

**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/HC/BW/CV/242/2020

BETWEEN:

WANEZ CONSULTANCY SERVICES LIMITED --- CLAIMANT

AND

1. HON. MINISTER, FEDERAL CAPITAL TERRITORY

2. CORPORATE IDEALS PROPERTIES LIMITED --- DEFENDANTS

JUDGMENT

DELIVERED ON THE 21ST JUNE, 2021

The substance of the Claimant's case is that on the 18th day of September 1987, it was granted a statutory right of occupancy over Plots No. 561 & 562 within Asokoro District, Abuja, and that the said statutory right of occupancy is valid and subsisting. The 1st Defendant has been holding out that the file for the said plots of land was misplaced and therefore could not complete the recertification for the same; when the Claimant discovered that the 2nd Defendant was about to acquire interest over Plots No. 561 & 562 within Asokoro District Abuja, the claimant approached the 2nd Defendant and warned the 2nd Defendant about the primacy of Claimant's title being first in time and that the Claimant's title was never revoked, the Claimant also warned the 2nd Defendant that any purported acquisition of interest in the property would amount to a nullity, despite which the 2nd Defendant later purportedly acquired interest in the said property, hence the present suit.

The reliefs sought by the Claimant, as endorsed on the Writ of Summons and Statement of Claim, are as follows:

- a. Declaration that the Claimant is the holder of a Statutory Right of Occupancy dated 18th September 1987, referenced [FCDA/EST/87/MISC. 4827] over Plots No. 561 & 562 Asokoro District, Abuja.
- b. Declaration that the title of the Claimant over Plots No. 561 & 562 Asokoro District, Abuja is first in time and was never revoked by the 1st Defendant.
- c. Declaration that the Claimant's Title over Plots No. 561 & 562 Asokoro District, Abuja, is valid and subsisting.
- d. Declaration that the purported title of the 2nd Defendant over Plots No. 561 & 562 Asokoro District, Abuja is null and void.
- e. Declaration that the payment of the sum of Seven Thousand, Seven Hundred and one Naira, Seven Kobo (N7,701.07) being the total assessed Rent, Fees, Premium, Survey Fees, Development Levy, etcetera for the issuance of Certificate of Occupancy is valid and subsisting and represents full and final payment by the Claimant for issuance of Certificate of Occupancy over Plots No. 561 & 562 Asokoro District, Abuja.
- f. An order setting aside the purported title of the 2nd Defendant over Plots No. 561 & 562 Asokoro District, Abuja
- g. An order directing the 1st Defendant to issue the Claimant with the Certificate of Occupancy over Plots No. 561 & 562 Asokoro District, Abuja.
- h. An order of perpetual injunction restraining the Defendants whether by themselves, agents or privies from unlawfully revoking and or expropriating or in any manner howsoever interfering with the

rights, title of the Claimant or possession of the Claimant over Plots No. 561 & 562 Asokoro District, Abuja.

- i. An award of the sum of Ten Million Naira (N10,000,000.00) as general damages against the Defendant.

The Claimant's evidence in support of its case comprised the two Witness Statements on Oath of its sole witness and the documents tendered without objection and admitted in evidence. The Claimant's witness testified that the Claimant applied and paid for allocation of land in the Federal Capital Territory, Abuja, and the said Application was acknowledged by the 1st Defendant. The Certified True Copy of the Revenue Collectors receipt for land application form and processing fee dated 18th of February 1987 was admitted in evidence and marked Exhibit AB1. The Certified True Copy of the Acknowledgment of the land application dated 18th of February 1987 was tendered and admitted in evidence as Exhibit AB2.

The Claimant's witness stated that the Claimant's application for land was successful and that on the 18th day of September 1987 the 1st Defendant issued the Claimant with Offer of Terms of Grant/Conveyance of Approval in respect of the said Plots No. 561 & 562 Asokoro District, Abuja. The Certified True Copy of Offer of Terms of Grant/Conveyance of Approval of grant of right of occupancy was tendered without objection and admitted in evidence as Exhibit AB3.

The Claimant's witness also testified that the Claimant accepted the said Offer of Terms/ Conveyance of Approval. The Certified True Copy of the Claimant's Acceptance of the Offer of Terms of Grant/Conveyance of Approval of grant of Right of Occupancy over the said plots of land dated

the 25th day of September 1987 was tendered without objection and admitted in evidence as Exhibit AB4.

The Claimant's witness further testified that pursuant to the said grant of the plot of land to the Claimant, the 1st Defendant issued the Claimant with a Bill dated the 17th day of February 1988 for payment of the sum of Seven Thousand, Seven Hundred and one Naira, Seven Kobo (N7,701.07) for the Right of Occupancy Rents and Fees including the Premium for Certificate of Occupancy, Survey Fees and Development Levy, etcetera for the said plot of land. The Certified True Copy of the said bill was tendered by the Claimant without objection and admitted in evidence as Exhibit AB5.

It was also testified by the Claimant's witness that the Claimant paid the sum of the sum of Seven Thousand, Seven Hundred and one Naira, Seven Kobo (N7,701.07) demanded by the 1st Defendant and was issued a Revenue Collector's receipt dated the 8th day of April 1988, certified true copy of which was tendered in evidence without objection and admitted in evidence as Exhibit AB6.

The Claimant's witness again testified that the Claimant duly complied with the 1st Defendant's recertification policy by submitting the requisite documents for verification and recertification and that it paid the processing fee for the same. A Certified True Copy of the recertification form was admitted in evidence as Exhibit AB7 while a Certified True Copy of the bank teller for payment of the re-certification fee was admitted in evidence as Exhibit AB8.

