

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT ABUJA**  
**ON FRIDAY 15TH OCTOBER 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI**  
**SITTING AT COURT NO. 9, MAITAMA, ABUJA**

**SUIT NO: CV/1292/2020**

**BETWEEN:**

1. ISHAYA ADIYHA ADIWU	}	CLAIMANTS
2. BARR. LILIAN OJINMA		
<i>(Struck out by order of Court of 15/10/2021)</i>		

**AND**

1. THE HON. MINISTER OF FCT	}	DEFENDANTS
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY		
3. ABUJA METROPOLITAN MNGT. COUNCIL		
4. CHIMELIE OKEZIE		

**JUDGMENT**

The *res* of this suit is the parcel of land described as Plot No. 382, Cadastral Zone C02, Gwarinpa District, Abuja, within the jurisdiction of this Court. The 1st Claimant laid claim as rightful allottee of the plot,

relying on documents of title purported to have been issued to him by the authority of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The 4<sup>th</sup> Defendant on the other hand also laid claim to the same plot, contending that the same was vested in his late father, **Hon. (Mr.) Justice Obinnaya Okezie**. He equally relied on documents of title purportedly issued to his late father by the same 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

The Claimants, who claimed to have been in long physical possession of the plot, alleged that the 3<sup>rd</sup> Defendant recently began to take steps to wrest possession of the plot from them and hand over same to a third party. As a result, they instituted the present action, *vide* Writ of Summons and Statement of Claim filed in this Court on 29/11/2018 which was later amended with leave of Court. By the Amended Statement of Claim filed on 20/09/2019, the Claimants claims against the Defendants the reliefs set out as follows:

- 1. A declaration that the 1<sup>st</sup> Claimant is the bona fide allottee of Plot 382, Cadastral Zone C02, Gwarinpa District, Abuja.**
- 2. A declaration of Court that the Claimants, having commenced development on Plot 382, Cadastral zone C02, Gwarimpa District, Abuja, are entitled to be allowed to complete same.**
- 3. An order of Court directing the 3<sup>rd</sup> Defendant upon payment of requisite fees, to process the Claimants' building plan approval.**
- 4. An order of Court nullifying any other allocation of Plot 382, Cadastral Zone C02, Gwarimpa District, Abuja, to the 4<sup>th</sup> Defendant or any other party whatsoever.**
- 5. An order of perpetual injunction restraining the Defendants whether by themselves, their agents, assigns or anybody claiming any right howsoever**

***known through them from entry, further entry, trespassing, marking, demolishing or howsoever dealing or tempering with the Claimants' property situate at Plot 382, Cadastral Zone C02, Gwarimpa District, Abuja.***

- 6. An order of Court mandating the Defendants to pay the Claimants the sum of Five Million Naira (₦5,000,000.00) as general damages.***
- 7. An order compelling the Defendants to pay the costs, disbursements and fees associated with this suit***

In defence to the suit, the 1<sup>st</sup> – 3<sup>rd</sup> Defendants filed a joint Statement of Defence on 04/02/19, denying all the averments of the Claimants in their Statement of Claim. Principally, the 1<sup>st</sup> – 3<sup>rd</sup> Defendants denied that the 1<sup>st</sup> Defendant allocated the plot in dispute to the Claimants; and that they did not issue or authorize the

issuance of any of the documents relied upon by the Claimants as evidence of title to the plot in dispute.

On his part, the 4<sup>th</sup> Defendant filed a Statement of Defence on 19/10/2018, to which he subjoined a Counter- Claim. He claimed to be the eldest son of the late **Hon. (Mr.) Justice Obinnaya Okezie** whose estate devolved to his family as represented by him. He claimed that the plot was allocated to his late father, **Hon. (Mr.) Justice Obinnaya Okezie**, and that they were aware of the trespassing on the land but allowed it, pending when a building permit is obtained. The 4<sup>th</sup> Defendant thereby Counter-claimed against the Claimants as follows:

***1. An order dismissing the claims of the Claimant in Suit No. FCT/HC/CV/398/18.***

***2. An order declaring the grant of a Certificate of Occupancy, Right of Occupancy and other title documents by the 1<sup>st</sup> Defendant to Hon. Justice***

***Obinnaya Okezie pertaining to Plot 382 Gwarimpa District, FCT as lawful, valid, subsisting.***

***3.An order declaring the Claimant as a trespasser in Plot 382 Gwarimpa District, FCT.***

***4.An order on the Claimant to abate the trespass forthwith and to pay the sum of ₦10m as damages.***

At the plenary trial, the 2<sup>nd</sup> Claimant testified for the Claimants. She adopted her *Statements on Oath* and tendered nineteen (19) sets documents in evidence as exhibits.

The 1<sup>st</sup> – 3<sup>rd</sup> Defendants elected not to lead evidence in support of their Joint Statement of Defence, even though their learned counsel cross-examined the 2<sup>nd</sup> Claimant.

For the 4<sup>th</sup> Defendant, one **Robert Oleikibe** testified. He claimed to be Solicitor who attended to the 4<sup>th</sup> Defendant's affairs with respect to the plot in dispute.

He adopted his *Statement on Oath* and tendered three (3) sets of documents in defence and to support the *Counter-Claim*.

Upon conclusion of plenary hearing, parties filed and exchanged their final addresses in the manner prescribed by the **Rules** of this Court.

