

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY 26TH FEBRUARY, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/884/11

BETWEEN:

MRS. FLORENCE ADENIYI
(SUIING AS THE TRUE AND LAWFUL ATTORNEY
OF HAJIA FATIMA MOHAMMED ADAMU)

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APPLICANT

AND

- 1. DURKWA ALHASSAN SAMAILA**
- 2. CHIEF CHRIS OKWUDILI NDIBE**

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DEFENDANTS

JUDGMENT

The old long standing and application chequered Suit was filed in 2011. It was later transferred to my Court sometime in November, 2019. In it the Plaintiff Mrs. Florence Adeniyi claimed the same Reliefs against Durkwa Alhassan Samaila and Chief Okwudili Ndibe. The Plaintiff sued as the True and Lawful Attorney of Hajia Fatima Mohammed Adamu. The Reliefs are as follows:

- (1) A Declaration that the Claimant is the true and lawful beneficiary of the unexpired or residual rights, interests and title to the parcel of land known and described as Plot 649, situate at Cadastral Zone 07 – 05, measuring an area of 936.60m², with Full Beacon Numbers: PB6202, PB6203, PB6209 and PB6210, Dutse Alhaji layout, Abuja, Federal Capital Territory, within the jurisdiction of this Honourable Court.**

- (2) A Declaration that the 1st Defendant is in acts of multiple of trespass on the parcel of land known and described as Plot 649, situate at Cadastral Zone 07 – 05, measuring an area of 936.60m², with Full Beacon Numbers: PB6202, PB6203, PB6209 and PB6210, Dutse Alhaji layout, Abuja, Federal Capital Territory, within the jurisdiction of this Honourable Court by his entry into same and building additional fence on the one already built by the Claimant and also building a gate house on the parcel of land.**

- (3) A Declaration that the 2nd Defendant is in acts multiple of trespass on the parcel of land known and described as Plot 649, situate at Cadastral Zone 07 – 05, measuring an area of 936.60m², with Full Beacon Numbers: PB6202, PB6203, PB6209 and PB6210, Dutse Alhaji layout, Abuja, Federal Capital Territory, within the jurisdiction of this Honourable Court by**

his entry into same and bringing a Forty-Foot Cargo container into the land.

- (4) AN Order directing the Defendants, severally, to cease any further act(s) of trespass on the parcel of land known and described as Plot 649, situate at Cadastral Zone 07 – 05, measuring an area of 936.60m², with Full Beacon Numbers: PB6202, PB6203, PB6209 and PB6210, Dutse Alhaji layout, Abuja, Federal Capital Territory, within the jurisdiction of this Honourable Court.**

- (5) An Order of Perpetual Injunction restraining the Defendants, their agent(s), assign(s), privies, successors-in-title and/or whosoever acting for and/or on their behalf, from committing any further act(s) of trespass on the parcel of land known and described as Plot 649, situate at Cadastral Zone 07 – 05, measuring an area of 936.60m², with Full Beacon Numbers: PB6202, PB6203, PB6209 and PB6210, Dutse Alhaji layout, Abuja, Federal Capital Territory, within the jurisdiction of this Honourable Court.**

- (6) Five Million Naira (₦5, 000,000.00) only, as general, aggravated and punitive damages against each of the Defendants for their acts of multiple trespass on the parcel of land known and described as Plot 649, situate at Cadastral**

Zone 07 – 05, measuring an area of 936.60m², with Full Beacon Numbers: PB6202, PB6203, PB6209 and PB6210, Dutse Alhaji layout, Abuja, Federal Capital Territory, within the jurisdiction of this Honourable Court.

- (7) Interest of ten percent (10%) on the Judgment sum from the day Judgment is delivered until the entire Judgment sum is liquidated.**
- (8) Three Hundred Thousand Naira (₦300, 000.00) only, as cost of action and Solicitor's professional fees.**

Because the case had tarried for long the Court ordered for accelerated hearing which lasted for 4 days 22nd – 25th June, 2020. Parties were given ample time to ensure that their respective Witnesses were in Court within that period.

The 2nd Defendant filed a Statement of Defence while the 1st Defendant filed a Statement of Defence and Counter Claim. In the Counter Claim the 1st Defendant claimed the ownership of the land through Ifeanyi Arinze who had obtained the land from Mrs. Monica Okonkwo who had donated a Power of Attorney to the said Ifeanyi. Meanwhile Ifeanyi also gave a Power of Attorney to the 2nd Defendant, Chief Okwudili Ndibe.

The 1st Defendant was more of a principal of Balami Danjuma who stood for him in Court and who claimed that the 1st Defendant handed over to him all the documents of title and gave him authority to act on his

behalf. The 1st Defendant never testified in Court or appeared as an observer.

The Plaintiff testified in person, other parties cross-examined her. The 2nd Defendant testified in person too. The 2nd Defendant called 2 Witnesses out of the 5 listed. They could not call the subpoenaed Witness as scheduled and the Court foreclosed them from presenting the Witness. The Court gave its reason in the Ruling Foreclosing the said Witness. The Court adjourned for Final Address and subsequently for Judgment. All parties tendered documents in support of their respective claims to the ownership of the Res.

In this Final Address the 2nd Defendant who testified in person and tendered 4 documents – **EXH 17 – 20**, raised a sole Issue for determination which is:

“Whether from the totality of evidence adduced by the Plaintiff and 1st Defendant/Counter Claimant in this case, they have been able to prove title, ownership and possession of the plot, the subject matter of this Suit to entitle them to their claim and Counter Claim before this Court.”

He submitted that neither the Plaintiff nor the 1st Defendant have succeeded in proving ownership, possession and title or established superior title to the Res before this Court. That the Plaintiff and the 1st Defendant claimed to have derived the root of their title from the same person but that they have irreconcilable documents of title.

That it is only him the 2nd Defendant that has established a better root of title from traceable source which is first in time given the date on the documents. He urged Court to dismiss all the claims of Plaintiff and Counter Claim of the 1st Defendant and declare him as the owner of the Res. He referred to **EXH 38 & 17** respectively all of which are the foundation upon which the titles are derived by the Plaintiff and the two (2) Defendants.

That the other two (2) parties agreed that he is in occupation of the Res. That he has been in occupation/possession since 2010 and had constructed a servant quarters where he housed his staff. That he had kept container in the said Plot and he urged Court to hold that it is positive evidence of possession of the Res. He relied on the case of:

**Anyafulu V. Meka
(2014) 16 WRN 82**

He urged Court to hold that the Plaintiff and 1st Defendant failed to establish their Claim and Counter Claim over the Res and as such their Claim and Counter Claim respectively should fail.

That Plaintiff failed to tell and establish who she derived her root of title from. That her EXH 3 has a different name – Yusuf Usman as the original Allottee while she had claimed that the allottee was Yusuf Usman. That it shows the character of the evidence adduced by the Plaintiff cannot be trusted. He urged Court to resolve the sole Issue in his favour.

The 2nd Defendant further submitted that there are two (2) ways to proof title which are act of possession and ownership, extending over a length of time which warrants an inference of ownership. He referred to the case of:

Anyafulu V. Meka Supra

**Idundun V. Okumagba
(1976) 10 SC 227**

That on the part of the 1st Defendant that he stated that he has never seen the policy files on the land and that the Bwari Area Council has no access to policy files too. That such policy file is only at the exclusive preserve of the Director of Lands at AGIS. That this is contrary to the Statement of Defence and the Statement on Oath of the 1st Defendant's three (3) Witnesses. That Court should discontinuance the Statement on Oath of the DW1 because it was allegedly made in his Counsel's chamber contrary to S. 112 Evidence Act. He referred to the case of:

Buhari V. INEC

(2009) All FWLR (PT. 459) 419

He urged the Court to expunge the deposition in the Oath of the DW1. That by doctrine of Judicial Precedence, the Court should discontinuance the evidence of DW1 including the documentary evidence tendered through DW1. That the evidence of the DW1 is liable to be struck out same being the main evidence of 1st Defendant as his case can only succeed on the strength of his case and no more.