The testimony of the Claimant's witness is also to the effect that over the years the 1st Defendant has not completed processing the Claimant's application for recertification of the said plots of land and has indeed

been holding out that the file for the said plot of land was missing which is a cover for the intention to illegally take the said plots. The Claimant's witness further testified that when the Claimant discovered that the 2nd Defendant was about to acquire interest over Plots No. 561/562 within Asokoro District Abuja, the claimant approached the 2nd Defendant and warned the 2nd Defendant about the primacy of Claimant's title being first in time and that the Claimant's title was never revoked, the Claimant also warned the 2nd Defendant that any purported acquisition of interest in the property would amount to a nullity, despite which the 2nd Defendant later purportedly acquired interest in the said property.

On the other hand the 1st defendant filed a memorandum of appearance, statement of defence and one witness statement on Oath dated 14th October, 2020 and filed same date.

After the close of the claimant case the 1st defendant opened its defence by leading one witness DW1 and the DW1 adopted her witness statement on Oath, where she testified that the claimant did not apply for allocation of land in the FCT Abuja and was not allocated Plots No. 561 & 562 Asokoro District, Abuja by the 1st defendant. The witness further testified that the 1st defendant did not issue any bills for payment to the claimant and that the claimant did not make any payments to the 1st defendant and did not file any forms for recertification nor make any payment for the same. The 1st defendant closed its case with one witness.

The 2nd Defendant filed a memorandum of appearance, statement of defence and one witness statement on Oath dated 19th October, 2020 and filed same date.

After the 1st Defendant closed her defence, the 2nd Defendant opened her defence by leading one witness who adopted her witness Statement on Oath. The 2nd Defendant witness testified that after the meetings in which the Claimant warned the 2nd Defendant of the primacy of the Claimant's title, the 2nd Defendant collected copies of the title documents of the Claimant and then reached out to the 1st Defendant, and there being no concrete answer from the 1st Defendant, the 2nd Defendant went ahead to acquire the Plots 561 & 562 within Asokoro District, Abuja, that it was much after the acquisition that the 1st Defendant invited the 2nd Defendant and promised to allocate to the 2nd Defendant alternative Plots in place of Plots 561 & 562 within Asokoro District, Abuja.

The 2nd Defendant's witness further testified that the 1st Defendant has failed and neglected to allocate the alternate Plots to the 2nd Defendant. The 2nd Defendant closed her case with one witness.

The Claimant's counsel at the close of the case, filed and adopted his final written address in which counsel formulated two issues for determination Viz:

1. Whether having regard to the state of pleadings and the evidence led by the parties, the Claimant has proved its case on the balance of probabilities so as to be entitled to the reliefs sought in its Writ of Summons and Statement of Claim?
2. Whether the 1st Defendant has proved beyond reasonable doubt that the documents tendered by the Claimant are forgeries?

On issue whether having regard to the state of pleadings and the evidence led by the parties, the Claimant has proved its case on

the balance of probabilities so as to be entitled to the reliefs sought in its Writ of Summons and Statement of Claim?

Counsel submitted that the standard of proof in land matters is the same as that for other civil cases. And referred the Court to the cases of *Owuana v. Oparaji* [2002] 5 NWLR (Pt. 760) 353; also reported in (2002) LPELR - 3702 (SC) at pp. 13-14, where the Supreme Court held:

“It must be recognised, however, that a claim for a declaration of title is none other than a civil case and by the general principle governing civil matters, proof is upon the balance of probabilities or preponderance of evidence... What has been firmly established as the law is that the plaintiff, in order to succeed in his claim for a declaration of title, must bring forward cogent evidence which must tilt the imaginary scale in his favour. He is not expected to prove his case beyond reasonable doubt as in criminal cases, nor is there a midway in the standard of proof between criminal and civil in such a claim. All that is required is that the evidence produced by the plaintiff to support title must be such that can support a declaratory relief and which, in the end, when placed on the scale of justice, will tilt it in his favour”.

Counsel also cited the cases of *Kaiyaoja v. Egunla* (1974)

12 SC 55 at 60- 61 (1974) NSCC (Vol.9) 606 at 609. *Adeleke v. Iyanda* [2001] 13 NWLR (Part 729) 1; (2001) LPELR - 114 (SC), pp.25-26.

To buttress this argument Counsel further submitted that in order to prove that the Claimant was granted a statutory right of occupancy by the Defendant, the Claimant pleaded paragraphs 1 to 4 of the Statement of Claim and adopted paragraphs 3 to 6 of its Witness Statement on

Oath. The Claimant also tendered without objection Exhibits AB1, AB2, AB3 and AB4.

In *Idundu v. Okunmagba* (1976) 9-10 SC 227 the Supreme Court set down five ways of proving title to land, namely:

- i. By traditional evidence;
- ii. By documents of title;
- iii. By various acts of ownership and possession numerous and positive to warrant inference of ownership;
- iv. By acts of long possession and enjoyment; and
- v. By proof of possession of adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

The law is that proof by one method suffices. And cited the Cases of *Uka v. Irole* [2002] 7 SCNJ 137 at 163, and *Balogun v. Akanji* [1988] 1 NWLR (Part 70) 301.

More so counsel submitted that the Claimant has traced its root of title to a grant from the Honourable Minister of the FCT. The Claimant has shown that it applied for allocation of land in the FCT and paid the application fee (Exhibits AB1 and AB2).

The Claimant has also shown that its Application for land was successful and that the Defendant granted the Application by issuing the Claimant with the Offer of Terms of Grant/Conveyance of Approval with Ref No: [FCDA/EST/87/MISC. 4827] dated 18th September 1987 (Exhibit AB3); and that the Claimant accepted the Offer of Terms of Grant/Conveyance of Approval on the 25th day of September 1987 (Exhibit AB4). The Claimant's evidence also showed that it complied with the Defendant's recertification policy (Exhibits AB7 and AB8).

