IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS MONDAY, THE 11TH DAY OF JANUARY, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/2243/10

BETWEEN:

1. STYCON PETROLEUM (NIG) LTD
2. ALHAJI ABDULMUNAF YUNUSA } **.....PLAINTIFFS**

AND

1. LIZA COMMERCIAL ENTERPRISES LIIMTED
2. MR SAEED ALI JAMAL
3. MRS SAEED ALI JAMAL
4. THE HON. MINISTER OF THE FCT
5. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)
6. COMMISSIONER OF POLICE FCT, ABUJA } **..DEFENDANTS**

JUDGMENT

This matter was initially been handled by the Honourable Chief Judge of the FCT, Justice Ishaq U. Bello (now retired) before it was transferred to this court sometime in the year 2016. It is a matter involving ownership of land within the FCT to be settled on fairly well settled principles. Let us however streamline the pleadings on which the matter was contested.

There is an Amended Statement of claim filed on 23rd May, 2018. The Plaintiffs claims against the defendants are as follows:

a. **A Declaration of title in respect of the piece and parcel of land known and described as Plot No. 193 located within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the Honourable Minister FCT and covered by the Certificate of Occupancy No. 1806w-17c17-c792u-20 dated 26th August, 2005 issued under the Recertification exercise of the Federal Capital Territory.**

b. **A Declaration that the action of the 4th defendant acting through the 5th defendant sub dividing the property as issued under the initial Right of Occupancy issued to Usmania Petroleum Ltd in respect of the parcel of land known and described as plot No. 193 located within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the Honourable Minister FCT and covered by the Certificate of Occupancy No. 1806w-17c17-c792u-20 dated 26th August, 2005, into two different titles covered by purported Certificates of Occupancy Nos. 1a561w-15507-3cf3r-a40fu-20 dated 20th March, 2009 in the name of the 1st Plaintiff and Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th of March 2007 in the name of the 1st defendant is unlawful, null and void and without any legal effect whatsoever.**

c. **A Declaration that the 1st, 2nd and 3rd Defendants have not acquired any title or interest howsoever described on and over the portion of the and parcel of land known and described as plot No. 193 located within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the Honourable Minister FCT for 99 years now covered by the Certificate of Occupancy No. 1806w-17c17-c792u-20 dated 26th August, 2005.**

d. An Order of this Honourable Court setting aside any purported sub-division of the parcel of land known and described as plot No.193 located within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the Honourable Minister FCT for 99 years now covered by the Certificate of Occupancy No. 1806w-17c17-c792u-20 dated 26th August, 2005.

e. An Order of mandatory injunction directing and compelling the 4th and 5th Defendants to withdraw and cancelled the purported Certificates of Occupancy Nos. 1a61w-15507-3cf3r-140fu-20 dated 20th March, 2009 in the name of the 1st plaintiff and Certificate o Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th of March 2007 in the name of the 1st Defendant having been issued without any lawful authorization howsoever.

f. An Order of mandatory injunction directing and compelling the 4th and 5th defendants to issue to the Plaintiffs Certificate of Occupancy No. 1806w-17c17-5c33r-c792u-20 dated 26th August 2005. In respect of the piece and parcel of land measuring 2854.53 sq. meters within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the4th defendant for 99 years commencing from the 8th of September, 1994.

g. A Declaration that the action of the 1st, 2nd and 3rd defendants with active connivance of the 6th defendant and some officials and agents of the 4th and 5th defendants in entering the 2nd plaintiff's land on the 21st of August, 2010 at about 10:30am with armed policemen, a bulldozer and demolishing the parameter fence and depositing building materials with the intention of building in the 2nd plaintiff's filling station measuring 2854.53 sq. meters within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No.

FCT/MISC.9051 dated 28th day of November, 1994 is unlawful, mischievous and an act of trespass.

h. An Order directing the 1st, 2nd and 3rd defendants jointly and severally to pay the plaintiffs the sum of five hundred Million Naira (N500, 000, 000) only as general damages for defamation, trespass and mischief.

i. An Order of this Honourable Court directing the 1st, 2nd and 3rd defendants to immediately move out of the plaintiffs property and hand over a vacant possession.

j. An Order of this Honourable court directing the 1st, 2nd and 3rd defendants jointly and severally to pay the plaintiffs the sum of Two Million Seven Hundred and Fifty Seven Naira, Eighty Seven Kobo (N2, 757, 00:87) only as the assessed costs of erection of the demolished parameter fence which was demolished by the 1st to 3rd defendants with the connivance of the 6th defendant using the bulldozer of the 2nd defendant.

k. An Order of this Honorable court directing the 1st, 2nd, 3rd and 6th defendants to issue a written and unreserved public apology to the plaintiffs in two national dailies with wide circulation in Abuja.

l. An Order of this Honourable Court directing the defendants jointly and severally to pay the costs of this action to the plaintiffs; and

m. And further Order or other reliefs which this Honourable Court may deem fit to grant in the circumstance.

The 1st – 3rd defendants filed a joint 2nd Amended Statement of Defence and set up a Counter-claim against plaintiffs as follows:

a. A Declaration that the act of the 4th Defendant in granting consent/approval for sub-division of Plot No. 193 Cadastral Zone A04, Asokoro District, Abuja into two parcels of Plots on November 11, 2001 in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited upon Usmania Petroleum Nigeria Limited's letter

dated 22nd November, 2000, (the then holder of the Certificate of Occupancy over Plot No. 193 Cadastral Zone A04, Asokoro District, Abuja), is valid, legal, lawful and within the powers of the 4th Defendant under the Land Use Act.

b. A Declaration that by virtue of the 4th Defendant's consent/approval granted on November 11, 2001 for sub-division of the original Plot No. 193 Cadastral Zone A04, Asokoro District, Abuja (covered with Certificate of Occupancy No. FCT/ABU/MISC.9051 dated 28th day of November, 1994 upon the application of Usmania Petroleum Nigeria Limited dated 22nd November, 2000, the then holder of the Certificate of Occupancy over the said Plot No. 193), into Parcels A and B in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited, together with the 4th Defendant's letter dated 25th October, 2002 conveying the grant of consent/approval for sub-division and the 4th defendant's subsequent issuance of two separate Certificates of Occupancies to each of Liza Commercial Enterprises Limited as shown on the Certificate of Occupancy dated 30th March, 2007 over Plot No. 3784 Cadastral Zone Ao4, Asokoro District, Abuja and Usmania Petroleum Nigeria Limited/its Attorney-Stycon Petroleum Nigeria Limited as shown on the Certificate of Occupancy dated 20th Mach, 2009 over plot No. 3785 Cadastral Zone A04, Asokoro District, Abuja, the original Plot No. 193 located within Cadastral Zone A04, Asokoro District, Abuja and the Certificate of Occupancy No. FCT/ABU/MISC.9051 dated 28th day of November, 1994 had cease to exist and had been duly replaced by Plot No. 3784 and Plot No. 3785 located within Cadastral Zone A04, Asokoro District, Abuja with Certificates of Occupancies validly issued over Plot No. 3784 and Plot No. 3785 by the 4th Defendant.

c. A Declaration that the Power of Attorney donated by Usmania Petroleum Nigeria Limited to Stycon Petroleum Nigeria Limited (over Plot No. 193 measuring about 2854.53 square meters located within Cadastral Zone A04, Asokoro District, Abuja covered with Certificate of Occupancy No. FCT/ABU/MISC.9051 dated 28th day of November, 1994) registered on the 14th day of September, 2004 by the 5th Defendant by mistake and in error

long after the 4th Defendant had already granted consent/approval on November 11, 2001 for sub-division of the same original Plot No. 193, located within Cadastral Zone A04, Asokoro District, Abuja into two Parcels of Plots in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited upon the application of Usmania Petroleum Nigeria Limited dated 22nd November, 2000, (the original holder of the Certificate of Occupancy as at that time), is invalid, unlawful, void and of no effect whatsoever.

d. A Declaration that Certificate of Occupancy No. 1806w-17c17-5c33r-c792u-20 dated 26th August, 2005 over Plot No. 193 located within Cadastral Zone A04, Asokoro District, Abuja measuring about 2854.53 square meters issued by the 4th Defendant in August 2005 was issued by mistake and in error and is therefore invalid, unlawful, void and of no effect whatsoever as the same Plot No. 193 located within Cadastral Zone A04, Asokoro District, Abuja measuring about 2854.53 square meters had already been sub-divided into two Parcels of Plots and granted in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited by the same 4th Defendant in November 2001 upon the application of Usmania Petroleum Nigeria Limited (the original holder of the Certificate of Occupancy as at that time).

e. A Declaration that the Plaintiffs/Defendants to Counter Claim are caught by the doctrine of laches and acquiescence and are estopped from interfering with or disturbing the long possession, interest and development of the 1st Defendant/Counter Claimant on Plot No. 3784 located within Cadastral Zone A04 Asokoro District, Abuja measuring 1, 429.28 square meters and covered with the Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612 dated 30th day of March, 2007.

f. A Declaration that by virtue of the Deed of Assignment and Power of Attorney between Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited, coupled with payment of the sum of Five Million Naira (N5, 000, 000.00) only and long/continuous acts of possession and development of that one half of Plot 193, located within Cadastral

Zone A04, Asokoro District, Abuja, the Counter-claimant had acquired an equitable interest/title over that one half of Plot 193,located within Cadastral Zone A04, Asokoro District, Abuja which later became Plot No. 3784 located within Cadastral Zone A04, Asokoro District, Abuja measuring 1,429.28 square meters and that the Counter-Claimant is entitled to have its equitable interest/title converted to a legal title over Plot No. 3784 located within Cadastral Zone A04, Asokoro District, Abuja measuring 1,429.28 square meters and covered with the Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th day of March, 2007 and demarcated by beacons Nos. PB 92740, PB 5018, PB 5017 and PB 92741 and back to the starting point.

g. A Declaration that the Counter-Claimant is the owner of Plot NO. 3784 located within Cadastral Zone A04 Asokoro District, Abuja measuring 1,429.28 square meters covered with the Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th day of March 2007 and demarcated by Beacons Nos. PB 92740, PB 5018, PB 5017 and PB 92741 and back to the starting point.

h. A Declaration that by virtue of the plan issued by the 5th Defendant through one of its Agencies/Departments, Abuja Geographic Information System (AGIS), on or about 27th October, 2009 showing the extent of the Plaintiffs' encroachment on Plot No. 3784, the plaintiffs, occupiers of Plot No. 3785 located within Cadastral Zone A04 Asokoro District, Abuja indeed trespassed upon the Counter-Claimant's Plot No. 3784 located within Cadastral Zone A04 Asokoro District, Abuja.

i. General Damages in the sum of N500, 000, 000. 00 (Five Hundred Million Naira) against the Plaintiffs for the said trespass.

j. An Order setting aside the Power of Attorney donated by Usmania Petroleum Nigeria Limited to Stycon Petroleum Nigeria Limited (over Plot No. 193 measuring about 2854.53 square meters located within Cadastral Zone A04, Asokoro District, Abuja covered with Certificate of Occupancy No. FCT/ABU/MISC.9051 dated 28th day of November, 1994) registered on

the 14th day of September 2004 by the 5th defendant by mistake and in error long after the 4th defendant had already granted consent/approval on November 11, 2001 for sub-division of the same original Plot No. 193, located within Cadastral Zone A04, Asokoro District, Abuja into two Parcels of Plots in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited upon the application of Usmania Petroleum Nigeria Limited dated 22nd November, 2000, (the original holder of the Certificate of Occupancy as at that time).

k. An Order setting aside Certificate of Occupancy No. 1806w-17c17-5c33r-c792u-20 dated 26th August 2005 over Plot No. 193 located within Cadastral Zone A04, Asokoro District, Abuja measuring about 2854.53 square meters issued by the 4th defendant in August 2005 by mistake and in error as the same Plot No. 193 located within Cadastral Zone A04, Asokoro District, Abuja measuring about 2854.53 square meters had already been sub-divided into two Parcels of Plots and granted in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited by the same 4th Defendant in November, 2001 upon the application of Usmania Petroleum Nigeria Limited, (the original holder of the Certificate of Occupancy as at that time).

l. An Order of perpetual injunction restraining the Plaintiffs/Defendants to the Counter-Claim, their servants, agents, assigns, privies, successors in title and any other person however described from further trespassing into, upon or howsoever interfering with the Counter-Claimant's right and interest over Plot No. 3784 located within Cadastral Zone A04 Asokoro District, Abuja measuring 1,429.28 square meters covered with the Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th day of March, 2007 and demarcated by Beacons Nos. PB 92740, PB 5018, PB 5017 and PB 92741 and back to the starting point.

m. An Order directing the 4th and 5th defendants to establish Beacon Numbers PB 92740 and PB 92741 on ground on the land, the Beacon Numbers that share the common boundary between Plot No. 3784 and Plot No. 3785, to

perpetually put an end to the acts of trespass to Plot No. 3784 by the Plaintiffs/Defendants to Counter-Claim.

n. Five Million Naira (N5, 000, 000.00) as cost of this suit.

o. And for such orders or other orders the Honourable Court may make in the circumstances of this case.

The 4th and 5th defendants filed a Further Amended Statement of Defence on 22nd January, 2019. The 6th defendant did not file any process in opposition and indeed never put up an appearance all through the course of this proceedings despite service of the originating court process and hearing notices. The plaintiff filed a Reply to the 1st – 3rd defendant joint statement of defence and defence to counter-claim. The plaintiff similarly filed a Reply to the 4th and 5th defendants statement of defence. These latter Reply processes were filed out of time and properly regularized by Order of Court.

In proof of their case, the plaintiffs called two (2) witnesses. **Alhaji Muktar Aliyu** testified as PW1. He deposed to a witness deposition which he adopted at the hearing. He tendered in evidence the following documents:

1. Certificate of Occupancy dated 20th March, 2009 to Stycon Petroleum Nig. Ltd in respect of Plot 3785 with 1.425.27m2 was admitted as **Exhibit P1**.

2. Four (4) numbered photographs together with the certificate of compliance was admitted as **Exhibits P2 (1-4) and P3**.

PW1 was then cross-examined by counsel to the 4th and 5th defendants and in the process, the letter by the law firm of **A.M. Maaji & Co**, Solicitors to plaintiffs dated 10th November, 2019 written to Abuja Metropolitan Management Council was admitted as **Exhibit P4**.

PW1 was also cross-examined by counsel to the 1st - 3rd defendants/counter-claimants.

Abubakar Usman testified as PW2. He deposed to a witness deposition dated 29th April, 2019 which he adopted at the hearing. He tendered in evidence the certified true copies (C.T.C) of the following documents:

1. Offer of terms of grant/conveyance of Approval to Usmania Petroleum (Nig) Ltd dated 1st August, 1994 of about 1,800m2 (Plot No. 193A) within Asokoro A4 District was tendered as **Exhibit P5**.

2. Acceptance of offer of grant of Right of Occupancy dated 3rd August, 1999 was admitted as **Exhibit P6.**

3. Power of Attorney donated by Messrs Usmania Petroleum (Nig.) Ltd to Stycon Petroleum Ltd Registered as No. FC28 at page 28 Federal Capital Territory Abuja Lands Registry office was admitted as **Exhibit P7**.

