

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT MAITAMA, ABUJA**

ON WEDNESDAY, 23RD DAY OF MARCH, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/1761/2014

BETWEEN

TICTON NYAME

**[Suing through his Lawful Attorney,
Min-Jash Nig. Ltd.]**



CLAIMANT

AND

- 1. THE HON. MINISTER OF THE FCT**
- 2. FEDERAL CAPITAL DEVELOPMENT
AUTHORITY**
- 3. MR. DANIEL NNADI**



DEFENDANTS

JUDGMENT

The claimant [plaintiff] commenced this action vide writ of summons filed on 10/6/2014. The suit was re-assigned to me by My Lord, The Honourable Chief Judge vide a Transfer Order dated 17/3/2021. The pleadings in this case are: [i] the claimant's amended statement of claim filed on 11/3/2015; [ii] the 1st& 2nd defendants' amended statement of defence filed on 9/9/2021; [iii] the 3rd defendant's statement of defence filed on 7/5/2015; and [iv] claimant's reply to the 1st& 2nd defendants' statement of defence filed on 20/1/2022.

In his amended statement of claim filed on 11/3/2015, the claimant claims the following reliefs against the defendants jointly and severally:

- A. An order of perpetual injunction restraining the 3rd defendant either by himself, his agents, servants, members or assigns from further trespass to the plaintiff's land situate at Plot LD 265, Cadastral Zone A09, re-plotted and now known as Plot 209 [A09] with Ref. No. TR534/TR 10158, Guzape in the Federal Capital Territory in whatever manner.
- B. An order of this Honourable Court restraining the 3rd defendant either by himself, his agents, servants, members or assigns on further converting the plaintiff's land situate at Plot LD 265, Cadastral Zone A09, re-plotted and now known as Plot 209 [A09]with Ref. No. TR 534/TR 10158, Guzape in the Federal Capital Territory in whatever manner.
- C. An order of this Honourable Court restraining the 3rd defendant either by himself and/or his agents, privies, servants, members and/or successors however so called from further molesting, intimidating, harassing, interfering and or engaging in any act that will run contrary to the plaintiff's Right of Occupancy on his property at Plot LD 265, Cadastral Zone A09, re-plotted and now known as Plot 209 [A09] with Ref. No. TR 534/TR 10158, Guzape in the Federal Capital Territory in whatever manner.
- D. An order of this Honourable Court allowing the plaintiff to re-take possession of the land situate at Plot LD 265, Cadastral Zone A09, re-

plotted and now known as Plot 209 [A09]with Ref. No. TR 534/TR 10158, Guzape in the Federal Capital Territory.

- E. An order of this Honourable Court compelling the 1st and 2nd defendants to issue to the plaintiff the Certificate of Occupancy of the land situate at Plot LD 265, Cadastral Zone A09, re-plotted and now known as Plot 209 [A09] with Ref. No. TR 534/TR 10158,Guzape in the Federal Capital Territory, which they have unjustly withheld up till this moment.
- F. A declaration of this Honourable Court that the Statutory Right of Occupancy granted to the plaintiff dated 7th August, 2009 in respect of Plot LD 265, Cadastral Zone A09, re-plotted and now known as Plot 209 [A09] with Ref. No. TR 534/TR 10158,Guzape in the Federal Capital Territory is still valid and subsisting.
- G. A declaration that the plaintiff is the rightful owner of Plot LD 265, Cadastral Zone A09, re-plotted and now known as Plot 209 [A09] with Ref. No. TR 534/TR 10158Guzape in the Federal Capital Territory.
- H. The sum of N10,000,000.00 as general and aggravated damages.
- I. The cost of this action assessed at N5,000,000.00.

At the trial, Shuaibu Muhammad, a Director in Min-Jash Nig. Ltd. [claimant's Lawful Attorney], testified as CW1. He adopted his statement on oath filed on 8/9/2021. He also adopted his statement on oath filed on 20/1/2022 along

with the claimant's reply to the 1st& 2nd defendants' statement of defence. CW1 tendered Exhibits A, B, C, C1, D, E, F, G, H & I.

Ibrahim Mohammed Rotimi, Chief Executive Officer and Managing Director of Edges Environmental Services [Nig.] Ltd., gave evidence as CW2. He adopted his statement on oath filed on 20/1/2022. During cross examination of DW2 by learned counsel for the 3rd defendant [Prince Orji Nwafor-Orizu], Exhibit K was tendered through him.

Jibril Mahmud Usman, a Principal Land Officer in the Lands Department of Federal Capital Territory [FCT] Administration, testified as DW1 for the 1st& 2nd defendants. He adopted his statement on oath filed on 9/9/2021. During cross examination of the DW1 by Prince Orji Nwafor-Orizu, Exhibit L was tendered through him. 3rd defendant was the DW2. He adopted his statement on oath filed on 7/5/2015 and tendered Exhibits M, N, O & P1-P4.

On 16/3/2022, before the adoption of final written addresses, Prince Orji Nwafor-Orizu sought and obtained the leave of Court to tender the certified copy of the back page of Exhibit L from the Bar. The document was received in evidence as Exhibit L1.

Evidence of CW1 - Shuaibu Muhammad:

In his statement on oath filed on 8/9/2021, the CW1 stated that the claimant is the rightful and lawful allottee [and in possession] of Plot LD 265, Cadastral

Zone A09, re-plotted and now known as Plot 209 [A09] with Ref. No. TR 534/TR 10158, Guzape, FCT, Abujacovered by a Statutory Right of Occupancy dated 7/8/2009 with File No. TR10158 issued to him by the office of the 2nd defendant. An Irrevocable Power of Attorney was donated to Min-Jash Nig. Ltd. with respect to the said Plot. The claimant applied for a land in FCT via a Land Application Form dated 16/10/2001. The claimant was allotted the said Plot by the 1st defendant via Offer of Terms of Grant/Conveyance of Approval dated 18/4/2003.

The 1st&2nddefendants acknowledged that they are in possession of the original of the Right of Occupancy via a letter dated12/15/05. The claimant paid all outstanding bills including ground rent and right of occupancy bill. A bill of N4,969,759.20 for right of occupancy was issued to the claimant and was paid after the land was re-plotted from old Plot No. LD 265, Cadastral Zone A09 to the current Plot 209 [A09], Guzape, FCT. After payment of all outstanding bills, the claimant was not issued a copy of the original of the certificate of occupancy despite repeated demands. The claimant, through Polygon Chambers, wrote a letter dated 7/5/2010 to the 1st& 2nd defendants captioned:*Application for Release/Issuance of Certificate of occupancy No. TR 10158*; the letter fell to deaf ears.

