

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 8<sup>TH</sup> DAY OF MARCH, 2022.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**  
**SUIT NO.:-FCT/HC/CV/629/17**

**BETWEEN:**

1) **AYODEJI HALIMAT SADIYA ZINKUR**  
2) **SHEDRACK PONTIM ZINKUR** :.....CLAIMANTS  
3) **IFEDOLA AISHA MUSA**  
*(Administrators of the Estate of  
the Late Mr. David ZinkurGambo)*

**AND**

1. **IFEANYI UJA**  
2. **MRS. AMAKA CHRISTOPHINE NNEBO**  
3. **EDWIN NNEBO NIG LIMITED**  
4. **THE HON. MINISTER OF THE FCT**  
5. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY:....DEFENDANTS**  
6. **SOSO FURNISHING NIGERIA LIMITED**

Kenneth Terder holding the brief of UcheUwazuronye for the 1<sup>st</sup> and 6<sup>th</sup> Defendants.  
AdebukolaOyewole-Lawal for 4<sup>th</sup> and 5<sup>th</sup> Defendants.  
2<sup>nd</sup> and 3<sup>rd</sup> Defendants not represented.  
Claimants not represented.

**JUDGMENT.**

By a Further amended Writ of Summons dated 30<sup>th</sup> day of January, 2018 and filed same date, the Claimants took out this action against the Defendants and claimed as follows:

- a. An order of this Court declaring the Estate of the late Mr. David ZinkurGambo the lawful and beneficial owner of Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja with file Number PL10365.
- b. A declaration that the Power of Attorney and Deed of Conveyance purportedly executed by the 1<sup>st</sup>

Claimant, Ayodeji Halimat Sadiya Zinkur, transferring interest in Plot No. 252, Cadastral Zone B10, Daki Biyu District, Abuja with file Number PL10365 in favour of the 3<sup>rd</sup> Defendant and/or anyone acting through it is invalid, null and void, same having not been executed by her or any of the other Administrators of the Estate of the late David Zinkur Gambo.

- c. A declaration that the purported interest acquired by the 3<sup>rd</sup> Defendant pursuant to the purportedly executed Deed of Assignment and Power of Attorney by the 1<sup>st</sup> Claimant, Ayodeji Halimat Sadiya Zinkur, in respect of Plot No. 252, Cadastral Zone B10, Daki Biyu District, Abuja with File Number PL10365 in Abuja, is invalid, null and void and of no effect whatsoever, same having not been executed by her or any of the other Administrators of the Estate of the late David Zinkur Gambo.
- d. A declaration that the purported interest acquired by the 6<sup>th</sup> Defendant pursuant to the purported purchase of Plot No. 252, Cadastral Zone B10, Daki Biyu District, Abuja with File Number, PL10356 in Abuja from the 3<sup>rd</sup> Defendant acting through the 2<sup>nd</sup> Defendant is invalid, null and void, and of no effect whatsoever.
- e. A declaration that the act of the 6<sup>th</sup> Defendant acting through the 1<sup>st</sup> Defendant in depositing blocks and other building materials preparatory to constructing a structure on Plot No. 252, Cadastral Zone B10, Daki Biyu District, Abuja with File Number, PL10356 in Abuja, is an act of trespass.
- f. An order of perpetual injunction restraining the Defendants either by themselves, servants, agents, privies, or through any person or persons however, from trespassing on or further trespassing on, encroaching on or further encroaching on, remaining on, occupying, selling, renting,

leasing or allocating the property lying and being at Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja with File Number, PL10356.

- g. An Order of Court awarding General Damages at forty Million Naira only (N40,000,000.00).

The case of the Claimants, as per their Further Amended Statement of Claim is that Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja with File Number, PL10356, Abuja, measuring 1,024m<sup>2</sup> which was initially allocated to one Sani Ahmed Moh'd, vide Offer of Terms of Grant/Conveyance of Approval dated 14<sup>th</sup> April, 2022, was subsequently conveyed by the said Sani Ahmed Moh'd, to the late David ZinkurGambo, vide an irrevocable Power of Attorney and a Deed of Assignment.

The Claimants averred that after the demise of late David ZinkurGambo, his widow, the 1<sup>st</sup> Claimant, ran into a certain Mr. Edwin Nnebo (the 2<sup>nd</sup> Defendant's husband and the then alter ego of the 3<sup>rd</sup> Defendant) at Jabi, Abuja, who had been a neighbour of hers at Gwarinpa before she got married. That upon learning about the demise of the 1<sup>st</sup> Claimant's husband and how things had become difficult for her and her children, the said Mr. Edwin Nnebo showed some sympathy and requested for her address, and subsequently started visiting her house.

The Claimants stated that on one of such visits, Mr. Edwin Nnebo asked if her husband did not leave behind any property, the utilization of which could make life a lot better for her and her children. That on learning that the 1<sup>st</sup> Claimant's late husband left her some properties, Mr. Edwin Nnebo advised that she sold the plots of land and start up a business to take care of her family's financial problems, to which the 1<sup>st</sup>

Claimant replied that she could not, as her late husband instructed her to keep the properties for the children.

The Claimants averred that after much persuasion from Mr. Edwin Nnebo, the 1<sup>st</sup> Claimant agreed to sell the two properties in Kuje, namely; Plot Nos. 1000 and 1001, Kuchiyako Extension Layout, Kuje, Abuja and it was agreed that the said Mr. Edwin Nnebo would go with the Original documents to show to prospective buyers and if they would not pay, the 1<sup>st</sup> Claimant would have her documents back. That the 1<sup>st</sup> Claimant agreed with Mr. Edwin Nnebo for the price of N200,000.00 per plot, and signed a handwritten agreement, after which she handed him the original documents in respect of Plot Nos. 1000 and 1001, Kuchiyako Extension Layout, Kuje, Abuja.

The Claimants averred that Mr. Edwin Nnebo started paying for the plots in bits and pieces, indicating that it was he who eventually purchased the properties, but that the instalment payments for the said plots by Mr. Edwin Nnebo did not come regularly. That anytime the 1<sup>st</sup> Claimant called Mr. Edwin Nnebo, he would either not pick her calls or pick and yell at her. That the 1<sup>st</sup> Claimant nevertheless kept calling his line, only for someone, (who later turned out to be the 2<sup>nd</sup> Defendant), to pick the call one day and informed the 1<sup>st</sup> Claimant, that the owner of the phone, Mr. Edwin Nnedo, had died.

The Claimants further stated that the 2<sup>nd</sup> Defendant then invited the 1<sup>st</sup> Claimant to their house at Wuse II, and that on getting there, the 2<sup>nd</sup> Defendant informed the 1<sup>st</sup> Claimant that her late husband, Mr. Edwin Nnebo, instructed her to give the sum of N100,000.00 only to her.

The Claimants averred that sometime in 2015, the 1<sup>st</sup> Claimant decided to start processing the documents in respect of the

subject matter of this suit, Plot No. 525, Cadastral Zone B10, DakiBiyu District, Abuja, preparatory to commencing development, only to discover that the original copy of the Recertification and Re-issuance of Certificate of Occupancy Acknowledgment was missing. That the 1<sup>st</sup> Claimant reported the matter to AGIS where she was made to submit affidavit, Police extract and 3 Newspaper publications in respect of the lost document.

The Claimants stated that sometime in July, 2016, the 1<sup>st</sup> Claimant decided to pay a visit to the subject plot and discovered that the land had been cleared and that blocks had also been offloaded thereon, preparatory to commencement of construction activities. That the 1<sup>st</sup> Claimant and her then lawyer then placed a caveat sign on the land, and subsequently, a man who gave his name simply as Chuks, was sighted on the land. That on inquiry, the said Chuks said that he was the 1<sup>st</sup> Defendant's agent and that they wanted to sell the land. That the 1<sup>st</sup> Defendant's phone number was then obtained from the said Chuks, with which the 1<sup>st</sup> Claimant and her then counsel put a call through to the 1<sup>st</sup> Defendant and requested that they meet at AGIS to ensure there was no mistake of any sort with regard to the subject property.

The Claimants averred that it took the 1<sup>st</sup> Defendant about one month to be ready to meet with the 1<sup>st</sup> Claimant and that when he eventually agreed to meet with the 1<sup>st</sup> Claimant, at AGIS on the 19<sup>th</sup> of August, 2016, the 1<sup>st</sup> Defendant showed up at the venue of the meeting with Police officers who arrested the 1<sup>st</sup> Claimant along with her colleagues who accompanied her to the meeting.

They stated that at the AGIS Zone 7 Police Headquarter where they were taken, the 1<sup>st</sup> Claimant and her friends were accused

of conniving with the 1<sup>st</sup> Defendant's agent, Chuks, to dispose of the 1<sup>st</sup> Defendant land. That the 1<sup>st</sup> Claimant was confronted with a fictitious Deed of Assignment and Power of Attorney with which she was alleged to have sold and/or transferred her interest in Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja to the 3<sup>rd</sup> Defendant (owned by the 2<sup>nd</sup> Defendant's late husband), which purportedly sold same to the 6<sup>th</sup> Defendant, a company owned and managed by the 1<sup>st</sup> Defendant.

The Claimants averred that the 1<sup>st</sup> Claimant never executed any Deed of Assignment and Power of Attorney in favour of 2<sup>nd</sup> and/or 3<sup>rd</sup> Defendant, and/or anybody/ entity in respect of Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja, with File Number PL10365.

They stated that the 1<sup>st</sup> Claimant was later released on account of ill health by the IPO, Joseph Musa, after intimidating, insulting and raining all sorts of insults and vituperations on her, as well as extorting the sum of N3,000.00 from her. That even after the 1<sup>st</sup> Claimant's release, the Joseph Musa, acting in concert with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, repeatedly invited her to his office and continued a sustained effort through threats, blackmail, intimidation and verbal abuse to have her divest her late husband' Estate of its interest in Plot No. 252, covered by File Number PL10365, Cadastral Zone B10, DakiBiyu District, Abuja, in favour of the 1<sup>st</sup> Defendant.

The Claimants further averred that while at the AIG Zone 7 Police Headquarters, the 1<sup>st</sup> Claimant, much to her chagrin and surprise, discovered that the original of the Recertification and Re-issuance of Certificate of Occupancy Acknowledgment which had been missing, and in respect of which she had obtained a Police Extract and done Newspaper publications, was with the 1<sup>st</sup> Defendant.

That the 1<sup>st</sup> Claimant having not met with the 1<sup>st</sup> Defendant before his trespass on the subject plot of land, the document could only have been one of the documents taken away by the late Edwin Nnebo in error.

The Claimants averred that in view of the trespass by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants, and the harassments, threats, intimidations and pressures the 1<sup>st</sup> Claimant had been subjected to at the hands of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants, using the Police, that all developmental ambitions have been put on hold and the Estate of her late husband now stands in jeopardy of losing the subject property.

The Claimants filed Replies to the statements of Defence filed by the respective Defendants. In their Reply to the 1<sup>st</sup> and 6<sup>th</sup> Defendants' Statement of Defence, the Claimants averred that the 1<sup>st</sup> and 6<sup>th</sup> Defendants do not have a valid legal and/or equitable title to the subject property and that in a desperate and disingenuous bid to forcibly confer ownership of or title in the subject land to himself, and by extension, on the 6<sup>th</sup> Defendant, the 1<sup>st</sup> Defendant paid the Ground Rent only when it had become a Police matter. That for this reason, the 1<sup>st</sup> Defendant paid a lump sum to cover the period between 2003-2016.

Contrary to their initial averment in paragraph 30 of their Further Amended Statement of Claim, the Claimants averred that there is no deposit of blocks and other building materials on the site. Also, that the so-called fence the 1<sup>st</sup> and 6<sup>th</sup> Defendants constructed was actually a low fence which was erected without a building plan approval from the 4<sup>th</sup> and 5<sup>th</sup> Defendants.

The Claimants further averred that the 1<sup>st</sup> Claimant did not execute any Power of Attorney and Deed of Assignment on the 2<sup>nd</sup> day of April, 2008 or any other date, neither did she deliver

any title documents of the land in dispute to the 3<sup>rd</sup> Defendant, save the Acknowledgment in respect of Recertification and Re-issuance of Certificate of Occupancy, which she must have mistakenly unknowingly handed over alongside other title documents in respect of the Plots 1000 and 1001, Kuchiyako Extension, Kuje, Abuja, she sold to the late Edwin Nnebo. That the 1<sup>st</sup> Claimant only became aware of the Power of Attorney and Deed of Assignment for the first time at the Police Station when the 1<sup>st</sup> Defendant produced them.

