

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT ABUJA**

**THIS WESNESDAY, THE 29<sup>TH</sup> DAY OF JANUARY, 2025**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: CV/2923/12**

**BETWEEN:**

**DR. ANDREW OKOLIE...CLAIMANT**

**AND**

- |   |   |                    |
|---|---|--------------------|
| <b>1. ALHAJI MUSTAPHA SULEIMAN</b>                                  | } | <b>.DEFENDANTS</b> |
| <b>2. CALIPHATE GLOBAL INVESTMENT LTD</b>                           |   |                    |
| <b>3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY</b>                     |   |                    |
| <b>4. HONOURABLE MINISTER, FEDERAL CAPITAL<br/>TERRITORY, ABUJA</b> |   |                    |

**JUDGMENT**

This is a very old case that unacceptably dragged for a long time for various reasons as situated in the Record of Court. After several faltering steps, hearing commenced and we have now arrived at this point.

Let us define the pleadings and in the process situate some relevant facts. By an amended statement of claim dated 15<sup>th</sup> December, 2017, the Plaintiff prayed for the following Reliefs:

- 1. A DECLARATION that the demolition of the 4-Bedroom Duplex belonging to the Plaintiff situate at Plot No.21, Caliphate Estate, Dakwo District, Abuja by the Defendants is illegal.**
- 2. AN ORDER mandating the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to immediately pay the Plaintiff the sum of Sixteen Million, Two Hundred and Forty One Thousand, Two Hundred and Ninety Two Naira only (16,241,292.00) only being the total amount spent by the Plaintiff in purchasing/processing the plot of land and constructing the building before its demolition by the Defendants.**

3. **AN ORDER mandating the Defendants to pay the Plaintiff the sum of N500,000,000.00 (Five Hundred Million Naira) only as general damages for the hardship, loss of earnings, inconveniences and frustration caused to the Plaintiff.**
4. **AN ORDER mandating the Defendants to pay the Plaintiff judgment interest of 10% on the judgment sum from the date of delivery of the judgment until the judgment sum is liquidated.**

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants who were represented by counsel chose or elected not to file a defence dispute more than ample time given to them to do so. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed a Defendants' statement of defence on 15<sup>th</sup> May, 2018, but they too on their part could not produce their witness despite the more than sufficient time given to them to present his evidence. The Claimant filed a Claimant's Reply to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' statement of defence on 22<sup>nd</sup> May, 2018.

Hearing finally commenced on 16<sup>th</sup> April, 2016. In proof of his case, the Claimant called (2) witnesses. The Plaintiff **Dr. Andrew Okolie**, testified as **PW1**. He deposed to a witness deposition dated 2<sup>nd</sup> April, 2012 which he adopted at the hearing and tendered in evidence the following documents:

1. Two (2) Cash receipts issued by 2<sup>nd</sup> Defendant dated 18<sup>th</sup> October, 2011 to Claimant for Application Form (N10,000) and payment for plot 21, 4Bedroom Duplex in Caliphate Estate Dakwo District in the sum of N7,500,000 were admitted as **Exhibit P1a and P1b**.
2. Two (2) Cash receipts issued by 2<sup>nd</sup> Defendant to Claimant for working drawing plan (N100,000) and setting out (N100,000) were admitted as **Exhibit P2a and P2b**.
3. Report prepared by Workmates Konsult titled: Proposed Residential Building (demolished by F.C.D.A) admitted as **Exhibit P3**.

PW1 concluded his examination in chief by urging the court to grant his claims.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants then at this point prayed for an adjournment to put their “**house in order**” by filing their Statement of Defence and to cross examine PW2.

No progress was made in the matter due to one adjournment or the other sought by parties and then two years later, Claimant filed an application to reopen the evidence of PW1 who had earlier concluded his evidence in chief and was to be cross-examined. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not oppose the application and it was granted.

PW1 was then recalled to lead further evidence in chief to tender a site plan which the court found to be inadmissible before he was then cross-examined by counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

The right of 3<sup>rd</sup> and 4<sup>th</sup> Defendants to cross-examine PW1 was foreclosed as at that point they had never appeared or filed any process despite service of the originating court process and hearing notices.

The second witness called by Claimant is **Niyi Adelana**, a registered quantity surveyor who was subpoenaed and testified as PW2. He testified that he has been in the profession since 1987. That the Claimant engaged his services at Apo Village, Plot 24 Caliphate Estate where the existing structure had been demolished. That he was to use his experience and knowledge to come up with a Bill of Quantities for the work done before demolition. That he went to the site with his boys/Quantity Surveyors and that they took detailed measurement of what was remaining on site. That they took the remaining materials on site and took digital photographs to enable them have enough data to prepare a reasonable bill of quantities.

PW2 said he prepared and submitted to Claimant with a forwarding letter a copy of his report and that he has his own copy. PW2 said he also took digital photographs at the site.

