IN THE HIGH COURT OF THE FEDERAL CAPITALTERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS THURSDAY, THE 13TH DAY OF FEBRUARY, 2025

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE

SUIT NO: CV/2417/2010

BETWEEN

1. RAKIYA DALHAT LADAN……CLAIMANT

AND

1. MR. CLEMENT LAYIWOLA LASEINDE
2. HON. MINISTER FEDERAL CAPITAL TERRITORY **…DEFENDANTS**

AND, BY COUNTER CLAIM, BETWEEN:

MR CLEMENT LAYIWOLA LASEINDE ……. COUNTER-CLAIMANT

AND

1. RAKIYA DALHATU LADAN
2. HON. MINISTER FEDERAL CAPITAL TERRITORY
3. ABUJA MUNICIPAL AREA COUNCIL **….DEFENDANTS**
4. FEDERAL GOVERNMENT OF NIGERIA
(AD-HOC COMMITTEE ON SALE OF FGN HOUSES IN ABUJA, FCT)

JUDGMENT

This is a matter with a rather unique and interesting history. It is a case involving ownership of a property within the F.C.T to be settled or fairly settled principles of law.

Because of the trajectory of the case and the length of time it has taken to get to this point, it may be relevant to situate some of the relevant facts to explain the delay in the conclusion of the case. When the case was filed, it was only against 1st

Defendant who joined issues and filed a defence. Hearing commenced on 12th February, 2014 and Plaintiff called two (2) witnesses and closed her case.

The Defendant opened his defence and testified as DW1. He was cross-examined and then his counsel sought for adjournment to call further witnesses. It was at this point that the Defendant applied to join the Minister F.C.T as a Defendant to the action and same was granted. There were then applications to amend processes before the Defendant called two more witnesses who testified as DW2 and DW3 before he applied for adjournment to call his remaining witness.

It was at this stage of the proceedings that 1st Defendant changed his counsel and briefed the learned Senior Advocate of Nigeria. The defence of 1st defendant was amended to now include a Counter-Claim. Learned senior counsel also filed an application praying for different set of reliefs including: (1) to join AMAC and Federal Government of Nigeria (Ad-Hoc Committee on sale of FGN Houses in Abuja, FCT) as defendants to the counter-claim of 1st defendant. (2) to recall PW2 (Kaka Samuel Senchi) who testified for Plaintiff and DW2 (Areh Ozah Akenaji) who earlier testified for 1st Defendant and (3) leave to rely on additional documents.

The application was granted. The 2nd Defendant in the main case and 2nd and 4th Defendants to the Counter-Claim of 1st Defendant then filed their defences to the claims of Claimant and the counter-claim of 1st Defendant and also filed an application to recall 1st Defendant which was granted. The 3rd Defendant to the 1st Defendants Counter-Claim also filed its defence to the Counter-Claim of 1st Defendant.

There were different interlocutory applications filed and determined as the new parties were also given opportunity to recall witnesses that had earlier testified before they also then led evidence in proof of the cases they projected in their defences. The last witness to testify for the 3rd defendant to the counter-claim gave his evidence on 5th December, 2022 and court then ordered for the filing and exchange of final addresses.

Having situated the above facts, let me now properly streamline the pleadings filed and exchanged as follows:

1. The Plaintiff filed an Amended Writ of Summons and Statement of Claim dated 6th June, 2018 and filed same date praying for the following reliefs against the 1st Defendant:

    1. **A Declaration that the Claimant is the rightful owner of the uncompleted Semi Detached Duplex situate at Block EEA 11A & B, Directors Estate, Karu, Abuja vide the letter of offer dated 22nd May, 2009 issued to her by the Honourable Minister of the Federal Capital Territory upon her payment of the full purchase price during the "walk-in-bid exercise" to purchase the property hitherto owned by the Federal Government of Nigeria. Which property is covered by a Certificate of Occupancy No: 22eqw-13a5z-159b8-12cd2-cur3 dated 2nd August, 2010, issued to the Claimant by the Honourable Minister of the Federal Capital Territory for a term of 99 years. The certificate is registered as No: 37138 at Page 37138 in Volume 186 of the Certificate of Occupancy Registry Office at Abuja on 2nd August, 2010.**

    2. **A Declaration that the 1st Defendant's act of building on and developing the Claimant's foundation without the knowledge, authority or consent of the Claimant amounts to trespass.**

    3. **A Declaration that the Claimant's property known as Block EEA 11A & B, Directors Estate, Karu, Abuja is not the same plot or property owned by the 1st defendant known as Plot 119, measuring 650 square meters in Abuja clinic by NIA which is covered by letter of offer issued Abuja Municipal Area Council vide a letter of offer dated 15th January, 2001 which is covered by file Nos. OS. 42898.**

    4. **An order of perpetual injunction restraining the 1st Defendant, his agents, privies, servants, assigns and persons claiming through or in trust for him from unlawfully taking possession of and further trespassing on Block EEA 11A & B, Directors Estate, Karu, Abuja, belonging to the Claimant.**

5. **The sum of N200,000,000,00 (Two Hundred Million Naira) only as general damages for trespass committed on the Claimant's property by the 1st Defendant.**

6. **The cost of this suit.**

2. The 1st Defendant and Counter-Claimant filed a second Amended Statement of Defence filed on 23rd January, 2019 and set up a Counter-Claim against the defendants in the counter-claim as follows:

1 **(a) A DECLARATION that Plot 119 Abuja Clinics Layout by NIA Quarters, Karu, Abuja belongs to the Counter-Claimant by virtue of the Right of Occupancy No. MZTP/LA/OS.3204 issued on 15th January, 2001 in his favour.**

(b) A DECLARATION that in so far as the said Right of Occupancy No: MZTP/LA/OS.3204 has not been revoked by the 2nd-4th Counter-Claim Defendants or any of them, the same remains valid and in effect.

(c) A DECLARATION that in so far as the said Right of Occupancy No: MZTP/LA/OS.3204 was not at any time after its issuance revoked, any allotment of the same piece or parcel of land subject thereof to any person other than the therein named holder of the Right of Occupancy is null void and of no effect whatsoever.

(d) A DECLARATION that the 2nd-4th Defendants cannot circumvent their legal obligation and duty to first revoke the said Right of Occupancy No:MZTP/LA/OS.3204 before dealing and transacting in/on the same piece of land with someone other than the holder by merely changing the name and/or identification of the piece of land from Plot 119 Abuja Clinics Layout Karu Abuja to Plot EEA 11A and B, Directors Estate, Karu, Abuja.

(e) To any extent, if at all, that the said Right of Occupancy No:MZTP/LA/OS.3204 lacks legal efficacy or is determined or found to be inferior as legal title, A DECLARATION that the Counter-Claimant

has an equitable interest in and on the said piece/parcel of land and the development thereon.

(f) A DECLARATION that the purported sale by the 4th Counter-Claim Defendant to the 1st Counter-Claim Defendant of "a SEMI DETACHED DUPLEX situated at Block EEA 11A & B Directors Estate, Karu, Abuja FCT" in so far as it is of the uncompleted semi detached building the development of which was started from foundation and being developed by the Counter-Claimant on the empty piece of land subject of the Right of Occupancy No: MZTP/LA/OS.3204 granted to him (the Counter-Claimant) amounts to unlawful expropriation of property and therefore null void and of no effect howsoever and whatsoever.

(g) AN ORDER setting aside the Certificate of Occupancy No:22eqw-13a5z-159b8-12cd-cur dated 2nd August, 2010 issued by the 2nd Counter-claim Defendant to the 1st Counter-claim Defendant and registered as No.37138 at Page 37138 in volume 186 of the Certificate of Occupancy Registry Office at Abuja in so far as it is over the same piece of land subject of the unrevoked Right of Occupancy No: MZTP/LA/OS.3204 earlier issued and granted to the Counter-Claimant.

2 IN THE ALTERNATIVE to 1(a)-(f) ABOVE, Damages against the 2nd, 3rd, and 4th Counter-claim Defendants jointly and severally in the sum of N50,000,000.00(Fifty Million Naira) only for (i) breach of the Right of Occupancy No: MZTP/LA/OS.3204 granted to him over the empty piece/parcel of land therein specified, (ii) unlawful expropriation of property and/or failure to revoke the said Right of Occupancy before purporting to transact thereon with the 1st Counter-Claim Defendant in utter disregard of the interest of the Counter-Claimant, the innocent holder of the said Right of Occupancy and developer and owner of the uncompleted building standing thereon.

3. The 2nd Defendant in the main action and 2nd and 4th Defendants to the Counter-Claim of 1st Defendant filed the following processes:

(i) 2nd Defendants statement of Defence to Claimants statement of Defence dated 24th October, 2022 and filed same date.

(ii) Statement of Defence of the 2nd and 4th Defendants to the Counter-Claim of 1st Defendant/Counter-Claimant on 12th March, 2020.

4. The 3rd Defendant filed a defence to the 1st Defendant's Counter-claim on 24th February, 2022.

5. The Plaintiff then filed a Reply to the 1st Defendant's Statement of Defence and defence to the Counter-Claim of 1st Defendant dated and filed on 6th May, 2019.

The above were the pleadings filed by parties which defined or streamlined the facts in dispute. These pleadings will be particularly critical in the resolution of this dispute.

Let me now equally from the records situate the evidence led.

Now in proof of her case, the Plaintiff called two witnesses. She testified as the **PW1** and the first witness. She deposed to a witness statement on oath which she adopted at the hearing and tendered in evidence the following documents:

1. Property sales Receipt issued to Claimant is the sum of N1,040,000 by FCTA Ad-Hoc Committee on sale of FGN Houses in Abuja been payment for property at Karu District Block EEA 11A & B Director Estate was admitted as **Exhibit P1.**

2. Letter of offer by the F.C.T.A, Office of the Minister to the Claimant dated 22nd May, 2007 for a property situate at Block EEA 11A & 11B Directors Estate, Karu, Abuja FCT was admitted as **Exhibit P2.**

3. F.C.T.A Handover form to Claimant of property at Block EEA 11A & 11B Directors Estate, Karu was admitted as **Exhibit P3**

4. Letter of complaint of trespass written by Claimant to the DPO Karu Police Station was admitted as **Exhibit P4.**

5. Three (3) Photographs showing uncompleted structure was admitted as **Exhibit P5.**

6. Certificate of Occupancy issued to Claimant by the Minister F.C.T dated 2nd August, 2011 in respect of property situate at Block EEA 11A & 11B Directors Estate, Karu, Abuja FCT, Nigeria was admitted as **Exhibit P6.**

PW1 was then cross-examined by Counsel to the then only Defendant on Record.

The second witness for the Claimant was subpoenaed. **Kaka Samuel Senchi**, a civil servant with F.C.D.A, attached to the Legal Services Secretarial of the Ad-hoc Committee on sale of Federal Government Houses testified as **PW2**. He was subpoenaed to give evidence and produce the following documents which were tendered and admitted in evidence as follows:

1. New Nigerian Newspaper dated 22nd March, 2007 containing the guidelines for the walk in sale of Federal Government Houses in the F.C.T to the General Public and showing the advert for sale of the disputed property at Page 25 was admitted as **Exhibit P7.**

2. Certified True Copy (C.T.C) of Front Page of the policy file of Claimant with file No: NS30579 at the F.C.T.A was admitted as **Exhibit P8.**

3. C.T.C. of Receipt issued to claimant by F.C.T.A, Ad-hoc Committee on Sale of F.G.N Houses for sale of the disputed property in the sum of N1,040,000 was admitted as **Exhibit P9.**

4. C.T.C of F.C.T.A Copy of hand over form of the disputed property to Claimant was admitted as **Exhibit P10.**

5. C.T.C of Claimant's Application for grant/re-grant of a Statutory Right of Occupancy was admitted as **Exhibit P11.**

6. C.T.C of F.C.T.A letter of offer of the disputed premises to Claimant dated 22nd May, 2007 was admitted as **Exhibit P12.**

7. C.T.C of Claimant's expression of interest form to purchase a Federal Government House was admitted as **Exhibit P13.**

8. C.T.C of letter by Claimant to Chairman Ad-hoc Committee, Sales of F.G.N House titled **"Request for handover"** was admitted as **Exhibit P14"**

9. C.T.C of Quit Notice to the occupants of Block EEA 11A-B Directors Estate was admitted as **Exhibit P15.**

PW2 testified that the property in dispute is situated within the Directors Quarters, Karu. That the Quarters has a new name now. That the property was sold during the sale of Federal Government Houses to the Claimant. That she bidded, paid for and it was sold to her. That the house was at D.P.C level. That it is an uncompleted house.