Counsel submitted that in *Adun v. Obayuwana* [2016] All FWLR (Part 819) 1135 at 1157 it was held that when a document is duly pleaded and admitted in evidence the document become the best evidence of its contents and therefore speaks for itself. He also refer this Honourable Court to *B. Stabilini & Co. Ltd v. Obasi* [1997] 9 NWLR (Pt. 520) 293; and *Skye Bank Plc v. Akinpelu* [2010] All FWLR (pt. 526) 460. *SANKEY v. ONAFIFEKE* [2014] All FWLR (Part 749) 1034; (2013) LPELR - 21997 (CA), pp. 24-25.

In *EBEM v. NSEYEN* (20160 LPELR - 40122 (CA), p. 22, the Court of Appeal restated that position of the law that documentary evidence (exhibits) are the hanger on which oral evidence would be hung for assessment or evaluation and cannot be contradicted by such oral evidence. also refer this Court to the case *FCDA V. KUDA ENG. & CONST. CO. LTD* (2014) LPELR - 22985 (CA), pp. 61-62, where it was held:

"Oral evidence may not be employed by any of the parties to contradict, alter, add to or vary the contents of Exhibits "B", "C" and "P" which constitutes the foundation of the legal relationship between the parties.

Counsel submitted that Exhibits AB1 - AB8 have the effect ascribed to them by their contents and cannot be contradicted by the 1st Defendant's bare denials. The said documents show that the Claimant acquired a right of occupancy over the plot of land in issue by virtue of its acceptance of the offer of terms and grant/ conveyance of terms of grant made to it by the Defendant and relied on the contents of Exhibit AB3 as well as Sections 5 (1) (a) and 52 of the Land Use Act. He further relied on *Dzungwe v. Gbishe* [1985] 2 NWLR (Part 8) 528; *Adebiyi v.*

Williams [1989] 1 NWLR (Part 99) 611; Ofoeze v. Ogugua [1996] 6 NWLR (Part 455) 451; and Olohunde v. Adeyoju [2000] 10 NWLR (Part 676) 562.

Counsel urged the Court to hold that the Claimant has proved that it is the holder of statutory right of occupancy over the said plot of land and that her title is valid and subsisting. And urged the Court to grant all the injunctive reliefs sought by the claimant and award general damages to the Claimant.

On Issue 2: Whether the 1st Defendant has proved beyond reasonable doubt that the documents tendered by the Claimant are forgeries?

Section 135 of the Evidence Act, 2011, provides:

“(1) If the Commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt.”

(2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.”

While Section 140 of the Evidence Act provides:

“When a fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

In Jules v. Ajani (1980) 5-7 SC 96; (1980) LPELR - 3123 (SC), pp. 19-20, it was held:

"The point is that the Appellant having raised the issue of Exhibit A being a forgery the burden was on him to prove that assertion.”

The 1st Defendant disowned all the documents tendered by the Claimant and alleged that the said documents were forgeries. In *Adelaja v. Fanoki* [1990] 2 NWLR (Part 131)137 at 153, Karibi-Whyte, J.S.C., said:

“I shall now refer to the denial of the second respondent that the Alade family sold the disputed land or any land to Victor Oludemi, which is the crux of their defence to the claim...The contention tantamounts to a denial of the existence of Exhibit “A”. In my opinion where the complaint is that no such document exists, the proof of the existence of the document will be conclusive as to its validity, except where the person challenging the existence of the document is able to show further that the document so proved to exist is a forgery. It is in such a circumstance well settled that the onus of such proof rests on who alleges - see S.137 (2) Evidence Act. In such a case since crime is alleged, the burden is on him who alleges to prove it beyond reasonable doubt.”

Also cited the cases of *Okunrinjeje v. Ajikobi* (2018) LPELR-44850 (CA), pp.72- 76. In *A.P.C. v. P.D.P.* [2015] 15 NWLR (Part 1481) 1 at 66 – 67. More so counsel submitted that the 1st Defendant did not make any attempt to clear the doubt raised by the presumption of innocence. The 1st Defendant did not demonstrate the alleged forgery in the open court during the trial. The Court was not afforded the benefit of seeing what title documents that emanate from the 1st Defendant actually look like, and the difference between them and those tendered in evidence by the Claimant. The 1st Defendant had a duty to prove the allegation of forgery beyond reasonable doubt. It is respectfully submitted that this grave omission on the part of the 1st Defendant is fatal to its allegation of forgery. Counsel refer the Court to *Nigerguards Ltd v. Usoroh* [2010] 12

NWLR (Part 1208) 207 at 221 and 224 *The State v. Azeez* [2008] All FWLR (Pt. 424) 1423 at 1455; *Egesimt a v. Onuzurike* [2003] FWLR (pt. 128) 1410; and *Alake v. State* [1992] 11/12 SCNJ (Pt II) 177 at 184.

Counsel urged the Court to disregard the oral testimony that the name of the Claimant is not in the 1st Defendant's records. This is because the oral testimony is inadmissible secondary evidence of a public document. Again, this Honourable Court was denied the opportunity of examining the said records to ascertain the veracity of the conclusion reached by DW1 that the documents tendered by the Claimant are forgeries based on the 1st Defendant's records. By withholding the records from the Court, the 1st Defendant wants this Court to speculate as to the contents of the records on which the allegation of forgery is predicated. Counsel urged the Court to refuse the 1st Defendant's invitation to speculate on such a crucial issue as allegation of forgery, and that the 1st Defendant did not proffer any reliable evidence to substantiate the allegations of forgery. In *Famuroti v. Agbeke* (1991) 6 SC 1 at 11, it was held that the mere ipse dixit of a witness (as in the instant case) will not suffice to prove forgery beyond reasonable doubt. We rely on section 135 (1) and (2) of the Evidence Act. We also rely on *Torno Internazionale Nig. Ltd v. FSB Ltd Bank Plc* (2013) LPELR - 22616 (CA), p.39.

