IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 13TH DAY OF OCTOBER, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/874/14

BETWEEN:

COL. FELIX ONAIWU EGIEBOR (RTD):…..….CLAIMANT

AND

1) THE HON. MINISTER FEDERAL CAPITAL TERRITORY.
2) FEDERAL CAPITAL DEVELOPMENT.
3) FRANK FILIX **:…..DEFENDANTS**
4) A. ABUBAKAR BELLO
5) LANRE MUSTAPHA

OgechukwuOfodile for the Claimant.
UzoamakaNnabe for the 1st and 2nd Defendants.
TesmunAzoon with Evelyn Agoh and Michael Agebfor the 3rd Defendant.
4th and 5th Defendants not represented.

JUDGMENT.

By an amended Writ of Summons dated and filed the 11th day of March, 2019, the Claimant claims against the Defendants in this suit, jointly and severally, as follows:

i) A declaration that the Claimant is the bonafide and rightful owner of Plot No. H204, (Whether presently described as Plot No. 135, or 204 as alleged by 1st and 2nd Defendants) Cadastral Zone B05 Utako District, Abuja under and by virtue of a Statutory Right of Occupancy No. MFCT/LA/89/BD-1422 dated 4th May, 1992.

ii) A declaration that the encroachment of the Defendants into the Claimant's land, coupled with the erection of structures thereon without the Claimant's consent and authorization constitute acts of trespass.

iii) An Order of Court compelling the 1st and 2nd Defendants to issue and release to the Claimant his recertified Certificate of Occupancy over Plot No. H204, (Whether presently described as Plot No. 135 or 204 as alleged by 1st and 2nd Defendants) Cadastral Zone B05 Utako District, Abuja.

iv) An Order granting immediate possession of Plot No. H204, (Whether presently described as Plot No. 135, or 204 as alleged by 1st and 2nd Defendants) Cadastral Zone B05 Utako District, Abuja, to the Claimant.

v) An Order of perpetual injunction restraining the 3rd Defendant, their agents, servants, privies or however described, from trespassing or further trespassing on the Plot No. H204, (Whether presently described as Plot No. 135, or 204 as alleged by 1st and 2nd Defendants) Cadastral Zone B05 Utako District, Abuja, to the Claimant (sic).

vi) The sum of N50,000,000.00 as general damages for trespass to land.

vii) The sum of N150,000,000.00 as exemplary and aggravated damages.

viii) The sum of N200,000,000.00 as general damages.

ix) The sum of N5,000,000.00 as cost of the suit.

The case of the Claimant is that he was granted a Statutory Right of Occupancy over Plot No. H204, Cadastral Zone B05, Utako District, Abuja, by the Hon. Minister of the Federal Capital Territory vide a letter of Offer of Terms of Grant/

Conveyance of Approval dated 4th day of May, 1992, with Ref. No. MFCT/LA/89/BD-1422.

The Claimant averred that sequel to the grant of the said Right of Occupancy, he liaised with the Survey Department of the 1st and 2ndDefendants which showed him the land and installed beacons thereon in line with the TDP, but he subsequently realized that he was shown Plot 204, Cadastral Zone B05, Utako District, which was formerly numbered as Plot No. H216.

He stated that he paid a deposit of N10,000.00 to the 1st and 2nd Defendants and submitted requisite documents in respect of the Plot for recertification and was issued an acknowledgment dated 04/19/05 in which his new file number of ED 10349 and other necessary details were stated.

The Claimant averred that 1st and 2nd Defendants in 2009 served on him Statutory Right of Occupancy Bill and demand for ground rent for payment of the fees contained therein, but surprisingly his plot number on the said documents were stated as Plot 135, Cadastral Zone B05, Utako District, Abuja, while all other details of the land remained the same.

He further averred that after paying all the fees demanded by the 1st and 2nd Defendants, he waited for a long time for the release of his recertified Certificate of Occupancy, and when it was not forth coming, he caused his solicitors to write a petition to the 1st Defendant on 25th March, 2011 complaining about the delay in the release of his recertified Certificate of Occupancy. That in the said 2011, he read a public announcement in the Guardian Newspapers stating that those awaiting their Certificate of Occupancy should come for collection and he went to the 1st and 2nd Defendants' Abuja Geographic Information System office, Abuja to collect his recertified Certificate of Occupancy but was informed that the

Certificatewas missing. That he subsequently called the office on phone to confirm if the certificate had been found, only to be informed that it was cancelled and that a new one was in the process of being issued.

The Claimant averred that he applied to the 1st and 2nd Defendants for permission to develop the land but has received no response till date.

That to his utter chagrin and consternation, he received a letter from the 2nd Defendant dated 19th August, 2011, informing him of the fact that his land was involved in a case of double allocation and that the committee on double allocation was working towards resolving the issue.

The Claimant further averred that sometime in April, 2009, Messrs A. Abubakar Bello and Lanre Mustapha (4th and 5th Defendants) encroached on the land shown to him by the 1st and 2nd Defendants, to wit; Plot No. 204, Cadastral Zone B05, Utako District, Abuja, and he reported the matter to the 1st and 2ndDefendants' Development Control Department which demolished the trespassers' structures on the land. Andin 2013, discovered that the same 4th and 5th Defendants had encroached on the land again and were moulding blocks on it, and also placed a container on the land. The Claimant stated that he caused his son OsarugueEgieborto write a petition in that respect to the 1st Defendant. That the Police also investigated the matter and their investigation report confirmed that the Claimant's title to the Plot was subsisting.

The Claimant stated that he instituted an action against the relevant authorities and the trespassers in order to protect his rights. That in the course of the proceedings, he became curious as the title documents of the alleged trespassers patently showed that their land was different from his

own.Consequently, he applied to AGIS once again to show him his land, in response to which the 1st and 2nd Defendants showed him a different land with completed structures on it which had already been occupied for some time. That he then realized that the 1st and 2nd Defendants had earlier shown him a wrong Plot of land as his own.

He stated that the Plot earlier shown to him was Plot No. 204, (old Plot No. H216), Cadastral Zone, B01, Utako District, as against his actual land which is Plot No. 135, (old Plot No. H204), Cadastral Zone, B05, Utako District, Abuja.That he was thus constrained by the discovery to discontinue the action he had instituted after expending huge resources.

The Claimant averred that in view of the discovery, he made efforts to see the 3rdDefendant who is the owner of the structures on the land but his efforts were thwarted by the gateman who kept saying the 3rd Defendant was not in the house, thereby prompting him to cause his solicitors to send a Quit Notice to the 3rd Defendant.

He further averred that despite the foregoing, the 1st and 2nd Defendants continued to send him bills for settlement of ground rent and other bills, last of which was in September, 2014, which he paid on 25thSeptember, 2014. He stated that the Plot number on the bills sent to him is No. 135, Cadastral Zone, B05, Utako District, Abuja.

The Claimant stated that up till date, the 1st and 2ndDefendants have not told him anything on the alleged double allocation, neither have they taken any steps to deliver possession of his land or any other land to him.

He averred that the allegation of the 1st and 2nd Defendants in their pleadings, that Plot H204, Cadastral Zone, B05, Utako

District, Abuja is the same as Plot 204, Cadastral Zone, B05, Utako District, Abuja necessitated the joinder of the 4th and 5th Defendants who are owners of Plot 204, Cadastral Zone B05, Utako District, Abuja.