In the further statement on oath of CW1 filed on 20/1/2022, he testified that claimant has always been in possession of the said Plot. Plot No. 209 survey number is the same with LD265 planning number,which means low density

plot as the land use. It was at the point of collecting the Right of Occupancy No. TR 10158 Rent and Fees addressed to the claimant that he found that the Plot number was now Plot No. 209 with same File No. TR 534/TR 10158. After numerous visits to the 1st& 2nd defendants' office, he was given a photocopy of certificate of occupancy dated 7/8/2009 and was told that the original copy would be released "*pending the outcome of investigation of some plots of land within Guzape District, Abuja.*" CW1 tendered the following documents:

1. Certificate of Incorporation of Min-Jash Nig. Ltd. dated 1/2/2008: Exhibit A.
2. Irrevocable Power of Attorney donated by the claimant to Min-Jash Nig. Ltd. dated 1/4/2008: Exhibit B.
3. Land Application Form dated 16/10/001: Exhibit C; the attached receipt dated 16/10/001: Exhibit C1.
4. Offer of Terms of Grant/Conveyance of Approval dated 18/04/03 in the name of the claimant: Exhibit D.
5. Recertification and Re-issuance of C-of-O Acknowledgement dated 12/15/05: Exhibit E.
6. Document titled: Right Of Occupancy No. TR 10158 Rent and Fees dated 24/07/2008 addressed to the claimant: Exhibit F.
7. Receipt dated 23/01/2009 for N2,558,000.00 issued to the claimant: Exhibit G.

8. Letter dated 7/5/2010 from Polygon Chambers to the Director [Lands] FCT Administration: Exhibit H.
9. Site Plan showing Plot: Guzape/A09/209 dated 25/01/08: Exhibit I.

During cross examination of CW1 by learned counsel for 1st& 2nd defendants [Mohammed GarbaBawaEsq.], he stated that the claimant accepted the offer after he collected the Offer of Terms of Grant/Conveyance of Approval [Exhibit D]; he cannot remember the date the claimant accepted the offer.

When CW1 was cross examined by Prince Orji Nwafor-Orizu on behalf of the 3rd defendant, he stated that he does not have a certificate of occupancy in respect of the said Plot; it is at the verge of collection but they kept telling him to “keep on coming”.

Evidence of CW2 - Ibrahim Mohammed Rotimi:

The evidence of CW2 is that he is a Registered Land Surveyor having over 35 years of experience. He is a Fellow of Nigeria Institution of Surveyors and Fellow of Geoinformation Society of Nigeria. 1st& 2nd defendants employed his services for numerous land surveying projects of FCT, Abuja pertaining to land, planning, survey and Geographical Information System analysis. He does not know the claimant or 3rd defendant. His service was engaged by the claimant through his counsel to give expert evidence in this case. He knows the location of the property in dispute.

He served as Consultant to the 1st & 2nd defendants during the planning and physical demarcation survey of each plot headed by M.S.U. Kalgo and A.C. Ike. He participated in the scheme in data generation and demarcation survey of each plot by planting beacons on ground. He has seen a certificate of occupancy bearing the name of Ticton Nyame. The plot which the claimant is claiming is *"Plot No. 209 survey number and the same time LD265 planning number which means low density plot of land as the land use"*, Cadastral Zone A09 Guzape District, Abuja measuring approximately 2,412.15m² and covered by beacon Nos. PB933, 934, 935, 957, 958 and 959 with certificate of occupancy dated 7/8/2009 and letter of grant dated 18/4/2003.

CW2 further testified that he knows Plot 209 with same number LD265 as planning number and he saw the Plot on 12/3/2021. He has also seen the letter of grant of Plot No. 209 dated 15/2/2010 with approximately 2,412.15m² in Cadastral Zone A09 of Guzape represented by the 3rd defendant. He has no difficulty in confirming that he was the one who surveyed Plot No. 209 and other plots around Guzape District, FCT, Abuja. Plot No. 209 and Plot No. LD265 *"are all the same and one plot"*. This is a clear case of double allocation from the issuing Authority, FCTA.

When CW2 was cross examined by learned counsel for 1st & 2nd defendants, he stated that he has worked for the 1st & 2nd defendants as a Consultant since 1999 till date; if there is any technical problem in Guzape Layout, the 1st & 2nd defendants will call him.

During cross examination of CW2 by learned counsel for the 3rd defendant, the photocopy of the certificate of occupancy in the claimant's namedated 7/8/2009 was tendered and marked Exhibit K. The cross examiner called the attention of CW2 to the fact that the plot number in the claimant's offer of grant of right of occupancy is not the same as the plot number in the certificate of occupancy in his name. The CW2 was asked the reason for the difference. He said: *"The mix-up came from the land use number by the planner which can be called HD [High Density], MD [Medium Density] or LD [Low Density]. Plot numbers are normally given by the surveyors."*

Evidence of DW1–Jibril Mahmud Usman:

The evidence of DW1 is that there has never been any plot known as Plot LD 265 Cadastral Zone A09, Guzape, Abuja. The claimant has never been in possession. The 2nd defendant never issued any statutory right of occupancy to the claimant for the non-existing plot as described by the claimant or Plot 209 [A09], Guzape District, Abuja. Any purported power of attorney donated to Min-Jash Nig. Ltd. was in respect of a non-existing Plot. The claimant never applied for any land allocation in FCT. The 1st&2nd defendants never issued any letter dated 16/10/2001. 1st& 2nd defendants never acknowledged being in possession of any original right of occupancy either via a letter dated 12/15/05 or any means whatsoever.

The claimant never paid any outstanding bills either for ground rent, right of occupancy bill or application processing fees or any bill to the 1st&

2nd defendants. No bill was issued to the claimant. The 1st & 2nd defendants could not have issued any bill or certificate of occupancy to the claimant in respect of a non-existing plot. The 1st & 2nd defendants never received any letter referred to by the claimant [i.e. letter from Polygon Chambers]. There is no plot known as Plot LD 265 in the Layout of Cadastral Zone A09, Guzape.

Jibril Mahmud Usman further testified that the said Plot 209 was allocated to ChimarokeOgbonayaNnamani vide Offer of Statutory Right of Occupancy dated 15/02/2010 and was accepted on 19/02/2013. ChimarokeOgbonayaNnamani was issued a Certificate of Occupancy dated 1/11/2010 by the 1st defendant. ChimarokeOgbonayaNnamani donated a power of attorney in respect of the said Plot 209 to Daniel Nnadi [the 3rd defendant] on 15/06/2011 and same was registered at the Lands Registry of the Land Administration Department as Pc 154, Page 154, Vol. 68 PA on 24/04/2013.

During cross examination of DW1 by learned counsel for the 3rd defendant, he stated that there is no double allocation on the land in dispute. Exhibit K was not issued by the 2nd defendant. From their records, Exhibit K was voided because it is a fake document. The Certificate of Occupancy issued to ChimarokeOgbonayaNnamani was tendered and marked Exhibit L. It is not correct that the Plot in dispute was Plot LD265 but changed to Plot 209. If the 1st & 2nd defendants re-plot a land or change the plot number, the person who

owns the plot must be informed in writing. Plot 209 is not the same as Plot LD265.

During cross examination of DW1 by KenechukwuAzieEsq., learned counsel for the claimant, he stated that Exhibits C, C1, E, F&G were validly issued by the 1st& 2nd defendants. Exhibit D was not issued by the 1st& 2nd defendants. They have the committee report in their office to show that the right of occupancy issued to the claimant is fake, which led to the voiding of Exhibit K. He did not know if claimant was invited to any panel before the decision was taken. He did not know if the committee report was communicated to the claimant.

Evidence of DW2–Daniel Nnadi [the 3rd Defendant]:

The testimony of the DW2 is that the transaction, payments and documents referred to by the claimant are between him and the 1st& 2nd defendants in respect of Plot LD 265 Cadastral Zone A09 Guzape, FCT Abuja, which was never at any time re-plotted to be known as Plot 209 Cadastral Zone A09, Guzape, Abuja. He acquired title/interest over Plot 209 through ChimarokeOgbonayaNnamani, the original allottee. The Irrevocable Power of Attorney dated 15/6/2011 donated to him by ChimarokeOgbonayaNnamani was registered as PC 154, Page 154, Volume 68 PA on 24/4/2013 at the Land Registry of Land Administration Department, Abuja.

