

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 11TH DAY OF JANUARY, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/1014/17

BETWEEN:

**HAJIYA MARYAM MOHAMMED UMAR:.....CLAIMANT/DEFENDANT
TO COUNTER CLAIM.**

AND

- 1. ECONOMIC AND FINANCIAL
CRIMES COMMISSION.**
- 2. MRSPHILOMENA**
- 3. MR FELIX AGBO**
- 4. INSPECTOR-GENERAL OF POLICE**

:.....DEFENDANTS

5. RANTI ANIFOWOSE:.....DEFENDANT/COUNTER CLAIMANT

6. S&M ESSENTIAL UNITS & COMPANY:..DEFENDANT/COUNTER CLAIMANT

7. USMAN MUHAMMAD:...DEFENDANT/DEFENDANT TO COUNTER CLAIM

8. FEMI SHOLA

9. MR. GENGA

10. IBRAHIM LAW

:.....DEFENDANTS

Musa J. Haruna for the 5th Defendant/Counter-Claimant with Patrick Ojagbon and Ezekiel Agboola.

Sera Avre for the 6th Defendant/Counter-Claimant.

1st, 2nd, 3rd, 4th, 7th-10th Defendants absent and not represented.

JUDGMENT.

By a Writ of Summons dated and filed the 23rd February, 2021, the Claimant brought this action against the Defendants praying for the following:

1. A declaration that from the sum total of facts in this case as it relates to the Claimant, there is no criminal connotation ascribable to the Claimant particularly within the entire provisions of the Economic and Financial Crimes Commission Act, 2004, as to entitle and or confer on the Economic and Financial Crimes Commission through any of her agents, staff, assigns, privies, however termed, including but not limited to the 2nd and 3rd Defendants) the powers and or jurisdiction to adjudicate upon or in any manner whatsoever entertain and or deal with the facts of this case.
2. A declaration that from the sum total of facts of this case as it relates to the Claimant, it is a civil action that is disclosed rather than a criminal action as to entitle the 1st and 4th Defendants (whether by their agents, staff, assigns, privies, officers, men or howsoever termed) the legal ability, powers and or jurisdiction to adjudicate upon or in any manner whatsoever entertain let alone decide on the said facts bothering on the transaction of sale of Plot – No. 13, Cadastral Zone C04, Dape, Abuja, belonging to the 6th Defendant.
3. A declaration that the 1st and 4th Defendants (whether by their agents, staff, assigns, privies, officers, men or howsoever termed) are precluded from taking any further steps whatsoever in relation to the facts of this case, whether under the guise of investigation, continuous investigation, reportage to the Claimant's employer whatsoever and or arraignment of the Claimant.
4. An Order of his honourable court perpetually restraining the 1st Defendant, whether through her agents, privies, staff, howsoever termed, including but not limited to the 2nd and 3rd Defendants, from further dealing with any and or in any manner whatsoever entertaining the facts of this

case as it relates to the Claimant, as same are roundly civil, in that they relate to land sale and purchase, and bear no criminal connotation.

5. A declaration that in the circumstances of this case, it is only just for the 7th, 8th, 9th and 10th Defendants to be under obligation to refund the respective sums of N11,000,000.00 (Eleven Million Naira), N1,000,000.00 (One Million Naira), N1,000,000.00 (One Million Naira), and N500,000.00 (Five Hundred Thousand Naira) which were benefited by them in that order, for onward remittance to the 5th Defendant being the purchase price (less N500,000.00 given the Claimant by the 7th Defendant as his kind gesture towards her, for her contribution at getting a buyer for the Plot in issue) she had earlier paid for the Plot of land in issue, in view of failure of consideration.
6. A declaration that the decision of the 1st Defendant via her staffers, the 2nd and 3rd Defendants herein, that the Claimant shall refund the sum of N5,000,000.00 (Five Million Naira) while the 6th and 7th Defendants respectively refund and pay to the 5th Defendant the sum of N4,000,000.00 (Four Million Naira) and N5,000,000.00 (Five Million Naira) is extra judicial, arbitrary, ultra vires the powers of the 1st Defendant, and to that extent, null and void.
7. General damages in the sum of N50,000,000.00 (Fifty Million Naira) against the 1st, 2nd, 3rd and 5th Defendants jointly and severally, for the trauma occasioned the Claimant arising from the serial arrests and detention of the Claimant by the 1st, 2nd and 3rd Defendants, at the prompting of the 5th Defendant.
8. And any such consequential order(s) this honourable court may deem fit to make in the circumstance of this case.

A brief summary of the Claimant's case is that the 7th Defendant, with written authorisation of the 6th Defendant, got her to market a Plot of land belonging to the 6th Defendant sometime in the month of January, 2011. She stated that when she could not get a buyer, the 8th and 9th Defendants got the 5th Defendant to buy the land, which they, with the permission of the 7th Defendant marketed at N14m over the purchase price of N11m. That because the 10th Defendant whom the 7th Defendant appointed to receive the money on his behalf, complained that he had no valid means of identification with which to cash the cheque through which the 5th Defendant was to pay for the land, she (the Claimant) made available her account into which the cheque was paid.

The claimant averred that the 8th and 9th Defendants took N1m each out of the N14m, while the N11m purchase price was given to the 10th Defendant on behalf of the 7th Defendant, and she herself and the 10th Defendant were both given N500,000.00 each by the 7th Defendant as his kind gesture in respect of the sale.

She stated that after the transaction in January, 2011, she was arrested and detained by the men of the Special Anti-Robbery Squad of the Nigerian police in October, 2016 on the prompting of the 5th Defendant.

That when it became clear that the Special Anti-Robbery Squad had no right to deal on land-related matters, she was released on administrative bail.

She averred that the Chief Executive Officer of the 6th Defendant later convened a meeting of the 5th, 7th, 8th and 9th Defendants in a bid to resolve the impasse, as she resolved to refund the 5th Defendant the entire purchase price so that the

6th Defendant could get back her Letter of Offer of Statutory Right of occupancy over the land in issue.

That when the 6th Defendant's Chief Executive Officer was not forthcoming with her pledge to refund the purchase price, the 5th Defendant resorted to the 1st Defendant, who through the instrumentality of the 2nd and 3rd Defendants, arrested and severally detained the Claimant. That the 1st Defendant, through the instrumentality of the 2nd, 3rd and 5th Defendants, has insisted on the Claimant refunding the sum of N5m and the 7th Defendant, another N5m, to the 5th Defendant, with the 6th Defendant volunteering to pay N4m to make up the total sum of N14m.

The Claimant thus instituted this action because, according to her; the 5th Defendant has always asked her to quickly refund her the sum of N5m, failing which she (the 5th Defendant) will stop at nothing to ensure that the Claimant is prosecuted either by the 1st and 4th Defendant, rightly or wrongly, and jailed and loses her job.

The Claimant opened her case on the 25th day of March, 2019. She gave evidence in chief and was cross examined by the 1st – 3rd Defendants' counsel. Thereafter, the case was adjourned to 22nd day of May, 2019 for continuation of cross examination.