4. Ministry of Federal Capital Territory Recertification and Reissuance of C-of-O Acknowledgment dated 29th April, 2005 was admitted as **Exhibit P8**.
5. Application by Usmania Petroleum (Nig.) Ltd of Application for consent to Register Power of Attorney dated 9th December, 2003 was admitted as **Exhibit P9.**

6. Application by Usmania Petroleum Nigeria Ltd dated 22nd November, 2000 to the Hon, Minister FCT for consent to assign one half (1/2) of Plot 193 Cadastral Zone A4 Asokoro District Abuja covered by C/O No FCT/ABU/MISC 9051 to Messrs Liza Commercial Ent. Ltd was admitted as **Exhibit P10**.

7. Letter from Land Admin and Resettlement of FCT to Usmania Petroleum dated 25th October, 2002 granting Approval of sub-division of Plot 193 was admitted as **Exhibit P11**.

PW2 was cross-examined by counsel to the 1st – 3rd defendants and in the process the following documents, all certified true copies, were tendered through PW2 as follows:

1. Form CAC 2.3, particulars of first Directors of Stycon Petroleum Ltd was admitted as **Exhibit P12a**.

2. Form CAC 7, particulars of Directors or any change therein of Stycon Petroleum Nig. Ltd together with a board resolution and consent letter were admitted as **Exhibit P12b**.

Counsel to the 4th and 5th defendants equally cross-examined PW2. With the evidence of Pw2, plaintiffs sought for an adjournment to call their last witness which the court reluctantly granted. On the next adjourned date, neither plaintiffs or counsel were in court and the case of plaintiffs, upon application by counsel to the defendants was then closed.

The 1st – 3rd defendants on their part called two (2) witnesses. **Alhaji Saheed Ali Jammal** testified as DW1. He deposed to a witness deposition dated 22nd January, 2019 which he adopted at the hearing. He tendered in evidence the following documents:

"1. Certificate of Incorporation of Liza Commercial Enterprises Limited was admitted as **Exhibit D1.**

2. Corporate Affairs Commission Form C.O. 7 with particulars of Directors of any changes therein of Liza Commercial Enterprises Limited was admitted as **Exhibit D2.**

3. Deed of Assignment between Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited was admitted as **Exhibit D3.**

4. Power of Attorney between Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited was admitted as **Exhibit D4.**

5. Letter dated 22nd November, 2000 was admitted as **Exhibit D5.**

6. Some pages (14 pages) of the file over plot No. 193 Cadastral Zone A4 Asokoro District, Abuja was admitted as **Exhibit D6.**

7. Letter dated 25th October, 2002 was admitted as **Exhibit D7.**

8. Document titled: "EXTRA-ORDINARY MEETING OF THE BOARD OF DIRECTORS OF USMANIA PETROLEUM (NIG) LTD HELD AT NICON HILTON HOTEL ABUJA ON SATURDAY 27TH JULY, 2002" was admitted as **Exhibit D8.**

9. Certificate of Occupancy No. FCT/ABU/MISC:13877 over Plot No. 1135 Durumi District, Abuja, the Schedule and the TDP attached was admitted as **Exhibit D9.**

10. Power of Attorney dated 30th December, 1999 was admitted as **Exhibit D10.**

11. Irrevocable Power of Attorney dated 20th January, 2000 was admitted as **Exhibit D11.**

12. Letter dated 23rd May, 2000 was admitted as **Exhibit D12.**

13. Certificate of Occupancy No. 1b28w-6b0cz-2ee3r-f9ffu-20 dated 20th day of February, 2009 over Plot No. 2922, Asokoro District, Abuja was admitted as **Exhibit D13.**

14. The Court Processes and accompanying documents in Suit Number FHC/ABJ/CS/384/2003 between Liza Commercial Ent. Nig. Ltd & Ors Vs. Alhaji Shehu Turaki (a.k.a Usman Haruna) & was admitted as **Exhibit D14.**

15. Letter dated 1st June, 2001 was admitted as **Exhibit D15.**

16. Abuja Geographic Information System (AGIS) Deposit Slip No. 25453 dated 27th April, 2005 was admitted as **Exhibit D16.**

17. Abuja Geographic Information System (AGIS) Deposit Slip No. 16144 dated 5th August, 2005 was admitted as **Exhibit D17.**

18. AGIS Acknowledgment dated 11th August, 2005 was admitted as **Exhibit D18.**

19. Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th day of March, 2007 over Plot No. 3784 Cadastral Zone A4 Asokoro District, Abuja was admitted as **Exhibit D19.**

20. Letter dated 18th May, 2000 was admitted as **Exhibit D20.**

21. Letter dated 7th April, 1995 was admitted as **Exhibit D21.**

22. Letter dated 7th September, 1995 was admitted as **Exhibit D22.**

23. Revenue Collector's Receipt No. 565114 was admitted as **Exhibit D23.**

24. Revenue Collector's Receipt No. 383436 dated 7th September, 1995 was admitted as **Exhibit D24.**

25. Memorandum and Articles of Association of Stycon Petroleum Nigeria Limited was admitted as **Exhibit D25.**

26. Corporate Affairs Commission Form CAC 2.2 with Notice of situation of registered address of Stycon Petroleum Nigeria Limited was admitted as **Exhibit D26.**

27. Corporate Affairs Commission Form CAC 2.5 with Return of Allotment of Shares Stycon Petroleum Nigeria Limited was admitted as **Exhibit D27.**

28. Corporate Affairs Commission Form CAC 2 with Statement of Share Capital and Return of Allotment of Shares together with the attached Board Resolution and letter of Relinquishment of Shares of Stycon Petroleum Nigeria Limited as at October 2006 was admitted as **Exhibit D28.**

29. Abuja Geographic Information System (AGIS) Revenue Collector's Receipt Number 000026534 dated 04/02/2009 was admitted as **Exhibit D29.**

30. Abuja Geographic Information System (AGIS) Revenue Collector's Receipt Number 000054418 dated 07/04/2010 was admitted as **Exhibit D30.**

31. Letter dated 24th September, 2009 was admitted as **Exhibit D31.**

32. Letter dated 8th October, 2009 was admitted as **Exhibit D32.**

33. Letter dated 19th April, 2010 was admitted as **Exhibit D33.**

34. Quit Notice dated 10th November, 2009 was admitted as **Exhibit D34.**

35. Quit Notice dated 23rd August, 2010 was admitted as **Exhibit D35.**

36. Letter dated 23rd August, 2010 was admitted as **Exhibit D36.**

37. Voided Certificate of Occupancy No. 1806w-17c17-5c33r-c792u-20 dated 26th August, 2005 over plot No. 193 Cadastral Zone A4 Asokoro District, Abuja was admitted as **Exhibit D37.**

38. Certificate of Occupancy No. 1a61w-15507-3cf3r-a40fu-20 dated the 20th day of March, 2009 over Plot No. 3785 Cadastral Zone A4 Asokoro District, Abuja was admitted as **Exhibit D38.**

39. Letter dated 10th November, 2009 was admitted as **Exhibit D39."**

Counsel to the 4th and 5th defendants chose not to cross-examine DW1. The matter was then adjourned in the interest of justice to avail the plaintiffs opportunity to cross-examine DW1. DW1 was then subsequently cross-examined by counsel to the plaintiffs.

Engineer Muhammed Alfa then testified as DW2. He deposed to a witness deposition dated 22nd January, 2019 which he equally adopted at the hearing. He was then cross-examined by counsel to plaintiffs after counsel to 4th and 5th defendants elected not to cross-examine DW2.

With the evidence of DW2, the 1st – 3rd defendants close their case.

The 4th and 5th defendants on their part called also two (2) witnesses. **Chanua Gayus Haman** testified as DW3. She deposed to a witness deposition dated 22nd January, 2019 which she adopted at the hearing. She tendered in evidence the following documents (Certified True Copies) as follows:

1. CTC of Memo written by the Director of Land Administration and Resettlement and approved by the Minister FCT dated 11th November, 2001 was admitted as **Exhibit D40**.

2. CTC of "voided" Certificate of Occupancy issued to Stycon Petroleum Nig. of Plot No. 193 dated 26th August, 2005 was admitted as **Exhibit D41a**.

3. CTC of Certificate of Occupancy to Stycon Petroleum Nig. Ltd of Plot No. 3785 dated 20th March, 2009 was admitted as **Exhibit D41b**.

4. CTC of Certificate of Occupancy dated 30th March, 2007 to Liza Commercial Enterprises Ltd of Plot 3784 is admitted as **Exhibit D41c**.

5. CTC of letter of authority by Stycon Petroleum (Nig) Ltd to the Director of Land AGIS authorizing the collection of Certificate of Occupancy over Plot 3785 was admitted as **Exhibit D42a**.

6. Copy of Certificate of Occupancy to Stycon Petroleum Nig. Ltd Acknowledgment receipt by Ado Maaji and his National Drivers Licence were admitted as **Exhibits D42b and D42c**.
7. Copy of Application for consent to assign one half of (1/2) of plot 193 by Usmania Petroleum to Messrs Liza Commercial Enterprises Ltd dated 22nd November, 2020 was admitted as **Exhibit D43**.

8. Copy of Approval of subdivision of Plot No. 193 by the Land Administration and Resettlement of FCT dated 25th October, 2002 was admitted as **Exhibit D44**.

9. Copy of extra-ordinary meeting of the Board of Directors of Usmania Petroleum (Nig.) Ltd dated 27th July, 2002 was admitted as **Exhibit D45**.

10. Copy of Application to conduct search by the law firm of Chima Henry Ebere & Co. over Plot No FCT/ABU/MISC.9051 together with the letter of instructions by Inter-Continental Bank Plc was admitted as **Exhibits D46 a&b.**

11. Copy of the search Report over Plot 193 dated 13th November, 2003 issued to Chima Henry Ebere & Co. was admitted as **Exhibit D47.**

DW3 was then cross-examined by counsel to the 1st – 3rd defendants and then counsel to the plaintiffs cross-examined DW3.

Abbas Sambo testified as DW4. He works with the Department of Development Control of FCDA. He deposed to a witness deposition dated 22nd January, 2019 which he adopted at the hearing. He tendered in evidence, the following documents (Certified True Copies) as follows:

1. Letter by Liza Commercial Ent. Ltd dated 24th September, 2009 titled "Request for adjustment in the placement of our beacon PB 92740…" on Plot No. 3784 dated 24th September, 2009 was admitted as **Exhibit D48**.

2. Letter by Liza Commercial Enterprises Ltd dated 8th October, 2009 titled "Request to remedy an encroachment on Plot No. 3784" was admitted as **Exhibit D49**.

3. Copy of plan showing extent of encroachment on Plot 3784 was admitted as **Exhibit D50**.

4. Copy of Quit Notice served on Plot 3785 over encroachment on Plot 3784 was admitted as **Exhibit D51**.

DW4 was not cross-examined by counsel to the 1st – 3rd defendants. He was however cross-examined by counsel to the plaintiffs and with his evidence, the 4th and 5th defendants closed their case.

As stated earlier, the 6th defendant did not file any process or appear in court. Parties were then ordered to file their final written addresses. The addresses were duly filed and exchanged.

Before streamlining the issues as raised by parties, it appears to me necessary to make some prefatory remarks on the processes filed in this court, by parties particularly the 1st – 3rd defendants. The crux of this dispute as earlier stated relates to ownership of land to be settled on fairly settled principles. It is difficult on the precisely streamlined facts in dispute to situate the volume of the averments in the pleadings of 1st – 3rd defendants. The 2nd Amended statement of defence and counter-claim of 1st – 3rd defendants was however unduly lengthy, cumbersome and verbose spanning nearly 41 pages.

The main function or philosophy behind filing of pleadings is simply for parties to state precisely what the disagreement really is. The Rules of court vide Order 15 states or provides for the mechanics of stating the dispute precisely. The Rules provides for the pleading of material facts not evidence to situate the crux of the dispute or disagreement. The plaintiff is thus expected to in succinct terms to state his case in the statement of claim and the defendant sends in a defence in answer to the dispute.

Furthermore, the Rules provides the guiding light so that parties in trying to state the disagreement do not go into verbose expressions of grievances as done by 1st – 3rd defendants thereby encumbering their statements with extraneous and repetitive expressions which add no value or substance to the material facts in dispute. The Supreme Court in **Atolagbe V Sharun (1985) 1 NWLR (pt.2) 360 at 365** stated that the principal function of pleadings is to:

"Define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them."

Where a pleading is unnecessarily too long, it is difficult to see how the strategic aim of pleadings, to allow for the case of each party to be stated clearly without ambiguity so that the adversary will know precisely the issues he is facing can really be achieved in a meaningful way. Courts with the volume of work, must not be saddled with the drudgery of wading through a process like this. I leave it at that.

The final addresses filed on both sides of the aisle also calls for some comments. The final address of 4th and 5th defendants contains 46 pages and when this is added to the 10 page reply on points of law, the address span nearly 60 pages.

The 1st – 3rd defendants filed a 93 page booklet and when added to the 31 pages Reply on points of law to the claimants address, we have nearly 123 pages of address. The claimants on their part filed two addresses: the first address is a response to the address of 1st – 3rd defendants and it contains 52 pages. The second address in response to the written address of 4th and 5th defendants has 11 pages. In

total we have nearly 63 pages of final written address on behalf of claimant. Cumulatively, the addresses in this case span nearly 250 pages.

These addresses are better classified as more of a treatise. A lot of industry and learning must have gone into the preparation but the final addresses clearly do not conform to what an address should encapsulate as provided for under **Order 33 Rule 2** of the Rules which situates precisely what an address should contain thus:

"33(2) A written address shall be printed on white A4 size paper, set out in paragraphs, numbered serially and shall contain:

a. **The claim or application on which the address is based;**

b. **A brief statement of the facts with reference to the exhibit(s) attached to the application or tendered at the trial;**

c. **The issue arising from the evidence; and**

d. **A succinct statement of argument on each issue incorporating the purpose of the authorities referred to with full citation of each authority."**

The addresses filed by parties, particularly again by 1st – 3rd defendants are certainly not succinct. They are unnecessarily lengthy, verbose and not surprisingly repetitive. This court will continue to demand of counsel for rigid and scrupulous adherence to the Rules on filing of final addresses, to avoid putting the court through the avoidable and tiresome reality of wading through such documents. As already alluded to, but the point must be emphasised, Counsel must appreciate the reality of the volume of work the courts deal with on a daily basis. Not surprisingly the issues raised here are also rather numerous, which I set out hereunder.

