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

THIS MONDAY THE 7TH DAY OF MARCH, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/677/2017

BETWEEN:

ALJACO LIMITED ..... PLAINTIFF

AND

1. **SENATOR ADOLPHOUS WAGBARA**
2. **DANTAMILLS NIGERIA LIMITED**

..... DEFENDANTS

JUDGMENT

By an Amended Statement of Claim dated 10th December, 2019, the Plaintiff claims against the Defendants as follows:

a. **A DECLARATION that the Plaintiff is the owner of the piece of land at Kubwa described as Plot No. 133 on Cadastral Zone 07-05 within BAC/FCT/ABUJA covering a total area of about 2077.56sqm as described in the schedule to the Certificate of Occupancy of No. FCT/BZTP/LA/MISC/99/844.**

b. **A DECLARATION that conveyance of provisional approval dated 2nd February, 1995 granted to the Plaintiff is valid and subsisting.**

c. **An ORDER of perpetual injunction restraining the Defendant and his privies from trespassing on the said (sic) as described in prayer 1 (one).**

d. General Damages of N20, 000, 000.00 (Twenty Million Naira) only, being aggravated damages resulting from incessant destruction of the Plaintiff's gate by the Defendant and consequent trespass therefrom.

The Defendants filed a Statement of Defence dated 22nd March, 2018. Hearing then commenced. In proof of its case, the Plaintiff called only one witness **Udoka Dennis Oguekwe**, Secretary to the Plaintiff who testified as PW1. He deposed to a witness statement on oath dated 10th December, 2019 which he adopted at the hearing. He tendered in evidence the following documents to wit:

1. **Copy of Conveyance of Approval dated 2nd February, 2003 in the name of Aljaco Nigeria Limited was admitted as Exhibit P1.**

2. **Certificate of Occupancy No. FCT/BZTP/LA/MISC/99/844 issued to Aljaco Limited was admitted as Exhibit P2.**

3. **FCTA Regularisation of Land Titles and documents of FCT Area Councils Acknowledgment dated 30th August, 2006 was admitted as Exhibit P3.**

4. **Letters written by Plaintiff to:**

    i. **Honourable Minister FCT dated 26th June, 2009.**
    ii. **Department of Development Control dated 27th March, 2002.**
    iii. **Honourable Minister FCT dated 26th June, 2009 which is the same document as (i) above.**
    iv. **The Director Lands Department, FCT dated 27th June, 2009 were admitted as Exhibits P4 (1-4).**

5. **Letter by the Law Firm Legal Point Chamber to the Honourable Minister FCT dated 20th October, 2010 was admitted as Exhibit P4 (5).**

6. **Conveyance of Approval for Development Plan by Bwari Area Council to Plaintiff dated 18th July, 2022 was admitted as Exhibit P5.**

PW1 was then cross-examined by counsel to the defendants and in the process, a Certified True Copy of Board Resolution of Plaintiff dated 1st February, 2011

together with Form CAC 2.1 (particulars of the person who is the secretary of a company or of any changes therein) were admitted as **Exhibits P6 1 and 2.**

With the evidence of PW1, the Plaintiff rested or closed its case.

The defendants on their part also called only one witness, John Obaide, the **Investment Manager** of 2nd Defendant who testified as DW1. He deposed to a witness deposition dated 29th March, 2018 which he adopted at the hearing. He did not tender any documentary evidence. He was then cross-examined by counsel to the plaintiff and with his evidence, the defendants closed their case.

At the conclusion of trial, parties filed and exchanged final written addresses. In the defendants final address dated 27th October, 2021, two issues were raised as arising for determination to wit:

a. **Whether from the pleadings in the Amended Statement of Claim, this suit is not statute barred?**

b. **Whether the plaintiff has proved her case to be entitled to judgment.**

On the part of the plaintiff, the final address is dated 5th November, 2021 and four issues were raised as arising for determination as follows:

"1. Whether or not the Plaintiff has established title for this Court to enter judgment for declaration of title in favour of the Plaintiff.

2. **Whether or not the plaintiff has established a case of trespass against the Defendant to entitle the Plaintiff a relief of perpetual injunction against the Defendants and their privies from further trespass.**

3. **Whether or not the Plaintiff's case is statute barred and therefore caught up by the limitation law.**

4. **Whether or not the absence of the Plaintiff's witness name in the CAC form 2.1 impinged the testimonies of the said witness."**

The defendant then filed a Reply on points of law to the plaintiff's address dated 11th November, 2021.

I have given a careful and insightful consideration to all the issues as distilled by parties. On the pleadings which has precisely streamlined the issues and or

facts in dispute, the central key issue or dispute on which all parties are at a consensus adidem relates to the ownership of a piece or parcel of land at Kubwa described as Plot 133 on Cadastral Zone 07-05 hereinafter described as the plot. Both parties here lay claim to this Plot. All the other reliefs sought by plaintiff and indeed the case to the contrary made by the defendants can be considered within the context of the critical question of who as between the parties has established a better right of ownership and possession of the plot in dispute.

There is however the important question of whether the action is statute barred covered by issue 2 raised by plaintiff. Being a threshold question or issue, it is important to have it resolved before determining the fundamental question in dispute earlier identified. There are also the issues dealt with by defendants under its issue 2 and covered by issue 4 raised by plaintiff relating to the witness deposition of plaintiff witness and the admissibility of certain documentary evidence tendered by plaintiff vide **Exhibits P4 (1), (3), (4) and (5).** All these issues I will address under issue (2) raised by court before proceeding with the substance of the dispute.

This being so, the two issues formulated by defendants, albeit slightly modified by court hereunder appears to have captured the real issues to be determined in this case as follows:

1. **Whether or not the plaintiff's case is caught by the limitation law and thus statute barred?**

2. **Whether the plaintiff has established on a preponderance of evidence that it is entitled to any or all of the Reliefs claimed.**

Issues 1 and **3** raised by defendants and plaintiff covers **issue 1** above. **Issues 1, 2** and **4** raised by plaintiff and **issue 2** raised by defendants comes under the purview of **issue 2** above.

The above issues in my considered opinion conveniently covers all the issues raised 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.**

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at

the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

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

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issues formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle.

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

ISSUE 1

Whether or not the plaintiff's case is caught by the limitation law and thus statute barred?