In their defence to the 1<sup>st</sup> and 6<sup>th</sup> Defendants' counter-claim, the Claimants reiterated that they only became aware of the existence of the fictitious Deed of Assignment dated 2<sup>nd</sup> of April, 2008 and Power of Attorney being brandished about by the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants as purportedly transferring title to the 3<sup>rd</sup> Defendant, at the AIG Zone 7 Police Headquarters during their travails in the hands of the Police, instigated by the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants.

They stated that whatever purported acts of possession exercised by the Counter-Claimants, were done without the knowledge and consent of the Defendants to counter-claim and that such acts constitute acts of trespass against the interest of the Estate of late David Zinkur over the subject plot, having not transferred its interest over the subject plot to any person in any way whatsoever.

The Claimants also averred that there has never been any confirmation by the Police pursuant to investigation authenticating the signature of the 1<sup>st</sup> Defendant to counter-claim.

Also in response to 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Statement of Defence and counter-claim, the Claimant filed a Reply to the Statement of Defence and Defence to counter-claim.



In their reply to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Statement of Defence, the Claimants averred that there was in fact, and indeed, no sale of the subject property by the 1<sup>st</sup> Claimant, either to the 3<sup>rd</sup> Defendant or to anyone at all, and that the 1<sup>st</sup> Claimant did not prepare, sign and seal any document transferring title in the subject property to the 3<sup>rd</sup> Defendant or to anyone else. Furthermore, that the 1<sup>st</sup> Claimant did not make any documents relating to the subject property available to the late Edwin Nnebo of the 3<sup>rd</sup> Defendant.

The Claimant averred that the 1<sup>st</sup> Claimant did not obtain a loan of N1,000,000.00 or any other amount from anyone and/or organisation, and so did not, and could not have used the subject property as collateral. Also, that the 1<sup>st</sup> Claimant had no creditors in Wuse Market or elsewhere to whom the sum of N1,000,000.00 or any other sum at all, was paid. That there was no time the 1<sup>st</sup> Claimant was ever at the Wuse Market together with late Edwin Nnebo, let alone with IkechukwuNworah, Esq. They maintained that the first time the 1<sup>st</sup> Claimant saw IkechukwuNwora was at Force CID, Area 10 in 2016.

The Claimants stated that the sum of N2,500,000.00, or any sum at all was not paid to the 1<sup>st</sup> Claimant by late Edwin Nnebo or the 3<sup>rd</sup> Defendant or any other person for that matter, in respect of the subject property or any other property at all.

The Claimants averred that the Power of Attorney and the Deed of Assignment being paraded by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and by the 1<sup>st</sup> and 6<sup>th</sup> Defendants, are a fraud.

On the particulars of fraud, the Claimants averred that:

- a. the said IkechukwuNworah, Esq, never visited the 1<sup>st</sup> Claimant's residence to get the briefing he claimed to have visited to get;

- b. the 1<sup>st</sup> Claimant saw the said Ikechukwu Nworah, Esq, for the first time ever at Force CID, Area 10, in Garki, Abuja in 2016.
- c. the 1<sup>st</sup> Claimant's purported signatures on the documents, even from visual observation, are inconsistent with her real/natural/ actual signature;
- d. the Power of Attorney and the Deed of Assignment were made in 2016 to cover up for the 1<sup>st</sup> and 6<sup>th</sup> Defendants' trespass (upon realisation that they had no legal basis to be on the land) and not in 2008 as indicated on them;
- e. the 1<sup>st</sup> Claimant did not obtain a loan facility from anyone/organisation and did not use the subject property as collateral in any transaction at all;
- f. the subject property was never up for sale and the 1<sup>st</sup> Claimant did not receive the sum of N3,500,000.00 or any sum of money at all from the 3<sup>rd</sup> Defendant or any other person at all for the subject property;
- g. the 1<sup>st</sup> Claimant alone could not have sold the property without the concurrence of the other Administrators.

It was further averred by the Claimants that the Police made no confirmation or finding that the 1<sup>st</sup> Claimant sold the property to anyone as the report of the forensic examination of the signatures on the Power of Attorney and the Deed of Assignment is still not yet out.

The Claimants also averred that the 1<sup>st</sup> and 6<sup>th</sup> Defendants' trespass was in 2016 whereas the affidavit of loss deposed to by the 1<sup>st</sup> Claimant, was sworn in 2015, and that the newspaper publications she made was in January, 2016 – months before the said Defendants' trespass was observed in July, 2016, contrary to the averments in paragraph 26 of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' statement of defence.

In their defence to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' counter-claim, the Claimants adopted averments in their Reply to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' statement of defence, and further averred that rather than the Claimants putting the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Counter-Claimants through any persecution or hardship, that it was the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who, through their unconscionable act of selling the subject plot, brought untold hardship and persecution to the Claimants/Defendants to counter-claim.

The Claimant also averred that the 1<sup>st</sup> Claimant is not aware of any charge preferred against her in any Court, or of any on-going prosecution against her.

At the hearing of the case, the 1<sup>st</sup> Claimant gave evidence for the Claimants by adopting her witness statements on oath wherein she affirmed the averments in the statement of claim and the respective replies to the Defendants statements of defence and counter-claim.

She also tendered the following documents in evidence:

1. Offer of Terms of Grant/Conveyance of Approval – Exh. PW1A.
2. Irrevocable Power of Attorney – Exhibit PW1B.
3. Photocopy of Certificate of Occupancy – Exhibit PW1C.
4. Copy of Peoples Daily Newspaper – Exhibit PW1D.
5. Copy of BluePrint Newspaper – Exhibit PW1E.
6. Revenue Collector's Receipt (National Library of Nigeria) – Exh. PW1F.
7. Re: Criminal Trespass, Forgery of Land Document – Exh PW1G.
8. Affidavit of loss – Exhibit PW1H.
9. Letters of Administration – Exhibit PW1J.

Under cross examination by 1<sup>st</sup> and 6<sup>th</sup> Defendants' counsel, the PW1 confirmed that the Kuje properties were not listed in the Letters of Administration, Exhibit PW1J. She further confirmed to have sold the said two properties in Kuje to late Mr.Nnebo on 20/6/2008.

The PW1 admitted she had entered into an agreement with one AderemiMakinde in respect of the sale of the land in dispute in 2016 before she discovered the presence of the Defendants on the land.

On the documents submitted to AGIS by her late husband, the PW1 informed the Court that she visited AGIS with her husband, where he submitted documents. However she maintained that she never sold the property to any one and also that she has not collected the Certificate of Occupancy from AGIS.

Under cross examination by 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' counsel she maintained that she never sold the plot to 3<sup>rd</sup> Defendant.

The 4<sup>th</sup> and 5<sup>th</sup> Defendants cross examination had no questions for the PW1.

In their defence of the suit, the 1<sup>st</sup> and 6<sup>th</sup> Defendants jointly filed a Statement of Defence dated and filed the 13<sup>th</sup> day of March, 2018, wherein they averred that the 6<sup>th</sup> Defendant did, in actual fact, purchase the plot, the subject matter of this suit, Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja FCT, from the 3<sup>rd</sup> Defendant, through the 2<sup>nd</sup> Defendant on the 28<sup>th</sup> day of August, 2009. That the 6<sup>th</sup> Defendant took immediate possession; has been, and still in actual/physical occupation till date. Also, that the 6<sup>th</sup> Defendant settled the natives, fenced round the plot, and has since 2009 consistently

cultivated/farmed, and still cultivates/farms the said plot till date through one KehindeOlowo.

Furthermore, that the 6<sup>th</sup> Defendant has paid Ground Rents in respect of the plot from 2003-2016 to the 5<sup>th</sup> Defendant; has started depositing blocks and building materials on the plot for its development to enable the registration of Deed of assignment, and has since August, 2009 till date been exercising quiet and undisturbed right of ownership in respect of the plot.

The 1<sup>st</sup> and 6<sup>th</sup> Defendants averred that the 1<sup>st</sup> Claimant disposed of the property to the 3<sup>rd</sup> Claimant after the demise of late David ZinkurGambo, pursuant to the Letter of Administration (Without Will) dated 26<sup>th</sup> day of April, 2007, issued by the High Court of Justice of the Federal Capital Territory, for a consideration of N3,500,000.00, and that she executed Power of Attorney and Deed of Assignment on 2<sup>nd</sup> day of April, 2008 and proceeded to deliver all title documents to the 3<sup>rd</sup> Defendant through late Mr. Edwin Nnebo. That the Letters of Administration in Claimants' possession and custody till date, was copiously recited in the Deed of Assignment and Power of Attorney.

The 1<sup>st</sup> and 6<sup>th</sup> Defendants further averred that the original copy of the Recertification and Re-issuance of Certificate of Occupancy Acknowledgment in respect of the subject plot is not, and has never been missing as upon outrightly selling the plot, the 1<sup>st</sup> Claimant handed the original documents thereof, including the said Recertification and Re-issuance of Certificate of Occupancy Acknowledgment over to the 3<sup>rd</sup> Defendant, which was in turn delivered/handed over to the 6<sup>th</sup> Defendant on 28<sup>th</sup> August, 2009.

That as law abiding citizens of Nigeria and in order to prevent the breakdown of law and order, the 1<sup>st</sup> and 6<sup>th</sup> Defendants had to report the 1<sup>st</sup> Claimant's act of trespass in 2016 over the 6<sup>th</sup> Defendants plot to the Nigeria Police Force, which in turn arrested and investigated the 1<sup>st</sup> Claimant over her criminal act over and in respect of the subject plot. That the 1<sup>st</sup> Claimant's denial of executing the Deed of Assignment and Power of Attorney, led to the Nigeria Police Force Forensic investigation of her signature, which confirmed same to be her true/real signature.

The 1<sup>st</sup> and 6<sup>th</sup> Defendants also counter-claimed against the Claimants. In their counter-claim, the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants averred that the 1<sup>st</sup> Claimant/Defendant to counter-claim outrightly sold the subject plot to the 3<sup>rd</sup> Defendant on 2<sup>nd</sup> April, 2008, pursuant to Letters of Administration obtained from the Probate Registry of the FCT High Court, Abuja on 26<sup>th</sup> day of April, 2007. That the 3<sup>rd</sup> Defendant, on 28<sup>th</sup> day of August, 2009, also outrightly sold the subject Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja, to the 6<sup>th</sup> Defendant/Counter-Claimant for a consideration of N10,000,000.00, executed Deed of Assignment and Power of Attorney in favour of the 6<sup>th</sup> Defendant and handed all title documents in respect of the plot over to the 6<sup>th</sup> Defendant/Counter-Claimant.

They averred that upon receipt of the original title documents, they took immediate quiet possession of the plot and has been exercising an undisturbed right of ownership over the said plot till date.

That sometime in 2016, the 1<sup>st</sup> Claimant/Defendant to counter-claim, trespassed on the subject plot, as a result of which the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants, as law abiding citizens, and in an effort to forestall the breakdown of law and order, lodged a

formal complaint to the Nigeria Police Force, which carried out investigations and found out that the signature on the Deed of Assignment and Power of Attorney dated 2<sup>nd</sup> April, 2008, by which the 1<sup>st</sup> Claimant sold the plot to the 3<sup>rd</sup> Defendant pursuant to the Letters of Administration, belong to the 1<sup>st</sup> Claimant/Defendant to Counter-Claim.

The 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants thus counter-claimed against the Claimants as follows:

- i) A declaration of this Honourable Court that the 1<sup>st</sup> Defendant consequent upon the Letter of Administration dated the 26<sup>th</sup> day of April, 2007, sold outrightly and executed Deed of Assignment and Power of Attorney dated 2<sup>nd</sup> April, 2008 transferring all rights and interest previously held by the late David Zinkur Gambo, to Edwin Nnebo Nigeria Ltd absolutely.
- ii) A declaration of this Honourable Court that Edwin Nnebo Nigeria Ltd transferred all its rights and interest in respect of the subject plot to the Claimants for a consideration of N10,000,000.00 (Ten Million Naira) on the 28<sup>th</sup> day of August, 2009.
- iii) A declaration of this Honourable Court that the Claimants have lawfully, legally and validly taken immediate quite actual/physical possession/occupation since the 28<sup>th</sup> day of August, 2009 till date after paying as consideration in the sum of N10,000,000.00 (Ten Million Naira), settled the natives in the sum of N279,500.00 (Two Hundred and Seventy-Nine Thousand and Five Hundred Naira) paid to AGIS (FCDA) as Ground Rent from 2003 to 2016, the sum of N200,500 (Two Hundred Thousand and Five Hundred Naira) cultivates/farms till date through Kehinde Olowo and fenced round the plot, the subject matter of this suit

in the sum of N665,500.00 (Six Hundred and Sixty-Five Thousand, and Five Hundred Naira).

