

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 24TH DAY OF SEPTEMBER 2024
BEFORE HIS LORDSHIP: HON JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/1721/2021

1. ALH. SAMAILA ALHASSAN
2. AUGUSTINE EBERECHUKWU OBIADOH CLAIMANTS

AND

CHIEF YOHANNA DYELKOP DEFENDANT

JUDGMENT

By way of a Writ of Summons dated and filed on the 23rd of July, 2021, the Claimants instituted this action against the Defendant seeking the following reliefs:-

- a. *A Declaration that the 1st Plaintiff is the original allottee and holder of the Statutory Right of Occupancy of Plot 612 within Dakibiyu District, Abuja and entitled to Certificate of Occupancy thereof and has granted her(sic) powers over the land to the 2nd Plaintiff.*
- b. *A Declaration that the 2nd Plaintiff is in exclusive possession of the said Plot 612 within Dakibiyu District, Abuja.*

- c. *A Declaration that the Defendant trespassed and unlawfully entered into the 1st Plaintiff's land, Plot 619 within Dakibiyu District, Abuja.*
- d. *An Order of perpetual injunction restraining the Defendant, his agents, privies, workers and representatives, howsoever called from further entering, encroaching or otherwise trespassing on the 1st Plaintiff's Plot 619 within Dakibiyu District, Abuja.*
- e. *An Order of this Honourable Court compelling the Defendant to pay to the 1st Plaintiff the sum of ₦5,000,000.00 (Five Million Naira) only as general damages for trespass on the Plaintiff's Plot 612 within Dakibiyu District, Abuja.*
- f. *The sum of ₦2,000,000.00 (Two Million Naira) only as cost of this suit.*

On the 23rd of June, 2022, this Court ordered the Claimants to amend their originating processes to reflect the actual name of the Defendant. The Claimants complied with this Order and filed an Amended Writ of Summons on the 13th day of July, 2022. The Amended Writ of Summons was dated the 13th day of July, 2022. The reliefs sought in the Amended Writ of Summons remained unaltered.

The Defendant was duly served with the originating processes and the hearing notices against each hearing date. On the 13th of April, 2022 and

the 23rd of June, 2023, the Defendant was represented by Counsel. On subsequent dates, he was neither represented by Counsel nor present in Court. On the 1st of December, 2022, the Claimants opened their case, with the second Claimant testifying as PW1. He was duly affirmed and proceeded to adopt his Witness Statement on Oath. He continued his examination-in-chief on the 28th of March, 2023 when he tendered his documentary evidence in Court.

In his evidence before this Court, the PW1 swore that the 1st Claimant applied for and was allocated Plot 612, Dakibiyu District, Abuja by the then Ministry of the Federal Capital Territory which was evidenced by the Statutory Right of Occupancy through a letter of allocation with reference number Ref.No. MFCT/LA/96/KD 2833 dated the 5/11/1997. It was the case of the PW1 that the 1st Claimant accepted the offer *vide* a letter of acceptance dated the 5/11/1997 which was forwarded to the office of the Honourable Minister of the Federal Capital Territory.

The PW1 swore that the 1st Claimant submitted the original title documents of the plot to the Abuja Geographic Information Systems (AGIS) during the re-certification exercise for regularization and was issued with a re-certification and re-issuance of certificate of occupancy/acknowledgement

letter with old File Number KD 2833 and new File Number KD 10183 dated the 14th March, 2005.

The PW1 further testified that the 1st Claimant donated an irrevocable power of attorney to him on the 12th of June, 2002, adding that the said power of attorney was registered as No.: FCT 192 at page 192 Vol. 77PA at the Abuja Geographic Information Systems. It was his case that following the donation of the power of attorney to him, he has been paying the rents and all necessary fees in respect of the said Plot 612 Dakibiyu District, Abuja, adding that he had cleared the plot of land for construction after he had paid compensation to Gwari indigenes, erected beacons on the plot as well as obtained the Technical Design Plan (TDP) over the plot of land.

The PW1 swore that he was shocked when the Defendant led a horde of people with some policemen on the 19th of July, 2021 to harass his workers who were working on his plot. He added that the Defendant got the police to arrest and detain his workers, adding that his workers were released only after he had applied for their bail. Though the police investigated the dispute, the investigation had not been completed. He averred that he consulted his solicitor who advised him to seek redress in the Court of law.

