IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/5499/2011

DATE: : MONDAY 7TH MARCH, 2022

BETWEEN:

HON. (CHIEF) EMMANUEL BELLO… PLAINTIFF

AND

1. CITEC INTERNATIONAL ESTATES LTD.

2. FEDERAL CAPITAL DEV. AUTHORITY

DEFENDANTS

JUDGMENT

The Claimant approached this Honourable Court by a further amended Statement of Claim and Writ of Summons and sought for the following reliefs against the Defendants, to wit;

a. A declaration of this Honourable Court that the Plaintiff is the lawful allottee and in physical possession of the property known as and called "Plot No. 2345 Cadastral Zone C06 in the Nbora District, Abuja within the jurisdiction of this Honourable Court.

b. A declaration of this Honourable Court that the 1st Defendant has no legal rights whatsoever to trespass into, interfere with or disturb the Plaintiff's possession, use and development of the said property known as and called "Plot No.

2345 Cadastral Zone C06 in the Nbora District, Abuja".

c. A declaration of this Honourable Court that the acts trespass of the 1st Defendant in demolishing the site office and store (batcher) housing the Plaintiff's building materials, carting away the sand, gravel, rods and other building materials on the land, closing up already dug building foundation trenches without the lawful authority, let or consent of the Plaintiff on the 8th day of July, 2011, is wrongful, unlawful and illegal.

d. An Order of Perpetual Injunction restraining the 1st and 2nd Defendants by themselves, their agents or servants from trespassing into, interfering with or disturbing the Plaintiff's possession, use and development of the said

property known as and called “Plot No. 2345 Cadastral Zone C06 in the Nbora District, Abuja”.

e. The sum of N100,000,000.00 (One Hundred Million Naira) being special and general damages against the 1st Defendant for trespassing into, interfering with and disturbing the Plaintiff’s possession, use and development of the said property known as and called “Plot No. 2345 Cadastral Zone C06 in the Nbora District, Abuja”.

Consequential amendments were similarly effected by the Defendants and Suit was then set down for hearing. The case of the Plaintiff as distilled from the witness statement on oath of PW1 (Hon. Chief) Emmanuel Bello) is that he is the lawful allottee by

virtue of statutory Right of Occupancy granted by the Hon. Minister of the Federal Capital Territory, Abuja dated the 15th day of February, 2010 of the land property known as and called plot No. 2345 Cadastral Zone C06 in the Nbora District, Abuja.

The Plaintiff claims that pursuant to his title and grant of a certificate of occupancy over the land and the building approval granted to him by the relevant regulatory authority, the 2nd Defendant through the Department of Land Administration on the 11th day of December, 2011, published in the leadership Newspaper the names of title holders whose certificate of occupancy had been signed by the Hon. Minister of the Federal Capital Territory from August, 2011.

That while his workers were busy on the site, the Managing Director of the 1st Defendant, one MR. Bello, came to the land and accosted his site manager and demanded that he stopped further construction work on the land.

Plaintiff contends further that he noticed that the sand, gravel and chippings deposited on the site had been scooped away and leveled off and that the batcher he constructed on the land and which housed the over three thousand cements bags and iron rods he had bought had been demolished and vandalized by the 1st Defendant.

That sometime in July 2010, the 1st Defendant unlawfully broke into his said land and uprooted the survey beacons on the land. And that through his solicitors, Messrs Rickey Tarfar& Co., by a letter

dated the 19th day of July, 2010, written to the 1st Defendant warning the 1st Defendant to immediately replace the said beacons or face legal action in court.

That he had suffered severe loss and damage as a result of the trespass, forcible entry, destruction and vandalisation of his land and property by the 1st Defendant.

PW1 tendered the following documents in evidence;

1. Letter to Development Control dated 19th July, 2010 as Exhibit "A".
2. Letter to Development Control dated 18th July, 2011 as Exhibit "B".
3. Letter to Hon. Minister of the FCT dated 18th July, 2011 as Exhibit "C".

4. Letter by Rickey Tarfa& Co. dated 19th July, 2010 as Exhibit “D”.

5. Publication of list of land allottees made by FCDA as Exhibit “E”.

6. Certificate of Occupancy of Emmanuel Bello as Exhibit “F”

7. Development Approval by Development Control as Exhibit “G”.

8. Pictures and certificate of compliance as Exhibit “H”.

PW1 was then cross – examined and subsequently discharged.

PW2 (UzairuTuraki) adopted his witness statement on oath and tendered no evidence. PW2 was cross – examined and accordingly discharged.

