

**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/4425/2011
DELIVERED ON THE 19/06/2025**

BETWEEN:

DEJI ADEKEYE.....CLAIMANT

*(Suing By his Attorney **LATE ONYEIWU VICTOR CHIKA***

*Represented by **UCHENNA LEONARD ONYEIWU** joined by
Order of Court on the 29th of April 2019)*

AND

1. THE HONOURABLE MINISTER, F. C. T. ABUJA

2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY

3. JAMIL ENG. CO. NIG. LTD

4. FIRST REAL PROPERTIES LTD (Joined by the Order of Court
On the 4th of May, 2015

}DEFNDANTS

JUDGMENT

The Claimant commenced this suit by way of a writ of summons dated the 30th March, 2011 and filed on the 31st March, 2011. The Claimant applied for and was granted leave to amend his statement of claim, the Claimant filed and served a further amended statement of claim dated the 26th February, 2021, and filed on the 1st March, 2021, seeking the following reliefs:

- a. A **Declaration** that the purported replacement of the title of the Claimant as the title holder/allotted over plot **1691**, Cadastral Zone **C02**, Gwarinpa, Abuja and the re - allocation to any other person is wrongful, unlawful null and void and of no effect whatsoever.*

- b. An Order directing the 1st Defendant to reverse the purported replacement of the title of the Claimant over plot 1691, Cadastral Zone C02, Gwarinpa, Abuja.*
- c. A Declaration that the Claimant is the true and rightful title holder and entitled to the right to title in respect of plot 1691, Cadastral Zone C02, Gwarinpa, Abuja.*
- d. A Declaration that the building approval granted to the 3rd and 4th Defendants by the 1st and 2nd Defendants is wrongful, unlawful, null and void and of no effect whatsoever.*
- e. An Order of perpetual injunction restraining the Defendants by themselves, their servants, agents and or privies from interfering with or doing any act or taking any step which is inconsistent with the rights, interests of the Claimant or its authorised and lawful agents or servants in respect of plot 1691, Cadastral Zone C02, Gwarinpa, Abuja.*
- f. The sum of One million naira (₦1,000,000.00) only being the cost of this suit.*

The Defendants were duly served with the Claimant's further amended statement of claim dated the 26th February, 2021, the 1st and 2nd Defendants filed and served their statement of defence dated the 24th March, 2021 and filed on the same date. The 1st and 2nd Defendant's statement of defence was served on the Claimant on the 12th October, 2023. Similarly, the 3rd and 4th Defendants filed and served their amended statement of defence dated the 29th September, 2023 and on receipt of same the Claimant filed and served reply to 3rd and 4th Defendant's amended statement of defence as well as reply to the 1st reply to the 1st, 2nd and 3rd and 4th Defendants amended statement of defence which were dated the 10th November, 2023 and filed on the 13th November, 2023 and by the order of this court the Claimant's reply was deemed as properly filed and served.

At the hearing of the suit, the Claimant called one witness who testified as the PW1 and tendered documents which were admitted in evidence and marked as Exhibits P1 - P14 respectively. The 1st and 2nd Defendants did not tender any document in evidence in defence to this suit although they called one

witness. The 3rd and 4th Defendants tendered documents which were also admitted in evidence and marked as Exhibits **D1 - D7** respectively. The Claimant called a sole witness who testified as PW1 while the 1st, 2nd, 3rd and 4th Defendants equally called two witnesses who testified as the **DW1** and **DW2** respectively. The witnesses for both parties testified in chief and were equally cross examined as required by the law. At the close of the case for the parties final written addresses were adopted by the respective learned counsel for the parties while the case was adjourned for judgment.

However, before considering the evidence before this court it suffices to glance at the background of the case which is that the 1st and 2nd Defendants granted a statutory right of Occupancy over plot No. **1103** to the Claimant which was later changed to plot **1691** vide a letter of offer of terms of grant/conveyance of approval dated the 7th of April 2003. The Claimant accepted the offer as contained in the terms of offer and paid all the statutory fees to the 1st and 2nd Defendants who issued the Claimant with Certificate of Occupancy (C of O) dated the 2nd March, 2009.

That sometimes in 2010 the 3rd and 4th Defendants challenged the Claimant's title in respect of the same plot of land. The 3rd and 4th Defendants claimed that the land was first granted to 3rd Defendant in 2002, and that the title to the land resided with the 3rd Defendant as at the time and that an alternative plot **1585** located within Kabusa District was given to the Claimant. The 1st and 2nd Defendants agreed that the 3rd Defendant was early in time and should retain plot **1691** Gwarinpa District. The Claimant testified by himself as the **PW1** and was accordingly cross examined. The written statement on oath of the plaintiff, Mr. Onyeiwu Victor Chika was adopted and through him the following documents were admitted in evidence and marked as Exhibits **P1** to **P14** respectively. They are:

- 1. Offer of terms of grant/conveyance of approval dated the 7th April, 2003 marked as Exhibit P1.**
- 2. Re - Certification and Re - issuance of C of O acknowledgement dated the 23rd March, 2005 as Exhibit P2.**

3. Legal search report dated 30th April, 2008, marked as Exhibit P3.
4. Demand for ground rent dated 08/12/2009 marked as Exhibit P4.
5. Diamond Bank teller paid to Abuja Geographic Information System dated the 11/12/2009 as Exhibit P5.
6. Legal search report dated 06/12/2010 marked as Exhibit P6.
7. Intercity Bank Teller dated 23/03/2005 marked as Exhibit P7.
8. Certified True Copy of Acceptance of offer of grant of right of Occupancy within the Federal Capital Territory, Abuja dated the 10/04/2003, marked as Exhibit P8.
9. Certified True Copy of Re - certification and Re - issuance of C of O acknowledgement dated 23rd March, 2005 marked as exhibit P9.
10. Certified True Copy of change of Occupancy issued to 4th Defendant by 1st and 2nd Defendants marked as Exhibit P10.
11. Certified True Copy of demand for ground rent dated the 08/12/2009 marked as Exhibit P11.
12. Certified True Copy of offer of terms of grant/conveyance of approval dated 07/04/2003 marked as Exhibit P12.
13. Certified True Copy of C of O granted to the Claimant dated the 2nd March 2009, marked as Exhibit P13.
14. Irrevocable Power of Attorney donated to Onyeiwu Victor Chika, marked as Exhibit P14.

It is part of the evidence of the **PW1** that sometimes in 2008 he was given a Power of Attorney over plot 1691 Cadastral Zone, **C02**, Gwarinpa, Abuja by one Deji Adekeye. He stated that he mandated his lawyers, the firm of Ivory chambers to conduct a search on the property in 2008 to ascertain the authenticity of the plot which was said to be positive in that the C of O was only awaiting the signature of the Honourable Minister. He further stated that the C of O was signed in 2010 by the Honourable Minister and issued to him together with the TDP bearing plot No. **1691** which was taken away from him and replaced with plot No. **1585** Cadastral Zone **C02** Kabusa which was a smaller one compared to plot **1691** Cadastral Zone 1 Gwarinpa, Abuja. He also told the court that his plot **1691** was never officially revoked as he was

never served with any revocation letter from the Respondents/Defendants and as such subsisting. He was also cross examined by the Defendant's counsel. He confirmed to this Honourable court the payment of all fees and levies in respect of the said plot, the receipts of which were admitted in evidence through him. He testified to the effect that the Power of Attorney was donated to him and it was equally admitted in evidence. The evidence of the **PW1** disclosed the fact that it was only in 2010 that the 3rd and 4th Defendants started challenging his title in respect of the same plot of land by claiming that the 3rd Defendant's plot was first granted to him in 2002 and that title resided in him as at the time the land was allocated to the Claimant. The 3rd Defendant claimed to be first in time and should retain the plot **1691** Gwarinpa District.

