

- b. A DECLARATION that the purported revocation of the Claimant's title and rights over the piece/plot of land known and described as Plot No.1157, within Katampe (B07) District measuring about 2540.840m² covered by Right of Occupancy dated 15th November, 1993 by the 1st and 2nd Defendants for reason of development on the plot is wrongful, unknown to the provision of the Land Use Act, unconstitutional and illegal.**
- c. A DECLARATION that the grant of another Right of Occupancy over the same piece and parcel of land known and described as Plot No.1157, within Katampe (B07) District to the 3rd Defendant on the 5th January, 1994 while the Claimant's grant made on the 15th of November, 1993 was subsisting and intact is invalid, null and void and a mere illusory.**
- d. AN ORDER OF COURT setting aside and/or nullifying the purported issuance of another Right of Occupancy over the piece and parcel of land known and described as Plot NO.1157, within Katampe (B07) District to the 3rd Defendant.**
- e. A DECLARATION that the acts of the 3rd Defendant on the property or piece/parcel of land known and described as Plot No.1157, within Katampe (B07) District measuring about 2540.840m² amounts to trespass.**
- f. AN ORDER OF PERPETUAL INJUNCTION restraining the 1st and 2nd Defendants, their agents, servants, privies or any one acting through them from subdividing, allotting or re-allotting the Claimant's rights over the piece/plot of land known and described as Plot No.1157, within Katampe (B07) District measuring about 2540.840m² covered by Right of Occupancy dated 15th November, 1993.**
- g. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants, their agents, servants, privies or any one acting or claiming through them from further act of trespass on the plot known as described as Plot No.1157, within Katampe (B07) District measuring about 2540.840m².**

h. AN ORDER of Court directing the Defendants jointly and severally to pay to the Claimant the sum of N10,000,000.00(Ten Million Naira) only as damages for trespass.

i. Cost of this action.

The 1st and 2nd Defendants filed a Statement of Defence dated 11th February, 2021 and filed same date.

The 3rd Defendant filed a 3rd Defendants consequential Amended Statement of Defence dated 12th March, 2020 and set up a counter-claim against the Plaintiff as follows:

- 1. A DECLARATION that the 3rd defendant counter-claimant is the exclusive owner of plot No. 1157 Cad. Zone B07 Katampe District to the exclusion of the Claimant or any other person.**
- 2. A DECLARATION by this Honourable Court that the development on the 3rd Defendant/Counter-claimant's land at plot No. 1157 at Cad. Zone B07 Katampe District by the 3rd Defendant/Counter-claimant is not trespass.**
- 3. AN ORDER OF PERPETUAL INNJUNCTION restraining the Claimant either by himself, agents or privies from laying claims to the property of the 3rd Defendant located at plot No. 1157 Cad. Zone B07 Katampe District Abuja.**

The Claimant then filed a Reply to the 3rd Defendant's Amended Statement of Defence and Defence to Counter-claim dated 17th January, 2023.

Hearing then commenced. In proof of his case, the Plaintiff called two (2) witnesses.

The Plaintiff himself testified as **PW1**. He deposed to two (2) witness depositions which he adopted at the hearing and tendered in evidence the following documents:

1. Offer of terms of Grant/Conveyance of approval dated 15th November, 1993 in respect of plot of about 2540.840m² (plot 1157) within Katampe District with file No: KW-1578 issued to the Claimant was admitted as **Exhibit P1**.

2. Ministry of Federal Capital Territory Recertification and Reissuance of C of O Acknowledgment dated 27th June, 2005 with file No: KW 1578 was admitted as **Exhibit P2**.
3. Acknowledged copy of letter by the law firm of Femi Oyekola & Co to the Chief Executive Abuja Metropolitan Management Council dated 19th May, 2014 titled: Notification of Trespass Re: Plot 1157, Katampe District Abuja was admitted as **Exhibit P3**.
4. Letter of Demand for Ground rent by the FCTA, Department of Land Administration to Claimant dated 21st January, 2015 in the sum of N454,273.63 together with the attached receipt of payment of Ground Rent in the sum of N300,000 dated 23rd January, 2015 were admitted as **Exhibits P4a and b**.
5. Copy of legal search report issued by F.C.T.A Department of Land Administration dated 11th February, 2015 together with the legal search fee receipt of payment dated 23rd January, 2015 were admitted as **Exhibits P5a and b**.
6. Copy of Legal Search Report dated 10th July, 2015 with the legal search fee receipt of payment admitted as **Exhibits P6a and P6b**.
7. Letter by the Law Firm of Femi Oyekola & Co to the Hon. Minister F.C.T dated 13th July, 2015 titled “Protest at illegal “Revocation” of title over plot 1157 Katampe District Cadastral Zone B07 in RE: AJIBADE OLABANJI. FILE NUMBER KW 10319 was admitted in evidence as **Exhibit P7**.
8. Six (6) numbered photographs with certificate of compliance admitted as **Exhibits P8 (1-7)**.

The 1st and 2nd Defendants did not appear in court despite service of hearing notices and accordingly their right to cross-examine PW1 was foreclosed. PW1 was cross-examined by counsel to the 3rd Defendant.

Architect David Audu Musa, an Architect testified for the Claimant as **PW2**. He deposed to a witness statement on oath dated 18th January, 2023 which he adopted at the hearing. He tendered in evidence the following documents:

1. Certified True Copy (C.T.C) of Motion on Notice No: M/8730/2023 in suit CV/2978/2015 filed in the extant action by the 3rd Defendant dated 10th July, 2020 was admitted as **Exhibit P9**.
2. Document titled: “**Report on stages/milestones and duration involved in the construction of the building from substructure to suspended 1st floor slab**” prepared by PW2 dated 16th January, 2023 was admitted as **Exhibit P10**.

Again the 1st and 2nd Defendants were not represented in court and their right to cross-examine PW2 was similarly foreclosed.

PW2 was however cross-examined by Counsel to the 3rd and 4th Defendants and with his evidence, the Claimant closed his case.

On the record, the 1st and 2nd Defendants were given every opportunity to lead evidence in this case but despite the adjournments granted at their instance and service of hearing notices, they chose or elected not to attend court. Their right to defend the action was then foreclosed.

The 3rd **Defendant** on his part testified as **DW1** and the only witness. He deposed to a witness statement on oath dated 21st July, 2020 which he adopted at the trial and tendered in evidence the following documents:

1. Ministry of the F.C.T Recertification and Reissuance of C of O Acknowledgment dated 22nd April, 2000 together with a copy of Certificate of Occupancy issued in the name of Sussanah C. Oyo dated 26th May, 1999 were admitted as **Exhibits D1a and D1b**.
2. Irrevocable Power of Attorney made by Mrs. Sussanah C. Oyo in favour of Alhaji Aminu Hamza dated 7th March, 2000 was admitted as **Exhibit D2**.
3. Demand for ground rent dated 22nd May, 2005 in the sum of N95,916.70 admitted as **Exhibit D3**.
4. (2) AGIS deposit slips reflecting payment for ground rent in (3) above and N10,000 all in the name of Sussanah C. Oyo admitted as **Exhibits D4a and b**.

