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

THIS TUESDAY, THE 22ND DAY OF JUNE, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO FCT/HC/CV/215/15

BETWEEN:

1. MS & SONS AUTO LTD
2. ASD MOTORS NIG LTD **……PLAINTIFFS**

AND

1. OMNI-CONCEPTS WORLDWIDE INTERNATIONAL LTD
2. OPENIYI OLAWALE **DEFENDANTS**

JUDGMENT

The Plaintiff's claim against Defendants as endorsed on the further Amended Statement of Claim dated 7th November, 2018 are as follows:

a. **A Declaration that the first Plaintiff is the rightful owner with the Right of Occupancy over parcel of land known and described as Plot. MF111 within the Northern expressway within Cadastral Zone 05-07 measuring approximately 6.829.27 square meters.**

b. **An order of perpetual injunction restraining the Defendants, their officers, servants, agents, privies, assigns howsoever from further trespassing Plot. MF 111 within the Northern expressway within Cadastral Zone 05-07 Kubwa District measuring approximately 6.829.27 square meters.**

c. **An order setting aside all other purported titles being flaunted by the Defendants in respect of the said Plot. MF 111 within the Northern expressway within Cadastral Zone 05-07 Kubwa District measuring approximately 6.829.27 square meters.**

d. **An order restraining the Defendants, their officers, servants, agents, privies, assigns and howsoever from further trespassing on the said property of the Plaintiff.**

e. **The sum of N50,000,000.00(Fifty Million Naira) as damages for trespass.**

f. **15% of the Judgment sum from the date of judgment until the entire amount is liquidated.**

The Defendants filed their joint Amended Statement of Defence dated 16th January, 2019 and set up a counter-claim against Plaintiffs as follows:

(a) **A Declaration that the land and property known as Plot No. 71, Karsana East, Cadastral Zone D01, Abuja belong to the Defendants and that the Defendants are the owners of same.**

(b) **The sum of One Hundred Million (N100,000.000.00) only general damages for various acts of trespass committed on the Defendants/Counter-Claimants' land by the Plaintiff's workmen and servants on or about 9 June, 2015 and since then.**

(c) **A perpetual injunction restraining the Claimant whether by themselves, their agents, servants, privies, workmen, successors-in-title or otherwise howsoever described from committing further acts of trespass or from ever interfering with the Defendants title on the said land.**

The Plaintiffs in response filed a joint defence to the counter-claim dated 20th January, 2017.

Hearing then commenced. In proof of their case, the Plaintiffs called two (2) witnesses. **Aishatu Sali**, Company Secretary and legal adviser of Plaintiffs testified as PW1. She deposed to a witness deposition dated 16th November, 2015 which she adopted at the hearing. She tendered in evidence the following documents:

1. Certified True Copy (C.T.C) of particulars of Director's form CAC 7 of MS&SONS AUTO LTD (1st Plaintiff) was admitted as **Exhibit P1a.**

2. C.T.C of particulars of Director's form CAC 7 of ASD Motors Nig Ltd (2nd Plaintiff) was admitted as **Exhibit P1b.**

3. Abuja Municipal Area Council (AMAC) offer of terms of grant/conveyance of approval dated 11th June, 1998 to MS & SONS AUTO LTD (1st Plaintiff) of Plot about 900m^2 (plot MF111) within outer Northern expressway was admitted as **Exhibit P2.**

4. Copy of Survey Plan titled Right of Occupancy No: FCT/MZTP/LA/2005/MISC 13853 together with the document titled Right of Occupancy Rent and fees were admitted as **Exhibits P3 a and b.**

5. Federal Capital Territory Administration (F.C.T.A) receipt dated 27th April, 2015 was admitted as **Exhibit P4.**

6. Regularisation of land titles and documents of F.C.T Area Councils Acknowledgment dated 24th November, 2011 was admitted as **Exhibit P5.**

7. Copy of Abuja Metropolitan Management Council (AMMC) conveyance of building plan approval dated 21st May, 2015 was admitted as **Exhibit P6.**

PW1 was then cross-examined by counsel to the Defendants.

Atuman Ishaku, a staff of Department of Urban and Regional Planning of F.C.T.A testified as PW2. The office of the Director Urban and Regional Planning was subpoenaed and he was instructed to give evidence on behalf of his department. He deposed to a witness deposition dated 14th January, 2019 which he adopted at the hearing. He tendered in evidence the following documents:

(1) Certified True Copy (C.T.C.) of a letter written by FCTA Department of Urban and Regional Planning dated 23rd June, 2015 to the Nigerian Police, Dutse Alhaji, FCT Abuja was admitted as **Exhibit P7.**

(2) C.T.C of letter by F.C.T.A, Department of Urban and Regional Planning dated 2nd February, 2015 to Alhaji Dr. Sani Dauda, Chairman/CEO, ASD Group of Company was admitted as **Exhibit P8.**

(3) C.T.C of Extract of Onex Layout showing Plot MF111 verged in Red was admitted as **Exhibit P9.**

PW2 was then cross-examined by counsel to the Defendants and with his evidence, the Plaintiffs closed their case.

The Defendants/counter-claimants on their part called only one witness, **Openiyi Olawale Shamsudeen,** the Managing Partner of 1st Defendant who testified as DW1. He deposed to a witness deposition dated 17th May, 2016 which he adopted at the hearing. He tendered in evidence the following documents:

1. Copy of offer of statutory Right of Occupancy to Omni-Concept World Wide Int. Ltd (1st Defendant) dated 2nd April, 2014 over plot 71 having an area of approximately 7,736.14 square meters in Cadastral Zone DO1 of Karsana East was admitted as **Exhibit D1.**

2. Copy of Certificate of Occupancy to Omni-Concept World Wide Int. Ltd dated 12th April, 2017 over plot No.71 Cadastral Zone: DO1, Karsana East District was admitted as **Exhibit D2.**

3. Original copy of satellite Plan/imagery of Karsana East, Cadastral Zone DO1 was admitted as **Exhibit D3.**

DW1 was then cross-examined by Counsel to the Plaintiffs and with his evidence, the Defendants close their case.

At the conclusion of trial, parties filed, exchanged and adopted their final written addresses. The address of Defendants/Counter-claimants is dated 20th October, 2020. Two(2) issues were raised as arising for determination as follows:

"**(a) Whether on the proper construction of the evidence of the Claimants together with the exhibits they tendered have discharged their burden to prove their case by credible evidence to justify the grant of the reliefs contained in paragraph 31 of the amended statement of claim.**

(b) Whether on the balance of probabilities the Defendants are entitled to Plot No. 71 Karsana East, Abuja, as Counter-claim, by the Defendant."

The final written address of Plaintiffs is dated 9th November, 2020. Three(3) issues were distilled as arising for determination:

"1. **Whether from the evidence before the court Plaintiff has sufficiently identified the land he lays claim to justify the award of the claims and whether Plot 71, Karasana District is the same Plot called the identity of the land in dispute (sic) is the same as Plot MF111 within the Northern expressway within Cadastral Zone 05-07.**

2. **Whether the Certificate of Occupancy granted to the second Defendant can validly confer any interest in the land in dispute in view of a subsisting interest by the AMAC.**

3. **Whether the Plaintiff is entitled to the reliefs claimed."**

The Defendants/Counter-Claimants filed a Reply on points of law dated 23rd November, 2020 to the Plaintiffs' address.