In the final address of 4th and 5th defendants filed on 26th June, 2020, four (4) issues were raised as arising for determination as follows:

i. **Whether the Suit is not Statute Bar?**

ii. **Whether the Plaintiffs have established their case for declaration of title to Plot No. 193 located within Cadastral Zone A4 Asokoro District?**

iii. **Whether the Plaintiffs are entitled to the grant of any injunctive order against the 4th and 5th Defendants?**

iv. **Whether it is not the duty of the Plaintiffs to pay the costs of their litigation fees?**

v. **Whether the plaintiffs are entitled to any of the reliefs being sought?**

The 1st – 3rd defendants final address was filed on 22nd June, 2020 and in the said address, five (5) issues were raised as arising for determination as follows:

1. **Whether the Claims of the Plaintiffs in this Suit for declaration of title to Plot 193 Asokoro, Abuja, Trespass to Plot 193 Asokoro, Abuja, General Damages for Trespass to Plot 193 Asokoro, Abuja, vacant possession of Plot 193 Asokoro, Abuja, and cost of this suit against the 1st to 3rd Defendants in respect of or affecting or touching one half of Plot 193 Asokoro, Abuja which aforesaid one half of Plot 193 Asokoro, Abuja later became Plot 3784 Asokoro, Abuja are not caught by the equitable doctrines of laches, acquiescence and estoppel by conduct, that is, standing by and therefore not maintainable.**

2. **Whether the Plaintiffs have proved their claims to entitle them to the reliefs sought in this Suit.**

3. **Whether the allegation of fraud leveled against the 1st to 3rd Defendants by the Plaintiffs in this Suit was properly pleaded and proved as required by law.**

4. **Whether Exhibit P4 does not constitute admission against the interest of the Plaintiffs in this Suit.**

5. **Whether the 1st Defendant has not made out a case for the grant of the reliefs sought in the Counter Claim against the 1st and 2nd Plaintiffs in this Suit as Defendants in the Counter Claim.**

On the part of the claimants, as stated earlier two addresses were filed both on 13th July, 2020. In the address in response to the 4th – 5th defendants address, five (5) issues were raised as arising for determination as follows:

a. **Whether the suit is not statute Bar?**

b. **Whether the Claimants have established their case for declaration of title to Plot No. 193 Located within Cadastral Zone A04 Asokoro District.**

c. **Whether the Claimants are entitled to the grant of any injunctive order against the 4th and 5th Defendants.**

d. **Whether it is not the duty of the Claimants to pay the cost of their litigation fees.**

e. **Whether the Claimants are entitled to any of the reliefs being sought?**

In the address in response to the final address of 1st – 3rd defendants, three (3) issues were raised as arising for determination:

a. **Whether the 1st – 3rd Defendants have successfully proved their root of title to the portion of Plot No. 193 (Plot No.3784) and in the instance that they have not, whether the principle of laches, acquiescence and estoppel by conduct, can be applied to prevent the Claimants form maintaining this action;**

b. **Whether the Claimants have proved their case to be entitled to the reliefs sought before this Honourable Court; and**

c. **Whether the 1st Defendant is entitled to the reliefs sought in the Counter Claim?**

Both set of defendants (4th and 5th) and (1st – 3rd defendants) filed Replies on points of law to the address of claimants filed on 11th September, 2020 and 10th September, 2020 respectively.

I have given a careful and insightful consideration to all the issues as distilled by parties in relation to the pleadings and evidence adduced at plenary hearing. The issues may have been differently worded but they seem to me in substance to be in ***pari materia*.**

On the pleadings which has precisely streamlined the issues and or facts in dispute, the central key issues on which parties are at a consensus *ad-idem* relates to:

(1) Claim of ownership made by claimants over the entire **Plot 193** (2) The question of whether there was a transfer of a part of Plot 193 to 1st defendant and (3) Whether there was a legal subdivision of the same plot into two plots and allocated to 2nd claimant and 1st defendant thereby extinguishing any or all rights that claimants may have over the said Plot 193. The claimants essentially seek for a pronouncement affirming their ownership of this Plot 193 contending that the purported sale or transfer of part of Plot 193 to 1st defendant and the subsequent subdivision cannot be legally countenanced. All the other Reliefs sought by claimant and indeed the case by the defendants and the counter-claim made can be considered within the context of these critical questions raised above.

All theses contested issues are a direct function of whether the parties have succeeded in discharging the burden of proof placed on them by law in proof of these contending assertions within the required legal threshold.

Flowing from the above, there is in this case **a claim** by plaintiffs and a **counter-claim** by the 1st – 3rd defendants. It is trite law that for all intents and purposes, a counter claim is a separate, independent and distinct action and the counter claimant(s) 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 (2007) 7 WRN 1 at 18; Shettimari V Nwokoye (1991) 9 NWLR (pt.213) 66 at 71.**

In view of this settled state of the law, both the plaintiffs and the 1st – 3rd defendants/counter-claimants have the burden of proving their claim and counter-claims respectively. This being so, therefore, the issues for determination in this

action can be condensed and be more succinctly encapsulated in the following issues as follows:

1. **Whether the claimants have established on a preponderance of evidence that they are entitled to all or any of the Reliefs claimed.**

2. **Whether the 1st – 3rd defendants/counter-claimants have equally on a preponderance of evidence established that they are entitled to all or any of the reliefs claimed.**

The above issues are not raised as alternatives to the issues raised by parties, but the issues canvassed by parties can and shall be cumulatively considered under the above issues. See **Sanusi V Amoyegan (1992) 4 N.W.L.R (pt.237) 527.** The issues thus raised will be taken together as it has in the court's considered opinion brought out with sufficient clarity and focus, the pith of the contest which has been brought to court for adjudication.

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

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

It is therefore guided by the above wise exhortation that I would proceed to determine this case based on the issues I have raised and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel.

Before going into the substance of the issues raises, let me quickly deal with certain preliminary issues flowing from the final addresses of the defendants. I start with that of 4th and 5th defendants and covered by their issue (1) that the present action is statute barred relying on the provisions of **Public Officers Protection Act (POPA)** to the effect that the extant action was not brought within three months as provided for by Section 2 (a) of the said Act. The case made out relying on **paragraphs 23** of the **Amended Statement of claim** is that the cause of action of plaintiff is situated on the subdivision effected, but that the action was filed outside the three months threshold as provided for in the POPA.

The claimants in response stated that the POPA has no application to the extant case involving recovery of land.

Now it is one thing to rely on a legal principle but quite a different thing to situate or demonstrate violation of the principle relying on the processes or materials filed before the court. Principles do not simply hang in the air or exist in a vacuum; the application to the processes before the court is critical.

It is therefore curious that a determination of the cause of action and when it accrued has been made only on the basis of jurist paragraph 23 out of the entire 29 paragraphs Amended statement of claim and the extensive Reliefs sought by claimants. The 4th and 5th defendants as stated earlier, contends that the case is predicated on the subdivision of the disputed plot 193 and no more.

Now a severely restricted consideration of the entirety of the Amended statement of claim as done here by counsel to the 4th and 5th Defendants would logically lead to a severely skewed understanding of the case made out by the claimant on the pleadings which in my opinion has sufficiently and in substance donated that the extant case certainly is not solely about subdivision as erroneously conceived by learned counsel to the 4th and 5th defendants but involves among others a determination of the fundamental question on recovery of land. Embedded in this

question is the issue of what was even allocated to the original allottee and what it even transferred to 1st claimant. There is the important related question of whether the original allottee even sold or transferred part of the disputed plot to 1st defendant. The claimants have denied that there was any such sale or transfer of part of Plot 193 to 1st defendant as alleged. These are critical questions streamlined on the pleadings that then provides the basis to consider the ancillary question of subdivision, the 4th and 5th defendants carried on the basis of the application of parties. This application or action has now being challenged as fraudulent. There is then the important questions of trespass, damages for trespass, defamation, special damages, demand for a written apology which are all issues involving other parties in the extant proceedings and not solely the 4th and 5th defendants. There is then the added question of the counter-claim which admittedly is a cross-action but which clearly has a direct bearing with the substantive action.

The very foundation of this case is no doubt the allocation over Plot 193. There certainly is a question of the subdivision, but the subdivision only came later, indeed much later after the allocation of statutory right of occupancy subject to fulfilment of certain conditions. There cannot be a **subdivision** without a valid root of title in existence. The trajectory of the narrative of this case has raised fundamental legal and factual issues relating to Plot 193 subject of the extant inquiry as earlier highlighted. It will therefore be disingenuous on the part of 4th and 5th defendants to say that this case is simply about subdivision because even after the subdivision, they voided certain allocations for example, **Exhibit D41a** and made new allocations vide **Exhibits D41b and D41c**. A subdivision properly understood can only be in the context of a matter of allocation and Recovery of Land. Subdivision is therefore not an esoteric term or concept and too much should not be made of it and detach it from what it is: a process in land transactions. No more.

In addition, the bulk of the **reliefs** sought by **claimants – indeed 7out of the 10 Reliefs** sought are majorly against 1st – 3rd defendants. The 4th and 5th defendants will appear to have been joined here due to the role they played in the process. Most importantly, even the subdivision was initiated by the parties independent of 4th and 5th defendants. They only came into the picture because the parties who are

all private legal entities wanted legal validity to the transaction. The process of the challenged Agreement between parties which is the cause of action is a distinct process and has nothing to do with 4th and 5th defendants. They only came into the picture as stated earlier, to give assent to the transaction which is also now in question. No more. The substance of the case was entirely driven by private entities. The claimants have put into question this entire process or transaction by this action.

Having made the above points, the question is whether **Section 2 (a) of POPA** has application in this case?

Now there is no doubt that certain enactments stipulate a time limit within which a party who alleges that his civil rights and obligations are stamped on must approach the court for redress. If such a wronged party fails or neglects to institute an action on schedule, as permitted by that enactment, his suit becomes stale and statute-barred. Such a party is taken to be an indolent who has slept on his violated rights. His allowing grass to grow under his feet or tardiness, in not taking action within the statutory period, makes the court to lose the jurisdiction to entertain his claim. Approving this position of the law in **Ajayi V. Military Administrator of Ondo State** (**1997) 5 NWLR (pt.504) 237 at 254**, Eso JSC stated:

> ***"The issue of whether or not an action has been statute-barred is one touching on jurisdiction of Court for once an action has been found to be statute-bared, although a plaintiff may still have his cause of action, his right of action, that is, legal right to prosecute that action has been taken away by statute. In that circumstance, no Court has the jurisdiction to entertain his action."***

It is true that **Section 2 (a) of the POPA** circumscribes the time for initiation of action against a public officer to three months next after the happening of the act, neglect or default complained of or cessation thereof of continuance of damage or injury.

Accordingly, this Act will have no application on two fundamental grounds. Firstly, for the section to be applicable, the cause of complaint must be attributable to a **public officer**. As I have demonstrated above, the complaint relating to the

subdivision was entirely driven by private entities and had nothing to do with 4th and 5th defendants. The sale of part of the plot; the preparation of documents (Power of Attorney and Deed of Assignment), the application for subdivision, all actions questioned by claimants had nothing to do with 4th and 5th defendants.

Secondly, even if I am wrong above, on the authorities, the limitation law such as POPA is malleable and has now well established exceptions. The Supreme Court in **Osun State Govt. V Dalami (Nig.) Ltd (2007) 9 NWLR (pt.1038) 86** relying on its earlier decision of **Nigeria Ports Authority V Construzion General; Farsura Cogefor Spa & Anor (1974) 1 All NLR (pt.2) 463** held that Section 2 of the Public Officers Protection ordinance which is in pari materia with the provision of 2(a) of POPA does not apply in cases of **"recovery of land, breach of contract, claims for work and labour done etc."**

I therefore have no hesitation in holding on the basis of the reasons advanced above, that the statutory privilege offered by Section 2 (a) POPA has no application in the extant case bordering on recovery of Plot 193 and the other extensive issues raised and Reliefs claimed. See **WURO Boga Ltd & Anor V Minister of FCT & ors (2009) LPELR 210 32 (CA); FGN V Zebra Energy Ltd (2002) 18 NWLR (pt.798) 162.**

Now with respect to the **1st – 3rd defendants,** two preliminary issues were raised in their address. The first has to do with the alleged failure of the claimants to file the additional witness statement on oath of **Alhaji Muktar Aliyu** (PW1) and which was the only statement he relied on within the 7 days granted by court for same to be filed.

Now it is true that the Rules of court makes provisions for the filing of witness depositions along with the originating court process. From the records, it is not in doubt that when the court granted on 18th May, 2018, the claimants application to amend their pleadings and to file an additional statement, the court granted 7 days for the process to be filed. The claimants filed the Amended statements of claim within time but filed the additional witness statement on 26th June, 2018 outside the time granted to do so.

It is however equally not in dispute that the said **Alhaji Muktar Aliyu** adopted this same witness deposition at trial, tendered documentary evidence without any

complaint or objection by all the defendants. Indeed all defendants extensively cross-examined PW1 and during the cross-examination of PW1 by counsel to the 4th and 5th defendants, **Exhibit P4** was tendered through this witness. The case was therefore fought extensively on the basis of all this process including the additional witness statement of PW1. This objection at this time appears to me extremely belated and I really cannot situate any injustice or that they (the 1st – 3rd defendants) suffered any confusion or doubt in the case filed against them. The Rules of Court itself under the relevant provisions of **Order 5** has anticipated such procedural challenges and provides the leeway or solution when it provides for effect of non-compliance with the Rules under **Order 5 Rule 1(2)** as follows:

"Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner, or form, such failure may be treated as an irregularity. The court may give any direction as he thinks fit to regularize such steps."

The above provision states clearly that any failure to comply with the provisions of the rules in respect of time, place, manner, form or content, the failure may be treated as an irregularity and the court may give any direction as it thinks fit to regularize such steps.

The Supreme Court in **Nipol Ltd V Bioku Inv. & Property Co. Ltd (1992) 3 NWLR (pt.232) 727 at 746 G-H** per Akpata JSC (of blessed memory) stated that Non-compliance should be treated as an irregularity and shall not nullify proceedings. Such proceedings can however be set aside wholly or in part on ground of irregularity and not because the proceedings are a nullity. Whether or not to set aside any proceedings for irregularity as a result of non-compliance depends on the circumstances of the case and the nature of the irregularity.

The provision of **Order 5 Rule 2 (1)** then provides as follows:

"An application to set aside for irregularity any step taken in the course of any proceedings may be allowed where it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity."

Now, where a party elects to exercise the option above, it has to be done timeosly and within a reasonable time and before taking any fresh steps after noticing the irregularity under **Order 5 Rule 2(1)** of the Rules. Where steps are taken, any further challenge shall not be allowed.

In this case, the 1st – 3rd defendants took active steps in contesting the evidence led on the basis of this process culminating in the final addresses they filed. It appears too late in the day to raise such an issue now. I find support for this in the Supreme Courts case of **Cooperative & Commerce Bank (Nig) Plc V A-G Anambra (1992) 8 NWLR (pt.261) 528 at 554 C-G** per Karibi-Whyte JSC who stated that where a party alleges non-compliance with the Rules of Court, yet files a counter-affidavit, he is deemed to have taken fresh steps in the proceedings since knowing of the non-compliance complained of. He is therefore prevented from raising the alleged non-compliance.

The Apex Court here talks about filing a counter affidavit as compromising the challenge on the issue of non-compliance with the rules. In this case the 1st – 3rd defendants fully contested the case against them on the basis of this process which makes their position worse. I agree that rules of court are meant to be obeyed but the modern and purposive approach of courts is that where strict compliance with the rules will lead to injustice, the rules should be abandoned in favour of doing substantial justice. See **Amadu V Yantunmake (2011) 9 N.W.L.R (pt.1251) 161 at 182 Pac per Peter Odili JCA (as he then was); Jeric (Nig) Ld V UBN Plc (2000) 15 N.W.L.R (pt.691) 447 at 458** per C Kalgo JSC. Indeed a procedural irregularity cannot vitiate a suit once it can be shown that no party suffered a miscarriage of justice as in the present situation. See **Famfa Oil Ltd V A-G Fed (2003) 18 NWLR (pt.852) 453 at 468** per D-H per Belgore JSC (as he then was).

