

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU  
SUIT NO: FCT/HC/CV/2503/2024  
DELIVERED ON THE 06/05/2025**

**BETWEEN:**

- 1. CHIEF LARRY EKWUNIFE
- 2. ALHAJI BAIRO A. MARIAMA

} .....CLAIMANTS

**AND**

- 1. HONOURABLE MINISTER, FEDERAL CPITAL TERRITORY ABUJA
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
- 3. ABUJA GEOGRAPHIC INFORMATION SYATEMS
- 4. FUNCAN TECHNOLOGY LIMITED
- 5. HALIWAYS GLOBAL LINK LIMITED

} .....DEFENDANTS

**JUDGMENT**

The Claimants filed this suit by way of an originating summons predicated essentially for the purpose of interpreting sections 5(1)(a), 9(1)(c) and 28 of the Land Use Act, Cap. L5 LFN 2004. The originating summons dated the 16<sup>th</sup> day of May, 2024 and filed on the 17<sup>th</sup> day of May, 2024 is supported by a twenty-seven (27) paragraphs affidavit deposed to by the 1st Claimant, Chief Larry Ekwunife. The Defendants who were duly served with the processes of this Honourable Court only filed a Memorandum of Conditional appearance on the 30/01/25 after having applied and obtained the order of this court to do so out of time.

The Claimants urged this Honourable Court to determine the following questions:

- 1. Whether having regard to the Offer of Statutory Right of Occupancy dated 18th of April, 2003 and the Certificate of Occupancy No. 2654w-3a9ez-62d4r-eea2u-10 dated 17th July, 2006 issued by the Hon. Minister of Federal Capital Territory in respect of the property known as Plot No. 2815, Cadastral Zone A04, Asokoro, Abuja measuring 1,825m<sup>2</sup> and covered by file No. LA 10316, vis a vis the provisions of sections 5(1)(a) and 9(1)(c) of the Land Use Act, Cap L5, LFN 2004, the 1st Claimant is not the allottee and the person vested with the Statutory Right of Occupancy in respect of the property.**
- 2. Whether having regard to the provisions of sections 5(1)(a), 9(1)(c) & 28 of the Land Use Act, Cap L5, LFN 2004, the 1st Defendant can after it has allocated to the 2nd Claimant, re-allocate to the 5th Defendant or any other person, plot No. 2815, Cadastral Zone A04, Asokoro, Abuja when the 2nd Claimant's Statutory Right of Occupancy in respect of the property as evidenced by Certificate of Occupancy No. 2654w-3a9ez-62d4r-eea2u-10 dated 17th July, 2006 has not been revoked.**
- 3. Whether having regard to the provisions of Section 5(1)(a), 9(1)(c) & 28 of the Land Use Act, Cap L5, LFN 2004, the 1st, 2nd and 3rd Defendants can during the subsistence of the statutory right of Occupancy granted to the 2nd Claimant in respect of the property known as plot No. 2815, Cadastral Zone A04, Asokoro, Abuja evidenced by Certificate of Occupancy No. 2654w-3a9ez-62d4r-eea2u-10**

dated 17th July, 2006 deal with or recognize any other person including the 4th and 5th Defendants, not being persons deriving title from the 2nd Claimant as the owner of the aforesaid property.

4. Whether having not revoked the 2nd Claimant's title to the property known as plot No. 2815, Cadastral Zone A04, Asokoro, Abuja in accordance with section 28 of the Land Use Act, the subsequent allocation to the 5th Defendant of the same property by virtue of Letter of Offer of Statutory Right of Occupancy dated 08/08/2012 and evidenced in Certificate of Occupancy No. 4bauw-15496-55clr-71b6u-6ul dated 8th June 2016 and registered as No. 55540 at page 1 in volume 278 of the Certificate of Occupancy Register in the Lands Registry Office at Abuja is not invalid, null and void and of no effect whatsoever.
5. Whether having regard to the Deed of Assignment and Irrevocable Power of Attorney executed by the 2nd Claimant in favour of the 1st Claimant, it is the 1st Claimant and not the 4th Defendant who is entitled to register and perfect his interest in and title to the property known as Plot No. 2815, Cadastral Zone A04, Asokoro, Abuja with the 1st, 2nd and 3rd Defendants.

Upon answering the foregoing questions in the affirmative, Claimants claim against the Defendants as follows:

1. *A Declaration that having regard to the Offer of Statutory Right of Occupancy dated the 18<sup>th</sup> of April, 2003 and the Certificate of Occupancy No. 2654w-3a9ez-62d4r-eea2u-10 dated 17<sup>th</sup> July, 2006 issued by Hon. Minister of Federal Capital Territory in respect of the property known as plot No.*

2815, Cadastral Zone A04, Asokoro, Abuja measuring 1,825.23m<sup>2</sup> and covered by File No. LA 10316, vis a vis the provisions of sections 5(1)(a) and 9(1)(c) of the Land Use Act, Cap L5, LFN 2004, the 1st Claimant is the allottee and the person vested with the statutory right of Occupancy in respect of the property.

