IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI, ABUJA

THIS TUESDAY, THE 3RD DAY OF MARCH, 2025.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI -- JUDGE

SUIT NO: CV/4832/2011

BETWEEN:

SCOA NIGERIA PLC .....……...…..... PLAINTIFF

AND

1. **THE MINISTER, FEDERAL CAPITAL TERRITORY**
2. **NIGERIA SOCIAL INSURANCE TRUST FUND** } **… DEFENDANTS**
3. **TRUSTFUND PENSIONS LIMITED**

JUDGMENT

This is a matter with an interesting and unique history particularly with respect to the length of time it took to get to this stage. The case dragged this long for a variety of reasons. I will highlight a few.

The case is one involving ownership of land within the FCT to be settled on fairly settled principles. When the case was filed, it was initially against only 1st and 2nd defendants. There was a challenge to the jurisdiction of the court which was heard and determined. Hearing commenced on 9th November, 2017 with claimant calling his first witness who was cross-examined by the defendants. The claimant called its 2nd witness on 16th April, 2018; he was cross-examined by defendants and claimant closed its case and the matter was adjourned for defence. The 1st defendant opened its defence and called two witnesses and sought for an adjournment to call further witnesses.

It was at this point that the 3rd defendant applied to be joined to the action as defendant. This prompted interventions in terms of different interlocutory

applications for injunction, amendments, re-opening of claimant's case and recall of witnesses etc which affected the natural flow of the case. There was also the associated delays of adjournments in cases occasioned by different factors. After what I will term as dislocations in the normal trial trajectory of a trial process, we have now finally arrived at this point culminating in the final judgment.

Let us start by streamlining the pleadings duly filed and exchanged:

1. By a further Amended Statement of claim filed on 13th September, 2022 and regularized by Order of Court on **19th September, 2022**, the claimant prayed for the following Reliefs:

   a. **A Declaration that the plaintiff is entitled to be afforded the opportunity to be heard by the 1st defendant before the revocation of its Statutory Right of Occupancy over Plot 258, Central Area (A00), Abuja and that the failure of the 1st defendant to afford the plaintiff a hearing before revoking the plaintiff's statutory right of occupancy over the said plot amounts to a gross violation of the plaintiff's fundamental right to fair hearing which right is guaranteed by Section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).**

   b. **A Declaration that the revocation of the plaintiff's statutory right of occupancy over the said plot 258, Central Area (A00) Abuja and its subsequent re-allocation by the 1st defendant to the 2nd defendant is illegal, arbitrary and unconstitutional, and thus a nullity, since the 1st defendant did not afford the plaintiff any opportunity to be heard before the revocation of the statutory right of occupancy over the said plot.**

   c. **A Declaration that the revocation by the 1st defendant of the plaintiff's statutory right of occupancy over the said plot 258, Central Area (A00) Abuja, is a violation of the provisions of Section 28 of the Land Use Act, not being for overriding public interest, and thus unlawful.**

   d. **A Declaration that the service of the Notice of Revocation on the Plaintiff is defective, invalid and contrary to Section 44 (d) of the**

Land Use Act, and therefore of no effect, as the purported Notice of Revocation was not addressed to either the Secretary or Clerk of the Plaintiff nor sent to its registered address as Section 44 (d) of the Land Use Act mandatorily requires.

e. **A Declaration that the purported sale by the 2nd defendant to the 3rd defendant of plot 258 Central Area (now plot 1363) Cadastral Zone A00 of Cadastral District Abuja, or any part thereof is illegal, having been made *Lis pendens* to the 3rd Defendant.**

f. **An Order nullifying and quashing the purported revocation of the Plaintiff's Statutory Right of Occupancy over the said Plot 258, Central Area (A00) Abuja, the revocation being arbitrary, illegal and unconstitutional.**

g. **An Order nullifying and quashing the said Notice of Revocation dated 22nd September, 2005, issued by the 1st Defendant to the Plaintiff.**

h. **An Order compelling the 1st defendant to forthwith restore the plaintiff's Statutory Right of Occupancy over Plot 258, Central Area (A00) Abuja, and to forthwith issue to the Plaintiff a recertified Certificate of Occupancy in respect of the said plot.**

i. **An Order voiding the Statutory Right of Occupancy granted by the 1st Defendant to the 2nd Defendant over Plot 258 Central Area (A00), Abuja and the Certificate of Occupancy issued by the 1st defendant to the 2nd defendant in respect of the said plot.**

j. **An order voiding the purported sale of plot 258 Central Area (now Plot 1393) Cadastral Zone A00 of Cadastral District, Abuja or any part thereof by the 2nd Defendant to the 3rd Defendant.**

k. **The sum of N2 Billion Naira being aggravated damages for the gross disruption of the plaintiff's Northern Nigeria operations arising from the arbitrary revocation of its Statutory Right of Occupancy, and the unwarranted demolition of its office complex.**

l. **The sum of N325, 000, 000 being special damages arising from the destruction by the 1st defendant of the plaintiff's office complex and showroom located at Plot 258 Central Area (A00) Abuja.**

Particulars:

The assessed replacement cost of the Plaintiff's demolished office structure and showroom, which is also the "open market value" of the structure, is N325, 000, 000.00.

m. **A Perpetual Injunction restraining the 1st defendant, whether by himself, agents, privies, or whomsoever purports to act on his behalf, from further tampering with the plaintiff's Statutory Rights of Occupancy over the said Plot 258 Central Area (A00) Abuja, either by revocation or otherwise, save in accordance with the procedure prescribed by law.**

n. **A Perpetual Injunction restraining the 2nd and 3rd defendants, whether by themselves, agents, privies or whomsoever purports to act on their behalf, from exercising any proprietary rights, or any right at all, in respect of Plot 258 Central Area (A00), Abuja.**

o. **An Order of Restorative Injunction compelling the Defendants to restore possession of the entirety of the said plot 258 Central Area (A00) (now plot 1363) Cadastral District, Abuja to the Plaintiff.**

p. **The cost of this action.**

2. The 1st defendant filed its **1st defendant's Amended Statement of defence** on 15th May, 2013.

3. The 2nd defendant filed its **2nd defendant's Further Amended Statement of Defence** on 26th September, 2022.

4. The 3rd defendant's **Amended Statement of defence** is dated 6th June, 2023 and filed on 7th June, 2023.

The claimant filed the following **processes** in response:

1. Claimant's Reply to the 1st defendant's defence dated 20th November, 2023.

2. Claimant's consequentially Amended Reply to the 3rd defendant's Amended statement of defence filed on 13th February, 2024.

Now in proof of its case, the claimant called three witnesses. **Boniface Nwabuko**, commercial Director of claimant testified as **PW1**. He deposed to two (2) witness depositions dated 23rd April, 2013 and 22nd November, 2013 which he adopted at the hearing and tendered in evidence the following documents:

1. Certified True Copies (CTC's) of CAC Form 2.2 (Notice of situation of registered office) with the company resolution and CAC Form C (Notice of situation/change of registred address) with company resolution were admitted as **Exhibits P1 and P2.**

2. Notice of revocation of undeveloped plots within Central Area FCT addressed to Scoa Ltd, plot 258 Central Area Abuja, P.O. Box 2318, was admitted as **Exhibit P3.**

3. Copies of building plans (2 bundles) were admitted as **Exhibits P4a and P4b.**

PW1 was then cross-examined by counsel to the 1st defendant and in the process, a letter he wrote to the Minister FCT, dated 9th April, 2007 was admitted as **Exhibit P5**. He was then cross-examined by counsel to the 2nd defendant.

Mr. Ademola Adetola, an Estate Surveyor and Valuer testified as **PW2**. He deposed to a witness statement on 17th November, 2007 which he adopted at the hearing and tendered in evidence a document tilted "Certificate of value on land and building property asset of Scoa Nig. Plc at Plot 258, Central Area, Cadastral Zone A0, FCT - Abuja" was admitted as **Exhibit P6.** He was then cross-examined by counsel to both 1st and 2nd Defendants.

Learned counsel to the claimant tendered from the Bar the following documents:

1. C.T.C of copies of offer of terms of grant/conveyance of approval dated 3rd February, 1989 and the Certificate of Occupancy dated 17th April, 1989 were admitted as **Exhibits P7 and P8.**

At this point, the plaintiff called **close its case**.

The 1st defendant on its part called three (3) witnesses. **Chanuwa Gayus Hamman**, a staff with Department of Land Administration of 1st defendant testified as **DW1.** She deposed to a witness statement on oath which she adopted at the hearing and tendered in evidence Certified True Copies of the following documents:

1. C.T.C of Application for Statutory Right of Occupancy Urban/Rural Land within the FCT by claimant was admitted as **Exhibit D1.**

2. C.T.C of Offer of Terms of grant/conveyance of approval dated 15th September, 1983 to claimant was admitted as **Exhibit D2.**

3. C.T.C of Acceptance of Offer of grant of right of occupancy within FCT by claimant was admitted as **Exhibit D3.**

4. C.T.C of Letter of Deputy Director (Lands) titled RE: Petition against alleged revocation of plot in Central Business District Phase 1, Abuja dated 27th August, 1996 was admitted as **Exhibit D4.**

5. C.T.C of letter by Deputy Director (Lands) to Bola Ajibola & Co titled Re: Right of Occupancy No. FCT/ABU/MISC.316 land granted to Scoa Nig. Ltd, Plot 258 Cadastral Zone A0 was admitted as **Exhibit D5.**

6. C.T.C of FCT Application for recertification and re-issuance of certificate of occupancy by claimant was admitted as **Exhibit D6.**

7. C.T.C of Notice of Revocation of undeveloped plots within Central Area, FCT dated 22nd September, 2005 was admitted as **Exhibit D7.**

8. C.T.C of copy of Accelerated Development Programme within FCT conveying the approval of Plot No. 258 to 2nd defendant dated 12th September, 2005 was admitted as **Exhibit D8.**

9. Document titled "Revocation of Plot 258 Central Business District Cadastral Zone A00 Abuja" to claimant dated 24th May, 2006 was admitted as **Exhibit D9.**

10. Copy of acknowledgment copy titled "original copy collected by one, Pius Alonge, Scoa Nig. Plc Abuja" was admitted as **Exhibit D10.**

DW1 was then cross-examined by counsel to the 2nd defendant and counsel to the plaintiff.

Garba T. Kwankur, a deputy Director in charge of monitoring and enforcement in the Department of Development Control testified as **DW2.** He deposed to a witness statement on oath which he adopted at the hearing. He did not tender any documentary evidence. He was then cross-examined by counsel to the 2nd defendant and counsel to the plaintiff.

It was at this point as stated earlier that the 3rd defendant applied to be joined and this then precipitated the filing of new processes and reactions to same; filing of different interlocutory applications including the amendment of process; application to re-open the claimants case and re-call of witnesses of claimant to allow the 3rd defendant cross-examine them among others. Some of the applications failed while some succeeded. The application to re-open the case of claimant and to recall PW1 and PW2 was not opposed.

To make the process neater and tidier, the direction of court was for the re-opening of the case of claimant and the cross-examination of their witnesses be conducted before the defence continues.

PW1, **Boniface Nwabuko** was then recalled. He made an additional witness statement dated 22nd September, 2021 which he adopted at the hearing. He was not cross-examined by counsel to the 1st and 2nd defendants. Counsel to the 3rd defendant however cross-examined him.

PW2, **Ademola Adetola** was recalled for purposes of cross-examination by 3rd defendant, but counsel indicated that having gone through his evidence, he was not going to cross-examine him.

The 1st defendant then called its last witness. **Mrs. Abdulsalam Ozioha Maryam** of the department of re-settlement and compensation of FCDA testified as **DW3**. She deposed to a witness statement of oath which she adopted at the hearing and she tendered in evidence Certified True Copies of the following documents:

1. C.T.C of Zenith Bank cheque dated 5th May, 2006 in favour of M/S Scoa Nig. Ltd in the sum of N23, 471, 540 was admitted as **Exhibit D11a.**

2. C.T.C of Zenith Bank cheque dated 31st December, 2007 in favour of m/s Scoa Nig. Ltd in the sum of N23, 471, 540 was admitted as **Exhibit D11b.**

The 2nd and 3rd defendants chose not to cross-examine DW3, but she was cross-examine by plaintiff's counsel.

With the evidence of DW3, the **1st defendant closed its case**.

The 2nd defendant on its part called only one witness. **Mohammed Alhaji Mohammed**, Assistant General Manager with 2nd defendant testified as **DW4**. He deposed to a witness statement on oath which he adopted at the hearing. Both the 1st defendant and 3rd defendant chose not to cross-examine DW4. He was however cross-examined by counsel to the plaintiff and with his evidence, the **2nd defendant closed its case**.

On the record, there was again an application for the re-opening of claimant's case and recall of PW1 to adopt his additional deposition in response to the Reply of the 3rd defendant's statement of defence which was not opposed and granted.

PW1, **Boniface Nwabukor**, testified again and adopted his additional witness deposition dated 13th February, 2024. He tendered in evidence:

1. Copy of certificate of incorporation of Scoa Nig. Plc with RC 6293 dated 4th October, 1991 was admitted as **Exhibit P9.**

2. C.T.C of 2nd defendant's statement of defence in Suit CV/4832/11 filed on 22th June, 2014 was admitted as **Exhibit P10.**

PW1 was then cross-examined by counsel to 1st, 2nd and 3rd defendants and with his evidence, the claimant finally closed its case.

