

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA**

THIS MONDAY, THE 27TH DAY OF JANUARY, 2025

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/2207/16

BETWEEN:

AFRICAN HEART HOSPITAL LTD CLAIMANT

AND

**1. FEDERAL CAPITAL DEVELOPMENT
AUTHORITY**

2. HON. MINISTER OF THE FCT

3. SAMUEL BAKO

4. TANKO BAHAGO

5. ELISHA SHEKWAGU

**(the 3rd, 4th and 5th Defendant for themselves and
On behalf of the indigenes of Piwoyi Village, FCT,
Abuja.)**

.....DEFENDANTS

JUDGMENT

By an Amended Writ of Summons dated 4th December, 2019 and filed same date in the Court's Registry, the Claimant prayed for the following Reliefs:

- a. A Declaration that the title to the property known as Plot No. 299, Cadastral Zone C00, Institutions and Research, Abuja covered by Certificate of Occupancy No. 187ew-17e75-7277r-ded0u-80 measuring an area of 1.62 Hectares (the Land) given under the hand of the Minister of the Federal Capital Territory, Abuja in favour of African Heart Hospital Ltd (Claimant herein) subsists and resides in the said African Heart Hospital Ltd.**

- b. A Declaration that the Defendants have no right, power or privilege to enter upon the Claimant's said land without Claimant's consent for whatever reason including for the purpose of carrying on improvements or erecting buildings thereon.**
- c. A Declaration that the 1st and 2nd Defendants have no right, power or privilege to interfere with Claimant's possession of its said land including for the purpose of resettling of Piwoyi indigenes represented herein by the 3rd, 4th and 5th Defendants.**
- d. A Declaration that the acts of the Defendants in entering upon the Claimant's said land without Claimant's consent and partitioning or dividing the land into plots, clearing, excavating, carrying on improvements or erecting buildings on the land is unlawful, ultra vires, null, void and amount to trespass to the Claimant's said land.**
- e. An Order of the Honourable Court directing the Defendants to, within seven days of the judgment in this suit, vacate Claimant's said land (i.e Plot No. 299, Cadastral Zone C00, Institutions and Research, Abuja covered by Certificate of Occupancy No. 187ew-17e75-7277r-ded0u-80) which is currently occupied by the Defendants.**
- f. An Order of Perpetual Injunction restraining the Defendants by themselves, their officers, staff, servants, agents and privies by whatever name called from further trespassing to claimant's plot No. 299, Cadastral Zone C00, Institutions and Research, Abuja covered by Certificate of Occupancy 187ew-17e75-7277r-ded0u-80.**
- g. An Order of Perpetual Injunction restraining the Defendants by themselves, their agents, servants, assigns, privies by whatever name called from in any way interfering with Claimant's possession and title to Plot No. 299, Cadastral Zone C00. Institutions and Research, Abuja covered by Certificate of Occupancy No. 187ew-17e75-7277r-ded0u-80.**
- h. N250, 000, 000.00 as general damages for Defendant's trespass to Claimant's Plot No. 299, Cadastral Zone C00, Institutions and Research, Abuja covered by Certificate of Occupancy No. 187ew-17e75-7277r-ded0u-80.**
- i. Cost of prosecuting this action.**

The 1st and 2nd defendants filed a joint statement of Defence dated 2nd February, 2022 and filed on 4th February, 2022.

The 3rd – 5th Defendants on their part equally filed a joint statement of defence dated 28th March, 2022 and filed same date at the Court's Registry.

In response the claimant filed a claimant's Reply to the 3rd – 5th Defendants joint statement of defence dated 9th September, 2022.

In proof of its case, the claimant called only one witness. **Doctor Onye G. Achililu**, Managing Director of the Claimant testified as **PW1**. He adopted his witness deposition dated 4th December, 2019 and tendered in evidence the following documents to wit:

1. Copy of Certificate of Incorporation of claimant dated 20th November, 2016 was admitted as **Exhibit P1**.
2. Offer of Statutory Right of Occupancy dated 14th October, 2008 in respect of Plot No. 299 having an area of approximately 1.62 Ha in Cadastral Zone C00 of Institutions and Research was admitted as **Exhibit P2**.
3. Certificate of Occupancy dated 21st April, 2009 issued to claimant in respect of Plot No. 299 was admitted as **Exhibit P3**.

PW1 was then cross-examined by counsel to 1st and 2nd Defendants and then counsel to the 3rd – 5th defendants took their turn and cross-examined PW1. With the evidence of PW1, the claimant closed its case.

The 1st and 2nd defendants equally called only one witness. **Kasimu A. Angba**, a civil servant with the Department of Resettlement and Compensation of 1st and 2nd defendants testified as DW1. He deposed to a witness statement on oath which he adopted at the hearing and tendered in evidence a copy of a Survey Plan showing plot 299 institutions and research district, Cadastral Zone C00 which was admitted as **Exhibit D1**.