That 1st Defendant has failed to adduce legal evidence to prove his case and title to the Res. He urged Court to enter Judgment in his favour and hold that 2nd Defendant is the true and lawful owner of the Res.

The 1st Defendant filed a Final Address on the 27th day of July, 2020 and he raised five (5) Issues for determination which are:

- (1) Whether by provision of S. 2 & 15 Land Registration Act, CAP 515 Laws of FCT 2007, EXH 1 – Power of Attorney, relied upon by Plaintiff, can be pleaded and admitted in evidence.**

- (2) Whether by decision of the Court in the case of: *Abu V. Kuyambana (2004) 44 WRN 113*, the 1st Power of Attorney EXH 1 between Isah Abubakar and Hajia Fatima Mohammed Adamu is admissible having not been registered before being relied upon to donate another Power of Attorney to another party.**

- (3) Where Issues 1 & 2 are answered in the negative and complied with the Claimant's piece of evidence before the Court, whether the Claimant has successfully proved that she has title over the Res in dispute as granted by the allotting authority.**

(4) Whether Plaintiff is entitled to recover her professional fees or cost of the action from 1st Defendant.

(5) Whether the 1st Defendant has through probable pieces of evidence successfully proved his case as to be entitled to the Reliefs sought in the Counter Affidavit.

On Issue No.1, the 1st Defendant submitted that the document which the Plaintiff relied on to claim title – EXH 1, is unregistered Registrable Instrument by virtue of **S.2 Land Registration Act**. He submitted that by the provision of **S.15 of the same Act**, the Power of Attorney cannot be admitted in evidence that the document is unregistered and was wrongfully admitted in evidence and should be expunged by the Court either suo motu or by application of any of the parties in the Suit. He referred to the case of:

Chukwu V. Amad

(2012) 4 NWLR (PT. 1289) 136 @ 166

That the Plaintiff's 2 unregistered Powers of Attorney were unpleaded and inadmissible proof of evidence in claim of Plaintiff title to the Res. That they have no evidential value. The 1st Defendant urged Court to so hold.

On Issue No.2, the 1st Defendant submitted that both Power of Attorney were not registered as required by law. That the Powers of Attorney did not transfer title to

Fatima Mohammed Adamu. That she therefore has no title or interest to confer on the Plaintiff.

That EXH 1 is not reliable because one was certified by the FCT High Court which has no right to keep the document in High Court possession. That the document emanated from the improper custody and that the certification by High Court is incompetent. That claiming that original was tendered before late Justice Kolo is not enough. That Plaintiff ought to have shown evidence of effort to retrieve the document from the said late Justice Kolo's office/Court and the Court refused. That the circumstance of the Plaintiff's documents remains doubtful.

That the Plaintiff and or the 2nd Defendant has not been able to challenge the documents of the 1st Defendant. They urged the Court to resolve Issue No.2 in his favour.

On Issue No.3, whether the Plaintiff has proved that she has title to the land, the 1st Defendant submitted that she has not placed sufficient evidence before this Court to prove her case to entitle her to the Judgment in this Suit. They referred to the case of:

Bello V. Sanda
(2012) FWLR (PT. 636) 462

That Isah Abubakar and Hajia Fatima Mohammed from who the root of title of the Plaintiff comes have no title to pass at all in law and as such the Claimant title has no footing in this case. They relied on the decision in the case of:

Tanko V. Echendu

(2011) FWLR (PT. 567) 699 (SC)

That since there is no sufficient fact shown by the Plaintiff in this case, her claims must fail. That she has not satisfied the Court with sufficient credible evidence that she is entitled to the rights claims. They referred to the case of:

Jika V. Akoson

(2006) FWLR (PT. 293) 276

That the onus to prove title does not shift and that where the Plaintiff fails to prove title her case must be dismissed.

That where 2 parties are contending for title over a parcel of land the Court has duty to determine party that has established a better title to the land. That EXH 3 tendered by the Plaintiff upon which she anchored the root of her title cannot stand. They urged the Court to so hold.

That EXH 4 does not support the case of Plaintiff either as she did not exhibit receipt of payment for the Certificate of Occupancy.

That the Plaintiff should had joined Isah Abubakar and Fatima as Co-Plaintiffs. That Isa Abubakar had sought to be joined as Co-Plaintiff before in 2016. That failure of Plaintiff to report the alleged act of trespass by 1st Defendant to Police or Bwari Area Council on becoming aware of the 1st Defendant's trespass in April 2011 makes her testimony to be unreliable.

On Issue No.4, the 1st Defendant submitted that Plaintiff is not entitled to shifting of the burden of her Solicitor's

fees on the other parties as part of her Reliefs. They referred to the case of:

**Nwaji V. Costal Services Limited
(2004) 36 WRN 1 Ratio 7**

They urged the Court to dismiss that claim as she did not establish that. He relied on the case of:

**Ibrahim V. Obeye
(2018) 11 WRN 1**

On Issue No.5, the 1st Defendant submitted that he has through his pieces of evidence in paragraph 1 – 41 of his Statement of Defence, successfully proved his case as to be entitled to the Reliefs sought in his Counter Claim as shown in EXH 7 – 16 which he tendered. That Yusuf Usman the original Allottee allocated the land to him and he personally acknowledge same. That Plaintiff and 2nd Defendant never filed any reply to challenge the fact.

That both Power of Attorney and Sale Agreement were all signed by the original Allottee as evidenced in EXH 14 & 15 in the presence of the DW1. That the 1st Defendant handed over the document to him – DW1. That without EXH 7 – Special Power of Attorney, the DW1 was well knitted to testify in this case on behalf of the 1st Defendant. That argument of the 2nd Defendant in paragraph 3.3 of the 2nd Defendant's Final Address is of no effect.

That notwithstanding the absence of the 1st Defendant to testify the special Power of Attorney is valid as 1st Defendant has a right to call a Witness after he had been sued and not before. That 1st Defendant is not bound to

be physically present in Court and give evidence. He relied on the case of:

Ezemah V. Attah

(2004) 17 WRN 1 Ratio 1 Page 23

S. 23 & 24 Evidence Act 2011 as amended

That absence of the Defendant does not affect the submission of the DW1 and does not strengthen the case of the Plaintiff who has the burden to prove her case.

That the argument that the special Power of Attorney was donated during the pendency of this Suit cannot hold and that doctrine of his pendis is not applicable too. He referred to the case of:

Barclays Bank V. Ashiru

(1978) 6 – 7 SC 99 @ 128

That the 1st Defendant has both equitable right and interest over the land and he is entitled to it. That the documents tendered by 1st Defendant were all admitted in evidence and not challenged by Plaintiff or 2nd Defendant. That 1st Defendant has not obtained Certificate of Occupancy though the statutory fee has been paid. He relied on the case of:

Ibrahim V. Obaje

(2018) 11 WRN 1 Ratio 5 Page 27

As to **EXH 19**, that Deed of Assignment and Power of Attorney tendered by the 2nd Defendant are inadmissible in law because of the signature disparity of the alleged donor Ifeanyi Arinze.

That the 2nd Defendant has no bearing, connection or foundation to be a party in this case as his documents are a nullity. He referred to the case of:

Babale V. Eze

(2012) FWLR (PT. 635) 287

That the 2nd Defendant violated the Order of Restraint granted by Late Justice Kolo for all parties to stay clear of the Res. That the 2nd Defendant violated the said Order and had in course of his Cross-examination said that he had seen the Order. That Court should hold that the 2nd Defendant is not Witness of truth.

That 2nd Defendant had never been in possession of the Res going by his Statement in paragraph 4.0 of his Final Address. That he never pleaded those facts in his amended Statement of Defence. That he cannot lead evidence in his Final Address. He urged Court to so hold. That contrary to the 2nd Defendant's Final Address paragraph 3.3, the DW1 has authority of the 1st Defendant to act as he did as shown in **EXH 17**.

