer, viz: (a) there must be positive evidence from which the Court may infer an acceptance – this may be in word, in writing or in conduct (b) the acceptance must be communicated to the offeror. "***

It is the submission of learned counsel, that by combined provisions and letters of Exhibits "A" and "C" there exist subsisting binding contract between the parties which grants the claimant an interest in the subject property. Counsel also submits

that the Claimant is not in breach of any of the terms and condition of her grant in the subject property.

Learned counsel further submits, that any interest in property however minute must not be extinguished without recourse to the laid down procedure. It is a constitutional requirement so important that it is also embodied in Section 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which deals with the Fundamental Rights of the citizens. That is why the courts always insist on strict

It is the contention of learned counsel, that the Claimant has not in any manner whatsoever breached the terms of her grant to warrant its withdrawal and purported re-allocation to the 5<sup>th</sup> Defendant, even surprisingly when this suit was hotly and actively pending in the court. Assuming but without conceding that the Claimant breached the terms of her grant, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants cannot exercise a right of re-entry without recourse to the laid down procedure. This is exactly the position of the Supreme Court in ***OSHO VS. FOREIGN FINANCE CORPORATION (1991) 4 NWLR (pt. 184) 157 at 188, paras. F-S*** condensed into ratio 20 as follows:

***"A right of re-entry for breach of a covenant contained in a lease cannot override the process of recovering prescribed by statute, be it the state land law or the recovery of premises law."***

It is instructive to note that prior to the revocation of the Claimant's plot, the Claimant was not served with a notice of intention to revoke the said plot by the 1<sup>st</sup> - 3<sup>rd</sup> Defendants. Accordingly, it is right to submit that in the entire exercise, the claimant was denied fair hearing by the 1<sup>st</sup> - 3<sup>rd</sup> Defendants. Service of a notice of intention to revoke the said plot would have afforded the claimant an opportunity to make representations and raise before the 1<sup>st</sup> - 3<sup>rd</sup> Defendants the issue of non-approval of her submitted building plan. This failure to issue and serve on the claimant a notice of intention to revoke her plot amounts to a substantial non-compliance with the law and renders the entire exercise null and void.

**On issue two**, learned counsel submits, that the law is settled that if the Claimant succeeds in her claim, the Defendants' counter-claim will not see the light of the day. ***AKPAJI V. UDEMBA (2009) 6 NWLR (pt. 1138) 545 at 565, paras. C-D*** was cited.

However, it is important to stress that a counter-claim is a separate claim. In order to succeed, the counter-claimant must adduce cogent evidence to entitle him to the relief sought. The counter-claimant must succeed on the strength of his own case. ***ANAMBRA STATE GOVERNMENT V. GEMEX INT'L LTD. (2012) 1 NWLR (pt.1281) 333 at 363 para. D*** was cited.

Learned counsel contends, that 4<sup>th</sup> and 5<sup>th</sup> Defendants/ Counter-Claimants repeatedly in their various final written address that the Claimant breached the terms and conditions of Exhibits "A" and "C". Counsel submits with outmost respect that the 4<sup>th</sup> and 5<sup>th</sup> Defendants/counterclaimants are not parties to the contract between the claimant and the 1<sup>st</sup>/2<sup>nd</sup> Defendants and therefore not in a position to impugn Exhibits "A" and "C". They are strangers to the transaction between the claimant and the 1<sup>st</sup>/2<sup>nd</sup> Defendants. On this score, counsel commend this Honourable Court to the Court of Appeal decision in ***OHIAERI V. YUSUF (2004) 1 NWLR (pt. 855) 548, ratio 3*** where the intermediate court held as follows:

***"A stranger to a transaction is not in a position to seriously dispute what has happened between the parties to the agreement. In the instant case, both***

***the 3<sup>rd</sup> and 4<sup>th</sup> Respondents who could have challenged the case of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents deliberately refrained from doing so at the trial court. The appellant who was a total stranger to the transaction between them and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was therefore not in a position to seriously dispute what happened between them."***

Learned counsel concludes, that litigation is not a contest of wit. It is an exercise in fact finding aimed at unraveling the truth of a matter. Suffice it to add that attainment of Justice is the ultimate end of litigation.

