IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.
SUIT NO: FCT/ABJ/HC/CV/3140/2013

BETWEEN:

SAMSON MORIANRI DULE
(Suing through his Attorney
Harmony Properties Ltd) --- PLAINTIFF

AND

1. MINISTER OF FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL TERRITORY AUTHORITY
3. ESTHER OLUWAREMILEKUN OTENAIKE --- RESPONDENTS

JUDGMENT

DELIVERED ON THE 24th JUNE, 2021

This suit was commenced in a Writ of Summons and Statement of Claim which was dated and filed on the 13th day of May, 2013 whereat the under-listed reliefs were sought from this Court:

A. A DECLARATION that the Plaintiff is the beneficial owner, and the person who enjoyed the possession of all that piece of land which is known as plot 292 Cadastral Zone B19 Katampe Extension District Abuja file No DT 810 (New file No DT 11208) having been allotted with and granted Certificate of Occupancy prior to the 3rd Defendant by the 1st and 2nd Defendants in respect of the said plot.

B. A declaration that the Certificate of Occupancy issued to the Plaintiff in respect of the said plot enures and still valid and

subsisting same having not been revoked by the 1st and 2nd Defendants.

C. An Order of perpetual injunction restraining the Defendants, their agents, assigns, privies or anybody/person/s claiming for, through them or on their behalf from trespassing or further trespassing on the Plaintiff's plot No 292 Cadastral Zone B19 Katampe Extension District Abuja in any way of or manner whatsoever.

D. An Order of mandatory injunction compelling the 1st and 2nd Defendants to issue the Plaintiff with the new Certificate of Occupancy in respect of the said plot of land with file No DT 11208 and known as plot 292 Cadastral zone B Katampe Extension Abuja.

In his pleadings, the following facts, along which evidence was led at the plenary trial, were pleaded by the Plaintiff as the foundation of his claim:

1. The Plaintiff is the owner and allottee of plot 292 Cadastral zone B Katampe Extension Abuja on file No DT 11208 allotted to him by the 1st and 2nd Defendants.
2. The Plaintiff aver that the 1st and 2nd Defendants allocated the said plot to him on the 16/12/1996 by virtue of Offer of terms of Grant Conveyance of Approval.
3. The Plaintiff states that he donated a Power of Attorney to his lawful and appointed Attorney, Harmony Properties Ltd to among other things prosecute and defend legal proceedings in respect of the said plot with new file No DT 11208. The Power of Attorney pleaded shall be founded upon at trial.

4. That upon donation of the Power of Attorney to his Attorney, he handed over all his original title documents to the plot, to the Estate Manager of his Attorney (Mr. Chukwuma Onyenankeya), who has been following up the processing of the Plaintiff's recertified Certificate of Occupancy at Abuja Geographic Information System.
5. The Plaintiff avers that he duly accepted the terms of the offer and conveyance of Approval and submitted his acceptance to the 1st and 2nd Defendants on the 18/12/1996.
6. The 1st Defendant processed and issued the Plaintiff a Certificate of Occupancy on the 3/5/1999 in respect of the plot.
7. The Plaintiff states that sometime in 2008, allottees of land in FCT were directed by the 1st and 2nd Defendants to submit their land title documents for verification and recertification
8. The Plaintiff submitted his Original Certificate of Occupancy to the 1st and 2nd Defendants and they issued him with Re-Certification and re-issuance of C of O acknowledgment with new file No DT 11208 both documents are hereby pleaded and will be relied on at trial. Notice is therefore given to the 1st and 2nd Defendants to produce the said original certificate of occupancy and certified true copy of the Re-certification and re-issuance of C of O Acknowledgment No DT 11208.
9. The Estate Manager of the Plaintiff's Attorney has been visiting the office of the 1st and 2nd Defendants to know whether the recertified Certificate of Occupancy is ready for collection and the desk officer continuously informs him that it is still under process.

10. The Plaintiff avers further that the Estate Manager to his Attorney instructed the Law Firm of Obinna Ajoku & Co to conduct the land search on the Plot to ascertain to ascertain the reason for the delay in issuing the recertified Certificate of Occupancy.

11. The law firm of Obinna Ajoku & Co submitted the search report to the Estate Manager and the report revealed a case of double allocation. The said report is pleaded and shall be found (sic) at trial.

12. The Plaintiffs state that on receipt of search report the Estate Manager made inquiry at Abuja Geographic Information System and the desk officer revealed that the Plaintiff's plot was reallocated to Esther Oluwaremilekun Otenaike on 2nd March, 2007.

13. The applied for Certified True Copy of his title documents and paid the assessed fees but the 1st and 2nd Defendants refused to recertify the title documents. Receipts of payment is pleaded and shall be relied on at trial. Notice is equally given to the 1st and 2nd Defendants to produce the Certified True Copies of the said title documents paid for.

14. The Plaintiff states that his title was never and has not been revoked as no revocation notice has been served on him.

The 1st and 2nd Defendants, upon receiving the Plaintiff's Originating Processes containing his claims, filed a joint Statement of Defence the salient portions of which are now laid out as follows:

2. The 1st and 2nd Defendants deny paragraphs 4, 5, 6, 7, 9 and 13 of the Statement of Claim as they are false and constitute distortion of facts calculated to mislead this Honourable Court.

4. The 1st and 2nd Defendants admit the content of paragraph 8 of the Statement of Claim only to the extent that the Plaintiff submitted its original title document over the said plot to the 1st and 2nd Defendants for recertification long after the recertification exercise of the 1st and 2nd Defendants was officially closed. The Plaintiff is hereby put to the strictest proof of the rest of the content.

9. The Plaintiff upon allocation of the said plot did not take constructive possession of the plot neither did it commence development of same notwithstanding that it has covenanted with the 1st Defendant to develop the plot within two (2) years of the grant.

10. The 1st Defendant sequel to the power delegated to him by the President of the Federal Republic of Nigeria, in 2005 made a regulation requiring ALL the allottees of plots in the Federal Capital Territory to submit their original title documents for recertification in order to checkmate alarming rate of title forgery and land racketeering by the speculators failure of which will automatically extinguish the affected title. The FCT Land Regulation 2005 is hereby pleaded and shall be found (sic) upon at the trial of this suit.

