

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GARKI, ABUJA**

**CLERK: CHARITY ONUZULIKE  
COURT NO. 9**

**SUIT NO: FCT/HC/CV/585/2019  
DATE: 5/2/2025**

**BETWEEN:**

- |   |   |                  |
|---|---|------------------|
| <ol style="list-style-type: none"><li>1. JIMMY DAVIS</li><li>2. ABUBAKAR NURUDEEN</li></ol> | } | <b>CLAIMANTS</b> |
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**AND**

- |  |   |                   |
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| <ol style="list-style-type: none"><li>1. HON. JOHN DYEGH</li><li>2. HON. MINISTER, FEDERAL CAPITAL<br/>TERRITORY</li></ol> | } | <b>DEFENDANTS</b> |
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**JUDGMENT**  
**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

The Claimants filed this suit against the defendants on the 17<sup>th</sup> day of December, 2019 praying this Honourable Court for the following:

1. A Declaration that the Claimants are the beneficial owners of Plot No. 252 Cadastral Zone B02, Durumi District, Abuja covered by file No. DT 20071 and Certificate of Occupancy No. 4c4uw-d715z-55f9r-deeeu-10.
2. An Order of perpetual injunction restraining the 1<sup>st</sup> Defendant, his servants, agents and or privies and any other person(s)

acting for him from unlawfully trespassing into Plot No. 252 Cadastral Zone B02, Durumi District, Abuja, or by any means disturbing, interfering with or doing anything contrary to the Claimants' interest and quiet enjoyment of the said plot.

3. An Order of perpetual injunction restraining the 1<sup>st</sup> Defendant, his servants, agents and or privies and any other person(s) acting for him from continuing the unlawfully development of the said plot.
4. The sum of **N20,000,000.00** (Twenty Million Naira only) for the unlawful act of trespass into the said plot and distortion of the physical structure of the land in issue.
5. The sum of **N2,500,000.00** (Two Million, Five Hundred Thousand Naira Only) being the cost of this suit.

The 1<sup>st</sup> defendant entered appearance and filed his statement of defence and counter claim on the 27<sup>th</sup> of August, 2020 while the claimants filed a reply to 1<sup>st</sup> defendant's statement of defence and defence to counter claim on the 14 day of December, 2020.

The 2<sup>nd</sup> Defendant on the other hand filed his statement of defence on the 22<sup>nd</sup> day of June, 2020.

At the close of pleadings, the claimants opened their case on the 27<sup>th</sup> of October, 2021. Claimants called 3 witnesses who testified on 27<sup>th</sup> October, 2021, 25<sup>th</sup> of January, 2022 and 29<sup>th</sup> March, 2023 respectively.

1<sup>st</sup> defendant opened his defence on the 5<sup>th</sup> of December, 2023. Two witnesses testified for the 1<sup>st</sup> defendant who testified on the 5<sup>th</sup> December, 2023 and concluded on 23<sup>rd</sup> April, 2024.

2<sup>nd</sup> defendant however did not call any witness but rested his case on that of the claimants, after which the case was adjourned for adoption of final written address.

## **CLAIMANTS' CASE**

It is the pleadings of the Claimants that they are businessmen within the FCT. They pleaded that on the 4<sup>th</sup> February, 2002, the 1<sup>st</sup> Claimant made an application to the 2<sup>nd</sup> Defendant for land allocation in the FCT and that on the 27<sup>th</sup> June, 2005, Plot No. 252, Cadastral Zone B02, Durumi District, Abuja covered by Plot No. DT 20071 and subject matter of this suit was allocated to the 1<sup>st</sup> claimant.

The Claimants aver that on the 26<sup>th</sup> August, 2014, the 1<sup>st</sup> Claimant donated an irrevocable Power of Attorney in respect of the property in favour of the 2<sup>nd</sup> Claimant. The claimants aver that they have been in undisturbed possession of the property since its allocation in 2005 until April, 2015 when 1<sup>st</sup> Defendant entered into same. The Claimants aver that when asked what the 1<sup>st</sup> Defendant was doing in the plot, he reported the 2<sup>nd</sup> Claimant to the police at the Durumi Divisional Police Headquarters, who was arrested by the Police. According to the Claimants, the 1<sup>st</sup> Defendant reported that he has bought the plot from one Danbala Hashimu whom the Claimants aver is a total stranger and has no nexus with the subject matter of this suit.

The Claimants aver that the Police asked the 2<sup>nd</sup> Claimant and the 1<sup>st</sup> Defendant to produce their title documents over the property and while the 2<sup>nd</sup> Claimant produced his, the 1<sup>st</sup> Defendant brought an offer letter and Power of Attorney purportedly executed in his favour by Danbala Hashimu and the 1<sup>st</sup> Defendant moved into the property commencing development of same in defiance of Police directive that none of the parties should enter same until the issue was resolved.