On the whole, the extant objection at this late stage is a resort to technicalities of the extreme type. Rules of court cannot be read in the absolute without recourse to the justice of the case. To do so will simply to make courts slavish to the rules and that certainly cannot be the *raison d'etre* of the Rules of Court. See **Anatogu V Anatogu (1997) N.W.L.R (pt.519) 49 at 67.**

In conclusion, I call in aid the immortal words of Tobi JCA (as he then was and of blessed memory) in **General Oil Ltd V Oduntan (1990) 7 NWLR (pt.163) 423 at 441** paras D-E where he stated as follows:

"Rules of Court are meant to be obeyed. Obedience to rules should however not be slavish to the point that the justice of the case is destroyed or thrown overboard. The greatest barometer as far as the eagle eyes of the public are concerned, is whether justice has been done to the parties. Therefore, if in the course of doing justice, some harm is done to some procedural rule which eventually hurts that rule, the court should be happy that it took that line of action in pursuance of justice. Litigation should be more than a pound of flesh but rather a game of give and take; not where the party in blunder, however infinitesimal, must pay the highest penalty of being denied hearing on the merits. Counsel should rely less on legal technicalities and more on merits."

The final contention is that after the 1st – 3rd defendants amended their statement of defence and counter-claim, which they filed on 22nd January, 2019 and served, that the claimants did not file a new Reply to the defence and counter-claim. That in the circumstances, the earlier Reply they filed to the defence and counter claim of 1st – 3rd defendants dated 8th November, 2016 has **"died a natural death and ceased from being a live process before the court with the aforesaid amendment."**

This submission with respect is completely misconceived and stems from a complete misunderstanding of the nature of an Amendment.

The law is settled that upon an amendment being allowed, the writ as amended becomes the origin of the action, and the claim thereon is regarded and deemed to have been made at the date the original pleading was filed. Put in more succinct language, amendment of pleadings dates back to the date when the pleadings were originally filed. This means that once pleadings are amended, what stood before the amendment is no longer material before the court. See **Union Bank of Nigeria Plc V Osazae (2011) 7 NWLR (pt.1246) 293 at 311**.

Upon an amendment of a statement of claim or defence as the case may be, the adversary is at liberty to amend his process without leave of court, in so far only as is necessary to meet the facts introduced by the amendment. This translates to a right in the adversary to plead afresh to the case made on the amended pleading. See **Mobil Oil (Nig) Ltd V IAL 36 Inc (2000) 6 NWLR (pt.659) 146 at 163 F-G; 171 E**. Where a defendant for example fails to amend his defence, after claimant

amends his pleadings, his original defence therefore stands as the defence to the amended statement of claim, the parties are brought to an issue on the amended statement.

In this case, there is no law and none was referred to mandating the claimants to file a **new Reply** to the amended statement of defence and counter-claim of 1st – 3rd defendants. The old Reply filed is therefore not "spent" or "ceases to exist" as wrongly submitted and therefore stands as the Reply to the amended process of 1st – 3rd defendants and parties are brought to an issue on these process.

Indeed where a defendant for example, fails to amend his statement of defence notwithstanding the amended statement of claim, he will be deemed to have admitted the amendment in the amended statement of claim and he will be deemed to have joined issues with the claimant in terms of the amended statement of claim. No more. See **Mobil Oil (Nig) Ltd V IAL Inc (supra)**.

Indeed the need to file a **fresh Reply** would only have been necessary if the 1st – 3rd defendants changed the character of there defence by introducing new facts such that failure to file a Reply to deny those essential and material allegations may amount to an admission of those essential and material averments. See **Ojo V Phillips (1993) 5 NWLR (pt.296) 751 at 767 B**. The existing **Reply** therefore defines or streamlines the issues/facts in dispute in this case. The preliminary issues raised by the defendants thus fails.

Now to the substance. I will **consider the two issues raised together**. At the commencement of this judgment, I had stated that there is a claim by plaintiffs and a counter claim by 1st to 3rd defendants. So these identified parties have the evidential burden of establishing their claims and succeeding on the strength of their cases 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).**

It is therefore to the pleadings which has precisely streamlined the issues and facts in dispute and that the evidence that we must now beam a critical judicial search light in resolving these contested assertions.

In this case, the claimants filed a 29 paragraphs Amended statement of claim which forms part of the Records of court. The evidence of their two witnesses are largely within the structure of the claim and the Replies filed to the defence and counter-claim of 1st – 3rd defendants/counter-claimants and the defence of 4th and 5th defendants.

The 1st – 3rd defendants/counter-claimants filed a 28 paragraphs Joint Amended Statement of Defence and Counter-Claim which also forms part of the Records of court. The evidence of their two witness similarly is largely within the purview of their pleadings.

Finally the 4th and 5th defendants filed a 26 paragraphs further Amended Statement of Defence which equally forms part of the Records of court and the evidence of their two witnesses is also largely within the body of facts averred in their defence.

I shall in the course of this judgment refer to specific paragraphs of the pleadings, where necessary to underscore any relevant point. Indeed in this judgment I will deliberately and in extenso refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts

exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

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

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

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

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

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

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

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was

adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

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

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

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

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

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

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

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131.** These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound

to plead and prove more than one root of title to succeed but he is eminently entitled to rely on more than one root of title. See **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252.**

It is also important to note the point at the onset that the nature of the reliefs both parties in the claim and counter-claim seek are substantially **declaratory** in nature. That being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.**

The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

A convenient starting point is to understand the precise situational dynamic relating to the **allocation or root of title of the claimants**. Situating what was precisely allocated to the original allottee will provide factual and indeed legal basis to consider the validity of the contested assertions in this case. I prefer here to take my bearing from the pleadings. The following paragraphs 6, 7, 9 and 10 of the Claimants Amended Statement of Claim are relevant:

"6. The plaintiffs avers that the land the subject matter of this suit known and described as Plot No.193 adjoining Plot No.192 located within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by Beacons Nos. PB 5017, PB 5018, PB 809, PB 810 and PB 807 was initially covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the Hon. Minister FCT for 99 years commencing from the 8th day of September, 1994 was originally granted to USMANIA TO PETROLEUM (NIG.) LIMITED.

A copy of the original Right of Occupancy and a copy of evidence of acknowledgment of the original shall be relied upon at the trial.

The 4th and 5th defendants are hereby given notice to produce the original which is in their custody. The Plaintiff shall also rely on the "OFFER OF TERMS OF GRANT/CONVEYANCE OF APPROVAL" dated 1st August 1994 issued to the 1st Plaintiff together with the "ACCEPTANCE OF OFFER OF GRANT OF RIGHT OF OCCUPANCY WITHIN THE FEDERAL CAPITAL TERRITORY, ABUJA" in proof of its title to the property.

7. **The Plaintiffs further aver that by a Deed of Assignment executed sometimes in 1998, the said USMANIA PETROLEUM (NIG) LTD, assigned all its rights and interest in the land described in paragraph 6 above with all its appurtenances (a petrol station with all its facilities) to STYCON PETROLEUM (NIG.) LTD. A copy of the Deed of Assignment is hereby pleaded and shall be relied upon at the trial to proof transaction only. The plaintiffs also rely on the Registered Power of Attorney executed by the 1st plaintiff and STYCON PETROLEUM (NIG) LTD and USMANIA PETROLEUM (NIG.) LTD letter of Application for Consent to register Power of Attorney in respect of Plot 193 situate within Asokoro District covered by Certificate of Occupancy No. FCT/ABU/MISC.9051 dated 9th December, 2003.**

9. **The plaintiffs aver that sometimes in the year 2005, the first plaintiff entered into a transaction with the 2nd plaintiff which culminated into a grant of power of attorney by the former in favour of the latter. In fact, even a Deed of Assignment was prepared and executed between them. Reliance shall be placed on the Power of Attorney, Deed of Assignment and authority letter issued by the 1st plaintiff to the 2nd plaintiff dated 3rd May 2005 to show proof of transaction between the 1st plaintiff and the 2nd defendant during the trial.**

10. **The 2nd plaintiff avers that being a petroleum marketer and particularly a major distributor of AP Petroleum products, with similar petrol stations in most parts of the Northern States of Nigeria, he was attracted by the strategic location of the property (he was also attracted by the fact that the filling station was already registered with AP PLC a major petroleum**

marketing company in Nigeria) the subject matter of this suit with all the facilities built on same by USMANIA PETROLEUM (NIG.) LTD and STYCON PETROLEUM (NIG.) LIMITED including the parameter fence which separates the filling station with other parts of the land which was being used as a workshop by the 1st to 3rd defendants who were motor mechanics and tenant at will of STYCON PETROLEUM (NIG.) LIMITED."

The above situates the basis or root of title of claimants. Let us give close scrutiny to the averments and the evidence. The above pleadings particularly **paragraph 6** above is silent with respect to the precise ambit or size of the land allocated to the original allottee of plot 193, **Usmania Petroleum Nig. Ltd**. However in paragraph 1(a) of **plaintiffs' Reply to the 4th and 5th defendants defence**, the following was pleaded:

"1(a). Messrs Usmania Petroleum Nigeria Limited (the original allottee) assigned the said Plot 193 measuring 2854.53 square meters covered by Right of Occupancy No. FCT/MISC.9051 dated 28th November 1994 and found on Sheet 334/999/NE.4 sq demarcated by beacons PB 5017, PB 5018, PB 810 now identified under the FCT Land Recertification scheme as Plot 193 in Cadastral Zone A04 Asokoro District with File No. 53613 issued under the recertified Certificate of Occupancy Number 1806w-17c17-5c33r-c729i-20 to the 1st plaintiff before 2005."

I had earlier alluded to the fact that the pleadings is a distinct process from the evidence in proof of the averments in pleadings. Let me again reiterate the principle that it is trite principle of general application that pleadings, however strong and convincing the averments may be, without evidence in proof thereof go to no issue. Through pleadings, the adversary and the court know exactly the points in dispute. Evidence must then be led to prove the facts relied on by the party to sustain the allegations raised in the pleadings, failing which they must be discountenanced as unsubstantiated. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 F-G; Odunsi V Bamgbala (1995) 1 NWLR (pt.374) 641 at 656 – 6577 H-A.**

The case is now to situate the evidence in support of the critical averments or support of the pleadings of claimants highlighted above.

Now in evidence, the PW2 and MD/CEO of the original allottee **Usmania Petroleum Nig. Ltd** (hereinafter simply referred to as **Usmania**) repeated the averments in paragraph 6 of his claim and paragraph 1(a) of the Reply above and in evidence tendered **Exhibit P5**; the offer of terms of Grant/Conveyance of approval granted to **Usmania**.

This offer letter **Exhibit P5** however contradicts in material particulars the pleadings and evidence led on what was offered to Usmania Petroleum Nig. Ltd. The file No. **MFCT/LA/92/MISC.9051** on **Exhibit P5** may be consistent with what was pleaded but the **date of issue**, **commencement date of the allocation for 99 years**, **the plot No**. and **size of the disputed plot** are completely at variance with what claimants pleaded.

The claimants pleaded that what Usmania was allocated was Plot 193 and adjoining Plot 192 measuring **2854.53** square meters. What was however allocated to Usmania from **Exhibit P5** is **Plot 193A** with a size of **1,800 square meters**. The Exhibit P5 is dated 1st August, 1994 not 28th November, 1994 as pleaded, even if I note that the two (2) dates of issue were pleaded in paragraph 6 above. There is however a **complete disconnect** between what was pleaded and the document tendered in evidence to situate the root of title of Usmania and on which the claimants base their claim(s).

The **Exhibit P6**, (Acceptance of Offer of Grant of Right of Occupancy) shows unequivocally that PW2 accepted the contents of **Exhibit P5**, the Offer letter. The acceptance here binds Usmania to the terms of the offer letter. See **Obi V. Minister FCT (2015) 9 NWLR (pt.1465) 610.**

The bottom line here is there is absolutely no evidence to situate the initial allocation of **Plot 193 with 2854.53 square meters to Usmania**. The letter of Offer tendered does not support the allocation pleaded.

As a logical corollary, the consequences of failure to lead evidence to support the allocation of **plot 193 with 2854.53** square meters to Usmania is that the said paragraphs are deemed as abandoned. See **Oshim V Ekpechi (2000) 5 NWLR (pt.656) 225 at 240.** I will return to this point again and severally in the course of this Judgment. Exhibit P5 therefore represents what was allocated to **Usmania**. It is trite law that the contents of this exhibit or allocation cannot be altered or any

interpolations made at this stage to suit any particular purpose. See **Section 128 of the Evidence Act**. It would appear that even at this early stage that the case of claimants predicated on the unproven original allocation to **Usmania of Plot 193 with 2854.53 square meters** has seriously compromising features and undermines the case of claimants.

In law where a party's root of title is pleaded as for example, a grant, sale or conveyance, that root of title has to be established first and any consequential acts following therefrom can then properly qualify as acts of ownership. In other words acts of ownership are done because, and in pursuance of the ownership. Ownership forms the Quo warrantor of these acts as it gives legality to acts which would have otherwise been acts of trespass. See Benedict **Nwofor V. Nwosu (1992) 9 NWLR (pt.264) 229 at 237 E-F**.

It is equally to be noted that in **paragraph 7** above, reference was made by claimant to a certificate of occupancy **No. FCT/ABU/MISC.9051 dated 9th December, 2003**. Again neither PW1 or PW2 tendered this certificate of occupancy said to be in respect of Plot 193. In the absence of this certificate, this aspect of the pleading will equally be deemed as abandoned.

The point to underscore is that this critical **root of title of Usmania** or its statutory allocation as pleaded was never tendered in evidence by claimants; what was tendered has no nexus with what was pleaded as the root of title. In law a root of title simple connote means or process through which a party came to be the owner of land in dispute. See **Ofume V Ngbeke (1994) 4 NWLR (pt.341) 746**. The production of this statutory allocation as pleaded appear to me a legal and factual imperative in the context of the dispute. See **Section 131(1) of the Evidence Act (supra).** This is more so when it is noted that production of a right of occupancy or a Certificate of Occupancy cannot in law be said to be conclusive evidence of any right, interest or valid title to land in favour of the grantee. It is, at best, only a prima facie evidence of such right, interest or title without more; and may in appropriate cases be effectively challenged and rendered invalid, null and void. See **Lababedi V. Lagos Metal Industries Nig Ltd (1973)1 SC 1 at 6; Olohunde V. Adeyoju (2000)14 WRN 160 at 184 and Kyari V. Alkali (2001)31 WRN 88 at 116.** Where this prima facie evidence of interest is not even tendered or

produced, as here, such a case will clearly be in dire straits as is said in popular parlance.

The point perhaps to underscore and all parties are adidem here is that the land in dispute clearly 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. 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.**

Now 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.

Now if the allocation to **Usmania of Plot 193 adjoining Plot 192 with 2854.53 square meters pleaded** was what was transferred to claimants and there is no evidence of this allocation, will there even be further basis to continue the extant inquiry to explore any transfer to a third party?

Let me however err on the side of caution and deal with all issues raised. Now on the pleadings vide paragraph 7 above the claimant said that **Usmania** transferred all its interest described in **"paragraph 6 above"** to 1st plaintiff sometime in 1998 via an executed Deed of Assignment. Now on the evidence there is nothing tendered donating this deed of assignment. Indeed no deed of assignment was tendered to support the pleading in paragraph 7.

Now it is true that a **Power of Attorney** between **Usmania and 1st plaintiff** vide Exhibit P7 was tendered but there is nothing in the exhibit delineating the plot of land over which it covers. It is however logical to hold that any transfer of interest to 1st plaintiff in 1998 certainly cannot be in respect of **"plot 193 adjoining plot 192 with 2854.53 square meters"** which was pleaded but with absolutely no evidence to ground or support it. If it is in respect of **Exhibit P5, plot 193A with 1,800 square meters**, this particular subject matter is not a matter on the pleadings on which issues were joined. That is the conundrum claimants are facing.