Learned counsel for the 1<sup>st</sup> – 3<sup>rd</sup> Defendants, **F. U. Ibanga Esq.**, formulated a sole issue in the written address filed on behalf of the 1<sup>st</sup> – 3<sup>rd</sup> Defendants on 17/12/2020. The sole issue is:

***Whether the Claimants have proven their claims on a preponderance of evidence to be entitled to claims sought.***

The 4<sup>th</sup> Defendant formulated three issues in the final written address filed on 30/11/2020, by his learned counsel, **Valentine Offia, Esq.** The issues are:

***1. Which of the competing titles to Plot 382, Gwarimpa District, FCT was granted first?***

**2. Do the Claimants have the legal capacity to ask for the prayers contained in the amended statement of claim filed on 14/11/2019?**

**3. Did the Claimants provide any evidence of title to Plot 382, Gwarimpa District, FCT?**

In the Claimants' final written address filed on 15/01/2020, by **C. K. Agu, Esq.**, of counsel, he formulated five issues, set out as follows:

**1. Whether the Claimants can commence this action as donor and donee of power of attorney over Plot 382 Gwarimpa, District, Abuja?**

**2. Whether the 4<sup>th</sup> Defendant not being the Administrator of the estate of the late Hon. Justice Obinnaya Okezie has the locus standi to defend and/or make claims over Plot 382 Gwarimpa District, Abuja?**

**3. Whether DW1 is a competent witness; and if not, whether his evidence is not inadmissible hearsay?**



**4. Whether Exhibits D1A-E, which are photocopies of public documents, tendered by the 4<sup>th</sup> Defendant should not be expunged from the record for being legally inadmissible and if so, whether the 4<sup>th</sup> Defendant has any evidence before the Court to sustain his Defence/Counterclaim?**

**5. Whether the Claimants have not adduced sufficient evidence to warrant declaration of title to Plot 382 Gwarimpa District Abuja, in their favour?**

I had carefully examined the totality of the claim and the Counter-Claim filed by the respective parties; the totality of the oral and documentary evidence they led to support their respective claims and the totality of the circumstances of this case. The identity of the land in dispute is not in contention as between all the parties. It is described as **Plot No. 382, Cadastral Zone C02, Gwarimpa District, Abuja**. Whilst the basis of the Claimants' action is that the 1<sup>st</sup> Claimant was granted a Right of Occupancy over the plot, sometime in 1995; on the other hand, the 4<sup>th</sup> Defendant/Counter-

Claimant, who also laid claim of ownership to the plot, contended that the Right of Occupancy over the same plot was issued to his late father, sometime in 1995. The 4<sup>th</sup> Defendant also alleged trespass of the same plot of land.

This being the case, in order to resolve the conflict that has arisen between the parties, on the basis of the admissible evidence on record, the reliefs claimed by parties and in consideration of the applicable legal principles, the focal substantive issue that has arisen for determination, in my respectful view, without prejudice to the issues already formulated by the respective learned counsel, is:

***Whose rival claim to the plot in dispute, as between the 1<sup>st</sup> Claimant and 4<sup>th</sup> Defendant, is established by evidence on record?***

The resolution of this focal issue will invariably determine both the main claim of the Claimants and the Counter-Claim of the 4<sup>th</sup> Defendant at once.

In proceeding to determine the issue set down, the Court has also given a careful consideration to and taken due benefits of the totality of the arguments canvassed by learned counsel for the respective parties in their final addresses. The Court shall make specific references to learned counsel's arguments as it is considered needful in the course of this judgment.

## **PRELIMINARY ISSUE**

### **ON THE STATUS/LOCUS OF THE 2ND CLAIMANT**

One of the preliminary issues that has arisen, raised by the 4<sup>th</sup> Defendant's learned counsel, is as to the competence of the 2<sup>nd</sup> Claimant to file the instant action. The action was originally commenced with **Barrister Lilian Ojemma**, suing as Attorney for the 1<sup>st</sup> Claimant. However, upon an application for

amendment which this Court granted on 12/11/2019, the Claimant amended the capacity in which the said **Lilian Ojemma** sued; and was converted to the substantive 2<sup>nd</sup> Claimant in this action.

In the course of trial, the said 2<sup>nd</sup> Claimant, who testified as sole witness for the Claimants in the action, tendered in evidence as **Exhibit C18**, original Power of Attorney executed in her favour by the 1<sup>st</sup> Claimant on 17/08/2016. I must note quickly that the Power of Attorney does not seek to convey title of the plot in dispute to the 2<sup>nd</sup> Claimant. It merely granted her power to superintend over the plot and to also, *inter alia*, commence and defend any legal proceedings relating to the plot on behalf of the 1<sup>st</sup> Claimant.

Furthermore, the 2<sup>nd</sup> Claimant testified in paragraph (1) of her *Additional Statement on Oath* deposed to on 20<sup>th</sup> May, 2019, that the 1<sup>st</sup> Claimant did not transfer title to the plot to her to render the Power of Attorney a

registrable instrument. As such, the provision of **s. 15** of the **Land Instruments Registration Act**, cited by the 4<sup>th</sup> Defendant's learned counsel for the contention that the Power of Attorney is inadmissible in evidence is inapplicable in the circumstances of this case, since the purpose for which the Power of Attorney was donated to the 2<sup>nd</sup> Claimant was clearly stated in its face, which does not include to transfer title of the plot to her. I so hold. See Orianzi Vs. A. G., Rivers State [2017] 6 NWLR (Pt. 1561) 224 @ 283.

Again, with regards to the contention by the 4<sup>th</sup> Defendant's learned counsel that the Power of Attorney is inadmissible, same having not been stamped, the Court of Appeal, in NURTW Vs. First Continental Insurance Co. Ltd. [2019] LPELR-20063(CA), interpreted the provision of **s. 22(4)** of the **Stamp Duties Act**, also cited by the 4<sup>th</sup> Defendant's learned counsel in the present case, and held that failure to stamp a document that requires stamping under that

provision of the **Act**, would not render such a document inadmissible, since stamping is not a condition for admissibility under the **Evidence Act**. See also Okuwobi Vs. Ishola [1973] All NLR(SC), 233; Prince Will Eyo Asuquo & Ors. Vs. Mrs. Grace Godfrey Eyo & Anor [2013] LPELR-20199(CA); Etokhana Vs. NDIC & Anor [2016] LPELR-41169(CA).

That settled, I note that whilst answering questions under cross-examination by the 4<sup>th</sup> Defendant's learned counsel, the 2<sup>nd</sup> Claimant stated that the 1<sup>st</sup> Claimant was aware that she instituted the instant suit in line with the powers granted her under the Power of Attorney.