PW3 (SalisuIsaka) in his statement, stated that on the 6th July, 2011, he was on duty with his colleques at the site and one Mr. Bello from Nbora Estate came in the afternoon around 1pm to look for their Oga, Hon. Emmanuel Bello. He told him that their Oga was not around. He thereafter asked them to leave the site because the land did not belong to the man who employed them to guard the land.

That he was on duty at the site with his colleagues (other security guards) on the night of 8th July, 2011 when they were attacked by some group of persons. They were armed with guns, cutlasses, club and other dangerous weapons and numbering about 50 persons.

It is further the deposition of PW3 that as they were not armed, all the guard ran for their lives, leaving

behind the materials that they were guarding at the site which include the followings:-

1. 6 Trailer load of cement
2. 2 Trailer loads of iron rods
3. 10 Trailer loads of gravel stones
4. Block molding machine
5. Thousands of blocks
6. The newly dug borehole and its properties
7. Various document and equipment etc.

That the invaders captured, beat and wounded two of their colleagues, LawalIsah and IsahRabe before they could escape. IsahRabe did not recover from the beating and injuries he sustained until he died two months later in his village in Katsina.

PW3 was accordingly cross – examined and then discharged.

Plaintiff closed it case to pave way for defence.

On the 8th of May, 2018, the 1stDefendant opened their case wherein DW1 was called who is one NurudeemJinadu.

In his witness statement on oath, DW1 stated that the 1st Defendant is the lawful allottee and beneficial owner of all that parcel of land measuring 225, 355 Hectares at Mbora District, Abuja.

That the claim of the Plaintiff that he brought several trips of sand, gravel and chippings, more than three thousand bags of cement, planks and bundles of iron rods is false, deceitful, fraudulent, misleading and gold – digging.

That the 1st Defendant never engaged in any lawless or trespassory act or caused any financial loss or damage to the Plaintiff.

DW1 tendered the following documents;

i. Construction agreement tendered is admitted as Exhibit "D1".

ii. Terms of settlement tendered and marked as Exhibit "D2" rejected.

DW1 was cross – examined and subsequently discharged.

DW2, Anode Chuks was called and cross – examined and discharged accordingly.

DW3, China Igbozuruike was called and tendered the following;

1. Document titled Re – submission of designed layout with reference No. FCDA/URP/EST/13914 is admitted and marked as Exhibit "D3".

DW3 was cross – examined and discharged.

Parties closed their respective cases to pave way for filing and adoption of final written address.

Learned counsel for the 1st Defendant formulated a sole issue for determination in his written address to wit:-

"Whether having regard to the pleadings as well as evidence led, the Plaintiff has failed to prove his case against the 1st Defendant."

It is the submission of the learned counsel that PW1 and PW2 were not present on the land at the time of

the alleged demolition and vandalism; and their evidence were based on what they were told by person who were not called as witnesses. The evidence of PW1 and PW2 in the circumstance amount to hearsay evidence which cannot be relied upon by the court.***ORJI & ANOR VS UGOCHUKWU & 2ORS (2009) 14 NWLR (Pt. 1161) 207, 289 C – E was cited.***

Learned counsel submits further that the 1st Defendant vide paragraphs 3 (v),(vi), (vii) and (viii) of its further amended statement of defence of 23rd February, 2018 specifically and categorically denied the above averments of the Plaintiff and put the Plaintiff to the strictest proof thereof. With issues joined thereof, the burden of prove by law rest squarely on the Plaintiff which legal burden the Plaintiff has failed to discharge. ***OGUEJIOFOR VS***

SIEMENS LIMITED (2008) 2 NWLR (Pt. 1071) 283, 300 D – F;

STANBIC IBTC BANK PLC. VS LONGTERM GLOBAL CAPITAL LIMITED & 4ORS (2018) 10 NWLR (Pt. 1626) 96, 153 G- H were cited.

Learned counsel submits that special damages cannot be awarded to the Plaintiff in the circumstances where the Plaintiff merely conjected and speculated that the 1st Defendant trespass, interfered or disturbed the use of the property without establishing same by credible evidence.

MOMODU VS UNIVERSITY OF BENIN (1997) 7 NWLR (Pt. 512) 325, 345 C – F;

ORIENT BANK NIGERIA PLC. VS BILANTE INTERNATIONAL LIMITED (1997) 8 NWLR (Pt. 515) 37, 91 G.

