

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 13
CASE NUMBER : SUIT NO: CV/531/18
DATE: : WEDNESDAY 16TH JULY, 2025

BETWEEN:

PHARMACIST (MRS) IFEYINWA GRACE OHIAERI } **PLAINTIFF**

AND

1. THE HON. MINISTER FCT
2. FED. CAP. DEV. AUTH.
3. MR. INECHIOMA CHRISTIAN N. } **DEFENDANTS**

JUDGMENT

The Plaintiff approached this Honourable Court vide Writ of Summons dated and filed on 15th of January, 2020, praying the Court for the following:-

1. A Declaration that the Plaintiff is entitled to the Statutory Right of Occupancy over the property lying, being situate and known as plot 472, Cadastral Zone 07-05 in Chikakore (Byazhin) Kubwa Layout, Abuja covered by the New File NO IM48459 of 8th August, 2007 and the Right of Occupancy No. FCT/BZTP/LA/CR, 291 dated 1st April, 2011 with Full Beacon Number FCT 07-05 PB22024 Measuring 600sq.m.
2. A Declaration that the Plaintiff has better rights in Law and Equity as against the 3rd Defendant(s) and/or any other person at all in respect of the Plot in dispute.
3. A Declaration that any allocation, offer, lease sale and/or transfer of the Plaintiff's interests in the property in dispute to the 3rd Defendant(s) or any person(s) whatsoever by the 1st and 2nd Defendants or any other person prior to and/or while this suit is pending is unconstitutional, illegal and null and void.

4. An Order setting aside any Allocation, Offer, Lease and/or Sale by the 1st, 2nd and/or 3rd Defendants or any other person of the Plaintiff's plot to the 3rd Defendant(s) or any person(s) whatsoever inconsistent with the Plaintiff's interest.
5. An Order for the Rectification of the Register of Deeds in favour of the Plaintiff's interests.
6. A Mandatory Order compelling the Defendants to pull down and remove any and all structure(s) purportedly erected by them on the said plot.
7. An Order of Perpetual Injunction restraining the Defendants whether by themselves, agents, servants, privies whomsoever and however defined from tampering with the said property and/or interference with the plaintiffs existing interests.
8. N800,000.000.00 (Eight Hundred Million Naira) only exemplary Damages for Trespass.
9. Cost of this suit

Pleadings were exchanged and the matter was set down for hearing.

The case of the Claimant as distilled from the Statement of Claim and Witness Statement on Oath is, that the Plaintiff avers that by virtue of an Offer of the Terms of Grant/Conveyance of Approval dated the 9th of June 2006, she was granted a Statutory Right of Occupancy in respect of Plot No. 472 of about 600 square meters in Chikakore (Byazhin) Kubwa layout, Abuja under the hand of one Sulaiman Moh. Sulaima Keffi, with Right of Occupancy **No. FCT/BZTP/LA/CR,291**. The said Offer of the Terms of Grant/Conveyance of Approval dated 09th June, 2006 was herein pleaded and found upon in trial.

That Plaintiff further averred that upon the grant, she took steps to ensure effective physical possession of the plot by engaging labourers to clear the plot of thick grasses and trees, deliver sand and gravels to the said plot and erected a makeshift structure (batcher) on the same plot, employing one Suleiman Aboki (Hausaman) as security thereupon and carried out survey and beaconed the plot. The survey TDP dated 1st April, 2011 was pleaded.

That Plaintiff averred that as consideration for the grant to her earlier pleaded, she paid the 1st to the 3rd Defendants, firstly the sum of N6,500.00 (Six Thousand, Five Hundred Naira) only on

the 18th of June, 2006 as non-refundable application and processing fee and only Development Levy and another N5,000.00 (Five Thousand Naira) only on the 15% of September, 2006 for Change of Ownership in respect of the plot. In proof of these averments, the plaintiff pleaded;

- i. Bwari Area Council, Departmental Receipt No. 071933 dated 18th June, 2006; and
- ii. Bwari Area Council, Departmental Receipt No. 031370 dated 05th September, 2006 and the grant to one Yau Mami dated 18th October, 2002 in respect of the plot in dispute and relied on them at the trial.

That the Plaintiff further averred, that to protect her Right to Occupancy in the plot in dispute, complied with the Re-certification policy of the 1st – 2nd Defendants, and on the 8th of August, 2007, she was issued an acknowledgment of her vested right in the plot. The Plaintiff pleaded her Regularization of Land and Titles and Documents of FCT Area Council's Acknowledgment dated 08th August, 2007 and relied on same at trial.

Plaintiff averred that because of her posting out of Abuja by the office where she works, she engaged one Mrs. Adio Muibat to help keep an eye on the plot, including the security put on the

plot as earlier pleaded and at a later date, process re-certification of title with the 1st and 2nd Defendants.

That following paragraphs 8 and 9 above, sometime in 2014, her agent drew her attention to the fact that she visited the plot and found out that the security the Plaintiff put on the property as earlier pleaded was no longer there, the makeshift property had been destroyed and a small new gate was set up thereon, asking whether Plaintiff was aware of the developments, which the Plaintiff denied.

That the Plaintiff personally visited the plot in the year 2015 and found that construction works were going on, on her plot to her shock and all attempts to engage the workmen on site were to no avail as some men who appeared to be employed thugs, about ten in number would not allow her go near the workmen.

That further efforts to get at the 3rd Defendant(s) to engage him or them did not yield any fruit, thereupon, the Plaintiff wrote to the Director Development Control of the 2nd Defendant on 2nd June, 2017 intimating him of the above facts and requested its immediate attention to remedy the situation. The said letter of Re-Encroachment on Plot No. 472 Measuring 600 Sq.m² in

Chikakore (Byazhin) Kubwa layout, Abuja dated 22nd June, 2017 was herein pleaded.

That there was no official reply or response neither action taken with respect to the letter pleaded in paragraph above, hence this action.

Plaintiff contended at the hearing of this suit that any offer, lease, sale and/or transfer of the Plaintiff's interest in the property in dispute by the 1st – 3rd Defendants or any other person(s) to the 4th Defendant(s) or any other person(s), and/or any form of takeover and/or the trespass by the 4th Defendant into the Plaintiff's plot in dispute is in gross violation of the Plaintiff's Statutory Right of Occupancy to the said property as the Plaintiff's Statutory Right to the plot in dispute has neither been revoked nor determined as prescribed by the law.

Plaintiff at the trial of this suit relied on all books, letters, documents and receipts as may be necessary for or incidental to the proof of her claims at the hearing of the suit especially but not limited to:-

- i. Offer of the Terms of Grant/Conveyance of Approval dated 09th June, 2006.

- ii. The survey TDP dated 1/04/2011.
- iii. Bwari Area Council, Departmental Receipt No. 071933 dated 18th June, 2006.
- iv. Bwari Area Council, Departmental Receipt No. 031370 dated 05th September, 2006
- iv. The grant to one Yau Mami dated 18th October, 2022 in respect of the plot in dispute
- v. Regularization of Land and Titles and Documents of FCT Area Council's Acknowledgment dated 08th August, 2007.
- vi. Letter - Re-Encroachment on Plot No 472 Measuring 600 Sq.m² in Chikakore (Byazhin) Kubwa layout, Abuja dated 22nd June, 2017
- vii. UBA Slip No W15444 dated 16/1/2007 for Recertification to AGIS Account No: 02680040002789, stamped received 2nd February, 2007.

PW1 tendered the following in evidence;

- 1. Offer of Terms of Grant dated 9th June, 2006
- 2. Survey Plan

3. Bwari Area Council Departmental receipts (two)
4. Regularization of Title Document acknowledgment.
5. Letter to the Department of Development Control.
6. UBA Teller slip dated 16th January, 2007

Document tendered 1 – 6 in number afore-listed are admitted in evidence and marked Exhibits “1” – “6” respectively.

PW1 was cross-examined and subsequently discharged.

Plaintiff closed its case to pave way for Defence.

1st and 2nd Defendants filed Joint Statement of Defence and Witness Statement on Oath, wherein they contended as follows:

That there is no time the 1st and 2nd Defendants/Counter-Claimants act or acted through the Bwari Area Council or any other Area Councils within the FCT in carrying out their responsibilities as they have various organs and agencies established by them to perform these various functions and these agencies are directly report of 1st and 2nd Defendants and they are vicarious liable for these actions.

That the 1st and 2nd Defendants/Counter-Claimants cannot be vicariously liable for an Organ of Government created by Constitution with its specific responsibilities and functions as provided by the Constitution.

That the 2nd Defendant is the Body Statutorily vested with power and responsibilities for development, control of development, issuance development permits and general superintendence and/or management of development generally in Federal Capital Territory but denied that Bwari Area Council or any other Area Councils within FCT is/are its agency/agencies through which it carries out these functions.

That the 2nd Defendant was a creation of the Act of National Assembly as provided by Constitution such Bwari Area Council and other Area Councils within FCT who were created by the Constitution cannot be its agency and neither can they carry out their responsibilities through them.

