IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.

SUIT NO. CV/2972/2018

BETWEEN:

MOHAMMED ALI --- CLAIMANT

AND

1. MINISTER OF FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL TERRITORY AUTHORITY ---- DEFENDANTS

JUDGMENT

DELIVERED ON THE 19TH FEBRUARY 2021

By paragraph 14 his Statement of Claim dated the 11th June, 2018 but filed on the 10th day of October, 2018, the Claimant, who commenced the instant suit by his Writ of Summons, claimed against the Defendants as follows:

A. A DECLARATION that the Claimant bought from and paid to the late Sunday A. Echoda, original allotee, Plot No. 475 CO2 Gwarinpa District Abuja, measuring approximately 1904.50m2 subject matter of this suit. ("the Plot").

B. A DECLARATION that the Claimant was given among other documents the original Certificate of Occupancy of the said plot by Sunday A. Echoda, original allottee, via a Power of Attorney Dated 26th May, 2013

C. A DECLARATION that having regard to the provisions of the Land Use Act, 1978/LFN 1990, the Constitution of the Federal Republic of Nigeria 1999, and other laws in that behalf, Claimant is in the circumstances the rightful holder of the Plot and is entitled to exercise all the rights of a title holder including the powers to transfer his title.

D. A DECLARATION that, Claimant having taken all necessary and reasonable steps to ascertain the veracity and validity of the title of the

original allottee of the said Plot before purchase is in the circumstances the rightful title holder of the Plot and is entitled to exefcise all the rights of a holder including the right to transfer his title.

E. A DECLARATION that Defendants are, in the circumstances of this case, estopped from denying the title and the title rights of the Claimant in Plot No. 475 CO2 Gwarinpa District, Abuja, the subject matter of this suit; and that the attempt by the Defendants to disturb the peaceful enjoyment of the title rights of the Claimant over the Plot, especially the right to transfer title to same is illegal, null and void.

F. AN ORDER OF MANDAMUS directing the Defendants to complete all legal processes necessary including granting the necessary consent and to register the power of attorney and deed of assignment over the Plot No. 475 CO2 Gwarinpa District, Abuja to enable the Claimant assign the Plot to third parties having met all the required conditions.

G. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants, their agents, privies or person claiming under or for them or in trust for them from further disturbing or depriving the Claimant the peaceful enjoyment of the rights of a title holder over the Plot No. 475 CO2 Gwarinpa District, Abuja under the guise of any irregularity regarding the collection of the Certificate of Occupancy.

H. EXAMPLARY DAMAGES against the defendants for despicable conduct.

I. GENERAL DAMAGES in the sum of 10, 000, 00.00 (sic) (Ten Million Naira) only.

By a Motion dated the 7th day of March, 2019, but filed on the 11th day of March, 2019, the Defendants sought that time be extended for them within which they would file their memorandum of appearance, Statement of Defence and Witness Statement on Oath, an order deeming the said processes as duly filed separately and served. The said

prayers were granted as prayed. In consequence, the Defendants filed their processes and joined issues with the Claimant on his claims resulting in a full blown trial on the merit of the case whereat the both parties put forward their cases through their witnesses. What then are the cases of the parties?

THE CASE OF THE CLAIMANT:

The relevant facts on which the Claimant founds his claims appear at **paragraphs 5, 6, 7, 8, 9, 10, 11 and 12 of the Statement of Claim** which I will now reproduce in extensor thus:

> 5. The Claimant acquired the Plot from one Mr. Sunday A. Echoda, (now deceased), the original allotee via a Deed of Assignment and Power of Attorney both dated 26th May, 2013. The Deed of Assignment and Power of Attorney are hereby pleaded and shall be relied upon at the trial.
>
> 6. The Claimant acquired the said Plot upon a legal search carried out on the property at the Abuja Geographic Information System, a Department of 2nd Defendant which revealed regularity of the title, and upon sighting of the Certificate of Occupancy and confirmation of genuineness of same.
>
> 7. The Claimant however did not immediately register his interest or perfect his title after purchase but he was in possession of a letter or authority to register Power of Attorney and Deed of Assignment from Mr. Sunday A. Echoda, the original allottee.
>
> 8. The Claimant has decided to sell off and transfer his interest in the plot and was made an offer by a third-party Hon. Adamu Kamale, who paid an initial deposit N3, 750, 000.00 (Three Million, Seven Hundred and Fifty Thousand Naira Only) with an agreement that the balance of N31, 250, 000.00 (Thirty-One Million, Two

Hundred and Fifty Thousand Naira Only) would be paid upon perfection of the Claimant's title or registration of his interest.

9. Before making the payment, the prospective buyer also had carried out a legal search

10. The Claimant thereafter applied to register the Power of Attorney with the 2nd Defendant being the statutory authority with the responsibility to do so, however in the course of doing this, the Claimant was informed that the Certificate of Occupancy is irregular and therefore Registration of the Power of Attorney would not be done. Officials of the 2nd Defendant also threatened to get the Claimant arrested over the irregularity.