He urged Court to discontinuance the submission of the Plaintiff and 2nd Defendant in that regard and as well discontinuance their documents **EXH 4 & 18** given the disparity in the Beacon Numbers CAD Zone, Plot size and co-ordinates in the documents – EXH 4 & EXH 8. Again that the 2 parties are talking about 2 different Plots of land but with same Plot Number. That the Plaintiff failed to identify the said Res clearly. That Court should grant the Counter Claim before this Court since Plaintiff could not identify the land. He relied on the case of:

**Salami Adesina V. Comm of Boundary Commission
Oshogbo**

(1996) 4 SCNJ 112 @ 120

That non response to the Counter Claim by 1st Defendant means that Plaintiff has admitted the said Counter Claim. He referred to the case of:

Orianzi V. A-G Rivers State

(2017) 6 NWLR (PT. 1561) 224

On certification of public document as set in paragraph 40 of 1st Defendant's Statement of Defence as Amended and Counter Claim as regards the document rejected by Court – from Bwari Area Council. He urged Court and submitted to consider and admit the document as it met all the legal requirements as a public document. That the CTC was based on Order of the Court. He referred to the case of:

Tabik Investment Limited V. GTB PLC

(2011) All FWLR (PT. 602) 1592

That the Counsel was fit and proper to tender the documents.

On the doctrine of Priority of Interest or estate which both Plaintiff and 2nd Defendant have raised in their Process (paragraph 4 Plaintiff Statement of Claim as Amended) and paragraphs 6, 13 & 15 of 2nd Defendant's Amended Statement, that both parties cannot raise the said doctrine in their favour because it is inapplicable. He referred and relied on the case of:

Gankon V. Ugochukwu Chem Ind. Ltd

(1993) 6 NWLR (PT. 297) 55

That 1st Defendant is the only party with valid unchallenged title to the Res. That Court should set aside the invalid documents presented by the Plaintiff & 2nd Defendant and resolve the issue in favour of the 1st Defendant and dismiss the case of the Plaintiff and that of the 2nd Defendant as they have not placed any credible evidence of better title before the Court.

On the Witness Statement on Oath of the DW1 being signed at his lawyer's chamber, 1st Defendant Counsel submitted that there is nothing that makes the Oath inadmissible since it was presented to the Commissioner for Oath for Sealing. That Buhari's case cited by 2nd Defendant is distinguishable from the present case in that Buhari's case was signed in the chamber of and before the Counsel who is also a Notary Public and not before the Commissioner for Oath.

That Plaintiff did not support her case with Statement on Oath as the purported amended Statement on Oath cannot legally be amended. It should either be Further Witness Statement on Oath or Additional Statement on Oath. That Oath cannot be amended even if pleadings are amended. He urged Court to look at the former Oath of the Plaintiff's Witness and the amended Oath. He urged Court to notice the disparities in her Statement of Claim and Witness Statement on Oath and resolve the Issue in 1st Defendant's favour and grant his Counter Claim and enter Judgment in favour of the 1st Defendant.

In her Final Address the Plaintiff raised 2 Issues for determination which are:

- (1) Whether the Claimant has discharged the burden of proving her claim to the Res, Plot 649 on the preponderance of Evidence and balance of probability for her to be entitled to all the Reliefs sought.**

- (2) Whether in view of abandonment of pleading in the 1st Defendant's Counter Claim and total absence of Counter Claim from the 2nd Defendant, the Court can grant any relief in favour of either of the Defendant.**

On Issue No.1, the Claimant submitted listing the way to prove ownership of title as decided by Supreme Court in the case of:

**Godfrey Ifediora & Ors V. Eugene Okafor & Ors
(2019) LPELR – 49518 (SC)**

She submitted that the Plaintiff had tendered several raw original documents of title in **EXH 3, 4 & 5** all of which were executed and authenticated as required by law. That she tendered the Power of Attorney donated by Isah Abubakar to Hajia Fatima Mohammed Adamu which was issued in August 2003 and the Certified True Copy of the another Power of Attorney donated by Fatima Mohammed Adamu to the Plaintiff on the 7th of August, 2008 all marked as EXH 1.

That she maintained consistency and was resolute in her testimony during Cross-examination. Her documentary evidence was not also controverted. That she discharged the burden of proving her claims to the ownership of the Res on the preponderance of evidence and balance of

probability. As such she is entitled to all her Reliefs as sought. That all the documents tendered were relevant to the issue in dispute and were admitted too. They referred to the following cases of:

**Vincent U. Egharevba V. Dr. Orobor Osagie
(2009) LPELR – 1044 (SC)**

**Shugaba Umaru Gana V. FRN
(2018) LPELR – 44344 (SC)**

That the evidence adduced were cogent and uncontroverted. That she successfully laid evidence to show that she acquired an equitable interest in the Res which is as good as a legal Estate in the Res. They cited the case of:

**Godwin Nsiegebe & Anor V. Obinna Mgbemena & Anor
(2007) LPELR – 2065 (SC)**

That the Plaintiff showed in her paragraph D that the ___ there was a valuable acquired consideration. That she became the beneficiary of the unexpired and residual interests, rights and title to the Res. That the Power of Attorney was authenticated and duly executed as required by law in compliance with **S. 150 Evidence Act 2011**. They urged Court to hold that Plaintiff is the true owner of and the lawful beneficiary of the unexpired residual right, interest and title to the Res, having established her title successfully.

On the claim of possession they submitted that Plaintiff has been in exclusive possession of the Res since 2008 until 2016 when the Defendants trespassed into the Res interrupting, disturbing and unlawfully obstructing her

right to peaceful possession by virtue of the Power of Attorney of 7th August, 2008. That she erected a fence round the Res and fixed a black gate to secure same. That the 1st & 2nd Defendants did not controvert the said fact on Plaintiff taking exclusive possession since 2008. That the 2nd Defendant claim to have taken possession in 2010, two (2) years after the Plaintiff had been in possession, further confirms that she was first in time.

That the 1st Defendant on his part immediately after the Power of Attorney was executed on the 11th of November, 2010, about three (3) years after the Plaintiff had taken possession, claimed that he came into possession. That 2nd Defendant had stated in his paragraph 13 that he took possession after the Power of Attorney was executed on the 10th of January, 2010.

That it is very clear that the Plaintiff was in occupation and possession first in time and long before the trespass by the Defendants. They urged Court to hold that Plaintiff's claim of exclusive possession since 2008 is uncontested, uncontroverted and undisputed.

On Claim of Trespass, the Plaintiff submitted that it is settled law that trespass to land is actionable by the person who had been in possession before all others as the Claimant has been in this case. That both 1st & 2nd Defendants through their respective averments had stated that they came into possession 2 & 3 years after the Plaintiff had been in exclusive possession respectively. That the Defendants by their own averments are in trespass on the Res in this case which is act of multiple trespass.

That the 1st Defendant added to the fence already built by the Plaintiff while the 2nd Defendant bought a forty feet Cargo Container and built Servant Quarter for his workmen which caused serious infraction on the Plaintiff's exclusive right of possession. That the Plaintiff's claim of trespass against the Defendants was not controverted by the Defendants. He relied on the cases of:

**Akunne Bosa Mbanefo V. Mofunanya Agbu & Anor
(2014) 4 LPELR – 22417 (SC)**

Egharevba V. Osagie Supra

That 2nd Defendant stated under Cross-examination that he saw a fence and a gate fixed on the Res. That he broke down the fence and brought the forty feet container into the land and later constructed the said Servant Quarters for his workers, hence confirming the allegation of trespass. That the 2nd Defendant by his action, committed multiple trespass. But that the Plaintiff did not resort to self help or took laws into her hand. That none of the Defendants had put off any credible defence to the act of trespass or justified the infraction of the Plaintiff's right to exclusive possession of the Res since 2008. They urged the Court to so hold.