- iv) A declaration of this Honourable Court that the Claimants who have taken immediate quiet physical/actual possession/occupation of the subject plots since the 28<sup>th</sup> day of August, 2009 and have continuously exercise (sic) right of ownership is (sic) being trespassed by the 1<sup>st</sup> Defendant and her former/previous lawyer through the placing of caveat Emptor despite stiff protest of Agent.
- v) Order of this Honourable Court that the Claimants are the actual owner of the subject plot to the exclusion of all the Defendants in the circumstance of this suit.
- vi) Order of this Honourable Court to Honourable Minister, FCT and Federal Capital development Authority to register Claimants legal title and issue Federal Republic of Nigeria Certificate of Occupancy in its favour in respect of Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja, FCT, Nigeria after the cancellation of the Federal Republic of Nigeria Certificate of the Federal Republic of Nigeria Certificate of Occupancy No. 4bauw-b01dz-6aa7r-dad4u-1p dated the 17<sup>th</sup> day of October, 2005, registered as [No.11543@pg.11543](#) in vol.58 Certificate of Occupancy Land Registry Office at Abuja issued in favour of David ZinkurGambo upon the incidence of sale by 1<sup>st</sup> Defendant.
- vii) Order of perpetual injunction restraining all the 3(three) Defendants, namely, AyodejiHalimatSadiyaZinkur, ShedrackPontimZinkur and Ifedola Aisha Musa, either by themselves, counsel, privies, servants, workmen or whomsoever, from entering into/upon or committing any other/further act of trespass against the Claimants in



respect of Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja, FCT, Nigeria.

- viii) Damages against 1<sup>st</sup> Defendant in the sum of N50,000,000.00 (Fifty Million Naira) in favour of Claimants for the act of trespass committed by the former against the later who have been in immediate, quiet actual physical possession/occupation since the 28<sup>th</sup> day of August, 2009 and till date.
- ix) Cost of defending the substantive action and asserting this counter-claim.

One Inspector Nmomah Francis of the Nigeria Police Force, was subpoenaed by the 1<sup>st</sup> and 6<sup>th</sup> Defendants to tender documents and give evidence on behalf of the 1<sup>st</sup> and 6<sup>th</sup> Defendants. In his witness statement on oath which he adopted as DW1 before the Court, he stated that the 1<sup>st</sup> Defendant, on behalf of the 6<sup>th</sup> Defendant, petitioned against the 1<sup>st</sup> Claimant to the Assistant Inspector General of Police (AIG), Zone 7 Headquarters, Abuja, alleging that the 1<sup>st</sup> Claimant criminally trespassed over Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja, which allegedly belong to the 6<sup>th</sup> Defendant.

He stated that the 1<sup>st</sup> Claimant being dissatisfied with the investigation of the office of the AIG, Zone 7, Abuja, caused a petition to be written to the Inspector General of Police, upon which the case file was transferred and minuted to his team and that he was then instructed to investigate the case with other members of his team.

The DW1 further stated that at the conclusion of his investigations by interviews, examination of documents, forensic reports, physical inspection of the property in question, etc, he established the following facts:

- i) That the 1<sup>st</sup> Claimant's husband, Mr. David Gambo (deceased), submitted the original offer letter of the plot, otherwise known as Right of Occupancy, to the Ministry of the Federal Capital Territory for recertification, and that same is with the Ministry till date.
- ii) That there was a claim that the 1<sup>st</sup> Claimant had sold the Plot to the 3<sup>rd</sup> Defendant, which claim the 1<sup>st</sup> Claimant denied; hence the forensic investigation.
- iii) That Edwin Nebo Nigeria limited later sold the property to Soso Furnishing Nigeria Ltd, whose Managing Director is Mr. Ifeanyi Ujah, and that the buyer has been in possession for years.

He stated that the Inspector General of Police later filed Charge Number CR/273/2018 against the 1<sup>st</sup> Claimant for offences related to forgery and giving false information. The DW1 tendered the following documents part of which he recovered during investigation:

1. Charge Sheet, in re: Charge No. CR/273/18 –Exh. DW1A.
2. CTC of Bank Tellers & AGIS Receipts – Exh DW1 B-B1.
3. CTC of Demand for Ground rent – Exh DW1C.
4. CTC of Deed of Assignment –Exh. DW1D.
5. CTC of Power of Attorney – Exh. DW1E.
6. CTC of Re-certification and Re-issuance of C. of O. Acknowledgement – Exh DW1F.
7. CTC of Purchase Receipt – Exh DW1G.

Under cross examination by the Claimants' counsel, the DW1 stated that the parties contributed money for the Power of Attorney and Deed of Assignment to be sent for forensic examination and that the forensic report is out since 2016. He stated that he did not have a copy of the report, but that the

report is in their file, and that the content thereof has not been divulged to any of the parties as it is unprofessional to do so.

The DW1 further stated that his team prepared an investigation report after their assignment, but that he did not have the report. He also stated that he would not know if the 1<sup>st</sup> Claimant was arraigned before any Court.

The other Defendants did not cross examine the DW1.

The 1<sup>st</sup> Defendant, at the hearing of the case, also gave evidence for himself and the 6<sup>th</sup> Defendant. Testifying as DW2, he adopted his witness statement on oath wherein he affirmed the averments in their statement of defence and counter-claim. He also tendered the following documents in evidence;

1. Photographs of corn farm – Exhibit DW2A-A2.
2. Cash/Credit Sales Invoice – Exhibit DW2B.
3. Irrevocable Power of Attorney – Exhibit DW2D.
4. Deed of Assignment – Exhibit DW2E.

Under cross examination by 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, the DW2 stated that he bought the land for 10m in 2009, and that when he took over the property, there were no block works there, except cashew trees, neither did he discover any work going on, on the property.

The DW2 also stated, under cross examination by 4<sup>th</sup> and 5<sup>th</sup> Defendants, that he was not put in possession of the land by FCDA. That he did not settle the villagers in collaboration with the Resettlement and Compensation Department of FCT, and that he did not get approval for the fence he did from the FCDA.

The DW2 admitted, under cross examination by the Claimants' counsel, that he does not have any documents at AGIS in proof of his ownership of the land.

In their own defence to the Claimants' suit, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants jointly filed a Statement of Defence and counter-claim dated 18<sup>th</sup> day of February, 2019 and filed the 1<sup>st</sup> day of March, 2019.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred in their defence that sometimes in 2008, the 1<sup>st</sup> Claimant intimated the erstwhile Managing Director of the 3<sup>rd</sup> Defendant, late Mr. Edwin Nnebo, that she had used the subject property as a security for a loan of N1,000,000.00 and that upon her default in repaying the loan, the creditors were requesting her to convey title to them as agreed in the transaction. That the 1<sup>st</sup> Claimant and late Mr. Edwin Nnebo, knowing that the property was worth more than N1,000,000.00, decided that it would make a better economic sense to sell the property at the prevailing rate, offset the loan and reinvest the outstanding sum.

They stated that when the parties could not find any buyer, with the 1<sup>st</sup> Claimant pestering, pressurizing and persistently calling the late Edwin Nnebo even at odd times, for him to buy the property, the late Edwin Nnebo persuaded other directors of the 3<sup>rd</sup> Defendant for the 3<sup>rd</sup> Defendant to buy the property for N3,500,000.00. That the said N3,500,000.00 was paid in two segments, to wit;

- a. N1,000,000.00 paid directly to the creditors in Wuse Market, whereupon the original title documents in the possession of the creditors, were released to the 1<sup>st</sup> Claimant in the presence of late Edwin Nnebo and Ikechukwu Nworah, Esq.
- b. N2,500,000.00 paid to the 1<sup>st</sup> Claimant, upon which she signed the Power of Attorney and the Deed of Assignment in favour of the 3<sup>rd</sup> Defendant.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that the 1<sup>st</sup> Claimant led late Edwin Nneboand IkechukwuNworah, Esq, from the creditors' office in Wuse Market, to her house within Old Federal Secretariat, Area 1, Garki, Abuja, where IkechukwuNworah, Esq, was more properly briefed to prepare the Power of Attorney and Deed of Assignment for the transfer of the interest in the property to the 3<sup>rd</sup> Defendant. That the 1<sup>st</sup> Claimant, in her sitting room, handed IkechukwuNworah, Esq, the original copy of the Letters of Administration of the Estate of late Mr. David Zinkur Gambo from where he copied all the basic information with which he prepared the aforesaid divesting instruments.

They averred that the 3<sup>rd</sup> Defendant took immediate possession of the said property without any form of disturbance from the Claimants or anybody whatsoever, from the date of purchase, being 2<sup>nd</sup> April, 2008 to when the 3<sup>rd</sup> Defendant sold same to the 6<sup>th</sup> Defendant on 28<sup>th</sup> August, 2009.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants stated that the 3<sup>rd</sup> Defendant could not register the Power of Attorney because of the prevailing policy of the 4<sup>th</sup> and 5<sup>th</sup> Defendants to the effect that they would not allow another Power of Attorney registered alongside that of late Mr. David Zinkur Gambo; that the only divesting instrument that could be registered was the Deed of Assignment upon the development of the property. That the 6<sup>th</sup> Defendant later purchased the said property from the 3<sup>rd</sup> Defendant on 28<sup>th</sup> August, 2009 and immediately took possession of same, and has been in physical possession till date.

They stated that the 1<sup>st</sup> Claimant, later claiming ownership of the land, wrote a petition against some of the Defendants at the Force Headquarters, and that at the conclusion of

investigations, the Police confirmed that the 1<sup>st</sup> Claimant actually sold the property.

In their counter-claim, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that the Defendants to the counter-claim, have put them through persecution, hardship and loss because of their greed to unlawfully gain the title over Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja. That the Police investigations have shown clearly that the Defendants have no subsisting interest in the aforesated plot, and that the Police has commenced prosecution of the 1<sup>st</sup> Defendant to the counter-claim, for giving false information to the Police, forgery and other offences.

They thus, counter-claimed against the Claimants/Defendants to counter-claim as follows:

- A. A declaration that Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja, with file number PL.10365, Abuja, and measuring 1,024M2 was rightly purchased by the 2<sup>nd</sup> Claimant (Edwin Nnebo Nig. Limited) from the Defendants.
- B. An order of perpetual injunction restraining the Defendants from laying any further claim on the said property.
- C. Damages of N10,000,000,00 against the Defendants based on the facts and circumstances of this suit.
- D. Such further or other order(s) as the Hon. Court may deem fit to make in the circumstances of this suit.

One IkechukwuNworah, Esq, a legal practitioner, who stated that at the material time to this suit, between 2007 and 2008, he was the legal Adviser and consultant to the 3<sup>rd</sup> Defendant, and that in that capacity, he rendered several professional services to the 3<sup>rd</sup> Defendant, including the subject matter of this suit, gave evidence for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Testifying as DW3, he adopted his witness statement on oath wherein he

affirmed the averments in the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants Statement of Defence and counter-claim. He also tendered the following documents in evidence:

1. Irrevocable Power of Attorney – Exh DW3A.
2. Deed of Assignment – Exh DW3B.
3. Particulars of Directors (Form C. O.7) – Exh DW3C-C1.
4. Certificate of Compliance – Exh DW3D.
5. CTC of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Statement of Defence and counter-claim – Exh DW3E.
6. CTC of Memorandum of Appearance – Exh DW3F.

The DW3 was duly cross examined by counsel to the 1<sup>st</sup> and 6<sup>th</sup> Defendants during which he affirmed the case of the 1<sup>st</sup> and 6<sup>th</sup> Defendants.

The 4<sup>th</sup> and 5<sup>th</sup> Defendants informed the Court that they had no cross examination questions for the DW3. Under cross examination by the Claimants, the DW3 stated that he was not there in 2009 when the 6<sup>th</sup> Defendant allegedly purchased the land from the 3<sup>rd</sup> Defendant. He maintained that he saw the Letters of Administration in the custody of the 1<sup>st</sup> Claimant and that the property in issue was listed therein. The DW3 told the Court under cross examination that the 2<sup>nd</sup> Defendant sold the land to the 6<sup>th</sup> Defendant in her capacity as a Director of the 3<sup>rd</sup> Defendant. When shown Exhibit DW3C-C1, (Particulars of Directors of 3<sup>rd</sup> Defendant), he admitted that the 3<sup>rd</sup> Defendant's name is not listed among the Directors of the Company.

