

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/GAR/CV/048/2023
DELIVERED ON THE 10/02/2025**

BETWEEN:

- 1. VICTOR KASSIM OYOFO
 - 2. EFAB PROPERTIES LTD
- }CLAIMANTS

AND

- 1. MINISTER, FEDERAL CAPITAL TERRITORY, ABUJA
 - 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
- }DEFENDANTS

JUDGMENT

The Claimants herein aver that the 1st Claimant applied to the 1st Defendant for allocation of plot of land within the Federal Capital Territory and the 1st Defendant allocated plot 1327 Cadastral Zone B01, Gudu District, Abuja vide offer of terms of Grant/Conveyance of Approval of the plot which the 1st Claimant duly accepted within the stipulated time.

That the Defendant without due process of the law revoked the Claimant’s title to the land hence this action. The Claimants took out writ of summon and statement of claim dated the 20/11/2023 and sought for the following:

- (a) *A Declaration that the 1st Claimant is the owner of Plot 1327, Cadastral Zone B01, Gudu District Abuja with*

- Certificate of Occupancy File No. **ED 10572** and his title over the Plot is still valid and subsisting.*
- (b) *A Declaration that by virtue of receipt of valuable consideration and delivery of vacant possession of Plot **1327**, Cadastral Zone **B01**, Gudu District, Abuja with Certificate of Occupancy No. **ED 10572** by the **1st** Claimant to the **2nd** Claimant, the **2nd** Claimant has an equitable interest over the Plot.*
- (c) *A Declaration that the purported revocation of the **1st** Claimant's title over Plot **1327**, Gudu District Abuja, file No. **ED 10572** is contrary to the provisions of the constitution of the Federal Republic of Nigeria 1999 (As Amended) and the Land Use Act thereby null, void and of no effect.*
- (d) *An Order setting aside the purported revocation of the Claimants Right of Occupancy of Plot **1327** Cadastral Zone **B01**, Gudu District Abuja, with file No. **ED 10572**.*
- (e) *An Order mandating the Defendants to delete the revocation status placed on the **1st** Claimants file No. **ED 10572** in the Defendants Office.*
- (f) *An Order of perpetual injunction restraining the Defendants, their agents, privies, officers and any person, howsoever described deriving power and authority from them from re-allocating to any person whatsoever, entering, trespassing and or interfering with or in any way disturbing the Claimants' quiet enjoyment, possession, use and*

occupancy of Plot 1327, Cadastral Zone B01, Gudu District, Abuja File No. ED 10572.

Upon service of the Court processes on the Defendants they filed their statement of defence. Pleadings having closed, the matter was set down for trial and trial commenced on the 07/05/2024.

The Claimants' case was led through one Engr. Chris Osuofia (PW1). The case of the Claimant as distilled from the witness statement on oath of PW1 and as introduced in the preceding part of this Judgment is that the 1st Claimant applied for and was allocated the land by the 1st Defendant, duly received a Certificate of Occupancy and has paid all required rents and fees in respect of the land.

It is the averment of the Claimants that after taking possession and beginning preparations for development, including applying for a building plan, the 1st Claimant assigned his interest to the 2nd Claimant for the sum of ₦120 million, although the necessary government consent for the assignment has not yet been obtained. That the 2nd Claimant has been in undisturbed possession with its construction equipment on the plot awaiting the issuance of conveyance of building plan approval to enable it commence work on the plot and that PW1 went to Abuja Geographic Information System of the Defendant on the 23rd day of October, 2023 to collect the ground rent bill of plot 1327 Gudu District for payment but was informed by the Desk Officer that the interest of the Claimant has been revoked.

The Claimant through PW1 tendered the following document in evidence to wit;

- (1) **Certificate of Occupancy**
- (2) **Deed of Assignment**
- (3) **Conveyance of Building Plan Approval**
- (4) **Another conveyance of building plan**
- (5) **Motion on Notice**
- (6) **Pictures and Certificate of Compliance.**

The documents were admitted and marked as Exhibits **P1** to **P6** respectively.

PW1 was cross examined by the learned Counsel for the Defendant and was subsequently discharged.

The Defendants on their part opened their case on the 02/10/2024 when DW1 (Yakubu S. Kure) adopted his witness statement on oath. It is the defence of the Defendants that plot **1327** Cadastral Zone **B01**, Gudu District, Abuja, the subject matter of litigation was allocated to one Barbedos Ventures Limited transferred his interest to the **1st** Claimant and same was registered on 28/06/2005 at the land Registry as FC 63 page 63 Vol. 46 PA.