DW2 further stated that before he took the Irrevocable Power of Attorney, diligent search was conducted at AGIS on his behalf by his solicitors, Obi Orizu & Co. A search report was issued, which confirmed that Plot 209 was allocated to Chimaroke Ogbonaya Nnamani. The claimant has no right over Plot 209. The claimant's plot is not the same plot of land over which a Power of Attorney was donated to him [DW2] by the original owner. He identified Exhibit L as the Certificate of Occupancy issued to Chimaroke Ogbonaya Nnamani in respect of Plot 209.

DW2 tendered the following documents:

1. Irrevocable Power of Attorney donated by Chimaroke Ogbonaya Nnamani to DW2 dated 15/6/2011: Exhibit M.
2. Offer of Statutory Right of Occupancy addressed to Chimaroke Ogbonaya Nnamani dated 15/2/2010: Exhibit N.
3. Demand for ground rent dated 12/3/2013 addressed to Chimaroke Ogbonaya Nnamani: Exhibit O.
4. Receipt dated 14/10/2010 for N7,531,640.00: Exhibit P1.
5. Receipt dated 14/10/2010 for N7,000,000.00: Exhibit P2.
6. Receipt dated 7/7/2011 for N110,000.00: Exhibit P3.
7. Receipt dated 14/3/2013 dated 14/3/2013 for N72,500.00: Exhibit P4.

When DW2 was cross examined by the claimant's counsel, he stated that he did not have any document to show that ChimarokeOgbonayaNnamani applied for the land and accepted the offer or paid for the application and land processing fees.

Issues for Determination:

At the end of trial, Mohammed GarbaBawaEsq. filed the final address of the 1st& 2nd defendants on 1/3/2022. Prince Orji Nwafor-Orizu filed the 3rd defendant's final address on 1/3/2022. KenekwukwuAzieEsq. filed the final address of the claimant on 10/3/2022. On 14/3/2022, Prince Orji Nwafor-Orizu filed the 3rd defendant's reply on points of law. On 16/3/2022, the learned counsel for the parties adopted their respective final addresses.

Learned counsel for the 1st& 2nd defendants distilled two issues for the Court's determination, namely:

1. Whether Exhibit "K", the purported photocopy of the certificate of occupancy granted to the claimant, was lawfully admitted into evidence.
2. Whether having regard to the facts and circumstances of this case, the claimant is entitled to the reliefs claimed.

Learned counsel for 3rd defendant posed three issues for determination, viz:

1. Whether the plaintiff has by credible evidence established any nexus or link between Plot LD 265 Guzape, Abuja, originally granted to the plaintiff [said to be re-plotted to Plot 209] and Plot No.209 Cadastral Zone [A09], Guzape, Abuja over which the 3rd defendant acquired interest from the original allottee.
2. Whether the payments made by the plaintiff and the administrative letters exchanged between the plaintiff and the 1st and 2nd defendants coupled with the photocopy of the certificate of occupancy unofficially issued to the plaintiff would defeat the title acquired by the 3rd defendant over Plot 209 Cadastral Zone A09, Guzape by virtue of the Certificate of Occupancy issued to the 3rd defendant by the 1st and 2nd defendants.
3. Between the plaintiff and the 3rd defendant, whose title should take priority in respect of Plot 209 Cadastral Zone A09 Guzape District, Abuja?

For his part, learned counsel for the claimant formulated these two issues for determination:

1. Having regard to the material evidence submitted to this Honourable Court, whether Plot LD265, Cadastral Zone A09, Guzape is the same as Plot 209, Cadastral Zone A09, Guzape in the Federal Capital Territory.
2. Whether given all the facts and circumstances of this case, especially having regards to the state of the pleadings and evidence on record, the

plaintiff has proved his claims as required by law so as to be entitled to the reliefs sought by him in this suit.

The claimant's reliefs F & G, which I had earlier set out, are for declaratory orders to the effect that the Statutory Right of Occupancy granted to him in respect of Plot LD265 Cadastral Zone A09, Abuja which was re-plotted and now known as Plot 209 [A09], Guzape District, Abuja is valid and subsisting; and that he [the claimant] is the rightful owner of the said Plot. Learned counsel for the 1st& 2nd defendants rightly referred to reliefs F & G as "*foundational reliefs*". It seems to me that the success or otherwise of the other reliefs sought by the claimant will largely depend on the decision of the Court on the declaratory reliefs.

The law is well established that a party seeking a declaratory order or relief must adduce credible and sufficient evidence to prove his case. He must succeed on the strength of his case and not on the weakness of the case of the adverse party. See the case of **Arowolo v. Olowookere [2011] 18 NWLR [Pt. 1278] 280.** It is also trite law that civil cases - including actions for declaration of title to land as in the instant case - are determined on balance of probabilities or preponderance of evidence. See **Cyprian Onwuama v. LoiusEzeokoli [2002] 5 NWLR [Pt. 760] 353.**

It is also necessary to point out that one of the five ways of proving title to land is by production of document[s] of title. See **Idundun v. Okumagba**

[1976] 9-10 SC 227 and Ilona v. Idakwo [2003] 11 NWLR [Pt. 830] 53. In FCT, the production of documents of title granted by the Honourable Minister of FCT [the 1st defendant] is the prevalent way to prove title to, or interest in, land. Thus, a party seeking a declaration of title to land in FCT, Abuja has to rely on document[s] evidencing a grant of a right of occupancy from the 1st defendant. See Madu v. Madu [2008] 6 NWLR [Pt. 1083] 296.

It must however be noted that even though production of document[s] of title is one of the five ways of proving title to land, the Court has a duty to satisfy itself, *inter alia*, that the document relied upon is genuine and valid. See the cases of Ayanwale v. Odusami [2011] 18 NWLR [Pt. 1278] 328 and Prince Ngene v. Chike Igbo & Anor. [2000] 4 NWLR [Pt. 651] 131.

In the light of the above principles, the evidence adduced by the parties and the submissions of the learned counsel, the Court is of the considered opinion that three main issues call for determination in this matter. These are:

1. Whether the claimant has adduced credible and sufficient evidence to prove that 1st& 2nd defendants granted the statutory right of occupancy over Plot No. 209, Cadastral Zone A09, Guzape District, Abuja [the land in dispute] to him.
2. If the answer to Issue 1 is in the affirmative, between the claimant and the 3rd defendant, whose title should take priority over Plot 209 Cadastral Zone A09 Guzape District, Abuja?

3. Whether the claimant is entitled to his reliefs.

ISSUE 1

Whether the claimant has adduced credible and sufficient evidence to prove that 1st& 2nd defendants granted the statutory right of occupancy over Plot No. 209, Cadstral Zone A09, Guzape District, Abuja [the land in dispute] to him.