On their part, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed Joint written address wherein two (2) issues were formulated for determination to-wit;

- 1. Whether from the pleadings and totality of evidence before this Honourable Court, the Plaintiff who entered into a Development Lease Agreement with the 1<sup>st</sup> Defendant in respect of the plot subject matter of this suit pursuant to Exhibits "A" and "C" has proved her case as to be entitled to the reliefs sought.***

**2. Whether the 4<sup>th</sup> and 5<sup>th</sup> Defendants are entitled to the reliefs sought by virtue of their respective counter-claims over the plot subject matter of this suit.**

On their part, 4<sup>th</sup> Defendant filed written address wherein three (3) issues were formulated for determination to-wit;

- 1. Whether the instruments (Exhibits "A" and "C") being paraded by the Claimant as the source of her title in Plot 1041, Cadastral Zone B11, Kaura District, Abuja, measuring about 9531.56 sqm from the 1<sup>st</sup> Defendant subsists to found any of the claims sought by the Claimant in her "Further Amended Statement of Claim"?**
- 2. Whether the 4<sup>th</sup> Defendant/Counter-Claimant has discharged the burden of proof that she was granted a Statutory Right of Occupancy by the 1<sup>st</sup> Defendant in Plot 1041, Cadastral Zone B11, Kaura District, Abuja measuring about 9531.56 sqm on the 25<sup>th</sup> September, 1997 from the 1<sup>st</sup> Defendant and as such has a prior superior subsisting title over the 'lease/license' of the Claimant and the Statutory**

***Right of Occupancy of the 5<sup>th</sup> Defendant Counter-Claimant?***

- 3. If the Court finds that the 4<sup>th</sup> Defendant/Counter-Claimant has proved that she had an unrevoked prior existing grant from the 1<sup>st</sup> Defendant in Plot 1041, Cadastral Zone B11, Kaura District, Abuja measuring about 9531.56 sqm can the equitable defences of waiver, laches and/or acquiescence set up by the Plaintiff in her 'Reply to the 4<sup>th</sup> Defendant's Statement of Defence and Counter Claim' undo the 4<sup>th</sup> Defendant's unrevoked legal right in the Plot?***

On their part, 5<sup>th</sup> Defendant filed written address wherein three (3) issues were formulated for determination to-wit;

- 1. Whether in the circumstances of this case, the Plaintiff has proved his case on the balance of probability to be entitled to the Judgment of this Honourable Court?***
- 2. Whether in view of the clear breach of the development lease entered into by the Plaintiff and 2<sup>nd</sup> Defendant, the Plaintiff is entitled to the remedy***

***of specific performance, to wit; the grant of Right of Occupancy?***

***3. Whether the 4<sup>th</sup> Defendant has proved his counter claims to warrant this Honourable Court granting the reliefs sought by the 4<sup>th</sup> Defendant in its counter claim.***

It is pertinent to note, that the issues for determination formulated by the 4<sup>th</sup> and 5<sup>th</sup> Defendants all seemingly dovetail around the issues for determination formulated by the 1<sup>st</sup> – 3<sup>rd</sup> Defendants.

**Thus, the issues for determination formulated by the 1<sup>st</sup> – 3<sup>rd</sup> Defendants will be discussed in detail without reproducing similar arguments from all the other Defendants.**

It is the submission of learned counsel, that it is a settled principle of law that he who assert must proof. The burden of proof of any fact in issue lies on the person who with fail if no evidence is adduced in support of his/her assertion. Sections 131 - 133 Evidence Act, 2011.

A claimant or party who claims declaration of title to land must prove title on the preponderance of credible evidence and must succeed on the strength of his own case and not on the weakness of the defence. The implication of this, simply put is that whenever, a court is called upon to make such declaration as to the title of the claimant, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by credible evidence that he is so entitled.

The law is well settled and has remained sacrosanct from time immemorial, right from the days of the locus classicus case of ***IDUNDUN VS OKUMAGBA (1979) 9 - 10 SC 277***, up to date that there are five (5) principal ways of proving title to land, namely:

- a. By traditional evidence
- b. By production of documents of title which are duly authenticated
- c. By act of possession spanning over a period of years
- d. By act of ownership exercised over the land over a period of time
- e. Proof of possession of adjacent or connected land.

The Claimant has chosen to proof its case by a grant under Accelerated Development Programme of the Federal Capital Territory (admitted as Exhibit "C") in evidence before this Honourable Court.