5. F.C.T.A Official receipt issued in the name of Sussanah C. Oyo dated 30th January, 2012 for payment of building plan fees in the sum of N792,304.54 and the document titled settlement of building plan fees dated 23rd January, 2012 admitted as **Exhibits D5a and b.**
6. Copy of proposed residential development plan at Plot 1157 Cadastral Zone B07 Katampe District Abuja admitted as **Exhibit D6.**
7. F.C.T.A (AGIS) Revenues Collectors Receipt in the sum of N402.200.00 dated 1st December, 2015 together with the deposit slip and demand for Ground Rent dated 19th May, 2015 admitted as **Exhibits D7a, b and c.**
8. Two (2) approvals for floor slab dated 2nd April, 2012 and 28th May, 2012 issued by the Department of Development Control to Mrs. Sussanah C. Oyo admitted as **Exhibits D8a and b.**
9. Conveyance of Building Plan Approval dated 8th February, 2012 admitted as **Exhibit D9.**
10. Letter by the F.C.T.A, Department of Land Administration to 3rd Defendant dated 11th May, 2015 titled: **RE: DOUBLE ALLOCATION OVER PLOT NO: 1157 WITHIN KATAMPE (B07) DISTRICT ABUJA WITH FILE NO KN10731 (OLD NO. AB 126)** was admitted as **Exhibit D10.**
11. Approval for roofing level issued by Department of Development Control to Mrs. Sussanah C. Oyo dated 22nd November, 2012 admitted as **Exhibit D11.**

The 1st and 2nd Defendants did not exercise their right to cross-examine DW1. He was however cross-examined by counsel to the Claimant and with his evidence the 3rd Defendant closed his case.

At the close of evidence, parties were ordered to file and exchange final written addresses. On the record, the 1st and 2nd Defendants elected not to file a final written address. The final address of 3rd Defendant is dated 16th August, 2024 and filed same date. In the address four (4) issues were raised as arising for determination to wit:

- 1. Whether or not from the circumstance of this case, the Claimant can sue the 3rd defendant for trespass given the fact that he has never been in possession.**
- 2. Whether or not the Claimant can claim damages from the 3rd Defendant, the 3rd Defendant being a bona fide purchaser for valuable consideration without notice of any adverse claim.**
- 3. Whether or not the Claimant has any evidence before this Honourable Court, having said he cannot remember where he signed his witness statement on Oath.**
- 4. Whether or not the Honourable Court can rely on the evidence of the PW2, having failed woefully to establish his professional qualification and the factual basis for his assumption.**

Submissions were made on the above issues which forms part of the Record of Court which I will shortly consider in resolving this dispute. The thrust of the submissions is basically that the Claimant has not established his case to entitle him to all or any of the Reliefs sought. I note however that no precise issue was raised on the basis of the counter-claim by the 3rd defendant/counter-claimant and submissions was equally not made with respect to whether the Counter-claim has merit and is availing.

The Claimant on his part filed his address on 7th October, 2024 and in the address, two issues were raised as arising for determination:

- 1. Having regard to the state of pleadings and evidence led, whether the claimant has not reasonably satisfied the court to be entitled to the reliefs sought.**
- 2. Whether the counter-claim of the 3rd defendant/counter-claimant has been proven to be entitled to the reliefs sought therein.**

Submissions were equally made on the above issues which forms part of the Record of Court which I will also consider in resolving the extant case. The thrust of the submissions made is that the Claimant has proved his claims within established legal threshold to entitle him to all the Reliefs sought and on the other

hand, that the counter claimant has not proven his claims to entitle him to any of the Reliefs he prayed for.

The **Counter-Claimant** then filed what he called a Reply on points of law in which he raised new issues and made submissions on them as follows:

- a. Whether or not the case of Universal Vulcanizing Ltd V. Ijesha United Trading and Transport Company (supra) is relevant in this case.**
- b. Whether or not the 3rd Defendant had not proved a transaction between himself and the original allottee issue.**
- c. Whether or not the Claimant made the third Defendant a party in this suit and a time wasting (sic) joining issues with him in address or the 3rd Defendant is a stranger to the transaction (sic).**
- d. Whether or not the Claimant sworn (sic) to his witness statement on oath before a notary public.**

I agree here with Learned Senior Advocate for the claimant that the Reply filed here is clearly not a reply contemplated by the Rules of Court. This appears to me to be an entirely new address or process and not made in response to the precisely defined issues and the submissions made by Claimant. The Reply here clearly seeks to raise or introduce new issues which were not raised or addressed by the Claimant and therefore lacks both factual and legal basis.

Ordinarily, I would have as a consequence, discountenanced it, but in the overall interest of justice, I would still consider it for whatever it is worth since ultimately the resolution of the dispute is not dependent on final addresses but on the issues streamlined on the pleadings and the quality of evidence led in proof of the contested assertions. I leave it at that.

I also note, from a careful consideration of the addresses of parties that some of the issues raised and argued in the final addresses cannot be situated within the remit of the issues defined on the pleadings and some are essentially peripheral issues that have no decisive bearing on the fundamental issue of ownership of the disputed plot. I will give a few examples. Issue 3 raised by 3rd Defendant cannot be really an important decisive issue. The witness said he deposed to his

deposition in Abuja but cannot remember where. There is no evidence elicited from him during cross-examination with respect to where he deposed to the deposition but on the face of the deposition, it was deposed to before the commissioner for oaths. It would therefore amount to bare speculative posturing to contend that it was done at any other place beside what is indicated on the face of the deposition.

The question relating to whether Claimant applied for and accepted the offer again did not feature in the pleadings of 3rd Defendant as an issue and cannot be a matter for address. In any event, the 3rd Defendant is not the allocating authority and has no hand in the allocation to Claimant. The 1st and 2nd Defendants, the allocating authority did not make out any case on that basis and in any event they did not lead evidence or participate in the proceedings. The 3rd Defendant has no locus to project such complaints that can only be made by 1st and 2nd Defendants.

Similarly the submissions made on the contention that the 3rd Defendant is a bonafide purchaser for value without notice cannot be situated within the **28 paragraphs Consequential Amended Statement of Defence and Counter-claim of 3rd Defendant**. In the pleadings, all the counter-claimant averred to is that one Sussanah Oyo was allotted the land in dispute by the Minister F.C.T and she appointed him as an Attorney. No more. He may have subsequently made payments and developed the plot but only in his capacity as the donee of the Power of Attorney. There is nothing in the pleadings of Counter-Claimant situating that he bought the property for value and even the Power of Attorney tendered by Counter-Claimant did not situate any value for the purchase of the property.

