

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/CV/1383/2024
DELIVERED: ON THE 01/12/2025**

BETWEEN:

MOHAMMED BABAWO ADAMU.....CLAIMANT

AND

- 1. CLAZI NIGERIA LIMITED**
 - 2. MS. NGOZI ABAKPORO**
 - 3. DIRECTOR, DEVELOPMENT CONTROL (AMMC)**
 - 4. FEDERAL CAPITAL TERRITORY DEVELOPMENT
AUTHORITY (FCDA)**
- } ...DEFENDANTS**

JUDGMENT

The Claimant alleges that he is the bonafide owner of all the property known as plot No. **1653** Cadastral Zone, A09, Guzape, Abuja measuring approximately **1,353.40m²**. That on the 29/08/2009, the Minister of Federal Capital Territory allocated the offer of statutory Right of Occupancy to Ghali Mohammed Abdu the subject matter as original allottee.

That the original allottee (Ghali Mohammed) executed instrument of transfer, to wit: Irrevocable Power of Attorney dated 15th June, 2010 in favour of the Claimant and the Claimant has been in quiet

possession since 2010. While in possession, he took measures including clearing the bushes on the plot and wading off trespassers from the plot. The position had remained so until recently when the Divisional Police Officer of the FCDA Police Out Station, Area 11, Garki, FCT invited him that there was petition on the subject matter.

The Claimant took out an Amended Writ of Summon and Statement of claim dated 15th April, 2025 against the Defendants and claims against them jointly and severally as follows:

- (A) *A declaration that the Claimant is the bonafide owner of all that property known as Plot No. 1653 Cadastral Zone A09 Guzape Abuja measuring approximately 1,353.40m² originally allocated to Ghali Mohammed Abdu.*
- (B) *A declaration that acts of the 1st, 2nd, 3rd and 4th Defendants being used by the said 1st and 2nd Defendants in entering and disturbing the possession of the Claimant which has been enjoying bonafide owner of Plot No. 1653 Cadastral Zone A09 Guzape Abuja measuring approximately 1,353.40m² since 2011 recently, precisely in year 2024 without the consent of the Claimant is tantamount to illegal and amount to trespass.*
- (C) *A declaration that acts of illegal trespassing done by the 1st, 2nd, 3rd and 4th Defendants on Plot No. 1653 Cadastral Zone A09 Guzape Abuja measuring approximately 1,353.40m² without the consent of the Claimant who has been in possession since 2011 till date is null and void.*
- (D) *An Order of Perpetual Injunction restraining the Defendants from further trespassing into plot No. 1653*

Cadastral Zone A09 Guzape Abuja measuring approximately 1,353.40m².

(E) The sum of Fifty Million Naira (₦50,000,000) only for the act of trespass committed in respect of Plot No. 1653 Cadastral Zone A09 Guzape Abuja measuring approximately 1,353.40m² and the cost of this suit being the sum of Two Million Naira (₦2,000,000) only.

The Amended Writ of Summons was duly served on the Defendants as required by law. 1st and 2nd Defendants filed their statement of Defence and a Counter claim dated 28th August 2024, against the Claimant.

At the close of exchanged of pleadings, the suit was set down for hearing. The Claimant called a sole witness on the 09/05/2025. The case of the Claimant as distilled from the witness statement on oath of **PW1** is that plot No. **1653** Cadastral Zone **A09** Guzape Abuja, subject matter of this suit, was allotted to one Ghali Mohammed Abdu on the 29/08/2009 by the Minister of Federal Capital Territory. The said allocation was accepted and file number **KN60563** was opened and title document was duly processed. That Right of Occupancy Bill was issued on the 28/07/2021 to the tune of **₦8,152,826.88k** and was duly paid.

That the original allottee also settled building plan in the sum of N945,942.55k before executing Irrevocable Power of Attorney dated 15/06/2010 in favour of the Claimant. That since the execution of the Power of Attorney he has been in active possession of the subject matter until 2024 when the D.P.O of FCDA Police Out Station Area 11 Garki, FCT invited him on the ground that there

is a petition by the 3rd Defendant on behalf of the 2nd Defendant laying claim over the subject matter. **PW1** tendered the following documents in evidence to wit;

- (1) **Original Right of Occupancy**
- (2) **Letter of Acceptance**
- (3) **CTC of Right of Occupancy**
- (4) **Title Deed Plan**
- (5) **Power of Attorney**
- (6) **Report of Police Investigation**
- (7) **Specimen signature**
- (8) **Specimen signature**
- (9) **Specimen signature.**

All these were admitted in evidence as Exhibit **P1** to **P9** respectively.