DW1 was then cross-examined by counsel to the 3rd – 5th defendants and then by counsel to the claimant and with his evidence, the 1st and 2nd defendants closed their case.

On the part of the 3rd – 5th defendants, they called two (2) witnesses to testify on their behalf. The 5th defendant, **Elisha Shekwasu**, testified as **DW2**. He deposed to a witness statement which he adopted at the hearing.

He was then cross-examined by counsel to the 1st and 2nd defendants and counsel to the claimant.

Tanko Bahago, the 4th defendant testified as **DW3**. He deposed to a witness statement on oath which he adopted at the hearing.

Both counsel to the 1st and 2nd defendants and the claimant elected not to cross-examine him.

With his evidence, the 3rd – 5th defendants closed their case.

At the conclusion of trial, parties filed, exchanged and adopted their final written addresses.

The final address of 3rd – 5th defendants is dated 28th October, 2024 and filed on 29th October, 2024. In the address, only one (1) issue was raised as arising for determination as follows:

“Whether the 3rd, 4th and 5th defendants are not the rightful owners of the land in dispute.”

Submissions were made on the above issue which forms part of the Record of Court. The main thrust of the submissions is pivoted on traditional ownership and or claim that the land in dispute is their ancestral land and that they have been in occupation of same as their farmlands and homestead for over 200 years.

The final address of 1st and 2nd defendants is dated 30th May, 2024 and filed on 31st May, 2024. In the address, two issues were identified as arising for determination as follows:

- 1. Whether having regards to only the facts contained in the claimants amended statement of claim vis-à-vis the applicable principles of law, this suit discloses a reasonable cause of action against 1st and 2nd defendants.**

2. Whether the claimant has proved its case to entitle it to the reliefs claimed in the suit against 1st and 2nd defendants.

Submissions were equally made on the above issues which forms part of the Record of Court. On issue 1, the case made is simply that on the materials supplied by claimant in its claim in relation to the principles governing situation of a reasonable cause of action, that the present action does not disclose such cause of action against 1st and 2nd defendants and accordingly that the claims made against them be dismissed.

On issue 2, the case made out is with respect to the 1st and 2nd defendants, the claimant has not led credible evidence to support the reliefs sought against them and accordingly that the suit against them must equally fail.

The claimant's address is dated 8th July, 2024 and filed on 9th July, 2024. In the address two (2) issues were raised as arising for determination:

1. Whether the claimant is not the rightful owner of the land in issue.

2. Whether the claimant is not entitled to the grant of the Reliefs sought.

Submissions too were made on the above issues which forms part of the Record of Court. On issue 1, the case made out is that on the pleadings and by the evidence proffered particularly the documents of title to the disputed land tendered by claimant which was not challenged, that it has established that it is the rightful owner of the disputed plot.

On issue (2) and flowing from issue (1), it was contended that having established clear ownership of the disputed plot, it is entitled to all the Reliefs claimed in the action.

I have given a careful and insightful consideration to the issues as identified by parties and except for the question of reasonable cause of action raised by 1st and 2nd defendants which I will treat separately as a threshold issue, all the other questions or issues raised pivots on the same question of whether the claimant has established its case on the balance of probability to entitle it to any or all of the Reliefs claimed. In resolving this issue, the sub issue or question of the status of indigenous ownership of land in the FCT has again reared its head and will be addressed as it forms the fulcrum of the defence of 3rd – 5th defendants in asserting their legal rights to the disputed plot.

This been so, the issue for determination in this case can be encapsulated under one single issue as follows:

“Whether the claimant has established its claims on a preponderance of evidence to entitle it to any or all of the Reliefs claimed.”

This issue in the courts opinion conveniently covers all the issues raised by parties and fully captures the pith or crux of the grievance submitted for resolution. The issue raised by court is thus not raised in the alternative but cumulatively with the issues raised by parties. See **Sanusi V Amoyegun (1992) 4 NWLR (pt.237) 527.**

It is on the basis of the above issue and the sub-issue I had earlier situated that I would now proceed to resolve the contested assertions presented by this case. In furtherance of the foregoing, I have carefully read the final addresses of parties. I shall where necessary in the course of this judgment refer to submissions made and resolving whatever issues arising therefrom.

Now before dealing with this substantive issue, let me quickly deal with the question of want of reasonable cause of action made by 1st and 2nd defendants. There case is simply that the statement of claimant does not disclose a reasonable cause of action against them.