In the circumstances and on the basis of the pleadings, the crux of the dispute clearly has to do with who has a better and valid allocation of the disputed plot as between the Claimant and Mrs. Sussanah Oyo who appointed 3rd Defendant as attorney. In the absence of a clear pleading demoting the facts of the Counter-Claimant been a purchaser for value without notice, there clearly will not be a valid basis to consider the contention. Similarly the argument by the Claimant that **“the 1st and 2nd Defendants connived with the 3rd Defendant to hurriedly and speedily develop the subject plot even despite the pendency of this suit”** made vide paragraph 4.23 of the final address can equally not be situated within the confines of the pleadings. There may be pleading that the 3rd Defendant hurriedly

developed the plot and that 1st and 2nd Defendants did nothing about the complaints made by claimant but this does not tantamount to pleading the allegation of connivance which is a complaint of criminal infraction which has to be proved beyond reasonable under **Section 135 of the Evidence Act**. There was no such pleadings in this case. The evidence of PW2 which sought to project connivance clearly will not fly in the circumstances in the absence of facts pleaded to situate the connivance.

In law, it is settled 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 N.W.L.R (pt.724)412 at 433-434H-A**. Addresses are thus not pleadings or evidence and cannot be used to make out a case not pleaded. Submissions made on the basis of issues not pleaded will thus be discountenanced. Similarly issues raised that have no significant material bearing with the key contested issue of ownership of the disputed plot should not really concern us.

In that context, I have here given a careful and insightful consideration to all the issues as distilled by parties in relation to the pleadings and evidence adduced at the hearing. I incline to the view that the two issues framed by the Claimant which I will slightly modify captures the essence and or the crux of this dispute.

On the pleadings which has streamlined the facts and or issues in dispute, the central key and or fundamental issue on which parties are at a *consensus adidem* relates to the contested claim of ownership the Claimant and 3rd Defendant/Counter-Claimant made over **Plot 1157**, Katampe District (hereinafter referred to as the disputed plot or just plot 1157).

Both Claimant and 3rd Defendant lay claim to this plot. All other issues raised are a direct function of whether the parties have succeeded in discharging the burden of proof placed on them by law in proof of these contending assertions within the required legal threshold.

Flowing from the above, there is thus a **claim** by plaintiff and **counter-claim** by the 3rd defendant. It is trite law that for all intents and purposes, a counter claim is a separate, independent and distinct action and the counter claimant like the plaintiff in an action must prove his case against the person counter claimed before

obtaining judgment. See **Jeric Nig. Ltd V Union Bank (2007) 7 WRN 1 at 18; Shettimari V Nwokoye (1991) 9 NWLR (pt.213) 66 at 71.**

In view of this settled state of the law, both the plaintiff and the 3rd defendant/counter-claimant have the burden of proving their claim and counter-claim respectively. This being so, therefore, the issues for determination in this action can be condensed and be more succinctly encapsulated in the following issues as follows:

- 1. Whether the claimant has established on a preponderance of evidence that he is entitled to all or any of the Reliefs claimed?**
- 2. Whether the 3rd defendant/counter-claimant has equally established on a preponderance of evidence, his entitlement to any or all of the Reliefs claimed?**

The above issues shall be taken together and conveniently in my opinion covers all the issues raised by parties. The issues thus distilled by court are not raised in the alternative but cumulatively with the issues raised by parties. See **Sanusi V Amoyegun (1992) 4 NWLR (pt.237) 257.**

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd & Anor (1985)3 N.W.L.R (pt13)407 at 418**, the Supreme Court instructively stated as follows:

“By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however

the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins.”

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issues formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle. In furtherance of the foregoing, I have carefully read the very well written addresses filed by parties respectively. I shall in this course of this judgment and where necessary or relevant, refer to submissions made by counsel and resolving whatever issue(s) arising therefrom.

Now to the **substance**. I had stated that the two (2) issues distilled by court as arising for determination above will be taken together. Indeed at the commencement of this judgment, I had stated that there is a claim by plaintiff and a counter-claim by 3rd defendant. So these identified parties have the evidential burden of establishing their claims and succeeding on the strength of their cases as opposed to the weakness of the case of the other party. 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 that we must now beam a critical judicial search light in resolving the contested assertions.

In this case, the Claimant filed a **21 paragraphs statement of claim** and a **7 paragraphs claimants Reply to the 3rd Defendants Amended Statement of Defence and Defence to Counter-Claim**. The evidence of the two(2) witnesses

called fell within the structure of the claim and Reply and defence to the counter-claim of 3rd Defendant.

The 1st and 2nd Defendants on their part filed a **7 paragraphs statement of defence** but they chose not to lead evidence in support of the averments. The consequence of this action is obvious as no value will be attached to the defence.

The 3rd Defendant/Counter-Claimant on its part filed a **28 paragraphs Amended Statement of Defence and Counter-Claim**. The evidence of the 3rd Defendant and sole witness was similarly within the purview of the facts averred therein.

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 **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252**.

It is also important to note at the onset that some of the critical reliefs sought both in the substantive claim and counter claim are **declaratory** in nature. This being so, it is critical to state that declarations in law 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).

The above principles identified in some detail, provides broad legal and factual template as we shortly commence the inquiry into the contrasting claims of parties.

Now from the pleadings of parties which as earlier indicated has precisely streamlined the facts or issues in dispute, both the **claimant** and the 3rd **defendant/counter-claimant** appear to found their respective claim of title on production of title documents. These title documents of both parties on the evidence appear to be predicated or derived from the same source, **the 1st and 2nd defendants**. Within the context of laws governing land tenure in the FCT, the 1st and 2nd defendants are the issuing authority of land allocations within the FCT. Their actions in this case is therefore critical in situating the validity of the case of the claimant and that of 3rd defendant/counter-claimant.

A convenient starting point is to understand the precise situational dynamic relating to the contested assertions of parties and the pleadings of parties appear to me to be a fair take off point. The case of claimant on the pleadings and the evidence is fairly straightforward. The case can be situated within the confines of **paragraphs 1, 4-20 of the Claim**. As stated earlier, the evidence of the Claimant's witnesses particularly PW1 followed the same trajectory in the claim.

The case of PW1 is simply that following his application for a Statutory Right of Occupancy in the FCT, he was granted an allocation or offer of terms/conveyance of approval of the disputed plot vide **Exhibit P1** by the Minister F.C.T on **15th January, 1993**.