In conclusion counsel urged the Court to hold that on the balance of probabilities or preponderance of evidence, the Claimant has proved that it has a right of occupancy over the plots of land in issue; and that the said right of occupancy is still valid and subsisting. And also hold that the 1st Defendant failed to prove its allegation of forgery beyond reasonable doubt.

The 1st Defendant also filed and adopted its final written address. In the said final written address the 1st defendant formulated two (2) issues for determination viz:

- A. Whether land can be allocated to any person in the Federal Capital Territory without the due approval and authorization of the Defendant.
- B. Whether the Claimant has proved her case to entitle it to the reliefs claimed.

It is settled law that the ownership of all land in the entire area comprising the Federal Capital Territory (which includes Asokoro District) is vested in the Federal Government of Nigeria with mandate given the 1st Defendant by the President of the Federal Republic of Nigeria to administer same for the development of the Capital City.

Section 1(3) of the Federal Capital Territory Act Cap 503 LFN 2004.

He also referred the Court to Section 2(1) of the FCT Act and Section 51(2) of the Land Use Act. Also Section 297(2) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended).

Cited the case of ONA Vs. ATANDA (2000) 5 NWLR Pt 656 Pg 244, particularly per Akintan J.C.A at page 268 para H, per Mustapha J.C.A at page 270 para G, per Bulkachuwa J.C.A at pages 271-272 para D, all to the effect that:

- a) All lands in the Federal Capital Territory are vested absolute!" in the Government of the Federation.
- b) Any occupier of land in the Federal Capital Territory, who is not in occupation of the land by virtue of a grant issued by the Federal Government through the Minister of FCT, is in illegal occupation of same.

cited *ONA Vs ATANDA (supra) @ 275 (C-D)* and *GRACE MADU VS DR BETRAM MADU (2008) LPELR - 1806 (SC)* where the court held that it is only the Minister of the Federal Capital Territory that can grant Statutory Right of Occupancy over lands in Federal Capital Territory, by virtue of Section 18 of the FCT Act, therefore that no land can be statutorily allocated to any person in the Federal Capital Territory without the due approval and authorization of the Minister of the Federal Capital Territory. And urged the court to so hold.

Having referred the court to the paragraphs of the 1st Defendant's Statement of Defence and also the Witness Statement on Oath of Prisca Okpolor who testified as DW1 in this case and also her oral testimony before the court, he therefore urged the Court to hold that there was no due approval and authorization by the 1st Defendant for Plots No. 561 & 562 Asokoro District, Abuja to be allocated to the Claimant.

Counsel further submitted that the 1st Defendant also stated categorically in paragraph 12 of its Statement of Defence and paragraph 13 of the Witness Statement on Oath of DW1 that the Claimant did not at any point submit originals of the documents it claimed to have submitted to the 1st Defendant's agents in its Statement of Claim, as it is not the practice of the agents of the 1st Defendant to collect originals of title documents or other land documents from allottees during recertification. The 1st Defendant also stated that its agents did not issue any acknowledgement letter to the Claimant as proof of evidence of the submissions it claims to have done. Counsel then submitted that the above piece of evidence has not been controverted in anyway by the Claimant, whether in its pleadings nor under cross-examination, and as such the position of the Law is that an unchallenged or uncontroverted

evidence will be deemed admitted and the court can rely on same, see Okike vs. L.P.D.C (2005) 15 NWLR (pt. 949) 7471 S.C.

Counsel submitted that the mere fact that the Claimant tendered Certified True Copies of the said purported documents and same were admitted in evidence, does not automatically imply that the court should rely on the said certified documents in its judgment. Counsel urged the court not to attach any weight whatsoever to the said Exhibits AB1 - AB8, and to discountenance and expunge same from its records. And hold that the Exhibits AB1 - AB8 are of no moment and discountenance same and dismiss relief 4 of the Claimant.

ISSUE TWO:

Whether the Claimant has proved her case to entitle it to the reliefs claimed.

In arguing this issue, counsel adopted its earlier submissions in respect of its first issue for determination and urged the court to hold that the Claimant in this case has not discharged the burden of proof placed on her in this matter to warrant the granting of her prayers.

In addition counsel submitted that it is a settled principle of law that he who asserts must prove. See sections 131- 133 OF THE EVIDENCE ACT, 2011. In this case, it is the Claimant that has the legal burden of establishing her claim. The "onus probandi" rests on the Claimant as its the party that will fail if no evidence is led at all, this is the evidential burden of proof, and the doctrine of burden of proof is encapsulated in the latin maxim "ei qui affirmat non ei qui, negatincumbit probation (that is "the burden of proof lies on the one who alleges and not on him who denies"). See ARASE Vs A LASE (1981) 5 SC 33 @ 37, ELEMO Vs OMOLADE (1968] NML 259, OSAWARU Vs EZEIRUKA (1978) 6 - 7 SC,

135 C 145 UMEOJIAKO Vs EZENAMUO (1990) 1 SCNJ 181 © 189 and UGBO Vs ABURXME (1993) 2 NWLR pt 273, 101.. SEE also SECTION 133(1) OF THE EVIDENCE ACT, 2011.