PW1 was cross examined by both Counsel for the 1st and 2nd Defendants and that of the 3rd and 4th Defendants respectively.

The 1st and 2nd Defendant on their part called a sole witness (2nd Defendant) who testified for the 1st and 2nd Defendants.

The case of the 1st and 2nd Defendants as distilled from the witness statement on oath of **DW1** dated 24th March, 2025 is that the original allottee of Plot **1635**, measuring approximately **1,353.40m²**, lying and situate at Cadastral Zone A09 Guzape Abuja transferred his interest in the said Plot to the 1st Defendant on the 22/08/2010 via a Deed of Assignment.

That the original allottee, Ghali Mohammed Abdu handed over the original title documents of the land, i.e. Offer of Statutory right of occupancy dated the 29/08/2009, site plan dated the 27/10/2009,

AGIS acknowledgment of application for Grant/Re-grant of a Statutory Right of Occupancy Bill dated 17/03/2010 to the 1st Defendant through his agent Uzomah Emilia. And that the 1st Defendant paid the grounds rent in the name of the original allottee in 2011 and that 1st Defendant is in the process of registration of its Power of Attorney and has paid the sum of (~~₦~~**102,000.00**).

That the original allottee did not donate any Power of Attorney to the Claimant.

The 1st and 2nd Defendants' Counter claimed against the Claimant and sought for the followings:

- (1) *An Order directing the Claimant/Defendant to counter claim to vacate Plot 1653, measuring 1353.40 square meter, with file number **KN60553**, lying and situate at Cadastral Zone **A09**, Guzape District, Abuja FCT forthwith.*
- (2) *An Order awarding the sum of Five Billion Naira only (~~₦~~**5,000,000,000** as general damages for trespass.*
- (3) *Twenty Million Naira as cost of action.*

The 1st and 2nd Defendants tendered the following documents in evidence.

- (1) **Deed of Assignment between Ghali Mohammed Abdu and Clazi dated 22/8/2010 Exhibit D1.**
- (2) **Power of Attorney dated 22/8/2010 Exhibit D2**

- (3) Title Documents D3, consisting of the following**
 - a. Original offer of statutory Right of Occupancy**
 - b. Site plan dated 27/10/2009**
 - c. Statutory Right of Occupancy**
 - d. Application for grant**
- (4) Receipts of payment of ground Rent – D4**
- (5) Receipt of payment for registration of Power of Attorney – D5**
- (6) Letters to the Minister – D6**
- (7) Pictures taken at the site – D7**
- (8) Letters of invitation to meeting – D8**
- (9) Subpoena dated and filed 29/1/2025 – SW1**
- (10) Title Documents of Plot 1653 – SW2**
- (11) Certified True Copy of Title document – SW3**
- (12) Application for Registration of Power of Attorney – SW4**

The 1st and 2nd Defendants witness was cross examined and discharged. The 3rd and 4th Defendants did not call any witness but rest their case on the defence of the 1st and 2nd Defendants.

Parties filed and adopted their Final Written Addresses to give way to this Judgment.

The 3rd and 4th Defendants filed their final written address dated the 15th of September, 2025 and formulated 3 issues for determination, to wit:

- (1) Whether this Court has the jurisdiction to hear and determine this suit as presently constituted**

- (2) Whether the Claimant's suit discloses any reasonable cause of action.**
- (3) Whether the Claimant has proved his case by credible evidence to be entitled to the grant of reliefs sought.**

Learned Counsel, in arguing the issues, submitted that the Claimant has woefully failed to proof his case before this Court and therefore, same be dismissed.

On the part of the 1st and 2nd Defendants, two issues were formulated for determination, to wit;

- (1) Whether the Claimant has proved by cogent, credible and admissible evidence his entitlement to the Declarations and Orders sought from the Hon. Court.**
- (2) Whether the 1st and 2nd Defendants are entitled to their Counter claim.**

Learned Counsel argued the above issues succinctly citing relevant case law and statutes in urging the Court to dismiss the suit of the Claimant and grant the Counter claim of the 1st and 2nd Defendants.

