IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO, ABUJA

ON WEDNESDAY, THE 19TH DAY OF FEBRUARY, 2025

BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA

JUDGE

SUIT NO.: FCT/HC/CV/1880/2021

BETWEEN:

CALISTUS UZOMA **CLAIMANT**

AND

1. ONYEBUCHI NNADI
2. UNKNOWN PERSONS **DEFENDANTS**

JUGMENT

By a Writ of Summons dated and filed on the 6th day of August, 2021, the Claimant herein commenced this action against the Defendants herein seeking for the following reliefs:-

1. *A Declaration that the Claimant is the bonafide owner of Plot No. 34 measuring 1518.10 square meters situate at Lugbe 1 Layout, Abuja having being seized of the plot vide Power of Attorney between him and the original allottee.*
2. *A Declaration that the act of the Defendants in entering into the Claimant's plot, destroying the Claimant's fence and developing same without the consent and authority of the Claimant is an act of trespass.*

3. *An Order of perpetual injunction restraining the Defendants, their agents, privies, workmen or foremen from entering into, developing, improving or otherwise changing the topography of the Claimant's Plot No. 34 situate at Lugbe 1 Layout, Abuja.*
4. *The sum of Fifty Million Naira (₦50,000,000.00) only as general damages for trespass by the Defendant.*
5. *Cost of this suit.*

The Writ of Summons was accompanied by the required processes. These are the Statement of Claim, the Claimant's Witness Statement on Oath, the List of Witness, the List of Documents and the Certificate of Pre-Action Counselling. The Claimant did not attach copies of the documents he intended to rely on in proof of his case against the Defendants.

This case has had a chequered history. It was assigned to this Court on the 4th of October, 2021. It came up for the first time in this Court on the 21st of November, 2022, more than one year after it had been assigned to this Court. Because parties were absent on that day, this Court struck out the suit. On the 8th of June, 2023, however, learned Counsel for the Claimant, E. E. Nweke, Esq., moved the Motion *Ex parte* with Motion Number M/9522/2023 dated the 27th of April, 2023 but filed on the 16th of May, 2023 seeking the relisting of the suit. This Court heard the Motion and granted the prayers sought. The Court also heard and granted the reliefs contained

in the Motion *Ex parte* with Motion Number M/8706/2023 seeking an order of Court for substituted service.

The Claimant opened his case on the 16th of January, 2024. He is IfunnayaOgbonnaya. He was sworn and thereafter proceeded to adopt his Witness Statement on Oath. Testifying as the PW1, the witness described himself as the agent of the Claimant in this suit. He averred that the Claimant was the bonafide owner of the property in dispute, that is, Plot 34 Lugbe 1 Layout, Abuja, measuring about 1500 square meters, which he purchased from TatiyeMamman, the original allottee, in 2006, with the Power of Attorney as evidence of the transfer of ownership.

He further swore that he changed the name on the property from the name of the original allottee to the name of the Claimant after he had made the payments for the development levy, certificate of occupancy, and other payments required and demanded by the relevant authorities. He averred too that he was given the technical design plan (TDP) of the plot as well as the survey data.

It was the case of the Claimant that in 2021, the Defendants trespassed into the property the subject matter of this suit, destroyed the fence the Claimant had built and began to erect a new one. In order to forestall a breakdown of law and order, the Claimant swore that he reported the

matter to the LugbePolice Station, adding that the Defendants continued to develop the property notwithstanding that the police had intervened. It is against this background that the Claimant has approached the Court, before the Defendants would radically alter the land and its use.

In the course of his evidence-in-chief, the PW1 tendered and this Court admitted the following documents in evidence: receipt number 5233 as **Exhibit A1**, receipt number 5183 as **Exhibit A2** receipt number 5135 as **Exhibit A3**, Power of Attorney as **Exhibit B1-B5**, Conveyance of Provisional Approval as **Exhibit C1-C2**, Offer of Terms of Grant as **Exhibit D1-D2**, Approval for TDP and TDP as **Exhibits E1-E2** and Acceptance Letter as **Exhibit F1**.