Now what is curious and interesting is that this **Power of Attorney** prepared ostensibly in 1998 refers to the donation by Usmania of a certain Certificate of Occupancy Reference No. FCT/ABU/MISC.9051 dated 28th November, 1994 which was said to have been granted by the Minister over plot 193 and said to have been registered at the Land Registry of FCT as No. FC63 at page 63 vol. 49 dated 27th January, 1995.

Again, this particular Certificate of Occupancy was neither pleaded and most importantly neither the two witnesses of claimants tendered this Certificate of Occupancy to Usmania in evidence which is the subject of the Power of Attorney, Exhibit P7.

This untendered Certificate of Occupancy over Plot 193 to Usmania dated 28th November, 1994 referred to in Exhibit P7, has no nexus with the statutory allocation to Usmania vide Exhibit P5 which is in respect of Plot 193A. Again this purported certificate appears even to be different from that pleaded in paragraph 7 and said to be dated 9th December, 2003 which as stated earlier was not tendered.

The question that must be raised here is why was this critical certificate of occupancy to Usmania neither pleaded or tendered at all by claimants? I just wonder. In the Re-certification and Re-issuance of Certificate of Occupancy acknowledgment issued by 4th and 5th defendants, allusion was made to a Certificate of Occupancy over plot 193 issued to Usmania as indicated above; this too was neither pleaded or tendered and the court has no jurisdiction to speculate. It would appear from the evaluation of these documents that there will appear to be a plot 193 but the root of allocation to Usmania on the evidence remains plot 193A. This case as repeatedly stated cannot be changed or altered now. There is nothing on the pleadings or evidence to show for example that plot 193 was changed to Plot 193A or that they are one and the same plot. The questions here which no answers have been provided is this: if plot 193A with 1,800 square meters (Exhibit P5) was allocated to Usmania and which was then transferred to 1st claimant, at what point did the plot change to 193 and the size then dramatically extended to 2854.53 square meters?

In the light of these confusing facts, there is therefore no legal or factual basis to situate the Certificate of Occupancy dated 26th August, 2005 said to have been

issued to 1st claimant on which claimants predicate their **Relief (a).** Even on the evidence, the claimants never tendered this Certificate of Occupancy dated 26th August, 2005 and one then wonders how the court is to even determine what is contains and the terms.

Now if we take it that this Certificate of Occupancy was what was tendered by 4th and 5th defendants vide **Exhibit D41a**, since it is dated 26th August, 2005, this exhibit is however in respect of **Plot 193 with 2854.53 square meters**. This was however not what was allocated to Usmania vide **Exhibit P5** who then transferred to 1st claimant. At the risk of prolixity Exhibit P5 to Usmania is in respect of Plot 193A with 1,800 square meters. No more. The 1st claimant cannot aggregate more land to itself beyond what was allocated to Usmania where it derived its title. If at all, any certificate of occupancy is to be issued to 1st claimant, it can only be in terms of or within the purview of the original allocation made to Usmania from where it derived its title.

Most importantly what was tendered as **Exhibit D41a by 4th and 5th defendants** and **D37 by 1st – 3rd defendants** were **voided** copies of the said Certificate and clearly of no value in the circumstances. The document has **"void"** conspicuously stamped on it by 4th and 5th defendants and in evidence they indicated it was wrongly issued.

In law, the word void means null, ineffectual, nugatory and having no legal force or biding effect, unable in law to support the purpose for which it was intended. In its strictest sence, void means that which has no force and effect, is without legal efficacy, is in capable of being enforced by law or has no binding legal force.

See **Buraimoh V Karimu (1999) 9 NWLR (pt.618) 310 at 323-324; Omoyinmi V Olaniyan (2004) 4, NWLR (pt.651) 38 at 58**.

I am in no doubt that in the circumstances, **Exhibits D41a or D37** cannot ground or support a declaration of title.

As stated earlier, even if we accept that a **Power of Attorney** was executed between Usmania and 1st claimant, it can only logically be in relating to plot 193A with 1,800 square meters which is not in contention in this case and logically is what 1st claimant can equally transfer to 2nd claimant except of course there is

evidence that the size of the original allocation was extended which is not the case here. The only thing to add is that a Power of Attorney donated to 1st claimant is not a root of title and it is obviously not a statutory allocation within the purview of the Land Use Act.

In **Ude V. Nwara (1993)2 SCNJ 47 at 66-67,** the Supreme Court per Nnaemeka Agu JSC held that:

"A power of attorney merely warrants and authorizes the donee to do certain acts instead of the donor and so it is not an instrument which confers, transfers, limits charges or alienates any tile to the donee, rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. So even if it authorises the donee to do any of these acts to any person including himself, the mere issuance of such a power is not per se an alienation or parting with possession. So far as it is categorized as a document of delegation, it is only after, by virtue of the Power of Attorney, the donee leases or conveys the property, the subject of the power, to any person including himself that there is alienation."

In the same vein, in **Ndukauba V. Kolomo (2001)12 N.W.L.R (pt.776)638 at 664-665; Pats Acholonu J.C.A (**as he then was) stated as follows:

"It is erroneously believed in not very enlightened circles particularly amongst the generality of Nigerians that a Power of Attorney is as good as a lease or an assignment. It is not whether or not coupled with an interest. It may eventually lead to execution of an instrument for the complete alienation of land after the consent of the requisite authority has been obtained."

I have carefully read the contents of **Exhibit P7,** the Power of Attorney and it is clear to me that it merely authorises the attorney to do certain acts on behalf of the Donor which includes instituting legal action on behalf of the Donor.

The **1st claimant** here as attorney has however not instituted this action on behalf of the **donor** as the law allows but in its own name which appears to me to be defective or flawed. No issue was raised on this point, so I keep my peace. The mere issuance of this power is however not per se an alienation or parting of possession but it is simply an instrument of delegation. It is only after, by virtue of

the Power of Attorney, the donee leases or conveys the property subject of the power to any person including himself that there is an alienation. This however is not the case here.

The bottom line is that this **power of attorney, Exhibit P7** in the context of the confusing and contradictory narrative of claimants is not a root of title or a foundation to ground a declaration of a statutory allocation over other plot 193 not in issue or even the plot 193A duely allocated to Usmania which is what Usmania can legally transfer to 1st claimant. To further muddy the already unclear waters and the case of claimants, they pleaded in the Reply to 4th and 5th defendants defence as follows:

"1(a). Messrs Usmania Petroleum Nigeria Limited (the original allottee) assigned the said Plot 193 measuring 2854.53 square meters covered by Right of Occupancy No. FCT/MISC.9051 dated 28th November 1994 and found on Sheet 334/999/NE.4 sq demarcated by beacons PB 5017, PB 5018, PB 810 now identified under the FCT Land Recertification scheme as Plot 193 in Cadastral Zone A04 Asokoro District with File No. 53613 issued under the recertified Certificate of Occupancy Number 1806w-17c17-5c33r-c729i-20 to the 1st plaintiff before 2005."

(b) In 2005, 1st Plaintiff assigned same to the 2nd Plaintiff.

(c) Consequent upon the assignment of the property identified as Plot 193 in Cadastral Zone A04 Asokoro District Abuja, with File No. 53613 issued under the recertified Certificate of Occupancy Number 180w-17c17-5c33r-c792i-20 (hereinafter referred to as("the land in dispute") measuring 2854.53 square meters, by the 1st plaintiff to the 2nd Plaintiff in 2005, both parties executed a Power of Attorney and Deed of Assignment together with the application for consent of the Honourable Minister of the Federal Capital Territory to register the deed of assignment and power of attorney which was duly submitted to the 4th Defendant."

In support of the above, the claimants tendered Exhibit P1, Certificate of Occupancy dated 20th March, 2009. The exhibit may have the same file No. as pleaded to wit: **MISC 53613** but that is all. There is nothing in the said exhibit to

support an allocation over **Plot 193** with **2854.53** square meters as pleaded above which claimants averred was allocated to Usmania who then assigned to 1st claimant who subsequently also assigned to 2nd claimant. Exhibit P1 again speaks for itself and is an allocation to 1st claimant of **plot 3785** with **1,425,27 square meters.**

Again it is clear that **Exhibit P1** does not support the above averments. Indeed Exhibit P1 even shows a reduced parcel of land when compared to the original allocation to Usmania, in **Exhibit P5** in 1994.

It is in this seeming state of confusion that 1st claimant said that in **2005** it entered into a transaction with 2**nd claimant** which culminated in a grant of power of attorney and that also they also executed a Deed of Assignment between 1st and 2nd **claimants vide paragraph 9**. What is strange here is that absolutely no scintilla of evidence was tendered to situate any transaction between 1st and 2nd claimants over any land. Neither the power of attorney or Deed of Assignment was tendered to situate any transaction or the premises of what was actually transferred by 1st claimant to 2nd claimant. Since the court cannot engage in any exercise in guess work, the pleading with respect to the transaction between 1st claimant and 2nd claimant is deemed as abandoned. The bottom line is that there is nothing on the evidence to show that plot 193A or indeed any plot of land was transferred to 2nd claimant to provide basis to grant any declaration of title in its favour. It must also be noted that nobody gave evidence on behalf of 1st claimant to lend credence to the alleged transfer to 2nd claimant.

As we have sought to demonstrate above in some detail, there is absolutely no clarity with respect to the case put forward by claimants. The basis of the allocation of the original allottee is in respect of a precise **plot 193A with 1, 800 square meters**. No more. The trajectory of the case or narrative then proceeds to a different and imprecise plot distinct from the said plot 193A on which the entire case is rooted or predicated. The point must be made clear that where a trial is conducted on the basis of pleadings as in this case, all relevant allegations in the pleading must be proved by evidence, and such evidence must be in line with the pleading. In other words, a party has to prove his case as pleaded and must prove the truth of the contents of the paragraphs of the pleading in support of the reliefs sought in order to obtain judgment. If a party fails to prove his case on the

pleadings to the satisfaction of the court, the case crumbles. See **Alamieyeseighe V. Igoniwari (NO2) (2007)7 N.W.L.R (pt.1034)524.**

Now the argument may be made that this disparate allocations was said to have been made by 4th and 5th defendants but as demonstrated, none of the documents tendered supported the case with respect to the allocation to **Usmania** of plot 193 adjoining plot 192 with 2854.53 square meters and the transfer of this plot to 1st claimant, talk less of transfer by 1st claimant to 2nd claimant.

As stated at the very beginning, declarations are not granted on admissions or the stance or disposition of the adversary. On the authorities, declarations are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. Indeed it would be futile when Declaratory reliefs are sought to seek refuge on the proposition that there were admissions by the adversary on the pleadings. The authorities on this principle are legion. I will refer to a few.

In **Vincent Bello V. Magnus Eweka (1981)1 SC 101 at 182,** the Supreme Court stated aptly thus:

"It is true as was contended before us by the appellants counsel that the rules of court and evidence relieve a party of the need to prove what is admitted but where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence not by admission in the pleading of the defendant that he is entitled to the declaration."

The law is thus established that to obtain a declaratory relief as to a right, there has to be credible evidence which supports an argument as to the entitlement to such a right. The right will not be conferred simply upon the state of the pleadings or by admissions therein.

In **Helzgar V. Department of Health and Social Welfare (1977)3 AII ER 444 at 451; Megarry V.C** eloquently stated as follows:

"The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what, it has found to be

the law after proper argument, not merely after admissions by the parties. There are no declarations without argument. That is quite plain."

I may also refer to the observations of Nnamani J.S.C of blessed memory in **Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262 (1988)5 N.W.L.R (pt.92)90** as follows:

"The court of Appeal relied on the decision of this court in Lewis & Peat (N.R.I.) Ltd V. Akhimien (1976)7 SC 157 to the effect that an averment which is not expressly traversed is deemed to be admitted. Admittedly, one does not need to prove that which is admitted by the other side, but in a case such as one for declaration of title where the onus is clearly on the plaintiff to lead such strong and positive evidence to establish his case for such a declaration, an evasive averment...does not remove the burden on Plaintiff. See also Eke V. Okwaranyia (2001)12 N.W.L.R (pt.726)181; Akaniwo V. Nsirim (2008)9 N.W.L.R (pt.1093)439; Maja V. Samouris (2002)7 N.W.L.R (pt.765)78 at 100-101."

The point from the above authorities is simply that declarations are not made because of the stance or position of parties in their pleadings but on proof by credible and convincing evidence at the hearing.

Flowing from all the above, I have no difficulty in holding that the claimants have not by evidence creditably established their root of title over the disputed plot. The law is settled that where a root of title is not established as in this case, there is no legal right in or over the land which equity would seek to protect by any positive order. See **Izouji V. Aju Kwara (1998)1 N.W.L.R (pt.533)255 at 271.**

Indeed the law is also clear that where a party pleads and relies on an allocation as a root of title as in this case, he is bound to prove same to the satisfaction of court. It follows therefore that where evidence of a party's source or roof of title to a land in dispute is lacking or rejected, the foundation of the case has collapsed whether or not there is evidence of positive or numerous acts of ownership. See **Akinlola V. Balogun (2000)1 N.W.L.R (pt.642)532 at 547; Odofin V. Ayoola (1984)11 S.C 72.**

Having therefore determined that the claimants have not creditably made any case with respect to **Plot 193 with 2854,53 square meters**, it appears to me that the question of subdivision of this plot has now largely become an academic issue but as stated earlier for purposes of exhaustively treating all issues raised, particularly since it has a bearing with the counter-claim, it is necessary to explore the evidence on the issue. I must however point out that a consideration of this issue of subdivision will necessarily be constrained or circumscribed by the obvious fact that the case of claimant is rooted on the evidence on a different plot different from that pleaded.

Now by paragraph 10 of the Amended Statement of claim, the claimant pleaded as follows:

"The 2nd plaintiff avers that being a petroleum marketer and particularly a major distributor of AP Petroleum products, with similar petrol stations in most parts of the Northern States of Nigeria, he was attracted by the strategic location of the property (he was also attracted by the fact that the filling station was already registered with AP PLC a major petroleum marketing company in Nigeria) the subject matter of this suit with all the facilities built on same by USMANIA PETROLEUM (NIG.) LTD and STYCON PETROLEUM (NIG.) LIMITED including the parameter fence which separates the filling station with other parts of the land which was being used as a workshop by the 1st to 3rd defendants who were motor mechanics and tenant at will of STYCON PETROLEUM (NIG.) LIMITED."

In paragraph 3 of the plaintiffs' Reply to the statement of defence and counter-claim of 1st – 3rd defendants, they pleaded as follows:

"3. Since its acquisition of the land in dispute from Usmania Petroleum (Nig) Ltd in 1998, the 1st plaintiff has at all material times being in exclusive possession of the land in dispute, a portion of which was developed as a filling station. Whilst the undeveloped part of the land was reserved for other purposes. Until 2005 when the 1st plaintiff re-assigned the land in dispute to the 2nd plaintiff by virtue of a Power of Attorney donated to him and Deed of Assignment executed between the parties."