This being the case, it is apparent, as correctly noted by learned counsel for the 4<sup>th</sup> Defendant, that the 2<sup>nd</sup> Claimant ought not have been joined as a party in this suit; having not contended or shown that she had a vested legal or equitable interest in the property in

dispute. Having shown that she was the 1<sup>st</sup> Claimant's lawful attorney, appointed to undertake the matters set out in the Power of Attorney, the 2<sup>nd</sup> Claimant, at best, could only have commenced the action in that capacity as lawful attorney to the 1<sup>st</sup> Claimant; and could also give evidence at the 1<sup>st</sup> Claimant's instance as she had done. She certainly did not possess the *locus*, as argued by the 4<sup>th</sup> Defendant's learned counsel, to co-institute the action as she did. I so hold.

In that circumstance, I shall, without wasting time, proceed to and I hereby strike out the name of the 2<sup>nd</sup> Claimant as a party in this suit. The 1<sup>st</sup> Claimant shall hereafter and for the purpose of this judgment be referred to as the Claimant and the erstwhile 2<sup>nd</sup> Claimant shall be referred to simply as the Claimant's witness (**CW**).

I should quickly add, as it is already well known, that mis-joinder of a party either as a Claimant or

Defendant, does not defeat or render incompetent an action that is properly constituted. See Ayankoya Vs. Olukoya [1996] 4 NWLR (Pt. 440) 1; Sapo Vs. Sunmonu [2010] 11 NWLR (Pt. 1205) 374.

As such, I hold that the striking out of the name of the erstwhile 2<sup>nd</sup> Claimant from this suit, without more, does not defeat the action.

### **CLAIMANT'S EVIDENCE OF TITLE**

Having resolved the preliminary issue, I now proceed straight to the case of the Claimant. He has sought declaratory reliefs in this suit. As such, as correctly argued by learned counsel for the 1<sup>st</sup> – 3<sup>rd</sup> Defendants, the Claimant can only succeed on the strength of the case he makes out, except there is a weakness in the defence of the Defendants that supports his case, of which he can take advantage. See Gambo Vs. Turdam [1993] 6 NWLR (Pt. 300) 500; Uchendu Vs. Ogbuni [1999] 1 NWLR (Pt. 603) 337.



The Claimant's case is largely documentary. The **CW1** testified that sometime in 1994, the Claimant applied for land allocation in the FCT and that upon paying the requisite fees, his application was duly acknowledged. She tendered in evidence as **Exhibit C4A**, original receipt dated 2/8/94, issued to the Claimant by the 2<sup>nd</sup> Defendant for payment of the sum of **₦100.00** Form fee. She also tendered in evidence as **Exhibit C4**, original receipt dated 2/8/94, issued to the Claimant by the 2<sup>nd</sup> Defendant for payment of the sum of **₦7,000.00 (Seven Thousand Naira)** only as Processing Fees. The **CW1** further tendered in evidence as **Exhibit C1**, document dated 02/08/1994, by which the Ministry of the FCT acknowledged the Claimant's Land Application Forms, after payment of the requisite fee.

She further testified that the FCT Land Use and Allocation Committee shortlisted the Claimant for land allocation in 1995 and that the Claimant's name was

included in the Ministerial List for December, 1995 for land allocation; and that by the said list, the Minister approved that the plot in dispute, Plot No. 382, within Gwarinpa District, measuring an area of **1,270sq. metres**, be allocated to the Claimant. The **CW1** further tendered in evidence as **Exhibit C17**, certified true copy of document containing Recommended Applications for Management Approval. In the document, the Claimant's name is shown as **No. 145** and the plot written against his name is Plot No. 382 Gwarinpa District with 1,270 Sq. Metres. It is also shown in the face of the document that the same was submitted for approval on 08/12/1995 by the Director, Land, Planning & Survey of the 2<sup>nd</sup> Defendant and the same is also shown to be approved by the Hon. Minister on 09/12/1995.

The **CW1** further testified that consequent to the Ministerial approval, the Claimant was issued offer letter for the allocation of the said plot to him. She

further tendered in evidence as **Exhibit C2**, certified true copy of Offer of Terms of Grant/Conveyance of Approval dated 19/12/1995, with respect to Plot No. 382 Gwarinpa District with 1,270 Sq. Metres, issued to **Ishaya Adiyha Adiwu**, by *Kassim T. Ahmed, Director, Land, Planning & Survey* for the Hon. Minister, FCT.

According to the **CW1**, the Claimant promptly accepted the offer of the said plot by issuing acceptance letter dated 19/12/1995 addressed to the Hon. Minister of the FCT. She tendered a certified true copy of the acceptance letter in evidence as **Exhibit C3**.

The **CW1** further testified that in the course of time, the 2<sup>nd</sup> Defendant undertook survey of the plot after which the Claimant was issued with site plan of the plot in dispute endorsed on 18/09/2001 and prepared by the Cadastral Section of Land Survey of the 2<sup>nd</sup> Defendant. The site plan is admitted in evidence as **Exhibit C6**.

The **CW1** further testified that in the course of the Claimant pursuing the issuance of Certificate of Occupancy with respect to the plot, his official file with the 2<sup>nd</sup> Defendant was misplaced and he wrote several letters to the Director of Lands of the 2<sup>nd</sup> Defendant to open a temporary file in that regard. The **CW1** tendered acknowledged copies of such letters respectively dated 01/07/1999 and 29/02/2000 as **Exhibits C8** and **C9** respectively.

The **CW1** further testified that the Claimant paid the sum of **₦1,100,000.00 (One Million, One Hundred Thousand Naira)** only, to the 2<sup>nd</sup> Defendant on 25/02/2003, as Right of Occupancy Rent and Fees charged on the plot and tendered in evidence original receipt issued to him in that regard as **Exhibit C7**. The **CW1** further tendered in evidence as **Exhibit C10**, acknowledged copy of letter written by the Claimant to the 1<sup>st</sup> Defendant to inform him of the payment for

the said Right of Occupancy Rent and Fees for the period 1997-2003.