He stated that the alleged 1<sup>st</sup> Claimant's witness, FunmiAjao, was not present during the execution of the Deed of Assignment and Power of Attorney.

The DW3 confirmed that the Deed of Assignment, Exhibit DW1D, was front-loaded in the Statement of Defence, Exhibit

DW3E. He however admitted that the alleged 1<sup>st</sup> Claimant's witness is different in the respective Exhibits. That while one FunmiAjao witnessed for the 1<sup>st</sup> Claimant in the front-loaded Deed of Assignment in Exhibit DW3E, another person, Henry Uzo, witnessed the Exhibit DW1D, which the DW3 had affirmed to be the same document front-loaded to Exhibit DW3E.

Also, that while one AmakaNnebo witnessed for the 3<sup>rd</sup> Defendant in Exhibit DW3E; Ralph ObinnaNnebo witnessed for the same 3<sup>rd</sup> Defendant in Exhibit DW1D. He further confirmed that both documents (which are supposed to be the same document) were signed by different commissioners for oath at two different dates.

On the claim that the 1<sup>st</sup> Claimant mortgaged the property, the DW3 stated that the property was used as a collateral for a loan of N3.5m. He stated that the 1<sup>st</sup> Claimant took him and late Edwin Nnebo to meet with the Creditors, but stated that he did not know who the mortgagee (Creditor) is.

In their own defence, the 4<sup>th</sup> and 5<sup>th</sup> Defendants filed Amended Statement of Defence dated 7<sup>th</sup> February, 2018 and filed the 8<sup>th</sup> day of February, 2018.

Disclosing the state of records at the Abuja Geographic Information Land Registry in respect of Plot 252, DakiBiyu District, Abuja, the 4<sup>th</sup> and 5<sup>th</sup> Defendants averred that Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja, had been offered to and accepted by SaniAhmed, Mohammed in 2002, and that by Irrevocable Power of Attorney registered with the Abuja Geographic Information System, Sani Mohammed donated his unexpired residue in Plot 252, DakiBiyu District, Cadastral Zone B10, Abuja, to David ZinkurGambo.



They averred that during the Recertification exercise initiated by the 4<sup>th</sup> and 5<sup>th</sup> Defendants, David ZinkurGambo applied for recertification, and to that end, had submitted the Right of Occupancy and Power of Attorney.

That upon recertification, a new file number, Plot PL10365, had been given to Plot 252, DakiBiyu District, and that the 4<sup>th</sup> and 5<sup>th</sup> Defendants issued a Certificate of Occupancy in the name of David ZinkurGambo.

Also, that a demand for Ground Rent had been made on the allottee in December, 2015, pursuant to which the Ground Rent was paid on 27<sup>th</sup> July, 2016, and that a receipt was issued to acknowledge the payment.

The 4<sup>th</sup> and 5<sup>th</sup> Defendants stated that the Claimants had written on 17<sup>th</sup> August, 2016 to the Director, Lands Department, AIGS, to request for a caveat to be placed on the plot, and also, that on 26<sup>th</sup> August, 2016, another letter had been received by the Director, Lands from the law firm of F.N. Onuoha & Co. requesting for a caveat to be placed on the same plot. That a caveat has thus been placed on the file in the AGIS Lands Registry.

In their defence to the 1<sup>st</sup> and 6<sup>th</sup> Defendants' counter-claim, the 4<sup>th</sup> and 5<sup>th</sup> Defendants averred that there had been a demand for payment of Ground Rent from the allottee of Plot 252, DakiBiyu District, FCT, and the Ground Rent had been paid in the name of the allottee, David ZinkurGambo. That they are neither parties to, nor privies to any of the transactions claimed and narrated in the counter-claim and have no records of same at its Abuja Geographic Information System's Land Registry.

One KenechukwuChineme Martha, Assistant Chief Town Planning Officer in Abuja Geographic Information System of the

Federal Capital Territory Administration, gave evidence for the 4<sup>th</sup> and 5<sup>th</sup> Defendants.

Testifying as DW4, she adopted her witness statement on oath whereby she affirmed the averments in the 4<sup>th</sup> and 5<sup>th</sup> Defendants' Statement of Defence.

She also tendered the following documents in evidence:

1. CTC of Offer of Terms of grant/Conveyance of Approval – Exh. DW4A.
2. CTC of Irrevocable Power of Attorney – Exh. DW4B.
3. Certificate of Occupancy – Exh. DW4C.
4. Demand for Ground Rent – Exh DW4D.
5. Receipt of Payment for Ground Rent – Exh. DW4E.
6. Request for Caveat on Plot 252 – Exh. DW4F.
7. Notification of Dispute over Ownership of Plot No. 252 – Exh. DW4G.

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

In their final written address, the 1<sup>st</sup> and 6<sup>th</sup> Defendants raised three issues for determination, namely;

1. Whether the Claimants whose claims are in the nature of declaratory reliefs proved their case as required by law?
2. Whether the Claimants have sufficiently shown that the Deed of Assignment and Power of Attorney dated 2<sup>nd</sup> April, 2008 in Favour of Edwin Nnebo Nigeria Limited are fictitious and product of fraud, as claimed?
3. Whether the 1<sup>st</sup> and 6<sup>th</sup> Defendants have proved their counter-claim?

Proffering arguments on issues one and two, learned 1<sup>st</sup> and 6<sup>th</sup> Defendants counsel, Uchenna Ernest Uwazuruonye, Esq,

posited that the six reliefs sought by the Claimants are equitable reliefs. That relief A is a declaration of title for the Claimants, while relief F is an injunctive order against the Defendants. He argued that the success of reliefs A and F depends on the success of reliefs B and C.

Learned counsel posited that the crux of reliefs B and C is that the Court should uphold the Claimants' claim that the Power of Attorney and Deed of Assignment of 2<sup>nd</sup> April, 2008, Exhibits DW3A and DW3B (also DW1E and DW1D), are fictitious and a product of fraud. He contended that the Claimants thus positively asserted that the 1<sup>st</sup> Claimant is not the maker of the said documents, and that the Claimants are therefore, relying on forgery of the said documents as the basis for their claims in reliefs B and C; thus raising the legal issue of Non-est Factum.

He argued that it is the duty of the Claimants in the circumstances, to present positive and believable evidence before a document, which is regular on its face value, will be declared null and void.

Placing reliance on **Anyanoru v. mandillas Ltd (2007) 4 SCNJ 288, Chukwumah v. S.P.D.C. (Nig) Ltd (1993) LPELR-864(SC)**, inter alia, he submitted that a person seeking declaratory relief must plead and prove the claim for declaratory relief without relying on the evidence called by the defendant.

He argued that for the Court to grant reliefs B and C, to the effect that PW1 did not execute the affected documents, the onus is on the Claimants to demonstrate to the Court that the documents were not made or could not have been made by PW1. That the Claimant must therefore, present the said documents before the Court.

Learned counsel further argued that the PW1 did not give any evidence discrediting her signatures on the Power of Attorney and Deed of Assignment.

Furthermore, he contended that the assertion by the Claimants that the documents are fictitious and a product of fraud raises an allegation of misrepresentation and/or fraud, which must be specifically pleaded and proven with specific particulars as required by Order 15 Rule 3 of the Rules of this Court. He referred to **Babatola v. Adewunmi (2011) LPELR-3945(CA)**.

He contended that where the forgery has not been proved on the standard required by law, the Court will not be under any legal duty or obligation to consider the document and that in the circumstances, the same will at best, be considered as worthless and tainted with criminality. He referred to **Ottih v. Nwanekwe (1990)3 NWLR (Pt.140)550**.

He further contended that the Claimants cannot succeed in their claim by cursorily raising the plea of non est factum in respect of Exhibit DW3B and DW3C. That to succeed in that plea, the party must clearly raise it in his pleadings and lead evidence thereto. He referred to **Igbiosa v. Aiyobagbiedgbe (1969) All NLR 95 at 98**.

He argued that since the foundation of the claims in reliefs B and C is the assertion that the documents referred to in their claims are fictitious and product of fraud, the Claimants ought to tender the documents they are disputing and demonstrate to the Court, the features therein that show that they couldn't have been made by the PW1.

He posited that with the failure of the Claimants to prove the essential positive assertion that the Power of Attorney and Deed of Assignment signed in favour of Edwin Nnebo Nigeria

Ltd, upon which the later sold the property to the 6<sup>th</sup> Defendant, is fictitious, the claim, and indeed the suit, is liable to be dismissed.

He further posited that reliefs D and E which are specifically against the 1<sup>st</sup> and 6<sup>th</sup> Defendants, must also fail on the additional ground that the 6<sup>th</sup> Defendant at worst, is a bona fide purchaser for value without notice of any existing third-party interest.

Learned counsel argued that assuming, but without conceding, that it is found that the Claimants still have interest in the property that such interest cannot defeat the title of the 6<sup>th</sup> Defendant who is an innocent purchaser. That even then, the Claimants can only succeed against the 3<sup>rd</sup> Defendant by proving beyond reasonable doubt that the 3<sup>rd</sup> Defendant forged Exhibit DW3A and DW3B, and that the Claimants must also prove that the original copy of Exhibit DW1F with which the property was sold to the 6<sup>th</sup> Defendant, was not given to the 3<sup>rd</sup> Defendant by the 1<sup>st</sup> Claimant.

Arguing further, learned counsel contended that in the face of two contradictory and/or irreconcilable evidence of the 1<sup>st</sup> Claimant on the whereabouts of Exhibit DW1F, that the only option left with the Court is to discard both pieces of evidence. He referred to **Ajonye v. Nwachukwu (2011) LPELR-3677 (CA), Onubogu v. State (1974) 9 SC 1.**

He posited that when the two irreconcilable versions of the 1<sup>st</sup> Claimant's evidence on Exhibit DW1F are discountenanced, the only available evidence which the Court must act upon is that the Claimants handed over the said title document to the 3<sup>rd</sup> Defendant for the purchase price of N3,500,000.00.

He urged the Court to hold that the Claimants have failed to prove their case as required by law.

In order to determine whether or not the PW1 signed Exhibits DW3A and DW3B (Power of Attorney and Deed of Assignment), learned counsel invited the Court, pursuant to Section 101 of the Evidence Act, 2011, to compare the PW1's admitted signature in Exhibit PW1H as well as her signatures on her 4 witness statements on oath, with the signatures on Exhibits DW3A and DW3B.

He contended that the signature of the PW1 started changing from the time she made her statement to the Police.

He further urged the Court to hold that the 1<sup>st</sup> Claimant actually sold the subject property to the 3<sup>rd</sup> Defendant in 2008, and to resolve issue 1 and 2 in favour of the 1<sup>st</sup> and 6<sup>th</sup> Defendants.

On issue 3, on whether the 1<sup>st</sup> and 6<sup>th</sup> Defendants have proved their counter-claim; learned counsel posited that the law is settled that to succeed in a claim of title by way of purchase, the only duty of the Counter-Claimant is to show the evidence of the purchase of the land.

He referred to **Olajide v. Akinboboye (2018) LPELR-46166(CA)**.

He contended that the Counter-Claimants have proved their case by credible and undisputed oral and documentary evidence. He argued that apart from the evidence of the neutral expert Police Officer, DW1, which conclusively proved that the 3<sup>rd</sup> Defendant got a valid title from the 1<sup>st</sup> Claimant, that the counsel who made the documents testified as DW3. Thus, that the evidence of DW1, DW2 and DW3 point irresistibly to the fact that the Counter-Claimants purchased the property.

He relied on **Aminu v. Ogunyebi&Anor (2003) LPELR-7195 (CA)** to submit that it is settled law that a receipt for purchase money is evidence that there was an agreement for sale and that the consideration for such sale was paid by the purchaser.

Learned counsel argued that the effect of payment for land evidenced by purchase receipt is that it confers an equitable interest on the purchaser which can be converted to a legal interest. He submitted that purchase receipt, being an unregistered instrument, though not admissible to prove title, is admissible as an acknowledgment of the payment of money and coupled with possession, raises a presumption, that the purchaser entered into possession under a contract of sale, and that from this arises an equitable interest capable of being converted into a legal estate by an order of specific performance. He referred inter alia, to **Enadeghe v. Eweka(2014) LPELR-24479 (CA);Ladunni v. Adesoye (2015) LPELR-25519(CA).**

He contended that the Counter-Claimants having paid N10,000,000.00purchase price; having been handed over the only document relating to title, Exhibit DW1F; having fenced the property, settled the villagers, paid all the outstanding ground rent; that they are entitled to their claims.

He contended further, that the evidence of the Counter-Claimants has proved their case by balance of probabilities as required by law.