On the said 22nd May, 2019, the PW1 was absent in Court for her cross examination. The Claimant's counsel applied for adjournment, stating that his client, the PW1, went to write examination. The Defendants respectively asked for cost to assuage their time waste since the Claimant who brought them to Court was aware of that date and yet failed to attend Court.

Accordingly, N5,000.00 cost was awarded to each of the Defendants while the case was further adjourned to 26th September, 2019 for continuation of cross examination.

On the 26th September, 2019, the PW1 was absent again and did not present herself for cross examination. The respective counsel to the Defendants consequently applied pursuant to Order 32 Rules 4, 5 and 12(1)(2) of the Rules of this Court, that the Claimant's case be dismissed for her unwillingness to prosecute her case.

The Claimant's counsel in his response, informed the Court that his client is unable to continue with the trial because she is not buoyant to pay the cost imposed on her.

The Claimant's case was accordingly dismissed upon considered ruling, and the case was then adjourned for the hearing of the counter claims of the 5th and 6th Defendants.

In her counter-claim against the Claimant and the 6th and 7th Defendants, the 5th Defendant averred that sometime in 2011, the 9th Defendant informed her of the availability of a land in Dape for N15,000,000 (Fifteen Million Naira) only, and that same was in the custody of the Claimant and the 7th Defendant.

She stated that she followed the 9th Defendant to AGIS' car park where she met the Claimant, who introduced herself as the Personal Assistant (PA) to the SA of the FCT Minister.

She averred that the Claimant showed her title documents of several plots of land within the FCT and made her understand that, with her (Claimant's) position, she has plenty of lands in her custody, and that the Claimant further assured her of every assistance required to verify them and register anyone she purchases.

The 5th Defendant/Counter-Claimant further averred that the Claimant showed her, her (Claimant's) identity card to prove that she works in the Treasury Department of the Federal Capital Development Authority (FCDA), and that the Claimant also took her from AGIS to her office at FCDA and showed her desk to the 5th Defendant/Counter-Claimant. That she then collected a copy of the Right of Occupancy of Plot No. 13, Cadastral Zone C04, Dape District, Abuja, with which she made inquiries and found out that the 6th Defendant was duly allocated the said plot.

She stated that she paid a total of N14,000,000 (fourteen Million Naira) only, in 3 instalments to the Claimant, after which she engaged her lawyers to prepare a Power of Attorney to secure the transaction, and forwarded same to the Claimant who later returned same duly signed, but without the incorporation documents of the 6th Defendant which she requested to enable her perfect her title.

She stated that the Claimant claimed that she sent someone to Bauchi to collect the documents but that the person was not back yet. That the Claimant kept evading her as she consistently demanded for the documents.

The 5th Defendant/Counter-Claimant stated that in 2016, she was in need of funds and decided to put up the property for sale, whereupon she engaged an agent to market same. That the said agent insisted on doing due diligence before selling the property and that on getting to AGIS, the agent found out that there was a caveat on the land; that the 6th Defendant had paid N32,000,000.00 (Thirty-Two Million Naira) only, for the Certificate of Occupancy to be processed but that the Right of Occupancy was not in the file.

She stated that she sought the contact of the 6th Defendant's representative and was able to get in touch with one Aliyu who claimed to reside in Bauchi and is a brother to the then serving Minister of the Federal Capital Territory, Senator Bala Mohammed. That the said Aliyu informed her that the 6th Defendant had been applying for a plot of land in Abuja unsuccessfully until their brother, Senator Bala Mohammed became Minister of FCT and allocated the said land to the 6th Defendant.

That the said Aliyu informed her that when he got to AGIS to pick up their Right of Occupancy, he was told that the 7th Defendant, who incidentally is his brother, had signed for collected it, and that when he demanded for it, the 7th Defendant claimed that it was stolen from his office but that he had made sure a caveat was put on the file to prevent the thief from selling same.

The 5th Defendant/Counter-Claimant stated that on realizing the fraud, she quickly reported to the Police, which led to the arrest of the Claimant, but that when it became clear that the 7th Defendant and the then Minister may be involved she became worried that the Police investigation may lose steam; that, she opted to go to the EFCC, the 1st Defendant. That at the 1st Defendant's office, the Claimant, the 6th Defendant (represented by Hajiya Salamatu Suleiman, the former Minister of State for Foreign Affairs) and the 7th Defendant, were invited, and after admitting to the 5th Defendant/Counter-Claimant's allegations, they discussed among themselves and offered to repay the N14,000,000.00 as follows:

- a. Claimant – N5,000,000.00 (Five Million Naira) only.
- b. 7th Defendant – N5,000,000.00 (Five Million Naira) only.
- c. 6th Defendant – N5,000,000.00 (Five Million Naira) only.

She averred that she reluctantly accepted and gave them a period of time to repay or she would institute civil proceedings against them.

She stated that the Claimant and 6th and 7th Defendants obtained from and caused her to lose a total of N15,120,000.00 and are now liable to refund same to her.

The 5th Defendant/Counter-Claimant thus claimed against the Claimant 6th Defendant and 7th Defendant, jointly and severally as follows:

- a. A declaration that the Claimant and the 6th and 7th Defendants have been dishonest in their dealings with the 5th Defendant/Counter-Claimant, at all times material to this suit.
- b. A declaration that the Claimant and the 6th and 7th Defendants are liable to the 5th Defendant/Counter-Claimant, in special damages as follows:
 - The sum of N14,000,000 as consideration for the transaction.
 - The sum of N420,000 being 3% Agency Fee paid to the 8th and 9th Defendants.
 - The sum of N700,000 being 5% Legal Fee to Solicitor for the Power of Attorney.

Total: N15,120,000.00.

- c. An Order of the Court directing the Claimant and the 6th and 7th Defendants to forthwith, pay the 5th Defendant/Counter-Claimant, special damages as follows:
 - The sum of N14,000,000.00 as consideration for the transaction.
 - The sum of N420,000.00 being 3% Agency fee paid to the 8th and 9th Defendants.

- The sum of N700,000.00 being 5% legal fees to solicitor for the Power of Attorney.

Total: N15,120,000.00.

- d. An Order of Court directing the Claimant and the 6th and 7th Defendants to forthwith, pay the 5th Defendant/Counter-Claimant, 10% interest per annum on the N15,120,000.00 from January, 2011 to the date of judgment.
- e. An Order of Court awarding general damages of N50,000,000.00 (Fifty Million Naira) only, in favour of the 5th Defendant/Counter-Claimant, against the Claimant and the 6th and 7th Defendants forthwith.
- f. An Order of Court directing the Claimant and the 6th and 7th Defendants to forthwith, pay the 5th Defendant/Counter-Claimant, 10% interest per annum on the judgment sum from the date of judgment until liquidation.

The 5th Defendant/Counter-Claimant, testified on her case as 'CCW1' on the 29th day of January, 2020. She adopted her witness statement on oath wherein she affirmed all the averments in her counter-claim.

She also tendered the following documents in evidence:

1. Power of Attorney – Exhibit CCW1A.
2. Hand Written Agreement – Exhibit CCW1B.
3. 1st – 3rd Defendants' Joint Statement of Defence – Exhibit CCW1C.