That the 2nd Defendant has various agencies through whom they carry out their function and responsibilities as provided by the Act that created it. They acted through these agencies in its name and all the receipts, documents, letter-head and other documents

issue by these agencies shows that they are directly responsible to the 1st and 2nd Defendants.

That 1st and 2nd Defendants/Counter-Claimants do not have any plot of land known as Plot 472, measuring about 600sqm in Chikakore (Byazhin) Kubwa Layout and neither did they grant any land with this descriptions.

That 1st and 2nd Defendants/Counter-Claimants divided the whole Abuja into districts in respect of Land allocation and each district falls under Cadastral Zone as such Kubwa is known as Kubwa District and the Cadastral Zone is F01. Thus, they can only have Plot 472, Kubwa District, Cadastral Zone F01 that is to say if the plot even exists at all.

That 1st and 2nd Defendants/Counter-Claimants do not have plot known as Plot 472, measuring 600sqm and neither them or any of agencies under them issued any Statutory Right of Occupancy in respect of the Plot as described by the Claimant at all.

That the Claimant did not and never paid any money to their account or any of agencies under them as they never grant or allocated any plot described and known as Plot 472, measuring about 600sqm in Chikakore (Byazhin) Kubwa Layout to the

Claimant or anybody at all as they don't have Plot with this number and description in the Area.

That when they discovered that there was a lot of fraudulent titles being peddled all over FCT as authentic ones and the need to digitalize land title allocation and documentation to be able to weed out fraud introduced Re-certification policy.

That based on this policy, all title holders within FCT are expected to submit their title documents to Land Department of FCDA which is an agency in FCT that handles all issue of Land Allocation and related matters in FCT for Verification and authentication.

That at the point of submission, the title documents submitted are just collected and acknowledgment were given to show evidence of submission and document submitted in form of receipt.

That this acknowledgment is just to show evidence that document was submitted and same was received. Thus, it was never confirmation of title or authentication of title rather evidence of submission of purported title document which is to be verified.

That all the documents mentioned by the Claimant are suborn documents that cannot be verifiable as they did not emanated from the 1st and 2nd Defendants/Counter-Claimant nor any of their agencies.

Whereof the 1st and 2nd Defendants/Counter-Claimants claim against the Claimant/Defendant as follows:-

1. A Declaration that Bwari Area Council or any other Area Councils within FCT are not agent/agencies of the 1st and 2nd Defendants/Counter-Claimants.
2. A Declaration that the 1st and 2nd Defendants/Counter-Claimants has never acts or acted through Bwari Area Council or any other Area Council within FCT in performing their functions.
3. A Declaration that the 1st and 2nd Defendants/Counter-Claimants has various agencies created by them within FCT through whom they carry out their function and perform their responsibilities which Bwari Area Council or any other Area Councils within FCT is not among.

4. An Order of this Honourable Court that exclusion of the Bwari Area Council who is the grantee of the subject Plot by the Claimant is fatal and intentional act to mislead the Court.

On their part, 3rd Defendant equally filed his statement of Defence/Counter-Claim.

That the 3rd Defendant denies paragraph 4 of the amended Statement of Claim and further avers that he is a Known Person by name Mr. Inechioma Christian N. with house address at Plot 472 Chikakore (Byazhin) Kubwa layout FCT Abuja, and has never been a trespasser of the said plot in dispute as he is the rightful owner of the said plot of land and has already built a 5-bedroom duplex on the said land and is living inside with his family since 2018.

The 3rd Defendant vehemently denies paragraph 5 of the amended statement of claim and further states that the Claimant's alleged title in respect of plot 472 measuring about 600 square meters with offer of terms of Grant/ Conveyance of approval dated 9th of June, 2006 and the survey TDP bearing right of occupancy No. FCT/BZTP/LA/CR.291 is not genuine having been procured after the title of the 3rd Defendant has

been granted. The Claimant is therefore nothing more than a victim of fraud by some persons.

In further answer to paragraph 6 of the amended Statement of Claim, the 3rd Defendant avers that he acquired plot No. 472 from Mr. Ayo Rotibi who sold the land to the 3rd Defendant on 19th February, 2016.

The 3rd Defendant averred further that Mr. Ayo Rotibi was granted the Statutory Right of Occupancy in respect of the said plot No. 472 measuring 600 sqm in Chikakore (Byazhin) Kubwa layout via an "offer of terms of Grant/Conveyance of Approval" dated 23rd March, 2005 together with a survey Title Deed Plan (TDP) with Right of Occupancy No: FCT/BZTP/LA/EB/195 dated 23rd March, 2011 by the 1st and 2nd Defendants.

Upon the grant of the said plot No. 472 to Mr. Ayo Rotibi by the 1st and 2nd Defendants, Mr. Ayo Rotibi through Bwari Area Council paid the 1st and 2nd Defendants the sum of N10,000 (Ten Thousand Naira) only on 31st August, 2005 for certificate of occupancy and was issued with a Departmental Receipt No: 019644.

In addition to the above, Mr. Ayo Rotibi also paid the sum of N6,500.00 (Six Thousand Five Hundred Naira) only on the same.

31st August, 200 for processing fees, Development Levy and form and was issued with a departmental Receipt No: 019643 for the said payment.

That in 2008, Mr. Ayo Rotibi applied to Federal Capital Territory Administration (FCTA) for the regularization of his title in line with the recertification policy of the 1st and 2nd Defendants and the FCTA issued Rotibi with an acknowledgment of regularization of land titles and documents of FCT Area Council Acknowledgement dated 2nd April, 2008.

The 3rd Defendant averred that upon the purchase of plot No: 472 from Mr. Ayo Rotibi, Ayo Rotibi then transferred the legal title documents of the said plot No: 472 to the 3rd Defendant by delivering to the 3rd Defendant the following documents;

- a. Acknowledgement of regularization of land titles and Documents of FCT Area Council dated 2nd April, 2008.
- b. Offer of the terms of Grant/Conveyance of approval dated 23rd March, 2005.
- c. Survey TDP with Right of Occupancy No: FCT/BZTP/LA/EB 195 dated 23rd March, 2011.
- d. Departmental Receipt No. 019644 dated 31st August, 2005.

- e. Departmental Receipt No. 019643 dated 31st August, 2005.
- f. Conveyance of Provisional approval dated 18th October, 2002 tracing Mr. Ayo Rotibi's root of title to Ya'u Mami.

That the said above Acknowledgement of regularization of land titles and Documents of FCT Area Council dated 2nd April, 2008, Offer of the terms of Grant/Conveyance of approval dated 23rd March, 2005, Survey TDP with Right of Occupancy No: FCT/BZTP/LA/EB 195 dated 23rd March, 2011, Departmental Receipt No. 019644 dated 31st August, 2005, Departmental Receipt No. 019643 dated 31st August, 2005, Conveyance of Provisional approval dated 18th October, 2002 were herein attached as Annexures A,B,C,D,E, & F respectively.

The 3rd Defendant averred further that on 19th February, 2016 He and Mr. Ayo Rotibi also executed a Deed of Assignment and Power of Attorney in respect of the said Plot No. 472 in order for them to have evidence of the transaction or purchase of the said plot No. 472. The said Deed of Assignment and Power of Attorney were herein attached as Annexures G and H respectively as evidence of the transaction or purchase in respect of plot No: 472 between the 3rd Defendant and Ayo Rotibi.

The 3rd Defendant denied paragraph 6 of the amended statement of Claim and in response averred that the Claimant did not at any time erect any makeshift (Batcher) on the land nor deliver sand and gravels to the land nor engaged any person or security personnel on the land because as at 19th February, 2016 when the 3rd Defendant bought the land and moved to the site and started building his 5-bedroom duplex on the land, the 3rd Defendant did not meet or see any makeshift structure nor sand nor gravels nor any person or security personnel on the land.

The 3rd Defendant averred that the title document of the Claimant and all the documents obtained pursuant to her title documents are not genuine having been procured after the title of the 3rd Defendant has been granted. The Claimant is therefore nothing more than a victim of fraud by some persons.

The 3rd Defendant denied paragraphs 9 and 10 of the amended Statement of Claim and repeated paragraph 12 of his Statement of Defence/Counterclaim.

In further response to paragraphs 9, 10, 11, 12 and 13 of the amended Statement of Claim, the 3rd Defendant averred that he took physical possession of plot No: 472 on 19th February, 2016 after purchasing the plot and immediately commenced

development on the land to even see if a rival would show up but none showed up until the 3rd Defendant finally completed building the 5-bedroom duplex on the land where he and his family now lives. The photographs of the 5-bedroom Duplex taken by the 3rd Defendant with his camera phone and the certificate of compliance were herein attached as annexures I, J, K, L and M.

The 3rd Defendant further to the above averred that from 19th September, 2016 when he started developing the land to 15th day of June, 2018 When he completed the 5-bedroom Duplex on the land and started living with his family, nobody has ever approached him to question or challenge him or his workers to stop the house or claimed ownership of the said Plot No. 472, until when for the first time the Writ of Summons was pasted on the 3rd Defendant's house on 15th March, 2019.