On the part of the Claimant, the issue formulated was

Where in view of the adoted Statement on Oaths, pleading and documents tendered and admitted. (sic)The Claimant has lead credible, probative value (sic) to be attached to Plot No. 1653 Cadastral Zone A09 Guzape Abuja measuring approximately 1,353.40m² on the preponderance of evidence to entitle the Claimant to reliefs sought from this Hon. Court to so hold.

Learned Counsel argued the above issue citing relevant case laws in urging the Court to grant the reliefs sought by the Claimant and dismissed the Counter claim of the 1st and 2nd Defendants.

Before delving into the substantive issue, I shall first of all consider the issue raised by 3rd and 4th Defendants in their written address which touches on the jurisdiction of this Hon. Court i.e. *whether this Court has the jurisdiction to hear and determine this suit as presently constituted.*

It is the submission of Counsel to the 3rd and 4th Defendants that, the 3rd and 4th Defendants were sued and addressed as Director Development Control (AMMC) which is an official nomenclature of the Administrative head of an office that carryout the functions spelt out in the Nigeria Urban and Regional Planning Act and the name is not a juristic person.

Indeed, for an action to be properly constituted so as to vests jurisdiction in Court to adjudicate on it, there must be a competent Plaintiff and a competent Defendant each with the juristic or legal capacity to sue or be sued. As a general principle of law, when either of the parties is not a legal person, either natural or artificial, then the capacity or competence to initiate or defend the action as the case may be, would be absent and the action is liable to be struck out. **AGBONMAGBE BANK LTD VS. GENERAL MANAGER G.B OLIVANT LTD (1981) ALL NLR 116.**

The question is whether the 3rd and 4th Defendants are juristic persons to clothe this Court with jurisdiction to entertain this suit.

The law is that when both parties are quite familiar with the entity envisaged in a writ of summons and could not have been misled or have any real doubt or misgivings as to the identity of the person suing or being sued, then there can be no problem of mistaken identity to justify a striking out of the action. A misnomer that will vitiate the proceedings would be such that will cause reasonable doubt as to the identity of the person intending to sue or be sued. See **THE REGISTERED TRUSTEES OF THE AIRLINE OPERATORS OF NIG. VS. NIGERIAN AIRSPACE MANAGEMENT AGENCY (2014) LPELR 22372 (SC).**

From the above, I shall dismiss the argument of the 3rd and 4th Defendants' Counsel for been technical. Same is hereby dismissed.

On the part of Court, I have gone through the case of the Claimant as aptly presented by PW1 and the documents tendered on the one hand, and I have gone through the case of the 1st and 2nd Defendants with documents tendered on the other hand. I have also read through the written addresses of all the Counsel representing the Claimant, 1st and 2nd Defendants and that of the 3rd and 4th Defendants in this case. I shall be brief but succinct in addressing all the issues raised by parties in the interest of justice.

It is pertinent to note that the first three reliefs of the Claimant are declaratory in nature. Declaratory reliefs are not only a form of equitable relief, they are Statutory/rights as well as constitutional rights. Judgment founded on declaratory reliefs broadly speaking is just a pronouncement of the legal state of affairs. See **CELTEL NIG. LTD VS. ECONET WIRELESS LTD & ORS. (2014) LPELR 22430 (CA).**

It is trite that in cases, such as this where declaratory reliefs are sought and or claimed, notwithstanding the fact that the Defendant or respondent did not call any evidence to challenge the evidence of the Claimant such failure will not relieve the said Claimant from satisfying the Court by cogent and reliable evidence in support of his claim against the Defendant. The Court will not make declaration of rights either on mere admission or in default of a defence. See **AGBAJE VS. FASHOLA & ORS. (2008) 6 NWLR (Pt. 1082)**. The imperativeness of this arise from the fact that the Court has discretion to grant or refuse to grant such declaration. See **SAMESI VS. IGBE & ORS. (2011) LPELR 4412**.

The foregoing authority remains good law and binds this Court as well. On whether the Claimant in the case in view is entitled to the reliefs claimed or not, it becomes most expedient to ascertain the root of title of the Claimant first and foremost.