11. The information has reached the prospective buyer who has decided to opt out of the transaction and is demanding for a refund of the deposit failing which he has threatened to get the Claimant arrested.

12. The Claimant has made several oral and written representations to the defendants regarding how he acquired the title and the steps taken and the fact that the defendant confirmed the authenticity of the title and title documents. The letter to the 2nd Defendant is hereby pleaded and shall be relied on at trial. 2nd Defendant is hereby put on notice to produce the said letter at the trial.

THE CASE OF THE DEFENDANT:

The salient portion of the Defendants' case is found at **paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14of the Defendant's Statement of Defence** thus:

4. In response to Plaintiff's claim vide paragraph 10, the Defendants state that legal search is a process of verification, confirmation or

otherwise of a title by the Defendants and on the application of a title holder.

5. The Defendants states (sic) that whenever a title holder or any applicant apply to conduct a legal search, he or she is expected to present the original title documents for sighting and authentication of same before a legal search report will be issued to the applicant.

6. The fact that the Plaintiff has applied for a legal search in respect of Plot 475, CO2 Gwarinpa I with a file no. BN 11114 and presented the original title document while a search report was issued to him does not necessarily mean that he cannot be subjected to further request to present the original title documents for further verification whenever the need arises.

7. The Defendants also states (sic) that when the Plaintiff applied to register a Power of Attorney in respect of Plot 475, CO2 Gwarinpa, the power of attorney unit of the defendants discovered that the Certificate of Occupancy presented for sighting appears to be irregular with no evidence of collection.

8. The record in the data base of the Defendants shows that there is no evidence of proper conveyance of the Certificate of Occupancy and since we have so many cases of lost C of O's. A Certificate of Occupancy may be reported lost from the office of the defendant and may eventually seen (sic) in possession of the owner or another person with no evidence of collection or a proper conveyance of same.

9. However it was in view (sic) of the above discovery that the Director Land of the Defendants directed that a letter dated 25th January, 2016 be written to request the Economic and Financial Crimes Commission to investigate the unauthorized removal and or theft of some certificates of occupancy and amongs (sic) which is the subject matter of this suit, plot

475, CO2 Gwarinpa. The said letter is hereby pleaded and shall be relied upon at the trial of this suit.

10. It was in furtherance of the above that an EFCC investigation CAVEAT was placed on the subject matter pending on when EFCC concluded its investigation and send to us a report of its investigation.

11. The Defendants states (sic) that the Plaintiff's application to register power of attorney in respect of the subject of this suit cannot (sic) be entertain (sic) in view of pending EFCC investigation.

12. The Plaintiff is not entitle (sic any (sic) any order of Mandamus or an order of perpetual injunction against the Defendants.

13. The Plaintiff is also not entitle (sic) to any damages either general or exemplary (sic) against the Defendants.

14. Whereof the Defendant shall contend that the Plaintiff's claims are frivolous, goal digging (sic) and unsubstantiated and should be dismissed with cost.

It is sufficient to state that apart from the Statement of Claim filed by the Claimant and the Statement of Defence filed by the Defendants, the both parties equally filed Witness Statement on Oath which the said witnesses adopted at the trial of the instant suit.

EVIDENCE LED BY THE PARTIES:

On the 22nd day of March, 2019, Mohammed Ali, the Claimant, adopted his Witness Statement on Oath and testified as the sole witness for the Claimant. He was led in evidence by his Counsel in the course of which he tendered five (5) Exhibits admitted and marked as follows:

Exhibit LA1: Certificate of Occupancy

Exhibit LA2: Deed of Assignment

Exhibit LA3: A copy of the Legal Search Report

Exhibit LA4: A copy of a letter written to the Defendant

After his testimony in Chief, the Claimant was cross-examined the same day by the Defendants' Counsel. The Claimant's Counsel did not re-examine the witness but applied that the witness be discharged from the witness box and the Claimant's case closed. The Court acceded to both prayers and closed the case of the Claimant. On the 28th day of January, 2020, the Defendant fielded one witness, one PRISCA OKPULOR, an Assistant Chief Estate Officer in the Department of Land Administration of the Defendants. She adopted her Witness Statement on Oath. While being led in evidence by the Defendants' Counsel, Exhibit DD 1 which is a letter addressed dated 25/01/16 and addressed to the Executive Chairman of the Economic and Financial Crimes Commission and signed by the Director Land in the 2nd Defendant. Witness was duly cross-examined by the Claimant's Counsel and her Counsel did not see the need to conduct re-examination who rather applied that the witness be discharged from the witness box. The Court adjourned for the filing and adoption of written addresses of parties. On the **5th day of November, 2020**, the parties adopted their written submissions which they respectively relied on in urging this Court to affirm their conflicting positions.