Under cross examination by the 6th Defendant's counsel, the CCW1 admitted that by her petition to the EFCC, the 6th Defendant has no business with the transaction that led to this suit. She stated however, that the 7th Defendant made her believe that he is the owner of the 6th Defendant. Under cross examination by the 7th Defendant's counsel, the CCW1 stated

that the 7th Defendant's counsel, the CCW1 stated that the 7th defendant admitted collecting the money she paid and that the 7th Defendant has repaid about N3m through the EFCC. She admitted that in all the transactions, she did not have any personal contact with the 7th Defendant.

On the application of the 5th Defendant's counsel, the rights of the Claimant and other Defendants to cross examine the 5th Defendant/Counter-Claimant, were foreclosed following their absence in Court.

The 6th Defendant/Counter-Claimant also filed a defence to the suit and a counter-claim. Denying the claims of the Claimant, she stated that HajiaSalamatu Suleiman, one of her directors, only accepted to meet with the parties in order to help resolve the impasse in good faith and never under took to refund the sum as alleged.

That she rather encouraged the parties to come to amicable settlement, without prejudice to her right to contend for her vested Statutory Right of Occupancy in respect of the land around which this suit surrounds.

Specifically, the 6th Defendant/Counter-Claimant averred that on the 18th and 19th July, 2000, she applied for a landed property for commercial purposes to the Hon. Minister of the Federal Capital Territory, following which she was granted a Statutory Right of Occupancy in respect of Plot No. 13, Cadastral Zone C04, Dape, within the Federal Capital Territory, Abuja. That after her statutory grant was effected in the year 2010, she was contacted from the office of the Lands Department of the Federal Capital Territory to pick up the original copy of the grant sometimes in the year 2011.

She stated that the representative of the company proceeded to the Lands Department of the Federal Capital Development Authority to pick up the original grant, only to be told on arrival, that somebody else, whose picture was not duly captured in the data system of Abuja Geographical Information System (AGIS), subsequently identified as the 7th Defendant in this suit, the Special Assistant to the Hon. Minister of the FCT, without the knowledge, consent authority and/or acquiescence of the 6th Defendant/Counter-Claimant, collected the original letter of grant from the Lands Department of Abuja Geographical Information System (AGIS).

The 6th Defendant/Counter-Claimant averred that she made a formal complaint to the Hon. Minister of the FCT regarding the mysterious disappearance of her original grant of Statutory Right of Occupancy on the 15th of July, 2011 and that her General Manager was later contacted by a lawyer acting for the 5th Defendant, requesting for a meeting wherein he was informed for the first time, that the 5th Defendant had purchased the 6th Defendant/Counter-Claimant's grant in issue from some persons. That on 20th November, 2014, her General Manager swore to an affidavit of loss of the original Right of Occupancy and on 20th April, 2015, she further caused an application to be made to the Hon. Minister of the FCT for a caveat to be placed on her file as a further proof that she was neither aware, nor did she consent or acquiesce in the purported sale of her property to any one at any time. That by letter dated 25th January, 2017, addressed to the 1st – 3rd Defendants, she sought to retrieve from and was granted custody of the stolen original copy of her Statutory Right of Occupancy, recovered by the 1st – 3rd Defendants in the course of investigating the petition of the 5th Defendant.

The 6th Defendant thus counter claimed against the Claimant, 5th, 7th and 10th Defendants as follows:

1. A declaration that the 6th Defendant/Counter-Claimant is the bonafide allottee and entitled to the Statutory Right of Occupancy over all the property lying, being, situate at and known as Plot No. 13, Cadastral Zone C04, Dape, Abuja, FCT, measuring of approximately 1.62 Hectares by virtue of the offer of Grant dated 14th October, 2010, covered by file Number MISC 106456.
2. An Order nullifying and setting aside as null and void, any transactions however described or documents however described by the Claimant, 5th, 7th and 10th Defendants and/or any person whatsoever touching the sale of the 6th Defendant/Counter-Claimant's Plot lying, being, situate at and known as Plot No. 13, Cadastral Zone C04, Dape, Abuja, FCT, measuring of approximately 1.62 Hectares by virtue of the offer of Grant dated 14th October, 2010, covered by file Number MISC 106456 having been done fraudulently, without the knowledge, authority and/or consent of the 6th Defendant/Counter-Claimant.
3. N5,000,000.00 (Five Million Naira) Punitive and/or aggravated damages for trespass.
4. 10% interest on judgment sum from the date of judgment until the judgment sum is liquidated.
5. An order of perpetual injunction restraining all the Defendants to the counter-claim, including the Claimant in the original action from further interference in any way whatsoever with the title and/or interest of the 6th Defendant/Counter-Claimant in all the property lying, being, situate at and known as Plot No. 13, Cadastral Zone C04, Dape, Abuja, FCT, measuring of approximately

1.62 Hectares by virtue of the offer of grant dated 14th October, 2012, covered by file Number MISC 106456.

At the hearing of the case, the duo of Hajia Salamatu Hussaini Suleiman and Aliyu S. Hussaini, Director and General Manager respectively of the 6th Defendant, gave evidence for the 6th Defendant/Counter-Claimant.

They testified as CCW2 and CCW3 respectively as they adopted their respective witness statements on oath wherein they affirmed the averments in the 6th Defendant/Counter-Claimant's Statement of Defence and counter-claim.

The CCW2 tendered the following documents in evidence:

1. Offer of Statutory Right of Occupancy – Exh CCW2A.
2. Land Application Forms – Exh CCW2B.
3. AGIS payment Receipt for N1,615,504.00 – Exh CCW2C.
4. AGIS payment Receipt for N32,426,858.00 – Exh CCW2D.
5. FCDA Revenue Collector's Receipts – Exh CCW2E-E1.

The CTC of the 6th Defendant/Counter-Claimant's Certificate of incorporation was also tendered from the Bar by her counsel during the adoption of the Final Written Addresses and same was admitted in evidence and marked as Exh. CCW4A.

Under cross examination by the 5th Defendant's counsel, the CCW2, in response to the question of whether it was not the resolution of the parties at the EFCC, to pay the 5th Defendant her money, stated that the resolution was that the culprit who stole the document, should pay her, her money.

She admitted however that the Claimant and the 7th Defendant were both asked to pay N5m each back to the 5th Defendant, while she voluntarily offered to pay N4m to the 5th Defendant.

She stated that she has not paid the N4m to the 5th Defendant because one of the parties brought the matter to Court.

The right of the other parties to cross examine CCW2 were foreclosed on account of their absence in Court.

Regarding the CCW3, the 5th Defendant had no cross examination question for him. The rights of the other parties to cross examine him were equally foreclosed on account of their absence in Court.

The Claimant in her Reply to the Defendants' statement of Defence had placed reliance on her averments in her Statement of Claim for her defence to the respective counter claims of the 5th and 6th Defendants.

Following the dismissal of the Claimant's case, the 1st – 3rd Defendants stayed away from further participation in the proceedings.

The 7th Defendant failed to lead evidence on his pleadings, which is thus deemed abandoned.