He urged the Court in conclusion, to dismiss the suit and claim of the Claimants with substantial costs and to enter judgment in favour of the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants in terms of their counter-claim.

The 1<sup>st</sup> and 6<sup>th</sup> Defendants also filed Reply on points of law to the Claimants' final written address.

Referring to the issue of fraud raised by the Claimants in their final written address, learned counsel for the 1<sup>st</sup> and 6<sup>th</sup> Defendants posited that fraud is a question of fact which the Rules of this Court, the Evidence Act, and indeed, case laws are in accord that it must be pleaded specifically and proved beyond reasonable doubt. He referred to Order 15 Rule 3; **Gbula v. Lawuji&Ors (2019) LPELLR-48391(CA).**

He submitted that counsel's address cannot take the place of evidence, and urged the Court to discountenance the Claimants' counsel's argument on issue one as it relates to fraud because the Claimants did not at any point during trial raise an issue of fraud.

On the onus and manner of proof of disputed signature learned counsel posited that the claim rooted on material averments of the Claimants determines what, who and how to prove the case.

He argued that the Claimants' claims are declaratory reliefs ingrained on their assertion that the Deed of Assignment and Power of Attorney credited to the 1<sup>st</sup> Claimant is "fictitious" and "forged", upon which the 1<sup>st</sup> Claimant disputed her signature on the documents.

He submitted, with reliance on **Jurassic Communications Nigeria Limited v. AbiodunNimzeAdeyey (2019) LPELR-46498(CA)**, that the onus is on the person who disputes his signature to prove otherwise.

He further posited that the dissimilarity in the signatures credited to the 1<sup>st</sup> Claimant in different documents, is not



conclusive evidence that the 1<sup>st</sup> Claimant did not make the documents.

Learned counsel further contended that the case of **Utong v. Utong** was misrepresented by counsel for the Claimants. He posited that the said authority does not establish that the only way of resolving a disputed signature is by the opposing party tendering a comparative signature of the denying party for the Court's comparison. That the case rather reaffirms the right of the trial Court to have compared the disputed signature with an undisputed signature in arriving at a sound decision as to who signed the document being denied in Court.

The Claimants' counsel having relied on Exhibit DW3C to dispute the 3<sup>rd</sup> Defendant's capacity to sell the property in issue, learned counsel urged the Court to expunge the said exhibit; that same was wrongly admitted in evidence, having not been pleaded nor tendered by its maker, and that same is not relevant to any material issue in dispute before the Court.

He posited that the doctrines of sanctity and privity of contract respectively protect the contract which is not disputed by any of the parties thereto, and prevent the Claimants who are not parties to the contract, from questioning the validity of the said contract.

On the power of Court to expunge document not pleaded or tendered by its maker; he referred to **Rabiu&Anor v. Babangida&Ors (2019) LPELR-49458 (CA)**.

He further urged the Court to also expunge Exhibits DW3E and DW3F on the basis that the DW3, through whom they were admitted in evidence and who was cross examined on them, is not their maker, and that they were not pleaded by the Claimants who now rely on them. Also, that the Court should

discountenance all evidence elicited on the basis of the wrongly admitted documents and address of counsel thereon.

He urged the Court, in the unlikely situation that the exhibits are retained; to ascribe no weight to them for the reasons already canvassed, and for the fact that the Defendants were ambushed and had no opportunity to react to the insidious reliance placed on the documents.

On the Claimants' contention that the Court should discountenance the handwritten agreement between the 1<sup>st</sup> Claimant and late Edwin Nnebo; learned 1<sup>st</sup> and 6<sup>th</sup> Defendants' counsel contended that the Court will not discountenance the said handwritten agreement as the Claimant pleaded the said document and admitted of its existence and contents. He submitted that the Court can take judicial notice of the frontloaded document under Section 122 of the Evidence Act. He referred to **Ude v. Ottih (2017) LPELR-44615 (CA)**. He contended, relying on **Enemchukwu v. Okoye (2016) LPELR-40027**, that the Claimants who signed the said document, are bound by it.

Further on the Claimants' contention that the 2<sup>nd</sup> Defendant lacked the capacity to sell to the 6<sup>th</sup> Defendant; learned counsel posited that the said issue did not arise in the pleadings of the Claimants. He submitted that the law forbids a party to make a new case during address outside the case he pursued in his pleadings and during trial. He referred to **Iloka v. Edokwe&Ors (2016) LPELR-41027(CA)**.

He urged the Court to discountenance the evidence, speculations and distractions contained in the Claimants' counsel's address and to dismiss the claims of the Claimants with substantial costs.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in their own final written addresses, raised three issues for determination, namely;

1. Whether from the facts, circumstances and evidence adduced in this matter, the Claimants have proved their case to be entitled to the reliefs sought?
2. Whether the 3<sup>rd</sup> Defendant has shown sufficient evidence to be entitled to the reliefs in their counter-claim?
3. Whether from the facts before this Court, the Claimants, especially the 1<sup>st</sup> Claimant, are in position to contest how, when, where and whom the 3<sup>rd</sup> Defendant transacts with over any of its property?

Proffering arguments on issue one, learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, C.K. Eburuo, Esq, posited that the Claimants have failed woefully to adduce evidence that will prove to the Court that they are entitled to the reliefs sought in their statement of claim.

Referring to Section 131 of the Evidence Act, 2011 on the law that he who asserts must prove; he argued that the Claimants have failed to convince anyone or the Court that they did not sell Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja to the 3<sup>rd</sup> Defendant, which is the crux of the Claimants' case before the Court.

He contended that the Defendants being in possession of the plot of land in question and having evidence of sale of the plot to the 3<sup>rd</sup> Defendant by the 1<sup>st</sup> Claimant on behalf of the Claimants, that the onus is on the Claimants who are asserting that they did not sell the plot of land in question to the 3<sup>rd</sup> Defendant, to show or prove to the Court how they did not sell the plot to the 3<sup>rd</sup> Defendant and how the 1<sup>st</sup> Claimant did not sign the Power of Attorney and Deed of Assignment, Exhibit DW3A and DW3B.

Learned counsel argued that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, who asserted that the Claimants sold the plot of land to the 3<sup>rd</sup> Defendant, supported their claim with Exhibits DW3A and DW3B, which evidenced sale of the subject matter to the 3<sup>rd</sup> Defendant by the Claimants. Furthermore, that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were in possession of the original Recertification and Re-issuance of Certificate of Occupancy Acknowledgment, Exhibit DW1F, being the only document affecting the land after the submission of the original Right of Occupancy, Exhibit DW4A, and the Power of attorney, Exhibit DW4B, to Abuja Geographical Information System by the late David Gambo.

He contended that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have discharged their obligation on balance of probability and that the duty is now on the Claimants. He argued that the Claimants unfortunately failed to discharge that duty.

He referred to **Mrs. Rosemary Onwusor v. Yahimaina&Ors (2021) Legalpedia (CA)11919** on the point that a Claimant has a duty to prove his case and not to rely on the weakness of the case of the opposite party.

Learned counsel argued that the Claimants who came to Court to claim that the 1<sup>st</sup> Claimant did not sign Exhibits DW3A and DW3B, failed to present the result of the forensic analysis and the Police report stating that the 1<sup>st</sup> Claimant's signature on the said exhibits do not belong to her. Also, that the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants refused to give evidence in Court to deny knowledge of the signature or the sale of the subject matter, and that the PW1 in fact, did not give any evidence discrediting her signatures on the Power of Attorney and Deed of Assignment.

He relied on Section 143 of the Evidence Act, 2011 to contend that they failed to prove to the Court that the 3<sup>rd</sup> Defendant did

not purchase the plot of land in issue, or that the 6<sup>th</sup> Defendant who is currently in possession of the subject matter, is not rightly in possession.

Placing further reliance on **Mrs. Rosemary Onwusor v. YahiMaina&Ors (supra)**, he argued that the Claimants' core prayers being declaratory in nature, the Claimants also failed to prove that they are entitled to declaratoryreliefs.

He urged the Court to resolve issue one in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as the Claimants have failed to prove their case.

On issue two, learned counsel contended that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have proved their counter claim against the Claimants, as they have through the exhibits tendered by DW1, DW2, DW3 and DW4, proved that the 3<sup>rd</sup> Defendant legally bought the subject matter of this suit from the Claimants' through the 1<sup>st</sup> Claimant.

He referred inter alia, to **Mbadinuju v. Ezuka (1994)8 NWLR (Pt.364) 535 SC** and **Mrs. Rosemary Onwusor v. YahiMaina&Ors (supra)**.

He urged the Court to grant the prayers of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as stated in their counter-claim.

Arguing issue three, learned counsel contended that it is not in the place of the Claimants to tell the 3<sup>rd</sup> Defendant how, when and where to dispose of its property. He posited that the 3<sup>rd</sup> Defendant being a juristic person, has capacity to dispose of its property as it may wish and to whom it wishes to so deal with.

He further argued that the Claimants do not have any form of interest to protect in the plot of land having sold same to the 3<sup>rd</sup> Defendant as evidenced in Exhibits DW3A and DW3B.

He urged the Court in conclusion to dismiss the claims of the Claimants for lacking in merit and to grant the reliefs sought by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in their counter-claim.

Learned counsel for the 4<sup>th</sup> and 5<sup>th</sup> Defendants, AdebukolaOyewopo-Lawal, in his own final written address, raised a sole issue for determination, to wit;

***“Whether the 4<sup>th</sup> and 5<sup>th</sup> Defendants have any issues to argue in this suit?”***

Proffering arguments on the issue so raised, learned counsel contended that the Claimants in this suit have disclosed no cause of action against the 4<sup>th</sup> and 5<sup>th</sup> Defendants. He referred to **Abubakar v. Bebeji Oil & Allied Products Ltd (2007) 147 LRCN 913-1143 pg 1091** and posited that for a Claimant to succeed against a Defendant, the Statement of Claim must layout the legal rights of the Claimant and the obligations of the Defendants.

He furtherreferred to **Rinco v. Veepee (2005) 125 LRCN 544-836 page 554 at 560.**

He argued that the 4<sup>th</sup> and 5<sup>th</sup> Defendants have not been indicted for any failure to fulfiltheir obligation, which failure had contributed to the injury suffered by the Claimants and for which the Claimants are seeking redress.

He contended that as the Writ of Summons disclosed no cause of action against the 4<sup>th</sup> and 5<sup>th</sup> Defendants, so the statement of facts in the claims did not give the 4<sup>th</sup> and 5<sup>th</sup> Defendants any case to answer or defend.

The learned Claimants’ counsel, AdetayoAdeyemo, Esq, in his own final written address, raised three issues for determination, namely;

1. Whether from the facts and circumstances of this matter and of the evidence adduced at the trial of this suit, the 1<sup>st</sup> Claimant did indeed dispose of the subject matter to the 3<sup>rd</sup> Defendant?
2. Whether the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants could have and/or made a valid sale of the subject matter to the 1<sup>st</sup> and 6<sup>th</sup> defendants?
3. Whether the 1<sup>st</sup> and 6<sup>th</sup> defendants have proven their entitlement to the grant of the counter-claim?

On issue one, learned counsel posited to the effect that the undisputed evidence before the Court established that the plot of land in issue was originally granted to one Sani Ahmed Moh'd, who later transferred the residue of his unexpired interest in the property to late Mr. David Zinkur Gambo vide an Irrevocable Power of Attorney. Also, that following the death intestate, of the said David Zinkur Gambo, the Claimants applied for and obtained letters of Administration in respect of his estate, wherein the subject matter of this suit was covered, thereby establishing that the Claimants are the Administrators of the Estate of the said late David Zinkur Gambo.

He argued that the Claimants have stoically maintained that the 1<sup>st</sup> Claimant did not dispose of the subject property to the 3<sup>rd</sup> Defendant, while on the contrary, the 1<sup>st</sup> and 6<sup>th</sup> defendants on the one hand and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the other hand, have maintained that the 1<sup>st</sup> Claimant had disposed of the property to the 3<sup>rd</sup> Defendant, whereupon they tendered Exhibits DW1D and DW1E as proof of their assertion.

He argued that it was consequent upon the assertion by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants at the Police Station, that the 1<sup>st</sup> Claimant executed a Power of Attorney and a Deed of Assignment in favour of the 3<sup>rd</sup> Defendant for consideration

that made the Claimants plead that the 1<sup>st</sup> Claimant executed neither a Power of Attorney nor a Deed of Assignment in favour of the 3<sup>rd</sup> Defendant.