In the course of his evidence-in-chief, the PW1 tendered and this Court admitted the following documents in evidence and marked same as exhibits. These are: bank slip dated 15/6/2021 with Number 0000433 payment of ₦170,032.23 (One Hundred and Seventy Thousand, Thirty-Two Naira, Twenty-Three Kobo) to AGIS marked as **Exhibit A1**, offer of terms of grant dated 5/11/1997 marked as **Exhibit B1**, letter of acceptance of the grant dated the 5/11/1997 marked as **Exhibit C1**, re-certification and re-issuance of certificate of occupancy with number No. KD2833 marked as **Exhibit D1**, technical design plan (TDP) marked as **Exhibit E1**, Irrevocable Power of Attorney marked as **Exhibit F1-F5**, Deed of Assignment marked as **Exhibit G1-G3**, revenue receipts for payment of certificate of occupancy with number No. 000027966 and No. 0000245567 marked as **Exhibit H1-H2**, payment for ground rent with numbers No. 000341685 dated 15//2021, No. 000245566 dated 1/3/2017, No. 000027984 dated 26/2/2009 with demand for payment dated 4/6/2021 and 15/5/2012 marked collectively as **Exhibits I1-I5**, Zenith Bank slip with Number No. 459317 dated 10/3/2017 with payment receipt from AGIS marked as **Exhibit J1-J2**.

The case was adjourned to the 16th of May, 2023 for the cross-examination of the PW1. On that day, however, learned Counsel for the Claimants

brought an application *vide* a Motion on Notice with Motion Number FCT/HC/M/GAR/714/2023 seeking the following reliefs:-

- i. An Order of this Honourable Court granting leave to the Plaintiffs/Applicants to file additional witness statement on oath;*
- ii. An Order of the Honourable Court deeming the already filed additional witness statement on oath with its attachment as properly filed and served, necessary fees having been paid;*
- iii. And for such other Order(s) that the Honourable Court may make in the circumstance.*

This Court heard the application and granted the reliefs as prayed. The matter was thereafter adjourned to the 21st of September, 2023 for continuation of hearing.

On the 21st of September, 2023, the PW1 adopted his Additional Witness Statement on Oath. In the Additional Witness Statement on Oath, he swore that he omitted to plead the settlement of building plan fees and the conveyance of building plan approval in respect of Plot 612 Dakibiyu District, Abuja. He proceeded to identify the conveyance of building plan approval dated the 15th of October, 2021. This document was tendered as evidence and the Court admitted it as exhibit and marked it as **Exhibit K1-**

K4. Thereupon, the Court adjourned to the 25th of October, 2023 for cross-examination of PW1.

The Defendant was not in Court to cross-examine the PW1. Counsel for the Claimants applied that the Defendant be foreclosed from cross-examining the PW1. The Court granted the application and adjourned to the 30th of November, 2023 for the subpoenaed witness to testify. The case could not proceed on that day because the Defendant was not served with the hearing notice against that date.

On the 24th of January, 2024, however, the subpoenaed witness took the stand. He gave his name as MrOgonnaOnunkwo and described himself as a civil servant working in the Land Department of the Federal Capital Territory Administration. He confirmed that he was called to testify in order to confirm the ownership of the plot of land known as Plot 612 Dakibiyu District, Abuja. He identified certain documents in respect of the plot and the documents were tendered in evidence. The Court admitted the documents in evidence and marked them as follows: letter of offer of grant/conveyance of approval bearing the name of AlhajiSamailaAlhassan dated 5/11/1997 marked as **Exhibit K1**, acceptance of offer of grant bearing AlhajiSamailaAlhassan marked as **Exhibit K2**, application for registration of power of attorney bearing AlhajiSamailaAlhassan marked as

Exhibit K3 and Irrevocable Power of Attorney marked as **Exhibit L1-L4**.

The Court then adjourned to the 27th of February, 2024 for cross-examination of the subpoenaed witness.

On that day, the Defendant was not in Court. The Counsel for the Claimants applied that the Defendant be foreclosed from cross-examining the subpoenaed witness. The Court granted the application and discharged the subpoenaed witness. The suit was then adjourned to the 16th of April, 2024 for the Defendant to open his defence.

