IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI

THIS TUESDAY THE 25TH DAY OF JANUARY, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/18008/14

BETWEEN:

KEVIN CHUKWUMA IHEKA...PLAINTIFF

AND

JEDO INVESTMENT LIMITED...DEFENDANT

JUDGMENT

By a further Amended Statement of Claim dated 8th May, 2007, the Plaintiff claims against the Defendant as follows:

a. **A DECLARATION that the encroachment and erection of structures on the part of the Plaintiff's plot of land known as Plot No.3482, measuring about 1,200 square meters, located within Lugbe 1 Extension Layout, Lugbe along Airport Abuja, FCT, by the Defendant is unlawful, illegal and constitutes an act of trespass on the property of the Plaintiff.**

b. **An ORDER of perpetual injunction restraining the Defendant whether by themselves, agents, servants, privies or whoever purporting to act on her behalf from trespassing or continue trespassing on the plot of land known as Plot No.3482 covered by Certificate of Occupancy No.MZTP/LA/2000/ED.1771 measuring about1,200 square meters, located within Lugbe 1 Extension Layout, Lugbe along Airport Abuja, FCT**

c. **An ORDER of perpetual injunction restraining the Defendant by themselves, agents, servants, privies or whoever purporting to act on their behalf from disturbing or interfering with the Plaintiff's possession, rights, interest and title in and over the said plot of land known as Plot No. 3482 covered by Certificate of Occupancy No. MZTP/LA/2000/ED.1771 measuring about 1,200 square meters located within Lugbe 1 Extension Layout, Lugbe along Airport Abuja FCT.**

d. **A MANDATORY ORDER of this Honourable Court directing the Defendant to immediately remove any material or structure illegally erected on or attached to the Plaintiff's property known as Plot No.3482 covered by Certificate of Occupancy No.MZTP/LA/2000/ED.1771 measuring about 1,200 square meters, located within Lugbe 1 Extension Layout, Lugbe along Airport, Abuja FCT**

e. **An ORDER of this Honourable Court directing the Defendant to pay the sum of N10,000,000.00 (Ten Million Naira) to the Plaintiff as exemplary and aggravated damages against the Defendant for committing trespass on the Plaintiff's plot of land known as Plot No. 3482 covered by Certificate of Occupancy No.MZTP/LA/2000/ED.1771 measuring about 1,200 square meters, located within Lugbe 1 Extension Layout, Lugbe along Airport, Abuja FCT.**

f. **The cost of this suit assessed at the sum of N500,000,00(Five Hundred Thousand Naira) only.**

The Defendant was duly served and filed an Amended Statement of Defence dated 28th November, 2017 and in response the Plaintiff filed a Reply to the Amended Statement of Defence on 30th November, 2019.

With the settlement of pleadings, hearing then commenced. In proof of his case, the Plaintiff testified in person as PW1 and the only witness. He deposed to two witness depositions dated 8th May, 2017 and 30th November, 2017 which he adopted at plenary hearing. The substance of his evidence is simple and fairly straight forward to the effect that the land subject of dispute, **Plot 3482** measuring 1,200 square meters located within Lugbe Extension Layout, Lugbe was allocated

to one Nafisah Hassan on 17th February, 2010 by Abuja Municipal Area Counsel (AMAC) and she was subsequently issued with a certificate of occupancy sometime in 21st February, 2003. PW1 stated that the plot was then sold to him in September 2003 by the said Nafisah and both parties executed an irrevocable Power of Attorney and Deed of Assignment wherein she transferred all her rights and interest over the said plot to him and he took steps to assert his ownership by registering the Power of Attorney at AMAC. He also took steps to recertify his title documents at Abuja Geographic System (AGIS) and was issued with an acknowledgment.

He stated that sometime in 2012, he visited the land and discovered that Defendant and its agents have unlawfully encroached on the land and virtually taken over all the plot of land to develop an estate. That his solicitors wrote several letters to Defendant to desist from such acts but they did not stop and he also similarly wrote a letter on the encroachment to the then chairman of AMAC.

The Plaintiff further added that at no time was his land revoked and given to Defendant and that he immediately complained when he noticed the encroachment by Defendant.

PW1 tendered in evidence the following documents, to wit:

1. Offer of terms of grant/conveyance of approval to Nafisah Hassan dated 17th February, 2000 was admitted as **Exhibit P1.**

2. Certificate of Occupancy (Customary) to Nafisah Hassan dated 28th February, 2008 was admitted as **Exhibit P2.**

3. Irrevocable Power of Attorney dated 10th September, 2003 between Mrs Nafisah Hassan and Chief Kevin C. Iheka was admitted as **Exhibit P3.**

4. Regularisation of land titles and documents of FCT Area Council acknowledgment was admitted as **Exhibit P4.**

5. Stamp duty receipt issued to Plaintiff dated 22nd September, 2003 was admitted as **Exhibit P5.**

6. AMAC Departmental receipt dated 19th December, 2003 was admitted as **Exhibit P6.**

7. Letter by the law firm of Lux Advocates dated 31st July, 2012 to the Managing Director of Defendant was admitted as **Exhibit P7.**

8. Letter by the law firm Lux Advocates to the Chairman of AMAC dated 5th September, 2012 was admitted as **Exhibit P8.**

9. Letters by the Law Firm of Wilfred Okoli & Co to the Managing of Director of Defendant and the Law Firm of Gaji & Associates dated 9th February, 2014 and 18th March, 2014 were admitted as **Exhibits P9 and P10.**

10. Letter by the Law Firm of GAJI Associates to the Law Firm of Wilfred Okoli & Co was admitted as **Exhibit P11.**

Cross-examined, Plaintiff said he did not apply for the land but bought from Nafisah Hassan who applied for the land. That the documents he tendered is what he is relying on. That he applied for search but did not apply for consent before the land was assigned to him. That he applied for reguralisation with AGIS and they gave him an acknowledgment vide **Exhibit P4** and he read the disclaimer on it.