I have set out above the issues as distilled by parties as arising for determination. From a careful consideration of the issues streamlined on the pleadings, and evidence led at trial, the issues raised by the Defendants, which will be slightly modified by court appear to have captured the crux of the extant dispute. It is not in dispute that there is a Claim and a Counter-claim. It is trite principle of general application that for all intents and purposes, a counter-claim is a separate, independent and distinct action and the counter-claimant, like the Plaintiff in an action must prove his case against the person counter-claimed before obtaining Judgment. See **Jeric Nig Ltd V. Union Bank (2019)7 W.R.N 1 at 18; Shettimari V. Nwokoye (1991)9 N.W.L.R (pt.213)66 at 71.**

In view of the settled state of the law, both the Plaintiffs and the Defendants/Counter Claimants have the burden of proving their claim and counter-claim respectively. This being so, the issues for determination in this action can be more succinctly encapsulated in the following issues:

1. **Whether the Plaintiffs have established on a balance of probabilities their entitlement to all or any of the reliefs claimed.**

2. **Whether the Defendants/Counter-claimants have equally on a balance of probabilities established their entitlement to all or any of the Reliefs sought.**

The above issues conveniently covers and accommodates all issues raised by parties. The issues thus raised by court are not raised in the alternative but cumulatively with the issues raised by the parties. See **Sanusi V. Amoesgun (1992)4 N.W.L.R (pt.237)527 at 550-551.**

Perhaps I only need again emphasise the often unappreciated but important point that it is now a general principle of wide application that whatever course the pleadings take, an examination of them at the close of pleadings and trial should show precisely what are the issues between the parties upon which they must prepare and present their cases and which remain to be resolved by court. Any issue outside the template of the pleadings can only but have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd & Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

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

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issues formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle. I shall consider and deal with common questions arising from both the claim and counter-claim together.

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

ISSUE 1

Whether the Plaintiffs have established on a balance of probabilities their entitlement to all or any of the reliefs claimed.

At the commencement of this judgment, I had stated that there is a claim and counter claim by the plaintiffs and defendants. So they both have the evidential burden of establishing their claims and succeeding on the strength of their case as opposed to the weakness of the case of the other party. See **Kodilinye V Odu (1935) 2 WACA 336 at 337; Fagunwa V Adibi (2004) 17 NWLR (pt.903) 544 at 568; Nsirim V Nsirim (2002) 12 WRN 1 at 14.**

This principle is however subject to the qualification that a claimant is entitled to take advantage of any element in the case of his opponent that strengthens his own cause. What this means is that it is not enough to merely assert that the case of the opponent is weak; there must be something of positive benefit to the claimant in the case of the opponent. See **Uchendu V Ogboni (1999) 5 N.W.L.R (pt.603) 337.** Accordingly, it is important to add that where the claimant fails to discharge the onus cast on him by law, the weakness of the case of the opponent will not avail him and the proper judgment is for the adversary or opponent. See **Elias V Omo-Bare (1982) NSCC 92 at 100 and Kodilinye V Odu (supra).**

The pleadings of parties will be important in this case because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus or pivot around which the cases of parties revolve. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality of evidence led. Because of the various contending issues raised by parties, I will properly situate the grievance from the standpoint of the pleadings of parties. Indeed, I will highlight, in extenso, the relevant paragraphs as I consider the contested assertions in this Judgment.

It is however important at the outset to say that it is true or correct as submitted by counsel to the plaintiff that there are five independent ways of proving title to land as expounded by the Supreme Court in **Idundun V Okumagba (1976) 9 – 10 SC 221** as follows:

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

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

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

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

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

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131.** These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title to succeed but he is eminently entitled to rely on more than one root of title. See **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252.** It is only apposite to state that under the relevant laws governing land tenure in the FCT and in most cases, apart from proof by production of title documents issued by the Minister FCT, the other methods of proving title to land in real terms lack factual or legal resonance.

It is equally pertinent to state the general principles that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131 (1) of the Evidence Act**. Similarly by virtue of **Section 133(1) of the Evidence Act**, the burden

of first proving the existence or non existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. As a logical corollary to the above, it also must be emphasised that in law it is one thing to aver a material fact in issue in ones pleading and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rest on him who asserts such a fact to establish same by evidence. This is because it is an elementary principle of law that averments in pleadings do not constitute evidence unless same is expressly admitted. See **Tsokwa Oil Marketing Co. Ltd V. B.O.M Ltd (2002)11 N.W.L.R (pt.777)9 N.W.L.R (pt.316)182.**

The above provides broad legal and factual template as we shortly commence the inquiry into the contrasting claims of parties.

I had earlier stated the importance of pleadings of parties to situate precisely their grievances. In this case, the Plaintiff filed a 31 paragraphs further Amended Statement of Claim and a 4 paragraphs joint defence to the counter-claim of Defendants. The evidence of the two(2) witnesses called are largely within the structure of their pleadings.

The Defendants filed a 21 paragraphs joint statement of defence and 3 paragraphs counter claim. The evidence of the sole witness for the Defendants is also largely within the structure of the defence. Indeed as already alluded to, in the resolution of the present dispute, there is no better template to situate the respective grievance or position of parties than the pleadings and evidence on record. These are the two critical elements that will be pivotal in the resolution of the extant dispute.

Now from the pleadings of parties which has streamlined the issues in dispute, both parties appear to found their respective claim of **title** on production of title documents, but the precise identity of the land in dispute has been put in issue or question.

The Plaintiffs in their pleadings vide paragraph 26 contends that the plot of land it lays claim to, to wit: **Plot MF 111 Onex Northern Expressway within Cadastral Zone 05-07** is the same as **Plot 71 Karsana East** which the Defendants lay claim to and which situates their counter-claim. The Defendants/Counter-Claimants in **paragraphs 6(b), 12 and 20 of their joint statement of defence** countered to the

contrary that Plot MF 111 Onex Northern Expressway within Cadastral Zone 05-07 claimed by Plaintiffs is a different and distinct parcel of land from Plot 71 Karsana District claimed by them.

The Plaintiffs in their defence to the Counter-Claim reiterated its position in paragraph 3 to the effect that the land subject of dispute is not called Karsana. It is therefore abundantly clear that the identity of the land in this case has been put in issue and this must be resolved. In law, the burden of proof of identity of land will not exist when the identity is not a question in issue. The question of identity of land will only arise or be in dispute when the Defendant raises it in his statement of defence as done here or through the cross-examination of the adversary and his witnesses. See **Ilona V. Idakwo (2003)11 N.W.L.R (pt.830)53 at 85 D-G; Adenle V. Ohide(2003)F.W.L.R (pt.157)1074 at 1086 C-E** In this case and on the pleadings, **parties** on both sides of the aisle have made the **identity of the land in dispute a precisely defined issue.**

As a logical corrollary, the starting point for the consideration of a claim for declaration of title to land is and must be the identity of the land in dispute. In other words, definite and precise boundaries of the land claimed must be clear and unambiguous. Where a Claimant fails to plead and establish the identity of the land to which his claim of ownership or title relates, whatever evidence whether oral or documentary he produces at the trial and however cogent and credible the evidence might appear, it cannot, in law ground a declaration of title in his favour. See **Okunade V. Olawale (2014)10 N.W.L.R (pt.1415)207; Onu V. Agu (1996)5 N.W.L.R (pt.451)652 at 662, Jinadu V. Esurombi Aro (2005)14 N.W.L.R (pt.944)142.**

As stated above, because of the dispute over the identity of the land in this case, the burden was on the Plaintiff who seeks the declaration of title to land and or an injunction to establish the identity of the land with certainty and precision and without inconsistency with respect to the area of land which he claims. This must be done with specific, clear and unequivocal evidence. The onus can be discharged in any of the following ways:

(i) A way to discharge the onus of proving the identity of the land in dispute is by giving such description of the land that any surveyor acting on such description could produce an accurate plan of the land in dispute. Thus, the acid test over the years is whether a surveyor, taking the record, could produce a plan showing accurately the land to which title has been given.