Now in **paragraph 2(a)** of the statement of defence, the defendant pleaded as follows:

"The defendants shall either before, during or after the hearing of this suit raise a Preliminary Objection to the hearing of this suit for want of the requisite jurisdiction of this Honourable Court to entertain this suit on the following grounds, to wit:

a. **The purported cause of action in this suit is caught up by the limitation law in that by the Plaintiff's pleading the alleged cause of action in this suit arose in 2002."**

In the address of defendants, the point or contention is that by a cumulative reading of paragraphs 10 and 19 of the Amended Statement of Claim, the cause of action in this case (trespass) occurred in 2002 and that this necessitated the writing of the letter of 27th March, 2002 tendered in evidence as **Exhibit P4(2).**

That in law any action to be instituted in respect of **trespass** to land must be instituted within 10 years of the accrual of the cause of action. That in the instant suit, the purported cause of action arose in 2002 but that the suit was instituted on 23rd January, 2017, well outside the 10 years limitation period making the present case statute barred and liable to be dismissed. The cases of **Hon. Francis Oko & 2 ors V A.G. Ebonyi State (2021) 14 NWLR (pt.1795) 63 at 110 G-H; Egbe V Adefarasin (1987) 1 NWLR (pt.47) 1** were cited.

On the other side of the aisle, the case of plaintiff is that the limitation action has no application to the facts of this case. That on the facts streamlined on the pleadings, the complaint of plaintiff by paragraphs 18, 19 and 20 of the Amended Statement of Claim is that of a case of continuing acts of trespass on the disputed land by defendants.

It was submitted that the defendants by their pleadings admit that they are in possession and as such the principle of continuity of trespass constituting separate wrongs in trespass arises in this case. That where there is continuity of acts of trespass, successive actions can be maintained by a plaintiff from time to time in respect of the continuance of trespass. That it is from a combination of the above principles that the doctrine of continuing trespass emerged giving rise to actions from day to day as long as the wrong last and that in such a situation, an action for trespass cannot be defeated by a plea of limitation of time.

It was finally submitted that the defendant cannot be heard to contend that the cause of action arose on a particular date since they remained on the land in dispute even at the time the suit was been heard. The cases of **Obueke V Nnamchi (2012) 12 NWLR (pt.1314) 327** and **Oyebanji V Lawanson (2008) 15 NWLR (pt.1109) 128 at 138** were cited.

The defendants filed a Reply on points of law and in response on this issue contended that the doctrine of continuing trespass has no application because the plaintiff knew that defendant was on the land since 2002 and so ought to have instituted an action since 2002 within the time frame as allowed by law.

Now it is not in dispute that certain enactments do have time sensitive criteria and stipulate a time limit within which a party who alleges that his civil rights and obligations are stamped or must approach the court for redress. If such a wronged party fails or neglects to institute an action on schedule as permitted by the enactment, his suit becomes stale and statute-barred. Such a party is taken to be indolent and has slept on his violated rights. His tardiness in not taking action within the statutory period makes the court loose the jurisdiction to entertain his claim. See **Ajayi V Mil. Administrator of Ondo State (1997) 5 NWLR (pt.504) 237 at 254.**

Now how does a court know whether a suit is statute barred? The formula is fairly simple. A court looks at the filed writ of summons and statement of claim alleging when the wrong was committed by the defendant, that is, when the cause of action accrued, and situate the date with that when the writ of summons was filed in court. If the date of filing, as endorsed on the writ, is beyond that permitted by the limitation law, then the action is statute barred. See **Amusan V Obideyi (2005) 14 NWLR (pt.945) 322**. If otherwise, then it is not statute barred.

Let me quickly point out that no **limitation law** applicable in the FCT Abuja was identified by defendants situating a 10 year time frame for the filing of an action in **trespass**. Indeed is there any such provision in the limitation law of the FCT dealing with trespass? The plaintiff in its response did not equally identify any limitation law dealing specially with the issue of trespass.

Now, I think it is important to first situate the precise nature of the **cause of action** and the crux of the present action. So much has been made of the fact that the action is one on trespass simpliciter and the submissions made were anchored on trespass. The imprecise delineation, characterization or narrowing of the cause of action will appear to have coloured the submissions on the issue. The question that logically then arises is what is the precise cause of action as streamlined on the pleadings.

I had earlier at the beginning stated the claims of plaintiff. Let me for purposes of clarity highlight the relevant pleadings of plaintiff in the Amended Statement of Claim as follows:

"4. The Plaintiff by a provisional offer dated 2nd February, 1995 was conveyed with Right of Occupancy of Plot No. 133 Cadastral Zone 07-05 within BAC/FCT/ABUJA covering a total area of about 2077.56sqm by Abuja Municipal Area Council, Abuja, Nigeria. The said conveyance of provisional Approval of Right of Occupancy dated February, 1995 is hereby pleaded and will be relied upon during trial.

6. The Plaintiff avers that while the application for issuance of the Certificate of Occupancy was going on, the Plaintiff fenced the entire plot and built a steel gate with lock at the entrance of the gate.

10. The Plaintiff avers that sometime in 2002 the defendant broke through the Plaintiff's gate and gate man house.

11. The trespass continued thereby resulting to the Plaintiff reporting the matter to the Development Control Department vide a letter dated 27th March, 2002. The said letter is hereby pleaded and will be relied upon during trial.

12. The Plaintiff avers that during the course of the investigation by the Development Control Department that the Defendant came up with an allocation letter dated 10th day of June, 1996 laying claim to the ownership of the land.

13. At the time of the investigation by the Development Control Department which is sometime in 2002, the Plaintiff had already obtained a Certificate of Occupancy with respect to the said property.

14. The investigation revealed that the Defendant had bought the property from one Late Mr. Chigbo Frank who was once Chief Resident Lands Surveyor in Bwari Area Council, who acknowledged that there was a mix up and offered another plot to the Defendant for an exchange, as the Plaintiff allocation was earlier, about a year and half before the one he sold to the Defendant, unfortunately Mr. Chigbo is now dead.

15. The Plaintiff yet felt that Defendant at this point would shield his sword and stay clear from the land having been offered alternative land by his seller but this was not to be.

16. The Plaintiff avers that sometimes in 2009, the Plaintiff exercised its proprietary right over the land by selling same to an interested buyer who immediately commenced development on the land but was stopped by the Defendant.

17. The Plaintiff avers that the Defendant interference and being a person who had held the post of a Senate President stalled and frustrated the land transaction making the interested buyer to back out from the transaction and demanded for a refund from the Plaintiff.

18. The Plaintiff has suffered excruciating damages financially and otherwise as a result of continues (sic) trespass by the Defendant.

19. The Plaintiff had severally written to the appropriate authorities personally and through their Legal representatives to report the acts of trespass and encroachment occasioned by the Defendant on the said property dated 27th March, 2002, 20th October, 2010 and 27th June, 2009 and will rely on same during trial.