Submissions of Learned Counsel for the 1st & 2nd Defendants:

Learned counsel for the 1st& 2nd defendants stated that Exhibit K purports to be the photocopy of a certificate of occupancy issued to the claimant by the 1st&2nd defendants.He submitted that by section 102 of the Evidence Act, 2011, Exhibit K is a public document. The law is trite that only the original or a certified true copy of a public document is admissible in evidence. He cited the case of **The Hon. Justice E. O. Araka v. The Hon. Justice Don Egbue [2003] 17 NWLR [Pt. 848] 1** in support.It was further submitted that failure of any of the parties to object to the admissibility of Exhibit K does not make it admissible. He urged the Court to expunge Exhibit K from its records.

Mohammed GarbaBawaEsq.relied on section 136[1] of the Evidence Act, 2011 and the case of **Archibong v. Ita [2004] 2 NWLR [Pt. 858] 590**to support the view that the claimant has the onus to prove his claims.He noted that in his pleadings, the claimant stated how he purportedly acquired his title to Plot LD265 in Guzape District, Abuja, which he claimed has been “re-plotted” to

Plot 209 in Guzape District, Abuja. It was submitted that the claimant failed to prove any allocation of Plot LD 265 or Plot 209 to him. Counsel referred to the case of Otanma v. Youdubagha [2006] 2 NWLR (Pt. 964) P-337 to support the submission that where a plaintiff fails to establish the identity of the land to which his claim of ownership or title relates, whatever evidence he produces at the trial cannot, in law, ground a declaration of title in his favour. He urged the Court to dismiss the entire claim of the claimant.

Submissions of Learned Counsel for the 3rd Defendant:

Learned counsel for 3rd defendant stated that it is curious that the payment for Plot LD 265 Guzape District over which a statutory right of occupancy was allegedly granted to the claimant vide the letter of offer dated 18/4/2003 [Exhibit D] was only made in 2009 via the receipt [Exhibit G]. According to the claimant, at this time, the Plot was no longer referred to as Plot LD 265 but Plot 209 Guzape District. The 1st & 2nd defendants stated that Exhibit D did not emanate from them and no statutory right of occupancy was issued to the claimant in respect of Plot 209. The claimant who had prior knowledge of the 1st & 2nd defendant's averments could not proffer cogent evidence to prove the contrary.

Prince Orji Nwafor-Orizu further argued that the claimant could not show that he accepted the offer in respect of the purported grant made to him over Plot LD 265. Recertification and Re-issuance of C of O Acknowledgement dated 12/15/05 [Exhibit E] has a disclaimer. In paragraph 4.6 of the 3rd

defendant's final address, he stated that CW2, the surveyor, was specific that no plot was given as Plot LD 265 and that Plot LD 265 *"is a survey marking and not a plot number"*. This means that there was no plot allocated to the claimant by the 1st& 2nd defendants.

The 3rd defendant's counsel also pointed out that the size of Plot LD 265 alleged by the claimant in the letter of Offer of Terms of Grant/Conveyance of Approval dated 18/4/2003 [Exhibit D] was about 2,500m² as opposed to the *"radical departure"* in Exhibit F wherein the size of the Plot was 2,412.15 m², without any reference to the original Plot LD 265. Learned counsel reasoned that *"the only logical conclusion to be derived from the analysis above is that payment for Plot LD 265 Guzape over which the Plaintiff was granted a Statutory Right of Occupancy, was made six years after the purported grant, and obviously referred to another plot."* Also, the claimant could not provide any evidence relating to the purported re-plotting of the plot in issue from Plot LD 265 to Plot 209 by the 1st& 2nd defendants.

Learned counsel for the 3rd defendant relied on the evidence of DW1 that the Offer of Terms of Grant/Conveyance of Approval in respect of Plot 209 dated 15/02/2010 [Exhibit N] granted to ChimarokeOgbonayaNnamani- who transferred his interest to the 3rd defendant - remains the only authentic document with respect to the grant of right of occupancy over the said Plot 209. DW1 also stated that there was no double allocation and no change of the plot number from LD 265 to Plot 209 by the 1st& 2nd defendants. Counsel

also relied on the testimony of DW1 that if a piece of land is re-plotted or changed, the owner of the plot must be informed in writing; noting that there is no document in that regard.

In concluding his argument on this issue, Prince Nwafor-Orizu submitted that the claimant did not lead any credible evidence linking Plot LD265 Guzape District to Plot 209 Guzape District. He referred to the case of **Aderonpe v. Eleran&Ors. [208] LPELR-46308 [SC]**; and submitted that Plot LD 265Guzape over which a purported statutory right of occupancy was granted to the claimant was not paid for and Plot 209in respect of which he purportedly made payment has no statutory right of occupancy granted to him. Therefore, the burden of proof on the claimant to show that he has a better title than the 3rd defendant over Plot 209 was not discharged.

Submissions of Learned Counsel for the Claimant:

From pages 6-12 of the claimant's final address, KenechukwuAzieEsq.put forward arguments to support his view that from the evidence adduced, the claimant has discharged the burden to show that Plot LD 265 GuzapeDistrictis the same as Plot 209 Guzape District. He referred to paragraph 7 of the claimant's reply to the 1st& 2nd defendants' statement of defence where it was averred that it was at the point of collecting the Right of Occupancy No. TR 10158 Rent and Fees dated 24/7/2008 [Exhibit F] that he found that the Plot number was Plot 209 with the same file number TR

534/TR 10158. It was submitted that by this averment, the claimant provided vital evidence on how the plot number changed from Plot LD 265 to Plot 209.

Learned counsel for the claimant noted that the file number of the claimant changed from File No. TR 534 to a new File No. TR 10158 after a successful recertification and re-issuance of C of O as evident in Exhibit E dated 12/15/05. He relied on the evidence of CW2 that he was the one who surveyed the Plot in dispute and other plots in Guzape Cadastral Zone A09 District, Abuja; and that Plot 209 is the same as Plot LD 265 as planning number. Mr. Azie argued that none of the defendants controverted the above evidence of CW2. He cited the case of Amobi v. Nzegwu & Ors. [2013] LPELR-21863 to support the principle that uncontroverted evidence should be acted upon by the Court once it is admissible and credible.

Kenechukwu Azie Esq. further contended that the 1st & 2nd defendants did not adduce credible evidence or tender any document to disprove claimant's claim that Plot LD 265 is the same as Plot 209. The evidence of the claimant was strengthened and corroborated by the evidence elicited from the DW1 during cross examination when he admitted that Exhibits E, F & G were validly issued by the 1st & 2nd defendants. He further stated that the certificate of occupancy dated 7/8/2009 addressed to the claimant which was tendered as Exhibit K by 3rd defendant's counsel during cross examination of CW2, also supports the case of the claimant that Plot LD 265 is the same as Plot 209.

In paragraphs 6.29-6.36 of the claimant's final address, Mr. Azi argued that the evidence of the DW1 that Exhibits D & K were voided because they were forged is an allegation of crime. The law is that the person who alleges that a document is forged must prove the allegation beyond reasonable doubt. He relied on the case of Nduul v. Wayo [2018] 16 NWLR [Pt. 1646] 548. It was submitted that the 1st& 2nd defendants did not prove the allegation of forgery. Counsel referred to the evidence of DW1 that there is a committee report in their office to show that Exhibits D & K were voided because of fraud. He stated that DW1 did not present any committee report and there is nothing to show that the claimant was invited, or given opportunity to be heard, by the committee before the decision was taken. Therefore, the claimant was not given fair hearing.

