

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON FRIDAY THE 9<sup>TH</sup> DAY OF MAY, 2025**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/BW/CV/205/2020**

**BETWEEN:**

**JIMOH NASIR ADIEZA** ----- **PLAINTIFF**  
(Suing as the lawful/Donee of Paul Odoh)

**AND**

**1. ALADEEN BADEJO**  
**2. UNAUTHORIZED AND UNKNOWN PERSON** } **DEFENDANTS**

## **JUDGMENT**

In a Writ of Summons filed on the 17<sup>th</sup> day of August, 2020, which was later amended on the 21<sup>st</sup> day of September, 2022, the Plaintiff, Jimoh Nasir Adieza suing through his Attorney and Donee, Paul Odoh, claims the following Reliefs against the Defendants, Aladeen Badejo and Unauthorized and Unknown Person:

- a) A Declaration that the Plaintiff is entitled to possessory right and is in the rightful possession of all that Plot of

land known as Plot No. L/25 of about 1700sqm, Kubwa - Abuja to the exclusion of any person whosoever.

- b) A Declaration that the Plaintiff is the bonafide owner of the Plot of land known as Plot No. L/25 of about 1700sqm, Kubwa - Abuja, and he is entitled to quiet enjoyment of same without no interference whatsoever.
- c) An Order of the Honourable Court for Perpetual Injunction restraining the Defendants in this Suit, their privies, assigns, agents, and/or whatsoever person connected with the Defendants from trespassing and from further interference.
- d) General Damages for continuance trespass on Plot No. L/25 of about 1700sqm, Kubwa - Abuja, being trespass caused by the Defendants on the Plaintiff's land as to be assessed by the Honourable Court.
- e) Cost of this Suit.

In the course of Proceeding the Plaintiff called a Witness and tendered some documents. The Court did not admit a letter titled Request for Confirmation of Title Document in respect of Plot No. L/25 of about 1700sqm, Kubwa - Abuja. The 1<sup>st</sup> Defendant called a Witness too and tendered documents through the Subpoenaed - Duces Tecum.

In the Written Address the Plaintiff Counsel raised 2 Issues for determination which are as follow:

- (1) Whether the Plaintiff has proved his case to be entitled to the Reliefs sought?**
- (2) Whether the absence of reasonable Defence affects the claim of the Plaintiff to not entitle the Plaintiff to the Reliefs sought? (SIC)**

**On Issue No. 1**, the Plaintiff Counsel submitted that he had done so. That the documents tendered by the Plaintiff in evidence, and admitted hold strong evidential value and favours to the case of the Plaintiff. He urged Court to so hold and enter Judgment in favour of the Plaintiff.

He submitted that standard of proof of issue premised on land and Declaration of title to land is that the onus is on the Plaintiff, and that he had established the case and discharged the onus placed on him in this case on balance of probability and on preponderance of his evidence before the Court.

That the Plaintiff had proved with particularity, with cogent, credible, and convincing evidence that he is entitled to the Reliefs sought. On all the above the Plaintiff referred to the cases of:

**Egharevba V. Osagie**  
**(2009) 18 NWLR (Pt. 1173) 299**

**Odom V. PDP**  
**(2015) 6 NWLR (Pt. 1456) 527 @ 560**

**Oteki V. The State**  
**(1986) ANLR 371 @ 392**

**Olonade V. Sowemino**  
**(2014) LPELR – 22914 (SC)**

**UBA V. Osok**  
**(2016) LPELR – 40110 (CA)**

That the Plaintiff has proved its title to the land/Res by the testimony of PW1, **Abdul Walab Ademoh** as he had shown that the Plaintiff has been in long possession of the Res as averred in **Para 5** of the Witness Statement on Oath of the said Witness. He referred to the case of:

**Duru & Ors V. Onwumelu & Anor**  
**(2001) LPELR – 970 (SC)**

He also referred to some of the paragraphs of Statement of Claim/Oath – **Para 4 – 8**. That the Plaintiff showed in those paragraphs that he carried out diverse acts of possession such as executing documents and registration of same and carrying out development work thereof. That he also carried out some routine checks on the Res as shown in **Para 7** of his Oath. That he noticed the trespass in the Res after he did one of the said routine checks.