2. **A Declaration** that having regard to the provisions of sections 5(1)(a), 9(1)(c) & 28 of the Land Use Act, Cap L5, LFN 2004, the 1st Defendant cannot after it had allocated to the 2nd Claimant, re-allocate to the 5th Defendant or any other person, plot No. 2815, Cadastral Zone A04, Asokoro, Abuja when the 2nd Claimant's Statutory Right of Occupancy in respect of the property as evidenced by Certificate of Occupancy No. **2654w-3a9ez-62d4r-eea2u-10** dated 17<sup>th</sup> July, 2006 has not been revoked.
3. **A Declaration** that having regard to the provisions of sections 5(1)(a), 9(1)(c) & 28 of the Land Use Act, Cap L5, LFN 2004, the 1st, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants cannot during the subsistence of the statutory right of Occupancy granted to the 2nd Claimant in respect of the property known as plot No. **2815**, Cadastral Zone **A04**, Asokoro, Abuja evidenced by Certificate of Occupancy No. **2654w-3a9ez-62d4r-eea2u-10** dated 17<sup>th</sup> July, 2006, deal with or recognize any other person including the 4th and 5th Defendants, not being persons deriving title from the 2<sup>nd</sup> Claimant, as the owner of the aforesaid property.
4. **A Declaration** that having not revoked the 2nd Claimant's title to the property known as plot No. **2815**, Cadastral Zone **A04**, Asokoro, Abuja, in accordance with section 28 of the Land Use Act, the subsequent allocation by the 1st Defendant to the 5th Defendant of the same property by virtue of Letter of Offer of

*Statutory Right of Occupancy dated 08/08/2012 and evidenced in Certificate of Occupancy No. **4bauw-15496-55clr-71b6u-6ul** dated 8<sup>th</sup> June 2016 and registered as No. 55540 at page 1 in Volume 278 of the Certificate of Occupancy Register in the Lands Registry Office at Abuja is invalid, null and void and of no effect whatsoever.*

- 5. A **Declaration** that having regard to the Deed of Assignment and Irrevocable Power of Attorney executed in favour of the 1<sup>st</sup> Claimant by the 2<sup>nd</sup> Claimant whose title to plot No. **2815** Cadastral Zone A04, Asokoro, Abuja has not been revoked till date, it is the 1<sup>st</sup> Claimant and not the 4<sup>th</sup> Defendant who is entitled to register and perfect his interest in and title to the property known as Plot No. **2815**. Cadastral Zone **A04**, Asokoro, Abuja with the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.*
- 6. An **order** nullifying/setting aside the Letter of Offer of Statutory Right of Occupancy dated 08/08/2012 and the Certificate of Occupancy No. **4bauw-15496-55clr-71b6u-6ul** dated 8<sup>th</sup> June 2016 and registered as No. **55540** at page 1 in Volume 278 of the certificate of Occupancy Register in the Lands Registry Office at Abuja granted to the 5<sup>th</sup> Defendant.*
- 7. An Order compelling the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant to recognize the 2<sup>nd</sup> Claimant as the rightful allottee in respect of plot No. **2815**, Cadastral Zone A04, Asokoro, Abuja and to allow the 1<sup>st</sup> Claimant, upon fulfilment of the requirements and payment of the prescribed fees, to register/perfect his interest in the property.*
- 8. An Order of perpetual injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, their servants, agencies, officials, staff, representatives or any other person(s) connected to them from*

*dealing with or recognizing the 4th and 5th Defendants as owners of Plot 2815, Asokoro Cadastral Zone A04, Abuja.*

*9. An order of perpetual injunction restraining the 4th and 5th Defendants, their servants, officers, staff, representatives or any other person(s) connected to them from interfering with or disturbing the Claimants' ownership or possession of plot 2815, Asokoro Cadastral Zone A04, Abuja.*

In accordance with the Rules of this court the Applicant's 27 paragraph affidavit in support of the application states his name and his own description, reliefs as well as the question of law that he urges this Honourable Court to determine as it relates to the facts of this case. The Deponent, Chief Larry Ekwunife, the 1st Claimant lives at Plot 2460, off Danjuma street, Asokoro Extension, Abuja. He also described the 1st to the 5th Defendants in paragraphs 2 - 4 of his supporting affidavit. The supporting affidavit is also accompanied with various exhibits described as Exhibits **A1, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 4C, 4D, 5(a) - (d), Exhibits 6, 7, 8, 9 & 10** respectively. The learned counsel to the Claimants equally adopted his written address as his oral argument in support of the application.