20. The Defendant had refused to retract his step and continued in his acts of trespass on the plaintiff property."

The above provides the factual basis for the clear and distinct Reliefs sought by claimant as earlier highlighted at the beginning of this judgment which cannot by any stretch of imagination be pigeon holed as a matter solely for **trespass** for it is a matter essentially for **Recovery of Land**.

From the above pleadings, the initial complaint of trespass may have been made in 2002 vide **Exhibit P4 (2)** dated 27th March, 2002 to the Acting Director, Department of Development Control FCDA but subsequent paragraphs of the pleadings vide **paragraphs 12-20** situates different interventions which alters completely the dynamics with respect to the initial trespass, including the alleged abatement of the trespass culminating in the offer of an alternative plot to the defendants. It is true that when a right accrues, it is the duty of the beneficiary to make moves to claim that right. Where a move is made as done

here and there is a favourable response by the offering of an alternative plot to defendants, the complaint of trespass at that point therefore becomes effectively abated. At this point, by the developments, no cause of action can be said to have accrued and there is really nothing to be enforced through the instrumentality of a judicial process. For purposes of limitation, time cannot therefore logically begin to run from **2002** as submitted by the defendants.

The plaintiff then further averred that in 2009, it exercised its proprietary right by **selling same to an interested buyer who immediately commenced development** before he was stopped by 1st defendant and this then led to the fresh letters of complaints to the Minister FCT dated 26th June, 2009 **(Exhibit P4(1) and (3)**; the Director Lands Development FCT dated 27th June, 2009 **(Exhibit P4 (4))** and another letter of complaint to the Minister FCT dated 20th October, 2010 **(Exhibit P4(5)).** These letters are variously titled trespass, illegal entry, unlawful takeover and forceful possession of 'plot 133' granted plaintiff. These alleged actions of defendants in 2009 and the letter of complaints written vide **Exhibits P4 (1), (3), (4)** and **(5)** clearly situates a fresh cause of action that has accrued and which is now enforceable through the judicial process.

Indeed a fair perusal of the relevant pleadings highlighted above leading to the Reliefs sought by claimant situates in the main, a case of title or Recovery of land with the claims for trespass, injunction and damages been ancillary claims. The defendants in **paragraph 6** of their defence situates the crux of this dispute as that of title when they also unequivocally averred **"that the land belongs to the 2nd defendant who has been in possession thereof till date."**

As demonstrated above, I am not sure that learned counsel to the defendants is entitled to assume that it is within his exclusive province to make deductions or findings from just one or two paragraphs of the Amended statement of claim when such deductions should or must logically flow from a reading of the entirety of the paragraphs of the Amended statement of claim to situate the true cause of action streamlined on the pleadings. Any deductions or conclusions made must reasonably reflect the case made out from the pleadings as a whole so as to be seen as a true understanding and interpretation of the paragraphs or contents of the Amended Statement of Claim in this case. Any conclusion thus reached on the basis of just one or two paragraphs of the extant pleadings which

is seen to fly in the face of its contents will be contradictory, perverse and will not fly.

On the whole, the claims as streamlined on the pleadings clearly incorporates reliefs for title, trespass, injunction and damages for trespass. The implication of these set of reliefs as presented is to put the **title** of the subject of dispute, in this case **plot No. 133** as the fulcrum of the courts inquiry. See **Odunze V Nwosu (2001) 13 NWLR (pt.1050) 1 at 53; Mafindi V Gendo (2006) All FWLR (pt.292) 157 at 165 FG.**

The defendants may have not filed a counter-claim seeking any relief but the pleadings in this case show that both parties lay claim to ownership of the disputed plot. Evidently both parties especially the claimant have the evidential burden of establishing their claim on the settled legal threshold. It is also apposite to add that in law a claim for declaration of title may even fail, but the claim for trespass and injunction may succeed. See **Monmom V Odili (2010) 2 NWLR (pt.1179) 419 at 446 B-D; Owhonda V Ekpechi (2003) 17 NWLR (pt.849) 326 at 345 C-E**. A claim for declaration of title is a separate and distinct Relief and different from a claim for trespass. The principles to situate the success of either reliefs are equally different.

Having streamlined with some clarity that the cause of action as clearly one of title or Recovery of land, let us now address the question of whether the action is statute barred.

Now in this case, it is important to state that the defendants did not refer me to any provision of the **Limitation Act Cap 522 Laws of the Federation (Abuja) 1990** applicable in the **FCT** which provides that an action for Trespass must be instituted within 10 (ten) years of the accrual of the cause of action as submitted in **paragraph 3.05** of the defendants final address.

The plaintiff equally in their final address referred me to **Sections 3** and **4** of the Limitations of Actions Act and there is no where to situate these provisions in the **Limitation Act** applicable in the **FCT**. I think it is important to emphasize that counsel must be careful in the submissions they make with particular reference to judicial or statutory authorities to ensure that whatever submissions they make reflect the correct statutory and or judicial position. It cannot be right that submissions are made and the authorities cited do not reflect or support the positions canvassed. There must be necessary due diligence on part

of counsel. I live it at that. As stated earlier, neither party referred to any provision of the **Limitation Act (supra)** applicable in the FCT situating explicitly a limitation time frame for **trespass**.

Now under the **Limitation Act (supra)** applicable to the FCT, the relevant provision with respect to limitation of actions to **Recover land** is **Section 15 (2) (a)** which provides thus:

"15(2) No action by a person to recover land –

(a) Shall, subject to paragraph (b) of this subjection, be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person."

The above provision is clear and unambiguous. No action by a person to recover land shall be brought after the expiration of **12 years** from the date on which the right of action accrued.

As already indicated, the cause of action in this case cannot be said to have accrued in **2002** for reasons already demonstrated. Yes, there may have been a complaint of trespass in 2002 and a right to sue clearly accruing to the plaintiff, but there case **on the pleadings** is that the matter was effectively settled by the offer of an alternative plot. The question then is with this development, what would the plaintiff be seeking to enforce at that point? In real times, nothing.

In **2009** the narrative however changed. The plaintiff said they exercise their right over the plot and sold and that the person who bought even commenced development before he was frustrated by 1st defendant and this explains the letters of complaints they again wrote vide **Exhibit P4 (1), (2), (4) and (5).**

A new cause of action clearly has arisen in 2009 relating to the disputed plot subsequent to the actions of defendants and any computation of time for purposes of limitation must commence at the least in **2009**. This action on the record for **Recovery of Land** was filed on 29th January, 2018 about 9 years after the cause of action arose in 2009 which is well within the purview of the twelve years time frame under **Section 15 (2) of the Limitation Act (supra).** It there cannot be correct to say that the plaintiff has slept on its rights or that this action is statute barred. The legal right of plaintiff to prosecute this case has

thus not been taken away by the Limitation Act (supra). **Issue (1)** is thus answered in the **negative**.