On the 20th of March, 2024, after a series of adjournments, the 1st Defendant cross-examined the PW1. In answer to questions, the PW1 replied that he did not have a written authority from the Claimant to act as his agent, adding that he was trusted by the Claimant. He confirmed that the Defendants destroyed the fence the Claimant had erected, adding that the boys that came to the site claimed that they were working for the 1st Defendant. He confirmed that he reported the matter to the Police Station at Lugbe, adding that he was around throughout the investigative process by the police. He explained that he had to report the matter to the police because the boys the Defendants sent to the site were always violent.

There was no reexamination.

On the 25th of September, 2024, again, after a series of adjournments, the 2nd Defendant was foreclosed from cross-examining the PW1. The Court therefore adjourned the suit to enable the Defendants open their defence.

On the 23rd of October, 2024, Counsel for the 1st Defendant, ChinonsoAfoaku, Esq., informed the Court that the 1st Defendant was resting his case on the case of the Claimant. On the same date, the Court, upon application to that effect from the Claimant's Counsel, foreclosed the 2nd Defendant from defending the suit. The Court also ordered parties to file their Final Written Addresses.

The Claimant filed his Final Written Address on the 28th of November, 2024. The Defendants did not file their Final Written Addresses. On the 3rd of December, 2024, the Claimant through his Counsel, adopted his Final Written Address. The 1st Defendant's Counsel informed the Court that the 1st Defendant was not desirous of filing any Written Address, adding that it was leaving the matter at the discretion of the Court.

In the Claimant's Final Written Address, learned Counsel for the Claimant formulated the following sole issue: "*Whether the Claimant has produced sufficient and satisfactory evidence in support of his title to the land in dispute*."

In his argument on this sole issue, learned Counsel submitted that the Claimant has proved his entitlement to the reliefs sought. He pointed out that the evidence adduced by the Claimant was admissible, relevant, credible and conclusive. He cited section 135 of the Evidence Act, 2011 in asserting that the Claimant has proved his case on a preponderance of evidence. He further relied on the case of ***Idundun v. Okumagba (1976) 9-10 SC 223*** on the different methods of proving ownership of land, adding that the Claimant was able to establish his right of ownership of the land through production of the documents of title to the property. He pointed out that the Defendants had the opportunity to challenge his evidence, but they did not.

He further submitted that the claim for trespass was rooted in exclusive possession, and that the Claimant was in exclusive possession when the Defendants encroached on the property. He stated the principle of law that title is put in issue once a Defendant claimed to be the owner of a land. He urged the Court to resolve the issue in favour of the Claimant.

For his submissions on this issue, learned Counsel relied on ***Okeke v. Aondoka (2000) 9 NWLR (Pt. 673) 501 at 516, Omo v. J.S.C. Delta State (2000) 12 NWLR (Pt. 682) 444, Otuendor v. Olughor&Ors (1997) 7 SCNJ 41, Olodo v. Josiah (2010) 18 NWLR (Pt. 1225) 653, Akinduro v. Alaya***

(2007) 22 WRN 1; (2007) 15 NWLR (Pt. 1057) 312, Mogaji v. Cadbury Ltd (1985) 2 NWLR (Pt. 7) 373 among other cases.

That is the summary of the case before me. In determining this suit, I shall adopt the sole issue the Claimant has formulated in his Final Written Address and reframe it as follows: "***Whether the Claimant, in view of the circumstances of this case, the nature of the reliefs sought herein and the entire body of evidence adduced in this case, has not established his case against the Defendants?***"

In resolving this sole issue, this Court shall keep two things in view: the first is the nature of the reliefs sought in this suit; the second is the body of evidence adduced in proof of the reliefs sought in this suit. With regards to the first subject, that is, the nature of the reliefs sought in this suit, the principal reliefs in this suit are "*(1) A Declaration that the Claimant is the bonafide owner of Plot No. 34 measuring 1518.10 square meters situate at Lugbe 1 Layout, Abuja having being seized of the plot vide Power of Attorney between him and the original allottee; and (2) A Declaration that the act of the Defendants in entering into the Claimant's plot, destroying the Claimant's fence and developing same without the consent and authority of the Claimant is an act of trespass.*" The other three reliefs are ancillary to these main reliefs because their grantability is dependent on whether the Claimant has been able to prove his entitlement to the principal reliefs.