PW2 was then cross-examined by counsel to the then only Defendant on Record and with his evidence, the Claimant closed her case.

As stated earlier, the Defendant subsequently applied to join the Minister FCT as second defendant and he also set up a counter-claim. He thus now became 1st defendant/counter-claimant.

The 1st Defendant/Counter-Claimant in total called four (4) witnesses. He testified as **DW1** and the **first witness**. He deposed to a witness statement on oath which he adopted at the hearing and tendered in evidence the following documents:

1. Ministry of F.C.T offer of terms of grant/conveyance of approval dated 15th January, 2001 of Plot 119, of about 650sqm in Abuja Clinic by NIA signed by W.A.M Shittu-Titiola Zone Manager for Honourable Minister F.C.T with Certified Copy AMAC written on its face was admitted as **Exhibit D1.**

2. Copy of T.D.P Plan in respect of Plot No.119 Cadastral Zone 09-07 was admitted as **Exhibit D2.**

3. Abuja Municipal Council Departmental Receipt in the name of 1st Defendant dated 13th June, 2005 was admitted as **Exhibit D3.**

4. F.C.T.A Regularization of land titles and documents of F.C.T Area Councils Acknowledgment dated 28th April, 2008 of Plot 119 was admitted as **Exhibit D4.**

DW1 was then cross-examined by counsel to the Plaintiff. As alluded to earlier on, after joinder of 2nd Defendant to the main claim and as 2nd and 4th Defendant to

the Counter-Claim, they applied for the Recall of **DW1** wherein he was further cross-examined.

Mr. Ozar Okanga, an Architect testified as **DW2**. He deposed to a witness statement which he adopted at the hearing and tendered in evidence the following documents as follows:

1. Conveyance of building plan approval over plot 119 dated 20th October, 2011 was admitted as **Exhibit D5.**
2. Approved drawings or document titled: Proposed Residential Development for Counter-Claimant admitted as **Exhibit D6.**

DW2 was then cross-examined by counsel to the Claimant. Let me perhaps state that as indicated earlier, DW2 was subsequently also later recalled by the 1st Defendant/Counter-Claimant and he adopted the further deposition he made dated 23rd January, 2019 and tendered in evidence a flash drive admitted as **Exhibit D8** and a twenty three nos photographs admitted as **Exhibits D9(1-23).** He was then cross-examined by counsel to the 2nd and 4th Defendants to the Counter-Claim and counsel to the Plaintiff/1st Defendant to the Counter-claim.

Mr. Sunday Chikezie Agha, a Registered Surveyor testified as **DW3**. He deposed to a witness statement on oath dated 24th April, 2018 which he adopted at the hearing. He produced a composite plan of the plot with AGIS/FCT01/18 which he tendered and admitted as **Exhibit D7.**

DW3 was then cross-examined by counsel to the Claimant.

The final witness of the 1st Defendant/Counter-Claimant is **Jeremiah Ojochegbe**, a registered Estate Surveyor and valuer with Jide Taiwo & Co who testified as **DW4**. He deposed to a witness Statement on Oath dated 10th January, 2020 which he adopted at the hearing and tendered a Valuation Report prepared by the estate firm of Jide Taiwo & Co. which was admitted as **Exhibit D10.**

He was then cross-examined by counsel to the 2nd and 4th Defendants and also counsel to the 3rd Defendant to the Counter-claim. Counsel to the Plaintiff and 1st Defendant to the Counter-claim also cross-examined DW4.

The 1st Defendant/counter-claimant said he wanted to call further witnesses which did not materialize and he then finally closed or rested his case.

The 2nd Defendant in the main case and 2nd and 4th Defendants to the Counter-claim on their part called only **one witness**, **Kaka Samuel Senchi**, Counsel with the Legal Services Department of the F.C.D.A who testified as **DW5**. (It is to be noted that he was earlier subpoenaed by claimant wherein he testified as PW2). He deposed to (2) witness depositions which he adopted at the hearing to wit:

i. Deposition in support of the **defence** to the statement of claim.

ii. Deposition in support of the 2nd and 4th Defendants **defence** to the Counter-Claim of 1st Defendant/Counter-Claimant.

He referred to documents in his deposition which have already been tendered in evidence in particular **Exhibits P2** (letter of offer) and **Exhibit P6** (certificate of occupancy) and also tendered in evidence a C.T.C of This day Newspaper publication of August 9, 2004 Vol. No.3395, Page 64 which was admitted in evidence as **Exhibit D11.**

DW5 was then cross-examined by (i) counsel to the 1st Defendant/Counter-Claimant; (ii) counsel to the 3rd Defendant to the Counter-Claim (AMAC) and (iii) counsel to the Plaintiff in the main action and with his evidence, the 2nd Defendant in the main action, 2nd and 4th Defendants to the Counter-Claim closed or rested their case.

The 3rd Defendant to the Counter-Claim (AMAC) on its part also called only one witness. **Musa Murtala Buba**, a civil servant and or Principal Technical Officer Planning with AMAC, testified as **DW6**. He deposed to a witness statement on oath dated 24th February, 2022 which he adopted at the hearing. He did not tender any documentary evidence.

He was then cross-examined by (i) counsel to the 2nd and 4th Defendants to the Counter-Claim, (ii) counsel to the Plaintiff and 1st Defendant to the Counter-Claim and (iii) counsel to the Counter-Claimant and with his evidence, the 3rd Defendant to the Counter-Claim closed their case.

At the conclusion of trial, parties filed, exchanged and adopted their final written addresses.

The final address of the 3rd Defendant to the Counter-Claim was filed on 8th March, 2023. In the address, three (3) issues were raised as arising for determination:

1. **Whether the Zonal Land Manager seconded from Federal Capital Development Authority acted for themselves or on behalf of the Minister F.C.T.**

2. **Whether the powers delegated to the Minister can further be sub delegated.**

3. **Whether the 2nd Defendant can allocate the same plot of land earlier allocated to the 1st Defendant/Counter-Claimant to the Claimant without revocation.**

Submissions were made on the above issues which forms part of the Record of Court and which I will shortly consider in the resolution of this case.

The final address of 2nd Defendant in the main action and 2nd and 4th Defendants to the Counter-Claim was filed on 16th February, 2022. In the address, seven (7) issues were raised as arising for determination as follows:

(i) Whether or not the Claimant/Plaintiff has any cause of action, claim or relief against the 2nd Defendant in the original action, and of what effect.

(ii) Is Block EEA 11A & B Directors Estate, Karu, Abuja, FCT, as claimed by the Plaintiff/Claimant, the same as Plot No: 119 of about 650sqm in Abuja Clinic by NIA as claimed by the 1st Defendant/Counter-Claimant.

(iii) Whether or not the "Further Written Statement on Oath of Arc Ozav Ukonga" (witness for the 1st Defendant/Counter-Claimant) dated 23rd January, 2019 is competent, and of what effect to the resolution of this issue.

(iv) Whether or not the D.W.I (the 1st Defendant/Counter-Claimant, Mr. Clement Layiwola Laseinde) Witness Statement on Oath dated 1st

August, 2012 which D.W.I adopted on 29th day of January, 2018 is incompetent and inadmissible in evidence, and of what effect to the resolution of this issue.

(v) Whether or not Exhibit D10 (Valuation Certificate on Property Located at House No:1, (Plot No:119), Gbagyi Close, Off Amb, Zakari Ibrahim Street, Cadastral Zone 09-07, Unity Estate, Karu, Abuja, Federal Capital Territory for Amb. Clement Layiwola Laseinde by Jide Taiwo & Co) is admissible in evidence and competent to be received in evidence and used in reaching Judgment.

(vi) Whether the Plaintiff/Claimant can succeed in her claims based on evidence before the Court and all relevant laws.

(vii) Whether the 1st Defendant/Counter-Claimant can succeed in his counter-claim from the evidence before this Court and all relevant laws.

Submissions were equally made on all the above issues which forms part of the Records of Court and I will also consider all the submissions made as I resolve the extant dispute shortly.

On the part of the 1st Defendant to the main action and Counter-Claimant, his final address was filed on 13th February, 2023. In the address, **two issues** were identified as arising for determination as follows:

(i) Has the Claimant established, by the evidence led, the case delimited by the three(3) declarations she claims in her Amended Writ of Summons and Statement of Claim?

(ii) Conversely, has the 1st Defendant/Counter-Claimant established, by the evidence led, the case delimited by the declarations/sub declarations he claims in his 2nd Amended Statement of Defence and Counter-claim?

Submissions were similarly made on the above issues which forms part of the Record of Court. I will also surely consider all these submissions in the resolution of the contested assertions in this case.

The address of the main Claimant in the substantive action and 1st Defendant to the Counter-Claim was filed on 29th January, 2024. In the address, **two issues** were equally identified as arising for determination as follows:

(a) Whether the Claimant has proven her case on the preponderance of evidence as to be entitled to the grant of her claims/reliefs as contained in her writ of summons and statement of claim.

(b) Whether the 1st Defendant have proven his counter-claim on the balance of probability as to entitle him to judgment in this suit.

Submissions were equally made on the above issues which forms part of the Record of Court. I will also shortly consider all the submissions made as I resolve the extant dispute.

The 1st Defendant in the main action and Counter-Claimant filed a Reply on points of law to the address of the Claimant/1st Defendant to the Counter-Claimant on 8th March, 2024.

I have given a careful and insightful consideration to all the issues distilled by parties. On the pleadings which has precisely streamlined the issues in dispute, the central key issue on which all parties are at a consensus ad idem relates to the claim of ownership made by the Claimant in respect of the property situate at **Block EEA, 11A & B, Directors Estate, Karu, Abuja**. It is this same property that 1st Defendant/Counter-Claimant claims ownership of and contends is the same **plot 119 Abuja Clinic by NIA covered by a Right of Occupancy No:MZTP/LA/OS.3204** which Plaintiff in the main action claims.

Flowing from the above, the key fundamental question is whether the land is the same and who between the Claimant and Counter-Claimant has established a better claim of right to the disputed plot. These for me are the critical and pivotal issues which forms the bedrock of this dispute. All other issues, even if relevant, are peripheral in the context of these pivotal defined issues. The question for example of want of cause of action raised by 2nd defendant in the main action clearly has no legal resonance on the face of the pleadings. The claimant did not join the 2nd defendant to the action and did not claim any relief against 2nd defendant. As

stated earlier, it was the 1st defendant that applied to join 2nd defendant. In any event, by the provision of **Order 13 Rule 4 of the Rules of Court**, judgment in a case can only be given against any defendant as may be found liable according to their respective liabilities. The issue of cause of action is not one that should be of concern at all.

Also, the issue with respect to where a particular deposition was signed in the face of the deposition showing it was signed before the Commissioner of Oaths of this Court appear to me trifle matters in the larger context of the more serious issues deserving serious attention.