PW2 said he arrived at the conclusion in his report from the date they went to the site and the photographs of the demolished structures. PW2 said they took detailed measurements where possible; that they also took measurement of materials on site and that they put all these together to come up with the bill of quantities.

That all his actions were based on his personal experience as a professional quantity surveyor and his years of experience. PW2 tendered in evidence the following documents:

1. Copy of bill of quantities titled: Proposed Residential Building (demolished by F.C.D.A) prepared by Workmates Konsult together with a forwarding letter dated 16<sup>th</sup> February, 2012 by Workmates Korsult to the Claimant were admitted as **Exhibits P4(1) and P4(2)**.
2. Three (3) numbered photographs together with the certificate of compliance were admitted as **Exhibits P5(1), (2), (3) and (4)**.

PW2 was then cross-examined by Counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The right of 3<sup>rd</sup> -4<sup>th</sup> Defendants to cross examine PW2, for reasons earlier situated was similarly foreclosed.

With the evidence of PW2, the Plaintiff closed his case. The matter was then adjourned for defence.

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants at this point kept praying for adjournments to file their defence and call their witnesses but despite the indulgence granted and for reasons that are not clear or apparent, he was unable to file the defence of 1<sup>st</sup> and 2<sup>nd</sup> Defendants. It was at this point that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed their statement of defence.

The Claimant then filed an application to amend his claim and to re-open his case and recall PW1 which was not opposed by counsel to both 1<sup>st</sup> and 2<sup>nd</sup> Defendants and 3<sup>rd</sup> and 4<sup>th</sup> Defendants. This action was prompted by the late filing of the defence of 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

PW1 or Claimant on been recalled testified again and adopted his (1) further witness statement on oath dated 18<sup>th</sup> December, 2017; and (2) further witness statement on oath dated 22<sup>nd</sup> May, 2018 in response to the defence of 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

He tendered in evidence the following documents:

1. (4) letters from 2<sup>nd</sup> Defendant, Caliphate Global Investment Ltd dated 14<sup>th</sup> December, 2011, 7<sup>th</sup> January, 2012, 26<sup>th</sup> March, 2012 and 25<sup>th</sup> May, 2012 were admitted as **Exhibits P6(1-4)**.

At this stage, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants stopped appearing in court despite service of hearing notice. Their right to further cross-examine PW1 was thus foreclosed.

PW2 was then cross-examined by counsel to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and with his evidence, the Claimant finally closed his case on 2<sup>nd</sup> December, 2019 five years after he had opened his case.

The matter was thereafter adjourned for defence but again as alluded to already, neither 1<sup>st</sup> and 2<sup>nd</sup> Defendants nor counsel appeared in court again and on application, their right to defend the action was foreclosed.

The 3<sup>rd</sup> and 4<sup>th</sup> Defendants equally were unable to bring their witnesses to court despite time given to them to do so and they had no objection to the foreclosure of their right to defend this action.

At the conclusion of trial, the court ordered for the filing of final addresses. Only Claimant and 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed, exchanged and adopted their final addresses.

In the final address of 3<sup>rd</sup> and 4<sup>th</sup> Defendants dated 24<sup>th</sup> June, 2024 and filed on 25<sup>th</sup> June, 2024, one issue was raised as arising for determination:

**“Whether or not the Plaintiff has established a reasonable cause of action to be entitled to any reliefs against 3<sup>rd</sup> and 4<sup>th</sup> Defendants?”**

Submissions were made on the above issue which forms part of the Record of Court. The thrust and substance of the submissions made is that on the evidence led, the Claimant has not established his case on the balance of probabilities to entitle him to any or all of the Reliefs claimed against 3<sup>rd</sup> and 4<sup>th</sup> Defendants. It was submitted that ownership of all land in the FCT vests in Federal Government and that there is no evidence that Plaintiff acquired title of the land allegedly demolished from 3<sup>rd</sup> and 4<sup>th</sup> Defendants. It was further submitted that the basis of the claim of Plaintiff is rooted in a relationship he had with 1<sup>st</sup> and 2<sup>nd</sup> Defendants

to which 3<sup>rd</sup> and 4<sup>th</sup> Defendants are not party to and as such, the claims of Plaintiff against them has no factual or legal basis.

The 3<sup>rd</sup> and 4<sup>th</sup> Defendants finally contend that no reasonable cause of action was even on the pleadings disclosed against 3<sup>rd</sup> and 4<sup>th</sup> Defendants and accordingly that the case be struck out as against 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

The Claimants final written address is dated 15<sup>th</sup> April, 2024 and filed same date. In the address, one issue was equally raised as arising for determination:

**“Whether the Claimant has proved his case to entitle him to judgment of this court.”**

Submissions were made on the above issue which forms part of the Record of Court. The main thrust of the submissions is that on the largely unchallenged evidence led by the Plaintiff, he had established his claims on the required legal threshold and thus entitled to the grant of all the Reliefs claimed.