The 8th – 10th Defendants on their part, failed to enter appearance to defend that various claims against them despite due service of hearing notices on them.

At the close of evidence, the 6th, 5th and 7th Defendants filed and exchanged final written addresses which they adopted on the 14th day of October, 2021.

Learned counsel for the 6th Defendant/Counter-Claimant Josiah O. Daniel-Ebune, Esq., in his final written address, raised two issues for determination, namely;

1. Whether the claim of the Claimant in the original action and the counter-claim of the 5th Defendant against the

6th Defendant are not misconceived having regard to the pleadings, the evidence led and all the facts and circumstances of this case?

2. Having regard to all the facts and circumstances of this case, is the 6th Defendant entitled to the grant of the reliefs sought on its counter-claim?

On issue 1, learned counsel simply urged the Court, on the basis of the facts that arose on the pleadings and the totality of evidence led in the case, to uphold the issue in favour of the 6th Defendant and to dismiss the counter-claim of the 5th Defendant as it pertains to the 6th Defendant.

Proffering arguments on issue 2, he relied on **Omotayo v. N.R.C. (1992) 7 NWLR (Pt.254) 471 at 485** to submit that facts admitted need no further proof. He referred to **Igwe v. A.C.B. PLC (1998) 6 NWLR (Pt.605) 1 at 11** and **Okafor v. Dumez (Nig) Ltd (1998) 13 NWLR (Pt.580)88 at 95.**

He contended that neither the Claimant nor any of the other Defendants made any claim for title or possession to the plot in issue. He posited that a party can only lead evidence to prove an issue which is in dispute, and that where parties have not joined issues on a matter, proof is not necessary.

He referred to **Dikwa v. Mode (1993)3 NWLR (Pt.280)170.** Learned counsel relied inter alia, on **Akinola&Ors v. Oluwo&Ors (1962) NSCC P.157; Onigbede v. Balogun (1998) 1 NWLR (Pt 535)643 at 652.** to contend to the effect that although a Claimant in an action for declaration of title, must succeed on the strength of his own case, and not on the weakness of the case of the defence, that the Claimant is still entitled to take advantage of any element of the Defendant's case that strengthens his case.

He urged the Court to accept the serial admissions and evidence of the Claimant in the original action and that of the 5th, 7th and 10th Defendants as having given solace or buttressed both the Defence and counter-claim of the 6th Defendant.

He further argued that notwithstanding the foregoing, that even on the strength of her own case, standing alone, the 6th Defendant/Counter-Claimant is entitled to judgment on her counter-claim, having convincingly discharged the onus of proof.

Learned counsel contended to the effect that all the pieces of evidence led in proof of her claim by the 6th Defendant/Counter-Claimant, were not controverted. He submitted that when admissible evidence remains uncontroverted, it becomes part of what will lead to a decision in the case, and that unless the evidence is palpably incredible, the Court is only entitled to, but has no reason not to accept it. Here referred to **Odulaja v. Haddad (1973) 8 NSCC 614 at 618; Moghalu v. Ude&Ors (2000) 4 WRN 13 at 23.**

He urged the Court to accept and act on the evidence led by the 6th Defendant/Counter-Claimant.

In response to the 5th Defendant's final written address, the 6th Defendant filed a Reply on points of law dated the 6th day of April, 2021 and filed on the 15th day of June, 2021, wherein learned 6th Defendant's counsel further raised two issues for determination, namely;

- i) Whether the pleadings of the 6th Defendant in answer to the 5th Defendant's counter-claim is a general traverse and evidence led weigh against the nature of the purported pledge of CCW2 to pay N4Million on behalf of

the 6th Defendant and the criminal allegations by the 5th Defendant against her proved beyond reasonable doubt?

- ii) Whether the point of law on the corporate capacity of the 6th Defendant both to sue and own landed property is misconceived having regard to joinder of issues, the appropriate procedure to raise and deal with such issue and all the facts and circumstances of the case and whether in any event, there is any merit on the point?

On the first issue, learned counsel posited to the effect that the 6th Defendant's reply to the 5th Defendant's Statement of Defence was not a general traverse; that the allegations of fraud and/or crimes against the 6th Defendant by the 5th Defendant were not proved beyond reasonable doubt; and that the alleged pledge by the CCW2 to pay N4m to the 5th Defendant was made in her personal capacity and not on behalf of the 6th Defendant as shown in the uncontroverted averments in the 6th Defendant's pleadings.

He variously referred to **Steyer (Nig) Ltd v. Gadzama (1995) 7 NWLR (Pt.407) 305 at 338; Akpunonu v. Beakart (2000) 12 NWLR (Pt.682) 553 at 6561.**

On the second issue, he posited that the contention of the 5th Defendant that this Court lacks the jurisdiction to hear the case of the 6th Defendant/Counter-Claimant, on the speculation that the 6th Defendant is not a juristic person, is a point of law that requires evidence.

He contended that the point of law raised by the 5th Defendant which is in form of a defence, is in gross violation of the express, strict and mandatory provisions of Order 23 Rules 1 and 2 and Order 34 of the applicable Rules of this Court, and is therefore, incompetent.

He referred to **Anyaeqbunam v. Osaka & 5 Ors (2000) 5 NWLR (Pt.657)386 at 396.**

He argued that by the combined provisions of Orders 22 Rules 1 and 2 and Order 23 Rules 6 (1), (2) and (3) and 21(b) of the Rules of this Court, such a defence must be specifically pleaded and disposed of before the merits of the case or specifically tried as an issue.

He referred inter alia, to **Teniola v. Olohunkan (1999)5 NWLR (Pt.602)280 at 298; Okoye v. Nigeria Construction and Furniture Co. Ltd (1991) 6 NWLR (Pt.199) 501.**

He contended that if the proper procedure or approach mandatory required by Order 23 of the applicable 2018 Rules of the Court had been adopted, the point of law regarding the 6th Defendant's capacity, would have been resolved peremptorily and the 5th Defendant would have been shown not to have the locus standi to contest the 6th Defendant's grant, and the 6th Defendant would have proved her limited liability status.

He submitted that since issues were not joined in the pleadings on the capacity of the 6th Defendant and the proper procedure to raise same was not adopted; that the objection is incompetent.

He posited that the 6th Defendant has nevertheless, submitted, along with her address, evidence of her incorporation as a limited liability. He relied on **Uzodinma v. Izunaso (No.2) (2011) 17 NWLR (Pt.1275) 30 at 75,** to urge the Court to make use of the incorporation documents of the 6th Defendant supplied along with her address.

The 6th Defendant/Counter-Claimant also filed Reply on points of law to the 7th Defendant's final written address, wherein he raised four (4) issues for determination, to wit;

1. Is the 7th Defendant who has not paid the cost of N50,000.00 awarded against (sic) entitled to address the Honourable Court before whom he is in contempt?
2. Is the allusion of Court's unfairness against the 7th Defendant raised in his written address correct?
3. Whether the point of law as to the capacity of the 6th Defendant/Counter-Claimant as a suitor is speculative and misconceived?
4. Whether exh. CCW1(sic) has probative value?