Now, declaratory reliefs are in a class of their own. They are not granted as a matter of course. The Claimant who seeks declaratory reliefs must establish their entitlement to same. The Courts have pronounced on this principle in a plethora of cases. For instance, in ***Akande v. Adisa (2012) 15 NWLR (Pt. 1324) 538 S.C.***, the Supreme Court held ***at page 571, paras A – C*** that

> "***The purpose of a declaratory action is essentially to seek an equitable relief in which the plaintiff prays the court in the exercise of its discretionary jurisdiction to pronounce, or declare an existing state of affairs in law, in his favour as may be discernible from the averments in the statement of claim. In order to be entitled to a declaration, a person must show evidence of a future legal right subsisting or in the future and that the right is contested. What would entitle a plaintiff to a declaration is a claim which a court is prepared to recognize and if validly made it is prepared to give legal consequence.***"

Speaking further on what a Claimant who seeks declaratory relief must prove, the apex Court held ***at page 571, paras C – H*** of the same report that:-

"***A declaratory action is discretionary in nature. Therefore, the onus of proof lies on the party claiming and he must succeed on the strength of his own case and not on the weakness of the defence except where the case for the defence supports his case. A declaration is a discretionary remedy and anybody seeking such a remedy has the legal burden of proof as well as the evidential burden under sections 135 to 137 of the Evidence Act.***"

In ***Guinness (Nig.) Ltd. v. Udeani (2000) 14 NWLR (Pt. 687) 367 C.A. at p. 392, para. B***, the Court of Appeal stated that "***Declaratory reliefs are discretionary in nature. Thus, a declaratory judgment in essence is an exercise of judicial discretion which is a part of equity. It is granted only after the court has had a recourse to the facts and equity of the case.***" In ***Mohammed v. Wammako (2018) 7 NWLR (Pt. 1619) 573 S.C. at 586, paras. A-B***, the Supreme Court instructively made this remarkable pronouncement: "***A party who seeks declaratory reliefs has an obligation to advance evidence in proof thereof. This is so in that courts have the discretion either to grant or refuse declaratory reliefs. The success of a declaratory claim largely depends on the strength of the plaintiff's case. It does not depend on the defendant's defence.***

This must be so for the burden on the plaintiff in establishing declaratory reliefs is, often, quite heavy."

In other words, a party who seeks declaratory reliefs must discharge the evidential burden incumbent on them by virtue of sections 131 – 137 of the Evidence Act, 2011. In civil cases, the relevant provisions are sections 131(1), 132, 133 (1), 134, and 136(1). The sections provide thus:-

Section 131(1):

> "***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***."

Section 132:

> "***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.***"

Section 133(1):

> "***In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the Judgment of the Court would be given if no evidence were***

produced on either side, regard being had to any presumption that may arise on the pleadings."

Section 134:

"***The burden of proof shall be discharged on the balance of probabilities in all civil proceeding***."

Section 136(1):

"***The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other***."

As the apex Court held in the cases of ***Akande v. Adisa (2012), supra*** and ***Mohammed v. Wammako (2018), supra***, this evidential burden is not mitigated by the feebleness, debility or decrepitude of the defence of the Defendant or, for that matter, the absence of any form of defence from the Defendant. This is particularly emphatic where the Claimant seeks declaratory reliefs. In the case before me, I have to interrogate the evidence before me to determine whether the Claimant has established its entitlement to the reliefs sought herein.

