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

THIS MONDAY, THE 4TH DAY OF OCTOBER, 2021.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/1705/14

BETWEEN:

1. ROYAL NIGER PROPERTIES LIMITED
2. AEROBELL NIGERIA LIMITED
3. A.V.M ADEKOYA
4. ALHAJI HUSSAINI ABDULRAHMAN
5. EMEKA MBA
6. ADAMU HAMIDU …….**PLAINTIFFS**
7. ISREAL EKPENYONG
8. RUTH DANIEL
(Suing for themselves as owners and residents of Asokoro District within a neighborhood radius of 100 meters of plot Nos. 3908 (now 2204)and 4079 Asokoro District Abuja.)

AND

1. SUNRISE ESTATE DEVELOPMENT LIMITED
2. SETRACO NIGERIA LIMITED
3. HON. MINISTER FEDERAL CAPITAL TERRITORY **DEFENDANTS**
4. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
5. ABUJA METROPOLITAN MANAGEMENT AGENCY
6. DIRECTOR, DEPT. OF DEVELOPMENT CONTROL

JUDGMENT

The Plaintiffs claims against Defendants as endorsed on its Amended Statement of Claim dated 17th February, 2015, are as follows:

1. **A Declaration that Plot Nos. 3908 now Plot 2204 and 4079 Asokoro District, Federal Capital Territory Abuja allocated by the 3rd to 6th defendants to the 1st and 2nd defendants which are "flood plain" and "green area" within the Federal Capital Territory Abuja is in breach of the Abuja Master Plan and its Land Use Maps, and Abuja Development Control Manual 2007 Edition.**

2. **A Declaration that the allocation of Plot No. 3908 now 2204 and 4079 Asokoro District Abuja made by the 3rd to 6th, to the 1st and 2nd defendants is an alteration of the usage of any land verged or tagged "flood plain" and "green area" and a violation of REG 40 to 47 contained in the Abuja Development Control Manual 2007 Edition, pages 61 to 62.**

3. **A Declaration that any review or purported review or change of Land Use and/or Density contained in the Abuja Master Plan in contravention of the Abuja Development Control Manual 2007 Edition by the 3rd, 4th, 5th and 6th defendants is a contravention of REG 40 to 47 Abuja Development Control Manual 2007 Edition and null, void and of no effect whatsoever.**

4. **A Declaration that the acts of the 3rd, 4th, 5th and 6th defendants in allocating the land designated as "flood plain" and "green area" at page 58 of the Federal Capital Development Authority, the Review of the Abuja landscape master plan final report submitted by Multi System Consultants to the 1st and 2nd defendants known and called Plot Nos. 3908 now 2204 and 4079 at Asokoro District, Federal Capital Territory Abuja in contravention of the laid down rules and procedures for change of land use and or density as contained in DC REG 40-47 in relief 2 above is null, void and of no effect whatsoever.**

5. **An Order directing the 3rd to 6th defendants to cancel the Addendum dated 26th May, 2011 to the Development Lease Agreement dated 19th March**

2007 in respect of all that parcel of land known as Asokoro Gardens Sunrise Hills Estate along Abuja – Keffi road measuring about 25 Hectares registered as No. FC133 at page 133 Volume 29, MISC. registered at the Abuja Geographic Information Systems (AGIS) on 21st September, 2011.

6. **A Declaration that under the Abuja Master Plan and its Land Use Maps, Asokoro District Federal Capital Territory Abuja is a Low Density Area and does not permit the high-rise structures being put up by the 1st and 2nd defendants on Plots Nos. 3908 now 2204 and 4079 within Asokoro District, Federal Capital territory Abuja which are "flood plain" and "green area" respectively.**

7. **A Declaration that the activities of the 1st and 2nd defendants in erecting or in developing eight floor buildings over the area verged or tagged "flood plain" and "green area" otherwise called Plot Nos. 3908 now 2204 and 4079 at Asokoro District, Federal Capital Territory, Abuja are invading the privacy of the plaintiffs and other residents of Asokoro District, Federal Capital Territory Abuja as illegal and in contravention of the provisions of Section 2 DC HOU3, 2.2. DC HOU6 and 7, 2.3. DC HOU8 and 9 (pages 17 to 20) 3.2.1.5 (iv) (a) and (b) contained in page 124 to 125 Abuja Development Control Manual, 2007 Edition.**

8. **A Declaration that the act of the 1st and 2nd defendants in connecting their sewage system in Plot Nos. 3908 now 2204 and 4079 to link the Asokoro District sewage is illegal and in contravention of laid down procedure of building sewage in Abuja Metropolis and in contravention of the clear terms of the Development Lease Agreement dated 19th march, 2007.**

9. **A Declaration that the act of the 1st and 2nd defendants in linking the network of their roads from Plot 3908 now 2204 and 4079 and the entire sunrise Estate of Kugbo District adjoining Asokoro District to link the Asokoro District network of roads through Plot No. 527 Nelson Mandela Street, Asokoro is in contravention of laid down procedure contained in the Abuja Master Plan and the Development Control Manual 2007 Edition**

and detailed site development plan submitted by the 1st and 2nd defendants to the 3rd to 6th defendants.

10. **A Declaration that the 1st and 2nd defendants violated the provisions of Section 2 (4) and Section 18 of the Environmental Impact Assessment Act, CAP E12 Laws of the Federation of Nigeria 2010 by not applying to the appropriate Agency for the identification of their project for the project to be quickly identified and environmental assessment applied as the activities are being planned and for a screening of the project thereby violating the rights of the plaintiffs to be heard relating to their statutory rights to make inputs as to the effect of the project on their environment.**

11. **An Order of perpetual injunction restraining the defendants, their agents, servants, workers and anyone or body claiming through them from trespassing, developing or further developing the "flood plain" and "green area" land otherwise called Plot No. 3908 now 2204 and 4079 at Asokoro District, Abuja.**

12. **An Order of perpetual injunction restraining the 1st and 2nd defendants, their agents, privies, servants, builders and whosoever claiming through them from linking the sewage system under construction on Plot Nos. 3908 now 2204 and 4079 to the Asokoro District sewage systems.**

13. **An Order of perpetual injunction restraining the 1st and 2nd defendants, their agents, privies, servants, builders and whosoever is claiming through them from linking the network of roads from Plot No. 3908 now 2204 and 4079 and indirectly the entire Kugbo District Sunrise Estate network of roads to Asokoro District road network through Plot 527 Nelson Mandela Street or any other street in Asokoro District Abuja.**

14. **An Order of mandatory injunction directing the 3rd to 6th defendants to demolish the all structures put up or built on Plot Nos. 3908 now 2204 and 4079 which is verged or designated "flood plain" and "green area" in contravention of the law at Asokoro District of the Federal Capital**

Territory, Abuja and compelling them to restore the entire 25 hectares to its original natural forest and green trail and open space.

15. **A Declaration that the 1st and 2nd defendants in constructing the 5 no. high-rise 8 floor and other type buildings firmly within the 100 meters buffer zone of 132 KVA High voltage power line provided by the Abuja Master Plan and in various AGIS maps is wicked in the extreme and in complete disregard of public health considerations and specifically the health of future residents of the buildings as living within such distance of the high voltage buffer zone has been proved to cause Leukemia in children exposed to the high voltage.**

16. **The sum of Two Hundred and Seventy Five Million Naira (N275, 000, 000. 00) as general damages for the nuisance created by the activities on the land allocated to the 1st and 2nd defendants.**

The originating court processes were duly served on all the defendants. The 1st defendant filed its statement of defence dated 25th July, 2014 and filed on 6th August, 2014. The 2nd defendant filed its statement of defence dated 27th June, 2014 and filed on 11th July, 2014. On the part of 3rd – 6th defendants, their joint statement of defence is dated 25th May, 2016 and filed same date at Court's Registry. The Plaintiffs then filed an Amended Reply to the 3rd – 6th Defendants defence dated 3rd February, 2017 and filed same date at the Court's Registry.

The matter then proceeded to hearing. In proof of their case, the plaintiffs called four (4) witnesses. **Mr. Olusola Lukman Adegoke**, a Surveyor with Adelat Environmental Nig. Ltd testified as **PW1**. He deposed to a witness deposition dated 11th July, 2016 which he adopted at the hearing. He tendered in evidence a Report together with a plan he was commissioned to prepare by some concerned citizens of Nelson Mandela Street, Asokoro, which were admitted in evidence as **Exhibits P1 (a and b**.)

A copy of publication titled "The Master plan for Abuja, the new Federal Capital of Nigeria" together with three (3) plans titled (1) The Regional plan for the Federal Capital Territory (2) The Central Area plan for Abuja, the new federal

capital of Nigeria and (3) The master plan for Abuja, the new federal capital of Nigeria were admitted in evidence as **Exhibits P2, P2a, P2b** and **P2c** respectively.

PW1 was then cross-examined by counsel to the 1st, 2nd and 3rd – 6th defendants respectively.

Mr. Simon Bamidele Ojukannaiye, a registered Town Planner testified as **PW2**. He deposed to two (2) witness depositions dated 16th June, 2016 and 3rd February, 2017 which he adopted at the hearing. He tendered in evidence the following documents, to wit:

1. The Report he was commissioned by 1st plaintiff to prepare titled "Report on evaluation of the negative impacts of the conversion of Asokoro Green Area to Mass Housing Estate" was admitted in evidence as **Exhibit P3.**

2. A publication titled "Abuja Development Control Manual" was admitted in evidence as **Exhibit P4.**

3. Abuja Geographical Information System (AGIS) City Guide Standard Map Edition 05/008 was admitted as **Exhibit P5.**

4. AGIS City Guide Standard Map Edition 02/2010 was admitted as **Exhibit P6.**

5. Federal Capital City Revised Land Use Plan 2011, Phases I, II and III produced by Fola Consult Ltd was admitted as **Exhibit P7.**

PW2 was then cross-examined by counsel to the 1st, 2nd and 3rd – 6th defendants.

The 4th plaintiff on record, **Alhaji Hussaini Abdulrahman** then testified as **PW3**. He is the Chairman of 1st Plaintiff, Royal Niger Properties Ltd. He deposed to two (2) witness depositions dated 17th February, 2015 and 19th January, 2016 which he adopted at the hearing. He tendered in evidence the following documents:

1. Certificate of Incorporation of 1st Plaintiff (Royal Niger Properties Ltd) was admitted as **Exhibit P8**.

2. Certificate of Incorporation of 2nd plaintiff (Aero-Bell Nig. Ltd) was admitted as **Exhibit P9.**

3. Letters by Royal Niger Properties Ltd to the Honourable Minister FCT dated 10th February, 2013, 23rd January, 2008, 19th August, 2010, 25th May, 2009, 19th August, 2010, 10th December, 2013 were admitted as **Exhibits P10 a – f**.

4. Letter by the Department of Urban and Regional Planning, FCDA dated 15th May, 2002 was admitted as **Exhibit P11**.

5. The Deed of Assignment between Alhaji Mohammed Gidalle and Royal Niger Properties Ltd was tendered as a receipt and admitted in evidence as **Exhibit P12.**

PW3 was then similarly cross-examined by counsel to the 1st, 2nd and 3rd – 6th defendants respectively.

Engineer Rowland B. Ahiome, a Registered Engineer testified as PW4 and the last witness for the plaintiffs. He deposed to a three (3) paragraphs witness deposition dated 11th July, 2016 which he adopted at the hearing. He tendered in evidence a report he was commissioned to prepare by the 1st plaintiff titled "Report: Engineering Impact of Asokoro Gardens" which was admitted in evidence as **Exhibit P13**.