The Claimants aver that they instructed a solicitor, Johnbull Adaghe Esq. to conduct a legal search at the Lands Registry, Abuja Geographic Information System (AGIS), an agency under the supervision of the 2<sup>nd</sup> Defendant whether there was double allocation in respect of the property, the subject matter of this suit, and the search report showed that there was no double allocation in respect of same just as the Police investigation also revealed that the original allottee of the plot is the 1<sup>st</sup> Claimant from whom the 2<sup>nd</sup> Claimant derived his title and interest.

The Claimants aver that in October 2015, the 2<sup>nd</sup> Claimant sold the subject matter of this suit to one Hon. Joe Edionwele who was accosted by the 1<sup>st</sup> Defendant at the point of moving materials into the site to commence development. The Claimants aver that the 1<sup>st</sup> Defendant also told Hon. Joe Edionwele that he is the owner of the plot having bought from Danbala Hashimu. The Claimants aver that the said Hon. Joe Edionwele then reported the matter to the FCT Police Command Headquarters through his solicitors, Mary's Solicitors & Advocates. The Claimant's aver that at the FCT Police Command both parties were once again asked to produce their title documents and the persons through whom they acquired their interest. The Claimants aver that while Hon. Joe Edionwele produced his title documents tracing title to the original allottee and also came with the 2<sup>nd</sup> Claimant, the 1<sup>st</sup> defendant on the other hand failed again to produce Danbala Hashimu whom he claimed he bought from.

The Claimants aver that their title documents were collected by the Police at the Police Command Headquarters for the purpose of investigation who confirmed after the said investigation that the genuine owner to the plot is indeed the 1<sup>st</sup> Claimant and that the 1<sup>st</sup> Defendant is a trespasser in the plot.

The Police upon conclusion of the investigation returned the title documents of the Claimants to them. The Claimants aver that the 1<sup>st</sup> Claimant however misplaced the said original Statutory Right of Occupancy on the 2<sup>nd</sup> day of January, 2018 which he was still holding due to the pending issues, while on transit from Kubwa to Garki, Abuja and all efforts made to locate the said document proved abortive. The Claimants aver that the 1<sup>st</sup> Claimant reported the loss to the Police who duly issued him an extract and he also deposed to an affidavit of loss at the High Court of the Federal Capital Territory as well as publications to that effect in 3 national dailies.

On the whole, the Claimants contend that the 1<sup>st</sup> Defendant is a trespasser and has made the Claimants to incur legal expenses of **N2,500,000.00** (Two Million, Five Hundred Thousand Naira) in prosecuting this suit.

At trial, the Claimants called 3 witnesses – Assistant Superintendent of Police Egbafe Edward Abogunde (PW1); the 2<sup>nd</sup> Claimant, Abubakar Nurudeen (PW2) and Mr. Mohammed Sada Mainasara (PW3). PW1 tendered the following documents and same were respectively admitted in evidence:

- (a) Deed of assignment Between Jimmy Davies & Danbala Hashimu and Honourable John Dyegh (Exhibit A1)
- (b) Deed of Assignment between Jimmy Davies and Abubakar Nurudeen (Exhibit A2)
- (c) Power of Attorney granted by Danbala Hashimu to Honourable John Dyegh (Exhibit A3)
- (d) Police statement of Honourable John Dyegh (Exhibit A4)
- (e) Letter from the Federal Capital Territory Administration addressed to the Commissioner of Police, Criminal

- Investigation and Intelligence Department, Abuja dated 30<sup>th</sup> August, 2016 (Exhibit A5)
- (f) Interim Investigation Report from the Deputy Commissioner of Police addressed to the Commissioner of Police, FCT Command dated 15<sup>th</sup> September, 2017 (Exhibit A6)
  - (g) Letter from Mary's Solicitors & Associates addressed to the Commissioner of Police, Federal Capital Territory Police Command dated 30<sup>th</sup> October, 2015 (Exhibit A7)
  - (h) Irrevocable Power of Attorney given by Jimmy Davis to Abubakar Nurudeen (Exhibit A8)
  - (i) Revenue collector's receipt dated 17<sup>th</sup> December, 2020 (Exhibit A9)

PW2 also tendered several documents which were admitted in evidence and they include the following:

- (a) Certified True Copy of Offer of Statutory Right of Occupancy to which was attached Certificate of Occupancy and site plan of the plot (Exhibit A10)
- (b) Letter of Acceptance with Revenue collector's receipt (Exhibit A11)
- (c) Irrevocable Power of Attorney between Jimmy Davis and Abubakar Nurudeen (Exhibit A12)
- (d) Application Letter for Power of Attorney registration (Exhibit A13)
- (e) People's daily newspaper publication of 1<sup>st</sup> August, 2018 with an attached Revenue Collector's Receipt (Exhibit A14)
- (f) Application letter for Certified True Copy of Right of Occupancy (Exhibit A15)
- (g) Solicitor's receipt of Hope Omorogie & Co (Exhibit A16)