ISSUE 2

Whether the plaintiff has established on a preponderance of evidence that it is entitled to any or all of the Reliefs claimed.

I had at the beginning of this judgment stated the **claims** of **plaintiff**. As pointed out during the consideration of issue 1, the Reliefs claimed by plaintiff incorporates Reliefs for title, trespass, injunction and damages for trespass which puts the **title of the subject of dispute** at the hub of the extant inquiry. The plaintiff lays claim to the said plot 133. The defendants may have not situated or claimed any Reliefs but their defence is essentially that the plot belongs to the 2nd defendant who has been in possession thereof till date.

It is to the pleadings and evidence that we must now beam a critical judicial search light as we resolve the contested assertions. 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 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-emphasized because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

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

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by

evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

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

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

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

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

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

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

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

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

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

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

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

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

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131.** These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title to succeed but he is eminently entitled to rely on more than one root of title. See **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252.**

It is also important to note at the onset that some of the critical reliefs sought by plaintiff are **Declaratory Reliefs**. This being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V.**

Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262. The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

The above principles identified in some detail, provides broad legal and factual template as I shortly commence the inquiry into the claims of parties.

As stated earlier and before dealing with the merits of this issue, let me address certain issues raised by the defendants which has some bearing with this issue.

Firstly, the defendant contends that the witness deposition of the sole witness was made by a legal practitioner but that the written deposition does not have his NBA Stamp and Seal as required by **Rule 10 of the Rules of Professional Conduct** and thus incompetent. The plaintiff on the other side of the aisle argues that the said provision is not applicable to a legal practitioner who happens to be a witness and that the deposition of DW1 is thus competent.

I have here carefully considered the interesting submissions on both sides of the aisle. Let us however carefully and properly situate the common facts of this case as this will provide factual and legal basis to resolve the complaint.

Now from the Records of court and indeed the case file which the court is at liberty to peruse, the originating processes filed in the case to wit the writ of summons and statement of claim clearly bear the seal of counsel filing the suit, **Chigozie George Iwuanyanwu,** with SCN1084216, provided by the Nigerian Bar Association showing that counsel is fully enrolled as a legal practitioner and qualified to practice in Nigeria. An NBA seal was equally affixed to all the subsequent processes filed by Plaintiff in this case. The processes filed here fully complies with the extant provision of **Order 2 Rule 9 of the FCT Rules of Court 2018.** Indeed the said provision provides as follows:

"All processes filed at the Registry, shall bear the seal of the Counsel filing the suit as provided by the Nigeria Bar Association showing that the counsel is fully enrolled as a Legal Practitioner and qualified to practice in Nigeria."

The above provision is clear and unambiguous and it cannot be extended to cover every situation as done by counsel to the Defendants. This provision clearly talks of counsel filing the processes affixing his seal and stamp approved by the NBA. As demonstrated above, there has been sufficient compliance with this provision by the counsel to the Plaintiff.

Now even with respect to the provision of **Rule 10 (3) of the RPC**, and I shall shortly refer to decisions of the Apex Court on the issue, it is difficult to situate its application in the extant case. The provision of Rule 10 (3) cannot be read in isolation from the Rule 10 (1). Indeed Rule 10 (1) ought to be the starting point to really understand its true and correct import and it provides thus:

A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any Governmental Department or Ministry of any corporation shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigeria Bar Association.

The above provision is again clear. How this provision applies to a witness who happens to be a legal practitioner giving evidence in a matter, I really find difficult to appreciate or understand. It certainly does not fly in my opinion. Again at the risk of prolixity, the originating process franked by counsel has fully complied with this provision or Rule.

The validity of the originating processes therefore have clearly not been impugned or challenged by the Defendants. On the Record, when the deposition of PW1 was adopted at the hearing, no challenge was made out by Defendants on any ground(s). Indeed learned counsel for the Defendants extensively cross examined PW1 on the basis of his deposition and what is even curious is that the substance of the final address of Defendants particularly on issue 2 dealt again extensively with the same evidence of PW1 which he contends has not creditably made out a case on the evidence to entitle Plaintiff to the Reliefs sought.

Now it correct that under the provisions of **Order 2 Rule 2(1) of the Rules of Court,** one of the requirements in the filing of the originating writ and statement of claim is the salutary introduction of frontloading or upfront filing of documents to be used at trial and one of such document(s) is the filing of witness deposition(s) of witness(es). Let me quickly state immediately that there is however nothing in the Rules which provides that where the witness

binding on a lower court in the decision of a higher court is the principle or principles decided and not the rules and where the facts and circumstances in both cases are not similar or the same, the inferior court is not bound by the decision of the superior court. See **Clement V. Iwuanyanwu (1989)3 N.W.L.R (pt.107)39; Emeka V. Okadigbo (2012)18 N.W.L.R (pt.1331)35.**

In **Ugwuanyi V. Nicon Ins Plc (2013)11 N.W.L.R (pt.1366)546,** the Supreme Court made the point thus:

"…cases remain authorities only for what they decided. Thus an earlier decision of this court will only bind the court and subordinate courts in a subsequent case if the facts and the law which inform the earlier decision are the same or similar to those in the subsequent case. Where, therefore, the facts and/or legislation, which are to inform the decision on the subsequent case differ from those which informed the courts earlier decision, the earlier decision cannot serve as a precedent to the subsequent one."

Now in the case of **Wayo V. Nduul, (supra)** the Apex Court made pronouncements striking out the said appeal and it predicated its decision on the failure of counsel to affix a seal and stamp approved by the NBA on 1) **The Notice of Appeal and 2) The Appellant's brief of argument.** The earlier case of **Yaki V. Bagudu (2015)18 N.W.L.R (pt.1491)288** referred to by defendants which provided the inspiration in the **Wayo V. Nduul** case similarly dealt with the failure to affix the seal of the counsel issued by the NBA on the **Notice of Appeal**. These cases never donated the proposition that a witness statement deposed to by someone who happens to be a legal practitioner contained as part of an originating process properly filed with the seal of counsel who franked the originating processes must also similarly contain the seal of the legal practitioner before such practitioner can give evidence as a witness. These cases clearly are therefore distinguishable from the present case as I have demonstrated above.