The 3rd defendant on its part also called only one witness. **Uche Ogbonna**, of the legal services department of 3rd defendant testified as **DW5**. He deposed to a witness statement on oath dated 7th June, 2024 which he adopted at the hearing and tendered in evidence the following documents, to wit:

1. Certificate of Occupancy dated 12th October, 2009 and issued to Nigeria Social Insurance Trust Fund was admitted as **Exhibit D12.**

2. Copy of letter of Scoa Nig. Plc dated 28th January, 2008 to the Hon. Minister FCTA was admitted as **Exhibit D13.**

3. Letter by the law firm of Akinboro & Co. dated 30th July, 2010 titled Re: Offer for Sale of NSTIF landed property was admitted as **Exhibit D14.**

4. Copy of letter by 3rd defendant dated 22nd July, 2010 titled Re: Offer for the sale of NSTIF landed property was admitted as **Exhibit D15**.

5. Copy of letter by 3rd defendant dated 5th October, 2010 titled Payment of N300, 000, 000 only to NSTIF was admitted as **Exhibit D16.**

6. Copy of Diamond Bank cheque was admitted as **Exhibit D17.**

7. Copy of letter by 3rd defendant dated 19th August, 2010 titled "Award of contract for construction of a standard fence, bush clearing and excavation at Plot 1363 Central District Area, Abuja" was admitted as **Exhibit D18.**

8. Copy of letter by the firm Dave Achisons Nig. Ltd dated 10th January, 2011 was admitted as **Exhibit D19.**

9. Counter-part copy of Deed of Assignment between NSTIF Management Board and Trust Fund Pension Plc was admitted as **Exhibit D20.**

10. Copy of valuation certificate on property at Plot No. 1303 prepared by Jide Taiwo & Co for Trust fund Pension Plc was admitted as **Exhibit D21.**

Both counsel to 1st and 2nd defendants elected not to cross-examine DW5 but he was cross-examined by counsel to claimant and with his evidence, **the 3rd defendant finally closed its case**.

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

The final address of 3rd defendant is dated 3rd July, 2024 and filed on the same date. In the address, three issues were raised as arising for determination to wit:

i. **Whether the 1st defendant's revocation of the Plaintiff's allocation to Plot No. 258, Central Area (A00), Abuja, FCT was illegal, arbitrary and unconstitutional.**

ii. **Whether the Plaintiff is not estopped from complaining of service on her of the Notice of Revocation of 22nd September, 2005.**

iii. **Whether the Plaintiff, on the balance or probability of evidence is entitled to any of the claims made by her on the Writ of Summons and Statement of Claim.**

Submissions were made on all the above issues in the address which forms part of the Record of court and which I have carefully considered.

The final address of 2nd defendant is dated 1st July, 2024 and filed on the 2nd July, 2024. In the address, two issues were raised as arising for determination:

a. **Whether the 1st defendant's revocation of the plaintiff's rights and interests over Plot 258 Central Area, Abuja was not in accordance with due process.**

b. **Whether the 1st defendant's allocation of Plot 258 (now Plot 1363), Central Area, Abuja to the 2nd defendant was not constitutional.**

Submissions were equally made on these issues which forms part of the Record which I have also carefully considered.

On the part of the 1st defendant, the final address is dated 3rd July, 2024 and filed same date. In the address two issues were raised as arising for determination:

1. **Whether the Notice of Revocation dated 22nd September, 2005 was not duly served on the plaintiff.**

2. **Whether the plaintiff is entitled to any of the Reliefs sought**.

Submissions were equally made on the above issues which forms part of the record of court, which I have similarly considered.

The final address of plaintiff is dated 2nd October, 2024 and filed on 25th October, 2024. In the address, three (3) issues were raised as arising for determination to wit:

1. **Whether, as at the time of the purported revocation of its right of occupancy over the Plot No. 258, Central Business District, Cadastral Zone A00, by the 1st defendant, and reallocation of same to the 2nd**

defendant, the plaintiff was in breach of the term/condition contained in the grant to erect and complete on the plot a building or other works of the value of not less than N2 Million.

2. **Whether the Plaintiff's right of occupancy over the said Plot 258, Central Business District, Cadastral Zone A00, Abuja, FCT, was validly revoked by the 1st defendant and whether the subsequent reallocation of the right of occupancy over the said plot by the 1st defendant to the 2nd defendant and the purported purchase of same by the 3rd defendant is not a nullity.**

3. **Is the plaintiff not entitled to the reliefs sought?**

Submissions were equally made on the above issues which forms part of the Record of court which the court equally has carefully considered.

In response to the address of claimant, all the defendants filed responses as follows:

1. **The 1st defendant filed a 1st defendant's reply on points of law to the plaintiff's final written address dated 25th October, 2024 and filed same date.**

2. **The 2nd defendant filed a 2nd defendant's reply on points of law to plaintiff's final address dated 25th October, 2024 and filed on 28th October, 2010.**

3. **The 3rd defendant filed a 3rd defendant's reply to the plaintiff's final written address dated 30th October, 2024 and filed same date.**

I have given a careful and insightful consideration to all the issues distilled by parties in relation to the pleadings and evidence adduced at the hearing. The issues may have been framed differently but they seem to be in substance in *pari materia*.

Despite the volume of the processes filed, on the pleadings which has precisely streamlined the issues/facts in dispute, the central and pivotal key issue has to do with legality of the 1st defendant's revocation of the plaintiff's allocation to Plot 258, Central Area (A00) Abuja.

The resolution of this fundamental question would impact one way or the other, the redesignation of the plot carried out by 1st defendant and the subsequent re-allocation to 2nd defendant who then sold its interest to the 3rd defendant and ultimately impact the question of whether the reliefs claimant is claiming are availing.

On the pleadings, there is no real dispute with respect to the initial allocation of Plot 258 Central Area Cadastral Zone A00 to plaintiff vide **Exhibit D2,** the letter of offer of terms of grant/conveyance of approval dated 15th February, 1983 which crystallized into a certificate of occupancy vide **Exhibit P8** dated 17th April, 1989.

These documents situate the **legal title** of claimant over the plot. There is equally no argument that the Honourable Minister of the FCT (1st defendant) is eminently empowered to revoke rights of occupancy within the remits and or as allowed by the Land Use Act.

Indeed a plea of revocation situates an acknowledgment by the revoking authority of the existence of a valid right of occupancy prior to the act of revocation. See **Osho V Foreign Finance Corp (1991) 4 NWLR (pt.184) 157 at 189.**

The claimant in this case maintain that the purported revocation of their title falls abysmally short of due process of law; the defendants contend on the other side of the aisle that the revocation was lawful. The inquiry here is simply with respect to the validity of the contested assertions on both sides of the aisle.

This being so, the issue for determination in this case can be condensed and more succinctly captured under the following issue and sub-issues:

Whether the claimant has established on a preponderance of evidence that it is entitled to all or any of the reliefs claimed?

This issue will be predicated on a resolution of these sub-issues:

i. **Did the claimant comply with the terms of the allocation as conveyed in the offer letter and/or certificate of occupancy?**
ii. **Was the allocation of claimant to Plot No. 258 validly revoked by the 1st defendant?**

iii. **Was the subsequent re-allocation of the said plot to 2nd defendant and the transfer of interest of the said plot to 3rd defendant valid in the circumstances?**
iv. **Whether the reliefs of clamant are availing?**

The above issue and sub-issues which will be taken together are equally in substance not any different from that formulated by parties. The issues thus distilled by 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.**

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 issue 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 issues will 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 the course of this judgment and where necessary or relevant refer to submissions made by counsel and resolving whatever issue(s) arising therefrom.

ISSUE 1

Whether the claimant has established on a preponderance of evidence that it is entitled to all or any of the reliefs claimed?

Sub-issues:

i. **Did the claimant comply with the terms of the allocation as conveyed in the offer letter and/or certificate of occupancy?**
ii. **Was the allocation of claimant to Plot No. 258 validly revoked by the 1st defendant?**
iii. **Was the subsequent re-allocation of the said plot to 2nd defendant and the transfer of interest of the said plot to 3rd defendant valid in the circumstances?**
iv. **Whether the reliefs of clamant are availing?**

At the commencement of this judgment, I had stated the **claims** of the claimant. 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 also important to note at the onset that some of the key reliefs claimed by claimant are **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).

I have stated some of these principles in some detail to allow for proper direction and guidance as to the party on whom the burden of proof lies in all situations.

It is therefore to the pleadings which has streamlined the issues and facts in dispute and obviously the evidence that we must now beam a critical judicial search light. I had earlier streamlined the **pleadings** filed in this 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.

A convenient starting point is to understand the precise situational dynamics relating to the allocation made, to claimant and its terms; the question of compliance with the terms; the revocation of Plot 258 and the question of its validity and whether it can be countenanced legally.

Now on the pleadings, there is no real dispute as stated earlier with respect to the allocation of Plot 258 to the claimant. The initial allocation has never been questioned by any of the defendants. It is however to be noted that in paragraph 4, the claimant referred to a statutory right of occupancy granted on 17th April, 1989 and in paragraph 9, reference was made to another approval of grant of statutory right of occupancy dated 15th February, 1983. None of these offers or approvals of grant of right of occupancy was tendered. The only offer of grant tendered by claimant is that dated 3rd January, 1989 vide **Exhibit P7** which does not fall within the purview of the pleaded facts in paragraphs 4 and 9 of the claim and must on the principles of pleading be discountenanced.

The 1st defendant who issued the offer of terms of grant/conveyance dated 15th February, 1983 however tendered the Certified True Copy of the offer vide **Exhibit D2** which contains the terms of the grant. Paragraph 2 of **Exhibit D2** contains the following terms:

"i. Within two years from the date of commencement of this Right of Occupancy to erect and complete on the said land the buildings or other works specified in detailed plans approved or to be approved by the Federal Capital Development Authority, or other Officer appointed by

the President, Such buildings or other works to be of such value of not less than (N2, 000, 000) and to be erected and satisfaction of the said Federal Capital development Authority or other Officer appointed by the President.

ii. Not to erect or build or permit to be erected or build on the said land any building other than those permitted to be erected by virtue of this Certificate of Occupancy not to make or permit to be made any addition or alternation to the said buildings to be erected or buildings already erected on the Land except in accordance with plans and specifications approved by the or other Officer appointed by the President in this behalf."

The claimant vide **Exhibit D3**, the acceptance letter accepted wholly the offer made vide **Exhibit D2.** The Certificate of Occupancy subsequently issued to claimant dated 17th April, 1989 vide **Exhibit P8** also contains or underscores the same terms as follows:

"**…(4) Within two years from the date of the commencement of this right of occupancy to erect and complete on the said land the buildings or other works specified in detailed plans approved or to be approved by the Federal Capital Development Authority, or other officer appointed by the President, such buildings or other works to be (of the value of not less than N2, 000, 000.00) and to be erected and completed in accordance with such plans and to the satisfaction of the said Federal Capital Development Authority or other officer appointed by the President.**

. . .

10. Not to erect or build or permit to be erected or built on the said land any buildings other than those permitted to be erected by virtue of this certificate of occupancy nor to make or permit to be made any addition or alteration to the said buildings to be erected or buildings already erected on the land except in accordance with plans and specifications approved by the President or other officers appointed by the President on his behalf."

It is critical to underscore the point at the outset that the certificate of occupancy as between the issuing authority and the beneficiary constitutes or serves as the

basis for the mutual reciprocity of legal obligations between the parties. An acceptance by an allottee of the offer of plot(s) of land binds him to terms and conditions specified in the Certificate of Occupancy.

The question here is whether the claimant complied with the clear mandate of the terms highlighted above and within the time sensitive criteria stipulated.

In **paragraph 11** of the Amended Statement of claim, the claimant pleaded thus:

"11. Upon accepting and receiving the Certificate of Occupancy, the Plaintiff complied with the terms and conditions therein stated. More specifically, the Plaintiff erected on the plot a purpose designed bungalow showroom with offices and conveniences along with a permanent and sophisticated perimeter fence. The said bungalow showroom and offices were part of a larger proposed office complex specified in detailed plans which were approved by the Federal Capital Development Authority to be erected on the said plot by the plaintiff. The said purpose designed bungalow showroom and offices built by the plaintiff on the plot were an integral part of the approved office complex. The plaintiff pleads the said approved plans. In 2004, the open market value of the said bungalow showroom and offices, and the encircling perimeter fence, was N325, 000, 000… (Three Hundred and Twenty five Million Naira Only). The Plaintiff, pleads the "Certificate of Value'' of the said property prepared in 2004 by the Estate Surveying and Valuation firm of Demola Adetola & Co., for the benefit of First Bank of Nigeria Plc."