Learned counsel submits, that the grant made to the Claimant in Exhibit C is not a Statutory Right of Occupancy. This can be gleaned from the content of same. In order to determine the nature of the offer of Plot No. No. 1041 Cadastral Zone B11, Kaura District made to the Claimant in 2007 the court has to look at the document (Exhibit "C") in evidence and interpret same.

Learned counsel further submits, that it is crystal clear that Exhibit "C" is not an offer of grant of a Statutory Right Occupancy. Ratner it is an approval of grant over Plot No. 1041, Cadastral Zone B11 Kaura District for participation in the Accelerated Development Programme of the Federal Capital Territory. It does not contain terms and conditions of the offer as it is obtained in an offer of Statutory Right of Occupancy. Rather the terms and conditions are contained in a Development Lease Agreement (Exhibit "A").

In order to accept the offer made in Exhibit "C", the Claimant must obtain, sign and return the development lease agreement

within two (2) weeks from the date of the letter. Counsel submits therefore Exhibit "C" is not an offer of Statutory Right of Occupancy but a grant over Plot No. 1041 Cadastral Zone B11 Kaura District for participation in the Accelerated Development Programme within the Federal Capital Territory, subject to the terms and conditions contained in the Development Lease Agreement.

***BINANI NIGERIA LIMITED V. THE HON. MINISTER FCT & 2 ORS - SUIT NO. FCT/HC/CV/1368/2016 at Page 13*** was cited.

The flagrant of the foregoing is that the document (Exhibit "C") being brandished by the claimant does not have the effect claimed (Statutory Right of Occupancy) by the holder Aro Contractors Limited of the said instrument as to entitle him to a declaration and we urge the court to so hold.

The other equally relevant document to look at here is Exhibit "A". As earlier submitted that Exhibit "C" is not a Statutory Right of Occupancy but a grant over Plot No. 1041 Cadastral Zone B11 Kaura District for participation in the Accelerated Development Programme within the FCT, subject to the terms and conditions contained in the Development Lease Agreement. Hence the need

to look into the content of same with a view to arriving at a just decision in respect of whether the claimant is entitled to the reliefs sought been declaratory in nature.

Learned counsel argued, that in the interpretation of contractual transaction, Court will always hold parties bound by the terms of their agreement when construed according to the strict, plain and common meaning of the words in the instrument as they stand.

***MR. SEGUN BABATUNDE VS BANK OF THE NORTH LTD & 2 ORS (2011) 12 SC (PT V) 1. 419*** was cited.

Learned counsel continued; that it is apparent from the pleadings and evidence before this court, that indeed the Claimant and the 1<sup>st</sup> Defendant entered into a contract christened as Development Lease Agreement (Exhibit "A") containing the terms of the lease whose terms are binding on the parties therein and the duty of the court in this instance is to interpret same in the plain words of the instrument as they stand in the aforesaid Exhibit A. The fundamental question begging for an answer is has the claimant complied with the terms of the Development Lease Agreement?... the answer is No. This is because the Plaintiff has not shown by way of credible evidence that it has obtained a building plan approval from the 1<sup>st</sup> - 3<sup>rd</sup> Defendants to build commercial

housing of not less than four floors within the six months as agreed by the parties thereto in Exhibit "A". Furthermore, by the said Exhibit "A", the Plaintiff shall only be entitled to be issued a Statutory Right of Occupancy upon reaching certain level of development on the plot subject matter of this suit upon and in accordance with the building plan approval duly issued by the 3<sup>rd</sup> Defendant. All these the plaintiff fails to prove before this court.

It is settled law that where time is made the essence of a contract and the stipulated time is not met, the other party will not be held to the contract. ***EDWARD AKINLADE V. MICHAEL ADEMOLA AYINDE (2021)1 NWLR (Pt. 1758) Page 443, Paragraph G.*** was cited.

The law is settled that where parties to a contract have by mutual agreement provided for the time for the satisfaction of a condition, time because of the essence of the agreement and any breach of that condition has the effect of putting an end to the contract.

***KAYDEE VENTURES LTD VS THE HON. MINISTER FCT & 2 ORS (2010) 2-3 SC (Pt. III) 1*** was cited.

The law is settled that that the law governing the determination of a lease agreement of land properly for a term of years is

different from the law governing the determination of other types of contract. The law recognizes that a lease agreement of landed property can be determined in any of the four ways i.e (a) by effluxion of time (b) by a surrender of the lease (c) by abandonment of the lease, and (d) where there has been a breach of covenants, by forfeiture. ***OTERI HOLDINGS LTD V. H.B.CO. LTD (2021) 18 NWLR (PT. 1755)*** was cited.