Again, as it has become usual with the Defendant, he was not in Court on the 16th of April, 2024. Upon application by learned Counsel to the Claimant to that effect, this Court foreclosed the Defendant from defending the suit. Further to this, this Court then adjourned to the 4th of June, 2024 for parties to adopt their Final Written Addresses. When this Court sat on this matter on the 25th of June, 2024, the Claimants' Counsel was in Court but the Defendant was neither in Court nor represented by Counsel. Counsel for the Claimants proceeded to adopt his Final Written Address. The Defendant did not file his Final Written Address. This Court thereupon adjourned to the 24th of September, 2024 for Judgment.

In the Final Written Address dated the 31st of May, 2024 and filed on behalf of the Claimants by their Counsel on the 5th of June, 2024, learned Counsel formulated the following sole issue for determination: “*Whether the Plaintiffs are entitled to the reliefs sought.*”

In his submissions on the sole issue he formulated, learned Counsel noted that the 2nd Claimant as the PW1 adopted his Witness Statement on Oath and tendered a number of documents which were admitted in evidence as exhibits. He noted, too, that the Defendant did not defend the suit and failed to utilize the opportunity to cross-examine the Claimants’ PW1. He referred to the evidence of the PW2, the subpoenaed witness, who tendered a number of documents in support of the case of the Claimants. Like in the case of the PW1, the Defendant neither challenged the evidence of the PW2 nor cross-examined the PW2. He added that the case of the Claimants was unchallenged and that the Court should act on the unchallenged evidence. He urged the Court therefore to hold that the Claimants have proved their case on the balance of probability.

In the determination of this suit, this Court will adopt the sole issue learned Counsel for the Claimants formulated in the Claimants’ Final Written Address and reframe it thus: “***(1) Whether the unchallenged evidence of the Claimants is not competent, cogent, credible and compelling? (2)***”

Whether the Claimants have not established their entitlement to the reliefs sought in this suit considering that the principal reliefs the Claimants seek in this suit are declaratory in nature?

I shall take these two issues together, that is, “***Whether the unchallenged evidence of the Claimants is not competent, cogent, credible and compelling***” and “***Whether the Claimants have not established their entitlement to the reliefs sought in this suit considering that the principal reliefs the Claimants seek in this suit are declaratory in nature***”. I must begin by looking at the position of the law on unchallenged evidence. Indeed, the law is settled that where a party to a suit has the opportunity to challenge the averments of the other party but failed to do so; or where they had the opportunity to challenge the suit of the other party, either by filing adverse processes in opposition or by way of cross-examination, that party is deemed to have admitted the case as set up by that other party. In ***Lagos State University & Anor v. Taiwo Adegboyega Ganiyu (2022) LPELR-56873(CA) at 24-26, paras. D-A***, Obande Festus Ogbuinya, JCA (as he then was, now, JSC) explained the principle in this graphic and self-explanatory dictum:

“It is imperative to observe, pronto, that the record, the bedrock of the appeal, revealed that the appellants were duly

served with all the processes encompassed in the respondent's application. Curiously, the appellants, in their infinite wisdom, failed to file a counter-affidavit or any process to neutralise the critical averments in the application. Put simply, the appellants starved the lower Court of any evidence refuting the allegations levelled against them. In essence, the crucial averments in the respondent's affidavit were not controverted. In [the] eyes of the law, those pungent depositions remained unchallenged. The law grants the Court the unfettered liberty to act on unchallenged affidavit, see Olofu v. Itodo (2010) 18 NWLR (Pt. 1225) 545; Uzodinma v. Izunaso (No.2) (2011) 17 NWLR (Pt. 1275) 30; Eyiboh v. Abia (2012) 16 NWLR (Pt. 1325) 51; Tukur v. Uba (2013) 4 NWLR (Pt. 1343) 90; Inegbedion v. Selo-Ojemen (2013) 8 NWLR (Pt. 1356) 211; Danladi v. Dangiri (2015) 2 NWLR (Pt. 1442) 124; APC v. INEC (2015) 8 NWLR (Pt. 1462) 531; Ezechukwu v. Onwuka (2016) 5 NWLR (Pt. 1506) 539; Owuru v. Adigwu (2018) 1 NWLR (Pt. 1599) 1. The caustic effect of the appellants' costly neglect is plain. They failed to deflate the respondent's claim of ownership of the Toyota

bus. In the mind of the law, in the absence of a counter-affidavit, the appellants admitted in toto all the respondent's assertions inclusive of his ownership of the Toyota bus. What is admitted does not need further proof. In the presence of the undiluted admission, the lower Court paid due allegiance to the law when it granted the respondent's reliefs relating to the seized Toyota bus."