(ii) Another way, and a better and more reliable way, of establishing the identity and precise extent of a piece or parcel of land in dispute is by filing an accurate survey plan which reflects all the features on such land and showing clearly the boundaries thereof.

See Aiyeola V. Pedro (2014)12 N.W.L.R (pt.1424) P.469. See also Okedare V. Adebara (1994)6 N.W.L.R (pt.349)157.

Lets now situate and evaluate the evidence led. The case of Plaintiffs vide paragraphs 6-10 of the claim and the evidence proferred is that the 1st Plaintiff was allocated the **Plot MF111, within outer Northern Expressway with 9000sqm vide offer of Terms of Grant/Conveyance of approval dated 11th June 1998 tendered as Exhibit P2.** That after the allocation, the actual dimension of the land upon survey came to 6,829.27 square meters vide **Exhibit P3a. Exhibit P3a,** the survey plan situates the dimensions of the plot and the beacon numbers. **Exhibit P3b** is the Right of Occupancy Rent and fees bill issued to the Plaintiffs. The Plaintiffs averred that they participated in the regularisation of land titles and documents of FCT Area Council exercise and the acknowledgment letter was tendered as **Exhibit P5** and that they paid for building plan approval vide **Exhibit P4** and they were granted the building approval vide **Exhibit P6.**

All these documents tendered by Plaintiffs to situate its title are clear and refer to or mention **Plot MF111** issued or allocated to 1st Plaintiff by **Abuja Municipal Area Council (AMAC).**

On the other side of the aisle, the pleadings and evidence of Defendants situates a different allocation to a different plot of land. The offer of statutory Right of Occupancy dated 2nd April, 2014 vide **Exhibit D1** granted a Right of Occupancy in respect of **Plot 71 with an area of 7,736.14sqm in Cadastral Zone D01 of Karsana East.** The certificate of occupancy signed by Minister FCT vide **Exhibit D2** and the attached plan situates the size and dimension of Plot 71 with an area of 7,736.14m^2. These documents of title of Defendants clearly donates Plot 71, Karsana East, Cadastral Zone D01. In addition, the Defendants tendered **Exhibit D3,** the satellite plan imagery of Karsana East, Cadastral Zone D01 showing the existence of the Area and most importantly Plot 71 allocated to them. The Plaintiffs on the pleadings and evidence as stated earlier contends that these plots are one and the same. The Defendants contend otherwise.

I have above clearly streamlined the documents tendered on both sides which clearly refer to different plots. All the title documents tendered by Plaintiffs do not situate or

disclose that **Plot MF111 within outer Northern Express way** allocated to 1st Plaintiff is the same as **Plot 71 Karsana East** allocated to 1st Defendant. The title documents on both sides indicate allocations to distinct plots.

To support the case that the plots are the one and the same, the Plaintiffs subpoenaed a staff of the Department of Urban and Regional Planning**, Atuman Ishaku** who testified as PW2. Being a staff of Department of Urban and Regional Planning Department of the FCT, his evidence ordinarily should carry some weight and help in resolving some of the contested assertions in this case. As stated earlier, he deposed to a witness statement and tendered in evidence certified true copies of **Exhibits P7, P8 and P9.** His evidence and the documentary evidence tendered are important especially **Exhibits P7 and P9** and they must be given close judicial scrutiny.

The relevant portions of his evidence are contained in paragraphs 9-13 of his deposition as follows:

" **9. I know that the land known as Plot MF 111 Onnex is the same land as Plot 71, Karasana on the District Layout. It was labeled Plot 71 as a result of the integration of the outer fringes of Onnex expressway into Karasana District. It carries the same beacon numbers**

10. All the plots on the stretch of land on Onnex expressway adjoining the disputed plot have AMAC customary title and upon processing by their title owners are converted to Statutory title over which Certificate of Occupancy are granted.

11. The official records of the status of the land with the Department of Urban and Regional Planning of FCDA shows that Plaintiff is the title owner of the land and not Defendant who has no file with the Department of Urban and Regional Planning.

12. The Federal Capital Development Authority is responsible for the Planning, Design and Administration of the Federal Capital Territory.

13. The Department of Urban and Regional Planning is a department of FCDA charged with the responsibility of physical planning and monitoring of land use in the Federal Capital Territory. It is responsible for preparation and coordination of all planning schemes through the plans used to generate surveys and development plans allocated to all allotters."

The evidence of PW2 above is clear to the effect that **Plot MF111** is the same as **Plot 71 Karasana District** and that it was labelled Plot 71 as a result of the integration of the outer fringes of Onnex expressway into Karasana District and that it carries the same beacon numbers. Further that official records show that it is Plaintiff who is the title owner of the disputed plot and not Defendants who have no file with them. Let me now analyse and or evaluate these assertions and their probative value especially since they were contested by Defendants.

Now what is strange about these bare and challenged statements of **PW2** is that nothing was produced by him to show when this **"integration"** was purportedly done and by whom. It is difficult to accept that the Urban and Regional Planning Department, an important and serious department in the FCT will carry out such integration involving parcels of land that may or may not have being allocated to innocent Nigerians without records to back up such serious actions.

In paragraph 10 above, PW2 averred that all plots on the stretch of land on Onnex expressway adjoining the disputed plot have AMAC customary title and upon processing by their title owners are converted to statutory title over which certificate of occupancy are granted: This clearly then means that Records exist of such customary allocations and the conversion to statutory titles. This evidence presupposes that both parties in this case went through this process of conversion but the question that has not been addressed is where is the evidence to support or back these assertions? Absolutely nothing was proffered by Plaintiffs or this witness. Indeed even if he had given evidence of these facts, they will go to no issue as these are not facts streamlined on the pleadings of parties. Absolutely no issue was raised in the pleadings with respect to customary allocations which were then converted.

Again, what is strange here is that in his evidence, PW2 alluded to having **official records** of the status of the disputed land. Indeed under cross-examination, he said he had the official records in court, but these records were not tendered by **PW2** situating the integration of **Plot MF111 with Plot 71** or indeed any plot and nothing was presented including the "file" of Plaintiff which must be in their possession donating that the Plaintiff is the title owner of the disputed plot and that the two plots were a product of the "integration of the outer fringes of onex express way into Karsana District" as stated in his deposition in paragraph 9.

The failure of PW2 and by extension, the Plaintiffs to tender the official records situating any integration and the **"file"** of Plaintiffs situating title ownership of Plaintiffs as stated in the deposition of PW2 allows for the invocation of the principle under **Section 167(d) of the Evidence Act** that the official records and file could have been produced but their production would have been unfavourable to the case of Plaintiffs and so it was withheld.

Now contrary to **paragraph 9** of the deposition of PW2 that "Plot MF111 Onnex is the same as Plot 71 Karsana on the district layout" and that it carries "the same beacon numbers," **Exhibit P7** tendered by the same PW2 and a document prepared by the same Department of Urban and Regional Planning he works in and signed by their Director in response to investigations by the police controverts completely the deposition in paragraph 9 above.

In paragraph 3 of **Exhibit P7,** the department wrote as follows:

"Plot MF111 Onnex Kubwa and Plot 71 Karasana Phase IV FCC are not the same plot as they emanated from different sources."