PW4 was equally cross-examined by counsel to the 1st, 2nd and 3rd – 6th defendants respectively. With the evidence of PW4, the plaintiffs closed their case.

The 1st defendant on its part called only one witness, **Mr. Mohammed-Deen Musa**, contract manager of 1st defendant who testified as **DW1**. He deposed to a witness statement on oath dated 7th August, 2014 which he adopted at the hearing. He tendered in evidence the following documents:

1. The Development Lease Agreement between the Minister, Federal Capital Territory and 1st Defendant dated 19th March, 2007 was admitted as **Exhibit D1**. The Addendum between the same parties dated 26th May, 2011 was admitted as **Exhibit D1a**.

2. Search Reports of Plots MISC 1101148, 1011585, 108652 and 80188 were admitted in evidence as **Exhibits D2 (1, 2, 3 and 4).**

3. The Ministers letter of approval of grant over plot 3908 dated 6th November, 2008 for Sunrise Estate Development Ltd was admitted as **Exhibit D3**.

4. Site plan of plot 2204 and site plan of 2204 following excision of green buffer was admitted as **Exhibits D4 (1 and 2).**

5. Letter of intent conveying approval of grant of plot 2204 was admitted as **Exhibit D5**.

6. Site Plan of plot 4079 and the approval of grant of plot 4079 dated 6th November, 2008 were admitted as **Exhibits D6 (1 and 2).**

7. Detailed site Development Plan of plot 4079 approved by Department of Development Control was admitted as **Exhibit D7**.

8. Site Development plan of Sunrise together with the letter titled "Re: Application for Land Use approval for Sunrise Hill Estate" were admitted as **Exhibits D8 (1 and 2).**

9. FCDA's letter of Status of Plot 4079 was admitted as **Exhibit D9**.

10. Building Plan approval for (1) Eight (8) compounds unit; (2) Approval for Villas and Standalone Houses and (3) Approval for 5 apartment Blocks were admitted as **Exhibits D10 (1, 2 and 3)**.

11. Environmental Impact and Assessment Study and Impact Clearance Certificate were admitted as **Exhibits D11 (1 and 2).**

12. FCDA's permission for Sunrise to connect its sewer and services lines was admitted as **Exhibit D12**.

13. Sunrise catalogs showing the proposed landscape of the project was admitted as **Exhibit D13**.

14. Nine (9) numbered photographs showing Developments at Sunrise Hills Estate was admitted as **Exhibit D14 (1-9.)**

DW1 was cross-examined by counsel to the 2nd Defendant and counsel to the plaintiffs. Counsel to the 3rd – 6th defendants elected not to cross-examine DW1 and with his evidence, the 1st defendant closed their case.

The **2nd defendant** indicated that they were not calling any witness and accordingly closed their case.

On the part of the 3rd – 6th defendants, they called two (2) witnesses. **Ja'afau Hamidu**, Assistant Chief Town Planning Officer with the Department of Development Control testified as **DW2**. He deposed to a witness statement on oath dated 25th May, 2015 which he adopted at the hearing. He did not tender any documentary evidence. Counsel to the 2nd defendant was not in court to cross-examine despite been served hearing notice. The 1st defendant on their part chose not to cross-examine DW2. DW2 was thus only cross-examined by counsel to the plaintiffs.

Bayo Balogun, Chief Town Planning Officer with the Department of Urban and Regional Planning testified as **DW3**. He deposed to a witness statement on oath dated 24th May, 2016 which he adopted at the hearing. Again, the 2nd defendant was not in court and so they did not exercise their right to cross-examine DW3. Counsel to the 1st defendant on its part chose not to cross-examine DW3. He was however cross-examined by counsel to the plaintiffs and with his evidence, the 3rd – 6th defendants closed their case.

At the conclusion of trial, parties were ordered to file and exchange final written addresses in compliance with the Rules of Court. From the Record, despite more than ample time given to the 3rd – 6th defendants, they did not file an address as allowed by the Rules of Court.

The final address of 2nd defendant is dated 13th January, 2021 and filed on 14th January, 2021. One issue was raised as arising for determination thus:

"Whether the 2nd defendant in the instant case is a competent and/or necessary party?"

On the part of 1st defendant, the final address is dated 4th December, 2020 and filed same date at the Court's Registry. In the address, three (3) issues were identified as arising for determination as follows:

1. **Whether the Abuja Master Plan (Exhibits P2, P2a, P2b and P2c) and Abuja Development Control Manual, 2007 (Exhibit P4) are justifiable documents; and whether the Plaintiffs have been able to establish that Plot No 3908 (now 2204) and Plot 4079 were designated as FLOOD PLAIN and GREEN AREA respectively.**

2. **Whether the Plaintiffs have been able to establish their allegation that the allocation of the Plot No 3908 (now 2204) and Plot 4079 is in contravention of the Abuja Master Plan and Abuja Development Control Manual; and whether the construction of Sunrise Hills Estates constitutes environmental hazard, invasion of privacy, negative social impact and as such liable to be set aside.**

3. **Whether the Plaintiffs are entitled to the reliefs sought; and whether the court should dismiss the case in its entirety**.

The plaintiffs final address is dated 3rd February, 2021 and filed on 8th February, 2021. In the address seven (7) issues were raised as arising for determination as follows:

1. **Whether the Plaintiffs have locus standi to bring this action.**

2. **Whether the allocation of Plots 3908 (now plot 2204) and Plot 4079 Asokoro District made by the 3rd Defendant to the 1st Defendants which are "Flood Plain" and "Green Area" within the Federal Capital Territory Abuja is in breach of Abuja Master Plan and the Regulations contained in the Abuja Development Control Manual 2007 Edition.**

3. **Whether the physical development by way of erecting high rise structures, buildings carried out by the 1st and 2nd Defendants area verged or described as "Flood Plain" and "Green Areas" otherwise called Plots Nos. 3908 now 2204 and 4079 at Asokoro District, Federal Capital Territory, Abuja is in breach of Abuja Master Plan and its Land Use Maps, Abuja Development Control Manual 2007 Edition and the Regulations contained in the Abuja Development Control Manual 2007 Edition.**

4. **Whether the allocation of Plots 3908 (now 2204) and 4079 to the 1st Defendant by the 3rd Defendant and the physical development by way of erecting high rise buildings and roads on the said plots by the 1st and 2nd Defendants constitute a valid review and or change of land use and or density of Abuja Master Plan in respect of Plot 3908 (now Plot 2204) and Plot 4079 at Asokoro District Federal Capital Territory.**

5. **Whether the act of the 1st and 2nd Defendants constructing road network from Plot 3908 (now 2204) and Plot 4079 and the entire Sunrise Estate of Kugbo District Adjoining Asokoro District to link the Asokoro District network of roads through Plot 527 Nelson Mandela Street, Asokoro is a contravention of the laid down procedure contained in Abuja Master Plan and Abuja Development Control Manual 2007 Edition.**

6. **Whether the act of the 1st and 2nd Defendants constructing 5 no high rise 8 floor and other type buildings firmly within the 100 meter buffer zone of 132 KVA High Voltage Power line provided by Abuja Master Plan a violation of the public health of the residents of the building within such distance of the high voltage buffer zone.**

7. **Whether the 1st and 2nd Defendants are not liable for the nuisance created by their activities on the land allocated to them.**

The 1st defendant then filed a Reply on points of law to the address of plaintiffs dated 23rd June, 2021 and filed on 24th June, 2021.

I have given a careful and insightful consideration to all the issues as distilled by parties as arising for determination.

On the pleadings which has precisely streamlined the issues and or facts in dispute, the central key issues revolves around (1) Whether the allocation of Plots 3908 (now plot 2204) and plot 4079 made by 3rd – 6th defendants to 1st defendant were made on a designated **FLOOD PLAIN** and **GREEN AREA** in violation of the Abuja Master Plan, Land Use Maps (LUM) and Regulations contained in the Abuja Development Control Manual (ADCM) 2007 Edition and (2) Whether the actions of the 1st defendant in developing the plots violated the same Abuja master plan, LUM, ADCM and the rights of plaintiffs.

All the other issues raised by parties can be considered within the above broad issues. Issues 2 – 7 raised by plaintiffs and issues 1 – 3 raised by 1st defendant can all be determined within the context of the issues identified above. Indeed if the critical allegations made by claimants with respect to the **two plots** have no validity, it follows that the very foundation on which the case and the Reliefs sought rest would have been compromised *ab initio*.

Issue (1) on locus standi raised by claimants clearly has been overtaken by events. At the very inception of this case, the 1st defendant filed a preliminary objection dated 7th August, 2014 and filed on 18th August, 2014 challenging the jurisdiction of the court to entertain the extant action and one of the issues raised relates to whether the claimants have the locus standi and legal capacity to institute this action. In the Court's Ruling on 3rd February, 2016, the court answered the question in the affirmative. None of the parties in this case challenged the decision at the Superior Court of Appeal. It is therefore stating the obvious that this Court is not a Court of Appeal, and as such the conduit of a final address cannot be used to re-open the issue again. Accordingly the question of locus standi must be discountenanced as no a proper issue for determination in the circumstances.

In the same vain, the issue of whether or not 2nd defendant is a necessary party to the action is equally not decisive and not one we should exert energy on particularly in the context of the streamlined issues in dispute and the clear Reliefs sought by plaintiffs.

The provision of **Order 13 Rule 4 of the High Court of FCT** (Civil Procedure Rules) 2018 is apposite here and provides that: **"Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether**

jointly, severally or in the alternative. Judgment may be given against one or more of the defendants as may be found liable, according to their respective liabilities, without any amendment." See also **Order 13 Rule 6 (1) of the FCT Rules 2018**.

The above provisions are clear and unambiguous. A determination of liabilities of parties in the extant case clearly is one of proof on established legal threshold. All parties having contested the extant action, what really remains is simply whether the plaintiffs have made out a case on the evidence and the law to entitle them to judgment against any or all of the defendants. Where no case is creditably made out against any or all of the defendants on Record, such a case must as a consequence then fail.

This being so, the issues for determination in this action can be considered and be more succinctly encapsulated in the following broad issue and sub issues:

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

This issue will be predicated on a resolution of these salient sub-issues:

i. **Was the allocation of plots 3908 (now plot 2204) and 4079 by 3rd – 6th defendants made on a designated flood plain and Green Area?**

ii. **Were the allocations in violation of the Abuja Master Plan, Land Use Maps and Regulations contained in the Abuja Development Control Manual?**

iii. **Did the developments undertaken by the 1st defendant violate the Abuja Master Plan, Land Use Maps, the Regulations in the Abuja Development Control Manual and rights of plaintiffs?**

iv. **Whether the plaintiffs are entitled to any or all of the Reliefs?**

The above issue and the sub-issues raised by court in my considered opinion conveniently covers all the issues raised by parties. The issues thus distilled by

court are not raised in the alternative but cumulatively with the issues raised by parties. See **Sanusi V Amoyegun (1992) 4 NWLR.**

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

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

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issues formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle. Some of the sub-issues will be taken independently while others may be taken together where there is a confluence of facts and or evidence.