11. The Plaintiff neither complied with the 1st Defendant's regulation as to recertification nor did it inform the 1st Defendant of the reasons for its inability to recertify its title within the period allowed by the FCT Land Regulation. It was only in June 2008 after the end of the recertification exercise by the 1st Defendant that the Plaintiff submitted its title documents for recertification without

stating any reason as to why it failed to come recertification within the time stipulated by the FCT Land Regulation.

12. Meanwhile, at the conclusion of the recertification exercise ALL plots within the Federal Capital Territory whose titles were not recertified (including the Plaintiff's plot) were treated as vacant and uncommitted, thereafter re-allocated to other land applicants.

13. Plot 292 Cadastral Zone B19, Katampe Extension District which plot the Plaintiff is claiming was among the plots affected by none recertification and had since been re-allocated to one ESTHER OLUWAREMILEKUN OTENAIKE on the 2nd day of March, 2007

14. The Plaintiff did not comply with the terms and conditions of grant as contained in the letter of Offer by not commencing and completing the development of the plot within two (2) years of the grant.

15. The 1st and 2nd Defendants aver that the Plaintiff's refusal to submit its original title document to the 1st Defendant for recertification within the time stipulated by the FCT Land Regulation constitute a fundamental breach of the FCT Land Regulation thereby extinguished its title over the said plot.

For the 3rd Defendant, who was later granted leave to amend its Statement of Defence and introduced a counter-claim, her pleadings detailed facts which demonstrate in their aggregate concurrence with the line of defence mounted by the 1st and 2nd Defendants in their Statement of Defence earlier outlined. Apart from those set of facts showing alignment with the 1st and Defendants' line of defence, the 3rd Defendant pleaded that she "*constructed foundation for the building and built a perimeter fence around the land*". She went ahead to lay out facts on

which she relied to project her counter-claims against the 1st and 2nd Defendants. The relevant facts bearing on the effective and neat disposal of this suit are set down below:

1. The 3rd Defendant/Counter-Claimant restates paragraphs 1-13 as contained in 3rd Defendant's Statement of Claim.
2. The 3rd Defendant/Counter-Claimant avers that she applied for grant of statutory right of occupancy and was granted statutory right of occupancy over Plot 292 Cadastral Zone B19 Katampe Extension District upon payment of sum of Seven Million, Eight Hundred and Eighty-nine Thousand, Four Hundred and Forty-nine Naira (7, 889, 44.00 NGN) for the Certificate of Occupancy. Receipts payment dated 24th April, 2007 and 6th July, 2009 is hereby pleaded.
3. 3rd Defendant further states that upon the grant of Right of Occupancy, and after conducting a search to be sure there was no issue of double allocation which she confirmed through her search reports including that of 8th April, 2010, she submitted her building plan to the Abuja Metropolitan Management Council Department of Development Control, a body under the control of 1st and 2nd Defendants and paid the required fee of One Million, Three Hundred and Twenty-Three Thousand, Forty-Seven Naira, Ninety-Five Kobo (1, 323, 047. 95 NGN). Copy of the receipt is hereby pleaded.
4. The 3rd Defendant/Counter-Claimant avers that she received demand for ground rent from the 1st and 2nd Defendants dated 18th March, 2010 and she paid the sum of Two Hundred and Thirty-Four Thousand Three Hundred and Fifty-Five Naira, Twenty Kobo

(234, 355. 20 NGN) on 23rd March, 2010. Copies of the demand and receipt of payment is hereby pleaded.

5. The 3rd Defendant/Counter-Claimant avers that avers that upon approval of her building plan by the regulating authority under the 1st and 2nd Defendants, she proceeded to build a fence and foundation for her building which she spent about Fifteen Million Naira (N15, 000, 000).
6. The 3rd Defendant/Counter-Claimant avers that sometime later upon visiting her allotted land she discovered her fence had been destroyed by vandals and upon further investigations to bring the vandals to book for damages done, discovered plaintiff (through his Attorney) was claiming to be the allotted owner of the land.

Proceeding on the above footing, the 3rd Defendant/Counter-Claimant counter-claimed thus:

1. A DECLARATION that the 3rd Defendant/counter claimant is the legal and beneficial owner of plot 292 cadastral zone B19 Katampe Extension District having being (sic) granted same, unencumbered by the 1st and 2nd Defendants
2. A DECLARATION that her statutory right of occupancy is valid and subsisting, same having been lawfully granted and not extinguish (sic) or revoked and having demonstrated acts of ownership and possession on the subject matter of this suit.
3. AN ORDER of perpetual injunction restraining the Plaintiff/Defendant, 1st and 2nd Defendants acting either by themselves or through their servants, agents, privies or successors in title from trespassing or asserting any form of right or interest whatsoever on the land.

4. AN ORDER granting 3rd Defendant/Counter-Claimant the sum of N25, 000, 000.00 against the Plaintiff/Defendant, 1st and 2nd Defendants jointly and severally, being damages for inconveniences, trauma, frustration and expenses incurred in course of litigating this suit.

The 3rd Defendant/Counter-Claimant sought alternative reliefs in these terms set out below:

AN ORDER mandating the 1st and 2nd Defendants to allot another plot of land with same size and value in an equal choice location/area and deeming all receipts and payment made on plot 292 Cadastral Zone B19 Katampe District Abuja as payment receipts made on the new to be allotted land.

AN ORDER mandating 1st and 2nd Defendants to pay 3rd defendant/counterclaimant the sum of N120, 000, 000.00 as general damages for inconveniences and trauma unjustly suffered by the 3rd defendants as a result of 1st and 2nd defendant's negligence of duty.

Exemplary Damages in the sum of N75, 000, 000. 00

The above narration fairly reflects the factual summary of this suit as it relates to each of the parties' position. It was on the basis of the highlighted facts above and all others not expressly set out but contained in the processes of the parties that this matter went to sailed to full trial to ascertain the truth amidst the stormy competing claims by the respective parties. There is no arguing the fact that land is central to the actualization of many of man's need in life. Professor J.A. Omotola admirably captured it thus: "*every person requires land for support, preservation and self-actualization. within the general ideals of the*

society. Land is the foundation of shelter, fund and employment. Man live on land during his life time and even upon his demise, his remains are kept in it permanently". So, the seemly unending battles over land in the Federal Capital Territory, Abuja, just as in every other part of this country, is not a strange development. It is a familiar contest. A calm reading and intimate understanding of the diverse issues agitated by the parties in hostility would reveal that the points that to be attended to in disposal of this suit together with the counter-claim are not shrouded in mystery, not esoteric but lend themselves to easy comprehension. There is no denying the fact that the Claimant was issued with a Certificate of Occupancy.