It is further the submission of learned counsel that general damages is not granted as a matter of course but on solid and sound legal principle and evidenceand it calls for some measure of quantification and a careful exercise of judicial discretion and that Plaintiff has failed to demonstrate his entitlement to general damages in the circumstances.***ADEKUNLE VS ROCKVIEW HOTEL LIMITED (2004) 1 NWLR (Pt. 853) 161, 175 – 176 H – B;***

SMITHKLINE BEECHAM PLC. VS FARMEX LIMITED (2010) 1 NWLR (Pt. 1175) 285, 306 C – D;

UNITED BANK OF AFRICA PLC. VS SAMBA PETROLEUM COMPANY LIMITED & ANOR

(2002) 16 NWLR (Pt. 793) 361, 401 – 402 H-B were cited.

Counsel urged the court to dismiss the suit in its entirety and all claim there under with substantial cost against the Plaintiff in favour of the 1st Defendant.

On its part, 2nd Defendant formulated the following issues for determination to wit;

a. ***Whether having established even by the Plaintiff admission that Plot 2345 Nbora District fell on the N30 road alignment, it was proper for the plot in issue to have been redesigned in the interest of the public.***

b. ***Whether it is proper for the Honourable Court to order that the Plaintiff be compensated for the redesign of the plot for public interest.***

It is the submission of the learned counsel to the 2nd Defendant that the plot of the Plaintiff was neither expropriated not revoked nor acquired. The plot was merely redesigned into a new location and much still exist. If the plot had been acquired, the question of compensation would have arisen.

Counsel further submit that it is the duty of the 2nd Defendant to design roads and provide infrastructure in the FCT and better still regulate development. These duties are what they have performed for the overall interest of the public and still doing so.

Counsel urged the court to declare that the Claimant shall be compensated by allocating another plot of commensurate value in the District to him prior to the acquisition of his plot for public interest. That way the public/statutory duties shall without more

have been undertaken for the benefit of the entire Nigeria citizen.

On the part of the Plaintiff, the following issues were formulated for determination to wit;

1. ***Whether from the evidence placed before this Honourable Court, the Plaintiff is the lawful allottee and bonafide owner of plot 2345, Cadastral Zone C06, Nbora District, Abuja.***

2. ***Whether the 2nd Defendant was right to have tampered with the nature and character of Plot 2345, Cadastral Zone C06, Nbora District, Abuja during the pendency of this matter?***

3. ***Whether the action of the 1st Defendant in destroying the Plaintiff's construction work and materials is not unlawful, illegal and***

amounting to a trespass on the Plaintiff's property?

On issue 1, ***whether from the evidence placed before this Honourable Court, the Plaintiff is the lawful allottee and bonafide owner of plot 2345, Cadastral Zone C06, Nbora District, Abuja.***

It is the submission of learned counsel that the only interest of the 1st Defendant in respect of land in the Nbora District is the sublease they obtained through the construction agreement for only thirty six months which extinguished sometime in August, 2004, several years before the acquisition of title to the land in question by the Claimant herein.

Counsel further submits that at the time the 2nd Defendant allotted plot 2345 to the Plaintiff, there was not in existence any title whatsoever in favour

of another person or body to have affected the validity of the Plaintiff's title and by extension the presumption of regularity it enjoins. By the evidence led by the Plaintiff in this regard, Plaintiff has duly discharged the burden placed on him to prove his title to the said plot 2345, and when the said burden shifted to the 1st Defendant, it woefully failed to discharge same.

Counsel submits that as the beneficiary of an assignment of title which is subsumed to the title of the original lessee, the 1st Defendant at best can be described as a sub-lessee and in the circumstance cannot claim to have a better title than the Plaintiff who is not a sub-lessee but a lawful allottee who has been assigned full title through his certificate of occupancy by the requisite authority.

CITEC (INTL) ESTATE LTD. VS EYIBOH (2018) LPELR – 44458 (CA) was cited.

On issue 2, ***whether the 2nd Defendant was right to have tampered with the nature and character of Plot 2345, Cadastral Zone C06, Nbora District, Abuja during the pendency of this matter?***

Learned counsel submits that the action of the 2nd Defendant to redesign the plot in contention is null and void, having no legal effect whatsoever based on that fact that it was done in grave contravention of the Order of this court and the rule of law. If an act is void, then it is in law a nullity.

MACFOY VS U.A.C LTD. (1961) 3 ALL ER 1169 was cited.

On issue 3, ***whether the action of the 1st Defendant in destroying the Plaintiff's construction work and***

materials is not unlawful, illegal and amounting to a trespass on the Plaintiff's property?