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

Issue 1

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

This issue will be predicated on a resolution of these salient sub-issues:

i. **Was the allocation of plots 3908 (now plot 2204) and 4079 by 3rd – 6th defendants made on a designated flood plain and Green Area?**

ii. **Were the allocations in violation of the Abuja Master Plan, Land Use Maps and Regulations contained in the Abuja Development Control Manual?**

iii. **Did the developments undertaken by the 1st defendant violate the Abuja Master Plan, Land Use Maps, the Regulations in the Abuja Development Control Manual and rights of plaintiffs?**

iv. **Whether the plaintiffs are entitled to any or all of the Reliefs?**

I had at the beginning of this Judgment stated the claims or Reliefs sought by the plaintiffs. As identified already, their case is rooted on the main allegation that plots Nos. **3908** (now plot 2204) and **4079** allocated to "1st and 2nd defendants" by 3rd – 6th defendants were on a "flood plain" and "green area" and in violation of the Abuja master plan, its Land Use Maps and Abuja Development Control Manual 2007 Edition. The developments effected on the plots were equally said to be flawed on the same premises.

These allegations were all vigorously denied by the defendants in their pleadings and these therefore became a matter for proof by credible evidence within established threshold as allowed by law.

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

In this case, the plaintiffs filed a 26 paragraphs Amended Statement of claim and a reply to the 3rd – 6th defendants statement of Defence which forms part of the

Record of Court. The evidence of the witnesses called by plaintiffs falls largely within the structure of the claim and the Reply filed.

The 1st defendant filed a 23 paragraphs statement of defence which also forms part of the Record and the evidence of their sole witness is similarly largely within the body of facts averred in their defence.

The 2nd defendant filed a 9 paragraphs defence but as already indicated, no evidence was led in support. The legal consequence of this action is that the defence is deemed as abandoned.

On the part of 3rd – 6th defendants, they filed a rather lengthy 56 paragraphs statement of defence which equally forms part of the Record of Court. Their two witnesses similarly and largely gave evidence within the context of the facts averred in their pleadings.

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

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act**. By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by

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

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

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

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

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

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

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

It is equally important to note that the nature of the reliefs sought by plaintiffs are substantially **declaratory**. That being so, it is critical to state that **declarations** in law are in the nature of special claims or reliefs to which the ordinary rules of

pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.**

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

A convenient starting point is to understand the precise situational dynamic underlining the entire case which then provides greater clarity and insight to the case made out on each side of the aisle.

Now on the pleadings and evidence, there is no real dispute on the fact that by a Development Lease Agreement dated 19th March, 2007 and an addendum dated 26th May, 2011 vide **Exhibits D1 and D1a**, the 3rd defendant and Honourable Minister FCT exercising extant statutory powers under applicable legislations in the FCT granted the 1st defendant a Development Lease over all that parcel of land and premises measuring about 578 hectares and duly registered in the Federal Capital Territory Land Registry Office, Abuja.

By **Exhibits D3, D5, D6** and **D6 (1)**, the 3rd defendant then conveyed approvals of grant over plots 3908, (now plot 2204) and 4079 to the 1st defendant. The grant of this development lease and the addendum via **Exhibits D1** and **1a** and the allocations subsequently made vide **Exhibits D3, D5** and **D6** were anchored on the policy initiative of the Federal Government to encourage private sector participation in the development and construction of Engineering and Housing infrastructure in Nigeria and the Federal Capital. The comments on the legal search reports issued by 4th defendant vide **Exhibits D2 (2) and (3)** captured or reflected the essence of the allocations to 1st defendant. The 1st defendant clearly desirous of providing modern primary and secondary infrastructural development after the allocations, then made necessary applications which were approved by the 3rd – 6th defendants vide **Exhibits D8 (1) and (2)** and **D10 (1)-(3)** which allowed 1st defendant to commence the building of the housing estate on the plots including the disputed plots 2204 and 4709. By **Exhibits D14 (1-9)** the photographs

tendered, the developments on the plots in question have clearly reached an advanced stage. I shall return to these approvals again in the course of this judgment.

It is important to underscore certain salient points at the onset thus:

1. The **plaintiffs** are not parties to the development lease agreement and the addendum (**Exhibits D1 a and b**). The contents of the Agreements are therefore clearly binding on only parties subject of the agreement and the contents cannot be altered or additions made to the agreements by anybody to suit a particular purpose. See **Section 128 of the Evidence Act**. I will also return to the Agreements later on.

2. The plaintiffs did not in their pleadings or evidence challenge the extant powers of the Minister, FCT to allocate or grant land within the FCT. Indeed the recognition by plaintiffs is explicit and unambiguous that on matters of land allocation in the FCT, the minister exercises undoubted powers conferred by law over allocations of land. Indeed in paragraphs 4 – 6 of the claim, the plaintiffs acknowledged the powers of the 3rd – 6th defendants with respect to management, control and allocation of lands and **"especially the Asokoro District lands in Abuja."**

3. The plaintiffs have equally not made any **claims of ownership** over the 2 disputed plots 3908 (now plot 2204) and 4079.

Now to the crux of the complaints of plaintiffs which I shall endeavour to treat in some sequence one after the other to cover all complaints made by plaintiffs. As stated earlier, I had indicated that I will refer to specific paragraphs of the pleadings to streamline and identify with specificity areas of complaint. It is important to immediately note that the plaintiffs commenced this suit **"for themselves as owners and residents of Asokoro District within a neighbourhood radius of 100 meters to the disputed plots in issue."** The clear implication is that this suit was brought by the eight (8) plaintiffs in their personal capacity as **"owners"** and **"residents"** and for their own benefit. It is clearly on the evidence not a case brought on behalf of other owners and residents of Asokoro District. PW3, the 4th plaintiff and Chairman of 1st plaintiff and the only plaintiff

of the eight (8) plaintiffs to give evidence stated clearly that he does not have the authority of all members of Asokoro District to bring this case or action.

Now in paragraphs 1 and 7 of the statement of claim, the plaintiffs pleaded as follows:

"1. The 1st plaintiff is a limited liability company registered under the laws of the Federal Republic of Nigeria carrying on business as property developers and owner/allottee of Plot 517 having purchased same from the original allottee Mohammed Gidalle in the sum of Twelve Million Naira and a Deed of Assignment executed. The Deed of Assignment is hereby pleaded as receipt. The Plot No. 517 was subsequently subdivided into Plot No. 517a and Plot No. 517b between Hajia Kolo Kingibe and the 1st plaintiff. While Hajia Kolo Kingibe is in plot No. 517a, the 1st plaintiff in Plot No. 517b and these facts are attested to in the correspondence from Federal Capital Development Authority dated 15th May, 2012 addressed to Mohammed Gidalle. The letter is hereby pleaded. The 2nd plaintiff's Director is Abdullahi Afolabi Yusuf who is the allottee of Plot No. 513 Asokoro District Abuja and the 2nd plaintiff resides in Plot No. 513 Asokoro District Abuja. The 3rd plaintiff is an allottee and resident of Asokoro District within 100 meters radius of Plot 3908 now 2204 and Plot 4079 while the 4th, 5th, 6th, 7th and 8th plaintiffs are tenants and residents of Property No. 517b and 513 Asokoro District Abuja and they bring this action for themselves as owners and residents of Plot No. 517b and Plot No. 513 Asokoro District which is within a neighbourhood of 100 meters radius of Plot No. 3908 now 2204 and Plot No. 4079 Asokoro District Abuja within the jurisdiction of this Honourable Court.

7. The Plaintiffs aver that the action as constituted is for themselves as owners and residents of Asokoro District within a neighbourhood radius of 100 meters of Plot 3908 now 2204 and Plot 4079 Asokoro District Abuja which are area verged "flood plain" and "green area" and are particularly residents of Plots 517b and 513 Abuja."

The 1st defendant in paragraphs 1 and 2 of its defence and 3rd – 6th defendants in paragraphs 1-3 of their defence joined issues with the above averments of the

statement of claim. Now if the plaintiffs are suing as owners and residents of Asokoro District within a radius of 100 meters to the disputed plots and this averment is challenged as in this case, the matter now is one of proof situating the plaintiffs ownership or residence in Asokoro District within the neighbourhood radius pleaded. There must be on the evidence credible evidence establishing a nexus or link between them and the properties they claim providing basis to evaluate the factual and legal validity of their complaint(s) and ultimately the Reliefs sought against Defendants.

In paragraph 1 above, it is alleged that **1st plaintiff** is the owner/allottee of plot 517 having purchased same from the original allottee, one Mohammed Gidalle and that the same plot 517 was later subdivided into plot 517a to the 1st plaintiff while plot 517b was allotted to Hajiya Kolo Kingibe. The conveyance of Approval by 4th defendant for the subdivision was tendered as **Exhibit P11**. This document from FCDA shows the interest of 1st plaintiff on plot 517a which is said to be within neighbourhood radius of 100 meters to the disputed plots. It is important to state that Hajiya Kolo Kingibe did not give evidence in this case and there is nothing in the pleadings situating any complaints by her or how her rights may have been impacted by the allocations to 1st defendant.

In the same paragraph 1, the plaintiffs aver that **2nd plaintiff's director** is an allottee of plot 513 while the 2nd plaintiff resides there. Now in evidence, the allottee himself of plot 513 is not a party to this action. If the 2nd plaintiff resides on the said plot, there is absolutely no evidence before court situating this residency. There is really nothing before the court disclosing the right of either the 2nd plaintiff or its director in relation to plot 513 or indeed any other plot in issue.

Again, in the same paragraph 1, it was averred therein that the **3rd plaintiff** is an allottee and resident of Asokoro district within 100 meters radius of the disputed plots but strangely no particular plot was identified as allotted to 3rd plaintiff and crucially no scintilla of evidence was produced showing any allocation to 3rd plaintiff or the fact that he is resident in Asokoro District as alleged.

Finally paragraph 1 states that 4th, 5th, 6th, 7th and 8th plaintiffs are tenants and residents of property No 517b and 513 but again no evidence was supplied in proof of these averments which were denied by defendants.

As stated earlier, apart from 4th plaintiff who is the chairman of 1st plaintiff who gave evidence in this case, no other **"owner or resident of Asokoro District within a neighbourhood radius of 100 meters"** to the plots in dispute gave evidence in support of the complaints comprehensively streamlined in their pleadings. Indeed the implication flowing from the conduct of this case and flowing from the evidence is essentially that 2nd, 3rd, 5th – 8th plaintiffs have not disclosed any interest that is threatened by the allocation to 1st defendant to support the extant cause of action. In the clear conspicuous absence of evidence to situate their ownership or residency of any plot within a neighbourhood of 100 meters radius to the disputed plots, the pleadings in paragraphs 1 and 7 with respect to ownership and residency is deemed as abandoned.

Flowing from the above analysis, what is therefore before the court is essentially the evidence for and on behalf of only the 1st plaintiff which was allocated plot 517a after subdivision vide **Exhibit P11**. How this impacts the case, we shall soon see.

Now in **paragraphs 8 – 10 and 22** of the Amended Statement of claim, the plaintiffs pleaded as follows:

"8. The plaintiffs aver that the lands being the focus of this action are the areas verged "flood plain" and "green area" at Asokoro District Abuja in the Abuja Master Plan which guides the legal and physical development of lands in Abuja the Federal Capital Territory and that the area verged "flood plain" and "green area" have been purportedly converted into plots 3908 now 2204 and 4079 and allocated to the 1st and 2nd defendants by the 3rd to 6th defendants which area is approximately 25 hectares at Asokoro District, Cadastral Zone A04. Reliance shall be placed on the Review of Abuja Landscape Master Plan Final Report submitted by Multi-Systems Consultants at page 58.