This fact is not in contention but settled as between the Claimant and the 1st and 2nd Defendants. There is also no argument that at no time did the 1st and 2nd Defendants serve revocation notice on the Claimant with a view to ending his ownership of the plot of land now in contention. This fact is settled and accepted as between the Claimant and the 1st and 2nd Defendants. This fact is not disputed, as it abundantly borne out by the pleadings of the parties and evidence led in proof thereof. Also not in argument is the fact that the 1st and 2nd Defendants have not issued a Certificate of Occupancy to the 3rd Defendant in respect of the disputed plot. The 3rd Defendant never made such argument and could not demonstrate that a Certificate of Occupancy was ever issued to her over the disputed plot by the 1st and 2nd Defendant.

What is in evidence is that the 3rd Defendant was issued with a Right of Occupancy over the disputed plot. Right of Occupancy is inferior to Certificate of Occupancy in the ranking of Title Documents under our laws and this is a simple legal postulation. Assuming, for the purposes of

argument (even though the pleadings and evidence do not support this assumption), that the 3rd Defendant was issued with a Certificate of Occupancy by the 1s and 2nd Defendants, the issuance was subsequent to and did not precede that of the Claimant in this proceedings. This fact is supported by the pleadings and evidence led by the parties before the Court. There is also the issue to be resolved arising separately from the counter-claim of the 3rd Defendant which would be adequately attended to.

With this factual summary in view, I shall proceed to reflect on the issues identified by the parties and which they considered germane and determinative of the agitations ventilated herein.

At **page 5, paragraph 3.0 of its Final Written Address**, the Claimant herein identified a sole for determination thusly:

> Whether from the state of pleadings and evidence led by the Plaintiff, he has proved its (sic) case to be entitled to the relief sought in the Statement of Claim.

For the 3rd Defendant, two issues were raised thusly:

(a) Whether this Honourable Court has jurisdiction to entertain this suit in view of the incompetent Power of Attorney upon which this action is filed?

(b) Whether the Plaintiff has proven his case on the preponderance of evidence to be entitled to the reliefs he seeks in his statement of Claim?

It is my view that the sole issue distilled by the Claimant and the second issue isolated by the 3rd Defendant are one and the same thing even though they are differently worded

For prudence sake, I shall attend to the issue of jurisdictional competence of this Court raised by the 3rd Defendant as her 1st issue with a view to determining whether or not there is a further need to examine the other issues submitted for the resolution of this matter.

The challenge to the jurisdiction of this Court was raised and anchored by the 3rd Defendant on the alleged violation of **Section 66 (1) of the Companies and Allied Matters Act (the defunct CAMA)** in that there was no evidence that the present was authorized by the company in whose name the present action was purportedly commenced. The 3rd Defendant invoked the authority of **Bank PHB v. CBN & Ors (2019) LPELR-47383 (CA)**.

The 3rd Defendant went on to contend that the Power of Attorney used in instituting the instant suit is a registrable instrument and was not registered and therefore void being in violation of **Section 2 of the Land Instrument Registration Act. Relying further on Section 150 of Evidence Act**, **Onward Enterprises Ltd v. Olam International Ltd and 2 Ors. (2010) ALL FWLR (Pt. 537) 1503** and a string of other authorities, the 3rd Defendant contended that the Power of Attorney admitted in evidence as **Exhibit A1** is incompetent.

In opposition, the Claimant pointed out that all the issues raised by the 3rd Defendant in her final written address on which she purports to found jurisdictional allegation were never pleaded in her Statement of Defence and no shred of evidence led in proof of same. This, the Claimant contended, grossly violated **Order 15 Rules 2, 3, 7 (i) & (ii) of this Court's 2018 Civil Procedure Rules**.

The Claimant punctured the allegation of violation of **Section 63 of the defunct CAMA** as misconceived in the sense that the argument on that

issue were raised for the first time in the written address. The 3rd Defendant never pleaded in her Statement of Defence, lack of authority of the PW1 or Harmony Properties Ltd to institute the action on behalf of the Plaintiff as provided by Order 15 of the Rules of this Court, Counsel submitted. Citing **Chukwuemeka N. Ojiogu v. Leonard Ojiogu & Anor (2010) 9 NWLR (Pt. 1198) 1**, Counsel contended that a party relying on a special provision for his defence or case must plead that defence specifically, although the specific statutory provisions need not be specifically stated. Claimant's Counsel went further to call in aid the authority of **PLATEAU STATE GOVERNMENT V. CREST HOTEL & GARDEN LTD. (2012) LPELR-9794 (CA)** where the Court held that it is nowhere provided in our laws that a company must produce resolution authorizing an action instituted in the name of the company and that it is only where a suit is filed in the name of the company without its authority, that the issue of resolution can arise if and only if there is a challenge to the institution of the action.

It was held that where the authority to sue is not challenged, no duty lies on the plaintiff to have led evidence on the need for authority or resolution. Counsel criticized the application of the authority of **Bank PHB v. CBN & Ors (supra)**cited and relied on by the 3rd Defendant in that the facts are not the same. He pointed out that in that case, the Defendant thereat filed a preliminary objection challenging the jurisdiction of the Federal High Court to entertain the suit on many grounds including the ground that "**the action is brought in the name of the Plaintiff without any authority or authorization of the Plaintiff company**", unlike in the present case where there was no

challenge to the authority of Harmony Properties Ltd and PW1 to institute this action.

RESOLUTION OF ISSUE 1 OF THE 3RD DEFENDANT:

I entirely agree with the contention of the Claimant's Counsel to the effect that the failure of the 3rd Defendant to raise these jurisdictional issues in her pleadings and lead evidence in proof of same is fatal. This is because for this Court to take a measured view of such issues as raised in the written address, it has to go into the ascertainment of the facts on the basis of which inferences could be drawn consistent with the allegations she has made. It is in such situation (or through a preliminary objection) that he Claimant would have been afforded the opportunity to challenge or defend the allegations of the Claimant not having the requisite authorization to have commenced the suit. This view is consistent with the provisions of **Order 15 Rules 2, 3, 7 (i) & (ii) of this Court's 2018 Civil Procedure Rules**.