The respective documents attached and described as Exhibits **1 - 10** include certified true copy of the land application form dated 02/02/2006 and the Revenue collector's Receipt for the application as Exhibits **1A** and **1B**. The Certified true copy of the letter of Offer of Statutory Right of Occupancy and the acceptance letter of the 2nd Claimant as exhibits **2A** and **2B** respectively. Equally attached are the Certified true copy of the search Report dated the 7th July, 2006 and the Certified true copy of the Acknowledgement issued upon the submission of the documents for the re - certification dated the 14th March, 2006 as exhibits **3A** and **3B** respectively. In the same

vein, the copies of Deed of Assignment, Irrevocable Power of Attorney, Letter of Authority to collect Certificate of Occupancy dated the 13th July, 2006 as well as application for consent to assign the Land are also marked as exhibits 4A, 4B, 4C and 4D respectively. Also marked as exhibit 6 is the Certified True Copy of the Land title document with Certificate Number, **2654w-3a93z-62d4r-eea2u-10** dated the 17<sup>th</sup> July, 2006 and registered as No. 16894 at pg 16894 in vol. 84 of the Certificate of Occupancy Register which was issued to the 2nd Claimant. There are also other exhibits such as Exhibits 5(a) - 5(d) and 8 which are copies of various receipts of payment made in respect of the land in issue by the Claimants. Similarly, Exhibit 7 is a copy of the correspondence from the counsel for the 1st Claimant to the Director of Lands Abuja in respect of the Land in issue.

Above all, exhibits 9 and 10 are copies of letter of offer of Statutory Right of Occupancy issued by the 1st Defendant to the 5th Defendant on the 8th August, 2012 and the Certificate of Occupancy No. 4bauw-15496-55clr-71b6u-6ul dated the 8th June, 2016 and registered as No. 55540 at pg 1 in Volume 278 of the Certificate of Occupancy Register in the lands Registry office at Abuja by which the 5th Defendant was allocated the land. The Claimant argued that the allocation to the 5th Defendant of the same plot of land earlier allocated to the 2nd Claimant is illegal and that there is no legitimate allocation or assignment of the same land to the 4th Defendant. He therefore prayed this court to intervene to enable the Claimant perfect his title to the land and interest in the land.

The 1st to 3rd Defendants on the other hand filed a four (4) paragraphs counter affidavit on the 30th day of January, 2025 by which they contended that the Claimants are not the rightful owners

of the property, the subject matter of this suit. The Defendants in their counter affidavit, particularly paragraph 3(e)(i) states as follows:

**(i) That Plot No. 2815, Cadastral Zone A04, Asokoro District, measuring about 2,800sm with file No. LA 10316 was allocated to one Bairo Mariama on the 4th day of April, 2003.**

**(ii) That the allottee submitted his Right of Occupancy (R of O) for recertification sometimes on 14th March, 2006.**

**(iii) That the allottee's title documents were found to be fake/forged.**

**(iv) As a result, the title over the said plot No. 2815, Cadastral Zone A04, Asokoro District, measuring about 2,800sm with file No. LA10316 was revoked.**

**(v) File report showing details of the above is attached and marked as Exhibit A.**

**(vi) That the Claimants are contesting title to the property, the subject matter of this suit.**

**(vii) That the facts of this case are hostile and evidence needs to be taken to determine the issue of title and therefore this suit ought to have been commenced by a writ of summons and not by originating summons.**

However, in a further reply to the 1st, 2nd and 3rd Defendants counter affidavit, the Claimants in paragraph 5(iv)(v) and (vi) deposed to the following facts, namely:

**(iv) Contrary to paragraph 3(f), the 1st, 2nd and 3rd Defendants did not follow due steps in revoking my title as I did not receive any notice of such from their office in line with the lawful process.**

**(v) The file Report in Exhibit A of the 1st, 2nd and 3rd Defendants counter affidavit shows that the Caveat there is "suspected forgery, under investigation" but it is not a conclusion that it was forged but rather a suspicion. The 1st, 2nd and 3rd Defendants have not shown any final report concluding that it is forgery.**

**(vi) I was never informed of any case of forgery of the title documents in respect of the land.**

This Honourable Court has taken the pains to reproduce some salient depositions made by the respective parties with a view to arriving at a reasonable determination as to whether or not the facts of this case are hostile and requires oral evidence from the parties or not.

It is therefore necessary to consider in due course the content of paragraphs 2, 6, 7, 20, 23 and 25 of the Claimants affidavit in support of this suit, paragraphs 3(d) - (g) and (j) of the counter affidavit of the 1st to 3rd Defendants and paragraph (5(iv) to (vi)) of the further reply of the Claimants respectively so as to elicit the position of the law as to whether or not this suit as presently constituted can rightly be entertained by this Honourable Court. It is clear from the aforementioned depositions by the parties that issues were essentially joined as far as the subject matter of this suit is concerned.