On Claim to Damages of Five Million Naira (₦5,000,000.00) for the act of trespass against each Defendant, the Plaintiff submitted that she is entitled to damages. She referred to the cases of:

**Iroaganachi V. Madubuko & Anor
(2016) LPELR – 40048 (CA)**

**Abimbola Afolalu V. Olumakinde
(2019) LPELR – 47515 (CA)**

They urged Court to hold that Plaintiff is entitled to general aggravated and punitive damages as compensation for the trespass and infraction of her right to exclusive possession of and equitable interest over the Res having successfully proven the act of trespass against the Defendants.

On Issue No.2 whether on the abandonment of the pleadings in the 1st Defendant's Counter Claim and total absent of the Counter Claim from 2nd Defendant, the Court can grant relief in favour of the Defendants? The Plaintiff submitted that Court cannot grant any relief in favour of the Defendants in view of the abandoned Counter Claim by the 1st Defendant and total absence of Counter Claim by the 2nd Defendant. That the 1st Defendant failed to lead any evidence to prove or establish the Counter Claim or the Reliefs sought by him. That the said Counter Claim is therefore abandoned and deemed abandoned. They relied on the case of:

**Engr. Goodnews Agbi & Anor V. Chief Audu Ogbeh & Ors
(2006) LPELR – 240 (SC)**

That the Witness of the 1st Defendant, stated under Cross-examination that he signed his Witness Statement on Oath in the office of his lawyer at Wuse II. That the said lawyer is not a Commissioner for Oath or a Notary Public and his office is not the proper place where the DW1 can sign or depose to Witness Statement on Oath as required by law.

That even where the said lawyer is a Notary Public, which obviously he is not that it is now settled law that the DW1 cannot take such Oath before him as he is a person who is interested in the same matter which the said Oath was taken or signed. That the proper place to take an Oath is at the Court Registry at the Process Unit of the Court before a Commission for Oath and not at the office of the Counsel to the DW1 at Wuse II. That the Oath of the DW1 is fundamentally defective and incompetent in the eyes of the law and therefore has no legal competence or potency. He relied on the decision of the Court in the cases of:

Aliyu V. Bulaki

(2019) LPELR – 46513 (CA)

Cora Farms & Resources Ltd V. Union Bank PLC

(2019) LPELR – 48162 (CA)

They urged the Court to so hold.

That the testimony of the DW1 is froth with inconsistency and manifestly contradictory, unreliable and have no value.

In his testimony and under Cross-examination DW1 Yusuf Usman made the payment personally and he had said that he never met the said Yusuf Usman. That he also claimed that Yusuf gave him receipts he tendered personally. That the receipts were dated 2017 and that he met the same Yusuf in 2017 while the case was already going on for several years. But he never called the said Yusuf as a Witness for 1st Defendant. That Yusuf should have come before this Court as a Witness to confirm that there was no change of Conveyance from

him to Isa Abubakar. He was equally not informed about the case which commenced since 2011. That failure to call Yusuf to testify in this Suit as 1st Defendant's Witness is very fatal to the claim of 1st Defendant and his defence. They urged Court to so hold.

On the testimony of the DW1, the Plaintiff submitted that it is a mere hearsay. That DW2 under Cross-examination told Court that he never went to Bwari Area Council with DW1 or any other person to conduct search or verify the authenticity of the genuineness of the Res. That everything he said were confirmed information he received from 2nd Defendant. That hearsay evidence has no probative value and same is therefore liable to be discontinued by the Court.

On the absence of Counter Claim from 2nd Defendant, they submitted that the Court can only grant Reliefs sought and facts proved or established with credible testimony/evidence and Exhibit where necessary as no Court grants Reliefs which are not sought. They relied on the case of:

**APC V. Hon. Godwin Etim John & Or
(2019) LPELR**

That if the 2nd Defendant had wanted the Court to give credence to the documents he submitted he ought to have filed a Counter Claim. Rather he continued to be in trespass at the Res. That the Statement of Witness of the 2nd Defendant is of no credibility as his testimony and documentary evidence relied on. They all were to justify the 2nd Defendant act of trespass and invasion of the Res. That the documentary evidence points to a totally

different plot from the Res in issue going by the documents of legal title and equitable interest thereon. That this shows that the 2nd Defendant has no business being on the Res in issue as same does not belong to him or to anyone he derived his right from.

That his root of title is different from that of the Plaintiff. That the Plaintiff's root is traced to Yusuf Usman to Isa Abubakar while 2nd Defendant's title is traced from Monica Okonkwo to Ifeanyi Arinze. That the Claimant's CAD Zone is 07 – 05 while the 2nd Defendant's is 05 – 07. Again that the Certificate of Occupancy Number of the Claimant's Plot is totally different from the one relied upon by the 2nd Defendant. That it is only the Plot Number Plot 649 that is the only thing similar with the 2nd Defendant's plot.

That the documents of title presented by the 2nd Defendant do not relate to the Res in issue. That Court is urged to act on the documents of title of the Claimant which are in their raw original form and were uncontroverted and unchallenged and attach evidential and probating value to them.

According to the Plaintiff that on the Power of Attorney relied upon by the 2nd Defendant, there are differences in the signatures and absence of any authentication as required by law. That the signatures of Ifeanyi Arinze in the earlier Power of Attorney is totally different from his purported signature in the later Power of Attorney which the DW2 presented. That it is doubtful as to whether the Donee of the earlier Power of Attorney is same as the person who donated the later Power of Attorney to the 2nd

Defendant. They referred to S. 101 (1) Evidence Act 2011 and the Court of Appeal decision in the case of:

Mobil Producing Nig. Ltd. V. Lawrence Dickson Hope. (2016) LPELR – 41191 (CA)

That the said Power of Attorney donated to the 2nd Defendant which is the only nexus to the document of title relied upon by the 2nd Defendant was not executed and authenticated and that presumption of regularity cannot avail the said Power of Attorney because of the disparity and irregularity in the said signature. They relied on **S. 150 Evidence Act 2011 as Amended.**

They urged Court to so hold and further hold that the Plaintiff has established her Claims on the Res on preponderance of credible evidence and on balance of probability and as such she is entitled to all the Reliefs sought. Again they urged Court to hold that the abandonment of the Counter Claim of the 1st Defendant and the non filing of any Counter Claim by the 2nd Defendant has further make and established the Plaintiff's ownership of the Res and make her to be entitled to the said Reliefs as sought in this case.

Upon receipt of the Claimant's Final Address the 1st Defendant on the 17th of September, 2020 filed a Reply to Plaintiff's Final Address filed on the 18th of August, 2020.

The Reply are on two (2) Issues, the first of which is that DW1 signed his Statement on Oath at the office of his Counsel. That in the case of Buhari V. INEC Supra and Aliyu V. Bulaki Supra the Oath were rejected because they were sworn at the office of the Counsel to the Defendants in this case. But that in this case the DW1

swore to the Oath at the Registry but signed the portion in his Counsel's Chambers. That where it is shown that from the face of the Oath that the Commissioner for Oath actually endorsed her/his portion of the Oath that it means that the Oath was sworn properly before the right person who is authorized to administer such Oath. That even if the Witness signed the Oath at his Counsel office but swear same physically before the Commissioner for Oath, it is a mere irregularity which should not violate/defeat the said Oath. That what the Court should look for is whether or not a Commissioner for Oath endorsed it. They referred to the cases of:

Udeagha V. Omeghara
(2010) 11 NWLR (PT. 1204) 168

Uduma V. Arunsi
(2012) 7 NWLR (PT. 1258) 55

That by the decision in the case of

Kaan Int. Dev. Ltd V. Little Acorns Turkey Projects Ltd & Anor

(2018) LPELR – 45291 that failure to sign the deposition or signing same at the office of the Commissioner does not defeat the Oath because Witness having taking an Oath in the open Court and there being a signature of the Commissioner for Oath is mere irregularity and should be taken to have given his evidence on Oath.