There was no way this Court could have come to a just determination of such issues where the parties have not properly joined issues. Beyond this, for me to agree with the 3rd Defendant's contention in the circumstances that have crystallised would amount to a violation of the Claimant's inalienable fundamental right to fair hearing embedded in **Section 36 of our Constitution**. The law, as laid down by the Supreme Court in **VULCAN GASES LTD. v. GESELLSCHAFD FOR INDUSTRIES GASVER WERTUNG A.G. (G.I.V.) (2001) 9 NWLR (Pt. 719)**, is that the donee of a power of attorney or an agent in the presentation of a Court suit or action pursuant to his powers must sue in the name of the donor or his principal and not otherwise. In the present

case, the Donee sued in the name of Donor and beyond that the purpose for which the Power of Attorney was tendered is not to prove title but to show authority to defend or institute the present suit. My view is in alignment with the decision of the Court in **ALOYEIOUS OKPE v. BLESSING UMUKORO (2013) LPELR-21999 (CA)** (equally cited and relied on by the Claimant) where it was held thusly:

> **"...If Exhibit 'A' had been a registrable instrument within the contemplation of Section 2 of the Land Instrument Registration Law, being an instrument which conferred any right or title or interest in land to the done. The respondent would have been obliged to register it to prove such alienation of interest. However, being merely a document tendered to show that the donor gave the done power to manage and develop the property and to affirm and defend the title of the donor in the property, it is admissible without registration."**

With the few remarks I have made above, I therefore entertain no reservations in peremptorily dismissing this challenge mounted to this Court's jurisdiction to hear this suit by the 3rd Defendant as being grossly unmeritorious and misconceived. The issue is resolved against the 3rd Defendant and in favour of the Claimant. I hold that this Court enjoys unfettered jurisdiction to hear and dispose of this suit.

I will now resolve the sole issue of the Claimant (which I had already identified as being identical with the 3rd Defendant's issue two).

I first of all note that the 1s and 2nd Defendants in this matter did not file any written address in this Court and there is no reason advanced by them for not doing so.

ARGUMENT CANVASSED BY THE 3RD DEFENDANT:

The 3rd Defendant contended that the Claimant woefully failed to prove his case on the preponderance of evidence due to the following reasons:'

a) Inconsistencies in the testimony of PW1 vis-à-vis his witness statement on oath.
b) The obvious, highly questionable alteration of date on the incompetent power of attorney by which this action is brought and upon which the Court cannot be left to speculate the authenticity of the signature therein.
c) Nothing proves that PW 1 was authorised by the said company to act on his behalf which is contrary to Section 66 (1) of the Companies and Allied Matters Act 2020
d) Exhibit A1 is a registrable instrument by its purpose and stands inadmissible having not been registered in accordance to law.
e) The only person who can challenge 3rd Defendant's title and/or attest to the fact that he did not receive revocation letter from 1st and 2nd Defendant is Sampson Dule himself, against the backdrop of Section 28 (6) of the Land Use Act, which provides that notice shall be given to the holder and the holder alone!

I will adopt and apply the ratio which I utilized in my disposal of the 3rd Defendant's first issue to dispose of the present one. I have earlier held that all the issues dredged up in ***paragraphs (b), (c), (d), and (e) above*** by the 3rd Defendant never arose from her pleadings but in the final addresses of Learned Counsel. Pleadings are not amended by address of Counsel, **ADONE V. IKEBUDU (2001) 90 LRCN 2711**. It is settled law that evidence led on facts not pleaded goes to no issue, **HONIKA SAWMILL NIG. LTD. V. HOFF (1994) 2 NWLR (Pt. 326)**

266. Of great note is the time-honoured proposition that parties to an action are bound by the pleadings, **N. I. P. C. Ltd V. THE THOMPSON ORGANIZATION (1969) 1 ANLR 138** and anything outside the pleadings cannot be considered, **NSIRIM V. NSIRIM (1990) 3 NWLR (Pt. 138) 285**. Facts not pleaded go to no issue, **SALAMI V. OKE (1987) 4 NWLR (Pt. 63) 1; EZEWANI V. ONWORDI (1986) 4 NWLR (Pt. 33) 27.** On issue of alteration of the Power of Attorney (**Exhibit 'A'**) which is an allegation of fraud, the law is stale to the effect that a party cannot rely on allegation of fraud where the allegation is based on facts not pleaded, **OMORHRHI V. ENATEVWERE (1988) NSCC 909**. Evidence led that is at variance with pleaded facts goes to no issues, **DIKE V. NZEKA (1986) 4 NWLR (PT. 34) 144**.

The summation of the outlined principles has constituted the Achilles heels of the 3rd Defendant's defence to the claims of the Claimant herein. The central pin of the issues agitated in her final written address were never pleaded and no evidence led on them. I hold that the issue in paragraph (a) dealing with alleged inconsistency in the testimony of PW1 vis-à-vis his witness statement on oath are not made out from the records before this Court. It remains an unproved allegation. This is because the PW1 in his witness statement on oath only stated that Exclusive Stores is his address. In paragraph 3 of the Statement of Claim, it is equally pleaded that PW1 is the Estate Manager of his Attorney.

PROVE OF TITLE:

Our land laws have settled the ways by which a Plaintiff may establish ownership to land in a suit for declaration of title. I shall refer to them and such other land law principles that must guide this Court in coming

to a just determination of the instant suit. Pointing at those established means of proving title to land, the Supreme Court quite recently in the case of **IFEDIORA & ORS v. OKAFOR & ORS (2019) LPELR-49518(SC)** restated the guiding principle thus:

> The law is trite that title to land can be proved by the following five grounds: - 1. Proof by traditional history or traditional evidence. 2. Proof by grant or the production of document of title. 3. Proof by acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the persons exercising such acts are true owners of the land. 4. Proof by acts of long Possession. 5. Proof by possession of connected or adjacent land in circumstances rendering it probable that the owner of such land would in addition be the owner of the land in dispute. See Idundun & Ors V. Okumagba (1976) 10 SC 277, lseogbekun & Anor v. Adelakun & Ors (2013) 2 NWLR (Pt 1337) 140, Madu V. Madu (2008) 6 NWLR (Pt 1083) 296, Odunze & Ors V. Nwosu & Ors (2007) 13 NWLR (Pt 1050) 1, Duru V. Nwosu (1989) 4 NWLR (Pt 113) 24. A plaintiff seeking declaration of title to land does not need to plead and prove all the five methods stated above. He only needs to prove one of such method. lf he pleads and/or relies on more than one method to prove his title, he merely does so ex abundante cautela as proof of one simple root of title is sufficient to sustain a plaintiff's claim for declaration of title to land. See Onwugbufor V. Okoye (1996) 1 SCNJ 1

