

**IN THE HIGH COURT OF THE 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/4220/2024

DELIVERED: ON THE 03/02/2025

BETWEEN:

OLYMPIA CEMENT LIMITED.....CLAIMANT

AND

- | | | |
|---|---|-------------------|
| 1. MINISTER OF THE FEDERAL CAPITAL TERRITORY ABUJA | } | DEFENDANTS |
| 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA) | | |

JUDGMENT

The Claimant instituted this suit on 27/09/2024 vide Originating Summons wherein it submitted thesetwo questions to the Honourable Court for determination:

- 1. Whether having regard to the combined provisions of Section 43 of the Constitution of the Federal Republic of Nigeria 1999, as amended and Sections 5(1)(a) and 9(1)(c)&(2) of the Land Use Act, 1978 the Claimant is not entitled to the grant of the Statutory Right of Occupancy by the 1st Defendant over Plot No. 943, measuring about 9.0623 Hectares as shown in the Layout/Site Plan (Exhibit “OCL 3”), Cadastral Zone A11, Guzape District, Abuja, the Claimant having fulfilled the conditions for the grant of same.*
- 2. Whether having regard to the combined provisions of Section 43 of Constitution of the Federal Republic of Nigeria 1999, as amended and Sections 5(1)(a) and 9(1)(c)&(2) of the Land Use Act, 1978, it is not inequitable for the 1st Defendant to grant the*

Statutory Right of Occupancy over Plot No. 943, measuring about 9.0623 Hectares as shown in the Layout/Site Plan (Exhibit “OCL 3”), Cadastral Zone A11, Guzape District, Abuja, to anybody other than the Claimant, the Claimant having fulfilled the conditions for the grant of same.

If the Honourable Court answers the foregoing questions in favour of the Claimant, it seeks the following reliefs:

- 1. A **DECLARATION** that by combined provisions of Section 43 of the Constitution of the Federal Republic of Nigeria 1999, as amended and Sections 5(1)(a) and 9(1)(c)&(2) of the Land Use Act, 1978 the Claimant is entitled to the grant of the Statutory Right of Occupancy by the 1st Defendant over Plot No. 943, measuring about 9.0623 Hectares as shown in the Layout/Site Plan (Exhibit “OCL 3”), Cadastral Zone A11, Guzape District, Abuja, the Claimant having fulfilled the conditions for the grant of same.*
- 2. A **DECLARATION** that by combined provisions of Section 43 of Constitution of the Federal Republic of Nigeria 1999, as amended and Sections 5(1)(a) and 9(1)(c)&(2) of the Land Use Act, 1978, it will be inequitable for the 1st Defendant to grant the Statutory Right of Occupancy over Plot No. 943, measuring about 9.0623 Hectares as shown in the Layout/Site Plan (Exhibit “OCL 3”), Cadastral Zone A11, Guzape District, Abuja, to anybody other than the Claimant, the Claimant having fulfilled the conditions for the grant of same.*
- 3. AN **ORDER** of this Honourable Court directing the 1st and 2nd Defendants to issue the Statutory Right of Occupancy and the Certificate of Occupancy (upon (sic) fulfilled its own the conditions for grant) over Plot No. 943, measuring about 9.0623 Hectares as shown in the Layout/Site Plan (Exhibit “OCL 3”), Cadastral Zone A11, Guzape District, Abuja, to the Claimant, the Claimant having fulfilled the conditions for the grant of Statutory Right of Occupancy.*

4. *AN ORDER of this Honourable Court setting aside any purported grant of the Statutory Right of Occupancy by the 1st Defendant over Plot No. 943, measuring about 9.0623 Hectares as shown in the Layout/Site Plan (Exhibit “OCL 3”), Cadastral Zone A11, Guzape District, Abuja, to anybody other than the Claimant, the Claimant having fulfilled the conditions for the grant of same.*
5. *AN ORDER OF PERPETUAL INJUNCTION restraining the 1st and 2nd Defendants either by themselves, agents, privies or anybody acting on their behalves (sic) howsoever described from allocating or granting the Statutory Right of Occupancy and subsequently the Certificate of Occupancy to anyone over Plot No. 943, measuring about 9.0623 Hectares as shown in the Layout/Site Plan (Exhibit “OCL 3”), Cadastral Zone A11, Guzape District, Abuja, to anybody other than the Claimant, the Claimant having fulfilled the conditions for the grant of same.*
6. *ANY OTHER RELIEF to which the Claimant may be found entitled by the Honourable Court.*

In support of the Originating Summons is a 22-paragraph affidavit deposed to by Elijah Umohof Plot 2, 17C, Dawaki Hillside, off Okada Junction, Dawaki, Abuja, with Exhibits OCL 1 – OCL 3.