I have reproduced a precis of the facts embodying the Claimant's case. These facts are contained in the Witness Statement on Oath of PW 1 which he adopted as his evidence in this case on the 16th of January, 2024. In the course of his evidence, PW 1 tendered six documents in evidence. These documents were admitted in evidence in the absence from the Defendants. At least, learned Counsel for the 1st Defendant was in Court on the day and expressed informed the Court that he was not objecting to the admissibility of the documents sought to be tendered in evidence.

In proof of his claim to ownership of the property the subject matter of this suit, the Claimant tendered the Conveyance of Provisional Approval which this Court admitted in evidence and marked as **Exhibit C1-C2**. **Exhibit C1-C2** is in the name of the original allottee, that is TatiyeMamman. He also tendered the Offer of Terms of Grant. This was admitted and marked as **Exhibit D1-D2**. **Exhibit D1-D2** is in the name of the Claimant. **Exhibit B1-B5** is the Power of Attorney which the original allottee donated to the Claimant.**Exhibits A1, A2 and A3** are receipts of payment which the Claimant made in respect of the property following the donation of power of attorney to him by the original allottee in respect of the property. **Exhibit A1** is the receipt of payment for development levy.**Exhibit A2** is the receipt of payment for form and processing fees for residential plot. **Exhibit A3** is the payment for the bill of certificate of occupancy for the plot. These payments

were made in 2006. Together with the Power of Attorney and the construction of a fence on the property constituted acts of ownership over a long period of time sufficient enough to raise presumption or inference that the Claimant is the owner of the property.

The Courts have in a long line of judicial authorities laid down the methods through which ownership of land can be proved, with the *locus classicus* being the case of ***Idundun v. Okumagba (1976) 9-10 SC 227***. In the said case of ***D. O. Idundun&Ors v. Daniel Okumagba (1976) LPELR-1431(SC) at 23-26, para. D-D***, the apex Court per AtandaFatayi-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 ***Raw Material Research & Development Council v. AbdullahiNuhuBamali& 4 Others (2023) 15 NWLR (Pt. 1907) 277 C.A.***, the Court held thus:

"***There are five methods in which title to or ownership of land can be proved. The five methods are as follows:***

(a) Traditional Evidence

(b) Document of Title

(c) By various acts of ownership, numerous and positive and extending over a length of time as to warrant the inference of ownership.

(d) By acts of lawful enjoyment and possession of the land and

(e) By proof of possession of adjacent land in circumstances which render it probable that the owner of such land would in addition, own the disputed land."

No doubt, the Claimant is required to succeed on the strength of his own case. He is not allowed to rely on the weakness of the defence, or, even, the absence of any defence, considering that what he seeks is declaratory reliefs. 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."

The Claimant also seeks declaratory relief regard the conduct of the Defendants which he regarded as trespass. It is his contention that the conduct of the Defendants in relation to the property is prejudicial to his proprietary as well as possessory interest in the plot of land in question.

Trespass has been defined in ***White Diamond Property Development Company Limited v. Trade Wheels Ltd. (2022) 8 NWLR (Pt. 1832) 247 S.C. at 294, paras B-C*** as "***…an unjustified interference or intrusion with exclusive possession of land. If the defendant placed a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if he had walked half a mile on it***." As to what a Claimant who seeks a declaratory relief that borders on trespass must prove, the Court, in the same case, held ***at page 294, paras C-H of the same Law Report*** as follows:-

"***Any form of possession so long as it is clear and exclusive and exercised with the intention to possess is sufficient to support an action for trespass. Even a trespasser can maintain an action in trespass against the world except the true owner. Therefore, for a plaintiff to institute or commence action on trespass, he must show that he is in exclusive possession, exclusive in the sense that he does not share his right of possession with any other person. A plaintiff needs not show ownership of the land, proof of actual possession can sustain an action on trespass. To resist the plaintiff's claim, a defendant must show either that he is the one in actual possession or that he has a right to possession. Put differently, trespass is actionable at the suit of the person in possession of the land. The slightest possession or any form of possession by the plaintiff, enables him to maintain an action for trespass against a wrongdoer so long as it is clear and exclusive, and if the defendant, cannot show a better title***."