The **1st defendant** on the other hand joined issues with this averment and pleaded in its defence as follows:

"8c. The Plaintiff accepted all the terms and conditions contained in the said Offer of Terms of Grant/Conveyance of Approval vide a letter of acceptance of offer of right of occupancy dated 6th April, 1983. The said letter is hereby pleaded and shall be relied upon at the hearing of this suit.

d. The said allocation was thereafter evidenced by a Certificate of Occupancy dated 17th day of April, 1989.

e. **The plaintiff accepted all the terms and conditions contained in both the Offer of Terms of Grant/Conveyance of Approval and Certificate of Occupancy.**

f. **Inspite of the fact that clauses 2(i) and 4 of the Offer of Terms of Grant/Conveyance of Approval and Certificate of Occupancy respectively contained condition to the effect that the plaintiff shall within two years from the date of commencement of this right of occupancy to erect and complete on the said land the buildings or other works specified in detailed plans approved or to be approved by the Federal Capital Development Authority, or other officer appointed by the President such buildings or other works to be (of the value of not less than N2, 000, 000.00 (Two Million naira) and to be erected and completed in accordance with such plans and to the satisfaction of the said Federal Capital Development Authority or other officer appointed by the President, the plaintiff refused or neglected to comply with the term of the grant.**

g. **When the plaintiff could not meet the condition for development within two (2) years of the commencement of the statutory grant, a letter reference No. FCDA/EST/80/MISC.316/76 dated 27th April, 1992 in which three months ultimatum to effect development was issued to the plaintiff.**

h. **When the plaintiff refused to take action, a subsequent letter headed "RE: PETITION AGAINST ALLEGED REVOCATION OF PLOT IN THE CENTRAL BUSINESS DISTRICT PHASE 1, ABUJA" dated 27th August, 1996, was written by Mrs. G.O. Ogbutor on behalf of the 1st defendant to the plaintiff. The purport of the letter was to inform the plaintiff that if there is no meaningful development on the plaintiff plot by December, 1996, it will be concluded that the plaintiff was no longer interested in the plot. The said letter is hereby pleaded and shall be relied upon at the hearing of this suit.**

i. **Inspite of the above letters, the plaintiff failed, refused and or neglected to commence meaningful development on the plot. Consequently, another letter headed "RE-RIGHT OF OCCUPANCY NO. FCT/ABU/MISC.316 – LAND GRANTED TO SCOA NIGERIA LIMITED PLOT NO. 258 CADSTRAL ZONE A0" dated 19th**

January, 2000 was written by Ogbutor G.O. (Mrs.) on behalf of the 1st defendant to the plaintiff through it counsel, Bola Ajibola & Co. The said letter is hereby pleaded and shall be relied upon at the hearing of this suit.

j. Upon the plaintiff's refusal to commence development within the stipulated period of time and despite several letters written to it, the plaintiff's title over the said plot was then revoked vide a letter conveying Notice of Revocation dated 22nd September, 2005 following the expiration of grace period granted by the Minister to complete development on the said plot. The said Notice of Revocation is hereby pleaded and shall be relied upon at the hearing of this suit. "

The above contested assertions are clear. It is to the evidence that the answers to the issue of **compliance with the terms of the offer** is to be found. On the basis of the certificate of occupancy dated 17th April, 1989 the two years within which the buildings were to be erected will end in April 1991 or thereabout.

Now, PW1 for the claimant essentially repeated the contents of paragraph 11 in evidence. PW1 may have alluded to "**the erection of a purpose designed bungalow showroom with offices and conveniences along with a permanent and sophisticated perimeter fence**" but no evidence in real terms was situated showing time lines for the commencement of the construction, when it was concluded and what the final product was in terms of whether they complied with the approved building plans for the construction of a **multipurpose plaza with a basement** as contained in **Exhibits P4a** and **P4b.** PW1 stated that what they constructed went beyond the value of the grant. Even if this was not creditably established, the time frame for this construction was not clearly defined as done within the 2 years provided in the grant and the court cannot speculate.

PW1 tendered the approval building plans vide **Exhibits P4a and P4b** and under cross-examination, he stated that they got the approval in July 1992 and the mandate was for the construction of a multipurpose plaza with a basement.

Rather than address, the fundamental key question of whether they constructed what was in this building approval within 2 years, the claimant in somewhat ambivalent manner stated that the structure constructed **"were part of a larger proposed office complex specified in detailed plans which were approved**

by the Federal Capital Territory to be erected on the said plot by the plaintiff."

The projection here by claimant would appear to be that what was actually approved in the approved building plans vide **Exhibits P4a and P4b** was not what was constructed on the ground, creating uncertainty and some considerable measure of doubt with respect to whether there was indeed compliance with the approved building plans.

The claimant may have built on the land but that really is not the point. The main point is whether there were developments on the land as situated in the building approvals vide **Exhibits P4a and P4b**. It is to be noted that in the letter of acceptance of the offer vide **Exhibit D3,** the claimant stated in accepting the terms of the offer as follows:

"I will submit my building plans to you for approval before commencing any improvement on the site; and on completion of the improvement, I will get your completion certificate before occupying the building."

There is therefore no confusion with respect to the commitment of claimant to build according to the approved building plans. The effect of this rather fluid and unclear pleading in **paragraph 11** situates the position that the claimant did not erect and complete on the said land the buildings or other works specified in the approved plans, **Exhibits P4a and P4b** approved by the 1st defendant in compliance with clause 2(i) and (4) of the Offer of Terms/Conveyance of Approval and the Certificate of Occupancy.

The evidence of PW1 and PW2 appear to add credibility to this position as in the evidence, during cross-examination PW1 stated that the structure identified in paragraph 11 was built on the land and that it was **"built over time".** He stated that they started roughly about 1990/91 and took them some years to complete and that they moved in around 1995/1996. PW1 also added that they **did not erect a multi-floor plaza because at the time of the demolition, they were looking for funds from first bank to carry out the construction**.

PW1 equally agreed that from the terms of the offer and certificate of occupancy which they accepted, they were to develop within 2 years the buildings approved by the 1st defendant and that at that time they moved in which is some time in 1995/1996, they had not completed the "**real structure**"

approved by the 1st defendant and that is why they did not apply to get a Certificate of Occupancy at that stage.

The evidence of PW1 here clearly constitutes an **admission** that for a grant made in 1989 with a 2 years time frame for construction of approved building plans, the claimant clearly was not able to adhere to the terms as agreed which as stated earlier served as the basis for the mutual reciprocity of legal obligation between parties. The admission extracted during cross-examination of PW1 is a clear and unequivocal admission and binding. PW1 himself concedes that they have not constructed the multipurpose plaza with a basement as contained in the approved building plans vide **Exhibit P4a and P4b** because of lack of funds at the material time.

Again, to accentuate this clear position of non-compliance with the terms of the offer, particularly the development of the plot within the purview of the plans via **Exhibits P4a and P4b** within two years, the claimant had a valuer PW2 who prepared a valuation report in 2004 vide **Exhibit P6** (about 15 years after the allocation and clearly surpassing by miles the period for development of the plot) and the findings are clear and instructive. I will quote relevant portions of the Report (**Exhibit P6**) under headings as made out by the Report thus:

"SITUATION: **The subject property is a bungalow purpose designed and built as an auto showroom. It situate on a fraction of a fairly large ground municipally known and identified as Plot 258, Central Area, Cadastral Zone A0, Federal Capital Territory, Abuja.**

At its location the property the developed portion is on the right flank along the Constitution Avenue fronting directly unto the overhead bridge and a turn unto Tafawa Balewa Way terminating at Samuel Adesujo Ademulegun Street. The subject property is largely undeveloped only occupied only a small fraction of the massive plot.

The commercial precinct is characterized by multi-storey office development and it is

	fully serviced with functional municipal facilities such as mains water, electricity, central sewage disposal system and a good network of grid patterned tarred access roads. **Other prominent landmarks in the immediate neighbourhood are Holts Plaza, Tofa House, Abuja Central Mosque and Bukar Dipcharima House.**
TYPE OF PROPERTY:	**The development on site is a purpose designed and built open plan bungalow showroom with offices and conveniences.**
SITE:	**The fairly rectangular shaped site has a measured land area approximately 1.86 hectare. It is well drained firm and slope gently to its rear. Property beacon numbers PB 1535; PB 1534; PB 33; PB 226 and PB 36 respectively demarcates the boundary lines as shown on Survey Plan annexed to the Certificate of Occupancy. The property is also fenced on all sides with dwarf sandcrete blockwalls."**

The above representations by the valuer in 2004 is similarly clear and unambiguous. The valuation speaks to the fact that what the claimant built on the land was a "**bungalow purpose designed and built as an auto showroom"** and situate **"on a fraction of fairly large ground municipally known and identified as plot 258 Central Area, Cadastral Zone A0 FCT Abuja**."

The Report clearly did not disclose that the multipurpose plaza and basement was built as contained in the building approvals vide **Exhibits P4a and P4b** and that what the claimant's even built was on a "**fraction of a fairly large ground**."

Indeed the report is even self inculpatory and indicting when it further stated thus:

"The subject property is largely undeveloped as the aforementioned showroom only occupied only a small fraction of the massive plot."

The attention of PW1 was drawn to this report under cross-examination and he was not able to fault the conclusions. The valuation report here confirms that what the claimant constructed was distinct from what was contained in the **approved building plan** and even at that, it only occupied a "small fraction" of the "massive plot" which is "largely undeveloped". This type of admission in my opinion discharges the burden on 1st defendant to prove non-compliance with the clear terms of the offer of grant or to provide any further proof except there is any other admissible evidence dislodging the admission. See **Balophys Ent. Ltd V NDIC (2019) 8 NWLR (pt.1674) 252**. There is none on the part of the claimant in this case.

Indeed, once there is a clear admission as situated here unequivocally of none compliance with the terms of the offer more than 15 years after the grant, then there is no dispute and so the need for proof does not even arise. An admission of this nature essentially drowns the element of dispute. See **Akaninwo & ors V Nsirim & ors (2009) 9 NWLR (pt.1093) 439; Anason Farms Ltd V N.A.L Merchant Bank Ltd (1994) 3 NWLR (pt.331) 241**.

Now what is even interesting in this case is that the 1st defendant had even before the damning valuation report prepared by the valuer of claimant vide **Exhibit P6** given claimant sufficient warnings at different times to keep fidelity to the terms of the offer. The letters are both instructive.

In the first letter dated 27th August, 1996 vide **Exhibit D4** in response to the petition of the claimant on alleged revocation of the disputed plot, the 1st defendant replied as follows:

"I am directed to acknowledge receipt of your letter on the above subject-matter dated 23rd February, 1995 and to inform you that your plot has not yet been revoked.

2. **However, in furtherance to the contents of our letter Reference No. FCDA/EST/80/MISC. 316/76 dated 27th April, 1992 which gave you 3 months ultimatum to effect development, I am to inform you that if there is no meaningful development on your site by December, 1996 it will be concluded that you are no longer interested in the plot.**

3. Your early compliance will be highly appreciated."

Exhibit D4 clearly situates an earlier letter was written on 27th April, 1992 giving claimant's 3 months to effect development and this letter therefore was a reminder that there was no meaningful development on the plot.

In another letter vide **Exhibit D5** dated 19th January, 2000, some years after **Exhibit D4**, the 1st defendant stated thus:

"3. Your client should make efforts to settle all the outstanding land rents. It should also commence meaningful development on the subject plot as the structure on site now falls short of the required standard within the prime area of a Central Business District."

These series of letters which claimant contend was not served on them, clearly put claimant on sufficient notice of the contravention of the terms of development of the right of Occupancy and that if they do not do the needful, it will be taken that they are not interested in the plot. The claimant did not keep to their commitments and this was even confirmed as earlier alluded to by the valuation carried out on their behalf vide **Exhibit P6** and they themselves further confirmed this in their letter of appeal to the FCT Minister dated 28th January, 2008 vide **Exhibit D13** wherein the **chairman** of claimant stated thus:

"for reasons adduced in our letter under reference, we were unable to meet the dead line for commencement of construction, but have since middle 2006, gotten fully ready to start and by today we would have had on imposing PLAZA on ground had we been given back the plot."

The above from the **chairman** of claimant speaks eloquently to the failure on their part to meet with the terms of allocation. Nothing need be added to it.

Now on the pleadings and evidence, as I have demonstrated at length, it is not in doubt that the claimant clearly has **failed** to or was **unable to meet** with the terms of the offer of grant/conveyance of approval and the certificate of occupancy. Even if it met with the terms as argued by them, it clearly did so in a manner inconsistent with the obligations contained in the terms of offer.

On the pleadings vide **paragraphs 8(j) – (l)** of the defence of 1st defendant and the evidence led and based on these state of affairs, the 1st defendant **revoked** the claimant's title over **Plot 258**, redesigned, sub-divided and renumbered the

plots into plots 1362 and 1363. Plot 1363 was then allocated to the 2nd defendant which subsequently transferred its interest to 3rd defendant.

The notice of revocation dated 22nd September, 2006 vide **Exhibit D7** read as follows:

"NOTICE OF REVOCATION OF UNDEVELOPED PLOTS WITHIN CENTRAL AREA FEDERAL CAPITAL TERRITORY

Following the expiration of grace period granted by the Minister to effect and complete development of your plot within the Central Area, I have been directed to inform you that the Minister of Federal Capital Territory has in the exercise powers conferred on him under Section 28 (5)(a)&(b) of the Land Use Act, 1978 revoked your rights and interest over plot 258 within Central Area (A00) for your continued contravention of the terms of development of the Right of Occupancy."