It is also trite law that cases in land matters are won on their merit i.e. strength of the Claimant's case and not weakness or absence of Defence. Cited OLUKUNLADE Vs SAMUEL (supra), and IDUNDUN Vs OKUMAGBA (supra), that the duty is on the party seeking such a relief to adduce evidence that he is entitled to that relief: cited the case of ADEMOLA Vs SEVEN UP BOTTLING CO. PLC (2004) 8NWLR pt 874, 134 @ 148-149 (G-D).

Conclusively counsel submitted that the Claimant having failed to adduce credible evidence in support of its claims is not entitled to the declaratory reliefs being sought, and urged the court to so hold and dismiss reliefs 1, 2 and 3 of the Claimant and dismiss the claimant's claims in entirety as same is lacking in merit.

The 2nd Defendant did not file a Final Written Address.

Having stated the facts of the case above and all the argument canvassed by both parties, and also x-rayed all the documents tendered and admitted in evidence the main crux of the case is;

1. Whether the claimant has adduced credible, cogent and sufficient evidence to establish that the defendant allocated Plots No. 561 & 562 Asokoro District, Abuja to it and
2. Whether the claimant is entitled to the reliefs sought against the defendants.

Now I will proceed with my consideration of the issue formulated, it is trite law that in a claim for a declaration of title to land the standard of

proof required of the Plaintiff/Claimant is on a balance of probabilities. See the cases of GOBA Vs. ALGONI (2020) LPELR 4 9489. ADEREMI Vs. ADERIBE (1960) NMCR 400 at 402 and PUAL NWADIKE & OR Vs. CLETUS IBEKWE & ORS (1987) NWLR (Pt.67) pg 718.

In the light of the foregoing, the pertinent question is whether the claimant has established his claim. In order to answer this question recourse has to be made to the available evidence adduced by the claimant before the court.

The Claimant's evidence in support of its case comprised the two Witness Statements on Oath of its sole witness and the documents tendered without objection and admitted in evidence by this Honourable Court. The Claimant's witness testified that the Claimant applied and paid for allocation of land in the Federal Capital Territory, Abuja, and the said Application was acknowledged by the 1st Defendant. The Certified True Copy of the Revenue Collectors receipt for land application form and processing fee dated 18th of February 1987 was admitted in evidence and marked Exhibit AB1. The Certified True Copy of the Acknowledgment of the land application dated 18th of February 1987 was tendered and admitted in evidence as Exhibit AB2.

The Claimant's witness stated that the Claimant's application for land was successful and that on the 18th day of September 1987 the 1st Defendant issued the Claimant with Offer of Terms of Grant/Conveyance of Approval in respect of the said Plots No. 561 & 562 Asokoro District, Abuja. The Certified True Copy of Offer of Terms of Grant/Conveyance of Approval of grant of right of occupancy was tendered without objection and admitted in evidence as Exhibit AB3.

The Claimant's witness also testified that the Claimant accepted the said Offer of Terms/Conveyance of Approval. The Certified True Copy of the Claimant's Acceptance of the Offer of Terms of Grant/Conveyance of Approval of grant of Right of Occupancy over the said plot of land dated the 18th day of September 1987 was tendered without objection and admitted in evidence as Exhibit AB4.

The Claimant's witness further testified that pursuant to the said grant of the plot of land to the Claimant, the 1st Defendant issued the Claimant with a Bill dated the 17th day of February 1988 for payment of the sum of Seven Thousand, Seven Hundred and one Naira, Seven Kobo (N7,701.07) for the Right of Occupancy Rents and Fees including the Premium for Certificate of Occupancy, Survey Fees and Development Levy, etcetera for the said plot of land. The Certified True Copy of the said bill was tendered by the Claimant without objection and admitted in evidence as Exhibit AB5.

It was also testified by the Claimant's witness that the Claimant paid the sum of the sum of Seven Thousand, Seven Hundred and one Naira, Seven Kobo (N7,701.07) demanded by the 1st Defendant and was issued a Revenue Collector's receipt dated the 8th day of April 1988, certified true copy of which was tendered in evidence without objection and admitted in evidence as Exhibit AB6.

The Claimant's witness again testified that the Claimant duly complied with the 1st Defendant's recertification policy by submitting the requisite documents for verification and recertification and that it paid the processing fee for the same. A Certified True Copy of the recertification form was admitted in evidence as Exhibit AB7 while a Certified True

Copy of the bank teller for payment of the re-certification fee was admitted in evidence as Exhibit AB8.

The testimony of the Claimant's witness is also to the effect that over the years the 1st Defendant has not completed processing the Claimant's application for recertification of the said plot of land and has indeed been holding out that the file for the said plot of land was missing which is a cover for the intention to illegally take the said plots of land from the Claimant.

As rightly stated by the learned claimant counsel, in order to prove that the claimant was granted a statutory right of occupancy by the 1st defendant, the claimant pleaded in paragraphs 1 – 4 of the statement claim and adopted paragraph 3 – 6 of its witness statement on oath and also tendered without objection exhibit AB1 Revenue collection Receipt for land form and processing fee; AB2 land application forms (acknowledgment receipt) AB3 offer of Terms of grant/conveyance of approval and AB4 acceptance of offer of grant of right of occupancy with the Federal Capital Territory Abuja, all tendered without objection by the 1st defendant who was accorded with all the right to object to but did not. And it is a trite law that the rule still remains inviolate that where objection has not been raised by the opposing party to the reception in evidence of a document or other evidence, the document will be admitted in evidence and the opposing party cannot after words be heard to complain about its admission see the case of ALADE Vs. OLUKINDE (1978) 2 SC pg 183 at 188-9 and ETIMES & ORS Vs. EKPE & ORS (1983) 14 NSCC pg 56-96.