Again, that there is also no reasonable Defence challenging the Plaintiff's entitlement to the Reliefs sought. Hence, the Court should grant all the Declaratory Reliefs as he succeeds on the strength of his case and not on weakness of the Defence. That the Plaintiff pleaded and proved his claims for the Declaratory Reliefs on evidence called by him without relying on evidence called by the Defendants. That the claim of the Plaintiff was succinctly established and

proved and not contradicted. He urged the Court to apply the principle in the case of:

**Husseini V. Mohammed & Ors**

**(2014) LPELR – 24216 (SC)** to hold and enter Judgment for the Plaintiff, and to disregard the argument of the Defendants, and enter Judgment in Plaintiff's favour. The Plaintiff referred to other case which are:

**Udor V. Akpan & Or**

**(2020) LPELR – 51062 (CA)**

**Arewa Textile V. FineTex Ltd**

**(2003) 7 NWLR (Pt. 819) 332**

**Mohammed V. Tinau & Ors**

**(2018) LPELR – 46707 (CA)**

On the importance of calling the Donor of the Power of Attorney and the Plaintiff's to prove his case in the absence, the Plaintiff Counsel submitted that there is no Rule that requires a party to testify in person in a civil Suit. That our adversary law does not foist on a party to testify in person. That the Plaintiff's Witness is competent to testify as he did. That he was directly involved in the transaction in this case. That he has more knowledge of the issue in dispute than the Plaintiff himself. That he witnessed the transaction of the Donor to Plaintiff and signed as a Witness in the Power of Attorney. That he was the Plaintiff's Site Manager. That his testimony was not impeached. That through him the Plaintiff proved his case.

That the argument of the 1<sup>st</sup> Defendant that the Plaintiff ought to testify in person should be discountenanced, and hold that the Plaintiff has proved its case in that regard.

That both the testimony and documentary evidence before the Court as presented by the PW1 is enough to entitle the Plaintiff to all the Reliefs and to have Judgment entered in its favour as the Plaintiff has discharged the onus placed on him by law in this case. They referred to the case of:

**Awolola V. Gov. Ekiti State  
(2018) LPELR – 46346 (SC)**

They urged the Court to so hold.

In his own Final Written Address, the 1<sup>st</sup> Defendant – Aladeen Badejo, who also called on Witness, raised 2 Issues for determination which are:

- (1) Whether case of the Plaintiff was properly constituted against the 1<sup>st</sup> Defendant?**
- (2) Whether the Plaintiff proved his title to the land to be entitled to Declaratory Reliefs and Injunction sought against the Defendants?**

In answer to the first Issue, the 1<sup>st</sup> Defendant held that this case was not properly constituted and the Plaintiff lacks the locus standi to institute the action through his purported Attorney – **Paul Odoh**.

That the Power of Attorney was not registered as required by law. That the proper parties are not before the Court as the Plaintiff failed to sue them. That the case is not

properly constituted and is ineffective. He referred to the case of:

**Oloride V. Oyebi**  
**(1984) 1SC1**

**Ifeanyi V. Osom**  
**(2015) LPELR – 25600 (CA)**

That a Donee of the Power of Attorney has the capacity to sue in his own name as he has no locus standi to sue as the Power of Attorney is not an instrument of transfer of right, title or interest in immovable property. He relied on the case of:

**United Nig. Company Ltd V. Nehman**  
**(2009) 9 NWLR (Pt. 671) 177**

That even if the Plaintiff has locus standi to sue in his name on behalf, there is no way he could have instated a competent action without reflecting the name of the Beneficiary of the title document – **Eskru Vent**. That it was never stated that **Paul Odoh** was the person doing business in the name of the company. That the action is incompetent and liable to be dismissed.

That from all the documents tendered by the Plaintiff – **EXH 1 to 3**, that the name of the documents bear **Eskru Vent** which means that the land was purportedly allocated to Eskru Vent and not to Paul Odoh on whose behalf the Plaintiff instituted the action.

That there is nothing before the Court to show or prove the existence of Paul Odoh or even the company, Eskru Vent. Hence, Paul Odoh has no nexus with the said Eskru Vent, and had no legal right to donate to anyone including the Plaintiff.