That the **2nd** Claimant interest on the subject matter is unknown and that conditions required of the **1st** Claimant by the Offer is that; they are supposed to erect and complete buildings on the plot within two years of its approval.

The Defendants aver that, they have not received any building plan submission from the Claimant or any other party regarding the property at plot **1327**, the subject matter of litigation.

That the Defendants revoked the right of occupancy for plot **1327**, the subject matter of litigation due to the continual breach of the terms of Grant from 2002 until the revocation in 2023.

That a notification was made and forwarded to the last known address of the **1st** Claimant which is 3, Nepa Road, Lagos, but the address was found to be non-existent and the Defendants were constrained to paste the revocation Notice on the plot vide a letter dated 20/09/2023.

The Defendants through DW1 tendered the following document in evidence to wit;

- (1) Building approval recommendation appendix**
- (2) Evidence of pasting of revocation notice**
- (3) CTC of Newspapers publication.**

Now Exhibits **D1** to **D3** respectively.

Learned Counsel for the Claimants cross-examined DW1 and he was subsequently discharge to give way for filing and adoption of final written address.

The Defendants, through their lawyer, filed their final written address and formulated three (3) issues for determination as follows:

- (1) Whether the 2nd Claimant is a proper party to this suit and has the locus standi to institute it in their own name, given that no Power of Attorney from the 1st Claimant has been presented authorizing the 2nd Claimant to initiate or defend legal actions relating to the subject matter.**

- (2) Whether by the state of pleadings and evidence before this Court, the Claimants have discharged the evidential burden of proof on them to establish wrongful and unjustified revocation of title to land on the part of the Defendants.**
- (3) Whether the Claimants are entitled to the reliefs sought before this Hon. Court, having regard to the totality of evidence led.**

Learned Counsel argued the above issues citing case laws in urging the Hon. Court to dismiss this action in the interest of justice.

Learned Counsel for the Claimant on his part, adopted the issues formulated by the learned Counsel for the Defendants and argued same succinctly in urging the Court to grant all the relief sought by the Claimants in this case.

I have gone through the case of the Claimants as presented by their sole witness Engineer Chris Osuofia cum the Exhibits tendered through him and the written address of the learned Counsel for the Claimant on one hand, and the evidence adduced by the Defendants through their sole witness Yakubu Kure and the Exhibit tendered by him; and equally the written address of the learned Counsel for the Defendants on the other hand.

I shall be brief but succinctly in addressing the issues in the interest of justice. It is trite, as laid down by a plethora of case law that he who asserts must prove. The Supreme Court held that section 131 (1) of the Evidence Act, 2011 provides that whoever desires any Court to give Judgment as to any legal right or liability dependent

on the existence of facts which he assert shall prove that those facts exist. See **MAIHAJA VS. GAIDAM (2017) LPELR 42474 SC.**

It is therefore logically follows that what is alleged without proof can be denied without proof.

It must be borne in mind that reliefs 1 to 3 sought by the Claimants are declaratory in nature and therefore, the success of other reliefs depends on them. Indeed, declaratory relief are not granted as a matter of course and on a platter of gold. They are only granted when credible evidence has been led by the person seeking the declaratory relief. A declaratory relief will be granted where the plaintiff is entitled to the reliefs in the fullest meaning of the word. It is a requirement of the law that the person seeking the declaratory relief must plead and proof his claim for declaratory relief without relying on the evidence called by the Defendant. See **OLODIOMA VS. OKOTIE-EBOH & ORS (2020) LPELR 51264 (CA).**

Having said this, I shall turn to the evidence before the Court to ascertain whether the Claimants are entitled to the reliefs sought or not. I shall do so, by adopting the issues 1 and 2 formulated by the parties in arriving at just conclusion of this case in the interest of justice.

On issue No. 1, whether the 2nd Claimant is a proper party to this suit and has the *locus standi* to institute it in their own name, given that no Power of Attorney from the 1st Claimant has been presented authorizing the 2nd Claimant to initiate or defend legal actions relating to the subject property.

Learned Counsel for the Defendants in his written address contended that the 2nd Claimant is not a proper party to the instant suit and therefore lacks the *locus standi* to institute this action in its name.