The learned counsel for the 1st defendant argued that the documents on which the claimant founded the validity of its title to the said plot did not

emanate from the 1st defendant that is the AB1, AB2, AB3 and AB4 and cannot confer a valid title over the said plot. The 1st defendant in paragraph 4:8.0 in line 7 the 1st defendant states that **“The curious question is that since the claimant is not in the record of the defendant as such unknown to the defendant, how else could the claimant have gotten its purported title if not from dubious means.”**

Having said all above Let me pause here and first state the position of the law on burden of proof in civil cases.

Section 133[1] &c [2] of the Evidence Act, 2011 provide thus:

1) In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

2) If the party referred to in subsection [II of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.

See the cases of GOBA VS ALGONI (supra).UNION BANK VS RAVIH ABDUL& CO (2018) LPELR-46333 (SC). AGU VS NNAJI (2003) FWLR PT.139 PG1537, ONWUAMA VS EZEOKOLI (2002)5 NWLR PT.760 PG 353.

From the above provisions and cases cited above, it is clear that in civil cases, the claimant has the first or initial burden to prove the existence or non-existence of a fact relied upon in support of his [or its] claims. However, the burden of proof in civil cases is not static; it shifts from

one party to the other depending on the state of the pleadings. In *Ofaiva v. Olaiva* (2002) 8 NWLR Pt. 7821 pg 652, it was held that the burden of proof may shift depending on how the scale of evidence preponderates. See also *Ebong v. Ikpe* (2002) 17 NWIR Pt. 7971 pg 504.

In the instant case, the claimant has tendered documents especially Exhibits AB1, AB2, AB3, AB4 & to prove that the defendant allocated the said Plot to it. For clarity, Exhibit AB1 Revenue collection Receipt for land form and processing fee; AB2 land application forms (acknowledgment receipt) AB3 offer of Terms of grant/conveyance of approval and AB4 acceptance of officer of grant of right of occupancy with the Federal Capital Territory Abuja, AB5 Right of Occupancy Rent.

The 2nd Defendant seems to lend credence to the documents of the Claimant since she testified that she collected copies of the Claimant's documents and approached the 1st Defendant who did nothing to challenge the contents or their veracity by offering no concrete answer to the 2nd Defendant.

Thus, by virtue of section 113[2] of the Evidence Act, the burden has shifted to the 1st defendant to adduce evidence to disprove the above facts.

In the statement of defence, especially paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14, the 1st defendant pleaded facts to impugn the credibility or genuineness of the documents tendered by the claimant and to disprove the claimant's evidence that the said Plot was granted to it by the 1st defendant.

The 1st defendant's averment simply that the documents relied on by the claimant are forged and/or fake.

"From the totality of the evidence led at the trial, the defendant has been able to show that this is a pure case of forgery as the title document produced by the Claimant did not emanate from the 1st Defendant. The 1st Defendant has not proved this beyond reasonable doubt.

At this juncture, let me refer to two judicial authorities to buttress my view that in the light of the documents tendered by the claimant and the 1st defendant's allegation of forgery, the burden has shifted to the 1st defendant to adduce evidence to prove that the documents relied upon by the claimant are forged or are not genuine. This is crucial in view of the arguments of the defence counsel in paragraphs 5.4.0, 5.5.0 & 5.6.0 of the 1st defendant's final address that the burden of proof on the claimant never shifts."

In the case of *Aderounmu & Anor. v. Olowu* (2000) LPELR-141 (SC)I @ 12, B-E, His Lordship, Ayoola, JSC held:

"... where in a claim for declaration of title to land the defendant alleges that the document relied on by the plaintiff for the title he seeks is a forgery, the burden is on the defendant who so alleges to prove that fact. Notwithstanding the general onus which rests on the plaintiff to prove his entitlement to the declaration he claims, the evidential burden of proving certain facts occasionally shifts to the defendant. Such is that burden of proving the allegation that the document which the plaintiff relies on is a forgery."

Also, in the case of *Okeke & Anor. v. Eze* (2013) LPELR-22455 (CA) the plaintiff/respondent claimed ownership of the parcel of land in dispute but the 1st defendant informed him that Exhibits ME2 & ME3 [which he relied upon] were not genuine as the signature on the conveyance was

fraudulently procured. One of the issues before the Court of Appeal was on the burden of proof. His Lordship, Amina Augie, JCA [now JSC] held pages 35-36:

"The Appellants contend that since the 1st Defendant denied issuing or signing the Exhibits ME2 and ME3, the burden shifted to the Respondent to prove that the said Exhibits are not forged. But the Respondent argued that the onus is on the Appellant and referred us to *Tewogbade Obadina* [supra]... The law is clear and this Court has stated times without number that where forgery of a document is alleged, there is no initial burden on the Plaintiff to prove due execution but the primary burden is on the Defendant who alleged forgery to prove the forgery alleged by him". There we have it in addition to the trite law that he who asserts must prove, where forgery of document is in issue, the primary burden is on the Defendant who alleges forgery which is a crime to prove the forgery alleged by him ..."

In the instant case, the defendant has the burden to prove that the documents relied upon by the claimant are not genuine or are forged. At this juncture I will now consider the averments or allegations raised in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14 of the statement of defence in order to determine whether the 1st defendant has proved that the said documents are not genuine or are forged.

5. The 1st Defendant states further to the above paragraph that it did not at any time allocate Plots No. 561 & 562 Asokoro District, Abuja to the Claimant on 18/9/1987 or on any other date. The 1st Defendant nor its agents did not at any point convey the purported Offer of Conveyance of Statutory Right of Occupancy dated 18/9/1987 to the Claimant. That the claimant did not apply for allocation of land.