Learned counsel for the Claimant filed a Written Address which he adopted on 02/12/2024 and relied upon as argument before the Court. Two issues were formulated for determination, to wit:

- (i) **whether having regard to the combined provisions of Section 43 of Constitution of the Federal Republic of Nigeria 1999, as amended and Sections 5(1)(a) and 9(1)(c)&(2) of the Land Use Act, 1978, the Claimant is not entitled to the grant of the Statutory Right of Occupancy by the 1st Defendant over Plot No. 943, measuring about 9.0623 Hectares as shown in the Layout/Site Plan (Exhibit “OCL 3”), Cadastral Zone A11, Guzape District, Abuja,**

the Claimant having fulfilled the conditions for the grant of same,

- (ii) (ii) whether having regard to the combined provisions of Section 43 of Constitution of the Federal Republic of Nigeria 1999, as amended and Sections 5(1)(a) and 9(1)(c)&(2) of the Land Use Act, 1978, it is not inequitable for the 1st Defendant to grant the Statutory Right of Occupancy over Plot No. 943, measuring about 9.0623 Hectares as shown in the Layout/Site Plan (Exhibit “OCL 3”), Cadastral Zone A11, Guzape District, Abuja, to anybody other than the Claimant, the Claimant having fulfilled the conditions for the grant of same.**

The Court will therefore adopt them in this judgment.

The evidence of the Claimant as deposed to in its affidavit in support of the Originating summons is that sometime in June 2024, the Claimant applied to the 1st Defendant for grant of a Statutory Right of Occupancy for a piece of land within the Federal Capital Territory, for use in line with its business. On 14/06/2024, the Claimant paid the sum of **₦100,000.00** processing fee for the application to the 1st and 2nd Defendants and was issued Exhibit **OCL 1**.

Elijah Umoh stated further that after sometime, staff of the 1st and 2nd Defendants informed the Claimant that its application for the grant of a Statutory Right of Occupancy for land in the Federal Capital Territory was successful and the said staff handed over to the Claimant the Application for Grant/Re-Grant of a Statutory Right of Occupancy Acknowledgement with File No: MISC **154348** dated 12/08/2024 as Exhibit **OCL 2**. The Claimant was informed that it has been allocated Plot No. **943**, measuring about **9.062** hectares, Cadastral Zone **A11**, Guzape District, FCT, Abuja. Thereafter, the Claimant was directed to pay **₦10,000,000.00** for the site plan/layout of the plot as “**condition precedent**” for issuance of the statutory right of occupancy. The Claimant paid immediately and was subsequently, given Exhibit **OCL 3**.

It is further stated that, the 1st Defendant has failed to fulfill its part of the bargain to issue a statutory right of occupancy in respect of the subject plot in favour of the Claimant, notwithstanding that the Claimant has done all that the law required her to do. The Claimant urged the Honourable Court to grant the reliefs sought in favour of the Claimant.

It is important to note at this point that, even though the Defendants were served with the Court processes in this suit on 21/10/2024, and hearing notice on 07/11/2024, the Defendants failed, neglected or refused to file their counter affidavit in response to the Originating summons.

It is trite law that, where there is no counter affidavit to facts raised in an affidavit, by operation of law, the facts are deemed to have been conceded. See **IN RE OPEKUN (2004) 6 NWLR (Pt. 870) 576**. It is also the position of the law that civil cases are determined on the balance of probabilities and preponderance of evidence. However, the degree of preponderance of evidence may be less where a civil case is uncontested. SEE **OGUN V. ASEMAH (2002) 4 NWLR (PT. 756) 208**. The principle of law above applies to the claimant in this case.

Collins Marshal, Esq. submitted that the Claimant has the right to acquire and own immovable property anywhere in Nigeria, including the Federal Capital Territory, Abuja. He relied on **Section 43 of the Constitution of the Federal Republic of Nigeria**, and the case of **ATTORNEY GENERAL, RIVES STATE V. ATTORNEY GENERAL, AKWA IBOM STATE (2011) 8 NWLR (Pt. 1248) 31 at p. 188 par. D**. Learned counsel for the Claimant also argued that the 1st Defendant is duty bound to grant a Statutory Right of Occupancy over the subject plot to the Claimant. He referred to **Sections 5(1)(a) and 9(1)(c)&(2) of the Land Use Act, 1978**.

Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides:

“Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.”

Section 5(1)(a) and 9(1)(c)&(2) of the Land Use Act, 1978 Section provides:

“It shall be lawful for the Governor in respect of land, whether or not in an Urban Area to-

(a) grant Statutory Rights of Occupancy to any person for all purposes.”

Without belabouring this issue, it is my considered view that **Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** is qualified with the words *“subject to” the provisions of the constitution*. The meaning and connotation of the phrase “subject to” was reiterated by the Supreme Court in **N.D.I.C V. OKEM ENT. LTD. (2004) 10 NWLR (PT. 880) 107** as follows:

The expression “subject to” means liable, subordinate, subservient, or inferior to; governed or affected by; provided that or provided; answerable for. It must therefore be understood that “subject to” introduces a condition, a restriction, a limitation, a proviso. It subordinates the provisions of the subject section to the section empowered by reference thereto and which is intended not to be diminished by the subject section. The expression generally implies that what the section is subject to shall govern, control and prevail over what follows in that subject section of the enactment, so that it renders the provisions to which it is subject conditional upon compliance with or adherence to what is prescribed in the provision referred to.”

I agree with learned counsel for the Claimant that by **Section 297 (2) of the Constitution, FRN 1999 (as amended)**, the Federal Government of Nigeria is vested with ownership of all lands in the Federal Capital Territory, Abuja and that the powers and functions

which the President of the Federal Republic of Nigeria have delegated to the 1st Defendant includes the power to grant Statutory Right of Occupancy.

In other words, the Claimant's case is that whether on a proper interpretation of **Section 43 of the Constitution of the Federal Republic of Nigeria (as amended)**, and **Section 5(1)(a) and Section 9(1)(c)&(2) of the Land Use Act, 1978**, the Defendants can resile from granting the Claimant a statutory right of occupancy over Plot No. 943, Cadastral Zone A11, Guzape District, Abuja measuring about 9.0623 hectares as shown in the Layout/Site Plan, having fulfilled the conditions for the grant of same.

Learned counsel for the Claimant cited a plethora of authorities to support his submission that the 1st Defendant is duty bound to issue a Statutory Right of Occupancy in favour of the Claimant over the subject plot, since the Claimant had fulfilled the requisite statutory requirement.

In paragraphs 9 – 13 of the affidavit in support of the Originating summons, it is deposed that the Claimant submitted an application to the 1st Defendant sometime in June 2024, the Claimant paid processing fee of **₦100,000** via **remita** on 14/06/2024 and was issued a receipt dated 26/09/2024 (Exhibit **OCL 1**). The Application for Grant/Re-Grant of a Statutory Right of Occupancy Acknowledgment dated 12/08/2024 issued to the Claimant (**Exhibit OCL 2**) stated that: *“This is to acknowledge the receipt of original application for Grant/Re-Grant of Statutory Right of Occupancy with the following particulars:”* By Exhibit **OCL 2**, the date of application is 23/07/2024. Exhibit **OCL 3** is a barely legible Site Plan.

By virtue of **Section 297(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)**, the ownership of all lands comprised in the Federal Capital Territory, Abuja is vested in the Government of the Federal Republic of Nigeria. By **Section 302 of the 1999 Constitution, FRN**, the President of the Federal Republic of Nigeria is empowered to appoint a Minister for the Federal Capital

Territory, Abuja who shall exercise powers and functions delegated to him by the President. These powers include the power to grant statutory right of occupancy to any person for all purposes. **See Section 299 of the 1999 Constitution, FRN; Section 18 of the Federal Capital Territory Act; and Section 5(1) of the Land Use Act, 1978.**

The Supreme Court in **FAGUNWA V. ADIBI (2004) 17 NWLR (Pt. 903) 544** held that ownership generally connotes the totality of or the bundle of the rights of the owner over and above every other person on a thing. It connotes a complete and total right over property. The property begins with the owner and also ends with him. Unless he transfers his ownership of the property to a third party, he remains the allodial owner.