The **CW1** further testified that the Claimant applied for building plan approval, submitted architectural drawings and designs to the 3<sup>rd</sup> Defendant in line with the residential purpose for which the plot was allocated; but that the application was not processed as a result of his missing file issue which the 1<sup>st</sup> – 3<sup>rd</sup> Defendants were yet to resolve. She tendered in evidence as **Exhibit C16**, document being Building Plan Processing and Approval issued to the Claimant on 22/05/2003, by the Development Control Unit of the 2<sup>nd</sup> Defendant after he submitted his architectural and other designs.

The **CW1** further testified that the Claimant exercised acts of possession over the plot by expending huge sums of money to reclaim and refill the plot that was almost completely submerged by swamp and a big

gully created by erosion; built a perimeter fence; and that the Claimant built a security house on the plot wherein a security man was employed to oversee; that the security man and his family had lived on the plot for many years without any disturbance from any quarters whatsoever.

The **CW1** again testified that in line with the call by the erstwhile Minister of the FCT for re-certification and re-issuance of certificates of occupancy to title holders in the FCT, the Claimant applied for recertification of his title over the plot and paid the requisite fees of **₦10,000.00 (Ten Thousand Naira)** only; that he submitted documents relating to the plot for re-certification, after which he was issued with a document to acknowledge the payment and the submitted documents. She tendered in evidence copy of the Re-certification application Form filled by the Claimant, the counterpart of the receipt issued by the office of the 1<sup>st</sup> Defendant on 27/04/2005 for payment of the

said sum of **₦10,000.00 (Ten Thousand Naira)** only Re-certification fees; and certified true copy of the acknowledgment document issued to him by the office of the 1<sup>st</sup> Defendant on 28/04/2005, as **Exhibits C11, C11A and C13** respectively.

The **CW1** further testified that pursuant to the re-certification exercise, the office of the 1<sup>st</sup> Defendant wrote to him, letter dated 21/06/2005, requesting him to pay a total sum of **₦2,601,217.67k (Two Million, Six Hundred One Thousand, Two Hundred and Seventeen Naira and Sixty Seven Kobo)** only, as rent payable on the plot, survey costs, C of O preparation fee and other costs. The original document is admitted in evidence as **Exhibit C12**.

The **CW1** further testified that sometime in 2005, the Claimant wanted to partner with someone to develop the plot which made him to conduct a search on the status of the plot and that the outcome revealed that

the Claimant's title over the plot was intact. She tendered as **Exhibit C14**, the said Search Report.

The **CW1** maintained that there had never been any time that the Claimant's title over the plot has been in doubt; that the only issue the Claimant had with the 1<sup>st</sup> – 3<sup>rd</sup> Defendants was his missing File, which was not resolved despite writing several letters to the 1<sup>st</sup> – 3<sup>rd</sup> Defendant. The **CW1** tendered as **Exhibit C15**, one of such letters, written again on 10<sup>th</sup> May, 2007, to the 1<sup>st</sup> Defendant, seeking resolution of the issue in order to enable him complete his documentation and the development of the plot.

The salient testimony of the **CW1**, under cross-examination by learned counsel for the 1<sup>st</sup> – 3<sup>rd</sup> Defendant is that the documents she tendered represented evidence of the Claimant's dealings with the 1<sup>st</sup> – 3<sup>rd</sup> Defendants. She also stated that she was not aware that there was any encumbrance on the



disputed plot as at the time the disputed plot was granted to the Claimant.

Under further cross-examination by the 4<sup>th</sup> Defendant's learned counsel, the **CW1** testified that even though the 1<sup>st</sup> – 3<sup>rd</sup> Defendants always maintained that the Claimant's file for the plot in dispute was missing, she however obtained certified true copies of the documents she tendered in evidence from e copies thereof that was kept in their custody; that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants did not formally communicate with the Claimant that the land file was missing; that she was in touch with the Claimant who donated power to her through the Power of Attorney, **Exhibit C18**, to institute the action. She also testified that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants disallowed the Claimant from developing the plot because building approval had not been granted.

## **THE 4TH DEFENDANT'S EVIDENCE OF TITLE**

In the Statement of Defence and Counter-Claim filed by the 4<sup>th</sup> Defendant, he introduced himself as the eldest son of the late **Hon. Justice Obinnaya Okezie**. He contended that he defended the suit in representative capacity on behalf of the Estate of his deceased father. He further contended that the land in dispute was allocated to his late father by the 1<sup>st</sup> Defendant on 21<sup>st</sup> November, 1995.

However, the 4<sup>th</sup> Defendant, who filed a Statement on Oath, did not testify in the suit. One **Robert Olekibe** testified for him. The said witness claimed, in paragraph 1 of his Statement on Oath filed on 28/10/2020, that he has personal knowledge of the facts of the case by virtue of being the Solicitor who attended to the affairs of the 4<sup>th</sup> Defendant pertaining the plot in dispute.

Now, in paragraph 7 of his Statement on Oath, the **DW1** deposed as follows:

***“7. That the 4<sup>th</sup> Defendant informed me through a telephone conversation on 5<sup>th</sup> November, 2019 of the following facts and I believe him because I have seen the documents which corroborates:***

***a. That the late Hon. Justice Obinnaya Okezie applied for allocation of land within the Federal Capital Territory on the 8<sup>th</sup> day of August 1980.***

***b. That the said application for allocation of land within the Federal Capital Territory was coupled with the payment of the sum of Two Hundred and Fifty Thousand Naira (N250) as application fees paid to the land administration of the Federal Capital Territory as their then office at Suleja, Niger State on 25/11/1980 and receipt No. H694939 was issued in respect thereof.***

***c. That the Minister of the Federal Capital Territory issued a Right of Occupancy with reference FCDA/EST/80/IM 124 to the late Hon. Justice Obinnaya Okezie on 21<sup>st</sup> November 1995***