That the said Paul Odoh was never called to testify in person and that the Certificate of Registration of Eskru Vent was never tendered in this case. That none of the Plaintiff's Witnesses know the said Paul Odoh even though they claimed that he is alive. Again, that Paul Odoh's name was never mentioned in the length and breadth of the Statement of Claim or in any of the documents tendered by the Plaintiff, so also the name of Eskru Vent. That Court cannot grant a Relief in favour of a party who is not before it, and cannot therefore grant Declaratory right to title to the land issued in the name of Eskru Vent who is not before this Court or any other person not named in the Certificate. He referred to the following cases:

**Mogbagbeola V. Sanni**  
**(2005) LPELR – 1815**

**NNPC V. Lutin Investment Ltd & Anor**  
**(2006) LPELR – 2024 (SC)**

**Ararume V. Ubah**  
**(2021) 8 NWLR (Pt. 1779) 511**

He urged Court to hold that the case was not properly constituted as no proper Plaintiff is before the Court, and

that the party who initiated the case lacks the locus standi to do so. He urged Court to dismiss the case.

**On Issue No. 2** – whether the Plaintiff has proved the case to be entitled to the Reliefs sought. The 1<sup>st</sup> Defendant answered in the negative that the Plaintiff has not shown he has any legal right over the Res, and has not established his case as required by law. That the Plaintiff has no valid existing right over the Res and was unable to prove its validity. That he could not state the root of his title and did not place facts with which to prove same. That he failed to plead and prove the authenticity of his title in this case. That he could not state how the Plot was validly vested on him. That he could not lead cogent evidence to prove his case too. That he asserted but could not prove. He referred to **Para 4 of the Amended Statement of Claim.**

That the Plaintiff could not show and/or prove that the documents were genuine or valid or duly execute, stamped or registered, or that the Grantor has the capacity and authority to make the grant. That the documents tendered were not linked to facts pleaded. That he did not prove his case on balance of probability. They relied on the following cases for all the submission above:

**Ajiboye V. Ishola**  
**(2006) 13 NWLR (Pt. 998) 626**

**Nwokidu V. Okum**  
**(2010) 1 SC (Pt. 1)**

**James A. Akuma V. Civil Service of Benue & Ors**  
**(2012) LPELR – 8621 (CA)**

**Akinduro V. Alaya**  
**(2007) 15 NWLR (Pt. 1057) 312**

**Alao V. Akano**  
**(2005) 11 NWLR (Pt. 935) 160**

**Dibiamaka & Ors V. Osakwe**  
**(1989) LPELR – 940 Per Oputa JSC**

In response to the evidence placed before the Court, the 1<sup>st</sup> Defendant submitted that the Plaintiff did not plead that the Plot in issue was allocated to a company allegedly owned by Paul Odoh – Eskru. Vent was not mentioned in the Amended Statement of Claim and Witness Statement on Oath of Charles Onazi Agbese.

That the Certificate of Occupancy admitted as Exhibit ought to be expunged and marked rejected. That the Plaintiff did not put the relationship between Eskru Vent and Paul Odoh who allegedly donated the Power of Attorney. Those setrinent facts were not pleaded. That there were no note deposition filed to support the Reply to activate the averment in **Para 2** of the Writ.

That though the Certificate of Occupancy was pleaded, the name in which it was issued to the beneficiary of the Certificate of Occupancy was not pleaded. That it renders the Certificate of Occupancy inadmissible. That failure to plead the name of the beneficiary of the Certificate of Occupancy and the nexus between Paul Odoh and the name in the Certificate of Occupancy is a fundamental

anomaly in Plaintiff's failure to prove the allocation of the land on balance of probability.

That the evidence of the Witness of the Plaintiff is Hearsay. That **EXH 1 - 3** are all documentary Hearsay as they contain Statements written by someone else other than the person – Witness who testified and person who received the document. That those people were never called as Witnesses.