Upon being served with the Writ of Summons to this suit, the 3rd Defendant immediately went to AGIS to conduct a window search on the title documents of the Claimant attached to her Writ of Summons and the 3rd Defendant discovered in the window search that the title document of the Claimant including her Regularization of Land Titles and Documents of FCT Area Council Acknowledgement does not exist in the Database of AGIS.

The 3rd Defendant averred that the 1st and 2nd Defendants have never written any letter to him revoking his Right of Occupancy for overriding Public interest or anything of that nature.

Whereof the 3rd Defendant relying on his response and further averments in paragraphs 1-18 of his Statement of Defence/ Counter Claim above, claims the following reliefs against the Claimant.

- a. A Declaration that the 3rd Defendant is the rightful owner of the Plot of land No: 472 measuring about 600 square meters at Chikakore (Byazhin) Kubwa Layout, FCT Abuja having been legally acquired from Mr. Ayo Rotibi who has a better title in law and in Equity than the Claimant.
- b. A Declaration that any other Right of Occupancy Subsequently granted after that of the 3rd Defendant by the 1st and 2nd Defendants to the Claimant or any other person or authority in respect of the said plot No. 472 is illegal, null and void and of no effect.
- c. An Order of perpetual injunction restraining the Claimant, her Servants, Agents, Privies and whosoever from entering into or doing anything on the said plot No: 472 and or

interfering with the 3rd Defendant's interest in the said Plot No: 472.

- d. The sum of N1,000,000,000.00 (One Billion Naira) only as general damages.

On their part, Plaintiff filed reply and defence to the 3rd Defendant's statement of defence and counter-claim.

That in specific reply to paragraphs 1 – 11 of the Statement of Defence/Counter-Claim, the Claimant avers that the property in dispute, Plot No. 472 of about 600 square meters in Chikakore (Byazhin) Kubwa Layout, FCT, Abuja, was originally the subject of ownership of a Customary Right of Occupancy in the name of one Ya'u Mami, issued by the Bwari Area Council on 18th October, 2002 under the hand of Mr. Ishaq Salihu of the Department of Lands Planning & Surveys of the Bwari Area Council.

That by virtue of an Offer to Terms of Grant/Conveyance of Approval dated 9th June, 2006, the Claimant was granted a Statutory Right of Occupancy over the same Plot No. 472 of 600 square meters in Chikakore (Byazhin) Kubwa Layout, Abuja under the hand of one Sulaiman Moh Sulaiman Keffi, with Right of Occupancy No. FCT/BZTP/LA291. The Claimants puts the 4th Defendant to the proof beyond reasonable doubts, the allegations

in paragraphs 1 and 3 touching “fraud” and “fake” of Claimant’s document of title.

Thereafter, the Claimant paid the 1st – 2nd Defendants, agent Bwari Area Council firstly the sum of N6,500.00 (Six Thousand, Five Hundred Naira) only on 10th June, 2006 as non-refundable application and processing fee and Development Levy and another N5,000.00 (Five Thousand Naira) only on 15th September, 2006, for change of ownership in respect of the plot.

Claimant avers that those paragraphs supports the fact that the 3rd Defendant’s possession and/or acquisition is not only very recent, and inferior to that of the Claimant, all through the gamut of the statement of Defence, the 3rd Defendant neither plead nor aver that his purported vendor Mr. Ayo Rotibi, was ever in physical possession nor exercised such rights of physical possession over the Plot prior to the 2016 purported transaction he had with his said vendor. Further, the 3rd Defendant did not dispute the Claimant’s averments that it was the periods 2014 and 2015 respectively that she noticed trespass on her hand and the formal report she made to the Development Control Department of the 1st Defendant.

In line with procedure, **1st and 2nd Defendants** filed written **address** wherein five (5) issues were formulated for determination to-wit;

- a. Whether Bwari Area Council or any other Area Councils within FCT is an agent or agency (ies) under FCT.***
- b. Whether any other person(s) has power to allocate land within FCT apart from Honourable Minister of FCT?***
- c. Whether the Claimant has proved their case to show that the purported Title Documents exhibited emanated from Bwari Area Council in light of 1st and 2nd Defendants tagging them as Suborn Documents?***
- d. Whether Re-certification acknowledgment given to Claimant acknowledge their vested right on the property by 1st and 2nd Defendants?***
- e. Whether the 1st and 2nd Defendants has successfully proved their Counter-Claim?***

On issue one, learned counsel submits, that Section 303 of the Constitution provide for Six (6) Area Councils of which political

structure and administration shall be as provided by an Act of National Assembly and it must be explicitly stated at this junction that up till date no Act of National Assembly in place to provide for political and administrative structure of Area Councils as provided, expected and requested by 1999 Constitution, as amended, for Area Councils.

Learned counsel also submits, that the Constitution interprets Local Government to include Area Councils. Based on the provision of Section 299 and 299 (a) of the 1999 Constitution and inherent power therein, the National Assembly enacted FCT ACT which established FCT and Federal Capital Development Authority with all functions contain therein.

Based on the above, the only agent/agency of FCT as created and recognized by relevant laws is the Federal Capital Development Authority, FCDA. This position was recently validated by the Supreme Court in the case of ***BAKARI VS. OGUNDIPE (2021) 5, NWLR (Pt. 1768) 1 SC.***

On issue two, it is the submission of learned counsel, that It should be borne in mind that Section 2(2) of the 1999 Constitution, as amended provides that the Federation shall consists of States and a Federal Capital Territory, while Section

7(1) provides for existence of Local Governments. Though by the Supreme Court verdict in ***BAKARI VS. OGUNDIPE (Supra)***, FCT is treated like a State. But unlike other States, all the land in FCT is an Urban Land which is the hand of Federal Government as headed by the President who delegates his Power over FCT to Minister so appointed as provided for in Section 302 of the 1999 Constitution as amended. Also, Federal Capital Territory (FCT) Act further re-affirmed this position by vests all land in FCT in the hand of Honourable Minister of FCT as appointed and delegated to all such power by the President of Federal Republic of Nigeria.

Learned counsel further submits, that thus, all land in FCT been an Urban area belonging to Federal Government of Nigeria can only be allocated or granted through Statutory Allocation. The Supreme Court in one of the locus Classicus case on this matter affirmed this position. ***MADU VS. MADU (2008) 6 NWLR (Pt. 1083)*** was cited.

On issue three, learned counsel submits, that the Claimant failed woeful to prove the fact that she is entitled to be declared as the owner of the purported plot of land. It is our submission that in a claim for declaration of title to land, onus lie on the Claimant to satisfy the Court that he/she is entitled on the

strength of evidence presented before the Court that he/she is entitle to such Claim.

Learned counsel contends, that it is a well-known principle of Law that who alleges must prove. It is well agreed that a claim for declaration for title to Land is none other than a civil case and by the general principle govern civil matters, proof is upon the balance of probabilities or preponderance of evidence however, this does not mean that the onus to prove title shifts from the Plaintiff. In order to succeed in his/her claim for a declaration of tittle, such claimant must bring forward cogent evidence which must tilt the imaginary scale in his/her favour. This was position of Supreme Court in ***MOGAJI VS. ODOFIN (1978) 4 S.C. 92; ONWUAMA VS EZEOKOLI (2002) 2 S. C.N.J. 281.***

Learned counsel further contended, that in the evidence tendered before this Honourable Court by the Claimant, one of them is the Purported offer of the terms of grant/conveyance of approval dated 09/06/2006 headed **MINISTRY FOR FEDERAL CAPITAL TERRITORY; URBAN & REGIONAL PLANNING DEPT., BAC ZONAL PLANNING OFFICE.** The Claimant claimed was that the subject plot was allocated to her vide the above-mentioned letter of grant/conveyance however, a cursory look at the document

revealed that there was a change of ownership which indicated that the Claimant was not original allottee this position was further re-enforced by the Writ of Summon/Statement of Claim dated 12th of December, 2018 wherein a document dated 18th October, 2002 which shows that the same subject matter was allocated to one Ya'u Mami.

The Claimant did not prove to the Court the root of her title and how she came to become the offeree of the offer of the terms of grant/conveyance of approval dated 09th June, 2006 which shows that there was change of ownership at the face of the document rather the claimant claimed that she was original allottee in her statement of claims which contradict the facts as revealed by the said offer letter.

On issue four, learned counsel submits, that the Claimant failed woefully to prove root of her title by proving how the purported land was allocated to her or called the allocation authority who purportedly allocated the purported subject plot to her vide the purported documents tendered in evidence which the 1st and 2nd Defendants has debunked and called suborn documents.

Learned counsel also submits, that especially, when it was boldly written on the face of the said acknowledgement that it is not

prove of title. Also, the by paragraphs 15-19, the 1st and 2nd Defendants has whittled down the documents thus it is incumbent on the Claimant to prove their case by calling verifiable evidence to support same which they never did.

It is trite law that documents speak for themselves and this court is urged to so hold.