I have stated above the issues identified by the parties who filed addresses in this case.

The 3<sup>rd</sup> and 4<sup>th</sup> Defendants may have framed there sole issue as one of non disclosure of a reasonable cause of action but the submissions made projects clearly that there contention is not whether there is a cause of action disclosed on the pleadings but whether on the evidence, the Claimant has proven his case as required by law to entitle him to his Reliefs.

Let me however out of abundance of caution deal with what a reasonable cause of action entails.

Now a reasonable cause of action is constituted by a bundle of facts which the law will recognize as giving the Plaintiff a right of action. It is a situation or state of facts which would entitle a party to sustain an action and give him right to seek judicial remedy or redress. It consists of every fact that would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of court. In other words, a cause of action means a bundle or aggregate of facts which the law will recognize as giving the Plaintiff substantive right to make the claim for the relief or remedy sought. Such facts or combination, which give rise to sue consist of two elements:

1. The wrongful act of the Defendant which gives the Plaintiff his cause of action; and
2. The consequent damage. See **Akibu V. Oduntan (2000)13 N.W.L.R (pt.685)446 at 463.**

In so far as can be evinced from the pleadings of Claimant, the facts or combination of facts on which the Claimant has premised his right to sue the Defendants and in particular the 3<sup>rd</sup> and 4<sup>th</sup> Defendants is as pleaded in paragraphs 13, 18 and 23-25 of the statement of claim and the Reliefs sought. The complaint is the alleged unlawful demotion of his property by 3<sup>rd</sup> and 4<sup>th</sup> Defendants which has occasioned damages to him.

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

After a careful consideration of the statement of claim, I am satisfied it has clearly set out the legal rights of the Plaintiff and the obligation of Defendants including 3<sup>rd</sup> and 4<sup>th</sup> Defendants. It has further set out the failure of Defendants to meet its obligations. The claim discloses questions fit to be decided by Court. The statement of claim has no doubt disclosed a reasonable cause of action. The fact that learned senior counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendant perceives and has submitted that the action is bound to fail is no reason to strike it out on the basis of want of reasonable cause of action. No.

In the circumstances and on the state of the pleadings and evidence led, the issue distilled by Claimant above as arising for determination which the court will slightly modify hereunder has succinctly captured the pith and crux of the contest that remains to be shortly resolved by court and it is therefore on the basis of this issue formulated by court that I would now proceed to consider the evidence and submissions of counsel.

## **ISSUE ONE**

**Whether the Claimant has established his case against the Defendants in the circumstances and therefore entitled to all or any of the reliefs sought?**

Now at the commencement of this judgment, I had stated the claims of the Claimant. There appears to be two elements to the Complaints. The Complaint or grievance is simply that he bought a plot of land from 1<sup>st</sup> and 2<sup>nd</sup> Defendants for consideration which is the first element; he commenced development of a 4 bedroom duplex and had reached the first floor slab (decking) of the building before the 3<sup>rd</sup> and 4<sup>th</sup> Defendants unlawfully demolished about six (6) buildings including his own building and which occasioned damages to him, (the second element).

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not file any defence to the claims of Claimant.

The 3<sup>rd</sup> and 4<sup>th</sup> Defendants on their part filed a defence but as stated earlier no evidence was led in support. The case of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants is that it is only the 3<sup>rd</sup> and 4<sup>th</sup> Defendants that have authority to allocate land in the FCT and that at no time was the plot in question allocated to 2<sup>nd</sup> Defendant and that the Claimant did not at any time obtain any development approval permit from the Department of Development Control or submit a set out plan before embarking on the construction of the building which was demolished as an illegal structure built on a road corridor.

The Claimant as stated earlier filed a reply to this defence joining issues with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants on the assertions made thereby making the validity of the title of the land on which the building was erected a defined issue. This important question will impact on aspects of the cases particularly the question of the legality of the demolition and ultimately who bears responsibility and then whether the Claimant is entitled to any or all of the Reliefs claimed.

The pleadings in this case and of course the quality of evidence led are what this court will shortly beam a critical judicial search light in resolving the contested assertions. Let me however make some important prefatory remarks in this case, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not file any defence and apart from the cross-examination of PW1 did not adduce evidence in rebuttal. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants may have filed a statement of defence but no evidence was led to situate or support the averments made and this of course in law has clear attendant legal implications.