In the meantime, in arguing the case for the Claimants as contained in his written address which was adopted along with that of the learned counsel for the Defendants on the 25th February, 2025, the learned counsel for the Claimants, Dr. OBINNA ONYA Esq formulated a lone issue for determination by this court, to wit:

**"Whether upon a proper construction of the relevant instruments, the facts in the affidavit and other exhibits placed before the court, the Claimants are entitled to the declaratory and injunctive reliefs sought".**

The learned counsel referred to the case of **ORIANZI V. A.G RIVERS STATE (2017) 6 NWLR (pt. 1561) pages 268 - 269 Para H - C** where the Supreme Court held that:

**" where there is a subsisting Right of Occupancy it is good against any other right, therefore, the grant of another right of Occupancy over the same piece of land will be merely illusory and invalid.....only the valid and effective revocation of the Appellant's right of Occupancy could ensure that the subsequent right of Occupancy evidenced by Exhibit D4 was valid in law".**

He further referred to the case of **OLOMODA V. MUSTAPHA (2019) 6 NWLR (pt. 678) pg 52 para E - G** where the Supreme Court also held that:

**"In exercising the Governor's power of revocation there must be due compliance with the provisions of the act, particularly with regard to giving adequate notice of revocation to the holder whose name and address are well known to the public officer acting on behalf of the Governor".**

The learned counsel therefore submitted that this Honourable Court should hold that the title documents of the Claimants are still subsisting having not been duly revoked as required by the law. He also submitted that the 5th Defendant who was purportedly reallocated the said plot had no valid title and couldn't have validly transferred same to the 4th Defendant. He again, referred this court to the case of **MALAMI V. OHIKHUARE (2019) 7 NWLR (pt. 1670) ph 132 at pg 179 Para E - F** where the Apex Court held thus:

**"For a certificate of Occupancy or any document of title to land under the Land Use Act, 1978, to be therefore valid, there must not be in existence at the time the Certificate was issued, a statutory or customary owner of the land in issue who was not divested of his legal interest to the land prior to that grant".**

On the necessity for a valid notice of revocation to be served on the holder of the right of Occupancy the learned counsel referred to the case of **DANTSOHO V. MOHAMMED (2003) 6 NWLR (pt. 817) pg 457** where it was held that:-

**"In the instant case, there is no evidence that the 1st appellant was given notice as required by section 28 of the Land Use Act. The purported right of Occupancy is null and void. The 1st appellant's statutory right of Occupancy over the disputed land is subsisting and remains valid".**

In the same vein, he argued that since the title of the 2nd Claimant was never revoked in accordance with the provisions of the Land use Act, the 5th Defendant couldn't have transferred any valid title to the 4th Defendants.

The supreme Court in the case of **BAC ELETRICAL CO. LTD V. ADESINA (2020) 14 NWLR (pt. 1745) pg 548 at pages 569 - 570** equally referred to its earlier decision in the case of **ALHAJI GONI KYARI V. ALAAJI CHIROMA ALKALI (2001) LPELR - 1728 (SC) OR (2001) 11 NWLR (PT. 724) PG 412** where the law was re-stated that

**"that mere issuance of Certificate of Occupancy (as exhibited in Exhibit 10 in the instance case) does not and cannot confer title in respect of the land in dispute where no valid title existed or was available to be transferred. The Certificate of Occupancy is merely a prima facie evidence of the title to the land it covers and no more. It does not Ipso Facto convey title nor revoke and take away an existing title".**

In arguing the Claimant's reply to the 1st, 2nd and 3rd Defendants counter affidavit the learned counsel to the Claimant's submitted that where facts are in dispute documents can be used to resolve the conflict. He therefore submitted that the documents exhibited by the parties can be used to resolve this case instead of ordering the parties to exchange pleadings as is being canvassed by the Defendants. He referred to the case of **UGWUEGEDE V. ASADU (2018) 10 NWLR (pt. 1628) 460 pg 477 Para D - E** where the Apex Court held:

**"Documentary exhibits ex facie speak for themselves. Oral evidence cannot be allowed to add or subtract from or alter or contradict a written document".**

According to the learned counsel to the Claimants, where facts are in dispute and the documents can be used to resolve the conflict, the

court can determine the matter under originating summons. He referred to the case of **ETIM V. OBOT (2010) 12 NWLR (pt. 1207) pg 108 at pages 156 - 157 para H - D** where it was thus:

**"The mere filling of a counter affidavit in response to the supporting affidavit of an originating summons does not automatically make the matter one in which oral evidence must be adduced and thereby necessitating the ordering of pleadings. Where the conflicts in the affidavit evidence of the parties are not material to the case or where the facts therein are inadmissible, the court is not saddled with the responsibility of calling oral evidence. Where the areas of conflict are so narrow and insignificant, the need to call oral evidence and thereby necessitating the ordering of pleadings will not arise. Also, where the conflict in the affidavit evidence can be resolved on available documentary evidence before the court, oral evidence need not be called and afortiori pleadings need not be ordered. This is because there is presumption of regularity in favour of documents more so, documents are the hangers of oral evidence".**

The learned counsel further submitted that the file report tagged as exhibit A of the 1st to 3rd Defendants' counter affidavit indicates that there was revocation, but that proof of revocation which is also documentary was never substantiated by any evidence of notice of revocation by the Defendants. He also submitted that the answers to the questions of the Claimants are in documents which the Claimants have provided while the 1st - 3rd Defendants have not exhibited anything concrete to substantiate their counter position. He therefore referred this Honourable Court to the case of **JEV V.**

**IYORTYOM (2014) LPELR 23000 (SC)** - where Okoro JSC held thus:

**"The general principle of law regarding conflict in affidavit in an originating summons Procedure is that where this is the case, the court should order for pleadings in order for the parties to lead evidence to resolve such conflicts. However where there are documents annexed to the affidavit of the parties which can be effectively used to resolve the seemingly conflicts, there would be no need to order for pleading and this is exactly what the learned trial judge did which was confirmed by the Court of Appeal".**

The learned counsel for the Claimants finally urged this Honourable Court to determine this suit as is presently constituted by way of originating summons proceedings and discountenance the position of the Defendants.