I think a fair take off point is to situate the import or what a reasonable cause of action denotes. It is a settled law that in deciding whether there is a reasonable cause of action, the determining factor is the Statement of Claim. The Court needs only to look at and examine the averments in the Statement of Claim of the Plaintiff. See **Ajayi Vs Military Admin. Ondo State (1997) 5 NWLR (pt.504) 237; 7up Bottling Co. Ltd Vs Abiola (2001) 29 WRN 98 at 116.**

In considering whether there exists a reasonable cause of action, it is sufficient for a Court to hold that a cause of action is reasonable once the Statement of Claim in a case discloses some cause of action or some questions fit to be decided by a Judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out. See **A-G (Fed.) Vs A-G Abia State & ors (2001) 40 WRN 1 at 52; Mobil Producing Nig. Unltd Vs LASEPA (2003) 1 MJSC 112 at 132.**

What then is a cause of action, which has to be reasonable failing which the Court would strike out the pleadings? The phrase cause of action has been given different definitions in a plethora of cases by our courts. It is however soothing that the array of definitions bear the same meaning and connotation. See the cases of **Egbe Vs Adefarasin (1987) 1 NWLR (pt.47) 1 at 20; Omotayo Vs NRC (1992) 7 NWLR (pt.234) 471 at 483.**

In **Akibu V Oduntan (2000) 13 NWLR (pt.685) 446 at 463**, the Supreme Court defined cause of action as:

“A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

- (a) The wrongful act of the Defendant which gave the Plaintiff his cause of complaint, and**
- (b) The consequent damage.”**

In so far as can be evinced from the Amended Statement of Claim, the fact or combination of facts on which the claimant has premised its right to sue seem to be as pleaded in paragraphs 2, 3, 6 – 16 of the statement of claim and the Reliefs sought. The alleged wrongful acts of 1st and 2nd defendants and the damage suffered by the claimant has been clearly set out in the said paragraphs of the statement of claim.

The case of claimant against 1st and 2nd defendants is that after it was duly allocated the disputed plot, the 1st and 2nd defendants allegedly wrongfully partitioned and allocated claimant’s same plot to Piwoyi indigenes represented by 3rd – 5th defendants who have moved on the land and erected structures consequent upon which the claimant seek to obtain redress by the declarations and orders sought in this action.

A statement of claim is said to disclose a reasonable cause of action when it sets out the legal right of the Plaintiff and the obligations of the Defendant. It must further set out the action constituting the infraction of the Plaintiff’s legal right or the failure of the Defendant to fulfill his obligation in such a way that if there is no proper defence, the Plaintiff will succeed in the relief or remedy which he seeks. See **Nwaka V Shell (2003) 3 MJSC 136 at 149, Ibrahim V Osim (1988) 3 NWLR (pt.82) 257 at 271 – 272.**

After a careful consideration of the statement of claim, I am satisfied that it has clearly set out the legal rights of the Plaintiffs and the obligation of the 1st and 2nd Defendants. It has further set out the failure of the 1st and 2nd Defendants to meet its obligations. The Statement of Claim clearly discloses a reasonable cause of action. It discloses questions fit to be decided by a Court. At the risk of prolixity, any perceived weakness of the Plaintiff's case is not a relevant consideration when the question is whether or not the statement of claim has disclosed a reasonable cause of action.

The fact that learned counsel to the 1st and 2nd defendants perceives and has indeed submitted that the claimant's action is bound to fail is no ground to strike the action out. No. The contention that a reasonable cause of action was not situated or disclosed clearly will not fly. It is discountenanced.

Now to the substance, I had at the beginning of this judgment situated the Reliefs sought by claimant which puts ownership of Plot No. 299, hereinafter referred to as the disputed plot as the fulcrum of the courts inquiry. The related and ancillary Reliefs of trespass, injunction and damages for trespass etc all have bearing with the issue of proof of ownership of the disputed plot. That being so, the claimant has the evidential burden of proving its claims and succeeding on the strength of its case as opposed to the weakness of the case of the adversary. See **Kodilinye V Odu (1935) 2 WACA 336 at 337; Fagunwa V Adibi (2004) 17 NWLR (pt.903) 544 at 568; Nsirim V Nsirim (2002) 12 WRN 1 at 14.**

This principle is however subject to the qualification that a claimant is entitled to take advantage of any element in the case of his opponent that strengthens his own cause. What this means is that it is not enough to merely assert that the case of the opponent is weak; there must be something of positive benefit to the claimant in the case of the opponent. See **Uchendu V Ogoni (1999) 5 N.W.L.R (pt.603) 337.** Accordingly, it is important to add that where the claimant fails to discharge the onus cast on him by law, the weakness of the case of the opponent will not avail him and the proper judgment is for the adversary or opponent. See **Elias V Omo-Bare (1982) NSCC 92 at 100 and Kodilinye V Odu (supra).**

It is therefore to the pleadings which has precisely streamlined the issues and facts in dispute and the evidence led that we must now beam a critical judicial search light in resolving these contested assertions.