Finally, the claimant's counsel contended that the grant to the claimant has received recognition by the 1st& 2nd defendants; they demanded for payment for right of occupancy vide Exhibit F. The claimant complied by paying the sum of N2,558,000, which they received. Having acted in that manner, the 1st& 2nd defendants are *"estopped from making avolte face and asserting otherwise. The law is not so laggard as to allow them to approbate and reprobate at the same time, all to the detriment of the Claimant."* He relied on section 169 of the Evidence Act, 2011 and the case of Duncan Maritime Ventures Nig. Ltd. v. Nigerian Ports Authority [2019] 1 NWLR [Pt. 1652] 163 on estoppel.

Decision of the Court:

In order for the Court to determine if the claimant has adduced credible or sufficient evidence to prove that 1st& 2nd defendants granted the statutory right of occupancy over Plot 209Guzape District to him, the starting point is to state the position of the law on burden of proof in civil cases.

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

- 1) *In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.*
- 2) *If the party referred to in subsection [1] of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.*

From the above provisions, it is the law that in civil cases, the claimant has the first or initial burden to prove the existence or non-existence of a fact relied upon in support of his claims. However, the burden of proof in civil cases is not static; it shifts from one party to the other depending on the state of the pleadings. In the case of Olaiya v. Olaiya [2002] 8 NWLR [Pt. 782] 652, it was held that in civil cases, the burden of proof may shift depending on how the scale of evidence preponderates. Where the claimant gives evidence

which ought reasonably to satisfy the Court that the fact sought to be proved is established, the burden will shift to the defendant to disprove that fact.

In the instant case, the claimant tendered Exhibits C, C1, D, E, F, G & J to prove that the 1st & 2nd defendants allocated the said Plot to him. For the sake of clarity, Exhibit C dated 16/10/001 is titled: *Land Application Forms*. Exhibit C1 is the receipt for the sum of N21,000 being payment for Land Application and Processing Fees. Exhibit D is Offer of Terms of Grant/Conveyance of Approval dated 18/4/03. Exhibit E is the Recertification and Re-issuance of C of O Acknowledgement dated 12/15/05. Exhibit F is the Right of Occupancy No. TR 10158 Rent and Fees dated 24/07/2008. Exhibit G is the receipt dated 23/1/2009 for N2,558,000. Exhibit J is Site Plan showing Plot Guzape/A09/209.

When DW1 was cross examined by the claimant's counsel, he admitted that Exhibits C, C1, E, F & G were validly issued to the claimants by the 1st & 2nd defendants. I note that this admission by DW1 is the direct opposite of his evidence in-chief. For instance, in paragraph 5 of their pleadings, the 1st & 2nd defendants averred that the claimant never applied for allocation of land in the FCT. From the evidence of DW1 during cross examination that Exhibits C & C1 were validly issued by the 1st & 2nd defendants, it is no longer in dispute that the claimant applied for allocation of land in the FCT.

In respect of Exhibit D, the evidence of DW1 is that they have a committee report to show that the claimant's right of occupancy [i.e. Exhibit D] "is

fake” which led to the voiding of Exhibit K [i.e. the certificate of occupancy in the name of the claimant]. This piece of evidence is in line with the averment in paragraph 3 of the 1st& 2nd defendants’ amended statement of defence to the effect that they never issued any statutory right of occupancy to the claimant.

Before I consider the position of the law on burden of proof of the 1st& 2nd defendants’ assertion that Exhibit D “*is fake*” and that they never issued any statutory right of occupancy to the claimant, let me consider the argument of counsel for the 1st& 2nd defendants that Exhibit K [i.e. certificate of occupancy in the name of the claimant], also relied upon by the claimant, is inadmissible. Mr. Bawa urged the Court to expunge Exhibit K from its records.

In response, learned counsel for the claimant pointed out that the original of Exhibit K is with the 1st& 2nd defendants. On 27/1/2022, the Court issued a *subpoena* for the Director of Lands under the 2nd defendant to produce some documents including the certificate of occupancy in the name of the claimant. The claimant also served a Notice to Produce dated 26/1/2022 on the 1st& 2nd defendants to produce, *inter alia*, the certificate of occupancy in the claimant’s name. He submitted that since the 1st& 2nd defendants failed to produce the documents, they are estopped from challenging the admissibility of Exhibit K. Mr. Kenechukwu Azie noted that the purpose of Exhibit K is to show that the 1st& 2nd defendants prepared it but refused to officially issue the original copy to the claimant.

There is no doubt that Exhibit K is a photocopy or secondary evidence of a public document, which is not certified. By section 90[1][c] of the Evidence Act, 2011, only a certified copy of a secondary evidence of a public document is admissible. The points made by Mr. Azie on the *subpoena* and Notice to Produce served on the 1st&2nd defendants to produce the certificate of occupancy in the claimant's name are correct. Be that as it may, by section 90[1][c] of the Evidence Act, these facts will not make Exhibit K admissible.

I agree with the 1st& 2nd defendants' counsel that Exhibit K was wrongly admitted in evidence by the Court. The law is that where a document was wrongly admitted in evidence by a court, the same court has the power to expunge it at the judgment stage since it can only base its judgment on legally admissible evidence and documents. See Nwaogu v. Atuma [2013] 17 NWLR [Pt. 1364] 117 and Etim v. Akpan [2019] LPELR-48681 [CA]. Based on this principle, I expunge Exhibit K from the records of the Court.

I now return to the allegations of the 1st& 2nd defendants that they did not issue Exhibit D and that it "*is fake*". In paragraph 1.08 of the 3rd defendant's reply on points of law, Prince Orji Nwafor-Orizu urged the Court to believe the 1st& 2nd defendants that the claimant's documents are fake. To my mind, the 1st& 2nd defendants' assertion means that Exhibit D was forged. As rightly stated by the claimant's counsel, the allegation that Exhibit D is fake or was forged is an allegation of crime and the 1st& 2nd defendants have the duty to

prove it beyond reasonable doubt. See section 135[1] of the Evidence Act, 2011; and the case of **Nduul v. Wayo [supra]; [2017] LPELR-44607 [CA]**.

In addition to the above, let me refer to two judicial authorities to buttress the position of the law that in the light of the 1st & 2nd defendants' assertion that they did not issue Exhibit D and that it is fake or that it was forged, they have the burden to prove the allegation. In the case of **Aderounmu & Anor. v. Olowu [2000] LPELR-141 [SC]**, His Lordship, Ayoola, JSC held:

"The case of Jules v. Ajani [1980 NSCC 222] has clearly established, quite a while ago now, that where in a claim for declaration of title to land the defendant alleges that the document relied on by the plaintiff for the title he seeks is a forgery, the burden is on the defendant who so alleges to prove that fact. Notwithstanding the general onus which rests on the plaintiff to prove his entitlement to the declaration he claims, the evidential burden of proving certain facts occasionally shifts to the defendant. Such is the burden of proving the allegation that the document which the plaintiff relies on is a forgery."

Also, **Okeke & Anor. v. Eze [2013] LPELR-22455 [CA]**, His Lordship, Amina Augie, JCA [now JSC] held at **pages 35-36**:

" ... The law is clear and this Court has stated times without number that where forgery of a document is alleged, there is no initial burden on the Plaintiff to prove due execution but the primary burden is on the Defendant who alleged forgery to prove the forgery alleged by him. There we have it in

addition to the trite law that he who asserts must prove, where forgery of document is in issue, the primary burden is on the Defendant who alleges forgery which is a crime to prove the forgery alleged by him ...”