He stated that his fundamental interest is to be given possession of his land, whether it is now referred to as Plot 204 or 135, Cadastral Zone B05, Utako District, Abuja.

At the hearing of the case, the Claimant testified in his case as PW1. He adopted his Written Statement on Oath wherein he affirmed all the averments in the amended Statement of Claim. He also tendered the following documents in evidence:

1. Offer of the Terms of Grant/Conveyance of Approval dated 4th May, 1992 – Exhibit PW1A.
2. AGIS Deposit Slip for N10,000.00 – Exhibit PW1B.
3. Re-certification and Re-issuance of C of O Acknowledgment – Exhibit PW1C.
4. Statutory Right of Occupancy Bill – Exh. PW1D.
5. Demand for Ground Rent – Exhibit PW1E.
6. AGIS Receipts for Ground Rent and R of O fees – Exhibit PW1F-F1.
7. Letter of Reminder on Grant of C of O – Exhibit PW1G.
8. FCTA letter on status of Plot 135, Cadastral Zone B05, Utako District – Exhibit PW1H.
9. Protest letter on non-release of C of O dated 27/8/12 – Exh. PW1J.
10. Letter of complain about encroachment on Plot No. H204.
11. Protest letter on non-release of C of O dated 18/4/13 – Exhibit PWL.
12. CTC of Writ of Summons – Exhibit PW1M.
13. Quit Notice dated 25th August, 2014 – Exh. PW1N.

14. Demand for Ground Rent and Receipts of Payment – Exh. PW1P.
15. Police Investigation Report – Exhibit PW1Q.

Under cross examination bythe 1st and 2nd Defendants the PW1 stated that as an artillery officer, he was trained in Survey. He confirmed that he requested for and was given a survey plan. That from the Survey Plan, Plot H204 is now Plot 135 and that, that is the Plot he is claiming.

The PW1 was duly cross examined by the learned counsel for the 3rd Defendant in the course of which he told the Court that he stood by the averments in his witness statement onoath and that he did confirm the dates and file numbers written on the documents he tendered in evidence.

The PW1 further told the Court that he was shown the land he is claiming, but that he could not remember the beacon numbers of the land neither are they reflected on any of the documents he tendered in evidence.

In their defence as per their amended joint statement of Defence dated and filed the 5th day of February, 2020, the 1st and 2nd Defendants averred that sometime on the 4th May, 1992, the Claimant was allocated Plot 204, Cadastral Zone B05, Utako District, Abuja, vide an Offer of Terms of Grant/Conveyance of Approval dated the 28thday of August, 1989, with Ministerial approval dated 27thApril, 1992.

The 1st and 2nd Defendants stated that Plot 135, Cadastral Zone B05, Utako District, Abuja was allocated to one Chief YasAdegbayi vide a Ministerial approval dated 24th day of May, 1997, which was later transferred to Mr. Frank Filis (Felix) vide a power of Attorney. That Plot No. 135 and 204, Cadastral

Zone B05, Utako District, Abuja being claimed bythe Claimant in this suit are two different Plots.

They averred that the Claimant submitted his title documents for recertification sometime in 2005 for which he was issued acknowledgement letter dated 19th April, 2005. Also, that based on their records at AGIS, it was confirmed that there was an issue of double allocation on Plot No. 135 Cadastral Zone B05, Utako District, Abuja which necessitated, that transactions on the Plot being put on hold until the issue is resolved.

One KenechukwuChineme Martha, an Assistant Chief Town Planning Officer in the office of the 1st and 2nd Defendants gave evidence for the 1st and 2nd Defendants. Testifying as DW1, she adopted her witness statement on oath wherein she affirmed all the averments in the 1st and 2nd Defendants' joint statement of defence. She also tendered a copy of the satellite image of Utako area where the plot in dispute is situate and same was admitted in evidence and marked as Exhibit D1WA.

Under cross examination by the 3rd Defendant's counsel, the DW1 admitted that the 3rd Defendant was given Right of Occupancy before recertification in 2005. She further admitted that where a case of double allocation is detected, the first procedure is to notify all the parties concerned. She stated that it is not correct that the 3rd Defendant was not notified about the incidence of double allocation affecting his plot.

The DW1 further stated that there has not been anything like re-numbering of Plots, particularly Plots 135 and H204. She stated that Plot H204 and 204 are the same; the letter "H" representing "High Density", and that same is different from Plot 135.

Under cross examination by the Claimant's counsel on 23/10/2018, the DW1 maintained that Plot H204 is the same as Plot 204. However, during the subsequent continuation of her cross examination on 23rd June, 2020, the DW1 retracted her evidence that Plot H204 is the same as Plot 204Cadastral Zone B05, Utako District, Abuja. She stated instead that H204 is the old plot number of 135. That in essence, Plot 135 is old Plot H204.

The DW1 maintained that Plot 135 is involved in double allocation to Frank Filis and Col. Felix Egiebor (i.e. 3rd Defendant and Claimant). She stated that from their records, the double allocation is not yet resolved.

In his own defence, vide his amended statement of Defence dated 24th March, 2021 and filed on the 26th day of March, 2021, the 3rd Defendant averred that the land in dispute was originally allocated by the 1st Defendant on 4/6/1998 to one AdegbayiYas Chief, as evidenced in the Certificate of Occupancy No. FCT/ABU/OY:1737, which was registered on 23/6/1998 as No. FC19 at page 19 in volume 85 in Land Administration Registry of the FCT, Abuja.

He stated that the said AdegbayiYas Chief donated the land to the 3rd Defendant by an irrevocable power of attorney in 2004. That on obtaining approved development plans from the Federal Capital Authorities, the 3rd Defendant developed the disputed property without any disturbance whatsoever from anybody, including the Claimant, and has since then been in occupation of same through tenants.

The 3rd Defendant further averred thatsince taking possession of the land, he has been paying tenement rates and other charges to the FCT Abuja land authorities, and that the disputed plot of land has always been known as Plot No. 135,

Cadastral Zone B05, Utako, now particularly know, upon the carving of streets in the Utako District, as No. 16, Dan Suleiman Street, Utako, Abuja. That there was no time the plot was called or labelled “old No. H204” Cadastral Zone B05, Utako District, Abuja.

The 3rdDefendant averred that a critical examination of the documents the Claimant tendered in evidence will reveal that the Claimant has either forged (some of) the said documents or has colluded with the 1st and 2ndDefendants to short-change him on the ownership/possession of Plot No. 135, Cadastral Zone B05, Utako. He stated inter alia that Plot 135, Cadastral Zone B05, as per the C. of O issued by the 1st Defendant, is of a different size from Plot No. H 204, from the offer letter issued to the Claimant.

Testifying as DW2 in his defence, the 3rd Defendant adopted his witness statement on oath confirming the averments in his amended statement of defence.