The 1st and 2nd Defendant's position in this suit is that the allocation to the Claimant was as a result of double allocation as same property had earlier been allocated to the 3rd Defendant and replaced the Claimant with plot No. **1585** Cadastral Zone **C12** Kabusa, Abuja. They called one witness who was also cross examined.

As for the 3rd and 4th Defendants the 3rd Defendant was allocated the land on dispute by the Honourable Minister of Federal Capital Territory in 2002 but it was erroneously allocated to the Claimant called Deji Adekeye who later transferred the purported title to late Onyeiwu Victor Chika now represented by Uchenna Leonard Onyeiwu. The 3rd and 4th Defendants called 1 witness through whom several exhibits were admitted in evidence and marked as Exhibits **D1** to **D7** respectively. They are:

- 1. Power of Attorney donated to 4th Defendant by the 3rd Defendant, marked as Exhibit D1.**
- 2. Re - double allocation over plot No. 1691 within Gwarinpa I (C02) District, Abuja dated 18th October, 2010, marked as exhibit D2.**
- 3. Memo - status of title plot 1103 (new plot No. 1691) Gwarinpa District Cadastral Zone C02 (Misc-55860) caters 20th September, 2010 marked as Exhibits D3.**

- 4. Certified True Copy of recommended application for approval dated the 20th March, 2002, marked as Exhibit D4.**
- 5. Offer of terms of grant/conveyance of approval in favour of the 3rd Defendant dated 09/04/2002 as Exhibit D5.**
- 6. Certificate of Occupancy in favour of the 4th Defendant dated 2nd July 2012 marked as Exhibit D6.**
- 7. A Certified True Copy of letters of Administration (without will) marked as Exhibit D7.**

The evidence of the 3rd and 4th Defendants is that the Claimant relied for his claim on a letter of allocation dated 07/04/2003 with Ref. Number, **MFCT/LA/KW/2621** in respect of plot **1691** Cadastral Zone **C02** Gwarinpa.

According to the 3rd and 4th Defendants there was an earlier allocation of the same plot to the 3rd Defendant vide offer of terms of grant/conveyance of approval dated the 09/04/2002 with **Ref - MFCT/LA/MISC/18862**.

The said plot was said to be previously identified with No. **1103** Gwarinpa but now plot 1691 Gwarinpa **C02** District which was said to be suffering from double allocation and was resolved by the principle of first in time prevails. The Claimant by the order of the Hon. Minister was given an alternative plot with number, **1585** Kabusa, **C12** district Abuja which the Claimant refused to accept as a result of which this suit was filed.

According to the 3rd and 4th Defendants, one Deji Adekeye by a Power of Attorney donated the land to late Onyeiwu Victor Chika who upon his death was purportedly joined by Uchenna Leonard Onyeiwu as his next of kin and junior brother without any valid letter of Administration from the Probate Division of the Federal Capital Territory, High Court, Abuja. The 3rd Defendant by a Power of Attorney donated his right on the land to the 4th Defendant and was issued with a certificate of Occupancy by the Honourable Minister of the Federal Capital Territory Abuja.

Above is a summary of the respective processes filed before this court as well as the evidence of the parties. It will equally be in the interest of justice to

peruse, consider and evaluate the written addresses of the counsel in this suit. The learned counsel for the plaintiff N. J KALU Esq in arguing his written address adopted before this Honourable court formulated six (6) issues for determination by this Honourable court, namely:

- 1. Whether plot 1691 (1103) within Gwarinpa District, Abuja was offered to the 3rd Defendant and accepted by him in accordance with the terms of offer dated 09/04/2002.**
- 2. Whether the offer of terms of grant/conveyance of approval dated 07/04/03 granted to the Claimant was validly and legally accepted by the Claimant in accordance with the terms of offer.**
- 3. Whether the right and interests of the Claimant in plot 1691 (1103) within Gwarinpa District, Abuja was revoked or withdrawn by the 1st and 2nd Defendants.**
- 4. Whether plot 1585 Cadastral Zone C12 Kabusa District, Abuja was granted to the Claimant or to the 4th Defendant as replacement of plot 1691 (1103) Gwarinpa, District, Abuja.**
- 5. Whether this Honorable court rightly admitted Exhibit D6 in evidence which was procured during the pendency of this suit.**
- 6. Whether the Claimant has proved his claim against the Defendants which will entitle him to the relief sought in this suit.**

The learned counsel submitted on the admissibility of Exhibit **D7** which is a Certified True Copy of letters of Administration issued in Lagos in respect of a landed property situated in Abuja. The learned counsel for the Defendants, particularly the learned silk for the 3rd and 4th Defendants vehemently objected to the admissibility of Exhibit **D7** on the grounds that it was not issued in Abuja Probate Division where the said plot of land is situated. The learned counsel for the plaintiffs submitted that Exhibit **D7** is relevant and payment was made in compliance with section **1041** of the Evidence Act, 2011 which deals with the admissibility of a public document. According to him, apart from the document having been pleaded in paragraph 7 of the Claimant's reply to 3rd and 4th Defendants amended statement of defence, the document is also relevant to the facts in issue. He referred to the case of

ABUBAKAR V. CHUKS (2007) 8 NWLR (Pt. 1066) pg 386 SC where it was held that:

"Admissibility is a rule of evidence and it is based on relevancy. In determining the admissibility of evidence, the court will not consider how it was obtained, rather the court will take into consideration whether what is admitted is relevant to the issues being tried".

He submitted that the letters of Administration sought to be tendered is a certified true copy which is admissible in law even from the Bar. He submitted further that the essence of Exhibit **D7** is only to show that the **PW1** who testified for the Claimant has the authority to represent his late brother Onyeiwu Victor Chika as he was earlier granted leave by this court to represent his brother. He referred to the case of **OLUBEKO V. AWOLAJA & ANOR (2017) LPELR - 41854 (CA)** where the Court of Appeal held thus:

"The import of the letter of administration is very clear, it confers authority on those named therein to continue to manage the estate of the deceased for the interest of the beneficiaries. To institute an action as personal representatives or administrators of a deceased estate does not require that the Certificate of Occupancy must be in their name....."

The learned counsel therefore urged this court to admit Exhibit **D7** as having satisfied the requirements of the law under section 104(1) of the Evidence Act.

On the issue of whether or not plot **1691** was granted to the 3rd Defendant and accepted by him the learned counsel for the Claimant submitted that even though Exhibit **D5** is an evidence of offer or grant to the 3rd Defendant, there is no evidence that he complied with the terms of the offer particularly paragraph 3 of Exhibit **D5** which states as follows:

"The date of commencement of this Right of Occupancy will be the date of acceptance as signified by you and should be within two months from the date of this letter".

He submitted that the refusal of the 3rd Defendant to tender the letter of his acceptance of the offer shows that he did not comply with the condition precedent contained in a contract or terms of the offer. The learned counsel for the Claimant referred to a number of judicial authorities on this issue which include **BILANTE INT'L LTD V. N.D.I.C (2011) 15 NWLR (pt. 1270) at pg 407** particularly at pg 413 ratio 6 and section 167(d) of the Evidence Act which provides:

"Evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it".

He submitted further that this failure to tender the letter of acceptance by the 3rd Defendant shows that he failed to comply with a fundamental term of the offer and it amounts to a breach of terms of the offer. He referred to the case of **BEST (NIG) LTD. V. B.H. (NIG) LTD (2011) 5 NWLR (pt. 1239) pg 95 at pg 104 ratio 10** where it was held inter alia that:

"A contract between parties may be discharged by breach of fundamental term by any of the parties...."