The above averments recognises a **developed** and **undeveloped portion**. The above paragraphs recognise that the claimants occupy the developed portion on which a petrol station was built. This property on the evidence can only be Plot 193A with 1,800 square meters originally allocated to Usmania vide Exhibit P5. As stated severally in this judgment both 1st and 2nd claimants cannot unilaterally expand the frontiers of the land granted to Usmania which they acquired from Usmania. Again this same paragraph 10 recognises there is a perimeter fence which separates the plot claimants occupy with other parts of the land which was used as a workshop by 1st defendant who claimants described in the pleadings as the **"tenant at will"** of 1st claimant.

On the evidence, **Nothing** was however put forward to situate the terms of this tenancy and indeed as stated earlier, nobody was produced from 1st claimant to give evidence on the nature of this tenancy relationship with 1st defendant. In the courts considered opinion, the failure to produce anybody from 1st claimant or Stycon appears to me inculpatory here. The PW2 who is the MD/CEO of Usmania, the original allottee, said he does not know 1st – 3rd defendants and that he never had any dealings with them. PW1 for the 2nd claimant on the other hand said under cross-examination that he has not seen any tenancy agreement between 1st claimant and 1st defendant and does not know if any agreement exists.

There is however no dispute on the evidence that the 1st – 3rd defendants occupy a portion of the land separated by the fence. Exhibit P4 (1-4) tendered through PW1 shows a developed property which PW1 acknowledged under cross-examination belongs to 1st – 3rd defendants.

The 1st – 3rd defendants case is that the original allottee in 2000 vide the Power of Attorney **(Exhibit D4)** and the Deed of Assignment **(Exhibit D3)** transferred half of the disputed plot 193 to the 1st defendant and that necessary applications were made to the issuing authorities to validate the subdivision vide **Exhibit D5** which was approved vide Exhibits D6 and D7. Let me again point out that neither side produced the original allocation of **Plot 193 with 2854.53 square meters** in this case.

Let me again underscore the point at the risk of prolixity that if the original allottee is to transfer any part of its holding, it can only be in respect of **Plot 193A** covered by **Exhibit P5.**

The claimants may have challenged all these documents of transaction between **Usmania and 1st defendant** and the **letter of consent for subdivision** as fraudulently obtained, but can the challenge be even availing when the land been claimed on which fraud is predicated is uncertain and extends beyond the original allocation?

Now it is settled principle that fraud must be expressly pleaded with particularity. See **Order 15 Rule 3 of the Rules of Court.**

In **United Africa Co. Ltd V. Taylor (1936)2 WACA 170, Lord Maugham** delivering the judgment of the Privy Counsel stated at Pg.71 as follows:

"In the opinion of their Lordships, there is no rule which is less subject to exception than the rule that charges of fraud, and a fortiori charges of criminal malversation or felony against a defendant ought not to be made at the hearing of an action unless, in a case where there are pleadings, those charges have been definitely and clearly alleged, so that the defendant comes into court prepared to meet them." (underlining supplied)

On the same principle, see the cases of **W.A.B. Ltd V. Savannah Ventures Ltd (2002)10 N.W.L.R (pt.775)401, Ojibah V. Ojibah (1991)5 N.W.L.R (pt.191)296; Fabunmi V. Agbe (1985)1 N.W.L.R (pt.2)299.**

In this case, general averments were made by claimants on fraud in the pleadings but it is difficult to situate the particulars with clarity. It is not a matter of guess work or speculation. It is a fundamental Rule on the pleading of fraud that the pleading must state precise but full allegations of facts and circumstances, with all necessary particulars leading to the reasonable inference of fraud. See **Ojibah V. Ojibah (supra) 13C-D.** A party cannot therefore raise or rely on allegation of fraud where the allegation is not based on facts pleaded. See **Omorhirhi & Ors V. Enatevwere (1988)1 N.W.L.R (pt.73)746.**

Now to avoid accusations that the court is unduly pedantic and we accept a case of fraud was made on the pleadings, the question now is whether the allegation of fraud has been proven on the legal threshold for an allegation involving criminal imputations.

Here again, it is difficult on the evidence to situate proof of the allegation of fraud in the context of the identified and proven fact that what was allocated to the original allottee, Usmania from whom claimants derive their title on the evidence is **plot 193A with 1,800 square meters**. Any allegation of fraud predicated on a different plot 193 with 2854.83 square meters cannot have resonance in the extant case.

There is again ,therefore in this case a complete absence of clarity with respect to the allocation of plot 193 with 2854.53 square meters. If no such allocation to Usmania was proved, how then did the transfer to 1st and 2nd claimants and even the subdivision really arise? On what plot was the subdivision based on? The 4th and 5th defendants and the issuing authority clearly were not of much help in the circumstances creating the irresistible impression that a lot is been hidden from the court. The entire trial process is entirely evidence driven. Without evidence, making conclusive findings of fact will be a herculean exercise.

The issuing authority here in **paragraph 4** of their defence referred to a certain plot 193 originally allocated to Usmania vide letter of approval dated 8th September, 1994 as a replacement for a previous allocation which was said to have been withdrawn but none of **these documents** pleaded were tendered in evidence. Indeed this averment in paragraph 4 relating to Plot 193 conflicts even with the original allocation to Usmania which states clearly that the allocation is in respect of Plot 193A. As indicated earlier, there is nothing before me situating that plot 193 is the same with 193A.

The 4th and 5th defendants in the said paragraph then stated that the said plot 193 ceased to exist since 11th November, 2001 when the 4th defendant approved the said subdivision of plot 193 into two plots: **3784 and 3785** based on the application of Usmania.

On the evidence, there indeed was a **subdivision** but to the extent that it has no direct relationship or bearing with **Exhibit P5** the original allocation to Usmania, then any further inquiry as repeatedly stated in this Judgment into the subdivision of a different plot 193 with 2854.53 square meters which on the evidence was not what was proven to be allocated to Usmania, will entirely be an academic exercise.

Let me further underscore this point by stating that all the documents in evidence on the subdivision relates to a different parcel of land from that originally allocated to **Usmania vide Exhibit P5** which they accepted via **Exhibit P6**. On the side of the plaintiffs, the application for consent to assign one half (1/2) of plot 193 vide Exhibits P10 and D43 which was challenged by the CEO of Usmania, PW2 as not emanating from them clearly is in respect of a certain **Plot 193**. Whatever is the worth of these documents, there is no clarity or explanation as to whether this application has any nexus with the original offer of terms of grant dated 1st August, 1994 vide **Exhibit P5 to Usmania** which is in respect of **Plot 193A with 1, 800 square meters**. The consideration and approval of the subdivision by the 4th and 5th defendants vide **Exhibits D40**, **D44** all relate to a certain Plot 193. As I have repeatedly stated, no party in this case tendered any copy of any allocation to Usmania in respect of **plot 193 with 2854.53 square meters**. If other parties can be excused for not providing this **certificate**, how does one explain the silence from the 4th and 5th defendants, the issuing authority? If a certificate that is **"void"** can be tendered by them, why did they not tender this precise allocation over plot 193 to enable the court determine with certainty the particular plot and its dimensions and who it was really allocated to? I just wonder.

Again I must emphasise that the original allocation to Usmania is **plot 193A with a plot size of 1, 800 square meters**. No more. The ultimate outcome of this subdivision which clearly is not rooted in Exhibit P5 however produced two certificates of occupancy issued by the issuing authorities to wit: **(1) Exhibit P1 to Stycon or 1st claimant dated 20th March, 2009 with a new plot No. 3783 and plot size of 1,425.27 square meters** and (2) **Exhibit D38 to 1st defendant dated 20th March, 2009 with a new plot 3785 and a size of 1,425.27 square meters**. It is obvious that the **cumulative size of both plots** goes beyond the initial allocation to Usmania, the original allottee which is a clear indication that this subdivision dealt with a different plot from that originally granted to Usmania. The question that no credible answer has been provided here is how can an allocation of **1,800 square meters** be said to have been subdivided into two equal half's but the sum total of the two (2) equal half's exceeds by far the initial allocation? The court has no magic wand in the absence of evidence demonstrated at trial to explain this conundrum. The best to be made of this unexplained issuance of these two certificates is that the 4th and 5th defendants clearly in the exercise of their powers

made the allocations vide **Exhibits P1 and D38** to 1st claimant and 1st defendant respectively. No more. I however hold that it cannot be said to be a rational product of subdivision of **Exhibit P5** which is the only root of title tendered in evidence allocated to the original allottee Usmania from whom all the disputants in this case say they derive title to the extent that its validity has not been impugned.

I must repeat that **Usmania** through PW2 stated that it was allocated **plot 193 with a plot size of 2854.53 square meters**. That assertion clearly was an empty or sterile assertion as demonstrated as it was not backed by any documentary evidence. Indeed as repeatedly stated, no party in this case produced any document or allocation beyond bare challenged oral assertions to back up the allocation of **plot 193 with 2854.53 square meters**. I leave it at that.

The above extensive pronouncements and findings on the very critical elements of the complaint or grievance of plaintiffs provides broad factual and legal template to address now the question of whether the **Reliefs** sought by plaintiffs are availing. Indeed these pronouncements would also provide template to determine the validity of the **counter-claim** of 1st – 3rd defendants.

In addressing the reliefs of plaintiffs, it may be necessary to restate at the risk of sounding prolix that the **substantive reliefs** on which the other orders sought are predicated are declaratory reliefs. As stated earlier, declaratory reliefs are special claims which must be established by producing cogent and reliable evidence in support putting the court in a commanding height to grant the reliefs sought. Declarations cannot be granted on speculations or guess work.

I must also add that the way the reliefs were couched on both sides of the aisle clearly left much to be desired. A relief must be succinct or briefly and clearly expressed. The reliefs were again unnecessarily long, windy and verbose making it difficult to situate the essence and true import of the reliefs sought. The Reliefs in this case could have been better formulated thereby eliminating unnecessary details or verbiage which characterized the wordy reliefs in this case. I leave it at that.

Relief (a) seeks a Declaration of title in respect of the piece and parcel of land known and described as Plot No. 193 located within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated

by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the Honourable Minister FCT and covered by the Certificate of Occupancy No. 1806w-17c17-c792u-20 dated 26th August, 2005 issued under the Recertification exercise of the Federal Capital Territory.

There is absolutely no evidence as demonstrated situating a precise allocation of **plot 193 with 2854.53** square meters to Usmania, the party 1st claimant derived its title which it claimed it transferred to 2nd claimant. The root of claimants case stands compromised or undermined abinitio. A Declaration of title cannot be made on a non-existent statutory allocation. **Relief (a) fails**.

Relief (b) seeks a Declaration that the action of the 4th defendant acting through the 5th defendant sub dividing the property as issued under the initial Right of Occupancy issued to Usmania Petroleum Ltd in respect of the parcel of land known and described as plot No. 193 located within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the Honourable Minister FCT and covered by the Certificate of Occupancy No. 1806w-17c17-c792u-20 dated 26th August, 2005, into two different titles covered by purported Certificates of Occupancy Nos. 1a561w-15507-3cf3r-a40fu-20 dated 20th March, 2009 in the name of the 1st Plaintiff and Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th of March 2007 in the name of the 1st defendant is unlawful, null and void and without any legal effect whatsoever.

Here too, there is absolutely no evidence situating an allocation of Plot 193 to Usmania with **2854.53 square meters vide a right of occupancy dated 28th November, 1994**. If there is no such proved allocation, the question of subdivision of same into Certificate of Occupancy dated 20th March, 2009 to 1st plaintiff and another certificate of occupancy dated 30th March, 2007 to the 1st defendant clearly has no factual or legal traction. The Right of Occupancy before court to Usmania is clear vide Exhibit P5 and it is in respect of Plot 193A with 1,800 square meters. Nothing was put forward situating any increase or expansion of this initial allocation. There is nothing precisely and conclusively delineating that the

subdivision done was on plot 193A with 1, 800 square meters. A declaration cannot be made on guess work or speculation. **This Relief fails too**.

Relief (c) seeks for a Declaration that the 1st, 2nd and 3rd Defendants have not acquired any title or interest howsoever described on and over the portion of the and parcel of land known and described as plot No. 193 located within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the Honourable Minister FCT for 99 years now covered by the Certificate of Occupancy No. 1806w-17c17-c792u-20 dated 26th August, 2005.

Again on the Record, there is no evidence of any Right of Occupancy dated 28th November, 1994 with FCT/MISC.9051 issued to Usmania or any of the claimants. The only offer of terms/conveyance of approval tendered by claimants is vide Exhibit P5 in respect of **plot 193A with 1,800 square meters**. There is equally nothing tendered by claimants situating any certificate of occupancy dated 26th June, 2005 allocated to any of them. The only certificate tendered dated 26th June, 2005 vide Exhibit D41a was tendered by 4th and 5th defendants and it was a **voided** copy. The bottom line here is that there is no credible evidence to grant or give validity to Relief (c) that the interest acquired by 1st – 3rd defendants is suspect on the basis of an interest not established as the Right of Occupancy was not produced in evidence. This Relief too cannot be granted on the basis of a void document as demonstrated already. **Relief (c) too fails**.

Relief (d) is for an order setting aside any purported sub-division of the parcel of land known and described as plot No.193 located within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the Honourable Minister FCT for 99 years now covered by the Certificate of Occupancy No. 1806w-17c17-c792u-20 dated 26th August, 2005.

Relief (d) similarly as demonstrated above cannot succeed on the basis of a Right of Occupancy not tendered and a voided Certificate of Occupancy dated 26th August, 2005 which was not even tendered by claimants. **Relief (d) fails**.

Relief (e) seeks for an Order of mandatory injunction directing and compelling the 4th and 5th Defendants to withdraw and cancelled the purported Certificates of Occupancy Nos. 1a61w-15507-3cf3r-140fu-20 dated 20th March, 2009 in the name of the 1st plaintiff and Certificate o Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th of March 2007 in the name of the 1st Defendant having been issued without any lawful authorization howsoever.

This Relief must equally fail. To the clear extent that the allocations of certificate of occupancy issued to 1st plaintiff and 1st defendant vide Exhibit P1 and D19 has not been conclusively shown to be on the original allocation to **Usmania via Exhibit P5**, the implication is that the **certificates** has not been factually or legally impugned. The fairness and justice of this case demands that each side keeps to its allocation. Save for this remark, **Relief (e) also fails**.

Relief (f) seeks for an Order of mandatory injunction directing and compelling the 4th and 5th defendants to issue to the Plaintiffs Certificate of Occupancy No. 1806w-17c17-5c33r-c792u-20 dated 26th August 2005. In respect of the piece and parcel of land measuring 2854.53 sq. meters within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 granted by the4th defendant for 99 years commencing from the 8th of September, 1994.

If there was no established allocation of any plot **measuring 2845.43** square meters to **Usmania** from whom claimants predicated their claims of ownership, it would be legally futile he seek an order compelling issuance of a Certificate of Occupancy to extend the size of the plot beyond what was offered to Usmania in 1994 vide Exhibit P5 which is in respect of Plot 193A with 1, 800 square meters. No more. **Relief (f) too fails**.

Relief (g) seek for a **Declaration that the action of the 1st, 2nd and 3rd defendants with active connivance of the 6th defendant and some officials and**

agents of the 4th and 5th defendants in entering the 2nd plaintiff's land on the 21st of August, 2010 at about 10:30am with armed policemen, a bulldozer and demolishing the parameter fence and depositing building materials with the intention of building in the 2nd plaintiff's filling station measuring 2854.53 sq. meters within Cadastral Zone A04 Asokoro District which falls on sheet 334/999/NE.4 sq. meters and demarcated by beacons Nos. PB5017, PB5018, PB509, PB810 and PB807 covered by Right of Occupancy No. FCT/MISC.9051 dated 28th day of November, 1994 is unlawful, mischievous and an act of trespass.