Similarly, in the light of the defence projected by 3rd defendant to the Counter-Claim situating it has nothing to do with the allocation to Counter-Claimant, how can issues be raised and canvassed in support of an allocation which in the pleadings it played no role in issuing? I just wonder. I leave it at that.

These and some other issues raised as stated earlier are largely peripheral which must not distract from the essence of the grievance that will shortly be resolved.

Flowing from the above, there is a counter-claim by **Plaintiff** and **counter-claim** by 1st Defendant. It is trite law that for all intents and purposes, a counter claim is a separate, independent and distinct action and the counter claimant like the plaintiff in an action must prove his case against the person counter claimed before obtaining judgment. See **Jeric Nig. Ltd V Union Bank (2007) 7 WRN 1 at 18; Shettimari V Nwokoye (1991) 9 NWLR (pt.213) 66 at 71.**

In view of this settled state of the law, both the plaintiff and the 1st defendant/counter-claimant have the burden of proving their claim and counter-claims respectively. This being so, the two (2) issues raised by Plaintiff and the Counter-Claimant which the court will slightly modify with addition of three sub-issues hereunder appear to me to be more apt and captures the essence and crux of the dispute.

Accordingly, I will shortly proceed to determine the dispute on the following issues which shall be taken together as follows:

(1) Whether the Plaintiff has established on a preponderance of evidence that she is entitled to all or any of the Reliefs claimed?

(2) Whether the 1st Defendant/Counter-Claimant has equally established on a preponderance of evidence that he is entitled to all or any of the Reliefs Claimed?

The above will be predicated on:

(i) In the Federal Capital Territory (FCT), who has the legal authority to allocate the land/property subject of dispute?

(ii) Is the land/property claimed by claimant the same with that claimed by the Counter-Claimant?

(iii) As between Claimant and 1st Defendant/Counter-Claimant, who did the allocating authority grant or allocate the disputed land/property.

The above issues and sub-issues conveniently covers and accommodates all the issues raised by the parties. The issues thus raised by the court court are not raised in the alternative but cumulatively with the issues raised by parties. See **Sanusi V Amoyegun (1992) 4 NWLR (pt.237) 527.**

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

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

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issues and sub-issues formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle. Some of the germane issues may be taken independently while others may be taken together where there is a confluence of facts and or evidence.

In furtherance of the foregoing, I have carefully read the very well written addresses filed by parties respectively. I will in this course of this judgment and where necessary or relevant refer to submissions made by counsel and resolving whatever issue(s) arising therefrom.

Now to the **substance**. As stated earlier, the issues and sub-issues raised shall be taken together.

At the commencement of this judgment, I had stated that there is a claim by plaintiff and a counter-claim filed by 1st defendant. So these identified parties have the evidential burden of establishing their claims and succeeding on the strength of their cases as opposed to the weakness of the case of the other party. See **Kodilinye V Odu (1935) 2 WACA 336 at 337; Fagunwa V Adibi (2004) 17 NWLR (pt.903) 544 at 568; Nsirim V Nsirim (2002) 12 WRN 1 at 14.**

This principle is however subject to the qualification that a claimant is entitled to take advantage of any element in the case of his opponent that strengthens his own cause. What this means is that it is not enough to merely assert that the case of the opponent is weak; there must be something of positive benefit to the claimant in the case of the opponent. See **Uchendu V Ogboni (1999) 5 N.W.L.R (pt.603) 337.** Accordingly, it is important to add that where the claimant fails to discharge the onus cast on him by law, the weakness of the case of the opponent will not

avail him and the proper judgment is for the adversary or opponent. See **Elias V Omo-Bare (1982) NSCC 92 at 100 and Kodilinye V Odu (supra).**

It is therefore to the pleadings which has precisely streamlined the issues and facts in dispute and the evidence that we must now beam a critical judicial search light in resolving these contested assertions.

I had at the beginning of this Judgment also **identified the pleadings** filed on both sides of the aisle. I shall in the course of this judgment refer to **specific paragraphs** of the **pleadings**, where necessary to underscore any relevant point. Indeed in this judgment I will deliberately and in extenso refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted.

See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

Being a matter involving disputation as to title to land, it is also important to situate the **five independent** ways of proving title to land as expounded by the Supreme Court in **Idundun V Okumagba (1976) 9 – 10 SC 221** as follows:

1. Title may be established by traditional evidence. This usually involves tracing the claimant's title to the original settler on the land in dispute.

2. A claimant may prove ownership of the land in dispute by production of documents of title. A right of occupancy evidenced by a certificate of occupancy affords a good example.

3. Title may be proved by acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant an inference that the claimant is the true owner of the disputed land. Such acts include farming on the whole or part of the land in dispute or selling, leasing and renting out a portion or all of the land in dispute.

4. A claimant may rely on acts of long possession and enjoyment of land as raising a presumption of ownership (in his or her favour) under **Section 146 of the Evidence Act**. This presumption is rebuttable by contrary evidence, such as evidence of a more traditional history or title documents that clearly fix ownership in the defendant.

5. A claimant may prove title to a disputed land by showing that he or she is in undisturbed or undisputed possession of an adjacent or connected land and the circumstances render it probable that as owner of such contiguous land he or she is also the owner of the land in dispute. This fifth method, like the fourth, is also premised on **Section 146 of the Evidence Act**.

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131.** These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title to succeed but he is eminently entitled to rely on more than one root of title. See **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252.** It is only apposite to state that under the relevant laws governing land tenure in the FCT, apart from proof by production of title documents issued by the Minister FCT, the other methods of proving title to land in real terms lack factual or legal resonance.

It is also important to note the point at the onset that some of the reliefs both parties in the claim and counter-claim seek are substantially **declaratory** in nature. That being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on

admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.**

The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

The above provides broad legal and factual template as we shortly commence the inquiry into the contrasting claims of parties.

In this case, parties on both sides of the aisle predicate their ownership of the disputed property by production of **title documents**.

Now a fair take off point since the dispute relates to ownership of a property in the F.C.T is to situate the undenied legal position that ownership of lands in the entire F.C.T derives from allocation by the Minister F.C.T or 2nd Defendant in the case. The validity of any allocation without the imprimatur of the minister would be suspect and even undermined. I will return to this point later on.

I had earlier emphasized the importance of pleadings. Indeed in every trial, pleadings and obviously the quality of the evidences adduced determine the outcome of the trial for parties are bound by the case put up before the court.

Flowing from this, the next important point is to understand the precise situational dynamics to the allocation made to Claimant and Counter-Claimant and who made the allocation and what was allocated. The pleadings of all parties here provide these important information and facts and I will allow the position taken by each party in their pleadings to speak out for itself on the nature of the allocation and what was allocated. Any interrogation by court and the findings will be based on these pleaded facts. In **paragraphs 4-8** of the Amended Statement of Claim, the following averments are averred thus:

4 The Ad-Hoc Committee on the sale of Federal Government Houses in Abuja advertised the buildings yet to be sold in the FCT

5 The Claimant in accordance with the guidelines on 7th May, 2007 paid the bid price of N1,040,000.00(One Million and Forty Thousand Naira) only for the uncompleted semi duplex at the DPC level known as Block EEA 11A & B, Directors Estate, Karu, Abuja. The Claimant pleads receipt No:52299 of 7th May, 2007 issued to her by the Ad-Hoc Committee on the sale of Federal Government Houses in Abuja.

6 The Claimant was subsequently issued a letter of offer dated 22nd May, 2007 by the Honourable Minister of the Federal Capital Territory upon the successful acceptance of her bid. The Claimant on 4th July, 2007 accepted the offer of sale made to her. The Claimant pleads the letter of offer and the acceptance of the offer.

7 The Claimant was taken to the building and formally handed over the uncompleted building by the chairman of the sale of FGN Houses in Abuja on 3rd March, 2008. She was issued Handover Form No:2651 signed by Theodora Eromobor, the Chairman of the Ad-Hoc Committee. The Claimant pleads the Handover Form with Ref No:EOI No:ASIS 035.

8 However the claimant was surprised sometime in May 2010 to discover that somebody was developing her building. She promptly reported the criminal land trespass at the Karu Police Station.

16 The Claimant was subsequently called by officials of AGIS that the Certificate of Occupancy covering her property had been issued and ready for collection since August, 2012. The Claimant went and collected the Certificate of Occupancy from AGIS sometime in February, 2011. The property is covered by a Certificate of Occupancy No: 22eqw-13a5z-159b8-12cd2-cur3 dated 2nd August, 2010 issued to the Claimant by the Honourable Minister of the Federal Capital Territory for a term of 99 years., The certificate is registered as No: 37138 at Page 37138 in Volume 186 of the Certificate of Occupancy Registry Office at Abuja on 2nd August, 2010. The Claimant pleads the original Certificate of Occupancy.

The above averments were backed up by the evidence, oral and documentary tendered. Now by the guidelines for the walk in sale of Federal Government

Houses in the F.C.T to the General Public made in the New Nigeria Newspaper tendered as **Exhibit P7,** the property Claimant bidded for was described on Page 25 as follows:

1. **Description: Uncompleted 5 bedroom semi detached duplex at DPC level.**
2. **House Number: Block EEA 11A & B**
3. **Street number: Directors Estate**
4. **District: Karu**
5. **Reserve price: N1,040,000,000"**

On the pleadings and evidence, following Claimant's participation in the walk in sale exercise having filled the expression of interest form vide **Exhibit P13**, the Claimant was given a letter of offer vide **Exhibit P2.** This Exhibit situates a letter of offer by the **2nd Defendant and signed by him** dated 22nd May, 2007. A relevant portion of the offer reads as follows:

"We refer to your Application and subsequent successful walk in Bid to purchase the property owned by the Federal Government of Nigeria situate at Block EEA 11A & B Directors Estate Karu F.C.T and more particularly described in schedule A" hereto together with all appurtenances rights, rights of way, easements, reversionary rights and privileges related thereto (the property) and in accordance with the published approved guidelines, are pleased to inform you that, having submitted the earliest application on the said property, we hereby offer you the right to purchase the property as herein indicated."

The Claimant on the evidence paid to the 2nd and 4th Defendants consideration for this described property vide **Exhibit P1** in the sum of N1,040,000 and possession was handed over to the Claimant by 2nd and 4th Defendant through a hand over form dated 3rd March, 2008 vide **Exhibit P3**. The Claimant was then issued with a **Certificate of Occupancy** signed by the Minister FCT vide **Exhibit P6** dated 2nd August, 2010 over the property with the address as BLOCK EEA 11 A & B DIRECTORS ESTATE KARU, FCT, NIGERIA confirming in significant material particulars the allocation over the same property covered by **Exhibit P2**, the **offer lette**r.

The evidence with respect to taking of these defined processes by Claimant with respect to the walk in bid, the sale, issuance of the offer and ultimately the issuance of **Certificate of Occupancy** by the Minister FCT and the handing over of possession were strengthened by the evidence of witness of the 2nd and 4th Defendants who conducted the exercise. **PW2** for the 2nd and 4th Defendants gave evidence corroborating in all material respect the assertions of claimant with respect to her claim over the disputed property. He tendered from the office of the 2nd and 4th defendants Department of Land Administration, FCT, **Certified True Copies** of the claimant's policy file No. 30579 vide **Exhibit P8** containing the receipt of payment for the property (**Exhibit P9**); Hand over form of the property (**Exhibit P10**); letter of offer of the disputed property signed by the Minister FCT (**Exhibit P12**); Expression of interest form, walk in bid by claimant (**Exhibit P13**); her request for a hand over (**Exhibit P14**) and the Quit Notice issued by the office of the Minister FCT (**Exhibit P15**). These Certified Copies tendered enjoy the presumption as to genuineness of Certified Copies under **Section 146 (1) of the Evidence Act**.