That after the acknowledgment by AGIS, he did not get any further document authenticating the authenticity of his documents from AGIS. PW1 stated that at the time he noticed the encroachment of Defendant, the construction was not yet concluded but almost at finishing stage, about **80%** complete. He stated that when he bought the land, he went there initially but after that, it took him a long time before he went back until he was ready to commence development and when he went, he then discovered the encroachment.

With his evidence as PW1, the Plaintiff then closed his case and the matter adjourned for defence.

Despite the indication by leaned counsel for the Defendant that he was going to lead evidence and the matter suffered adjournments at his instance, he never called any witness or led evidence in support of the Defendant's defence and the Defendant's case was closed on 25th February, 2020 when defence counsel informed court that they are not calling any witness. Let me quickly state here that the implication of the election not to lead evidence in support of the statement of defence is that the defence and the witness deposition of Defendant would be treated as abandoned.

The adoption of the witness deposition or statement is fundamental under the present regime introduced by the Rules of Court. Where a witness does not appear in court to adopt same to support the statement of defence, the implication is that the defence has no evidence to back it up. In **N.I.M.V. Ltd V. F.B.N Plc (2009)16 N.W.L.R (pt.1167)411at 437 D.E**. the Court of Appeal stated thus:

"Pleaded facts on which no evidence was adduced in support are deemed abandoned. Pleadings are the body and soul of any case in a skeleton form and are built and solidified by the evidence in support thereof. They are never regarded as evidence themselves and if not supported by evidence are deemed abandoned."

The implication as stated already is that there is nothing from the other side of the divide to serve as a counter-balance to the case of Plaintiff which then stands unchallenged. In law, it is now accepted principle of general application that in such circumstances, the defendant is assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the plaintiff's unchallenged evidence. See **Tanarewa (Nig.) Ltd. vs. Arzai (2005) 4 NWLR (pt. 919) 593) at 636 C – F; Omoregbe vs. Lawani (1980) 3 – 7 SC 108 and Agagu vs. Dawodu (1990) 7 NWLR (pt. 160) 56.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case **of Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce evidence … the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24** stated thus:

"… a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all."

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiff to establish his case on a balance of probability by providing credible evidence to sustain his claim irrespective of the presence and/or absence of the defendant. See the case of **Agu v. Nnadi (1990) 2 NWLR (pt. 589)131 at 142.**

Now, with the election of the Defendant not to call evidence, the court ordered for the filing of addresses in compliance with the Rules of Court. Parties then filed, exchanged and adopted their final written addresses. The Plaintiff's final address is dated 23rd September, 2020 and filed on 24th September, 2020 at the court's registry. Two (2) issues were raised as arising for determination to wit:

a. **Whether in view of the state of evidence and pleadings in this matter, can it be said that the Plaintiff have not made out a case on the balance of probability to entitle him to judgment?**

b. **Based on the pleadings and evidence adduced in this suit, can it be justify(sic) to award damages in favour of the Plaintiff on the ground that he has succeeded on the strength of his own case?**

The Defendant on its part filed its final address dated 9th February, 2021 and filed on 10th February, 2021. The Defendant adopted the two issues raised by Plaintiff and made submissions on same. The Plaintiff then filed a reply on points of law dated 4th November, 2021 and filed same date.

I have set out above the issues as distilled by parties as arising for determination. However having regard to the pleadings and evidence, these issues can be harmonised into one single broad issue as follows:

Whether the Plaintiff has proved his case on a preponderance of credible evidence and therefore entitled to the reliefs sought on the claim?

The above issue has in the court's opinion brought out with sufficient clarity the pith of the contest which remains to be resolved by the extant judicial inquiry. Let me quickly add that the sole issue is not raised as an alternative to the issues raised by parties, but the issues raised by parties can conveniently be considered under the sole issue formulated by the court. See **Sanusi V. Amoyegun (1992)4 N.W.L.R (pt.237) 527 at 550.**

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

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to

some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

It is therefore guided by the above wise exhortation that I would now proceed to determine this case based on the issue I have raised and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel.

ISSUE 1

Whether the Plaintiff has proved his case on a preponderance of credible evidence and therefore entitled to the reliefs sought on the claim.

Now at the commencement of this judgment, I had stated the claims of the Plaintiff. It is doubtless that that they incorporate reliefs for title, trespass, injunction and damages for trespass. The implication of these set of reliefs as presented is to put the title of the subject of dispute at the fulcrum of the courts inquiry. See **Odunze V. Nwosu (2007)13 N.W.L.R (pt. 1050)1 at 53; Mafindi V. Gendo (2006) AII F.W.L.R (pt.292)157 at 165F-G.**

The Plaintiff who has here claimed entitlement to be declared owner and in possession of the disputed plot has the evidential burden of establishing his claims and succeeding on the strength of the case as opposed to the weakness of the case of Defendant. See **Kodilinye V. Odu (1935)2 VACA 336 at 337, Nsirim V. Nsirim (2002)12 WRN 1 at 14 and Fagunwa V. Adibi (2004)17 N.W.L.R (pt.903)544 at 568.**

In law, there are five independent ways of proving title to land as expounded by the Supreme Court in **Idundun v. Okumagba (1976) 9/10 SC 221** as follows:

(a) Proof by traditional evidence;

(b) Proof by production of documents of title duly authenticated, unless they are documents 20 or more years old, produced from proper custody;

(c) Proof of acts of ownership, in and over the land in dispute such as selling, leasing, making grants, renting out of any part of the land or farming on it or a

portion thereof extending over a sufficient length of time numerous and positive enough as to warrant the inference that the persons exercising such proprietary acts are the true owners;

(d) Proof by acts of having possession and enjoyment of the land which prima facie may be regarded as evidence of ownership; and

(e) Proof of possession of connected or adjacent land in circumstance rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute. See also **Oyedoke V The Registered Trustees of C.A.C (Supra)632 A-D.**

In law, proof of title could be by any one of the above listed ways.