Did the 1st& 2nd defendants prove the assertion that they did not issue Exhibit D to the claimant;and that it is fake or it was forged?Clearly, the 1st& 2nd defendants did not adduce any evidence to prove the assertion.Exhibit D was signed by *Mallam M. S. U. Kalgoon* behalf of the Hon. Minister of FCT. The 1st& 2nd defendants did not allege that *Mallam M. S. U. Kalgo* is not known to them or that he was not the officerwho signed Offers of Terms of Grant/Conveyance of Approval on behalf of the Hon. Minister of FCT as at 18/4/2003 when Exhibit D was issued.

It is also noteworthy that *Mallam M. S. U. Kalgo* was not called to testify that he did not issue or sign Exhibit D. The position of the law is that where there is an allegation that a document is fake or was forged, as in the instant case, it is necessary to invite the person whose signature is on the document. Failure to invite him or her to accept or deny his or her signature is fatal to the case of the person alleging that the document isfake or was forged. See the cases of **Ibrahim &Anor. v. Dogara&Ors. [2015] LPELR-40892 [CA]**and **Alake v.The State [1992] 11-12 SCNJ 177.**

I hold that the failure of the 1st& 2nddefendants to call *Mallam M. S. U. Kalgowho* signed Exhibit D as a witness to accept or deny his signature on

the document is fatal to the allegation that they did not issue Exhibit D or that it is fake or it was forged. Thus, the decision of the Court is that Exhibit D is not fake or was not forged. Exhibit D emanated from, and was issued by, the 1st & 2nd defendants to the claimant.

Now, Exhibit D with Ref. No. MFCT/LA/TR 534 dated 18/04/03 conveyed to the claimant "*the Honourable Minister's approval of Grant of Right of Occupancy in respect of a plot of about 2,500m² [Plot No. LD 265] within Guzape District*". The Plot in dispute is Plot 209 Guzape District, Abuja. The crucial question is whether, from Exhibits D, E, F, G & J, the claimant has established a nexus between Plot LD 265 [granted to him vide Exhibit D] and Plot 209 to prove that Plot LD 265 and Plot 209 refer to the same Plot.

Both Mohammed Garba Bawa Esq. and Prince Orji Nwafor-Orizu answered this question in the negative. In the 3rd defendant's reply on points of law, Prince Orji Nwafor-Orizu emphasized that it is possible that the claimant who tendered a right of occupancy of LD 265 was granted another land in Guzape as the land in dispute is Plot 209. On the other hand, Kenechukwu Azie Esq. answered the question in the affirmative.

Let me now evaluate the said documents in order to reach a decision on the question. In the Re-certification and Re-issuance of C-of-O Acknowledgement dated 12/15/05 [Exhibit E], 1st & 2nd defendants wrote: "*This is to acknowledge the receipt of the original R-OF-O for Ticton Nyame in respect of Plot Number LD*

265 Cadastral Zone A09 and dated 04/18/03. The new file number is TR 10158."It is clear from Exhibit E that the 1st& 2nd defendants gave a new file number to the claimant i.e. TR 10158.

Exhibit F dated 24/07/2008 with Ref. No. TR 534/TR 10158 is titled: *Right of Occupancy No. TR 10158 Rent and Fees*. By Exhibit F, the 1st& 2nd defendants wrote to the claimant as follows:

You may wish to please refer to the above Right of Occupancy granted in your favour with particulars shown below:

Plot No. 209

Size 2412.15m²

Location: Guzape [A09]

Date of Expiry: 17/04/2102

Date of Issue: 18/04/2003

Rent per Annum: N36,182.25

Exhibit F then set out the Rent and Fees payable by the claimant for Plot 209, which amounted to a total of N4,969,759.20 out of which the claimant was requested to pay the sum of N2,557,609. 20 while the balance of N2,412,150.00 "*shall be spread over 5 years for settlement.*" Inote that the rent of N128,840.97 in Exhibit F was calculated from 18/04/2003 to 31/12/2008. Although it is obvious, let me state for emphasis that Exhibit F stated 18/4/2003 as the date of issue of the right of occupancy, i.e. the same date of the Offer of Terms of Grant/Conveyance of Approval [Exhibit D].

By the receipt, Exhibit G, the claimant paid N2,558,000.00 to the 1st& 2nd defendants as he was requested to do in Exhibit F. Exhibit J dated 25/01/08 is the Site Plan of Guzape/A09/209. The 1st& 2nd defendants did not adduce any evidence to impugn the genuineness of the Site Plan. Exhibit J is similar to Exhibit L which shows Plot 209 granted to ChimarokeOgbonayaNnamani. It is significant to note that Exhibit J stated that the Site Plan is for File No. TR 10158; i.e. the new file number of the claimant as stated in Exhibits E & F.

Now, from Exhibits E, F, G & J, which Plot did the 1st& 2nd defendants refer to in Exhibit F as the *“above Right of Occupancy granted in your favour with particulars shown below”*? In my respectful view, it cannot be any other plot but the plot they had allocated to the claimant on 18/4/2003 vide Exhibit D under File No. TR 534, which the 1st& 2nd defendants changed to new File No. TR 10158 in Exhibit E. The 1st& 2nd defendants referred to the plot as Plot LD 265 in Exhibit D and changed the number to Plot 209 in Exhibit F. If Plot LD 265 granted to the claimant vide Exhibit D is not the same plot referred to as Plot 209 in Exhibit F, where then is Plot LD 265? To my mind, the 1st& 2nd defendants - as custodians of all lands in FCT and the records thereof - have the duty to identify Plot LD 265 if indeed it is different from Plot 209.

From the contents of Exhibit F, the 1st& 2nd defendants represented to the claimant that the number of the plot earlier granted to him is Plot 209 and demanded payment of fees. Based on the representation, the claimant made payment of N2,558,000.00, which they accepted. Therefore, I agree with

Mr.KenechukwuAzie that this is an appropriate case to apply the doctrine of estoppel against the 1st& 2nd defendants under section 169 of the Evidence Act, 2011. Section 169 of the Evidence Act, 2011 provides:

“When one person has either by virtue of an existing court judgment, deed or agreement, or by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceedings between himself and such person or such person’s representative in interest, to deny the truth of that thing.”

In **Unity Bank Plc. v. Olatunji [2013] LPELR-20305 [CA]**, it was held that estoppel, by its very nature, is so important, so conclusive, that the party whom it affects is not allowed to plead against it, or adduce evidence to contradict it. Estoppel prohibits a party from providing anything that contradicts his previous acts or declarations to the prejudice of a party who, relying upon them, has altered his position. It shuts the mouth of a party. See also the case of **Bank of the North Ltd v. Yau [2001] 10 NWLR [Pt. 721] 408.**

I hold the considered opinion that in the light of the representations made by the 1st& 2nd defendants in Exhibit F and the payment made by the claimant, they are estopped from stating that Plot 209 is not the same as Plot LD 265 granted to the claimant on 18/4/2003.