He also tendered the following documents in evidence;

1. Irrevocable Power of Attorney – Exhibit DW2A.
2. Re-certification and Re-issuance of C. of O Acknowledgement –Exhibit DW2B.
3. Building Plan Approval – Exhibit DW2C.
4. AGIS Deposit Slips – Exhibits DW2D-D1.
5. CTC of Court processes – Exhibit DW2E-E2.
6. CTC of Affidavit of urgency – Exhibit DW2F.
7. CTC of Further and Better Affidavit – Exhibit DW2G.
8. CTC of Joint Statement of Defence – Exhibit DW2H.
9. CTC of Notice of Discontinuance – Exhibit DW2J.
10. Certificate of Occupancy No. FCT/ABU/OY:1737 – Exhibit DW2K.

The 1st and 2nd Defendants did not cross examine the DW2.

Under cross examination by the Claimant's counsel, the DW2 admitted that Exhibit PW1A was first issued before Exhibit DW2K, but stated that they are two different documents.

Following the failure of the 4th and 5th Defendants to enter appearance to the suit and defend same, their rights to defend the suit was foreclosed on the Claimant's application.

At the close of evidence, the parties filed and exchanged final written addresses.

In their final written address, the 1st and 2nd Defendants raised a sole issue for determination, to wit;

> ***"Whether the Claimant has discharged the onus of proof on him in establishing that Plot 204, Cadastral Zone B05, Utako District, Abuja is the same Plot as Plot 135, Cadastral Zone B05, Utako District, Abuja?***

Proffering arguments on the issue so raised, learned 1st and 2nd defendants' counsel, F.M. Oduma, Esq, contended that the Claimant has failed to discharge the onus on him in proving that Plot 204, Cadastral Zone B05, Utako District, Abuja is the same plot or was converted to Plot 135, Cadastral Zone B05, Utako District, Abuja in view of the facts and evidence before the Court.

He posited that it is an axiomatic principle of law that the onus of proof is on the party who asserts to prove the assertion and that such primary burden of proof does not oscillate until it is discharged as required by law.

He argued that the Claimant who in his amended statement of claim stated in paragraph 7 that he was allocated Plot No. H204, Cadastral Zone B05, Utako District, Abuja, as

represented in Exhibit PW1A, all through the trial failed to lead credible evidence to show the connection between Plot H204, Cadastral Zone B05, Utako District, Abuja and Plot 135, Cadastral Zone B05, Utako District, Abuja.

He referred to **Yusuf &ANor v. Mashi&Ors (2015) LPELR-40757 (CA0; Union Bank v. Ravih Abdul & Co. Ltd (2018) LPELR-46333 (SC).**

The learned counsel further argued that the Statutory Right of Occupancy Bill dated 27/04/2009 with which the Claimant attempted to linkPlot 204, Cadastral Zone B05, Utako District, Abuja and Plot 135, Cadastral Zone B05, Utako District, Abuja, is not a document of title but a mere ground rent and as such does not qualify in law as one of the ways of proving title to land. He referred to **D.O. Idundun&Ors v. Daniel Okumagba (1076) 9 & 10 SC.**

Placing further reliance on**Mr. Marvin Faithful Awara& 2 Ors v. AlayeAlaibo& 3 Ors (2002) 14 SCM 71** and**Yaro v Manu &Anor (2014) LPELR-24181 (CA),** he posited that the onus is on aclaimant seeking declaration of title to land to prove his case, and that he can only rely on the strength of his case and not on the weakness of the defence.

Arguing that the Claimant has failed to discharge with concrete evidence, the burden of proving that Plot 204, Cadastral Zone B05, Utako District, Abuja is the same as Plot 135, Cadastral Zone B05, Utako District, Abuja, he urged the court to dismiss the suit of the Claimant with substantial cost for being gold digging, vexatious, lacking in merit and a complete waste of the time of the Honourable Court.

In their Reply on Points of law to the Claimant's final written address, the 1st and 2nd Defendants posited that in paragraph 3

of their joint statements of defence, they only admitted that the Claimant was issued Plot 204, Cadastral Zone B05, Utako District, Abuja, and nothing more. That the burden of proof still rests on the Claimant to prove any assertion made by him and thus prove his case as required by law. He referred to Section 131 of the Evidence Act, 2011.

The 1st and 2nd Defendants further posited that in making reference to their statement of defence earlier filed on 1/2/2017, which was subsequently amended several times, the Claimant failed to have recourse to the principle of law as to the consequential effect of amendment of a court process.

Relying on **Fayemi v. Oni &Ors(2019) LPELR-46623 (CA)** and **Okpokpobe v. Agbabinoko (2018)LPELR-44190(CA),** learned 1st and 2nd Defendants' counsel submitted that once a court process has been amended, the eelier process filed ceases to exist and the Court cannot act on or take cognizance of it in determining the rights of the parties.

He urged the court to overlook and discountenance the submission of the Claimant's counsel inviting the court to take cognizance of the Statement of Defence filed on the 1/2/2017 which has been amended severally by the 1st and 2nd Defendants as the process has been overtaken and superseded by the most recent one filed on 5/07/2020.

In the 3rd Defendant's final written address, the learned 3rd Defendant's counsel, TerlumunAzoom, Esq, first raised objection to the admissibility of Exhibits PW1D, PW1E, PW1F and PW1P tendered in evidence by the Claimant. He submitted that the said Exhibits are computer generated evidence and that compliance with Section 84(4) of the Evidence Act, 2011 is mandatory.

He urged the court not to rely on the said exhibits, the Claimant having failed to meet the condition precedent for their admissibility.

He referred to **Abode v. Agbaje&Ors (2015) 8 C.A.R. 95 at 116.**

In his arguments proper on the case before the court, the learned 3rd Defendant's counsel raised two issues for determination, namely;

(a) Whether the reliefs of the Claimant are competent and grantable by this Honourable Court?
(b) Whether from the totality of evidence adduced by parties at the trail, the Claimant has proved his case against the Defendants?

Proffering arguments on issue one, learned counsel contended that the principal relief (relief 1) claimed by the Claimant in this suit is incompetent and ditto, the ancillary reliefs. He argued that the relief 1 of the Claimant's claim is not specific; that it is imprecise and vague. He referred to **N.M.A.S.A. v. Hensmor (Nig) (2013) All FWLR (pt.703) 2011 at 2025.**

The learned counsel contendedthat the Claimant does not know what he wants before the court; whether it is Plot 135 or 204. That the Claimant's claim is not directed with certainty on Plot No. 135nor Plot 204. He contended that the Claimant's principal relief in this suit is at best vague, fluid or expressed in general terms, and therefore, that same ought to fail and should accordingly be refused.

He contended that this relief, being incompetent, nullifies the suit of the Claimant and that the court is not competent to make

a pronouncement granting same. He posited that the law is settled that no court should make vague or unenforceable orders. He referred to **Jos v. Ikegwuoha (2013) All FWLR (Pt. 707) 641 at 656.**

Learned counsel posited, relying on **Kotoye v. CBN (2001) FWLR (Pt.49) 1567 at 1623,** that both parties and the court are bound by the reliefs claimed in a suit or in an application made before a court of law.

Placing further reliance on **Ozueh v. Ezewepata (2005) 4 NWLR (Pt.915)221 at 241** and **Attorney General of Ogun State v. Attorney General of the federation (2003) FWLR (Pt.143) 565 at 1581 SC,** he contended that this relief being incompetent on ground of vagueness, uncertainty, lack of particularity and specificity, this court is forbidden from embarking on a voyage of discovery to amend it and grant same.