I had also at the beginning of this judgment identified the **pleadings** filed by parties. I shall in the course of this judgment refer to specific paragraphs of the pleadings, where necessary to underscore any relevant point. Indeed in this judgment I will deliberately and *in extenso* refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act**. By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act**. It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

Being a matter involving disputation as to title to land, it is also important to situate the **five independent** ways of proving title to land as expounded by the Supreme Court in **Idundun V Okumagba (1976) 9 – 10 SC 221** as follows:

1. Title may be established by traditional evidence. This usually involves tracing the claimant's title to the original settler on the land in dispute.
2. A claimant may prove ownership of the land in dispute by production of documents of title. A right of occupancy evidenced by a certificate of occupancy affords a good example.
3. Title may be proved by acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant an inference that the claimant is the true owner of the disputed land. Such acts include farming on the whole or part of the land in dispute or selling, leasing and renting out a portion or all of the land in dispute.
4. A claimant may rely on acts of long possession and enjoyment of land as raising a presumption of ownership (in his or her favour) under **Section 146 of the Evidence Act**. This presumption is rebuttable by contrary evidence,

such as evidence of a more traditional history or title documents that clearly fix ownership in the defendant.

5. A claimant may prove title to a disputed land by showing that he or she is in undisturbed or undisputed possession of an adjacent or connected land and the circumstances render it probable that as owner of such contiguous land he or she is also the owner of the land in dispute. This fifth method, like the fourth, is also premised on **Section 146 of the Evidence Act**.

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131**. These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title to succeed but he is eminently entitled to rely on more than one root of title. See **Ezokuwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252**.

It is also important to state that some of the critical Reliefs claimed by claimant are **declaratory** in nature. That being so, it is important to state that in law, declarations are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262**.

The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

A convenient starting point since the disputed plot is within the Federal Capital Territory is to first situate from the pleadings of parties the situational dynamics relating to the relationship of parties, the allocations made and also determine the body responsible for the allocations in the FCT.

The claimant in paragraphs 2 and 3 of the claim pleaded thus:

“2. The claimant is the body established by law and empowered to oversee the development of the Federal Capital Territory (FCT) Abuja.

3. The 2nd defendant is the minister in charge of the FCT, Abuja and is conferred with the power to administer the lands in the FCT including the power to allocate.”

The 1st and 2nd defendants in **paragraph 1** of their defence admitted the above paragraphs. The 3rd – 5th defendants in their joint statement of defence in **paragraph 2** equally admitted paragraphs 2 and 3 of the statement of claim.

The implication of the positions taken by defendants particularly 3rd – 5th defendants is that no issue(s) were joined with respect to the averments in paragraphs 2 and 3 of the claim and accordingly there will be no requirement to prove those assertions.

The defendants in this case therefore all admit that the 2nd defendant is the Minister in charge of FCT and conferred with the powers to administer lands in the FCT including the power to allocate.

The point perhaps must be made now that a party is bound by his pleadings and cannot go outside it to lead evidence or rely on facts which are extraneous to those pleaded. See **Kyari V Alkali (2001) 11 NWLR (pt.724) 412 at 433-434 H-A.**

Indeed in every trial, pleadings and evidence adduced determine the outcome of the trial, for parties are bound by the case they put up before the court. The main reason for the insistence of filing of pleadings in all cases is to ascertain with as much certainty as possible the issues in controversy between the parties and to create a situation where none of the parties is caught by surprise. See **Agba V Civil Service Commission Nasarawa State (2011) 1 NWLR (pt.1229) 544 at 556 D-G.**

Flowing from the above, the next question that logically must arise is again on the basis of the pleadings and evidence, who did the 2nd defendant allocate the disputed plot 299?

The case of claimant from the pleadings vide **paragraphs 6, 7 and 11** of the claim are as follows:

“6.The Claimant avers that upon application to that effect, the 2nd defendant, by a document titled “Offer of Statutory Right of Occupancy” dated 14/10/2008 granted the Right of Occupancy (R-of-O)

over Plot 299, Cadastral Zone C00 of Institutions and Research, Abuja (hereinafter called “the property” or “the land”) to the Claimant. The property measures an Area of 1.62 Hectares. The “Offer of Statutory Right of Occupancy” is pleaded and shall be founded upon at the trial.

7. It is the averment of the Claimant that upon the grant of the R-of-O, it applied to the 1st and 2nd Defendants for the issuance of a Certificate of Occupancy (C-of-O) over its said property. And upon the payment of necessary fees and taking of all required steps, the 1st and 2nd Defendants granted Certificate of Occupancy (C-of-O) No. 187ew-17e75-7277r-ded0u-80 over the said Plot 299, Cadastral Zone C00 of Institutions and Research given under the hand of the 2nd Defendant. The C-of-O is pleaded and shall be founded upon at the trial.

11. The claimant also avers that the 2nd Defendant has never at any time whatsoever revoked the Claimant’s Right of Occupancy over the said land. Thus, Claimant’s title to the land is extant and subsisting.”