He duly participated in the recertification exercise of the 1st and 2nd Defendants vide the acknowledgement copy tendered as **Exhibit P2**. He stated further that on his retirement, he liased with his bankers to finance development of the plot wherein they engaged surveyors who went to the land and indicated the existence of a substructure. He went to AGIS where his allocation was confirmed and that his solicitors by **Exhibit P3** also wrote to the Department of Development Control

of 1st and 2nd Defendants complaining about the trespass. The Claimant by **Exhibits P4a and 4b** dated 22nd January, 2015 and 23rd January, 2015 situates demands for ground rent made by 1st and 2nd Defendants on him and the payments made.

The Plaintiff further testified that he also instructed his solicitors to ascertain the status of his plot wherein they paid and conducted a search vide **Exhibits P5 (a and b)** where the ownership of Claimant over the disputed plot was confirmed with no encumbrances situated.

PW1 stated that despite his complaints, the 1st and 2nd Defendants did not respond or take any actions and this apparently emboldened whoever was trespassing on the land which made him to instruct his solicitors to conduct another search on the property vide **Exhibits P6a and b** dated 10th July, 2015 wherein the 1st and 2nd Defendants now stated that they revoked the allocation of Claimant “in view of development on the plot as at the date of this report” and he instructed his lawyers to write to the Minister FCT vide **Exhibit P7** to complain against the illegal revocation. The evidence of Claimant or his narrative was not challenged or impugned under cross-examination.

The allocating authority of lands in the F.C.T the 1st and 2nd defendants as stated earlier did not participate in the proceedings and so nothing was projected in real terms by them denying or controverting the case of the Claimant and most importantly the **allocation made to him**. The 3rd Defendant clearly had nothing to do with the allocation to Claimant and was thus not in any position to debunk the affirmative assertions of Claimant with respect to the allocations, payments made and the efforts to protect his interest in the face of the trespass.

Now on the other side of the aisle, the case of party contesting this same plot, the **3rd Defendant** is similarly straightforward and can be situated within the confines of **paragraphs 3-28** of his defence and counter-claim. His case is also fairly straight forward as alluded to already. The case of counter-claimant is that he is the owner of **Plot 1157** and developed the plot which is now at over 80% completion. He stated that on the 6th January, 1994 Mrs. Sussanah C. Oyo was offered and allocated Plot 1157 with file No: AB 128 in Cadastral Zone B07 Katampe District via C of O No: FCT/ABU/AB/26 registered as No: FC127 at

Page 129 in Vol.92. In paragraph 5 of the defence, it was averred therein that “**a Certified True Copy of same shall be relied upon at the trial.**” However at the trial, the **letter of offer dated 6th January, 1994** was not tendered but a copy of a Recertification and Reissuance of C of O acknowledgment with a copy of the Certificate of Occupancy dated 26th May, 1999 issued to Sussanah C. Oyo was tendered in evidence and admitted as **Exhibits D1a and D1b**. The 3rd Defendant stated that the said Sussanah Oyo then donated an Irrevocable Power of Attorney to him in respect of Plot 1157, by Katampe District vide **Exhibit D2** dated 7th March, 2000.

The 3rd Defendant also stated that the 1st and 2nd Defendants issued a demand for ground rent vide **Exhibit D3** dated 22nd May, 2005 which they paid vide **Exhibit D4 a and b**. He stated that further demands for ground rent were made on 19th May, 2015 vide **Exhibit D7c** which he paid on 1st December, 2015 vide **Exhibits P7a and b**.

The 3rd Defendant referred to his building plans for the plot vide **Exhibit D6** and the settlement of building plans fees issued by the Department of Development Control of 1st and 2nd Defendant and the settlement of the fees vide **Exhibits D5a-c** dated 23rd January, 2012; 30th January, 2012 and 27th January, 2012 which culminated in the issuance of the conveyance of building plan approval dated 8th February, 2012 vide **Exhibit D9**.

The 3rd Defendant equally in addition alluded to approvals he obtained by the Department of Development Control of 1st and 2nd Defendant for construction of 1st and 2nd floor slabs on the said Plot 1157 tendered as **Exhibits D8a and b**.

Now again, just like the evidence of Claimant, the narrative of 3rd Defendant with respect to the allocation to Sussanah Oyo was not challenged by either the 1st and 2nd Defendants, the allocating authority or the Claimant who was in no position too to challenge the specifics of the narrative with respect to the allocation, the payments made to 1st and 2nd Defendants and the approvals he obtained to commence development.

What therefore follows from the surfeit of oral, documentary evidence tendered by both the Claimant and 3rd Defendant is that this case is clearly one **unfortunately**

of allocation of the same plot 1157 within Katampe District to both Claimant and 3rd Defendant usually described as “double allocation”

Let me now properly identify the allocations tendered by **Claimant and 3rd Defendant** as follows:

1. On the part of claimant, the offer of terms of grant/conveyance of approval in respect of plot of about 2540.840m² (of plot 1157) within Katampe District is dated **15th November, 1993** vide **Exhibit P1**.
2. On the part of the 3rd Defendant as stated earlier, the offer of terms of grant/conveyance of approval dated **6th January, 1994** may have been pleaded but it was not tendered. A copy of the certificate of occupancy to Mrs. Sussanah C. Oyo in respect of plot No.1157 of about 2540.845sqm dated 26th May, 1999 was tendered and admitted as **Exhibit D1b**.

It is clear as crystal that the **allocation** relates to the **same parcel of land** and the **allocation to Claimant was first in time**.

It is logical to hold that there cannot be concurrent ownership of the same disputed plot by two different parties. It is stating the obvious that under relevant extant laws and the land tenure system operational in the FCT, it is only the Honourable Minister FCT that has the power to allocate land. Indeed the 1st and 2nd defendants superintend over all lands in the FCT. If both parties are claiming title from a common grantor, the **1st and 2nd Defendants**, then the position taken or projected by them in response to the contested assertions or dispute would have been helpful. In this case however, the 1st and 2nd Defendants chose or elected to, as it were, **“run away”** from the unfortunate confusion created by them which clearly could have been avoided. By **Exhibit P3** received on 20th May, 2014, the Claimant brought to the attention of the Development Control Department of 1st and 2nd Defendants, the trespass on his land.