He further referred to**Onemu v. Comm. For Agriculture (2019) All FWLR (Pt.1009) 1 at 19G-20A** on the onus of a claimant seeking declaration of title to establish the precise identity of the land in respect of which he is seeking the declaration.

Learned counsel argued that the Claimant in this case has not only failed to give the exact extent and identity of his land, but that his principal relief which bothers on declaration of title to land is devoid of the exact extent and identity of the land he is claiming, and thus, that the relief is not grantable.

He further argued that bythe joinder of the 4th and 5thDefendants who are alleged by the Claimant to be in possession of Plot No. 204 to this suit, the Claimant has demonstrated overtly and in no uncertain way that he does not

know the land which he is claiming before this court as the land occupied by the 4th and 5th Defendants are thoroughly and radically different from the 3rd Defendant's Plot 135.

He referred to **Okunriboye v. Osuma (2017) All FWLR (Pt.866) 342 at 381.**

Learned counsel posited that relief one, which is the Claimant's principal relief, having been shown as a relief that cannot be granted by this court; that it materially and virally affects the rest of the ancillary and incidental reliefs which are dependent on the principal relief.

Relying on **Eyigebe v. Iyaji (2013) All FWLR (Pt.703) 1901 at 1919** and **Uba v. Etiaba (2010) All FWLR (Pt.548) 805 at 836,** he submitted that the law is settled that if the principal relief is refused or dismissed, no incidental or consequential relief based on such principal relief will be granted.

He urged the court to uphold the 3rd Defendant submissions and to refuse the grant of the reliefs sought by the Claimant.

Arguing issue two, on whether from the totality of evidence adduced by parties at the trial, the Claimant has proved his case against the Defendants; learned counsel posited to the effect that by Section 138 of the Evidence Act, 2011, it is the responsibility of the Claimant to adduce evidence to prove the case he has maintained against the Defendants. He referred to **Adegboyega v. Awe (1993) 3 NWLR (pt.280) 243-244, Abdullahi v. Hedima (2011) 2 NWLR (Pt.1230) 42 at 55.**

He contended that the Claimant herein has failed to discharge the burden/duty placed on him to adduce evidence in support of his claim before this court to warrant the grant of the reliefs he is claiming.

He argued that the evidence called by the Claimant in this suit does not show the court clearly the area of land to which his claim relates; that he has failed to identify with certainty the plot of land he seeking declaration in respect of.

He argued that the size of the land in Exhibit PW1A tendered by the Claimant in support of his case shows the size of the land he is claiming to be 1386.5m^2 (Plot No. H204), and that at the same time, the size of the land in Exhibit PW1D also tendered by the Claimant in support of his claim is 1360.532.That the two documents tendered by the Claimant in support of his case stand diametrically opposed to each other and have failed to show quite clearly and establish the area/land the Claimant is claiming.

Arguing that the size of the 3rd Defendant's Plot as shown in Exhibit DW2K is 1389.69m^2, and is characteristically distinct from the conflicting sizes shown on Exhibits PW1A and PW1D, he contended that land shown in Exhibit DW1K is certainly not the land the Claimant is claiming. He argued that these disparities, coupled with the inability of the Claimant to clearly identify the area of land he is claiming with certainty, entails that his claim must fail and must be dismissed.

He referred to **Adegboyega v. Awe (supra), Epi&Anor v. Aigbedion (1972) 10 SC 53 at 59-60** and **Abdullahi v. Hedima (2011)2 NWLR (pt.1230)42.**

Furthermore, learned counsel posited that the failure of the Claimant to adduce evidence to ascertain the boundaries of the disputed land, is fatal to the case of the Claimant.

He contended in conclusion, that the Claimant has not proved his case against 3rd Defendant to entitle him to the grant of the

reliefs he is seeking before the court. He thus urged the court to dismiss the Claimant's case with cost.

The learned Claimant's counsel, O.B. Omale, Esq, in his own final written address, raised three issues for determination, namely;

i) Whether the Claimant is entitled to the declaratory reliefs sought in this case?
ii) Whether the Claimant is entitled to the other reliefs sought?
iii) Whether the Claimant is entitled to judgment?

Proffering arguments on issue one, learned counsel submitted that in order to establish title to land, a Claimant must prove his title through one of the five ways as established in **Idundun v. Okumagba (1976) 10 SC 227.** He argued that in the instant case, the Claimant led evidence in support of his declaratory reliefs and established the fact that he was granted a Statutory Right of Occupancy via a letter entitled "Offer of Terms of Grant/Conveyance of Approval, Exhibit PW1A.He contended that the said document has not been countered nor denied by the Defendants. He posited that as far as the land in question (Plot H204, Cadastral Zone B05, Utako District, Abuja) is concerned, there is only one Statutory Right of Occupancy before this Court, namely Exhibit PW1A. He argued that the 1st and 2nd Defendants in their defence, expressly admitted that they issued the Statutory Right of Occupancy to the Claimant.

Learned Claimant's counsel contended that the only defence of the 1st and 2nd Defendants is that the land in issue was involved in double allocation. He argued that the issue of whether the current number of the Plot is 135 or 204 is a hoax introduced by the Defendants in order to mislead the court. That all the documents tendered before the Court indisputablyshow that the

Plot number is H204, which is currently known as Plot No. 135, Cadastral Zone B05 Utako District, Abuja.That this fact is attested to by the Statement of Defence filed by the 1st and 2nd Defendants on 1st February, 2017.

Relying on **Nigergate Ltd v. Niger State Govt. (2008) 13 NWLR (Pt.1103) 111 at 145** and **Agbareh v. Mimra (2008) 2 NWLR (Pt.1071) 378,** he submitted that it is trite law that a Court can rely on the document which forms part of the Court's record in determining issues before it.

He contended that the first Statement of Defence of the 1st and 2nd Defendants contains the truth in respect of this matter and that the amended Statement of Defence filed by the 1st and 2nd Defendants on 13th June, 2018, which was later refilled on 5th February, 2020 after the joinder of the 4th and 5th Defendants, is an afterthought meant to mislead the Court.

Learned counsel contended that Exhibits PW1B, PW1E, PW1P and PW1Q support the position that the Claimant's land is presently known as Plot No. 135. He posited that the contents of Exhibit PW1Q which was issued long before the filing of this suit, are straight-forward and put to rest all issues relating to the claim by the 1st and 2nd Defendants in their amended Statement of Defence that the Claimant's Plot number is 204 is at variance with the exhibits before the Court. He submitted that oral testimony cannot be used to alter, vary, add to, or in any other way counter written information.

He referred to **Nursery & Midwifery Council of Nigeria v. Ogu (2019) 10 NWLR (Pt.1680) 233 at 243.**

On the question of double allocation of Plot 135, learned Claimant's counsel argued that the issue does not arise as the 1st and 2nd Defendants have records and ought not to have

allocated one Plot to two persons as alleged. Also, that there is no other Statutory Right of Occupancy or root of title in respect of the Plot save that of the Claimant. That the Claimant paid ground rents and other bills to the 1st and 2nd Defendants, but the 3rd Defendant paid none. Also, that the purported allocation to the 3rd Defendant which was originally in the name of Chief YasAdegbayi, is subsequent in time to that of the Claimant and that same is not covered by a Right of Occupancy.