ISSUES JOINED BY THE PARTIES:

The Defendant at **paragraph 3.1 of its written address** (which has no page numbers) raised for the determination of this Court a sole issue couched thus:

> "WHETHER having regard to the pleadings and evidence led by parties in the suit, the plaintiff has discharged the onus of proof cast upon him by law so as to be entitle (sic) to the relief sought".

On behalf of the Claimant, this solitary issue was framed for the Court's resolution:

"Whether in view of all the facts and circumstances of this case, the Plaintiff has proven that he is the rightful owner of the land in dispute as to be entitled to the reliefs sought".

ARGUMENTS CANVASSED BY THE DEFENDANTS:

After holding out the proposition that he who asserts proves as prescribed by **Sections 133 and 136 of the Evidence Act, 2011**, and citing the authorities of **AROMOLARAN VS. KUPOLUYI (1994) 2 NWLR (Pt. 325); ARASE VS. ARASE (1981) 5 SC 33; and UMEOJIAKU VS. EZENAMUO (1990) 1 SCNJ 181 at 189**, the Defendants' Counsel submitted that it is the Plaintiff who seeks declaratory reliefs in this suit that bears the burden and is required to prove that the purported Certificate of Occupancy was regular and properly issued to the original allottee. He further submitted that the Plaintiff has the burden of proving that the said Certificate of Occupancy was properly collected by presenting documents showing evidence of collection of the Certificate of Occupancy.

He directed this Court to the sole exhibit tendered by the Defendants showing that the Certificate of Occupancy covering the subject matter of this suit was improperly and illegally obtained without due process. Relying on the authority of **DUMEZ NIG. LTD VS. NWAKHOBA (2008) 18 NWLR (Pt. 1119) 361 at 367**, Counsel urged me to dismiss the case of the Claimant.

The Claimant's Counsel argued that the report of the search conducted by the prospective buyer, Hon. Adamu Kamale shows convincingly that the Defendants had indicated that the land was without encumbrance, the claim therefore of an irregularity in the issuance of the Certificate of Occupancy is either an afterthought or an administrative irregularity for

which the Plaintiff cannot be held responsible, more so that the original allottee is now deceased.

Claimant's Counsel further argued that if the charade that the Defendants plan to perpetuate is allowed, it will defeat the essence of certification, which is security of title, the effect of which will be to send a wave of confusion in the minds of landowners and prospective landowners that they cannot have their property rights protected simply because of administrative lapse on the part of the Defendants. It could also open a window for Defendants to simply dispossess any landowner of their land on the pretext of administrative irregularities, for which they ordinarily should be chastised, Counsel argued.

Invoking and relying on the authorities of: **Igbinovia & Ors. Vs. Agboifo (2002) FWLR [Pt. 103] 505 @ 514** and **International Nigerbuild Construction Co. Ltd. & Anor. Vs. Giwa (2002) FWLR [Pt. 107] 1312 @ 1354**, Counsel submitted that the oral and documentary evidence led by the Claimant at trial in support of his claims remain uncontroverted and should be taken as accepted. He further canvassed the spirited view that the failure or refusal of the Defendants to respond to the enquiries of the Plaintiff is indicative of the fact that they have no convincing explanations to give. According to Counsel, the presumption must therefore be in favour of the Plaintiff as the rightful owner until it is rebutted with evidence.

RESOLUTION OF THE ISSUE CANVASSED:

I have reviewed the facts of the respective parties to this forensic combat. I have painstakingly dwelt on the analysis which their briefs of argument projected in amplification of their cases. I examined the issues submitted by the parties for the resolution of

this matter and I have found that they are one and the same issue, even though slightly worded differently t

which extent, I am at liberty to adopt the issue as framed by the Claimant in disposal of this suit. The issue reads:

> **"Whether in view of all the facts and circumstances of this case, the Plaintiff has proven that he is the rightful owner of the land in dispute as to be entitled to the reliefs sought".**

PROVE OF TITLE:

Our land laws have settled the ways by which a Plaintiff may establish ownership to land in a suit for declaration of ownership. I shall refer to them and such other land law principles that must the guide this Court in coming to a just determination of the instant suit. Pointing at those established means of proving title to land, the Supreme Court quite recently in the case of **IFEDIORA & ORS v. OKAFOR & ORS (2019) LPELR-49518(SC)** restated the guiding polestar thus:

> The law is trite that title to land can be proved by the following five grounds:- 1. Proof by traditional history or traditional evidence. 2. Proof by grant or the production of document of title. 3. Proof by acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the persons exercising such acts are true owners of the land. 4. Proof by acts of long Possession. 5. Proof by possession of connected or adjacent land in circumstances rendering it probable that the owner of such land would in addition be the owner of the land in dispute. See Idundun & Ors V. Okumagba (1976) 10 SC 277, lseogbekun & Anor v. Adelakun & Ors (2013) 2 NWLR (Pt 1337) 140, Madu V. Madu (2008) 6 NWLR (Pt 1083) 296, Odunze & Ors