Counsel submits that given all the facts and the evidence placed before the court in this matter, the court will find that the judicial scale tilts in favour of the Plaintiff and against the Defendants. Therefore, as the trespass of the 1st Defendant is willfully wrongful, unlawful and illegal as well as the redesigning of the land done by the 2nd Defendant despite known fact that there is an Order of Court for parties to maintain status quo, the proper remedy, in line with the principle of restitution in intergrum is to restore him to the position he would have been but for the trespass and destruction brought by the 1st Defendant and handsomely compensate him in damages for the pains and suffering he had been subjected to for over 9 years now that he has been

unable to reap the full benefits of his possession. ***WABURTON VS TAFF VALE RAILWAY CO. (1902) 18 TLR 420;***

KUBURI INT'L TRADING CO. LTD & ANOR VS MUSTI & ANOR (2018) LPELR – 44004 (CA) were cited.

Counsel urged the court to exercise its discretionary and statutory powers to award the amount sought by the Plaintiff as general and special damages having regard to the circumstances of the case and also having put forward materials to establish same.

Counsel finally urged the court with profound respect to enter judgment in favour of the Plaintiff in terms of the statement of claim.

COURT:-

I have gone through the pleadings of parties and the ensuing oral and documentary evidence in support of their respective cases.

Indeed a party who seeks Judgment in his favour, is required by law to produce evidence to support his pleadings.

Reliefs 1, 2 and 3sought by Plaintiff are declaratory in nature therebypredicating the success of the other reliefs on their success.

It is an established position of law that in cases where declaratory reliefs are claimed as in the present case, the Plaintiff must satisfy the court by

cogent and reliable proof of evidence in support of his claim.

AGBAJE VS FASHOLA & ORS (2008) 6 NWLR (Pt. 1082).

Where the court is called upon to make declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleading.

The imperativeness of this arises from the fact that the court has discretion to grant or refuse to grant such declaration.

SAMESI VS IGBE & ORS (2011) LPELR 4412.

The foregoing authority remains good law and binds this court as well.

On whether the Plaintiff in the case in view is entitled to the reliefs claimed or not, it becomes most expedient to ascertain the root of his title,first and foremost…

I shall come to this in a moment.

Judicial pronouncement are ad-idem that declaratory reliefs are never granted based on admission or on default of filling defence. ***MOTUNWASE VS SORUNGBE (1988) WNLR (Pt. 92) 90.***

The imperativeness of this crises from the facts that the court has discretion to grant or refuse to grant such declaration. ***SAMESI VS IGBE & ORS (2011) LPELR 4412.***

The Plaintiff in an effort to sway this Court to give judgment in its favour, called 3 witnesses who

adopted their witness statements on oath and tendered documents.

1st and 2nd Defendants on their part, filed their respective statements of defence, witness statements on oath, and urged the court to dismiss the action.

From the issues afore-formulated by parties for determination, issue No. 1 formulated by Plaintiff seem apt for the determination of this suit; i.e***whether from the evidence placed before this Court, the Plaintiff is the lawful allottee and bonafide owner of Plot 2345, Cadastral Zone C06, Nbora District.***

My take off point shall be to examine the law with respect to land in FCT, Abuja.

Now, on whether the Plaintiff in the case in view is entitled to the reliefs claimed or not, it becomes most

expedient to ascertain the root of title of the Plaintiff first and foremost.

There are five ways of proving ownership to land that are recognized by judicial decision. One or more of the mode are usually used in proof. They are:-

a. Traditional evidence

b. Production of documents of title

c. By proving acts of ownership numerous and positive enough to warrant an inference that the person is the owner.

d. Act of long possession and

e. By proof of possession of connected or adjacent land. ***AKAOSE VS NWOSU (1997) 1 NWLR (Pt. 482) 478 at 492 paragraphs B – D.***

As captured from both the oral and documentary evidence in the preceeding part of this Judgment, whereas Plaintiff is relying on a statutory grant by the FCT Minister, 1st Defendant is relying on an agreement titled "Construction Agreement" which it entered-into with Federal Capital Development Authority (FCDA) and Federal Housing Authority (FHA).

I shall revisit the issue in a moment.

As aptly stated by learned counsel for the Plaintiff in its final written address and the ensuing evidence and title documents; Plaintiff stated in paragraph 4 of his statement of claim and paragraph 4 of the witness statement on oath of Pw1 that; "***the Plaintiff is the lawful allottee by virtue of Statutory Right of Occupancy granted by the Hon. Minister of the***

Federal Capital Territory, Abuja dated the 15th day of February, 2010 of the landed property known as and called Plot No.2345 Cadastral Zone C06 in the Nbora District, Abuja."