He contended that the onus thus shifted to these Defendants to prove that the 1<sup>st</sup> Claimant executed the documents which they allege that she executed based on the principle that “ei qui affirmati non ei qui negati incumbit probatio”; which translates that the burden of proof lies on one who alleges and not on him who denies. He referred to **Arum v. Nwobodo (2004) 9 NWLR (Pt.878) 411** and **Jack v. Whyte (2001) SC 122.**

Learned counsel further posited that Section 93(1) of the Evidence Act, 2011 places the burden squarely on the Defendants alleging that the signature on Exhibits DW1E and DW1D belong to the 1<sup>st</sup> Claimant, to prove same. He submitted that the law, by virtue of Section 131(1) of the Evidence Act, 2011, is that he who asserts must prove.

He argued that in their attempt to prove that the 1<sup>st</sup> Claimant executed the said exhibits, the 1<sup>st</sup> and 6<sup>th</sup> Defendants as well as the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants pleaded the Police Investigation report and report of the forensic examination conducted on the signature purported to be the 1<sup>st</sup> Claimant's. He contended that the 1<sup>st</sup> and 6<sup>th</sup> Defendants, in an attempt to discharge the burden of proof on them, got the Court to subpoena the Police, in consequence of which the Police sent one Inspector Nmamah Francis, who deposed to a witness statement on oath on 5<sup>th</sup> October, 2020, which he adopted in Court the following day and tendered a plethora of documents ranging from Exhibits DW1A – DW1G.

He argued that the said subpoenaed witness failed to tender the Police Investigation Report and the much-vaunted Forensic Report which he said had been ready since 2016. Learned



counsel therefore, contended that this alone effectively buried the case of the 1<sup>st</sup> and 6<sup>th</sup> Defendants as well as that of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. That their cases ended with the absence of those documents in Court.

He further argued to the effect that contrary to the claims of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants that the Police investigation and forensic examination indicted the 1<sup>st</sup> Claimant, that the DW1 testified under cross examination that the result of the forensic examination was not divulged to any of the parties, and stated categorically that it would be unprofessional of him to have divulged the contents to any of the parties.

Placing reliance on **Arum v. Nwobodo (supra)** and **Jack v. Whyte (supra)**, he posited that the Claimants through no other person than the 1<sup>st</sup> Claimant herself having denied the signature on the documents relied on by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants, and the attempt of the said Defendants to prove that the 1<sup>st</sup> Claimant did indeed sign the said documents, having yielded no fruit; that the said Defendants must be held to have not proven their contention that the 1<sup>st</sup> Claimant executed Exhibits DW1D and DW1E (also DW1B and DW1A respectively) in their favour.

On the allegation that the 1<sup>st</sup> Claimant had been charged to Court, learned Claimants' counsel contended that the purported charge is a devious ingenuity by the Defendants to create the impression that the Police Investigation report indicted the 1<sup>st</sup> Claimant as having executed Exhibits DW1D and DW1E. He argued that the said charge, Exhibit DW1A, contains nothing to other than the 1<sup>st</sup> Claimant signed the exhibits, and therefore, fails woefully in convincing this Court that the 1<sup>st</sup> Claimant did indeed execute Exhibits DW1D and DW1E.

He posited that a criminal charge filed against a party who denies a signature, cannot take the place of hard evidence, such as a forensic report.

On how the authenticity of the hand writing/signatures may be proved, he referred the Court to Sections 68(1)(2) and 101(1) of the Evidence Act, 2011, and the cases of **Utong v. Utong (2014) All FWLR (Pt.746)447 at 463** and **C.G.C. (Nig) Ltd v. Ayouare (2016) NWLR (Pt.1504) 1 at 19.**

Learned counsel in this regard, he argued that the Deed of Assignment frontloaded by the Defendants is materially different from the one tendered in Court. That the one frontloaded has a certain FunmiAjao witnessing for the 1<sup>st</sup> Claimant while the one tendered has a certain Mr. Henry Uzoh witnessing for the 1<sup>st</sup> Claimant. Also, that in both documents the signatures purporting to be the 1<sup>st</sup> Claimant's are different, even from visual observation.

Furthermore, that in the Deed frontloaded, the 2<sup>nd</sup> Defendant, AmakaChristophineNnebo, witnessed the Agreement for the 3<sup>rd</sup> Defendant, whereas a certain Ralph ObinnaNnebo, witnessed for the 3<sup>rd</sup> Defendant in the one tendered before the Court. He further pointed out that the dates the Commissioner for Oath signed the documents are also different. He argued that it is only fraud that can give rise to two versions of the same document in respect of one transaction executed on the same day at the same time and between the same persons.

Arguing further, learned counsel contended that besides the issue of fraud is also the fact that the Defendants pleaded one thing and tendered another. That the Deed of Assignment pleaded and meant to be relied on by the Defendants is the one that has a certain FunmiAjao as the 1<sup>st</sup> Claimant's witness, but that the one they tendered has Mr. Henry Uzoh as her witness.

He posited that the evidence furnished is thus not in support of the Defendants' pleadings. He thus urged the Court to discountenance Exhibit DW1D (also DW3B). He argued that this scenario implies that the pleadings of the Defendants on the point, is not supported by evidence.

Placing reliance on **Ugbotor v. Ugbotor (20060LPELR-7612,** he submitted that the law is trite that pleadings not supported by evidence are to be deemed abandoned.

He urged the Court to not just discountenance the evidence adduced, but to deem all pleadings on the point as abandoned; with particular reference to paragraphs 14(ii), 15, 20 and 27 of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Statement of Defence and Counter-Claim as well as paragraphs 7,8,10,11,16,17,18,21,24 and 28(vi), (vii) of the 1<sup>st</sup> and 6<sup>th</sup> Defendants' Statement of Defence and paragraphs 3,7,10 and 11(i) of their Counter-Claim.

He posited that if the defence of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants fail, that of the 1<sup>st</sup> and 6<sup>th</sup> Defendants must fail too (since one's defence is dependent on the other's) and that their respective counter-claims will be of no moment automatically, as it is the law that one cannot put something on nothing and expect it to stand.

He contended that the above scenario effectively buries the cases of the Defendants.

The learned counsel highlighted various contradictions in the evidence of DW3 and posited that the entire evidence of DW3 are all tissues of lies.

In concluding his arguments on issue one, he argued that assuming but without conceding that the 1<sup>st</sup> Claimant disposed of the subject property as alleged; that she cannot validly dispose of the said property singly/unilaterally, independently of

the other Administrators, as the mere fact that one is an Administrator without more, does not confer automatic beneficial ownership on one.

He referred to **Eyiboh v. Mujaddadi (2013)LPELR-20187 (CA).**

Proffering arguments on issues two and three jointly, learned counsel posited on the principle of “nemo dat quod non habet”, that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants could not have validly sold what never belonged to them to the 1<sup>st</sup> and 6<sup>th</sup> Defendants. He argued that having established that neither the 1<sup>st</sup> Claimant nor the Claimants as Administrators of the estate of late David Zinkur Gambo sold the subject plot to the 3<sup>rd</sup> Defendant, and that the Defendants did/could not prove that the 1<sup>st</sup> Claimant executed any documents in their favour; that the purported sale to the 1<sup>st</sup> and 6<sup>th</sup> Defendants is therefore, void ab initio.

Furthermore, learned counsel argued that assuming but without conceding that the property actually belonged to the 3<sup>rd</sup> Defendant, that the 2<sup>nd</sup> Defendant having no nexus to the 3<sup>rd</sup> Defendant, lacked the capacity to dispose of the property as she did.

He posited that her action was null and void ab initio. He referred to **Georgewill v. Ekine (1998)8 NWLR (Pt.562)454 at 466.**

He argued that from Exhibit DW3C, the 2<sup>nd</sup> Defendant was not a Director of the 3<sup>rd</sup> Defendant, the 3<sup>rd</sup> Defendant having only two Directors, namely late Edwin Nnebo and Linus Nnebo, and that at the time of the purported sale, one of the Directors, Edwin Nnebo, was dead.

He contended that the purported sale by the company was with the lone/only living Director, Linus Nnebo contrary to Section 24 6(2) of the Companies and Allied Matters Act, 2004.

Learned counsel further contended that the Deed of Assignment, Exhibit DW1E, with which the 3<sup>rd</sup> Defendant purportedly conveyed interest in the land to the 6<sup>th</sup> Defendant, is tainted with fraud, as the said Deed date 28<sup>th</sup> day of August, 2009, referenced in its Schedule, the Certificate of Occupancy dated 17<sup>th</sup> day of October, 2015. He argued that this shows that the documents were made, not in 2009, but after matter had gone to the Police in 2016.

He posited that if the Deed is tainted with/by fraud, then the purported Power of Attorney (Exhibit DW1E) too cannot be exempt, as both were made on the same date, at the same time by the same persons and in the same transaction.

Lastly, he contended that not even the 1<sup>st</sup> and 6<sup>th</sup> Defendants acted bona fide in their purchase of the land as there is no record that they conducted a search at AGIS before purchasing the subject property; which runs against the principle of Caveat Emptor and of common sense.

He referred to **Ageh v. Tortya (2003)6 NWLR (Pt.816) 385 at 396.**

On the Counter Claims of the 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants, learned Claimants' counsel posited that the same is confusing as it is contradictory. That the import of the counter claims is that both sets of parties are still laying claim to ownership of the subject property whilst at the same time claiming that the 3<sup>rd</sup> Defendant had disposed of same to the 6<sup>th</sup> Defendant.

He urged the Court to discountenance the Counter-Claims of both sets of Defendants, to wit; the 1<sup>st</sup> and 6<sup>th</sup> Defendants on

the one hand, and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the other hand; and indeed, their entire cases, and to enter judgment in favour of the Claimants.

The Claimants in this suit have claimed for declaratory reliefs, order of injunction and general damages. A declaratory relief is one that seeks the pronouncement of the Court as to the status of a named matter, thing or situation. See **Nwagu v. Fadipe (2012) LPELR-7966(CA)**.

Given the discretionary nature of the grant of declaratory reliefs, the Court will not readily, without good and sufficient evidence, exercise its discretion to grant a declaratory order. See **Ndu v. Umudike Properties Ltd (2008) 10 NWLR (Pt. 1094) 24 at 29; Nzurike v. Obioha & Anor (2011) LPELR-4661(CA)**.

In this regard, the Supreme Court, per Karibe-Whyte, JSC, held in the case of **Chukwuma v. SPDC (Nigeria) Ltd (1993) LPELR-864(SC)**, that:

***“It is an elementary but fundamental requirement of a declaratory relief to satisfy the Court that he is entitled in law, to the relief claim.”***

The question therefore, that calls for consideration in the determination of the Claimants' suit, is **whether the Claimants have established their claims as to be entitled to the reliefs sought?**

The first relief sought by the Claimants is a declaration of title to land. The onus is therefore on the Claimants to satisfy this Court by credible evidence, that they are entitled to the relief claimed, and they are bound to succeed on the strength on their own case, except where the evidence of the Defendants support their case.

Thus in **Anukam v. Anukam (2008)LPELR-500(SC)** the Supreme Court, per Tabai, JSC held that;

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

To prove title to land, one of the five recognised ways as enunciated by the Supreme Court in the case of **D.O. Idundun&Ors v. Daniel Okumagba&Ors (1976) 9-10 SC 227 at 246-250.** is by production of a document of grant or title.

The Claimants in this case representing the administrators of the estate of late David Zinkur Gambo in proving their entitlement to title to the land in dispute, have relied on production of documents of grant. The Claimants tendered Exhibits are PW1A, PW1B, PW1C and PW1J, which are Offer of Terms of Grant, Irrevocable Power of Attorney, Certificate of Occupancy and Letters of Administration respectively.

It is trite law that mere production of even a valid document of title or grant, does not ipso facto carry with it automatic relief for grant of declaration relating to such grant. Such production carries without the need for the Court to enquire into a number of questions, to wit;

1. Whether the document is genuine and valid?
2. Whether it has been duly executed, stamped and registered?
3. Whether the grantor had the authority and capacity to make the grant?

4. Whether in fact the grantor had what he purported to grant; and
5. Whether it has the effect claimed by the holder of the instrument?

See **Akinduro v. Akaya (2007) All FWLR (Pt.38)1665-1666.**

In a claim for declaration of title to land, the onus is always on the Claimant to satisfy the Court that based on the evidence that he is entitled to declaration that he has better title therefore the Claimant must rely on the strength of his case and not on the weakness of the Defendant's case **Itaumav. Akpe-lme (2001)7 SC;Sodeinde v. Adeniji se Digest of Supreme Court cases 1956-84 vol 9, p.212.**

The land in question is situate at Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja, and by a combined effect of Section 297(2); 302 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 18 of the Federal Capital Territory Act, only the Minister of the Federal Capital Territory, acting under the delegated authority of the President of the Federal Republic of Nigeria, can exercise power over the land to allocate same to a citizen.