The law is that an unregistered registrable instrument, though, is not admissible to prove title, it is admissible to prove payment of money and coupled with possession of land by the purchaser. It may give rise to equitable interest. See **FBN PLC VS. OKELEWU & ANOR. (2013) LPELR 20155 (CA).**

The land instrument Registration Act, Cap. 515, LFN Abuja has the following provisions:

Section 3(1) “There shall be in the FCT, Abuja, a Land Registry with an office or offices at such place or places as the Ministry may, from time to time direct.”

Section 3(2) “The registry shall be the proper office for the registration of all instruments including Power of Attorney affecting land.”

Section 15 “No instrument shall be pleaded or given in evidence in a Court as affecting a land unless the same has been registered in the lands in question.”

The Claimant in their evidence before the Court stated that sometime in 2021, the 1st Claimant subject to the consent of the 1st Defendant assigned his interest over the subject matter to the 2nd Claimant for the sum of **₦120,000,000.**

That the requisite consent of the 1st Defendant to assign the subject matter has not been obtained and the Deed of Assignment has not been registered.

Whereas the Defendants stated that the subject matter was allocated to one Barbados Ventures Limited on the 09/04/2002 and the said Barbados Ventures Limited transferred its interest to the 1st Claimant and same was registered with the Defendants on 02/06/2005 at FC 63 Page 63 Vol. 46PA. That the 2nd Claimant's interest in respect of the subject matter is unknown and unregistered with the Defendants.

I have seen Exhibit P2 in evidence (Deed of Assignment) donated to the 2nd Claimant by the 1st Claimant. The said Deed of Assignment is not registered in line with law as already stated in the preceding part of this judgment. I must state here that, in the eyes of the law, the 2nd Claimant is definitely not known to law as legal owner of the property, but certainly acquired equitable interest over the subject matter. Though the legal title still resides in the 1st Claimant.

A look at the parties before me will reveal that, the 1st Claimant who has the legal title to the subject matter is before the Court in conjunction with the 2nd Claimant. Who has equitable title over the subject matter. Therefore, the joinder or non joinder of the 2nd Claimant would certainly not defeat the case.

Consequently, the argument of the learned Counsel with respect to legal capacity of the 2nd Claimant is refused. I therefore resolve issue no one (1) in favour of the Claimant. I so hold.

I shall now move to issue no two (2) that is, **“whether by the state of pleadings and evidence before this Court, the Claimants have discharged the evidential burden of proof on them to establish wrongful and unjustified revocation of title to land on the part of the Defendants.”**

It is however trite that a Court of law must always respect the sanctity of the agreements reached by parties. It must not make a contract for them or re-write the one they have already made themselves. See **BABATUNDE & ANOR VS. BANK OF THE NORTH LTD & ORS. (2011) LPELR 8249 (SC)**.

The Claimant tendered Exhibit **P1** (Certificate of Occupancy) issued by the Defendants to the 1st Claimant by virtue of the registered Power of Attorney in evidence. The said Exhibit **P1** is the foundation and the fulcrum of this case before the Court.

A perusal of the said Exhibit **P1** will reveal that there are terms and condition governing same. Paragraphs 3 and 4 of the said Exhibit **P1** is hereby reproduce for better appreciation of this case.

Paragraph 3**is to pay forthwith without demand to the Federal Capital Development Authority or such other body or person appointed by the Minister (if not sooner paid) all survey fees and other charges due in respect of the preparation, registration and issuance of this Certificate.”**

Paragraph (4) **“Within two years from the date of the commencement of the right of occupancy to erect and complete on the said land buildings or other works specified in related plans approved or to be approved by**

the Federal Capital Development Authority or any other Agency empowered to do so.”

The Defendants stated that they revoked the rights of occupancy for plot **1327** Cadastral Zone **B01**, Gudu District Abuja due to the continual breach of the terms of grant from 2002 until the revocation in 2023 by the original grantee and his successors in titled.

Whereas the Claimant contend that the Defendants wrongfully revoked their title over the subject matter citing lack of development, according to the Claimant, the revocation occurred while their application for building approval was still pending but not yet approved by the Defendant.

The Claimants tendered Exhibit **P3** (Conveyance of building plan approval dated 19/06/2019) and Exhibit P4 (Conveyance of building plan approval dated 15/05/2018) to buttress this assertion.

It must borne in mind that the Claimants assert that it submitted a building plan to the **1st** Defendant for approval concerning the subject property. During cross-examination by the learned Counsel for the Defendant, PW1 insisted that such documents exists although he confirm during cross-examination that he had not seen any application for building plan approval.