V. Nwosu & Ors (2007) 13 NWLR (Pt 1050) 1, Duru V. Nwosu (1989) 4 NWLR (Pt 113) 24. A plaintiff seeking declaration of title to land does not need to plead and prove all the five methods stated above. He only needs to prove one of
such method. If he pleads and/or relies on more than one method to prove his title, he merely does so ex abundantecautela as proof of one simple root of title is sufficient to sustain a plaintiff's claim for declaration of title to land. See Onwugbufor V. Okoye (1996) 1 SCNJ 1

The onus is on the Plaintiff always to lead evidence and rely on the strength of his case rather the weakness of the defence in proving his title to the land subject of litigation. This ancient proposition was stated by the Supreme Court, *PER NNAEMEKA-AGU, J.S.C.* in **OKPALA & ANOR V. IBEME& ORS. (1989) LPELR-2512(SC)** where is it stated thus:

"I must begin my consideration of this issue in this appeal by pointing out that the catch expression enunciated long ago in the case of Kodilinye v. Mbanefo Odu (supra) that in a claim for declaration of title the onus is on the plaintiff who must rely on the strength of his own case and not on the weakness of the defence now admits of at least two qualifications. The first is that the plaintiff can quite perfectly take advantage of those facts in the defence case which support the plaintiffs. The second which is relevant in this appeal, is that where an issue of title to land arises in litigation, the court is concerned only with the relative strengths of the titles proved by adverse parties in the litigation and not the titles of those not before the court. Idigbe, J.S.C. put this principle very succinctly in the case of Madam I. Arase v Peter U. Arose

> (1981) 5 S.C. 33, at p.35 where he held: "It ought to be borne in mind always that at common law, where questions of titles to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B, he (party A) is entitled to succeed: per Lord Diplock in Ocean Estates Ltd. v. Norman Pinder (1969) 2 A.C. 19, at pp.24-25."

In a matter bordering on declaration of title to land, the court is more concerned with the relative strength of the party with better right who must be given the declaration. It is also elementary to restate that for the plaintiff to succeed. Vindicating this principle, the Court in **AJIBULU v. AJAYI (2013) LPELR-21860(SC)** left us with this enduring teaching:

> **"A long line of authorities have settled that in a case where both parties claim title to land, the court is more concerned with the relative strength of the party with better right who must be given the declaration. It is also elementary to restate that for the plaintiff to succeed, he must rely on the strength of his own case and not on the weakness of the defence, except, however, where such evidence of the defence manifestly supports the case of the plaintiff. The legal position is also well established wherein a plaintiff in seeking title to land has the onus to show how he or his predecessor - in title has acquired such."**

In the case before me, the Claimant relies on title documents, **Exhibits LA1, LA2 and LA3** to prove his title to the plot in dispute in this proceeding. In affirmation of production of title documents as one of the

settled and recognized means of proving title, the Supreme Court, through Edozie J.S.C., in **DABO V. ABDULLAHI (2005) LPELR-903(SC)**, brilliantly wrote this illuminating passage to guide us:

"Admittedly, the production of documents of title is one of the recognized methods of proving title to land, see Idundun v. Okumagba (1976) 9-10 SC 227 at 246; Piaro v. Tenalo (1976) 12 SC

31 at 37. But such a document of title must be admissible in evidence and be of such a character as to be capable of conferring valid title on the party relying on it. Discussing the nature and character of such a document of title, this court, in the case of Romaine v. Romaine (1992) 4 NWLR (Pt.238) 650 at 662 observed thus: "I may pause here to observe that one of the recognised ways of proving title to land is by production of a valid instrument of grant: see Idundun v. Okumagba (1976) 9-10 SC 227; Piaro v. Tenalo (1976) 12 SC 31 p. 37; Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Pt.67) 718.

But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance on such an instrument inevitably carries with it the need for the court to inquire into some or all of a number of questions including: (i) whether the document is genuine and valid; (ii) whether it has been duly executed, stamped and registered; (iii) whether the grantor had the authority and capacity to make the grant; (iv) whether the grantor had in fact what he purported to grant; and (v) whether it has the effect claimed by the holder of the

instrument." With the guiding principles enunciated above, it is easy to appraise the documents of title produced by the parties in support of their claims.