He therefore submitted that the 3rd Defendant cannot be said to be first in time having accepted the offer of grant neither can it be said that plot 1691 is a subject of double allocation. The learned counsel also drew the attention of this court to Exhibits **D2, D3** and **D4** to be compared with Exhibits **P13** and **P10** respectively. He submitted that exhibit D2 was made on the 18th October 2010 while Exhibit **P13** which is the Certificate of Occupancy of the Claimant was issued to him on the 22nd March, 2009. He also referred to Exhibit **D3**, paragraph 4 where plot 1585 Kabusa (C12) district was recommended for the 3rd Defendant as a replacement for the 3rd Defendant and it was written on the 20th September, 2010. He equally referred to Exhibit **P10** dated the 20th October, 2010 which was a change of offer of statutory Right of Occupancy in favour of the 4th Defendant. He submitted that there is no evidence from the 3rd, 1st and 2nd Defendants to the effect that plot 1691 was reallocated to the 3rd Defendant apart from Exhibit **P10**

which is a change of offer of statutory Right of Occupancy in favour of the 4th Defendant.

It is the submission of the learned counsel for the Claimant that oral evidence cannot change or contradict documentary evidence as Exhibit **P10** speaks for itself. He referred to the case of **HAMIDU & ANOR V. KADUNA ELECTRICITY DISTRIBUTION PLC & ANOR (2019) LPELR - 48281 (CA)** where it was held by the Court of Appeal that:

"Let me hasten to reiterate the settled position of law that oral evidence cannot supersede, replace, dislodge or contradict documentary evidence. Documentary evidence which by its nature of being permanent in form is more reliable than oral evidence which is the best evidence and proof of the contents of the documents".

He therefore urged this Honourable court to hold that the 3rd Defendant never accepted the offer of plot **1691** made to him as a result of which the same plot was granted to the Claimant who complied with the terms of offer dated the 7th April, 2003, and that there was nothing like double allocation on the said land.

On the second issue distilled for determination by this court the learned counsel for the Claimant submitted that the 1st and 2nd Defendants did not deny having allocated the plot **1691** to the Claimant neither did they deny that the Claimant paid all the required statutory fees demanded by them which receipts were tendered as Exhibits **P4**, **P11**, and **P5** respectively. He therefore urged this Honourable court to hold that the offer made to the Claimant dated the 7th April, 2003 was accepted by him, but there is no evidence to show that the 3rd Defendant ever accepted the offer of plot **1691** made to him dated the 9th April, 2002.

The next issue contended by the Claimant is whether or not the interest of the Claimant in plot **1691** (1103) Gwarinpa District Abuja was ever revoked or withdrawn by the 1st and 2nd Defendants. The learned counsel submitted that there is no evidence tendered in proof of the revocation of plot 1691 allocated

to the Claimant despite the fact that the 1st, 2nd, 3rd and 4th Defendants tendered in evidence Exhibits **D1** to **D5**. He referred to the evidence of the **PW1** in his statement of witness on oath wherein he said:

"That the Claimant states he never received any letter dated the 18th October, 2010 and that plot 1691 (plot 1103) was never revoked and allocated to the 3rd Defendant on the ground that the first Defendant was first in time. Certified True Copy of Acceptance letter by the Claimant is hereby referred to as Exhibit".

The learned counsel submitted that the Defendants failed to proof or lead evidence that the Claimant received any notice regarding double allocation of plot **1691** (1103) within Gwarinpa District, Abuja, and this being the case there can be no title granted to the 4th Defendant in respect of plot 1691. He further submitted that by 18th August 2005 when Exhibit **D1** (Power of Attorney donated to the 4th Defendant by the 3rd Defendant) was registered in the 1st and 2nd Defendant's Deed Registry, Title and interest in plot **1691** Gwarinpa District, Abuja was legally and validly with the Claimant. He referred to the evidence of the **DW2** under cross examination when he admitted that he bought plot **1691** (1103) within Gwarinpa District from the 3rd Defendant but that if he had made a search he would have known that plot **1691** was encumbered and title and interest was residing with the Claimant since 7th April, 2003. He further submitted that the registration of Exhibit **D1** by the 1st and 2nd Defendants is void, illegal and of no effect as the 3rd Defendant knew that he did not possess title and interest in plot **1691** (1103) Gwarinpa District, Abuja when he donated Power of Attorney (Exhibit **D1**) in favour of the 4th Defendant in 2004. This, according to him is because there is no evidence before this court that the said plot **1691** was ever revoked or withdrawn by the 1st and 2nd Defendants.

In arguing the 4th issue the learned counsel submitted that despite the evidence of both the **DW1** and **DW2** that plot **1585** Cadastral Zone **C12** Kabusa District Abuja was issued to the Claimant by the 1st and 2nd Defendants as a replacement for plot **1691** and also confirmed by both

paragraph 13 (d) of 3rd and 4th Defendants amended statement of defence there is no documentary evidence of such replacement. According to him, the fact was challenged by the Claimant in paragraph 2 of the Claimant's reply to the 1st and 2nd Defendant's further amended statement of defence where he says:

"In reply to paragraph 7 of the 1st and 2nd Defendant's further statement of defence, the Claimant states that plot No. 1585 Cadastral Zone C12 Kabusa District was never allocated to the Claimant at any time by the 1st and 2nd Defendants instead plot 1585 Cadastral Zone C12, Kabusa District was allocated to the 4th Defendant, vide change of offer of statutory right of Occupancy dated the 9th April, 2002. The 1st, 2nd, 3rd and 4th Defendants are hereby given notice to produce the original copy of the said letter".

In compliance with the procedure of the law where a party fails to produce original document after being given a notice to do so, the Claimant tendered Exhibit **P10** which is evidence of change of offer of statutory right of Occupancy in favour of the 4th Defendant. He therefore urged this Honourable court to hold that Exhibit **P10** was granted to the 4th Defendant and not the Claimant. He reiterated the principle of the law that documentary evidence cannot be replaced or contradicted by oral evidence.

The learned counsel referred to Exhibit **D6** which was admitted in evidence as evidence procured during the pendency of this suit which ought not to be admitted in evidence as being against the spirit of section 83(3) of the Evidence Act 2011 which states as follows:

"Nothing in this section shall render admissible any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any facts which the statement might tend to establish".

The learned counsel submitted that this suit was commenced by writ of summons dated the 30th March, 2011 and the 1st and 2nd Defendants were

parties to the suit. However, he submitted that exhibit D6 was made on the 2nd July, 2012 by the 1st and 2nd Defendants when this suit was already pending before this Honourable court. The 4th Defendant is also a party to this suit whose interest Exhibit D6 was procured by the 1st and 2nd Defendants who are also interested parties in the subject matter of this suit. He referred to the case of **MATINO (NIG) LTD V. VIEWPOINT (NIG) LTD & ORS (2021) LPELR - 56262 (CA)** where the Court of Appeal held that:

"The trial judge made a finding that exhibit G was made during the pendency of the suit and there is no Appeal against the finding, that being the case and because it was made by a party interested, section 83(3) of the Evidence Act, 2011 has caught up with it and it must be expunged."

The learned counsel equally referred this Honourable court to a number of judicial authorities on this issue which include: **ANAGBADO V. FARUK (2018) LPELR - 44909 (SC)**, **PETERSIDE & ORS V. WABARA & ORS (2010) LPELR - 4847 (CA)** **OGIDI V. EGBA (1999) 6 SCNJ pg 107** and **OKONKWO V. OKONKWO** respectively. He also referred to the case of **BAMGBOYE V. OLUSOGA (1996) 4 NWLR (pt. 444) ph 520** where the Supreme Court held thus:

"The transfer of land (in dispute) during pendency of a suit is against the law and the operation of a just trial of the suit, more so when the Purchaser had a clear notice of pending suit. Because when a case is pending, with either party claiming ownership or title and neither has been declared owner or winner, nothing must interfere with the status quo at the time of litigation. Thus, no person can validly convey that land in dispute to any other person including the parties to the suit during the pendency of that suit."