That such irregularity will not affect the validity of the said Witness Statement. They referred to **S. 4 (2) & (3) Oaths Act**. That the Oath of DW1 was sworn to before the Commissioner for Oath who has his name, signature and stamp clearly stated and placed on the said Oath. He

urged the Court to discontinuance the submission of the Plaintiff as regards the Oath of 1st Defendant's Witness. They referred to the provision of **S. 168 (1) Evidence Act 2011**. That oral evidence cannot contradict the content of a document as the Statement of Oath. He referred to the case of:

**Bulet Int. Nigeria Limited V. Olaniyi
(2017) 17 NWLR (PT. 1594) 260**

He also referred to **S. 128 Evidence Act 2011**.

That Court is called upon to do substantial justice and not technical justice. They referred to the case of:

**Oyeyemi V. Owoeye
(2017) 12 NWLR (PT. 1580) 364 Ratio 24 @ Page 394
B – G**

That it is settled law that possession cannot give rise to a claim of trespass upon the face of a party having good and better title to land. They referred to the case of:

**Ajibulu V. Ajayi
(2003) 1 FWLR (PT. 190) 855 Ratio 5**

They urged Court to discontinuance the Plaintiff's "purported and imaginary possessory right" over the land as she according to the 1st Defendant has no title or interest over the Res.

That the 1st Defendant cannot therefore be liable for trespass over the said Res, since the Plaintiff wrongfully entered the said land. That Plaintiff was not able to prove her title to the Res to be entitled to her damage against the 1st Defendant. That Plaintiff has no locus standi in

this action as there is no nexus between the Plaintiff and the cause of action.

That Plaintiff claiming to sue as true and rightful Attorney of Hajia Fatima Mohammed Adamu renders her action incompetent. That Yusuf Usman is the original Allottee. That she has not proved her nexus with the said Yusuf Usman or with Isa Abubakar. That the rightful party on whose behalf this Suit should have come up is Isah Abubakar. That to that extent the action of the Plaintiff is incompetent and same should be dismissed.

That the initial root is laid on and traceable to the said Isah Abubakar and that Plaintiff ought to sue as his agent and not as agent of Hajia Fatima Mohammed Adamu. They urged Court to so hold.

That Court is left with the 1st Defendant's Counter Claim. That failure of Plaintiff to file defence to Counter Claim is fatal to her case and that the Counter Claim is deemed to be admitted. They cited the cases of:

Ndulaka V. Nwakanma
(2013) LPELR – 21949

Obi V. Nzewuihe
(2020) 30 WRN 144

That failure to file defence to Counter Claim means that Plaintiff had admitted the case of 1st Defendant in the Counter Claim and therefore 1st Defendant is entitled to the relief as contained in the Counter Claim.

They urged Court to dismiss the Suit of the Plaintiff and grant the Counter Claim. That since the 1st Defendant has placed sufficient and credible evidence before the

Court, the Plaintiff cannot over ride the legal interest of the 1st Defendant with her equitable. He referred to the case of:

Nsiegbe & Anor V. Obinna Mgbemene & Anor Supra

That the Plaintiff cannot take advantage of unregistered registrable instrument to claim equitable interest on the Res. That **EXH 1, 3, 4 & 5** has no nexus with the Plaintiff and Isah Abubakar. That the EXH is not admissible and should not be relied upon by the Court to enter Judgment in Plaintiff's favour. That the 1st Defendant's Counter Claim is still intact and unchallenged by Plaintiff.

That Plaintiff has not proved her case, challenged the Counter Claim or prove that she has right title to the Res to be entitled to Judgment of this Court. They also urged Court to dismiss the case of 2nd Defendant who they say is a busybody in the Suit and enter Judgment in their favour and grant their Counter Claims.

In every case predicated on tussle for ownership of land establishment of title is proved by traditional evidence, production of document of title authenticated and duly executed or by evidence of sufficient length of time, act of long possession and enjoyment among other methods. See the cases of:

Oriodu V. Akinlolu
(2012) 9 NWLR (PT. 1305) 370

Owoeye V. Oyinlola
(2012) 15 NWLR (PT.84)

For the Plaintiff to succeed in such case, the onus is on her to establish title on the strength of her case. See:

Akolechewo V. Ojibutu
(2012) 16 NWLR (PT. 1325) 1

The Plaintiff is also to prove the title of the vendor where her title emanated from. Whether the title emanated from a family hand. In that case the Claimant only has to discharge the onus of proof of title to her. It is unless the title is denied that the onus is on Plaintiff to plead and prove origin of the vendor's title. See the cases of:

Nwadiogbu V. Nnadozie
(2001) 12 NWLR (PT. 727) 315

Famuroti V. Agbeke
(1991) 5 NWLR (PT. 189) 1

In any matter concerning tussle on owner of land and where there is an allegation of trespass it is incumbent on the Plaintiff to show or establish the ownership of the land and that he is in exclusive possession before the act of trespass. That is what the Court decided in the case of:

Akoledowo V. Ojubutu Supra

The Plaintiff also has to establish through testimony and evidence the nature of her title. To succeed, the Plaintiff must satisfy the Court as to the precise nature of the title she claims either by virtue of the constancy grant, Conveyance, Sale or having possession. She must also have evidence establishing the nature of the title claimed. That is what the Court decided in the cases of:

Adesanya V. Aderonmu
(2009) 9 NWLR (PT. 672) 370

Ovi Wodo V. Akinlolu Supra

Proof of ownership is based on documentary evidence. Also Agreement for Sale of Land must be in writing. Specification of the property is *sina qua non* to the validity of such contract of sale. See the case of:

Dantata V. Mohammed
(2012) 14 NWLR (PT. 1319) 122

Any document proposing intention of parties to convey land ___ is registrable document and can be tendered to prove the terms of any oral agreement between parties. It can also act as receipt to prove payment and equitable interest. That is what the Court decided in the cases of:

Ogunjumo V. Ademolu
(1995) 4 NWLR (PT. 389) 254

Dantata V. Mohammed Supra

Adesanya V. Aderonmu Supra

Evidence of receipt of purchase price of land with evidence of delivery of possession confers on a person/Plaintiff an equitable interest in the land. See:

Mohammed V. Mohammed
(2012) 11 NWLR (PT 1310) 1

Nsiegbe V. Mgbemene
(2007) 10 NWLR (PT. 1042) 364

Thompson V. Arowolo
(2003) 7 NWLR (PT. 818) 163

According to the equitable Black Law dictionary 8th Edition

By the principle of **Bonafide Purchaser of Value without Notice**, a Claimant is protected from the ground of his vendor. He is not affected by the transferor's fraud against a 3rd party and has a superior right to the transferred property as against the transferor's creditor to the extent of the consideration that he had paid. See P. 1271 Black's Law Dictionary 8th Edition. See also the cases of:

Omosanya V. Anifowoshe
(1995) SCNLR 217

Odunkwe V. Admin General East Central State
(1978) 1 SC 25

Mohammed V. Mohammed Supra

The Claimant also has a duty to show clearly the area of land to which his claim relates the exact boundaries and its extent because no Court will obliged to grant a declaration on an unidentifiable land. See the cases of:

Ashiek V. Borno State Government
(2012) 9 NWLR (PT. 1304) 1

Ogbedemgbe V. Balogun
(2007) 9 NWLR (PT. 1309) 380

Adelusola V. Akande
(2004) 12 NWLR (PT. 887) 295

Okochin V. Animkwai
(2003) 18 NWLR (PT. 851) 1

It is imperative to state that where a Claimant fails to establish the exact boundary and identify of the land the claim will fail. See the case of:

Fagunwa V. Adibi
(2004) 17 NWLR (PT. 903) 544

In a Suit on tussle for ownership of land where there are two or more competing parties to a piece of land and they trace their grantor to same person “**the later in time will have to give way to the first in time.**” This is based on the latin maxim of:

Quo prior tempore, prior est jure.