In the case before me, the Claimant relies on title documents, principally the Certified True Copy of Certificate of Occupancy (**Exhibit A4**) issued him by the 1st and 2nd Defendants to prove his title to the plot in dispute

in this proceeding. The 1st and 2nd Defendants have not denied that they issued the Claimant with the said Certificate of Occupancy over **Plot 292 Cadastral Zone B19, Katampe Extension District** neither have they denied that they took the original copy of the Certificate of Occupancy from the Claimant for the purposes of *'re-certification exercise'* they carried out without returning same to the Claimant despite his efforts to get back his original Certificate of Occupancy in the custody of the 1st and 2nd Defendants.Admittedly, at paragraph 4 of their joint Statement of Defence earlier reproduced, the following pleading is found in support of the finding which I have just made:

> **The 1st and 2nd Defendants admit the content of paragraph 8 of the Statement of Claim only to the extent that the Plaintiff submitted its original title document over the said plot to the 1st and 2nd Defendants for recertification**…"

These conceded facts, as between the parties, are deemed accepted and established for the purposes of this Court coming to a just determinations of the issues joined by the parties. In affirmation of title documents as one of the settled and recognised means of proving title, the Supreme Court, through Edozie J.S.C., in **DABO V. ABDULLAHI (2005) LPELR-903(SC)**, brilliantly wrote this illuminating passage to guide us:

> "Admittedly, the production of documents of title is one of the recognised methods of proving title to land, see Idundun v. Okumagba (1976) 9-10 SC 227 at 246; Piaro v. Tenalo (1976) 12 SC 31 at 37. But such a document of title must be admissible in evidence and be of such a character as to be capable of conferring valid title on the party relying on it. Discussing the nature and

character of such a document of title, this court, in the case of Romaine v. Romaine (1992) 4 NWLR (Pt.238) 650 at 662 observed thus: "I may pause here to observe that one of the recognised ways of proving title to land is by production of a valid instrument of grant: see Idundun v. Okumagba (1976) 9-10 SC 227; Piaro v. Tenalo (1976) 12 SC 31 p. 37; Nwadike v. lbekwe (1987) 4 N.W.L.R. (Pt.67) 718. But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own.

Rather, production and reliance on such an instrument inevitably carries with it the need for the court to inquire into some or all of a number of questions including: (i) whether the document is genuine and valid; (ii) whether it has been duly executed, stamped and registered; (iii) whether the grantor had the authority and capacity to make the grant; (iv) whether the grantor had in fact what he purported to grant; and (v) whether it has the effect claimed by the holder of the instrument." With the guiding principles enunciated above, it is easy to appraise the documents of title produced by the parties in support of their claims.

There is no doubt that Certificate of Occupancy evidences title. In this proceeding, the Claimant relies heavily on same (**Exhibit A4**), among other documents, in asserting his title of the disputed Plot of land which is **Plot 292 Cadastral Zone B19, Katampe Extension District**.

What then is Certificate of Occupancy?

In **Adeshina v. Bac Electrical Co. Ltd. (2007) ALL FWLR (Pt. 369) 1279 at 1322; Paras. D - E (CA)**, Agube, J.C.A. writing for the Court of Appeal, wrote this about Certificate of Occupancy:

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

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

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

Off course, Certificate of Occupancy enjoys only but a rebuttable presumption of evidencing title in the holder. This is so because where it is proved by evidence that another person had a better title to the land before the issuance of the Certificate of Occupancy the court can revoke same and nullify it. In espousal of this view, the Supreme Court very

authoritatively wrote in **OTUKPO v. JOHN & ANOR (2012) LPELR-20619(SC)** as follows:

> "A Certificate of Occupancy is only prima facie evidence of title to land or exclusive possession of land. Consequently, if it is successfully challenged, it can be nullified. Where there is evidence to show that the certificate was wrongfully obtained the court is entitled to nullify it. In order to, succeed in a claim to title a party who held a Certificate of Occupancy will -need to show his root of title that is through his vendor and that the vendor or seller has to show valid title to the land over which the purchaser secured his Certificate of Occupancy. This is because the Certificate of Occupancy can only be valid if the root of title originates from the customary owners of the property.
>
> Where a competent authority properly issues a Certificate of Occupancy it raises the presumption that the holder is the owner in exclusive possession of the land to which the Certificate relates. It also raises the presumption that all the time it was issued, there was not in existence a customary owner whose title has not been revoked. However, these presumptions are rebuttable. Where it is proved by evidence that another person had a better title to the land before the issuance of the Certificate of Occupancy the court can revoke. Okpalugo vs. Adesoye (1996) 10 NWLR, pt. 476, Pg.77 Auta vs. Ibe (2003) 13 NWLR, pt.837, Pg.247 Dakat vs. Dashe (1977) 12 NWLR, Pt. 531, pg.46

In view of the above examined principles eventuating from a galaxy of Superior Court decisions on the score, the question that comes to mind is whether there is any other competing evidence challenging the

authenticity of the Claimant's Certificate of Occupancy. This must be the compelling question that must be addressed with every cogency that it deserves because as the law stands, "*where a competent authority properly issues a Certificate of Occupancy it raises the presumption that the holder is the owner in exclusive possession of the land to which the Certificate relates*" **Okpalugo vs. Adesoye (1996) 10 NWLR, pt. 476, Pg.77**. In this Court and as matter stands between the combating parties, the Claimant is enjoying, already, the privileges and benefits of all the presumptions of law conferred on a holder of a Certificate of Occupancy, ***Dakat vs. Dashe (1977) 12 NWLR, Pt. 531, pg.46***.
Throughout this proceedings, the point has been made that the 1st and 2ndDefendants never at any time denied or challenged the authenticity of the Claimant's Certificate of Occupancy as emanating from them or as not properly issued by a competent authority.