It is strange that the 1st and 2nd Defendants will be dealing with both parties over the same and particular plot 1157. Bills for grounds rents were issued on both sides and payments received. Indeed the 3rd Defendant applied for building approval, he made payments as earlier alluded to and he was given approval to commence building. Even when Claimant complained vide **Exhibit P3** of trespass

to his plot, no action(s) was taken by 1st and 2nd Defendants. It is even the more worrisome and disturbing that while they (1st and 2nd Defendants) were dealing with 3rd Defendant on the same plot, by the legal search report issued to Claimant by the Department of Land Administration F.C.T.A vide **Exhibit P5b** dated 11th February, 2015, when he sought to confirm the status of the land, the report unequivocally projects that there was no encumbrances on Claimants land and that the **“Documents submitted are under recertification process as at the date of the Report.”**

On the evidence, the **1st and 2nd Defendants** having realized the contrived confusion created by them, sought to resolve the matter, however not within the remit of the clear provisions of the law. For such a serious matter, the resolution by them was whimsical at best. In the letter to the Counter-Claimant dated 11th May, 2015 vide **Exhibit D10** the 1st and 2nd Defendant stated as follows:

“RE: DOUBLE ALLOCATION OVER PLOT NO. 1157 WITHIN KATAMPE (B07) DISTRICT, ABUJA WITH FILE NO. KN 10731 (OLD NO. AB 126)”

I am directed to refer to our earlier letter in respect of the above subject matter and inform you that the Honourable Minister has approved that you retain Plot 1157 within Katampe (B07) District.

The approval is in consideration of the fact that you have taken possession and developed the plot with the requisite approvals. You are therefore advised to immediately take steps to fulfill all your obligations to the FCTA.

**Signed
MRS. ASMAU MUKHTAR
DEED REGISTRAR
FOR: THE MINISTER (FCT)”**

The above letter is **ambiguous** in many respects. It refers to a letter to the 3rd Defendant which was not produced and so the court will not speculate but at least this letter suggests that they know very well that **plot 1157 within Katampe District is one involving a double allocation.**

The letter now with what amounts to a fiat resolved the “**problem**” and directed 3rd Defendant to take possession of the said plot because he had “**taken possession and developed the plot with requisite approvals.**”

The above is with respect a really strange and unknown proposition under our laws. Following this letter, the 1st and 2nd Defendants now issued another legal search Report to Claimant on 10th July, 2015 vide **Exhibit P6b** wherein they now in the column for encumbrances, wrote “**Revocation**” and in the column for other comments, they stated that “**Title revoked in view of development on the plot as at the date of this report**”

It must be underscored that this latest legal search report was made barely 5 months after the legal search report vide **Exhibit P5b** was issued by the same 1st and 2nd defendants wherein the Claimant was informed that his documents were under recertification and no encumbrance of any kind was registered on the plot.

The question to ask now is at what point did the 1st and 2nd Defendants realize these developments and on what legal basis did they seek to play the ostrich and ignore the right of Claimant over the same plot and who was first allocated the disputed plot? Is there a valid legal basis to revoke a Right of allocation or a duly allocated plot because a later allottee had developed on the same land? I think the law on these points are now fairly settled and projects no confusion or ambiguity and sentiments unfortunately has no role to play in such admittedly difficult situation. The easiest and far better way to mollify sentiments of disaffection on matters like this is to apply the law, as it is, without fear or favour. I say no more.

Now back to what the law says on these issues. As earlier stated, there cannot be concurrent ownership of the same plot by different persons. In the prevailing situation, the law is settled that where two or more competing documents of title upon which parties to a land dispute rely for their claim originate from a common grantor as in this case, the doctrine of priorities pursuant to the well-recognised maxim, *qui prior est tempore, potior est jure*, meaning that he who is first has the strongest right, dictates that the first in time takes priority. See **Atanda V Ajani (1989) 3 NWLR (pt.135) 745; Uzor V D.F (Nig.) Ltd (2010) 13 NWLR (pt.1217) 553 at 576 and Gege V Nande (2006) 10 NWLR (pt.989) 256.**

In this case on the evidence, **Exhibit P1**, the allocation to Claimant is dated **15th November, 1993** and issued before the **offer** issued to Sussanah Oyo said to be dated **6th January, 1994** which as stated earlier was not tendered and that aspect of the pleading is deemed abandoned. Again on the evidence **Exhibit P1** predates the certificate of occupancy issued to the same **Sussanah Oyo dated 26th May, 1999** vide **Exhibit D1b**.

On the authorities, the allocation to **Claimant of Plot 1157 must take priority in the circumstances**.

The attempt by the 3rd Defendant to, as it were, ignore the existence of **Exhibit P1** clearly will not fly. Any conclusion on the issue of the disputed **Plot 1157** which is made in disregard or denial of the earlier letter of offer to Claimant vide **Exhibit P1** will not fly. If it flies at all, it will be contradictory and perverse and the court must reject such submission. The 1st and 2nd Defendants by the same token cannot willy nilly simply discard or jettisoned a document which they have not denied issuing on the basis of mere convenience. On the whole, the doctrine of priority clearly operates in this case and enures in favour of the Claimant. The Claimant clearly and unquestionably acquired interest in Plot 1157 before the 3rd Defendant.

As stated earlier and at the risk of prolixity, there cannot be concurrent possession of one plot by adverse Claimants; only one can have validity. The contention that the **Certificate of Occupancy** issued to Sussanah Oyo somehow is superior to the letter of offer to claimant which was earlier in time, with respect has no legal basis and stems perhaps from lack of proper understanding of the provisions of the Land Use Act. A certificate of occupancy does not exist in a vacuum but it is usually issued after a valid letter of conveyance of grant is issued. In this case, the 3rd Defendant did not tender this initial letter of offer as stated earlier. Even if it was to have been tendered, it was issued after that of claimant.

Secondly, a certificate of occupancy such as that issued to the 3rd defendant by the Minister raises a prima facie presumption in favour of the holder albeit a rebuttable presumption that the holder has a right of occupancy. A Certificate of Occupancy is therefore prima facie evidence of exclusive possession by a party. It is not however conclusive evidence of any right, interest or valid title and thus in

appropriate cases can be effectively challenged. See **Edebiri V Daniel (2009) 8 NWLR (pt.1142) 15.**

Because of the case projected by the counter-claimant and the address in support, the point must be made that the pre-requisite for a valid grant of a C/O is that there must not be in existence the **valid title of another person with legal interest in the same land at the same time the certificate was issued.**

In other words there must not be in existence at the time the certificate was issued a statutory owner of the land in dispute or issue who was not divested of his legal interest prior to the grant. Where a C/O has been granted to one of two claimants, who has proved a better title, the other must be deemed to be defective or have been granted or issued erroneously and against the spirit of the Land Use Act and the holder would have no legal basis for a valid claim over the land in dispute. Where it is shown on the evidence and creditably established that another person other than the grantee of a certificate of occupancy had a better right to the land upon which the grant relates, a court would have no option but to set aside the said grant or to otherwise discountenance it as invalid, defective, and or spurious as the case may be. See **Omiyale V Macaulay (2009) 7 NWLR (pt.1141) 597 SC; Ogunleye V Oni (1990) 2 NWLR (pt.135) 745; Dzungwe V Gbishe (1985) 2 NWLR (pt.8) 528.**

In this case as demonstrated at length, there is in existence a **valid title of Claimant over Plot 1157** as at the time the **certificate of occupancy was issued to 3rd Defendant.** That interest of Claimant on the evidence was at no time divested of him. Without such legal divesture, any allocation or grant of a R/O or C/O to another will be defective and set aside as the authorities of our superior courts stated above projects in clear, unambiguous terms.