On issue five, learned counsel submits, that in answering above question, it is necessary to look at the 1st and 2nd Defendants Counter-Claims before the Court. By paragraphs 1-11 of the Counter-Claim, the 1st and 2nd Defendants vividly stated without equivocal that all land in FCT belong to the Federal Government who administer same through Honourable Minister of FCT and that it is only FCT Minister that can allocate land within FCT. The 1st and 2nd Defendants/Counter-Claimant further assert that the purported plot as claimed by the Claimant is not known to them as they do not have plot with such description. They also stated that Bwari Area Council or any other area councils within FCT are not agent of FCT rather they are product of constitution like FCT with distinct responsibilities. By the decision of Supreme Court in ***BAKARI VS. OGUNDIPE (Supra)***, the only agency of FCT is FCDA.

All these stated above was never controverted in the 1st and 2nd Witness Statement on Oath by the Claimant. As we know, Counter-Claim is a separate suit that need to be proved.

OROLA VS. ADENIYI (2017) 6 NWLR (Pt.1560) 138 SC was cited.

On their part, **3rd Defendant/Counter-Claimant file written address** wherein sole issue was formulated for determination to-wit;

"Whether the subsequent allocation of a Right of Occupancy to the claimant in 2006 by the 1st and 2nd Defendants is valid and if yes, then who, between the Claimant and the 3rd Defendant has proved a better title in law and in equity to be entitled to the ownership of the land in dispute?"

It is the submission of learned counsel, that the subsequent allocation of a Right of Occupancy to the Claimant by the 1st and 2nd Defendants is not valid to entitle the claimant to the ownership of the land in dispute.

It is settled law and in accordance with common sense that after a person has effectively divested himself of his interest in land or

other res, no right naturally vests in him to deal with such land or res any further for, nemo dat quod non habet, meaning that no one can give that which he does not have. ***SANYAOLU VS. COKER (1983) 1 SCNLR 168; (1983) 3 SC 124 at 163-164; UGO VS. OBIEKWE (1989) 1 NWLR (Pt. 99) 566*** were cited.

Learned counsel further submits, that the Claimant in claiming ownership of the said land in dispute relies on the right of occupancy namely **"OFFER OF THE TERMS OF GRANT/CONVEYANCE OF APPROVAL"** issued on 09th June, 2006, i.e. on the 9th June, 2006.

Learned counsel contends, that from the foregoing consideration of the right of occupancy of both the Claimant and the 3rd Defendant, it is crystal clear that it is a case of land dispute with simply two contending parties having their right of occupancy from a common grantor.

It is clear from the above facts and the evidence before this Honourable Court that the 3rd Defendant's right of occupancy was issued in 2005 while that of the claimant was issued in 2006. Where such is the case, the law is very simple on how to resolve such dispute where both parties sought declaration of title to the same land.

The law is settled on a long line of decided authorities, that any allocation made by the 1st and 2nd Defendants during the subsistence of a previous grant is void abinitio. See the Supreme Court case of ***KARI VS. GANARAM (1997)2 NWLR (Pt. 488) 320 at 400*** where the Apex Court per Belgore, JSC 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 Appellant's Right of Occupancy subsists up till now as it has not been revoked and the wrongful grant to the Ist Respondent has no effect whatsoever on its authenticity.*"

Learned counsel further submits, that the 3rd Defendant has already built a 5 Bedroom Duplex on the said land since 2018 and has been living inside with his family since that time that without interference from anybody until in 2020 when the Claimant was served with the writ of summons.

The Claimant did not act diligently and timeously in 2014 when her agent drew her attention to the fact that her security man was no longer there and that it was another man that was developing the land. The Claimant waited until after one year

before visiting the plot in 2015 and found that construction works was going on in the plot.

It is the submission of learned counsel, that equity helps the vigilant and not the indolent. Although if the Claimant had acted timeously, we most humbly submit that the principle of nemo dat quod non habet will operate to defeat her title and where this does not defeat her title, then the principle of 'where there are two equal equities, the 1st in time prevails' will operate to defeat her title.

In conclusion; this court is urged from the foregoing submissions and authorities to dismiss the claimant's case with substantial cost on the following grounds.

- i. That Claimant does not have a valid title.
- ii. That the 3rd Defendant has a better title than the claimant.

On their part, **Claimant filed their final written address** wherein two (2) issues were formulated for determination to-wit;

- 1. Whether the Claimant has proved on the balance of probability by cogent and credible evidence that she is entitled to the grant of the reliefs sought in her Amended Statement of Claim, if yes, is the***

Counterclaim of the Defendants misconceived, especially but not limited to the fact that their Defences and Counterclaims are built on allegations of fraud and forgery against the Claimant?

- 2. Whether or not the striking out of Bwari Area Council as a party in this suit is fatal to the Claimant's case, especially but not limited to acquiescence of the striking out of same from the suit and is the point not res judicata having regard to the proceedings of 11th February, 2020 and 28th September, 2020 and whether in any event the absence of Bwari Area Council having regard to the state of the law and all the facts and circumstances of this case the 1st and 2nd Defendants are the proper and necessary parties to this case.***

Arguments of both issues joined hereunder.

The Claimant as against the Defendants/Counter-Claimants, has met the standard and burden of proof required in this case and she deserves judgment on her claim. From the totality of the facts before the Honorable court and the evidence led on both sides, the 3rd Defendant's vendor's purported title is defective. It

is the Original Claimant, Pharmacist (Mrs.) Ifeyinwa Grace Ohiaeri whose title is the only one entered in the record of the 1st and 2nd Defendants who is entitled to apply them for the grants claimed on the Amended Statement of Claim.

It is further the submission of learned counsel, that the 3rd Defendant neither proved his own root of title, purchase, as required by law nor the root of title of his vendor, by direct grant. The evidence of PW2/DW1 who came from the principal of grantor of the land in issue before the court shows that the legal interests of the Claimant was preserved vide Exhibits "1", "4", "5" and "6" against both the purported legal interests of the 3rd Defendant's Vendor as well as then equitable interests of the 3rd Defendant.

Learned counsel also submits, that what makes the case of the 3rd Defendant more dubious, is the fact the he is parading **ORIGINAL COPIES OF TWO GRANTS OF RIGHTS OF OCCUPANCY** at the same time. One, Exhibit "D6" in the name of his Vendor's predecessor, the second, Exhibit "D2" in the direct name of his vendor. Under cross-examination by the 3rd Defendant's Counsel, Claimant gave evidence unimpeachable,

that two original Owners cannot co-exist, upon change of ownership.

The Defendants, were also unable to prove their allegations of fraud, fake or forgery against the Claimant.

Learned counsel also submits, that under cross-examination, the 3rd Defendant affirmed that Exhibit "D1" contained a caveat that it could not be sold or transferred. That he had no search report to prove that he conducted a search in the lands registry of the 1st and 2nd Defendants to know the true owner of the property in dispute before buying same. He affirmed that contrary to paragraph 6 of his statement of defence and paragraph 6 of his witness statement on oath, even though he paid N10,000.00 for CERTIFICATE OF OCCUPANCY, none was tendered in evidence. That he has no evidence to show that his vendor offered consideration or paid for Exhibits "D2", "D6" or Exhibit "D1", the Re-certification document which forms the root of his purported title. He also affirmed that he neither applied for nor obtained Development Approval before putting up the buildings in Exhibit "D8" contrary to Section 7 of the Federal Capital Territory Act laws of the Federation (Abuja) and the provisions of the Urban and Regional Planning Decree No 88 of 1992.

Learned counsel contended, that PW2/PW1 knocked off the rock bottom of the averment in paragraph 17 of the Statement of Defence. To contest the validity or legitimacy of the purported developments above, the Claimant by paragraphs 5(ii), (iii), (iv), (v), (vi), 6, 9, 10 and 12 of her reply and defence to the 3rd Defendant's Statement of Defence and Counterclaim put the 3rd Defendant to task to prove by rebuttable evidence the grounds and basis for those developments. No Search Report nor duly stamped Plan Approval was pleaded nor tendered by him. On the imperative of conducting searches before purchasing for value.

Learned counsel argued, that the counterclaim of the 3rd Defendant, was abandoned as no evidence was led in support of same. In any event, assuming (without conceding) that same was not abandoned the 3rd Defendant cannot claim title to the plot in dispute relying on the power of attorney he tendered, having regard to the state of the law and the status in which he is counterclaiming for title in his own name directly. He is not counterclaiming as the donee of a donor.

The 3rd Defendant (Mr. Inechioma Christian N.) asserted title to the property in dispute is not a direct grant or allocation from the 1st and 2nd Defendants in the manner of Claimant's (Pharmacist

(Mrs.) Ifeyinwa Grace Ohiaeri) claim. No. He is not defending the case or counterclaiming as Donee of his vendor. His purported title is tied through purchase, on the basis of a speculative "window search" on the plot, from a third party.

Counsel referred the court to paragraphs 4, 5 - 11, 15 and 17 of his Statement of Defence and paragraphs 4-17 of his Witness Statement of Oath). This "window search", unfortunately took place after he was served with the processes of the Claimant originating this suit, not even before he purchased the property in dispute! His alleged averments and evidence arising from the said window search that no record of Claimant's interests existed has been debunked by PW2/DW1. The 3rd Defendant did not tender any agreement or receipt of the purchase of the plot from his vendor. He only tendered Exhibit "D7". It is now settled law, that the mere fact that a holder of a right of occupancy executed a Power of Attorney in respect of land is not evidence that he has alienated the plot. Power of Attorney is not evidence of alienation of the plot of land.