***which Right of Occupancy pertained to Plot 382, Gwarinpa District, FCT measuring 1,270 sqm.***

***d. That the Minister of the Federal Capital Territory also issued a Certificate of Occupancy dated 4<sup>th</sup> day of April 1997 in respect of Plot 382, Gwarinpa District, FCT to the late Hon. Justice Obinnaya Okezie.***

***e. That all persons who were allotted land within the Federal Capital Territory were required by the 1<sup>st</sup> Defendant to submit their original title documents to the 1<sup>st</sup> Defendant under a scheme titled “re – certification and re – issuance of certificate of occupancy”.***

***f. That the original copy of the Certificate of Occupancy issued to Hon. Justice Obinnaya Okezie was submitted to the 1<sup>st</sup> Defendant upon official request under the “re – certification and re – issuance of certificate of occupancy” and is in the possession of the 1<sup>st</sup> Defendant.***

**g. That the 1<sup>st</sup> Defendant issued an acknowledgment of the receipt of the said original copy of the Certificate of Occupancy issued to late Hon. Justice Obinnaya Okezie in respect of Plot 382, Gwarinpa District, FCT.**

**h. That the said acknowledgment document issued by the 1<sup>st</sup> Defendant is dated 20<sup>th</sup> day of May 2005, has IM 12 as the file number, AB 10258 as the new file number and has copies of the Certificate of Occupancy, Right of Occupancy, receipts of payments, correspondence from the 1<sup>st</sup> Defendant attached to it – which evidence receipt of documents submitted to the 1<sup>st</sup> Defendant through the Abuja Geographic Information Systems office.**

**i. That the 1<sup>st</sup> Defendant also approved the building plan of late Hon. Justice Obinnaya Okezie after receiving payment of the sum of ₦361,133.10 as approval fees.**

***j. That the 4<sup>th</sup> Defendant's family was always aware of squatters on the land who resided in temporary zinced structures from time to time, farmed occasionally, mechanics who occupied the land occasionally and other trespassers but allowed these activities pending when they obtained the permit to build on the land from the 1<sup>st</sup> Defendant.***

***k. That in 2018, notice was given to all trespassers in Plot 382 Gwarinpa District, FCT to abate the trespass and vacate the property to enable the 4<sup>th</sup> Defendant's family to develop the land according to the stipulations of the building approval granted by the 1<sup>st</sup> Defendant.***

***l. That the Claimants filed this suit wherein the allocation of the land to late Hon. Justice Obinnaya Okezie was challenged and served the 4<sup>th</sup> Defendant by pasting the processes of the suit at Plot 382 Gwarinpa District, FCT to bring the suit to the notice of the 4<sup>th</sup> Defendant.***

- m. That the Claimants have not abated the trespass despite the efforts of the officials of the land administration of the Federal Capital Territory and all parties are now awaiting adjudication of this suit by the honourable Court.***
- n. That the 1<sup>st</sup> Claimant was not allotted title to Plot 382, Gwarinpa District, FCT, has no file at the land registry, never registered any Power of Attorney in favour of “Barr Lilian Ojinma” and has no building approval granted to him.***
- o. That the 2<sup>nd</sup> Claimant was not allotted title to Plot 382, Gwarinpa District, FCT, has no file at the land registry, never registered any Power of Attorney in her name and has no building approval granted to her.***
- p. That the 1<sup>st</sup> – 3<sup>rd</sup> Defendants informed the Claimants that they have rights or interests in Plot 382, Gwarinpa District, FCT before the Claimants filed this suit.***

*q. That nobody has ever seen the 1<sup>st</sup> Claimant and nobody knows who he is.”*

I have noted the Claimant’s learned counsel’s submissions as to whether or not the totality of the testimony of the **DW1** is legally admissible. I shall return to that anon.

The **DW1** further tendered a number of documents to support the 4<sup>th</sup> Defendant’s Counter-Claim. He tendered as **Exhibit D1B**, photocopy of Offer of Grant/Conveyance of Approval dated 21/11/1995, issued on behalf of the Minister of FCT to **Hon. Mr. Justice Obinnaya A. Okezie** with respect to Plot No. 382, within Gwarinpa District, Abuja. He also tendered as **Exhibits D1C** and **D1D** respectively, photocopies of payments receipts issued by the 2<sup>nd</sup> Defendant to the said **Hon. Mr. Justice Obinnaya Okezie** for payments made at the material periods.



The **DW1** further tendered in evidence as **Exhibit D1A**, photocopy of Certificate of Occupancy dated 4<sup>th</sup> April, 1997, issued **Lt. Gen. J. T. Useni**, Hon. Minister, FCT, to **Hon. (Mr.) Justice Obinnaya A. Okezie** with respect to Plot 382 supra and registered as No. FC110 at page 110 in Volume 73 (Certificates of Occupancy) in the Land Administration, Land Registry Office at Abuja and dated 4<sup>th</sup> April, 1997.

The witness further tendered as **Exhibit D1**, original acknowledgment of re-certification and re-issuance of C of O document dated 20/05/2005, issued to **Hon. (Mr.) Justice Obinnaya A. Okezie** with respect to the land in dispute. He also tendered as **Exhibit D2**, counterpart Deposit Slip dated 3/3/05, for the payment of the sum of **₦10,000.00** to the Abuja Geographic Information Systems.

Lastly the witness tendered as **Exhibit D3** document being Conveyance of Building Plan Approval dated 14

December, 2018, issued by the 3<sup>rd</sup> Defendant to **Hon. (Mr.) Justice Obinnaya Okezie**, with respect to Plot 382 *supra*.

While answering further questions under cross-examination by the Claimant's learned counsel, the **DW1** stated that the 4<sup>th</sup> Defendant defended the suit in his personal capacity.

### **RESOLUTION**

The question to be resolved, after assessing the totality of evidence adduced by the contending sides, is, who, between the two parties, that is the Claimant and the 4<sup>th</sup> Defendant, laid a more credible claim to the plot in dispute, on the basis of the evidence they adduced.

Both the Claimant and the 4<sup>th</sup> Defendant had relied on documents of title purportedly issued to them by the 1<sup>st</sup> Defendant, at the material time, to support their claim of entitlement to declaration of title to the plot in dispute.