9. The plaintiffs aver that it was in 2008 that the 3rd defendant allocated the entire green area and flood plain covering the expanse of 25 hectares at Asokoro District to the 1st and 2nd defendants to erect a 7 floor residential buildings. The 1st and 2nd defendants are hereby put on notice to produce

their title documents to Plot 3908 now 2204 issued to them by the 3rd defendant.

10.The plaintiffs aver that the Asokoro District Landscape Map shows clearly that Plot 3908 now 2204 is a flood plain while Plot 4079 in its entirety is an unclassified green area. The said map which is contained in the Review of Landscape Master Plan final Report submitted by Multi-Systems Consultants at Page 60 is hereby pleaded and shall be relied upon at the trial of this suit.

22.The plaintiffs aver that Plot No. 3908 now 2204 is a "flood plain" within Asokoro district measuring 10.47 hectares while Plot No. 4079 is a "green area" measuring 14.54 hectares hence the total area of the land subject of this action is 25.01 hectares. Reliance shall be placed on page 60 Appendix 3A04.2 of the Review of Abuja Landscape Master Plan Final Report submitted by Multi-Systems Consultants to the 3rd and 4th Defendants."

Again, as stated earlier, it is one thing to aver facts in pleadings but it must be substantiated by credible evidence in support of the facts as averred, in the absence of which the averments are deemed abandoned. See **Aregbesola V Oyinlola (2011) 9 NWLR (pt.1253) 458 at 594 A-B**. The duty of court is now to situate from the evidence, credible proof that plots 3908 (now 2204) and 4079 are areas verged "flood plain" and "Green Areas" in the Abuja master plan which was tendered in evidence as **Exhibit P2** along with accompanying maps tendered as **Exhibits P2 a, b** and **c**.

Let me quickly point out immediately that absolutely no scintilla of evidence was proffered by **plaintiffs** to support their pleadings that the 2 plots in focus was at any time **allocated** "to the 1st and 2nd defendants." Indeed on the evidence, the allocations were unequivocally made to only the 1st defendant. In the absence of evidence to support such averment, it is clear that the various averments in the entire pleadings of plaintiff which was structured to situate the **allocations** of the two plots to include the **2nd defendant** must be deemed as abandoned.

Now a careful reading of the averments and the allegations made in paragraphs 8-10 and 22 (above) of the Amended statement of claim above and indeed a

substantial basis of the case or complaints of plaintiffs is rooted on **"the Review of Abuja Landscape Master Plan Final Report submitted by Multi-systems Consultants at page 58"** pleaded in **paragraph 8** above.

In paragraph 10 above, the plaintiffs pleaded that the **"Asokoro District Landscape Map shows clearly that plot 3908 and 2204 is a flood plain while plot 4079 in its entirety is an unclassified green area. The said map which is contained in the Review of Landscape Master Plan Final Report submitted by Multi-systems Consultants at page 60 is hereby pleaded and shall be relied upon at the trial of this suit."**

Furthermore in **paragraph 22** above, the plaintiffs aver that the total area of the land subject of this action is 25.01 hectares with "plot 3908, now 2204 on a flood plain with 10.47 hectares" while plot No. 4079 is a "green area measuring 14.54 hectares." The plaintiffs said they will be again rely on **page 60 Appendix 3A04.2 of the same review by Multi Systems Consultant**.

Now in evidence, this important document of **"Review of Landscape Master plan final report submitted by multi-systems consultants"** which clearly **underpins** the case of plaintiffs was not tendered in evidence to support the allegations in the statement of claim and particularly in paragraphs 8-10 and 22 above that the plots in issue were situated on a **flood plain** and **green area** and that the total area of land subject of this action is **25.01 hectares**.

Indeed in **paragraph 10**, the claimants pleaded that the **"Asokoro District Landscape Map"** which is "contained" in the **"Review of Landscape Master Plan Final Report"** submitted by Multi Systems Consultants at Page 60 show the following:

1. **Plot 3908 now 2204 is a flood plain while**
2. **Plot 4079 in its entirety is an unclassified green area.**

If this **"Review"** by **Multi Systems Consultants** was not tendered including the said **"Asokoro District Landscape Map"** contained in it, the clear legal implication is that the complaints or allegations that the grant or allocations covers 25.01 hectares and that the allocation of Plot 3908 (now 2204) is a "flood plain" and that plot 4079 is an entirely "unclassified green area" which were all

strenuously denied by defendants are clearly unsubstantiated and are deemed as abandoned.

Averments in pleadings it must be underscored do not amount to evidence. They have been described as mere paper tigers and are not evidence. See **Omo-Agege V Oghojafor & ors (2011) 3 NWLR (pt.1234) 341 at 353 G-H**. The consequence of the failure of the **plaintiffs** to tender this very important **Review of Abuja Landscape Master Plan final Report submitted by Multi System Consultant** including the **Asokoro District** Landscape Map contained in it to support the case made with respect to the size of the plots and that Plot 3908 now 2204 is a "Flood Plain" while "Plot 4079 in its entirety is an unclassified green area" is that those averments are deemed as abandoned completely and bereft of probative value. It cannot be right for any court of law qua justice to treat averments in a pleading without evidence as evidence of matters averred therein. It is apparent even at this early stage that the very foundation on which the plaintiffs fundamentally predicates their entire case is now substantially undermined.

In the absence of the **Review**, and the **Asokoro District Landscape Map**, we are now left with the publication titled "Abuja Master Plan" tendered as **Exhibit P2** and the accompanying land use maps tendered as **Exhibits P2 a, b** and **c**.

I have carefully gone through these exhibits and the evidence led to situate the complaints of plaintiffs relating to the allocation of the plots in question on a flood plain and green area; unfortunately there is nothing conclusive in any of Exhibits P2 and P2 a-c streamlining with clarity any portion of land designated as a Flood Plain or Green Area and most importantly that the disputed **plots 2204** and **4079** are specifically on a flood plain or green area. None of the witnesses produced by plaintiffs was able to demonstrate with clarity or conviction on the basis of these maps that the plots in issue are on a flood plain or green area.

In the evidence of PW1, the surveyor who prepared the report, **Exhibit P1a**, he stated in his deposition that plots 2204 and 4079 fall within the Green Area and Flood Plain in the book Abuja Master Plan, **Exhibit P2**. He referred the court to page 3 of Exhibit P2 which contains a plan but there is clearly nothing on page three situating any **flood plain** or **green area**. This map on page 3 is the same map tendered as **Exhibit P2c**. Now this **Exhibit P2c** titled the **Master Plan of Abuja**

equally has nothing on it showing any designated area of the map described as a "flood plain" or "Green Area". Indeed there is nothing on this map showing a designation of any part into **Asokoro District**; the district where the two plots in issue are situated. What is interesting here is that on the **legend columns** on both **Exhibit P2** (page 3) and the map **Exhibit P2c** which PW1 agrees describes the features on the maps, there is nothing on the **legend** indicative of a flood plain or green area. PW1 agreed under cross-examination that **flood plain** or **green area** is not indicated in the maps, so one then questions the credibility of his contention that the two plots fall within a flood plain and green area and how this map relates even to plots 2204 and 4079 at Asokoro District.

Most importantly, beyond bare speculative posturing and at the risk of sounding prolix, there is nothing in either **Exhibits P2 or P2c** showing that plots 2204 and 4079 are on a designated **flood plain** or **green area**. **PW1** again agrees under cross-examination that there are no plot numbers written on the maps. Again here, it would appear clearly that his conclusions that the two plots are on a flood plain and green area are based on unfounded speculations. Furthermore and to further undermine whatever creditability PW1 may have, he stated under cross-examination that Asokoro is a district but that **Exhibit P2c** does not contain districts; that it is a central area plan. When further asked where Asokoro district was on the map, Exhibit P2c, he stated that it was in the "Central District" and that he can use his coordinates to show that Asokoro district where the disputed plots are situated are in the "Central Area".

Now and still under cross-examination, his attention was drawn to Exhibit P2, the Abuja Master Plan at page 6, paragraphs I and II where the following appears:

"In the plan for the Central Area of the new Federal Capital, the requirement of governmental efficiency is met in a dignified setting responsive to the natural landscape, and structured to achieve appropriate spatial relationships among government agencies and between government, municipal and commercial activities.

The Central Area houses the Chief Government and business activities of the City. It has been divided into two functionally distinct zones: one containing the governmental and ministerial functions, the other containing business,

parastatal, and commercial functions. These two areas are placed end to end along a central axis centering on the great granite inselberg of Aso Hill. This central axis traverses four low, rounded hills, interspersed with minor stream valleys. These cross at right angles to the axis. Where the axis crosses the high point of each hill, sites of important public buildings have been located."

On reading these two paragraphs of **Exhibit P2**, the Abuja Master Plan, PW1 now agreed that Asokoro district is now not in Central area. If Asokoro district is not in central area, it follows logically that the maps in question clearly have no application to the two plots in question which are located in Asokoro. The Reference to the map, Exhibit P2c and the map on page 3 of Exhibit P2 as providing the basis to underpin the case of plaintiffs that the two plots in issue are on a flood plain or green area is again undermined. Unfortunately, the evidence of PW1 riddled with unclear and rather confused testimony did not further the case of plaintiffs that the disputed plots are on a designated **flood plain** and **green area**.

In the circumstances, it is difficult to accord probative value to the report, **Exhibit P1a**, he was commissioned to prepare by 1st plaintiff on "physical demarcation and survey of green areas," when this green area cannot be identified on the Maps used in the preparation of the report and most importantly, they cannot be linked or connected to the two (2) plots in dispute.

In any event and relevant here is the unchallenged evidence of **DW1**, who indicated that the documents titled **Master Plan, Exhibit P2** and the accompanying map **Exhibit P2c** are outdated master plans not in use now. He stated that **Exhibit P2** was the first proposal and that it has been reviewed over and over again. That the city of Abuja does not look as is depicted in **Exhibit P2c**.

This evidence was not challenged in any manner and must be accorded probative value particularly coming as it were from the authority responsible for the management, control and allocations of land as conceded by the plaintiffs themselves.

The evidence of PW2, **Simon Bamidele Ojukunnaiye**, a Registered town planner is not also particularly helpful. The remit of the assignment given to him by plaintiffs was to produce a report on evaluation of the negative impact of the

conversion of **Asokoro Green Area to mass housing estate** which he tendered as **Exhibit P3** in evidence. He stated that he carried out the assignment using the same outdated Abuja Master Plan, **Exhibit P2** and the Abuja Development Control Manual **Exhibit P4** but again no where in his evidence did he show or demonstrate in court any flood plain and or green area in any of these Exhibits and most importantly that the two plots indeed are on a flood plain or green area. Indeed his report **Exhibit P3** only talked about "Green Area" and nothing to do with "Flood Plain".

In evidence particularly at **page 6** of his report Exhibit P3, he referred to a map which he indicated is the Abuja Master Plan showing "Asokoro District". Indeed in this plan which he produced in his report, he delineated an area as the "Green Area" and an area as "Low Density Land Use."

Now it is not clear if this plan on page 6 of his Report Exhibit P3 is the same as the plan or map Exhibit P2c and the map shown on page 3 of Exhibit P2, the publication titled "Abuja Master Plan for Abuja, the new federal capital of Nigeria." If the **contention of PW3** is that what he has produced in his report is the same with the plan or map in Exhibit P2c and Exhibit P2, then it is clear that he has altered or made interpolations or additions to the contents of **Exhibits P2c and P2**.