It is the submission of learned counsel, that the Power of Attorney tendered is not an irrevocable one. It is not expressed as nor indicated that it was donated for valuable consideration.

By paragraphs 2 and 3 it refers to the donor's interests as the "Principal Lease." Afortiori, there being no proof of purchase of the plot in dispute or rent payable between the 3rd Defendant and his purported vendor, nor evidence of payment for the purported grants contained in Exhibits "D1" and "D4", there is no valid grant ab-initio to his vendor by the 1st and 2nd Defendants or valid lease between him and his vendor. What constitutes a valid lease, as represented in the contents of the Power of Attorney tendered by the 3rd Defendant is settled in law. Payment of rent is an essential ingredient of valid lease.

Learned counsel further submits, that where there is a valid case of defects in capacity as grantor or grantee the only remedy is to treat such case as voidable title that can only be set aside timeously, in a different specific claim to that effect giving the person challenged the opportunity to also defend; assuming the Defendants have a counterclaim in the first place, for that is the only legal mode they can challenge an alleged voidable title.

The Defence and counterclaim of the 1st and 2nd Defendants are misconceived. The Land Registration Act, Cap. 515, Laws of the Federation of Nigeria (Abuja) 1990, defines "statutory right of occupancy" as:-

....a right of occupancy granted under the provisions of section 5 of the Land Use Act or of any written law replaced by that Act whether by the President or the Minister or a public officer or local authority duly authorized and empowered in that behalf and a right of occupancy granted under a regulation made under the Land Use Act" (underlining supplied by the Claimant for emphasis). This statute has not been repealed.

Learned counsel also submits, that the 1st Defendant's designated agent within the Statute, Bwari Area Council is deemed to have allocated the land in dispute on behalf of the 1st Defendant, so far as it is expressed to be so done in his name and on his behalf. See ***EDET VS. CHIEF OF AIR STAFF (1994) 2 NWLR (Pt. 324) P 41 at 66.*** The Claimant's statutory grant, (root of title) Exhibit "1" is headed "**MINISTRY FOR FEDERAL CAPITAL TERRITORY URBAN & REGIONAL PLANNING DEPARTMENT., BAC ZONAL PLANNING OFFICE,** dated 9th June, 2006, reads inter-alia as follows:- "**MRS IFEYINWA G. OHIAERI, 1ST (CHANGE OF OWNERSHIP) OFFER OF THE TERMS OF GRANT/CONVEYANCE OF APPROVAL** I am pleased to convey the Hon. Minister's approval of a Statutory Right of Occupancy in respect of Plot No 472 of about 600 Sqm.

In CHIKAKORE (BYAZHIN) KUBWA Layout" (underlining supplied by the Claimant). Exhibit "1" was signed by **"SULAIMAN MOH. SULAIMAKEFFI ZONAL MANAGER FOR HONORABLE MINISTER, FCT."** (Underlinings supplied by the claimant for emphasis).

Learned counsel argued, that where the subject matter in dispute relates to ownership of land covered by a Statutory Right of Occupancy or is for a declaration of title covered by such rights, it does not matter who the parties are. What is of importance is to construe and apply the provisions of Section 39(1) (a) and (b) and (2) of the Land Use Act. Court of Appeal Section of the Constitution makes it clear by 299 (a), (b) and (c) and Section 301(e) is unequivocal on how the administrative structure of the Federal Capital Territory is to be carried out, that is, as "if it were one of the states of the Federation". Section 318 of the Constitution defines "area council" to mean each of the administrative areas within the Federal capital Territory, Abuja. It also defines "government" to include the Government of the Federation, or of any state or of a local government council or any person who exercises power or authority on its behalf. The same Section 318 defines "local government" local government council" to include "an area council." Section 1 of the Federal

Capital Territory Act, Cap. 503 LFN, (Abuja) 1990 affirms the constitutional provisions that Area Councils within the FCT forms part of the FCT and "shall be governed and administered under the control of the Government of the Federation".

Section 3 creates the FCDA whose functions, among others, by section 4(e) is **"the coordination of the activities of all, ministries, departments and agencies of the Government of the Federation within the Federal Capital Territory"**.

Learned counsel further argued, that the initial act(s) of Statutory Grant to the Claimant by the Bwari Area Council for and on behalf of the 1st Defendant contrary to the contentions of the 1st and 2nd Defendants are deemed the act(s) of the 1st and 2nd Defendants on record, against whom the Claimant has directed her cause of action and the reliefs sought, against.

If an issue, such as whether Bwari Area Council is a proper or Necessary Party to this proceedings or not had been decided in an action in which both parties are represented, it is unjust and unreasonable to permit the same issue to be litigated afresh between the same parties, or persons claiming under them. Estoppel prohibits a party from proving anything which contradicts his previous acts to the prejudice of a party. Exhibit

"1" holds it as "conveying the decision of the Honorable Minister of the Federal Capital Territory". Section 45 (2) Land Use Act, 2004 was cited.

The recertification document Exhibits "4" and "D1" says that **"FEDERAL CAPITAL TERRITORY ADMINISTRATION REGULARIZATION OF LAND TITLES AND DOCUMENTS OF FCT AREA COUNCILS ACKNOWLEDGMENT"** (underlining supplied). By the underlined words above, the 1st and 2nd Defendants represented to the claimant that by issuing them Exhibits "1" and "6" the Zonal Manager of the Bwari Area Council was doing so on his behalf.

The evidence PW2 on subpoena and as DW1 for the 1st and 2nd Defendants vide paragraphs 15-18 of his witness Statement on oath and under cross-examination supports the nature of declaratory reliefs sought by the Claimant. If the 1st and 2nd Defendants did not authorize BAC to issue the first allocation, what is the locus to call for re-certification?.

The Federal Capital Territory Act, is the Act of the National Assembly that sets out the administrative and political structure of the FCT. By **Section 4(2) of the FCT Act (Supra)** the 1st and 2nd Defendants "shall have power to do anything which in its

opinion on is calculated to facilitate the carrying on of its activities including, without prejudice to the generality of the forgoing, power:-

"(d) To purchase or otherwise acquire or take over any asset, business, property, privilege, contract, right, obligation and liability of any person or body (whether corporate or unincorporated in furtherance of its activities."

(e) To enter into contracts or partnerships with any person or body (whether corporate or unincorporated) which in the opinion of the authority will facilitate the discharge of its functions under this Act.

(f) To exercise such other powers as are necessary or expedient for giving full effect to the provisions of this Act."

Section 12 of the said Instrument also went on to create several secretariats and Agencies of the Federal Capital Territory to function as specialized Bureaus and Parastatals, "Law" includes "Instrument" having the force of Law.

On their part, **3rd Defendant file Reply to the Claimant's Final Written Address** wherein they replied both issues formulated by the Claimant in their Final Written Address.

On issue one, it is the submission of learned counsel, that the evidence before this Honourable Court in Exhibits "D1" – "D8" clearly shows that absolute ownership of the land has been transferred to the 3rd Defendant who successfully commenced building a bedroom duplex on the land in 2016, completed it in 2018 and started leaving inside with his family without protest from anybody until just in 2020 when Claimant instituted this action.

For all intent and purposes, the case of ***COLE V. FOLAMI (Supra)*** cited by the Claimant's counsel at page 8 paragraph 6.5 of the Claimant's final address supports the case of the 3rd Defendant that the 3rd Defendant possesses a legal interest and has a better title. In the case of ***COLE V. FOLAMI (Supra)***, the court held that "...the legal estate remained in the Oloto Chieftaincy Family until it is conveyed to the Appellant". Applying this to the instant case, counsel can safely say that the legal title of the land in dispute remained with Mr. Ayo Rotibi until it is conveyed to either the Claimant or the 3rd Defendant or anybody.

However, in the instant case before this Honourable Court, both the Claimant and the 3rd Defendant possesses a legal interest whose root of title is traced to the same source or common grantor and where such clash exists, it is usually resolved by invoking the principle of *nemo dat quod non habet* or the principle of the first in time takes priority which the 3rd Defendant has already argued in his final written address and therefore ought not to be re argued here.

Learned counsel further submits, that the Claimant at page 10 of paragraph 6.9 of the Claimant's final address relied on the case of ***UBA PIC VS. AYINKE (2000) 7 NWLR (Pt. 663) 83*** to argue that she has a direct statutory allocation or grant and the case of ***FOLARIN VS. DUROJAIYE (1988) 1 NWLR (Pt. 70) 351 at 366*** to argue that under English or Nigerian law, a deed of conveyance cannot possibly convey a title the vendor does not possess and at page 12 of the Claimant's final address, the Claimant also relied on the cases ***AMANKRA VS. ZANKLEY (1963) ALL N.L.R. Page 303 at 307; AGUSIOBO & ANOR VS. OKAGBUE & OR. (2001) 15 NWLR (Pt. 737) 502 at 537-538; REGISTERED TRUSTEES OF A.C.C VS. REGISTERED TRUSTEES, G.C.C (2021) 6 NWLR (Pt. 1801) 135 at 138 & KAYODE VS. OUTOLA (2001) 27 WRN PAGE***

50 at78 NWLR (Pt. 663) 83 to argue that the 3rd Defendant's vendor has no title to pass to the 3rd Defendant.