Where the evidence of a party is unchallenged and uncontroverted, the legal implication is that the other party is deemed in law to have admitted the facts contained in the unchallenged and uncontroverted evidence. The principle that facts not controverted are deemed admitted has been codified in the Evidence Act, 2011 by virtue of section 123 thereof. The said section provides that,

"No fact need be proved in any civil proceedings which the parties to the proceedings or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the court may, in

its discretion, require the facts admitted to be proved otherwise than by such admissions.”

The rule of pleading in force in so far as this Court is concerned is the High Court of the Federal Territory, Abuja (Civil Procedure) Rules, 2018. Order 15 Rule 5(1) thereof provides thus:

“Every allegation of fact in any pleadings if not specifically denied in the pleadings of the opposing party shall be taken as admitted except as against a person under legal disability.”

A party who intends to challenge a suit against them is required under the Rules to file a Statement of Defence where the case is one commenced by way of Writ of Summons as in this case. Order 17 Rules 1 and 2 of the Ruls of this Court, 2018 provide that,

“(1) The statement of defence shall be a statement in summary form and shall be supported by copies of documentary evidence, list of witnesses and their written statements on oath.”

(2)“When a party in any pleading denies an allegation of fact in the pleadings of the opposing party, he shall not be evasive, but answer the point of substance.”

The combined effect of the above provisions of the Rules of this Honourable Court is that a Defendant is required to deny the averments contained in the Statement of Claim of the Claimant by way of a Statement of Defence in order to avoid the liability ensconced in the claims contained in the Statement of Claim. Such denial in the Statement of Defence where it is filed must be definite and must meet each allegation of fact in the Statement of Claim.

The purpose and essence of a Statement of Defence was stated in ***Ifesinachukwu v. Ifesinachukwu (2019) 17 NWLR (Pt. 1700) 59 CA at 85, paras E-F*** where the Court explained that ***“The essence of a statement of defence is that by the statement of claim, the defendant is fully abreast of the details of the case against him and that by the statement of defence, material facts are set out to disproof any or all the assertions of the plaintiff.”*** See also ***Ostankino Shipping Co. Ltd. v. The Owners, The MT Bata (2022) 3 NWLR (Pt. 1817) 367 SC at 390, paras. E-H; 401-402, paras. H-C.***

I have reviewed the facts and circumstances of this case as well as the records of this Court in so far as this case is concerned. There is evidence that the Defendant was served with the originating processes in this suit. The Defendant was also served with the hearing notices against each day the suit came up for hearing. On days the matter came up and the Court found that the Defendant was not served with hearing notices, the Court as a matter of law and practice always adjourned the matter to another day to enable the preservation of the right to fair hearing of the Defendant. Indeed, the Defendant cannot be said to be ignorant of the pendency of this suit. He was represented by Counsel on the 13th of April, 2022 and on the 23rd of June, 2022. The Defendant cannot be heard, therefore to complain that his right to fair hearing has been breached.

In ***Ozoemene v Ozoemene (2013) LPELR-20383 (CA) at pp 15-16 paras F-E***, the Court of Appeal per MojeedAdekunleOwoade JCA, aptly stated that:

“In the business of fair hearing, the duty of the Court is to provide the access, the opportunity and the environment, the Courts would not be blamed neither could the fair hearing provisions be successfully invoked if a litigant that has been given due access and opportunity to be heard failed to utilize

same. In the case of H.R.H. Eze Dr. Frank v. M. Godfrey Chizieze Ogbonda the Supreme Court had this to say at page 162. "The duty of a Court is to create the environment for fair hearing in an egalitarian manner for the benefit of the parties. A Court of law cannot force parties to take advantage of the principles, once the Court creates the environment, its duty stops and the parties are at liberty to take advantage of the environment created by the Court. If the parties fail to take advantage of the environment created by the Court, they cannot be heard on Appeal to complain that they were denied fair hearing. Such will be unfair to the judge who has placed the fair hearing principle at the door steps of the parties.