Now, the allocation by the Minister FCT of this property situate at **Block EEA 11A & B Directors Estate, Karu** covered by both the Offer Letter and C/O was not impugned or challenged either on the pleadings or evidence by the counter-claimant. Learned senior counsel for the counter-claimant has sought in his well written address to pick holes, as it were, on the contents of these **documents tendered by the claimant** and the **certified true copies** tendered by PW2, but I am not enthused or persuaded that the conduit of a final address can be a substitute for pleadings and evidence or to make a case not presented and tested at plenary hearing. Let me perhaps at this early stage deal with the submission of learned silk that the certificate of occupancy was made in violation of the provision of **Section 83(3) of the Evidence Act.**

With profound respect, the submission is not legally available. On the evidence, this case was filed on **22nd September, 2010** while the **Certificate of Occupancy** is dated **2nd August, 2010** and signed by the minister and tendered in the case by Claimant well before the 1st Defendant applied on **26th March, 2018** to join the Minister as 2nd Defendant and this is even after Claimant had closed her case and 1st Defendant has given evidence. It is difficult to accept that **Section 83(3) of the**

Evidence Act can be construed to have a retrospective effect in the circumstances. At the time this action was filed, the Minister FCT was not a party and therefore it is difficult to situate how he can be a "**person interested**" within the purview of **Section 258 (1) of the Evidence Act**.

The complaint also that it was surreptitiously prepared and back dated suggests criminal infractions which by **Section 135 (1) of the Evidence Act** must be proved beyond reasonable doubt. No such evidence was proffered. In the absence of any scintilla of evidence to support these serious allegations, the averments with profound respect turn out to be speculative posturing and will not fly. In any event, even if the C/O is tainted legally, this does not in any way impact the availability and value of the extant **letter of offer**, **Exhibit P2** issued by the Minister FCT over the same property covered by the C/O which was not impugned or discredited.

The complaint on the admissibility of the certificate of occupancy is thus discountenanced.

Now a certificate of occupancy such as that issued to the claimant by the Minister raises a prima facie presumption in favour of the holder albeit a rebuttable presumption that the holder has a right of occupancy. A Certificate of Occupancy is therefore prima facie evidence of exclusive possession by a party. It is not however conclusive evidence of any right, interest or valid title and thus in appropriate cases can be effectively challenged. See **Edebiri V Daniel (2009) 8 NWLR (pt.1142) 15**.

Because of the case projected by the counter-claimant and the address in support, the point must be made that the pre-requisite for a valid grant of a C/O is that there must not be in existence a **valid title** of **another person with legal interest in the same land at the same time, the certificate was issued.** In other words there must not be in existence at the time the **certificate** was issued a statutory owner of the land in dispute or issue who was not divested of his legal interest prior to the grant. Where a C/O has been granted to one of two claimants, who has proved a better title, the other must be deemed to be defective or have been granted or issued erroneously and against the spirit of the Land Use Act and the holder would have no legal basis for a valid claim over the land in dispute. Where it is shown on

the evidence and creditably established that another person other than the grantee of a certificate of occupancy had a better right to the land upon which the grant relates, a court would have no option but to set aside the said grant or to otherwise discountenance it as invalid, defective, and or spurious as the case may be. See **Omiyale V Macaulay (2009) 7 NWLR (pt.1141) 597 SC; Ogunleye V Oni (1990) 2 NWLR (pt.135) 745; Dzumgwe V Gbishe (1985) 2 NWLR (pt.8) 528**.

The Claimant may have situated above her allocation but we are now at the crux of this dispute to wit, the question of whether the counter-claimant made out a case for situating the validity of his own allocation as earlier in time thus invalidating the allocation to claimant? In addressing this point and to put the issues in proper perspective, the **2nd Defendant or the Minister FCT, the allocating authority of all lands in the FCT including the disputed dwelling unit** pleaded in his defence supporting the case of claimant thus:

"2. Paragraphs 1, 2, 3, 4, 5, 6 and 7 of the Statement of Claim of the Claimant are admitted.

7. The 2nd Defendant states that the property and plot of land in dispute is dwelling unit Block EEA 11AB, dwelling Plot No./Floor 5108/00, located at Directors Estate, Cadastral Zone/Plot No. E 10/9080, Karu District Abuja and the property was granted to the Claimant having File No. NS 30579; the 2nd defendant has already issued Certificate of Occupancy to that effect and the 2nd Defendant pleads and relies on relevant documents pleaded and frontloaded to that effect by the Claimant, and at the hearing shall adopt same."

The above averments backed up by the testimony of their witness vide paragraphs 3 and 8 of his witness deposition are clear and self explanatory.

As alluded to earlier, the duty of the Counter-Claimant is to creditably challenge this clear position or establish he has a prior, valid and subsisting allocation.

The next stage as done for claimant is to now situate the representations made by the Counter-Claimant with respect to his own allocation. As stated earlier, the pleadings situates the case made out. In **paragraphs 1-1.4, 22 and 23** of the

Second Amended Statement of Defence, and Counter-Claim, the following averments underpinning the allocation of Counter-Claimant were pleaded thus:

1. **Save that the Claimant is a Civil Servant, the 1st Defendant denies paragraph 1 of the Statement of Claim. In particular, in so far as the "uncompleted semi detached duplex" alleged in the said paragraph of the Statement of Claim to be "situate at Block EEA 11A & B, Directors Estate, Karu, Abuja" is one and the same with the 1st Defendant's own semi-detached property lying being situate and identified as Plot 119 Abuja Clinics by NIA Karu, Abuja, the Claimant is put to the strictest proof of his alleged ownership of the property as against the 1st Defendant.**

1.1 The 1st Defendant avers that, he was allocated the said Plot 119 by the 2nd Defendant through the Land Planning & Survey Department at Abuja Municipal Area Council (AMAC)Zonal Planning Office on the 15th January 2001 the Offer of the Terms of Grant/Conveyance of Approval was issued the 2nd Defendant and signed by one W.A.M SHITTU TITILOLA on behalf of the 2nd Defendant. The Offer of the Terms of Grant/Conveyance of Approval dated 15th January, 2001, is hereby pleaded and shall be relied upon at trial.

1.2 The 1st Defendant avers that after the allocation vide letter of offer dated 1st January, 2001 that he was issued a Right of Occupancy with No.FCT/MZTP/LA/2005/OS.3204 dated 6th July, 2005 and a survey map with beacon Nos. PB9230, PB9231, PB9232, PB9233, PB9234, PB9235 and PB9236 by the Abuja Municipal Area Council. The right of occupancy and the survey map are hereby pleaded and shall be relied upon at trial.

1.3 The 1st Defendant also aver that on the 13th day of June, 2005, he paid the sum of N6,350.00(Six Thousand, Three Hundred and Fifty Naira) only for a Certificate of Occupancy (C of O) of Plot 119 Abuja Clinics by NIA Karu, Abuja, at Abuja Municipal Area Council (AMAC). Departmental Receipt issued to the 1st Defendant by Abuja Municipal Council (AMAC) is hereby pleaded and shall be relied upon at the trial.

1.4 The 1st Defendant also aver that the Federal Capital Territory Administration issued him an acknowledgment letter on the 28th day of April, 2008 when he submitted all his property document as requested for by the Abuja Geographic Information Systems (AGIS) and paid the prescribed fee of N5,000.00. The acknowledgement letter and the receipt for payment are herby pleaded and shall be relied upon at trial.

"22. The 1st Defendant avers that Plot 119 Abuja Clinic by NIA Karu, Abuja, the subject matter of this suit was validly allocated to him by the 2nd defendant acting through its Abuja Municipal Area Council and has not been revoked till date

23. The 1st Defendant avers that hence title over the land is still subsisting, the 2nd Defendant could not have carried out the purported sale with a different plot number."

The above **averments** in his defence to the claimant of claimant with respect to how the counter-claimant acquired title to his own plot is **clear**. Now in the **Counter-Claim**, after repeating the averments in the defence to the statement of claim, the Counter-Claimant now appear to project some ambivalence as to his root of title. In **paragraphs 26 and 27** of his Counter-Claim, he pleaded thus:

"26. To the knowledge and by the authority and/or acquiesce (sic) of the 2nd Counter-claim-Defendants (The Hon. Minister of the Federal Capital Territory), the 3rd Counter-claim-Defendant (the Abuja Municipal Area Council of the Federal Capital Territory) engages in the allotment of land and issuance of Rights of Occupancy over certain category of land within the area known as the Federal Capital Territory.

27. The 3rd Counter-claim-Defendant (the Abuja Municipal Area Council of the Federal Capital Territory) allotted and issued to the Counter-claimant the Right of Occupancy to, and over the piece of land lying being situate and known as Plot No. 119 Abuja Clinics by NIA Karu, Abuja consisting of 637.12 sqm, the area of which is marked with Beacon Nos. PB 9230, PB 9231, PB 9232, PB 9233, PB 9234, PB 9235 and PB 9236."

The trajectory of the **narrative** of Counter-Claimant with respect to his allocation changed from the **2nd defendant (Minister FCT) allocating title to him through 3rd defendant (AMAC)** – (par. 1.1 of the defence) to **now** the 3rd defendant to the counter-claim **(AMAC) allotted and issued the Right of Occupancy to the counter-claimant** (paragraph 27 of the counter-claim). I think it is trite principle to situate that a party must be consistent in the case he presents. A party cannot make or take at the same time two inconsistent positions. The pleadings above do not project the required consistency of a case of this nature. The case of the Counter-Claimant shifts from an allocation by 2nd Defendant to an allocation by 2nd defendant through 3rd Defendant to an allocation by 3rd Defendant.

The Counter-claimant on the pleadings appears not to be clear and certain as to who made the allocation situating his root of title.

This then begs to the question of who **allocated the plot** in issue to the counter-claimant. A determination of this question will no doubt impact the question of the validity of the allocation to Counter-claimant; the question of identity of the land and whether they are the same with that of claimant and other sundry issues posed by this dispute. The **narrative** of the counter-claimant on the positions he advanced on his allocation will have to be viewed and analysed vis-à-vis the positions advanced by the **parties** he pleaded made the allocations to him as between 2nd/4th defendants and 3rd defendant.

Now in evidence, the Counter-Claimant to situate his ownership of the disputed plot tendered in evidence, the offer of terms of grant/conveyance of approval dated 15th January, 2001 conveying the ministers approval of a statutory right of occupancy in respect of plot 119 **(Exhibit D1);** he also tendered the T.D.P (Title Deed Plan) of plot 119 (**Exhibit D2),** Receipt of payment for Certificate of Occupancy (**Exhibit D3);** the regularization of land titles and documents of F.C.T **(Exhibit D4)** and a conveyance of building plan approval (**Exhibit D5).**

It is clear that apart from **Exhibit D1,** none of the other documents vests or allocate title to land or property. See **Section 26 of the Land Use Act.**

It is to be noted that the regularization exercise Counter-Claimant participated in vide **Exhibit D4** contains an express disclaimer to wit: **"This acknowledgment**

does not in any way validate the authenticity of the documents described above. All documents are subject to further verification for authenticity."

The Counter-Claimant did not in evidence tender any other document from F.C.T.A to situate that the title document to wit: **Exhibit D1** was verified and authenticated. It is equally important at this point to state that unlike the claimant who **subpoenaed an official** from the 2nd and 4th defendants to situate with **Certified True Copies of documents** that she participated in a defined process that led to the allocation made to her by the 2nd defendant, the counter-claimant did not produce anyone from either his organisation (NIA); 2nd and 4th defendants or the 3rd defendant to explain the processes that led to the allocation to him and whether he infact participated in a defined process leading to the allocation to him.

There is nothing on the evidence to situate for example, an application for land or acceptance. It must be noted that the counter-claimant said he was not personally involved in the **allocation processes**. That it was done by his organization, NIA. The critical insight of those involved in the allocation to counter-claimant is unfortunately missing here and the court cannot speculate.