It is clear that the exercise of powers to revoke was exercised pursuant to and within the clear remit of the provision of **Section 28 (5) a and b of the Land Use Act** on the basis of the failure of the claimant to meet with the terms of the grant on development of the plot.

Section 28 (5) a and b of the Act is clear and self explanatory. It provides thus:

"The Governor may revoke a statutory right of occupancy on the ground of–

(a) a breach of any of the provisions which a Certificate of Occupancy is by Section 10 of the Act deemed to contain;

(b) a breach of any term contained in the Certificate of Occupancy or in any special contract made under Section 8 of this Act."

This provision clearly mandates the minister FCT to revoke where there is a breach or violation of the terms of offer or C/O as in this case. See **Olomoda V Mustapha (2019) 6 NWLR (pt.1667) 36 at 51 A-B.**

As I have demonstrated at length, the revocation notice in this case is clear and the basis on which the Minister acted cannot be said to be subject to equivocation. Contrary to the assertion of claimant, the revocation was not done within the purview or based on the provision of **Section 28(2) of the Land Use Act** on grounds of overriding public interest. The revocation notice speaks for

itself and again the principle must be underscored that no additions or interpolations can be made to what is in the revocation notice to suit any purpose. See **Section 128 (1) of the Evidence Act**. Similarly within the specific remit of **Section 28 (5) a and b of the Land Use Act** and on the basis of the clear evidence of non-compliance with the terms of the grant, the contention that the claimant needs to be heard will not fly.

On the law, I have carefully even read the provisions of **Section 28 of the Land Use Act** and it certainly does not donate the proposition sought to be canvassed that before a right of occupancy is revoked under **Section 28 (5) (a)** and **(b)** that the holder must first be heard. Indeed on the authorities, **Section 28 (5)** vest in the 1st Defendant the discretion to revoke where the terms and conditions contained in the certificate has been breached by the holder. In **Ekundayo & Anor V FCDA & Anor (2015) LPELR - 24512,** it was instructively stated as follows:

"Fair hearing is a constitutional entitlement of all litigants at all times; having said that there does not appear to be any particular requirement of fair hearing in the Land Use Act with regard to revocation as a result of failure to comply with terms in the right of occupancy, as in this case; the respondents particularly, complied with Section 28 (6) and (7) with regard to notice as per Exhibit G, and that in the considered opinion of this Court suffices to all intents and purposes. Since the respondents are satisfied that there is a breach by the holder of a right as in this case the respondents are entitled to exercise their statutory powers; subject only to the issuance of notice of revocation of title and service of such notice."

In the context of the trajectory of the case, the complaint of lack of fair hearing will not fly. This is a case in which the claimant itself acknowledged that it was unable to meet its commitments under the conditions of the offer. The claimant was at different times intimated of these breaches and time extended to allow it meet with the development conditions of the grant. It was unable to meet with the conditions.

The complaint on fair hearing with respect to the actions of the 1st defendant within the specific remit of **Section 28 (5) (a) and (b)** is thus not availing.

In **Obi V Minister FCT (supra)** the court held thus:

"On the authority of Dantsoho V Mohammed (supra), a statutory right of occupancy may be revoked on any of the following grounds –

1. **breach of any of the provisions which a certificate of occupancy by section 10 of the Act is deemed to contain; or**

2. **breach of any term contained in the certificate of occupancy or any special contract made under section 8 of the Act; or**

3. **refusal or neglect to accept and pay for a certificate which was issued as evidence of a right of occupancy but has been cancelled by the governor.**

Therefore, since the appellant had failed to develop the plot within 2 years, a condition or term contained in paragraph 4 of Exhibit 2 (the certificate of occupancy) the 1st respondent possess the legal right to revoke it. The cases cited by learned counsel for the appellant are not applicable here as they are on revocation for overriding public interest, which is not the only provision for revocation of a plot, especially as Dantsoho V Mohammed (supra) was decided after the cases cited by Mr. Olowolafe. There is also, absolutely no clash whatsoever, between the provision of section 28(5)(b) of the Act, and section 5(1)(e) of the Act. Section 28(5)(b) gives the governor the power to:

"revoke a statutory right of occupancy on the ground of a breach of any term contained in the Certificate of Occupancy or in any special contract made under section 8 of this Act."

In other words, if an allottee fails to develop his plot within 2 years, as happened here, in violation of paragraph 4 Exhibit 2, then the governor has the power and the option, to revoke the said plot. It is not mandatory for him to do so, as he can ignore it, or he can employ some other measures of enforcing the provision."

At the risk of prolixity, on a confluence of facts on the evidence, I don't really see any dispute that nearly 15 years after the allocation to claimant, there was clearly none-compliance with the key clause pertaining to erection and construction of a completed building on the basis of the detailed plans approved for the claimant vide **Exhibits P4a and b** and there cannot be any valid complaint of untoward actions by the Minister in the circumstances. The only

point to add is that on the authorities, where an allottee fails to develop a plot allotted by a Certificate of Occupancy within two years, the Governor or Minister responsible may revoke the plot for such failure. He may, instead of revoking it immediately, delay the revocation. He may also instead of revoking it, impose a penal rent on the allottee for failure to so develop. Whichever path he chooses, he is empowered legally to do so. See **Obi V Minister, FCT (supra).**

Now it is one thing to have valid **legal reasons to revoke** but it must be done as allowed by law. This is fundamental, as all authorities of our Superior Courts project unequivocally that where the revocation is not done in a manner prescribed by law, such revocation stands compromised.

Let me also underscore the point that Revocation of a right of occupancy must be done pursuant to the provisions of **Section 28 of the Land Use Act** and the revocation must comply strictly with the provisions of the said section. See **IBRAHIM VS. MOHAMMED (2003) 4 MJSC 1 at 18G-19A.** A revocation of a right of occupancy is signified under the hand of a public officer duly authorized in that behalf and it is effective upon the notice of revocation being given to the holder of a right or certificate of occupancy. See **IBRAHIM VS. MOHAMMED (supra) at 36C.** A holder of a right of occupancy, whether evidenced by a certificate of occupancy or not, holds that right as long as it is not revoked and he will not lose his right of occupancy by revocation without his being notified first in writing. The revocation must state the reason or reasons for the revocation. Any other method may be a mere declaration of intent; it will never be notice or revocation. Indeed, it will be a nullity. See **OSHO VS FOREIGN FINANCE CORPORATION (1991) 4 NWLR (PT184) 157 at 187 and NIGERIA ENGINEERING WORKS LTD VS DENAP LTD (2002) 2 MJSC 123 at 145.**

Now the complaint of claimant with respect to the revocation can be situated within **paragraphs 14, 15, 16, 18 and 21** of the Further Amended Statement of Claim thus:

"14. Notice of the said revocation was purportedly conveyed to the plaintiff vide a letter dated 22nd September, 2005 captioned "Notice of Revocation of Undeveloped Plots within Central Area, Federal Capital Territory" and addressed to –

"Scoa Nig. Ltd.
Plot 258 Central Area, Abuja,
P.O. Box 2318, Lagos".

The plaintiff pleads the said letter of revocation which was never received at the plaintiff's registered office.

15. (a) At the time of the purported revocation, i.e. 22nd September, 2005 the plaintiff's registered address was No. 67 Marina, Lagos, and has never been "Scoa Nig. Ltd, Plot 258 Central Area, Abuja, P.O. Box 2318, Lagos". The plaintiff pleads Form CAC 2.2 filed with the Corporate Affairs Commission on 7th November, 2000 and dated 25th October, 2000.

16. (b) The registered office/address of the plaintiff did not change until 9/5/06 when the plaintiff filed a change of its address and the new registered address became –

"Apapa/Oshodi Expressway, Isolo Industrial Estate, Isolo, Lagos."

The plaintiff pleads the Notice of Situation/Change of Registered Address issued by the Corporate Affairs Commission, i.e. Form CAC 3 filed on the 9th day of May, 2006"…

18. Before revoking the plaintiff's Right of Occupancy over the said plot 258 and demolishing the structures thereon, the 1st defendant did not notify the plaintiff at any time of any breach by the plaintiff of any covenant or condition, express or implied, of the plaintiff's statutory right of occupancy, nor was the plaintiff ever required, or notified by the 1st defendant to remedy any breach. Also, no penal rent was ever imposed on the plaintiff by the 1st defendant, or anybody acting on the 1st defendant's behalf, on account of any alleged breach by the plaintiff of its covenant to develop or effect improvements on the said plot 258, the subject of the Certificate of Occupancy. At the time of the purported revocation of its Statutory Right of Occupancy, the plaintiff was up to date in the payment of both tenement and ground rents in respect of the said plot. The plaintiff pleads the "Tenement Rate Demand Notice" on the property issued by the Abuja Municipal Area Council dated 9/9/2005, for N42, 749.80 and a Zenith Bank Plc

Manager's Cheque No. 01644588 with which the said demand was satisfied. The plaintiff further pleads –

a) A "Demand for Ground Rent" dated 14/12/2001 for N279, 000.00 issued by FCDA to the plaintiff.

b) Payment Slip No. 44397 issued to the plaintiff by Aso Savings and Loans Ltd evidencing payment of the N279, 000.00 to the FCDA.

c) Revenue Collector's Receipt No. 639495 issued by FCDA to the Plaintiff evidencing payment of the said sum.

21. At the hearing of this matter, the plaintiff shall contend that the revocation, and re-allocation of its Statutory Right of Occupancy over the said Plot 258 to the 2nd Defendant, by the 1st Defendant, is illegal, unconstitutional, null and void for the following reasons –

a. The plaintiff was not afforded any hearing at all before his fundamental right to property was so brusquely determined and revoked by the 1st Defendant.

b. The conditions precedent to the exercise of the powers conferred on the 1st Defendant by Section 28 of the Land Use Act, which conditions are outlined in Section 19 of the Land Use Act, were not complied with by the 1st Defendant.

c. The purported Notice of Revocation was defective as it did not conform to Section 44 (d) of the Land Use Act."

The above averments situate the complaints of claimant on the revocation and basically the case made is that the revocation in this case was not in a manner prescribed by law; and that the purported revocation of claimant's title to Plot 258 without serving any notice of revocation on it is unlawful, null and void.

Now in response to the above averments and again because of the importance of the averments, I also reproduce the response of **1st defendant who effected the service of the revocation notice** as follows:

"4. The 1st Defendant admits paragraph 14 of the Plaintiff's Statement of Claim only to the extent that notice of revocation dated 22nd September, 2005 was served on the plaintiff but denied the allegation as to the use

of word "purported" in the said paragraph as the notice was indeed served on the plaintiff.

7. In further response to paragraph 14(a) and (b) denied above, the 1st defendant avers as follows:

a) The notice of revocation dated 22nd September, 2005 was sent to the address of the Plaintiff as indicated by the Attorney of the Plaintiff in the Application for Re-certification and Re-issuance of Certificate of Occupancy form.

b) The Application for Re-certification and Re-issuance of Certificate of Occupancy form was filled by the Attorney of the plaintiff on 11/04/05. The said Application for Re-certification and Re-issuance of Certificate of Occupancy form is hereby pleaded and shall be relied upon at the hearing of this suit.

c) The address written on the notice of revocation dated 22nd September, 2005 served on the plaintiff was based on the address indicated by the Attorney of the Plaintiff.

d) The plaintiff has by the Application for Re-certification and Re-issuance of Certificate of Occupancy form filled by its Attorney on 11/4/05 formally notified t he 1st defendant of its new registered address for delivery of all mails.

e) The plaintiff, apart from the address it provided through its Attorney to wit:

> **"SCOA NIG. LTD**
> **PLOT 258 CENTRAL AREA,**
> **P.O. BOX 2318, LAGOS" in the application for Re-certification and Re-issuance of Certificate of Occupancy form dated 11/4/2005, has not communicated any new address to the 1st Defendant.**

f) Moreover, the said averment in paragraph 14(b) of the Amended Statement of Claim is completely irrelevant to this suit as the revocation was done since 2005."

The 3rd defendant made additional averments in **paragraph 17** of the 3rd defendant's Amended statement of defence to support the case of 1st defendant that claimant was served the notice. Although I will consider the submissions predicated on those averments, I think the **primary responsibly and rightly so**, to prove service lies on the person or body who effected the service on claimant and in this case, it is the **1st defendant** and these they have streamlined in the defence as already identified. **Service is a function of evidence**; and it is to the evidence, that the question of service must be determined.

Now as stated earlier, facts deposed to in pleadings must be substantiated and proved by evidence in the absence of which the averments are deemed abandoned except of course the averments are admitted. See **Buhari V Obasanjo (2005) 2 NWLR (pt.910) 241 at 351 H-A; Aregbesola V Oyinlola (2011) 9 NWLR (pt.1253) 458 at 594 A-B.**

Indeed it is trite law that pleadings, however strong and convincing the averments may be without evidence in proof go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must be led to prove the facts relied on by the party or to sustain allegations raised in pleadings. See **Union Bank Plc V Astra Builders (WCA) (2010) 5 NWLR (pt.1186) 1 at 27 F-G**.