## **1<sup>ST</sup> DEFENDANT'S CASE**

It is the case of the 1<sup>st</sup> Defendant that contrary to the Claimants' case, he has been in effective possession of the land in dispute particularly described in paragraph 4 of the statement of claim and also known as Plot 252, Durumi Layout, FCT, Abuja, since 2011 when title over the land devolved on him by virtue of a Power of Attorney commissioned on the 11<sup>th</sup> August, 2011 between the 1<sup>st</sup> Defendant and Mr. Danbala Hashimu who prior to that time became seized of the land by virtue of a prior Power of Attorney between him (Mr. Danbala Hashimu) and the original allottee, Mr. Jimmy Davis.

The 1<sup>st</sup> Defendant averred that in order to ensure consistency and synchronization in the process of payments for the process of perfecting title, he advanced monies for the payment of various fees to the said Danbala Hashimu to continue the registration process in the name of Jimmy Davis. Original receipts for payments of outstanding ground rents and Right of Occupancy (C of O Bill), all paid in the name of Jimmy Davies with Serial Nos: 000098852 and 000098859 were tendered by the 1<sup>st</sup> Defendant and admitted in evidence.

The 1<sup>st</sup> Defendant contended that in exercise of his proprietary rights and without let or hindrance, he immediately begun the erection of a perimeter fence over the land, installed a gate, dug foundations and deposited cement blocks on the land preparatory to the erection of a dwelling place on the land but due to paucity of fund and owing to the fact that he had rented a place at Games Village, Abuja as a temporary accommodation measure, he had to pause work on the premises after he dug a borehole (again without let or hindrance) sometime in 2013 with a mindset to resume work on the site once he had the finances.

That after winning re-election into the House of Representatives in 2015, he returned back to site sometime in 2016, and was shocked when for the first time, his active possession of the land was disturbed by police officers of the Nigerian Police Force who extended an invitation to him for what they said was a “routine chat” over the land. That he honoured the said invitation whereupon they told him that there were issues over the land and he informed them that since he bought the land he has had no issues with any person claiming contrary title to the land. That surprisingly, the officers of the Police, without any prior information or notice proceeded thereafter to drive out his workers and sealed off the premises.

That it was in the course of all these that he discovered that one of his colleagues in the House of Representatives, Honourable Joe Edionwele representing Esan West/Esan Central and Igueben Federal Constituency of Edo State claimed to have bought the land when he was elected into the House in 2015 and reported the matter to the FCT Police Command. That he honoured all police invitations but hearkened to the advice of his counsel, S. E. Irabor, Esq. who advised that he should approach the Court as the police had no right to adjudicate over land matters talk less of sealing the premises as he had a constitutional right to own immovable property.

That consequently he filed Suit No: FHC/ABJ/CS/902/2017 to enforce his fundamental rights to own immovable property at the Federal High Court, Abuja but same was struck out in 2018 when his counsel was inadvertently absent in Court as a result of mix up in dates. That in 2019, he re-filed the suit as Suit No: FHC/ABJ/CS/902/2019 and in spite of service of the processes and several hearing notices on the police commands sued, they refused to appear and judgment was entered in his favour and N10,000,000.00 (Ten Million Naira) only awarded him as damages by the Honourable Justice Tsoho, then Acting and now substantive Chief Judge of the Federal High Court.

That it was while he was exhausting the legal processes above that the 2<sup>nd</sup> Claimant, acting on the purported report of the police misrepresented facts to the 2<sup>nd</sup> Defendant and the Certificate of Occupancy already processed in the name of Jimmy Davis was released to the 2<sup>nd</sup> Claimant by the 2<sup>nd</sup> Defendant.

The 1<sup>st</sup> Defendant contended that the 2<sup>nd</sup> Claimant's averments that he lost the original land documents was deliberate falsehood meant to lay foundation for why the 2<sup>nd</sup> Claimant does not have in his possession the originals of the Right of Occupancy of a land he professed to be his. The 1<sup>st</sup> Defendant contended that contrary to the 2<sup>nd</sup> Claimant's averment, the original of the Right of Occupancy is in 1<sup>st</sup> Defendant's possession. At trial the 1<sup>st</sup> Defendant indeed produced and tendered all the said originals which were all admitted in evidence.

The 1<sup>st</sup> Defendant averred that he owed the 2<sup>nd</sup> Claimant no liability whatsoever as the 2<sup>nd</sup> Claimant has rather trespassed and caused him avoidable physical and psychological torture in the course of developing the disputed plot knowing that title over same does not in any way inure upon him. Consequent upon these, the 1<sup>st</sup> Defendant raised a counter-claim against the Claimants and sought for the reliefs on the face of his processes.