In this instant case, going by the agreement of the parties as gleaned from Exhibit A, learned counsel submits that the Development Lease was determined by breach of covenant, by effluxion of time and by abandonment. This is because the claimant has failed to prove before this Honourable Court by credible evidence that it had commenced the development of commercial housing of not less than four floors on Plot No. 1041 Cadastral Zone 311 Kaura District. There is no evidence showing that the claimant had completed the structure of first floor slab of commercial housing of not less than four floors of the building within six (6) months from the date of signing the agreement (Exhibit "A") or had completed the third (3<sup>rd</sup> floor) of the building within twelve (12) months from the date of signing the agreement. So as to be eligible to be conferred with a Statutory Right of Occupancy or Statutory Certificate of Occupancy as the

case may be by the lessor. The plaintiff abandoned the plot subject matter of this suit since 2007 and decided to file this suit in 2014 which was about 6-7years after the expiration of the said Exhibit "A".

The evidence shows that the plaintiff has failed to proof to this Honourable court that it complied with the terms in Exhibit "A". The aforesaid Exhibit "A" has long expired. It is only if the plaintiff had proved that the said Exhibit "A" is still subsisting and that it has complied with the terms of the said Exhibit A particularly paragraphs i, ii & iii that this Honourable court will grant the declaration sought. Therefore in the absence of this the plaintiff is not entitled to the relief sought and we urged the court to so hold.

Learned counsel also submits, that the evidence shows clearly that the said Development Lease Agreement (Exhibit "A") expired since 2007 and therefore is not subsisting. The Plaintiff did not even comply with the terms of the said Exhibit "A". Furthermore, Exhibit "D3" also shows that the entire programme of Accelerated Development the bases of which the Claimant heavily relied upon as its possessory right has since been cancelled.

**COURT:-**

I have considered the reliefs sought by the Plaintiff based on the evidence before the Court, on the one hand, and the Defence/ Counter-claims of the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Counter-Claimants on the other hand.

It is noteworthy that reliefs 1, 2, 3, 4 and 5 out of the ten reliefs sought by the Plaintiff, are declaratory in nature.

The law in this area of jurisprudence is already settled through a long line of decided cases.

The Court of Appeal in the case of ***PCN VS. LAMLEX (PHARMACY) NIG. LTD (2018) LPELR 44686 (CA)*** had the following to say with respect to declaratory reliefs and what a party seeking same shall do;

***“The law is settled that a declaratory relief is not granted as a matter course or on admission of the other party. It is a discretionary remedy which can only be granted upon cogent, credible and satisfactory evidence being placed before the Court. It is also settled that a party seeking a declaratory relief must succeed on the strength of his own case and not on the weakness of the Defendant’s case. The fact that a Defendant fails to defend a claim for***

***declaratory relief does not relieve the Claimant of the burden to establish his entitlement to the relief he is seeking by placing or adducing cogent and credible evidence before the court. See KWAJAFFA & ORS. VS. B.O.N LTD. (2004) 13 NWLR (Pt. 889) 146 at 172 (D – E);***

Above position was also stated by the apex court in the case of ***AG RIVERS STATE VS. AG BAYELSA STATE & ANOR (2012) LPELR – 9336 (SC).***

It presupposes therefore that evidence shall be led to establish fact asserted in pleadings, if not, the Claimant's case, shall fail.

This is in line with the settled law on burden of proof.. In civil proceedings, burden of proof has two distinct and frequently confirmed meanings. It may mean the burden of proof on a matter of law and the pleadings referred to on the legal burden, and the other burden of proof in the sense of adducing evidence i.e evidential burden... while the burden of proof in the first sense is always static, the other burden of proof which is evidential, usually shifts depending on the evidence adduced. ***EZEMBA VS. IBENEME & ANOR (2004) LPELR 1205 (SC);***

***Section 131(1) of the Evidence Act, 2011*** are instructive.

It is therefore correct to say that where the said reliefs 1 -5 fail, the other reliefs 6 -10 which are all reliant on the success reliefs 1-5 shall all die a natural death.

I now gravitate to the fulcrum of the case of the Parties.