He argued that the purported allocation by the 1st and 2nd Defendants to Chief YasAdegbayi is therefore unlawful and void. He referred to **Malami v. Ohikuare (2019)7 NWLR (Pt. 1670) 132.**

He submitted further, that the Certificate of Occupancy issued to the 3rd Defendant has no basis in law as there is no Right of Occupancy, which is the root of title to land in the FCT. That by Section 9(1) of the Land Use Act, a Certificate of Occupancy is issued as evidence of the existence of a Right of Occupancy; thus, there cannot be a Certificate of Occupancy without a Right of Occupancy. He posited that all the above facts conclusively establish the fact that the Claimant is the sole allottee of Plot No. H204, Cadastral Zone B05, Utako, Abuja, which the 1st and 2nd Defendants said is presently described as or called Plot No. 135, Cadastral Zone B05, Utako, Abuja.

Learned counsel argued that the 3rd Defendant having no letter of offer nor Statutory Right of Occupancy entitling him to be in occupation of the land, his possession therefore, is unlawful and constitutes encroachment upon the Claimant's land. He urged the Court to note the connivance of the 1st and 2nd Defendants who misled the Claimant when he requested to be shown his land, thereby allowing the 3rd Defendant to develop

the land, and to hold that the act amounted to trespass, and to grant the declaration sought by the Claimant.

On issue two, on whether the Claimant is entitled to the other reliefs sought; learned counsel argued in respect of relief (iii), that the Claimant having established by evidence, an allocation by the 1st and 2nd Defendants, which evidence was admitted by the 1st and 2nd Defendants, and that he submitted all necessary documents for the issuance of the Certificate of Occupancy and paid all applicable fees as per Exhibits PW1C, PW1D, PW1E and PW1F-F1, that the Claimant is entitled to the order sought in the said relief.

In respect of relief (iv), he posited that possession of land is a necessary corollary of ownership. That once ownership or title to land is established, the owner of the property is entitled to possession of land as a necessary corollary of ownership. That once ownership or title to land is established, the owner of the property is entitled to possession of same. He argued that the Claimant having established that he is the rightful owner of Plot No. H204, Cadastral Zone B05, Utako District, Abuja, that what follows is a right of possession to enable him exercise other due rights of ownership on the land.

On relief (v), learned counsel submitted that where a Claimant's legal right has been invaded and the invasion is continuous or there is a threat of continuance of the invasion, the Claimant is entitled to a perpetual order of injunction. He referred to **HO v. Abubakar (2011) 12 NWLR (Pt.1262) 323.**

He contended that the Claimant herein has established his legal right and has also proved continuous invasion of his land, and therefore, that he is entitled to an order of perpetual injunction against the 3rd Defendant who invaded his land and

has been in continuous invasion through the connivance of the 1st and 2nd Defendants.

On the claim for N50,000,000.00 general damages for trespass (relief (vi)) learned counsel submitted, with reliance on **Yakubu v. ImpresitBakolori PLC (2011) 6 NWLR (Pt.1244) 564,** that it is a well-settled principle of law that once a Claimant or party is successful in a claim for trespass, he is automatically entitled to damages even where no loss or damage is occasioned. He posited that the Claimant having proved trespass to his land, is thus entitled to damages.

In respect of relief (vii), he posited that exemplary and aggravated damages are granted only where the conduct of a Defendant has been so outrageous as to deserve punishment as in cases of malice, fraud, extreme depravity, bad faith or flagrant violation of law. He referred to**First Inland Bank v. Craft 2000 Ltd (2011) 48 WRN 62 at 76.**

He argued that in the instant case, the conducts of the Defendants are sufficiently outrageous as to merit punishment. That the facts of this case point conclusively to a case of blatant fraud, malice, extreme depravity, bad faith, etc, and as such, that the Claimant is entitled to the relief of exemplary and aggravated damages as claimed.

On the claim for general damages (relief (viii)) learned counsel submitted, relying on **Odogwu v. Ilombu (2007) 8 NWLR (Pt.1037) 488 at 512,** that general damages are those damages which the law presumes to flow from the wrong complained of and that the amount claimed does not require proof. He posited that the Defendants have shown extreme depravity to the Claimant in the circumstances of this case, and therefore, ought to pay him damages.

Regarding the claim for the cost of the suit, he submitted that the principle governing costs is that litigation is a serious business and a party engendering dispute ought to be prepared to bear the natural consequences and costs of resolving such disputes. On this point, he referred to **Chijioke v. Soetan (2006) 10 NWLR (Pt.990) 179 at 218.** He contended that this dispute culminated in litigation essentially due to the failure of the 1st and 2nd Defendants to issue to the Claimant a Certificate of Occupancy in respect of his land and deliver possession to him.

On issue three: whether the Claimant is altogether entitled to judgment; learned counsel posited that the Claimant has proved his case as required by Section 131 and 134 of the Evidence Act and therefore, ought to be entitled to judgment. He urged the Court to hold that the Claimant is entitled to judgment in this case.

Replying to the objection raised by the learned 3rd Defendant's counsel in his final written address regarding the admissibility of Exhibits PW1D, PW1E, PW1F and PW1P, learned Claimant's counsel submitted that Section 84 of the Evidence Act, 2011 does not apply to the exhibits which were served on the Claimant by the 1st and 2nd Defendants as original copies. He argued that the exhibits emanated from the 1st and 2nd Defendants and as such, the manner of production of the documents is within their exclusive knowledge.

He further contended that it is not every document printed from a computer that is considered as computer-generated evidence; that otherwise, even the pleadings of parties would warrant issuance of certificate of identification.

He posited that the said exhibits are original documents which were duly prepared and signed as such by officers of the 1st and 2nd Defendants.

Furthermore, learned counsel argued that the parties consented to the admissibility of the documents when they were tendered and are estopped from resiling from same by virtue of Section 169 of the Evidence Act, 2011.

He urged the Court to discountenance all the 3rd Defendant's submissions on the issue as irrelevant and misleading.

On the issue of the Claimant's first relief being vague, learned Claimant's counsel posited that the relief is not vague. That the Claimant knows what he is claiming.

He argued that the Claimant claims title to Plot H204, Cadastral Zone, B05, Utako District, Abuja. That the 1st and 2nd Defendants admitted this fact and went further to state that the Plot number has been changed to 135and yet they tried to mislead the Court by introducing Plot 204 into the matter.

He contended that all the authorities cited by the 3rd Defendant's counsel on the matter are irrelevant, and urged the Court to discountenance them.

On the issue of the size of Plot H204, learned counsel posited that it is about the size stated in exhibit PW1A (1386.5m^2) because at the time of allocation, as stated by the PW1 during hearing, the area had not been properly surveyed and demarcated as to know the exact size.

He contended that all the technical issues raised by the 3rd Defendant are meant to divert the Court's attention from the real issues at stake. He submitted that this Court is a Court of

justice which ought to do substantial justice to all parties without unnecessary reliance on technicalities.

He urged the Court to consider all the documents including exhibits in the file in order to arrive at a just determination of all issues before it.