Though the evidence of the Claimants is unchallenged, the Court, however, has a judicial obligation to scrutinise the evidence in order to satisfy itself that the evidence, though unchallenged, is such that the Court can act on it. In the case of *Ogojeifo v. Ogojeifo (2006) LPELR-2308 (SC)*, the apex Court held that *"...It is also the law that the unchallenged and uncontroverted facts deemed admitted in the affidavit must be capable of proving and supporting the case of the appellant as the applicant. In other words, the evidence contained in the unchallenged*

affidavit must be cogent and strong enough to sustain the case of the applicant.” This principle was further fleshed out in the case of ***Ramawa v. NACB Consultancy & Finance Co. Ltd. & Anor (2006) LPELR-7606(CA)*** where the Court of Appeal per Kekere-Ekun JCA (as he then was, now, Ag. CJN) followed this principle when it laid down the conditions that must be fulfilled before the Court can act on unchallenged affidavit evidence thus:-

“There is a plethora of authorities in support of the general position of the law that evidence or averments in an affidavit that are not denied are deemed admitted and the court ought ordinarily to act on them. See: Ajomale v. Yaduat (No. 2) 1991 5 NWLR (PT. 191) 266; Honoka Sawmill (Nig.) Ltd v. Hoff (1994) 2 NWLR (Pt. 326) 252. There is however a proviso to this general rule. Unchallenged evidence, to be accepted and relied upon by the court, must be both credible and reliable. See Egbunike v. A.C.B. Ltd (1995) 2 SCNJ 58; (1995) 2 NWLR (Pt. 375) 34 at 55 E-F; IfeanyiChukwuOsondu Co. Ltd. v. Akhigbe (1999) 11 NWLR (Pt. 625) 1 at 19 F-G. In the case of: Neka B.B.B. Mfg. Co. Ltd. V. A.C.B. Ltd. (2004) 2 NWLR (Pt. 858) 521 at 550-551 E-A. His Lordship Pats-Acholonu, JSC (of

blessed memory) had this to say: “An opposing party should not be expected to challenge evidence that is hollow, empty or bereft of any substance as that would to my mind amount to chasing a shadow. I am familiar with the case of Odulaja v. Haddad (1973) 1 ANLR 191 to the effect that an evidence not challenged by the party that had the opportunity to do so should ordinarily be believed and accorded credibility. I believe that such holding rests on the premise that such evidence is capable of being believed if not challenged. In other words, when the evidence is weak in content as not to assist the court, or manifestly unreasonable or is devoid of any substance as not to help to resolve the matter in issue, it will be safe to ignore it as it does not attain the standard of credibility... It is also trite to say that the court is not in all circumstances bound to accept as true testimony an evidence that is uncontradicted where it is wilfully or corruptly false, incredible, improbable or sharply falls below the standard expected in a particular case.”

This principle has been enunciated in a number of cases such as *COP v. Agholor (2014) LPELR-23212CA, Odiong v. Assistant Inspector-*

General of Police (2013) LPELR-20698(CA), Statmak v. COP & Anor (2018) LPELR-46324(CA) and JMG Ltd v. Israel & Ors (2020) LPELR-50585(CA) among others. In *Odiong v. Assistant Inspector-General of Police, supra*, the Court held that **“Although the facts deposed to by an applicant are not challenged by a respondent, the Court still has a duty to consider and weigh the affidavit evidence before it in order to ensure that they can ground the Order sought by the applicant...”** I will highlight the dicta in three other cases before I bid farewell to this issue.

In *Maidara v. Halilu (2000) 13 NWLR (Pt. 684) 257 C.A. at 268, paras F-G*, the Court held that,

“It is not always the case that when a party produces unchallenged and uncontroverted evidence he is entitled to judgment. This is because unchallenged and uncontroverted evidence is not synonymous with prove by credible evidence. The unchallenged and uncontroverted evidence might be worthless or might fall far short of tilting the imaginary scale in favour of a party tendering unchallenged and uncontroverted evidence.”

In *Lufthansa Airlines v. Odiese* (2006) 7 NWLR (Pt. 978) 34 C.A. at 81-82, paras F-A, it was stated 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. In fact, even in situations where evidence of special damages will rest on the ipse dixit of the plaintiff, where it is not credible though unchallenged, the fact that it was not challenged will not improve its quality. Such unchallenged ipse dixit evidence is not an automatic proof of special damages.”

Finally, in *Martchem Industries Nigeria Ltd. v. M.F. Kent West Africa Ltd.* (2005) 10 NWLR (Pt. 934) 645 S.C. at 659, paras C-G, the Court noted that,

“Even if the evidence in a case went in one direction in that it was unchallenged, the trial court is still expected to examine whether or not the unchallenged evidence was sufficient to establish the claims made by the party in whose favour the unchallenged evidence was given. It is not in every case in which the evidence called in support of the plaintiff is unchallenged, that judgment must be given in favour of the plaintiff. On the contrary, it is possible that evidence called in support of the plaintiff's case, even if unchallenged, may still be insufficient to sustain the plaintiff's claims in that it may be so weak and so discredited under cross-examination that it was unnecessary for the defendant to testify.”