While the cases of **UBA PLC VS. AYINKE (SUPRA), FOLARIN VS. DUROJAIYE (Supra), AGUSIOBO & ANOR VS. OKAGBUE & OR. (Supra) & REGISTERED TRUSTEES, A.C.C. VS. REGISTERED TRUSTEES, G.C.C (Supra)** establish the principle of *nemo dat quod non habet* the **CASES OF AMANKRA VS. ZANKLEY (Supra) & KAYODE V. ODUTOLA (Supra)** establish the principle of the first in time takes priority all of which support the case of the 3rd Defendant and not the Claimant as the 3rd Defendant's vendor also has a direct statutory allocation or grant from the same grantor which was first in time than the Claimant's alleged direct statutory allocation or grant and thus has a better and a valid title that he can legally convey to the 3rd Defendant.

The above cases cited by the Claimant's counsel rather show that it is the Claimant that has not acquired a valid legal title in this case. Counsel submits, that in the above cases of **UBA PLC VS. AYINKE (Supra); FOLARIN VS. DUROJAIYE (Supra), AGUSIOBO & ANOR VS. OKAGBUE & OR. (Supra) & REGISTERED TRUSTEES, A.C.C. V. REGISTERED**

TRUSTEES, G.C.C (Supra), the courts in resolving on whether a person who has no title can pass title to another person applied the principle of *nemo dat non quod habet* to resolve the disputed land.

Applying the above cases to this instant case, it can safely be submitted that the root of title of both the Claimant and the 3rd Defendant is traced to one common source or grantor, namely the Ministry for Federal Capital Territory.

Thus, the Ministry for Federal Capital Territory having lawfully granted the piece or parcel of land in dispute to the 3rd Defendant's vendor in 2005 was left with nothing more to grant to the Claimant subsequently in 2006 during the subsistence of the grant of 3rd Defendant's vendor from whom the 3rd Defendant acquired his legal title. On the basis of the principle of *Nemo dat non quod habet*, the Ministry for Federal Capital Territory having lawfully granted the piece or parcel of land in dispute to Mr. Ayo Rotibi in 2005 could not have thereafter validly transferred any title in the disputed property to the Claimant again in 2006.

Learned counsel further submits, that the only option open to the claimant if dissatisfied with the said decision is to appeal against the ruling admitting the photographs in evidence and not to have

asked the Court to revisit the same issue. Doing so is like inviting this court to sit on appeal over his decision that the Court has already becomes *Functus Officio*. Without over flogging the issue, we urge my noble lord to invoke the ruling of this Honourable Court on 11th June, 2024 and discountenance the argument of the Claimant's counsel.

On issue two, learned counsel submits, that all the argument and the cases the Claimant cited on issue two in support of her right of occupancy equally legally applies *Mutatis Mutandis* to the right of occupancy of the 3rd Defendant by virtue of the fact that the same person that issued the 3rd Defendant's right of occupancy was the same person that issued the Claimant's right of occupancy and the two competing right of occupancy contain the same contents. However, the dates that the rights of occupancies were issued and the people it was issued to are different as a result of which the parties are before the Court.

It is the submission of learned counsel, that the 1st and 2nd Defendants has their statement of defence expressly deny or challenge title or allocation of the claimant but did not do so to the allocation of the 3rd Defendant. This means the 1st and 2nd Defendants have accepted the case of the 3rd Defendant having

not denied the averments of the 3rd Defendant's pleadings. Learned counsel submits that this account for the reason why the complaint the Claimant wrote to the 1st and 2nd Defendants was not taken seriously and as an indication of the recognition and acceptance of the title of the 3rd Defendant, the 1st and 2nd Defendants did not preclude the 3rd Defendant from continuing with his building his Bedroom Duplex till completion.

Learned counsel concludes by urging this court from the forgoing submissions and authorities to dismiss the Claimant's case with substantial cost in the following grounds;

- a. That Claimant does not have a valid title.
- b. That the 3rd Defendant has a better title than the Claimant.

COURT:-

It is instructive to state from the onset that the principal reliefs sought by the Plaintiff against the Defendants are declaratory in nature. The law is founded in this area of jurisprudence. A party such as in this case, who seek declaration of right, must win on the strength of his case and not on the weakness or absence of the defence.

Indeed, declaratory reliefs is one that seeks the pronouncement of the court as to the status of a named matter, things or situation, ***NWAGU VS FADIPE (2012) LPELR 7966 (CA)***.

Judicial pronouncements are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence ***MOTUNWASE VS SORUNGBE (1998) NWLR (Pt. 92) 90***.

Where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleading that he is entitled.

The imperativeness of this arises from the facts that the court has discretion to grant or refuse to grant such declaration.

SAMESI VS IGBE & ORS (2011) LPELR 4412.

The forgone authority remains good law and binds this court as well.

The Plaintiff in an effort to satisfy this Honourable court to enter judgment in her favour called two witnesses and tendered some documents to establish that indeed, she is entitled to the Statutory Right of Occupancy over the property lying, being situate and known as plot 472, Cadastral zone 07-05 in Chikakore (Byazhin) Kubwa layout, Abuja covered by the New File No. IM48459 of 8th August, 2007 and the Right of Occupancy No. **FCT/BZTP/LA/CR, 291** dated 1st April, 2011 with full beacon Number FCT 07-05 PB22024 Measuring 600sq.m.

Whereas 1st and 2nd Defendants filed their statement of defence with two statements on oath (DW1- Chuma Igbozuzuike) who adopted the said witness statements on oath and tendered some documents, urging the court to grant their counter-claim against the Claimant/Defendant.

On their part, 3rd Defendant equally called a sole witness in the person of Inechioma Christian who adopted his witness statement on oath and tendered some documents, and urging the court to grant their reliefs (counter claim) against the Claimant.

From the totality of parties' case, i.e both oral and documentary before the Honourable court, the issue ***whether the Plaintiff has proved his case on balance of probability*** has been formulated for determination.

On whether the Plaintiff in the case in view is entitled to the reliefs claimed or not, it has become most expedient to ascertain the root of title of the Plaintiff first and foremost.

There are five ways of proving ownership to land that are recognized by judicial decision. One or more of the mode are usually used in proof. They are:-

- a. Traditional evidence
 - b. Production of documents of title
 - c. By proving acts of ownership numerous and positive enough to warrant an inference that the person is the owner.
 - d. Act of long possession; and
 - e. By proof of possession of connected or adjacent land.
- AKAOSE VS. NWOSU (1997) 1 NWLR (Pt. 482) 478 at 492 paragraphs B – D.***

It is trite position of the law that where a claim for trespass coupled with a claim for perpetual injunction is in issue, it automatically puts title of the parties in issue.

MORENIKEJI VS ADEGBOSIN (2003) 25 WRN Vol. 25.

I need only state at this juncture that the Federal Capital Territory came into being by decree No. 6 of 1976, with 4th February, 1976 as the commencement date.

Section 297 (2) of the 1999 Constitution of the Federal Republic of Nigeria as amended vests absolute ownership of land within the Federal Capital Territory in the Federal Government of Nigeria.

The said provision is in agreement with section 1(3) of the Federal Capital Territory Act, 2004.

For ease of reference, I shall attempt to reproduce the said section 297 (2) of the 1999 constitution of Federal Republic of Nigeria as amended and 1(3) of the FCT Act.

Section 1(3) FCT Act.

“The Area contained in the Capital Territory shall, as from the commencement of this Act, cease to be a

portion of the states concerned and shall henceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Federal Capital Territory shall likewise vest absolutely in the Government of the Federation."

Section 297(2) of the 1999 Constitution.

"The ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria."

For all intents and purposes, the intention of the law makers on the status of Federal Capital Territory is deliberate.

What government and the makers of the Federal Capital Territory Act intended was for a vast expanse of land devoid of any form of cultural or hereditary inclination to be set aside for the development of the capital city of Nigeria.

More elucidating is the fact that even the original inhabitants who had occupied their ancestral lands were merely paid

compensation and asked to move-on, regardless of the fact that generations of their ancestors were buried on such lands. Section 6 of the Federal Capital Territory Act is instructive in this regard.

There is no gain saying that the issue of deemed grant which is a product of the Land Use Act, 1978 was deliberately made inapplicable to lands within the Federal Capital Territory from the construction of the preamble to the Land Use Act and Section 49 of the same Act.

The Land Use Act must not be read in isolation. Were the Land Use Act meant to apply to Federal Capital Territory, the original inhabitants would have been granted deemed grant and remained on their various lands within the Territory.

It therefore presupposes that where the language and intent of an enactment or contract is apparent, a trial court must not distort their meaning.