Indeed in the Judgment in **Yaki V. Bagudu (supra),** the Apex Court per Onnoghen J.S.C (as he then was) explained the import of **Rule 10(3) of RPC at Pages 319-320 paras H-E** thus:

"What sub-rule (3) supra is saying is that such non-compliance renders the document so signed or filed voidable, that is why it is said that the

document is "deemed not to have been properly signed or filed." In other words, the offending document/instrument can be remedied at any stage in the proceedings by an application for and production and fixing of the seal…it should be noted that the qualification to practice law as a legal practitioner is as provided for under the Legal Practitioners Act which includes being called to the Bar and enrolled at the Supreme Court of Nigeria as a legal practitioner. It is that qualification that entitles a legal practitioner to sign/frank any legal document either for filing in court of law in a proceeding or otherwise."

The respected Jurist above has captured the true import of the provision of **Rule 10(3) of the RPC** and again on the basis of his exposition, it is difficult to see how this provision has application to a witness who happens to be a legal practitioner. The Rule properly understood relates to the practice of law as a legal practitioner which must necessarily involve being called to the Bar and enrolled at the Supreme Court of Nigeria as a legal practitioner. This qualification then entitles a legal practitioner to sign/frank any legal document for filing in a court of law. However this provision is stretched, there is no such qualifications before a legal practitioner can give evidence in court.

Except perhaps with respect to age and mental capacity as already alluded to under **Section 175(1) of the Evidence Act**, there is no qualification under the Evidence Act providing conditions for purposes of giving evidence in a civil trial. You don't have to be called to be Bar or enrolled at Supreme Court before a witness who happens to be a legal practitioner can give evidence. The qualification that allows or entitles a legal practitioner to sign/frank a legal document for filing in a court or law or proceeding has no relevance or nexus with his role as a witness in a civil trial. The provision of **Rule 10(3) of RPC** and **Order 2 Rule 9 of the Rules of Court** should therefore not be stretched beyond acceptable limits to create a scenario not contemplated by the framers. The Rule must therefore be narrowly construed or given a narrow interpretation to ensure its effectiveness and permit or allow a legal practitioner to give evidence as a witness in civil trials in support of ordinary and legitimate grievances without creating unnecessary obstacles which only serve to severely subvert the cause of justice.

The bottom line is that there is a fundamental difference between the role of a legal practitioner filing a case or suit in contradistinction to his role as a witness

in a trial or hearing which I concede, not everybody, including the legally enlightened, may have the self awareness to appreciate, but it is there. I leave it at that.

Each party has a right to have his dispute determined on the merits and courts have a duty or obligation to do everything to favour the fair trial of the questions before them. See **United Spinners Ltd V. Chartered Bank Ltd (2001)14 N.W.L.R (pt.732)195 at 216A; Wakwah V.Ossai (2002)2 N.W.L.R (pt.752)548 at 562 F-G.** This is the salutary step or position I have taken in this case. This issue is thus resolved against Defendants. On the whole the deposition of PW1 is competent.

Flowing from the above is the contention by defendants that the said **witness** for the plaintiff perjured when he stated that he is the Secretary of the plaintiff. Let me quickly state I have carefully read the pleadings of parties and there is nothing turning on who is the company Secretary or the right and proper company secretary of plaintiff. No issue was made on this point on the pleadings and it appears to me that the address is been used to expand the remit of the grievance beyond that streamlined on the pleadings. The plaintiff never pleaded or alluded to any CAC Form to situate that PW1 is a company secretary and the defendant did not assert a contrary position to make it a defined issue. If they had, the plaintiff would then have needed to file a reply in response and or then lead evidence in proof of a precisely streamlined issue. Let me however still out of caution evaluate the complaint made out by defendants on the issue.

Now it is true that during the cross-examination of PW1, the defendants tendered copies of Board Resolution of plaintiff vide **Exhibit P6(1)** and Corporate Affairs Commission (CAC) Form 1 (particulars of a person who is the secretary of a company or of any changes therein) vide **Exhibit P6(2)** showing that the company secretary of plaintiff was one **Akpamgbo Augustine Esq**. but what these documents show is that the said **Akpamgbo Augustine** was only company secretary as at **2011**. The Exhibits are clear and speaks to a specific year. The Board Resolution and the CAC 2.1 Forms vide **Exhibits 6 (1)** and **(2)** are specific to just the year **2011**. The Exhibits did not say that the said Augustine Akpamgbo is the eternal company Secretary of plaintiff. It is obvious to say that no additions or interpolation can be made to these exhibits to suit a particular purpose. See **Section 132 of the Evidence Act**. Nothing was put forward by defendants situating that as at 2021 when PW1 gave evidence,

that he is not the company secretary of plaintiff. The defendants did not also produce the said Akpamgbo Augustine or any document from CAC showing that he is still the company secretary as at 2021.

Fundamentally, neither of **defendants** is a member or director of plaintiff company. It therefore does not lie within its purview to raise such a complaint. If there should be any complaint that PW1 is not the company secretary, it should emanate from the plaintiff's company itself and no one else. The only other legitimate way to make this type of challenge is to perhaps produce Certified True Copies of the relevant forms or notices from CAC showing the present company Secretary of the plaintiff.

The contention that PW1 perjured is clearly a crime of telling a lie in court after he may have been sworn in to tell the truth. Such an allegation is usually proven beyond reasonable doubt. See **Section 135 (1) of the Evidence**. The defendants clearly have not established perjury or put another way the defendants cannot conceivably rely on a **2011** document to prove that the representation that PW1 is a company secretary in **2021** is incorrect.

On the whole the position that PW1 is the company secretary of plaintiff has not been materially or substantially challenged. His evidence is thus available to be evaluated.

Finally, I deal with the objections relating to the admissibility of **Exhibits P4 (2), (4) and (5) and P5**. The documents are:

1. **Letter written by plaintiff to Director, Development Control dated 27th March, 2002 was admitted as Exhibit P4(2).**

2. **Letter written by plaintiff to Director Lands Department FCT dated 27th June, 2009 was admitted as Exhibit P4 (4).**

3. **Letter by the Law Firm Legal Point Chamber to the Honourable Minister FCT dated 20th October, 2020 was admitted as Exhibit P4 (5).**

4. **Conveyance of approval for Development Plan by Bwari Area Council dated 18th July, 2002 was admitted as Exhibit P5.**

The case made out by defendants is that all these documents are photocopies of public documents and having not been certified are inadmissible in law.