In this case too, it has not been the argument by either of the parties especially the Defendants, neither has it been "***proved by evidencethat another person had a better title to the land before the issuance of the Certificate of Occupancy***" to the instant Claimant**, MADU V. MADU (supra)**. Paragraph 13 of the 1st and 2nd Defendants pleadings affirm this position by its tenor thus:
Plot 292 Cadastral Zone B19, Katampe Extension District which plot the Plaintiff is claiming was among the plots affected by none recertification and had since been re-allocated to one ESTHER OLUWAREMILEKUN OTENAIKE on the 2nd day of March, 2007.

The above clears the issue that whatever claim the 3rd Defendant is laying to the disputed plot started on or after the 2nd day of May, 2007. This means that the Claimant's Certificate of Occupancy was already in

existence over the said plot before even a Right of Occupancy was purportedly issued to the 3rd Defendant by the 1st and 2nd Defendants.

So, the question that naturally comes to mind at this juncture is: *Did the 1st and 2nd Defendants validly extinguish the interest of the Claimant in the disputed plot 292 Cadastral Zone B19, Katampe Extension District*?The answer is found in their pleadings thus:

> *10.* The 1st Defendant sequel to the power delegated to him by the President of the Federal Republic of Nigeria, in 2005 made a regulation requiring ALL the allottees of plots in the Federal Capital Territory to submit their original title documents for recertification in order to checkmate alarming rate of title forgery and land racketeering by the speculators failure of which will automatically extinguish the affected title. The FCT Land Regulation 2005 is hereby pleaded and shall be found (sic) upon at the trial of this suit.
>
> 11. The Plaintiff neither complied with the 1st Defendant's regulation as to recertification nor did it inform the 1st Defendant of the reasons for its inability to recertify its title within the period allowed by the FCT Land Regulation. It was only in June 2008 after the end of the recertification exercise by the 1st Defendant that the Plaintiff submitted its title documents for recertification without stating any reason as to why it failed to come recertification within the time stipulated by the FCT Land Regulation.
>
> 12. Meanwhile, at the conclusion of the recertification exercise ALL plots within the Federal Capital Territory whose titles were not recertified (including the Plaintiff's plot) were treated as vacant and uncommitted, thereafter re-allocated to other land applicants.

13. Plot 292 Cadastral Zone B19, Katampe Extension District which plot the Plaintiff is claiming was among the plots affected by none recertification and had since been re-allocated to one ESTHER OLUWAREMILEKUN OTENAIKE on the 2nd day of March, 2007.

From the pleadings of the 1st and 2nd Defendants reproduced above even though at the risk of prolixity, it bears no repetition that the ground upon which the 1st and 2nd Defendants thought themselves to have purportedly extinguished the interest of the Claimant in *Plot 292 Cadastral Zone B19, Katampe Extension District* is the Claimant's "*inability to recertify its title within the period allowed by the FCT Land Regulation*". They did not contend that they served the Claimant or any person for that matter with a revocation notice over the disputed plot prior to "re-allocating" the said plot to the 3rd Defendant herein. Since this was never their argument, it is completely untenable and does not lie in the mouth of the 3rd Defendant to argue, as she did, that the only person who can challenge 3rd Defendant's title and/or attest to the fact that he did not receive revocation letter from 1st and 2nd Defendant is Sampson Dule himself, against the backdrop of Section 28 (6) of the Land Use Act, which provides that notice shall be given to the holder and the holder alone! This is strange.

Did the 3rd Defendant even raise this issue in her pleadings? Where is the evidence she led respecting same? What title is the 3rd Defendant talking about? Did the 1st and 2nd Defendant have any title to give to the 3rd Defendant in these circumstances? The 1st and 2nd Defendant did not serve any revocation notice on anyone for that matter over the disputed plot. The most they did was to declare the plot vacant for the reasons they advanced. Can this be a right procedure in law to tamper with the

proprietary right of a citizen under the Land Use Act and our Constitution itself? Can the FCT Land Regulation be invoked as the procedural law guiding revocation of land in the Federal Capital Territory, Abuja? If yes, since when? If no, why did the 1st and 2nd Defendants rely on same? What does the Land Use Act provide?

The settled principle of law is that where a statute provides for a particular procedure or method for performing any act, no other method or procedure can be employed in achieving the intent of the statute. In fortification of this view, I call in support the authority of **INAH & ANOR v. WILLIAMS & ORS (2016) LPELR-40128(CA)** where, relying on the earlier Supreme Court decision in **Mega Progressive Peoples Party v. INEC (2015) LPELR-25706 (SC)**, the Court held thus:

> "It is well settled that where a statute provides for a particular procedure or method for performing any act, no other method or procedure can be employed. In MEGA progressive peoples Party v. INEC (2015) LPELR-25706 (SC), the Supreme Court, per Muhammad, JSC succinctly put thus: "Certainly, when a law provides a particular way/method of doing a thing, and unless such a law is altered or amended by legitimate authority, then whatever is done in contravention, it amounts to nullity."See also: NNPC v Famfa Oil Ltd LPELR-7812 (SC) (Consolidated); University of Calabar Teaching Hospital v Bassey (2005) LPELR-8553 (CA)." Per OTISI, J.C.A. (Pp. 14-15, Paras. C-A):"

This sacred principle of law was expatiated on in **ADESANOYE Vs. ADEWOLE (2006) 14 NWLR (Pt. 1000) 242**, where the Supreme Court, Per TOBI, JSC (of blessed memory) succinctly held thus:

"Where a statute clearly provides for a particular act to be performed; failure to perform the act on the part of the party will not only be interpreted as a delinquent conduct but will be interpreted as not complying with the statutory provision. In such a situation, the consequences of non-compliance with the statutory provision follow notwithstanding that the statute did not specifically provide for a sanction. The Court can, by the invocation of its interpretative jurisdiction, come to the conclusion that failure to comply with the statutory provision is against the party in default."

Upholding and aligning with this immutable view, the Court in **JOHNSON & ORS. v. MOBIL PRODUCING NIG. UNLIMITED & ORS. (2009) LPELR-8280(CA)**aptly held thus:

"It is trite that where an Act prescribes a particular method of exercising a statutory power, any other method of exercising such power is excluded"

In demonstration of judicial unanimity of view on this score and in fidelity to the law, it has been held by the Supreme Court in **TANKO V. THE STATE (2009) LPELR-3136(SC)** that:

"...where a statute provides for a particular method of performing a duty regulated by the statute, that method, and no other, must have to be adopted."