Indeed, in no case are the principles enunciated in the foregoing cases accorded prime importance than in cases where the Claimant, like in this case, seeks for declaratory reliefs. Declaratory reliefs are special breed of reliefs considering their nature. First, they are equitable reliefs. Second, they are granted at the discretion of the Court. Third, they are not granted as a matter of course. Fourth, the Claimant must prove their entitlement to the declaratory reliefs sought. Fifth, the Claimant who seeks declaratory reliefs must succeed on the strength of their own case and not on the

weakness of or absence of defence of the Defendant. I shall reproduce judicial authorities on these principles anon.

In *N.B.C. Plc v. Edward* (2015) 2 NWLR (Pt. 1443) 201 C.A. at 223, para H, the Court explained that “**A declaratory relief, as the name implies, is declaratory of a named matter or thing or situation. For example, in land matters, a declaratory relief ends at the declaration by the court. It does not go further to give the property to the ownership of the plaintiff.**” Similarly, in *Dagazau v. Bokir Intl Co. Ltd.* (2011) 14 NWLR (Pt. 1267) 261 C.A. at 340, para B, the court held that “**Declaratory remedies are equitable in nature and a claimant who seeks declaratory remedies must do so with clean hands.**”

In *Amobi v. Ogidi Union Nigeria* (2023) 1 NWLR (Pt. 1864) 153 S.C. at 182-183, paras. F-C, the court held that,

“A claimant seeking declaratory reliefs has the legal burden to establish his claim. He must succeed on the strength of his case and not on the weakness of the defendant’s case. In other words, the claimant must plead and prove his claims for declaratory reliefs on the evidence called by him without relying on the evidence called by the defendant. The burden

of proof on the claimant in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that such declaratory reliefs are not granted even on admission by the defendant, where the plaintiff fails to establish his entitlement to the declaration by his own evidence. A claimant must prove to the satisfaction of the court that he is entitled to the declaratory relief sought. He cannot point fingers at any weakness, omission, or default on the part of the defendant. He stands or falls on the strength of his case; if his case is strong, he wins, and if his case is weak, he loses.”

Similarly, in *Nduul v. Wayo (2018) 16 NWLR (Pt. 1646) 548 S.C. at 586, paras E – G* the apex Court noted without equivocation that,

“Where a claimant seeks declaratory reliefs, the burden is on him to prove his entitlement to those reliefs on the strength of his own case. A declaratory relief will not be granted even on admission. The claimant is also not entitled to rely on the weakness of the defence, if any. The rationale for this position of the law is that a claim for declaratory reliefs calls for the exercise of the court's discretionary powers in favour

of the claimant. Therefore, the claimant must place sufficient material before the court to enable it exercise such discretion in his favour.”

A Claimant who fails to prove his entitlement to the declaratory reliefs will not be entitled to the ancillary reliefs which are dependent on the declaratory reliefs. See ***C.B.N. v. Okemuo (2018) 15 NWLR (Pt. 1642) 367 C.A. at 380, paras F-G*** where the Court held that ***“Where a principal claim for declaratory order fails, any ancillary relief based on the declaratory relief sought must fail. In other words, where injunctions are sought as consequential reliefs to declaratory reliefs, the injunctions will be refused once the declarations are refused.”***

This burden is particularly stiff and heavy where the Claimant is seeking, as in this case, declaratory reliefs that revolve around ownership of a plot of land, exclusive possession of the said land as well as trespass. 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.”***

Have the Claimants in this suit been able to establish their entitlement to the reliefs they seek in this suit? The answer to this question can be gleaned only from the state of the evidence before this Court. The first relief is a declaration that the 1st Claimant is the original allottee and holder of the Statutory Right of Occupancy of Plot 612 Dakibiyu District, Abuja. In other words, the Claimants seek an order of declaration of title to the property properly described as Plot 612 Dakibiyu District, Abuja. How, then, can a claimant prove his ownership of any plot of land?