By virtue of **Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)**, the right of every citizen of Nigeria to acquire and own immovable property anywhere in Nigeria is entrenched. Upon a careful construction of the subject section, the Court is of the considered view that, the provision of **Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)**, introduced a condition, a restriction, a limitation, a proviso on the right to acquire land anywhere in Nigeria, including the Federal Capital Territory, Abuja. See **N.D.I.C V. OKEM ENT. LTD. (SUPRA)**.

The phrase “*subject to*” in **Section 43 of the Constitution, FRN** subordinates the provisions of the subject section to the other provisions of the 1999 Constitution. This is so as to protect the other provisions of the Constitution from being diminished by the subject section. See also **ATTORNEY GENERAL, RIVERS STATE V. ATTORNEY GENERAL, AKWA IBOM STATE (SUPRA)**.

It follows, therefore, in my view that **Section 297(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** subordinates the right of the Claimant under **Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as**

amended)to acquire land Plot No. **943**, Cadastral Zone **A11**, Guzape District, Abuja measuring about **9.0623** hectares, unless the 1st Defendant grants a statutory right of occupancy over the subject plot to the Claimant.

The three Exhibits attached to the affidavit in support of the Originating summons are: (1)revenue collector's receipt dated 26/09/2024 for land application fee processing(**Exhibit OCL 1**); (2) application for grant/re-grant of a statutory right of occupancy acknowledgment dated 12/08/2024 (**Exhibit OCL 2**); and (3) site plan (**Exhibit OCL 3**).These documents issued to the Claimant are not documents of grant upon which a claim of entitlement over the subject plot could be sustained by the Claimant.

Having said so, there is nothing more before the Court to warrant the Court to resolve Question 1 in favour of the Claimant. The Court holds the view that the Claimant failed to establish that its right under **Section 43 of the 1999 CFRN** to acquire immovable property in the FCT, to wit, Plot No. **943**, Cadastral Zone **A11**, Guzape District, Abuja measuring about **9.0623** hectares is not limited or restricted by a right of occupancy which the 1st Defendant has not granted to it. The Court resolves Question 1 against the Claimant.

It was further contended by Collins Marshal, Esq. that it is inequitable where the Claimant had satisfied all requirements for the grant of a statutory right of occupancy over the subject property and the 1st Defendant turnaround to grant the statutory right of occupancy over the subject plot to anybody other than the Claimant. He referred to **OKUSAMI V. A-G., LAGOS STATE (2015) 4 NWLR (PT. 1449) 220 AT P. 253 PAR. D.**in urging the Court to upset the inequity.

Collins Marshal, Esq. urged the Court to invoke the principle of estoppel in **Section 169 of the Evidence Act** to estop the 1st Defendant from leading the Claimant on, that it had been granted the subject plot to the Claimant and later turnaround to grant it to another person. He relied on **C. & C. B. DEVELOPMENT CO. LTD V. MIN. E. H. & U. D. (2019) 5 NWLR (Pt. 1666) 484 at 510.**

I had earlier stated that the Claimant failed to establish that its right under **section 43 of the 1999 CFRN** to acquire immovable property in the FCT, to wit, Plot No. **943**, Cadastral Zone **A11**, Guzape District, Abuja measuring about **9.0623** hectares is not limited or restricted by a right of occupancy which the 1st Defendant has not granted to it. The Claimant cannot claim exclusive right to a land that a Statutory Right of Occupancy has not been granted to it by the 1st Defendant. Therefore, ownership of all land comprised in the FCT including the subject plot is vested in the Government of the Federal Republic of Nigeria and administered by the 1st Defendant who is empowered to exercise a complete and total right over all lands in the FCT. That remains the position of the law unless the 1st Defendant transfers ownership of a part thereof to a third party by grant. See **FAGUNWA V. ADIBI (supra)**.

Having carefully considered the submission of learned counsel for the Claimant, the judicial authorities relied upon, the decision of the Court is that it is not inequitable that the 1st Defendant grant the subject plot to anybody, other than the Claimant. The position of the law is that lands begins with the owner and also ends with the owner. Unless the owner transfers his ownership of the land to a third party, he remains the allodial owner. The Court resolves Question 2 also against the Claimant.

Based on the findings of the Court above, the Claimant's reliefs **1, 2, 3, 4, 5, and 6** fails. Suit is accordingly dismissed.

SIGNED:
HON. JUDGE
03/02/2025.

APPEARANCE:

Ekpo Philip Ekpo, Esq for Claimant