The relevant inquiry now is whether the Honourable Minister FCT complied with the procedure prescribed under **Section 28 (6) and (7); Section 44 of the Land Use Act** in exercising his statutory power of revocation. The claimant as stated earlier maintain that the purported revocation falls short of due process of law; the defendants on the other hand insist that applicable statutory provisions were complied with.

As stated earlier, **Section 28 of the Land Use Act** provides and regulates the process of revocation. I had earlier streamlined the process. Let me however again underscore some critical elements. Under **Section 28 (6),** the revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice shall be given to the owner. The title of the holder of a right of occupancy under **Section 28 (7) of the Land Use Act** shall be extinguished on receipt of him of a notice given under **subsection (6)** of this section or on such later date as may be stated.

The word used under **28 (6) and (7)** is shall which is a word of command or a mandatory word and imposes a clear duty. It denotes obligation and gives no room to discretion. See **Environmental Dev. Construction & Anor V. Umara Associates Nigeria (2000)4 N.W.L.R (pt.652)293 at 303.**

Section 44 of the Act then provides clear modalities for service of notices as follows:

Any notice required by this Act to be served on any person shall be effectively served on him -

"a. By delivering it to the person on whom it is to be served; or

b. By leaving it at the usual or last known place of abode of that person; or

c. By sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or

d. In the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office; or

e. If it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises."

The two conditions that must be satisfied before a right of occupancy can be revoked flowing from **Section 28 (6) and (7)** are:

i. The issuance of a **notice of revocation by a public officer** duly authorised in that behalf; and

ii. There must be clear evidence that due notice of the revocation was given to the holder of the right of occupancy; and it is when the holder of a right of occupancy receives notice of the revocation that his title thereto shall be

extinguished. Thus, notice of revocation and service of such notice are two mandatory requirements that have to be strictly complied with.

See **Adole V Gwar (2008) 11 NWLR (pt. 1099) 562 at 603-604** – per Ogbuagu, JSC. A notice of revocation is not meant to be kept under wraps in the archives of the revoking authority (such as the 1st Defendant): it must not only be shown to have been issued, the revoking authority must go further to demonstrate that the notice so issued was duly served on the holder of the right of occupancy as required by Section 28 (6) of the Land Use Act 1978 before such revocation can take effect. See **Atobatele V Lekki Concession Company Limited (2017) LPELR – 43041 (CA)**.

Section 44 then situates as stated above how service is to be effected. The word used in that provision is also **"shall"** which as alluded to already, is a word of command.

Now the notice of revocation dated **22nd September, 2005** (Exhibit D7) was signed by one Oluwaseun on behalf of the Minister. No defined issue was raised on the pleadings with respect to whether the notice was properly issued on behalf of the Minister, so we are not concerned with the point.

Now on the face of the **Exhibit D7**, the address for service reads thus **"Scoa Nig. Ltd Plot 258 Central Area, Abuja, P.O. Box 2318 Lagos."**

In the addresses on both sides of the aisle, a lot was made about the different addresses of claimant and which is the correct address for purposes of situating the validity of the service in this case. The 3rd defendant in its final address went further to question the credibility of PW1 for the claimant on the basis that he was not forthright when he answered questions on the address of claimant.

I am not sure such an exercise was necessary. To the clear extent that the address furnished on the **revocation notice** forms part of the different addresses used by the claimant and there is nothing on the evidence to show that any particular address was furnished to the 1st defendant as the registered or principal office at any particular period, then due service on any of the **addresses** should suffice. The most important point and that appears to be glossed over, is that the revoking authority must however demonstrate that the notice so issued was served on the holder of the right of occupancy as required

by **Section 28(6) of the Land Use Act** before such revocation can take effect. See **Atobatele V Lekki Concession Co. Ltd (supra)**.

The 1st defendant has in the **pleadings pleaded how and where it effected service on claimant**. The concern should be **clear evidence** of **such service** at a particular defined place, because the law is settled that where service of a process is legally required as in this case, the failure to serve it in accordance with the law is a fundamental flaw. I will return to this point later.

Let met perhaps explain further on why the various addresses supplied by claimant only served to detract from the main point of contention on evidence of proof of service.

Now by **Exhibit D1**, the C.T.C of the application made by claimant for a statutory right of occupancy, provides the contact address of claimant as:

1. **11/13, Davies Street, P.O. Box 2318, Lagos- Nigeria.** This address appears on both the letter of offer and acceptance by claimant dated 15th February, 1983 and 6th April, 1983 vide Exhibits D2 and D3.

Now in the C.T.C of letter by the 1st defendant dated 27th August, 1996 in response to the petition by claimant against alleged revocation of the plot vide **Exhibit D4**, addressed to the M.D. of claimant, the address reads **"67, Marina P.O. Box 2318, Lagos"**.

In the C.T.C of application for recertification and re-issuance of certificate of occupancy dated 11th April, 2005 vide **Exhibit D6**, filled by the claimant's attorney, the permanent address of claimant reads thus:

"Plot 258 Central Area, P.O. Box 2318 Lagos."

Now even the notice of situation of registered office of claimant tendered as **Exhibit P1** dated 25th October, 2006 shows the registered office as **67, Marina Street Lagos**. In the resolution of change of registered office attached to **Exhibit P1**, dated 21st August, 2000, the resolution reads thus:

"That the situation of the registered office of the company be and is hereby changed from Lapal House, 235 Igbosere Road, Lagos to 67, Marina with effect from 1st September 2000."

By **Exhibit P2**, and the **company resolution** attached to it dated 28th April, 2000, the head office was again changed from **67 Marina Street Lagos Island to Apapa/Oshodi Expressway Isola Industrial Estate, Isolo Lagos**.

I have referred to these documentary evidence to situate that apart from perhaps the **P.O. Box 2318 Lagos**, which is a constant, the address of claimant was constantly changing. If the argument sought to be made by the claimant is that at the time of the revocation, there registered address was at a particular location, there is no evidence that after the change of address, as done in **Exhibits P1 and P2**, that the 1st defendant was notified. The most important point is that the address used on the revocation notice forms part of the **addresses** supplied by the claimant to the 1st defendant at different times and the claimant on the pleadings and evidence has pleaded particularly vide paragraph 12 of the claim that the office at **Plot 258 Central Area** is the hub and from where it supervised its entire Northern Nigeria operations, so that if service is proven to have been effected there, there cannot really be any serious complaints in my opinion.

In this case **Exhibit D7,** the revocation notice situates the address of claimant at **Scoa Nig. Ltd at Plot 258 Central Area Abuja and the P.O. Box 2318 Lagos address**. As an important take off point, there is nothing on the **face of this document** to situate receipt or service of the document.

The key point of service is simply a demonstration that the process was served, where and how? As I understand it, on the basis of the address on the revocation notice, **Exhibit D7,** the duty of the 1st defendant was to situate or prove that service was effected either at **Plot 258 Central Area Abuja or by post at P.O. Box 2318 Lagos**.

Now in **paragraph 4** of the 1st defendant defence, it was pleaded therein that the notice was "**served**" on claimant and in **paragraph 7(a)** the 1st defendant pleaded thus:

"In further response to paragraphs 14(a) and (b) denied above, the 1st defendant avers as follows:

a. **The notice of revocation dated 22nd September was sent to the address of the plaintiff as indicated by the attorney of the plaintiff in**

the application of Recertification and Re-issuance of certificate of occupancy form"

The above averments are clear. It is to be noted that this Recertification and Re-issuance of Certificate of Occupancy was tendered by 1st defendant as **Exhibit D6** and it is said to have been prepared by the attorney of claimant.

Now if the notice **Exhibit D7** was sent to claimant, there is no indication either in the pleadings or evidence as to how it was **sent, where and when**: Was it sent to Plot 258 Central Area Abuja or P.O. Box 2318 Lagos as appeared on **Exhibit D7** and who sent it and when? Was it by post or courier for example? If it was sent to the Abuja office, where is the evidence to situate service or proof of service? Was the notice accepted and who accepted it? Did he acknowledge receipt or he refused to acknowledge receipt? These are not matters for speculation or guess work? In this case there is absolutely no demonstration of proof of service of **Exhibit D7**, the notice of revocation.

It cannot escape notice that **none of the witnesses** brought by 1st defendant was able to situate or positively assert that the notice was served as pleaded. Indeed not a single paper trail to situate service on claimant of the notice of revocation was furnished and one then wonders how service can be said to have been effected in such an opaque and unclear manner. I am not sure that it can be argued with conviction that the 1st defendant do not have defined processes as it relates to service and proof of service of documents.

Indeed as the 1st defendant itself demonstrated with respect to another aspect of the case on **compensation vide Paragraphs 8(m) and (n) of the defence**, they pleaded and led evidence that when the plot of claimant was revoked, they carried out an assessment of compensation dated 24th May, 2006 and that the letter was collected on 26th May, 2006 by one Pius Alonge on behalf of the plaintiff. The C.T.C of the acceptance by this Pius Alonge on behalf of the claimant was tendered as **Exhibit D10.**

It cannot again escape notice that with respect to this **assessment of compensation**, the 1st defendant apart from pleading the assessment of compensation letter, pleaded when it was collected and the date and the person who collected it on behalf of claimant. It is therefore curious that with respect to the **revocation notice**, the 1st defendant was conspicuous by its silence with

respect to the date it was served or collected and the person who collected the notice for the claimant.

The 1st defendant was therefore unable to provide any scintilla of evidence in support of how it **served the revocation notice as pleaded in paragraphs 4 and 7a of its defence.**

It also cannot escape notice that in the absence of a clear demonstration of proof of service of this notice, the case now constructed by defendants including 1st defendant would appear to be that 1st defendant is "**aware**" of the revocation letter relying on some of the correspondence exchanged by parties.

The question I must address and this has given me some considerable difficulties I must confess is as to whether the fact that the claimant is "**aware**" or somehow got to know about the revocation translates to fulfillment of the clear requirements of the law. Let me here with care evaluate the evidence and the documents relied on.

Now it is true that **PW1** may have under cross-examination stated that after "we received the letter of revocation", he wrote **Exhibit P5** dated 9th July, 2007 to request for the cheque with respect to compensation but it is equally correct that he explained in the same cross-examination how he got the notice of revocation. He stated that he was physically present when their structure was demolished sometimes early 2006 before the ed-il-fitr celebration and that he pleaded with them for over three (3) hours that they had not been served with a letter of revocation which enabled their Chairman to come in from Lagos but that nevertheless, the demolition still went on. He also stated that when he kept telling officials of Development Control that they have not received any notice of revocation, they told him to go to their office at Zone 2 where he was shocked to find a copy of the revocation letter. He stated that he did not want to collect the letter but he called the head office and he was instructed to collect the notice to enable them take necessary action.

As far as I can see from his evidence, there is nothing to show or suggest that the claimant was served the revocation notice and the court cannot speculate or reach any decision on such a fundamental point in a vacuum. Fact finding cannot be subject of guess work.

Again **Exhibit P5** written by PW1 dated 9th April, 2007 may have alluded to the revoked property and efforts made to have the property back but there is again nothing in **Exhibit P5** written by PW1 stating that the revocation notice dated 22nd September, 2005 was served on claimant and the court cannot again speculate.

Again I have equally read the letter by the chairman of claimant dated 28th January, 2008 to the Minister FCT vide **Exhibit D13** wherein he alluded to the fact that their title to Plot 258 was withdrawn through a revocation order of about 22nd September, 2005 and his plea for a return of the plot but again it is difficult to situate where the chairman of claimant said they were served with the revocation notice and I cannot situate how receipt or service of the revocation can be read into this letter.

I am not sure these letters can be altered or their scope extended beyond the remit of what is contained in the letters to suit a particular purpose. See **Section 128 (1) of the Evidence Act**.

It must be noted that these letters **Exhibits P5 and P13** were written two and three years after the notice of revocation was issued in 2005 and after the property of claimant had been demolished.

At that period, as narrated by PW1, all they could really do was not to take aggressive actions against the 1st defendant but to find peaceful ways to end the dispute and get their plot back, so that subsequent reference to the revocation notice by claimant, without more, cannot be construed as amounting to admission of service of the revocation notice on them. Indeed it would even be strange at that point for the claimant to feign ignorance of the existence of the notice after their property had since been demolished.

These letters may have shown or alluded to the revocation notice, and a plea for rescission of the revocation but I have clearly not been persuaded that the law has been complied with here.

What the law requires as I understand it is not that the claimant somehow became aware of the purported notice of revocation. The language of **Section 28(6) of Land Use Act** is that "notice thereof shall be given the holder" whilst **Section 44(a) and (e) of Land Use Act** prescribes how the service should be effected.