This question was resolved in the *locus classicus* on this subject, to wit, the 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 Adamawa State Min., Land & Survey v. Salisu (2021) 2 NWLR (Pt. 1759) 1 CA at 29, para C, this principle was applied when the Court held that “The five ways by which a declaration of title could be proved are by: (a) traditional evidence; (b) production of title document; proving acts of ownership numerous and positive enough to warrant an inference that (c) the person is the true owner; proving acts of long possession and enjoyment (d) under section 45 of the Evidence Act; and proof of possession of connected or adjacent land.”

In this case, the Claimants have sought to prove the ownership of Plot 612 Dakibiyu District, Abuja by way of production of documents of title and acts of possession. To attain this, the PW1 tendered and the Court admitted **Exhibit K1** which is the offer of terms of grant/conveyance of approval made in favour of Alhaji Samaila Alhassan, the 1st Claimant in this suit. **Exhibit K1** is the certified true copy of **Exhibit B1**. **Exhibit B1** was tendered through the 2nd Claimant testifying as PW1 while **Exhibit K1**, emanating from proper custody, was tendered through PW2, the

subpoenaed witness, MrOgonnaOnunkwo, an officer in the Land Department of the Federal Capital Territory Administration. This is consistent with the decision in *Idundun v. Okumagba (1976) supra* where it was held the documents of title must be duly executed and authenticated.

In addition to the above documents, the Claimants also tendered **Exhibit C1** which is the acceptance, by the 1st Claimant, of the terms of grant. There is also the recertification and reissuance of C of O acknowledgement admitted as **Exhibit D1** and also the technical design plan admitted in evidence as **Exhibit E1. Exhibit G1-G3** is the Deed of Assignment through which the 1st Claimant assigned his interest in the property known as Plot 612 Dakibiyu District, Abuja to the 2nd Claimant. **Exhibit F1-F5** is the Irrevocable Power of Attorney which the 1st Claimant donated to the 2nd Claimant in respect of the property known as Plot 612 Dakibiyu District, Abuja. The PW2 tendered the copy of this Irrevocable Power of Attorney in the Land Registry of the Federal Capital Territory Authority and the Court admitted it as **Exhibit L1-L4**. The PW2 also tendered and the Court admitted in evidence as **Exhibit K3** the application by the 1st Claimant for the registration of the said Irrevocable Power of Attorney.

The Claimants continued to exercise acts of ownership by paying the requisite and necessary fees in respect of the land. **Exhibit A1** is the

payment for the registration of the Irrevocable Power of Attorney. **Exhibit K1-K4** is the payment for the building plan approval and this includes the conveyance of the building plan approval. **Exhibit J1-J2** are payments for the right of occupancy and the certificate of occupancy in respect of the plot of land. **Exhibit I1-I5** and **Exhibit H1-H2** are payments of ground rent in respect of the same property.

In *Edosa v. Ehimwenma (2022) 5 NWLR (Pt. 1823) 215 SC at 230-231, paras G-F*, the Court held as follows: “***Ownership or declaration of title may be established through documents of title duly executed, such as conveyance, mortgage and sale. However, it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance upon such an instrument inevitably carries with it the need for the court to inquire into some or all of a number of questions, including: (a) whether the document is genuine and valid; (b) whether it has been duly executed, stamped and registered; (c) whether the grantor has the capacity and authority to make the grant; (d) whether the grantor had in fact what he purported to grant; and (e) whether it had the effect claimed by the holders of the instrument.***”

The 1st Claimant, the evidence before this Court has shown, possessed the capacity to make the grant he made to the 2nd Claimant. He also possessed the requisite powers over the property which powers he donated to the 2nd Claimant through the Irrevocable Power of Attorney already in evidence. I so hold.

There is no question that the Claimants have been able to show that they are entitled to the relief seeking for declaration of title to Plot 612 Dakibiyu District, Abuja. The Claimants, too, have been able to show that the 2nd Claimant is in exclusive possession of the said Plot 612 Dakibiyu District, Abuja. It is my considered view, and I so hold, that the Claimants are entitled to the first two declaratory reliefs.

The third relief is a declaration that the Defendant trespassed and unlawfully entered into the Claimants' land known as Plot 612 Dakibiyu District, Abuja. 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.”