From the available evidence, both Plaintiff, 4<sup>th</sup> and 5<sup>th</sup> Defendants are laying claims to the subject matter (Land) based on the title document in their possession which were all made available to them by the 1<sup>st</sup> Defendant (FCT Minister).

The instant legal tussle emanates from the Development Lease Agreement entered into between the Plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, i.e FCT Minister, Federal Capital Development Authority and Department of Development Control.

The said Development Lease Agreement which was dated the 21<sup>st</sup> May, 2007 was duly executed by the parties and witnessed by One Altine Jibrin of Abuja Geographical Information System (AGIS) address.

It is therefore correct to say that the Claims of the Claimant are founded on the afore-mentioned Development Lease Agreement.

It is similarly very clear from the evidence before the Court that all the parties tendered various documents in support of their

cases thereby narrowing the issues in contention to documentary evidence.

It is settled law that the best form of evidence is Documentary Evidence in view of its permanency.

Oral evidence is only used to give meaning sometimes to documentary evidence.

See the case of ***EHOLOR VS. OSAYANDE (1992) LPELR – 8053 (SC)***.

It is the law that where parties have embodied the terms of their agreement or contract in a written document, extrinsic evidence is not admissible to add, vary, subtract or contradict the terms of the written contract.

***LARMIE VS. DATA PROCESSING MAINTENANCE & SERVICE (2005) LPELR – 1756 (SC)***.

From the evidence of DW1 which is at the instance of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, the data of the 1<sup>st</sup> Defendant does not have any record showing the allocation made in favour of the 4<sup>th</sup> Defendant (Ring Integrated Venture Limited).

I shall therefore deal with the claims of the 4<sup>th</sup> Defendant/Counter-Claimant to establish their standing in the instant case, in view of the issue of locus standi raised.

4<sup>th</sup> Defendant relied on allocation vide Terms of Grant/Conveyance of Approval dated the 25<sup>th</sup> September, 1997, marked as Exhibit "D4", letter of acceptance to show that they were the first to be allocated the land in issue and that they still remain the owners of the land contrary to the evidence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who have identified the 5<sup>th</sup> Defendant/Counter-Claimant as the rightful owner in view of the Statutory Right of Occupancy made in their favour.

As stated earlier in this Judgment, the best form of evidence is documentary evidence. I have seen the conditions contained in the said Exhibit "D4".

It is clearly stated in paragraph 2(i) of the said Exhibit "D4" that 4<sup>th</sup> Defendant shall erect building approved within two (2) years.

For understanding, I shall reproduce the said paragraph 2(i) as contained in the Offer of Terms of Grant/Conveyance of Approval.

**Paragraph 2(i)**

***"Within two (2) years from the date of commencement of this Right of Occupancy to erect and complete on the said land the buildings or other works specified in detailed plans approved or to be approved by the Federal Capital Development Authority, or other Officer appointed by the President, such buildings or other works to be of such value of not less than (N.....) and to be erected and satisfaction of the said Federal Capital Development Authority or other Officer appointed by the President."***

I note with concern that 4<sup>th</sup> Defendant did not tender Certificate of Occupancy which was meant to have been issued to them upon payment after accepting the said offer on the 30<sup>th</sup> September, 1997.

It is similarly not in evidence that 4<sup>th</sup> Defendant took any steps to consolidate their ownership of the said land which was allocated to them on record in 1997 which is over 26 years.

It is true that it is the FCT Minister who has the Statutory and Constitutionally delegated powers of the President of the Federal Republic of Nigeria to allocate Land within the FCT upon

fulfilment of conditions. This is done pursuant to Section 297(2) of the Constitution of the Federal Republic of Nigeria as amended and Section 18 of the Federal Capital Territory ACT.

Having not taken any such steps recognizable in law to fortify their right over the said land i.e Plot 1041 within Kaura District in FCT, the subject matter in issue, 4<sup>th</sup> Defendant are deemed in law to have forfeited their right as equity does not aid the indolent but only the vigilant.

See ***A.G RIVERS STATE VS. UDE & ORS (2006) LPELR – 626 (SC).***

Clearly, 4<sup>th</sup> Defendant slept on their right and cannot be helped in this instance.

Supposing, 4<sup>th</sup> Defendant had even taken steps to keep the land by making any such payments to the authorities, can they still lay claim to the said land?