The position of the law as enunciated in the age long famous authority *Idundun Vs. Okumagba* [1976] 10 SC 227, cited by the Claimant's learned counsel, to the extent that there are five ways by which title to land may be proved, including production of title document, seems to me to be the general principle. I reckon that there is a clear distinction and departure from the general rule when the land in question is within the Federal Capital Territory of Nigeria. This is because, in the Federal Capital Territory, the law seems to recognize just one way in proving right or title to land, which is by production of documents of title issued by or under the authority of or with the consent of the Minister of the Federal Capital Territory, acting for the President of the Federal Republic of Nigeria; or by the authority of any other person or authority the President may so delegate his executive powers to in that regard. I make particular reference to the provisions of **Ss. 297(2) and 304 of the Constitution, Ss. 1(3) and**

**18 of the Federal Capital Territory Act; and s. 51(2) of the Land Use Act.**

In Madu Vs. Madu [2008] 6 NWLR (Pt. 1083) 296, cited by the Claimant's learned counsel, the Supreme Court made this point clear when it held as follows:

***“See also section 297(1) & (2) of the Constitution of the Federal Republic of Nigeria, section 236 of the Constitution of the Federal Republic of Nigeria, 1979 and section 1(3) Federal Capital Territory, Act 1976. Section 18 of the Federal Capital Territory Act, Cap. 503 Laws of the Federation of Nigeria, 1990 vests power in the Minister for the FCT to grant statutory rights of occupancy over lands situate in the Federal Capital Territory to any person. By this law, ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vest same to every citizen individually upon application. Thus without an allocation or grant by the Hon. Minister of the FCT there is no way any person***

*including the respondent could acquire land in the FCT.”*

See also the authority of *Eboreime Vs. Olagbegi* [2018] LPELR 63412(CA), where the Court of Appeal further made the point that the President of the Federal Republic of Nigeria, who is invested with powers to exercise authority of the Federal Government of Nigeria over all land within the Federal Capital Territory, could exercise such powers not only through the Minister of the Federal Capital Territory, notwithstanding the provision of **s. 18** of the **FCT Act**; but also through any of the Ministers of Government, by virtue of the provisions of **Ss. 5(1)(a), 147, 148** and **302** of the **Constitution**, to which the **FCT Act** is subject.

Evidence on record establishes that the Claimant demonstrated, by documentary evidence, the process by which the land in dispute was granted to him. He tendered in evidence, through the **CW1, Exhibit C1,**

which was the letter issued to him on behalf of the 1<sup>st</sup> Defendant on 2/8/94, to acknowledge that he formally applied for allocation of land in the FCT, by paying the required fee of **₦7,000.00** (Seven Thousand Naira) only. He also tendered in evidence as **Exhibits C4A** and **C4** respectively, original receipts issued to him for payment of the sum of **₦100.00** (One Hundred Naira) only for Application Form and the sum of **₦7,000.00 (Seven Thousand Naira) only** as processing fees for his application, which is captured in **Exhibit C1**.

The Claimant proceeded to produce, through the **CW1**, **Exhibit C2**, Offer of Terms of Grant/Conveyance of Approval dated 19/12/1995, by which the approval of the 1<sup>st</sup> Defendant was conveyed to the Claimant for the grant of Plot No. 382, within Gwarinpa District. The Claimant went further to produce in evidence the Ministerial Approval of the grant of the plot which was communicated to him *vide* **Exhibit C2**. Certified true

copy of the said Ministerial Approval, signed by the Hon. Minister of the FCT on 09/12/95, was tendered as **Exhibit C17**.

I reckon that **Exhibit C17** is of particular significance because it captures the prior internal official processes that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants must follow before the plot was eventually offered to the Claimant.

Again, the Claimant relied on certified true copy of letter of acceptance he issued to the 1<sup>st</sup> Defendant to formally accept the offer of the land granted to him, **Exhibit C3**. This document is also significant in the sense that, it fulfilled an integral condition set out in the letter of offer, **Exhibit C2**, which, in law, validates the offer and crystallizes the grant.

The Claimant went on to also tender as **Exhibit C6**, original survey plan, drawn by the 2<sup>nd</sup> Defendant, clearly delineating the land allocated to the Claimant.

I had noted the contention of the 4<sup>th</sup> Defendant's learned counsel that it was impossible for the Claimant to obtain certified true copies of documents tendered in this suit, since it is his case that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants maintained that his land file had been missing. Learned counsel thus challenged the credibility of the certified documents.

In my view, learned 4<sup>th</sup> Defendant's counsel's arguments in this regard, not only amounted to an attempt by learned counsel to give evidence in his final address, which, in law, is forbidden; but also to attempt to pull the rug off the feet of the Claimant.

It is on record that the **CW1** who tendered the documents was duly cross-examined by learned counsel for the 1<sup>st</sup> – 3<sup>rd</sup> Defendants, from whose custody the documents were certified; but learned counsel failed to question her as to the authenticity or



credibility of the said certified documents. The 1<sup>st</sup> – 3<sup>rd</sup> Defendants did not also deny certifying the documents. Again, learned counsel for the 4<sup>th</sup> Defendant indeed cross-examined the **CW1** on the point and she maintained that despite that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants claimed that the Claimant's file for the land was missing, they were still able to certify for her the documents she tendered in evidence with respect to the plot.

As such, I hold that the arguments of the 4<sup>th</sup> Defendant's learned counsel that it was legally impossible for the 1<sup>st</sup> – 3<sup>rd</sup> Defendants to issue certified true copies documents in a missing file of the Claimant is clearly of no moment.

If anything, the Claimant has clearly fulfilled the requirements of certification of a public document as required by the provision of s. **104** of the **Evidence Act**, to enable him tender secondary copy thereof in

evidence in the present case. As such, it will be late in the day for the 4<sup>th</sup> Defendant to attempt to question the credibility of the documents in his final address.