In this case, the Plaintiff from the pleadings and his evidence appear to have found his claim for title on production of title documents. It is trite law that a claimant can establish his title to land in dispute by production of documents. See **Ilona V. Idakwo (2003)12 MJSC 35 at 54; Idundun V. Okumagba (supra).** It may also be apt to restate the general principle that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131 (1) of the Evidence Act**. Similarly by virtue of **Section 133(1) of the Evidence Act**, the burden of first proving the 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.

As a logical corollary to the above, it also must be emphasised that in law it is one thing to aver a material fact in issue in ones pleading and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rest on him who asserts such a fact to establish same by evidence. This is because it is an elementary principle of law that averments in pleadings do not constitute evidence unless same is expressly admitted. See **Tsokwa Oil Marketing Co. Ltd V. B.O.M Ltd (2002)11 N.W.L.R (pt.777)9 N.W.L.R (pt.316)182.**

The burden of proof therefore lies on Plaintiff to establish the affirmative contents of his pleadings by credible evidence which will provide both the factual and legal template to sustain the reliefs he seeks.

In proof of his case, the Plaintiff as earlier stated relied on these relevant documents of title to wit:

1. The offer of terms of grant/conveyance of approval dated 17th February, 2000 to Nafisah Hassan admitted as **Exhibit P1**

2. Certificate of Occupancy (Customary) and attached Title Deed Plan (T.D.P) to Nafisah Hassan admitted as **Exhibits P2a and P2b.**

3. A registered Power of Attorney executed by Nafisah Hassan to Chief Kev. C. Iheka was admitted as **Exhibit P3.**

The Plaintiff clearly situates his root of title to the disputed land on these title documents which as stated earlier is one of the acknowledged five ways of proving title to land in the Nigerian Legal System. The Defendant may have not led evidence in support of its pleadings but this does not however obviate the imperative of the Plaintiff leading evidence, even if minimal and credible to put the court in a commanding height to grant the reliefs sought. It is equally to be noted that the substantive Relief 1 sought by Plaintiff is a declaratory relief. In law declarations are special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. Indeed it would be futile when declaratory reliefs are sought to seek refuge on the proposition that there were admissions by the adversary on the pleadings. The authorities on this principle are legion. I will refer to a few.

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

"It is true as was contended before us by the appellants counsel that the rules of court and evidence relieve a party of the need to prove what is admitted but where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by

evidence not by admission in the pleading of the defendant that he is entitled to the declaration."

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

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

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

I may also refer to the observations of Nnamani J.S.C of blessed memory in **Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262 (1988)5 N.W.L.R (pt.92)90** as follows:

"The court of Appeal relied on the decision of this court in Lewis & Peat (N.R.I.) Ltd V. Akhimien (1976)7 SC 157 to the effect that an averment which is not expressly traversed is deemed to be admitted. Admittedly, one does not need to prove that which is admitted by the other side, but in a case such as one for declaration of title where the onus is clearly on the plaintiff to lead such strong and positive evidence to establish his case for such a declaration, an evasive averment...does not remove the burden on Plaintiff. See also Eke V. Okwaranyia (2001)12 N.W.L.R (pt.726)181; Akaniwo V. Nsirim (2008)9 N.W.L.R (pt.1093)439; Maja V. Samouris (2002)7 N.W.L.R (pt.765)78 at 100-101."

The point from the above **authorities** is simply that declarations are not made because of the stance or position of parties in their pleadings but on proof by credible and convincing evidence at the hearing.

In the circumstances, the duty of the court is to determine whether these documents of title legally situates the root of title of the Plaintiff to the disputed property. In law, the root of title simply connotes means or process through which a party came

to be the owner of the land in dispute. See **Ofume V. Ngbeke (1994)4 N.W.L.R (pt.341)946. The Defendant in its final address** made extensive submissions on the validity of these documents of title. I agree on point of principle that legal submissions can properly be made on the legal effect of these documents tendered by the Plaintiff in a final address but with a **caveat**. An address or a final address is no conduit to proffer evidence or a substitute for critical evidence to test or debunk evidentiary positions adduced or elicited at trial.

The case of Defendant in the **14 paragraphs statement of defence** to which no evidence was led is essentially that it was properly and duly allocated a large parcel of land at Lugbe extension by the Hon. Minister FCT measuring about 30 hectares which it has since developed and now occupied by tenants which are entirely different from that of Plaintiff and that **"the purposes for which they were granted are not the same".**

It is therefore important to underscore the point that the pleadings of parties remains the sole template which streamlines and situates the issues that remains to be resolved by court. Anything outside it cannot have any significance in the context of the dispute.

As stated earlier, parties including the court are bound by and confined to the issues precisely raised and streamlined on the pleadings. The address of counsel, however well written or articulated is no conduit to expand the remit of the dispute or issues as joined on the pleadings. The submissions on the above points and indeed some few others in the address of 3rd defendant raised outside of what was properly pleaded cannot have any traction now as it will amount to a belated attempt at expanding the remit or boundaries of the dispute and also amount to stealing a match on the adversary and taking them by surprise and such course of action would be unfair and indeed prejudicial. The fundamental underpinning philosophy behind filing of pleadings is for parties to as it were, properly streamline the facts in dispute allowing the party or parties on the other side to know the case they are to meet in court. See **Bunge V. Governor of Rivers State (2006) 12 NWLR (pt.993) 573 at 598-599 H-B; Balogun V Adejobi (1995) 2 NWLR (pt.376) 131 at 15 C**. Civil litigation is not a game of chess or hide and seek and as such all cards as it is stated in popular parlance must be laid on the table and there is no room for surprises.