In proof of these assertions, the claimant through PW1 led unchallenged evidence in proof and tendered in evidence documents of title issued by the 1st and 2nd defendants evidencing these allocations to wit:

1. Offer of Statutory Right of Occupancy to the disputed plot 299 dated 14th October, 2008 admitted as Exhibit P2;
2. The Certificate of Occupancy to the disputed plot 299 signed by the 2nd defendant on 21st April, 2009 admitted as Exhibit P3.

The admitted allocating authorities of land in the FCT, the 1st and 2nd defendants did not deny, challenge or indeed join issues with the averments of claimants on the allocation and the documents of title to the plot streamlined above.

Indeed in paragraph 1 of their defence, the 1st and 2nd defendants equally **admitted** paragraphs 6, 7 and 11 of the Amendment Statement of Claim.

The allocating authority of lands in the FCT here unequivocally admits that the claimant applied and was granted the Right of Occupancy and upon the payment of necessary fees and taking all required steps, they granted claimant the **Certificate of Occupancy** over the disputed plot. The allocating authorities

also projected by this admission that they never revoked claimants title and that its title to the land is extant and subsisting.

The clear implication of this stated position is that **Plot 299** was never allocated to anyone or person beside **claimant**.

Now an admission in pleadings as made here by the sole authority which all parties in dispute agree is the allocating authority of all lands basically puts an end to the question of dispute as to the ownership of **Plot 299**. The 1st and 2nd defendants never made any **contrary averments to the allocation** of the disputed plot to 3rd – 5th defendants at anytime.

The point to underscore is that an admission in pleadings basically puts an end to proof. This is because by the admission, the parties particularly here, the allocating authorities or 1st and 2nd defendants, no more join issues on the matter of who was allocated the plot as between claimant and 3rd – 5th defendants. Since proof presupposes a dispute and since admission drowns the element of dispute, proof in this case really become superfluous. See **Akaninwo & ors V Nsirim & ors (2009) 9 NWLR (pt.1093) 439**.

The claimant here still went ahead, out of caution to lead credible evidence and tender the allocations. The evidence of claimant vide PW1 on these allocations was not **challenged** or **controverted** by any other admissible evidence and the court is thus bound to accept and act on it and ascribe probative value to it. See **Adeleke V Iyanda (2001) 13 NWLR (pt.729) 1 at 22-23**.

Indeed in law where material evidence given by a party to any proceedings was not challenged or rebutted by the opposite party which had the opportunity to do so, it is always open to the court seized of the matter to act on such unchallenged evidence before it. The implication is that it accepts the truth of that matter as led in evidence. See **Insurance Brokers of Nigeria V ATMN (1996) 8 NWLR (pt.466) 316 at 327 G**.

The bottom line here is that the claimant here has adduced satisfactory and unchallenged evidence situating its allocation; this evidence was wholly supported by the allocating authority. The 3rd – 5th defendants did not in evidence provide contrary rebuttal evidence in terms of producing their own allocation to the disputed plot by 1st and 2nd defendants, if any but in paragraphs **3-5** of their defence they pleaded as follows:

“3. The 3rd, 4th and 5th Defendants jointly deny paragraphs 4 to 8 of the plaintiff statement of claim and shall therein put the plaintiff to the strictest proof of the averments in the said paragraph of the statement of claim and further, states as follows:

4. That the Plaintiff is not the rightful owner of the entire land (the subject matter of the suit herein) situate at Piwoyi Village within jurisdiction of this Honourable Court by virtue of customary rights and dominance.

5. That the 3rd, 4th and 5th Defendants are the rightful owners of the land at Piwoyi (the subject matter of the suit herein), it is their ancestral land and have been in occupation of same as their farmlands and homestead for over 200 years.”

The defence here projects once again the vexed question of indigenous ownership of land in the FCT. The 3rd – 5th defendants therefore make no pretention to any allocation from the 2nd defendant which they acknowledge is the minister in charge of the FCT conferred with power to administer the lands in FCT including power to allocate lands. It would appear a contradiction in terms even at this early stage for the 3rd – 5th defendants to agree that the 2nd defendant superintends over the entirety of the lands in FCT with power to allocate and to at the same time contend that their claim to the disputed land is anchored on traditional title and as Gbagyi indigenes of Piwoyi have enjoyed long possession and enjoyment of their ancestral land in the same FCT.

Let us now situate the legal validity of this position as projected.

Happily the jurisprudence on the point particularly the status of indigenous ownership of land in the FCT appears fairly settled. The Constitution and applicable laws are clear and projects the unequivocal position that ownership of all lands comprised in the Federal Capital Territory vests absolutely in the Government of the Federal Republic of Nigeria.

Section 297 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 provides thus:

“297: Federal Capital Territory Abuja, ownership of lands

(1) There shall be a Federal Capital Territory, Abuja, the boundaries of which are as defined in part II of the first schedule to this constitution.

(2) The ownership of all lands in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria.”