This makes the burden of proof incumbent particularly onerous. In ***Eyo v. Onuoha (2011) 11 NWLR (Pt. 1257) 1 SC at 43-44, paras G-D***, the Court explained that "***A claim for a declaration that the claimant is entitled to the certificate of occupancy in respect of a parcel of land, damages for trespass to the land and injunction to restrain further trespass***

puts the radical title in the land and the exclusive possession of the land in issue. This implies that the court has to determine who has a better title to the land and it follows that the general onus of proving title is on the claimant." This principle was reiterated in ***Tourist Co. (Nig.) Ltd. v. Neo Vista Prop. Ltd. (2022) 15 NWLR (Pt. 1853) 317 S.C.at 377, paras E-G***, where the Supreme Court pronounced that "***A claim of right of ownership and injunction by a party puts his title in question and he bears the burden of proof of entitlement to the declaration of such ownership and title claimed***."

The Claimant has led evidence that he purchased the property from the original allottee in 2006. See paragraph 5 of the PW1's Witness Statement on Oath. He also narrated how he made payments for the property in his own name after effecting the change of ownership in respect of the property. See paragraph 6, 7, and 8 of the PW1's Witness Statement on Oath. **Exhibits A1, A2 and A3** were receipts of payment made for a number of purposes in respect of the property. **Exhibit D1-D2** was dated the 16/08/2006 after the payments in **Exhibits A1, A2 and A3** had been made. The Claimant showed that the Defendants encroached on the property and began to assert adverse title in January, 2021. He also claimed the Defendants broke down his fence and began to erect another fence thereon. These acts, interrupted the Claimant's right to quiet

possession of the property which he had enjoyed since 2006. See paragraphs 8, 9 and 10 of the PW1's Witness Statement on Oath. There is also evidence that the Defendants did not return to the police station when the police asked the parties to bring their documents of title to enable them verify the authenticity of same from the relevant authorities. See paragraph 10 of the PW1's Witness Statement on Oath. It is instructive to note that the Defendants in this case, at least, the 1st Defendant who participated in this suit actively did not file any process and he did not challenge the documents the Claimants tendered.

I have stated earlier that the 1st Defendant did not question the authenticity of the documents the Claimant tendered in evidence. He did not also adduce better title over the property, or any document that is superior to the documents the Claimant has tendered in proof of his case. he merely rested his case on the case of the Claimant. The 2nd Defendant, on the other hand did not file any process in opposition and they did not appear in Court to challenge the evidence of the Claimant via cross-examination.

Where a Defendant rests their case on the case of the Claimant, as the 1st Defendant has done in this case, the effect is that the Defendant rises or falls with the case of the Claimant. In ***Dec Oil & Gas Ltd. v. S.N.G. Ltd. (2021) 11 NWLR (Pt. 1786) 75 C.A.***, the Court held ***at 115 – 116, paras G-B*** thus:

"***The appellant's grudge here is canalised within a narrow compass. It quarrels with lower court's grant of the first respondent's reliefs without proof.***

To begin with, it is decipherable from the record, the spinal cord of the appeal, that the appellant, in its infinite wisdom, through the counsel of its choice, rested his case on that of the first respondent. A party's (defendant's) decision not to call evidence has always been regarded as a legal strategy, not a mistake, which enhances/strengthens his case if it succeeds. See Akanbi v. Alao (1989) 3 NWLR (Pt. 108) 118. In the sight of the law, a defendant resting his case on that of the claimant signifies any of these: (a) that the defendant is stating that the plaintiff has not made out any case for the defendant to respond to; or (b) that he admits the facts of the case as stated by the plaintiff, or (c) that he has a complete defence in answer to the plaintiff's case. See Newbreed Org. Ltd. v. Erhomosele (2006) 5 NWLR (Pt. 974) 499; Admin/Exec., Estate, Abacha v. Eke-Spiff (2009) 7 NWLR (Pt.1139) 97; Mezu v. C. & C. B. (Nig.) Plc (2013) 3 NWLR (Pt. 1340) 188; Ojigho v. NBA (2019) 9 NWLR (Pt. 1678) 399."