Having not complied with Clause 2(i) of the Terms of Grant/Conveyance which expressly states that an approved Building Plan shall be erected on the said land within two (2) years from the commencement of the Right of Occupancy!

There is no evidence that 4<sup>th</sup> Defendant ever submitted any Building Plan for approval within the two (2) years, not to talk of erecting such building on the land. 1<sup>st</sup> Defendant who has the right to allocate land within the Federal Capital Territory (FCT), shall reserve the same right to revoke the said land expressly or impliedly.

The evidence by 1<sup>st</sup> Defendant's witness that no data with them carrying any information relating to the allocation of the 4<sup>th</sup> Defendant is justifiable.

Clearly, 4<sup>th</sup> Defendant who are still basking in the euphoria of ownership of the subject matter, albeit in error, have no such right to approach any Court as they lack any justifiable reason.

The allocation paper i.e Exhibit "D4" which has in it conditions is the Contract Document between the parties.

It is elementary law that parties are bound by the contract they freely enter into.

Having not complied with the said Terms contained in the said Offer Letter, 4<sup>th</sup> Defendant is presumed in law to have repudiated the contract.

See ***COMMISSIONER FOR WORK BENUE STATE & ANOR VS. DEVCON DEVELOPMENT CONSULTANT LTD. ANOR (1988) LPELR 884 (SC).***

The reliefs claimed by the 4<sup>th</sup> Defendant/Counter-Claimant are largely Declaratory in nature.

Having not led any acceptable evidence to show ownership, the case of the 4<sup>th</sup> Defendant/Counter-Claimant **hereby fails.**

On the whole, the said Counter Claims are **hereby dismissed.**

With the dismissal of the case of the 4<sup>th</sup> Defendant/Counter-Claimant, I am left with the Plaintiff and 5<sup>th</sup> Defendant's case to determine who has the support of the law bearing in mind the fact that 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' lone witness gave evidence in support of the allocation made to the 5<sup>th</sup> Defendant/Counter-Claimant (Toleb Integrated Services Limited).

The claim of the 5<sup>th</sup> Defendant/Counter-Claimant is largely founded on the fact that Plaintiff who were allocated the said land under the Accelerated Development Programme of the Federal Capital Territory (FCT), failed to comply with the conditions contained in the said Lease Agreement, and that by Exhibit

“D16”, the said Programme has been cancelled by the Federal Capital Territory (FCT) Administration.

It is further the evidence and argument of the 5<sup>th</sup> Defendant/ Counter-Claimant that they have valid statutory title over the subject matter which cannot be compared to the said Development Lease Agreement which does not have the force of law.

I am constrained from the evidence before me, which are documentary to observe that it is not in doubt that the only title known in the Federal Capital Territory (FCT) is Statutory.

The cases of ***ONA VS. ATENDA (2000) 5 NWLR (Pt. 656) Page 244;***

***MADU VS. MADU (2008) LPELR 1806 (SC)*** are instructive.

I am however minded to observe that regardless of the superior position of Statutory Allocation within the Federal Capital Territory (FCT), once parties have entered into a building contract, they are bound by such terms unless otherwise determined.

Above underscores the importance of contract and its sanctity. See the case of ***ADEABANYA VS. AIR FRANCE (2018) LPELR – 49894 (CA)*** where the Court has this to say;

***"The essence of the doctrine of sanctity of contracts is that where parties have entered into a contract they are bound by the provisions of the contract: ARJAY LTD VS. AIRLINE MANAGEMENT SUPPORT LTD (2003) LPELR (555) 1 at 67 (SC)." Per UGOCHUKWU ANTHONY OGAKWU, JCA (Pp 21 - 21 Paras E - F)***

On Bindingness of Contract, the case of ***WILLIAMS VS. REGISTRAR OF TITLES LAGOS STATE & ORS (2016) LPELR – 41420 (CA)*** is good law, where it was held as follows:

***"Abubakar, JCA pointed out in WILLIAMS VS. WILLIAMS (2014) 15 NWLR AT PAGE 244 that: The law is trite regarding the bindingness of terms of agreement where parties as in the instant appeal voluntarily enter into an agreement and willingly too endorse the said terms, the agreement must be honoured, Courts of law being Courts of justice and conscience will certainly not allow anything to be read into an express agreement, terms on which parties were not in agreement." Per SIDI DAUDA BAGE, JCA (Pp. 19 - 20 Paras F - B)***

I shall for the avoidance of doubt and posterity, reproduce the relevant portion of the said Development Lease Agreement... of specific reference will be the preamble, paragraphs 4 and 8 of the said Document.