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

- (1) Traditional evidence**
- (2) Production of documents of title**
- (3) By proving acts of ownership numerous and positive enough to warrant an inference that the person is the owner**
- (4) Act of long possession and**
- (5) By proof of possession of connected or adjacent land.**

See **AKAOSE VS. NWOSU (1997) 1 NWLR (Pt. 482) 478 at 492 para 13 – 8**.

As aptly stated in evidence that both the Claimant and the 1st and 2nd Defendants came about the subject matter of litigation been plot No. **1653** Cadastral Zone **A09** Guzape Abuja measuring approximately **1,353.40m²** by virtue of Power of Attorney and Deed of Assignment, respectively donated and assigned by the same Grantor who is the original allottee of the property (Ghali Mohammed Abdu).

It is obvious from the pleadings and evidence of parties that both the Claimant and the 1st and 2nd Defendants traced the root of the title they claim over the subject matter of this suit to the same original owner Ghali Mohammed Abdu.

The duty of the Court will therefore be to determine from the available evidence, who actually got title from the original allottee. This is in view of the fact that, the title of the original allottee (Ghali Mohammed Abdu) is not in doubt, none of the parties is contesting same. Exhibits **SW2** tendered by the subpoenaed witness shows that Plot **1653** Cadastral Zone **A09** Guzape, Abuja measuring approximately **1,353.40m²** was duly allocated to Ghali Mohammed Abdu. The law is where the Plaintiff and the Defendant trace their title to an establish owner, the first to purchase the land is regarded as the owner of the land. He who is first in time has a better claim in law and equity. Where two contending parties in a land in dispute derive title from a common vendor, the first in time takes priority. This is summed up in the latin maxim “*quo poorest tempore, potiorest bure*” meaning the first in time has the strongest title. The resultant effect is that since the first to acquire title has a stronger title, the later in time must give way to the earlier one. He cannot in the circumstance maintain an action against the one who first

obtained title or interest in the property. The simple reason being that the grantor or original owner who divested himself of his title over the land in dispute to the first grantee had nothing; no Title to offer in respect of the said property. See **OGUNDARE VS. DUROJAIYE (2016) LPELR 41923 (CA)**.

The Claimant in proving his case, tendered Exhibit **P1**, a perusal of Exhibit **P1** which is original Right of Occupancy in relation to Plot **1853** belonging to the same allottee in Ghali Mohammed Abdu. Exhibit **P2** which is the letter of acceptance of the offer of allocation relates to Plot **1653** different from Exhibit P1. Whereas Exhibit P4 is a site plan produced on the 30/10/2023.

Similarly, the Claimant tendered Exhibit **P5** which is Power of Attorney. It was said to be registered in accordance with land instrument Registration law on the 05/07/2011.

However, subpoenaed witness tendered Exhibit **SW1** to show that there is no valid registered Power of Attorney in respect of the property in issue. The Court was also shown by evidence that the registered number imposed on Exhibit P5 was the registration number of another Power of Attorney registered in favour of one Uba Hamidu over a plot located at Dutse Alhaji.

The Claimant also stated in paragraph 5 of the Statement of claim as thus;

“The Claimant avers that sometime on the 29th August, 2009, the Minister of Federal Capital Territory allocated the offer of Statutory right of Occupancy to Ghali Mohammed Abdu who is the original and first allottee of the said plot in respect

of Plot No. 1653 Cadastral Zone A09 Guzape Abuja, the said statutory Right of Occupancy issued in favour of Ghali Mohammed Abdu is hereby pleaded and attached as Annexure 'A'."

I have seen annexure 'A' attached to the Writ of Summon before me, the Certificate is in respect of Plot **1653**. However, the Claimant tendered Right of Occupancy with Plot No. **1853** contrary to what was pleaded.

The law is trite that parties must be consistent in the presentation of their case before the Court. A party cannot be allowed to say one thing in pleadings then say another thing during trial. I wish to say that civil litigation is a very serious legal business. A party to any matter or cause is expected to be consistent and honest in the presentation of his claim, as litigation is not a game of hide and seek, deceit or tricks. See **EMMANUEL OLAMIDE LARMIE VS. D.P.M.S Ltd (2005) 18 NWLR (Pt. 958) 438 at 471 – 472.**

It is trite law, that in a civil matter such as this, the burden of proof is on the party who asserts of facts to prove same. This position of the law has been amplified in section 133 of the evidence Act, 2011. The burden of proof rests on the party who substantially asserts the affirmative of the issue. When it is said that onus of proof shifts from Plaintiff to Defendant and vice versa from time as the case progresses it means no more than the burden of proof may shift depending on how the scale of evidence preponderates. However, subject to the scale of evidence preponderating, the burden of proof rests squarely on the party who would fail if no evidence at all or no more evidence as the case may be, were given on either side.