In law, it is now accepted principle of general application that in such circumstances, the defendants are assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the plaintiffs' unchallenged evidence. See **Tanarewa (Nig.) Ltd. vs. Arzai (2005) 4 NWLR (pt. 919) 593 at 636 C – F; Omoregbe vs. Lawani (1980) 3 – 7 SC 108 and Agagu vs. Dawodu (1990) 7 NWLR (pt. 160) 56.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case of **Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA expounded the point thus:

**“The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce evidence ... the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant...”**

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24** stated thus:

**“... a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all.”**

It is equally important to situate some relevant principles that will guide our evaluation of the 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.**

Since the matter equally has features or aspects involving issue or title or allocation of land in the F.C.T, it may be opposite 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 one of the critical relief sought by plaintiff is a **Declaratory Relief**. 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 indentified in some detail provides broad legal and factual template as I now resolve the extant dispute.

As stated earlier, there are two elements to the grievance of Claimant. There is no dispute to the fact that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sold the disputed plot to him for consideration vide **Exhibits P1c and P2b**. Since it is not a contested assertion by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as no issue was joined on it, there is therefore no dispute in that respect and proof in the circumstances becomes superfluous. With respect to that aspect of the case, proof would appear to me uncalled for.

Let me now deal with the 2<sup>nd</sup> element of the Complaint which underpins the entire case which is whether the land 1<sup>st</sup> and 2<sup>nd</sup> Defendants sold to the Claimant was allocated to them by 3<sup>rd</sup> and 4<sup>th</sup> Defendants. I will shortly refer to the pleadings but it may be important to state that the law is clearly beyond peradventure and does not admit of any ambiguity whatsoever that the ownership of all lands comprised in the Federal Capital Territory vests absolutely in the Government of the Federal Republic of Nigeria. See **Section 297(e) of the 1999 Constitution and 55 1(3) and 2(1) of the Federal Capital Territory Act, Cap F6, LFN 2014.**

The jurisprudence is now fairly settled that no one can acquire title to any land situate within the FCT without an allocation or grant by the appropriate authority that is the Honourable Minister of FCT (4<sup>th</sup> Defendant). See **Madu V Madu (2008)6 NWLR (pt.1085)296 at 324-325.**

Now in this case, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants pleaded thus in paragraphs 4, 5, 7, 9, 12 and 13 of the Statement of Defence as follows:

**“4 The 3<sup>rd</sup> and 4<sup>th</sup> Defendants deny paragraph 7 of the Statement of Claim and insist that the Claimant did not make any proper inquiry as regards the land in question. Because the proper authority vested with allocation and use of land in FCT is the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.**

**5 Contrary to the averments in paragraph 8 of the Statement of Claim, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants state that at no time was the said plot or any land**

allocated to the 2<sup>nd</sup> Defendant and further insist that the Claimant proves the averment therein.

...

7. With specific reference to paragraphs 9, 10 & 11, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants state that are not privy to the alleged transactions contained therein if at all there is any and further state that at no time did the 3<sup>rd</sup> and 4<sup>th</sup> Defendants allot the said Plot 101 to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants neither did the 3<sup>rd</sup> and 4<sup>th</sup> Defendants introduce the Claimant to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for allocation of any land whatsoever.

...

- 9 The 3<sup>rd</sup> and 4<sup>th</sup> Defendants in further response to paragraph 12, state that the Claimant did not obtain any development/approval permit at any stage of his development from the Department of Development Control neither did the Claimant submit any Set Out Plan to the Department of Development Control.

...

- 12 The 3<sup>rd</sup> and 4<sup>th</sup> Defendants state that the demolitions were done in accordance with the relevant Development laws for constituting danger to members of the public and more particularly the structure was put up without the requisite approval permit and set out plan being submitted and/or obtained from Department of Development Control.

- 13 In response to paragraph 14 of the Statement of Claim, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants state that the Claimant was not entitled to demolition notice as the structure was put up without the requisite approval permit and set out plan being submitted and/or obtained.”

In response to the above, the Claimant joined issues with 3<sup>rd</sup> and 4<sup>th</sup> Defendants in his Reply and averred in response as follows:

- 2 The Claimant denies paragraphs 4 and 5 of the Statement of Defence and state that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants held out themselves as the owners of the said Caliphate Estate, Dakwo and that they had done all that was

**required of them to get good title of the estate from the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.**

...

- 4 In specific response to paragraph 7, the Claimant avers that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants held out themselves as the owners and allottees of the said Caliphate Estate, Dakwo and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants demolished the Claimant's property without just cause.**

...

- 8. The Claimant denies paragraph 12 and avers that Samuel Ochoi Onoja and Mr. Tukur Bakori were regularly supervising the Claimant's building to ensure compliance with relevant set out plan from Department of Development Control, agent of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.**

...