***"THIS DEED is made the 21<sup>st</sup> May, day of 2007 BETWEEN THE FEDERAL CAPITAL DEVELOPMENT AUTHORITY of Area 11 Garki, Abuja (hereinafter called the "LESSOR" which expression wherever the context so admits shall include its successors – in – title and assigns) of the one part.***

***ARO CONTRACTORS LIMITED a Company incorporated in Nigeria and having its registered office, at SYNDICATE PLAZA, AREA 11, GARKI, ABUJA (Hereinafter called the "Lessee" which expression wherever the context so admit shall include its successors – in – title and assigns) of the other Part.***

***WHEREAS:***

- i. The Lessor is the Beneficial Owner of the land situate and lying at the KAURA DISTRICT of the Federal Capital Territory, Abuja known as Plot No. 1041, Zone B11 Kaura, Abuja.***

- ii. *Under the Federal Development Scheme, the **Lessor** intends to develop the land inquest into full scale commercial complex.*
- iii. *The **Lessee** has shown willingness to enter into agreement for the purpose set out herein. Pursuant to the Agreement reached between the parties, details of which are contained in File No the **Lessor** has agreed to grant to the **Lessee** a term of six (6) months in and over the aforesaid property on the terms and conditions hereinafter contained."*

#### **Paragraph 4**

***"All notices consents or approval to be given hereunder shall be in writing and shall be sufficiently given to any party if sent by recorded delivery service addressed to that party's last known address or place of business or that party's registered office. Such Notices may also be sent by facsimile as follows:-"***

#### **Paragraph 8**

***"Every dispute question or difference arising between the parties with regard to this agreement or***

***the duties powers or liabilities of the parties hereunder or with regards to the construction of any clause hereof or arising out of or touching anything herein contained whether during the continuance of this agreement or upon or after its termination by act of either party hereto or otherwise shall, and at the option of an aggrieved party be referred to a Court of competent jurisdiction or Arbitration, and where the Arbitration option applies, the provisions of the Arbitration & Conciliation Act, Cap. A1 Vol. 1 Laws of the Federation, 2004 or any statutory modification or re-enactment of the same for the time being in force shall apply to such Arbitration. Each party shall nominate one (1) Arbitrator and the two (2) Arbitrators shall appoint third (3) Arbitrators as the Presiding Arbitrator. In the case of disagreement, the Chief Judge of the Federal Capital Territory, Abuja shall appoint the Presiding Arbitrator. The place of Arbitration shall be Abuja.”***

The grouse of the Plaintiff from the evidence before the Court (oral and documentary) is that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are in gross violation of the terms contained in the Development

Lease Agreement i.e Exhibit "A" and could therefore not have been validly enabled in law to have terminated same.

I have seen Exhibit "D3" which was the Notice Cancelling the Allocation of the Plot in issue which was allocated to the Plaintiff under the Development Lease Agreement meant for Accelerated Development.

I shall pause here and ask the 1<sup>st</sup> Defendant the following question:-

1. Was Plaintiff entitled to be served written Notice at their address or not!
2. Was Court and or Arbitration contemplated in the Agreement as avenue for the settlement of any dispute arising from the Development Lease Agreement!

I answer above in the positive.

3. Having not complied with the content of the said Development Lease Agreement as spelt-out in paragraphs 4 and 8 afore-reproduced, could 1<sup>st</sup> Defendant have revoked or cancelled the said Development Lease Agreement, legally speaking?

Again, I answer the poser in the negative...

I have no doubt in mind that the Development Lease Agreement is the Contract Document between the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Parties therein mentioned are bound by the terms contained in the contract.

It is only an Arbitration or Court of law that could have resolved any such discrepancies arising from the said Contract Document.

The law on burden of proof/onus of proof is settled. See the case of ***MAIHAJA VS. GAIDAM (2017) LPELR-42474 (SC)***, where it was stated as follows:-

***"Section 131(1) of the Evidence Act, 2011 provides that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist. Put streetwise, he who asserts must prove his assertion. It therefore logically follows that what is alleged without proof can be denied without proof. When a fact is asserted without proof then the existence of the alleged fact is not established. That is why Section 132 of the Evidence Act provides further that the burden of***

***proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side." Per EJEMBI EKO, JSC (Pp 61 - 62 Paras E - B)***

I am morethan satisfied that the allocation made by the 1<sup>st</sup> Defendant to the Plaintiff was cancelled/revoked, albeit, in complete violation of the terms contained in the Contract Document i.e Exhibit "A".