The 1<sup>st</sup> Defendant called Mr. Danbala Hashimu (DW1) and himself (DW2) in proof of his case. At trial, several documents were tendered in evidence by the DW2. The documents include the following:

- (a) Power of Attorney granted by Jimmy Davis to Danbala Hashimu (Exhibit "AA"),
- (b) Power of Attorney granted by Danbala Hashimu to Honourable John Dyegh (Exhibit "B")

- (c) Offer of Right of Occupancy in favour of Jimmy Davis (Exhibit “C”)
- (d) Photographs of plot with fence and a certificate of compliance (Exhibit “D”)
- (e) Official receipt of FCT Administration dated 21/2/2012 (Exhibit “E”)
- (f) Two (2) Revenue Collectors Receipts (Exhibit “F1 and F2”)
- (g) Certified True Copy of Judgment of the Federal High Court (Exhibit “G”)
- (h) Cash receipt number 181 (Exhibit “H”)
- (i) Application for Stamping/Registration of Power of Attorney dated 26/7/2011 (Exhibit “I”)
- (j) Solicitors receipt of S. E. Irabor and Associates (Exhibit “J”).

## **ISSUES FOR DETERMINATION**

The Claimants formulated the following issues for the determination of this Honourable Court;

- (1) ***Whether the Claimants have proved better title to the subject matter of the suit in view of the evidence before the Court to entitle them to the reliefs sought.***
- (2) ***Whether the 1<sup>st</sup> defendant has made out any credible defence to this suit or proved his counter claim in view of the evidence led.***

While the 1<sup>st</sup> Defendant submitted one issue for determination. The issue is this:

***“On the balance of probabilities, between the Plaintiffs and the 1<sup>st</sup> Defendant, who have proved their case to be entitled to the reliefs sought?”***

It is my strict view that the two issues distilled by the Claimants’ learned Counsel for the determination of this case are appropriate and apt. I therefore adopt them as the germane issues to be determined in this case.

It is trite that he who alleges must also prove as the burden of proof rests on the party who asserts the affirmative of an issue. See **Yabatech v. M. C. & D Ltd (2014) 3 NWLR (Pt. 1395), Page 616 at 660-661, Paras. G-A**. See also section Section 131 and 132 of the Evidence Act 2011.

It is the averment of the claimants and indisputably so that the subject matter of this suit being Plot 252 Cadastral Zone B02, Durumi District, Abuja, covered by file No. DT 20071 was allotted to the 1<sup>st</sup> claimant. This position is acknowledged and admitted by the defendants and so needs no further proof as it is trite that admitted facts require no proof. See **Ajibulu v. Ajayi (2014) 2 NWLR (Pt. 1392) Page 483 at 497 Para. E**.

While the 2<sup>nd</sup> claimant said he bought the plot from the 1<sup>st</sup> claimant, the 1<sup>st</sup> defendant also claims he bought the plot from one Danbala Hashimu who is said to have bought from 1<sup>st</sup> Claimant.

It is the averment of the claimants that the 2<sup>nd</sup> Claimant became seized of title to the plot by purchase of same from the 1<sup>st</sup> claimant. In proof of their averment, the claimants tendered many documents in evidence which were admitted and marked as exhibits, chiefly amongst them are an Irrevocable Power of Attorney donated to the 2<sup>nd</sup> claimant by the 1<sup>st</sup> claimant, a Deed of Assignment between the 1<sup>st</sup>

claimant and the 2<sup>nd</sup> claimant, CTC of 1<sup>st</sup> claimant's Letter of Acceptance, application for CTC of Right of Occupancy. It should be noted that the evidence of the claimants has been consistent, as the same documents produced to the police during investigation of cases reported were also tendered in court during the trial. It is my firm view that the 2<sup>nd</sup> claimant has successfully traced his title to the 1<sup>st</sup> claimant, the allottee of the subject plot. Exhibits A2 and A8 are clear and unequivocal that they were executed in favour of the 2<sup>nd</sup> claimant by the 1<sup>st</sup> claimant. I have critically looked at the signature on Exhibit A11 (Letter of Acceptance) which shows that it is the same signature. In **Akande v. Alaja (1988) LPELR-317 (SC) (pp.7-8, paras. F-A)** the Supreme Court held thus:

***“Where the Plaintiff traces his title directly to one whose title to ownership has been established, it is not necessary that he should prove such acts of ownership. If the title has been so established, then the onus is upon the defendant to show that his own possession is of such a nature as to oust that of the original owner”.***

Also in **Ajibulu v. Ajayi (2014) 2 NWLR (Pt. 1392) Page 483 at 500 Para. C**, the Court held that:

***“The legal position is also well established wherein a plaintiff in seeking title to land has the onus to show how he or his predecessor-in-title has acquired such”.***

It is clear and not in dispute that the 1<sup>st</sup> claimant acquired interest over the property having been duly allotted same by the 2<sup>nd</sup> Defendant. All the parties are in agreement with this. Also by the consistent transfer instruments produced both to the police during investigation and at the trial of this suit, it crystallised out clearly that

the claimants have duly established that the title over the property was duly passed to the 2<sup>nd</sup> claimant.