On the 1st issue, learned counsel contended that the 7th Defendant who was ordered to pay cost of N50,000.00 on the 1/3/2021 and who has failed to pay same in spite of demand made on him, is not entitled to address the Court until he has complied or shown reason(s) why he ought not to comply. He referred to **Uwazuruike&Ors v. The A.G.F. (2013) LPELR-20392 (SC).**

On the 2nd issue, of the allegation unfairness or denial of fair hearing by the 7th Defendant, learned counsel submitted that a hearing is fair hearing when and if it is fair to both parties. That it is not a one way traffic but a two way traffic.

Relying on **NewsWatch Communications Ltd v. Atta (2006)12 NWLR (Pt.993) 144 and Nkwocha v. MTN (Nig) Comm. Ltd (2008) 11 NWLR (Pt.1099)439 at 459-460,** he posited that the Court is enjoined not to invoke the principle in favour of one of the parties to the disadvantage of the other party undeservedly as that will amount to injustice.

He further submitted that it is settled law that fair hearing is not only a party being given an opportunity to present its case, but that the opportunity is neither indefinite; that rather, it is reasonable and could be waived.

He contended that having regard to all the facts on the record, the 7th Defendant was not denied the opportunity to cross-examine the 6th Defendant's witnesses or to present his own defence. That the record will show that he waived or threw the opportunity away.

He thus posited that the 7th Defendant was not denied fair hearing.

On the third issue regarding the juristic status of the 6th Defendant, he reiterated the same submissions he made in his reply to the 5th Defendant's contention on the same issue, as reproduced above.

On the 4th issue learned counsel contended to the effect that documents in Exh CCW1C are relevant, tendered and admitted in evidence by consent and that the 7th Defendant's counsel made use of same charitably during the cross examination of the 5th Defendant. He thus urged the Court to discountenance the 7th Defendant's contention that the said Exhibit lacks probative value.

On his part, learned counsel for the 5th Defendant/Counter-Claimant, M. J. Haruna, Esq, in his own final written address, raised three issues for determination, namely;

1. Whether the Claimant is entitled to the reliefs sought?
2. Whether the 5th Defendant is entitled to the grant of the reliefs sought in her counter-claim?

3. Whether the 6th Defendant/Counter-Claimant is entitled to the reliefs it is seeking against the 5th Defendant/Counter-Claimant?

Learned counsel posited on issue 1, relying on **Ugwakeh-Omene v. Stanbic IBTC Bank PLC & ANor (2013) LPELR-22032(CA)**, that the Claimant has ceased to have any relief with expending energy on, her suit having been dismissed by this Court on the 26th day of September, 2019 for want of diligent prosecution.

Arguing issue two, learned counsel contended to the effect that the 5th Defendant/Counter-Claimant established her claim by credible evidence as to be entitled to the reliefs sought.

In particular, he argued regarding relief 1, that the 5th Defendant/Counter-Claimant satisfied the rule of pleadings for alleging fraud. He referred to **Olufunmise v. Falana (1990) LPELR 2616(SC)**.

He posited that the pleadings, evidence and exhibits tendered, clearly point to the fraud alleged by the 5th Defendant/Counter-Claimant. That the Claimant in her pleadings admitted the alleged fraud, and thus, that what is admitted needs no further proof. That by the admission of the Claimant in her pleadings, the 5th Defendant/Counter-Claimant's case succeeds against her. He referred to **Trimskay Nig. Ltd v. Bankole-Oki (2015) LPELR-24518**.

Learned counsel further posited that the findings of the 1st – 3rd Defendants from their investigation stated in their Joint Statement of Defence, is further proof and corroboration of the 5th Defendant/Counter-Claimant's allegations of fraud against the Claimant, 6th and 7th Defendants jointly and severally.

Furthermore, that the 7th Defendant on his own part admitted to the fraud in paragraph 25 of his Statement of Defence dated 6th June, 2017. That though he filed another undated defence on 17th May, 2019, he only afforded a general traverse in his defence and failed to specifically deny the purported sale, and also did not lead any evidence before the Court.

He relied on **W.A.E.C. v. Oshionebo (2007) All FWLR (Pt.370)1501 at 1509** to urge the Court to discountenance the 7th Defendant's undated defence filed on 17th May, 2019 and resolve the issues herein against the 7th Defendant.

He further contended that Exhibit CCW1C provides sufficient proof of the conspiracy and fraud on the part of the Claimant, 6th and 7th Defendants.

On the contention by the 6th Defendant that she was not a party to the transaction that led to the emergence of this case, and that her Director, CCW2, pledged to refund N4,000,000.00 to the 5th Defendant/Counter-Claimant in her personal capacity and not on behalf of the company, learned counsel posited that even though it is trite that a company for all intent and purposes, is distinct from its promoters; that at the same time, a company acts through its controlling minds, to wit; its directors, which Salamatu Suleiman, the CCW2, has admitted to be.

He referred to **Nigerian National Supply Company Ltd v. Alh. Hamajoda Sabana & Company Ltd & Ors (1988) LPELR-2025(SC)**.

He contended that the CCW2, who holds herself to be the alter ego of the 6th Defendant, made the pledge of paying the sum of N4,000,000.00 to the 5th Defendant/Counter-Claimant on behalf of the 6th Defendant in her capacity as one of the controlling minds of the 6th Defendant. He urged the Court to so hold.

He further argued that the 6th Defendant being a business name, does not possess a juristic status, and as such does not pass resolutions like a company, in order to do anything relating to its business. That it was in recognition of this fact that CCW2 personally made the pledge at the office of the 1st Defendant to defray the sum of N4,000,000 to the 5th Defendant/Counter-Claimant to placate her for the wrong done to her by the Claimant, 6th and 7th Defendants.

He further urged the Court to hold that the pleadings, evidence and exhibits tendered thereon, clearly establishes the fraud alleged by the 5th Defendant/Counter-Claimant.

He posited that the 5th Defendant/Counter-Claimant has discharged the burden placed on her for the grant of reliefs 1 and 2, and urged the Court to so hold and to resolve 'relief a' and relief b' in favour of the 5th Defendant/Counter-Claimant as the Claimant, and 7th Defendant admitted receiving money from the 5th Defendant/Counter-Claimant for the final benefit of the 6th Defendant.

Learned counsel further contended that the 5th Defendant/Counter-Claimant is entitled to be claim for special damages in relief 3 having established them by her pleadings and pieces of evidence adduced before the Court.

In respect of relief 4, learned counsel posited that the claim for 10% interest on sum expended on the transaction is just and grantable in view of the fact that the monetary value of the entire sum spent by her in purchasing the subject matter of this suit, which was about 10 years ago, is not same as at today. That it will meet the justice of this case to restore the 5th Defendant to the monetary position she would have been entitled if the transaction leading to the now protracted sale of the subject matter of this suit did not occur in the first place.

He referred to **IfeanyiChukwuOsondu Company Ltd &anor v. Akhigbe (1999) LPELR-1433** and Order 39 Rule 4 of the Rules of this Court, on the propriety of the claim for general damages and 10% post judgment interest in reliefs 'e' and 'f' respectively.