I have taken into account the evidence of CW2 that he carried out the survey of the lands in Guzape District including the Plot in dispute. The CW2 stated unequivocally that Plot LD 265 is the same as Plot 209. When CW2 was asked by Prince Orji Nwafor-Orizu to explain the reason for the difference in Plot No. LD 265 stated in Exhibit D and Plot 209, he explained that: *“The mix-up came from the land use number by the planner which can be called HD [High Density], MD [Medium Density] and LD [Low Density]. Plot numbers are normally given by the surveyors.”*

The defendants, especially 1st & 2nd defendants, did not discredit the evidence of CW2. In particular, there is no evidence to discredit the testimony of CW2 that he carried out the survey of the lands in Guzape District including the Plot in dispute. Exhibits J & L1 - which are the Site Plans of Plot 209 - show that the Plot was surveyed by Edges Environmental Services. The evidence of CW2 that he is the Chief Executive Officer and Managing Director of Edges Environmental Services [Nig.] Ltd. was not challenged or controverted by the defendants.

Also, 1st & 2nd defendants, as custodians of all lands in FCT and the records thereof, did not adduce any evidence to show that land use numbers i.e. HD [High Density], MD [Medium Density] and LD [Low Density], as explained by CW2, were not used to allocate plots in Guzape within the period when Exhibit D was issued by Mallam M. S. U. Kalgo on behalf of the Hon. Minister of FCT to grant the right of occupancy in respect of Plot LD 265 to

the claimant. At least the 1st& 2nd defendants ought to have presented some Offers of Terms of Grant/Conveyance of Approval in Guzape District to other allottees made on 18/4/2003 or within that period to discredit the evidence of CW2 and Exhibit D.

From the foregoing, the Court agrees with learned counsel for the claimant that the claimant has established a nexus between Plot LD 265 and Plot 209 and has proved that Plot LD 265 is the same as Plot 209.

I have considered the arguments of learned counsel for the 3rd defendant that: [i] the payment for Plot LD 265 Guzape District granted to the claimant on 18/4/2003 was only made in 2009 via Exhibit G; [ii] the claimant could not show that he accepted the offer; [iii] Recertification and Re-issuance of C of O Acknowledgement dated 12/15/05 [Exhibit E] has a disclaimer; and [iv] the size of Plot LD 265 in Exhibit D was about 2,500m² as opposed to Exhibit F where the size of the Plot was about 2,412.15 m².

The Court is of the view that the said points canvassed by 3rd defendant's counsel will not affect its finding that Plot LD 265 is the same as Plot 209. On the payment, the 1st& 2nd defendants communicated the demand for payment to the claimant on 24/7/2008 vide Exhibit F. By Exhibit G, the claimant made the payment on 30/12/2008 but the receipt was issued on 23/1/2009. The 1st& 2nd defendants accepted the payment without any complaint.

With respect to the argument that the claimant did not show that he accepted the offer, that issue was not raised by any of the defendants in the pleadings. So, issues were not joined by the parties on the issue. However, when CW1 was cross examined by the 1st& 2nd defendants' counsel, he stated that the claimant accepted the offer of grant after the collection of the offer. In any event, since the 1st& 2nd defendants continued to relate with the claimant in respect of the grant and issued Exhibits E, F, G & J to him, one can safely infer that the offer of grant was accepted by the claimant.

It is correct that Recertification and Re-issuance of C of O Acknowledgement dated 12/15/05 [Exhibit E] contains a disclaimer. The disclaimer did not affect the fact that by Exhibit E, the claimant was given a new file number TR 10158 by the 1st& 2nd defendants. The difference in the size of the Plot as stated in Exhibit D [i.e. about 2,500m²] and the size of Plot 209 stated in Exhibit F [i.e. 2,412.15m²] will not affect the finding of the Court that by Exhibit F, Plot LD 265 is the same as Plot 209. The 1st& 2nd defendants, who issued Exhibits D & F, have the power and responsibility to determine the size of plots and any change thereof.

From all that I have said, the decision of the Court on Issue 1 is that the claimant has proved that the 1st& 2nd defendants granted the statutory right of occupancy over Plot 209 [formerly Plot LD 265], Cadstral Zone A09, Guzape District, Abuja to him.

ISSUE 2:

If the answer to Issue 1 is in the affirmative, between the claimant and the 3rd defendant, whose title should take priority in respect of Plot 209 Cadastral Zone A09 Guzape District, Abuja?

Submissions of Learned Counsel for the 3rd Defendant:

The 3rd defendant's counsel stated that the claimant does not have a certificate of occupancy over the said Plot 209. He submitted that assuming this Court finds that Plot LD265 Guzape is the same as Plot 209, it is until the claimant has been granted a certificate of occupancy over Plot 209 that he can claim legal title in respect of Plot 209 and priority of interest over and above the 3rd defendant. All payments, letters, including Exhibit F, are "inchoate" equitable interest. He relied on the case of **Eleran v. Aderonpe [2012] 1 Nigerian Real Estate Law Reports, page 173.**

Prince Orji Nwafor-Orizu also relied on **Oriloye v. Lagos State Government [2014] LPELR-22248 [CA]** to support his submission that a certificate of occupancy confers legal interest on the holder. He stressed that a legal right and an equitable right "are not equal equities." He referred to Halsbury's Laws of England Fourth Edition, page 261 to support the view that a person [like the claimant] can have equitable interest in land, but such right is "defeated if the legal estate passes to an owner [like the 3rd defendant] who takes for value without notice." Learned counsel concluded that a claimant who does not have a legal

title over land cannot have equal equity with a defendant with a certificate of occupancy over the same land, which is a legal title.

Submissions of Learned Counsel for the Claimant:

The submission of the claimant's counsel is that the right of occupancy granted to the claimant over the Plot in dispute by the 1st& 2nd defendants is valid and subsisting and the purported subsequent grant to the 3rd defendant has no foundation in law and does not exist in the eyes of the law. He argued that the grant to ChimarokeOgbonayaNnamani was on 15/2/2010, 7 years after the grant made to the claimant on 18/4/2003. He relied on **Orianzi v. A.G., Rivers State [2017] 6 NWLR [Pt. 1561] 224** to support the principle that where two parties trace their title in respect of the same piece of land to the same grantor, the first in time will prevail.

Mr.KenechukwuAziefurther submitted that a certificate of occupancy cannot legalize an illegal title. A defective title cannot be cured by obtaining a certificate of occupancy. He relied on**AtikuAderonpe v. AlhajaSobalajeEleran&Ors. [2019] 4 NWLR [Pt. 1661] 11** to support the view that there must be an entitlement to a statutory right of occupancy before a certificate of occupancy can be given as evidence of such right. He also referred to **Olohunde v. Adeyoju [2000] 10 NWLR [Pt. 676] 562.**

Decision of the Court:

As I have shown earlier, Exhibits D, E, F, G & J were issued by the 1st& 2nd defendants to the claimant between 2003 and 2009. On 15/2/2010, the 1st& 2nd defendants granted the Offer of Statutory Right of Occupancy [Exhibit N] over Plot 209- earlier granted to the claimant - to ChimarokeOgbonayaNnamani. The 1st defendant also issued the Certificate of Occupancy dated 1/11/2010 [Exhibit L] in respect of Plot 209 to ChimarokeOgbonayaNnamani. The claimant's right of occupancy over Plot 209 was not revoked by the 1st defendant before the right of occupancy over the said Plot 209 was granted to ChimarokeOgbonayaNnamani.