This **Exhibit P7** produced by the Department of Urban and Regional Planning years before the deposition by PW2 was made and tendered by him, recognises that the **Plots are different,** so this deposition by PW2 that the Plots are one and the same clearly lacks credibility and value and must be discountenanced. In any event, the deposition of PW2 cannot even in any manner vary or alter the contents of **Exhibit P7** produced from the department of Urban and Regional Planning.

What this **Exhibit P7** has comprehensively and decisively achieved is to further completely 1) undermine the case made by Plaintiffs with respect to the contention that the Plots are one and the same; 2)it undermines any contention of any integration and 3) the document itself undermines itself and one wonders whether the document was prepared to serve the cause of justice or to achieve a self serving purpose?

Let me further evaluate the findings of this document. Let me here allow the document, a Certified True Copy speak for itself. **Exhibit P7** states as follows:

"Divisional Police Headquarters,
The Nigeria Police,
Dutse Alhaji,
FCT-Abuja.

Attention: SP. U.S Dalatu

RE:POLICE INVESTIGATION ACTIVITIES ON PLOT NO MF111 ONEX, OWNED BY MS & SONS AUTO LIMITED AND PLOT NO 71 CADASTRAL ZONE D01 OF KARSANA EAST, OWNED BY OMNI CONCEPT WORLDWIDE INTERNATIONAL LIMITED, ABUJA

Reference to your letter dated 11th June, 2015 on the above subject matter, you are hereby informed as follows:

2 **Plot MF111 Onex layout Kubwa measuring 6829.29sqm allocated to MS & Sons Auto Limited on 11th June 1998 for mixuse commercial development purposes under Abuja Municipal Area Council preceded the allocation of Plot 71 Karsana East Phase IV FCC measuring 7738.14sqm to OMNI Concept Worldwide International Limited on 2nd April, 2014 for misuse (comprehensive development).**

3. **Plot MF111 ONEX Kubwa and Plot 71 Karsana East Phase IV FCC are not the same plot as they emanated from different sources.**

4. **The plot being contested by the two parties falls within ONEX fringe and not Karsana East Phase IV FCC as contained in the offer of OMNI Concept Worldwide International Limited.**

5. **From the foregoing, and on the strength of principle of first in time, the ownership of the plot under investigation is considered in favour of MS & Sons Auto Limited (ASD Motors), owner of Plot MF111 ONEX fringe Kubwa, because he is first in time and original allotee from AMAC records.**

6. **In view of the above, you are hereby requested to note that allotee of Plot MF111 ONEX Kubwa is the legitimate owner with building plan approval from Department of Development Control, please.**

7. Above is for your information and further necessary action, please

Signed
SALAMI. R. I
Director, Urban & Regional Planning"

Now from the above findings of the Department, **paragraph 2** shows that there are two different allocations made to two different entities. The allocation to 1st Plaintiff preceded that of 1st Defendant but this paragraph recognises or affirms that they are different plots at different locations.

In **paragraph 3**, they stated clearly that **"plot MF111 and plot 71 are not the same plot as they emanated from different sources."** The evidence of DW2, in paragraph 9 of his deposition that the plots are the same as already indicated above cannot alter or contradict the contents of this **Exhibit P7.** See **Section 128(1) of the Evidence Act.**

Now if the **plots are not the same** and **emanated from different sources**, how then does one explain the conclusions in paragraphs 4, 5 and 6 that the plot contested by parties falls within Onnex fringe and not Karsana East Phase IV as contained in the offer to Defendants and that on the principle of first in time, that the disputed plot is that of Plaintiff in their records. It is logical to hold and I so hold that if the **Plots** are different or to use the wordings in **Exhibit P7,** that **"the plots are not the same as they emanated from different sources,"** then there is no basis to situate the principle of priority of allocations in the circumstances and as erroneously concluded in the **Exhibit.**

Let me perhaps quickly situate the legal principle. It is settled principle that where two competing titles to the same land originate from a common grantor, the first in time takes priority and the trial court must, in addition to finding as a fact that both parties derive title originally from a common grantor, proceed to ascertain, where there is credible evidence, the priority of the competing titles. See **Uzor V. D.F. (Nig) Ltd (2010)13 NWLR (pt.1217)553 at 576; Atanda V. Ajani (1989)3 NWLR (pt.135)745; Gege V. Nande (2006)10 NW.L.R (pt.988)256.**

For this principle to be availing, as discerned from the above authorities, the court must find that the competing claims relate to the same land and indeed that both parties originally derive title from a common grantor.

As stated severally above, there is a clear recognition even by **Exhibit P7** that the competing titles do not clearly refer to the **same land**: whoever therefore prepared **Exhibit P7** may not be aware of the nuances of this legal principle, but on the facts, it has no application. I leave it at that.

Most importantly, the contents of the letter of offer **(Exhibit D1)** and the Certificate of Occupancy (**Exhibit D2)** issued under the hand of the **Minister, FCT** donating a **different parcel of land** allocated to Defendants again cannot be altered or interpolations made to them by the challenged averments of PW2 and the inconsistent and contradictory contentions made vide **Exhibit P7.** In any event, in paragraphs 12 and 13 of the deposition of PW2, he had streamlined the duties and responsibilities of his department. There is no where he indicated that, the department of Urban and Regional Planning exercises contemporaneously the duty of allocation of plots of land in the F.C.T with the Minister. Since there is no such shared responsibility and the duty of allocation is legally and solely that of the Minister, F.C.T., it is difficult to situate the legal basis or validity of the attempts by the department through **Exhibit P7** to impugn the allocation made by the Minister vide **Exhibit D1** to the Defendants.

The Plaintiffs cannot in law seek to actively take advantage of the part of **Exhibit P7** favourable to them and at the same time seek to ignore the unfavourable part. The court cannot however pick and choose what parts to apply and what party to ignore as unavailing. The Plaintiffs are bound by the entirety of the contents of **Exhibit P7** tendered by them through PW2 which controverts in critical material respect his evidence and the very foundation of their case.

In **A.G. Enugu State V. Avon Plc (1995)6 N.W.L.R (pt.399)90 at 120-121 paras H-B,** the Court of Appeal per Tobi J.C.A (As he then was and now of blessed memory) stated as follows:

"A party who has tendered a document in court and admitted as an exhibit cannot disassociate from a portion of the document and associate himself with the other portion. He cannot do so. Both law and equity will not allow him to

do so. A party who has tendered a document in a court of law and admitted as an exhibit, will at the end of the litigation either sail joyfully with it in the boat of victory or sink sorrowfully with it in the boat of defeat. He cannot be a beneficiary of both at the same time."

Before rounding up on the question of identity of the land, let me underscore the point at the risk of sounding prolix, that I had alluded to the evidence of PW2 in paragraph 9 of his deposition that **Plot MF111 Onnex and Plot 71 Karsana** are on the same district layout and carry the same **beacon numbers**. **Exhibit P7** tendered by PW2 as demonstrated however undermined his evidence that the plots are the same and this clearly has put an end to any question with respect to whether the plots are the same. In law, documentary evidence makes oral testimony more compelling. Indeed where documentary evidence supports oral evidence, oral evidence becomes more credible. This is because, documentary evidence serves as a hanger from which to assess oral testimony. See **MIC GOV. Lagoes V. Adeyiga (2012)5 N.W.L.R (pt.1293)2 N.W.L.R (pt.77)445.** Where however the converse is the case and documentary evidence does not support but fundamentally controverts the oral evidence as in this case, the oral evidence would lack credibility and probative value.