In order to further establish the Claimant's case, the **CW1** testified that during the re-certification exercise, the Claimant submitted to the 1<sup>st</sup> – 3<sup>rd</sup> Defendants, the right of occupancy issued to him on 19/12/1995 with respect to the plot in dispute and he was issued with an acknowledgment document in respect thereof on 28/04/2005. It is revealed in the acknowledgment document, **Exhibit C13**, that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants acknowledged that the Claimant submitted the right of occupancy granted to him with respect to the plot in dispute on 19/12/1995, for recertification. On that account, the 1<sup>st</sup> Defendant, in the absence of any legally proven rival claim to the plot in dispute, is under legal obligation to issue a recertified right of occupancy to the Claimant with respect to the plot. I so hold.

I must not fail to make reference to the original Search Report tendered by the **CW1** as **Exhibit C14**. It was issued by the office of the 1<sup>st</sup> – 3<sup>rd</sup> Defendants on 03/03/2005 pursuant to application of **A. U. Okoli**, as endorsed on the face of the Report. The Report gave details of the history of the plot and stated the name of the title holder, as at the date the report was issued, as **Ishaya Adihya Adiwei**. The evidence as contained in the said Search Report, **Exhibit C14**, emanating from the 1<sup>st</sup> – 3<sup>rd</sup> Defendants, further established beyond conjecture that the Claimant was rightfully allotted the plot in dispute. I so hold.

The Claimant's evidence of being in physical possession of the plot is not also dislodged in the course of trial. The evidence of **CW1** that the Claimant built a wall fence round the plot and built a gate house thereon, as depicted in the photographs, **Exhibits C19** series; and that he put a security man who had overseen the plot

for many years was not controverted by any of the Defendants at trial.

### **ON THE 1ST - 3RD DEFENDANT'S CASE**

Let me, at this point; assess the quality of evidence adduced by the Defendants in order to determine substance of the 4<sup>th</sup> Defendant's counter-claim to title of the plot in dispute.

It is to be noted that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants chose to abandon the defence they filed in this suit. As correctly submitted by the Claimant's learned counsel, the legal implication thereof is that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants have admitted the claim of the Claimant.

The Court is not unaware that the Claimant, having claimed declaratory reliefs, is under bounden legal obligation and burden to prove his entitlement to the reliefs for declaration, even if the Defendants admitted his claim. Nevertheless; in the present case, the 1<sup>st</sup> – 3<sup>rd</sup>

Defendants have not adduced any evidence or extracted any evidence from the **CW1** under cross-examination, that could be said to have weakened or detracted from the case made out by the Claimant. I so hold.

### **ON THE 4TH DEFENDANT'S COUNTER-CLAIM**

With respect to the 4<sup>th</sup> Defendant, the Court has assessed the documents tendered by the **DW1** in an attempt to supplant the case of the Claimant. He tendered the purported letter of offer, **Exhibit D1B**, issued to **Hon. Mr. Justice Obinnaya A Okezie** by the 1<sup>st</sup> Defendant on 21/11/1995, as the basis of his rival claim to the land in dispute. He also tendered as **Exhibit D1A**, photocopy of certificate of occupancy purportedly issued to the said **Hon. Mr. Justice Obinnaya Okezie**, on 4/07/1997, by the Minister of FCT at the material time. These documents relate to the

same Plot No. 382, to which the Claimant lays claim of title.

However, even though the admissibility of **Exhibits D1A** and **D1B** were not objected to at the trial; it is apparent that these documents were inadmissible in evidence *ab initio*, being photocopies of public documents, of which the only admissible secondary evidence thereof are certified true copies. The provisions of s. **87(a)** and s. **89(e)** of the **Evidence Act** are clear on this point. See also *Adeyefa Vs. Bamgboye* [2013] 10 NWLR (Pt. 1363) 536, cited by the Claimant's learned counsel.

The position of the law, as correctly submitted by the Claimant's learned counsel, is that only legally admissible evidence can be tendered in court proceedings. Therefore, where a court erroneously admitted a legally inadmissible document, without objection, would not foreclose the power of the court to

expunge such document from its record as exhibit; where in the course of writing judgment, the court finds that the document is legally inadmissible. See Abdullahi Vs. Milad Kaduna State [2004] 5 NWLR (Pt. 866) 232 at 250; Egbenighe Vs. Achi [2011] 2 NWLR (Pt. 1230) 57 @ 69.

Similarly in Okafor Vs. Okpala [1995] 1 NWLR (Pt. 374) 749 at 758, the Court of Appeal, per **Achike JCA** (as he then was), held as follows:

*“It is a matter of common sense and good practice, for a trial judge who had wrongly admitted certain evidence and on further consideration of the controversial evidence to expunge it in limine from the record where he is properly addressed on the issue, if he is satisfied that such evidence was erroneously admitted.”*

In the circumstances, therefore, the documents, **Exhibits D1A** and **D1B**, respectively, which are photocopies of public documents purported to be relied upon by the

4<sup>th</sup> Defendant in support of his counter-claim of title to the plot in dispute are accordingly expunged from the records of this Court as if they were tendered and rejected.

I have further examined the original acknowledgment document issued to the said **Hon. Justice Obinnaya A. Okezie** on 20/05/2005, **Exhibit D1**. I note, curiously, as the document revealed in its face, that apart from the Recertification Application Form and Two Passport Photographs, the said **Hon. Justice Okezie** did not submit any document of title purportedly previously issued to him with respect to the plot in dispute for recertification. This implies that the said **Hon. Mr. Justice Okezie** had no right of occupancy over the plot in dispute to recertify.

I have again noted that the 3<sup>rd</sup> Defendant purported to issue document being Conveyance of Building Plan Approval dated 14 December, 2018, to the said **Hon.**



**(Mr.) Justice Obinnaya Okezie**, the original of which the **DW1** tendered as **Exhibit D3**.

As correctly submitted by the Claimant's learned counsel, **Exhibit D3** was issued by the 3<sup>rd</sup> Defendant whilst the present suit was already pending. It is on record that the suit was instituted on 29/11/2018. For this reason, the document clearly offends the provision of **s. 83(3)** of the **Evidence Act**, being issued by the 3<sup>rd</sup> Defendant, a party interested in the suit, to the 4<sup>th</sup> Defendant's father, whilst this suit is subsisting, thereby rendering the document inadmissible *ab initio*. I so hold.