Again, that the Plaintiff had no direct dealing with the person who issued the title documents as his evidence was limited to what he was told by Paul Odoh whose whereabouts he does not know. He urged Court to expunge the Exhibits as they are clearly inadmissible. He relied on the cases of:

**Mohammed V. Attorney General of the Federation  
(2021) 3 NWLR (Pt. 1764) 397**

**Urreh V. State  
(1992) 2 NWLR (Pt. 223) 257**

**Omega Bank V. O.B.C Limited  
(2005) 8 NWLR (Pt. 928) 247**

That failure to call Paul Odoh and tender Certificate of Registration of Eskru Vent is fatal to the Plaintiff's case. He referred to **S. 167 (d) of the Evidence Act, 2011**, and the case of:

**Kesena V. State  
(2017) LPELR – 42458 (CA)**

On his Defence before the Court, the 1<sup>st</sup> Defendant submitted that he tendered Letter of Conveyance of Provisional Approval dated 15<sup>th</sup> April, 1999, issued in favour of Mohammed A Musa. Letter of Conveyance of Approval dated 16<sup>th</sup> November, 2000 in his name following an Application for Change of Name of first Allottee, CTC of Certificate of Occupancy issued in his name and dated 20<sup>th</sup> June, 2002, all obtained from Bwari Area Council, the land allocating authority then.

That the 1<sup>st</sup> Defendant called a Subpoenaed Witness – Legal Adviser Bwari Area Council, and he produced the CTC of the documents presented before this Court. That all those documents so presented by the Subpoenaed Witness – DW2 were all same with the ones tendered by DW1. All these showed that the land was duly allocated to the 1<sup>st</sup> Defendant.

The 1<sup>st</sup> Defendant Counsel also pointed out the staking difference in the 2 Certificate of Occupancy presented by the Plaintiff which has 2 different commencement dates. One showed 3<sup>rd</sup> August, 1999, while the other shows 15<sup>th</sup> April, 1999; the Certificate of Occupancy frontloaded by the Plaintiff in his Amended Writ filed on the 21<sup>st</sup> day of September, 2022, and tendered in evidence. He urged the Court to look at the 2 documents as it has right under the law to do so. He referred to the case of:

**Gwandu V. Federal Republic of Nigeria  
(2014) LPELR – 21992**

He urged Court to dismiss the Plaintiff's Suit for failure to prove its case and for improperly constituting the case.

The 1<sup>st</sup> Defendant also replied to the Plaintiff's Final Written Address. He submitted in Pg. 2 Para 2.0 on admissibility of Power of Attorney – **EXH 1** that it was admitted and argument canvassed. That the document rejected was not frontloaded. He referred to **S. 104 (1) & (2) of the Evidence Act**. That the rejected document does not satisfy the condition laid down in the Evidence Act. That it rightly rejected same.

In response to Plaintiff's submission on Issue canvassed by the 1<sup>st</sup> Defendant in **Para 4.21** in the Final Written Address, failure to call vital Witness, the 1<sup>st</sup> Defendant Counsel submitted that failure to call such a Witness spells doom for the Plaintiff's case and prejudice his case. That the Witness called by the Plaintiff was not strong enough to prove his case. He urged Court to discountenance the submission of the Plaintiff on account of failure to address the substantial issues of law raised by the 1<sup>st</sup> Defendant which are the defining monument of the Plaintiff's case. He referred to the case of:

**Moneke V. Moneke**  
**(2020) 13 NWLR (Pt. 1741) 311**

## **COURT**

It is well known parlance in law that whoever asserts must prove with cogent, watertight, and credible evidence through a consistent uncontroverted and uncontradicted evidence and testimony of its Witness(s) and documentary evidence tendered before the Court.

Again, in any Suit which the dispute is on ownership of land and land related, it is a common knowledge and the law that document is the key and king, judicially speaking, in that for the Plaintiff to succeed he must call credible Witness(s) and tender good documents showing how he came into the Res, where the Res is situate or located – which is called defined and properly ascertained location, and size of the Res. Where he got in as an Attorney on the strength of a Power of Attorney, he must be able to show that the Donor has the capacity, and that he has the legal right over the property, as no one can give what he does not have. And no one can place anything on nothing and expect it to stand, because anything placed on nothing cannot stand as it will surely fall.

Again, where a party fails to present credible evidence before Court, it cannot rely on the weakness of the Defence. Also, where the Plaintiff fails to prove and establish his case he cannot expect the Court to prove and establish it for him. It is an onerous task which he must fulfill. It is his duty to assert and to prove what he has asserted. There is no 2 ways about it.