Out of abundance of caution, let me again look at his evidence on the point. Beyond bare assertions that the plots are the same, nothing was really presented or streamlined in evidence by PW2 or any other witness situating that the plots are the same. Indeed in his evidence, in addition to the depositions he made, PW2 stated that **Exhibit P3a,** the Title Deed Plan (T.D.P) in respect of Plot MF111 is the same with the extract of Onnex layout showing Plot MF111 tendered as **Exhibit P9.**

These documents no doubt relate to the parcel of land claimed by Plaintiffs and they tendered these exhibits. No attempt was however made by this witness (PW2) or any other witness for the Plaintiffs to situate or compare these documents with the title documents tendered by Defendants from the other side to show that they are the same or that they indeed refer to the same plot. Furthermore, no attempt was made by Plaintiffs to impugn or challenge the imagery plan of Karsana East Cadastral Zone D02 showing the existence of Plot 71 tendered as **Exhibit D3.** These are matters that must be demonstrated at trial with credible evidence and it is not a matter for final address. I note that learned counsel to the Plaintiffs in his address stated as follows at page 6 paragraph 4.10 thus:

"The layout plan tendered by the Defendant when compared with Exhibit P9 tendered by PW2, it becomes clear that it is the same land. When the beacons are carefully examined, it will be clear that the three beacon numbers on both plans are the same. This evidence conclusively resolves the issue of the identity of the land." Learned counsel then at length in **paragraphs 4.14 and 4.15 of his address** then sought to explain why the plots are the same.

The learned counsel for the Plaintiffs has here tried so much and so hard to construct a scenario of case not based on the structure of the pleadings and evidence presented in the case. And cases are decided on the pleadings and evidence led in support and not by address of counsel. In **paragraph 26** of the further amended statement of claim, the Plaintiff stated that Plot MF 111 Onnex and Plot 71 Karasana **"carries the same beacon numbers."** The PW2 may have repeated this in his paragraph 9 of his deposition but absolutely no demonstration was made by this witness of the similarity if any between the dimensions in the Title Deed Plan of Plaintiffs (**Exhibit P3a)** with that at the back of the Certificate of Occupancy of Defendants (**Exhibit D2)** as done by counsel in his address.

Indeed no **comparison** was done of the title plan documents in this case by any witness at trial and that is fatal. No surveyor was produced from AMAC to speak about the dimensions of the disputed plot. What is strange here is that even the address of counsel to the Plaintiffs, for whatever its value in the circumstances, stated at paragraph 4.10 that **"when the beacons are carefully examined, it will be clear that the three beacon numbers on both plans are the same."** Now counsel with respect is not a surveyor but his conclusion here shows that the beacon numbers are not the same as pleaded. Indeed even in **paragraph 4.14** of the address, learned counsel for the Plaintiffs situated that the beacon numbers of both plots are **not completely the same** as one of the beacon number is different. The point here is that, **if one of the beacon numbers on the plot** is different, then the contention that the plots carry the same beacon numbers cannot factually be correct. The word "**same**" as stated in the pleadings of Plaintiffs is used when the things being compared are really one thing and not two or more things which is the situation or scenario the Plaintiffs seek to depict in the final address. In this case, apart from the fact that no credible evidence was proferred to situate that the beacon numbers of both plots are the same, the address which sought to supply the critical missing

evidence is not predicated either on the pleadings or evidence led at trial. Address of counsel it must be underscored is no more than a handmaid in adjudication and cannot take the place of the hard facts required to constitute credible evidence. No amount of brilliance in a final address can make up for the lack of evidence to prove and establish or disprove and demolish points in issue. See **Iroegbu . M.V. Calabar Carrier (2008)5 N.W.L.R (pt.1079)147 at 167; Michika Local Govt. V. N.P.C (1998)11 N.W.L.R (pt.573)201.**

There is really nothing on the evidence to situate that **Plot MF111** is the same as **plot 71** allocated to Defendants. The bottom line and as already alluded to is that a claimant in an action for declaration of title must prove his claim with cogent, satisfactory and uncontradicted evidence which includes the establishment of the identity of land in dispute, when the identity of the land is in dispute as in this case. See **Nwabuoku V. Onwordi (2006)4 F.W.L.R (pt.331)1236 at 1255 A-B.** There is as demonstrated above absolutely no clear evidence to situate that **Plot 71 Karsana East** and **Plot MF111 Onnex** is one and the same plot and this clearly on the authorities serves to undermine the claims of Plaintiffs.

In the event that the court is wrong with respect to the **identity of the land**, let me now address other critical aspects relating to the validity of the allocation of title to the disputed plot to Plaintiffs. Again, we take our bearing from the pleadings of Plaintiffs. In the following salient paragraphs, they pleaded as follows:

"**6. By letter dated 11th June, 1998, with ref No:MFCT/ZA/AMAC/ONEX MF 111 Abuja Municipal Area Council conveyed to first Plaintiff approval of a grant of a Right of Occupancy in the Federal Capital Territory in respect of a piece of land described as Plot MF111 within the Onex Northern expressway within Cadastral Zone 05-07, Kubwa District measuring approximately 9,000square meters. The said letter will be tendered in evidence at trial.**

7. Shortly after the grant of the said Right of Occupancy over the said Plot MF111, the second Plaintiff informed the Abuja Municipal Area Council that it wants the allocation cancelled and re-allocated to first Plaintiff which it had planned as at that time to incorporate. This request was granted and the initial allocation to second Plaintiff was cancelled and the plot re-allocated to first Plaintiff accordingly. This fact will be proved by documentary evidence at trial.

8. It was the second Plaintiff's business plan to incorporate MS Autos & Sons Ltd immediately thereafter but the plan was jettisoned and later picked up sometime in 2011 when the company MS Autos & Sons Limited was finally incorporated."

PW1 for the Plaintiff basically repeated the above averments in her deposition.

The Defendants joined issues with the above averments in paragraphs 1, 3 and 4 thus:

"**1. The Defendants emphatically deny the Claimants averments in paragraph 1,2,3,4,5 and 6 of the Amended Statement of Claim and they shall be put to the strictest proof of their allegations therein at the hearing of this suit.**

3 The Defendants categorically deny the Claimants averments in paragraph 7 to 30 of the Claimants amended statement of claim and the Defendants will contend during trial that the alleged conveyance of Plot No:MF111 by Abuja Municipal Area Council (AMAC) to the 1st Claimant vide their quoted letter of 11th June, 1998 and the subsequent cancellation and re-allocation to the 1st Claimant as canvassed in paragraph 6 and 7 of the statement of claim are false and spurious.

4 In further answer to the foregoing, and with specific reference to the averments in paragraph 7 and 8 of the Claimants' statement of claim, the Defendants state that the entire exercise of assignment and re-allocation as it was alleged to have been done in favour of a non-existing entity is/was novel and the Claimants shall be put to the strictest proof thereof."

Now in evidence, the Plaintiffs tendered only one offer of terms of grant/conveyance of approval to **1st Claimant** vide **Exhibit P2** dated 11th June, 1998.

In paragraph 7 above, the Claimants made averments that are not clear and not supported or borne out by evidence on record. In this unclear paragraph 7 and supported by the similarly unclear evidence of PW1 in paragraph 9 of her deposition, the case was made that after the allocation to 1st Claimant vide **Exhibit P2,** the 2nd Claimant then informed Abuja Municipal Area Council (AMAC) that it wants the allocation, **Exhibit P2** cancelled and reallocated to 1st Plaintiff which it was at that time planning to incorporate.