Learned counsel to the Defendant in his very well written address tried so much to and so hard to construct a scenario of a case by the varied issues and points addressed which are not based on the evidence led and the pleadings presented in this case. And cases are decided on the pleadings and evidence led in a case. The point to underscore is that an address of counsel is no more than a hand maid in adjudication and cannot take the place of the hard facts required to constitute credible evidence. No amount of brilliance in a final address can make up for the lack of evidence to prove and establish or disprove and demolish points in issue. See **Iroegbu V. Mr. Calabar Carrier (2008)5 N.W.L.R (pt.1079)147 at 187; Tapshang V. Lekret)2000)13 N.W.L.R (pt.684)381**

In the case of **Adeniran V. Alao (2001)118 N.W.L.R (pt.745)361 at 381 to 382;** the Supreme Court stated thus:

"Parties and the court are bound by the parties' pleadings. Therefore, while parties must keep within them, in the same way but put in other words, the court must not stray away from them to commit itself upon issues not properly before it. In other words, the court itself is as much bound by the pleadings of the parties as they themselves. It is not part of duty or function of the court to enter upon any inquiry into the case before it other than or adjudicate upon specific matters in dispute which the parties themselves have raised by their pleadings. In the instant case, the question of due execution of Exhibit 1, the deed of conveyance relied on by the appellant, was never an issue on the pleadings of the parties. The trial court and the Court of Appeal were therefore wrong in treating same as an issue in the case. The Court of Appeal lacked the jurisdiction to determine the point of due execution which was not before it."

I shall therefore circumscribe the issues to be addressed to those fundamental questions of law which have a bearing on the case as pleaded and on which issues were joined and also on which all parties have addressed the court on.

As a logical corollary and flowing from the above particularly in the light of the declaratory relief sought and the ancillary reliefs all predicated on the production of title documents, it is then relevant to underscore the fundamental principle that the mere production of title documents does not automatically tantamount to ownership. Where a party pleads and relies on documents of title as the proof of

his title to land as in this case, the law requires that for the court to accept such document as satisfactory proof of title to land in dispute, certain questions must be enquired into and explained as postulated in the case of **Romaine V. Romaine (1992)4 N.W.L.R (pt.238)650 at 662 D-G** where the Supreme Court per Nnaemeka Agu J.S.C (of blessed memory) and I will quote him in-extenso stated as follows:

"…One of the recognized ways of proving title to land is by production of a valid instrument of grant…But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather production and reliance upon such an instrument inevitably carries with it the need for the court to inquire into some or all of a number of questions including:

i. Whether the documents are genuine and valid?
ii. Whether it has been duly executed, stamped and registered?
iii. Whether the grantor had the capacity and authority to make the grant?
iv. Whether the grantor had in fact what he purported to grant; and
v. Whether it had the effect claimed by the holder of the documents?"

The fundamental questions therefore addressed in the **address of parties** relating to the legal status of the **Power of Attorney** with respect to whether it is an instrument of transfer or delegation and the legal status of a Certificate of Occupancy (customary) on which the entire Reliefs (b) –(e) are predicated appear to me to fall within fair and legitimate purview or sphere of the pertinent and salient questions this court must inquire into as highlighted above by the Apex Court.

Now on the pleading and evidence of claimant, it is common ground that the initial allocation to the disputed Plot No3482 was to one Nafisah Hassan vide the offer of terms of grant/conveyance of approval (**Exhibit P1)** dated 17th February, 2000 under the hand of the Zonal Manager AMAC for the **"Honourable Minister"** and then she was subsequently granted a Certificate of Occupancy (Customary) dated 21st February, 2003 signed by Chairman AMAC.

By paragraphs 7 and 8 of the statement of claim, the Plaintiff averred that he bought the land for consideration and tendered in evidence both the **Power of Attorney and the Deed of Assignment**. The latter document failed the test admissibility at the hearing due to want of registration and it was rejected as inadmissible. The Power of Attorney was however admitted in evidence as **Exhibit P3.** It is on the basis of these critical documents that Plaintiff situates his claim of ownership. I will start with the medium through with Plaintiff acquired this title i.e the Power of Attorney before dealing with the important question of validity of the letter of offer and certificate of occupancy (customary).

What then is the legal status of a Power of Attorney. In law a Power of Attorney such as **Exhibit P3** is not an instrument that transfers or alienates any landed property. While it is conceded that it is often erroneously used or utilised as such, it is merely an instrument delegating powers to the Donee to stand in position of the Donor and to do the things he could do. I cannot put it any better than to quote, ***Ipsissima verba,*** the useful words of Pats Acholonu (JCA) (as he then was and of blessed memory) in **Ndukauba v. Kolomo (2001) 12 N.W.L.R. (pt 726) 117 at 127 par F.G,** where he stated as follows:

"It is erroneously believed in not very enlightened circles particularly amongst the generality of Nigerians that a Power of Attorney is as good as a lease or an assignment. It is not whether or not coupled with an interest. It may eventually lead to execution of an instrument for the complete alienation of land after the consent of the requisite authority has been obtained."

In the same vein, let me add that even before the pronouncement above, the Supreme Court in **Ude V. Nwara (1993)2 N.W.L.R (pt.278)638 at 644** instructively stated as follows:

"A power of attorney merely warrants and authorizes the donee to do certain acts instead of the donor and so it is not an instrument which confers, transfers, limits charges or alienates any title to the donee, rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. So even if it authorises the donee to do any of these acts to any person including himself, the mere issuance of such a power is not per se an alienation or parting with possession. So far as it is categorized as a document of delegation, it is only after, by virtue of the Power of Attorney, the

donee leases or conveys the property, the subject of the power, to any person including himself that there is alienation."

Similarly in **Ezeigwe V Awudu (2008) 11 NWLR (pt.1097) 158**, the Supreme Court per Onnoghen JSC (as he then was) stated as follows:

"Even if Exhibit A could be relied upon, it does not deprive the respondent of her title to the property; the document being nothing other than an irrevocable Power of Attorney – not a conveyance. In fact Exhibit "A" being an irrevocable Power of Attorney allegedly donated by the Respondent to the Appellant is a clear evidence or confirmation of the fact that title to the land in dispute resides in the Respondent, the donor of that power. The only document that could have proved any passing of that title to the Appellant would have been a conveyance or an assignment, none of which was said to have existed nor tendered in evidence in the case."