There is no doubt that Certificate of Occupancy evidences title. In this proceeding, the Claimant relies heavily on same, among other documents, in asserting his title of the disputed Plot of land. What then is Certificate of Occupancy. In **Adeshina v. Bac Electrical Co. Ltd. (2007) ALL FWLR (Pt. 369) 1279 at 1322; Paras. D - E (CA)**, Agube, J.C.A. writing for the Court of Appeal wrote this about Certificate of Occupancy:

> ***"A Certificate of Occupancy is a written document which records that the premises contained therein is vested in the person named thereon. See Inwelegbu v. Ezeani (1999) 12 NWLR (Pt. 630) 266."***

When then can a Certificate of Occupancy be said to hold the potency to sustain a claim or assertion of title by a Plaintiff? The answer is provided by the Supreme Court in **MADU V. MADU (2008) LPELR-1806(SC)** where Aderemi, J.S.C. held thus:

> "A Certificate of Occupancy properly issued where there is no dispute that the document was properly issued by a competent authority raised that the holder is the owner in exclusive possession of the land. The Certificate also raises the presumption that at the time it was issued, there was not in existence a customary owner whose title has not been revoked. It should however be noted that the presumption is rebuttable because if it is proved by evidence that another person had a better title to the land before the issuance of the Certificate of Occupancy in which case the Certificate of Occupancy will stand revoked by the court."

Off course, the Certificate of Occupancy enjoys only but a rebuttable presumption of evidencing title in the holder. This is so because where it is proved by evidence that another person had a better title to the land before the issuance of the Certificate of Occupancy the court can revoke same and nullify it. In espousal of this view, the Supreme Court very authoritatively wrote in **OTUKPO v. JOHN & ANOR (2012) LPELR-20619(SC)** as follows:

> "A Certificate of Occupancy is only prima facie evidence of title to land or exclusive possession of land. Consequently, if it is successfully challenged, it can be nullified. Where there is evidence to show that the certificate was wrongfully obtained the court is entitled to nullify it. In order to, succeed in a claim to title a party who held a Certificate of Occupancy will -need to show his root of title that is through his vendor and that the vendor or seller has to show valid title to the land over which the purchaser secured his Certificate of Occupancy. This is because the Certificate of Occupancy can only be valid if the root of title originates from the customary owners of the property. Where a competent authority properly issues a Certificate of Occupancy it raises the presumption that the holder is the owner in exclusive possession of the land to which the Certificate relates. It also raises the presumption that all the time it was issued, there was not in existence a customary owner whose title has not been revoked. However, these presumptions are rebuttable. Where it is proved by evidence that another person had a better title to the land before the issuance of the Certificate of Occupancy the court can revoke. Okpalugo vs. Adesoye (1996) 10 NWLR, pt. 476, Pg.77 Auta vs. Ibe (2003) 13

NWLR, pt.837, Pg.247 Dakat vs. Dashe (1977) 12 NWLR, Pt. 531, pg.46.

In view of the above examined principles eventuating from a galaxy of Superior Court decisions on the score, the question that comes to mind is whether there is any other competing evidence challenging the authenticity of the Claimant's Certificate of Occupancy. This must be the compelling question that must be addressed with every cogency that it deserves because as the law stands, "where *a competent authority properly issues a Certificate of Occupancy it raises the presumption that the holder is the owner in exclusive possession of the land to which the Certificate relates*" **Okpalugo vs. Adesoye (1996) 10 NWLR, pt. 476, Pg.77**. In this Court and as matter stands, the Claimant is enjoying privileges and benefits of all the presumptions of law conferred on a holder of a Certificate of Occupancy, ***Dakat vs. Dashe (1977) 12 NWLR, Pt. 531, pg.46***.

Throughout this proceedings, the Defendants never at any time denied or challenged the authenticity of the Claimant's Certificate of Occupancy as emanating from them. Their complaint is that the plot of the Claimant falls within the cases of "*lost/stolen Certificate of Occupancy at the Office of the 2nd Defendant*" ***as submitted by Counsel at paragraph 2.6 of his written address***. To buttress this point, on the 22nd day of March, 2019, when the Claimant's Counsel sought to tender through the Claimant as his own witness the Certificate of Occupancy and the Search Report, the Defendants' Counsel who was in Court was shown the said documents and was asked if he had any objection to them to which he answered in the negative leading to their unchallenged admittance in evidence. The above apart, ***Exhibit LA3*** was shown to the Defendant's Counsel and he did not object to its admissibility neither did he challenge

its authenticity. Having not disowned the authorship of those two documents, there are contents are everlastingly binding on the Defendants who made them. The above apart, the only way to dismantle the effectiveness of the two **Exhibits LA1 and LA3** is to adduce cogent and verifiable evidence that will compellingly lead the Court to possibly nullifying the Certificate of Occupancy and setting same aside and revoking it. The conclusion I must come to is that it is only a Court of Law that has the plentitude and latitude of powers to set declare a Certificate of Occupancy a nullity and consequently revoke or set same aside unless the Defendants follows religiously, and I mean strictly all the laid down provisions of Section 28 of the Land Use Act which no evidence has been led in this proceedings to convince me that they have been referred to let alone followed by the Defendants.