He urged the Court to answer in the affirmative, the issue 2, and to consequently grant all the reliefs sought by the 5th Defendant/Counter-Claimant against the Defendants to the counter-claim, as the said reliefs are meritorious.

Arguing issue 3, on whether the 6th Defendant/Counter-Claimant is entitled to the reliefs sought against the 5th Defendant/Counter-Claimant; learned counsel posited, relying on **SLB Consortium Ltd v. NNPC (2011) LPELR-3074 (SC) and Bankole&Ors v. Emir Industries Limited (2012)LPELR-19719 (CA)**, that the 6th Defendant, being a mere Business Name, is not a juristic person and as such cannot hold interest in land. That consequently, relief 1 of her claim, which is the principal relief, is not grantable.

He referred to **FCDA &Ors v. Unique Future Leaders International Limited (2014) LPELR-23170(CA)**.

He urged the Court to invoke the inherent powers conferred upon it, as well as the 1999 Constitution of the federal Republic of Nigeria (as amended) and set aside the aforesaid allocation of Plot 12, Cadastral Zone C04, Dape, Abuja granted to the 6th Defendant/Counter-Claimant by the Minister of the Federal Capital Territory, Abuja, as same was done in error.

Regarding the 6th Defendant/Counter-Claimant's claim for damages for trespass, learned counsel relied on **Obawole v. Williams(1996) LPELR-2158(SC)** to submit that where a party fails to show better title to land in dispute, such a party cannot

succeed in trespass against a defendant who also claims to be in possession.

He contended that from the entire pleadings and exhibits before the Court, nowhere was the issue of possession in contention, neither was any case of illegal occupation mentioned, let alone raised. He posited that the claim for damages for trespass is thus a figment of the 6th Defendant's imagination and that same must be refused with cost.

Learned counsel argued that the 6th Defendant/Counter-Claimant having failed to make out a case of trespass, and in the light of the failed relief 3, that relief 4 which seeks 10% interest on relief 3, automatically fails, and ditto the last relief which seeks an order of perpetual injunction.

He urged the Court in conclusion, to grant all the reliefs sought by the 5th Defendant/Counter-Claimant as she has been able to prove that she is entitled to same.

The 5th Defendant/Counter-Claimant also filed a Reply on points of law to the 7th Defendant's final written address.

Learned 5th Defendant's counsel submitted that it is trite and an elementary principle of law, that that the only avenue wherein issues are to be joined by parties, is through their respective pleading, and not the final written address. He posited that the attempt by the 7th Defendant to join issues with the 5th defendant in his final written address, is alien to our laws.

He referred to **White Diamonds Property Development Co. Ltd. v. Trade Wheels Ltd (2018) LPELR-44572** placing reliance on **Geneva v. Afribank Nigeria PLC (2013) LPELR-20662(SC)**, he urged the Court to hold that the 7th Defendant's Amended Statement of Defence and Witness Statement on oath are inconsequential to qualify as "pleadings", the

7th Defendant having failed and/or refused to lead any evidence before the Court even after several opportunities were given to him.

He further referred to **UBN PLC &Anor v. Ayodare& Sons (Nig) Ltd &Anor (2007) LPELR-3391** on the point that address of counsel, no matter how well delivered, cannot be a substitute for evidence.

Learned counsel posited that the reference by the 7th Defendant's counsel to the case of **Akhigbe v. Paulosa (Nig) Ltd (2006) LPELR-7573** in support of his argument that a defendant cannot counter-claim against another defendant, is misleading, as the said authority is not on all fours with the instant case.

He contended that unlike in the said Akhigbe's case, the 5th Defendant/Counter-Claimant herein also counter-claimed against the Claimant.

He contended in conclusion, that the address filed by the counsel to the 7th Defendant, was filed with the sole intention of substituting evidence and is akin to putting something on nothing and expecting it to stand. He urged the Court to dismiss in its entirety, all arguments canvassed therein.

The judgment centres on the counter-claims of the 5th and 6th Defendants. The Claimant's case having been dismissed, there is nothing more to consider regarding the Claimant's case.

In the complexity of this cause of action, the Court is bound to discover and confine itself to the cause of action by facts averred. The 5th Defendant had in her pleadings imported paragraph 1, 2, 4, 5, 6, 7 and 8 of the dismissed statement of claim of the Claimant dated and filed on 23rd February, 2017 which summarily described 1st – 4th Defendants as officers of

the 1st Defendant. While she admitted the 6th Defendant as the original allottee.

In paragraph 4 of 5th Defendant's amended Statement of Defence and Counter-Claim dated on 13th March, 2019 the 5th Defendant by default admitted the paragraph 12 -16 of the Statement of Claim of the Claimant. Thus material event not specifically denied by the Defendant in its Statement of Defence and Counter-Claim as the case may be is taken to be an admission. **Adesanya v. Otuewe (1993) NWLR (Pt.270)414** expressed that parties must present proper traverse either by way of denial or non-admission or expressly or by necessary implication. In other words a Defendant who refuses to admit a particular allegation in Statement of Claim must state specifically so and is forbidden in law to state ***“Defendant is not in a position to admit or deny and will at trial put the change to proof”***. This amounts to an admission of the Claimant's averment.

Sequel to the above the 5th Defendant admitted he bought the said plot after enquiries about the said plot and being satisfied paid the purchase price of N14m. The 5th Defendant by averment in paragraph 8 of her Statement of Defence and Counter-Claim of insufficient denial and putting the Claimant to the strictest proof, imported and admitted paragraphs 22, 23 and 25 Statement of Claim that the 8th and 9th Defendants acceded to the sale and jointly collected N2m since the 5th Defendant failed to pay them the agency fee over the transaction.

By implication in paragraph 9 of the 5th Defendant's Statement of Defence the 5th Defendant traversed and stated that he paid 8th and 9th Defendants 3% of the N14,000,000.00 amounting to N420,000 as their agency fee.

The 5th Defendant again in paragraph 12 of his Statement of Defence and Counter-Claim admitted paragraph 28 Statement of Claim by insufficient traverse that the Chief Executive Officer of 6th Defendant, HajiaSalamatu Suleiman resolved the issue by agreeing to refund the purchase price to the 5th Defendant and on the part to return the Right of Occupancy in his possession.

The 5th Defendant is adopting paragraph 1 – 15 of her Statement of Defence in her Counter-Claim in other words adopted and imported all the paragraphs of the Statement of Claim whereby she made a general and or evasive and non-specific denial. Thus every fact or allegation not denied specifically or by necessary implication stands as an admission **Ogunola v. Eiyekole (1990) 4 NWLR (Pt.146) 532 SC.**

The nature of counter-claim is to establish a distinct action named in another way a cross-action which is same position as an action and subject to the rules of pleadings.

Therefore, I repeat in another perspective that all admissions of the 5th Defendant/Counter-Claimant in her statement of defence imported into her counter-claim stand to be part of her pleadings. Thus paragraph 17 of the 5th Defendant/Counter-Claimantstates that she adopted and relied on all averments in paragraph 1 – 15 of her statement of defenceand by the bindingness of pleadings, parties and the Court are confined to the pleadings and the case present before the Court – **Olochukwu v. A.G., Rivers State (2012)6 NWLR (Pt.1324)53.**

Considering paragraph 17 – 24 of counter-claim, the 5th Defendant/Counter-Claimant averred and supported by evidence that N14m was paid and N420,000 agency fee was paid to 8th and 9th Defendants.