The above provisions are clear and unambiguous. By the canons of statutory interpretation which include the constitution, a judge’s duty which is even a command on him, is to interpret the clear and unambiguous words according to their ordinary, natural and grammatical meanings and he must not add to or remove any words therefrom. The well established canons of interpretation requires that, if the intention of the framers of a statute or constitution must be ascertained, it can be from no other source than the words used by them in couching the provisions and it is there, their intention is entrenched. See **Action Congress V Independent National Electoral Commission (2001) 12 NWLR (pt.1048) 220 at 318 E-H.**

The provisions of **Section 297 (1) and (2)** in particular states clearly that ownership of all lands comprised in the FCT **shall** vest in the Government of the Federal Republic of Nigeria.

The word used in 297(2) is **shall** which in law is a word of command. It denotes obligation and gives no room to discretion. It imposes a duty and mandatoriness. See **Agip (Nig.) Ltd V Agip Petroleum Int’l (2010) 5 NWLR (pt.1187) 348 at 419 F-H; Environmental Development Construction & Anor V Umara Associates Nig. (2000) 4 NWLR (pt.652) 293 at 303.**

In the light of this clear constitutional provision, it is really difficult to situate the legal validity of the claims of ownership made by 3rd – 5th defendants hinged on traditional title or indigenou ownership of land in the FCT. See also **Sections 1(3) and 2 (1) of the Federal Capital Territory Act, Cap F6, Laws of the Federation 2004** which underscores the ownership of all lands in the FCT in the Federal Government.

Section 1 (3) of the Act provides thus:

“The area contained in the Capital Territory shall, as from the commencement of this Act, cease to be a portion of the States concerned and shall henceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the

Federal Capital Territory shall likewise vest absolutely in the Government of the Federation.”

The above provision is also clear and situates no equivocation or ambiguity whatsoever with respect to ownership of all lands in the FCT. The 3rd - 5th defendants in their final address advanced the position that under Nigerian Laws, that the minister must compensate indigenous communities before acquiring their ancestral lands. Reference was made to **Section 28 (1) of the FCT Act** and the provisions of **Section 29 (1) and (2) of the Land Use Act** on payment of compensation.

It is difficult to situate how these provisions have any application in the light of extant provision of **Section 6 of the FCT Act** which makes abundant provisions on the process or procedure for payment of compensation by the Federal Government to persons who claim any interest in the lands comprised in the Federal Capital Territory prior to the commencement of the Act in 1976. Specifically, **Section 6 (3)** thereof provides that **“any person who claims any right or interest in any land comprised in the Federal Capital Territory shall submit, in writing, particulars of his claims to the Executive Secretary on or before the expiration of twelve months from the date of commencement of the order made under Section 2 of this Act or such longer period as the President may, either generally or in relation to any particular claim or claims, prescribe by notice published in the Federal Gazette.”** What I understand this to mean is that all forms of indigenous ownership in respect of the lands comprised in the Federal Capital Territory under the pre-existing land tenure systems became extinguished with effect from 4th February, 1976 when the ownership thereof became absolutely vested in the Federal Government of Nigeria. To make assurance doubly sure and remove every iota of doubt (especially in relation to the status of the FCT Act vis-à-vis **Section 44 of the Constitution** on the imperative of prompt payment of compensation upon compulsory acquisition of land), the Constitution provides in clear unambiguous terms that all lands comprised in the FCT are vested in the Federal Government without any qualifications whatsoever. It being so, anyone (including the defendants herein) who claims any right or interest in any land comprised in the Federal Capital Territory (including the expanse of land situate at Piwoyi village) was required to submit their claims for compensation in writing to the appropriate authority before the expiration of twelve (12) months from the date the boundaries of the Federal Capital

Territory by reference to the limits, distances and bearings were defined by an Order published in the Federal Gazette.

Section 6 (4) of the FCT Act then situates clearly the provision that **“No claim for compensation shall be entertained by the authority unless a written notice of the claim in accordance with subsection (3) of this section is served on the Authority within the period specified in the said subsection.”**

There was therefore a clear time sensitive criteria or threshold for the claim for compensation to be made by the 3rd – 5th Defendants.