The learned counsel therefore urged this Honourable court to expunge exhibit D6 having been procured during the pendency of this suit as was held in the case of **SOCACIC WEST AFRICA (NIG) LTD V. ACCESSFILED (NIG) LTD (2021) LPELR - 56405 CA** where it was held that:

"The law on admissibility of evidence has made it clear that a court has the power to expunge inadmissible evidence that was wrongly admitted during trial, at judgment stage or an appeal".

He also referred to the case of **UBN PLC V. AJABULE & ANOR (2011) LPELR - 8239 (SC)** on the same principle that such wrongly admitted evidence can be expunged by the court at the judgment level in the interest of Justice.

The final issue argued by the learned counsel for the Claimant is whether or not the Claimant has proved his claim against the Defendants to entitle him to the reliefs sought in this suit. He submitted that in proof of the Claimant's claim it has been shown by way of documents tendered before this Honourable court that plot 1691 (1103) was validly allocated by the 1st and 2nd Defendants and accepted by the Claimant. He submitted that title in plot 1691 (1103) is subsisting in favour of the Claimant as no evidence was tendered by the Defendants to prove otherwise. He submitted further that by virtue of Exhibits **P11** it could be said that uptill December 2009, the 1st and 2nd Defendants were consistent that title in plot 1691 (1103) was still extant in favour of the Claimant while the Defendants failed to prove by way of any documentary evidence their assertion that the title in plot 1691 (1103) was allocated to the 3rd or 4th Defendants nor were they able to prove that plot 1585 (C12) Kabusa District was issued in favour of the Claimant in replacement of plot 1691. He submitted that he is in alignment with the submissions of the learned counsel for the Defendants that where there is a subsisting title over land as in this case where title plot 1691(1103) is subsisting in favour of the Claimant, the title cannot be extinguished by the issuance of Exhibit **D6** to the 4th Defendant. He therefore submitted that the Claimant has shown by credible evidence and proof that he is entitled to the reliefs sought in this suit as no contrary or credible evidence has been adduced by the Defendants to proof otherwise. He prayed this Honourable court to enter judgment in favour of the Claimant with substantial cost against the Defendants particularly the 3rd and 4th Defendants.

On the other hand, the learned counsel for the 1st and 2nd Defendants, JOHN ABAH AUGUSTINE Esq in their joint final written address formulated a lone issue for determination by this Honourable court to wit:

Whether the Claimant has successfully proved his claim against the Defendants which will entitle him to the reliefs sought.

In arguing, the lone issue distilled by the 1st and 2nd Defendants the learned counsel submitted that the burden of proof lies on the Claimant to show that he is entitled to the reliefs sought as required by **sections 131(1) and 132 of the Evidence Act 2011** and authorities in plethora of cases such as **LAWRENCE V. OLUGBEMI & ORS (2018) LPELR - 45966 (CA)** and **UNION BANK V. RAVIH ABDUL & CO LTD (2018) LPELR - 46333 (SC)**. The ratio in both cases cited above is to the effect that the burden of proof is on the party who would lose if no evidence were adduced.

The learned counsel submitted that in a claim for title to land mere presentation of Certificate of Occupancy is not sufficient for declaration of title and grant of injunctive reliefs. He submitted that where there is a subsisting interest in land, issuance of Certificate of Occupancy on the same land without the previous one being revoked is a nullity. He supported this position by referring to the case of **NNADIKE & ANOR V. NWACHUKWU (2019) LPELR - 48131 (SC)** where the Supreme court held thus:

"Where there is subsisting title over land in favour of one party, that title cannot be extinguished by the mere issuance of a C of O to another party, without a valid revocation of the earlier title".

He submitted further that at the time plot 1691, Cadastral Zone C02, Gwarinpa, Abuja was allotted to the Claimant by the 1st and 2nd Defendants there was already an existing interest on the said land granted to the 3rd Defendant hence, the subsequent allocation is null and void. He stated that the 3rd Defendant's title was issued on the 9th day of April, 2002 while that of the Claimant was issued on the 7th day of April, 2003. He submitted that the

title on plot 1691 was never revoked and as such one cannot give what he does not have. He referred to the case of **GBADAMOSI & ORS V. AKINLOYE & ORS (2013) LPELR 20937 (SC)** where it was stated that:

"It is settled law that you cannot give what you do not have, otherwise known as the doctrine of "Nemo dat quod non habet".

Similarly, in the case of **OMILAYE V. MACAULAY & ORS (2009P LPELR - 2640 (SC))** it was held that:

".....the prerequisite for a valid grant of a certificate of Occupancy is that there must not be existence the valid title of another person with legal interest in the same said land at the time the Certificate was issued".

He further urged this Honourable court to consider the observation in the above cited case when the same court further held that *"the holding of a certificate of Occupancy whether statutory or customary is at best a prima facie evidence of title of the land covered by it. But its exclusive possession is rebuttable"*. He also referred to the case of **OTUKPO V. JOHN & ANOR (2012) LPELR - 25053 SC** on the same principle of the law stated above.

The learned counsel further submitted that where there are competing interests by parties claiming from a common grantor, the first in time prevail. He referred to the case of **ATANDA V. AJANI (1989) 3 NWLR (pt. 111) pg 511 at pg 538** where the Supreme Court held thus:

"Where as in this case, the two competing titles originate from a common grantor, the first in time takes priority and the trial judge must in addition to finding as a fact that both parties derive title originally from a common grantor, proceed to ascertain where there is a credible evidence, the priority of the competing titles".

The learned counsel further referred to the case of **MAZA V. AWUNA (2022) LPELR - 58909 (SC)** and the case of **OMILAYE V. MACAULAY**

& ORS (supra) to the effect that any superior court of record, can set aside and/or nullify a Certificate of Occupancy where it is proven that at the time such a Certificate of Occupancy was issued (as in the instant case) there was in existence a customary owner whose title has not been revoked.

The learned counsel silk for the 3rd and 4th Defendants also filed a written address in support of the case of the 3rd and 4th Defendants. The learned silk formulated a sole issue for determination to wit:

"Whether there was an allocation of one plot of land to two persons in this suit and whether the issue was resolved in accordance with justice and fairness by the Honourable Minister of Federal Territory, Abuja".

The learned silk submitted that the Claimant claimed to have been allocated the plot subject matter of this suit on the 07/04/2003 while the 3rd Defendant was issued the same plot on the 09/04/2002. He submitted that it was a case of double allocation where by one plot was allocated to two people. According to the learned silk referring to the evidence of the witness for the 1st and 2nd Defendants, Ibrahim Babangida, it was a mistake which was resolved by the 1st and 2nd Defendants in favour of the 3rd Defendant who was asked to retain plot 1691 (1103) Cadastral Zone, Gwarinpa, Abuja, while the Claimant gets an alternative land at Kabusa in the same Federal Capital Territory on the principle of first in time prevails. He also urged this Honourable court to consider Exhibits **D1** to **D6** as well as evidence elicited from the 1st and 2nd witnesses, during cross examination. According to the learned silk evidence procured under cross examination is very relevant to the facts of the case. He referred to the case of **ISAAC GAJI & 2 ORS V. EMMANUEL D. PAYE (2003) 8 NWLR (pt. 823) pg 583 at pgs 603 to 604 paragraph F - B**, where the Supreme court held inter alia that:

"Evidence procured from cross examination is as valid and authentic as evidence procured from examination in chief. That both have the potency of relevancy and relevancy is the heart of admissibility in the law of evidence. The Apex court restated that

where evidence is relevant it is admissible and admitted whether or not it is procured from examination in Chief or cross examination".