Similarly, the submission of the learned counsel for the Defendants, **IGBUBE COMFORT KAKA** Esq could briefly be summarised to the effect that two issues were formulated for determination by this Honourable Court, to wit:

**"1. Since the facts of the Claimant's originating summons as constituted are hostile and controversial being a claim for declaration of title to land, whether this suit ought to have been commenced by an originating summons rather than a writ of summons.**

**2. Whether this Honorable Court can grant the reliefs sought by the Claimants without trial to enable the court determine the competing right, interest and title of the parties involved in this suit.**

In arguing the above issues, the learned counsel for the Defendants submitted that the facts and circumstances of this case are controversial by nature being one for declaration of title to land, hence commencing this suit via an originating summons is wrong. He referred to paragraphs 5 - 25 of the supporting affidavit as containing mere facts that are not capable of proving issues that are of contested and hostile nature. He referred to the case of **ZAKARI V. MUHAMMAD (2017) 17 NWLR (pt. 1594) pg 181 at pg 193** where the Supreme Court held that:

**"Originating summons is a procedure where in the evidence is mainly by way of documents and there is no serious dispute as to their existence in the pleadings. It is usually heard on affidavit evidence and involves question of law rather than disputed issues of fact".**

The learned counsel submitted that the mere possession of title documents to a property is not conclusive proof of ownership of the said property to enable a court to grant declaration of title to property as is being sought by the Claimants in the instant case. He submitted further that the validity of the documents attached to the affidavit of the Claimants can only be ascertained by calling witnesses to testify in a witness box and be cross examined. The effect of the failure to commence this suit by a writ of summons, according to him, robs the court of its jurisdiction to entertain the matter and makes the matter incompetent before the court. He further submitted that this Honourable Court cannot grant the reliefs sought in this suit without hearing from the Defendants, particularly the 4th and 5th Defendants. He urged this court to dismiss the suit for being incompetent and lacking in merit for non-disclosure of any valid interest over the property, the subject matter of this suit.

Having thus analysed the various affidavits before the Court in respect of this suit it becomes necessary to evaluate same as they support the case of the parties.

As earlier mentioned in this judgment, paragraphs 2, 6, 7, 20, 23 and 25 of the Claimants affidavit in support of this application, paragraphs 3(d) - (g) and (j) of the counter affidavit of the 1st, 2nd and 3rd Defendants as well as paragraphs 5(iv) - (vii) of the further and better affidavit of the Claimants are germane to the just determination of this suit.

In order to achieve this objective, this Hon. Court has distilled a lone issue for determination, to wit:

**"Whether upon a proper construction of the relevant instruments, the facts disclosed in the relevant affidavit evidence and the exhibits placed before the court, it can be said that the facts of this case are hostile and therefore robs this Honourable Court the requisite jurisdiction to grant the reliefs sought by the Claimants".**

It is a notorious fact that in a proceeding commenced by way of originating summons it is the nature of claim that ought to be examined to determine whether the facts are contentious or not.

Thus, in the case of **OGUEBEGO V. PEOPLE'S DEMOCRATIC PARTY (2016) 4 NWLR (pt. 1503) pg 446 at pg 485 Para C - D** it was held that:

**"In determining whether facts in support of an originating summons are contentious, it is the nature of the claim and the facts deposed to in the affidavit in support of the claim**

**that will be examined to see if they disclose disputed facts and a hostile nature of the proceedings".**

This is moreso that in originating summons, affidavits serve as a statement of claim and defence.

Again, in the case of **OWURU V. ADIGWU (2018) 1 NWLR (pt. 1599) at pg 27 Para E - G Per KEKERE - EKUN JSC** (as he then was) said:

**"When the originating process is an originating summons, the affidavits filed in support serve as the statement of claim while the counter affidavits serve as the statement of defence. They are of the same evidential value as a witness statement on oath. It is not sufficient to simply say that an averment is untrue and incorrect. There must be a specific denial of every material averment otherwise it will be deemed admitted".**

Infact, in the case of **AZEEZ V. STATE (1986) 2 NWLR (pt. 23) pg 541** and the case of **LIJADU V. LIJADU (1991) 1 NWLR (pt. 169) pg 627** it was held that:

**"Facts deposed in an affidavit which are not contradicted or challenged by a counter affidavit are deemed to have been admitted as true and proved".**

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in paragraph 3(c) of their counter affidavit deposed to the facts as follows:

**"That the deposition contained in the affidavit in support of the originating summons (paragraphs 5 - 27) are not true and does not reflect the true facts and circumstances in this suit".**

The above averment has totally failed to adequately respond to some vital issues that would have rendered the originating summon hostile and therefore incompetent. The Claimants attached Exhibits **1 to 10** showing clearly the title and the interests of the Claimants. Unfortunately, there is nothing to show that the 5<sup>th</sup> or 4<sup>th</sup> Defendants were ever issued with any title documents in respect of the same land as no title document was exhibited. The Claimants have exhibited all the processes they went through in respect of the land in issue and exhibited all by way of exhibits 1 - 10 respectively. While exhibit A attached to the counter affidavit does not disclose title granted to the 5<sup>th</sup> Defendant. It is equally surprising that paragraph 2 of the supporting affidavit states that the 3<sup>rd</sup> Defendant is charged with the responsibility of providing and maintaining a computerised data of infrastructure, Cadastral and land registry for the Federal Capital Territory and therefore is in charge of keeping and documenting all information relating to land under the control of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, yet they could not exhibit similar relevant documents relating to the application and grant of title documents to the 5<sup>th</sup> Defendant.

Similarly, relevant documents relating to the processes of revocation, if any, such as publication of Notice of Revocation, Proof of Service of revocation and other relevant documents that led to the alleged revocation of the title of the Claimants ought to have been attached to the counter affidavit of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants. In the same vein, the evidence of assignment of the land to the 4<sup>th</sup> Defendant by the 5<sup>th</sup> Defendants as a reaction to the documents presented by the Claimants ought to have been attached to the counter affidavit of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants since there is no counter affidavit from the 4<sup>th</sup> and 5<sup>th</sup> Defendants.

It is also important to observe at this stage that the main borne of contention of the entire suit is the alleged re-allocation of the same land to the 5<sup>th</sup> Defendant who assigned same to the 4<sup>th</sup> Defendant.

Unfortunately, there is no counter affidavit filed on behalf of the 4<sup>th</sup> and 5<sup>th</sup> Defendants as the only counter affidavit before this Honourable Court is for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. This clearly shows that most of the paragraphs of the affidavit in support have not been controverted particularly paragraph 24, 25 and 23 of the supporting affidavit of the Claimant, which relate particularly to the 4<sup>th</sup> and 5<sup>th</sup> Defendants.

It is equally important to refer to paragraph 3(e)(i) - (iv) and F of the counter affidavit of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants which gives a scanty information about the subject matter of this suit instead of the relevant documents of title relating to the land in issue. It would have been better for the Abuja Geographical Information System to have printed out all relevant documents and attached same to the counter affidavit instead of deposing to facts that are within the knowledge of the personnel in charge of the maintenance of a computerised data infrastructure, that is, the 3<sup>rd</sup> Defendant.

The aforementioned analysis has shown clearly that corresponding information have not been made available before this Honourable Court to treat the facts as hostile and disputed. All along, the issues presented are straight forward especially that Exhibits **1 - 8** have clearly shown all the processes under taken by the Claimants whereas no corresponding documents depicting same procedure were shown by the Defendants. In fact, the 5<sup>th</sup> Defendant who is said to have been allocated title on the same land did not file a counter affidavit to challenge certain averments that specifically

relate to him. This could be seen from paragraphs 3, 4, 11, 12, 23, 24 and 25 of the supporting affidavit of the Claimants.

In addition, paragraph 5(viii) of the Claimant's Reply to the 1st to 3rd Defendants counter affidavit refers to the purported exhibit A attached to the counter affidavit of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants as an afterthought made for the purpose of this case and that it does not show which documents or whose signatures were forged or how and which of the documents are fake.

In the same vein, by paragraph 5(v) of the further reply to the 1st to 3rd Defendant counter affidavit the Claimants requested the Defendants to show any evidence of forgery or even final report concluding that there was forgery.

This Honourable Court is satisfied that on the basis of the available facts deposed to in their respective affidavit and the exhibits attached to the originating summons that this suit cannot be said to be hostile which must be proved by oral evidence.

Furthermore, the Claimants invites this Honourable Court to interpret the provisions of sections 5(1)(a), 9(1)(c) and 28(6) & (7) of the Land Use Act Cap. LS LFN, 2004. It is clear that by virtue of section 5(1) and 9(1)(c) of the Land Use Act 1978, it is the duty of the 1st and 2nd Defendants to allocate the grant of right of Occupancy and statutory right of Occupancy to the Claimants. As a result, Exhibits **2A**, **2B** and exhibit 6 were allocated to the Claimants in accordance with the Land Use Act 1978. Similarly, Exhibits **5A - 5D** and Exhibits **2A**, **2B** and **6** shows clearly that the land in question belong to the 2nd Claimant. This right can only be extinguished as required by section 28 of the Land Use Act and this

can only be effectively carried out in accordance with section 28(6) and (7) of the Land Use Act, 1978.