Plaintiff's case is largely Declaratory in nature, the success of which must be based on evidence that are credible bearing in mind the fact that Declaratory reliefs are not granted as a matter of course, admission or absence of Defence.

See ***IYANDA VS. AMORI (2006) LPELR – 7747 (CA)***

Having established its case on preponderance of documentary or oral evidence, the said reliefs sought as contained on the face of the Writ of Summons and Statement of Claims succeed in part and are hereby granted, as follows;-

1. A Declaration that the Plaintiff is and shall be entitled to its lawful allocation, occupation, rights and privileges over Plot 1041, Cadastral Zone B11, Kaura, Abuja, measuring 9157.99sqm vide the letter of grant titled "Accelerated

Development Programme within Federal Capital Territory” dated the 18<sup>th</sup> day of May, 2007 is **hereby granted.**

2. A Declaration that the Development Lease Agreement duly executed between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and the Claimant and registered as No. FC52 at page 52 in Vol. 20MISC of the Lands Registry in respect of Plot 1041, Cadastral Zone B11, Kaura, Abuja, still subsists is **hereby granted**
3. A Declaration that the purported revocation/withdrawal of the allocation of Plot 1041, Cadastral Zone B11, Kaura, Abuja made to the Plaintiff was not done in accordance with the procedure permitted by law and *ipso facto* null and void and of no effect whatsoever is **hereby granted.**
4. A Declaration that prior to the Claimant’s allocation of Plot 1041, Cadastral Zone B11, Kaura, Abuja under the “Accelerated Development Programme within Federal Capital Territory” dated 18<sup>th</sup> day of May, 2007 by the 1<sup>st</sup> Defendant, there was no valid allocation to 4<sup>th</sup> Defendant or any other person or person is **hereby granted**
5. A Declaration that the grant of right of occupancy by the 1<sup>st</sup> Defendant to the 5<sup>th</sup> Defendant of Plot No. 1041, Cadastral

Zone B11, Kaura, Abuja notwithstanding the subsistence of the Claimant's allocation and development Lease No. FC52/52/20MISC, and during the pendency of this suit in respect of the subject matter is unconstitutional, illegal and therefore null and void is **hereby granted**.

6. An Order compelling the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to issue the Plaintiff with an approved building plan over Plot No. 1041 in Cadastral Zone B11 Kaura District, Abuja measuring 9157.99sqm is **hereby granted**.
7. An Order compelling the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to vacate all caveat placed on Plaintiff's plot file in respect of Plot. No. 1041 in Cadastral Zone B11, Kaura District, Abuja is **hereby granted**.
8. An Injunction restraining the 1<sup>st</sup> Defendant from revoking the Plaintiff's title and or interest over Plot No. 1041 in Cadastral Zone B11, Kaura District, Abuja measuring 9157.99sqm is **hereby granted**; and
10. A Perpetual Injunction restraining the Defendants, either by themselves, their agents, privies, or any person claiming through them from interfering with, and or disturbing the Plaintiff's right to peaceful and quiet possession of Plot No.

1041, Cadastral Zone B11, Kaura, Abuja measuring 9157.99sqm is **hereby granted**.

Relief 9 can only be granted upon completion of the Project therein contained in the Development Lease Agreement. It cannot therefore be granted at this embryo stage.

In view of the fact that there was no such land available for allocation at the time of the alleged allocation to the 5<sup>th</sup> Defendant/Counter-Claimant, the said allocation done in favour of the 5<sup>th</sup> Defendant/Counter-Claimant, albeit in error, cannot stand in the eyes of the law.

The Counter Claim of the 5<sup>th</sup> Defendant/Counter-Claimant therefore fails and is accordingly **hereby dismissed**.

***Justice Y. Halilu  
Hon. Judge  
23<sup>rd</sup> February, 2024***

## **APPEARANCES**

Richard Uba, Esq. – for the Claimant.

Ramalan Jibrin Abdullahi, Esq. – for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

E.D. Bala, Esq. – for the 4<sup>th</sup> Defendant.

5<sup>th</sup> Defendant not in Court nor represented.