In considering the issues raised, the first question is **whether Exh PW1E, PW1F, PW1P, PW1D were wrongly admitted in evidence?**

The 3rd Defendant's counsel in his final written address had raised objection regarding the admissibility of Exhibits PW1D, PW1E, PW1F and PW1P which he contended were wrongly admitted in evidence and urged the Court to expunge same from evidence for the Claimants failure to comply with section 84(4) of the Evidence Act, 2011.

The said Section 84(4) of the Evidence Act, 2011 deals with the requirement for a Certificate of Identification for computer-generated evidence.Exhibits PW1D, PW1E, PW1F and PW1P are Statutory Right of Occupancy Bill dated 27/4/2009, Demand for Ground Rent dated 27/04/2009, Revenue Collector's Receipts (AGIS), and another Demand for Ground Rent dated 10/09/2014, respectively.

Without much ado, I make haste to state that I agree *intoto* with the submissions of learned Claimant's counsel that the provisions of Section 84 of the Evidence Act, 2011, do not apply to documents of this nature. These are documents issued by the 1st and 2nd Defendants and tendered by the Claimant in the original form in which they were issued. They are relevant to the case of the Claimant and they did not breach any rule of admissibility.

I agree with the learned Claimant's counsel that the 3rd Defendant's objection to the admissibility of the said exhibits are irrelevant, and same is accordingly dismissed.

In considering the substantive suit, I will adopt for determination, the issue 2 raised by the learned 3rd Defendant's counsel in his final written address, to wit;

> ***"Whether from the totality of evidence adduced by the parties at trial, the Claimant has proved his case against the Defendants?"***

It is a principle that is well settled in a plethora of judicial authorities that in a claim for declaration of title to land, the Claimant has to succeed on the strength of his own case and not on the weakness of the defence. In this regard, the Supreme Court, per Tabai, J.S.C. held in **Anukam v. Anukam (2008) LPELR-500(SC),** that:

> ***"The well settled principle of law is that in a claim for declaration of title to land, the Plaintiff has to succeed on the strength of his own case and not on the weakness of the defence. Where however, evidence from the Defendant supports the case of the Plaintiff, he is entitled to rely on it."***

The onus therefore, squarely rests on the Claimant in this case who is claiming for a declaration of title to Plot No. H204, Cadastral Zone, B05, Utako District, Abuja, to prove his claim by credible evidence.

The law is clear on the modes or ways of proving title to land. Thus in**Idundun v. Okumagba (1976) 9-10 SC,** the Supreme Court listed the following as the ways of proving title to land:

1. By traditional evidence.

2. By production of documents of title.
3. By acts of ownership over sufficient length of time numerous and positive enough to warrant the inference that the person is the owner.
4. Long possession.
5. By proof of possession of connected or adjacent land in circumstances rendering probable that the owner of such connected or adjacent land would be the true owner of the land.

In the instant case, the Claimant has relied on production of document of title in his attempt to establish his title to the land in issue.Before examining the documents in evidence,I have reviewed the claim and it is my considered view, that the Claimant's claim is not vague as contended by the learned 3rd Defendant's counsel in his final written address.

The reliefs sought by the Claimant are clear on the face of the claim,that they are directed at Plot No. H204, Cadastral Zone, B05, Utako District, Abuja.However, following the prevarications of the 1st and 2nd Defendants, the granting authorities in respect of land in the FCT, both in the severally amended pleadings and their evidence in Court under cross examination, wherein one breath, they stated that Plot H204 is the same as Plot 204 and in another breath, that Plot H204 is the old Plot number of the current Plot 135.Thus the Claimant amended his pleadings and inserted in his reliefsthe phrase "whether presently described as plot No. 135 or 204 as alleged by the 1st and 2ndDefendants". The insertion of this phrase, in my opinion, does not alter the claim as evidenced by the title document showing Plot H204 Cadastral Zone B05, Utako District, Abuja.

Contrary to the issue raised by the 1st and 2nd Defendants in the final written address on whether the Claimant has established that Plot 204 is the same plot as Plot 135; I am of the firm view that it is the responsibility of the 1st and 2nd Defendants to establish the existence of the various Plots.The 1st and 2nd Defendants are the authorities saddled with both the responsibility of allocating land in the FCT, and also assigning Plot numbers to the various plots.They introduced the issue of remembering of the Plot both by the documents they issued to the Claimant and by their pleading and evidence in Court. They are in the best position to clear the issue of renumbering.

Going by the evidence of the Claimant,ExhPW1A Offer of Terms of grant/Conveyance of Approval dated 4/5/92, the Claimant was granted a Statutory Right of Occupancy over Plot No. H204, Utako District, Abuja by the 1st Defendant.

Exhibit PW1A was submitted to the 1st and 2nd Defendant for re-certification and re-issuance of Certificate of Occupancy and Exh PW1C Statutory Right of Occupancy was issued by 1st Defendant.These pieces of evidence were confirmed and admitted by the 1st and 2nd Defendant establishing the grant of Statutory Right of Occupancy on Plot H204 Utako, District, Abuja.

Since the submission of hisStatutory Right of Occupancy to the 1st and 2nd Defendants by the Claimant for re-certification and re-issuance,the 1st and 2nd Defendants have neither re-issuedhis Certificate of Occupancy to the Claimant nor responded to his letters of demand in that regard.The 1st and 2nd Defendants' silence in this regard means admission.

It is in evidence before this Court, that by the letters, Exhibits PW1G, PW1J, and PW1L respectively dated 25th March, 2011, 27/8/12 and 18/04/13, the Claimant demanded from the

1st Defendant the release of his Certificate of Occupancy in respect of Plot No. H204, Cadastral Zone, B05. The acknowledgment stamps on the said exhibits show that they were duly received by the 1st Defendant who failed to either respond to same or release the Claimant's Certificate of Occupancy to him.

Going back to the identity of the Plot in issue; the Supreme Court, per Oputa, JSC held in **NwobodoEzeude&Ors v. Isaac Obiagwu (1986) 2 NWLR (Pt.21) 208 at 220,** that;

> ***"The identity of land in dispute will be in issue, if, and only if, the Defendants in their Statement of Defence made it one - that is, if they disputed specifically either the areaor the size or the location or the features shown on the Plaintiff's plan."***

Although the Claimant is claiming the Plot numbered in Exhibit PW1A as Plot No. H204, the Claimant averred that when he demanded to be shown his plot of land, the officers of the 1st and 2nd Defendants took him and showed him a Plot numbered 135 which is occupied by the 3rd Defendant.

The 1st and 2nd Defendants however averred in paragraphs 2 and 3 of their amended joint Statement of Defence that the Claimant was allocated Plot No. 204, Cadastral Zone, B05, Utako District, Abuja while Plot No. 135, Cadastral Zone, B05, Utako District, Abuja was allocated to one Chief YasAdegbayi which he later transferred to the 3rd Defendant.

The 1st and 2nd Defendants further averred in paragraph 4 of their joint Statement of Defence that Plot Nos. 135 and 204 are two different plots. They tendered a satellite image, Exhibit DW1A to prove that Plot 135 is different from Plot 204.