He equally urged this court to consider ratio 10 of the case of **ABDULLAHI HARUNA Esq & 31 ORS V. KOGI STATE HOUSE OF ASSEMBLY & 5 ORS (2010 7 NWLR (pt. 1194) pg 604 at pg 614** and urged the court to act upon the answer elicited from Ibrahim Babangida during cross examination as the answer is relevant and admissible especially that the issue of double allocation was resolved by the Minister.

The learned silk further submitted that the 1st Defendant under his hand issued a Certificate of Occupancy (Exhibit **D6**) to the 4th Defendant in accordance with the Land Use Act, and this fact was corroborated by the evidence of the witness for the 3rd and 4th Defendant in person of NASIRU ANNAS ALIYU. He therefore prayed this Honourable court to uphold the Certificate of Occupancy, Exhibit **D6**. He equally submitted that the evidence of the witnesses for the 1st, 2nd, 3rd and 4th Defendants Ibrahim Babangida Azeez and Nasiru Abbas Aliyu were not controverted or challenged by the Claimant in any way. In support of this submission he referred to the case of **MATANMI & 2 ORS V. VICTORIA DADA & 1 OR (2013) 7 NWLR (pt. 1353) pg 319 at pg 324 ratio 7** where the Supreme Court held thus:

"An unchallenged evidence is deemed to be correct and can be acted upon by the court".

He therefore urged this Honourable court to act on same.

It is the learned silks further submission that the failure of the Claimant to challenge the issue of the double allocation either in their pleadings or evidence shows an admission of that fact by the Claimant that there was double allocation of the plot to two persons and validity was given to the one allocated first that is the 3rd Defendant and eventually, the 4th Defendant. On this principle, he referred to the case of **OWOSHO & ORS V. DADA (1984) NSCC pg 568 SASEGBON** where the Apex court held that:

"That a fact is deemed to be admitted if it is neither specifically denied by implication having regard to other facts in the pleadings. A plaintiff's averments of facts must be met by the Defendant frontally and categorically....."

In the same vein, the learned silk referred to the case of **ALHAJI UBAN KARI V. ALHAJI ISA ABBA GANARAM & 2 ORS (1999) 2 SCNJ pg 38 at pg 59** where the Supreme court held thus:

"Where there is a subsisting right of Occupancy, it is good against any other right. The grant of another right of Occupancy over the same piece of land will therefore be merely illusory and invalid. The appellants right of Occupancy subsist up to now as it has not been revoked and the wrongful grant to the 1st respondent has no effect whatsoever on its authenticity"

He further referred to the case of at pg 558 **TERUNGWA SACHIA V. KWANDE LOCAL GOVERNMENT COUNCIL & 2 ORS (1970) 5 NWLR (pt. 152) pg 548** where it was held that:

"It is trite law that a person cannot give what he does not have or possess"

He therefore submitted that the 1st Defendant having allocated the land to the first allottee has nothing left to allocate to the 2nd allottee whose allocation in that wise becomes null and void and of no effect and as such nothing to be revoked since there was no allocation, hence an alternative plot to the Claimant. He again submitted that the court should not rely on any of the exhibits tendered by the Claimant particularly the letter of Administration from the Lagos State Probate Division.

According to the learned silk the letter of Administration from the Lagos State Probate Division cannot be admitted in evidence as it relates to a property situated in Abuja more so that it has failed to comply with requirements of **section 104(1) of the Evidence Act** as regards to certification of a public document. He submitted that notwithstanding the

presence of a receipt of payment in certifying the letter of Administration, it has no relevance in respect of property in Abuja nor does it contain any property or description anywhere. He urged this Honourable court to discountenance Exhibit **D7** which he described as a "spanner" thrown into the works that does not contain the property, the subject matter of this suit at Gwarinpa, or alternative plot granted the Claimant by the 1st and 2nd Defendant at Kabusa. He urged this Honourable court to regard Exhibit **D7** irrelevant to the present suit. He finally urged this Honourable court to hold that there was double allocation of one plot to two persons in this suit and the issue was administratively resolved in accordance with Justice and fairness by the Honourable Minister of Federal Capital Territory Abuja. He therefore urged this Honourable court to dismiss the Claimants case for lacking in merit and being frivolous.

Having thus paraphrased both the content of the respective processes filed by the parties before this court and the final written addresses of the learned counsel for the parties, it will be in the interest of Justice to analyse the various exhibits tendered in evidence in proof of the case of the parties. The Claimant tendered Exhibits **P1** to **P14** which were listed in the preceding part of this Judgment.

Conversely, the 3rd and 4th Defendants tendered seven documents also listed in the preceding part of this Judgment.

The 1st and 2nd Defendants did not tender any document in evidence in defence of this suit.

In determining the issues raised before this Honourable court, by the parties this court hereby adopts the following issues for determination by this court, to wit:

- 1. Whether the offer of terms of grant/conveyance of approval dated 07/04/03 granted to the Claimant was validly and legally accepted by the Claimant in accordance with the terms of offer.**

2. **Whether the rights and interest of the Claimant in plot 1691 (1103) within Gwarinpa District, Abuja was revoked or withdrawn by the 1st and 2nd Defendants.**
3. **Whether plot 1585 cadastral Zone C12 Kabusa District, Abuja was granted to the Claimant or to the 4th Defendant as replacement of plot 1691 (1103), Gwarinpa District, Abuja.**
4. **Whether this Honorable court rightly admitted exhibit D6 in evidence which was procured during the pendency of this suit.**
5. **Whether the Claimant has successfully proved his claim against the Defendants which will entitle him to the reliefs sought.**
6. **Whether there was an allocation of one plot of land to two persons in this suit and whether the issue was resolved in accordance with Justice and fairness by the Honourable Minister of Federal Capital Territory, Abuja.**

It will be in the interest of Justice to state from the onset the position of the law in proving Civil matters particularly title to land that under **sections 131(1)(2) and 132 of the Evidence Act 2011** the burden of proving facts lies on the person who alleges their existence or non - existence. The above quoted sections states that:

"whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist".

Similarly, in a claim for the title to land mere presentation of Certificate of Occupancy is not sufficient proof of title to be entitled to declaration of title and injunctive reliefs but whether there is no subsisting interest in land before the one being presented was issued. This is the crux of the issue before this Honourable court in that the Claimant is claiming that his right of Occupancy is first in time before that of the 3rd and 4th Defendants.

In considering the first issued distilled for determination, Exhibits **P1** and **D5** tendered in evidence by the Claimant and the 3rd and 4th Defendants must be considered first. It is not in doubt that Exhibit **P1** is the offer of terms of

grant/conveyance of approval to the Claimant dated the 7th April 2003 while Exhibit **D5** is the offer of terms of grant/conveyance of approval in favour of the 3rd Defendant dated the 9th April, 2002. Both Exhibits **P1** and **D5** were issued to the Claimant and the 3rd Defendant by the 1st and 2nd Defendants. Exhibit **P1** was issued in 2003 while Exhibit **D5** was issued in 2002. The implication of this analysis is that Exhibit **D5** issued to the 3rd Defendant is first in time as against Exhibit **P1** issued to the Claimant in 2003. The argument of the Claimant in respect of this suit is that he accepted the offer as shown in Exhibit **P8** which is a certified true copy of Acceptance of offer of grant of right of Occupancy within the Federal Capital Territory, Abuja dated the 10th April, 2003. It is also the argument of the Claimant that he is first in time because he has an acceptance letter which the 3rd Defendant does not have. It is his further contention that the failure of the 3rd Defendant to present an acceptance letter shows that he did not accept the offer and as such by implication his right of offer was extinguished for breaching one of the conditions of the terms of grant to the FCT that:

"This Right of Occupancy shall commence on the date of acceptance as signified by you in writing and shall be within two months from the date of this Right of Occupancy".