Now contrary to the representation made by PW2 on page 6 of his report, there is absolutely no mention of Asokoro District in Exhibit P2c or on page 3 of Exhibit P2. There is equally nothing in either Exhibits delineating any areas as a low density land use or green area as done by PW2 in his report. The legends on both maps do not situate a green area or flood plain or low density area.

As stated severally in this judgment, there is no liberty in any one to make additions or interpolations to any document to suit any purpose. PW2 cannot therefore seek to expand the remit of these clear maps or documents beyond what they espouse or say. This Abuja Master Plan was made as far back as 1979 and he was clearly not part of those who prepared it. What is strange here is that the evidence of PW2, a town planner even conflicts fundamentally with the evidence of PW1, the registered surveyor. I had earlier referred to his evidence where he

stated in unambiguous terms that Asokoro District does not fall within the purview of Exhibit P2c or the map on page 3 of Exhibit P2.

It is therefore obvious that the **"map"** used by PW2 in his report clearly has no nexus with the maps in evidence. This "map" depicted on page 6 of his report and used to support the conclusions of PW2 is not before the court.

Indeed even looking at his report Exhibit P3, it is clear that his report even only dealt with one of the plots in issue (plot 3908) as been on a Green Area and the plan he even used as demonstrated is different from the Abuja Master Plan contained in **Exhibits P2 and P2c**. If the report dealt with only one plot in issue, the implication is that the report and its conclusions will have no application to the other plot 4079 also in dispute.

On **page 7** of **Exhibit P3** of his report, PW3 stated thus:

"4.0. EXISTING SITUATION

> **This section of the Report will focus on all the issues concerning plot 517B resulting from the conversion of the Green Area/132 KVA buffer to plots 3908 and K079 for Mass Housing Project by Sunrise Estate.**

4.1. MASTER PLAN PROVISION

> **The plot in question (No.517B) is located in Asokoro District of Abuja, zoned as a Low Density Area in the officially approved comprehensive land use plan of Abuja (produced by S.F. Consultant & S.F. Cologne Consultants West Germany)."**

The above paragraphs of the Report are clear. The report dealt clearly and specifically with only plot 3908 and not plot 4079 as the converted green area and then relied on **"an officially approved land use plan of Abuja (produced by S.F. Consultant and S.F Cologne Consultants West Germany) to state that the said plot is in Asokoro District of Abuja."**

Now this so called **"officially approved comprehensive land use plan"** depicting plot 3908 as located in Asokoro district was not produced by PW2 or plaintiffs in evidence and this is fatal; what is clear here is that the map used to reach the

conclusions in **Exhibit P3** is certainly not the Abuja Master Plan in evidence vide **Exhibit P2 or P2c** produced by International Planning Associates and that a different plan was used by PW2 as clearly indicated in **Exhibit P3** paragraph 4.1 (supra).

In addition, to further muddy the waters, the same PW2 at page 9 of **Exhibit P3** referred to another "Reviewed Land Use Map Abuja (2011) Asokoro District." This was tendered as **Exhibit P7**. This map however depicts or shows a description/categorization of the areas on the maps with names which again is different from **Exhibits P2** and or **P2c.**

What is interesting about this map **Exhibit P7** and the evidence of PW2 is that PW2 sought to actively discredit the map which he did not produce but which he himself tendered. He stated that the plan was **"manipulated"** because the green area was described as "undeveloped area." The legend on the Exhibit or Map it must be underscored does not indicate any green area at all.

Now this plan was not prepared by PW2 as stated earlier but by a firm **"Fola Konsult Ltd"** who were appointed according to the 3rd – 6th defendants along with other consultants to carry out specific consultancy projects as part of the ongoing review of the Abuja Master Plan.

PW2 did not make any claim to be part of this firm that prepared the maps neither did he participate in its production. It is therefore difficult to see how his evidence can alter or change the contents of **Exhibit P7**. That is a futile exercise.

It is also difficult to situate the rather baseless assertion that the map was manipulated. Where is the evidence to support any manipulation? Absolutely nothing was put forward beyond bare accusations. The fact that PW2 does not agree with the review undertaken by the firm does not mean that there is a manipulation.

In any event, the 3rd – 6th defendants have stated vide the unchallenged evidence of **DW2, Bayo Balogun**, the Chief Town Planning Officer with the Department of Urban and Regional Planning that there is as yet no final report by Fola Konsult as the work is ongoing and that even when there is a final report, it has to be approved by the Minister before it becomes an official document of the 3rd and 4th

defendants. The bottom line is that the disagreement with the contents of the review does not in anyway derogate from the fact that the said map does not delineate a green area or that plot 3709 is on a green area and further undermines the basis of the complaints of plaintiffs.

Indeed PW2 under cross-examination agreed unequivocally that the **legend** on the Abuja Master Plan, **Exhibit P2c** and that of **Exhibit P2** were not manipulated and that there is no flood plain on it.

I note that during re-examination, PW2 sought to explain that the **protected water courses** and **protective forestry** on the legend in **Exhibit P2c** are not supposed to be built on and that they are green areas. Let me quickly state that it is now too late to seek to alter the case of the plaintiffs as streamlined in their pleadings. Cases are determined on the basis of issues settled and or streamlined on the pleadings. No case or issue was made by plaintiffs that the plots in issue were on a protected forestry or protected water courses. The specific remit of a re-examination at trial is no conduit to frame a new case or expand the frontier of matters joined on the pleadings. That aspect of the evidence elicited during re-examination must be accordingly discountenanced. The evidence of Pw2 is thus unambiguous that there is no portion of the Abuja Master Plan particularly the legend denoting a green area or a flood plain. The map speaks for itself. No more.

As I round up on the evidence of PW2, I note that in his witness deposition, he stated in paragraph 2(i) that "the Abuja Master Plan has never been reviewed" but in his report, **Exhibit P3**, he referred to different plans, including:

1. The "officially approved comprehensive land use plan of Abuja (produced by S.F. Consultant and S.F Cologne Consultants, West Germany) which was not tendered, and

2. The Review Land Use Map Abuja (2011) prepared by Fola Konsults which was admitted as **Exhibit P7**.

which are all different from the Abuja Master plan vide **Exhibits P2 or P2c**. It is interesting that PW2 who has stated that there was no review of the Abuja Master Plan but the basis of his Report, Exhibit P3 are predicated on plans or maps distinct

and different from **Exhibit P2c** to support the case of 3rd-6th defendants that the **Abuja Master Plan** has indeed gone through reviews to suit the shifting peculiarities of the still developing federal capital territory.

Again, as demonstrated above, the evidence of PW2, clearly does not creditably establish the complaints of plaintiffs that the plots in issue are situated on a flood plain and green area in violation of the Abuja Master Plan, Land Use Maps and the Development Control Regulations. It is equally legally and factually difficult to in the circumstances as demonstrated above to accord any premium or value to the discredited evidence of PW2 and the report he prepared in evaluation of the negative impact of the conversion of Asokoro Green Area to Mass Housing Estate. Without first establishing the existence of the disputed plots on a Green Area, any tale about conversion will lack substance and must be discountenanced.

Again as a logical corollary, if there is no proved depiction of a green area or flood plan on the Abuja Master Plan, Exhibit P2c, then there cannot be a valid complaint of violation of the Abuja Master Plan or any map(s).

This now leads us to the evidence of **PW3**, the **4th plaintiff**. The fulcrum of his evidence is similarly predicated on the assertion that the plots in issue are verged **"flood plain"** and **"green area"** at Asokoro District in the Abuja Master Plan. Here too, nothing of value was presented by PW3 showing that the Abuja Master Plan vide **Exhibit P2c** or the plan in the publication, **Exhibit P2** delineated the two plots as a flood plain and or a green area. From the additional witness deposition of 4th plaintiff in paragraph 14, it is clear that his averment that plot 3908 now 2204 is a flood plain while plot 4079 in its entirety is an unclassified green area is based on the **Asokoro District Landscape Map** which is said to be contained in the **Review of Landscape Master Plan final Report submitted by Multi Systems Consultants at Page 6** but as stated earlier, neither the Review or the Map was tendered. The evidence of 4th plaintiff predicated on the Review and the Map clearly goes to no issue and will be discountenanced. In addition as we have repeatedly demonstrated, there is no where in **Exhibit P2** and **P2c** were an Asokoro district was identified or indeed where it was shown that the 2 plots are on a flood plain or green area.

PW3 may have conceived or thought that the plots are on a green area or flood plain and written letters of complaints vide Exhibits P10 a – f to the 3rd – 6th defendants on the alleged violation of the Abuja Master Plan and Regulations but the authorities can only act, and rightly so, if they find that there is validity to the allegations or complaints bearing in mind that they superintend completely over affairs of land allocation and management in the FCT. Where no valid complaints is made out, they have the undoubted powers to jettison such complaints. The authorities it must be stated are equally subject to the constitution and extant laws and even where there are proved violations of the Master Plan and regulations, they equally must subject the alleged violations to the process of the law and recourse to the Courts of law. On the basis of the challenged oral averments of Pw3, no credible complaints was made over violations of the Abuja Master Plan and Regulations with respect to the allocations of Plot 2204 and 4079 to the 1st Defendant.

The final witness for the plaintiffs was **Engr. Raymond Ahione**, PW4 whose mandate or instructions by plaintiffs was for him to prepare a Report of "Engineering impact of Asokoro Gardens" which he tendered as **Exhibit P13**. Here too, there is nothing in the report or evidence of PW4 supporting the contention that the 2 plots in issue are on a designated Green Area or Flood Plain in the Master Plan.

I have equally and carefully gone through the other "plans" tendered by plaintiffs. **Exhibits P5** and **P6** are essentially **City Guides** which identifies streets in some defined districts in Abuja. No where in **Exhibits P5** and **P6** was any plot identified. Indeed there is absolutely no mention of either plot 2204 or 4079 in the two City Guides. There is therefore absolutely no situation of either plot on a green area or a flood plain.

Exhibit P12 is a plan showing layout of Lugbe 1 Extension Layout surveyed by Edges Environmental Services (Nig.) Ltd. The **two plots** in issue in this case are not situated in Lugbe on the evidence so one wonders at the relevance and value of this Exhibit in the clear context of the issues streamlined on the pleadings.

I have deliberately and at some length gone through the evidence of all the witnesses of plaintiffs and the documents tendered and as demonstrated, there is

absolutely no evidence of quality and probative value to support the case made by plaintiffs that plot 3908 now plot 2204 and 4079 Asokoro District are on a **flood plain** and **green area** in breach of Abuja Master Plan, Land Use Maps and Regulations.

I note that in the address of plaintiffs at pages 9 and 10, reference was made to (1) the written statement of one Hassan Musa Argungu, Town Planning Officer of 3rd – 6th defendants where he was said to have stated:

"That Plots 3908 Asokoro District being a land bank was redesigned to carve out the actual land mass constituting a flood plain which is about 3.2 hectares while the remaining 7.1 hectares now Plot 2204 Asokoro District was allocated to the 1st Defendant for residential purposes."

Now this witness never gave evidence and so never adopted this witness deposition. In the circumstances, the said deposition is of no value and must be discountenanced. It is not available to be utilised by the plaintiffs or the court or indeed anybody. It is the adoption of the deposition at trial that gives life as it were, to any witness deposition. Without adoption, it is valueless. There is no admission in the circumstances.

(2) The address then referred to the deposition of DW1 Ja'afu Hammidu, Assistant Chief Planning Officer of 6th defendant who stated thus:

"That plot 4079 Asokoro District is not a green area and that plot 3908 is not entirely a flood plain".