The provision of section 28(6) & (7) of the Land Use Act provides as follows:

**“6. the revocation of a right of Occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor (in the instant case, by the Minister of FCT) and notice there of shall be given to the holder”.**

**7. the title of the holder of a right of Occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the notice”.**

It is the position of the law that only after the title is extinguished in line with the above provision that the 1st Defendant can proceed to allocate the said land to another person. Unfortunately, there is nowhere in the counter affidavit of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants that a single document was attached to show that the above Procedure of the Law were complied with by the Defendants. This shows that the existing right of the Claimants have not been extinguished in accordance with the provisions of the law. This being the case, there cannot be another subsequent re-allocation of the same land to any other person without a valid revocation of the subsisting authority.

Thus, in the case of **ORIANZI V. A.G RIVERS STATE (2017) 6 NWLR (pt. 1561) pg 268 - 269 Para H - C** the Supreme Court held that:

**"Where there is a subsisting right of Occupancy, it is good against any other right. Therefore, the grant of another**

**right of Occupancy over the same piece of land will be merely illusory and invalid. As long as the previous or earlier title or right of Occupancy in or over a piece of land subsist, no other rival or competing title or right of Occupancy can simultaneously exist in or over the same piece of land. Two rights of Occupancy cannot subsist in respect of the same property or else there will be anarchy. In the instant case, the appellant's case was that he was entitled to statutory right of Occupancy over the disputed property which he successfully established. At the time the right of Occupancy evidenced by Exhibit "D4" was issued to the 3<sup>rd</sup> and 4<sup>th</sup> respondents predecessor in - title, the Appellant's right of Occupancy was subsisting in the land since it had not been revoked or cancelled as required by law. Only the valid and effective revocation of the Appellant's right of Occupancy could ensure that the subsequent right of Occupancy evidenced by exhibit D4 was valid in law".**

**See also KARI V. GANARAN (1997) 2 NWLR (pt. 488) pg 380 especially pages 268 - 269 paras H - C.**

As for the absence of any valid notice of revocation, in the case **OLOMODA V. MUSTAPHA (supra)** where the Supreme Court held thus:

**"In exercising the Governor's power of revocation, there must be due compliance with the provisions of the Act particularly with regard to giving of adequate notice of revocation to the holder whose name and address are well known to the public officer acting on behalf of the**

**Governor (and in the instant case, the Minister of the Federal Capital Territory)".**

Thus, it is the position of this Honourable Court that the Defendants ought to have exhibited all these requirements in their counter affidavit showing the title documents of the 5<sup>th</sup> Defendant, the various documents that resulted in the alleged revocation as well as the notice of revocation and proof of service of notice of revocation before it can be concluded that the facts are hostile to require calling oral evidence to resolve the issues.

It is equally the position of this Court that the documentary evidence provided by the affidavit evidence are enough to resolve the issues before the court. Thus, in the case of **JEV V. IYORTYOM (2014) 14 NWLR (pt. 1428) pg 575 at pg 615 paragraph G - HPer OKORO JSC** it was held that:

**"However, where there are documents annexed to the affidavit of the parties which can be effectively used to resolve the conflicts, there would be no need to order pleadings".**

In the same vein, it has been held in the case of **UGWUEGBE V. ASADU (2018) 10 NWLR (pt. 1628) pg 460 (pt. 477) paras D - E** by the Supreme Court that:

**"Documentary exhibits ex - facie speak for themselves. Oral evidence cannot be allowed to add to or subtract from or alter or contradict a written document".**

After all, the mere filing of a counter affidavit by the Defendants is not conclusive that the parties must be invited to give oral evidence.

Thus, in the case of **ETIM V. OBOT (2010) 12 NWLR (pt. 1207) pg 108 at pages 156 - 157 paras H - D** it was held that:

**"The mere filing of a counter affidavit in response to the supporting affidavit of an originating summons does not automatically make the matter one in which oral evidence must be adduced and thereby necessitating the ordering of pleadings. Where the conflicts in the affidavit evidence of the parties therein are in admissible, the court is not saddled with the responsibility of calling oral evidence. Where the areas of conflict are so narrow and insignificant, the need to call oral evidence and thereby necessitating the ordering of pleadings will not arise. Also, where the conflict in the affidavit evidence can be resolved on available documentary evidence before the court, oral evidence need not be called and a fortiori pleadings need not be ordered. This is because there is presumption of regularity in favour of documents. Moreso, documents are the hangers of oral evidence".**

See also the case of **A. G OF ADAMAWA STATE V. A.G OF FEDERATION (2005) 18 NWLR (PT. 958) PG 581** on the same principle stated above.