The contention of the Claimant however, is that Plot 204 as shown is exhibit DW1A is the old Plot No. H216 allocated to the 4th Defendant who later sold same to the 5th Defendant. He maintained that he was informed by the officers of the 1st and 2ndDefendants that his new Plot number is Plot 135, thus admitting that there was a double allocation over the said Plot 135.

The 1st and 2nd Defendants in paragraph 7 of their amended joint Statement of Defence stated that their record confirms the incidence of double allocation over Plot 135, and under cross examination by learned Claimant's counsel, the DW1 confirmed the incidence of double allocation and stated that the individuals affected by the double allocation are Col. Felix Egiebor (Claimant) and Frank Filis (3rd Defendant).

Furthermore, in the correspondence from the 1st and 2nd Defendants to the Claimant, Exhibits PW1D, PW1E and PW1P, the 1st and 2nd Defendants who are the custodians of all the land records in the Federal Capital Territory, stated the Claimant's Plot number as Plot 135. Also, in Exhibit PW1Q, Police Investigation Report, which was not controverted by the 1st and 2nd Defendants, the Police reported their findings from the information supplied to them by the 1st and 2nd Defendants, that the Claimant's Plot H204 now has a new Plot number, to wit; Plot No. 135,Cadastral Zone, B05, Utako District, Abuja.

Specifically, the 1st and 2nd Defendants wrote to the Claimant vide Exhibit PW1H informing him that Plot 135 Utako was involved in a case of double allocation and that a committee was working towards resolving the issue.

From the above pieces of evidence, I am clear on my mind that the Claimant's Plot No. H204, Cadastral Zone, B05, Utako District, Abuja, was re-numbered by the 1st and 2nd Defendants

and assigned a new number, Plot No. 135, Cadastral Zone, B05, Utako District, Abuja.

It is also crystal clear from the evidence before the Court that by the negligence of the officers of the 1st and 2nd Defendants, the said Plot 135 was doubly allocated to two different parties.

It is pertinent at this stage to present the history of the title document of the parties particularly the Claimant and 3rd Defendant. The 4th and 5th Defendants never put appearance despite the services of Hearing Notices effected on them.

Claimant obtained the offer of terms of Grant/Conveyance of Approval on 4/5/1992,Exh PW1A which is the Right of Occupancy.

The 3rd Defendant claiming through Mr.AdegbayiYas Chief (the original allottee) claimed to have obtained his Right of Occupancy/Allocation letter dated 22/7/97 (extracted from Exh DW2B as documents submitted to Abuja Geographic Information System (AGIS) for issuance of Recertification and Re-Issuance of Certificate of occupancy).The said Right of Occupancy/Letter of Allocation was never tendered in Court.

The Claimant tendered Exh PW1C – Re-certification and Re-issuance of Certificate of Occupancy Acknowledgment dated 04/19/05 suggesting that he obtained and submitted the Right of Occupancy to the 1st and 2nd Defendants for recertification.

While the 3rd Defendant claiming through AdegbayiYas Chief tendered Exh DW2B – Recertification andRe-issuance of Certificate of Occupancy Acknowledgment dated 21/01/07.

The Claimant obtained and tendered Exh PW1D – Statutory Right of Occupancy Bill dated 27/04/09.

The 3rd Defendant never tendered any Statutory Right of Occupancy Bill indicating the financial obligation to Abuja Geographic Information System (AGIS).

The Claimant further received and tendered Exh PW1E – Demand for Ground Rent dated 27/04/09 demanding the payment of N134,420.32 due for payment before 3/12/09 (See paragraph 2 of Exh PW1E). The Court observed that the said money N134,420.32 was paid by Exh PW1F to Abuja Geographic Information System (AGIS) dated 29/07/09 and Exh PW1F1 reflects also payment of N2, 721,060.00 as demanded in Exh PW1D Statutory Right of Occupancy Bill. Several other receipts/tellers for payments were tendered depicting the Claimants financial commitments to 1st and 2nd Defendants.

Apart from Exh DW2K Certificate of Occupancy, the 3rd Defendant did not tender any other ancillary title documents connecting him to the land.

In observance, all the title documents tendered by the Claimant bear earlier dates than that of the 3rd Defendant.

It is a liability on the part of any grantee to pay fees as demanded by the grantor in respect of a grant and as a consideration in the contractual relationship.

It is obvious from the foregoing that the 3rd Defendant never produced/presented any Right of Occupancy prior to the Certificate of Occupancy (Exh DW2K).

An existing Right of Occupancy prior to the issuance of a Certificate of Occupancy is considered a good right as against any other right other than the Certificate of Occupancy. The grants of Right of Occupancy over a piece of land gives the holder a right standing to occupy and possess the land.

Therefore, the grant of another Right of Occupancy over the same piece of land becomes illusory and invalid while the earlier one is unrevoked.

In other words, the grant of the earlier Right of Occupancy subsists until revoked – **Abdullahiv. Bani (2014) 17 NWLR (Pt.1435) 1.**

However, the Claimant in the instant case by Exh PW1C showed that Right of Occupancy dated 05/04/1992 was submitted to Abuja Geographic Information System (AGIS) for recertification as item 2 on the list of "Items Submitted or Received". Also the 3rd Defendant under items submitted, purported to have submitted Right of Occupancy dated 22/07/1997. The Claimant tendered his Right of Occupancy as Exh PW1C.

The evidence of the Claimant established that various payments were made subsequent to the receipt of his Right of Occupancy. Reference is made to Exh PW1D paragraph 1, I quote ***"You may wish to please refer to the above Right of Occupancy granted in your favour with particulars shown below…"***.Based on the Claimant's Right of Occupancy upon which the authority demanded fees and Claimant made various payments which were receipted (see Exh PW1F-F1. The learned counsel to 3rd Defendant argued that the Claimant merely had an Offer of Grant/Conveyance of Approval and therefore, has no possessory right to the land. I am convinced by the pieces of evidence before this Court that the Claimant went beyond having an offer. From the pieces of evidence put together, I believe the Claimant accepted the offer, made necessary payments, received a Right of Occupancy which he submitted for recertification.

Doubtless, the Claimant accepted the offer, thus the liability to pay fees/consideration on demand and communication by the offeror through Exh PW1D& PW1E. The 1st and 2nd Defendants admitted that offer was made and accepted, thus the fulfilment of the obligations as to payment made to them. The witness of 1st and 2nd Defendants, DW1, further admitted that there was existence of Right of Occupancy in favour of the Claimant.

So long as the Right of Occupancy existed and has not been revoked, any grant of a subsequent one would be ineffectual. This is because the Statutory Right of Occupancy existing over the land must be first revoked or nullified before another is issued.

The 1st and 2nd Defendants did not revoke the Claimant's Right of Occupancy – **Mu'Azu v. Unity Bank PLC (2014)3 NWLR (Pt.1395) 512.**

It is immaterial that the Right of Occupancy was lost by the owner. It is deemed to still be in his possession. The earlier one must be invalidated before the coming into existence of the subsequent one.

Evidently, the duty of the 1st and 2nd Defendants is to ensure that before the grant of any Right of Occupancy or Certificate of Occupancy, they must make sure that there is no conflicting title document in existence.