On their part, the Defendant filed and served their statement of defence, along with front loaded checklist of properties without submission of a building plan, which was later admitted as Exhibit D1. However, the Claimant in their reply to the statement of defence stated that they did not proceed with the development on the disputed plot because the Defendants when issuing building plan

approvals for other properties advised allottees not to begin construction in areas where road and infrastructure were not completed.

Indeed, the law forbid a litigant to speak at the same time or the same moment from two sides of his mouth. See **CHIEF EDMUND I. AKANINWO & ORS. VS. CHIEF O. N. NSIRIM & ORS. (2008) LPELR 321 (SC)**.

I must observe here that Exhibit **P1** (Certificate of Occupancy) creates a term of years absolute or a lease for a number of years stated therein. The greatest legal estate that can now subsist under the Land Use Act is a term of years. The grant of term of years under a Certificate of Occupancy is in substance a lease. I rely on **EZEANAH VS. ALTAH (2004) 7 NWLR (PT. 873) 468 page 500 – 501**. See also section 8 of the Land Use Act, 1978.

The Claimants tendered Exhibits **P3** and **P4** which are conveyance of building plan approval as part of their defence for not erecting structure in the subject matter within time frame. The Claimants equally provided pictorial evidence showing the State of development within the District referenced by the Exhibit (i.e. Exhibit **P6**).

Indeed, it is inconsistent to rely on a clause prohibiting constructions while at the same time presenting pictorial evidence from the same area showing active development in line with the terms of the grant. I must say here that, the Claimant Exhibit **P6** is consistent with the testimony of DW1 that Exhibit **P3** and **P4** only applies in favour of an allottee if the specific plot lacks essential infrastructure, such as major access roads and sewages lines. I so hold.

However, whether the revocation of the Claimants land was done in line with law and procedure, I shall resolve same shortly. Section 28 (5) (a) & (b) of the Land Use Act, 1978 vests the Defendants with the powers to revoke the title of the Claimant for breach of the terms of grant. The section provides as thus:

“The Governor shall revoke a statutory right of occupancy on the ground of:

- (a) A breach of any of the provision which a Certificate of Occupancy is by section 10 of this act deemed to contain.**
- (b) A breach of any terms contained in the Certificate of Occupancy or in any special contract, made under section 8 of this Act.”**

Indeed, by the provisions of section (2) of the Land Use Act, the Defendant who exercise the powers of a Governor of a state over land in the FCT, has a duty to comply with and abide by the provisions of section 28 (b) 6 and (7) of the Act for a valid and effective revocation of a Certificate of Occupancy granted or given to a person in respect of a piece of land in the Federal Capital Territory. The revocation cannot be in complete disregard to the specific requirement and procedure set out by the law. See **RAHAMANIYA UNITED (NIG) LTD VS. MINISTER OF FCT & ORS. (2021) LPELR 55633 (SC).**

I must state here that until there was a valid and effective revocation of a right of Occupancy over a piece of land in the FCT in strict compliance with the provision of the law any act done could be declared null and void. The question is, does the Notice of

revocation of plot 1327, the subject matter of litigation complied with the relevant provision of the Land Use Act?

Section 28 (6) and (7) of the Land Use Act states:

(6) “The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the governor and Notice thereof shall be given to the holder.

(7) “The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (5) on such latter date as may be stated by the Notice.

The above provisions are very clear and must be given their literal meaning. From the above, it is obvious that the Notice of revocation must be given to the right holder of the right of occupancy as required by law. The Defendant in their statement of defence before the Court, stated that on 19/04/2002 one Barbedos Ventures Ltd was offered allocation of terms of grant and conveyance of approval for plot **1327**, Cadastral Zone B01, Gudu District, Abuja, the subject matter of litigation. And that Barbedos Ventures Ltd transferred her interest to the 1st Claimant and that same was registered with the Defendants on 28/06/2005 at FC 63 Page 63 Vol. 46 PA.

From the above, it is obvious that the 1st Claimant is the recognized holder of the right of occupancy.

The question is, did the defendants served the 1st Claimant the revocation Notice in line with the law?

The Defendants stated in their statement of defence before the Court that, it revoked the rights of occupancy for plot **1327** Cadastral Zone **B01**, Gudu District Abuja due to breach of terms of grant from 2002. That a notification was made and forwarded to the last known address of the **1st** Claimant which is 3, Nepa Road, Lagos but the address was found to be non-existent. See paragraph 24 of the witness statement on oath.

The Defendant stated further that owing to the above, they were constrained to paste the revocation Notice on the plot vide a letter dated 20/09/2023 under the hand of ESV Sayyadi FNIVS and also through publication in various print and electronic media dated 22/09/2023.