The said Certificate of Occupancy was tendered and admitted in evidence as Exhibit "F".

I pause here to state the law as regards the importance of documentary evidence.It has been held by a number of court decision that documentary evidence is the yardstick or a hanger by which to assess the veracity of oral testimony or its credibility. ***OGBEIDE & ANOR VS OSIFO (2006) LPELR 627 (CA).***

I must state here that, the court is under obligation to interpret every document accurately Not to add or subtract from the content of the document.

The implication of tendering Exhibit, including documentary evidence before a court of law is captured by MUKHTAR JCA (as he then was) in ***JOHN M. BUBA VS THE STATE (1992) NWLR (Pt. 215) 1 at 168 as thus;***

> ***"Exhibits are not tendered and admitted in court for the fun of it. They are for the purpose albeit to assist in determining the relevance of the Exhibits to the case. Secondly, one this form part of the record they must be examined, scrutinised and assess or the just determination of the case, if they are not scrutinised as they apply to the facts of the case, then of what use are they admitted admittance in evidence."***

Similarly in ***FAGUNWA VS ADIBI (2004) 17 NWLR (Pt. 903) 544 at 567 paragraph D-E the Supreme Court per Tobi JSC held as follows:-***

> ***"A trial judge must consider relevant exhibits tendered along with oral evidence, he cannot takeoral evidence and throw away documentary evidence which the primary evidence under section 94(1) of the Act."***

1st Defendant on their part tendered Exhibit DW1 which is the ConstructionAgreement between Ministry of the Federal Capital Territory, Federal Housing Authority and Citec International Estate Ltd. which was tendered by 1st Defendant and admitted in evidence.

I shall therefore, examine these documents to ascertain where both parties stand in the eyes of the law.

I need only state at this juncture that the Federal Capital Territory came into being by Decree no 6 of 1976, with 4th February, 1976 as the commencement date.

Section 297 (2) of the 1999 constitution of the Federal Republic of Nigeria as amended vests absolute ownership of land within the Federal Capital Territory in the Federal Government of Nigeria.

The said provision is in agreement with section 1(3) of the Federal Capital Territory Act 2004.

For ease of reference, I shall attempt to reproduce the said sections 297 (2) of the 1999 constitution of

Federal Republic of Nigeria as amended and 1(3) of the FCT Act.

Section 1(3) FCT Act.

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

Section 297(2) of the 1999 Constitution.

"***The Ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republicof Nigeria."***

Question ... Who then has the power to grant title to land within the Federal Capital Territory?

For all intents and purposes, the intention of the law makers on the status of Federal Capital Territory is deliberate.

What Government and the makers of the Federal Capital Territory Act intended was for a verse espance of land devoid of any form of cultural or hereditary inclination to be set aside for the development of the capital city.

No little wonder, even the original inhabitants who had occupied their ancestral lands were merely paid

compensation and asked to move on, regardless of the fact that generations were buried on such lands. See section 6 of the Federal Capital Territory Act.

Were the Land Use Act meant to apply to Federal Capital Territory, the original inhabitants would have been granted deemed grant and remained on their various lands within the Territory. The Land Use Act must not be read in isolation.

It is trite that where the language, terms, intent or words to any part or section of a written contract, document or enactment are clear and unambiguous as in the instant case, they must be given their ordinary and actual meaning as such terms or words used best declare the intention of law maker unless this would lead to absurdity or be in conflict with some other provision thereof. It therefore

presupposes that where the language and intent of an enactment or contract is apparent, a trial court must not distort their meaning.

See ***OLATUNDE VS OBAFEMI AWOLOWO UNIVERSITY (1998) 5 NWLR (Pt. 549) 178.***

A certificate of occupancy properly issued and where there is no dispute that the document was properly issued by a competent authority raises the presumption that the holder of the documents is the owner in exclusive possession of the land.

The certificate also raises the presumption that at the time it was issued, there was not in existence a customary owner whose title has not been revoked. It should however be noted that the presumption is rebuttable because if it is proved by evidence that another person had a better title to the land before

the issuance of the certificate of occupancy the said certificate of occupancy stands revoked. See ***MADU VS MADU (2008) 2-3 SC (Pt. 11), 109.***

Poser... Who issued the said certificate of occupancy to the Plaintiff?