The strenuous arguments put up by defendants must be flawed in view of the lack of evidence to situate proper service of the notice of revocation. If the 1st defendant served the notice, the **simple question** is where is the evidence of service? It is difficult to accept that a **matter of service** which is a matter of evidence has now been turned into a matter that is strenuously projected vide the conduit of final addresses. It is settled principle of general application that cases are decided on pleadings and evidence led in support and not by address of counsel. Address of counsel is no more than a handmaid in adjudication and cannot take the place of hard facts required to constitute credible evidence. No amount of brilliance in a final address can make up for the lack of evidence to prove and establish or disprove and demolish points in issue. See **Iraegbu V M.V Calabar Carrier (2005) 5 NWLR (pt.1079) 147 at 167; Michika Local Govt V NPC (1998) 11 NWLR (pt.573) 201.**

Any finding of fact relating to service of **Exhibit D7** cannot be found in the addresses of counsel.

Indeed any findings of fact which is made, having regard to the existence of documentary evidence, cannot be seen to fly in the face of the accepted relevant document or documents by the court. If it is, it will be contradictory and perverse. See **Atolagbe V Shorun (1985) 4 SC 250 at 285.**

No trial court is entitled to assume that it is within his exclusive province to make findings of fact when such findings depends much or entirely on documentary evidence. The findings must reasonably reflect the contents of the document or documents in question as a whole so as to be seen as a true understanding of the terms thereof.

Where oral evidence is given on an issue in any case, and there is cogent documentary evidence on the same issue, it is the duty of the trial judge to test the reliability of the oral evidence against the said documentary evidence. To use the now familiar expression, it helps the trial judge to reach a fair finding by using the relevant document as a hanger on which to assess the oral testimony. See **Kimdey V Gov. Gongola State (1988) 2 NWLR (pt.77) 445 at 473.**

It is a truism that a document when admitted in evidence speaks for itself. There is really nothing in evidence to situate service of the **revocation notice** on claimant. There is really no cogent documentary evidence in this case to use

to test the reliability of the bare assertions of 1st defendant's witnesses that service of the revocation notice was effected on claimant.

Quiet clearly, the **defendants** and **1st defendant in particular** have failed or neglected to produce any iota or scintilla of evidence to situate any proof of service of the notice of revocation on claimant and this for me is **fatal** to their case. There is nothing in the evidence before me where claimant admitted been served with the notice of revocation in respect of Plot 258 and as stated severally, the finding with respect to service cannot be a matter for speculation or conjecture.

The type of evidence a court can act on is the evidence which was exposed and canvassed in court. A court cannot decide issues on speculation no matter how close to what it relies on may seem to be to the facts.

As the Superior Courts have held in a number of cases, 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 when it appears plausible should never be allowed by a court of law to fill any hiatus in the evidence before it. See **Overseas Const. Co. Ltd V Greek Ent' Ltd (1985) 3 NWLR (pt.13) 409; Dennis Ivenagbor V Henry Osato Bazuoye & Anor (1999) 6 SCNJ 235 at 243-244.**

In that specific clear legal context, the resort by 3rd defendant to the principles of estoppel by conduct to situate service of the notice of revocation, I am afraid will not fly. Again I am afraid, I am not at all enthused that in the absence of evidence of service, that resort can be heard to estoppel by conduct. **Section 169 of the Evidence Act** provides thus:

"169. When one person has either by virtue of an existing court judgment, deed or agreement, or by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceedings between himself and such person or such person's representative in interest, to deny the truth of that thing."

The above provision is clear. I cannot situate on the basis of the evidence where it can be said that claimant conducted itself in a manner to convey the

impression that it was served. It never made any such representation anywhere either on the pleadings or evidence. The fact it chose or elected to tow the path of peace in its dealings with 1st defendant with respect to the property does not mean it was served the notice and in any event the letters in question were made long after the purported service of the notice of revocation and after the property had been demolished. There is nothing, as far as I can see in the conduct of claimant that can be said to have intentionally caused or permitted the defendants to believe and act on any state of facts to their detriment. The conditions that would have allowed for the invocation and application of **Section 169 (supra)** clearly has not arisen in this case.

In A**.G Bendel State V AG Fed & ors (1981) LPELR – 605 (SC) pp 149**, the Supreme Court held instructively as follows:

"Estoppel does not lie in mere imagination or assertion, there must be facts proved which will give rise to estoppel. In Greenwood V Martins Bank Ltd (1933) AC 51 at 57, Lord Tomlin defined the essential factors as: (1) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made; (2) An act or omission resulting from the representation whether actual or by conduct by the person to whom the representation is made; (3) Detriment to such person as a consequence of the act or omission."

The defendants have clearly failed to creditably prove facts warranting the application of the principle of estoppel by conduct. The resort to **estoppel** perhaps is an attempt to simply draw inferences to justify the conclusion they have reached that there was **service of the revocation notice** in the complete absence of **evidence to support such conclusion**. The defendants may exercise liberties to draw such inferences but a trial judge enjoys no such liberties and cannot draw inference in a vacuum but only in relation to facts which justify such inference. And since an inference is an act of deducing or drawing a conclusion from existing clear premises or basis, by way of acts, the facts upon which the inference is deduced or drawn must be in close proximity with the inference. Where an inference is at large, it cannot perform inferential function of drawing a conclusion from such a premise. See **Boniface Ezeaduka V Peter Maduka & Anor (1997) 8 NWLR (pt.518) 635 at 663.**

In the context of the facts of this case, the issue of estoppel to situate service of **Exhibit D7** does not vindicate and reflect the legal position on service as determined under **Section 28** and as such estoppel has no bearing on the issue of service of the revocation notice at all.

The point that must be underscored vigorously is that the **Land Use Act, Cap. L5 Laws of Nigeria, 2004** is a piece of expropriatory legislation, and binding case law donates the proposition that in order to validly revoke title to land evidenced by a right of occupancy, both the letter and the spirit of the Act must be strictly adhered to. **The rule of construction is that any law which has the effect of depriving a citizen of any right to property shall be construed strictly** and in such a manner as to preserve the citizen's right to property. See **Abioye & Ors V Yakubu & ors (1991) 15 NWLR (pt.190) 130 at 251 – per Phillips Nnaemeka- Agu, JSC, Osho V Foreign Finance Corporation (supra), DIN V A-G, Federation (1988) 4 NWLR (pt.87) 147 and Bello V The Diocesan Synod of Lagos & ors (1973) ALL NLR (Reprint) 196 at 214 – per Coker, JSC).** It is for this reason that binding case law insists on strict compliance with the provisions of **Sections 28 and 44 of the Land Use Act 1978**, notably proof of service of notice of revocation amongst several other strictures, before title to land covered by a right of occupancy can be extinguished. See **Adole V Gwar (supra), Ibrahim V Mohammed (2003) 4 MJSC 1 at 36, Estate of General Sani Abachi (Decased) V Eke-Spiff (2009) 2 SCNJ 119, Olomoda V Mustapha (2019) LPELR-46438 (SC) and Malami V Ohikhuare (2019) 7 NWLR (pt.1670) 132 at 182 para D-F.**

Since no proof of service of the notice of revocation, **Exhibit D7** on the Claimant was produced in evidence, there is no gainsaying that the claimant's title to **Plot 258**, Cadastral Zone A00, Central Area District, Abuja remains valid and subsisting. The law, as I have always understood it, is that a right of occupancy, whether evidenced by a certificate of occupancy or yet to be so evidenced by a certificate of occupancy, cannot be lost **"by revocation without being notified first in writing and the subsequent revocation must also be notified to him in writing. Any other method may be a mere declaration of intent; it will never be notice or revocation. It will be a nullity."** See **Nigeria Engineering Works Ltd V DENAP Ltd (supra)**.

In **Olomoda V Mustapha (2019) 6 NWLR (pt.1667) 36,** the Supreme Court per Akaahs JSC at page 52 E-F stated as follows:

"In exercising the Governor's power of revocation; there must be due compliance with the provisions of the Act; particularly with regard to giving of adequate notice of revocation to the holder whose name and address are well known to the public officer acting on behalf of the Governor. See Nigerian Telecommunications Ltd. V Chief Ogumbiyi (1992) 7 NWLR (pt.255) 543. The purpose of giving notice of revocation of the right of occupancy is to duly inform the holder thereof of the steps being taken to extinguish his right of occupancy. In the absence of notice of revocation of the right of occupancy, it follows that the purported revocation of the right of occupancy by the office duly authorized by the Governor is ineffectual. See: A.-G., Bendel State V. Aideyan (1989) 4 NWLR (pt.118) 646; Nigeria Engineering Works Ltd. V Denap Limited (1997) 10 NWLR (pt.525) 481. "

The above pronouncement is clear and applies with full force to the notice of revocation, **Exhibit D7** in this case.

Now it is the case of 1st defendant that after the revocation, it redesigned the plot 258 to plot 1363 and allocated it to 2nd defendant vide a letter captioned accelerated development programme within the FCT dated 9th December, 2005 vide **Exhibit D8** and followed it up with a certificate of occupancy dated 12th October, 2009 vide **Exhibit D12**.

In law a certificate of occupancy 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. In other words, a C/O is not 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 CA**. Where it is shown by evidence that another person other than the grantee of a C/O 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 otherwise discountenance it as invalid and defective as the case made be. See **Omiyale V Macaulay (2009) 7 NWLR (pt.114) 597 SC.**

Indeed once there is a subsisting title or right of occupancy, any subsequent adverse title issued in purported competition with the subsisting primary title is a nullity. Where a common grantor, as in this case subsequently vests title in favour of another grantee in respect of the same land during the subsistence of the first or primary title, which has not been properly revoked as allowed by

law, the subsequent title is invalid. The Supreme Court in **Malami V Ohikhuare (2019) 7 NWLR (pt.1670) 132** held that between the plaintiff/1st appellant and 3rd defendant/4th respondent, their common grantor was the 2nd respondent. The title of plaintiff/1st appellant was first in time. The purported revocation of it having been declared a nullity reinforces the subsistence of title against the whole world including both the 2nd respondent and the 3rd respondent and the 3rd defendant/4th respondent. See **Ilona V Idakwo (2003) 11 NWLR (pt.830) 53; Kar V Ganara (1997) 2 NWLR (pt.488) 380.**

The above decisions and the illuminating principles enunciated applies *mutatis mutandis* to the case at hand. Having found the revocation of claimant's title to plot 258 as ineffectual, null and void having not **been served** the revocation notice, it logically follows that any allocation of the same plot to any other person lacks legal validity in the light of the subsistence of the allocation of claimant.

The issuance of a letter of offer and certificate of occupancy to the 2nd defendant was carried out in clear violation of **Section 28 of the Land Use Act** and clearly null and void. If this subsequent offer of title of the plot to 2nd defendant is not valid, any subsequent transfer by 2nd defendant to a third party will be of doubtful validity as no one gives out what he does not have under the ***maxim-nemo dat qud non habet***. See **Ashiru V Olukoya (2006) 11 NWLR (pt.990) 1; Dadi V Garba (1995) 9 SCNJ 232; Ilona V Idakwo (2003) 11 NWLR (pt.830) 53 and Chiadi V Aggo (2018) 2 NWLR (Pt.1603) 175.** These findings clearly must necessarily impact the **sale to the 3rd defendant** as we will soon show.

This then now leads us to the question of the sale by **2nd defendant to 3rd defendant**. As stated earlier, the decision on the validity of the revocation would necessarily impact the whole exercise from the revocation, to the redesigning and re-allocation to 2nd defendant who then sold to the 3rd defendant.

Now from the pleadings of 3rd defendant, the case projected is that in **October, 2010**, before the claimant commenced this suit, that the 3rd defendant had purchased from the 2nd defendant the disputed plot and that it had erected a "**massive ten-storey structure**" on the property. Indeed the 3rd defendant gave a trajectory through its witness of how it purchased the property and of interest is the Diamond Bank cheque admitted as **Exhibit D17** and the Deed of

Assignment between 1st defendant and 2nd defendant vide **Exhibit D20.** I will return to these Exhibits later again.

Now what is interesting above this position advanced by the **3rd defendant** is that it **contradicts** wholly the position of the **2nd defendant** who 3rd defendant claimed to have bought from before the inception of this case.

At the inception of this case, the position situated in the pleadings of the 2nd defendant is that it has been in possession of the plot 258 (now plot 1363) since the allocation and that they have engaged the services of a private developer to secure the necessary approvals to commence its building project on the said plot. Indeed in the C.T.C of the **Statement of Defence filed by the 2nd defendant as far back as 11th June, 2014**, admitted as **Exhibit P10** before the joinder of 3rd defendant to this case, the 2nd defendant pleaded in **paragraph 5(d)** as follows:

"The 2nd Defendant is and has been in possession of Plot 258 (now Plot 1363), Cadastral Zone A00 of Central Area District, Abuja measuring approximately 1.67 Hectares since the said allocation by the 1st Defendant. The 2nd Defendant has long engaged the services of a private developer to secure the necessary approvals and commence its building project on the said plot."

The case projected by 2nd defendant clearly did not situate any sale or transfer of its interest to 3rd defendant in **2014** contrary to the claim of 3rd defendant that it purchased the plot in **2010**.

Now what is interesting in this case is that in the course of the trial, the 2nd defendant sought to amend this position when they filed a motion to amend their pleadings dated 22nd March, 2021 and filed on 23rd March, 2021 to essentially change the structure of their defence to now situate a transfer of interest to 3rd defendant of the disputed plot and it was refused. I prefer to give full expressions to the ruling given by this court on **12th April, 2022**.