However, let me quickly say that if a Plaintiff on whom always rests the onus of proving that affirmative of what he asserts, no burden shifts to the Defendants unless he has a Counter-claim. See **IROAGBARA VS. UFOMADU (2009) LPELR 1538 (SC)**.

The Claimant in its statement of claim stated in paragraph 10 as thus;

“The Claimant avers that upon the receipts of the Title Deed Plan (TDP), Ghali Mohammed then cause Plot No. 1653 Cadastral Zone A09 Guzape Abuja measuring approximately 1,353.40m² the said site plan showing plot Guzape/A09/1653 is hereby attached and marked as annexure E 1.”

The Claimant tendered the TDP in evidence as Exhibit **P4**. However, a look at the said Exhibit **P4** will reveal that same is dated 30/10/2023 contrary to what the Claimant said in the statement of claim.

The totality of the Claimant’s evidence did not corroborate the averment in his statement of claim. For example, he pleaded Rights of Occupancy of Plot **1653** but tendered that of Plot **1853**, he pleaded that his TDP was handed over to him in 2010 after purchase, but the TDP tendered was produced on 30/10/2023.

The Claimant did not tender the title documents he claimed were handed over to him after payment of the purchase consideration, and no evidence of payment of purchase consideration.

It is the law that parties should not lead evidence outside the facts pleaded. The aim of pleadings is to give notice of the case to be met,

which enable either party to prepare his evidence and arguments on the issues raised by the pleadings. Evidence which is at variance with the pleadings goes to no issue. Parties as well as the Court are bound by the pleadings. Evidence which is at variance with the pleadings should be disregarded or discountenanced. Therefore, it is not open to the Court to violate the pleadings of the parties and make a case for them contrary to their pleadings. See **MWANMUT VS. YONBUSH & ORS. (2022) LPELR 57038 (CA)**.

In their defence, the 1st and 2nd Defendants testified through the 2nd Defendant. The 2nd Defendant tendered Exhibit D1 which is the Deed of Assignment and Power of Attorney donated by Ghali Mohammed Abdu in favour of the 1st Defendant. The 1st and 2nd Defendants also tendered the original title documents consisting of the following as Exhibit D3:

- (a) Original offer of statutory Right of Occupancy**
- (b) Site plan dated 27/10/2009**
- (c) Statutory Right of Occupancy Bill dated 17/03/2010**
- (d) Application for Grant/Re-grant of Statutory Right of Occupancy acknowledgment dated 19/08/2009.**

Equally in evidence is Exhibit **D4** which is payment of ground rent in the year 2011 and Exhibit **SW3** tendered by subpoenaed witness showing the payment for registration of Power of Attorney.

From the avalanche of documents tendered by both parties as analysed in the preceding part of this Judgment, it is obvious that the Claimant has woefully failed to proof its case worthy of judicial pronouncement in his favour. The case of the 1st and 2nd Defendants is more superior and reliable.

On this layout, the case of the Claimant lacking in merit fails, is hereby dismissed.

Having dismissed the case of the Claimant, the Counter claim of the 1st and 2nd Defendants succeeds naturally from my findings based on evidence before the court in respect of the subject matter. Consequently, I make the following Orders:

1. **An Order is hereby granted** directing the Claimant/Defendant to Counter Claim to vacate Plot **1653**, measuring **1353.40m²** with Number **KN60563**, lying and situate at Cadastral Zone **A09**, Guzape District, Abuja FCT forthwith.
2. **I make Order** for the Award of **₦20,000,000.00** as Damages for Trespass against the Claimant.
3. The sum of **₦10,000,000.00** is assessed as cost of litigation

I make no further orders.

SIGNED:
HON.JUDGE
01/12/2025

APPEARANCE:

J. O. Elias, Esq., for the Claimant

Eloka J. Okoye, Esq, with C. B. Nwogu, Esq, for the 1st and 2nd Defendants

Y. Abubakar, Esq, with M. S. Ugwu, Esq, for the 3rd & 4th Defendants.