The above was construed by plaintiffs as a partial admission that part of plot 3908 falls within a flood plain.

Now I don't see how this alleged partial admission helps the case of the plaintiffs in view of the declaratory reliefs they seek. As already alluded too, declaratory reliefs are special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. Indeed it would be futile when Declaratory Reliefs are sought to seek refuge on the proposition that there were admissions by the adversary on the pleadings. The authorities on this principle are legion. I will refer to a few.

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

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

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

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

"The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what, it has found to be the law after proper argument, not merely after admissions by the parties. There are no declarations without argument. That is quite plain."

Furthermore the case of plaintiffs is not that **"part"** of **"plot 3908"** is a flood plain but that the whole plot falls within a flood plain. It is not for the court to now start an idle exercise in chambers to determine what part of plot 3908 is a flood plain or not. The case as streamlined on the pleadings by plaintiffs is clear. The plaintiffs cannot at the address stage seek to alter or modify the remit of their grievance as presented in their pleadings. It is rather too late in the day to engage in such futile exercise. A party is bound by his pleadings and cannot go outside it to lead evidence or rely on facts which are extraneous to those pleaded. See **Kyari V Alkali (2001) 11 NWLR (pt.724) 412 at 433-434 H-A**. The bounden duty on them was to prove the contents of their pleadings with credible and affirmative evidence to support the averments. This as demonstrated, they have not creditably discharged. It is trite law that pleadings, however strong and convincing the averments may be, without evidence in proof thereof go to no issue. Through

pleadings, people know exactly the points which are in dispute with the other. Evidence must be led to prove the facts relied on by the party or to sustain allegations raised in pleading. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 paras. F-G**.

Having found above, that plot 3908 now plot 2204 and 4079 are not on a designated "flood plain" or green area in breach of Abuja Master Plan and its Land Use Maps, any complain of violation of Abuja Development Control Manual 2007, **Exhibit P4**, becomes redundant. Let me now even situate what the manual provides on Green Areas. I shall only refer to the relevant provisions thus:

"1.1 Green Areas and Open Spaces

DC.ENV1

Green Areas and Open Spaces shall be as prescribed by the approved land use plans. (See Appendix I for the colour codes for various land uses.)

DC.ENV2

No construction shall be permitted in designated green areas. Such exceptions include but may not be limited to the following:

- **i. Outdoors sports and recreation;**
- **ii. Memorial parks and cemeteries;**
- **iii. Nurseries and Green Houses;**

DC.ENV3

Other development(s) on green areas will be regarded as contravention of the Land Use and, therefore not in accordance with the provisions of the Development Control Manual plan, unless it maintains openness and does not conflict with the exceptions enumerated at DC.ENV2 (i-iii)."

The above provisions are clear.

The application of the above is predicated on areas designated as **green areas**. On the evidence, and as demonstrated, there is absolutely no credible evidence that the grant or allocations of plot 2204 and 4079 to 1st defendant were on a green area or

even a flood plain. The development lease agreement and the addendum vide **Exhibits D1** and **(1a)** and the grants or allocations vide **Exhibits D3**, **D5** and **D6** are clear and explicit and as stated severally, the plaintiffs are in no position to add or alter its contents to suit a particular purpose.

The 3rd – 6th defendants who prepared this manual and are statutorily charged with the duty and responsibility of management, control and allocation of lands within the FCT have not in any matter impugned these allocations or grants to the 1st defendant on any ground or specifically on grounds of violations of the provisions of **Exhibit P4**. Indeed on the pleadings and evidence, they have unequivocally affirmed the validity of the allocations and grants made to 1st defendant. For any challenge to these actions of 3rd – 6th defendants to have traction of any kind, it must be based on credible and convincing evidence showing violations of any law or regulation. This sadly is completely lacking in this case.

Similarly the contention that there was a **conversion** of the plots from flood plain and green area must be dismissed as lacking substance. Without showing or establishing that the plots were indeed allocated within a flood plain or green area, any allusion to a conversion or alteration of land use will not fly.

The provisions of change of land use and/or density in **Exhibit P4** or the Abuja Development Control Manual are clear as follows:

"DC.REG40

In line with the provisions of the FCT's regulation on change of land use and/or densities application for change of use or density of plot or building shall be presented to the Department following FCT's Executive Council's laid down procedures and requirements.

DC.REG41

Applicants for change of land use and/or density shall accompany their applications with title documents such as certificate of occupancy with title deed plan, feasibility report, schematic designs and environmental impact

assessment report duly prepared and stamped by qualified and registered professionals.

DC.REG42

The Department shall within two (2) weeks of receipt of an application for change of Land Use or density convene an Interdepartmental Committee meeting with members drawn from the Department of Urban and Regional Planning, Abuja Geographic Information Systems, Abuja Environmental Protection Board, Department of Engineering and Transport Secretariat.

DC.REG43

Upon receipt of an application for conversion of land use or density, the Interdepartmental Committee referred to in DC.REG42, shall within two weeks, review the application and forward its recommendations to the FCT Executive Council through the Managing Director, Abuja Metropolitan Management Agency (AMMA) for consideration.

DC.REG44

Executive Committee shall upon giving approval to any recommendation for conversion of land use or density, direct that a stakeholder meeting be convened to get the assent of residents who live within a neighbourhood radius of 100 meters of the subject property for the proposed conversion.

DC.REG45

Such stakeholders meetings as referred to in DC.REG44 shall always be chaired by the Director, Development Control who shall have the right to cast a vote whenever necessary to avoid a stalemate in determining the assent or otherwise of stakeholders for a proposed conversion.

DC.REG46

Upon assenting to the proposed conversion by the stakeholders referred in DC.REG45 a memo shall be forwarded to the President, Federal Republic of

Nigeria outlining various processes observed and seeking approval for the proposed conversion having been satisfied that due process has been observed.

DC.REG47

An application seeking for a conversion of density from a higher to a lower level shall not be subjected to the procedures outlined in DC.REG40 46 above, but be treated on its merit by the Department."

In this case, there is absolutely no evidence of any kind produced by plaintiffs showing that there was at any time any **application for change of land use and or density by the 1st defendant** and or that **the 3rd – 6th defendants acted on an application for that purpose.**

Again at the risk of prolixity, the development lease agreement and the addendum governing the relationship between 1st defendant and 3rd – 6th defendants together with the grants or allocations did not make any allusions, at all, to any change of land use and/or density.

In the circumstances, I have no difficulty in agreeing with the evidence of DW1 for the 3rd – 6th defendants that the **provisions of DC REG 40 – DC REG 47** of the Abuja Development Control Manual (**Exhibit P4**) absolutely has no application to this case since there was no allocation of a flood plain or green area in the first place to warrant any change of land use. I hold that if the provisions on change of land use has no application on the facts, then there cannot logically be a question of violation of its terms.

The complaints of plaintiffs that there was no application for change of use; that no stakeholders were convened to get assent of residents of Asokoro who live within the neighbourhood radius of 100 meters of the plots in issue; that they, plaintiffs did not assent to the conversion; that no votes were cast by them for change of use; that no memo was forwarded to the president for his approval all clearly have no legal or factual basis and must be discountenanced without much ado.

Flowing from the above, the extensive physical developments of the plots by the 1st defendant evidenced by **Exhibits D14 (1-9)** has not being impugned in the

circumstances. The developments were all predicated on proper approvals given by 3rd – 6th defendants vide **Exhibits D10 1 – 3**.

On the evidence, which was not challenged or impugned by plaintiffs and further to the grant by the 3rd defendant, the 1st defendant developed a detailed site plan vide **Exhibit D8(1)** which was approved by the Department of Urban and Regional Planning under the 4th defendant vide **Exhibit D8 (2)**. Let me quote the contents of **Exhibit D8 (2)** as follows:

"Sunrise Hills Estate
Asokoro – Abuja.

<u>RE: APPLICATION FOR LAND USE APPROVAL FOR PLOT SUNRISE HILLS ESTATE</u>

Your letter dated 22nd April, 2003 on the above subject matter refers.

2. **Having met the required Planning Standards as stipulated in the General Land Use and approved by the Department of Urban and Regional Planning, approval is hereby granted for the Detailed Site Development Plan for Sunrise Hills Estate as submitted.**

3. **Find attached a copy of the approved Detailed Site Development Plan.**

4. **Thank you.**

ABUBAKAR SULAIMAN
Director, Urban & Regional Planning"

The above letter speaks for itself. The detailed site development plan prepared by 1st defendant met the required planning standards and approval was give by the authority authorised by law to carry out such exercise. This letter clearly also shows that there was no conversion or change of land use of the plots in question or its identity as contended by plaintiffs.

By **Exhibit D10 (1-3)** dated 1st April, 2014, 10th June, 2014 and 17th December, 2013, the 5th defendant granted **building plan approvals** for the construction of

buildings on plot 4079. These approvals were all signed by the Director of 4th defendant for and behalf of 6th defendant. In **Exhibit D10 (1)** dated 1st April, 2014 the approval was for development of eight (8) nos. blocks of four (4) bedroom detached duplexes meant for eight (8) families (type A and B).

In **Exhibit D10 (2)** dated 10th June, 2014, the approval is for "development of three (3) nos. seven suspended floors with basement floor consisting of eleven (11) units of three (3) bedroom/one (1) unit of two (2) bedroom blocks of flats/one (1) unit of four (4) bedroom duplex each meant for thirty nine (39) families and 2 nos. seven (7) suspended floors with basement floor consisting of twelve (12) units of two (2) bedroom blocks of flats/one (1) unit of four (4) bedroom duplex each meant for twenty six (26) families."

Finally in **Exhibit D10 (3)** dated 17th December, 2013, the approval is for "development of 1 no. one (1) no suspended floor with a basement floor consisting of seven (7) bedroom duplex with attached servants quarters meant for one (1) family and 2 nos. one (1) suspended floor with basement floor consisting of six (6) bedroom duplexes with attached servants quarters meant for two (2) families."

As stated severally in this judgment, the plaintiffs are in no doubt as stated in their statement of claim that the 3rd – 6th defendants superintend over matters or all issues to do with management, control and allocation of lands in the FCT. One of such statutory duties is the approval of building plans before construction of such buildings can commence.

The **extensive conditions** contained or stipulated in the conveyance of building plan approvals in this case are clear and self explanatory demanding strict compliance with the terms to assure of the integrity of the project or buildings and to protect lives and properties of other Nigerians within the vicinity of the building(s). There are conditions relating to among others, to wit:

1. That the building(s) if constructed shall only be used for the purpose for which the plan approval is granted and no change of usage is allowed without the formal consent of the authority – clause (x).
2. That a complete set of the approved drawings be kept at site at all times during and after construction – clause (xi).

3. Facilitation of access to site by a designated development control staff at all times – clause (xii).

4. The applicant should contact the Engineering Department and obtain appropriate information on designed road levels and other infrastructures to determine the DPC/Foundation level in the area – clause (xiii).

5. That during physical construction, concrete mixing block molding and any such acts should be strictly contained within your plot, public right of way, storm water drains and similar public utilities should not be tampered with by the work on your site – clause (xiv).

6. That you report on completion work to the authority so that an official will certify that the building(s) is/are suitable for human habitation together with your "built drawing" – clause (xvi).

7. That the authority reserves the right to withdraw this approval at any stage of implementation if deemed necessary – clause (xviii).

8. That this approval is considered void if it discovered that any information leading to its grant is false or forged – clause (xx).