From the above authorities I hold that the title of the 1<sup>st</sup> claimant not being disputed from whom the 2<sup>nd</sup> claimant got his title, the 2<sup>nd</sup> claimant has proved better title to the disputed plot.

The testimonies of the claimant's witnesses from PW1 to PW3 and the documents tendered by them are consistently pointing clearly to the title of the claimants. The evidence of the claimants is credible, relevant to the issue in controversy, and has not been successfully debunked. See the case of **State v. Oladotun (2011) LPELR-3226 (SC) (p.16, paras. E-F)**, the Supreme Court held thus:

***“The position of the law as is settled in many authorities is that evidence adduced in court, that is relevant to the issue in controversy and has neither been challenged nor successfully debunked becomes good and credible evidence, which ought to be relied upon”.***

In view of the possession of all requisite documents from the allottee (1<sup>st</sup> claimant), AGIS released the C of O of the disputed plot to the 2<sup>nd</sup> Claimant after several failed attempts to collect same by 1<sup>st</sup> defendant for not possessing the requisite documents and authorizations from the 1<sup>st</sup> claimant. The release of the said C of O to the 2<sup>nd</sup> claimant is a further testament of the fact that he possessed the requisite documents and met all conditions for release of same. **Section 168(1) of the Evidence Act, 2011** provides thus:

***“When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.”***

In **Olly v Tunji & Ors. (2012) LPELR-7911 (CA) (pp. 78-79, paras. F-A)** the Court held thus:

***“In any event, the law is that once a thing or an official act is shown to have been done, regularly, it is presumed that all conditions precedent to its validity have been complied with.”***

It is my strict view that the 2<sup>nd</sup> claimant proved better title to the property which warranted the release of the C of O to him after several failed attempts by the 1<sup>st</sup> defendant because he did not prove legitimate title and I so hold.

I can recall that the 1<sup>st</sup> defendant who claimed that the 2<sup>nd</sup> Claimant misrepresented facts to AGIS that made AGIS not to release the C of O to him said during cross examination that he did not complain to AGIS that the 2<sup>nd</sup> claimant misrepresented facts to enable him collect the C of O neither did he contest the police investigation report (Exhibit A6) that stated that he unlawfully entered the land since 2017 when the report was released.

The burden of rebuttal of the regularity and correction of these acts and report is on the 1<sup>st</sup> defendant which he failed to discharge. In **Mainstreet Bank Ltd v. Yau (2015) LPELR-24657 (CA) (pp. 10-11, paras. B-C)** the Court held inter alia thus:

***“Section 168(1) of the Evidence Act provides that “when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with”. This raises a presumption of regularity of judicial or official acts which is expressed in the latin maxim omnia presumuntur, rite esse acta meaning that a prima facie presumption of the regularity of the acts of public officers exists until the contrary appears.....The presumption is***

***rebuttable and the burden of rebuttal is on the appellant. It has failed to discharge the burden.....”.***

The 1<sup>st</sup> defendant having failed to rebut the presumption of regularity of the proper release of the C of O to the 2<sup>nd</sup> claimant, especially when there is also no complaint to or by the 2<sup>nd</sup> defendant or his agency (AGIS) in that regard, I hold that the claimants have proved better title to the subject matter of this suit and I resolve this 1<sup>st</sup> issue in favour of the Claimants.

Finally on this issue, the failure of the 2<sup>nd</sup> defendant to adduce any evidence and resting his case on that of the claimants is a clear acceptance or admission of the case and claims of the claimants, and I therefore grant the reliefs of the claimants. See **Beverly Development & Realities Ltd v. Tec Engineering Co. (Nig) Ltd (2020) LPELR – 52023 (CA)** where the Court held thus:

***“A defendant, as in the instant case, who does not give evidence in support of his pleadings or in challenge of the evidence of the plaintiff is deemed to have accepted and rested his case on the facts adduced by the plaintiff”.***

I hold that the claimants are entitled to judgment, having established a better title to the subject matter of this suit without any opposition from the 2<sup>nd</sup> Defendant who is the custodian and rightful determinant of the legitimate owner of the property.

On the 2<sup>nd</sup> issue, it is my view that the 1<sup>st</sup> defendant in this case has neither made any credible defence to this suit nor proved his counter claim. The evidence led by the 1<sup>st</sup> defendant does not in any way support his pleadings. I shall analyze part of the evidence of the 1<sup>st</sup> defendant to buttress the point I am making.

In his adopted witness statement on oath, the 1<sup>st</sup> defendant stated in paragraphs 2 and 6 that Danbala Hashimu donated a Power of Attorney to him on the 11<sup>th</sup> of August, 2011. The said paragraphs are on all fours with paragraph 2 of the witness statement on oath of DW1 (Danbala Hashimu).