Whether the 1st Defendant believes that the Claimant has not made out any case for him to respond to, or that he admits the facts as contained in the pleadings of the Claimant and the evidence led in support of the pleading or

that he has a complete defence to the case of the Claimant, usually, asin this case where there is the absence of adverse pleading, the fact remains that the evidence of the Claimant is the only evidence on the imaginary scale of justice. More so, as the 2nd Defendant neither filed any process in opposition nor did they appear in Court to shake the evidence of the Claimant through cross-examination.

In ***First Bank of Nigeria Plc v. Standard Polyplastic Ind. Ltd. (2022) 15 NWLR (Pt. 1854) 517 S.C. at 550, paras. G-H***, the apex Court held that "***The evidence of a party at the trial of a case, if not denied, challenged or contradicted, is deemed to be admitted.***" It must be noted that such unchallenged and uncontroverted evidence must be cogent, credible and compelling before the Court can act on it. In ***Federal College of Education, Technical, Potiskum v. Joseph (2020) 9 NWLR (Pt. 1729) 381 CA at 407, para D***, the Court held that "***Where there is unchallenged evidence before a court, the court is not only entitled to accept it or act on it but is in fact duty bound to do so provided that such evidence is not incredible.***"

An unchallenged evidence that is watery, tepid, improbable, implausible, incredible, untenable and inconceivable cannot ground the reliefs sought even if there is nothing on the other side of the imaginary scale of justice. In the case of ***Dibia v. Tubonimia (2024) 11 NWLR (Pt. 1950) 433 SC at***

457, paras C-F, the apex court held inter alia that "***Evidence which is materially inconsistent or contradictory with or to the facts which it seeks to prove, is not and cannot be regarded as being credible, cogent and reasonably believable to attract and be worthy of any probative value or worth in the determination of the existence of such facts so as to ground or be the basis of a decision by a court of law…***"

It is therefore a duty that is incumbent on the Court to examine intensely the unchallenged evidence and satisfy itself that the evidence is sufficient, credible and cogent enough to ground the reliefs sought. In the case of ***Lufthansa Airlines v. Odiese (2006) 7 NWLR (Pt. 978) 34 CA at 81 – 82, paras F – A*** where the Court of Appeal held that

"***The principle that unchallenged/uncontradicted evidence should be accepted by the court is not at large. Therefore, it is not in all cases that unchallenged evidence of a witness will be swallowed hook, line and sinker. The requirement is that for such evidence to be accepted and relied on by the court, it has to be in line with the pleadings, cogent and credible. Thus, where evidence is unchallenged, if it is at variance with the pleadings, and not credible, it cannot form the basis of any decision that can be sustained…***"

On the importance of cross-examination and the effect of failure to cross-examine a witness at all, as in the case of the 2nd Defendant, or failure to cross-examine on material facts, like in the case of the 1st Defendant, the court in ***Mohammed v. State (2023) 3 NWLR (Pt. 1870) 157 S.C. at 199, paras. B-G; 217-218, paras. F-G***, the court held that "***Where an adversary or a witness called by him testified on a material fact in controversy in a case, the other party should, if he does not accept the witness's testimony as true, cross-examine him on that fact or at least show that he does not accept the evidence as true. Where he fails to do either, a court can take his silence as an acceptance that the party does not dispute the fact. The noble art of cross-examination constitutes a lethal weapon in the hands of the adversary to enable him effect the demolition of the case of the opposing party. Therefore, it is good practice for counsel not only to put across his client's case through cross-examination, he should, as a matter of the utmost necessity, use the same opportunity to negative the credit of that witness whose evidence is under fire. It is unsatisfactory, if not suicidal bad practice for counsel to neglect to cross-examine a witness after his evidence-in-chief in order to contradict him or impeach his credit while being cross-examined but attempt at doing so only by calling other witness or witnesses thereafter. That is***

demonstrably wrong and will not dent unchallenged evidence by counselleading evidence through other witnesses to controvert the unchallenged evidence."