Poser...Was it the Federal Capital Territory Minister?

It is clear from the preamble to the Land Use Act (LUA) and the provision of section 1 of the Land Use Act (LUA) that the provisions of the Act are meant to vest all land in the territory of each state, excluding land vested in Federal Government or its agencies, in state governors who would hold same in trust for the people of the said state.

It must be mentioned at this juncture that the purpose of a preamble is to explain certain facts

which are important to be explained for better appreciation of the enactment. Preamble is therefore part of the Act and indeed a veritable tool in construing the said enactment especially when there is ambiguity and or conflicting views as to the exact meaning of the enactment in which case the view that best fits the preamble shall be preferred.

See ***POWELL VS KEMPTON PACK RACE COURSE CO. LTD (1999) AC 143.***

It follows therefore, that in line with the position expressed in the preamble and section 1 of Land Use Act (LUA), section 49(1) of Land Use Act (LUA) specifically excludes the application of provisions of Land Use Act (LUA) to title to land held by the Federal Government or any agency of the Federal Government at the commencement of the Act.

In thesame analysis, it is most crystal clear from both the preamble to the FCT Act and section 1(3) of the Act that all land comprised in the Federal Capital Territory vest absolutely in the Federal Government of Nigeria.

For the purpose of clarity, I shall re-produce the preamble to the Land Use Act (LUA) 1978 and FCT Act respectively.

Preamble to FCT Act

> **"*An Act to establish for Nigeria, a Federal Capital territory and to provide for the constitution of a Federal Capital Development Authority for the purpose of exercising the various powers set out in this Act, to execute other projects connected therewith, to provide for the laws applicable to that Territory and for***

appeals from the Upper Area Court and the law applicable thereto; and to provide for the delegation to the Minister of Federal Capital Territory of the executive powers vested in the President and those vested in him and the Government of a State under the applicable laws."

Preamble to Land Use Act

"An Act to vest all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Government of the State, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential,

agricultural, commercial and other purposes while similar powers with respect to non – urban areas are conferred on Local Government."

Let all beware that it is a well settled fact that the ownership of land comprised in the Federal Capital Territory, Abuja vests absolutely in the Federal Government of Nigeria, who through the Federal Capital Territory Minister grant statutory rights of occupancy to any person.

It follows naturally and legally speaking therefore that, ownership of land within the Federal Capital Territory vests in the Federal Government of Nigeria who through the Minister of Federal Capital Territory vest same to every citizen individually upon application.

Impliedly therefore, without allocation or grant by the Hon. Minister of Federal Capital Territory, there is no way any person or group of persons, could acquire land in the Federal Capital Territory.

Poser... From the plethora of statutory provisions and case laws cited afore, could the Plaintiff be said to be entitled to the land in question as a beneficial owner?

I shall look at the said agreement which 1st Defendant tendered as Exhibit "D1".

By the nature and character of Exhibit "D1", it is a Lease and Sub-lease agreement.

What then is Lease in law?

Black's Law Dictionary, 9th Edition, Page 970, defines lease as a contract by which the rightful

possessor of personal property conveys the right to use that property in exchange of a consideration.

For a lease to be valid, the term of the lease as well as its date of commencement must be certain or capable of being ascertained.

See ***AP PLC. & ANOR VS.FARAGOLA (2009) LPELR 8902 (CA).***

I herein reproduce paragraph of the **CONSTRUCTION AGREEMENT.**

"From the purpose of the project, the Client shall provide a suitable and serviceable land at Nbora District of Phase III of the Capital City which shall consist of 250 Hectares to be covered by Certificate of Occupancy granted by the Client to the Ministry of Federal Capital Territory for 99 years which shall be subleased to the Developer for a term of

<u>Thirty-Six (36) months certain which shall at the expiration authentically revert to holder"</u>

I have seen the said construction agreement which was tendered as Exhibit "D1" by the 1st Defendant. I shall pause at this juncture and ask 1st and 2nd Defendants the following questions:-

1. What is the duration as contained in the lease Construction Agreement between 1st Defendant and the Federal Capital Territory?
2. Who granted the Right of Occupancy and Certificate of Occupancy over the said land to the Plaintiff!
3. Is the said Construction Agreement meant to last forever!

From the said Construction Agreementwhich is the document 1st Defendant seem to have derived its authority from, the 'Developer' in the agreement which is same as 1st Defendant in this case has a period of Thirty-Six (36) Months upon which the said land authentically reverts back to the holder.

The holder here is the Federal Capital Territory.