To underscore the lack of clarity here, the claimants then stated that the request to cancel the initial allocation to 2nd Plaintiff was granted and the allocation was cancelled and the plot was then reallocated to 1st Plaintiff. The Plaintiffs in paragraph 7 and the PW1 in paragraph 9 of her deposition stated unequivocally that these facts will be proved by **"documentary evidence at trial."**

Now on the evidence, there is absolutely nothing put forward to show that there was an initial allocation to 2nd Plaintiff which was then cancelled and that a new allocation was then made to 1st Claimant on the prompting of 2nd Claimant after the cancellation of the initial allocation. The only allocation tendered vide **Exhibit P2** was clearly to 1st Plaintiff.

On the pleadings and evidence, and at the risk of prolixity, if the only allocation presented vide, **Exhibit P2** was cancelled as stated in paragraphs 6 and 7 of the claim, the implication is that the said **Exhibit P2** tendered which on its face does not show or disclose any allocation to 2nd Plaintiff and cancellation meant that it is evidence produced or tendered contrary to the facts pleaded in the said paragraphs and goes to no issue. The bottom line here is that there is absolutely no critical evidence to support the averments of allocation, cancellation and reallocation pleaded in paragraph 7. Here too, the invocation of the principle under **Section 167(d)** has application that these documents which Plaintiffs pleaded and will be relied on are such that if produced would have been unfavourable to the case of Plaintiffs.

This then raises the important question as to the **root of title** of Plaintiffs. In law, the root of title simply connote means or process through which a party came to be the owner of land in dispute. See **Ofume V. Ngbeke (1994)4 N.W.L.R (pt.341)746.** If the initial allocation dated 11th June, 1998 vide **Exhibit P2** was "cancelled and reallocated to 1st Plaintiff," when was this cancellation effected and when was the reallocation done? Who even effected these dual exercise of cancellation and reallocation? There important issues have been left to the unwieldy world of speculation and conjecture and the court has no jurisdiction to engage in an idle exercise of speculations.

The Defendants as stated earlier, have categorically joined issues with this cancellation and reallocation and describing the averments as **"false and spurious,"** therefore evidence ought to have been led creditably establishing or showing the

cancellation of **Exhibit P2** and the new reallocation. The Plaintiffs unfortunately did not lead any iota of evidence situating an allocation to 2nd Plaintiff which was cancelled and then a new allocation that was then made to 1st Plaintiff. Nobody from **AMAC** was called to give evidence on the processes involved in the cancellation of **Exhibit P2** or any allocation and how any purported re-allocation was made in place of **Exhibit P2** and that is fatal.

In law, it is settled that where a party traces his root of title to a particular source in this case AMAC and such title is challenged, the party must not only establish his title but must satisfy the court as to the title of the source from whom he claims. In **Adole V Gwar (2008)11 N.W.L.R (pt.1099)562 at 592 B-C,** the Supreme Court stated as follows:

"As to whether or not the appellant as plaintiff proved title to the plot of land in issue by the production of Exhibit 2, I am in agreement with the respondent's submission that the appellant did not prove his root of title. This is because, this court has held repeatedly that once a party pleads and traces his root of title to a particular source and the title is challenged, to succeed, the party must not only establish his title to the land in issue, he must also satisfy the court as to the title of the source from whom he claims."

Now what further compounds the position of Plaintiffs here is that the alleged reallocation now made to 1st Plaintiff was made at a time **1st Plaintiff** was not even incorporated. In **paragraphs 7 and 8** of the pleadings of Plaintiffs, it was the plan of the 2nd Plaintiff to incorporate 1st Plaintiff but that the plan was **"jettisoned"** until sometime in 2011 when the 1st Plaintiff was incorporated. Now on the evidence, there is nothing to show or situate that any allocation was made to the 1st Plaintiff after the incorporation in 2011. If at all there was any allocation to 1st Plaintiff, it certainly must have been effected before its registration or incorporation and that explains the contention of Defendants in paragraph 4, that the entire exercise of assignment and re-allocation was done in favour of a **"non-existing entity"** and therefore fatal. The Plaintiffs while obviously not denying the specifics of the allocation prior to the incorporation of 1st Claimant however contends that the allocation was in order.

Let me at the risk of prolixity situate again the position of the Plaintiffs using the evidence of PW1 even if I had already dealt with aspects of the position averred by them. She stated in her deposition as follows:

"**3 The first Plaintiff is a private limited liability company registered under the laws of the Federal Republic of Nigeria and a subsidiary company of second Plaintiff. It carries on business as an automobile company involved in the sales and servicing of vehicles. It imports and sells automobile spare parts.**

4 The second Plaintiff is also a private limited liability company registered in February 1998 under the laws of the Federal Republic of Nigeria and carries on business as an automobile company involved in the sales and servicing of vehicles.

5 The first and second Plaintiff companies are both promoted by Alhaji Sani Dauda from where the acronym ASD was couched. The shareholders and other directors of both companies are his adult sons.

8 By letter dated 11th June, 1998, with ref no MFCT/ZA/AMAC/ONEX MF 111 Abuja Municipal Area Council conveyed to first Plaintiff approval of a grant of a Right of Occupancy in the Federal Capital Territory in respect of a piece of land described as Plot MF 111 within the Onex Northern expressway within Cadastral Zone 05-07, Kubwa District measuring approximately 9,000 square meters. The said letter will be tendered in evidence at trial.

9 Shortly after the grant of the said Right of Occupancy over the said Plot MF111, the second Plaintiff informed the Abuja Municipal Area Council that it wants the allocation cancelled and re-allocated to first Plaintiff which it had planned as at that time to incorporate. This request was granted and the initial allocation to second Plaintiff was cancelled and the plot re-allocated to first Plaintiff accordingly. This fact will be proved by documentary evidence at trial.

10 It was the second Plaintiffs business plan to incorporate MS Autos & Sons Ltd immediately thereafter but the plan was jettisoned and later picked up sometime in 2011 when the company MS Autos & Sons Limited was finally incorporated."

The bottom line from the above depositions is clearly that 1st Plaintiff was incorporated in 2011, years after the allocation of the disputed plot to it. Under

cross-examination, PW1 confirmed that the allocation to 1st Plaintiff preceded its incorporation. In view of the challenge posed by Defendants, this then raises the question of whether an unincorporated body such as 1st Plaintiff can own land eo-nomine or in its unincorporated status enter into a pre-incorporation contract with a third party in respect of land.

On the evidence as already demonstrated, 1st Plaintiff did not establish that it was incorporated as a company as at the time the disputed land was purportedly allocated in 1998. The effect clearly is that the disputed land was allocated to an unincorporated body. By **Section 37 of Companies and Allied Matters Act, Cap c.20 LFN 2004 (CAMA),** only an incorporated company can own or buy land in its corporate name. This necessarily has to be so because an unincorporated body is not a juristic person and cannot enter into any contract or transaction and or own land in its unincorporated name save through trustees that are natural persons. See the Court of Appeal decision per Ikyegh JCA in **Abraham Olusegun Bankole & Ors V. Emir Industries Ltd (CA/1/177/01) (2012)NGCA 2 delivered on 30th November, 2012.**

Let me also call in aid here the instructive decision of the Supreme Court in **Anyaegbunam V. Osake & Ors (2000) 1-3 SCNJ 1 at 9-10** where the court per Katsina Alu J.S.C (as he then was) held in the lead judgment and i will quote him at length as follows:

"In view of these reliefs, it becomes imperative to decide the status of the said unincorporated church organisation called the Light of Christ Praying Band, Onitsha in relation to the Respondent and other Defendants who were appointed its trustees. In this regard, I refer to the provisions of the land (perpetual succession) Act, (cap 98) LFN 1958 vol. 1v. Section2(1) which provides inter alia:

"Trustees may be appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literacy, scientific, social or charitable purposes and such trustees may apply to the minister for a certificate of registration of the trustees or trustee of such community, body or association of persons as a corporate body."