Applying the amplified principle above in resolving the issues generated in this suit, the question must be asked: what is the method prescribed by the Land Use Act by which the Certificate of Occupancy of a citizen, such as the Claimant herein, could be tampered with by the issuing authority such as the 1st and 2nd Defendants herein?**Section 28 of the Land Use Act** deals extensively with the power of the Governor to

revoke right of occupancy. The said provision is hereby reproduced by me in its undiluted form thus:

> 28 (1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.
>
> (2) Overriding public interest in the case of a statutory right of occupancy means--.
>
> (a) The alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder;
>
> (b) The requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;
>
> (c) The requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.
>
> (3) Overriding public interest in the case of a customary right of occupancy means –
>
> (a) The requirement of the land by the Government of the State or by a Local Government in the State in either case for public purpose within the State, or the requirement of the land by the government of the Federation for public purposes of the Federation.
>
> (b) The requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;

(c) The requirement of the land for the extraction of building materials;

(d) The alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

(4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the (Head of the Federal Military Government) if such notice declares such land to be required by the Government for public purposes.

(5) The Military Government may revoke a statutory right of occupancy on the ground of –

(a) A breach of any of the provisions which a certificate of occupancy is by section 10 deemed to contain;

(b) A breach of any term contained in the certificate of occupancy or in any special contract made under section 8;

(c) A refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Military Governor under subsection (3) of section 10.

(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder.

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him or a notice given under subsection (5) or on such later date as may be stated in the notice

The primary responsibility of the court is to ascertain the intention of the legislature so as to give effect to it, **Ojokolobo v. Alamu (1987) 3**

NWLR (Pt.61) 377 at p.413. Such an approach provides the Judge with the key to unlock the elusive and sometimes obscure intentions of the legislation buried in ambiguous expressions, **ODENEYE V. EFUNUGA (1990) LPELR-2208(SC)**. From a calm reading of the above cited provision of the Land Use Act, two important things have crystallised to wit; *(a) Revocation as ordained by* ***Section 28 of the Land Use Act (LUA)*** *is the only means known to law by which the issuing authority can interfere with the title which a citizen has validly acquired or enjoys over a piece of land (regardless of the ground on which the revocation notice may rest)*, **Osho v. Foreign Finance Corporation (1991) 4 NWLR (Pt.184) 157** *and (b) Re-certification or failure to comply with any re-certification demand made on holders of Certificate of Occupancy is not a means known to law for bringing to an end the right of a citizen over a piece of land by the issuing authority*, **Olohunde v. Adeyoju (2000) 10 NWLR (Pt.676) 562**.

Where does this leave the Claimant and the defendants? Was there a revocation of the Claimant's land by the 1st and 2nd Defendants? The answer is a simple no. The 1st and 2nd Defendants made no pretenses to the contrary. For instance, the Claimant has contended, and this the 1st and 2nd Defendants have not lifted even one finger to refute, that no revocation notice was ever served on him by the 1st and 2nd Defendants prior to purporting to re-allocate his land to the 3rd Defendants. This contention finds firm anchorage on **subsection 6 of Section 28 of LUA** which lucidly provides thus:

> **The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that**

behalf by the Governor and notice thereof shall be given to the holder

In interpreting **Section 28 of the LUA**, which has now fallen for the interpretation of this Court in this case, the Supreme Court, in **C.S.S. Bookshop Ltd v The Registered Trustees of Muslim Community in Rivers State & 3 others (2006) 11 NWLR (Part 992) 530; (2006) 6 SCM 38**, luminously provided us with this guide thus:

> It is not at all in doubt that the provisions of section 28 of the Act contains comprehensive provisions to guide the Governor of a State in the exercise of his vast powers of control of land within the territorial areas of his State particularly the power of revocation of a right of occupancy. One of the preconditions for the exercise of this power of revocation is that it must be shown clearly to be for overriding public interest. In order not to leave the Governor in any doubt as to the conditions for the exercise of his powers, the law went further to provide adequate guidance by defining in clear terms what overriding public interest means in the case of a statutory right of occupancy under the Act in subsection (2) of section 28. What this means of course is obvious.
>
> Any revocation of a right of occupancy by the Governor in exercise of powers under the Act must be within the confine of the provisions of section 28 of the Act. Consequently, any exercise of this power of revocation for purposes outside those outlined or enumerated by section 28 of the Act or not carried out in compliance with provisions of the section, can be regarded as being against the policy and intention of the Land Use Act resulting in the exercise of the power being declared invalid, null and void

by a competent court in exercise of its jurisdiction on a complaint by an aggrieved party.

From the above jurisprudential floodlight offered us by the Apex Court, this Court has no difficulty in accepting the contention, advanced by the Claimant herein, that there was no valid revocation of the Claimant's Certificate of Occupancy evidencing his right over the land which is subject matter of this litigation, **Dantsoho v. Mohammed (2003) 6 NWLR (Pt.817) 457 at 483**; **Ibrahim v. Mohammed(2003) 6 NWLR (Pt.817) 457.**

I make bold to say that the **FCT Land Regulation 2005** issued by the 1st Defendant being a *subsidiary legislation* cannot operate to either override, suppress, stampede or overthrow the parent statute, LUA, which it is subservient to, **Din v. A. -G., Federation (1988) 4 NWLR (Pt.87) 147; Gov**. It has been held, and this is settled, that a subsidiary legislation cannot overthrow its parent legislation, **Ishola v. Ajiboye (1994) 6 NWLR (Pt.352) 506 at 621** neither can it expand the powers donated to the 1st and 2nd Defendant more than the **LUA** has already done especially respecting to revocation, **Oyo State v. Folayan (1995) 8 NWLR (pt.413) 292 at 327**. Beyond this, where the parent legislation has evinced the intention to cover a particular field, in this case revocation, a subsidiary legislation is incapable of making provision over the fields already covered by the parent legislation with an intent to nullify or supersede the provisions of the parent legislation, **A.G Lagos State v. Eko Hotels (2017) LPELR-43713 (SC)**.