It is however still important in the circumstances that we situate the import and parameters of the allocation, **Exhibit D1.** As alluded to earlier on and at the risk of prolixity, **Exhibit D1** is an offer of terms of grant/conveyance of approval covering the ministers approval of a right of occupancy of **plot 119**, of about **650sqm in Abuja Clinic by NIA**.

The offer or conveyance was issued by one **"W.A.M SHITTU-TITILOLA, ZONAL MANAGER FOR HONOURABLE MINISTER, FCT."** And it has emblazoned on it **"CERTIFIED COPY AMAC."** The letter of offer is clear, unambiguous and specific with respect to the allocation, the area covered and who made the allocation. I will return to this allocation again but the letter of offer here which supports the defence of the counter-claimant **vide paragraph 1.4(supra)** is that the allocation to Claimant was by 2nd Defendant (the Minister of FCT) through the Land Planning and Survey Department of Abuja Municipal Area Council (AMAC) Zonal Planning Office on 15th January, 2001. This letter of offer however directly conflicts with **paragraph 27** of the counter-claim where counter-

claimant now made or took the clear position that the 3rd defendant (AMAC) allotted and issued the counter-claimant the R/O over the disputed plot.

Three critical questions arise from these conflicting representations- Was this allocation by the 2nd Defendant, the Minister FCT; secondly was it effected by the 2nd defendant (Minister, FCT) through the Land Planning and Survey Department of AMAC Zonal Planning Office as projected and thirdly was the allocation by AMAC?

The Counter-Claimant himself has here defined the nature of the allocation to him as made (1) by 2nd Defendant through the 3rd Defendant to the Counter-Claim (AMAC) and (2) by AMAC. The response of these Defendants will thus be critical in resolving this dispute particularly with respect to whether they indeed made the allocation.

Now the **3rd Defendant (AMAC)** in response to the claim made by **Counter-Claimant** averred in its defence thus:

1. **The 3rd Defendant denies paragraph 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 of the Counter-Claim of the 1st Defendant, as the 3rd Defendant <u>does not allocate land</u>, therefore put the Claimant to the strictest proof thereof.**

2. **In response to the paragraphs denied, the 3rd Defendant aver that:**

    a. **The 4th (sic) Defendant is not in a position to confirm whether the Claimant or the 1st Defendant are the legal owners of the disputed Plot No: FCT/MZTP/LA/2005/OS3204 dated 6th July, 2005 and a survey map with beacon Number PB9230, PB9231, PB9232, PB9233, PB9234, PB9235 and PB9236.**

    b. **That prior to year 2004, the 2nd Defendant designated Zonal Land Managers to all the Area Councils, which the 3rd Defendant is one, for the purpose of allocation of land in the various Area Councils on behalf of the Honourable Minister, Federal Capital Territory.**

    c. **The 3rd Defendant was responsible for providing office space known as Zonal Land Office for the said Zonal Land Manager, seconded to its**

office and issues its own payment receipts for the purpose of revenue and accountability.

d. **That the allocation paper issued from the 3rd Defendant's and other Area Councils' office bear the name of the 3rd Defendant and such Area Council, for the sole purpose of identifying the Area Council where the land is situated.**

3. **The 3rd Defendant further avers that the Zonal Land Office of AMAC is an extension or adjunct of the Federal Capital Territory, and ought not to be seen as a department of AMAC merely because it is situated in the premises of the 3rd Defendant.**

4. **The 3rd Defendant avers that the actions of the Zonal Land Manager who were an employee of the Federal Capital Territory Administration cannot by any stretch of the imagination be taken to amount to the actions by or on behalf of AMAC.**

5. **The 3rd Defendant strongly contends that the Zonal Land Manager designated in the 3rd Defendant office, acted on behalf of the Honourable Minister, Federal Capital Territory, and this Honourable Court is urged to dismiss the case against the 3rd Defendant with punitive cost, as it lacks merit.**

The case made out by 3rd Defendant above is clear, self explanatory and unambiguous. The 3rd Defendant to the Counter-claim (AMAC) in no uncertain and unequivocal terms stated that it does not allocate land, thereby denying the averment of **counter-claimant in paragraph 27** and in real terms, it projects that it knows nothing about the allocation to Claimant and most importantly the Counter-Claimant who delineated the position that his allocation was done through AMAC. Indeed in **paragraph 2(a) above**, it referred to the contents of T.D.P vide **Exhibit D2** and made the position that it is in no position to say who is the legal owner of the disputed plot between Claimant and Counter-Claimant. This appears to me a logical position to take since it did not allocate to either party.

Indeed in the defence, while it acknowledged that the 2nd Defendant designated Zonal Land Officers to the 3rd Defendant and other Area Councils, it stated that

such zonal offices **"ought not to be seen as a department in AMAC"** and that the actions of the Zonal Manager cannot by any stretch of the imagination **"be taken to be actions by or belief or AMAC"**

In view of these clear positive assertions by 3rd defendant to the counter-claim, it is difficult to then factually situate arguments made in the final address of 3rd defendant that the Zonal manager in this case acted on behalf of the Honourable Minister, FCT and the elaborate submissions made on the question of whether powers delegated to the Minister can be further delegated and applicability of the **Caltona principle** developed in the case of **Caltona Ltd V. Works Commissioner (1943)2 AII ER 566;** the argument that **Exhibit D1** issued to counter-claimant was validly made and that 2nd Defendant cannot grant the same plot earlier allocated to the 1st Defendant to Claimant without revocation of the earlier grant.

These submissions made which are in **direct conflict** with the averments made in the **pleadings of 3rd Defendant** already highlighted are largely, I am afraid, misconceived. It is really difficult to fathom or rationalise the basis of the position taken by 3rd Defendant in the address in respect of allocation they know nothing about. How can you seek to justify a position in ignorance?

If the position canvassed by 3rd Defendant at all times is that they don't allocate land; they don't know the real owner of the disputed plot between Claimant and Counter-Claimant and that the Zonal Managers are independent and not an adjunct of AMAC, then it appears to me a contradiction in terms to seek to project a different case in the address. It is with respect a wholly idle exercise in speculation to now make the argument that the Zonal Manager in this case acted on behalf of the Minister F.C.T or 2nd Defendant on the basis of the **Caltona** principle and or that the allocation to Counter-Claimant is now genuine or superior, having freely stated in the defence that you don't know as between **claimant** and **counter-claimant** who "**are the legal owners of the disputed plot**."

What is interesting in this case is that the 3rd Defendant did not produce **any iota of evidence** to support the argument that in respect of the allocation to the counter-claimant, the Zonal Manager acted on behalf of the Minster, FCT. The Zonal Manager, **W.A.M Shittu-Titilola** was not produced to verify that the allocation

she signed or issued was on behalf of the Minister. Indeed nobody was produced either from the Zonal Office then in AMAC or from the office of the 2nd Defendant or indeed F.C.D.A to support and strengthen the credibility of the narrative that the Zonal Manager acted for and on behalf of the minister.

As stated earlier, the witness for the 3rd Defendant essentially confirmed the position that while the land in dispute may be in AMAC, but he agreed that he is in no position to answer any question on **Exhibit D1,** the allocation to Counter-Claimant or to confirm its genuineness. He also stated under cross-examination that AMAC does not grant building permits. He also stated that he does not know anything about the developments on the land situated in the pictures tendered vide **Exhibit P9(1-23)** and equally does not know if the pictures relate to the plan and **Exhibit D1,** the offer letter.

The point to make in view of the diametrically opposed and inconsistent positions taken by 3rd Defendant in their defence and evidence vis-à-vis the address proferred is that a party is bound by his pleadings and cannot go outside it to lead evidence or proffer his final address on or rely on facts extraneous to those pleaded. See **Kyari V. Aikale (2001)11 NWLR (pt.124)412 at 433-434 H-A.**

The primary function of pleadings is to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases. It is designed to bring the parties to an issue on which alone the court will adjudicate between them. See **Kyari V. Aikale (supra).** An address however well written cannot expand the remit of the issues streamlined on the pleadings. An address cannot be a substitute for pleadings and evidence. Cases are not normally decided on addresses but on credible evidence. No amount of brilliance in a final speech can make up for absence of pleadings and evidence to prove, establish, disprove or demolish points in issue. See **Sanyaolu V. INEC (1999)7 NWLR (pt.112)600 at 611 C-D.**

The whole basis of the address of 3rd defendant were on matters outside the confines of what was pleaded and demonstrated in court and wholly speculative. The point to underscore is that the type of evidence that a court can act on is on the evidence demonstrated, canvassed and argued in court.

A court cannot also decide issues on speculation no matter how close what it relies on may seem to be to the facts. Superior Courts have made the position clear that speculation is not an aspect of inference that may be drawn from facts that are laid before the court. Inference is a reasonable deduction from facts whereas speculation is a mere variant of imaginative guess which even if when it appears plausible, should never be allowed by a court of law to fill any hiatus in the evidence before it. See **Overseas Construction Co. Ltd V Greek Ent. Ltd (1985) 16 NSCC part 2 1371 at 1375; (1985) 3 NWLR (pt.13) 409**.

With respect, learned counsel for the 3rd defendant only sought to belatedly construct a new case outside that structurally defined in their defence. The bottom line is that **there is really nothing on the pleadings and evidence proffered by 3rd defendant to situate or support the contention that the allocation to the counter-claimant was by the 2nd defendant through the 3rd defendant**.

There is equally again crucially nothing to support the alternative version of the narrative of counter-claimant that it was the **3rd defendant (AMAC) that allocated the disputed plot to him**. As the 3rd defendant stated clearly in paragraph 1 of their defence, (AMAC) "**does not allocate land**."

It is thus clear that the case of Counter-Claimant on the basis of his pleadings that the allocation was made by AMAC or by **2nd defendant through AMAC has not been established**.

This then leads us to the position advanced by the **2nd defendant** (in the main action and **2nd and 4th defendants in the counter-claim**) to the case of Counter-Claimant. It must be again underscored that on the pleadings and evidence and indeed the clear position of the law, there is no dispute that the allocating or vesting authority of all lands in the FCT is the **2nd defendant** or **minister FCT**.