Indeed if the R/O of claimant was revoked, there is absolutely no scintilla of evidence to situate that there was a valid revocation in compliance with the law. Let us perhaps here interrogate the **“revocation”** as appeared in the legal search report vide **Exhibit P6b.** There is no argument that the Honourable Minister F.C.T (1st Defendant is eminently empowered to revoke rights of occupancy for overriding public interest pursuant to **Section 28(1) of the Land Use Act.** In this case, there is no evidence that the purported revocation was for overriding public

interest or that the allocation to 3rd Defendant was for a public purpose as defined in **Section 51(1) of the Land Use Act**. Indeed, a plea of revocation subsumes an acknowledgment by the revoking authority of the existence of a valid right of occupancy prior to the act of revocation. See **Osho V. Foreign Finance Corporation (1991) 4 N.W.L.R (pt.184)157 at 189**. Of course, it goes without saying that if no grant exists in the first place, there would be nothing for the Honourable Minister (1st Defendant) to revoke *Ex nihilo nihil fit*. Out of nothing comes nothing.

In this case, the Claimant maintain that the purported revocation of his title falls foul of due process of law. Strangely the 1st and 2nd Defendants did not respond to this allegation at all in their pleadings and one then wonders if by their silence, they recognize that they did not follow the right procedure prescribed in **Section 28(6) of the Land Use Act** in exercising the statutory power of revocation in this instance.

In the circumstances, it may be necessary to situate the right and proper procedure for revocation and whether it was complied with in this case.

Now **Section 28(6) of the Land Use Act 1978** provides that “**the revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder**”, whilst subsection (7) thereof is to the effect that “**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.**” The two conditions that must be satisfied before a right of occupancy can be revoked for overriding public interest are: (i) the issuance of a notice of revocation by a public officer duly authorized in that behalf; and (ii) there must be clear evidence that due notice of the revocation was given to the holder of the right of occupancy; and it is when the holder of a right of occupancy receives notice of the revocation that his title thereto shall be extinguished. Thus, notice of revocation and service of such notice are two mandatory requirements that have to be strictly complied with. See **Adole V. Gwar (2008)11 N.W.L.R (pt.1099) 562 at 603-604-** per Ogbuagu, JSC. A notice of revocation is not meant to be kept under wraps in the archives of the revoking authority (such as the 1st Defendant) it must not only be shown to have been issued, the revoking authority must go further

to demonstrate that the notice so issued was duly served on the holder of the right of occupancy as required by **Section 28(6) of the Land Use Act 1978** before such revocation can take effect. See **Atobatele V. Lekki Concession Company Limited (2017) LPELR-43041(CA)**.

In this case on the evidence (i) no notice of revocation was issued by a public officer duly authorized in that behalf and (ii) there is no evidence that due notice of the revocation was given to the holder of the Right of Occupancy. The Legal Search Report vide **Exhibit P6b** is not a revocation notice known to law.

Quite clearly, the 1st and 2nd Defendants have failed or neglected to produce the notice of revocation and the proof of service on Claimant and that is fatal.

The point that must be underscored in clear terms is that the **Land Use Act, Cap. 15 Laws of Nigeria, 2004** is a piece of expropriatory legislation, and binding case law donates the proposition that in order to validly revoke title to land evidenced by a right of occupancy, both the letter and the spirit of the Act must be strictly adhered to. The rule of construction is that any law which has the effect of depriving a citizen of any right to property shall be construed strictly and in such a manner as to preserve the citizen's right to property. See **Abioye & Ors V. Yakubu & Ors (1991)15 N.W.L.R (pt.190)130 at 251-** per (Philips Nnaemeka-Agu, JSC), **Osho V. Foreign Finance Corporation supra, Din V. A-G, Federation (1988)4 N.W.L.R (pt.87)147 and Bello V. The Diocesan Synod of Lagos & Ors (1973) AII NLR (Reprint)196 at 214** –per (Coker, JSC). It is for this reason that binding case law insists on strict compliance with the provisions of **Section 28 and 44 of the Land Use Act 1978**, notably proof of service of notice of revocation amongst several other strictures, before title to land covered by a right of occupancy can be extinguished. See **Abole Gwa supra, Ibrahim V. Mohammed (2003)4 MJSC 1 at 36, Estate of General Sani Abacha (Deceased) V. Eke-Spiff (2009)2 SCNJ 119, Olomoda V. Mustapha (2019)LPELR-46438 (SC) and Malami V. Ohikhuare (2019)7 N.W.L.R (pt.1670)132 at 182 para D-F**.

Since there is no proof of the issuance of the revocation notice and also no proof of service of any notice of revocation, there is no gainsaying that the Claimant's title to the disputed plot remains valid and subsisting. The law is settled that a right of

occupancy, whether evidenced by a certificate of occupancy or yet to be so evidenced by a certificate of occupancy, cannot be lost **“by revocation without being notified first in writing and the subsequent revocation must also be notified to him in writing. Any other method may be a mere declaration of intent; it will never be notice or revocation. It will be a nullity.”** See **Nigeria Engineering Works Ltd V. Denap Ltd supra.**

Indeed because of the penchant for recourse to revocation without following due process of law, the point must be underscored again and again, even at the risk of prolixity that while the Governor of a State or in the case of the FCT, the Minister can revoke a right of occupancy, the revocation must be for overriding public interest and public purposes. Any revocation outside the purview or as prescribed under **Section 28** of the Act is against public policy and the intention of the Act and will be declared null and void. See **Dantsoho V Mohammed (2003) 6 NWLR (pt.817) 457 at 482; 483 D-E.** Accordingly a revocation ought to precede a subsequent grant under **Section 5 (2)**, even where the prior grant is a customary right of occupancy vide **Section 28 (3)**. See **Dantsoho V Mohammed (supra) 457 at 485 – 486 C.**

In this case, there was no revocation, and so there cannot legally be another allocation or issuance of a C/O (**Exhibit D1b**) to 3rd defendant in the face of the **existing** grant to claimant vide **Exhibit P1** of the same plot 1157.