The 3rd – 5th defendants cannot by any stretch of the imagination be said to have met this time streamlined sensitive time frame. It may be argued flowing from Section 6 (3) that no order defining the limits, distances and bearings of the Federal Capital Territory has been published in the Federal Gazette and that they are still within time to seek compensation. It seems to me however that the question of whether or not any such Order has been published in the Federal Gazette seems to me rather academic. This is so because the boundaries of the Federal Territory are clearly outlined and delineated in Part II of the 1st Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which is the grundnorm with unquestionable superiority over any Order required to be published in the Federal Gazette under the FCT Act. It therefore constitutes an act of blatant impunity, if not flagrant disregard for the extant provisions of the 1999 Constitution and the FCT Act, for the 3rd – 5th Defendants to continue to assert indigenous ownership over any land in Piwoyi village including Plot 299, which is an integral part of the Federal Capital Territory on the basis that no compensation has been paid by the Federal Government of Nigeria. It has been held that no one can acquire title to any land situate within the Federal Capital Territory without an allocation or grant by the appropriate authority i.e. the Honourable Minister of FCT. See **Madu V Madu (2008) 6 NWLR (Pt.1083) 296 at 324 – 325.**

Now even if it is argued that no order defining the limits, distances and bearings of the Federal Territory has been published in the Federal Gazette such that the 3rd – 5th Defendants are still within time to seek compensation, and they feel aggrieved about the vesting of their ancestral land in the Federal Government of Nigeria without payment of compensation as alleged, I take the considered view that the option open to them is to take out an appropriate action against the Federal Government of Nigeria with a view to voiding the vesting of the lands

comprised in the FCT. That is what happened in the case of **Attorney General of Bendel State V Aideyan (1989) 4 NWLR (pt.118) 646**, therefore until the 3rd – 5th Defendants file and succeed in such an action, they cannot validly insist that the lands comprised in Piwoyi village, including Plot 299 remains their ancestral land.

The 3rd – 5th defendants also submitted that they have been in possession and that the claimant has not made out a case of trespass. With great respect, that argument is a misconception of the legal incidents of a trespasser in possession of a piece of land the title of which vests in another. The law is settled that a person who has title to land even if he is not in actual *de facto* possession is deemed in the eyes of the law to be the person in possession. This is because the law attaches possession to title and ascribes it to the person who has title. Such possession is known as constructive possession or *de jure* possession. Conversely, a trespasser, though in actual possession of the land is regarded in law not to be in any possession at all since he cannot by his own wrongful act acquire any possession recognised or recognizable at law. The legal principle is that where there are rival claimants to possession of a piece of land, the law ascribes possession to the party who has a better title. See **Carrena & Anor V Arowolo (2008) 6 – 7 SC (pt.1) 66 at 84 – 85 per Tabai, JSC, Ekretsu V Oyobebere (1992) 9 NWLR (pt.266) 438 and Aromire V Awoyemi (1972) All NLR 105 at 115 – 116.**

In the case at hand, the claimant has traced its root of title to the Minister of FCT without whose approval no one can acquire land in the FCT. See **Madu V Madu (Supra)**. Thus, even if the 3rd – 5th Defendants are in actual possession of the land in dispute, since no title resided in them at all material times, the 3rd – 5th Defendants cannot but be held to be trespassers in relation to the claimant who has a better title. In such a circumstance, a claim for delivery up of physical possession, damages for trespass to land and injunction would lie at the suit of the claimant.

On the evidence, nothing was proffered projecting that the 1st and 2nd defendants are the ones on the land or that they had any hand in putting 3rd – 5th defendants on the disputed Plot 299. Indeed on the pleadings and evidence, they affirmed the ownership of claimant over the disputed plot 299. The claim for trespass will only enure in favour of claimants against 3rd – 5th defendants who on the

evidence appear to be responsible for the interference with the claimant's ownership and possession of the disputed plot 299.

The above findings provide broad, factual and legal template to now determine whether the Reliefs claimed by claimant are availing.

On the basis of the findings demonstrated above situating the ownership of the disputed Plot 299 residing with claimant, **Relief (a)** succeeds.

With the success of Relief (a), **Relief (b)** is also availing against 3rd- 5th defendants in recognition of the claimant's ownership of the disputed Plot 299.

Relief (c) is not availing. No evidence was proffered to situate or support the claim that 1st and 2nd defendants have interfered with claimant's possession of the disputed plot and that they have resettled Piwoyi indigenes represented by 3rd – 5th defendants on the disputed plot 299.

With the success of **Reliefs (a) and (b)**, **Relief (d)** will also be availing against 3rd – 5th defendants. The unchallenged evidence situates ownership of the disputed plot in claimant. Any acts of interference by the 3rd – 5th defendants on the plot constitutes acts of trespass and thus unlawful.

Having recognised the claimant's ownership of the plot via Relief (a) **Relief (e)** will be only granted on terms as streamlined hereunder.

Reliefs (f) and (g) are in substance the same reliefs of **injunction** even if framed differently. The Reliefs have merit to secure the proprietary rights of the claimant to the disputed plot 299. The court will however grant or make injunctive orders that will cover both reliefs hereunder.

Relief (h) for N250, 000, 000.00 as general damages for trespass is obviously against 3rd – 5th defendants.