The power of attorney here clearly only authorizes the donee to carry out certain acts on behalf of the donor and is not an **instrument of transfer of title to Plaintiff on record.**

Before rounding up on the Power of Attorney, let me briefly state that I note that the Defendant in the final address made submissions asserting that Chief Kev. C. Iheke on the Power of Attorney is not the same person as the Plaintiff on Record. That the consent of the Governor was not obtained for the Power of Attorney and also that the identity of the land claimed by parties are different.

On the issue or question of **proper identity,** this is simply clutching at straws. It was never an issue raised on the pleadings and no question or issue was made of it when the Defendant exercised its right to cross-examine Plaintiff. It is too late in the day to argue the case outside the structure of the case properly pleaded and presented on the evidence. See **ILona V Idakwo (supra).** On the question of consent, I am not enthused by the submission made and I find it really difficult to situate the application of **Section 22(1) and 26 of the Land Use Act** in the context of the clear legal position demonstrated above that a Power of Attorney such as **Exhibit P3** is not an instrument that transfers or alienates any landed property.

The bottom line is that the **Power of Attorney** could not in law transfer or vest title in Plaintiff in respect of the disputed plot. The Power of Attorney did not also in clear, specific commanding terms, allow him to sue in his name to claim the disputed property in the event of a dispute over the land. If there was a right to enforce any claim with respect to the plot covered by the power, it ought to have been in the name of the donor. I have carefully gone through the entire terms of the Power of Attorney and no where was it clearly indicated that Plaintiff could sue in his name. I leave it at that.

Now even if I am wrong with respect to whether the Power of Attorney allowed Plaintiff to sue in view of the ambiguous terms used and also whether the Power of Attorney conferred or alienated title over the disputed plot to Plaintiff, this then leads us to the legal status of the **Certificate of Occupancy (Customary) Exhibit P2** which the Plaintiff has and which he has clearly relied on as the basis for practically the entire reliefs he seeks. I again note that in paragraphs 3, 4 and 5 of the Statement of Claim, Plaintiff categorically stated as follows:

"**3 The Plaintiff avers that a plot of land was allotted by the Abuja Municipal Area Council (AMAC) to Nafisah Hassan sometime in the year 2000 in respect of a plot of land known as Plot No.3482, measuring about 1,200 square meters, located within Lugbe 1 Extension Layout, Lugbe along Airport Road, Abuja FCT.**

4 The allocation to the said Nafisah Hassan was evidenced in the allocation document referred to as Offer of Terms of Grant… with reference No:MFCT/ZC/AMAC/LUE 3482, dated the 17 day of February, 2000. The offer letter is hereby pleaded.

5 The Plaintiff avers that Nafisah Hassan applied and was subsequently issued with a Certificate of Occupancy with reference No: MZTP/LA/2000/ED.1771, dated the 21st day of February, 2003. The said Certificate Occupancy is hereby pleaded."

Again as already highlighted, parties are bound by the averments on the pleadings. The allocation here vide these paragraphs was made to **Nafisah Hassan** by AMAC. The Offer of Terms of grant/conveyance of approval dated 17th February,

2000 was made under the hand of one **"Lugard I. Edegbe Zonal Manager for Honourable Minister"** and then based on it, the **Certificate of Occupancy (customary) with No:MZTP/LA/2000/ED.1771 was then issued to Nafisah Hassan by one Mrs. Esther J. Audu, Hon. Chairman Abuja Municipal Council vide Exhibit P2.**

It is true that on the face of **Exhibit P1,** it was indicated as issued for the Honourable Minister but in the **Certificate of Occupancy (Customary)** which supersedes the initial offer letter and is the basis for the mutual reciprocity of legal obligations between parties, there is absolutely no indication that it was issued for and on behalf of the Minster FCT and the court cannot add or make interpolations to **Exhibit P2** to suit a particular purpose. Because of the submission in the address of Plaintiff that the Certificate of Occupancy was issued for and on behalf of the Minister F.C.T, I went over the Certificate of Occupancy repeatedly and it does not support his submission. The **chairman AMAC** issued the Certificate of Occupancy (customary) in her capacity as chairman and this then raises the questions of whether she has the capacity and authority to make the grant and whether the document has the effect claimed by the holder? See **Romaine V. Romaine (supra)**

Let us start by saying that any person or organization who desires to be granted a right of occupancy in respect of any land shall apply for such grant to the Governor or Local Government as the case may be. Upon being satisfied that an applicant is qualified to be granted a right of occupancy over any parcel or land, the Governor or the Local Government may grant such right of occupancy and a Certificate of Occupancy shall be issued to the applicant. See **Bakar V. Bashar (2014)11 N.W.L.R (pt.1417)68**

In this case, the extensive submissions in the address of Plaintiff that the allocation was done on behalf of the Minister will lack both factual and legal traction in the face of the clear contents of the Certificate of Occupancy (customary) vide **Exhibit P2.**

If **Exhibit P1,** was, as argued, issued for and on behalf of the minister, then the grant of the certificate should logically be from the Minister or again and at best, for and on behalf of the Minister. The Certificate of Occupancy (customary) here speaks for itself and it was issued by the chairman of an Area Council as a

customary allocation to Plaintiff and in that capacity and not for and on behalf of anybody.

There is nothing before the court either on the pleadings or evidence with respect to how an allocation said to have been made for and on behalf of the Minister will, somehow, now, transfigure to now become an allocation by the chairman of an Area Council. Does the chairman of AMAC exercise or share any contemporaneous powers of allocation of land in the FCT with the Minister FCT? I will shortly proffer an answer to this question.

As stated earlier, no additions or interpolations can be made to this **Exhibit P2** to achieve a particular purpose.

Again, it is to be noted that all the **Reliefs (b) –(e)** sought by Plaintiff are not based on the **initial letter of offer** but on the **Certificate of Occupancy (Customary)** to underscore the importance of the document to the case of Plaintiff and that indeed it is a fundamental pivot on which his case rest. To the clear self evident extent that it was an allocation made by the Chairman of AMAC in that capacity, the principle in the **Caltona** case which dealt with the parameters of delegated powers will have no application in this case.