It is also a known fact that facts not pleaded goes to no issue, and it will not count as Court will not take judicial notice of it or give it any judicial recognition. So also documents not frontloaded cannot be smuggled into the Court during the Proceeding as the Court frowns at such behavior. Besides, everything done in the cause of a Proceeding in the High Court is done transparently as there is no springing of surprises against an opponent in matter

pending before the High Court. Where a party decides to abandon issues it has raised in its pleadings by failure to call evidence to support such pleadings, the Court cannot aid such party to do the needful as it is not the duty of Court to fish evidence for a party and do the case of such party. Also assertion is one thing. And proof is another thing, but the two go hand in hand in proper dispensation of justice. Where proof is dropped the assertion cannot stand alone, and the Court will not hesitate to state so and Rule against the party who failed to prove his assertion.

Failure to call a vital Witness will negatively defeat the case of a party as held in the cases of:

**Moneke V. Moneke supra Pg. 15**

**Magbagbeola V. Sanni**  
**(2005) LPELR – 1815**

**N.N.P.C V. Lutin Inv. Ltd & Anor**  
**(2006) LPELR – 2024 (SC)**

**Nwokidu V. Okum**  
**(2010) 1 SC (Pt. 1)**

**Orlu V. Gigo Abite**  
**(2010) 8 NWLR (Pt. 1196) 397**

On root of title see the case of:

**Ovido V. Akinlolu**  
**(2012) LPELR – 7887**

On proof of authenticity of title to land see the case of:

**Ajibola V. Ishola**

**(2006) 13 NWLR (Pt. 995) 626 @ 627**

On failure to led evidence to prove title and how party came into the Res or took possession of the Res, see **SS. 135, 136, 137 and 138**. On failure to show that the Grantor has capacity to grant see the cases of:

**Agboda V. UBA PLC**

**(2011) LPELR – 9353**

**Akundum V. Alaya supra Pg. 312**

Where a party fails to tender a document already pleaded it cannot be called “Judicial Dumping”. And where such party links the document(s) tendered with the facts already pleaded, the Court has right to look at the document(s), and can place any evidential value on such document(s). See the case of:

**Alao V. Akano**

**(2005) 11 NWLR (Pt. 935) 160**

It is incumbent on a Donee to prove the title of his Grantor on balance of probability which is predicated on perception, especially where there is a valid Power of Attorney. It is not mathematical calculation. It is based on credibility of the Witness(s) called by the party. Such evidence must be worthy, truthful, cogent, credible, and believed by the Court, and even the judicially blind person, and showing that it is linked to the fact proved before the Court at the time of establishing the case. See the case of:

**Abdullahi V. Suleiman  
(2011) LPELR – 9219**

Again, since probability is the only and surest way to get to the sacred altar of justice, improbable evidence cannot get to that altar as it will be fizzled out and be discarded along the road because of untruthfulness, thus making the journey short and the road clear for balance of probable evidence which upon getting to the altar of justice reflect as Balance of Truth, and is eventually transformed to Balance of Justice. See the cases of:

**Dibiamaka & Or V. Osakwe  
(1989) LPELR – 940**

**Grace & Ors V. Omolola Hospital  
(2014) LPELR – 22777 (CA)**

**Anyanwu V. Mandilas Ltd  
(2007) 4 SC (Pt. 111) 58**

No Court allows/tolerates a party to go out of its pleading as parties are bound by their pleadings, and cannot rely on facts not pleaded. The Court itself is also bound by the pleadings of the parties before it, and can only decide on the issue in controversy or in dispute before it. So any issue which is admitted need no further proof. So also any issue rebutted by evidence and testimony is held to have been controverted, and cannot stand. See the case of:

**Eneje V. O.M Oil Inv. Ltd  
(2021) 4 NWLR (Pt. 1765) 11**

All evidence before the Court should at all times in all cases be based on facts averred in the pleadings of the parties. Where any evidence laid before the Court is not supported by pleaded facts, the Court will not admit it when Court considers the case before it. See the cases of:

**Ojiogu V. Ojiogu**  
**(2010) 9 NWLR (PT. 1198) 1**

**Onuigbo V. Azubike**  
**(2013) LPELR – 22978**

It is the primary duty of this Court like all other Courts to determine and consider the issue before it by evaluating and analyzing the evidence adduced by all parties in the Suit to determine the case. See the cases of:

**Guardian Newspapers Ltd V. Ajeh**  
**(2011) 10 NWLR (Pt. 1256) 574**

**P.R.C.C Nig. Ltd V. Al.Hassan**  
**(2020) 9 NWLR (Pt. 1729) 1**

I have carefully gone through the case of both parties, and I have summarized the stand of the parties as stated above. In answer to the questions posed by the parties, it is the humble view of this Court that the Plaintiff has proved his case to be entitled to the Reliefs sought. Again, it is the humble view of this Court that there is a very credible reasonable and cogent evidence put forward in proof of the case of the Plaintiff. Again, the action of the Plaintiff was properly and rightly constituted against the 1<sup>st</sup> Defendant. Also, the Plaintiff proved the title to the Res, and is entitled

to both the Declaratory and Injunctive Reliefs. So this Court humbly holds that the Plaintiff established and proved its case with credible and cogent evidence, though he failed to call the vital person as vital Witness. He presented documents which stands the test of time in establishing his title to the Res in this Suit. None of the documents presented lack evidential credibility in proof of land ownership tussle especially the Certificate of Occupancy. There are no contradictions and/or disparities in the documents. Even the documents rejected by the Court further supports the case of the Plaintiff as it shows that the 1<sup>st</sup> Defendant has a different land affected from that of the land in issue on the document rejected by the Court.

In the Supreme Court case of:

**Diverse Assets Management Ltd V. Wema Bank PLC**

**(2023) 12 NWLR (Pt. 1897) 121 SC** the Court had held that such document could be admitted in evidence after proper foundation had been laid by the party that presented the document before the Court, for its admissibility and fresh argument is taken on it.

In this case this Court had called the parties to address it on the said document marked “rejected”, and had asked the Plaintiff Counsel to lay proper foundation and give a copy to the 1<sup>st</sup> Defendant Counsel to study before it can present the 1<sup>st</sup> Defendant’s argument on that. It is a known fact that Court has the right to call for such argument if it feels there is need to further put light on the document. This Court felt that there is need for the parties to make

further submission in that regard. In the light of that the Court vacated its earlier Ruling on the objection raised and therefore vacates the Order Rejecting the document.

This Court had taken fresh argument of the parties on the earlier rejected document. This Court had listened to both parties submission for and against the admissibility of the document earlier rejected which is CTC of letter titled:

**“Request for Confirmation of Title Documents in Respect of Plot L/125 of about 1700sqm, Kubwa.”**

A closer look at the content of the said document presented before this Court and the file copy from where it emanated from, it shows the minutings from A – D. By the content of the document it shows that the L125 which is the Res was issued on 15<sup>th</sup> April, 1999, and was submitted for Regularization on 5<sup>th</sup> March, 2014, long before this matter came to this Court. There was another Conveyance of Approval dated the same 15<sup>th</sup> April, 1999 equally submitted for Regularization. But it came with the name Mohammed Musa, submitted by the 1<sup>st</sup> Defendant. But the one forwarded by the Bwari Area Council to the Department of Land has the name of the Plaintiff’s Attorney – Eskru Vent. This shows that the document of title presented by the Plaintiff is the one recognized by the Bwari Area Council, and forwarded to the Land Department.

It is imperative to state that the Plaintiff presented before this Court the raw original Certificate of Occupancy with the commencement date being 15<sup>th</sup> April, 1999, the date of the Conveyance of Approval, where the Letter of Allocation

was dated. It has number **FCT/BZTP/LA/FCT/2000/641** which means that it was in 2000, and Batch No. 641. The document bears the name of the Plaintiff's Attorney – **Eskru Vent**. The Certificate of Occupancy was duly signed, stamped, and sealed. So also the TDP was equally fully sealed by the Surveyor.

The Conveyance of Provisional Approval was dated 15<sup>th</sup> April, 1999. It is equally in its original raw form. It was signed by the then Chairman of Bwari Area Council and stamped too. That batch of documents which was admitted as **EXH 2** clearly shows that it was for the L125, and granted to the said Eskru Vent.