An examination of the documents of title relied upon by the Claimant, particularly Exhibits PW1A and PW1C, clearly reveals that same emanated from the Minister of the Federal Capital Territory who has the constitutional powers to allocate lands in the Federal Capital Territory.

The genuineness and validity of the documents are not in doubt as the certification stamps on same show that they emanated from the Land Registry of the Federal Capital Territory. What is more? The 4<sup>th</sup> and 5<sup>th</sup> Defendants, in this suit, namely, the Honourable Minister of the Federal Capital Territory and the



Federal Capital Development Authority, in their evidence before the Court, tendered documents from their custody relating to the land in issue, to wit; Exhibits DW4A, DW4B and DW4C, which are copies of Exhibits PW1A, PW1B and PW1C respectively.

Also the DW4 representing the 4<sup>th</sup> and 5<sup>th</sup> Defendants testified to the effect that the land currently belongs to late David ZinkurGambo, which is in line with the claim of the Claimants.

See Particularly the Certificate of Occupancy, Exhibit PW1C (also DW4C). The evidence of 4<sup>th</sup> and 5<sup>th</sup> Defendants' witness still maintained that the grantor of the Certificate of Occupancy is the Honourable Minister Federal Capital Territory who allocated the said plot to late David ZinkurGambo.

By virtue of Exhibit PW1J, Letters Administration, the Claimants constituted the Administrators of the Estate of the late David ZinkurGambo upon his demise they legally stepped into the shoes of the demised David ZinkurGambo as the allottees. Invariably, the plot of land in issue, was duly listed in Exhibit PW1J, as one of the properties belonging to the Estate of David ZinkurGambo (deceased). This piece of documentary evidence was not contradicted by the Defendants which evidence lends support to the proof of relief (a) of the Claimants' claim. It is no longer in doubt that the principles set out in **Akinduro v. Akaya (supra)** have been established.

Reliefs (b)-(e) deal with Power of Attorney and Deed of Assignment purportedly executed by the 1<sup>st</sup> Claimant in favour of the 3<sup>rd</sup> Defendant.

It is the case of the Claimants that when they discovered the presence of the 1<sup>st</sup> and 6<sup>th</sup> Defendants on the land in dispute, they made attempts to resolve the issues that brought the

1<sup>st</sup> and 6<sup>th</sup> Defendants to the land. That led to Police involvement in the case. That at the Police Station, the 1<sup>st</sup> Claimant was confronted with the Power of Attorney, Exhibit DW1E and Deed of Assignment, Exhibit DW1D, by which she was alleged to have transferred interest in the disputed land to the 3<sup>rd</sup> Defendant.

The 1<sup>st</sup> Claimant vigorously denied executing the said documents. It is an elementary principle of law that the burden of proof lies on he who asserts the positive of a fact. In **Access Bank PLC v. trilo Nigeria Company Ltd & Ors (2013) LPELR-22945(CA)**, the Court of Appeal, per Orji-Abadua, JCA, held thus;

***“By the provisions of the Evidence Act, the burden of proof as to any particular fact, lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person... The law is, he who asserts must prove.”***

The Evidence Act, 2011 in Section 131(1) provides thus:

***“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?”***

As it relates to the instant case; contrary to the contention of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants, it is not the duty of the 1<sup>st</sup> Claimant who denies executing the documents, to prove that she did not execute the said documents. The duty to prove that she executed the documents lies squarely on the Defendants who are asserting that she did execute the documents.

In the case of **Utong&Ors v. Utong&Ors (2013)LPELR-2020 (CA)**, which both the Claimants and the Defendants referred this Court to; the Court of Appeal, per Tur, J.C.A. made it expressly clear that:

***“The law is well settled that where a witness denies signing a document, the onus is on the party asserting, to prove otherwise.”***

The 1<sup>st</sup> Claimant as PW1, unequivocally denied signing Exhibits DW1D and DW1E, the Deed of Assignment and Power of Attorney being relied on by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants. The position of the law is that the onus to prove that the said witness signed the documents, rests on the Defendants who are asserting that she signed them.

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants who are asserting that the PW1 signed the Power of Attorney and Deed of Assignment in favour of the 3<sup>rd</sup> Defendant, failed to present any shred of evidence to prove their assertion. They did not even as much as confront the PW1 with the said document under cross examination, neither did they ask her any question regarding the execution of the documents. The Defendants whose duty it is to prove that the PW1 executed Exhibits DW1D and DW1E (also DW3B and DW3A respectively), thus failed to discharge that duty. In the circumstances therefore, this Court is bound to believe and accept the testimony of the Claimants that the PW1 did not execute the said Exhibits.

In the absence of any evidence adduced by the Defendants who are asserting that the PW1 executed Exhibits DW1D and DW1E, to prove their assertion, this Court finds as a fact that the 1<sup>st</sup> Claimant, the PW1, did not execute the said documents, and I so hold.

The resultant effect is that the interest purportedly acquired by the 3<sup>rd</sup> Defendant over the property in dispute pursuant to the Deed of Assignment and Power of Attorney purportedly executed by the 1<sup>st</sup> Claimant, is invalid, null and void.

A fortiori, the purported sale of the property by the 3<sup>rd</sup> Defendant to the 6<sup>th</sup> Defendant is null and void as it is the trite position of the law that one cannot give what he does not have.

Having no valid title to the land therefore, whatever purported acts of possession or ownership exercised over the land by the Defendants, constitute acts of trespass.

In **Fagunwa & Anor v. Adibe & Ors (2004) LPELR-1229(SC)**, the Supreme Court, per Tobi, JSC held that;

***“Trespass to land in law constitutes the slightest disturbance to the possession of land by a person who cannot show a better right to possession.”***

The presence of the 1<sup>st</sup> and 6<sup>th</sup> Defendants on the disputed plot therefore constitutes an act of trespass, the said Defendants having not shown a better right to possession.

From the totality of the foregoing therefore, the Claimants' case succeeds and this Court enters judgment for the Claimants as follows:

- a. This Court declares the Estate of the late Mr. David Zinkur Gambo the lawful and beneficial owner of Plot No. 252, Cadastral Zone B10, Daki Biyu District, Abuja with File Number, PL10365.
- b. It is declared that the Power of Attorney and Deed of Conveyance purportedly executed by the 1<sup>st</sup> Claimant, Ayodeji Halimat Sadiya Zinkur, transferring interest in Plot No. 252, Cadastral Zone B10, Daki Biyu District, Abuja,

with File Number PL10365 in favour of the 3<sup>rd</sup> Defendant and/or anyone acting through it, is invalid, null and void, same having not been executed by her or any of the other Administrators of the Estate of the later David ZinkurGambo.

- c. It is declared that the purported interest acquired by the 3<sup>rd</sup> Defendant pursuant to the purportedly executed Deed of Assignment and Power of Attorney by the 1<sup>st</sup> Claimant, Ayodeji Halimat Sadiya Zinkur, in respect of Plot No. 252, Cadastral Zone B10, Daki Biyu District, Abuja, with File Number PL10365 in Abuja, is invalid, null and void and of no effect whatsoever, same having not been executed by her or any of the other Administrators of the Estate of the late David Zinkur Gambo.
- d. It is declared that the purported interest acquired by the 6<sup>th</sup> Defendant pursuant to the purported purchase of Plot No. 252, Cadastral Zone B10, Daki Biyu District, Abuja, with File Number PL10365 in Abuja, from the 3<sup>rd</sup> Defendant acting through the 3<sup>rd</sup> Defendant, acting through the 3<sup>rd</sup> Defendant, is invalid, null and void and of no effect whatsoever.
- e. It is declared that the 6<sup>th</sup> Defendant acting through the 1<sup>st</sup> Defendant in depositing blocks and other building materials preparatory to constructing a structure on Plot No. 252, Cadastral Zone B10, Daki Biyu District, Abuja, with File Number PL10365 in Abuja, is an act of trespass.
- f. The Court makes an order of perpetual injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants, either by themselves, servants, agents, privies or through any person or persons howsoever, described, from trespassing on, or further trespassing on, encroaching on or further encroaching on, remaining on, occupying, selling, renting, leasing or allocating the property lying and

being at Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja, with File Number PL10365.

- g. The sum of N1,000,000.00 (One Million Naira) is awarded against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants as general damages in favour of the Claimants.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants counter-claimed against the Claimants basically, for a declaration that the plot in dispute was rightly purchased by the 3<sup>rd</sup> Defendant, Edwin Nnebo Nig. Ltd, from the Claimants, an order of injunction and damages. The question for consideration is **whether the Counter-Claimants have proved their claims as to be entitled to the reliefs sought?**

In **Paul Cardoso v. John Bankola Daniel &Ors (1986) LPELR-830(SC)**, the Supreme Court, per Karibi-Whyte, JSC held that;

***“It is well settled principle of the administration of justice that a party who sets out to assert the existence of a claim, bears the burden of establishing the claim, and must fail if he does not succeed in establishing what he has undertaken to do.”***

The onus is therefore, on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Counter-Claimants who are asserting that the Claimants/Defendants-to-Counter-Claim sold the land to them, to establish by credible evidence, the existence of such sales transaction.

In an attempt to discharge this onus on them, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Counter-Claimants tendered and relied on Exhibits DW3A and DW3B, a Power of Attorney and Deed of Assignment respectively, purportedly executed in their favour by the 1<sup>st</sup> Claimant, by which she allegedly transferred interest in the disputed property to them.

The 1<sup>st</sup> Claimant/Defendant-to-Counter-Claim denied executing the said documents, and as was held by this Court in the main suit, the Defendants failed to lead any evidence to prove that she indeed executed the documents.

As was contended by the learned Claimant's counsel, even the purported conveyance documents being relied on by the Defendants, appear to be tainted by fraud.

The Defendants had maintained that in the course of the Police investigation into the matter, they submitted the purported Deed of Assignment and Power of Attorney to the Police. In paragraph 27 of their statement of defence, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that the 1<sup>st</sup> Claimant executed both the Power of Attorney and Deed of Assignment in favour of the 3<sup>rd</sup> Defendant in the presence her witness – **Funmi Ajao and Ikechukwu Nwaorah, Esq.,**

First, none of the documents has Ikechukwu Nwaorah, Esq, as witness. Instead, the said Ikechukwu Nwaorah, Esq, gave evidence before the Court as DW3 in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and in his evidence in Chief, he told the Court that at the time material to this suit, he was the Legal Adviser and Consultant to the 3<sup>rd</sup> Defendant, and not to the 1<sup>st</sup> Claimant.

Going through the Deed of Assignment, Exhibit DW3A and DW1D this Court observed a marked difference between DW1D which is a CTC of DW3A tendered by defence witness. The DW1D being a CTC of DW3A should be exactly same document.

Whereas Exhibit DW3A has Funmi Ajao as the witness for the 1<sup>st</sup> Claimant, Exhibit DW1D, has entirely a different person, in the name of Mr. Henry Uzoh, as witness for the 1<sup>st</sup> Claimant in the same document. This Court further observed that the

3<sup>rd</sup> Defendant's witnesses to the document are also different in the two Exhibits (DW3A and DW1D) and so are the Commissioners for Oath who attested to the said documents. It is also observed that the dates appended to the DW3A and DW1D by the Commissioner for Oath appear different. These are supposedly the same document, executed the same day by the same parties!

Clearly this shows that the document submitted to the Police by the Defendants as the documents they allegedly used in acquiring title to the land, is different from the document the same Defendants are using to assert right over the same land before this Court.

The Court further observed that DW1E Power of Attorney and DW3D, Deed of Assignment purportedly executed on 2<sup>nd</sup> April, 2008 between 1<sup>st</sup> Claimant and 3<sup>rd</sup> Defendant on one part bear same revenue collector's receipt serial number Z008084048. On the other part DW2D made between the 3<sup>rd</sup> Defendant and 6<sup>th</sup> Defendant executed on 28<sup>th</sup> August, 2009 still bears the same revenue collectors serial number of Z008084048. Court observed that the stamp receipt of the Commissioner for Oath in all the documents had same date 8<sup>th</sup> February, 2010, same receipt number and same payment of N200= . This goes to suggest elements of fraud as contended by the Claimants.