On the above see the cases of:

Anta V. Ibe
(2003) 11 NWLR (PT. 837) 247

Adeniran V. Ashabi
(2004) 2 NWLR (PT. 857) 375

Ilona V. Idakwo
(2003) 11 NWLR (PT. 830) 53

Production of Certificate of Occupancy or document of title does not automatically entitle a party to claim for declaration of title. Before the Court can admit document of title as proof of ownership, the Court must be satisfied that the document is genuine or valid and has been executed, stamped and Registered, that the grantor has what he granted or proposed to grant has the effect claimed by the holder of the instrument. That is Court’s decision in the cases of:

Dabo V. Abdullahi

(2005) 7 NWLR (PT. 928) 181

Kyari V. Alkali

(2001) 11 NWLR (PT. 742) 412

Romaine V. Romaine

(1992) 4 NWLR (PT. 238) 650

Mere possession of Right of Occupancy cannot destroy existing right over land in dispute. So for such Certificate of Occupancy to be valid there MUST NOT be in existence at the time of or when grant of such Right of Occupancy or Certificate of Occupancy when the right was grant any issue of customary owner who has not been diverted of his title. This means that there must not be any encumbrances at all before such grant. So where a person presents a document without title or piece of land in respect of which a grant was issued/acquired no right or interest because of the encumbrance to such land. See the cases of:

Ezeamah V. Attah

(2004) 7 NWLR (PT. 873) 468

Dansoho V. Mohammed

(2003) 6 NWLR (PT. 817) 457

Oloyunde V. Adejoju

(2000) 10 NWLR (PT. 676) 562

No grantor can give what he does not have. See also the cases of:

Provost Lagos College of Education V. Edun

(2004) 6 NWLR (PT. 870) 476

Registered Trustee Apostolic Church V. Oloweseni

(2003) 6 NWLR (PT. 158) 514

In any action where allegation of trespass is raised, presupposes that the Claimant is either in ownership of the land in dispute or that she is in possession of the land in dispute. Failure of the Plaintiff to prove possession, the action in trespass cannot succeed. See the following cases:

**Dim V. Attorney General Federation
(2004) 12 NWLR (PT. 888) 459**

**Oluwode V. Abubakir
(2004) 10 NWLR (PT. 882) 549**

All the above are what must be established by any Claimant and what the Court must consider before it can determine a person who is entitled to land in dispute. Failure of the Plaintiff to do so means that claim of title and trespass cannot stand. Other it will ___ she successfully prove so.

COURT:

In this case, parties – the Plaintiff and Defendants are claiming ownership of the Res. All have tendered documents of title in prove of ownership as summarized above. The Plaintiff specifically claims ownership of Plot 649 CAD 07 – 05 Dutse Alhaji District, Abuja.

There was Counter-Claim by 1st Defendant. The Plaintiff had claimed that the Defendant did not lead evidence to prove the Counter-Claim. Again, the 2nd Defendant did not file any Counter-Claim.

The question before this Court is who is the rightful owner of the Res, bearing in mind that where there are several claims the first in time is deemed the owner and all the others are deemed trespassers; more so when such party is in possession of the Res.

All the parties have in time as detailedly summarized above elucidated on the principle of first in time, possession, occupation and title document. This Court will not waste time to delve into same.

But it is imperative to state that in allegation of trespass, it is incumbent on the Plaintiff to establish that it was in effective occupation and in possession as at the time the trespasser came into the Res. That means that the Plaintiff must prove that she has quiet enjoyment of the Res before the trespasser. This she must lead evidence to. Again the trespassers on their own must with cogent evidence and documents of title show that they are not trespassers. That they were in occupation and in possession of the Res before the Plaintiff. That is that the Plaintiff is the person in trespass. Where such Defendant succeed, the Court will hold so and enter Judgment in the Defendant's favour, bearing in mind that where there is multiple claim to ownership the first in time holds or carries the day.

It is imperative to state that admitting a document in the cause of proceeding is a different thing from attaching weight to such document so admitted, in that at the end of the day a document admitted may not have any evidential judicial weight attached to it. So also any document that is rejected in the course of proceeding at the time of attaching weight to document, the Court can

suo motu admit such documents in evidence by marking it as an Exhibit and then if necessary attach weight to it at the end of the day. All is done in the interest of justice of the case.

In the light of the above, this Court hereby admit the CTC of documents from Bwari Area Council sought to be tendered from the Bar by the 1st Defendant Counsel but which was then rejected by the Court. The Court's decision to do so is that the Court has realized that admitting same will aid the Court to get to the justice of this case.

So the said document policy extract is admitted and marked as EXH 21. This means that the 1st Defendant tendered 12 documents in support of his case.

It is trite law and had been held in plethora of cases that a Court has a right to look into all Processes filed, adopted, abandoned or even withdrawn by parties all in the interest of justice of the case and to get to the justice of the case. In this case there are many abandoned, withdrawn and amended documents by all the parties. This Court will and had taken note of same in considering the issues in dispute. It is imperative to state that the latest in the series of amendment by parties in a matter is what is regarded as the parties' documents to be considered in support of their respective cases as the case may be.

It is imperative for the Court to highlight the documents tendered by parties in support of their respective stances. It is also imperative to state that whoever alleges must prove with cogent and strong evidence.

In a matter predicated on land, documents reign and such document in support must be so cogent and relevant that it can “speak” with the human voice. It is incumbent on the Plaintiff who claims ownership of such land to present such good and credible facts and documents to support its claim to ownership of such land. Where the Plaintiff fails to do so, the Court will hold that he/she has not been able to establish his/her case. The weakness of the Defendant case cannot avail the Plaintiff in that case. This also applies in the case of a Counter-Claim. So where evidence is not led to establish Counter-Claim it shall fail; the fact that Plaintiff/Defendant to Claim did not file a reply notwithstanding because the weakness of the Defendant’s case in the Counter-Claim cannot avail the Counter-Claimant’s success.

Once there is contradiction or inconsistency in the testimony of the Claimant or Counter-Claimant or their respective Witness in support of the claim or Counter-Claim, the Court will hold that such testimony/facts is not worthy to support the party’s case as the case may be. So also disparity in the document presented will equally affect the case negatively. In such case the Court will hold that the Claimant or Counter-Claimant had not been able to establish his/her case. Of course Judgment will not be entered in favour of such a Claimant or Counter-Claimant in such case.

In this case the tussle is on the ownership of Plot 649 located at Dutse Alhaji within Bwari Area Council, Abuja. The Plot size according to the Right of Occupancy attached by the Plaintiff is 935.60m². The file Number is

FCT/MZTP/LA/KG/2144. Letter of offer is dated 15/6/95. The new number is KN.40472 going by EXH 5 – AGIS Acknowledgement Receipt of 30th November, 2006. She had attached the Conveyance Offer of Provisional Approval dated 15/6/95 issued to Isa Abubakar and also attached the one cancelled but issued initially to Yusuf Usman. She had two (2) Powers of Attorney. One donated by Isa Abubakar on the 31st of August, 2003 to Hajia Fatima Mohammed Adamu while the other was donated to her Florence Adebisi by the same Hajia Fatima Mohammed Adamu on the 7th of August, 2008. She also attached Right of Occupancy in respect of the said Plot 649 File Number MZTP/LA/KG/2144. She attached receipt of payment of Five Hundred Thousand Naira (₦500, 000.00) as cost of this Suit and pictures showing trespass on the said land by the 2nd Defendant. The mark on the Right of Occupancy shows that it was submitted to AGIS in 16th October 2006 and receipt of acknowledgment was issued on the 30th of November, 2006.

The 1st Defendant who filed a Counter Claim tendered several documents. He attached Conveyance of Provisional Approval issued to Yusuf Usman dated the same 15/6/95 (EXH 8). The marking on the document shows that it was presented to AGIS for Regularization on the 28th February, 2006. The receipt of acknowledgment is dated 18/10/07.