This Relief must equally fail to the clear extent that the claim of trespass here is predicated on the land measuring 2854.53 square meters covered by a Right of Occupancy dated 28th November, 1994 which are clearly non-existent and never granted or allocated to Usmania or the claimants. Trespassing cannot be rooted in a non-existent parcel of land.

Relief (h) is for an Order directing the 1st, 2nd and 3rd defendants jointly and severally to pay the plaintiffs the sum of five hundred Million Naira (N500, 000, 000) only as general damages for defamation, trespass and mischief.

With the failure of **Relief (g)**, this Relief must fail. Neither **trespass**, **mischief** or **defamation** was on the pleadings clearly made out and established creditably by evidence. **Relief (h) fails**.

Relief (i) is for an Order of this Honourable Court directing the 1st, 2nd and 3rd defendants to immediately move out of the plaintiffs property and hand over a vacant possession.

This Relief clearly has no leg to stand on and fails. There is no clarity on what specific plot of land claimants situate their claim of possession. I have shown or demonstrated the disparate and different allocations referred to and relied on but these allocations were not creditably established or proved. **Relief (i)** cannot be granted on such patently unclear circumstances. It fails.

Relief (j) is for an Order of this Honourable court directing the 1st, 2nd and 3rd defendants jointly and severally to pay the plaintiffs the sum of Two Million Seven Hundred and Fifty Seven Naira, Eighty Seven Kobo (N2, 757, 00:87) only as the assessed costs of erection of the demolished parameter fence which

was demolished by the 1st to 3rd defendants with the connivance of the 6th defendant using the bulldozer of the 2nd defendant.

This is a relief in the realm of special damages. In law special damages have been defined as damages of the type as the law will not infer from the nature of the act; they do not flow in the ordinary course; they are exceptional in their character and therefore, they must be claimed specially and strictly proved. See **A.T.E. Co. Ltd V M.L. Gov. Ogun State (2009) 15 N.W.L.R (pt.1163) 26 at 71; Ekennia V Nkpakara & 2 ors (1997) 5 SCNJ 70 at 90.**

The Apex Court in **X.S (Nig.) Ltd. Vs. Tasei (W.A) Ltd**. **(2006)15 N.W.L.R. (pt.1003) 533 at 552 B-E; 552 E-G** Mohammed J.S.C. stated as follows:

> ***"With regard to how to plead and prove special damages, the law is quite clear that special damages must be specifically pleaded and proved strictly…In this respect, a plaintiff claiming special damages has an obligation to plead and particularise any item of damage. The obligation to particularise arises not because the nature of the loss is necessarily unusual, but because the plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible"***

Also in **Neka BBB Manufacturing Co. Ltd V A.C.B. LTD (2004) 2 NWLR (pt.858) 521** the Apex Court stated thus:

"A damage is special in the sence that it is easily discernable. It should not rest on a puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions."

In this case, apart from the amount claimed for the demolished fence there is no pleadings situating the clear particulars of the items of what was damaged thereby providing access to the facts which make the calculation of the amount claimed as special damages possible. If it is taken again that there was proper pleadings of special damages, the next question is where is the evidence to support the amount claimed in special damages. Here again the claimants did not tender any iota of evidence to support the claim for special damages. No evidence was put forward showing value or the "assessed" cost of the erection of the perimeter fence as pleaded. If the cost of putting back the destroyed fence has been "assessed," who

did the assessment and where is the report or outcome of the assessment. It is true that strict proof of special damages does not mean an unusual proof; but it however implies that sufficient facts must be furnished to allow for a computation of the claim. No such fact(s) or sufficient facts were furnished in this case. **Relief (j) thus fails**.

Relief (k) – (m) all equally fail. There is no basis to situate the demand for a written apology under (k) or costs under (l) and (m).

As I round up on the plaintiffs claims and this also applies to the reliefs sought by the counter-claimant, it is important to restate the settled principle and the Supreme Court has made it abundantly clear that where a relief is sought, it must not be a matter of speculation or doubt as to what it entails as in this case. A court therefore cannot be expected to make an order which is subject to different interpretation as to whether it meets the relief claimed. Nor has the court a duty to engage in any semantics in the order it makes in an attempt to explain what the party intended to ask for. The guiding principle or rule is that a court must not grant a party what it has not asked for in clear terms and sufficiently proved. See **Joe Golday Co. Ltd. V. Cooperative Development Bank Ltd. (2003) 35 SCM 39 at 105.**

Now to the counter-claim of 1st – 3rd defendants.

As stated earlier, in resolving the extant counter-claim, the decision of the court on the substantive claim of plaintiffs would have significant bearing on the counter-claim of 1st – 3rd defendants.

I had in the substantive action stated the Reliefs sought in the counter-claim and also indicated that the counter-claimants like the plaintiffs in the substantive action must establish their case on the same principles to entitle them to the declarations and order(s) sought.

Let us here too start by situating the entire root or basis of the case made out by the 1st – 3rd defendants. Again I take my bearing from the pleadings of 1st – 3rd defendants and paragraphs 5 and 5(a) of their defence are the foundational basis and critical as follows:

"5. The 1st, 2nd and 3rd Defendants deny the averments in paragraph 6 of the Amended Statement of Claim and put the Plaintiffs to the strictest proof of the averments therein contained. In further answer to the averments in Paragraph 6 of the Amended Statement of Claim, the 1st – 3rd Defendants state by a Certificate of Occupancy No. FCT/ABU/MISC.9051 dated 28th November, 1994, the Honourable Minister of the Federal Capital Territory (FCT) had originally in November 1994 granted the Certificate of Occupancy in favour of Usmania Petroleum Nigeria Limited over Plot No. 193 located within Cadastral Zone A04 Asokoro District, Abuja and demarcated by Beacons Nos. PB 5017, PB 5018, PB 809, PB 810 and PB 807 for 99 years, commencing from the 8th of September, 1994.

5(a). In further answer to the averments in paragraph 6 of the Amended Statement of Claim, the 1st – 3rd Defendants state that the Minister of the Federal Capital Territory (FCT) had later on in November 2001, acting upon an application by Usmania Petroleum Nigeria Limited, granted consent/approval for the sub-division of Plot No. 193 Cadastral Zone A04 Asokoro District, Abuja into two Parcel, A and B, in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited and later named as Plot No. 3785 and Plot No. 3784 thereby extinguishing the further existence of the said Plot No. 193 Cadastral Zone A04 Asokoro District, Abuja; and the 1st – 3rd Defendants state further that the subject matter of this Suit is not Plot No. 193 but Plot No. 3784 within Cadastral Zone A04 Asokoro District, Abuja created by the sub-division of Plot No. 193 into two Parcels of Plots."

Here again as in the main claim, the case made out is that by a Certificate of Occupancy No. **FCT/ABU/MISC.9051 dated 28th November, 1994**, Usmania Petroleum Nig. Ltd (hereinafter referred to as Usmania) was allocated **Plot 193** commencing on 8th September, 1994 and that Usmania later sold half of this plot to 1st defendant and then subsequently applied for a subdivision of this plot 193 in 2004 which the 4th and 5th defendants granted by subdividing the two plots into plots 3784 and 3785.

The claimants categorically denied these averments. Indeed, PW2, the MD/CEO of Usmania accentuated these positions in evidence when he said he never

assigned or sold half of plot 193 and never dealt or had any dealings with 1st – 3rd defendants. The principle here too is that averments in pleadings must be backed up by evidence. Without evidence, the averments in pleadings are redundant and lacking any value.

The key question here is where is this allocation or Certificate of Occupancy No. **FCT/ABU/MISC.9051 dated 28th November, 1994 over plot 193** which is the source of title of 1st – 3rd defendants? The law is settled that where a party traces his root of title to a particular source 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."

This critical Certificate of Occupancy with a commencement dated of 8th September, 1994 was not tendered by 1st – 3rd defendants. No less important is what is even the size of this plot 193 1st – 3rd defendants talk about? The pleadings of 1st – 3rd defendants here is silent and no evidence was proffered to situate or delineate precisely the size of plot 193 said to have been allocated to Usmania who sold or transferred half to 1st defendant.

As stated in the substantive judgment, the only grant of statutory right of occupancy to Usmania is that covered by **Exhibit P5 and is dated 1st August, 1994 and it is over plot 193A with 1,800 square meters which Usmania accepted via Exhibit P6**. The claimants similarly alluded to this certificate of occupancy referred to by 1st – 3rd defendants above, but they too did not tender it. The 1st – 3rd defendants for reasons that are not clear did not tender this critical document on which critical aspects of their case rested. Interestingly, it was listed as one of the documents to be relied on by 1st – 3rd defendants but it was not

tendered. The implication of failure to tender the certificate of occupancy No FCT/ABU/MISC.9051 over plot 193 is that the pleadings on that aspect is deemed as abandoned.

Again the failure to tender this certificate allows for or calls for the invocation of the principle under **Section 167 (d) of the Evidence Act**, that if the certificate was produced it would have not be favourable to the case of the 1st – 3rd defendants. The point to make here is that the transaction over the sale of half of this plot 193 between Usmania and 1st defendant could not have been done in a vacuum or without this important certificate of occupancy.

Indeed the importance of this document can be seen in Exhibit D3 (Deed of Assignment) and Exhibit D4 (Power of Attorney) which was said to have been executed between Usmania and 1st defendant wherein Usmania assigned the unexpired residue of one half (1/2) of the said property covered by the **Certificate of Occupancy** not tendered.

Indeed, both Exhibits D3 and D4 in their schedule referred to this certificate but no copy was furnished or attached to any of the Exhibits. What is interesting however here is that the plot was described in these Exhibits as "plot 193 adjoining plot 192".

Again nothing was tendered in evidence to situate or ground the allocation of any "plot 193 as adjoining plot 192". Even the application for subdivision vide Exhibit D5 tendered by 1st – 3rd defendants is still in respect of this unproven and unidentified certificate of occupancy.

The bottom line just as in the case of claimants is that there is nothing to support the allocation of **Plot 193 with 2854.53 square meters to Usmania**. As a logical corollary, there cannot be an assignment of one half of what was not proven to have been allocated to the original allottee or a subdivision of same. Again at the risk of prolixity, the only proven allocation to Usmania is the grant of right of occupancy covered by Exhibit P5 which is plot 193A with a size of 1, 800 square meters. The remit of that allocation cannot be extended or expanded for any purpose or any interpolations made to it.

As stated in the main judgment, there is more to the subdivision carried out by 4th and 5th defendants beyond what was demonstrated in court. This court cannot speculate or engage in an idle exercise of conjecture as to how an allocation of a specific plot with a streamlined size suddenly increased and how and then made a subject of a subdivision? I adopt my conclusions here in the main judgment on the question of subdivision. The only point to reiterate is that since the subdivision complained of is not rooted in any proven process allocated to the original allottee, the issue has largely become academic. The implication is that the subdivision in the context of the proven facts of this case with no bearing on the original allocation Exhibit P5 has not been factually or legally impugned.

The above provides basis to situate whether the reliefs claimed by 1st – 3rd defendants are availing. Again the point must be reiterated, that declarations are not granted as matter of course or on admissions but they must be made out by cogent and convincing evidence.

Relief (A) seek a Declaration that the act of the 4th Defendant in granting consent/approval for sub-division of Plot No. 193 Cadastral Zone A04, Asokoro District, Abuja into two parcels of Plots on November 11, 2001 in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited upon Usmania Petroleum Nigeria Limited's letter dated 22nd November, 2000, (the then holder of the Certificate of Occupancy over Plot No. 193 Cadastral Zone A04, Asokoro District, Abuja), is valid, legal, lawful and within the powers of the 4th Defendant under the Land Use Act.

Now as stated earlier, nothing was produced to delineate this allocation of plot 193 to Usmania and the size of the plot. This certificate as stated severally was never tendered. In such fluid and unclear circumstances, how is the court to consider the validity of any subdivision on the basis of a document not tendered. I just wonder. The 4th and 5th defendants as stated severally may also have alluded to this allocation of Plot 193, but they too did not tender any statutory allocation evidencing the said grant. The only allocation to Usmania tendered vide Exhibit P5 controverts the allocation relied on in proof of **Relief (a).** The relief fails.

Relief (b) seeks for a Declaration that by virtue of the 4th Defendant's consent/approval granted on November 11, 2001 for sub-division of the

original Plot No. 193 Cadastral Zone A04, Asokoro District, Abuja (covered with Certificate of Occupancy No. FCT/ABU/MISC.9051 dated 28th day of November, 1994 upon the application of Usmania Petroleum Nigeria Limited dated 22nd November, 2000, the then holder of the Certificate of Occupancy over the said Plot No. 193), into Parcels A and B in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited, together with the 4th Defendant's letter dated 25th October, 2002 conveying the grant of consent/approval for sub-division and the 4th defendant's subsequent issuance of two separate Certificates of Occupancies to each of Liza Commercial Enterprises Limited as shown on the Certificate of Occupancy dated 30th March, 2007 over Plot No. 3784 Cadastral Zone Ao4, Asokoro District, Abuja and Usmania Petroleum Nigeria Limited/its Attorney-Stycon Petroleum Nigeria Limited as shown on the Certificate of Occupancy dated 20th Mach, 2009 over plot No. 3785 Cadastral Zone A04, Asokoro District, Abuja, the original Plot No. 193 located within Cadastral Zone A04, Asokoro District, Abuja and the Certificate of Occupancy No. FCT/ABU/MISC.9051 dated 28th day of November, 1994 had cease to exist and had been duly replaced by Plot No. 3784 and Plot No. 3785 located within Cadastral Zone A04, Asokoro District, Abuja with Certificates of Occupancies validly issued over Plot No. 3784 and Plot No. 3785 by the 4th Defendant.

This Relief too like Relief (a) has no foundational basis to support it. The 1st – 3rd defendants seek validity to an action by 4th defendant on the basis of a document, certificate of occupancy No. FCT/ABU/MISC.9051 dated 28th November, 1994 over plot 193 said to have been granted to Usmania which was never tendered. How can a court lawfully declare a document out of existence or to use the words of 1st – 3rd defendants "cease to exist" when this document was never produced to be analysed and or evaluated in the context of other variables or contested facts of the case. I just wonder. **Relief (b) fails.**

Relief (c) seeks for a Declaration that the Power of Attorney donated by Usmania Petroleum Nigeria Limited to Stycon Petroleum Nigeria Limited (over Plot No. 193 measuring about 2854.53 square meters located within Cadastral Zone A04, Asokoro District, Abuja covered with Certificate of Occupancy No. FCT/ABU/MISC.9051 dated 28th day of November, 1994)

registered on the 14th day of September, 2004 by the 5th Defendant by mistake and in error long after the 4th Defendant had already granted consent/approval on November 11, 2001 for sub-division of the same original Plot No. 193, located within Cadastral Zone A04, Asokoro District, Abuja into two Parcels of Plots in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited upon the application of Usmania Petroleum Nigeria Limited dated 22nd November, 2000, (the original holder of the Certificate of Occupancy as at that time), is invalid, unlawful, void and of no effect whatsoever.