My finding is that the sole Exhibit of the Defendants is not such as to dethrone a Certificate of Occupancy which they have never alleged that they never issued but complain of "wrongful collection". The law presumes in favour of the Claimant's Certificate of Occupancy. It is the Defendants who wish to overthrow this presumption that shoulders the burden to call evidence in upsetting the Claimant's Certificate of Occupancy. No scintilla of evidence has been led to achieve this. It is therefore a gross misconception for the Defendants to argue that the Claimant should carry a burden which under our land laws he is not meant to carry. They, the Defendants, assert the positive, commission of theft, they carry the burden of proof, a very high burden for that matter.

There yet another aspect of this matter. The allegation of the Defendants is criminal in nature. An examination of Exhibit DD1 reveals this. At paragraph one of the Letter to the Economic and Financial Crimes Commission (henceforth herein called EFCC), the Defendants

requested the Executive Chairman to "*kindly and urgently investigate the unauthorized removal and or theft of some Certificate of Occupancy from the Land Registry*" To remove all doubts relating to the nature of the Defendants' allegation, paragraph 4 of the same letter beckoned on the Chairman of EFCC to use his "*good office to conduct a proper investigation to identify and prosecute the individuals involved in this **crime***.". While it is doubtful whether theft of land documents is part of economic crimes over which the EFCC has statutory jurisdiction to prosecute, I hasten to say that no report of EFCC's investigative activities were tendered in this proceedings, no arraignment, no conviction since the 25th day of January, 2016 when the request was made up to the time when pleadings were settled in this matter. Who know the outcome of the EFCC's investigation into the matter? Was the Claimant accused or fingered in the "*this crime" of "theft*"? Was the Claimant ever invited by the EFCC? If yes, was his statement taken? Courts can only deal with speculations in the absence of logical answers to these critical posers. Does the Court have the power or jurisdiction to speculate or act on speculations? The answer is no. I rely on the authority of **Isah v. State (2007) NWLR (Pt. 1049) 582 at 614, Paras. A - B (CA)** where it was aptly stated that:

> ***"Speculation is the art of theorising about a matter as to which evidence is not sufficient for certain knowledge"***

In fact, in **IKENTA BEST (NIG.) LIMITED V. ATTORNEY GENERAL RIVERS STATE (2008) LPELR-1476(SC),** the Supreme Court held thus:

> "Speculation has no place in our courts. Neither the parties nor the court is permitted or entitled to speculate anything. A court will interfere to set any speculation aside. See Overseas Construction

Co. (Nig.) Ltd v. Creek Enterprises (Nig) Ltd (1985) 3 NWLR (Pt. 13) 407; Bakare v. A.C.B. Ltd (1986) 5 SC 48; Olawuyi v. Adeyemi (1990) 4 NWLR (Pt. 147) 746; Seismograph Service (Nig) Ltd v. Ogbeni (1976) 4 SC 85; State v. Aigbangbee (1988) 3 NWLR (pt. 84) 548; Fawehinmi v. N.B.A. (No. 1) (1989) 2 NWLR (Pt. 105) 494, (1989) 4 SCNJ 1; Adelanwa v. State (1972) 10 SC 13 Ihewuezi v. Ekeanya (1989) 1 NWLR (Pt. 96) 239; Barnet v. Cohen (1921) 2 KB 461; Alli v. Alesinloye (2000) FWLR (Pt. 15) 2610, (2000) 6 NWLR (Pt. 600) 177, (2000) 4 SCNJ 264"

In **FCDA & ANOR v. MTN & ANOR (2016) LPELR-41248(CA)**, the Court held as follows:

> "This clearly is a proper case of improper evaluation of evidence, born out of substitution of evidence by inference; speculation is not acceptable in our Courts, because neither the parties nor the Court is permitted or entitled to speculate anything; where a decision is based on speculation it is liable to be set aside, for good reason, see OVERSEAS CONSTRUCTION CO. (NIG.) LTD V. CREEK ENTERPRISES (NIG) LTD (1985) 3 NWLR (PT. 13) 407; BAKARE V. A.C.B. LTD (1986) 5 SC 48; OLAWUYI V. ADEYEMI (1990) 4 NWLR (Pt. 147) 746; SEISMOGRAPH SERVICE (NIG) LTD V. OGBENI (1976) 4 SC 85.

Decisions anchored or pillared on speculations have been held to be perverse by the Courts, **ARIDAM VS. THE STATE (1994) 1 NWLR (Pt. 320) 250**, and liable to be set aside, **ADEFULU VS. OKULAJA (1996) 9 NWLR (PT. 475) 668 at 675**. I shall not render a perverse decision, **O. B. M. C. LTD. VS. M. B. A. S. LTD. (2005) ALL FWLR (PT. 261) 216 at 234**. I shall render judgment in accordance with the

law so that it will not be set aside, **EGBEWOLE v. ADELEKE & ORS (2018) LPELR-44857(CA)**.