"It seems clear to me that the above provision shows that an unincorporated body or association of persons is a factual reality. The association, though unregistered must appoint trustees or trustee who will apply for registration. Thus the law takes into cognizance the fact that before the application is made, i.e while the association is not registered in law, certain persons may be appointed trustees who must act in that capacity. Clearly as the Act recognises pre-incorporation ownership of land, Exhibit 4 does not conceivably violate same. A close examination of Exhibit 4 clearly establishes that the gift vested in the trustees in their capacity as trustees."

See also **ACB Plc & Anor V. Emostrade Ltd(1998)2 N.WL.R (pt.536)19 at 33.**

Flowing from the above and in the context of the pleadings and evidence in this case, the provision of **Section 72(1) and (2) of CAMA** on pre-incorporation contract and ratification has no application. Indeed no case was made out on the pleadings by Plaintiffs situating any ratification of any pre-incorporation contract or transaction. It is stating the obvious that the remit of Plaintiffs grievance cannot be altered or expanded at this point. Parties as well as the court are bound by the issues streamlined in the pleadings. This is trite principle.

There is also nothing in **Exhibit P2,** the source of 1st Plaintiff's title to the disputed land showing the name or identity of the natural person that was allocated the disputed land on behalf of the then unincorporated 1st Plaintiff. The totality of the evidence on record does not show that a trustee or representative had been appointed for the then unincorporated 1st Plaintiff for purposes of allocation of the disputed plot. I am therefore in no doubt that **Exhibit P2** could not have vested title to the disputed land on the unincorporated 1st Plaintiff as at 1998 and the case of Plaintiffs is made worse by the unclear and unproven averments on the pleadings and evidence relating to the initial allocation and re-allocation said to have been made between the two plaintiffs as already demonstrated.

Finally on this point, I only need add that the rule of court allowing for unregistered business enterprise or partnership to sue eo-nomine is not coterminous or put another way is not authority for an unincorporated body to buy or own land in its unincorporated name or eo-nomine.

The case of Plaintiffs particularly 1st Plaintiff as I have demonstrated suffers from serious evidentiary challenges. The Plaintiffs have not by evidence creditably established that the Plot MF111 is the same with Plot 71; they have similarly not established their entitlement to the disputed plot or any clear identifiable parcel of land. It is clear that the case of Plaintiffs have no foundation that it can stand on and the case appear fatally compromised. The law is settled that where a Relief or reliefs are sought, a court can only grant what has been sufficiently proved in accordance with the requirements of the law. See **Joe Golday Co Ltd V. Co-operative Dev. Bank Ltd (2003)SCMR 39 at 105.** Where a party fails to meet the required legal threshold, that clearly would amount to a failure of proof of the contested assertions. Indeed the law is settled that where evidence of title is not satisfactory and conclusive, a party will not succeed at trial. See **Nnabuife V.Nwigwu (2001)9 N.W.L.R (pt719)710 at 727.**

As I round up, it should be noted that I had not placed any premium on the regularization of land titles and documents of FCT Area Councils Acknowledgment issued to Plaintiffs as **Exhibit P5**. The acknowledgment is obviously not a document evidencing title and has no role or indeed legal value in the resolution of this dispute. The exhibit in any event contain a clear and unambiguous disclaimer that the acknowledgement does not in anyway validate the authenticity of the documents presented by parties. That all documents are subject to further verification for authenticity. I need not say more.

On the whole and for the avoidance of any doubt, issue (1) relating to the Plaintiffs substantive claim is resolved against the Plaintiffs. Relief (a) seeking declaration of title is not **availing**. Reliefs b, c, d, e and f seeking for orders of perpetual injunction, the setting aside of all other titles in respect of the disputed plot, injunction, damages for trespass and interest claim are all predicated on successful proof of legal title over the disputed by Plaintiffs. The Plaintiffs did not creditably proved its legal title and so all the other reliefs shall equally not be **availing.** The legal principle being once the principal is taken, the adjunct is also taken away. See **Adegoke Motors V. Adesanya (1989)3 N.W.L.R (pt.109)250 at 269.**

Now with respect to the Counter-claim of Defendants and the second issue raised, I had in the substantive action stated that the counter-claimant must like the Plaintiff in the main action establish its case on the same principles to entitle them to the reliefs

sought. I need not repeat these principles. The case of the counter-claimants on the pleadings and evidence is that the disputed land is not one and the same with Plot **MF111 Cadastral Zone 05-07 claimed by 1st Plaintiff in this case.** That the disputed plot is known and delineated as **Plot No.71 Cadastral Zone D10, Karsana East District Abuja measuring 7,736.4square meters** and that the 1st Defendant became seized of the property upon application by them and payment of requisite fees to the authority by virtue of an offer of statutory right of occupancy dated 2nd April, 2014 issued by the **Minister FCT** which was tendered and admitted in evidence as **Exhibit D1.**

On the pleadings and evidence the 1st Defendant was then issued or granted a **Certificate of Occupancy** dated 12th April, 2017 by the Minister F.C.T vide **Exhibit D2** over Plot 71, Karsana East, Cadastral Zone D01 measuring 7,736.14square meters and that it has since then been in quiet possession of the this land until sometime in 2015 when their quiet possession was allegedly "threatened" by agents of Plaintiffs and they were "rounded up" by the police for trespass.

Now the law is settled that a **Certificate of Occupancy** is prima facie evidence of title. However it is not a conclusive proof of title to the land it relates to. Indeed the mere production of a certificate of occupancy by a party does not by itself entitle the party to a declaration. Consequently, if it is successfully challenged or the adverse party can establish a better title, it can be nullified. See **Otukpo V. John (2012)7 N.W.L.R (pt.1299)357; Ihena V. Idakwo (2003)11 N.W.L.R (pt.830)53 at 84EG; ESO V Adeyemi (1994)4 N.W.L.R (pt.340)558 at 573 G-H**

Now in this case and in my consideration of the substantive claim, I had found that the case of Plaintiffs and the contention that the disputed plot of land claimed by them which is Plot MF111 Cadastral Zone 05-07 is not one and the same with Plot No71 Cadastral Zone D01 Karsana East District subject of the extant counter-claim. I had also found that **Exhibit P7** tendered by PW2, a staff of the Department of Urban and Regional Planning of FCT only served to further accentuate the fact that Plot MF111is not the same with plot 71 Karsana East. The said **Exhibit P7** as demonstrated contradicted the evidence of PW2 that the plots are the same. I also need add that the attempts by them to invoke the principle of priority of allocation was held to be misplaced to the clear extent that the allocations refer to distinct or different plots which **Exhibit P7** clearly recognise.

The bottom line is that the statutory allocations to the Defendant/Counter-Claimants vide **Exhibits D1 and D2** by the Minister F.C.T have not been challenged or impugned in any manner.