Reliance was placed on **Section 102 of the Evidence Act**. The plaintiff on its part contends that the documents are private documents kept in their custody and not documents kept for public records. That they indeed wrote to public officers but they retained the original copies. That the letters in the custody of the public officer is the public document not the copies that remained with plaintiff. Finally it was submitted that sufficient foundation was laid before they brought photocopies of the originals with them.

This issue calls for a proper interpretation of the provision of **Section 102 and 102 (b) of the Evidence Act** which provides thus:

"The following documents are public documents –

(a) Documents forming the official acts or records of the official acts of –

(i) of the sovereign authority;
(ii) of official bodies and tribunals;
(iii) of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; and

(b) Public records kept in Nigeria of private documents."

Let me start with the conveyance of approval for development plan tendered as **Exhibit P5** by plaintiff. There is no doubt here that said conveyance of approval for Development plan was produced by the Zonal Planning Department of Bwari Area Council and is without argument a public document within the purview of **Section 102** above.

The settled jurisprudence on tendering of public documents is that a party either tenders the original within the purview of **Section 88 of the Evidence Act** and where the original is not available, the only admissible evidence is a Certified True Copy within the purview of **Section 89 (e)** and **90 (1) (c) of the Evidence Act.**

In this case, a perusal of **Exhibit P5** shows that it is a photocopy of a public document and having not been certified is without question inadmissible and will thus be discountenanced in the process of evaluation of the evidence on Record.

The law is settled that a document wrongly admitted can be expunged at the stage or point when the judgment is been considered. The court at all times can

only properly act on admissible evidence. See **UBA Plc V Ayinke (2000) 7 NWLR (pt663) 83 at 100 B-C; A.G. Leventis (Nig.) Plc V Akpu (2007) 17 NWLR (pt.1063) 416 at 440 G-H.**

Now **Exhibits P4 (2)**, **(4)** and **(5)** may have originally been private documents but they were written to personalities subject of those letters in their official capacities which therefore formed part of the Records of those Government institutions and consequently became public documents within the purview of **Section 102 (b) supra**. For purposes of clarity, **Exhibit P4 (2)** was written to the Director, Development Control FCDA in his official capacity. **Exhibits P4 (4)** was equally written to the Director, Lands Department FCDA in his official capacity. The position holds true for **Exhibit P4 (5)** written again to the Honourable Minister, FCT in his official capacity.

Yes they may be private letters but once sent out to the head of these Government institution, the letters now assume the character of public documents because they now become public Record kept in Nigeria of a private document which comes under the purview of **Section 102 (b) of the Evidence Act**.

As a logical corollary, the letters are public documents and there ought to have been a certification that they are true copies of the originals to make them admissible in evidence. See **Aromolaran V Agoro (2014) 18 NWLR (pt.438) 153 and Tabik Inv. Ltd V GTB (2011) 17 NWLR (pt.1276) 240**.

The letters clearly having not been certified are therefore inadmissible and will similarly be expunged. Having dealt with the above preliminary issues, I now proceed with the substantive critical question raised under **issue (2).**

Now the case of **plaintiff** through PW1 is fairly straightforward. I will concern myself with the facts that have direct bearing with the crux of the dispute. By letter of provisional approval issued by the **Abuja Municipal Area Council** dated 2nd February, 1995 tendered as **Exhibit P1**, PW1 stated that the plaintiff was allocated Plot No. 133 at Kubwa and it immediately commenced the processing of getting a Certificate of Occupancy and while this process was on going, they fenced the plot and built a steel gate for the land. By **Exhibit P2**, **a Certificate of Occupancy No. FCT/BZIP/CA/MISC/99/8CN** was issued to the plaintiff and that it now subsequently applied for a building approval which was granted by Bwari Area Council, Zonal Planning Unit. It is also in evidence

of PW1 that when the Regularisation of Land Titles and documents of FCT Area Council started, the plaintiff participated in the exercise and was issued an acknowledgment admitted in evidence as **Exhibit P3**.

It follows that the claimant here appear to found their claim of **title** or **ownership** of the disputed plot on production of title documents. As already alluded to, a claimant can establish his title to land in dispute by production of title documents. It will be noted immediately that this judgment did not concern itself with the averments vide paragraphs 10, 12 – 14 of the statement of claim that when parties had the initial dispute in 2002, it was resolved and an alternative plot given to defendant. No evidence was really led by the plaintiff to support or situate these averments. In the absence of evidence, the aspect of the pleadings really has no factual or legal resonance. This however does not detract in any sence or in anyway from the allocations made to plaintiff and this appears to me to be what is of direct relevance to the contested assertions in this case.

On the evidence, the defendants did not in any significant manner challenge or impugn the evidence of the plaintiff with respect to the **allocations** made with respect to plot 133 identified or streamlined above.

The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial judge who would in turn ascribe probative value to it. See **Ebeinwe V State (2011) 7 NWLR (pt.1246) 402 at 416 D**. Indeed the law is that where evidence given by a witness is not contradicted by any other admissible evidence, the trial judge is bound to accept and act on that evidence, even if it had been minimal evidence. See **Adeleke V Iyanda (2001) 13 NWLR (pt.729) 1 at 22-23 AC.**

Now on the other side of the aisle, as stated earlier, the defendants also lay claim to this plot of land. Unlike the plaintiff, the defendant did not however tender any **documentary** evidence to situate any allocation to the disputed plot. How a claim of ownership can legitimately be made under the land tenure system in the FCT, Abuja without **documents of title** really remains to be seen. It may be relevant to perhaps properly situate the case of the defendants from the following relevant paragraphs of the defence as follows:

"3.Subject to the outcome of the Preliminary Objection raised in paragraph 2 herein above, the Defendants deny paragraphs 4 to 8 of the

Statement of Claim in further answer thereto aver that the Plaintiff's said provisional offer letter dated 2nd February, 1995 as well as the Certificate of Occupancy and the Building approval were surreptitiously obtained and not in relation to the 2nd Defendant's parcel of land. The Plaintiff was on the frolic of her own when she allegedly made payment of fees for the Defendant's plot of land.