In the Conveyance of Approval the size of the Plot is about 1000sqm – EXH 8. In the AGIS receipt the old file Number is KN/877 and the new file Number is KN/43989 which is totally different from the old and new

File Number of the Plot in issue as tendered by the Plaintiff in claim of ownership of the Plot 649. This fundamental difference in the old File Number and the New cast doubt in the issue of ownership as claimed by the 1st Defendant in their Counter as far as this case is concerned. The same numbers reflected in the letter of authority purportedly issued by Yusuf Usman to the 1st Defendant – EXH 9.

Again the TDP attached by the 1st Defendant also bears the number BZTPLA/KN/877 granted to the same Yusuf Usman for the same Plot 649. In the said TDP it shows that the size of the land in question is 836.24m² which is not same as the size of the Plot which the Plaintiff claims as hers which is 935.60m². This disparity in the TDP and size of the Res casts another doubt as to whether the Plot allocated to the 1st Defendant is same as that claimed by the Plaintiff.

Again there is no Right of Occupancy document heralding the TDP of the 1st Defendant. The Plaintiff had submitted the sealed copy of the Right of Occupancy with the duly signed TDP attached to it as signed by the Registered Zonal Land Surveyor. It was also signed by the HTO(c) and also signed by the person who checked the said document. But the TDP of the 1st Defendant has no Right of Occupancy. It was for land granted to Yusuf Usman at “Dutse” not at “Dutse Alhaji.” All the documents the 1st Defendant attached starting from the Special Power of Attorney stated that the land is located at “Dutse Alhaji” not at “Dutse” as indicated in the TDP attached by the 1st Defendant. Again the document

attached to the said TDP by the 1st Defendant has the same signature of the Zonal Land Surveyor.

The drawing was not signed and it was not checked or passed by anyone. Again a closer look at the document shows that the same person initiated on the document. The same document did not show CAD Zone on the down part of the TDP. It only stated coordinate of 6234. The TDP attached to the Certificate of Occupancy tendered by Plaintiff also has written on its face bold the new File Number KN/40472 unlike the one submitted by the 1st Defendant. The same TDP has boldly written clearly the CAD Zone Number 07 – 05. The one which the 1st Defendant presented to support his Counter Claim looks fictitious in that it was squeezed into the line as it glaringly clear in that the figure “7” and figure “5” were squeezed into the document. They have different font size too. The disparity in that EXH 10 makes the document evidently weightless. This Court holds that the document is not credible to support the Counter Claim of the 1st Defendant. It is equally worthless as a document to support 1st Defendant’s defence in this case. From all indications that document relates to a totally different Plot of land, not the said Res in issue in this case. To that extent this Court hold that the Counter Claim and the 1st Defendant’s defence to the case of the Plaintiff fail and cannot stand because of the fundamental disparities and inconsistencies as outlined above.

The Plaintiff presented two (2) Powers of Attorney, one donated by Isa Abubakar and another donated by Hajia Fatima Mohammed Adamu to Plaintiff on the 31st August, 2003 and 7th August, 2008 respectively.

Certificate of Occupancy was issued to Isah. She attached another Conveyance of Provisional Approval which was cancelled which bears the name of Yusuf Usman. She attached a letter dated 5/7/96 where the same Yusuf had acknowledged receipt of One Hundred and Eighty Thousand Naira (₦180, 000.00) from Isa Abubakar for sale of the same Plot 649. Though the Plaintiff withdrew this document, thus Court has right to look at it.

Going by the said Powers of Attorney attached by Plaintiff in support of her claim and the date of the donation of same, it is clear that it was first in time as far as the said Plot 649 is concerned. The Power of Attorney donated by the same Yusuf on 11th November, 2010 to 1st Defendant as well as the Deed of Sale has no legitimacy in that the same document concerns the said Plot as at that time the said Yusuf Usman has nothing to donate to 1st Defendant since he has transferred this Conveyance of Provisional Approval to Isa Abubakar long before then. But in this case the Plot 649 which the 1st Defendant referred to by the AGIS receipt is the one located in AMAC while the one the Plaintiff is claiming ownership for is Area Council in Bwari going by the AGIS receipt she attached. This further confirms that the Plot 649 – the Res in this case is different from Plot 649 referred to by the 1st Defendant just like the Reference Number of the allocation.

It is no secret that before anyone is allowed to carry out construction there must be an approved Building Plan. But most importantly there must be evidence of Certificate of Occupancy. In this case the Plaintiff had

attached a Certificate of Occupancy. The 1st Defendant had not attached any Certificate of Occupancy. He only attached evidence of payment of Certificate of Occupancy. It is a well known secret that there must be a certificate of Occupancy before one can be allowed to construct on any land anywhere. Conveyance of Approval Development Plan can only come after there is Certificate of Occupancy customary or state. In this case as far back as 2002 the 1st Defendant had by EXH 11 gotten Approval of Development Plan. The said approval ordinarily expired on the 20th February, 2004. There is no evidence that the 1st Defendant met the requirement as contained in the said EXH 11 particularly the provision of paragraph 1 (xii). This further shows that the Plot which the 1st Defendant is laying claim on is quite different from the Res since Development Approval was already issued to 1st Defendant as far back as 19th August, 2003. Meanwhile the Certificate of Occupancy was already issued to the Plaintiff since 13th March, 1997 while the 1st Defendant paid for Certificate of Occupancy sometime in 1st March, 2017. The principle of first in time applies here too. The Plaintiff was also first in time in that regard. So this Court holds.

On the documents from Bwari Area Council showing minutes of several officers of the Area Council it is clearly that there was an inquiry from Court based on the subpoenaed 1st & 3rd Defendants that calls for the policy file. That “policy file” is what the minutings referred to. The document attached which the Court had admitted as EXH 11 is not the policy file. Again, it did not show any

document in respect of the said Plot 649. The EXH only showed the front page of what is termed “Action Sheet.”

In the minute the said document which the Court originally marked rejected but has in the interest of justice lifted the “rejected” and marked as the last EXH 21, shows that on Plot 649 CAD 05 – 07 from AMAC policy file on MZTP/LA/AN/308 Dutse Alhaji was traced to Monica Okonkwo the person who the 2nd Defendant claims origin of his title from. It is not same as Plot 649 where the Plaintiff claims her own title from. This is because Plaintiff’s policy file number is MZTP/LA/KG/2144 which is for Plot 649 with origin from Yusuf Usman through Isa Abubakar. It is quite different from that of the 2nd Defendant and the 1st Defendant whose file number is quite different from the Plaintiff and 2nd Defendant. The 1st Defendant’s Number is BZTPLAN/KN/877.

It is interesting to point out that the site plan of the 2nd Defendant does not have the name/signature of the Surveyor who drew it. It does not also have the signature of the person who passed and checked it. This shows that the document is not regular. It is unsigned and has no judicial evidential value. So this Court holds.

Proof of ownership of land is based strictly on credible documents and documents alone. Oral testimony is not as strong as documentary evidence in land matters. Also the CAD Zone on the document – EXH 10 by 1st Defendant has different character than others. It is clear that it was imposed into the document. The CAD Zone on the 2nd Defendant document shows that it is not the

regular numbering in survey plan. It is 05 – 07 and not 07 – 05.

The same “Bwari Policy File” as the 1st Defendant Counsel claims shows that the AN/308 transferred from AMAC and was fully processed. There is no evidence to show that KN/877 of the 1st Defendant was part of the same Plot 649 KG/2144 of the Plaintiff. Or that the AN/308 is same as KG 2144. AN/308 came from AMAC not Bwari.

Also the Plot which the 1st Defendant is laying claim on based on the document they have in Court – EXH 10 shows that the plan is for a land at Dutse not a land at Dutse Alhaji which is where the Res in issue is located. It is imperative to state that the documents presented by the Plaintiff in this case are very regular, consistent and authentic unlike the document presented by the 1st Defendant in claim of KN/877 and 2nd Defendant in claim of AN/305.