As stated earlier, these approvals was signed by the 4th defendant for the 6th defendant to underscore in my opinion, the seriousness attached to the exercise of approvals of building plans and to ensure that the building(s) on ground strictly adhere to what was approved.

As a logical corollary, the contention by plaintiffs that under the Abuja Master Plan and its land use maps, that Asokoro district is a low density area and does not permit or allow for the structures put up by 1st defendant on the plots in question clearly would lack basis in the light of the approvals by the body statutorily allowed by law to grant such approvals. The approvals completely derogates from the complaints of plaintiffs on the alleged violations of the provisions of Section 2 on Housing in the Abuja Development Control Manual, **Exhibit P4**. What the approvals show is even compliance with the rules and or regulations. In addition,

there is even absolutely no evidence to support the allegation of violations of Housing Regulations as contested by plaintiffs. It is difficult to really situate the basis of the further complaints of plaintiffs relating to (1) the compatibility of buildings with the area of location under provisions of Section DC Hou3 and (2) the designs of the buildings within the purview of Section 3.2.1.5 of the "Design principles" in **Exhibit P4**.

Firstly, beyond speculative assertions, the plaintiffs are obviously not any of 3rd – 6th defendants and so have no access to the "plans" of 1st defendant to situate or know the designs they have and their compatibility with the area of location and or whether they complied with the compatibility criteria and design principles in **Exhibit P4**.

There is nothing in their pleadings or evidence to say they had access to the plans and evaluated same to ensure compliance with the compatibility and design principles of Exhibit P4. Even if they had access to the plans, it is clear that it is not within their jurisdictional sphere to carry out such an exercise of determining compatibility or otherwise. The body charged with such statutory duties never made any such complaints and that is fatal to the case of plaintiffs.

The complaints of plaintiffs clearly is without doubt largely speculative as earlier stated. At the risk of prolixity, the body statutorily empowered to carry out such an exercise has assured of the integrity of the plans, and the buildings. In the absence of evidence to impugn this exercise, the complaints that the buildings of 1st defendant contravened any building regulations must be discountenanced as lacking probative value and in such circumstances it is difficult to fathom the basis for the complaints of invasion of privacy.

As stated earlier in this judgment, apart from 4th plaintiff who gave evidence for 1st plaintiff, none of the other plaintiffs gave evidence of any invasion of their privacy. In real terms and this is significant, there is really no streamlined evidence of invasion of privacy by anyone else beyond the challenged evidence of 4th plaintiff. It is to be noted that he himself said in evidence that he was not representing anybody in this case but himself. The alleged complaints of the "other" plaintiffs on invasion of their privacy must be deemed as abandoned.

The evidence of 4th plaintiff that the height of buildings of 1st defendant is "towering and over bearing on the surrounding building" and that the buildings are "erected on a hill over and above the height of plaintiffs building" and "that occupants of 1st defendant's buildings will be seeing anything being done in plaintiffs building" clearly is speculative posturing of the extreme kind in the absence of credible evidence to support these allegations.

There is no law or regulation referred to by plaintiffs which prescribes that because 4th plaintiff has a bungalow, then nobody in the neighbourhood can build a storey building or something bigger in dimension and height than that of plaintiffs. The rather tenuous contention of plaintiffs suggesting that owners of bungalows have certain undefined rights to prevent owners of adjourning lands from building storey buildings clearly will not fly. Interestingly, there is nothing in law preventing 4th plaintiff from erecting storey building on his land, if he chooses so to do, provided the Regulators have given the green light as in the case of 1st defendant.

Most importantly the plaintiffs' claim on the alleged infringement on their rights to privacy cannot be legally sustained as the constitutionally guaranteed right to privacy is not absolute and subject to protection of the freedom and rights of other persons. The Plaintiffs' rights to privacy cannot override the right of 1st defendant to own and develop its property in line with building Regulations.

As allottees to the said plots in question, the 1st defendant has every right incidental to ownership of the said plots. Under Nigerian law, ownership of land connotes infinite and absolute right. When ownership of land is transferred to an individual or entity, usage of the land is not subject to or restricted to the right of another person. In the case of **Abraham V Olorunfunmi (1990) 1 NWLR (pt.165) 53 at 74**, Tobi JCA (as he then was and now of blessed memory) described the concept of ownership of land as follows:

> ***"It connotes a complete and total right over a property. The owner of the property is not subject to the right of another. Because he is the owner, he has the full and final right of alienation or disposition of the property, and he exercises his right… without seeking the consent of another party because as a matter of law there is no other person's right over the property that is higher than his…***

The owner of a property can use it for any purpose; material, immaterial, substantial, non-substantial, valuable, invaluable, beneficial or even for a purpose non beneficial to his proprietary interest. In so far as the property is his and inhered in him, nobody can say anything. He is the Alpha and Omega of the property. The property begins with him and ends with him. Unless he transfers his ownership over the property to a third party, he remains the allodial owner."

The simple implication of the above is that the 1st defendant's right to property is not subject to the plaintiffs' right to privacy and so long as 1st defendant has complied with all development laws and obtained the necessary approvals, the construction undertaken by them cannot be questioned for the singular reason that occupants of their buildings can purportedly look and see into adjourning buildings. If this were to the position, then all buildings in any city would be the same height and there would be no storied buildings because no matter how high or low a building is, occupants of an adjourning building that is lower can equally make such self serving complaints as made by 4th plaintiff.

In addition, there is absolutely nothing in either Exhibit P2c or of Exhibit P2 (page 3) to support the contention that Asokoro district is a low density area which does not permit the erection or building of high rise structures. As stated severally in this judgment, Exhibit P2c by the evidence of PW1 even has no application to Asokoro. The evidence of PW2 and the report he prepared Exhibit P3 which sought to import low density area into Exhibit P2c, clearly is not tenable. And most importantly the personal views of PW1 and PW2 cannot override the 3rd – 6th defendants who gave the necessary approvals for the development of the Housing Estate to take care of the obvious explosion of population and the attendant demand for Housing within the FCT.

In the present situation, no credible case was made by plaintiffs that the building approvals granted violated the Abuja Master Plan, Land Use Maps or regulations.

Flowing from the above, it is difficult to situate the basis of the complaint of trespass by plaintiff. Trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of that owner is an act

of trespass actionable without any proof of damages. See **Ajibulu V. Ajayi (2004) 11 N.W.C. R (pt 885) 458 at 48)**

The claim for trespass is therefore rooted in exclusive possession. All a plaintiff suing in trespass needs to prove or show in order to succeed is to show that he is the owner of the land or that he has exclusive possession. The plaintiff has without doubt on the pleadings and evidence before court proved that the subject matter of dispute is owned by him.

In the context of the confluence of facts as demonstrated, it is clear the complaint of trespass will not fly. None of the plaintiffs on record made any streamlined and proven infraction of their rights of possession. As stated earlier, apart from the 4th plaintiff who gave evidence, none of the "other" plaintiffs proffered evidence in this case to support or situate any complaint of trespass. Most importantly, they sued on the basis that they are "within a neighbourhood radius of Plots 3908 (now 2204) and 4079 Asokoro District Abuja" and not that there was any infraction or interference with their lands. As stated severally in this case, the two plots in dispute were allocated to 1st defendant. None of the plaintiffs made any claims of ownership over the two plots. The developments complained of are on these plots duely allocated to 1st defendant.

In such circumstances, it is difficult to see the legal or factual basis for any complaint of interference with the possessory rights of plaintiffs. No case for trespass was made out in this case. In the same vain the complaint of nuisance clearly has no validation in the context of the streamlined facts and evidence of this case.

Nuisance in law is any conduct that interferes and obstructs with the convenience and comfort of another person in the exercise of the use and enjoyment of land or right attached to it. Nuisance whether public or private confers on the person affected a right to action. The burden is however on the individual to establish his injury. See **Helios Towers Ltd V Bello (2017) 3 NWLR (pt.1551) 93; Adediran V Interland Transport Ltd (1991) 9 NWLR (pt.214) 155**.

Again on the evidence, apart from 4th plaintiff, who gave evidence in this case, there is absolutely no evidence of any kind from the other plaintiffs defining how

the alleged activities of 1st defendant has impacted negativity or otherwise in the enjoyment of their allocations. The evidence of 4th plaintiff as demonstrated who spoke for himself and beyond speculative posturing did not establish nuisance in the slightest degree.

The whole philosophical basis and aim of the complaint of nuisance is to protect one's right to peaceful enjoyment of his property. The law of nuisance is therefore designed to protect the individual owner or occupier of land from substantial interference with his enjoyment, thereof. The threat must not be imagined or some superficial threat or fanciful inconvenience. It is really difficult in this case to situate any nuisance in the context of the lawful allocations to 1st defendant and the due and proper approvals gotten for developments made on the plots. Most importantly there is absolutely no clear, credible evidence suggesting any interference or disturbance to exercise or enjoyment of rights belonging to plaintiffs or 4th plaintiff in particular.

This then leads me to the complaint in paragraph 26 relating to the alleged connection of the sewage systems on the plots in issue to the Asokoro District System and the linkage of the roads on 1st defendant's property to the Asokoro district network. The 1st defendant in response vide paragraph 16 of its defence, stated that it got the permission of 4th defendant to connect its sewer and service lines from Asokoro Gardens to the public sewage. On the part of 3rd – 6th defendants who own and manage these infrastructural facilities and services, they stated in their pleadings and evidence that they **allowed** the 1st defendant to connect a limited number of its buildings to the sewer and service lines network on Nelson Mandela Street, Asokoro.

In paragraph 25 (c) – (e) of the 3rd – 6th defendants' statement of defence and supported by the evidence off DW2 and DW3 they averred as follows:

"25. The 3rd – 6th Defendants thus answer to the Plaintiffs' particulars of environmental hazard as follows:

(a) That the development of Plot 2204 and 4079 Asokoro District will not result in high human and vehicular congestion. The Asokoro infrastructure and road network as designed will take care of additional

vehicles that may rise from the development of Plot 2204 and Plot 4079 Asokoro District.

(b) That Asokoro District does not enjoy a sole water supply outlet as districts in the FCT are supplied by the FCT Water Board and Electricity is supplied by the Abuja Electricity Distribution Company for all FCT residents.

(c) The 3rd – 6th Defendants only permitted the connection of five (5) housing units to the central sewage system, the remaining housing units will have their sewage treatment and control within the estate. Copy of the letter approving the connection of 5 housing units is hereby pleaded.

(d) The 1st Defendant's Development will not result in any ecological problem but rather enhance the Asokoro ecological landscape and ecological system because of the 1st Defendant engineering expertise being brought to bear on the said development.

(e) The expected human and traffic activities are in line with the standards approved for the Asokoro District and cannot constitute noise and air pollution."

The letter by the 4th defendant vide **Exhibit D12** further accentuates the above position that permission was granted albeit a limited permission, to the 1st defendant to carry out the connection. It appears pertinent to refer to the contents of **Exhibit D12** thus:

"The Director,
Sunrise Estate Development Ltd.,
Setraco Building,
Shehu Yar'adua Way;
Abuja.

Sir,

RE: REQUEST FOR PERMISSION TO CONNECT SEWER AND SERVICE LINES FROM ASOKORO GARDENS TO SERVICES NETWORK ON NELSON MANDELA STREET, ASOKORO.

Kindly refer to your letter number SED/FCDA/DES/0510/1 dated 13th May, 2010 on the above subject matter (copy attached).