Exhibit AB1 is the Federal Capital Development Authority [FCDA] revenue receipt dated 18/0/1987 issued to the claimant. The receipt shows that claimant paid N300 for land application form. The 1st defendant did not adduce any evidence to show that the receipt is not that of FCDA or that the receipt is different from the revenue receipts issued by FCDA as at 18/2/1987. Also, the 1st defendant did not allege that the signature on Exhibit AB1 is not the signature of the staff of FCDA assigned to issue such receipts for land application forms as at 18/2/1987.

Exhibit AB2 dated 28/8/1992 issued by Ministry of FCT to the claimant is an "acknowledgement of receipt of your duly completed application forms" together with the documents listed in the letter. Since, by this letter, the claimant submitted the completed application form to the 1st defendant, the claimant is no longer expected to be with the form. The defendant did not allege that the signature on Exhibit AB2 is not the signature of the staff of the Ministry of FCT assigned to sign such letters as at 18/2/1987. The 1st defendant did not produce similar letters issued on 18/2/1987 to show that the signature on those letters. Also exhibit AB3 is an offer of terms of Grant\Conveyance of Approval dated 18/9/1987 and exhibit AB4 is a letter of acceptance of the Offer of Grant of Right of Occupancy, as stated that there are records of land applications in their system from 1980s to date and in particular, there are records of land applications made in 1987. The DW1 did not produce that record to support her evidence that there is no record of application in the claimant's name with File No. MISC.4827

In the circumstances, the Court cannot rely on a dogmatic and unproven statement of DW1 to reach a decision that the claimant did not apply for allocation of land. The Court holds that from Exhibits AB 1, 2, 3 & 4 the

claimant applied for allocation of land on 18/2/1987 also got approval dated 18/09/1987.

6. The 1st Defendant states that none of its agencies issued any file number known as File No. [FCDA/EST/87/MISC. 4827] and as such the 1st Defendant never granted title over Plots No. 561 & 562 Asokoro District, Abuja or any plot whatsoever to the Claimant.

The DW1 did not produce that record to support her evidence that there is no record of application in the claimant's name with File No. MISC. 4827.

7. The 1st Defendant states that they did not issue the purported revenue collector receipt for land application form dated 18/02/1987 and Land application form acknowledgment purportedly issued by the Defendant or its agents.

8. In specific response to paragraph 5 of the Statement of Claim, the 1st Defendant states that the Claimant had no title/Offer to purport to accept on 25/09/1987 as it has nothing before the court to show that it was validly granted a Statutory Right of Occupancy over the said Plots No. 561 & 562 Asokoro District, Abuja by the 1st Defendant. The Claimant is further put to the strictest proof of the averment thereof.

On the two averments of the 1st defendant statement of defence I will adopt my earlier findings and answer to paragraph 5 and 6 above.

9. In specific response to paragraph 6 of the Statement of Claim, the 1st Defendant states that its agents did not at any point in time issue any Bill for Right of Occupancy Rent and Fees including Premium for Certificate of Occupancy, Survey Fees and Development Levy fees dated 17/02 /1988 to the Claimant, whether in respect of the Plots No. 561 & 562 Asokoro District, Abuja or any plot whatsoever.

The claimant tendered Exhibit AB5 Right of Occupancy Rent duly signed by one M .I. Sule chief Deeds REG Lands. On this averment the failure of the 1st defendant to call M. I. Sule who signed Exhibit AB5 - as a witness to accept or deny his signature on the document is fatal to the allegation that Exhibit AB5 is fake or forged or that it did not emanate from the defendant. However, the 1st defendant did not tender any of these documents. I will invoke and apply the presumption in section 167[d] of the Evidence Act, which provides that the Court may presume that: the evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

See the case of Gambari & A. v. Saraki & Ors. (2009) LPELR-4182 1 CA 1. The documents would have proved that Exhibit AB5 and AB6 emanated from the 1st defendant and that the 1st defendant allocated the said Plot to the claimant. It is necessary to invite the person who's signature is alleged to have been forged. Failure to invite him or her to accept it or deny his or her signature is fatal to the case of the person alleging that the document is forged. In Ibrahim & Anor. v, Dogara & Ors, (2015) LPELR-10892 (CA). it was held that indeed, in proving forgery of signature and certificate, the person whose signature is alleged to have been forged is an indispensable and vital witness and the case is fatal without his evidence. See also the case of Alake v. TheState (1992) 1112 SC177.

10. The 1st Defendant in specific response to paragraph 6 OF the Statement of Claim states that the Claimant did not at any point in time pay the sum of (N7,701.07)Seven Thousand, Seven Hundred and one Naira, Seven Kobo only to the 1st Defendant or its agents as Requisite Rent and Fees, Development Levy, etc for the Preparation and issuance

of Certificate of Occupancy in respect of the subject plot or any plot whatsoever and the 1st defendant never issued any revenue collector receipt dated 8/04/1988 to the claimant in the above stated sum.

The crucial point from the above is that by Exhibits AB6 the case of the claimant is that the 1st defendant issued him a bill via exhibit AB5 and claimant paid the bill and the 1st defendant issued with a receipt dated 8/04/1988.

Therefore, it is not helpful to the 1st defendant to disprove the fact that Exhibits AB5 and AB6 emanated from the 1st defendant by a mere assertion. Oral testimonies would not take the place of documentary evidence.

First of all, the 1st defendant did not adduce evidence for the reasons I have given, I hold that the 1st defendant was not able to disprove that all the document tendered by the claimant were issued by, his office.