In this case before me, this Court has found that the 1st Claimant is the original allottee of the property known as Plot 612 Dakibiyu District, Abuja. By virtue of **Exhibits F1-F5** and **G1-G3**, the 2nd Claimant acquired an equitable title over the property and exclusive possession. He began to exercise acts of exclusive possession of the property by clearing the land for development, payment of compensation to the Gwari indigenes, consistent payments of ground rents on the property to the appropriate authority in the name of the original allottee, payment for the settlement of building plan approval in the name of the original allottee, obtaining of the building plan approval in the name of the original allottee and actual construction on the plot. These are evidenced in **Exhibit A1, Exhibit K1-K4, Exhibit J1-J2, Exhibit I1-I5** and **Exhibit H1-H2**. The testimony of the PW1 in this regard is captured in paragraphs 10, 11, 12, 13, 14 and 14 of his Witness Statement on Oath. These averments and the documents admitted in evidence as exhibits in support of the case of the Claimants were not challenged by the Defendant.

The Claimants in paragraph 15 and 16 narrated how the Defendant invaded the property of the Claimants with *“a group of people accompanied by policemen... and arrested the [the 1st Claimant’s] workers and whisked them away to the police station.”* There is no doubt in my mind – and I so

hold – that, considering the acts of exclusive possession which this Court has found in favour of the Claimants, the Defendant have trespassed into the property known as Plot 612 Dakibiyu District, Abuja, being the property of the 1st Claimant but which is in the exclusive possession of the 2nd Claimant as the equitable owner.

Having established their entitlement to the three principal reliefs which are, as I have noted earlier, declaratory in nature, the Claimants are entitled to the ancillary reliefs of an order of perpetual injunction as well as an award of damages for trespass. The Court is required to make the orders. It is not even discretionary; it follows naturally the finding of trespass against the Defendant. See *Omotayo v. Co-operative Supply Association (2010) 16 NWLR (Pt. 1218) 1*; *Oriorio v. Osain (2012) 16 NWLR (Pt. 1327) 560*. 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.”*** In *White Diamond Property Development Company Limited v. Trade Wheels Ltd. (2022) supra at 298, paras G-H*, the Supreme Court maintained 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.”

It is for the above reasons that I arrive at the ineluctable conclusion that the unchallenged, uncontradicted and uncontroverted evidence of the Claimants have established their case of proprietary and possessory rights over the property specifically known as Plot 612 Dakibiyu District, Abuja. They are therefore entitled to the three principal declaratory reliefs and the three ancillary reliefs. In view of this therefore, the reliefs sought by the Claimants in this suit are hereby granted as follows:-

(1) THAT the 1st Claimant is the original allottee and holder of the Statutory Right of Occupancy of Plot 612 within Dakibiyu District, Abuja and therefore entitled to the Certificate of Occupancy thereof.

(2) THAT 1st Claimant as the original allottee and holder of the Statutory Right of Occupancy of Plot 612 within Dakibiyu District, Abuja has granted his powers over the land to the 2nd Claimant.

(3) THAT the 2nd Claimant is in exclusive possession of the Plot 612 within Dakibiyu District, Abuja.

(4) THAT the Defendant trespassed and unlawfully entered into the 1st Claimant's land specifically known as Plot 619 within Dakibiyu District, Abuja and which plot of land is in the exclusive possession of the 2nd Claimant.

(5) THAT AN ORDER OF PERPETUAL INJUNCTION is hereby made restraining the Defendant, his agents, privies, workers and representatives, howsoever called from further entering, encroaching or otherwise trespassing on the 1st Claimant's property known as Plot 612 Dakibiyu District, Abuja and which is in the exclusive possession of the 2nd Claimant.

(6) THAT AN ORDER OF THIS HONOURABLE COURT is hereby made compelling the Defendant to pay to the Claimants the sum of ₦2,000,000.00 (Two Million Naira) only as general damages for trespass on the Claimants' property specifically known as Plot 612 Dakibiyu District, Abuja.

(7) THAT AN ORDER OF THIS HONOURABLE COURT is hereby made compelling the Defendant to pay to the Claimants the sum of ₦500,000.00 (Five Hundred Thousand Naira) only as cost of this suit.

(8) THAT a post-judgment interest of 10% per annum is hereby imposed on the entire Judgment sum from the date of Judgment until the entire Judgment sum is fully liquidated.

This is the Judgment of this Honourable Court delivered today, the 24th day of September, 2024.

**HON. JUSTICE A. H. MUSA
JUDGE
24/09/2024**

APPEARANCES:

For the Claimants:

**E. O. OkoliEsq.
Blessing IhemeEsq.**

For the Defendant:

**S. E. UkehEsq.
A.Y. JibrinEsq.**