However, there is nowhere in the copy of the grant making the failure to accept the offer in writing an automatic revocation of the offer granted to an individual. In fact, by the letters of the Right of Occupancy, specifically paragraph 3 states:

"A breach or failure to comply with any or all of the terms stated herein shall be liable to the revocation of this Right of Occupancy".

This Honourable court is of the humble view that if there is any failure to meet the terms of the grant, a machinery shall be put in place to revoke the said grant. Unfortunately, there is no evidence before this court to show that the necessary procedure required by due process of the law was put in place with the outcome that the grant of Occupancy granted to the 3rd Defendant dated the 9th April, 2002 was revoked. This court is therefore of the humble

view that the failure by the 3rd Defendant to have presented a copy of an acceptance letter of offer of Right of Occupancy does not mean that his right and interest in plot No. 1691 (1103) Gwarinpa, Abuja was automatically extinguished.

In addition to the above stated position, it is important to examine the procedure of revoking/extinguishing the interest in title to land as required by the Land Use Act, 1978. Thus, in the case of **ONONUJU V. A. G. ANAMBRA STATE (2009) 10 NWLR (pt. 1148) pg 152** it was held that:

"To extinguish a statutory right of Occupancy granted or deemed granted, the provisions of section 28 of the Land Use Act 1978 must be scrupulously complied with. And where a person who is the owner of an existing right including customary right of Occupancy has his title issued to a third party by the Governor of a state, he may sue to set aside the right of Occupancy granted in favour of the third party except if it is for overriding public purpose".

In the same vein, in the case of **NNADIKE & ANOR V. NWACHUKWU (2019) LPELR - 48131 (SC)** it was held that:

"Where there is a subsisting title over land in favour of one party, that title cannot be extinguished by the mere issuance of a C of O to another party, without a valid revocation of the earlier title".

This court therefore holds that in the absence of any valid revocation of the title of the 3rd Defendants any later issuance of a C of O is null and void and of no value in law. The said earlier right of Occupancy to the 3rd Defendant was not revoked and subsists. Finally, on this issue, let me refer to the case of **OMIYALE V. MACAULAY & ORS (2009) LPELR - 2640 SC** it was held thus:

"The prerequisite for a valid grant of a C of O is that there must not be in existence the valid title of another person with legal interest in the same said land at the time the Certificate of Occupancy was issued".

In view of the foregoing analysis and judicial authorities the two issues distilled by the Claimant regarding the acceptance or non - acceptance of offer of Right of Occupancy have been answered to the effect that the failure to present a letter of acceptance does not automatically extinguish the title of the 3rd Defendant except a valid revocation is done in accordance with the due process of the law.

The next issue raised by the Claimant is whether the rights and interest of the Claimant in plot **1691** (1103) within Gwarinpa District, Abuja was revoked or withdrawn by the 1st and 2nd Defendants. It will equally be expedient to address this issue alongside the next issue which is whether or not plot **1585** Cadastral Zone **C12** Kabusa District Abuja was granted to the Claimant or to the 4th Defendant as replacement of plot **1691** (1103), Gwarinpa District, Abuja. In considering the dual issues stated above, this Honourable court will resort to the content of Exhibits **D2** and **D3** respectively. The content of exhibits D2 dated the 18th October, 2010, signed by one Tijani U. Sanusi titled "**RE DOUBLE ALLOCATION OVER PLOT NO. 1691 WITHIN GWARINPA 1(CO2) DISTRICT, ABUJA**" and addressed to First Real Properties Limited, Hassan Dalhatu Road, Suleja, Niger State, Nigeria where in the first paragraph it states:

" I am directed to refer to the above subject matter and inform you that the Honourable Minister has approved that you retain plot 1691 within Gwarinpa (Co2) district".

The letter continues:

"The approval is in consideration of the extant policy of first-in-time".

The above letter must be read in connection with Exhibit **D1**, Power of Attorney donated to 4th Defendant by 3rd Defendant, that is, Power of Attorney donated by Jamil Eng. Big. Ltd (Donor) the 3rd Defendant to First Real Properties Ltd (Donee) the 4th Defendant respectively. It therefore means that the 3rd Defendant and by implication the 4th Defendant were

asked to retain plot **1691** (1103) by the 1st Defendant. Furthermore, by virtue of Exhibit **D3**, MEMO - STATUS of title plot 1103 (new plot 1691), Gwarinpa District Cadastral Zone C02 (**MISC 55860**) dated the 20th September, 2010, it could be said that plot **1585** Cadastral Zone C12 Kabusa District, Abuja was granted to the Claimant and not the 4th Defendant as replacement of plot **1691** (1103) 1 Gwarinpa District, Abuja. The content of Exhibit **D3** states partly that:

"Paragraph 2: Same plot (plot 1103 Gwarinpa C02 district) was erroneously allocated to Deji Adekeye (Kw. 2621) vide Ministerial approval dated 11th April 2003 at page 7. The plot No. for the plot was later changed from plot 1103 Gwarinpa C02 District to plot 1691 Gwarinpa C02 District.

Paragraph 5: Our extant policy of resolving double allocation cases is that the first in time prevails. It is of note that the first in time in this case is Jamil Eng. Co. Ltd who should be entitled to the plot of land in issue while the 2nd allottee, Deji Adekeye be considered for alternative".

The conclusion derived from the content of Exhibit **D3** is that the C of O of the Claimant was by that letter revoked, withdrawn, recalled and cancelled while the First Real Properties Limited as registered Attorneys of Jamil Eng. Co. Big. Ltd. being the first allottee was allowed to retain plot No. **1691** Gwarinpa District, Cadastral Zone C02 and finally, plot No. **1585** Kabusa (C12) District measuring about **2, 633.21m²** was allocated to the Claimant, Deji Adekeye as replacement for the revoked plot 1691, Gwarinpa (C02) District.

It is therefore resolved that the interest of the Claimant in plot **1691 (1103)** within Gwarinpa District, Abuja was revoked and replaced with plot No. **1585** Cadastral Zone C12 Kabusa District, Abuja as a result of double allocation to both the 3rd Defendant and the Claimant although the allocation to the 3rd Defendant was first in time.

On the issue of double allocation, the learned silk submitted that the evidence of both Ibrahim Babangida Azeez for the 1st and 2nd Defendants and the evidence of Nasiru Abbas Aliyu for the 3rd and 4th Defendants were not controverted or challenged by the Claimant. I agree with the submission of learned silk. In the case of **ALHAJI FATAL ALANI MATANMI & 2 ORS V. VICTORIA DADA & 1 OR (2013) 7 NWLR (pt. 1353) pg 319 at pg 324 Ratio** The Supreme court held that:

"An unchallenged evidence is deemed to be correct and can be acted upon by the court".

In addition, by virtue of the above cited case, this court is also bound to believe and act upon Exhibits **D3** and **D2** respectively. This is more so that the grant or revocation of any title to land within the Federal Capital Territory, Abuja is within the vires of the 2nd Defendant, the Honourable Minister of the Federal Capital Territory, Abuja. He has the right to offer a Right of Occupancy as well as revoking or withdrawing or cancelling same as long as it is done within the ambit of the law. Thus, in the case of **TERUNGA SACHIA V. KWANDE LOCAL GOV'T COUNCIL & 2 ORS (1990) 5 NWLR (pt. 152) pg 548 at pg 558** the Court of Appeal held inter alia that:

"It is trite law that a person cannot give what he does not have or posses. This is embodied in the Latin Maxim, Nemo dat non quad habet. In the instant case, it follows that the Land Allocation Advisory Committee having earlier allocated the plot of the land in question to another person had nothing which it could legally and properly allocate to the Appellant".