Now back to the **Certificate of Occupancy (Customary) Exhibit P2.** A Certificate of Occupancy, if properly issued by a competent authority, raises a presumption that the holder is the owner in exclusive possession of the land. It is not conclusive evidence of a right or valid title to the land. It is at best only a prima-facie evidence of such right and may in appropriate cases by effectively challenged and rendered invalid and null and void. See **Olotunde V. Adeyoju (2000)10 N.W.L.R (pt.676)562 at 587 C-D**

As stated earlier, the mere production of a Certificate of Occupancy does not by itself entitle the party to a declaration of a statutory right of occupancy. Important questions earlier streamlined need be addressed by the court. This case has again thus thrust up the status of allocation by Area Council and or customary allocations.

By the provision of **Section 297 (2) of the 1999 Constitution**, the ownership of all lands comprised in the F.C.T shall vest in the Government of the Federal Republic

of Nigeria. It is also not contestable that the Government of the Federal Republic of Nigeria exercises executive powers over the F.C.T by virtue of **Sections 299 and 301 of the Constitution** by a Minister appointed by the President by virtue of **Section 302 of the Constitution.**

The provision of the **Section 297 (2) (supra)** by the use of the embracing word **"all"** clearly extends its application to all lands within the F.C.T inclusive of all the lands including the disputed plot. This position is further accentuated by the clear provisions of **Sections 1 (1), (2) and (3) of the Federal Capital Territory Act (cap503) LFN (Abuja) 1990 now cap F6, LFN, 2004.** Indeed **Section 1 (3) of the F.C.T Act** provides in trenchant terms as follows:

"The area contained in the Capital Territory shall, as from the commencement of this Act, cease to be a portion of the States concerned and shall thenceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Federal Capital Territory shall likewise vest absolutely in the Government of the Federation."

The word used above is **"shall"** which is a word of command. This provision makes it clear that the area comprised in the F.C.T shall be governed and administered by or under the control of the Government of the Federation to the exclusion of any person or authority whatsoever and the ownership of lands comprised in the F.C.T shall likewise vest absolutely in the Government of the Federation. The word used is **"absolutely"** which connotes that the ownership is total and complete. See **Oxford Advanced Learners Dictionary by A.S Hornby at page 5.**

The simple implication of this latter part of the provision with the use of the word **"and"** which imports that the provision be read as conjunctive is to the effect that administration of these lands whose ownership vest absolutely in the Federal Government is equally the exclusive preserve of the Government to the exclusion of any person or authority.

Having provided the above legal template which provides clarity to the ownership of all lands within the F.C.T as exclusively belonging to the Federal Government, including its governance and administration, we now address the central question as to the legitimacy of the claim of customary allocation.

Now by virtue of **Section 5 (1) of the Land Use Act (LUA) cap. 202, LFN 1990,** it shall be lawful for the Governor in respect of land, whether or not in an Urban Area to grant **statutory rights of occupancy** to any person. **Section 6 (1) of the Land Use Act** provides that it shall be lawful for a local government in respect of land not in an Urban Area to grant **customary rights of occupancy** to any person.

The designation of land as Urban and non-urban area is a creation of **Section 3 of the Land Use Act**. The section confers on the Governor of each state the power to **"designate the points of the area of the state constituting land in an Urban Area."**

These provisions clearly create a precisely defined delineation between urban and non-urban areas and also the grant of statutory rights of occupancy and a customary right of occupancy. A **customary allocation** can only properly issue in a local government in a state and within its sphere or area of jurisdiction subject to the provisions of **Sections 5 (1) and Section 6 (3) (a) – (d) and (4) of the Land Use Act.**

Yes there are Area Councils within F.C.T but there is nothing presented before court to establish the fact that either the President or the Minister of the F.C.T has pursuant to **Section 3 of the Land Use Act** designated any part of the F.C.T as constituting urban or non-urban area to provide basis to support the incidence of **customary allocation**. To the clear extent that there is, as yet, no such designation, the right of occupancy being granted by the Honourable Minister F.C.T, is the Statutory Right of Occupancy and no other.

It is obvious that in the light of the constitutional provisions referred to, the provisions of the F.C.T Act and the Land Use Act, that this demarcation between statutory and customary allocations with respect to urban and non-urban Areas has no application within the F.C.T.

Now by virtue of **Section 51 (2) of the Land Use Act**, the powers of a governor under the Land Use Act shall in respect of land comprised in the F.C.T Abuja or any land held or vested in the Federal Government in any state be exercisable by the president or any Minister designated by him in that behalf. The word **"shall"** is used again which I earlier said is a word of command or that a thing must be done. On the authorities, the word **"shall"** is not permissive and neither is there a discretion to be exercised in the matter. It is mandatory denoting an obligation. See **Nwankwo & ors V Yaradua & ors (2010) 12 NWLR (pt.1209) 518.**

The allocation of land within the entirety of the area known as the F.C.T can only legally and properly be exercised by the President or any Minister designated by him in that behalf. The Minister by virtue of **Section 302 of the 1999 Constitution** earlier referred to shall exercise such powers and functions as may be delegated to him by the president from time to time.

These legislations appear to underscore the paramountcy of the minister to make these statutory allocations over lands comprised in the F.C.T except perhaps where a case is properly made out that he delegated such powers which is a different matter altogether.

Indeed **Section 18** of the F.C.T Act further accentuates the powers of the minister as follows:

"As from the 28th May, 1984, the President has delegated to the Minister F.C.T, the following functions, that is to say-

a. Any function or power conferred on the Chairman of the Federal Capital Development Authority under this Act.

b. Any executive power of the Federal Government vested in the President pursuant to Section 263(a) or any other section of the constitution of the Federal Republic of Nigeria and exercisable within the Federal Capital Territory.

c. **Any function or power conferred by any law set out in the Second Schedule to this Act vested in the Governor or Military Governor of a state.**

d. **The Powers vested in the President by Section 1 (1)(d)(i) of the Public Officers (Special Provisions) Act; and**

e. **Such other functions as the President may from time to time confer on the Minister."**

When the correct import of all these provisions referred to above are properly appreciated and applied, it is difficult to situate the legitimacy of any claim to customary allocation of land in the FCT. These provisions clearly show that such claims would lack validity. Any claim of ownership of land in the FCT not proceeding from appropriate authority vested with such powers, which in this case is the Minister FCT would not fly. The Land Use Act, the FCT Act and relevant constitutional provisions above clearly do not provide any basis for claim of ownership predicated on customary allocation. **Section 26 of the Land Use Act**, provides thus:

"Any transaction or any instrument which purports to confer or vest in any person any interest or right over land than in accordance with the provisions of this Act shall be null and void."