See ***OLATUNDE VS. OBAFEMI AWOLOWO UNIVERSITY (1998) 5 NWLR (Pt. 549) 178.***

Poser.. Who is the Federal Capital Territory Minister?

It is clear from the preamble to the Land Use Act (LUA) and the provision of Section 1 of the Land Use Act (LUA) that the

provision of the Act are meant to vest all land in the territory of each state, excluding land vested in Federal Government or its agencies, in state governors who would hold same in trust for the people of the said state.

It follows therefore, that in line with position expressed in the preamble and Section 1 of Land Use Act (LUA), Section 49 (1) of Land Use Act (LUA) specifically excludes the application of the said Act to title to land held by the Federal Government or any agency of the Federal Government at the commencement of the Act.

In the same analysis, it is most crystal clear from both the preamble to the FCT Act and section 1(3) of the Act that all land comprised in the Federal Capital Territory vest absolutely in the Federal Government of Nigeria.

For the purpose of clarity, I shall re – produce the preamble to the Land Use Act (LUA) 1978 and FCT Act respectively.

Preamble to FCT Act

“An Act to establish for Nigeria, a Federal Capital territory and to provide for the constitution of a Federal Capital Development Authority for the

purpose of exercising the various powers set out in this Act, to execute other projects connected therewith, to provide for the laws applicable to that Territory and for appeals from the Upper Area Court and the law applicable thereto; and to provide for the delegation to the Minister of Federal Capital Territory of the executive powers vested in the President and those vested in him and the Government of a State under the applicable laws."

Preamble to Land Use Act

"An Act to vest all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Government of the State, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non – urban areas are conferred on Local Government."

It is instructive to note the settled fact that ownership of land in the Federal Capital Territory, Abuja vests absolutely in the Federal Government of Nigeria, who through the Federal Capital Territory Minister grant statutory rights of occupancy to any person/persons.

It follows; naturally and legally speaking, therefore, that ownership of land within the Federal Capital Territory vests in the Federal Government of Nigeria who through the Minister of Federal Capital Territory vest same to every citizen individually upon application.

If therefore, there is no non – urban land in the Federal Capital Territory, it presupposes that the only title validly and legally acceptable within the Federal Capital Territory is the statutory allocation by the Federal Capital Territory Minister.

From the foregoing therefore, it is clear that no Area Council Chairman/Administrator within the Federal Capital Territory has the power to vest any title on land to any person or group of persons as no such land within the Federal Capital Territory exist as non – Urban Land where customary title could be conferred.

Consequently, to the extent of non – compliance with the statutory provision, of law, any of such allocation so made, is null, void and unconstitutional.

The duty of court is to interpret and give adequate and as close as possible accurate and ordinary meaning of the words used. At best, both Plaintiff and 3rd Defendant are trespassers on the land in question.

Having held that both Plaintiff and 3rd Defendant are both trespassers at best, and therefore not entitled to the land in issue and could not have been the beneficial owners in that respect, I shall now gravitate to the evidence on record showing who was the first trespasser on the land, since the law gives even a trespasser protection to sue all but except a true owner of such land.

As aptly stated by learned counsel for the Plaintiff in his final written address and the ensuing evidence and title documents' particularly Plaintiff stated in paragraph 5 of their amended statement of claim that;

By virtue of an offer of the terms of grant/conveyance of approval dated 9th June 2006, she was granted a Statutory Right of Occupancy in respect of Plot No. 472 of about 600 Sq.m in

Chikakore (Byazhin) Kubwa layout, Abuja under the hand of one Sulaiman Moh. Sulaima Keffi, with Right of Occupancy No. ***FCT/BZTP/LA/CR/291.***

She took steps to ensure effective physical possession of the plot by engaging labourers to clear the plot of thick grasses and trees, deliver sand and gravels to the said plot and erected a makeshift structure (batcher) on the same plot, employing one Suleiman Aboki (Hausaman) as security thereupon and carried out survey and beacons the plot.

The said Offer of the Terms of Grant/Conveyance of Approval dated 09th June, 2006 was tendered and marked as Exhibit "1".

I pause here to state the law as regards the importance of a documentary evidence. It has been held by a number of court decision that documentary evidence is the yardstick or a hanger by which to assess the veracity of oral testimony or its credibility.

OGBEIDE & ANOR VS OSIFO (2006) LPELR 627 (CA).

I must state here, that the court is under obligation to interpret every document accurately not to add or subtract from the content of the document.

The implication of tendering Exhibit, including documentary evidence before a court of law was captured by MUKHTAR JCA (as he then was) in ***JOHN M. BUBA VS. THE STATE (1992) NWLR (Pt. 215)*** 1 at 168 as thus;

“Exhibits are not tendered and admitted in court for the fun of it. They are for the purpose albeit to assist in determining the relevance of the Exhibits to the case. Secondly, once this form part of the record they must be examined, scrutinized and assess for the just determination of the case, if they are not scrutinized as they apply to the facts of the case, then of what use are they admitted admittance in evidence.”

Similarly, in ***FAGUNWA VS ADIBI (2004) 17 NWLR (Pt. 903) 544 at 567 paragraph D-E*** the Supreme Court per Tobi JSC held as follows:-

“A trial judge must consider relevant exhibits tendered along with oral evidence, he cannot take oral evidence and throw away documentary evidence which the primary evidence under Section 94(1) of the Act.”

I shall therefore, take a look and peruse through the documents tendered in evidence.

In proving her case, Plaintiff tendered the following documents in evidence;

1. Offer of Terms of Grant dated 9th June, 2006 as Exhibit "1".
2. Survey Plan as Exhibit "2".
3. Bwari Area Council Departmental receipts (two) as Exhibit "3".
4. Regularization of Title Document acknowledgment as Exhibit "4".
5. Letter to the Department of Development Control as Exhibit "5".
6. UBA Teller slip dated 16th January, 2007 as Exhibit "6".

Whereas 3rd Defendant tendered the following;

- a. Acknowledgement of regularization of land titles and Documents of FCT Area Council dated 2nd April, 2008 as Exhibit "D1".

- b. Offer of the terms of Grant/Conveyance of approval dated 23rd March, 2005 as Exhibit "D2".
- c. Survey TDP with Right of Occupancy No: **FCT/BZTP/LA/EB 195** dated 23rd March, 2011 as Exhibit "D3".
- d. Departmental Receipt No. 019644 dated 31st August, 2005 as Exhibit "D4".
- e. Departmental Receipt No. 019643 dated 31st August, 2005 as Exhibit "D5".
- f. Conveyance of Provisional approval dated 18th October, 2002 tracing Mr. Ayo Rotibi's root of title to Ya'u Mami as Exhibit "D6".

It is the case of Plaintiff, that as consideration for the grant, she paid the 1st to the 3rd Defendants, firstly the sum of **N6,500.00 (Six Thousand, Five Hundred Naira)** only on the 18th of June, 2006 as non-refundable application and processing fee and only Development Levy and another **N5,000.00 (Five Thousand Naira)** only on the 15th of September, 2006 for Change of Ownership in respect of the plot. This is evidenced by Exhibit "3".

That to protect her Right of Occupancy in the plot in dispute, complied with the Re-certification policy of the 1st – 2nd Defendants, and on the 8th of August, 2007, she was issued an acknowledgment of her vested right in the plot. This is evidenced by Exhibit "4".

Plaintiff personally visited the plot in the year 2015 and found that construction works were going on, on her plot to her shock and all attempts to engage the workmen on site were to no avail as some men who appeared to be employed thugs, about ten in number would not allow her go near the workmen.

That further efforts to get at the 3rd Defendant(s) to engage him or them did not yield any fruit, thereupon, the Plaintiff wrote to the Director Development Control of the 2nd Defendant on 2nd June, 2017 intimating him of the above facts and requested its immediate attention to remedy the situation. Plaintiff personally visited the plot in the year 2015 and found that construction works were going on, on her plot to her shock and all attempts to engage the workmen on site were to no avail as some men who appeared to be employed thugs, about ten in number would not allow her go near the workmen.

1st and 2nd Defendants on their part contended;

That when they discovered that there were a lot of fraudulent titles being peddled all over FCT as authentic ones and the need to digitalize land title allocation and documentation to be able to weed out fraud introduced Re-certification policy. Furthermore, all the documents mentioned by the Claimant are suborn documents that cannot be verifiable as they did not emanate from the 1st and 2nd Defendants/Counter-Claimants nor any of their agencies. Based on this policy, all title holders within FCT are expected to submit their title documents to Land Department of FCDA which is an agency in FCT that handles all issue of Land Allocation and related matters in FCT for Verification and authentication.

That at the point of submission, the title documents submitted are just collected and acknowledgment were given to show evidence of submission and document submitted in form of receipt.

That this acknowledgment is just to show evidence that document was submitted and same was received. Thus, it was never confirmation of title or authentication of title rather evidence of submission of purported title document which is to be verified.

3rd Defendant, on the other hand contended that he has never been a trespasser of the said plot in dispute as he is the rightful owner of the said plot of land and has already built a 5-bedroom duplex on the said land and is living inside with his family since 2018.