A look at the New File Numbers of the document in the AGIS receipt tendered by the Plaintiff shows that it is KN/40472 while that of the 1st Defendant is KN/43989. They are both different, dated on different dates. For the Plaintiff it is 30/11/06. For the 1st Defendant it is 18/10/07. The principle of first in time applies here. So this Court holds that the Plaintiff is first in time as far as the same Plot 649 is concerned.

It is clear that all the signature in the TDP of the 1st Defendant’s EXH 10 was signed by the same person which ought not to be. That of the 2nd Defendant is not signed at all.

It is clear that the Bwari subpoenaed document shows that the Plot 649 bears the name of Yusuf Usman. In that case the said Plot is not same as the one claimed by the 2nd Defendant.

On the documents presented by the 2nd Defendant, the dating on the Conveyance of Approval shows that it was imposed out of place unlike any other thing printed in the document – EXH 17. It is also for a plot of land that is about 1000m², not specific.

The recertification was done in 2009 – 18th March. While that of the Plaintiff was done in 2006. That recertification is for a totally different File Number old AN/308 and New File Number AN/61238. It is fundamentally different from the Res. It was for Plot allocated on the 12th July, 1996. While the Res was allocated on 15th June, 1995. The issue of first in time applies too, in that Plaintiff is also first in time as regard the plot of the 2nd Defendant.

It is imperative to state that the size of the plot which the 2nd Defendant lays claim on are very different from the size of the plot in issue. To that extent the said Counter Claim of the 1st Defendant cannot stand as the claims is on a totally different plot of land. Again their documents in support are all for the plot which is different from the Plot/Res in issue. Of fundamental interest is the Deed of Assignment and Powers of Attorney attached by the 2nd Defendant in defence of this Suit – EXH 17 & 18.

To start with the Certificate of Occupancy tendered by the 2nd Defendant is for AN/308 which has nothing to do with the Res in this case. The Certificate of Occupancy of the Plaintiff is for KG/2144. There would not have been a

Certificate of Occupancy on the same Plot 649 belonging to the Plaintiff and another Certificate of Occupancy on the same Plot 649 (AN/308) which the 2nd Defendant claims.

On the Power of Attorney tendered by the 2nd Defendant dated 16/12/98, it was donated by Monica Okonkwo to Ifeanyi Arinze of Festac Town, Lagos. It is in respect of asset of File No. AN/308, Plot 649 and not in respect of KG/2144 Plot 649 which is the Res in this case. The parties signed the Power of Attorney and the present 2nd Defendant witnessed for Ifeanyi Arinze. A look at the receipt issued by Monica Okonkwo shows that there is a disparity in the signature of Monica Okonkwo. Phony enough the donation of the Power of Attorney by Monica Okonkwo was even as contained in paragraph 3 of the Power of Attorney in consideration of One Hundred and Fifty Thousand Naira (₦150, 000.00) paid by the same Ifeanyi Arinze. This makes the Power of Attorney to be “defective” because Powers of Attorney are not donated in consideration of any amount paid by Donee to the Donor. To that extent that document does not have evidential value and weight. So also the receipt issued had further watered down the said Power of Attorney and all its intent and purposes.

Again the Power of Attorney donated to 2nd Defendant by the Ifeanyi Arinze is in respect of the said Certificate of Occupation on the Plot 649 and File Number AN/308. That donation was done on the 10th January, 2010 at Amudo Village Awka. There is a fundamental disparity in the signature of the said Ifeanyi Arinze so much different from his/the signature in the Power of Attorney

purportedly donated to him by sale and payment of consideration of One Hundred and Fifty Thousand Naira (₦150, 000.00) by Monica Okonkwo. Strangely there was no Witness to the said document – EXH 18. Again no one witnessed for and on behalf of the 2nd Defendant who is the Donee and who was the Witness in the Power of Attorney donated by Monica Okonkwo to Ifeanyi Arinze.

It is strange that the 2nd Defendant witnessed when the Power was donated to Ifeanyi Arinze and when it was donated to him there was no Witnesses and there was no Witness for Ifeanyi Arinze the Donor. All that disparities as pointed out makes this Court to hold that the 2nd Defendants' documents EXH 19, has no evidential value and weight as far as this case is concerned. The fundamental disparity in the signature of the Donor to the 2nd Defendant calls for question and makes the document not to have any judicial evidential weight attached to it. The trace of the origin on the 2nd Defendant title is shaky and defective. His defence has no merit. He is a trespasser to the Res in this case, just like the 2nd Defendant is too. The claim of ownership by Defendants is shaky and froth with inconsistencies.

After all the above detailed analysis this Court holds that the case of the Plaintiff is meritorious. She has been able to establish her title to the Res from Yusuf Usman through Isa Abubakar to Hajia Fatima Mohammed Adamu who donated the land to her on the 7th of August, 2008. She had also established with consistent testimony and credible documentary evidence that the land – Plot 649 in Dutse Alhaji Layout is on Plot 649 in File No: MZTP/LA/KG/2144 and not on any other number. She

has by her testimony shown and established that the 1st & 2nd Defendants trespassed into her land. She had shown from all indications that she is first in time and that all the Defendants especially the 1st Defendant is a trespasser and had no concrete evidence to establish ownership to the land. The journey of the parcel of land to her is consistent. The Defendants have not been able to controvert that fact.

The 1st & 2nd Defendants have shown a lot of inconsistencies in their defence and the 1st Defendant had not been able to also establish its Counter Claim to the Res. All his documents shows that he has a totally different Plot from the Plot which the Plaintiff lays claim both by the size of the Plot and its location at “Dutse” instead of Dutse Alhaji. There is no credence to the evidence of the 1st Defendant. He has not shown or exhibited any Certificate of Occupancy. The documents he exhibited are froth with inconsistencies and contradiction.

The Plaintiff, in all this case comes first by the principle of first in time. The document she has presented shows that she was first in time. Meanwhile the 2nd Defendant had confirmed that he met a fence in the Res and destroyed it and sent his boys to occupy it.

The 2nd Defendant could not contradict her evidence that she had a perimeter fence in the Res before the 2nd Defendant’s trespassed and encroached into the land. In fact he confirmed that the picture she tendered puts no one in doubt about the said trespass. The 2nd Defendant did not deny that either. The CTC of the Power of Attorney donated by the Hajia Fatima Mohammed

Adamu shows that it was certified and stands as the original of the document. After all the documents was initially tendered or presented in Court in the cause of the journey of this case in Court since 2011. The Certificate of Occupancy she presented puts no one in doubt about the authenticity of the beneficial ownership of the Res, just like all the other documents she tendered before this Court in this case.

The disparity in the CAD Zone is glaringly clear 07 – 05 and in the 2nd Defendant is 05 – 07.

This Court therefore holds that the Plaintiff Florence Adebisi is the true and lawful beneficiary of the unexpired and residual rights, interest and title to the Res Plot 649 CAD Zone 07 – 05 measuring 936.60m² located at Dutse Alhaji as detailed stated in the Certificate of Occupancy and in the Claimant number 1 in this case.

The 1st Defendant is in multiple act of trespass as stated in Relief No.2.

The same goes to 2nd Defendant who is also by his action a multiple trespasser to the Res as stated in Relief No.3.

Prayer 4 & 5 are granted as prayed.

Perpetual Injunction granted as prayed in Relief No.5.

The 1st & 2nd Defendants are to pay the sum of One Hundred Thousand Naira (₦100, 000.00) each to the Plaintiff for the act of multiple trespasses on the land.

Parties are to bear their respective cost of litigation and Solicitor's fees.

Two percent (2%) Interest on the Judgment sum from date of Judgment until fully liquidated.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2021 by me.

**K.N. OGBONNAYA
HON. JUDGE**