It may be relevant here to call attention to the case of **Ona V Atanda (2000) 7 WRN 1 at17** where the Court of Appeal sitting as a full court comprehensively resolved the question whether incidence of customary right of occupancy exist in the FCT. The court unanimously answered and stated that it has been abolished under statutory and constitutional provisions considered by the court.

Under the principle of stare decisis, this decision is obviously binding and should have provided clear answers to some of the questions posed by the extant dispute. The only snag is the absence of clarity in legal circles as to the real fate of the decision. There is no clear consensus as to whether it was over turned and thus we must thread carefully. What however is certain is that there is yet to be a pronouncement on the merits by the Apex Court on the issues raised in **Ona V Atanda** and which remains till today.

This is underscored by the fact that in the decision of the Apex Court in **Madu V Madu (2008) 6 NWLR (pt.1083) 324 at 325 H-C,** the Supreme Court referred to the same **Ona V Atanda (supra) and Onu J.S.C (of blessed memory)** clearly appeared to support the position taken in **Ona V Atanda** when he stated as follows:

"Be it noted that it is well settled that the ownership of the land comprised in the Federal Capital Territory, Abuja is absolutely vested in the Federal Government of Nigeria vide Ona V Atanda (2000)5 N.W.L.R (pt.656) page 244 at page 267 paragraphs C-D. see also Section 297 (1) and (2) of the Constitution of the Federal Republic of Nigeria, Section 236 of the Constitution of the Federal Republic of Nigeria, 1979 and Section 1(3) Federal Capital Territory, Act 1976. Section 18 of the Federal Capital Territory Act, Cap.503 Laws of the Federation of Nigeria, 1990 vests power in the Minister for the FCT to grant statutory rights of occupancy over lands situate in the Federal Capital Territory to any person. By this law, ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vest same to every citizen individually upon application. <u>Thus without an allocation or grant by the Honourable Minister of the F.C.T, there is no way any person including the respondent could acquire land in the F.C.T."</u>(Underlining supplied)

This clear postulation by the eminent jurist further impugns the contention of incidence of ownership by natives or chiefs or indeed of customary allocations in the F.C.T.

It has been argued in legal circles that the decision of **Onu J.S.C** is a supporting judgment and not the lead judgment and thus can be over looked. Now it is true or correct that in reading the said decision, no issue was precisely raised on the question of allocations by Area Councils or the propriety of customary allocations and claim of ownership by indigenes within the F.C.T. The fact that the contribution of **Onu JSC** may be termed an **obiter** and thus not binding does not derogate from its importance and relevance to the question which continuous to agitate legal minds particularly in the F.C.T. Whatever the validity of the arguments against its application, it cannot ignore the clear imperative that it is a pronouncement by a revered legal jurist from the Apex Court. It is a

pronouncement that cannot be simply ignored or treated with disdain particularly since it has clear legal and or statutory support from the various provisions of the law and the constitution that we have so far analysed in this judgment.

It only suffices to say that the value of such pronouncement such as made by **Onu J.S.C** however is that it sometimes gives an indication as to how the Apex Court may approach the issue where it to properly come before it. I leave it at that.

I am therefore not too sure there is liberty to dance around the clear provisions of the F.C.T Act and other relevant applicable enactments. The duty of court is constrained when it comes to the application of the relevant legislations and the constitution we have severally referred to in this judgment. There is this rather attractive sentimental appeal to ignore clear provisions of the law and protect and or side with these claims been made which has no statutory backing. Unfortunately sentiments has no role in the delicate task of adjudication. The court has no jurisdiction to lessen the threshold of these enactments or as earlier stated dance around its clear provisions or attempt any interpolations. The approach of courts to interpretation of clear provisions of a statute is now settled beyond argument. Where the words use therein are clear and unambiguous, the court's legitimate duty is to give them their ordinary and plain meaning and construe them without any glosses unless its employment will lead to apparent absurdity and inconsistency with the provisions of the statute as a whole, which is not the case here. See **Kalu V Odili (1992) 5 N.W.L.R (pt.240) 130 at 193-194; Fawehinmi V IGP (2002) 7 N.W.L.R (pt.767) 606 at 678; Adewumi V A.G Ekiti (2002) 17 N.W.L.R (pt.743)706.**

The bottom line and as I have sought to demonstrate is that no one can acquire title to any land situate within the FCT without an allocation or grant by the appropriate authority i.e the Honourable Minister of F.C.T**.**

Flowing from the above, all the **Reliefs** sought based on this allocation not proceeding from proper authority with powers to make allocations of land in the FCT will clearly be undermined.

Before dealing with the Reliefs, it should be noted that I had not factored the acknowledgment of regularization of land documents tendered by Plaintiff as **Exhibit P3.** It is not on instrument of title and clearly contains a disclaimer.

There is no evidence tendered by claimant from AGIS pursuant to the exhibit validating the authenticity of his documents. I leave it at that.

Let us now situate the availability of the Reliefs sought within the context of the clear finding that the **Certificate of Occupancy (customary) Exhibit P2** is not a legal instrument for allocation of land in the F.C.T

Reliefs (a) and (b) are reliefs essentially on tresspass. The law is settled that a claim for trespass and injunction is not predicated on the success of the claim for declaration of title. See **Monkon V. Odili (2010)2 N.W.L.R (pt.1179)419 at 446; Owhonda V. Epkechi (2003)17 N.W.L.R (pt.849)326 at 345; Wachikwu V. Owunwane (2011)14 N.W.L.R (pt1266)1 at 39**

The Supreme Court in **Runsewe V. Odutola (1996)4 N.W.L.R (pt44)143 at 153 C-E** made it clear that:

"A claim for trespass does not necessarily postulate title."