After the usual preliminaries, I held thus:

> ***"With the settlement of pleadings, hearing then commenced. The Plaintiff led evidence and closed its case. The 1st Defendant has called two out of their three witnesses and were about rounding up their case when 3rd Defendant applied to join the extant action and was joined on***

15th February, 2021 and they then filed their statement of defence on 9th March, 2021.

It is interesting to note that in its defence, the 3rd Defendant now averred that it bought the subject matter in dispute from 2nd Defendant in 2010 before commencement of this suit and has perfected the sale with 1st Defendant and exercising various acts of ownership.

The 2nd Defendant on Record never made mention of this assignment of this interest in the subject matter at any time in the years the case had lasted in court. It may equally be interesting to note that the 1st Defendant did not equally mention this assignment or more precisely the perfection of this sale or assignment between 2nd and 3rd Defendants said to have been effected at their offices. I shall agin return to these points again.

Having provided the above background facts in some detail, lets now determine the justice and fairness of the extant application for amendment in the light of the clear legal parameters earlier highlighted.

For purposes of clarity, I will repeat the amendments sought as contained in the proposed 2nd Defendants proposed amended defence vis-à-vis the existing processes and evidence on Record.

Now the proposed Amendments sought via this application dated 23rd March, 2021 are in respect of paragraphs 5(b), (c) and (d) as contained in Exhibit 1 are as follows:

"*b. Following the 2nd Defendant's application to the 1st Defendant for participation in the "Accelerated Development Programme of the Federal Capital Territory", the 1st Defendant approved the grant of Plot Number 258 in Cadastral Zone A00 of Central Area District measuring approximately 1.86 Hectare to the 2nd Defendant vide a letter captioned "ACCELERATED DEVELOPMENT PROGRAMME WITHIN THE FEDERAL CAPITAL TERRITORY" dated 9th December, 2005. <u>The said letter now in possession of the 3rd Defendant was handed over to the 3rd</u>*

Defendant at the time 2nd Defendant assigned her interest in the property to the 3rd Defendant in 2010 via a Deed of Assignment.

c. ***The 1st Defendant on 12th day of October, 2009 issued the Certificate of Occupancy in respect of the said Plot Number 258 in Cadastral Zone A00 of Central Area District measuring approximately 1.86 Hectares (now renumbered and resized as Plot number 1363 and measuring 1.67 Hectares respectively) to the 2nd Defendant. The 2nd Defendant shall rely on the said Certificate of Occupancy vide File No: MISC 103738 now in possession of the 3rd Defendant by virtue of the said Deed of Assignment from the 2nd Defendant to the 3rd Defendant.***

d. ***The 2nd Defendant was in possession of Plot 258 (now Plot 1363, Cadastral Zone A00 at Central Area District, Abuja measuring approximately 1.67 Hectares from the time the property was allocated to her by the 1st Defendant until sometime in 2010 when the 2nd Defendant assigned her interest in the property to 3rd Defendant. The 3rd Defendant has since commenced development of the property."***

At the risk of cluttering this Ruling but for purposes of ease of understanding, let me reproduce the contents of the existing defence of 2nd Defendant filed nearly 8 years ago on 11th June, 2014 and on the basis of which the case was contested all along before the joining of 3rd Defendant. The relevant paragraphs are 5, (b), (c), (d):

" b. ***Following the 2nd Defendant's application to the 1st Defendant for participation in the "Accelerated Development Programme of the Federal Capital Territory," the 1st Defendant approved the grant of Plot Number 258 in Cadastral Zone A00 of Central Area District measuring approximately 1.86 Hectares to the 2nd Defendant vide a letter captioned "ACCELERTED DEVELOPMENT PROGRAMME WITHIN THE FEDERAL CAPITAL TERRITORY" dated 9th December, 2005. The 2nd Defendant shall rely upon the said letter at the trial of this suit***

c. The 1st Defendant on 12th day of October, 2009 issued the certificate of occupancy in respect of the said Plot Number 258 in Cadastral Zone A00 of Central Area District measuring approximately 1.86 Hectares (now renumbered and resized as Plot Number 1363 and measuring 1.67 Hectares respectively) to the 2nd Defendant. The 2nd Defendant hereby pleads, and shall at the hearing, tender and rely upon the said Certificate of Occupancy vide File No: MISC 103738.

d. The 2nd Defendant is and has been in possession of Plot 258 (now Plot 1363), Cadastral Zone A00 of Central Area District, Abuja measuring approximately 1.67 Hectares since the said allocation by the 1st Defendant. The 2nd Defendant has long engaged the services of a private developer to secure the necessary approvals and commence its building project on the said plot."

Paragraph 5b of the proposed amendment except for the underlined portion is essentially a reharsh of the existing paragraph 5b. The addition or proposed amendment to this paragraph seeks to alter fundamentally the narrative to the existing contention of 2nd Defendant that it has always exercised acts of possession since it was allocated the disputed Plot in 2005 as clearly adumbrated in paragraph 5d of the existing defence above. No allusion was made to any sale or assignment to a third party in 2010. It is difficult to believe or accept that the 2nd Defendant would have assigned its interest in the subject of dispute well before the filing of this action and yet it made no mention or reference to it and still went ahead to aver that "it has long engaged the services of a private developer to secure the necessary approvals and commence tis building project on the said plot."

At the risk of sounding prolix, this averment in paragraph 5d highlighted above in the original defence filed by 2nd Defendant was made in 2014 nearly 4 years after this alleged sale or assignment in 2010 to a third party and no mention or allusion was made of the sale as stated above. The amendment sought now to reflect this narrative strikes at the basis of the case 2nd Defendant has presented in this proceedings.

The same observations affects the proposed amendment in paragraph 5c above and even more. The proposed amended in paragraph 5c is equally the same with the existing paragraph 5c except for the additions now sought to be made. In the existing paragraph 5c and consistent with the case it has always presented, the 2nd Defendant indicated that it will be relying on the certificate of occupancy property issued to it by 1st Defendant which it will tender at the hearing. There is no confusion or ambiguity in the tenor of the paragraph to the effect that reliance was been placed on the certificate of occupancy to situate the ownership of the disputed plot. There is no allusion, directly or indirectly that the Certificate of Occupancy is with a third party. To now suddenly seek to alter the trajectory of the narrative of the defence after 8 years of a case been in court to rely on an event that occurred even before the commencement of the action beggars belief.

The allusion now to the existence of the certificate of occupancy with a third party and that reliance will be placed on what is with this third party again conflicts with the case 2nd Defendant has streamlined on the pleadings for nearly 8 years and on which parties (except 3rd Defendant who was joined later) joined issues and led evidence on.

Paragraph 5d in the proposed amended defence is a completely new case or at best it is an attempt by 2nd Defendant to frame a new case or to alter the face of the case on which issues have since been joined by parties. On the existing pleadings, the case of 2nd Defendant has always been that it has been in possession and "has long engaged the services of a private developer to secure the necessary approvals and commence its building project on the said plot." The amendment sought now that the 2nd Defendant assigned its interest in "2010" and that the "3rd Defendant has since commenced development of the property" clearly creates a scenario which directly conflicts with the existing pleadings of 2nd Defendant and evidence led by parties on record and prior to the joinder of 3rd Defendant. The 3rd Defendant may have alluded to the assignment but it is a matter for proof at trial. It is not an opportunity or a conduit for the 2nd Defendant to present a new case or to change the character of its case.

A party on settled principles must be consistent in the case it presents. A party cannot as it were blow hot and cold as done by 2nd Defendant here. The trial process whatever its imperfections must be contested on the basis of each party stating clearly its case without ambiguity so that the opponent will know precisely the issues he is facing. See Balogun V. Adejobi (1995)2 N.W.L.R (pt.376)131 at 158. Litigation is not a game of hide and seek.

The amendments sought here as demonstrated are clearly prejudicial as attempts are now been made by 2nd Defendant to actively charge or alter the nature of its case to the detriment of parties especially Plaintiff. It is difficult if not impossible for the extant application to escape or avoid the label and or allegation that it was brought or made male fide to achieve a basically self serving purpose. See Chief Adedope Adekoye V Chief O.B. Akin-Olugbade (supra) 214; Celtel (Nig.) Ltd V Econet Wireless Ltd (2011) 3 NWLR (pt.1233) 156 at 167-168 and Okolo V UBN (supra) 429. To grant this extant application is to violate the consecrated principles governing the grant of an Amendment.

The court recognizes that perfection in human affairs is an impossible expectation and errors do occur from time to time in the filing of processes and the mechanism of amendment provides an avenue or conduit to correct such errors. The grant of such amendment is however not automatic or granted as a matter of course. Where the amendment as clearly demonstrated here would if granted, occasion prejudice, injury or will be overreaching, to the adversary or indeed where it has been brought male fide for the purpose of undermining the case of the opponent, then such on amendment will not have been brought in the interest of justice and would not have met the legal parameters for amendment. See Biya & Ors V. Bonet & Ors (2020) LPELR -52144(CA); CGDG Nig V. Idorenyin (2015)AII FWLR (pt.804)2093, 2103

As I round up, let me call in aid the instructive decision of the Court of Appeal in H.I. Iyamabor V. Mr. Mavis Omoruyi (2011)26 WRN 87 where it was stated as follows:

"Justice demands that in order to determine the real matter in controversy, pleadings may be amended at any stage of the proceedings, even in the Court of Appeal or this court (Supreme Court) to bring them in line with the evidence already adduced; provided the amendment is not intended to overreach and the other party is not taken by surprise and the claim or defence of the said other party would not have been different, had the amendment been averred when the pleadings were first filed. Per Akpata, JSC in Laguro V. Toku (1992)2 NWLR (pt.223)278; (1991)2 SCNJ 201.

A court of equity should never allow a cunning or crafty application to lord over an amendment sought mala fide, at the detriment of the adverse party. In order to ensure that justice is done to the parties, the court should open its eyes wide and with a meticulous and searching mind comb through the entire application. Per Niki Tobi, JCA (as he then was) in Aina V. Jinadu (1992)4 NWLR (pt.233)91. A refusal will be inevitable, especially if it is designed to overreach or outmanoeuvre the adverse party with the aim of wining the victory at all cost."

In the final analysis the application to amend the statement of defence of 2nd Defendants fails."

This Ruling as far as the court is aware was not **challenged on appeal**. The court is obviously not infallible, but in the absence of a challenge at the Superior Court of Appeal, the decision remain valid and binding.

The Ruling thus made clear the position advanced by 2nd defendant at all times prior to the application to amend nearly 10 years after the case was filed. The undeniable position is that the 2nd defendant did not at any time situate this sale to the 3rd defendant on their pleadings or evidence and this is strange. They did not tender any instrument to situate this sale or assignment of its interest to the 3rd defendant at anytime.

Now during the **cross-examination of the witness** for the **2nd defendant,** he stated that as at 2022 that they were still in possession through their sister organization, the 3rd defendant, a subsidiary of 2nd defendant. He stated that he does not know if the disputed plot was sold but that there was a transfer to the subsidiary. He stated that 3rd defendant was created by 2nd defendant and that it is a major shareholder. What is interesting about these narrative is that no

where did the 2nd defendant plead these or allude to this new narrative anywhere in their pleadings all through the course of this proceedings.

This aspect of his evidence ordinarily ought to and must be discountenanced for obvious reasons, but I had deliberately referred to it to show that DW4 for the 2nd defendant clearly was not forthcoming and forthright with respect to the sale or transfer of the plot to 3rd defendant and when it was effected.

It is a matter of concern that for a person holding such a high position of Assistant General Manager, in 2nd defendant, he does not know whether the property was sold or not. If they are still in possession as at 2022, through its subsidiary, does it mean that the transfer was done internally between two sister companies with the full knowledge of the existence of the extant case? If they were in possession uptill **2022**, then the contention that the sale was effected since **2010** tells a lie against itself.

Is it possible that such a senior officer in the 2nd defendant lacks knowledge of the full details of this sale transaction? If he is in the know, why then the deliberate hesitancy to provide the details?

The evidence of **DW4** for me lacks credibility. In law, credible evidence in this connection means the evidence worthy of belief and for evidence to be worthy of belief or credit, it must not only proceed from a credible source, it must be credible in itself in the sence that it should be natural, reasonable and probable in view of the entire circumstances. See **Agbi V Audu Ogbeh (2006) 11 NWLR (pt. 990) 65 at 116**.

A witness such as DW4 who sets out to mislead the court either by denying facts known to him or misrepresenting facts upon which he is questioned until forced to contradict himself by whatever means cannot be relied upon because he has from his performance destroyed any rational basis for accepting his evidence in part or in total based on credibility. See **Oguntayo V Adebutu (1997) 12 NWLR (pt.531) 81 at 94 A-B**.

For me, the evidence of **DW4** which failed to address directly the issue of the sale or transfer and when it was effected projects that they have something to hide. A party cannot project in one breadth that it is in possession and preparing to develop as at 2014 and in other breath seek to support a contradictory and adverse claim that the plot has been sold well before the action was filed in

2010. Any party which projects such a contradictory narrative that is an affront to reason and intelligence is not deserving of any credibility. See **Fatunb V Olanloye (2004) 12 NWLR (pt.887) 229 at 247**.