The law is that a document of title such as a certificate of occupancy is *prima facie* evidence of title but it will give way to a better title. Where there are competing interests by two or more parties claiming title to the same parcel of land from a common grantor, the position, both at law and in equity, is that such competing interests will *prima facie* rank in order of their creation. In effect, a person whose interest was first created has a better title to the land because he who is first in time is stronger in law. Where a person had fully divested himself of all interest in land, no right vests in him to deal with the same property because *nemodat quod non habet* i.e. he cannot give that which he no longer has. See Ilona v. Idakwo [supra] and Uzor v. Delta Freeze [Nig.] Ltd. &Ors. [2010] LPELR-9114 [CA].

It is also the law that where a statutory right of occupancy granted by the Governor of a State or the Minister of FCT to an allottee [or a deemed grant of

a statutory right of occupancy] has not been revoked, any certificate of occupancy granted to another person is void. This is because after the grant to the first allottee, the Governor of a State [or the Minister of FCT] has nothing left to convey to a subsequent allottee.

By section 9 of the Land Use Act, a certificate of occupancy is issued by the Governor of a State [or the Minister of FCT] as evidence of a right of occupancy. This means that there must be a valid grant of a right of occupancy before a certificate of occupancy can be validly issued to the holder of the right of occupancy. Where there is no valid grant of a right of occupancy over a plot of land, a certificate of occupancy can only be a mere or worthless piece of paper. Such certificate of occupancy is invalid.

In **Olohunde v. Adeyoju [supra]**, it was restated that where a certificate of occupancy has been granted to one of the claimants who has not proved a better title, it has been granted against the letters and spirit of the Land Use Act. Where it is shown by evidence that another person other than the grantee of a certificate of occupancy had a better right to the grant, the court may have no option but to set aside the grant or discountenance it as invalid. See also the case of **Kolo v. Lawan [2018] LPELR-44378 [SC]**.

In the light of the above principles, the submission of learned counsel for the 3rd defendant that the certificate of occupancy issued to Chimaroke Ogbonaya Nnamani in respect of Plot 209 has priority over the right of occupancy earlier granted to the claimant over the same Plot is, with

due respect, not correct. Since, as I have shown, the grant of the statutory right of occupancy over Plot 209 to claimant was earlier than the grant to ChimarokeOgbonayaNnamani, the claimant has a better title to the Plot. It does not matter that the claimant has not been issued a certificate of occupancy over the Plot. The option open to the Court is to strike down or invalidate the Offer of Statutory Right of Occupancy dated 15/02/2010 [Exhibit N] and the Certificate of Occupancy dated 1/11/2010 [Exhibit L] granted to ChimarokeOgbonayaNnamani.

From the moment the 1st defendant granted the statutory right of occupancy in respect of Plot 209 to claimant, he had nothing left to grant to ChimarokeOgbonayaNnamani or any other person because *nemo dat quod non habet*. Thus, Issue 2 is resolved in favour of the claimant.

ISSUE 3

Whether the claimant is entitled to his reliefs.

From the decisions of the Court under Issues 1 & 2, I hold that the claimant is entitled to the declaratory orders in reliefs F & G; they are granted.

In relief A, the claimant seeks an order of perpetual injunction restraining the 3rd defendant, his agents, etc. from further trespassing to his said Plot 209. Trespass is defined as the unjustified intrusion by one person upon land in possession of another. See **Adetono & Anor. v. Zenith Int'l Bank Plc. [2011] LPELR-8237 [SC]**. The evidence of CW1 is that the claimant has always been

in possession of the said Plot 209. In the absence of any evidence to prove the alleged trespass, there is no basis to grant the relief. Relief A is refused.

The claimant's relief B is an order restraining the 3rd defendant, his agents, etc. from further converting his said Plot 209 in whatever manner. This relief flows from the declaration that the claimant is the rightful owner of Plot 209. Relief B is granted.

Relief C is an order restraining the 3rd defendant, his agents, etc. from further molesting, intimidating, harassing, interfering and or engaging in any act that will run contrary to the claimant's right of occupancy over the said Plot. There is no evidence of molestation or harassment of the claimant by the 3rd defendant. However, in view of the declaratory orders granted by the Court, there is need to restrain the 3rd defendant from further engaging in any act that will interfere with, or run contrary to, the claimant's right of occupancy over the said Plot 209. Relief C is granted in part.

Relief D is an order allowing the claimant to re-take possession of the said Plot 209. I adopt my reasoning and decision in respect of relief A. I hold that there is no basis to grant this claim since the evidence of the CW1 is that the claimant has always been in possession of the said Plot. Relief D is refused.

In relief E, the claimant seeks an order compelling the 1st & 2nd defendants to issue to him the Certificate of Occupancy of the said Plot, which they have unjustly withheld. Flowing from the declaratory orders granted, the claimant

is entitled to a certificate of occupancy as evidence of the grant of the statutory right of occupancy over the said Plot.

As I said under Issue 1, the 1st & 2nd defendants in Exhibit F requested the claimant to pay the sum of N2,557,609.20 while the remaining balance of N2,412,150.00 *“shall be spread over 5 years for settlement.”* Exhibit F further stated that: *“The Certificate of Occupancy in evidence of this Right of Occupancy will not be issued until the amount due to Government is paid.”*

The evidence of CW1 is that N2,558,000.00 was paid by the claimant as shown in the receipt dated 23/1/2009 [Exhibit G]. It means that the claimant is to pay the sum of N2,412,150.00 before the certificate of occupancy will be issued. Therefore, relief E is granted subject to the payment of N2,412,150.00.

In relief H, the claimant claims the sum of N10,000,000.00 as damages. It seems to me that the claimant did not adduce any evidence upon which this claim can be granted, especially as CW1 stated that the claimant has always been in possession of the said Plot. This relief is hereby refused.

Conclusion:

I enter judgment for the claimant against the defendants. I make these orders:

1. A declaration that the Statutory Right of Occupancy granted to the claimant on 18/4/2003 in respect of Plot LD 265, Cadastral Zone A09

now known as Plot 209 [A09] Guzape District, Abuja with Ref. No. TR 534/TR 10158 is still valid and subsisting.

2. A declaration that the claimant is the rightful owner of Plot LD 265, Cadastral Zone A09 now known as Plot 209 [A09] Guzape District, Abuja with Ref. No. TR 534/TR 10158.
3. An order restraining the 3rd defendant either by himself, his agents, servants or assigns from further converting the claimant's land situate at Plot LD 265, Cadastral Zone A09 now known as Plot 209 [A09] Guzape District, Abuja with Ref. No. TR 534/TR 10158 in whatever manner.
4. An order restraining the 3rd defendant either by himself, his agents, privies, servants or successors from further engaging in any act that will interfere with, or run contrary to, the claimant's right of occupancy over Plot LD 265, Cadastral Zone A09 now known as Plot 209 [A09] Guzape District, Abuja in whatever manner.
5. An order directing the 1st& 2nd defendants to issue to the claimant the Certificate of Occupancy over Plot LD 265, Cadastral Zone A09 now known as Plot 209 [A09] Guzape District, Abuja with Ref. No. TR 534/TR 10158Guzapeupon payment of the sum of N2,412,150.00.
6. Cost of N200,000.00against the 1st& 2nd defendants and cost of N200,000.00 against the 3rddefendant.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

1. KenechukwuAzieEsq. for the claimant.
2. Prince Orji Nwafor-Orizu for the 3rd defendant.