That the Claimant's alleged title in respect of plot 472 measuring about 600 square meters with offer of terms of Grant/Conveyance of approval dated 9th of June, 2006 and the survey TDP bearing right of occupancy No. **FCT/BZTP/LA/CR.291** is not genuine having been procured after the title of the 3rd Defendant has been granted. The Claimant is therefore nothing more than a victim of fraud by some persons.

3rd Defendant insists, that he acquired plot No. 472 from Mr. Ayo Rotibi who sold the land to the 3rd Defendant on 19th February, 2016. That Mr. Ayo Rotibi was granted the Statutory Right of Occupancy in respect of the said plot No. 472 measuring 600 sqm in Chikakore (Byazhin) Kubwa layout via an "offer of terms of Grant/Conveyance of Approval" dated 23rd March, 2005 together with a survey Title Deed Plan (TDP) with Right of Occupancy No: FCT/BZTP/LA/EB/195 dated 23rd March, 2011 by the 1st and 2nd Defendants.

3rd Defendant averred further that on 19th February, 2016 He and Mr. Ayo Rotibi also executed a Deed of Assignment and Power of Attorney in respect of the said Plot No. 472 in order for them to have evidence of the transaction or purchase of the said plot No. 472. The said Deed of Assignment and Power of Attorney were herein attached as Annexures G and H respectively as evidence of the transaction or purchase in respect of plot No: 472 between the 3rd Defendant and Ayo Rotibi.

That the Claimant did not at any time erect any makeshift (Batcher) on the land nor deliver sand and gravels to the land nor engaged any person or security personnel on the land because as at 19th February, 2016 when the 3rd Defendant bought the land and moved to the site and started building his 5-bedroom duplex on the land, the 3rd Defendant did not meet or see any makeshift structure nor sand nor gravels nor any person or security personnel on the land.

Indeed, the case before the court is a clear case of two competing interests between the parties. The long standing principle of law is that where two competing interests by two or more persons claiming title to the same land (from a common grantor or from a common vender) the position both at law and

equity is that, such competing interest will prima facie rank in order of their creation (**Qui prior est tempore, portior est jure**) i.e he who is earlier in time is stronger in law. **DUGBUM VS ANDZIENGE (2007) ALL FWLR (Pt. 385) 499 at 526.**

Indeed, it is trite that where equities are equal, the first in time prevails. **GOLD MARK NIG. VS IBAFON CO. LTD (2012) 10 NWLR (Pt. 1308) page 291.**

The question that follows naturally is that between the Plaintiff and the Defendants who is earlier in time and who is in possession?

3rd Defendant stated that from 19th September, 2016 when he started developing the land to 15th day of June, 2018 When he completed the 5-bedroom Duplex on the land and started living with his family, nobody has ever approached him to question or challenge him or his workers to stop the house or claimed ownership of the said Plot No. 472, until when for the first time the Writ of Summons was pasted on the 3rd Defendant's house on 15th March, 2019.

Upon being served with the Writ of Summons to this suit, the 3rd Defendant immediately went to AGIS to conduct a window search on the title documents of the Claimant attached to her Writ of

Summons and the 3rd Defendant discovered in the window search that the title document of the Claimant including her Regularization of Land Titles and Documents of FCT Area Council Acknowledgement does not exist in the Database of AGIS.

Trial court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment and or act on it. Document tendered before a trial court are meant for scrutiny or examination by the court, documents are not tendered merely for the sake of tendering but for the purpose of examination and evaluation ***OMEGA BANK (NIG) PLC VS O.BC LTD (2002) 16 NWLR (Pt. 794) 483.***

It is settled law that where there are oral as well as documentary evidence, documentary evidence should be used as hanger from which to assess oral testimony. ***PASHAMNU VS. ADEKOYA (1974) 6 (SC) 83.***

The trial court is enjoined to give more weight to the documentary evidence rather than oral testimony. This is because oral evidence may tell lie but documentary evidence which is shown to be genuine does not tell lies. ***UDERAH VS.***

***NWAKONOB I (2003) 4 NWLR (Pt. 811) 643 at 678
paragraph A-C.***

Indeed, the law has no room for speculation and does not rely on it. In the instant case, since both parties are claiming title from the same grantor, they are duty bound to call upon such grantor to give evidence as to who it actually transferred it title to.

1st and 2nd Defendants contended that they do not have plot known as Plot 472, measuring 600sqm and neither them nor any of agencies under them issued any Statutory Right of Occupancy in respect of the Plot as described by the Claimant at all.

That the Claimant did not and never paid any money to their account or any of agencies under them as they never granted or allocated any plot described and known as Plot 472, measuring about 600sqm in Chikakore (Byazhin) Kubwa Layout to the Claimant or anybody at all as they don't have Plot with this number and description in the Area.

Indeed, 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.

As stated in the preceding part of this Judgment, a party who claims for declaratory relief must adduce evidence that he is entitled to that relief, thus, the court has a discretion to grant or refuse the declaration and the success of Claimant in such an action depends entirely on the strength of his case and not on the weakness of the defence.

ADEMOLA VS SEVEN UP BOTTLING CO. PLC. (2004) 8 NWLR (Pt. 874) 134 at 140 – 149 (a-d).

It is my judgment; that from the totality of facts, evidence and authorities adumbrated above, it is obvious that the Claimant has failed to put sufficient evidence before this Honourable Court in proof of their claims to entitle them to judgment.

Simply put... Claimant has failed to establish their claim before the court.

I shall proceed to the Counter claims of the 1st and 2nd Defendants, then that of the 3rd Defendant because counter claim is to all intents and purposes a separate action, although the Defendant/Counter-claimant for convenience and speed, usually joins it with his defence where a court so grant leave. ***OGBONNA VS THE A.G OF IMO STATE & ORS (1992) LPELR 2287 (SC).***

For the reasons already advanced in the preceding part of this judgment, I see no reason why claims of the 1st and 2nd Defendant against the Claimant should not succeed.

Accordingly;

1. A Declaration that Bwari Area Council or any other Area Councils within FCT are not agent/agencies of the 1st and 2nd Defendants/Counter-Claimants **is hereby granted.**
2. A Declaration that the 1st and 2nd Defendants/Counter-Claimants have never act or acted through Bwari Area Council or any other Area Council within FCT in performing their functions **is hereby granted.**
3. A Declaration that the 1st and 2nd Defendants/Counter-Claimants has various agencies created by them within FCT through whom they carry out their function and perform their responsibilities which Bwari Area Council or any other Area Councils within FCT is not among **is hereby granted.**
4. An Order of this Honourable Court that exclusion of the Bwari Area Council who is the grantee of the subject Plot by the Claimant is fatal and intentional act to mislead the Court **is hereby granted.**

I shall now delve into the Counter Claim of the 3rd Defendant.

The 3rd Defendant gave evidence to the effect that they are in possession of the said land, the subject matter of litigation. This evidenced by Exhibits "D4", "D5", and "D6".

Indeed, trespass to land is actionable at the suit of the person in possession of the land.

That person can sue for trespass even if he is neither the owner nor a privy of the owner because exclusive possession of land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong doers except a person who could establish a better title. ***MRS. GRACE ODUSANYA VS. MR. KOLADU OSINOWO (1999) LPELR 6714.***

From the evidence before the court both oral and documentary, it is not in dispute that the 3rd Defendant/Counter – Claimant is in possession and therefore have the support of law.

Consequently, the 3rd Defendant's case succeeds on preponderance of evidence and shall be entitled to judgment. Judgment is hereby entered in favour of 3rd Defendant/Counter – Claimant and the following Declarations are hereby made;

- a. A Declaration that the 3rd Defendant is the rightful owner of the Plot of land No: 472 measuring about 600 square meters at Chikakore (Byazhin) Kubwa Layout, FCT Abuja having been legally acquired from Mr. Ayo Rotibi who has a better title in law and in Equity than the Claimant **is hereby granted.**
- b. A Declaration that any other Right of Occupancy Subsequently granted after that of the 3rd Defendant by the 1st and 2nd Defendants to the Claimant or any other person or authority in respect of the said plot No. 472 is illegal, null and void and of no effect **is hereby granted.**
- c. An Order of perpetual injunction restraining the Claimant, her Servants, Agents, Privies and whosoever from entering into or doing anything on the said plot No: 472 and or interfering with the 3rd Defendant's interest in the said Plot No: 472 **is hereby granted.**

On general damages, the term general damages cover all loses which are not capable of exact quantification. It includes all non-financial loses, it need not be specifically pleaded.

***CHUKWUBUZOR & SONS NIG. LTD VS AKAN DICKSON
IDIONG Suit no CA/C/315/2011.***

Thus, I hereby award the sum of **N1,000,000.00 (One million Naira)** only in favour of 3rd Defendant against the Plaintiff as general damages.

Above is the Judgment of this court.

*Justice Y. Halilu
Hon. Judge
16th July, 2025*

APPEARANCES

Fumilola A., Esq. with **Amina Khalid, Esq.** – for the Claimant.

Joshua E.M., Esq. – for the 3rd Defendant.

Other Defendants not in Court.