The said construction agreement dated the 6th August, 2001 was executed on the same date. The then FCT Minister Engr. Muhammad Abba-Gana signed for the Ministry of the Federal Capital Territory and same was witnessed by Dr. BabangidaAliyu as Permanent Secretary, whereas one Francis O. Josiah signed for CITEC International Estates Limited as the Chairman/CEO

while Oludare Bello who is the Managing Director signed as a witness.

From the evidence before me, there isn't any mention of any extension of the said construction agreement period, throughout the hearing.

If the date on the Construction Agreement is 2001 with Thirty-Six (36) months as the time needed for the land to revert to the holder, it means clearly that the said land had long reverted to the holder.

Where then does the 1st Defendant derived the right, if any, to lay claim or authority to the land which houses the said Plot 2345 which has been lawfully allotted to the Plaintiff!

It is my judgment that 1st Defendant who clearly signed the said Construction Agreementhas no right at all, not only over the land allotted to Plaintiff but

the entire of the land contained in the Construction Agreement. I am fortified to say this because the Development Agreement which is evident, has been fortified by the evidence of DW1 who under cross-examination has this to say:-

Qst... You were granted a lease for three (3) years?

Ans…Yes.

The case of 1st Defendant has been clearly compromised here.This is an admission against interest that 1st Defendant's right, if any, had expired before Plaintiff was allotted its land.

See **Section 24 Evidence Act**, **2011 and*UNGUWA VS. PINA (2005) LPELR 11497 (CA).***

UcheOfodile, Esq., Counsel for the 2nd Defendant i.e Federal Capital Development Authority, made very

clandestine and legally unreliable arguments on his final written address all tailored towards supporting the illegality the 1st Defendant is perpetrating whilst relying on an agreement that has long expired. Why would 2nd Defendant's counsel be saying that Federal Capital Development Authority (FCDA) had redesigned the plot in contention in principle and not physically on ground!

Why is UcheOfodile, Esq., for the 2nd Defendant arguing that Plaintiff was only relocated to a different area in the District!

Where is the evidence!

2nd Defendant's counsel is trying to pamper a developer of land who's right is derived from the **DEVELOPMENT AGREEMENT**which expired for morethanTen (10)years. 1st Defendant for lack of

knowledge, even referred to themselves as beneficial owners of the land in question being landallottee. For the records, 1st Defendant cannot and are not beneficial owners in the eyes of the law. 1st Defendant does not have a statutory title over the said land but became an interested party arising from the construction agreement.

A person has to have a valid title to land before he/she can be a beneficial owner.

See ***SHESHE VS. IBRAHIM (2013) LPELR – 22607 (CA).***

The Development lease agreement only gave three(3) years to the 1st Defendant for same to revert to the holder. How has that translate to being a beneficial owner! This is bizarre.

I now come back to the 2nd Defendant's counsel, UcheOfodile, Esq. again and demand that the following questions be answered.

1. When was the purported redesigning done..was it before or after Plaintiff instituted the instant action!

From the available evidence, I shall answer the posers:-

The so called redesign in principle was done after Plaintiff filed the instant action.

2. Was there an Order for Interlocutory Injunction in this case?

3. Why would 2nd Defendant proceed to redesign the said subject matter and now use their final written address to bamboozle the Court with the

position of the law on the powers of the Government to provide infrastructure i.e Road!

Why would the so-called redesign affect only the Plaintiff who has less than 2000 square metres and not the 1st Defendant who had over 225 hectres of land, even though the said agreement is expired!

This is double standard on the part of 2nd Defendant's counsel who has made spurious and most academic argument in its written address without any atom of evidence to support his position. Written address, no matter how well made, cannot take the place of evidence.

What 2nd Defendant's counsel is trying to do is to rob Peter to pay Paul…I will not allow this to happen.

How can 2nd Defendant's counsel who had all the time to lead credible evidence but who failed to so do, now want to use his brilliance in advocacy without evidence in support, to waste the time of this court.

1st Defendant does not have any land as I read this judgment because the said lease as I said,expiredmorethan ten (10) years ago without any renewal. I have no such evidence of renewal before me.

The pact between 1st Defendant and counsel for the 2nd Defendant has to fail having been exposed.

Nigeria is not a Banana Republic. 1st Defendant is clearly a trespasser on Plaintiff's land.

The best form of evidence is documentary evidence in view of the fact that it lends evidence to oral evidence.