Again in **Adewole V. Dada (2003)4 N.W.L.R (pt810)369 at 378 F-H,** the Apex Court **reiterated that:**

"a claim for trespass is not dependant on a claim for declaration of title as issues to be determined in trespass is whether the claimant has established his actual possession of land and the Defendant trespassed on it."

The question here is did the claimant establish that he was in possession of the disputed plot 3482? Now on the evidence, Plaintiff may have bought the land from **Nafisah Hassan in 2003**, and effected regularisation in 2003 but there is nothing in the evidence situating that he at any time took possession of the said plot 3482. Indeed his evidence is clear that after he bought the plot and went there, he never visited the land until he was ready to develop the land in 2012. Let me perhaps refer to what he said under cross-examination:

"…when I bought the land, I went there. After that, I did not go there for a long time until when I was ready to develop when I went there and discovered the encroachment."

By the pleadings vide **paragraph 13**, he discovered the alleged encroachment when he visited the plot in **"July 2012".** The implication is that since the Plaintiff

bought the land in 2003 up to 2012 when he discovered the alleged encroachment, a period of nearly 10 years, he never really took any practical steps to situate his ownership and possession of the land in dispute. No single **possessory acts** or **actions** by Plaintiff was delineated on the pleadings or evidence. There was no farming, no beacon pegs erected neither did he secure the plot by any form of fencing, demarcation or erection of a gate etc. On the contrary, it is the Defendant that on the evidence appears to be in possession and has nearly completed construction of its estate on the sites said to be allocated to it including the disputed plot.

Again, under cross-examination, this is what the Plaintiff said:

"As at the time I discovered Defendants encroachment on our land, his construction was not yet completed; it was almost at finishing stage, almost 80% complete."

The above is clear. The Plaintiff candidly situates he was never in possession but the Defendant. Trespass it must be underscored is only actionable at the instance of the person in possession of the land. The slightest possession by the claimant enables him to maintain an action in trespass against the Defendant, if the Defendant cannot show a better title. See **Monkon V. Odili (2010)2 N.W.L.R (pt.1179))419 at 451 AB.**

The Defendant may have not proven or established its **title over the disputed plot,** but on the evidence, it is in possession and has already built on it. Since the Plaintiff on the evidence cannot on the basis of the flawed Certificate of Occupancy (customary) lay claim to ownership, then to succeed in his relief for trespass, he must establish that he is in possession. Unfortunately the Plaintiff is not the owner of land and was never in possession and this undermines the **reliefs in trespass.**

Let me quickly add that once a party is shown to be the owner of a piece of land, he is in exclusive possession or has a right to such possession and anyone on the land without his permission is a trespasser abinitio. See **Onagoruwa V. Akinremi (2001)13 N.W.L.R (pt.729)38 at 59 EF.** At the risk of prolixity, the Plaintiff has not creditably established that he is the owner of the disputed plot.

On the whole, **Reliefs (a) and (b) fails**. **Relief (e)** for damages for trespass with the failure of **Reliefs (a) and (b)** also fails. In any event, even if trespass has been established by Plaintiff and he did not, it is difficult to situate the legal and factual basis for the sum of N10Million claimed as exemplary and aggravated damages by Plaintiff bearing in mind that he was never at any time on the evidence in possession.

Indeed, I need add even if trespass has been established and here, it was not, i do not see from the paucity of pleadings and evidence on the point, how the sum of **₦10,000,000** (Ten Million Naira) claimed as damages can even be justified. There is absolutely no basis for it.

General damages are not awarded as a matter of course, but on sound and solid legal principles and not on speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

Now because of the huge amount claimed as damages for trespass, it may be apposite to just add that on the authorities, damages in a case for trespass should be nominal to show the courts recognition of the plaintiff's proprietary right over land in dispute. If the plaintiffs in this case wanted more damages, they should claim it under special damages which they should properly plead and prove. See **Madubuonwu V. Nnalue (1992)8 N.W.L.R (pt.260)440 at 455 B-C; Armstrong V. Shippard & Short Ltd (1959)2 AII ER 651.** The relief for damages for trespass in the humongous amount claimed therefore fails.

Relief (c) for an order of perpetual injunction restraining the Defendant by themselves, agents, servants, privies or whoever purporting to act on their behalf from disturbing or interfering with the Plaintiff's possession, rights, interest and title in and over the said plot of land known as Plot No. 3482 covered by Certificate of Occupancy No. MZTP/LA/2000/ED.1771 measuring about 1,200 square meters located within Lugbe 1 Extension Layout, Lugbe along Airport Abuja FCT equally **fails**. The Certificate of Occupancy (customary) as already found was not properly allocated by the FCT Minister and is thus compromised.

Relief (d) seeks a mandatory order of this Honourable Court directing the Defendant to immediately remove any material or structure illegally erected on or attached to the Plaintiff's property known as Plot No.3482 covered by Certificate of Occupancy No.MZTP/LA/2000/ED.1771 measuring about 1,200 square meters, located within Lugbe 1 Extension Layout, Lugbe along Airport, Abuja FCT. Here too, with the finding that the customary allocation is flawed and the finding that the Plaintiff is not in possession to situate trespass, the claim that the Defendant should remove its structures on the disputed land is similarly undermined. It also fails.

The final **Relief (f)** for cost of action clearly must fail in the circumstances with the failure of the substantive reliefs.

On the whole, the sole issue raised as arising for determination is answered in the negative. For the avoidance of doubt, all the Reliefs sought by Plaintiff are unavailing. The Plaintiff's claims therefore fails in its entirety and is accordingly dismissed.

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Hon. Justice A.I. Kutigi

<u>Appearances:</u>

1. **Wilfred Okoli, Esq., for the Plaintiff**

2. **Aliyu Hassan, Esq., for the Defendant**