In their **defence to the counter-claim**, and in response to the **case made against them by the counter-claimant**, they pleaded in response as follows and because of the decided crucial role the 2nd defendant plays in the allocation of land in the FCT, I will reproduce the relevant averments thus:

"Save and except as hereinafter specifically admitted, the 2nd and 4th defendants deny each and every material allegation of facts contained in the

Counter-Claim as if same were set out and traversed seriatim and the 2nd and 4th defendants to the Counter-Claim shall rely on all available defences:

"1. The pleadings of the counter-claimant in his statement of defence to the claimant's statement of claim (adopted by Counter-claimant) are denied and the counter-claimant put on the strictest proof of this averment and it is further stated in response as follows:

a. The Minister of Federal Capital Territory did not allocate or give approval to allocate Plot 119 Abuja Clinics by NIA Karu, Abuja to the counter-claimant at anytime and did not and had never authorized Abuja Municipal Area Council or one W.A.M Shittu-Titilola to issue or give offer of terms of grant/conveyance of approval for grant of Statutory Right of Occupancy dated 15/1/2001 in respect of Plot No. 119 of about 650 square meters Abuja clinics Karu to the counter-claimant and the counter-claimant is given notice to produce the purported written document where the Minister of Federal Capital Territory approved such as it does not exist, for all approvals and authorization relating to land in Federal Capital Territory must be in writing.

b. In further response, it is stated that on Monday, August 9, 2004 the Federal Capital Territory Administration published in page 64, Thisday Newspaper, Vol. 10 No. 3395 for all holders of Certificate of Occupancy and Statutory Right of Occupancy to participate in the Recertification and Re-issuance of their land title documents in Federal Capital Territory issued by the Minister of Federal Capital Territory herein pleaded and the counter-claimant did not participate in the exercise till today because his purported allocation was purportedly issued by Abuja Municipal Area Council and has nothing to do with the Minister of the Federal Capital Territory as the Minister of Federal Capital Territory did not allocate same or authorize the issuance.

c. In further response it is stated that as a result of the concern of people concerning and unlawfully granted by Area Councils in Federal Capital Territory, the Federal Capital Territory Administration then decided to do Regularization of Land Titles and Documents of Federal Capital

Territory Area Councils whereby the Federal Capital Territory Administration will now take inventory of irregular allocations of land by the Area Council and regularize it by after necessary verification and documents issue genuine Offer of Statutory Right of Occupancy by the Minister of Federal Capital Territory evidence by a Certificate of Occupancy signed by the Minister of federal Capital Territory.

d. **In further response, it is stated that the Counter-claimant purportedly participated in the Federal Capital Territory Administration Regularization of Land Titles and Documents of Federal Capital Territory Area Councils because his purported Offer of Statutory Right of Occupancy was purportedly issued by Abuja Municipal Area Council and not the Minister of Federal capital territory, and his purported allocation is irregular, unlawful, unconstitutional and against the Land Use Act.**

e. **It is further averred that the counter-claimant got purported approval to build and started to build on the disputed land during the pendency of this suit to overreach the defendants in the counter-claim as well as this court.**

2. **Paragraph 26 of the counter-claim of the counter-claimant is denied as the Minister of Federal Capital Territory did not authorize or acquiesce to any allotment or grant of Plot of land to the counter-claimant.**

3. **Paragraphs 27, 28, 29 and 30 of the counter-claimant's claim is denied as Abuja Municipal Area Council has no right to allocate land or issue Statutory Right of Occupancy to the counter-claimant in 2001 over the piece of land lying and situate and known as Plot No. 119 Abuja clinics by NIA Karu, Abuja consisting of 637.12 sqm having beacon numbers PB 9230, PB 9231, PB 9232, PB 9233, PB 9234, PB 9235 and PB 9236 and the counter-claimant has no right to take possession of the property and build on the property which was not given by the Minister of the Federal Capital Territory.**

4. **Paragraphs 31, 32, 33, 34 and 35 of the counter-claimant's counter-claim are denied as the Minister of Federal Capital Territory did not approve for allocation to the counter-claim and did not allocate or authorize allocation of Plot 119 Abuja Clinics by NIA Karu, Abuja to the counter-claimant on 15/1/2002 and the counter-claimant has no right to build any structure on the land and the counter-claims of the counter-claimant are unfounded, baseless and gold-digging.**

5. **In further response, it is stated that the counter-claimant has no Certificate of Occupancy issued by the Minister of Federal Capital Territory and this is because the counter-claimant was not granted a Statutory Right of Occupancy by the Minister of Federal Capital Territory in line with the Land Use Act.**

6. **In further response, Rakiya Dalhat Ladan was on 22nd of May 2007 given a letter of offer to purchase the property owned by the Federal Government of Nigeria which is a SEMI DETACHED DUPLEX situate at Block EEA 11A & B DIRECTORS ESTATE KARU, ABUJA FCT and she accepted the offer on 4th of July, 2007 and after fulfilling all conditions was granted a Certificate of Occupancy No.: 22e9w-13a5z-159b8-12cd2-cur3 having File No. NS 30579 dated 2nd day of August, 2010 over the property specifically referred in the Certificate of Occupancy as Dwelling Unit: Block EEA 11 A & B, Dwelling Plot No. Floor 5108/00, Cadastral Zone/Plot No. E10/9080 at Directors Estate, Karu District, Karu Abuja and this Offer letter cum Certificate of Occupancy shall be relied upon and notice is given to Rakiya Dalhat Ladan to produce same during trial.**

7. **In further response, it is averred that the Minister of Federal Capital Territory has granted to Rakiya Dalhat Ladan a Certificate of Occupancy dated 2/8/2010 over Dwelling Unit Block EEA 11A & B, Dwelling Plot No. 1 Floor 5108100 in Directors Estate, Cadastral Zone/Plot No. E 10/9080, Karu District, Abuja with File No. NS 30579 which is the subject matter in dispute in this case and the property in issue has beacon numbers PB 21170 to PB 21171, PB 21171 to PB 21171, PB 21172 to PB 21173 and PB 21173 to PB 21174 and thence to the starting point and the clear cut coordinates are clearly stated at the back of the Certificate of Occupancy given to Rakiya**

Dalhat Ladan and the total area of the land is 712.98m2 and this document shall be relied upon at the trial."

The above averments are again clear. The witness for the 2nd and 4th defendants, **Kaka Senchi** led largely uncontested evidence in support of the above averments in support of the case and made out that at no time did the 2nd defendant allocate **Plot 119 Abuja Clinics by NIA, Karu Abuja** to the Counter-claimant and they did not also at any time authorise **Abuja Municipal Area Council (AMAC)** or one **W.A.M Shittu-Titilola** to issue or give offer of terms of grant/conveyance of approval for grant of statutory right of occupancy to the counter-claimant. Indeed the evidence led reiterated the point that AMAC has no right to allocate the land in dispute and that the said zonal officer WAM Shittu Titilola was equally not permitted by the minister to issue **Exhibit D1** and accordingly that the Counter-claimant has no right to take possession of the property and build on it which was not given by the Minister FCT.

The evidence of this witness for the 2nd and 4th defendants was not in anyway impugned or challenged during cross-examination with respect to the critical elements of the allocation said to have been effected as stated by counter-claimant by AMAC on behalf of the Minister, FCT. The evidence of DW5 for the 2nd and 4th defendants to the counter-claimant was, on these important elements, not contradicted by any other admissible evidence and in such circumstances, the trial judge is bound to accept and act on that evidence even if it had been minimal evidence. See **Adeleke V Iyanda (2001) 13 NWLR (pt.729) 1 at 22-23 AC.**

Indeed the position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial judge who would in turn ascribe probative value to it. See **Kopek Const. Ltd V Ekisola (2010) 3 NWLR (pt.1182) 618.**

The Counter-claimant did not again here bring in any admissible evidence to support the case made out that the allocation to him was made by the **2nd defendant** through the 3rd defendant to the counter-claimant and this is fundamental. In **Divage Health and Sanitary Service Ltd & Anor V. Ilanuj Invt' Ltd (2018) LPELR – 45975**, the Court of Appeal held thus:

"Also, exhibits PW1C & PW1D shows on their face they conveyed the Hon. Minister's approval, but there is no evidence to show that they were issued by the Minister or the person who signed them was a staff of the Federal Capital Territory and he has signed the said Exhibits on behalf of the Minister. It is my view that the Respondent's documents of title Exhibits PW A, B, C, D, E; E G & H do not qualify as documents conferring title. See Yuguda V Nyimnya (2017) LPELR – 43008 CA. In view of all the above, I do not agree with the Respondent's counsel contention that the Respondent was the rightful allottee, notwithstanding the issue of allocation from Abuja Municipal Area Council."

Now what is interesting in this case and I had alluded to it but which must be stressed is that the counter-claimant under cross-examination stated that the entire process of application for and acceptance of the disputed Plot was done on their behalf as a group by their organization, **NIA**. The counter-claimant equally in evidence stated that NIA actually applied to the Minister who directed AMAC to make the allocation to them but when he was asked whether he has the letter situating the direction, he said it is with NIA or AMAC.

Now what is strange here is that the counter-claimant who clearly is not ceased of the facts relating to the allocation to him did not summon anyone from NIA where there should or ought to be records to give evidence of what really transpired at the material time to strengthen the credibility of his narrative and assertions in view of the vehement denial by the 2nd and 4th defendants. These critical insights, I am afraid cannot, again, be a matter for speculation, inference or address of counsel. A trial court cannot draw inference in a vacuum but in relation to facts which justify the inference. An inference cannot be made at large on the basis of very fluid and unclear evidence. See **Boniface Ezeadukwa V Peter Maduka & Anor (1997) 8 NWLR (Pt.518) 635 at 663.**

As earlier alluded to, the point must be underscored that the law is clear beyond per adventure and does not permit of any ambiguity whatsoever, that the ownership of all lands comprised in the FCT vests absolutely in the Government of the Federal Republic of Nigeria. See **Section 277 (2) of the 1999 Constitution** and **Sections 1 (3) and 2 (1) of the Federal Capital Territory Act**, Cap. F6 Laws of the Federation 2004 (hereinafter "the FCT Act"). And it has been held that no one

can acquire title to any land situate within the Federal Capital Territory without an allocation or grant by the appropriate authority i.e. the Honourable Minister of FCT. See **Madu V Madu (2008) 6 NWLR (pt.1083) 296 at 324-325.** Here too, the Counter-Claimant unfortunately was not able to creditably establish any due allocation by the **Minister FCT** and that is fatal.

The elaborate and impressive submissions of learned senior Advocate for the Counter-claimant in the final address on aspects of the allocation to claimant, I am afraid does not in the slightest, amount to proof of the existence of a due allocation to claimant of the **disputed plot** by the Minister, FCT. The attack on the title documents situating allocation to claimant does not equally prove the existence of an allocation duely granted to **counter-claimant**. The issue of allocation is primarily a function of evidence. In this case, the institutions Counter-Claimant projects as deriving his title from have denied such allocation and no admissible evidence was tendered to support any such allocation. The case of counter-claimant as demonstrated at length suffers from serious evidentiary challenges particularly on the fundamental question of absence of a due allocation by the **2nd defendant and Minister, FCT**. The Minister it must be emphasized pursuant to **Section 302 of the Constitution** and **Sections 13 and 18 of the FCT Act** is the only authority that can validly allocate land in the Federal Capital Territory.

The counter-claimant may have tendered his letter of offer, **Exhibit D1** but this **root of title** was challenged and or impugned and its due and proper allocation was not established.

In law, it is settled that where a party traces his root of title to a particular source in this case the 2nd defendant through AMAC or AMAC itself and title in either of the cases was challenged, the party must not only establish his title but must satisfy the court as to the title of the source from whom he claims. In **Adole V Gwar (2008)11 N.W.L.R (pt.1099)562 at 592 B-C,** the Supreme Court stated as follows:

"As to whether or not the appellant as plaintiff proved title to the plot of land in issue by the production of Exhibit 2, I am in agreement with the respondent's submission that the appellant did not prove his root of title. This is because, this court has held repeatedly that once a party pleads and traces his root of title to a particular source and the title is challenged, to succeed,

the party must not only establish his title to the land in issue, he must also satisfy the court as to the title of the source from whom he claims."

Flowing from the above, where the title of a grantor has been put in issue as done by defendants here, the production of document(s) of title without more is not sufficient proof of title. It is the duty of claimant to go further and plead and clearly trace the root of title of the Grantor. See **Olukoya V Ashiru (2006) A FWLR (pt.322) 1479 at 1506 A-E.** This threshold clearly was not crossed by Counter-Claimant.

It is also settled principle of general application that production of documents of title is without doubt one of the five recognised ways in which ownership of or title to land may be proved. However production of an instrument of grant of title carries with it the need for the court to inquire into a number of questions, including:

(a) Whether the document is genuine and valid;
(b) Whether the document has been duly executed, stamped and registered;
(c) Whether the Grantor had the authority and capacity to make the grant;
(d) Whether the Grantor had what he purported to grant; and
(e) Whether it had the effect claimed by the holder of the document.

See **Oyeneyin V Akinkugbe (2010) 4 NWLR (pt.1184) 265 at 284-285 E-D**.