In **BENDEX ENGINEERING CORPORATION & ANOR v. EFFICIENT PETROLEUM NIGERIA LTD (2000) LPELR-10143(CA)**, the Court, per Olagunju, J.C.A., very adroitly held thus:

> "...Therefore, any inference about the correct version of the complaint based on a hunch or drawn a priori will be tantamount to speculation to which a judicial inquiry is allergic instance of juridical revulsion against which was manifested by Ivienagbor v. Bazuaye, (1999) 9 NWLR (Pt.620) 552, (1999) 6 SCNJ 234, where the Supreme Court, per Uwaifo, J.S.C., at pages 243-244, cautioned that: "...speculation is a mere variant of imaginative guess which, even
> where it appears plausible, should never be allowed by a court of law to fill any hiatus in the evidence before it." A similar disapproval was expressed by the same court in Long-John v. Black (1998) 6 NWLR (Pt.555) 524, (1998) 5 SCNJ 68, 89; and Orhue v. NEPA (1998) 7 NWLR (Pt.577) 187, (1998) 5 SCNJ 126, 140."

Apart from the above, having found as a fact that the allegation of the Defendants border on commission of crime, we have to look at the requirements of the law in that respect.

Burden and standard of proof where allegation of crime is directly in issue in any civil or criminal proceedings is that of proof beyond reasonable doubt. Affirming this principle, the Court in **AGI v. PDP & ORS (2016) LPELR-42578(SC)** held thus:

> "The law is well settled that where allegation of crime is directly in issue in any civil or criminal proceedings, it must be proved beyond reasonable doubt and the onus of proof is on the person who

asserts. See Section 135(1) and (2) of the Evidence Act. See also Omoboriowo v. Ajasin (1984) 1 SC NJ 108; Bayo v. Njidda (2004) 8 NWLR (Pt. 876) 544 and Arebi v. Gbabiyo (2008) 2 LR ECN 467 at 489."

Relying on **Nwobodo v Onoh [1984] 1 SCNLR 27 -28**, the Supreme Court in **UMANNA VS EMMANUEL (2016) JELR 37134 (SC)** held thus:

"In one word, the Lower Court, relying on an opinion in a Newspaper article, purported to abrogate Section 135 (1) of the Evidence Act, 2011 by judicial fiat. That section provides that:135 (1): If the commission of a crime by a party to any proceedings is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt. In my humble view, it is difficult to see how the Lower Court could have, legitimately,

wished away the position of this Court which, interpreting the above section, has maintained that a Petitioner who makes an allegation of the commission of a crime the basis of challenging the election of a candidate who was returned, must prove that allegation beyond reasonable doubt, Buhari v Obasanjo [2005] SCNJ 1, 47; Nwobodo v Onoh [1984] 1 SCNLR 27 -28.

In **NYESOM WIKE VS. PETERSIDE (2016) VOL. 66 NSCQR (PT.3) 1325**, the same decision was reached in these simple language:

"It is also the law that where the commission of a crime by a party to a proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. See: Section 135 (1) of the Evidence Act 2011. The burden of proof is on the person who asserts it. See: Section 135 (2) of the Evidence Act 2011. See also:

Abubakar v. Yar'Adua (2008) 19 NWLR (pt.1120) 1 @ 143 D 144 B: Buhari v. Obasanjo (supra): Omoboriowo v. Ajasin (1984) 1 SCNLR 108: Kakih v. P.D.P. (2014) 15 NWLR (Pt.1430) 374 @ 422-423 B-C.

There is yet another point which is presumption of regularity in favour of act of officials. It is expressed in Latin as: *Omnia rite essepresumptur rite acta*. In **DAWODU V. ISIKALU & ORS. (2011) LPELR-4488(CA)**, the Court applied this principle thus:

> **"It is trite that when an Act is shown or appears to have been regularly done, the presumption is that all conditions for its regularity have been complied with. This statutory presumption finds support in the acclaimed Latin Maxim- Omnia rite essepresumptur rite acta, i.e. there is a presumption of regularity in respect of official deeds or actions."**

In **SHITTA-BEY v. AG FEDERATION & ANOR. (1998) LPELR-3055(SC)**, this principle was utilized by the Supreme Court thus:

> "Apart from what is called presumption of regularity of official acts, there is the presumption that, where there is no evidence to the contrary, things are presumed to have been rightly and properly done. This is expressed in the common law maxim in the Latin phrase Omnia praesumuntur rite esseacta.
>
> This presumption is very commonly resorted to and applied especially with respect to official acts. See Ogbuanyinya v. Okudo (1990) (No.2) 4 NWLR (Pt. 146) 551 at 570 paragraphs D-E. See also section 114 of the Evidence Act, Cap 112 Laws of the Federation of Nigeria, 1990. The learned authors of Phipson on Evidence. Eleventh Edition have this to say on the subject: "The

presumption which is nearly akin to that of innocence is chiefly applied to a judicial and official acts, and though sometimes conclusive, is in general only rebuttable. Thus, the constant performance of divine service from an early period in a Chapel raises a rebuttable presumption of its due consecration.