- 10 The Claimant denies paragraph 15 and 18 and in specific response states that the said Samuel Ochoi Onoja and Mr. Tukur Bakori were the ones who supervised his building construction and never told the Claimant of any illegal structure erected by him.**

- 11 The Claimant denies paragraph 19 and in specific response states that he got the relevant approval permit and set out plan from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Samuel Ochoi Onoja and Mr. Tukur Bakori were regularly supervising the said plan and the Claimant's building to ensure compliance with relevant set out plan on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.**

I have above situated the above averments in response to the contention by learned counsel to the **Claimant in his final address** that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not plead or raise the issue of the title or validity of the allocation Claimant is relying on. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants in paragraphs 4 and 5 made the issue of title or the allocation to 2<sup>nd</sup> Defendant of the plot in which they carried out demolition a clear, precisely defined issue. The Claimant in his Reply clearly joined issues in paragraphs 2 and 4 that the 1<sup>st</sup> and 2<sup>nd</sup> Claimants held themselves out as the owners and allottees of the said estate including the plot in issue.

The argument that the title or allocation was not in **issue** clearly would not fly. In every trial, pleadings are critical. One of the functions of pleadings is to enable parties in the case to give a fair notice of the nature of their respective cases to each other; thereby circumscribing and fixing issues in respect of which they are in agreement and those in respect of which they are not in agreement. See **Balogun V. Adejobi (1995)2 NWLR (pt376)131 at 158.**

The 3<sup>rd</sup> and 4<sup>th</sup> Defendants have situated that they never made any allocation to 2<sup>nd</sup> Defendant which are material and essential contentious in the context of this dispute. The Claimant traversed these averments implying or making a denial of pleaded facts making the issues defined contested issues that must be established at trial.

As stated earlier, it is trite law that facts deposed to in pleadings must be substantiated and proved by evidence, in the absence of which, the averments will lack utility value. Mere averment in pleadings proves nothing unless admitted. See **Aregbesale V. Oyinlola (2011)9 NWLR (pt.1253)458-594 A-B; Union Bank Plc V. Astra Builders (W/A) Ltd (2010)5 NWLR (pt.1185)1 at 27F-G.**

I had earlier situated the position on lands within the FCT and the person vested with the power of allocation, in this case, the **4<sup>th</sup> Defendant.**

Now if as pleaded, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants held themselves out as owners and allottees of the disputed plot and in paragraph 7 of the reply, Claimant pleaded that the disputed plot was “**duly allotted by 3<sup>rd</sup> and 4<sup>th</sup> Defendants,**” the question here is where is the evidence to situate or support this allocation and claim of ownership by 1<sup>st</sup> and 2<sup>nd</sup> Defendants? Unfortunately for Claimant, no iota of evidence was tendered in proof that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were allocated any plot by the vesting or allocating authority. He may have tendered receipts of payment vide **Exhibits P1a-P2b** issued by 1<sup>st</sup> and 2<sup>nd</sup> Defendants to him, but these receipts and indeed all the exhibits tendered by Claimant did not include any allocation to **1<sup>st</sup> and 2<sup>nd</sup> Defendants by 3<sup>rd</sup> and 4<sup>th</sup> Defendants.** It is logical to hold that if the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were not allocated any plot as specifically situated by the 4<sup>th</sup> Defendant, the implication is that they cannot allocate or sell what they *abinito*, do not have.

The onus is on who claims ownership of land to establish his claim in view of the principle of *nemo dat quod non habet* whereby a person can only convey to another that which he has. Put another way, the principle is when a grantor, had no title to

the land he purports to convey to another, the purported conveyance is not valid and is incapable of conveying any legal title over the land or property in question. See **Elewa V. Guffanti (Nig) Plc (2017)2 NWLR (pt.1549)233.**

The law is equally settled that once a party pleads and traces his root of title as the Claimant has done here, both in the pleadings and evidence, and this title is challenged as the 3<sup>rd</sup> and 4<sup>th</sup> Defendants have done here, then for the Claimant to succeed, he must not only establish his title but must satisfy the court as to the title of the source from which he claims. See **Adole V. Gwar (2008)11 NWLR (pt.1099)562 at 592 B-C.**

In law, root of title simply connotes means or process through which a party came to be the owner of the land in dispute. See **Ofume V. Ngbeke (1994)4 NWLR (pt.341)746.**

In this case, there is really nothing by **Claimant** to satisfy the legal principle highlighted above situating the root of title of 1<sup>st</sup> and 2<sup>nd</sup> Defendants whom he claimed from and that is fatal. There is in this case a complete failure by Claimant to trace his root or title of the disputed plot to the Minister FCT without whose approval, no one can acquire land in the FCT. See **Madu V. Madu (supra).**

Now what further undermines the case of Claimant is that again, in paragraph 24 of his claim, he stated that the “**representative**” of 3<sup>rd</sup> and 4<sup>th</sup> Defendants supervised the construction and in the Reply vide paragraphs 7-11, he averred or mentioned two names as staffs of 3<sup>rd</sup> and 4<sup>th</sup> Defendants who supervised the building demolished but none of these representatives or the persons mentioned were produced in evidence to prove the averments and claims made in the Reply. Indeed nobody was even subpoenaed to add credibility to these assertions.