The question therefore is whether the said DW1 had title or interest to pass on to the 1<sup>st</sup> defendant. I can recall, that it is the undisputed and uncontradicted evidence of PW1 that during the cause of investigation, the 1<sup>st</sup> defendant brought Power of Attorney donated to him by Danbala Hashimu which AGIS refused to register because Danbala Hashimu had no nexus with the original allottee. This is clearly stated in Exhibit A5. PW1 said Exhibit A5 was shown to the parties and 1<sup>st</sup> defendant said he had no other Power of Attorney from the original allottee. This piece of evidence was neither denied nor controverted during cross examination. I therefore hold that same has been admitted. In **Gaji v. Paye (2003) LPELR-1300 (SC) (Page 20, Paras. B-D)** the Supreme Court held thus:

***“It has been said that the effect of failure to cross-examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence. Oforlete v. State (2000) 12 NWLR (Pt. 681) 415 at 436. In the case of Agbonifo v. Aiwereoba (1988) 2 SCNJ 146, this Court held that it is not proper for a defendant not to cross examine a plaintiff’s witness on a material point and to call evidence on the matter after the plaintiff had closed his case”.***

Furthermore, one of the documents provided by the 1<sup>st</sup> defendant to the police during the investigation is Exhibit A1 which is a Deed of Assignment between Jimmy Davis & Danbala Hashimu on one hand as Assignor and Honourable John Dyegh on the other hand as assignee.

The question from the above is whether Jimmy Davis & Danbala Hashimu is one person or two persons? There is no title document traceable to Plot 252 Durumi District, Abuja that reads Jimmy Davis & Danbala Hashimu. In the absence of any title document issued by the 2<sup>nd</sup> defendant having Jimmy Davis & Danbala Hashimu, it therefore means Exhibit A1 cannot transfer any title to the 1<sup>st</sup> defendant as none of the title documents before the Court bears such name. Jimmy Davis & Danbala Hashimu not having any title document issued in that name by the 2<sup>nd</sup> defendant, Exhibit A1 cannot divest any interest to the 1<sup>st</sup> defendant.

Again, Exhibit A1 was said to have been prepared and signed in 2011. Two issues call for attention here. Firstly, if Jimmy Davis had assigned the property to Danbala Hashimu in 2008, how come he was assigning same to the 1<sup>st</sup> defendant in 2011? Secondly, on what basis will Jimmy Davis and Danbala Hashimu be jointly assigning the property to the 1<sup>st</sup> defendant after Jimmy Davis had allegedly divested himself of interest in the land in 2008, and had assigned same to Danbala Hashimu? The above raises confusion as to the actual source of title of the 1<sup>st</sup> defendant. Is it via Exhibit A1, Exhibit AA or Exhibit B? He obviously cannot derive title to the same property through multiple sources as the evidence before the court seems to suggest.

It is my firm view, that Danbala Hashimu never had title to pass on to the 1<sup>st</sup> defendant as the allottee (1<sup>st</sup> claimant) never transferred his title to him. It is the trite principle of law that you cannot put something on nothing and expect it to stand, it will collapse. See the Supreme Court case of **Adewunmi v Oketade (2010) Vol. 23 WRN Page 25 at 38 line 40.**

It is my strict view, that in view of the obvious defect in the claim/case of the 1<sup>st</sup> defendant, he went to concoct another Power of

Attorney (Exhibit AA), which is an afterthought in an attempt to cover up the defects. If Exhibit AA ever existed, the DW2 (1<sup>st</sup> defendant) would have shown it to the police during investigation. DW2 further admitted that the police asked him to come with Danbala Hashimu and his documents but that he did not go with Danbala Hashimu. He said he submitted documents to the police at the Force Headquarters but that he did not submit the Power of Attorney between Jimmy Davis and Danbala Hashimu. He also admitted that he did not submit the said Power of Attorney to AGIS for registration even after AGIS refused to register the one donated to him by Danbala Hashimu because Danbala Hashimu had no nexus with the property.

DW2 said he conducted a search before buying the plot and that the search report ***“indicated something in favour of Danbala Hashimu”*** (which is contrary to Exhibit A5). The search report was also not tendered in Court). I hold that failure to tender the search report given to the 1<sup>st</sup> Defendant (if indeed he conducted a search) is tantamount to withholding evidence because the 1<sup>st</sup> Defendant knows that the report will not be favourable to his case. See **Section 167 (d) of the Evidence Act, 2011** which provides for the presumption that:

***“Evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;”***

Also, that the contradiction between the evidence of DW1 and DW2 are fundamental to the case of the 1<sup>st</sup> defendant/counter claimant. While DW1 told the court during examination-in-chief by claimants’ counsel, that he handed over Power of Attorney donated to him by Jimmy Davis to the 1<sup>st</sup> defendant, the 1<sup>st</sup> defendant told the police that he had no other Power of Attorney apart from the one donated to him by Danbala Hashimu.