In view of the forgoing analysis supported by judicial authorities especially the decision of the Apex Court of this country, I am of the firm view that the fact of this case are straight forward and not hostile to require the calling of oral evidence. In the same vein, it is the finding of this Honourable Court that this suit was competently initiated as presently constituted and this court has the requisite jurisdiction to grant Claimants reliefs. Consequently, the reliefs

sought by the Claimants ought to be granted and they are accordingly granted. This Honourable Court hereby order as follows:

1. *A Declaration that having regard to the Offer of Statutory Right of Occupancy dated the 18<sup>th</sup> of April, 2003 and the Certificate of Occupancy No. 2654w-3a9ez-62d4r-eea2u-10 dated 17<sup>th</sup> July, 2006 issued by Hon. Minister of Federal Capital Territory in respect of the property known as plot No. 2815, Cadastral Zone A04, Asokoro, Abuja measuring 1,825.23m<sup>2</sup> and covered by File No. LA 10316, vis a vis the provisions of sections 5(1)(a) and 9(1)(c) of the Land Use Act, Cap L5, LFN 2004, the 1st Claimant is the allottee and the person vested with the statutory right of Occupancy in respect of the property.*
2. *A Declaration that having regard to the provisions of sections 5(1)(a), 9(1)(c) & 28 of the Land Use Act, Cap L5, LFN 2004, the 1<sup>st</sup> Defendant cannot after it had allocated to the 2<sup>nd</sup> Claimant, re-allocate to the 5<sup>th</sup> Defendant or any other person, plot No. 2815, Cadastral Zone A04, Asokoro, Abuja when the 2nd Claimant's Statutory Right of Occupancy in respect of the property as evidenced by Certificate of Occupancy No. 2654w-3a9ez-62d4r-eea2u-10 dated 17<sup>th</sup> July, 2006 has not been revoked.*
3. *A Declaration that having regard to the provisions of sections 5(1)(a), 9(1)(c) & 28 of the Land Use Act, Cap L5, LFN 2004, the 1st, 2nd and 3rd Defendants cannot during the subsistence of the statutory right of Occupancy granted to the 2<sup>nd</sup> Claimant in respect of the property known as plot No. 2815, Cadastral Zone A04, Asokoro, Abuja evidenced by Certificate of Occupancy No. 2654w-3a9ez-62d4r-eea2u-10 dated 17<sup>th</sup> July,*

2006, deal with or recognize any other person including the 4<sup>th</sup> and 5<sup>th</sup> Defendants, not being persons deriving title from the 2<sup>nd</sup> Claimant, as the owner of the aforesaid property.

4. **A Declaration** that having not revoked the 2nd Claimant's title to the property known as plot No. **2815**, Cadastral Zone A04, Asokoro, Abuja, in accordance with section 28 of the Land Use Act, the subsequent allocation by the 1<sup>st</sup> Defendant to the 5<sup>th</sup> Defendant of the same property by virtue of Letter of Offer of Statutory Right of Occupancy dated 08/08/2012 and evidenced in Certificate of Occupancy No. **4bauw-15496-55clr-71b6u-6ul** dated 8<sup>th</sup> June 2016 and registered as No. **55540** at page 1 in Volume 278 of the Certificate of Occupancy Register in the Lands Registry Office at Abuja is invalid, null and void and of no effect whatsoever.
5. **A Declaration** that having regard to the Deed of Assignment and Irrevocable Power of Attorney executed in favour of the 1<sup>st</sup> Claimant by the 2<sup>nd</sup> Claimant whose title to plot No. **2815** Cadastral Zone A04, Asokoro, Abuja has not been revoked till date, it is the 1st Claimant and not the 4<sup>th</sup> Defendant who is entitled to register and perfect his interest in and title to the property known as Plot No. 2815. Cadastral Zone A04, Asokoro, Abuja with the 1st, 2nd and 3rd Defendants.
6. **An order** nullifying/setting aside the Letter of Offer of Statutory Right of Occupancy dated 08/08/2012 and the Certificate of Occupancy No. **4bauw-15496-55clr-71b6u-6ul** dated 8th June 2016 and registered as No. **55540** at page 1 in Volume 278 of the certificate of Occupancy Register in the Lands Registry Office at Abuja granted to the 5<sup>th</sup> Defendant.
7. **An Order** compelling the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant to recognize the 2<sup>nd</sup> Claimant as the rightful allottee in respect of

*plot No. 2815, Cadastral Zone A04, Asokoro, Abuja and to allow the 1st Claimant, upon fulfilment of the requirements and payment of the prescribed fees, to register/perfect his interest in the property.*

- 8. An Order of perpetual injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, their servants, agencies, officials, staff, representatives or any other person(s) connected to them from dealing with or recognizing the 4<sup>th</sup> and 5<sup>th</sup> Defendants as owners of Plot 2815, Asokoro Cadastral Zone A04, Abuja.*
- 9. An order of perpetual injunction restraining the 4<sup>th</sup> and 5<sup>th</sup> Defendants, their servants, officers, staff, representatives or any other person(s) connected to them from interfering with or disturbing the Claimants' ownership or possession of plot 2815, Asokoro Cadastral Zone A04, Abuja.*

**SIGNED:  
HON. JUDGE  
06/05/2025.**

**APPEARANCE:**

*Claimants are absent and not represented  
David Z. Dada, Esq, for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants  
4<sup>th</sup> and 5<sup>th</sup> Defendant are absent and not represented*