The cross-examination of the PW1 on the 20th of March, 2024 reinforced the earlier testimony of the PW1 in his examination-in-chief that the fence of the Claimant was destroyed by boys who claimed to be acting on the Defendants' behalf. He also stated under cross-examination that the boys acting for the Defendants also prevented them from working on the land.

On the other hand, the only dent the 1st Defendant achieved during cross-examination was when the PW1 responded to a question to that effect that he did not have any authority to show that he was an agent of the Claimant.

Yet, this dent is not sufficient to nullify the evidence of the PW1 or in any way obliterate the evidence the Claimant has placed on his side of the scale of justice, especially, when the Defendants have not placed any evidence on other side of the scale. It would have been a different issue altogether if, for instance, the PW1 acting as the agent of the Claimant sold the property to another person without a written instrument appointing him as the Claimant's agent or authorizing him to sell the property. In the situation envisage in the pleadings and the evidence before me, the PW1 acted more like a worker of or caretaker for the Claimant notwithstanding

how he described himself in paragraph 1 of this Witness Statement on Oath. Everything he did was in the name of the Claimant.

It is my considered view, therefore,that the Claimant has established that he is entitled to a declaration of this Court that he is the *bonafide* owner of the property the subject matter of this suit and that the conduct of the Defendants amounts to trespass. The evidence of PW1 is compelling, cogent and credible. This Court has no option than to act on it. I so hold.

Having found that the Claimant is entitled, it follows naturally that the Claimant is also entitled to an order of perpetual injunction and the award of damages for trespass. In ***Olorunfemi v. Asho (1999) 1 NWLR (Pt. 585) 1 S.C. at 10, paras F-G***, the Court held that "***In a claim for damages for trespass and an injunction to restrain further trespass, once there is a finding of trespass, the claims for damages and injunction must be awarded…***"This principle was reiterated in the case of ***White Diamond Property Development Company Limited v. Trade Wheels Ltd. (2022) 8 NWLR (Pt. 1832) 247 S.C. at 298, paras G-H*** where the court held that "***Once infringement of the right to possession of a party has been established, and the Court makes a finding to that effect, the remedy of grant of injunction would naturally follow to prevent multiplicity of suits and irreparable damage or irremedial mischief.***"

In view of the foregoing, therefore, I find the suit of the Claimant meritorious. All the reliefs sought in this suit are hereby granted as follows:-

1. **THAT the Claimant is the *bonafide* owner of Plot No. 34 measuring 1518.10 square meters situate at Lugbe 1 Layout, Abuja having being seised of the plot *vide* Power of Attorney between him and the original allottee and other documents of title in relation thereto.**
2. **THAT the act of the Defendants in entering into the Claimant's plot, destroying the Claimant's fence and developing same without the consent and authority of the Claimant is an act of trespass.**
3. **THAT AN ORDER OF PERPETUAL INJUNCTION IS HEREBY MADE RESTRAINING the Defendants, their agents, privies, workmen or foremen from entering into, developing, improving or otherwise changing the topography of the Claimant's Plot No. 34 situate at Lugbe 1 Layout, Abuja.**
4. **THAT the sum of 5,000,000:00 is hereby awarded to the Claimant and against the 1st and 2nd Defendants jointly and severally as general damages for trespass.**

5. **THAT the sum of 500,000:00 is hereby awarded to the Claimant and against the 1st and 2nd Defendants jointly and severally as the cost of action.**
6. **THAT a post-Judgment interest at the rate of 10% per annum is hereby ordered on the entire Judgment sum from the date of this Judgment until the entire Judgment sum is fully and finally liquidated.**

This is the Judgment of this Court delivered today, the 19th day of February, 2025.

HON. JUSTICE A. H. MUSA
JUDGE
19/02/2025

APPEARANCE:

For the Claimant:

E. E. Nweke, Esq.

M. I. Agbo, Esq.

For the 1st Defendant:

ChinonsoAfoaku, Esq.

For the 2nd Defendant:

Not in court and no legal representation.