Also while the DW1 said during cross examination that he registered his power of attorney with AGIS, DW2 on the other hand admitted that no power of attorney was registered in favour of DW1, thereby agreeing with Exhibit A5 that no power of attorney was registered in favour of DW2 since the person he allegedly derived title from does not have any nexus with the property.

Also worthy of note is the contradiction in the dates by DW1 and DW2 of when the purported Power of Attorney between Jimmy Davis and Danbala Hashimu was made. While both of them in their evidence stated that the Power of Attorney was donated in 2008, the front-loaded Power of Attorney between Jimmy Davis and Danbala Hashimu states thus:

***“THIS POWER OF ATTORNEY is made the.....Day of.....2006.....”***

Again in Exhibit A4 (statement of the 1<sup>st</sup> defendant to the police) the 1<sup>st</sup> defendant stated that DW1 bought the property in 2005 as against 2006 in the Power of Attorney.

That these sharp contradictions are fundamental defects which must go to the root of the 1<sup>st</sup> defendant/Counter-claimant’s case and I hold that these contradictions and discrepancies are fundamental to the evidence given by the 1<sup>st</sup> defendant as such they are hereby discountenanced. In **Oligie v. Adun (2015) Vol. 9 WRN Page 109 at 150 lines 30-35** the Court held as follows:

***“.....A piece of evidence contradicts another when it affirms the opposite of what the evidence has stated .....and two pieces of evidence contradicts one another when they are by themselves inconsistent.....”***

Also in **Jegede & Ors. v. Bamidele & Ors (2005) LPELR-11390 (CA) (Pp. 19-21, Paras. D-A)** the Court held that:

***“In the law of evidence, a piece of evidence is contradictory to another when it asserts or affirms the opposite of what the other asserts.....”***

Again, during cross examination by the claimants’ counsel, the 1<sup>st</sup> defendant who had earlier said that a Power of Attorney between Jimmy Davis and Danbala Hashimu existed and was passed on to him by Danbala Hashimu insisted by saying he did not know the signature on Exhibits A11 and AA which is the signature of Jimmy Davis on the CTC of Letter of Acceptance from AGIS and that on the Power of Attorney allegedly given to Danbala Hashimu by Jimmy Davis. That is the signature that is on the document allegedly with the 1<sup>st</sup> defendant since 2011, yet he did not know whose signature it is. By Section 131 of the Evidence Act, 2011, the burden of proving the existence of the said document rested on the 1<sup>st</sup> defendant because he is the one that wants this Honourable Court to believe on the existence of the said documents which he has failed to do.

#### **TUSEMONE VS. SMOOTH (2023) LPELR-60231 (CA)**

***“A counter-claim is a cross-action and not merely a defence to the Plaintiff’s claim. Strictly, it is not part of the original action though for convenience the two are tried together. In a counter-claim, the parties to the main suit swap position.....Therefore, counter-claim is a separate, distinct and independent action, the totality of evidence led is the main claim and counter-claim, must be examined to ascertain whether the counter-claim is proved or not proved and/or whether the counter-claimant is***

***entitled to the grant of the reliefs claimed in the counter-claim.  
See AYORINDE VS. KUFORJI (2022) 12 NWLR (Pt. 1843) 43 SC.***

Counter-claim is a different suit on its own distinct from the main suit upon which it emanates. I also want to address the counter claim of the 1<sup>st</sup> defendant wherein he prays this Honourable Court to declare him as beneficial owner of the disputed land. The 1<sup>st</sup> defendant relies on the purported Power of Attorney from Jimmy Davis to Danbala Hashimu (Exhibit AA) as proof of his root of title. The 1<sup>st</sup> defendant also claims he was in possession. This, the claimants vehemently denied and contested, thereby putting the burden of proof on the 1<sup>st</sup> defendant.

A critical look at the purported signature of Jimmy Davis on the Power of Attorney allegedly donated in favour of Danbala Hashimu in comparison with Exhibit A11 (CTC of Letter of Acceptance made by the 1<sup>st</sup> claimant to the 2<sup>nd</sup> Defendant, who is the custodian of all lands and title documents in FCT) will clearly show that the said signature is not the same. Exhibit A11 bears the authentic signature of the original allottee (the 1<sup>st</sup> claimant). There was only a failed attempt to replicate the signature of the 1<sup>st</sup> claimant on the said Power of Attorney. I look at the signature of Jimmy Davis as contained in Exhibits A11, A2, A8 and “AA”. It shows that the signature on Exhibit “AA” is clearly different from others. In **Ubanco Consulting & Trading Ltd & Anor v. Okereke & Anor (2014) LPELR-22503 (CA) (pp 16-17, paras. E-A)** the Court held thus:

***“.....Moreover, since the said letter was already before the Court, the law permits the judge to look at every document in the court’s file”.***

See also **Ajanaku & Anor v. Osuma (2013) LPELR-20528 (CA) (p.39, paras E-F).**

Conversely, a quick run on the purported signature of the 1<sup>st</sup> claimant on Exhibit AA (Power of Attorney between Jimmy Davis and Danbala Hashimu) reveal beyond doubt that the purported signature is a make belief, a failed attempt to replicate or clown the signature of the 1<sup>st</sup> claimant. As a matter of fact, the making of Exhibit AA is a consequence of an afterthought to bridge the void discovered by the police investigation report which is to the effect that there is no nexus between Exhibit B (Power of Attorney) presented to AGIS for registration by the 1<sup>st</sup> defendant with the 1<sup>st</sup> claimant, the original allottee.

A careful comparison of the undisputed and authentic signature of the 1<sup>st</sup> claimant on Exhibit A11 and the purported signature of the 1<sup>st</sup> claimant on Exhibit AA reveal that the signature on Exhibit AA is diametrically different from the 1<sup>st</sup> claimant's authentic and undisputed signature in Exhibit A11.

In view of the aforesaid, it is crystal clear that the 1<sup>st</sup> defendant/counter-claimant has not shown any shred of evidence to prove that the 1<sup>st</sup> claimant ever transferred his interest in Plot 252 Durumi District, Abuja to him and has not been able to disprove the 2<sup>nd</sup> claimant's root of title. Consequently, I discountenance the said Exhibit AA as same was never signed by Jimmy Davis.

In law, the 1<sup>st</sup> defendant/counter-claimant has the onus to proof the title of Danbala Hashimu who he claimed sold the property to him. See **Oligie v. Adun (2015) Vol. 9 WRN PAGE 109 at 142 lines 15-25** where the Court held as follows:

***“Now the case of the appellant is that his predecessor in title acquired the disputed land under Bini Customary Law and thereafter transferred the title to him. The respondent hotly***

***contests that Joseph Omo-Osador had any title to the disputed land. In such circumstances, the law enjoins the appellant to prove how his predecessor in title Joseph Omo-Osador got title to the land”.***

The 1<sup>st</sup> defendant/counter-claimant also alleged that he was in possession and indeed commenced acts of development. However, during cross examination, he admitted that no approval of the Development Control Department was given to him before he commenced the so called acts of development. It is unbelievable that the 1<sup>st</sup> defendant, a member of the House of Representative for several years and making laws for FCT, said he did not know he had to obtain approval before commencing development in FCT, yet on the other hand, he told the Court he had applied but approval was not yet given to him. The question is, if he did not know he had to get approval before building, why did he apply? If indeed he did. And if he actually applied, there is no way approval would have been given to him since he had no title to the property.

It goes to show that the 1<sup>st</sup> defendant/counter-claimant was indeed a trespasser on the land as clearly stated in Exhibit A6 that the 1<sup>st</sup> defendant/counter-claimant had unlawfully entered the land. He should not have been in a hurry to commence development without first obtaining approval to do so. He did not satisfy the condition precedent for development before entering into the plot. This act further affirms the position of the claimants and as stated in Exhibit A6 that the 1<sup>st</sup> defendant/counter-claimant is a trespasser and I so hold.

Assuming but without conceding that the 1<sup>st</sup> defendant/counter-claimant was ever in possession of the land, without title, he was merely a trespasser. In **Ochigbo v. Simon (2022) LPELR-57894 (CA) (pp. 31-32, paras F-D)** the Court held thus:

***“It is trite and settled law that acts of possession without satisfactory root of title leads to trespass.”***

Also in **Oligie v. Adun (supra)** at page 149-150 lines 25-15, the Court held inter alia that:

***“What was paramount was for the appellant to prove his title as any acts of possession exercised by him would be good against the whole world except the person with a better title in which case those acts of possession become acts of trespass”.***

Therefore I hold that the unlawful entry of the 1<sup>st</sup> defendant/counter-claimant into the subject plot is trespass and that the 1<sup>st</sup> defendant/counter-claimant has not established title to the plot as his evidence is totally unreliable not being credible and cogent, I hereby dismiss the counter-claim of the 1<sup>st</sup> defendant.

In the light of the above, I grant relief 1, 2, 3 of the Claimants’ and I award N5,000,000.00 (Five Million Naira) only as a general damage.

As for the cost of prosecuting this case, that is not part of our jurisprudence and that is refused.

This is the Judgment of this Court.

.....

**S. B. Belgore**

(Judge) 5/2/2025

**APPEARANCES:**

Hope Omorogie with Gbenga Babade and Blessing Eze for the Claimants.

S. E. Irabor for the 1<sup>st</sup> Defendant

J. J. Esemuze for the 2<sup>nd</sup> Defendant