On the basis of the case presented by **2nd defendant**, there is nothing to situate any sale or transfer of interest of the **disputed plot to 3rd defendant**.

The 3rd defendant on its part as alluded to already has made the case that the 2nd defendant sold the property in **2010** before the extant case was filed.

Let us now situate the case of 3rd defendant on the sale and or transfer of interest of plot 258 (now plot 1363). The 3rd defendant tendered documents vide **Exhibit D14 and D15** dated 30th July, 2010 and 22nd July, 2018 which situates discussions on the sale of the property between 2nd and 3rd defendants and the offer made for the disputed plot in the sum of **N700, 000, 000 (Seven Hundred Million Naira)**. **Exhibits D16** and **17** dated 5th October, 2010 then situates payment of N300, 000, 000 (Three Hundred Million Naira) to 2nd defendant.

By **Exhibit D18** dated **19th August, 2010**, wherein the 3rd defendant awarded a contract for the clearing and excavation of the disputed **plot 1363** shows that even before any payments was made for the plot vide **Exhibits D16** and **D17,** the 3rd defendant was awarding a contract on the disputed plot.

I have referred to these documents to situate a complete lack of clarity even by 3rd defendant with respect to the sale. Negotiations vide **Exhibits D14** and **D15** is not the contract or agreement itself. Negotiations may or may not crystallize into a legally binding agreement. There is here nothing on the evidence to clearly situate what parties finally agreed to as the terms of the transaction and then when the transaction was fully concretized.

Now on the evidence, there is no clarity as to when full payments for the property was made. Yes the 3rd defendant may have tendered a **Deed of Assignment** between 2nd and 3rd Defendants vide **Exhibit D20** which was registered at the FCT Land Registry but the **Deed** is not **dated**.

However from the **Registration** particulars and the **stamp of the Deeds Registrar**, FCT Land Registry on the Deed, shows clearly that the Deed of Assignment was delivered for registration on **4th September, 2014** clearly when the matter was **pending** in court.

If the 3rd defendant seeks to project or feign ignorance in the circumstances of the pending case over the plot, the **2nd defendant** cannot however pretend it is unaware of the case with respect to ownership of the property. The 2nd defendant therefore chose or elected to ignore this case and went ahead with the sale to 3rd defendant.

The 3rd defendant like the 2nd defendant was equally reticent with respect to giving full particulars of when the sale was conducted and therefore it is difficult to accord probative value and credibility to the case they projected that they bought before this case was filed in 2010. The Deed of Assignment they tendered vide **Exhibit D20** shows that it was only submitted for registration in 2014 long after the extant case had commenced. The contention therefore by 3rd defendant that it bought the property before the extant case was filed in the light of the unclear and fluid **evidence** they presented cannot be correct as demonstrated.

Now with respect to the building itself, for such a **massive ten storey structure** to have been erected by the **3rd defendant,** they must have drawn plans for it and received the requisite building approvals. Neither the plans or the building approvals were tendered. The tendering of these documents would have given a clear insight as to when the massive building was constructed. The 3rd defendant for reasons that are not apparent elected not to produce these important documents.

The defendants and in particular the 2nd defendant which effected this sale have not been able to satisfy the court that the sale or transfer of interest was not done when the case was already in court.

Again, it must be underscored that apart from the **preliminary letters situating discussions on the sale**, not a single document was tendered to support that the sale was fully effected before this case was filed. This case clearly situates, at the least, that the 2nd and 3rd defendants continued with acts to effect the transfer in **2014** vide **Exhibit D20** despite knowledge of this case and if it was a gamble or a risk, so be it, but the consequences of deliberately ignoring such court actions is that such sale or alienation abide by the outcome of the suit under the doctrine of ***lis pendens***.

The doctrine of *lis pendens* evolved for the purpose of preventing one party form fraudulently seeking to overreach the decision of a court granting title to

the opposing party on the basis that he had divested himself of the title before the decision of the court was reached. If a purchaser chooses to purchase a property, subject of litigation, from one of the litigants during pendency of the litigation, he does so at his own risk and if it turns out that the person from whom he bought has no title or was adjudged at the end of the pending action not to be the owner, he takes as he finds it. See **Akiboye V Adeko (2011) 6 NWLR (pt.1244) 415 CA. See also Ogunsola V NICON (1991) 4 NWLR (pt.188) 762**.

The doctrine of *lis pendes* it must be underscored does not operate to defeat a title to property that had vested before the commencement of litigation over title to the property nor does it operate to nullify the sale of property that is the subject matter of litigation. It only makes title to property acquired during pendency of a suit over title to the property subject to the outcome of that suit. If a third party chooses to purchase the property, the subject matter of litigation, from one of the litigants during the pendency of the litigation, he does so at his risk, if it turns out that the person from whom he bought had no title or was adjudged at the end of the pending action not to be the owner, he takes as he finds. Where the defendant alienates during the pendency of a suit, and the result is that the claim of the plaintiff succeeds, the judgment will overreach such alienation. If the transferor of the property to a purchaser loses the suit, the purchaser loses it too. Therefore, the contract entered into by a third party who purchases a property that is subject of litigation during the dependency of the suit is not void but that sale or alienation shall abide by the outcome of the suit. See **Akiboye V Adeko (2011) 6 NWLR (pt.1244) 415 CA**. See also **Bua V Dauda (1999) 12 NWLR (pt.629) 59; Barclays Bank (Nig.) Ltd V Ashiru (1978) 6-7 SC 99; Ogunsola V NICON (1991) 4 NWLR (pt.188) 762**.

If the parties, the 2nd and 3rd defendants in particular chose or elected to ignore the court proceedings, they did so at great risk, as the authorities project, and they must abide by the outcome of this same case they chose to ignore.

The **final plank** of the case of claimant is the claim of **Two Billion naira** aggravated damages for the gross disruption of the plaintiffs Northern Nigeria operations arising from the arbitrary revocation of its Statutory Right of Occupancy, and the unwarranted demolition of its office complex**.** The claimant also claimed the sum of **N325, 000, 000** being special damages arising

from the destruction by the 1st defendant of the plaintiff's office complex and showroom located at Plot 258 Central Area (A00) Abuja.

In the light of the evidence as demonstrated at some length, these set of reliefs seem to me overtly ambitious. This case succeeded on the basis of the failure to properly serve the revocation notice. At other levels, I had found that the claimant breached the terms of the allocation. They were not able to build the plaza and basement approved for them within the purview of **Exhibits P4a and P4b**. Indeed, the valuation report produced by claimant situates that only a fraction of the plot was in use. Again the documentary evidence produced by claimant vide **Exhibit D13** situates that what was built on the land was a "temporary structure". The description of what was built on the plot as a **"temporary office structure"** by the chairman of claimant himself is telling and an admission that they were unable to build on the basis of the approved building plans.

Aggravated, exemplary or punitive damages are not awarded as a matter of course. For a party to be entitled to exemplary damages, it is his duty to prove that the action of the defendant is outrageously reprehensible. Such damages are awarded when a defendant's act was malicious, oppressive, wanton or grossly reckless. These damages are awarded both as a punishment and to set a public example. On the facts of this case, the 1st defendant clearly was acting on the basis of the admitted violations of the terms of offer, but there is nothing to indicate their conduct was actuated by malice or that they were propelled by ill-will to humiliate, disgrace or treat the claimant badly. See **FBN Plc V A.G Fed. (2018) 6 NWLR (pt.1350) 225; Elochin (Nig.) Ltd V Mbadiufe (1986) 1 NWLR (pt.14) 47.**

I find no legal or factual basis upon which an award of aggravated damages can be based.

The same goes for the claim for **special damages** which has to be strictly pleaded and proved.

On the authorities, special damages have been defined as damages of the type as the law will not infer from the nature of the act; they do not flow in the ordinary course; they are exceptional in their character and therefore, they must be claimed specially and strictly proved. See **A.T.E. Co. Ltd V M.L. Gov. Ogun**

State (2009) 15 N.W.L.R (pt.1163) 26 at 71; Ekennia V Nkpakara & 2 ors (1997) 5 SCNJ 70 at 90.

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

> ***"With regard to how to plead and prove special damages, the law is quite clear that special damages must be specifically pleaded and proved strictly…In this respect, a plaintiff claiming special damages has an obligation to plead and particularise any item of damage. The obligation to particularise arises not because the nature of the loss is necessarily unusual, but because the plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible*"**

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

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

In this case, a huge amount was claimed on the basis of the destruction of the plaintiff's office complex. In paragraph 11 of the claim, all the claimant pleaded was the structure they said they constructed and the value. They did not plead and particularize any item of damage. The claimant who here have the advantage of basing their claim on a precise calculation must give the defendants access to the facts which make such calculation possible. The claimant did not. There was thus no proper pleadings in this case, and in the absence of the due particularization of items of damage, the valuation report tendered vide **Exhibit P6** will essentially be evidence tendered to support facts not pleaded and thus inadmissible.

The bottom line is that this court has not been furnished via the pleadings of particulars of losses exactly known and that can fairly and accurately be measured and that is fatal to the claim for special damages. A court of law qua justice has no duty to speculate as I have indicated repeatedly in this judgment. The law is settled that a party is allowed to establish what he pleaded and obtain only such relief that was prayed for on the basis of the pleadings and then

creditably established by evidence. See **Ajikanle V Yusuf (2000) 2 NWLR (pt.1071) 301.**

I however reckon that the claimant is entitled to cost of this action. It is a cliché that costs follow event. **Order 56 Rule 3** of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 provides for the principles to be observed in fixing costs. I am obligated to take into consideration the imperative of indemnifying the Claimant for the expenses to which it has been subjected, in addition to offering some compensation for the time and effort expended in prosecuting these proceedings, which would have been unnecessary if the 1st defendant has simply complied with the law on service of the revocation notice.

The above extensive pronouncements and findings on fundamental elements underpinning the case of claimant provides broad factual and legal template to address the question of whether the Reliefs of claimant are availing.

Now because of the way some of the reliefs were framed, it is incumbent to make the point that Reliefs are the live wire of an action and puts in specific demanding language the cause of action. On the authorities, reliefs are the bedrock of any action and the language used must be precise, concise, simple, clear and should not be fluid, ambiguous or vague. See **Uzokwu V Ezeonu II (1991) 6 NWLR (pt.2000) 708 at 784**.

In this case, some of the reliefs are repetitive, projecting the same grievance even if with slightly nuanced variations. In that context for example **Reliefs a-c** project in substance the same reliefs. **Reliefs h** and **o** falls under this category. **Reliefs d, f and g** also project the same relief. **Reliefs m and n** are essentially the same injunctive Reliefs couched differently. These splitting of Reliefs appears to me verbose and even unnecessary and the reliefs ought to have been better formulated into fewer reliefs to capture the essence of the grievance.

On the whole and for the avoidance of doubt, the single issue raised is answered substantially in favour of claimant and judgment will be and is hereby entered in the following terms:

1. **IT IS HEREBY DECLARED that the purported revocation of Plot 258 (now Plot 1363) Central Area (A00) Abuja evidenced by Certificate of Occupancy dated 17th April, 1989 issued under the hand of the**

Honourable Minister FCT without service of a notice of revocation on the claimant as required by law is illegal, null and void and of no effect whatsoever.

2. **IT IS HEREBY DECLARED that the sale by the 2nd defendant to the 3rd defendant of Plot 258 central Area (now plot 1363) or any part thereof during the pendency of this action is illegal, null and void.**

3. **IT IS ORDERED that the Notice of revocation dated 22nd September, 2005 issued by 1st defendant to the claimant is illegal, null and void and of no effect whatsoever.**

4. **AN ORDER is granted voiding the statutory right of occupancy and the certificate of occupancy issued by 1st defendant to 2nd defendant over Plot 258 Central Area (A00) (now Plot 1363) Central Area Abuja.**

5. **AN ORDER is granted voiding the sale of Plot 258 Central Area (now Plot 1363) or any part thereof by the 2nd defendant to the 3rd defendant.**

6. **The defendant is ordered to forthwith restore the plaintiff's statutory Right of Occupancy and Certificate of Occupancy over Plot 258 (now Plot 1363) Central Area (A00) Abuja.**

7. **The Reliefs for aggravated damages and special damages are refused.**

8. **The defendants and their agents are restrained from acts capable of affecting the lawful and subsisting interest of the plaintiff over Plot 258 (now Plot 1363) Central Area Abuja as guaranteed under the Land Use Act and the 1999 Constitution of the Federal Republic of Nigeria.**

9. **Pursuant to Order 56 Rule 3 of the Rules of Court, I assess cost of this suit at N500, 000 in favour of Claimant against Defendants jointly and severally.**

……
Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***Ken C. Ikonne, Esq. with Bowie Attamah, Esq. and Michael Okejimi, Esq., for the Claimant.***
2. ***O.F. Bamidele (Mrs.) for the 1st Defendant.***
3. ***C.M. Nwankwo, Esq. for the 2nd Defendant.***
4. ***J.C. Njikonye SAN for the 3rd Defendant with Abiodun Olalerin, Esq., Isaac Ita, Esq. and I.A. Nnana, Esq.***