On the basis of the evidence on record, as analyzed in the foregoing, it becomes crystal clear that there is nothing in the case of the 4<sup>th</sup> Defendant to pitch against the unassailable evidence mustered by the Claimant to establish that he was indeed the rightful allottee of the plot in dispute. I so hold.

It is firmly established that pursuant to the Claimant's land application acknowledged by the 1<sup>st</sup> Defendant *vide* **Exhibit C1**, the 1<sup>st</sup> Defendant, *vide* ministerial approval, **Exhibit C17**, made on 09/12/1995, offered Plot 382, within Gwarinpa District, Abuja, to the Claimant, *vide* **Exhibit C2**, Offer of Terms of Grant/Conveyance of Approval dated 19/12/1995. It is further established that the Claimant accepted the offer *vide* **Exhibit C3**, after which he made payment, *vide* **Exhibit C7**, to process his right of occupancy. The Claimant having also submitted his right of occupancy for purposes of recertification and issued an acknowledgment thereof by the 1<sup>st</sup> Defendant, *vide* **C13**, is clearly entitled to be issued with certificate of occupancy with respect to the plot. I so hold.

Now, apart from the inadmissible documents relied upon by the 4<sup>th</sup> Defendant to ground his Counter-Claim, it is also pertinent to state that there are other deficiencies in his case that makes the Counter-Claim

unmeritorious. At first I must note that even though the 4<sup>th</sup> Defendant claimed that the 1<sup>st</sup> Defendant allotted the plot in dispute to **Hon. (Mr.) Justice Obinnaya Okezie**, who he claimed is now deceased; he however failed to produce any evidence to establish when the said Hon. Judge died. He failed to state, as noted by the Claimant's learned counsel, whether or not the deceased Hon. Judge died intestate or not; and at what time he was appointed as personal representative of the estate of the deceased.

I am mindful that there is no law or rule of Court which requires a party to a civil suit to personally give evidence in support of his case so long as the available evidence is sufficient to prove or sustain their case. See Okoronkwo Vs. Chukwueke [1992] 1 NWLR (Pt. 216) 192.

However, in the present case, the testimony of the **DW1**, does not seem to emanate from his personal

knowledge. He stated so in paragraph 7 of his *Statement of Oath*, which had been reproduced in the foregoing, that the 4<sup>th</sup> Defendant informed him through telephone conversation he had with him on 5<sup>th</sup> November, 2019, the facts he deposed to in the subparagraphs of paragraph 7 thereof. The effect is therefore that the totality of the evidence of the **DW1**, particularly as contained in paragraph 7 of his *Statement on Oath* amounted to inadmissible hearsay evidence, within the meaning of s. **37** of the **Evidence Act**. I so hold.

As such, whichever way the Counter-Claim of the 4<sup>th</sup> Defendant is viewed, it is bound to fail. I so hold.

In conclusion, I have also noted that the Claimant claimed for an order of perpetual injunction against the Defendants in this case. The law is trite that where a claimant successfully establishes right to title of a parcel of land, it is appropriate, even where it is not

specifically prayed for, to grant perpetual injunction in order to prevent continuous or permanent infringement of the rights declared in his favour by the Court. See Oyedoke Vs. The Reg. Trustees of C.A.C. [2001] 3 NWLR (Pt. 701) 621; Rector, Kwara Poly. Vs. Adefila [2007] 15 NWLR (Pt. 1056) 42.

I am therefore in no difficulty in holding that the Claimant is rightly entitled to the relief for perpetual injunction.

In the final analysis, I am satisfied that the Claimant had established his case upon cogent and credible evidence laid before the Court at the trial. His case therefore succeeds. For avoidance of doubt and abundance of clarity, I hereby enter judgment in favour of the Claimant on the following terms:

- 1. It is hereby declared that the Claimant is the bona fide allottee of Plot 382, Cadastral Zone C02, Gwarinpa District, Abuja and he is accordingly entitled to be***

**issued with Certificate of Occupancy in respect thereof by the 1<sup>st</sup> Defendant.**

- 2. It is hereby further declared that the Claimant, having commenced development on Plot 382, Cadastral Zone C02, Gwarimpa District, Abuja, is entitled to be allowed to complete same.**
- 3. Consequent to (2) above, the 3<sup>rd</sup> Defendant is hereby ordered to proceed forthwith to process the Claimant's building plan approval, upon payment of approved fees.**
- 4. It is hereby further ordered that the 4<sup>th</sup> Defendant's rival claim to the allocation of Plot 382, Cadastral Zone C02, Gwarimpa District, Abuja, to the Claimant is hereby nullified.**
- 5. The Defendants are hereby restrained, whether by themselves, their agents, assigns or anybody claiming any right howsoever known through them from entering, further entering, trespassing, marking, demolishing or howsoever dealing or tampering with**

*the Claimant's property situate at Plot 382, Cadastral Zone C02, Gwarimpa District, Abuja.*

- 6. *The 4<sup>th</sup> Defendant's Counter-Claim is hereby dismissed.***
- 7. *I award costs of this action, in the sum of ₦1,000,000.00 (One Million Naira) only, in favour of the Claimant, against the Defendants, jointly and or severally.***

**OLUKAYODE A. ADENIYI**  
**(Presiding Judge)**  
**15/10/2021**

**Legal representation:**

**C. K. Agu, Esq., (with John Paul Eze, Esq.) – for the Claimant**

**Felix U. Ibanga, Esq. – for the 1<sup>st</sup> – 3<sup>rd</sup> Defendants**

**Valentine Offia, Esq. (with – Kunle Kosoko, Esq; & Joan Aliu, Esq.) – for the 4<sup>th</sup> Defendant**