The grant of a Certificate of Occupancy like **Exhibit D1b** to 3rd defendant without revoking the earlier Right of Occupancy vide **Exhibit P1** to claimant does not amount to the revocation of the earlier existing Right. This later grant does not also give life or validate **Exhibit D1b** by any stretch of the imagination. The grant of any Right of Occupancy done in violation of the provisions of **Section 28 of the Land Use Act** is invalid, null and void and confers no title. See **CSS Bookshops Ltd V Registered Trustees of Muslim Community in Rivers State (2006) 11 NWLR (pt.992) 530 at 567 – 568 H-F.**

It is therefore difficult to situate the superiority sought to be attached by 3rd defendant to the acquisition of the certificate of occupancy predicated on a flawed and invalid Right of Occupancy which was issued when there was already in existence a Right of Occupancy over the same land which has not been revoked.

The acquisition of the Certificate of Occupancy does not and cannot validate a flawed instrument of grant. **Exhibit D1b** in law is patently invalid or ineffective. See **Ejilemele V Opara (2003) 9 NWLR (pt.826) 536 at 557 E.**

Here again, it is apposite to state the familiar legal truism that you cannot put something on nothing and expect it to stand. The inevitable collapse of putting something on nothing is only a natural consequence. That unfortunately is the fate of **Exhibit D1b.**

Finally the contention that 3rd Defendant is in possession of the land and as such the Claimant cannot make a case for trespass, as contended by learned counsel to the 3rd Defendant in his final address, with respect will not fly. The law is clear 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 recognized or recognisable 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-** Per Tabai, JSC, **Ekretsu V. Oyobebere (1992)9 N.W.L.R (pt.266)438 and Aromire V. Awoyemi (1972)AII NLR 105 at 115-116.**

In this case, the Claimant has traced his 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 Defendant is in actual possession of the land in dispute, since no title resided in him at all material times, the 3rd Defendant cannot but be held to be a trespasser 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 whole, the Claimant by a confluence of clear unchallenged evidence, both oral and documentary has established his entitlement to the declaration sought under **Relief (a).** It has merit and is availing.

With respect to **Relief (b)**, having also found as demonstrated that there was no valid revocation of the Claimant's interest in plot 1157, Relief (b) also has merit and is availing to underscore that the actions of 1st and 2nd Defendants is unconstitutional and wrongful.

With the success of **Reliefs (a) and (b)**, **Relief (c)** is availing. As long as the interest of Claimant in Plot 1157 subsists, there cannot be another grant of the same plot to another person.

Reliefs (e) and (h) for trespass and for damages for trespass shall be taken together. Trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of the owner is an act of trespass actionable without any proof of damages. See **Ajibulu V Ajayi (2004) 11 NWLR (pt.885) 458 at 481**.

The claim for trespass is therefore rooted in exclusive possession. All a plaintiff suing in trespass needs to prove in order to succeed is to show that he is the owner of the land or he has exclusive possession.

On the basis of the pleadings and evidence, the Claimant has established that he has title or better claim of possession to plot 1157 compared to that of 3rd Defendant. On the pleadings and evidence, it is not in dispute, indeed it is common ground that the 3rd Defendant has built on the disputed plot. There is thus a clear infraction of the right of possession of Claimant's plot 1157. I concede that the Claimant is entitled to some measure of damages but I do not see how the humongous amount of **₦10,000,000** as damages for trespass can be justified under the peculiar circumstances of this case. The Counter-Claimant clearly moved on to the land on the basis of an allocation the court has now found to be flawed. There is no suggestion here of deliberate wrong doing by Counter-Claimant. I am therefore unable to find 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.**

On the whole, I award **N250, 000** as damages for trespass which the court considers as reasonable in the circumstances of this **case**.

Relief (f) in the absence of evidence must fail. There is nothing on the pleadings turning on subdividing, allotting or re-allotting of Claimants rights over the plot. There is equally absolutely no scintilla of evidence to situate or support these allegations leveled against 1st and 2nd Defendants. In the absence of both proper pleadings of these issues and most importantly, the lack of evidence, **Relief (f)** fails

With the success of **Reliefs (a)-(e)**, **Relief (g)** for injunction logically enures to protect the proprietary right of Claimant over the disputed plot.

The final **Relief (i)** is for cost. I incline to the view that that claimant is entitled to cost of this action. The Rules of court pursuant to **Order 56 Rule 1 (3)** provides for the principles to be observed in fixing costs. I am obligated to take into consideration the imperative of indemnifying the claimant for the expenses to which he was subjected, in addition to offering some compensation for the time and effort expended in prosecuting this action, which would have been unnecessary if the 1st and 2nd defendants have simply applied the clear provisions of the law to the admittedly unfortunate situation.

The first issue thus raised is answered **substantially** in the affirmative in favour of the **Claimant** and the final orders shall shortly be streamlined.

This now leads to the second issue relating to the Counter-claim. I had earlier stated that the counter claimant must like the plaintiff in the main action establish his case on the same principles to entitle him to the **Reliefs sought**. The same legal position equally holds true for **Reliefs 1-3** of the Counter Claim which includes two (2) **Declaratory Reliefs** which must be established by cogent and

compelling evidence putting the court in a commanding height to grant the declaratory Reliefs sought.

I had also stated that because the **Claim** and **Counter Claim** are inextricably tied together, I would consider the two issues raised together as a consideration of the substantive issue on the main claim would impact the issue raised with respect to the counter claim and provide broad factual and legal template to determine whether the reliefs or claims sought by the 3rd defendant/counter-claimant are availing. I now deal with the Reliefs in the Counter-claim.

Before dealing with the reliefs, let me underscore one point which may not altogether be decisive in view of the decision reached in the main claim.

On the pleadings and evidence of the 3rd Defendant, the allocation of the disputed plot was to one Sussanah Oyo who then donated an irrevocable Power of Attorney to 3rd Defendant which was duly registered vide **Exhibit D2**. I have read the contents and he was appointed by the said Susanah Oyo **“to be my lawful attorney for me and in my name to do the following acts or any of them.”** The acts were then delineated.

There is however nothing either in the Power of Attorney or evidence tendered by 3rd Defendant to situate transfer of interest to him in the said Plot 1157. **Exhibit D1** admittedly was donated in respect of the Plot 1157 but the Power of attorney is obviously not the offer letter and in law it is not construed as an instrument of transfer or alienation. While it is conceded that it is often erroneously used or utilized as such, it is merely an instrument delegating powers to the Donee to stand in position of the Donor and to do the things he could do. I cannot put it any better than to quote, *Ipsissima verba*, the useful words of Pats Acholonu (JCA) (as he then was and of blessed memory) in **Ndukauba v. Kolomo (2001) 12 N.W.L.R. (pt 726) 117 at 127 par F.G**, where he stated as follows:

“It is erroneously believed in not very enlightened circles particularly amongst the generality of Nigerians that a Power of Attorney is as good as a lease or an assignment. It is not whether or not coupled with an interest. It may eventually lead to execution of an instrument for the complete alienation of land after the consent of the requisite authority has been obtained.”