11. The 1st Defendant states in response to paragraph 8 of the Statement of Claim that the Claimant did not fill any Recertification form in respect of the subject plot or any plot at all and did not at any point in time pay the sum of N20,000.00 (Twenty Thousand Naira) only or any sum whatsoever to the 1st defendant or its agent as recertification fee. Exhibit AB7 is the claimant's Application for Recertification while Exhibit 8 is the evidence of payment of the sum of N20,000 described as "Processing fees - Recertification". Exhibit AB 8 has stamp of "FCC RECERTIFICATION" with a signature and date acknowledging receipt of the form. The offer of the right of occupancy issued to the claimant [Exhibit 2] also has the stamp of "FCC RECERTIFICATION" with a signature and date acknowledging receipt of the letter of offer.

The 1st defendant did not discredit the stamp and the signature on Exhibits AB 7 & 8. I hold that the 1st defendant was not able to disprove the fact that the claimant submitted its Application for Recertification [Exhibit 7 & 8 together with the Offer of Terms of Grant/Conveyance of Approval to his office.

The case of the claimant is fortified by the fact that all her exhibits are certified true copies of public documents.

See section 102 of the Evidence Act 2011.

Section 146(1) of the Evidence Act 2011 enjoins the court to presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized in that behalf to be genuine, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The claimant tendered the certified true copies and which without any objection by the Defendant were admitted in evidence during the trial. These certified true copies must therefore be accorded the same legal significance and importance as the originals.

See AICE Investment Co. Ltd v. Fidelity Bank (2015) LPELR – 25753 (CA), p.25. Kawu v. Minister, FCT (2016) LPELR – 41142 (CA), pp. 9-11

Having considered the above allegations raised by the defendant, I hold that the 1st defendant failed to prove the allegation that the documents relied upon by the claimant are not genuine or are forged. Therefore, I resolve Issue No. 1 in favour of the claimant and hold that the claimant has adduced credible, cogent and sufficient evidence to establish that

the 1st defendant allocated the said Plots No. 561 & 562 Asokoro District, Abuja to it.

On issue two 2

Whether the claimant is entitled to reliefs against the defendant?

In reliefs I & 2, claimant seeks a declaration that it is the holder of statutory right of occupancy dated 18/09/1987 over the said Plots No. 561 & 562 Asokoro District, Abuja; and that its statutory right of occupancy over the Plot is still valid and subsisting. In the light of the decision of the Court under Issue No. 1, these reliefs have merit and are hereby granted.

In relief 3, the claimant seeks a Declaration that the payment of the sum of (N7,701.07) Seven Thousand, Seven Hundred and one Naira, Seven Kobo only being the total assessed Rent, Fees, Premium, Survey Fees, Development Levy, etcetera for the issuance of Certificate of Occupancy is valid and subsisting and represents full and final payment by the Claimant for issuance of Certificate of Occupancy over Plots No. 561 & 562 Asokoro District, Abuja. In the light of the decision of the Court under Issue No.1, the reliefs granted.

Relief 4, An order directing the 1st Defendant to issue the Claimant with the Certificate of Occupancy over Plots No. 561 & 562 Asokoro District, Abuja is hereby granted.

5.The Defendants whether by themselves, agents or privies are restrained from unlawfully revoking and or expropriating or in any manner howsoever interfering with the rights, title of the Claimant or possession of the Claimant over Plots No. 561 & 562 Asokoro District, Abuja.

6. An award of the sum of Ten Million Naira (N10,000,000.00) as general damages against the Defendants.

In view of the fact that for Relief 6 the claimant did not adduce any credible evidence to prove its claim for general damages. Relief 6 is hereby refused.

Being satisfied that the claimant has proven his case, I enter judgment in favour of the claimant against the defendants as follows:

- a. Declaration that the Claimant is the holder of a Statutory Right of Occupancy dated 18th September 1987, referenced [FCDA/EST/87/MISC. 4827] over Plots No. 561 & 562 Asokoro District, Abuja.
- a. Declaration that the title of the Claimant over Plots No. 561 & 562 Asokoro District, Abuja is first in time and was never revoked by the 1st Defendant.
- b. Declaration that the Claimant's Title over Plots No. 561 & 562 Asokoro District, Abuja, is valid and subsisting.
- c. Declaration that the purported title of the 2nd Defendant over Plots No. 561 & 562 Asokoro District, Abuja is null and void.
- d. Declaration that the payment of the sum of Seven Thousand, Seven Hundred and one Naira, Seven Kobo (N7,701.07) being the total assessed Rent, Fees, Premium, Survey Fees, Development Levy, etcetera for the issuance of Certificate of Occupancy is valid and subsisting and represents full and final payment by the Claimant for issuance of Certificate of Occupancy over Plots No. 561 & 562 Asokoro District, Abuja.
- e. An order setting aside the purported title of the 2nd Defendant over Plots No. 561 & 562 Asokoro District, Abuja

- f. An order directing the 1st Defendant to issue the Claimant with the Certificate of Occupancy over Plots No. 561 & 562 Asokoro District, Abuja.
- g. An order of perpetual injunction restraining the Defendants whether by themselves, agents or privies from unlawfully revoking and or expropriating or in any manner howsoever interfering with the rights, title of the Claimant or possession of the Claimant of Plots No. 561 & 562 Asokoro District, Abuja.

This is the Judgment of the court which I reserved to be delivered today.

APPEARANCE

J.C. Eze Esq. for the claimant.

S.O. Shaibu Esq. holding the brief for

C.J Oyiobi Esq. for the 1st defendant.

D.G Odubitas Esq. holding the brief of

Frank Collins Ogu Esq. for the 2nd defendant.

Sign

Hon. Judge

21/06/2021