6. **The truth is simply that the land belongs to the 2nd Defendant who has been in possession thereof till date. It was rather the Plaintiff who made efforts to trespass into the land but was resisted by the 2nd Defendant. This made the Plaintiff to report the matter to the Development Control Department against someone else and not the Defendants.**

7. **The Development Control Department found as a fact that the said plot of land belongs to the 2nd Defendant and accordingly offered an alternative plot of land to the Plaintiff which the Plaintiff accepted.**

8. **The 2nd Defendant therefore continued being in possession of the said land which she let to someone using same as a mechanic workshop. The 2nd Defendant has neither seen nor heard from the plaintiff since then and was very surprised when the plaintiff caused this suit to be instituted against the Defendants for no just cause.**

9. **The Defendants deny that the said FRANK CHIGBO admitted there was a mix up let alone being offered another plot of land to the Defendants in exchange of the 2nd Defendant's said plots of land.**

10. **The defendants further deny that the Plaintiff sold any portion of the 2nd Defendant's land to an interested person let alone the Defendants stopping him from developing the said land in 2009 or in any other year at all. The Plaintiff has not suffered any damages let alone suffering excruciating damages financially and otherwise as alleged or at all."**

The only witness for the **defendants** simply repeated the above assertions in his witness deposition. The defendants' contend that the plaintiff did not file a reply or join issues with respect to paragraph 3 above and that there was thus an admission by plaintiff that the defendants have a title document to the land.

I am not sure I share the enthusiasm of defendants here. Paragraph 3 of the defence above and indeed the relevant averments of the Defence highlighted above clearly joined issues with plaintiff with respect to the averments in its **"paragraphs 4 to 8".** The joining of issues here has made the issue of plaintiff's allocations and the contention by defendants that they were **"surreptitiously obtained"** a matter now for proof by credible evidence. The same goes for the other contentions of defendants that the land belongs to 2nd defendant and that they have been in continuous possession. There is no admission here and there was absolutely no need for a Reply as erroneously contended by defendants. The failure to file a Reply cannot by any stretch of the imagination translate to an admission that defendants have the title documents to the disputed plot as erroneously canvassed by learned counsel to the defendants. By the nature of the issues precisely streamlined on the pleadings, it is for each party to present its allocation to the disputed plot from a competent authority and to creditably establish by evidence the averments made in the pleadings.

A **Reply** in law is the defence of a plaintiff to the counter claim of a defendant **or** to new facts raised by the defendant in his defence to the plaintiffs statement of claim. See **Oshodu V Eyifunmi (2000) 7 SC (pt.10) 145**. Indeed the function of a reply is to raise, in answer to the averments contained in a statement of defence, any matters or facts which must be specifically pleaded or which make the defence not maintainable or which might take the defence by surprise or which raise issues of fact not arising out of the defence. See **Akeredolu V Akenremi (1989) 3 NWLR (pt.108) 164 SC.**

There was therefore in the circumstances no need for a Reply. The contested assertions on the **pleadings** must be proved by evidence of quality and probative value.

The questions that arises from the pleadings of defendants are numerous as follows: if the plaintiff **"surreptitiously"** obtained its allocations, where is the evidence to sustain such serious allegation? If the land belongs to 2nd defendant and it has been in possession thereof till date, as asserted in paragraph 6 above, where is the document or allocation from any authority to situate the allocation. Indeed where is the evidence to situate ownership or that it has exercised acts of possession on the plot. If the plot was let to **'someone'** to use as a mechanic

workshop as pleaded in paragraph 8, who is the person and why was he not presented in court to give evidence?

Furthermore if the Development Control Department found as a fact that the disputed plot belongs to 2nd defendant and offered an alternative plot to the plaintiff which plaintiff accepted, where is the evidence to **situate** or prove these facts as asserted. The defendants really offered nothing beyond bare challenged oral assertions to situate or prove that the **plaintiff surreptitiously acquired its allocation**s over the disputed plot and also that the land belongs to 2nd defendant and that they have been in possession.

It is settled law that averments in pleadings do not amount to evidence. Where evidence is not led in support of averments, they are deemed as abandoned, unless admitted. Indeed it is trite law that pleadings, however strong and convincing the averments may be, without evidence in proof thereof goes to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must then be led to prove the facts relied on by the party to sustain the allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27; Monkom V Odili (2010) 2 NWLR (pt.1179) 419 at 443 A-B**.

From the analysis of the pleadings and evidence on both sides of the aisle, it is obvious that the plaintiff has pleaded and proved title to the disputed plot by production of its **title documents** over the plot which were not challenged or impugned. Indeed the defendants did not **produce anybody from the issuing authorities** to question or challenge the allocations made to plaintiff. The 2nd defendant on its part who claimed that the land **"belongs"** to it did not proffer any evidence in proof or to situate that the disputed land belongs to it. As stated earlier, the pleaded acts of possession was not proven by credible or indeed any evidence, no matter how small or little. Acts of possession in law is indeed one of the ways of establishing title to land, but the possessory acts must be identified and proven in evidence. Most importantly, acts of possession is not a better way of proving title than the proof of title itself. See **Aliko V Ogwo (2010) 5 NWLR (pt.1187) 281 at 312 G.**

In this case apart from the provisional approval given to plaintiff vide **Exhibit P1**, which was not challenged, they were equally issued with a certificate of occupancy vide **Exhibit P2**. In law it is true that a document of title such as a **Certificate of Occupancy** is prima facie evidence of right or valid title and may

in appropriate cases be effectively challenged and rendered invalid. See **Olotunde V Adeyoju (2002) 10 NWLR (pt.676) 562 at 587 C-D; Ilona V Idakwo (supra).** The challenge cannot however be based on empty or impotent assertions.

There is in this case absolutely no challenge to the allocations of **plaintiff** of any kind by the defendants. Nobody as stated earlier was called from the issuing authority to challenge or impugn the credibility of the allocations vide **Exhibits P1 and P2** and they must be thus accorded probative value.

Now it is true or correct that the mere production of title documents does not automatically prove ownership. Rather the production and reliance upon such an instrument carries with it the need to inquire into some or all of a number of questions including:

i) Whether the documents are genuine and valid?
ii) Whether it has been duly executed, stamped and registered?
iii) Whether the grantor had the capacity and authority to make the grant?
iv) Whether the grantor had in fact what he purported to grant?
v) Whether it had the effect claimed by the holder of the documents?

See **Romaine V Romaine (1992) 4 NWLR (pt.238) 650 at 662 D-G; Kyari V Alkali (2001) 11 NWLR (pt.724) 412 at 440 B-D.**

In this case the defendants did not raise or make an issue at all on any of the above posers either in their pleadings or evidence as already demonstrated. There was effectively no evidence that could have provided a template or basis to answer the above questions. Since no issues were defined on the pleadings relating to these posers or evidence led on them, the court cannot at the judgment stage expand the remit of parties grievance beyond that streamlined on the pleadings and evidence. The fundamental underpinning philosophy behind filing of pleadings is for parties to as it were properly streamline the facts in dispute allowing the party or parties on the other side to know the case they are to meet in court. See **Bunge V. Governor of Rivers State (2006) 12 NWLR (pt.993) 573 at 598-599 H-B; Balogun V Adejobi (1995) 2 NWLR (pt.376) 131 at 15 C**. Civil litigation is not a game of chess or hide and seek and as such all cards as it is stated in popular parlance must be laid on the table and there is no room for surprises.