In the same vein, let me add that even before the pronouncement above, the Supreme Court in **Ude V. Nwara (1993)2 N.W.L.R (pt.278)638 at 644** instructively stated as follows:

“A power of attorney merely warrants and authorizes the donee to do certain acts instead of the donor and so it is not an instrument which confers, transfers, limits charges or alienates any title to the donee, rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. So even if it authorises the donee to do any of these acts to any person including himself, the mere issuance of such a power is not per se an alienation or parting with possession. So far as it is categorized as a document of delegation, it is only after, by virtue of the Power of Attorney, the donee leases or conveys the property, the subject of the power, to any person including himself that there is alienation.”

Similarly in **Ezeigwe V Awudu (2008) 11 NWLR (pt.1097) 158**, the Supreme Court per Onnoghen JSC (as he then was) stated as follows:

“Even if Exhibit A could be relied upon, it does not deprive the respondent of her title to the property; the document being nothing other than an irrevocable Power of Attorney – not a conveyance. In fact Exhibit “A” being an irrevocable Power of Attorney allegedly donated by the Respondent to the Appellant is a clear evidence or confirmation of the fact that title to the land in dispute resides in the Respondent, the donor of that power. The only document that could have proved any passing of that title to the Appellant would have been a conveyance or an assignment, none of which was said to have existed nor tendered in evidence in the case.”

The above pronouncements are clear.

In the absence of any document to situate passing of title in the property to 3rd Defendant, it would appear that the manner of the formulation of the Counter-claim is faulty to the extent that the case was filed in the name of 3rd defendant and the Reliefs sought are all in the name of Counter-Claimant or 3rd defendant. If the argument is made that he was given the attorney compiled with possession and so has an equitable interest, the Reliefs sought were not formulated in those terms and

the court has no jurisdiction to make a case different from that made by the party himself. I leave it at that.

Now to the **Counter-Claim**.

Having found for the prior allocation to Claimant of **plot 1157** as valid and as having not been revoked, **Relief (1)** on the Counter-claim seeking ownership of the same plot has no legal or factual foundation and must fail.

Having also found that the actions of 3rd Defendant/Counter-Claimant constitutes acts of trespass, **Relief (2)** must fail.

Finally with the success of the case of Claimant who has situated a better title to Plot 1157 than Counter-Claimant and with the failure of Reliefs 1 and 2 of the Counter-claim, **Relief (3)** equally has no basis and fails.

On the whole, the single issue raise with respect to the Counter-Claim, fails.

Before I round up, and because of the unfortunate facts of this case and the developments already carried out on the land by 3rd Defendant, I feel compelled to once again call attention to the admonition I made to the 1st and 2nd Defendants in the Judgment delivered on 26th June, 2023 in **Suit No: CV/1251/2016: Mr. Usman Usman Khan V. Mr. Richard Okozi and 4 Ors** thus:

“As I round up, it is important to call on the FCDA or issuing authority to exhibit more circumspection as they discharge the responsibility of allocating land to innocent Nigerians. The process of allocating land in the FCT is not done in a vacuum. It has well defined processes and or modalities and usually subject of streamlined Records. It is because the records are streamlined and kept that allowed the Deeds Registrar to produce Certified True Records of the allocation to the 3rd Defendant.

Now if these records are readily available, then it is difficult to accept or justify the subsequent allocation of the same plot to another party and the avoidable expenses he was made to incur on a clearly flawed allocation...

The bottom line is the pressing need for the Defendants to critically reevaluate the process of allocations of land to avoid the recurrent incidences of double allocations and also to harmonize the relationship of its various departments

to project a united front in matters concerning allocations of land in the FCT. That way, the avoidable confusion created in this case will not repeat itself. As an aside, a copy of this judgment be furnished to the Defendants to allow them take action on these lapses and to take remedial steps to reduce the losses suffered by Claimant in terms of allocating an alternative parcel of land.”

This Judgment too should be furnished to the 1st and 2nd Defendants. I leave it at that.

In the final analysis and for the avoidance of doubt, I hereby make the following orders:

ON PLAINTIFF’S CLAIMS/RELIEFS

- i. It is declared that the Claimants title and rights over the plot of land known and described as Plot No. 1157 within Katampe (B07) District measuring about 2540.840m² covered by Right of Occupancy dated 15th November, 1993 remains valid and subsisting.**
- ii. It is declared that the purported revocation of the Claimants title and rights over the plot of land known and described as Plot 1157 within Katampe (B07) District measuring about 2540.840M2 covered by Right of Occupancy dated 15th November, 1993 by the 1st and 2nd Defendants for reason of development on the plot is wrongful, unknown to the provision of the Land Use Act, unconstitutional and illegal.**
- iii. It is equally declared that the grant of another Right of Occupancy over the same piece or parcel of land known and described as Plot No. 1157 within Katampe (B07) District to the 3rd Defendant on the 5th January, 1994 while the Claimants grant was subsisting and intact is invalid, null and void.**
- iv. An order is granted setting aside and/or nullifying the purported issuance of another Right of Occupancy over the parcel of land known and described as Plot No.1157 within Katampe (B07) District to the 3rd Defendant.**

v. It is declared that the acts of the 3rd Defendant on the parcel of land known and described as Plot No. 1157, within Katampe (B07) District measuring about 2540.840m² amounts to trespass.

vi. Relief (vi) is refused.

vii. The Defendants, their agents, servants, privies or anyone acting or claiming through them are hereby restrained from further acts of trespass and acts capable of affecting the lawful and subsisting interest of the Claimant over Plot 1157, Katampe (B07) District measuring about 2540.840m² as guaranteed under the Land Use Act and the 1999 Constitution of the Federal Republic of Nigeria.

viii. I award the sum of ₦250, 000 as general damages for trespass against 3rd Defendant.

ix. Pursuant to Order 56 Rule 3 of the Rules of Court, I assess costs of this suit at ₦200, 000 in favour of Claimant against the Defendants, jointly and severally.

ON THE 3RD DEFENDANTS COUNTER-CLAIM

The 3rd Defendant's Counter-Claim fails in its entirety and is accordingly dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

1. *Olasoji Olowolafe SAN for the Claimant with Olajide O. Adewunmi, Esq., and Oketade Hameeddah, Esq.*

2. *Emeka Mozie, Esq., with M.S Dukas Esq., and Abdulkareem Usman Esq., for the 1st and 2nd Defendants.*

3. *Patrick Otsima, Esq., for the 3rd Defendant/Counter-Claimant.*