In the same vein, the 2nd Defendant having granted an offer of Right of Occupancy dated the 9th April 2002 with Ref. No. **MFCT/LA/MISC/18862** to the 3rd Defendant had nothing which it could have legally and properly allocated to the Claimant in 2003.

The 1st and 2nd Defendants having realised that they had no right to reallocate the same plot No. **1691** earlier allocated to the 3rd Defendant to the Claimant

have a right to revoke same and if possible replace it with another vacant plot. The authority to revoke and replace vested on the 1st and 2nd Defendants has been re - echoed in the case of **TERUNGA SACHIA V. KWANDE LOCAL GOVERNMENT COUNCIL & 2 ORS** (supra) where it was held per ADIO JCA (as he then was) when he said:

"An appropriate authority vested with the power to allocate land to a person under the Land Use Act, 1978, or other similar legislation may revoke a Certificate of Occupancy granted in relation to a particular parcel of land if it subsequently discovered that the allocation was made in error or as a result of a mistake on the part of the appropriate authority and it does not require an Express provision in law or act to give the power to the Governor or other appropriate authority to correct errors made by him arising from a misunderstanding of the facts as there is an inherent power in the Governor or any other appropriate authority to act in that regard".

In the light of the forgoing judicial authorities it can conveniently be concluded that the decisions in respect of Exhibits **D2** and **D3** were rightly made by the 1st and 2nd Defendants. That is, that both the revocation of the plot wrongly allocated to the Claimant while the interest of the 3rd Defendant is still subsisting is the proper step that ought to have been taken. Similarly, the replacement of plot **1691** by plot No. **1585** to the Claimant was rightly done.

As to whether exhibit **D6** was rightly admitted in evidence having been procured during the pendency of this suit by an interested party there is no doubt that Exhibit **D6** falls under **section 83(3) of the Evidence Act 2011** which provides that:

"Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish".

For the purposes of clarity, Exhibit **D6** is a copy of Certificate of Occupancy dated the 2nd day of July, 2012. The present suit was filed before this Honourable court on the 31st March, 2011.

It is equally a fact that Exhibit **D6** was signed by the Honourable Minister of the Federal Capital Territory Abuja in his official capacity, and Exhibit **D6** deals with plot No. **1691** which is the subject matter of this suit. This also requires reference to **section 83(4) of the Evidence Act 2011** which provides as follows:

"For the purposes of this section a statement in admissible shall not be deemed to have been made by a person unless the document or the material part of it was written, made or produced by him with his own hand, or was signed or initialed by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible".

Indeed, the issue of admissibility of a document has been reiterated in the case of **OKOYE V. OBIASO (2010) LPELR- 2507 (SC)** where **ONNOGHEN JSC** (as he then was) observed that:

"It is settled law that the issue of admissibility of any documentary evidence is governed by the principle as to whether or not the document is pleaded by the party(ies) to the proceedings, whether it is relevant to the subject matter of inquiry by the court or tribunal and whether it is admissible in law".

It is equally a known fact to all the parties that the document in issue, that is, Exhibit **D6** was pleaded by the 3rd Defendant in paragraph 12(c) of the amended statement of defence of the 3rd and 4th Defendants. It is equally relevant to the subject matter of inquiry by the court. The next question to be considered is whether or not it is admissible in evidence in view of the submission of the learned counsel for the Claimant that it was procured by an interested party during the pendency of this suit. The learned counsel for the Claimant referred this Honourable court to the case of **MATINO (NIG) LTD V. VIEWPOINT (NIG) LTD & ORS (2021) LPELR - 57262 (CA)** and

PETERSIDE & ORS V. WABARA & ORS (2010) LPELR - 4847 (CA)
where it was held thus:

"The general rule and the law is that documents made by interested party during the pendency of a suit is inadmissible".

However, the phrase "interested person" in section 83(3) of the Evidence Act 2011 has been defined in the case of **LADOJA V. AJIMOBİ (2016) 10 NWLR (pt. 1519) pg 87 at pg 140 para A - E** Per Ogunbiyi JSC to mean:

"A person interested is a person who has a pecuniary or other material interest and is affected by the result of the proceedings and therefore would have a temptation to pervert the truth to serve his personal or private ends. It does not mean an interest purely due to sympathy but an interest in the legal sense which imports something to be gained or lost".

It is interesting to observe at this stage that exhibit D6 was signed by the 2nd Defendant in his official capacity as the Hon. Minister of the Federal Capital Territory, Abuja. The question is whether or not he can be described as an interested party to render exhibit D6 in admissible? This question has aptly be answered in the case of **B. N APUGO & SONS LTD. V. ORTHOPAEDIC HOSPITAL MANAGEMENT BOARD (OHMB) (2016) 13 NWLR (pt. 1529) pg 206 at pg 260 para C - F** Per Kekere - Ekun JSC when it was observed that:

"A person not interested is one who has no interest in the outcome of an action and is one who has no temptation to depart from the truth and is not swayed by personal interest but completely detached, impartial, independent and non - partisan. Normally a person who is performing an act in an official capacity cannot be a "person interested".

In the same vein, in the case of **UTC (NIG) PLC V. LAWAL (2014) 5 NWLR (pt. 1400) pg 221 at pg 241 - 242 para E - C** Per ARIWOOLA JSC it was held that:

"It is trite law that a document made by a party to a litigation or person otherwise interested when proceedings are pending or anticipated is not admissible. However, the interest that is envisaged is a personal interest and not merely interest in an official capacity. Therefore, where the interest of the maker is purely official or a servant or employee without a direct interest of a personal nature, the document is not excluded."

In view of the foregoing judicial authorities this court is of the humble view that Exhibit **D6** was duly signed by the Hon. Minister of Federal Capital Territory, Abuja in his official capacity and cannot therefore be held to be an interested person that is capable of rendering Exhibit **D6** inadmissible. I hold therefore that, Exhibit **D6** was properly and validly admitted in evidence.

The last leg of the issues raised or distilled for determination by this Honourable court is whether the Claimant has proved his claim against the Defendants which will entitle him to the reliefs sought in this suit.

In addressing this issue regard must be made to the fact that it is the duty of the plaintiff/Claimant in every civil proceedings to adduce admissible evidence to establish his case failing which he cannot be entitled to the reliefs sought. In this wise reference must be made to the provisions of **sections 131 - 134 of the evidence act 2011**. The essence of the provisions of **section 131 - 134 of the Evidence Act 2011** has been restated in the case of **CORPORATE AFFAIRS COMMISSION V. UZOMAH IBEGBULEM** (carrying legal practice under the name and style **UZOMAH IBEGBULEM & CO (2019) 3 Abuja Appeals Quarterly Reports page 70 at pg 75 Ratio 6** where the court of Appeal held that:

"Pursuant to sections 131 - 134 of the Evidence Act 2011, the initial onus of proof in a case rest on the Claimant to lead or introduce credible cogent or believable evidence in line with his statement of claim to enable him sustain the case he laid against the Defendant. The onus of proof which is on the balance of probability oscillates between the Claimant and the Defendant and will not shift until the

Claimant has established prima facie case against the Defendant, which if the Defendant does not rebut will give the Claimant an edge over the Defendant. The burden or onus of proof can be discharged on either side on balance of probability".