Again, the Plaintiff Counsel tendered the Power of Attorney – **EXH 1** in proof of the case. It shows that on the 21<sup>st</sup> of June, 2006, that **Paul Odoh**, doing business in the name and style of **Eskru Vent**, donated the power to the Plaintiff as his Attorney. The power is irrevocable. The document was signed by the Donor and the Donee in the presence of their respective Witnesses in 2006. That document was not challenged. The only grouse from the 1<sup>st</sup> Defendant Counsel is that the Plaintiff did not call Paul Odoh as a Witness. The 1<sup>st</sup> Defendant Counsel has argued that failure to so do marred the case of the Plaintiff. But this Court holds otherwise in that it is not a must that the Donor must come to testify or that failure to call the Donor as a Witness will mar the case of the Plaintiff. This is so because anyone who is conversant with the subject matter of the case can testify as a Witness.

Again, in this case, the Plaintiff's Attorney himself did not testify for the Plaintiff as PW1 or PW2. But PW1 who testified is the Witness to the Power of Attorney. Again, **Abdulwahad Adenola** is the PW2. He witnessed the Power of Attorney on the side of **Eskru Vent – Paul Odoh**. This Court so hold based on the decision in the case of:

**Magaji V. Nig. Army**

**(2008) 8 NWLR (Pt. 1089) 338 @ 395** where the Court held that document maker need not be the person that will tender same. A Court may dispense with the personal appearance of the maker to tender the document once the person tendering has the knowledge of the content of the document, and the content is relevant to the issue in dispute before the Court. The Court refers to the case of:

**Iheonu V. Obiukwu**

**(1999) July Electronic Law Dep 78400**

See also the provision of **SS. 89 – 91 of the Evidence Act, 2011.**

On the document marked previously “Rejected”, it is clear that it was certified and duly paid for and dated and signed by the person who certified the document. It met all that is required under the law on certification of document which is not computer generated. Besides, it has a stamp on it showing the date it was received by the Department of Development Control, the Receiver of the document, addressee. The five minutes on the document puts no one in doubt that it went through all the necessary hands. All the minuting came after it was received on the 24<sup>th</sup> of

September, 2021. By all these and the contents it shows that the Plaintiff's claim has an authentic and recognized history and root. The content confirmed that the claim of the Plaintiff is genuine.

Also, a look at the document shows stark difference between the Plot numbers. The Plaintiff's is 2000/641 while that of the 1<sup>st</sup> Defendant shows 09/2001/320. By that the Certificate of Occupancy of the Plaintiff is first in time. So also the Letter of Allocation of the Plaintiff is equally first in time, same having been allocated on 15 April, 1999, as against the 1<sup>st</sup> Defendant's that was allocated on the 16<sup>th</sup> of November, 2000. By the principle of first in time, the Plaintiff already in possession having been allocated the land earlier on 15<sup>th</sup> April, 1999, before the 1<sup>st</sup> Defendant's purported allocation. So based on that the Plaintiff proved its case and title to the Res in that regard.

Again, the Certificate of Occupancy was signed on the 18<sup>th</sup> February, 2002. But was presented to the Chairman on the 10<sup>th</sup> of January, 2002. Strangely, the Certificate of Occupancy which the Subpoenaed Witness presented on behalf of the 1<sup>st</sup> Defendant shows that it was signed on 20<sup>th</sup> January, 2002, but was presented to the Chairman on the 12<sup>th</sup> of August, 2002 – seven (7) months after the Chairman had signed same. Again, the last page of the Certificate of Occupancy was stamped but not certified unlike all the other pages. That same page is the page that has the disparity in the date the document was presented to the Chairman for signature. Even the characters of the print in the 2 documents are fundamentally different.

In the bundle of document of title presented by the Plaintiff, there is Receipts evidencing payment of Purchase Price, Form Fee Departmental Fee, Processing Fee, and payment for Certificate of Occupancy. The payments were made in the year 2000 before the Certificate of Occupancy was dated, issued, and signed.

On the part of the Defendant, it never showed any Receipt evidence of payment of Certificate of Occupancy which it claimed was issued to it.

The Certificate of Occupancy presented before this Court by the Plaintiff shows that it was fully sealed as I had earlier pointed out. It was also duly stamped, and the TDP fully signed and sealed also.

Apart from the subpoenaed Witness, the 1<sup>st</sup> Defendant did call the 1<sup>st</sup> Defendant as Witness to testify in person, and they called the subpoenaed Witness. During Examination in Chief the 1DW1 himself stated that the Letter of Allocation was issued in 1991 which is not true as the document he tendered was purportedly issued in 2000.