The paragraphs 25 – 27 of the 5th Defendant/Counter-Claimant, the material effect was that a Power of Attorney was executed for purposes of securing the transaction forwarded to Claimant who promised to return same with copies of the incorporation documents of S & M Essentials (the original allottee) to the 5th Defendant/Counter-Claimant.

In paragraphs 28 – 31, 5th Defendant/Counter-Claimant put the plot for sale, because she was in need of money, employed an agent who did a due diligence before selling. Further 5th Defendant/Counter-Claimant discovered that the 6th Defendant paid N32m on the land for Certificate of Occupancy and that there was a caveat on the said property. Shocked at the discovery concerning the allocation of the plot to 6th Defendant and 7th Defendant signing and collecting the Right of Occupancy at same time claiming the loss of the Right of Occupancy documents.

Paragraphs 32 – 38, refer to the Police and EFCC report on the fraudulent involvement of the Claimant, 6th and 7th Defendant in having a hand in the sale of the plot without releasing the land documents and their involvement to dupe the 5th Defendant/Counter-Claimant. Rather they were trying to execute another Certificate of Occupancy. The 5th Defendant/Counter-Claimant stated in the particulars of fraud and evidence how the Claimant, sold the land for N14m over and above N12m she was asked to sell.

The 10th Defendant claimed to have received N9m from the Claimant instead of N14m and that he gave it to 7th Defendant. The 5th Defendant/Counter-Claimant tendered Exh CCW1C the joint statement of 1st, 2nd and 3rd Defendants which includes, Police report containing the admissions of the 6th, 7th, and 10th Defendants with respect to the different roles they played in

the fraud. Where a document is tendered as an exhibit, the Court can refer to any part of it and not only the page mentioned – **Otuo v. Nteogwuila (1996) 4 NWLR (Pt.440) 561.**

Also paragraph 36(a)(b)(c) is an averment of how the Claimant (Plaintiff), 6th and 7th Defendant shared the N14m to this proportion, Plaintiff N5m, 7th Defendant N5m and 6th Defendant N4m.

With reference to the statement of Claimant Hajia Maryam Mohammed Umar, she admitted to refund the sum of N5m she got out of the N14m.

With reference to the statement of 7th Defendant, Usman Mohammed he admitted to refund N5m received from Claimant from the sale of land at N14m.

The unchallenged evidence of the 6th Defendant was that she was not part of the sale rather she counter-claimed against the Claimant, 5th, 7th and 10th Defendants seeking the Court's declaration as the bonafide allottee and an order for perpetual injunction against all the Defendants. The 6th Defendant/Counter-Claimant relied on Exh CCW4A – Certificate of incorporation dated 3rd March, 2017.

On the part of the 7th Defendant, he filed a defence and witness statement on oath and never led evidence thus abandoning his pleadings. Averment in pleadings not supported by evidence are deemed abandoned. It is notorious that litigation is fought on pleadings and evidence led on it thus strengthening the function of pleadings to define with clarity and precision the facts averred. The notoriety of this law is established in the case of **CBN v. Okojie (2015) 14 NWLR (Pt.1479) 231.**

Pleadings unsustainable with and proved by evidence are deemed abandoned.

That is the case with the 7th Defendant's pleadings. It is an abandoned process.

Furthermore, the abandonment of the 7th Defendant's pleadings amounts to an unchallenged evidence on his part and the acceptance of the 5th Defendant/Counter-Claimant's case.

Consequently, the final written address of the 7th Defendant does not constitute evidence. It is settled law that arguments of a counsel in written address or oral cannot constitute evidence.

Ogunsanya v. The State (2011) LPELR 2349 SC held;

“a case is won on credible evidence and not on address.”

The purport of address therefore is summary of the facts and the law as revealed by evidence before the Court. Therefore, the address of the 7th Defendant based on an unsubstantiated and abandoned pleadings is baseless such address cannot be a substitute for evidence –**Christian Onyeakarusi v. Francis Nwadiogo (2016) LPELR 40932(CA)**.

For the Supreme Court in **Asco Investment Ltd &Anor v. NdukaEzeigbo&Anor (2015) LPELR 24460(CA)** has stated clearly that the purport of a written address is to let the Court and his adversary know what his summary upon facts and the law as revealed is evidence is.

It is recalled that the purported allocation of the said plot was made to 'S & M Essential Units & Company', being a business name.

The legal implication is that a registered business name has no legal personality to acquire land.

Therefore, the purported acquisition of plot No.13 Cadastral Zone C04, Dape, Abuja, FCT by 6th Defendant in its business name is a nullity. The 6th Defendant/Counter-Claimant cannot rectify such a nullity by improving the business name to a limited liability Company read “**S & M Essential Units & Company Ltd**” on 3rd March, 2017. The rules of evidence again estops the use of a document obtained during the pendency of proceedings to be used as a piece of evidence, Section 91(3) Evidence Act renders inadmissible statement or document made in anticipation or pendency of proceedings in Court. The Exh CCW4A Certificate of Incorporation fails within this ambit of Section 91(3) Evidence Act. This case was commenced on 23rd February, 2017, while the said Certificate of Incorporation of S & M Essential Units & Company as a limited liability company was issued on 3rd March, 2017 to the 6th Defendant, an interested party. Therefore, the CCW4A Certificate of Incorporation is hereby expunged. See **Arab Contractors (O.A.O) Nig Ltd v. Gillian Umanah (2012) LPELR 7927 CA.** Also the legal implication of allocation of plot 13 Cadastral Zone C04 to S & M Essential Units & Company a business name is that it is a nullity.

In the determination of the counter-claim of the 5th Defendant/Counter-Claimant, the issue for consideration is whether the 5th Defendant/Counter-Claimant has proved her claim as to be entitled to the reliefs sought?

It is trite law that a counter-claim, to all intents and purposes, is a separate action, which for convenience and speed, the Defendant usually joins with his defence. See **Usman v. Garke (2003)LPELR-3431(SC).**

The counter-claimant, like all other Claimants in an action, is expected to prove his claim against the persons counter-

claimed against before he can obtain judgment on the counter-claim. See **Jeric (Nigeria) Ltd v. UBN PLC (2000)LPELR-1607(SC)**.

With respect to the case the 5th Defendant/Counter-Claimant; from the consideration of the facts elucidated from the averments in the pleadings of the parties, and the evidence adduced before this Court, there is clearly a dishonest and fraudulent intent established against the Claimant, and the 7th Defendant in the transaction that led to this present action. The 6th Defendant, represented by the CCW2, HajiaSalamatuHussaini Suleiman, demonstrated a covert acquiescence to the fraudulent transaction.

Evidence before the Court shows that the 7th Defendant with ostensible authorisation of the 6th Defendant, signed for and collected the offer of Statutory Right of Occupancy, Exhibit CCW2A, and purported to sell same to the 5th Defendant/Counter-Claimant.