The level or requirement of the law as far as the burden of proof on the side of the Claimant has also been explained in ratio 7 of the above cited case of **CAC V. UZOMAH IBEGBULEM** (supra) where it was held that:

"Civil cases are determined on preponderance of evidence and balance of probabilities and so he who asserts a fact must prove that fact with credible evidence that is relevant to the matter in controversy, not evidence that is irrelevant and inconsequential to the success of the claim".

Thus, one may be tempted to ask as to whether or not the Claimant has placed credible and believable evidence before the court to warrant granting him the reliefs sought by him. It must be noted at the onset that the foundation of the case of the Claimant lies in Exhibit **P12** which is a certified true copy of offer of terms of grant/conveyance of approval dated the 7th April, 2003 in favour of the Claimant issued by the 2nd Defendant in respect of plot No. **1691** within Gwarinpa 1(C02) district, Abuja. It is a known fact that all the remaining exhibits, that is, Exhibits **P1** to **P11** and **P13** to **P14** revolves around Exhibit **P12**. However, before Exhibit **P12** was issued or granted to the Claimant on plot 1691, an earlier offer of terms of grant/conveyance was issued to the 3rd Defendant evidenced by Exhibit **D5**, that is, a certified true copy of offer of terms of grant/conveyance of approval by the 2nd Defendant, the Hon. Minister of the Federal Capital Territory, Abuja. This simply means that two offers of terms of grant/conveyance were issued to two people in respect of one plot, that is, plot **1691**. The offer of terms of grant issued to the 3rd Defendant is dated the 9th April, 2002. By implication therefore the offer made to the 3rd Defendant is first in time before that of the Claimant. Unfortunately, there is no any credible evidence before this court that the offer earlier granted to the 3rd Defendant dated

09/04/2002 was revoked before another one was issued to the Claimant dated the 07/04/2003. The position of the law in this situation has been explained in the case **OF AISHA KURA MOHAMMED V. HALIMA MAGAJI BELLO (SUING THROUGH HER ATTORNEY MR. DANIEL NNADI) & 2 ORS (2019) 1 ABUJA APPEALS QUARTERLY REPORTS PG 251 AT PG 256 RATIO 1** where it was held that:

"The law has long been established that where as in this present case, there are competing interest by two or more parties claiming title to the same land from a common grantor, the position, both at law and equity is that such completing interests will prima facie rank in order of their creation based on the maxim qui prior est tempore portio est jure, which simply means he who is earlier in time is stronger in law".

I dare say that the 2nd Defendant was right to have resolved the issue of double allocation in favour of the 3rd Defendant who was first in time.

Similarly, can it be believed by this court as submitted by the learned counsel for the Claimant that the failure on the part of the 3rd Defendant to present his letter of acceptance of offer of terms of grant/conveyance within a stipulated period automatically extinguish his title to plot 1691? This answer has also been provided in the case of **AISHA KURA V. HALIMA MAGAJI & 2 ORS** (supra) at pg 257 Ratio 4 where it was held that:

"A Right of Occupancy granted under the act is and remains valid and effective and is admissible in law as documentary evidence until legal step are taken to have it revoked".

Again, there is no such evidence of any step taken by the 1st and 2nd Defendants or any other person to revoke the offer of terms of grant/conveyance issued to the 3rd Defendant dated the 9th April, 2002 that is, Exhibit **D5**.

It means therefore that Exhibit **D5** remains valid and admissible in law as a credible documentary evidence. This is moreso that none of the steps stated

in the case of **MULIMA V. USMAN (2014) 16 NWLR (pt. 1432) pg 160** as laid down by the Apex court for a valid revocation of a statutory right of Occupancy has been taken in respect of plot **1691** to invalidate it. These steps include:

- a. *Notice of revocation of the existing title should be given to the holder of the statutory Right of Occupancy.*
- b. *Payment of prompt and adequate compensation.*

Thus, in the same cited case above, it was held at page 258 Ratio 6 that:

"The law is that the right of an existing holder or occupier of a parcel of land is not automatically extinguished by the mere issuance of a Certificate of Occupancy to another person. This is because a statutory Right of Occupancy, deemed or actual, existing over a parcel of land must first be properly revoked or nullified before another one can be issued in its place".

This equally means that as at the time Exhibit **P12** was issued in 2003, Exhibit **D5** earlier issued was not revoked and therefore no valid offer of terms of grant/conveyance was issued to the Claimant. In effect, there was nothing granted to him then as you cannot plant something on nothing as stated by Lord Denning (MR) in the case of **MCFOY V. UAC**.

The next and most vital question at this stage is in view of the foregoing analysis, what is the status of Exhibit **P12** in law? This answer has also been provided in the case of **AISHA KURA V. HALIMA MAGAJI & 2 ORS** (Supra) at pg 258 Ratio 7 where it was held thus:

"It is also the law that where a statutory Right of Occupancy is issued when an existing case has not been revoked, the subsequent Statutory Right of Occupancy becomes a worthless document because there cannot exist concurrently two title holders over one and the same piece of land. One must of necessity be invalid and the invalid one must be the latter right granted without first revoking the former one"

It is therefore clear that Exhibit **P12** is a worthless document and this court so hold. As earlier mentioned in this judgment, Exhibit **P12** is the foundation of this suit as instituted by the Claimant and all the other exhibits, that is, Exhibits **P1** to **P11** and **P13** to **P14** cannot stand on their own without the support of exhibit **P12**. Unfortunately, Exhibit **P12** has been declared as a worthless document. This being the case, all other exhibits no longer have any worth or bearing of their own. They must therefore fall along with Exhibits **P12** and thus this Court so hold. The only available entitlement of the Claimant is the resolution by the Hon. Minister of Federal Capital Territory Abuja on the issue of double allocation by granting plot **1585** Cadastral Zone C12 Kabusa District, Abuja to the Claimant as a replacement in place of plot 1691(1103) within Gwarinpa District, Abuja. This court is unable to see any credible and believable evidence placed before it by the Claimant to warrant granting him any of the reliefs. This shows that the Claimant has woefully failed to discharge the burden of proof placed on him by law to prove his case on a balance of probability. The evidence placed before this court by the Claimant has failed to tilt the scale on his side as against the evidence of the Defendants. The evidence adduced by the Defendants particularly the evidence of both Ibrahim Babangida Azeez and Nasiru Abbas Aliyu alongside Exhibits **D1** to **D7** have proved that the evidence of the Claimant cannot be believed or relied upon to grant the reliefs sought. Having thus placed the evidence of the parties on an imaginary scale I am unable to believe the evidence of the Claimant. I do not believe the evidence of the Claimant to warrant granting any of the reliefs sought.

Finally, I must not fail to observe the fact that it is not the brilliant submissions of counsel that constitute evidence, parties must produce cogent, convincing and credible evidence before this reliefs can be granted. This was the observation made in the case of **SENATOR JULIUS ALI - UCHA & OR V. CHIEF MARTIN NWANS CHOELECHI & 2 ORS (2012) 28 WRN pg 1 at pg 10 Ratio 8** where the Supreme court held:

"A brilliant address is no substitute for evidence. Counsel submission no matter how brilliant and alluring cannot take the place of legal proof".

It will therefore be safe to at this stage conclude that the case of the Claimant has failed woefully as against the evidence adduced by the Defendants particularly Exhibits **P1** to **P14** as against Exhibits **D1** to **D7**. This Court believes and rely totally on Exhibits **D1** to **D7**. Consequently, the case of the Claimant is hereby dismissed.

**SIGNED:
HON. JUDGE
19/06/2025.**

APPEARANCE:

N. J. Kalu, Esq, with Uche Uduma, Esq, and B. C. Ekekwe (Miss), for the Claimant

John Abah Augustine, Esq, for the 1st and 2nd Defendants

P.E. Ossai, Esq, With M. Ibekwe, Esq, for the 3rd and 4th Defendants