This Relief must equally fail. There is no power of attorney tendered in evidence before court in respect of "plot 193 measuring 2854.53 square meters" as formulated in this Relief by 1st – 3rd defendants. The power of attorney in evidence vide Exhibit P7 does not contain the description or the size of any plot. I don't think there is any liberty to add or make interpolations to Exhibit P7. See **Section 128 of the Evidence Act.**

In any event as stated in the main judgment, a power of attorney is not an instrument that vest title and is not a statutory allocation and it cannot therefore override the specific original allocation to Usmania which is in respect of plot 193A with a plot size of 1,800 square meters. This Relief fails.

Relief (d) seeks for a Declaration that Certificate of Occupancy No. 1806w-17c17-5c33r-c792u-20 dated 26th August, 2005 over Plot No. 193 located within Cadastral Zone A04, Asokoro District, Abuja measuring about 2854.53 square meters issued by the 4th Defendant in August 2005 was issued by mistake and in error and is therefore invalid, unlawful, void and of no effect whatsoever as the same Plot No. 193 located within Cadastral Zone A04, Asokoro District, Abuja measuring about 2854.53 square meters had already been sub-divided into two Parcels of Plots and granted in favour of Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited by the same 4th Defendant in November 2001 upon the application of Usmania Petroleum Nigeria Limited (the original holder of the Certificate of Occupancy as at that time).

This Relief has clearly been overtaken by events. The copy of the certificate in question **Exhibit D41a** tendered was a voided copy. The Exhibit has "void" conspicuously written all over it. I had earlier explained the import of a void document and certainly imports no legal validity. I need not repeat myself. Relief (d) is accordingly struck out.

Relief (e) seeks for a Declaration that the Plaintiffs/Defendants to Counter Claim are caught by the doctrine of latches and acquiescence and are estoppel from interfering with or disturbing the long possession, interest and development of the 1st Defendant/Counter Claimant on Plot No. 3784 located within Cadastral Zone A04 Asokoro District, Abuja measuring 1, 429.28 square meters and covered with the Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612 dated 30th day of March, 2007.

The simple question in the context of the clear facts of this case is whether this principle is availing. The law as I understand it is that laches and acquiescence will apply on the basis of proof of certain clear elements to wit:

1. **The defendant or person who sets up the doctrine of laches and acquiescence must have been mistaken as to his own rights over the land.**

2. **Te defendant or person had in reliance as to his mistake expended some money or must have done some act on the fact of his mistaken belief.**

3. **The plaintiff or possessor of the legal right, must also know of the existence of his own right which is inconsistent with the right claimed by the defendant over the land as doctrine of acquiescence is founded upon conduct with knowledge of ones legal rights.**

4. **The plaintiff, the possessor of the legal right knew of the mistaken belief by the defendant of his right and the plaintiff encouraged the defendant.**

5. **The plaintiff, the possessor of the legal right, must have encouraged the defendant in his expenditure of money or in the other acts which he has done either directly or by abstaining from ascertaining his legal rights.**

Thus to successfully maintain the defence of laches and acquiescence, the defendant must prove high degree of acquiescence which amounts to fraud and not mere lapse of time. See **Atuchukwu V Adindu (2012) 6 NWLR (pt.1927) 534**; **Mohammed V Mohammed (2012) 11 NWLR (pt.1310)**; **Kayode V Odutola (2011) 11 NWLR (pt.725) 684 and Adejumo V Olawaiye (2014) 12 NWLR (pt.1421) 252**.

Now in this case and on the facts or evidence, it is difficult to situate the above elements. The very foundational basis or root of title of 1st – 3rd defendants as demonstrated had nothing to do with a mistaken behalf by 1st defendant as to its legal rights over the land or that relying on that mistaken belief it expended money. The case of the 1st – 3rd defendants is that Usmania approached 1st defendant through 2nd defendant to sell one half (1/2) of plot 193 for consideration. The offer was accepted, consideration paid, a power of attorney and deed of assignment were executed and an application was made to the issuing authorities for subdivision which was granted and which finally culminated in the issuance of a Certificate of Occupancy dated 30th March, 2007 over plot 3784 with 1,429.28 square meters to 1st defendant vide **Exhibit D19**.

The above facts are clear. This is therefore not a situation where the 1st defendant was mistaken as to his right over the disputed land. It is also not a situation where the plaintiffs knew of the existence of their own rights which is inconsistent with that of 1st – 3rd defendants and encouraged the defendants to expend money. On the evidence, each party had its distinct allocation issued by the issuing authority, the 4th and 5th defendants vide Exhibits P1 and D19. The bottom line is that 1st – 3rd defendants cannot be said to be strangers who began to build on another person's land supposing it to be their own and the owner perceiving their mistake, abstains from setting them right and leaves them to persevere in error. A court of equity will in such circumstances not allow the owner afterwards to assert his title to the land on which the stranger had expended money on the supposition that the land was his own. The court considers that, when the owner saw the mistake into which the stranger had fallen, it was the owners duty to be active and to state his adverse title and that it would be unfair of him to remain willfully passive in such an occasion in order afterwards to profit by the mistake which he might have prevented. This scenario did not play out in this case. **Relief (e) fails**.

Relief (f) seeks for a Declaration that by virtue of the Deed of Assignment and Power of Attorney between Usmania Petroleum Nigeria Limited and Liza Commercial Enterprises Limited, coupled with payment of the sum of Five Million Naira (N5, 000, 000.00) only and long/continuous acts of possession and development of that one half of Plot 193, located within Cadastral Zone A04, Asokoro District, Abuja, the Counter-claimant had acquired an equitable interest/title over that one half of Plot 193,located within Cadastral Zone A04, Asokoro District, Abuja which later became Plot No. 3784 located within Cadastral Zone A04, Asokoro District, Abuja measuring 1,429.28 square meters and that the Counter-Claimant is entitled to have its equitable interest/title converted to a legal title over Plot No. 3784 located within Cadastral Zone A04, Asokoro District, Abuja measuring 1,429.28 square meters and covered with the Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th day of March, 2007 and demarcated by beacons Nos. PB 92740, PB 5018, PB 5017 and PB 92741 and back to the starting point.

This Relief appears to me to have been overtaken by events. To the clear extent that there is in existence a certificate of occupancy dated 30th March, 2007 over plot 3784 with 1,429,28 square meters (Exhibit D19) allocated to 1st defendant by the issuing authority, the prayer that the court makes a pronouncement that the 1st defendant has an equitable title which should be converted to a legal title over the same plot over which Exhibit D19 covers is entirely a redundant exercise. **Relief (f) is struck out**.

Relief (g) seek for a Declaration that the Counter-Claimant is the owner of Plot NO. 3784 located within Cadastral Zone A04 Asokoro District, Abuja measuring 1,429.28 square meters covered with the Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th day of March 2007 and demarcated by Beacons Nos. PB 92740, PB 5018, PB 5017 and PB 92741 and back to the starting point.

On the evidence and facts, I have found that even if I had my reservations on the precise parameters of the subdivision, the allocations of plot 3784 to 1st defendant has in substance not been impugned. **Relief (g) is availing**.

I will take **Reliefs (h)** and **(i)** together for trespass and damages for trespass.

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.L.R (pt 885) 458 at 48)**

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

The question here is whether the complaint of trespass has been proved in this case.

Now on the evidence, the 4th and 5th defendants through DW4 may have tendered vide **Exhibit D49** the request to remedy encroachment on plot 3784 and that steps were taken to treat the matter by the Development Control Department. Now with respect to the specifics of what the department did and the outcome of the investigations, DW4 stated in his deposition thus:

"5. That I have equally seen and read the records in respect of the approvals of Building Plan by the Development Control Department of the 5th Defendant granted from January, 1994 to date and the Policy Files in respect of Plot 193, Plot No. 3784 and Plot No. 3785, Cadastral Zone A04, Asokoro District, Abuja by virtue thereof I state as follows:

i. **That the 1st Defendant wrote a letter dated 24th September, 2009 entitled "REQUEST FOR ADJUSTMENT IN THE PLACEMENT OF OUR BEACON PB 92740 TOWARDS NORTH EAST OF OUR PLOT NO 3784 FILE NO MISC 81271 DISTRICT ASOKORO CADASTRAL ZONE A04" to the 4th Defendant and copied the Departments of Development Control and Surveying and Mapping wherein the 1st Defendant requested approval in the beacon adjustment of its parcel of land.**

ii. **That the 1st Defendant further wrote a subsequent letter dated 08/10/2009 titled "Request to Remedy an encroachment on our Plot No.**

3784 File No. MISC 81271 District Asokoro Cadastral Zone A04" to the co-ordinator, AMMC. The said letter was received at the Development Control Department of AMMC on the 12/10/2009.

iii. **That the Director, Department of Development Control thereafter directed the then District Officer in charge of Asokoro District, to treat same.**

iv. **That consequent upon the paragraph above, the then District Officer in charge of Asokoro District, visited the Plot No. 3784 Asokoro and confirmed that there was encroachment on plot No. 3784 Asokoro by the Plaintiffs.**

v. **That the Plaintiff encroached into Plot No. 3784 Asokoro District, Abuja. The Plan showing extent of encroachment on Plot 3784 Asokoro FCT, Abuja is dated 27/10/09.**

vi. **That upon confirmation of the encroachment, the then District Officer of Asokoro issued and served a Quit Notice dated 10/11/09 on the Plaintiffs…"**

To further underscore these depositions, the witness under cross-examination stated that he was not part of the team that investigated the complaint of encroachment and that he has never visited the plot in question.

It is true that a C.T.C of plan showing alleged extent of encroachment on plot 3784 may have been tendered as **Exhibit D50** but this witness did not prepare the plan and as stated above he was not the district officer who visited the plot; he was also not part of the team that investigated the alleged encroachment and had also never visited the disputed plot.

DW4 was therefore not in a position to give evidence of value on the plan or give flesh to the alleged encroachment reflected on the plan in open court. Indeed this witness never spoke on the contents of the plan, **Exhibit D50**. The plan was simply as it were dumped on the court without the critical evidence to situate the contents. The court cannot in chambers simply look at the plan and make

conclusions outside what was demonstrated in court. The plan in the circumstances lack probative value and has not proved trespass in the circumstances.

I therefore on the basis of the paucity or lack of evidence hold that an unjustified interference or trespass cannot be said to be availing on the basis of **Exhibit D50**. I only need add that even if trespass had been established and here it was not, I do not see how in the absence of critical evidence on the point, how the sum of N500, 000, 000 (Five hundred Million Naira) claimed as general damages can be justified. On the unclear facts of this case and the role played by 4th and 5th defendants in creating this avoidable confusion, there would appear to be 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 plaintiff's proprietary right over land in dispute. If the 1st – 3rd defendants 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. **Reliefs (h) and (i) accordingly fail**.

Reliefs (j) and **(k)** are clearly predicated on Reliefs (c) and (d). With the failure of those reliefs, **Reliefs (j) and (k)** equally fail.

Relief (i) is for an Order of perpetual injunction restraining the Plaintiffs/Defendants to the Counter-Claim, their servants, agents, assigns, privies, successors in title and any other person however described from further trespassing into, upon or howsoever interfering with the Counter-Claimant's right and interest over Plot No. 3784 located within Cadastral

Zone A04 Asokoro District, Abuja measuring 1,429.28 square meters covered with the Certificate of Occupancy No. 1a7fw-1543d-5e8br-10612-20 dated 30th day of March, 2007 and demarcated by Beacons Nos. PB 92740, PB 5018, PB 5017 and PB 92741 and back to the starting point.

This Relief succeeds on terms as formulated hereunder.

Relief (m) is for an Order directing the 4th and 5th defendants to establish Beacon Numbers PB 92740 and PB 92741 on ground on the land, the Beacon Numbers that share the common boundary between Plot No. 3784 and Plot No. 3785, to perpetually put an end to the acts of trespass to Plot No. 3784 by the Plaintiffs/Defendants to Counter-Claim.

This relief equally appears to me to have been overtaken by events. On the evidence, by **Exhibit D48**, the 1st – 3rd defendants have since applied for adjustment of beacon numbers. From our consideration of the complaint of trespass and the evidence of DW4, the 4th and 5th defendants have already taken steps to investigate the complaint and have made their findings. On the evidence, by **Exhibit D51**, they have even gone further to issue Quit Notice to abate the alleged acts of trespass they said they discovered.

The evidence on record shows that the 4th and 5th defendants have done what was required of them in the circumstances. There is however nothing before me conclusively showing any findings by the 4th and 5th defendants that there is failure to establish beacon numbers on the disputed land and or that they are responsible for the failure to establish beacons in this case. The court cannot be seen to make orders in vain. With the allocation of certificate of occupancy, Exhibit D19 showing a delineated plot with beacon numbers, there should be no difficulty in seeing that beacons are properly established and placed. Except for the above few comments, **Relief (m) is struck out**.

Relief (n) is for cost of this suit which is at the discretion of the court pursuant to the provision of **Order 56 Rule 5 of the Rules of court**.

Before rounding up, I must call attention to and demand of the **4th and 5th defendants** to show circumspection in the discharge of their duties particularly as it relates to land allocations within the FCT. The confusion generated by this case

and the problems caused bordering on conflicting and unclear allocations can be avoided if there is some modicum of departmental synergy and cooperation between the various agencies in the FCDA.

It is difficult to fathom how an allocation can be made on a specific plot with clear delineations and dimensions by the 4th and 5th defendants and the allocation suddenly increases in size without any application or basis. It is indeed difficult to understand how a subdivision of a plot into two equal half's can be made but the subdivided plots exceeds by far the size of the original plot from which the subdivision was made? Is it that the issuing authorities don't have or know about the size of the original plot and the title documents of same or was there a mistake or an error somewhere in the process? If it was a genuine error, why the difficulty in admitting to the error. How does one explain the absence of critical allocations in evidence; allocations emanating and made by the 4th and 5th defendants? Why the seeming reluctance by the 4th and 5th defendants to shed light and insight on contested matters relating to issues arising from allocations made by them? I just wonder.

It is the hope of this court that some of these issues can be looked into to reduce, if not abate completely, the volume of contentious litigations, courts in the FCT deal with on a daily basis. I leave it at that.

In the final analysis and in summation, I accordingly make the following orders:

ON PLAINTIFFS CLAIMS

The Plaintiffs' claims fail in its entirety and it is hereby dismissed.

ON 1ST – 3RD DEFENDANTS COUNTER-CLAIM

1. **It is hereby Declared that the Counter-Claimant is the owner of Plot No. 3784 within Cadastral Zone A04 Asokoro District, Abuja measuring 1,429.28 square meters covered by Certificate of Occupancy dated 30th March, 2007.**

2. **The Plaintiffs/Defendants to the Counter-Claim, their servants, agents, assigns, privies, successors in title and any person however described are hereby restricted from Acts capable of affecting the lawful and subsisting interest of the Counter-Claimants over Plot No. 3784 within Cadastral Zone A04 Asokoro District measuring 1, 429.28 square meters covered by Certificate of Occupancy dated 30th day of March, 2007.**

3. **Reliefs (a), (b), (c), (e), (h), (i), (m) and (n) fail and are hereby dismissed.**

4. **Reliefs (d) and (f) are struck out.**

5. **I award cost assessed in the sum of N25, 000 payable to the Counter-Claimants by Plaintiffs/Defendants to the Counter-Claim.**

……

Hon. Justice A.I. Kutigi

<u>Appearances:</u>

1. **Ado Muhammad Ma'aji, Esq. for the Claimants.**

2. **Aniefon U. Umoso, Esq. for the 1st – 3rd Defendants/Counter-Claimants.**

3. **Bamidele O.F. (Mrs.) for the 4th and 5th Defendants.**