It is strange that the 1<sup>st</sup> Defendant could not present the Newspaper Publication where he advertized that the document of title to the Res was lost. The document showing Change of Ownership is dated 16<sup>th</sup> November, 2000. The Allocation to Mohammed Musa which the 1<sup>st</sup> Defendant claimed was reallocated to him is dated 15<sup>th</sup> April, 1999. There is nothing in the allocation paper to show there was a mark on the allocation of Mohammed Musa that the allocation was changed from Mohammed

Musa to the 1<sup>st</sup> Defendant – Aladeen Badejo. The only thing on the address column of the document – Conveyance of Provisional Approval is “*Change of Ownership*”. Ordinarily where there is such change, it will show 2 parallel lines across the face of the document changed, showing that it is no longer authentic, and the person whose name appear on it has no power or right to deal with the land. This is unfortunately lacking in this case, in the paper presented by the 1<sup>st</sup> Defendant.

By not having the said lines in the centre of the Conveyance of Provisional Approval, it means that the purported Change of Ownership claimed by the 1<sup>st</sup> Defendant does not exist, as there is no concrete evidence to show that the document was changed from Mohammed Musa to Aladeen Badejo. As it stands the said document of Mohammed Musa is still standing, same having not been changed. So this Court holds. Hence, the 1<sup>st</sup> Defendant’s Defence to the claim of the Plaintiff is not strong but weak. This Court also holds that there is absence of reasonable Defence against the case of the Plaintiff and as such the Plaintiff is entitled to the Reliefs sought for having proved his claims in this case. This Court accepts the submission of the Plaintiff/Plaintiff Counsel in this case.

The 1DW1 claimed under Cross-examination that he bought from someone else, but did not present any document to prove the purchase price he paid for the land. There was no Deed of Assignment and/or Power of Attorney tendered. He did not tender evidence of Bank Transfer he claimed he made. Meanwhile, he claimed to be former staff

of Central Bank of Nigeria (CBN), but could not show document where he transferred the money from to the Account of the person he bought from. He claimed also to have met Paul Odoh. He could not remember of any Departmental Receipt of Payment made for the Certificate of Occupancy or any other Receipt of Payment made.

He stated that he had never seen the Process/ Writ filed and served on him by the Plaintiff. There is equally no evidence to show that copy of the subpoena was served on the subpoenaed Witness. She could not show Court any, and there is no evidence of Endorsement and Return of the subpoena.

It is strange that the Subpoenaed Witness could not come with the original file copies of the documents subpoenaed for citing before tendering the CTC. The essence of the subpoena was for the Subpoenaed Witness to come the original of the documents for Court to see. The failure to do so by the Subpoenaed Witness makes the case of the Plaintiff to be strong, and makes this Court to hold that the Plaintiff proved his title to the Res in this case by tracing the origin, proving allocation, and presenting the raw original title documents including the Certificate of Occupancy and other documents and Receipts.

The 1<sup>st</sup> Defendant could not defend the Suit as there was no reasonable Defence in challenge of the Plaintiff's case. Notwithstanding that the Plaintiff should not rely on the weakness of a Defence to prove its case does not mean that the Court should ignore the weakness of a Defence.

All in all, the Plaintiff proved its case on balance of probability and on the preponderance of his evidence before this Court. He is entitled to his Reliefs, and this Court enters Judgment in his favour to wit:

Prayer a to c granted as prayed.

The 1<sup>st</sup> Defendant is to pay to the Plaintiff the sum of ~~N~~50,000.00 (Fifty Thousand Naira) as Damages for trespass, and ~~N~~50,000.00 (Fifty Thousand Naira) as cost of the Suit.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_\_\_ day of \_\_\_\_\_ 2025 by me.**

---

**K.N. OGBONNAYA**  
HON. JUDGE

**APPEARANCE:**

**PLAINTIFF'S COUNSEL:** IHENSEKHIEN SAMUEL JUNIOR, ESQ.

**1<sup>ST</sup> DEFENDANT'S COUNSEL:** ADEKOLA MUSTAPHA, SAN  
A.R. AJIBADE

**2<sup>ND</sup> DEFENDANT'S COUNSEL:** NOT REPRESENTED