The Defendants list of documents to be tendered, they listed as No. 6, Lagos State Town Planning, feedback on falsity of No. 3 Nepa Road, Lagos State. But throughout the proceeding before me, DW1 never tendered the proof of postage of the Notice of revocation or the feedback on falsity of the address.

During the cross-examination of DW1 by learned Counsel for the Claimants, DW1 stated that the proof of postage is not in Court. Court of Appeal in the case of **MRS. RITA OKOYE VS. MR. FRANK TOBECHUKWU & ANOR (2016) LPELR 41543 (CA)** held as thus;

“It is not the law that a party must produce and tender every document pleaded by him. The only duty a party has is to produce enough material and relevant evidence, either oral or documentary that satisfied the Court that he is entitled to his claim or to defeat the claim against him. The

provision of section 167 (d) of the evidence Act that evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it would apply to only relevant and material evidence which would have effect or influence on the decision of the Court. The provision would not apply where the evidence is not shown to be in possession of a party or that it would have affected or influenced the decision of the Court.”

The Defendants who alleged that a notice of revocation was duly served on the 1st Claimant has failed and or neglected to produce such evidence before the Court. The implication is that, if produced, it may work against them.

Indeed, the method of service of revocation Notice on the holder of Statutory Right of Occupancy is prescribed in section 44 of the Land Use Act as thus;

“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 letter address 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 to be served, by addressing it to him by the description of holder or occupier (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 copy of it, to some conspicuous part of the premises.”**

See F. O. OBAYIUWANA VS. MINISTER OF FCT & ORS. (2009) LPELR 8202 (CA).

Indeed, the object and intention of the legislature is what should guide the Court in the determination of any matter or cause submitted by the parties for determination. It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the interference that the legislature intended something which it omitted to express. It is a wrong thing to read into an Act of parliament words which are not there, and in the absence of clear necessity. It is a wrong thing to do, we are not entitled. **See OKECHUKWU VS. UBA PLC & ANOR (2017) LPELR 43160 (CA).**

The intention of the law maker in enacting section 44 of the Land Use Act is to protect the interest of holder of a right of occupancy and therefore, any act which is not in consonance with the said section is null and void.

From the revelation in the evidence before the Court, it is obvious that the Defendants have not adhered to section 44 of the Land Use Act in revoking the subject matter. I so hold.

It is my Judgment that by the state of pleadings and evidence before this Court, the Claimants have discharge the burden placed on them to be entitled to the Judgment of this Hon. Court. Accordingly, Judgment is hereby entered for the Claimants as follows:

- (a) It is hereby declared that the 1st Claimant is the owner of Plot **1327**, Cadastral Zone **B01**, Gudu District Abuja with Certificate of Occupancy File No. **ED 10572** and his title over the Plot is still valid and subsisting.
- (b) A Declaration is hereby made that by virtue of receipt of valuable consideration and delivery of vacant possession of Plot **1327**, Cadastral Zone **B01**, Gudu District, Abuja with Certificate of Occupancy No. **ED 10572** by the 1st Claimant to the 2nd Claimant, the 2nd Claimant has an equitable interest over the Plot.
- (c) A Declaration that the purported revocation of the 1st Claimant's title over Plot **1327**, Gudu District Abuja, file No. **ED 10572** is contrary to the provisions of the constitution of the Federal Republic of Nigeria 1999 (As Amended) and the Land Use Act thereby null, void and of no effect is hereby granted.
- (d) I hereby made an Order setting aside the purported revocation of the Claimants Right of Occupancy of Plot 1327 Cadastral Zone **B01**, Gudu District Abuja, with file No. **ED 10572**.

- (e) An Order mandating the Defendants to delete the revocation status placed on the 1st Claimants file No. **ED 10572** in the Defendants Office is hereby granted.
- (f) I further make an Order of perpetual injunction restraining the Defendants, their agents, privies, officers and any person, howsoever described deriving power and authority from them from re-allocating to any person whatsoever, entering, trespassing and/or interfering with or in any way disturbing the Claimants' quiet enjoyment, possession, use and occupancy of Plot **1327**, Cadastral Zone **B01**, Gudu District, Abuja File No. **ED 10572**, while his title subsist.

SIGNED:
HON. JUDGE
10/02/2025.

Appearance:

Chidozie Ajoku, Esq, for the Claimant

Caleb Atakpa, Esq, for the Defendants.