In this case **issues (a), (c), (d)** and **(e)** were fundamental and projected against the allocation of the Counter-Claimant and unfortunately the Counter-Claimant had no answers to negate the attack on the validity of his letter of allocation. As severally demonstrated, the institutions he claimed made the allocation to him and in clear terms denied any such allocation.

It is thus obvious as demonstrated at length that the Counter-Claimant was not able to produce and prove his title to the disputed land/property on the basis of production of a valid **document of title**. With the failure to prove title, the question of valuation of the property and developments on it and the weight, if any to attach to the evidence of DW4 and the valuation report prepared vide **Exhibit D10** becomes essentially academic which the court lacks the luxury to indulge in.

I think it may be relevant to now address the question earlier raised even if briefly with respect to whether the land claimed by claimant is the same with that of Counter-Claimant even if it appears no longer decisive in view of the failure of the Counter-Claimant to establish a duely issued allocation by the Minister, FCT. If no proper allocation is first determined, it will be redundant to really make an inquiry as to whether the Plots are the same. Out of abundance of caution, I will address the issue. Let us do some refreshing of the facts.

The letter of offer to claimant vide **Exhibit P2** dated 22nd May, 2007 and the Certificate of Occupancy issued by the Minister vide **Exhibit P6** is in respect of a property situate at **BLOCK EEA 11 A & B DIRECTORS ESTATE KARU, ABUJA FCT**. The plan situated with the certificate of occupancy provides the beacon numbers and dimension of the property allocated to claimant. The case of claimant is pivoted on this property.

Now on the other side of the aisle, the offer of terms of grant to counter-claimant vide **Exhibit D1** is in respect of **Plot No. 119 of about 650 sqm in Abuja clinic by NIA**. **Exhibit D2** is the Title Deed Plan (TDP) situating the dimensions of the land and the beacon numbers.

It would appear on the basis of the pleadings of counter-claimant to wit: His defence and Counter-claim that the question of identity of the land in dispute was raised by counter-claimant but in not a clear and consistent manner or pattern. I equally however note that in Relief (3) claimed by claimant, a declaration was sought that the two plots are not the same.

Now in law, the identity of land will be in dispute if the defendant in his statement of defence makes it so specifically disputing either the area or size covered or the location as described in the statement of claim of the claimants plan. See **Adenle V Olude (2003) FWLR (pt.157) 1074 at 1086 C-E.**

I had earlier referred to the allocations and the survey plans of parties. Now the Counter-Claimant who delineated this question however cast doubt on the very basis of this contention with respect to the identity of the land he was allocated to vide **Exhibit D1**. Again, if there is no clarity with respect to the identity of the Plot allocated to a person, it is difficult to really carry out any meaningful inquiry to determine that this same land is the same or different from that of the adversary.

Let me here give full expression to his testimony under cross-examination. When Counter-Claimant was first cross-examined by plaintiff, he stated thus:

"Yes Plot 119 of about 650 sqm in Abuja Clinic by NIA is the description on Exhibit D1 but the description on the Exhibit is clearly not correct.

NIA was not initially fenced; it was when officers wanted to move in about 5 years later that it was fenced.

I am not in a position to know whether there is Abuja Clinic district in the FCT. I don't work in FCT AGIS. I don't know Karu District but I know Karu…"

When counter-claimant was subsequently recalled and cross-examined by other parties joined to the action, he stated again thus:

"Exhibit D1 talks of land inside Abuja Clinic but Abuja Clinic is a small clinic or plot of land so no land can be on it. As at that time, Abuja clinic was a landmark at Karu. They did not use the right phraseology in Exhibit D1 by whoever wrote the exhibit."

As a starting point on the question of identity, a party should be able to situate with certainty and precision the land he lays claim to. See **Kyari V Alkali (supra).** Indeed, the law is settled that a claimant in an action for declaration of title must prove his claim with cogent, satisfactory and uncontradicted evidence which includes the establishment of the identity of the land in dispute, when the identity of the land is in dispute. See **Nwabuoku V Onwordi (2006) AFWLR (pt.331) 1236 at 1255.**

Now in this case, the counter-claimant has as it were, challenged or impugned the allocation made to him in **Exhibit D1** with respect to the **identity** and **location** of his plot. He seeks essentially, by his evidence highlighted above, to change the location of his allocation in **Exhibit D1.**

The said **Exhibit D1** for me is clear. By virtue of **Section 128 (1) of the Evidence Act**, oral or parol evidence will not be admissible among other things to contradict or alter its contents to suit a particular purpose. See **Bunge V Gov. of Rivers State (2006) 12 NWLR (pt.995) 573 at 616 – 617 G-A.**

I am not sure it lies in the mouth of the counter-claimant to speculate that whoever **filled or prepared Exhibit D1** was not correct in his description of the plot allocated to claimant as described in **Exhibit D1**. The counter-claim concedes he did not work with either AMAC or the FCDA and therefore his evidence is essentially speculative. The counter-claimant did not as stated earlier call anybody from AMAC or 2nd defendant to state that there were indeed **mistakes in the description** of what he was allocated. It must be noted that the witness who testified for AMAC, DW6, a principal technical officer planning with ALAC was not asked any questions relating to any mistakes on **Exhibit D1**. Again since it was NIA, his organization that applied and got the allocations, nobody was brought to situate these errors and what actions if any, they took to rectify same.

On the evidence, nothing was done by Counter-Claimant to either effect corrections or to get a new offer letter, effecting corrections he highlighted on the offer issued to him and that for me is fatal. The belated attempt to alter the contents of the letter will not fly.

The point to therefore make is that a finding of fact which is made having regard to documentary evidence, cannot be seen to fly in the face of the accepted relevant document or documents; if it is, then such findings will be contradictory and perverse.

Any findings to be made, as in this case which depend on documentary evidence such as **Exhibit D1** must reasonably reflect the contents of the document(s) in question as a whole so as to be seen as a true understanding of the contents. As stated earlier, in the absence of any other admissible evidence, **Exhibit D1** must be taken as projecting what it says from the terms therein. No more.

With the impugning of the **letter of offer**, it is then difficult to give probative value and weight to the Title Deed Plan (TDP) tendered by counter-claimant as **Exhibit D2**, which is based on **Exhibit D1** which Counter-Claimant says is flawed.

Again, nobody was called from the survey and mapping section of AMAC where **Exhibits D1 and D2** were prepared to speak to the Exhibits and what it contains particularly with respect to the exact description and location of the land of counter-claimant and the court cannot speculate. As stated earlier, the only witness for AMAC, DW6 essentially projected the position asserted in the 3rd defendant's

Defence that they know nothing about this T.D.P (see paragraph 2(a) of the Defence).

Now on the evidence, the counter-claimant produced a Registered Surveyor by name **Sunday Chukeze Agha** who testified as DW3 and tendered a plan vide **Exhibit D7** which he described as:

"Plan showing the superimposition of Plot No. 5108 Directors Estate on Plot 119 Abuja Clinic Layout by NIA Quarters at Karu, Abuja."

Now it is obvious that this plan is dated 24th January, 2018. The surveyor in evidence said his client retained him to produce the composite plan clearly when this proceeding was pending and caught by the provision of **Section 83 (3) of the Evidence Act** and thus inadmissible.

Now even if the court is wrong on the question of admissibility, DW3 said he worked on the basis of the **Title Deed Plan (TDP)** of plaintiff and **that of counter-claimant given** to him by the counter-claimant. These plans were not attached to the composite plan and he did not identify the plans already in evidence as those he used to prepare his own plan, **Exhibit D7.** These are matters that must be demonstrated at trial to put the court in a commanding height to weigh and accord the necessary probative value to such evidence. It can't be a matter for speculation.

Interestingly under cross-examination, DW3 said that the plan of claimant was **produced by FCDA** while that of counter-claimant was **given by AMAC**. DW3 does not work in any of these institutions and so clearly is in no position to discredit any of the plans or to project one as superior.

A relevant point to note is that the T.D.P. used by DW3 was what Counter-Claimant gave him. The T.D.P formed part of the documents of title in possession of Counter-Claimant including the offer letter **Exhibit D1** which Counter-Claim says is **flawed** and does not represent the correct location of the plot. If the T.D.P. was produced on the basis of the same flawed Exhibit D1, it is logical to hold that any conclusions made from it will equally be flawed.

As stated severally, nobody was brought from AMAC who allegedly produced the plan to speak to its contents.

Indeed, the only witness who appeared for AMAC, DW6, Musa Murtala Buba, a principal technical officer planning at AMAC essentially disowned this T.D.P. In their defence and his deposition, he stated clearly that AMAC does not allocate land and is not in any position to confirm whether claimant or Counter-claimant are the legal owners of the disputed land. The evidence of DW6 makes the position clear that AMAC really have no business with this T.D.P said to have been produced by them and used by DW3 to prepare his composite plan **Exhibit D7** which allowed him to make the allegation of superimposition. At the risk of prolixity, nobody who had a hand in the production of this **T.D.P** was thus produced by Counter-claimant and therefore the claim made by DW3 that there was a superimposition of claimants plot on Counter-claimant's plot was not established.

The bottom line is that even if the **Exhibit D7** was available to be considered, it did not creditably establish the fact of superimposition in the light of lack of clarity on the evidence presented and the clear failure to present materials used to justify such conclusions.

Now it is true that by **Exhibit D9 (1-23),** the counter-claimant may have commenced development on the disputed plot. The claimant equally tendered photographs vide **Exhibit P5 (1-3)** showing construction work with a stop work painting dated 14th May, 2010 on the building been constructed. There is no clear evidence when these building works by counter-claimant commenced as shown in **Exhibit D9 (1-23).** The exhibits are not dated. There is equally nothing to show that the construction going on was on the plot situated by **Exhibit D1** or **Exhibit P2**.

Now it must be stated that this court as far back as 10th February, 2011 after hearing from both sides on an interlocutory injunction application ruled as follows:

1. **"An order of interlocutory injunction is hereby granted restraining the defendant, his agents, privies, workmen, foremen, Engineers, Architects or by whatever name called from taking possession of, trespassing into, further developing, roofing, changing the shape of or in any way disturbing or interfering with the property situate at Block EEA 11A & B, Directors**

Estate, Karu pending the hearing and determination of the substantive suit.

2. **In the interest of justice, an accelerated hearing of the substantive suit is hereby ordered."**

Now as at the time, this application was heard and granted, pictures situating **construction** works on the plot claimant was claiming was attached.

It would appear therefore that while the allocations may have described the **Plot differently**, at least on the basis of the dispute presented and the materials presented, there was a consensus that the property, Counter-Claimant was developing is that claimant says belongs to her. The question of identity equally in that context may not be fundamental since parties know the **land** in dispute. These facts provided the factual and legal basis for the order granted by court on **10th February, 2011**.

On the facts it is also clear that as at the time the Order was granted, the building had already reached a certain level; making it difficult, if not impossible to determine the key question of whether what was allocated to claimant was at a certain level of construction or not. It was also unclear if the flawed allocation to Counter-Claimant was on a barren plot of land.

Now **Exhibit D5**, the approval of building plan dated 20th October, 2011 and the building plan itself, **Exhibit D6** approved on 25th October, 2011 issued to the Counter-Claimant shows clearly that they were issued or made when this action was pending and after the order of injunction was granted. Again these Exhibits clearly fall foul of the provision of **Section 83 (3) of the Evidence Act**.

The point must be underscored again that at the time the injunctive orders were granted, only the counter-claimant was a party in the case. The institutions that prepared **Exhibits D5** and **D6** may not be aware of the court case and the orders but the counter-claimant cannot feign ignorance of the case and orders and therefore in my view if developments were continued or carried out on the land when the case was pending, it was done at great risk or peril.