In the case of **Adeniran V. Alao (2001)118 N.W.L.R (pt.745)361 at 381 to 382;** the Supreme Court stated thus:

"Parties and the court are bound by the parties' pleadings. Therefore, while parties must keep within them, in the same way but put in other words, the court must not stray away from them to commit itself upon issues not properly before it. In other words, the court itself is as much bound by the pleadings of the parties as they themselves. It is not part of duty or function of the court to enter upon any inquiry into the case before it other than to adjudicate upon specific matters in dispute which the parties themselves have raised by their pleadings. In the instant case, the question of due execution of Exhibit 1, the deed of conveyance relied on by the appellant, was never an issue on the pleadings of the parties. The trial court and the Court of Appeal were therefore wrong in treating same as an issue in the case. The Court of Appeal lacked the jurisdiction to determine the point of due execution which was not before it."

On the whole, as I have, I hope demonstrated, the defendants and or 2nd defendant has not on the balance established that it has a better claim of title to the disputed plot 133 than the plaintiff. In law, where two parties claim possession, the law ascribes claim possession to one who can show a better title. See **Iseru V Catholic Bishop Warri Diocese (1997) 3 NWLR (pt.495) 517 at 526, Biariko V Edeh-Ogwuile (2001) 12 NWLR (pt.726) 233 at 262-263; Thampson V Arowolo (2003) 7 NWLR (pt.818) 163 at 208 B**.

Indeed the law is settled that where there is a dispute as to which of the two persons is in possession, the presumption is that the person having title to the land is in possession. See **Basil V Fajebe (2001) 11 NWLR (pt.725) 592 at 617 C-D**. Indeed the law is settled that where a party has better title to a disputed plot, there is a legal presumption in his favour, that he is the party in exclusive possession and bestows in him the locus to even sue for trespass on the plot. In the case of **Carrena V. Akinlase (2008)14 NWLR (pt.1107)262 at 281, paras F-H, the Supreme Court per Tabai,** JSC, re-echoed the law thus:

"…A person, who has title over a piece of land, though not in *de facto* physical possession, is deemed, in the eyes of the law, to be the person in possession. This is because the law attaches possession to title and ascribed it to the person who has title. Such a possession is the legal possession which is sometimes also called constructive possession. Conversely a

trespasser, though in actual physical possession to the land, is regarded in law not to be in any possession since he cannot, by his own wrongful act of trespass acquire any possession recognised at law. This gives credence to the principle that where there are rival claimants to possession of a piece of land, the law ascribes possession to the party who has title or better title."

I have no difficulty in holding by a confluence of facts found in this case that the plaintiff has creditably proven its entitlement to Plot 133, Cadastral Zone 07-05 covered by the Conveyance of Provisional Approval, **Exhibit P1** and the Certificate of Occupancy, **Exhibit P2** and thus entitled to the declarations sought. A party is in law entitled to succeed at trial where evidence of title is satisfactory and conclusive. See **Nnabuife V Nwigwu (2001) 9 NWLR (pt.719) 10 at 727**.

As a logical corollary, **Reliefs (a)** and **(b)** succeed and they are granted.

Relief (c) is for an order of injunction which is an ancillary relief to **Reliefs (a)** and **(b).** With the success of these Reliefs, **Relief (c)** has merit and is equally availing.

The final **Relief (d)** is for General damages of **N20, 000, 000** only being aggravated damages resulting from incessant destruction of the plaintiff gate by the Defendants and consequent trespass therefrom.

Now **trespass** in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of that owner is an act of trespass actionable without any proof of damages. See **Ajibulu V. Ajayi (2004) 11 N.W.C. R (pt 885) 458 at 48)**

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

Now on the pleadings and evidence, the plaintiff may have pleaded that it fenced the plot and built a gate but this was denied by the defendants in **paragraph 3 of their defence** and this then clearly became a matter for proof by credible evidence. The plaintiff may have been found to have **title** over the plot by virtue of the allocations, but it did not provide any scintilla of evidence to show or situate that it fenced the building and that a gate was constructed on the plot. Most importantly no evidence was put forward beyond bare

challenged oral assertions proving or showing the destruction of any gate and who was responsible. These are matters that cannot be left to speculation or guess work.

As stated earlier when considering **issue (1)** and even the extant **issue (2)** the trespass allegedly committed in 2002 was abated and effectively settled by the offer of alternative plot to defendant, even if no evidence was proffered to situate this arrangement.

Also, in paragraphs 16, 17 and 18 of the claim, the plaintiff alleged that sometime in 2009, it exercised its proprietary right and sold the land to an interested buyer who commenced development but that the 1st defendant intervene to frustrate the sale and that it suffered "excruciating damages" as a result of the "continuing trespass." Here again this "interested buyer" was not presented by plaintiff in court to situate the sale and explain how the 1st defendant frustrated the sale or how his action(s) impacted on the transaction with plaintiff.

As stated severally in this judgment, a mere averment in pleadings proves nothing, unless admitted. See **Union Bank Plc V Astra Builders (W/A) Ltd (supra)**. Indeed our Superior Courts have described averments in pleadings as mere paper tigers and are not evidence. It will therefore be wrong for any court to treat averments in a pleading without evidence as evidence of matters averred therein. See **Omo-Agege V Oghojafor (2011) NWLR (pt.1234) 341 at 353 G-H**.

It is true that on the evidence, the plaintiff may have written letters of complaints to the issuing authorities but there is nothing to show that they took any steps to determine who was responsible for the acts of trespass on plaintiff's plot and the court cannot speculate.

Flowing from the above, the plaintiff may have not creditably established who was responsible for the trespass and the destruction allegedly occasioned but I note that the defendants both in its pleadings and evidence claimed the land **"belongs"** to 2nd defendant and that they have been in **"possession thereof till date."** This appears to be an admission by defendants and it may be argued that there is here an unjustified intrusion even if the remit of the intrusion is unclear. Despite this seeming admission by defendants, I am however unable to see either in the pleadings or evidence of plaintiff the precise basis or premise for

the huge sum of N20, 000, 000 claimed as aggravated damages for “incessant destruction of the plaintiff’s gate” and “consequent trespass” by defendants therefrom.

While it is true that general damages are awarded for proved acts of trespass, it