Again, the 3<sup>rd</sup> and 4<sup>th</sup> Defendant alleged that no building approval permits was issued to Claimant by the Department of Development Control, the body in charge of issuance of building approvals and further that no set out plan was submitted to the Department. The Claimant here too did not tender any set out building plan and building approvals from the department allowing him to build on the land in question and one then wonders as to how the construction of the building was carried out. **Exhibit P2a**, which was tendered as receipt of payment for “**working drawing plan**” was made by 2<sup>nd</sup> Defendant, which is not the **Department of Development Control**. The point to perhaps underscore is that pleadings however strong and convincing the averments may be, without evidence in proof thereof go

to no issue. Through pleadings people know exactly the points which are in dispute with the other. Evidence must however be led to prove the facts relied on by the party to sustain allegations raised in the pleadings. See **Union Bank Plc V. Astra Builders (W/A) Ltd (supra)**1 at 27.

There is therefore nothing to situate that the **3<sup>rd</sup> and 4<sup>th</sup> Defendants** had any hand in the allocation or construction of the demolished building. Interestingly, the **2<sup>nd</sup> Defendant** in all their correspondence to the Claimant vide **Exhibits P6(1)-(4)** did not allude to any wrong doing of any kind on the part of the **3<sup>rd</sup> and 4<sup>th</sup> Defendants**. Indeed in the letter vide **Exhibit P6(1)**, to the Claimant, they said thus:

**“The above management wishes to apologise and notify you in respect of the situation that took place this afternoon of 14<sup>th</sup> December, 2011 at its estate Dakwo to all affected clients. The management is taken (sic) all necessary steps/measures towards investigating this issue at hand and also take responsibility for all damages to restore all structures with immediate effect after investigation. We thank you for your kind understating and patient, (sic) towards the issue.”**

Those sentiments were expressed again vide **Exhibits P6(2) and (3)** and finally in **Exhibit P6(4)** to the Claimant where the **2<sup>nd</sup> Defendant** stated that they were resuming work on site effective from **2<sup>nd</sup> June, 2012**. It is therefore on the facts difficult to situate any wrongdoing on the part of **3<sup>rd</sup> and 4<sup>th</sup> Defendants**. The Claimant has not established or shown he has title to the disputed land or that he had a valid allocation. The **3<sup>rd</sup> and 4<sup>th</sup> Defendants** on the state of the law superintends over all land in the FCT and have powers of allocation; that fact stands unchallenged.

Let me here apply the general principle that where a party has been found to have good title to a disputed plot, there is a legal presumption in that person’s favour that he has possession and has the locus to sue for trespass. In the case of **Carrena V. Akinlase (2008)14 NWLR (pt.1107)262 at 281, paras F-H, the Supreme Court per Tabai, JSC, re-echoed the law thus:**

**“...A person, who has title over a piece of land, though not in *de facto* physical 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 ascribed it to the person who has title. Such a possession is the legal possession which is sometimes also called constructive possession. Conversely a trespasser,**

**though in actual physical possession to the land, is regarded in law not to be in any possession since he cannot, by his own wrongful act of trespass acquire any possession recognised at law. This gives credence to the principle that where there are rival claimants to possession of a piece of land, the law ascribes possession to the party who has title or better title.”**

I leave it at that. To all intents and purposes, there is really nothing to situate any valid allocation to Claimant and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants cannot legally be said to have done anything wrong in going to their land, as it were.

The above factual and legal finding provides broad actual and legal basis to determine whether the reliefs of Claimant are availing.

Relief (1) is a declaratory relief which must be established with credible and convincing evidence. As demonstrated at length, there is nothing presented by Plaintiff situating he has legal or valid title to the disputed plot. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants who made the allocation to Claimant were not shown to have title and so cannot convey title to any person including Claimant. There is equally nothing on the evidence to situate they carried out the demolition. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants who carried out the demolition did so on the basis of the undenied fact that they did not allocate the land to 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the Claimant or indeed anyone. There is nothing to situate any application for building approval or any set out plan and no approval for any building was furnished by Claimant. There is really nothing to situate illegality with respect to the actions taken by 3<sup>rd</sup> and 4<sup>th</sup> Defendants on the disputed land. If 1<sup>st</sup> and 2<sup>nd</sup> Defendants held themselves out as acting for 3<sup>rd</sup> and 4<sup>th</sup> Defendants, absolutely no evidence was supplied to situate and support this assertion. **Relief (1) thus fails.**

Now with respect to Relief (2), the receipts tendered vide **Exhibits P1a-P2b** shows the payments made to 1<sup>st</sup> and 2<sup>nd</sup> Defendants as follows:

- 1. Exhibit P1a-N10,000 application form**
- 2. Exhibit P1b-N7,500,000 payment for the 4 bedroom Duplex**
- 3. Exhibit P2a-N100,000 for working drawing plan;**
- 4. Exhibit P2a-N100,000 for setting out.**