It must be pointed out again that the dates on the approvals **Exhibits D5** and **D6** are clear; 20th October, 2011 and 25th October, 2011, but by **Exhibits P5 1-3,** the pictures of the construction tendered by claimant which situates a stop work order dated **14th May, 2010** projects clearly that the counter-claimant had commenced development without waiting for the necessary building plan approvals and permits.

PW1 was not questioned or challenged in relation to these pictures and the stop work order on it dated 14th May, 2010 and this also confirms that the approvals for building came after construction had commenced.

In law, the effect of failure to cross-examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence of the witness as led in evidence. It is not proper for a defendant not to cross-examine a claimant's witness on a material point. See **Gaji V Paye (2003) 8 NWLR (pt.823) 5893 at 605 A-C.**

The actions to get approvals for building when the case was going will therefore appear to have been avoidable. The doctrine of *Lis pendens* was evolved for the simple purpose of preventing parties from seeking to overreach the decision of the court. The doctrine is essentially aimed at preserving the res pending when the court determines the legal rights of the parties subject of a particular action. See **Haruna V Kogi State House of Assembly (2010) 7 NWLR (pt.1194) 604.**

A party who thus ignores a court action and proceeds with development on a plot subject of a court action does so at great risk as such a party will be bound by the outcome as reached by the court. I leave it at that.

As I have sought to demonstrate at some length, and on the basis of the pleadings and evidence led, parties clearly are adidem on the identity of the land, notwithstanding the fact that different names may have been used in the allocations. Again, by **Exhibit P5 (1-3),** the photographs tendered by claimant situates the building of counter-claimant on the land claimants says is her own. The counter-claimant did not deny this particular building was his and when the claimant reported the matter to the police, parties actually met and exchanged title papers.

In the circumstances, the law is settled that where parties, by evidence adduced, both oral and documentary, are adidem on the identity of the land in dispute, the fact that different names are attached to it or that the area where it is located is called different names is not fatal. See **Ojo V Azam (2011) 4 N.W.L.R (pt.702) 57 at 68 C**.

There is therefore in my opinion, no real difficulty in identifying the disputed land. Finally as alluded to earlier, the whole exercise with respect to identity may have been undertaken by court but in the context of the fundamental finding that there was no valid and proper allocation of the disputed plot to the Counter-claim, the exercise may turn out to be simply an academic exercise. I say no more.

This then leads us to the question of **trespass**. Trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of the owner is an act of trespass actionable without any proof of damages. See **Ajibulu V Ajayi (2004) 11 NWLR (pt.885) 458 at 481**.

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

The claimant as demonstrated at length has established her title vide **Exhibits P2 and P6** to the disputed plot at BLOCK EEA 11 A & B Directors Estate at Karu, FCT and situated vide **Exhibit P5 1-3** developments been carried out on the plot by the Counter-Claimant. These developments were not denied.

On the other hand, the counter-claimant on the evidence was not able to prove his title, accordingly in law and in such circumstances, it will even be unnecessary to consider the acts of possession. See Registered Trustees of the **Diocese of Aba V Nkume (2022) 1 NWLR (pt.749) 729 at 738.**

The Counter-claimant may have built to a certain level on the disputed land but the law is that a person who has title to land even if he is not in actual *de facto* possession is deemed in the eyes of the law to be the person in possession. This is because the law attaches possession to title and ascribes it to the person who has title. Such possession is known as constructive possession or *de jure* possession. Conversely, a trespasser, though in actual possession of the land is regarded in law

not to be in any possession at all since he cannot by his own wrongful act acquire any possession recognised or recognizable at law. The legal principle is that where there are rival claimants to possession of a piece of land, the law ascribes possession to the party who has a better title. See **Carrena & Anor V Arowolo (2008) 6-7 SC (pt.1) 66 at 84-85 – per Tabai, JSC, Ekretsu V Oyobebere (1992) 9 NWLR (pt.266) 438 and Aromire V Awoyemi (1972) All NLR 105 at 115-116**.

In the case at hand, the Claimant has traced her root of title to the Minister of FCT without whose approval no one can acquire land in the FCT. See **Madu V Madu (supra)**. Thus, even if the Counter-claimant is in actual possession of the land in dispute, since no title resided in him at all material times, the Counter-claimant cannot but be held to be trespassers in relation to the claimant who has a better title. In such a circumstance, a claim for delivery up of physical possession, damages for trespass to land and injunction would lie at the suit of the claimant.

The above findings now provides broad factual and legal basis to determine whether the Reliefs of the **claimant** and Counter-Claimant are availing. I start with the **Reliefs** of claimant.

Having found that the claimant has established by a preponderance of credible evidence that she was duly allocated the dwelling unit or property at Block EEA 11 A&B Directors Estate Karu, Abuja by the 2nd defendant, **Relief (1)** has merit and is availing.

Relief (2) is equally availing having found that the defendant unlawfully interfered with the property of claimant.

Relief (3) will not be availing having found that while the plot may have been described differently on the letters of allocation, the dispute centered on the same plot of land.

With the success of **Reliefs (1) and (2), Relief (4)** for injunction logically inures to recognise and protect the proprietary right of the claimant in the property.

Relief (5) for damages for trespass is availing. The claimant having established the acts of trespass, she is entitled to some measure of damages but I do not see how the sums claimed can be justified under the peculiar circumstances of this

case. The Counter-Claimant clearly moved on to the land on the basis of an allocation the court has now found to be flawed. There is no suggestion here of deliberate wrong doing by Counter-Claimant. I am therefore unable to find basis for the huge sum claimed. It is important to point out that general damages are not awarded as a matter of course but on sound and solid legal principles and not on speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

Finally I only need to add that on the authorities, damages in a case of trespass should be nominal to show the courts recognition of the plaintiff's proprietary right over land in dispute. If the plaintiff as in this case wanted more damages, they should claim it under special damages which they should properly plead and prove. See **Madubuonwu V. Nnalue (1992)8 N.W.L.R (pt.260)440 at 455 B-C; Armstrong V. Shippard & Short Ltd (1959)2 AII ER 651.**

On the whole, I award **N50, 000** as damages for trespass which the court considers as reasonable in the circumstances of this **case**.

Finally on cost, I incline to the view that claimant is entitled to cost of this action. The Rules of court pursuant to **Order 56 Rule 3** provides for the principles to be observed in fixing costs. I am obliged to take into consideration the imperative of indemnifying the claimant for the expenses to which she was subjected, in addition to offering some compensation for the time and effort expended in prosecuting this action.

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

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

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

I had also stated that because the **Claim** and **Counter Claim** are inextricably tied together, I would consider the two issues raised together as a consideration of the substantive issue on the main claim would impact the issue raised with respect to the counter claim and provide broad factual and legal template to determine whether the reliefs or claims sought by the 1st defendant/counter-claimant are availing. I now deal with the Reliefs in the Counter-claim.

Relief 1(a) as demonstrated at length, in the absence of evidence situating a valid allocation by the 2nd defendant will not fly. I had on the pleadings and evidence situated the two versions of the allocation, Counter-Claimant relied on but none was established. **Relief 1(a)** clearly is not availing.

Relief 1(b) clearly also as demonstrated is not availing. In the absence of a valid legal allocation of title to a defined land by the Minister, FCT, the argument with respect to revocation will not fly. The question of the propriety of revocation of land will only legally arise if there was a valid allocation established. This threshold was not crossed, **Relief 1(b)** fails.

Relief 1 (c) and (d) for reasons advanced under **Relief 1(b)** must also fail.

Relief 1 (e) similarly will not factually and legally fly. There is nothing on the evidence as stated severally in this judgment situating a valid allocation of title to counter-claimant by 2nd defendant. Ascertainment of equitable interest cannot be done in a vacuum. There is nothing to found equitable interest in the circumstances to the clear extent that the legal title of claimant to the property stands un-impugned, there cannot be any pretention to a claim for equitable interest. **Relief 1(e)** fails.

Relief 1 (f) fails in the absence of any iota of evidence to situate unlawful expropriation of land. Again there has to be a valid allocation, before a complaint of expropriation of that land can be made. The sale of the disputed property to claimant clearly has not been faulted. **Relief 1(f) fails**.

With the failure of **Reliefs 1a – f**, **Relief 1(g)** to set aside the Certificate of Occupancy has no foundation and fails.

With the failure of **Reliefs 1(a) – (g),** the court can properly inquire into the **alternative Relief**. In law, it is only where the principal reliefs fails, that the court is obliged to consider the alternative Relief. Indeed where a claim is in the alternative, the trial court will first of all consider whether the principal or main claim ought to have succeeded. It is only after the court has found that it could not for any reason grant the principal main claim that it would consider the alternative claim. See **New breed Organisation Ltd V Erhomosele (2006) 5 NWLR (pt.974) 499 at 544 D-C**.

Again with the failure of the counter-claimant to prove a valid **legal allocation** by the 2nd defendant who has the exclusive powers to make any allocation of a Right of Occupancy to any land in the FCT, the complaint of breach of its terms and unlawful expropriation will not be availing. The **alternative relief** also fails.

On the whole, the single issue raised with respect to the counter-claim fails.

Before I round up, the point to make clear is that the whole trial process, and whatever its imperfections, is entirely evidence driven. Every case must be determined on the basis of the pleadings and the quality of evidence led. The duty of the court is to fully consider the evidence proffered by parties, ascribe probative value to it, put the evidence on the imaginary scale of justice to determine the party in whose favour the balance tilts, make necessary findings, apply the relevant law and come to the logical conclusion. Where the evidence led on both sides is weighed ultimately on the imaginary scale of justice and it tilts unquestionably in favour of one party, such a party must, per force be declared the victor. I leave it at that. See **Chief Victor Woluchem & ors V Chief Simon Gudi & ors (1981) 5 SC 291**.

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

ON PLAINTIFFS CLAIMS/RELIEFS

1. **IT IS HEREBY DECLARED that the Claimant is the rightful owner of the dwelling unit or property at BLOCK EEA 11 A & B DIRECTORS ESTATE KARU vide the letter of offer dated 22nd May, 2009 issued by the Honourable Minister of the Federal Capital Territory upon the payment of full purchase price during the "walk-in-Bid" exercise to purchase the property hitherto owned by the Federal Government of Nigeria which property is covered by a Certificate of Occupancy dated 2nd August 2010 issued to the Claimant by the Honourable Minister of the FCT for a term of 99 years and registered as No: 37138 at Page 37138 in Vol. 186 of the Certificate of Occupancy Registry office at Abuja on 2nd August, 2010.**

2. **IT IS HEREBY DECLARED that the 1st Defendant's act of building on Claimant's plot without her knowledge, authority or consent amounts to trespass.**

3. **The 1st Defendant, his agents, privies, servants, assigns and persons claiming through or in trust for him are restrained from acts capable of affecting the lawful and subsisting interest of the claimant on the property at BLOCK EEA 11 A & B DIRECTORS ESTATE KARU as guaranteed under the Land Use Act and the 1999 Constitution of the Federal Republic of Nigeria.**

4. **The sum of N50, 000 is awarded as general damages for trespass.**

5. **I assess cost of this action in the sum of N100, 000 payable by 1st Defendant to the Claimant.**

ON 1ST DEFENDANT'S COUNTER-CLAIM

The 1st Defendant's Counter-Claim fails in its entirety and is accordingly dismissed.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***Anthony A. Agbonlahor, Esq., for the Plaintiff/Defendant to the Counter-Claim.***
2. ***Idumodin Ogumu, Esq. with Usman Yuzoma, Esq., for the 2nd Defendant/2nd and 4th Defendants to the Counter-Claim.***
3. ***Emmanuel O. Abang, Esq., for the 3rd Defendant to the Counter-Claim.***
4. ***Adeyinka Olumide-Fusika, SAN for 1st Defendant/Counter-Claimant with Raphael Adakole, Esq.***