2. Your request has been duly considered against the background of the design capacities of the lines into which you intend to hook up. We are accepting that you hook up the few plots through an easement to facilities in Nelson Mandela Street on the ground that:

i. Our calculations show that it is possible to accommodate approximately 16 plots population equivalent only.

ii. There is no other alternative way of draining or hooking up lines from this area as dictated by the existing topography.

3. Kindly note that the capacity of these lines are not with unlimited elasticity and hence no other extension or addition is permitted.

4. Accept the assurances of my esteemed regards.

Engr. S.O.U Ugonabo, FNSE
Director, Engineering Services"

The above letter is clear and self explanatory.

The owners of these facilities, **3rd – 6th defendants** have by **Exhibit D12** considered the request of 1st defendant to connect their sewer and they acceded to their request clearly taking into consideration the capacity of the network. Indeed in Exhibit D12, they stated clearly to 1st defendant that **"kindly note that the capacity of these lines are not with unlimited elasticity and hence no other extension or addition is permitted."**

There is no evidence before court that the 1st defendant exceeded the capacity of the lines they were to connect in contravention of **Exhibit D12**. There is equally no evidence that the connection has led to any **"health and environmental**

disaster" as pleaded by plaintiffs in paragraph 26 of the claim. In any event, the pleadings of plaintiffs was predicated not on the fact that there is or was a present health or environmental crises or challenge but that it may **"eventually"** occur. The precise parameters for such eventuality was not defined and the court cannot obviously engage in such speculative exercise.

Again on the question of the linkage of the plots in question to Nelson Mandela street, the 3rd – 6th defendants again stated in their pleadings vide paragraph 55 and the evidence of DW2 that the linkage was authorised by 3rd – 6th defendants with no adverse consequences on other inhabitants or users of the road. Again here it is difficult to situate any wrong on the part of 1st defendant who was permitted by the 3rd – 6th defendants to make the linkage. There is no data or credible evidence by plaintiffs to support their contention that the linkage will cause **"high traffic congestion"** and be **"over bearing on the usage of the roads in Asokoro."**

There is really on the evidence nothing to show that any acts or omissions of the 1st defendant in the context of the clear narrative over the allocation of the plots in issue has interfered or distorted the acts of ownership or occupation of plaintiffs land or of some easement, profit or other right used or enjoyed in connection with the adjoining lands. The plaintiffs (or rather the 4th plaintiff) on record have not shown by the evidence that they have suffered any particular, direct and substantial harm to their person or property over and above that which may have been sustained by other plot owners and residents at Asokoro district particularly when it is noted that on the evidence, the development of plot 4079 Asokoro district has reached an advanced stage and almost completed and there has been no report of any health or environmental challenges like floods or landslides by any resident of Asokoro district occasioned by the developments.

As rightly pointed out by 3rd – 6th defendants in **paragraph 46** of their defence, they have a duty to continuously survey and supervise the developments carried out by 1st defendant to ensure that the developments are in line with the approved plan and other developmental approvals. That is at it should be.

Again flowing from the established facts of this case, the complaint that the 1st defendant did not comply with the provisions of the Environmental Impact Assessment Act, Cap. E12 LFN would again clearly not fly. At the risk of

prolixity, the 3rd – 6th defendants who superintend over the allocation and management of lands within the FCT including construction works have stated categorically that the construction works being carried out by 1st defendant would not constitute environmental hazard or threat. The evidence of DW2 and DW3 from the 3rd – 6th defendants in the absence of credible evidence impugning their narrative must be accorded probative value.

In addition, in this case, the 1st defendant conducted an extensive and broad Environmental Impact assessment study of the land vide **Exhibit D11** before they commenced construction and this report was presented to the necessary authority in the FCT, the Abuja Environmental Protection Board which issued an impact clearance certificate vide **Exhibit D11 (2)** permitting the 1st defendant to commence the project.

The failure to therefore to make the application to the Nigerian Environmental Protection Agency to carry out the environmental impact assessment under the Environmental Impact Assessment Act is therefore not fatal in the light of the checks and environmental assessment undertaken by regulatory agencies under the 3rd – 6th defendants.

In any event, under **section 60** of the Environmental Impact Assessment Act, failure to comply with its provision is a criminal offence and on conviction, where a firm or corporation is involved, the punishment is a fine of between 50, 000 and 1, 000, 000. No more. I leave it at that since the extant process is not about determining the guilt of any person or corporation. This is not a criminal trial.

As I round up, let me say that so much has been made about the Abuja Master Plans, Land Use Maps and the Development Control Manual which the plaintiffs considered inviolable and that they have not been reviewed. As rightly pointed by 3rd to 6th defendants, most of the Land Use Maps tendered by plaintiffs are outdated and no longer availing and that they are been constantly reviewed to reflected prevailing realities in the FCT.

The then Minister FCT **Mallam Nasir Ahmad El-Rufai OFR** vide **Exhibit D4**, the Abuja Development Control Manual tendered by the plaintiffs underscored this

position and the general flexibility of the manual, land use maps, master plans in the following clear terms:

"The overall policy objective of this document is to set out the basis for deciding planning application or conditions to be attached to planning permissions, while the Design and Development guidelines on the other hand execute the policies by setting out a number of detailed planning and environmental technicalities.

The performance of the manual over time however, is largely determined by its level of flexibility and adaptability to the changing physical and socio-economic circumstances of its operating environment. Herein lies the compelling need to periodically review its content and by extension, the Master Plans.

Even though previous editions of the Development Control Manual have served their purposes, this review became imperative against the back drop of emerging trends.

There is no gainsaying that the Department is the high point of interaction with the public and thus well placed to understand their yearnings and aspirations. This document is therefore fashioned to accommodate public aspirations and taste whilst at the same time providing background information necessary for the review of the city's Master Plan and the land administration process.

It is to noted that the content of this manual should not represent any constraint on good design based on individual taste and style. Its purpose therefore is to assist developers initiating projects in the Federal Capital Territory to create well designed and functionally efficient developments."

The above statements by the Minister FCT is instructive. I say no more.

Having addressed all critical issues above, this then leads to the question of whether any or all of the Reliefs sought are availing. I had earlier streamlined the Reliefs sought at the beginning of this Judgment. I need not repeat myself.

Relief (1) predicated on the unproven assertions that the two plots 3908 (now 2204) and 4079 were allocated on a "flood plain" and "green area" in breach of the Abuja Master Plan (AMP), Land Use Maps (LUM) and Abuja Development Control Manual (ADCM) clearly is unavailing. No credible evidence was produced by plaintiffs as already demonstrated situating that the plots were allocated on a flood plain or green area of Abuja Master plan breach of Land Use Maps, Abuja Development Control Manual (ADCM) 2007 Edition or any regulation.

Relief (2) like Relief 1 equally fails. In the absence of evidence situating that the plots in issue were allocated on a **flood plain** or **green area**, the complaints of alteration of land use in violation of the ADCM clearly has no foundation and will not fly.

Relief (3) equally is not availing. The plaintiffs as demonstrated did not elicit any credible evidence situating or showing any review or change of land use and or Density contained in the Abuja Master Plan (AMP) by the 3rd – 6th defendants in contravention of the ADCM. All the allocations to the 1st defendant tendered in evidence do not support the contention of a review or change of land use in contravention of any Regulation(s).

Relief (4) also fails. The entire relief which postulates that the plots allocated are a designated flood plain and green area was anchored on a particular page 58 of a document, **the Review of Abuja Landscape Master Plan Final Report submitted by Multi Systems Consultants** which was never tendered. This document is so critical to the case of plaintiffs because it was meant to show that the plots in issue were on a designated flood plain and green rea and then on the basis of the report, the court will hold that there was a review or change of land use in contravention of laid down Rules and procedure for change of land use and or density as contained in the ADCM. This untendered review document fatally affects the very basis of the case of plaintiffs. **Relief (4)** fails.

Relief (5) is similarly also not availing. What is strange here is that the plaintiffs are not even complaining about the **development lease Agreement dated 19th March, 2007, Exhibit P1** but the addendum dated 26th November, 2011 vide Exhibit P1a. On the Record they are not parties to the two documents and have no

established interest on the land **covered** by the two documents. If the main lease which gave both to the addendum is not being objected to, one then finds difficulty in situating the legal basis for the contention that it should be set aside particularly when absolutely no evidence of any breach of the Master plan, Land Use Maps and the ADCM was established**. Relief (5)** fails.

Relief (6) must equally fail. As repeatedly found in this judgment, no evidence was tendered showing that the plots in issue are a "flood plain" or "green area" and no evidence was equally produced showing that under the land use maps, Asokoro District is a low density area which does not permit high rise structures.

Relief (7) like Relief (6) must also fail. The structures built by 1st defendant was clearly predicated on proper building approvals which did not encroach on the privacy of plaintiffs as demonstrated and there is again no evidence that the construction were on a "flood plain" or "green area" in violation of any laid down Rules and or Regulations contained in the ADCM.

Relief (8) also fails. There was absolutely no evidence showing that the connection of the sewer system of 1st defendant contravened any laid down procedure of building sewage in Abuja or in contravention of the Development Lease Agreement dated 19th March, 2007. The procedure and the portion of the development lease was not streamlined and no specific breach was then identified by plaintiffs. As found in this judgment and this was not impugned, the 3rd – 6th defendants sanctioned or authorised the connection.

Relief (9) like **Relief (8)** similarly must fail in the absence of evidence showing how the linking of the roads from the plots in issue contravened the Abuja Master plan and the site plan submitted by plaintiffs.

Relief (10) equally fails. On the evidence I found that the 1st defendant conducted vide **Exhibits D11 (1) and (2)** the Environmental Impact assessment and that all necessary approvals were obtained from the 3rd – 6th defendants before construction work began at the site.

The orders of perpetual injunction covered by **Reliefs (11) – (13)** and the order for mandatory injunction covered by **Relief (14)** clearly are all predicated on the

success of **Reliefs (1) – (10)**. With the failure of these Reliefs, **Reliefs (11) – (14)** clearly lacks any factual or legal foundation and must as a consequence fail.

Relief (15) is a relief clearly predicated on the unwieldy realm of unfounded speculation. There is absolutely no evidence showing that the constructions by 1st defendant poses any health hazard or that it exposes children to the risk of Luekemia; the court can only act of the basis of **evidence** demonstrated in court and not speculations or conjectures. **Relief (15)** fails.

Relief (16) seeking damages for nuisance equally fails as there is again no evidence situating any allocation to both 1st and 2nd defendants and crucially no evidence constituting nuisance was established beyond challenged and impugned oral assertions.

In closing, there is no doubt that the plaintiffs may have made elaborate allegations on their pleadings but they have clearly failed to prove those allegations by relevant, credible and admissible evidence. **The case of plaintiffs unfortunately is one completely starved of evidence**. Our courts of law qua justice cannot perform miracles in the handling of matters before them; neither can they manufacture evidence for the purpose of assisting a party to win his case. Cases are determined solely on the quality, probative value and strength of the evidence adduced before the court.

The case of plaintiffs is bereft and devoid of any substance and merit, it is hereby dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

1. **P.O. Jimoh-Lasisi, SAN with Omang C. Omang Esq., for the Plaintiffs.**

2. **I.A. Onyeabuchi, Esq., with Oladiran Falore Esq., for the 1st Defendant.**

3. **C.N. Nwapi, Esq., with Margareth Agbo, Esq., for the 2nd Defendant.**

4. Joseph Eriki, Esq., for 3rd – 6th Defendants.