See ***OHIOWALE VS IGHODARO (2013) LPELR – 2029 (CA).***

Exhibit "D1" which was the lease agreement between 1st and 2nd Defendants has exposed 1st Defendant and comprised its case.

1st Defendant is a personal non quata, as far as this land given to the Plaintiff and where he is claiming is concerned. 1st Defendant is a meddlesome interloper and a busy body and a trespasser who's frolic is being aided and abetted by 2nd Defendant's counsel.

Reliefs 1, 2, and 3 sought by Plaintiff are declaratory in nature predicting the success of reliefs 4 and 5 on

their success. The law with declaratory reliefs is settled.

A declaratory relief is a discretionary remedy which is not granted as a matter of course and the court must be satisfied before granting it that the Plaintiff or claimant has a very strong and cogent case both from his statement of claim and from the evidence he adduces in support of his case. The Plaintiff or claimant must satisfy the court that under all the circumstances of the case, he is fully entitled to the discretionary reliefs in his favour, when all facts are taken into consideration.

See ***MAKANJOULA VS AJILORE (2001)12 NWLR (Pt. 727) 416.***

The Plaintiff in a bid to establishing his case as required by law, tendered the following documents in evidence.

1. Letter to Development Control dated 19th July, 2010 as Exhibit "A".

2. Letter to Development Control dated 28th July, 2011 as Exhibit "B"

3. Letter to Hon. Minister of the FCT dated 18th July, 2011 as Exhibit "C".

4. Letter by Rickey Tarfa& Co. dated 19th July, 2010 as Exhibit "D".

5. Publication of list of land allottees made by FCDA as Exhibit "E".

6. Certificate of Occupancy of Emmanuel Bello as Exhibit "F".

7. Development Approval by Development Control as Exhibit “G”

8. Pictures and Certificate of Compliance as Exhibit “H”.

Trial court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment and act on it. Documents tendered before a trial court are meant for scrutiny or examination by the court, documents are not tendered merely for the sake of tendering but for the purpose of examination and evaluation.

OMEGA BANK (NIG.) PLC.VS O.B.C LTD. (2002) 16 NWLR (Pt. 794) 483.

I have evaluated the evidence before me and I am left in no doubt that Plaintiff has made out a case deserving of judgment as per the reliefs claimed.

The issue formulated afore is resolved in favour of the Plaintiff.

I hereby enter judgment in that order by granting reliefs 1, 2 and 3 in the first instance.

Next is an Order of Perpetual Injunction.

This Order is normally granted upon final determination of the rights of parties.

I hereby so grant an Order for Perpetual Injunction against the 1st and 2nd Defendants as prayed.

I rely on the case of ***HON. MINISTER FCT VS. FAYODE & ANOR (2015) LPELR - 41674 (CA).***

Next is relief for Special and General damages.

Special damages are quantifiable pecuniary losses up to the time of trial at which time the exact amount to claim is known. On the other hand, General damages cover losses which are not capable of exact qualification. They need not be specifically pleaded although some evidence of the damages is required. See ***ABI VS CBN & ORS (2011) LPELR – 4192 (CA).***

I have seen pictures and solicitor's letter tendered and admitted as Exhibits "A", "B", "C" and "H" respectively.

Whereas Exhibits "A", "B" and "C" are letters of complaint against the conduct of the 1st Defendant to the FCT Minister and the Managing Director of the 1st Defendant, Exhibit "H" on the other hand are pictures photographs of the "Res" in question

showing destroyed part of a house under construction and deposits of gravels scattered all over the place.

I am morethan satisfied that 1st Defendant has resorted to self-help.

Self-help is unlawful. No Court would condone resort to self-help.

See ***NWADIAJUEBOWE VS. NWAWO & ORS (2003) LPELR – 7234(CA).***

I hereby award **N20,000,000.00 (Twenty Million Naira)** as Special Damages and **N30,000,000.00 (Thirty Million Naira)** as General Damages.

Before I put a full stop to this Judgment, I'll like to state that Orders of Court must be respected without any reservation. The purported redesigning was done

in clear disrespect for the Order of court and the institution of Judiciary.

All actions taken during the pendency of the Interlocutory Injunction remain a nullity and of no effect. I say no more.

Above is my judgment.

Justice Y. Halilu
Hon. Judge
7th March, 2022.

<u>APPEARANCES</u>

James Odiba, Esq. with Abduljaleel Musa, Esq. – for the Plaintiff.

A.S Abdulmalik, Esq. with Dominion Adamu, Esq. – for the 1st Defendant.

2nd Defendant not represented and not in court.