The 1st and 2nd Defendants' witness, DW1, clearly admitted there was double allocation without properly revoking existing and earlier title documents. Therefore, the mere issuance of Certificate of Occupancy does not and cannot confer title of land on another person where there is an existing title document in the nature of Right of Occupancy. The issuance of the said Certificate of Occupancy without revocation of the

earlier title documents does not ipso facto revoke the earlier Right to Occupancy. Put in another way, the earlier Right of Occupancy is extinguished where there is proper notice of revocation served on the party involved.

Issuance of Certificate of Occupancy is prima facie evidence of title or possession but not conclusive proof of title to the land in contention. The mere production of Certificate of Occupancy as in the instant case by the 3rd Defendant does not by itself entitle the party to declaration of the land. If it is successfully challenged it can be nullified and where evidence establishes that the Certificate of Occupancy was wrongfully obtained, the Court can nullify it – **Otukpo v. John (2012) 7 NWLR (Pt.1299) 357 SC.**

Sequel to the above, it is noteworthy that production of Certificate of Occupancy or any document of title does not automatically entitle a party to a claim for declaration.

The 3rdDefendant by virtue of his Certificate of Occupancy obtained on 4/6/98 claimed that he has a better title. It is my strong opinion that the said Certificate of Occupancy Exh DW2K does not stand as a revocation of the Right of Occupancy of the Claimant. The presumption that the holder of Certificate of Occupancy holds exclusive possession is rebuttable. The Claimant's allocation by the 1st and 2nd Defendant has not been revoked.

Therefore, the Certificate of Occupancy issued to the 3rd Defendant is a mistake as the DW1 admitted it was a double allocation of which the 3rd Defendant's allocation came later in time. The position of the law is that a party cannot validly obtain a Certificate of Occupancy in respect of a piece of land without first divesting the owners or holders of Right of Occupancy of their title. In the face of the unextinguished Right of Occupancy

of the Claimant, any other title document issued remains invalid **Azi v. Registered Trustee of Evangelical Church of West Africa (1991) 6 NWLR (Pt.195) 113.**

I came to the conclusion that the Claimant has discharged the onus on him by establishing the proof by tracing and producing documents issued by the issuing authority of 1st and 2nd Defendants. The DW1 for 1st and 2nd Defendants admitted the issuance of double allocation without revoking the Claimant's allocation. To my mind, the Claimant has validly acquired the land through the Honourable Minister, FCT the grantor. Claimant is therefore, bound to succeed on the strength of his case. The claim of the Claimant therefore succeeds.

In considering Relief I, I lay emphasis on the evidence of DW1 with regards to paragraph 5 of her Witness Statement on Oath that stated that Plots 135 and 204 are two different Plots as indicated in Exh DW1A.

In paragraph 6, she averred in her Witness Statement on Oath that the Claimant submitted his title documents for recertification in 2005 two years before the Defendant submitted in 2007.

In paragraph 3 of the Witness Statement on Oath of DW1, she averred that Plot 204 was allocated to Claimant on 4/5/92.

The DW1 under cross examination on 25/10/18, contradicted her written evidence, stating that Plot H 204 and 204 are same as the letter 'H' represents "High Density". On further cross examination on 23/6/20, DW1 stated that it was no longer her evidence that Plot H 204 is same as Plot 204, rather that her evidence is that Plot H204 is the old Plot number of Plot 135 and that Plot 135 is involved in a double allocation. The DW1 has contradicted herself during cross examination. Defence

counsel discredited her evidence therefore, leaving the Court with no other option than to disregard and disbelieve her evidence and thus relying on the documentary evidence before the Court.

With reference to Exh PW1D - “Statutory Right of Occupancy Bill,Exh PW1E is Demand for ground rent.WhileExh PW1Pis an apology letter, communication from 1st and 2nd Defendants by Abuja Geographic Information System (AGIS) indicating that the Plot allocated to the Claimant is Plot 135.

Further the response letter from the Department of Land Administration dated 19/8/11 informed the Claimant that Plot 135 was involved in a double allocation and that the 1st and 2nd Defendants would resolve the issue but they never did.

It is therefore, very obvious and convincing that Plot H204 is same as Plot 135 allotted to the Claimant at first instance before it was allotted to the 3rd Defendant as a double allocation. Therefore, I strongly hold that the Claimant has proved his case on the preponderance of evidence and the said Plot H204 is same as Plot 135 which belongs to the Claimant. The later allocation of Plot 135 to the 3rdDefendant is worthless because there cannot exist, concurrently two title documents holders over same piece of land.

The rules of equity is that the first allocation which is unrevoked remains a valid allocation.

The Certificate of Occupancy of the 3rd Defendant is invalid and cannot extinguish the Right of Occupancy of the Claimant.

On issue of trespass; trespass has been defined as the “unjustified interference with one’s possession and enjoyment of property”. See **CompagnieGenrraledeGeophysique (Nigeria) Ltd v. Asagbara&Anor (2000) LPELR-5517 (CA).**

In the instant case, the 3rd Defendant's interference with the Claimant's possession is not justifiable, not even on the ground that same was based on the mistaken belief that he has a legal right in the property pursuant to the negligent act of the officers of the 1st and 2nd Defendants who made a double grant over the same property. I am of the considered view that the 3rd Defendant in this particular circumstances, is liable for trespass.

As submitted by the learned Claimant's counsel at paragraph 4.15 of his final written address, "exemplary and aggravated damages are granted only where the conduct of a Defendant has been so outrageous as to deserve punishment as in the case of malice, fraud, extreme depravity, bad faith or flagrant violation of law." It is my considered view that none of the Defendants in the instant case has conducted themselves in ways showing malice, fraud, extreme depravity, bad faith or flagrant violation of law.

The Defendants are therefore, not liable for exemplary and aggravated damages.

Having found for the Claimant as stated above, judgement is hereby entered in favour of the Claimant as follows:

i. Relief I succeed to the extent that the Court declares the Claimant the bona fide rightful owner of Plot H204 described as Plot 135 Cadastral Zone B05 Utako District, Abuja under and by virtue of Statutory Right of Occupancy No. MFCT/LA/89/BD-1422 dated 4th May, 1992.
ii. It is declared that the encroachment of the 3rd Defendant into the Claimant's land, coupled with the erection of structure thereon without the Claimant's consent and authorisation constitute acts of trespass.

iii. The 1st and 2nd Defendants are ordered to issue and release to the Claimant his recertified Certificate of Occupancy over Plot No. H204, presently described as Plot No. 135, Cadastral Zone B05, Utako District, Abuja.

iv. An order is made granting immediate possession ofPlot H204, presently described as Plot No. 135,Cadastral Zone B05, Utako District, Abuja, to the Claimant.

v. An order of perpetual injunction is made restraining the 3rd Defendant, his agents, servants, privies or however described, from trespassing or further trespassing on the Plot No. H204, presently described as Plot No. 135, Cadastral Zone B05, Utako District, Abuja.

vi. The sum N5m is ordered against the 3rd Defendant and in favour of the Claimant as general damages for trespass to land.

vii. Relief (vii) is refused for want of proof.

viii. Relief (viii) succeeds against the 1st, 2ndand 3rd Defendants to the tune of N2,000,000.00 (Two Million Naira).

ix. Out of pocket expenses is N1,000,000.00 (One Million Naira).

HON. JUSTICE A. O. OTALUKA
13/10/2021.