From the evidence adduced before the Court, the Claimant, in demonstration of a fraudulent intent, sold the land to the 5th Defendant at N14m as against the sum of N9m which she represented to the 7th Defendant to be the price it was sold.

I am of the considered view that the alleged acts of writing to the Minister about the loss of Exhibit CCW2A and the placing of caveat on the file thereof, were all part of the grand scheme orchestrated by the 6th Defendant to defraud the 5th Defendant.

First, from Exhibit CCW4A, it is evident that the 6th Defendant was not a legal entity at the time it purportedly applied for a plot of land in the year 2000. Exhibit CCW4A shows that the 6th Defendant was incorporated on 3rd March, 2017, ten years after

it was purportedly allocated the plot, around which this suit revolves. Thus the plot was allocated to a fictitious company.

In the second place, after it purportedly discovered that its original Right of Occupancy was signed for; and collected by the 7th Defendant in 2012, the 6th Defendant waited until 2015, after same had been sold to the 5th Defendant/Counter-Claimant, before placing a caveat at Abuja Geographical Information System (AGIS).

Then the 6th Defendant represented by his witness CCW2, also made a pledge to refund N4m to the 5th Defendant/Counter-Claimant.

I do not believe the claim of the 6th Defendant that the pledge was made by the CCW2 in her personal capacity out of sheer sympathy to the 5th Defendant/Counter-Claimant because the CCW2 attended the meeting where she made the pledge as a representative of the 6th Defendant. Again the 6th Defendant represented by (CCW2) was consistent at the time of the transaction. The said 6th Defendant is different from the company in Exhibit CCW4A which only came into existence on 3rd March, 2017.

None of the parties has denied or controverted the amount claimed by the 5th Defendant/Counter-claimant with regards to the consideration or purchase price for the property, and agency fee. The claim is therefore deemed admitted by the parties. It is trite that fact admitted, need no further proof. See **Kayode v. APC & Ors (2014) LPELR-23092 (CA); Umeh v. Ejike (2015) LPELR – 23506 (CA).**

It is thus my finding, from the totality of the foregoing, that the 5th Defendant/Counter-claimant has established her claims before this Court and is therefore, entitled to the reliefs sought;

save for the claim in respect of the cost of preparing the Power of Attorney, Exhibit CCW1A, which has no relativity to the 5th Defendant/Counter-claimant's claim.

Accordingly, judgment is entered for the 5th Defendant/Counter-claimant as follows:

- a. It is declared that the Claimant and the 6th and 7th Defendants have been dishonest in their dealings with the 5th Defendant/Counter-Claimant, at all times material to this suit.
- b. It is declared that the Claimant and the 6th and 7th Defendants are liable to the 5th Defendant/Counter-claimant, in special damages as follows:
 - The sum of ₦14,000,000.00 as consideration for the transaction.
 - The sum of ₦420,000.00 being 3% Agency Fee paid to the 8th and 9th Defendants.

Total: ₦14,420,000.00

- c. The Claimant and the 6th and 7th Defendants are ordered to forthwith, pay to the 5th Defendant/Counter-claimant as follows:
 - The sum of ₦14,000,000.00 as consideration for the transaction.
 - The sum of ₦420,000.00 being 3% Agency Fee paid to the 8th and 9th Defendants.

Total: ₦14,420,000.00

- d. The Claimant and the 6th and 7th Defendants are ordered to forthwith, pay to the 5th Defendant/Counter-claimant, 10% interest per annum on the ₦14,420,000.00 from January, 2011 to the date of this judgment.

- e. The sum of ₦5,000,000.00 is awarded in favour of the 5th Defendant/Counter-claimant as general damages against the Claimant and the 6th and 7th Defendants jointly and severally.
- f. The Claimant and the 6th and 7th Defendants are ordered to pay the 5th Defendant/Counter-claimant, 10% interest per annum on the judgment sum from the date of this judgment until liquidation.

In respect of the counter-claim of the 6th Defendant/Counter-claimant, the issue for consideration in the determination of same is, whether the 6th Defendant/Counter-claimant is entitled to her claims before this court?

In the case before this court, the ownership of plot No. 13, Cadastral Zone C04, Dape, Abuja, is not in issue as neither the Claimant in the original action, nor the 7th – 10th Defendants herein, are laying claim to the plot. Though the 5th Defendant to whom the plot was purportedly sold to, is not laying claim to the plot; instead, she is suing for the refund of her money.

It is trite that he who claims is put to prove, the 6th Defendant/Counter-claimant who is claiming ownership is bound to prove his title. The 6th Defendant/Counter-claimant must satisfy the court that he is entitled in law to the declaratory relief claimed. The Supreme Court held in the case of **Chukwuma v. SPDC (Nigeria) Ltd (1993) LPELR – 864 (SC)**, where the Court held per Karibi-Whyte, JSC, 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 claimed.”

Put in another way, it is incumbent on a 6th Defendant/Counter-claimant in seeking the grant of declaratory relief per ownership

of the land in his favour, to satisfy the Court that he is entitled in law to the relief which he seeks.

In the instant case, the 6th Defendant/Counter-claimant, in attempt to prove his entitlement to the plot claimed, tendered Exhibit CCW4A as its certificate of incorporation as proof that corporate entity with juristic personality acquired and holds interest in the plot of land. I reiterate that the said certificate of incorporation was obtained on the 3rd day of March, 2017 during the pendency of this suit filed on 23rd day of February, 2017, by the 6th Defendant who is an interested party. On this premise, the said certificate of incorporation, Exhibit CCW4A, has somewhere in this judgment, been expunged by this Court.

The certificate of incorporation, Exhibit CCW4A, having been expunged, the 6th Defendant/Counter-claimant cannot claim title to land through a business name.

The 6th Defendant/Counter-claimant has therefore, not satisfied this court that it is entitled to the declaratory relief sought before this Court.

In respect of relief 2, of the 6th Defendant's counter-claim, the purported sale of the plot has already been repudiated by the purchaser, the 5th Defendant; having found same to be fraudulent, hence her claim for the refund of her money paid in respect of the transaction. It is therefore, superfluous to flog a dead horse. The said relief therefore, fails.

Regarding the claim for damages for trespass in relief 3, I agree with the submission of learned counsel for the 5th Defendant in paragraph 6.14 of his final written address, that the issue of possession was not in contention in this suit, and that no case of illegal occupation was mentioned nor raised. The claim for damages for trespass by the

6th Defendant/Counter-claimant is therefore, preposterous, and it is thus not entitled to same.

Invariably, the 6th Defendant/Counter-claimant is automatically, not entitled to the claim for interest on judgment sum as per relief 4, given the failure of relief 3.

With the failure of relief 1, the claim for perpetual injunction in relief 5 stands on nothing. It thus suffers the same fate as the other reliefs, as it falls like a pack of cards; something cannot be put on nothing and expects it to stand.

From the totality of the foregoing, the counter-claim of the 6th Defendant/Counter-claimant is not proved. The same therefore fails in its totality and is accordingly dismissed.

HON. JUSTICE A. O. OTALUKA
11/1/2022.