Now it is equally true that on the authorities, production of a certificate of occupancy or document of title does not automatically entitle a party to a claim of declaration. Before the production of document of title is admitted as sufficient proof of ownership, certain material questions need to be considered as donated in the case of **Romaine V. Romaine (1992)4 N.W.L.R (pt. 238)650 at 662 D-G** where the Supreme Court stated per Nnaemeka Agu J.S.C (of blessed memory) and I will quote him in-extenso stated as follows:

"One of the recognized ways of proving title to land is by production of a valid instrument of grant…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 upon 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 documents are genuine and valid?**
ii) **Whether it has been duly executed, stamped and registered?**
iii) **Whether the grantor had the capacity and authority to make the grant?**
iv) **Whether the grantor had in fact what he purported to grant?**
v) **Whether it has the effect claimed by the holder of the instrument.**

In this case there is no pleadings by Plaintiffs and Defendants to the Counter-claim situating any of the above issues or questions and there is equally no credible evidence to equally situate any of the above issues. As a logical corollary, there is therefore no evidence at all, that discredits in any manner the allocations made by the **Minister FCT** to the 1st Defendant in respect of Plot 71 vide **Exhibits D1 and D2.** These title documents clearly were issued by the competent authority, the Minister F.C.T. At the risk of sounding prolix, the said **Plot 71, Karsana East** subject of the counter-claim on the evidence is within the FCT. It is settled that ownership of land comprised in the F.C.T, Abuja vests in the Federal Government of Nigeria and under

the relevant enactments, the power vests on the Minister to grant statutory rights of occupancy over lands within the F.C.T as he did in this case to the 1st Defendant. See generally **Sections 297(1) and (2) of the 1999 Constitution, Sections 1(3), 13 of the F.C.T Act; Section 5(1) and 51(2) of the Land Use Act.** See also the case of **Madu V. Madu (2008)6 N.W.L.R (pt.1083)324 at 325 H-C.**

Also by **Section 26 of the Land Use Act,** any transaction or instrument which purports to confer on or vest in any person any interest or right over land than in accordance with the provisions of this Act shall be null and void.

I have extensively referred to the above provisions to underscore the paramountcy of the statutory allocation by the Minister FCT once the conversation relates to ownership of land within the F.C.T. The allocation to the Defendants over Plot 71 have not been impugned by Plaintiffs at all.

The unchallenged title documents to Defendants vide **Exhibits D1 and D2** clearly raises a presumption that the 1st Defendant is the holder and the owner and in exclusive possession of the said **Plot 71.** As stated severally in this judgment, the presumption is rebuttable. There is however in this case no such credible evidence showing that the adversary here has a better title to the land before **Exhibits D1 and D2** were granted to the Counter-Claimants or that the **Exhibits** are not genuine or validly issued and lacking the effect claimed by the holders.

The statutory allocation to the Defendants/Counter-Claimants to Plot 71 has in the circumstances not been factually or legally impugned and I so hold. Having found on the evidence that the counter-claimants clearly have a better title to **Plot 71,** there is a legal presumption, in their favour, that they are in exclusion possession. This bestows on them the locus to sue Plaintiffs for trespass to land. In the case of **Carrena V. Akinlase (2008)14 NWLR (pt.1107)262 at 281, paras F-H, Tabai,** JSC, stated the position of law thus:

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

cannot, by his own wrongful act of trespass acquire any possession recognised at law. This gives credence to the principle that where there are rival claimants to possession of a piece of land, the law ascribes possession to the party who has title or better title." See also, **Okoko V. Dakolo (2006)14 N.W.L.R (pt.1000)401.**

This now logically brings us to the whether the reliefs sought by the Defendants/Counter-Claimants are availing.

Flowing from our consideration and finding that the **1st Defendant/Counter-Claimant** has creditably established its right or statutory allocation to **Plot 71**, Relief (1) clearly has merit and is availing. **Relief 3** which is an ancillary relief for injunction predicated on the success of Relief 1 clearly also has merit and is availing. See **Gbadamosi V. Taiwo (2004)43 WRN 51**

The final relief to consider in the counter claim is **Relief 2** for ₦100,000,00(One Hundred Million) general damages for various acts of trespass allegedly committed by Plaintiffs' workmen and servant on or about 9th June, 2015 and since then.

Now trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of that owner is an act of trespass actionable without any proof of damages. See **Ajibulu V. Ajayi (2004) 11 N.W.C. R (pt 885) 458 at 48)** . The claim for trespass is therefore rooted in exclusive possession. All a plaintiff or party suing in trespass needs to prove or show in order to succeed is to show that he is the owner of the land or that he has exclusive possession.

As already demonstrated in sufficient details, the Defendants/Counter-Claimants have without any doubt proved that Plot 71 belongs to them. Now on the pleadings and evidence, particularly the deposition of DW1 vide paragraphs 3 and 4, he stated that sometime on 9th June, 2005, some persons trespassed into the plot and that upon his enquiry, the persons claimed to be Plaintiffs workmen, servants or agents and that he immediately stopped them from further acts of trespass on the land and that those that proved difficult were reported to the Police Station for criminal trespass. There is on the evidence here absolutely no clarity with respect to who interfered with possession of Defendants of Plot 71, particularly when it is noted that in the pleadings of Defendants in paragraph 6(d) it was stated clearly by them that "**artisans**" have been on the land and that they are "**mere squatters who had been**

on the land" property of the Defendants **"from time immemorial and at nobody's mercy"**

If the Defendants themselves recognise that **"artisans"** who are **"mere squatters"** have been on the land from time **"immemorial,"** then clear evidence ought to have been presented showing that those who DW2 said trespassed on the land are indeed the workmen of Plaintiffs. There was no such clear evidence beyond challenged oral assertions. Furthermore, since a report was said to have been made to the **police,** there is however nothing from them to show their findings with respect to the complaint laid by Defendants against those arrested for the alleged trespass and whether they have anything to do with Plaintiffs or that they were there at the instance of Plaintiffs. Trespass cannot be granted in such patently fluid circumstances.

Indeed, in such unclear circumstances, it is difficult to situate the factual and even legal basis for the **One Hundred Million Naira** general damages claim for trespass in this case. Indeed, I need only add that even if trespass has been established and here, it was not, i do not see from the paucity of pleadings and evidence on the point, how the sum of ₦100,000,000 claimed as damages can even be justified. There is absolutely no basis for it.

General damages are not awarded as a matter of course, but on sound and solid legal principles and not on speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

Now because of the huge amount claimed as damages for trespass, it may be apposite to just add that on the authorities, damages in a case for trespass should be nominal to show the courts recognition of the party's proprietory right over land in dispute. If the Counter-Claimants as in this case wanted more damages, they should claim it under special damages which they should properly plead and prove. See **Madubuonwu V. Nnalue (1992)8 N.W.L.R (pt.260)440 at 455 B-C; Armstrong V. Shippard & Short Ltd (1959)2 AII ER 651.** The relief for damages for trespass therefore fails.

For the avoidance of doubt and in the final analysis, I hereby make the following orders:

ON PLAINTIFFS CLAIMS

The Plaintiffs claims having failed is in its entirety is hereby dismissed.

ON DEFENDANTS COUNTER-CLAIM

1. It is hereby declared that the Defendants/Counter-Claims are the Rightful owners of the land and property known as Plot No71, Karsana East, Cadastral Zone D01, Abuja, FCT

2. The Plaintiffs/Defendants to the counter-claim by themselves, agents, servants, privies, workmen, successors in title or otherwise however described are restrained from acts or omissions adverse to the Defendants/Counter-Claimants title and enjoyment of the land known as Plot No.71 Karsana East Cadastral Zone D01, Abuja FCT.

3. I award cost assessed in the sum of N30,000 payable by the Plaintiffs to the Defendants/Counter-Claimants.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Olugbenga Owa, Esq., for the Plaintiffs**

2. **A.B. Amao, Esq., for the Defendants/Counter-Claimants**