Let me again perhaps situate what constitutes trespass to land. Trespass to land constitutes the slightest disturbance to the possession of land by a person who cannot show a better right to possession. See **Imona-Russel V. Niger Construction Ltd (1987)3 N.W.L.R (pt.60)298SC; Ojomo V. Ibrahim (1999)12 N.W.L.R (pt.631)415 at 417 CA.**

Trespass to land is actionable at the instance of the person in possession. Exclusive possession gives the person in possession the right to retain the land and to undisturbed possession of it against all wrong doers except a person who can established a better title. The key phrase here is a **better title**. See **Agu V. Nnadi (1999)2 N.W.L.R (pt.589)131 CA; Adepoju V. Oke (1999)3 N.W.L.R (pt.594)154.**

Now on the pleadings and evidence, there is no doubt the claimant has established that it is the owner of the disputed plot 299 and in possession even though nothing was demonstrated in evidence on any specific acts of possession taken like building a fence, farming, fixing pegs on the land etc were carried out.

On the evidence however, the 3rd – 5th defendants have not denied that they are on this plot on the basis of been indigenes and traditional and customary owners of the specific plot 299 and the Piwoyi District which they say remains their ancestral land. Beyond this admission, nothing was however presented in evidence by claimant to support that structures were erected on the said Plot 299 and the court cannot speculate. No pictorial evidence, for example was tendered to situate any structure built by 3rd – 5th defendants on the claimants plot. The bottom line is that nothing was presented by claimant to situate the various acts of trespass pleaded in the statement of claim.

On the whole, the claimant is certainly entitled to some measure of damages in recognition of the acknowledged trespass by 3rd – 5th defendants but I do not see from the pleadings and evidence how the sum of **N250, 000, 000** claimed as general damages can be justified under the circumstances. As stated earlier, apart from the unchallenged evidence that 3rd – 5th defendants are on the land even if the nature of the acts of trespass was not established, I am unable to find the basis for the huge sum claimed. It is important to point out that general damages are not awarded as a matter of course but on sound and solid legal principles and not on speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

Finally I only need to add that on the authorities, damages in a case of trespass should be nominal to show the courts recognition of the plaintiff's proprietary

right over land in dispute. If the plaintiff as in this case wanted more damages, they should claim it under special damages which they should properly plead and prove. See **Madubonwu V. Nnalue (1992)8 N.W.L.R (pt.260)440 at 455 B-C; Armstrong V. Shippard & Short Ltd (1959)2 All ER 651.**

The N250, 000, 000 claim for damages is not availing. The sum of N200,000 will in the court's opinion be reasonable as general damages against 3rd – 5th defendants in the circumstances.

Finally on cost, I incline to the view that claimant is entitled to cost of this action. The Rules of court pursuant to **Order 56 Rule 3** provides for the principle to be observed in fixing costs. I am obliged to take into consideration the imperative of indemnifying the claimant for the expenses to which it was subjected, in addition to offering some compensation for the time and effort expended in prosecuting this action.

In the final analysis and for the avoidance of doubt, the sole issue raised is resolved substantially in favour of claimant and judgment is hereby entered in the following terms:

- 1. It is hereby DECLARED that the title to the property known as Plot No. 299 Cadastral Zone C00, Institutions and Research, Abuja covered by Certificate of Occupancy No. 187ew-17e75-7277r-ded0u-80 measuring an area of 1.62 Hectares (the Land) given under the hand of the Minister of the Federal Capital Territory, Abuja in favour of African Heart Hospital Ltd (Claimant herein) subsists and resides in the said African Heart Hospital Ltd.**
- 2. It is hereby DECLARED that the 3rd – 5th Defendants have no right or power to enter upon the claimant's said land without claimant's consent for whatever purpose.**
- 3. It is hereby DECLARED that the acts of 3rd – 5th Defendants in entering upon the claimants land amounts or constitutes acts of trespass and is unlawful.**
- 4. It is hereby ORDERED that the 3rd – 5th Defendants deliver possession of the said Plot 299 Cadastral Zone C00, Institutions and Research Abuja forthwith to Claimant, failing which, the Claimant shall take Lawful steps to eject them from the said Plot.**

5. The 3rd – 5th Defendants, whether acting by themselves or through their agents, servants, privies or otherwise however are hereby restrained from trespassing into, entering upon, interfering with or acts capable of affecting the lawful and subsisting title or interest of claimant over the said Plot 299, Cadastral Zone C00, Institutions and Research Abuja, covered by Certificate of Occupancy No. 187ew-17e75-7277r-ded0u-80 save in accordance with law.
6. The 3rd – 5th Defendants are Ordered to pay the sum of N200, 000 as General damages for trespass in favour of Claimant.
7. Pursuant to Order 56 Rule 3 of the Rules of Court, I assess the cost of this suit in the sum of N50, 000.

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Hon. Justice A.I. Kutigi

Appearances:

1. *Godwin N. Chigbu, Esq. for the Claimant.*
2. *Jamila Ifunanya Okeke for the 1st and 2nd Defendants.*
3. *Mwansal Michael Hirse, Esq., for the 3rd – 5th Defendants.*