Common instances occur also with respect to the validity of a person's appointment to a public office, from his acting therein; and as to the due execution of deeds and wills. User of a way by the public as of right for twenty years gives rise to a presumption of dedication. See also Eaglehill Ltd. v. J. Needham (Builders) Ltd. (1972) 3 All E.R. 895 (H.L.) especially at page 905. It should be noted that Lord Cross expressly disavowed the application of the

presumption of regularity and relied instead on the principle of construction ut res magisvaleat quam pereat.

It is, with respect, hard to see why the latter should be applicable, or indeed the former inapplicable on the facts of the case. (Lord Dilhorne who reached the same result as Lord Cross - with whom the rest of the House agreed - preferred to rely no neither Latin tag). However, whatever the true description of the presumption involved, it seems clear that it cast a persuasive and not merely an evidential burden." But it seems that the court is bound to draw the inference where, as in the instant case, there is no evidence to the contrary. See Ogbuanyinya v. Okudo (No.2) (supra).

Relying on all these wide-ranging extrapolations, I hold that the presumption accorded a Certificate of Occupancy cannot be dethroned in the case of the instant Claimant there being no contrary evidence from

the Defendants to upset the presumption. Both the Certificate of Occupancy and the Legal Search Report issued by the Defendants enjoy regularity presumption of law. This is quite apart from the position of the law to the effect that unless Section 28 of the Land Use Act utilized by the Defendants, the title of the Claimant herein as evidenced by the Certificate of Occupancy cannot be disturbed in any way unless by a judicial proceedings resulting in the Court nullifying same for any proven irregularity which in this case none has been proved to warrant such judicial intervention.

Flowing from the foregoing, I am minded to come to the decision that the claims of the Claimant are richly meritorious and I will grant them in these terms:

A. A DECLARATION of this Honourable Court that the Claimant bought from and paid to the late Sunday A. Echoda, original allotee, Plot No. 475 CO2 Gwarinpa District Abuja, measuring approximately 1904.50m2 subject matter of this suit. ("the Plot") is hereby made by me.

B. **A DECLARATION of this Honourable Court** that the Claimant was given among other documents the original Certificate of Occupancy of the said plot by Sunday A. Echoda, original allottee, via a Power of Attorney Dated 26th May, 2013 is hereby made by me.

C. A DECLARATION of this Honourable Court that having regard to the provisions of the Land Use Act, 1978/LFN 1990, the Constitution of the Federal Republic of Nigeria 1999, and other laws in that behalf, Claimant is in the circumstances the rightful holder of the Plot and is entitled to exercise all the rights of a title holder including the powers to transfer his title is hereby made by me.

D. A DECLARATION of this Honourable Court that, Claimant having taken all necessary and reasonable steps to ascertain the veracity and validity of the title of the original allottee of the said Plot before purchase is in the circumstances the rightful title holder of the Plot and is entitled to exercise all the rights of a holder including the right to transfer his title is hereby made by me.

E. A DECLARATION of this Honourable Court that Defendants are, in the circumstances of this case, estopped from denying the title and the title rights of the Claimant in Plot No. 475 CO2 Gwarinpa District, Abuja, the subject matter of this suit; and that the attempt by the Defendants to disturb the peaceful enjoyment of the title rights of the Claimant over the Plot, especially the right to transfer title to same is illegal, null and void is hereby made by me.

F. AN ORDER OF MANDAMUS of this Honourable Court is hereby made directing the Defendants to complete all legal processes necessary including granting the necessary consent and to register the power of attorney and deed of assignment over the Plot No. 475 CO2 Gwarinpa District, Abuja to enable the Claimant assign the Plot to third parties having met all the required conditions.

G. AN ORDER OF PERPETUAL INJUNCTION of this Honourable Court is hereby made restraining the Defendants, their agents, privies or person claiming under or for them or in trust for them from further disturbing or depriving the Claimant the peaceful enjoyment of the rights of a title holder over the Plot No. 475 CO2 Gwarinpa District, Abuja under the guise of any irregularity regarding the collection of the Certificate of Occupancy.

General damages of One Million Naira Only (₦1, 000, 000. 00) hereby awarded in favour of the Claimant and against the Defendants. The

conducts of the Defendants are found to be reprehensible and unconscionable by me to which end I am minded to award an exemplary damages of Five Hundred Thousand Naira.

APPEARANCE

Oluwasisayomi S. Awno Esq. for the plaintiff.
The 1st and 2nd defendant not in court.

Sign
Hon. Judge
19/02/2021