The total amount paid is **₦7,100,000.**

The Claimant both in his pleading vide paragraph 22 and in evidence stated that despite the promise of 1<sup>st</sup> and 2<sup>nd</sup> Defendants that they were going to put the property back and effect repairs, that they have so not commenced work or effected repairs. This averment and the evidence led was not challenged by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

The Claimant equally claimed, in addition to the purchase price paid, the sum of ₦8,501,292,00 vide **Exhibit P4(1)**, the valuation report of the demolished property and **Exhibit P4(2)**, the letter forwarding the valuation bringing the total value of what Claimant is claiming under Relief 2 to be the total amount of **₦16,241,292,00**

In paragraph 26 of the claim he pleaded thus:

**“The Plaintiff avers that he has since engaged the services of a registered Quantity Surveyor to evaluate the cost of the structure/building and all the monies the Plaintiff has expended on it (including the payments to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants) and the said Surveyor came up with a total of Sixteen Million, Two Hundred and Forty One Thousand, Two Hundred and Ninety Two Naira Only (N16,241,292.00).”**

Now this aspect of the cost of building in the sum of N8,531,292.00 is a relief in the realm of special damages which must not only be specially pleaded but also strictly proved.

Now on the authorities, special damages have been defined as damages of the type as the law will not infer from the nature of the act; they do not flow in the ordinary course; they are exceptional in their character and therefore, they must be claimed specially and strictly proved. See **A.T.E. Co. Ltd V M.L. Gov. Ogun State (2009) 15 N.W.L.R (pt.1163) 26 at 71; Ekennia V Nkpakara & 2 ors (1997) 5 SCNJ 70 at 90.**

The Apex Court in **X.S (Nig.) Ltd. Vs. Tasei (W.A) Ltd. (2006)15 N.W.L.R. (pt.1003) 533 at 552 B-E; 552 E-G** Mohammed J.S.C. stated as follows:

*“With regard to how to plead and prove special damages, the law is quite clear that special damages must be specifically pleaded and proved strictly...In this respect, a plaintiff claiming special damages has an obligation to plead and particularise any item of damage. The obligation to particularise arises not because the nature of the loss is necessarily unusual,*

*but because the plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible”*

Also in **Neka BBB Manufacturing Co. Ltd V A.C.B. LTD (2004) 2 NWLR (pt.858) 521** the Apex Court stated thus:

**“A damage is special in the sence that it is easily discernable. It should not rest on a puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions.”**

In this case, it is clear that paragraph 26 above has not particularized any item of damage(s). The Claimant who had the advantage of being able to base his claim on a precise calculation must give the Defendants access to the facts which make such calculation possible.

The failure to particularize these facts on the pleading of Claimant providing basis for this arm of the relief is fatal and undermines that arm of the Relief. It may be argued that the valuation report, **Exhibit P4(2)** particularizes these items of damage. That may be so but it is settled that evidence of facts which are not pleaded in a given case is not admissible for it would have no foundation to support it. See **Ogu V. Manid Technology & Multipurpose Co-operative Society Ltd (2011)8 NWLR (pt.1249)345 at 375-376 F-B**. Any matter not pleaded will have no bearing on the decision of court. See **Balogun V. Adejobi (1995)2 NWLR (pt.376)131 at 158F**. It is difficult to situate the factual and legal basis of the contents of the valuation report in the absence of proper pleading.

Now even if out of caution I accept this projections and anticipated profits as having met the requirements of proper pleading, the next hurdle is that of strict proof. Now in law, strict proof does not mean an unusual proof, it however implies that sufficient facts must be furnished to allow for computation of the claim. In **Neka BBB Manufacturing Co. Ltd V ACB Ltd (supra)**, the Supreme Court per Pats-Acholonu JSC (of blessed memory) stated thus:

**“The term “strict proof” required in special damages means no more than the evidence must show the same particularity as it is necessary for its pleading. It should therefore normally consist of evidence of particulars losses which are exactly known as accurately measured before trial. Strict proof does not mean unusual proof... but simply implies that a plaintiff who has the**

**advantage of being able to base his claim upon a precise calculation must give the defendant access to the facts which make such calculation possible.”**

Now in this case, the demolition was on 14<sup>th</sup> December, 2011. By **Exhibit P4(2)**, dated 10<sup>th</sup> February, 2012 which forwarded the valuation report to Claimant, the report was made after the demolition. Now the report vide **Exhibit P4(2)** reads thus:

**“PROPOSED RESIDENTIAL BUILDING (PLOT NO.21), CALIPHATE ESTATE, DAKWO DISTRICT, ABUJA (DEMOLISHED), BILLS OF QUANTITIES FOR VALUE OF WORK DONE TO DATE**

**Please find enclosed herewith 2 (two) copies of the amount of work done before demolition of above structure took place. It is prepared in the form of a Bill of Quantities but for demolished work.**