This is what the doctrine of covering the field enunciates and teaches, **Attorney-General of Ogun State vs. Attorney-General of the**

Federation [1982] 2 NCLR 166. A subsidiary legislation cannot expand or curtail the provisions of the substantive statute from where it derives its legitimacy or validity, **Best Njoku V Chief Mike Iheanatu (2008) LPELR - 3871 (CA). 16 (2009) 12 NWLR (PT. 1156) 462**. This explanation was well offered by the Court in **OLANREWAJU v. OYEYEMI & ORS. (2000) LPELR-6045(CA)** where it was clearly stated that:

> "It is settled law that a subsidiary legislation derives its authority and validity from and subject to the provisions of the parent enabling statute. It follows therefore that a subsidiary legislation cannot expand or curtail the provisions of the substantive statute. It must be within the authority derived in the main enabling statute. See Din v. A. -G., Federation (1988) 4 NWLR (Pt.87) 147; Gov., Oyo State v. Folayan (1995) 8 NWLR (pt.413) 292 at 327 and Ishola v. Ajiboye (1994) 6 NWLR (Pt.352) 506 at 621."

This point was made clearer in **Best Njoku V Chief Mike Iheanatu (2008) LPELR - 3871 (CA). 16 (2009) 12 NWLR (PT. 1156) 462** where it was held that:

> **"A subsidiary legislation or enactment is one that was subsequently made or enacted under and pursuant to the power conferred by the principal legislation or enactment. It derives its force and efficacy from the principal legislation to which it is therefore secondary and complimentary."**

Even though when validly made, a subsidiary legislation acquires the force of law by virtue of **Section 18(1) of the Interpretation Act**, **Ishola v. Ajiboye (1994) 6 NWLR (Pt.352) 506 at 621**, however, it

has been held that for such subsidiary legislation to enjoy the force of law, it must speak the same language with the enabling statute**- See DIN V. A-G., FED. (1988) 4 NWLR (Pt.87) 147 p.154**. Its provisions therefore, must be in conformity with the terms of its enabling law- **ODENEYE V. EFUNUGA (1990) LPELR-2208(SC)**.

For all I have been saying, the Certificate of Occupancy of the Claimant in this suit remains intact, valid and subsisting. In the face of **Section 28 of the Land Use Act*especially subsection 6 thereof*** with which the 1st and 2nd Defendants did not comply in purporting to divest the Claimant of his title over the disputed plot of land, any provision of the FCT Land Regulation, 2005 (being relied on by the 1st and 2nd Defendants) claiming or pretending to have divested the Claimant of his title to the disputed plot is an anathema and therefore a nullity and I so declare it. I find and hold that the1st and 2nd Defendants did not take a step known to law in tampering with the Claimant's title over the now disputed piece of land. At the time the 1st and 2nd Defendant purported to have "re-assigned" *Plot 292 Cadastral Zone B19 Katampe Extension District* to the 3rd Defendant, I hold that there was absolutely NOTHING available on the said piece of land to be "*re-assigned*" and the 1st and 2nd Defendants had nothing to "*re-assign*" to the 3rd Defendant. This is where we are.

This is where the law has found the parties, all because of the lawlessness of the 1st and 2nd Defendants. To resolve the issues raised by the parties, it is the answer of this Court that the Plaintiff has proven his case on the preponderance of evidence to be entitled to the reliefs he seeks in his statement of Claim.

On the above premises, I come to the irresistible conclusion that the claims of the Plaintiff succeed. In the name of the law, I hereby enter the following Orders:

A. I grant a declaration that the Plaintiff is the beneficial owner, and the person who enjoyed the possession of all that piece of land which is known as plot 292 Cadastral Zone B19 Katampe Extension District Abuja file No DT 810 (New file No DT 11208) having been allotted with and granted Certificate of Occupancy prior to the 3rd Defendant by the 1st and 2nd Defendants in respect of the said plot.

B. I grant a declaration that the Certificate of Occupancy issued to the Plaintiff in respect of plot 292 Cadastral Zone B19 Katampe Extension District Abuja file No DT 810 (New file No DT 11208) enures to his benefit and still valid and subsisting same having not been revoked by the 1st and 2nd Defendants.

C. I make an Order of perpetual injunction restraining the Defendants, their agents, assigns, privies or anybody/person/s claiming for, through them or on their behalf from trespassing or further trespassing on the Plaintiff's plot No 292 Cadastral Zone B19 Katampe Extension District Abuja in any way of or manner whatsoever.

D. I make an Order of mandatory injunction compelling the 1st and 2nd Defendants to issue the Plaintiff, FORTHWITH, with the new Certificate of Occupancy in respect of the said plot of land with file No DT 11208 and known as plot 292 Cadastral zone B Katampe Extension Abuja.

COUNTER-CLAIM:

I will adopt all the reasoning I earlier utilized in dispensing with the main claim. The Claimant in this Counter-claim is the 3rd Defendant in the main claim. After exhaustively considering the entirety of the 3rd Defendant's Witness Statement on oath particularly the salient portions supporting the counter-claim and the evidence led along those lines, I am of the calibrated view that the main reliefs sought by the Counter-Claimant are unmeritorious. I cannot grant them. Doing so would run contrary to the main judgment I have just delivered and render it worthless. I cannot indulge in such. The law does not support me in doing so. I enter an order dismissing the main claims of the 3rd Defendant/counter-claimant. I will however consider the alternative reliefs prayed for. In the light of the pleadings and established evidence, I am minded to grant the following alternative reliefs in favour of the counter-claimant:

1. I make an Order mandating the 1st and 2nd Defendants to allot to the 3rd Defendant/counter-claimant another plot of land with same size and value in an equal choice location/area and deeming all receipts and payment made on plot 292 Cadastral Zone B19 Katampe District Abuja as payment receipts made on the new to be allotted land.
2. I award Exemplary Damages in favour of the 3rd Defendant/counter-claimant in the sum of Five Million Naira N5, 000, 000. 00 against the 1st and 2nd Defendants for their lawlessness as have become manifest in this judgment.

I decline to award general damages against the 1st and 2nd Defendants anchored on negligence as prayed by the 3rd Defendant/counter-

claimant. This is because, the claim of negligence was made out in the pleadings and or proved at the trial.

This shall be my judgment.

For want of a better expression, the 1st and 2nd Defendants collected the monies of the 3rd Defendant for no consideration or for a consideration they could not furnish and could not have validly furnished in law.

APPEARANCE

Daubry Edizimoh Esq. holding brief for

Obinna Ajoku Esq. for the claimant.

The defendants not in court.

Sign

Hon. Judge

24/06/2021