Furthermore, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in paragraph 23 of their statement of defence, alleged that the investigations of the Police confirmed that the 1<sup>st</sup> Claimants actually sold the land to them, and to prove this allegation, they pleaded the Police report. But they neither frontloaded the alleged Police report nor tendered same in evidence. They are therefore caught by the law of withholding evidence for the simple reason that it would have been unfavourable to them. Even the purported



charge which they pleaded in the same paragraph and which was tendered by the DW1 – exhibit DW1A, says nothing about the 1<sup>st</sup> Claimant selling the property to the 3<sup>rd</sup> Defendant.

Another factor which the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Counter-Claimants relied upon in their bid to prove that the 1<sup>st</sup> Claimant sold the property in issue to them is the fact that the details of the Claimants' Letters of Administration were quoted in the Power of Attorney and the Deed of Assignment. In this regard, the DW3 testified that he went to the 1<sup>st</sup> Claimant's house where he sat in her sitting room and was properly briefed to prepare the said documents.

This assertion by the DW3, to my mind, is highly implausible. The DW3 was not the lawyer to the 1<sup>st</sup> Claimant, but rather the Legal Adviser and Consultant to the 3<sup>rd</sup> Defendant, and as such could not have been briefed by the 1<sup>st</sup> Claimant. Again, it is a notorious fact that it is a purchaser of a property who briefs a lawyer to prepare documents that will protect and save guard his interest and not the seller of the property.

I do not believe the testimony of the DW3, even for a single bit. Even from his demeanour in the course of his evidence before this Court, it was clear to me that the DW3 was not a witness of truth and his evidence is unbelievable.

Therefore, the fact that the details of the Letters of Administration were mentioned in the purported Power of Attorney and Deed of Assignment, is not a conclusive proof that the 1<sup>st</sup> Claimant who has custody of the Letters of Administration, availed the DW3 of the said document.

Also, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants contention was that the fact that the original Recertification and Re-issuance of Certificate of Occupancy Acknowledgment DW1F is in their possession, is

evidence that the Claimants sold the land to them. Meanwhile the said Recertification and Re-issuance of Certificate of Occupancy Acknowledgment is still in the name of the original allottee who sold to late David ZinkurGambo

The Claimants on their part, asserted that they had at a point realized that the said document was missing and believing that they lost the document in the course of relocating, the 1<sup>st</sup> Claimant had deposed to affidavit of loss of the document on 30<sup>th</sup> December, 2015 – Exhibit PW1H and made newspaper publications in respect of same – Exhibits PW1D and PW1E. It was evidence of 1<sup>st</sup> Claimant that the said DW1F was mistakenly given to Edwin Nnebo in the course of another land transaction in Kuje. Edwin Nnebo is Director with the 3<sup>rd</sup> Defendant. In analysing the evidence of the Claimants in respect of PW1D and PW1E, newspaper publications for the loss Exh DW1F tendered by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Clearly the purpose of publication of a lost item is to inform the public who might have come across it to return same to the owner. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are assumed to be aware of this publication in a national newspaper but they never reacted to the publication by informing the Claimant that it was in their possession. The inference drawn from an act of withholding the document which is lost means the person withholding it meant to use it for a purpose. The Claimant have taken all legal steps to show that the document was lost and ensure that they recover them, I therefore believe the Claimants evidence as against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, in paragraph 20 of their Statement of Defence denied knowledge of any transaction affecting the sale of two plots of land in Kuje.

To buttress the evidence of 1<sup>st</sup> Claimant, shetendered in evidence Exhibit DW3F, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants earlier statement of defence wherein, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants admitted in paragraph 6 thereof, the said transaction of sale of land at Kujeduring which some original land documents were handed over to the late Edwin Nnebo by the 1<sup>st</sup> Claimant.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have made strenuous efforts in this case to conceal the truth in this matter, but it is a truism, the truth, being the mother of justice, will always appear at the end of the race. Therefore, through the web of lies weaved by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, ably aided by the DW3, with the sole aim of divesting the Claimants of their interest in the property in issue, this Court can clearly see where the truth lies, and from the totality of the foregoing, this Court finds that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Counter-Claimants have failed to prove their counter-claim. I believe the evidence of the Claimants.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Counter-Claimants' counter-claim therefore fails in its entirety, and is accordingly dismissed.

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**HON. JUSTICE A. O. OTALUKA.**

Now to the 1<sup>st</sup> and 6<sup>th</sup> Defendants' counter-claim.

The 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants have sought for declaratory reliefs, order of injunction and damages for trespass. The Counter-Claimants therefore, have the duty to satisfy the Court through credible evidence, that they are entitled to the reliefs claimed. See **Chukwuma v. SPDC (Nigeria) Ltd (supra)**.

The question therefore, is **whether the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants have discharged the onus**

**of proof on them as to be entitled to their claims?** The 1<sup>st</sup> and 6<sup>th</sup> Defendants' counter-claim is the contention that Plot No. 252, Cadastral Zone B10, DakiBiyu District, Abuja, FCT, belong to them by reason of a purported sale of same to them by the 3<sup>rd</sup> Defendant through the 2<sup>nd</sup> Defendant.

The said Counter-Claimants therefore have the onus, not only to lead evidence tracing their title to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, but also to establish by credible evidence, the root of title of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

The Supreme Court made this abundantly clear in the case of **Oluhunde&Anor v. Adeyoju (2000)LPELR-2586(SC)**, where the Court, per Uwaifo, JSC, held that:

***“The law is clear that it is not enough for a Plaintiff seeking declaration of title to land to lead evidence to trace his title to a particular person. He must go beyond that to establish by credible evidence, the root of that persons’ title, otherwise, title will not be declared in his.”***

The 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants asserted that the 3<sup>rd</sup> Defendant derived its title to the land through an outright sale of same to it by the 1<sup>st</sup> Claimant, which assertion the Claimants vehemently denied and the Court has found for the Claimants against the 3<sup>rd</sup> Defendant.

Rather than leading evidence as required by the law, to prove that the Claimants indeed sold the said plot of land to the 3<sup>rd</sup> Defendant, the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants invited this Court to hold that the Claimants failed to prove that the 1<sup>st</sup> Claimant did not sell the land to the 3<sup>rd</sup> Defendant. That amounts to standing the law on its head.

It is not the duty of the person who denies an assertion to prove the nonexistence of the fact which he denies. Rather, the law is well settled that the duty is on the person who asserts the existence of a fact to adduce evidence to prove the fact which he asserts. See Section 131(1) of the Evidence Act, 2011; **Access Bank PLC v. Trilo Nigeria Company Ltd &Ors (supra); Pal Cardoso v. John Bankola Daniel &Ors (supra).**

In an attempt to prove that the 1<sup>st</sup> Claimant executed the Power of Attorney and the Deed of Assignment which purportedly transferred interest in the property to the 3<sup>rd</sup> Defendant, the 1<sup>st</sup> and 6<sup>th</sup> Defendants pleaded and relied on Police investigation report and result of forensic examination into the signatures on the documents, which they alleged to have conclusively proven that the said documents were indeed executed by the 1<sup>st</sup> Claimant. However, no expert evidence was led to establish the claim on the forensic examination into the signatures on the document.

The 1<sup>st</sup> and 6<sup>th</sup> Defendants proceeded to subpoena the Police IPO who led the investigation of the matter to come and testify on their behalf.

In his witness statement on oath, in paragraph 13 thereof, the IPO Nmomah Francis (DW1) averred that the 1<sup>st</sup> and 6<sup>th</sup> Defendants applied to the Nigeria Police for the Certified True Copies of the land related documents gotten from the parties during investigation of which he was subpoenaed to tender in Court.

The said documents were tendered by the DW1 as Exhibits DW1A – DW1G which were land related documents submitted to the Police during the interrogation of the parties with the exclusion of Police investigation report and forensic

examination result heavily relied upon by the 1<sup>st</sup> and 6<sup>th</sup> Defendants.

The DW1 (IPO) was also silent on the outcome of their investigation and the forensic examination conducted on the purported 1<sup>st</sup> Claimant's signature on the documents.

In paragraph 10 of his Witness Statement on Oath, the DW1 stated thus:

***“10. That at the conclusion of my investigations by interviews, examination of documents, forensic reports, physical inspections of the property in question, etc, the following facts were established:***

***i. That the 1<sup>st</sup> Claimant's husband, Mr. David Gambo (deceased), submitted the original offer letter of the plot otherwise known as Right of Occupancy to the Ministry of the Federal Capital Territory for recertification which is with the Ministry till date.***

***ii. That the original documents including Power of Attorney regarding the said plot was presented by the 1<sup>st</sup> Defendant on behalf of the 6<sup>th</sup> Defendant, with a claim that the 1<sup>st</sup> Claimant had sold the plot to the 3<sup>rd</sup> Defendant, which the 1<sup>st</sup> Claimant denied; hence the forensic investigation.***

***iii. That we obtained the 1<sup>st</sup> Claimant's signatures from her account opening and other documents with the 1<sup>st</sup> Claimant's bankers and her signatures at the land Registry, Abuja. The Forensic Report is with the Nigeria Police.***

***iv. That Edwin Nnebo Nigeria Limited later sold the property to SOSO FURNISHING NIGERIA LTD whose managing director is Mr. Ifeanyi Ujah. That the buyer has been in possession for years.”***

I have carefully and deliberately reproduced the findings of the Police from their investigation according to DW1. He specifically stated that the 1<sup>st</sup> Claimant denied selling the plot in issue to the 3<sup>rd</sup> Defendant, but he was silent on whether or not the forensic examination on the signature of the 1<sup>st</sup> Claimant revealed that the 1<sup>st</sup> Claimant indeed sold the plot as alleged.

When asked under cross examination, whether the Police divulged their report to any of the parties, the DW1 answered in the negative and stated that it would be unprofessional for the Police to do so.

**The question then, is how did the 1<sup>st</sup> and 6<sup>th</sup> Defendants come about the knowledge that the Police investigation report and forensic examination result indicted the 1<sup>st</sup> Claimant of having signed the Power of Attorney and a Deed of Assignment in favour of the 3<sup>rd</sup> Defendant? Again, why did the 1<sup>st</sup> and 6<sup>th</sup> Defendants tender all other documents relating to the Police investigation into the purported transaction, but carefully kept away the Police investigation report and forensic examination result from the Court?**

The natural inference that can be drawn from the failure of the 1<sup>st</sup> and 6<sup>th</sup> Defendants to include the said documents among the documents they subpoenaed the Police to tender, is that the contents of the said reports would be unfavourable to their case.

Thus, like the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Counter-Claimants, the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants are also caught in the web and the law of withholding evidence.

By virtue of Section 167(d) of the Evidence Act, 2011, this Court presumes that the Police investigation report and forensic

examination result pleaded by the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants in paragraph 8 of their counter-claim, would have been unfavourable to the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants if produced before this Court, hence their decision to withhold same.

The 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants have not placed anything before this Court to prove that the 3<sup>rd</sup> Defendant had the title which it purportedly conveyed to them.

The 3<sup>rd</sup> Defendant cannot convey a title which it never had to the 1<sup>st</sup> and 6<sup>th</sup> Defendants. In **AbiodunAdelaja v. OlatundeFanoiki&Anor (1990) LPELR-110 (SC)**, the Supreme Court, per Karibi-Whyte, JSC, held that:

***“It is well settled that a person can only convey to another that which he has. Nemo dat quod non habet.”***

Since the 1<sup>st</sup> and 6<sup>th</sup> Defendants failed to establish their root of title, and purportedly, in the circumstance in which this Court has already made a finding in this judgment, that the 3<sup>rd</sup> Defendant has no title to the land in dispute, any purported sale of the land to the 1<sup>st</sup> and 6<sup>th</sup> Defendants by the 3<sup>rd</sup> Defendant, is ineffective. It is invalid, null and void, on the basis of the well settled maxim that nemo dat quod non habet.

In the circumstances therefore, whatever steps the 1<sup>st</sup> and 6<sup>th</sup> Defendants had taken in respect of the land in issue, they did that at their own risk. If any party has put up any structure on the land, then the principle of quicquid plantatur solo, solo cedit, applies.

See **Ezekiel v. Azejeji (2008) LPELR-4476(CA)**.

The 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants having failed to prove their principal claim, which relates to a declaration of title



to the land in issue, all other claims which are contingent to the principal claim invariably fail, as it is trite that one cannot put something on nothing and expect it to stand. Such a thing will naturally fall, and that like a pack of cards.

It is therefore, my finding that the 1<sup>st</sup> and 6<sup>th</sup> Defendants/Counter-Claimants have failed to establish their counter-claim. Accordingly, the same fails and is hereby dismissed.

**HON. JUSTICE A. O. OTALUKA**  
**8/3/2022.**