**Each work executed before the demolition exercise is being itemized to indicate quantity and value of work done on the site in the total sum of N8,531,292.00(Eight Million, Five Hundred and Thirty One Thousand, Two Hundred and Ninety Two Naira Only). The value of the property in entirety will therefore be as follows:**

<b>1. Cost of Land</b>	<b>N7,500,000.00</b>
<b>2. Cost of Registration</b>	<b>N 10,000.00</b>
<b>3. Cost of set of Drawings</b>	<b>N100,000.00</b>
<b>4. Cost of setting out</b>	<b>N100,000.00</b>
<b>5. Cost of Building as it exists</b>	<b>N8,531,292.00</b>
<b>Value of Property in Entirety</b>	<b>N16,241,292.00”</b>

Now on the basis of this letter, there is no real clarity as to when the valuation report was made. The letter projects that the report covered **valuation before the demolition and after the demolition**. However under cross-examination, PW2 stated that he did not see the building before it was demolished and that he made his report after the demolition. There is no real clarity in the report as to particular

losses which are exactly known or can be accurately measured before trial. Since PW2 did not visit the building before the demolition, the losses he referred to which was not backed up by any evidence of any kind are at best projections and not actual or particular losses which are exactly known and can be measured.

Again even with respect to the visit after the demolition which was combined with that before the demolition making the report fluid and unclear, beyond bare viva voce evidence, nothing was presented of value situating fair and firm basis to situate facts which make the calculation made by him possible. Nothing like a receipt to support the cost of the items listed was tendered or indeed to situate cost of items. I had earlier referred to the dictum of **Pats Acholonu J.S.C (of blessed memory) in Neka BBB Manufacturing Co. Ltd V A.C.B Ltd (supra)** and this bears repeating: A damage is special in the sense that it is easily discernable and does not rest on puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions.

The aspect of the claim for cost of building clearly has not been properly pleaded or proved. It is not availing but the arm of the claim for payment of consideration in the sum of **₦7,710,000** will be availing against 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

**Relief 3** is for general damages. Now in law general damages flow from the wrong complained of and is usually awarded to assuage loss suffered by the plaintiff from the alleged act of the defendant complained of. Put another way, general damages are the kinds implied by law in every breach of legal rights, its quantification however being a matter for the court. See **Corporate Development Bank Plc V. Joe Golday Co. Ltd (2000)14 N.W.L.R (pt.688)506; UBA V. BTL Ind. Ltd (2001)All F.W.L.R (pt.352)1615.**

The Supreme Court in **Lar V. Stirling Astaldi (Nig) Ltd (1977)11-12 SC 53 at 63** defined general damages as such damages as may be given when the judge cannot point out to any measure by which they may be assessed, except the opinion and judgment of a reasonable man. See also **Elf Petroleum Nig. V. Umah (2006)All F.W.L.R (pt.343)1761.**

In this case, no wrongdoing has been established against 3<sup>rd</sup> and 4<sup>th</sup> Defendant. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants by **Exhibits P6(1)-(4)** have admitted that they were responsible for what happened to Claimant. Indeed by those exhibits, they stated

that they will effect repairs to the property of Claimant which Claimant said they have not done.

To that extent, the Claimant will be entitled to some measures of damages but not on the humongous amount claim. The claim of loss of earnings under general damages is untenable in law. It has been held that specific loss of earnings or loss of use is a matter which falls in the realm of special damages which must be averred and strictly proved. See also **Umoetuk V. U.B.N Plc (2002)3 WRN 62 at 79**. If the Claimant wanted such huge sum, he should have claimed special damages which should be established on the required legal threshold.

On the whole, the Claimant is entitled to the sum **₦2,000,000** as general damages against 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

The final relief is for 10% interest on the Judgment sum from date of Judgment until liquidation. This is discretionary and based on the provisions of **Order 39 Rule 4 of the Rules of Court**. On the facts, this relief should be availing.

On the whole, the single issue raised in answered partly in favour of Claimant. For the avoidance of doubt, Judgment is entered against 1<sup>st</sup> and 2<sup>nd</sup> Defendants as follows:

- 1. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are hereby ordered to pay forthwith the sum of ₦7,710,000 been consideration paid for the 4 bedroom duplex situate at Plot No.21, Caliphate Estate, Dakwo District, Abuja.**
- 2. The sum of N2,000,000 is awarded in favour of Claimant payable by 1<sup>st</sup> and 2<sup>nd</sup> Defendants.**
- 3. I award 10% interest on the Judgment sum (Relief 1) per annum from the date of this Judgment until liquidation.**

.....  
**Hon. Justice A.I Kutigi**

**Appearances:**

- 1. Okechukwu C. Uzu-Azorji, Esq., for the Claimant.**
- 2. I.L Akharama Esq., for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.**
- 3. Abdullahi Mohammed Esq., for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants**