IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON THURSDAY30THJUNE 2022
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 8,MAITAMA, ABUJA

SUIT NO. CV/1861/18

BETWEEN:

CARAMELO LOUNGE & SUITS LTD. … … … …

CLAIMANT

AND

1. HON. MINISTER, FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY DEFENDANTS
3. ABUJA METROPOLITAN MGT. COUNCIL (AMMC)

JUDGMENT

At the time material to the instant suit, the Claimant began to operate the business of lounge, suite, clubbing and entertainment at the premises known as ***Plot 630, T. O. S. Benson Crescent, Cadastral Zone B05,***

Utako, Abuja (hereafter referred to simply as "Plot 630"), sometime in 2012. Her case, as gathered from processes filed to commence the instant suit, is that after operating her businesses on the premises for about five5 (five) years, the Defendants served her with a notice of contravention of land use, in February, 2017, following which she was also served with a notice to pay for contravention of land use charges, which she did in July, 2017, January, 2018, respectively. Her case is further that sometime in February, 2018, officers of the Defendants supervised the demolition of a part of the premises in question, including the fence, the swimming pool and properties within the premises. Thereafter, upon satisfying the Defendants that she had paid for contravention fees for 2018, the Defendants invited the Claimant for a settlement meeting with the Permanent Secretary of the Defendants at which meeting she was requested to be paying the Permanent Secretary the sum of

₦5,000,000.00(Five Million Naira) only annually so as to be allowed to continue to operate her business peacefully at the premises; which demand she claimed to have rejected. The case of the Claimant is further that she continued to face hostility and intimidation from the Defendants as a result of which she and other hotel owners in Abuja with similar experiences had to drag the Defendants before the House of Representatives Committee on the FCT for its intervention; that after appearing before the House, it was resolved that the Defendants should suspend all planned demolition of hotels not situated within commercial plots in Abuja and that the Defendants were advised to grant the hotel owners' requests for change of land use or allow them to continue to pay contravention fees, which resolutions the Defendants were said to have accepted. The case of the Claimant is further that the Resolution of the House of Representatives did not however go down well with

the Defendants which resulted in them serving fresh Notice of Contravention of Land Use on the Claimant sometime in March, 2018, by which she was given thirty (30) days within which to wind up her business in the premises.

The Claimant's case is further that after she had instituted the instant action and the Court had made interlocutory orders of injunction restraining the Defendants from disturbing her occupation of the premises pending the hearing and determination of the action, the Defendants disregarded the Court order and invaded the premises on 18/04/2019, chased away the Claimant's guests in the hotel, demolished the fence of the building and other Claimant's properties in the building; that the Defendants thereafter served a Notice of Revocation and Notice of Demolition on the property and on 13/05/2019demolished the entire property; whilst the instant suit was still pending.

The Claimant's case is further that as a result of the Defendant's actions, which caused her losses and damages, she instituted the present action, *vide* *Writ of Summons and Statement of Claim* filed on 22/05/2018; and by her operative *Further Amended Statement of Claim* filed on 28/09/2020, she claimed against the Defendants, jointly and severally, the reliefs set out as follows:

1. **A declaration** that by virtue of sections 4(6) and 7, 299(a), (b) and (c) and item 10 in Part II, 2nd Schedule to the 1999 Constitution of the Federal Republic of Nigeria(as amended), only the National Assembly is empowered to make laws for the imposition of taxes, fees and penalties in the Federal Capital Territory.
2. **A declaration** that by virtue of the subsisting judgment of the FCT High Court in Suit No. **FCT/HC/CV/1960/2014 between DIVENTION Holding Ltd Vs. Abuja Metropolitan**

Management Council & 2 Ors delivered on the 16th of March, 2016 by Hon. Justice Valentine B. Ashi, of the blessed memory, the Defendants cannot validly demolish and seal off the premises of the Claimant located at Plot 630, TOS Benson Crescent, Cadastral Zone B05, Utako District, Abuja for contravention of lad use without an order of a court of competent jurisdiction.

3. **A declaration** that the demolition of the Claimant properties on the 23rd February, 2018 without an order of court for reason of contravention of land use, having collected contravention fee from the Claimant is illegal, unlawful and an affront to the powers of this Honourable Court.
4. **A declaration** that the Notice of Contravention dated 27th March, 2018 served on the Claimant by the Defendants with respect to Plot 630, TOS

Benson Crescent, Cadastral Zone B05, Utako District, Abuja while this suit is pending is illegal, unlawful, ultra vires, null and void and of no effect whatsoever.

5. **A declaration** that the acts of Defendants in totality with respect to the Claimant business premises, by demolishing, sealing up and destroying all equipment, goods, documents of the Claimant is illegal, unlawful, ultra vires and a nullity.
6. **A declaration** that the Demolition and revocation Notice both dated 10th May 2019, served on the Claimant same day, while this suit is still pending and order made on 19th June, 2018 is subsisting, that such notices are illegal, unlawful, ultra vires, null and void and contemptuous.
7. **A declaration** that the demolition and sealing up of Plot 630, TOS Benson Crescent, Cadastral

Zone B05, Utako District, Abuja on the 13th Day of May, 2019 while this suit is pending and without an order of court is illegal, unlawful, ultra vires, null, void and amounted to self-help.

8. **An order** of this Honourable Court setting aside all the Contravention Notice served on the Claimant by the Defendants with respect of Plot 630, TOS Benson Crescent, Cadastral Zone B05, Utako District, Abuja.
9. **An order** of court setting aside the Demolition notice and revocation notice dated 10th day of May, 2019 for being illegal, unlawful, ultra vires and of no effect, been an act done to undermine, negate and sabotage the powers of this Honourable Court.
10. **An order** of this court against the Defendants severally and jointly to pay to the Claimant the sum of **₦225,195,830 (Two Hundred and Twenty Five Million, One Hundred and Ninety**

Five Thousand, Eight Hundred and Thirty Naira Only) as total cost of items/equipment/properties and wines, damaged, looted and destroyed as a result of the unlawful acts of the Defendants.

11. **An order** for the Defendants to pay jointly and severally the sum of **₦6,300,000 (Six Million Three Hundred Thousand Naira Only)** as total money the Claimant used or expended in renovating, replacing and fixing the damages suffered as a result of the 23rd February, 2018 demolition of the Claimant properties and business premises without an order court and for being an illegal act.
12. **An order** of this court for the Defendants to pay severally and jointly the Sum of **₦5,000,000,000 (Five Billion Naira)** as general damages for the illegal and unlawful

demolition of the Claimant properties and inversion of the Claimant corporate image.

13. **An order** of this court for the Defendants to pay severally and jointly the Sum of **₦500,000,000(Five Hundred Million Naira)** as exemplary damages for carrying out an act which is contemptuous, illegal, unlawful and illegitimate, purposely done to subvert, debase and overthrow the powers of this Honourable Court and also to destroy the Claimant corporate image.

14. **An order** of court for the Defendants to pay severally and jointly to the Claimant the sum of **₦1,200,000 (One Million Two Hundred Thousand Naira Only)** as the Claimant daily sales from 13th day of May, 2019 to the day and year the Claimant will be restored back to its normal position.

15. Cost of this action **₦10,000,000.00 (Ten Million Naira).**

The Defendantsjoined issues with the Claimant by filing their *Joint Statement of Defence* on 05/01/2021. The contention of the Defendants essentially, is that the designated land use for the Plot in question was for Hospital business and that they removed the unapproved structures on the premises and eventually demolished the building on the plot as a result of the Claimant's defiance of the removal and demolition notices.

The Claimant further filed Reply to the Defendants' Joint Statement of Defence on 01/07/2021.

At the plenary trial, the Claimant fielded **Maxwell Ignatius Eze,** her Managing Director/Chief Executive, as her sole witness. He adopted his two *Statements on Oath* as his evidence in chief and further tendered a total of Fifty Eight (58) documents in evidence as

exhibits. He was duly cross-examined by the Defendants' learned counsel.

In turn, one **Temitope Anthony-Awi**, Town Planning Officer in with the Federal Capital Territory Administration, testified on behalf of the Defendants. He adopted his Statement on Oath as his evidence in chief and also tendered four (4) documents in evidence as exhibits. The witness was equally subjected to cross-examination by the Claimant's learned senior counsel.

At the conclusion of plenary trial, parties filed and exchanged their final written addresses in the manner prescribed by the **Rules** of this Court.

In the Defendants' final address filed on 20/01/2022, their learned counsel, **Ezekiel O. Ituma, Esq.,** formulated two issues as having arisen for determination in this suit, namely:

1. ***Whether the Defendants have the legal capacity to impose fines and to demolish illegal structures within the Federal capital Territory?***

2. ***Whether the Claimant has proved its case before this Court to be entitled to the reliefs sought?***

The Claimant in turn filed her final written address on 01/02/2022, wherein her learned counsel, **BennethNnaemeka Eke, Esq.**, equally identified two issues as having arisen for determination in this suit, namely:

1. ***Whether in the circumstances of this case vis-à-vis the pleadings and the evidence adduced by the parties, the Claimant is not entitled to the reliefs sought?***

2. ***Whether the Defendants have not resorted to self-help during the pendency of this suit that would entitle the Claimant to the reliefs sought?***

ESTABLISHED/UNCONTROVERTED FACTS:

I consider that the starting point, in determining the issues in dispute in this suit, is at first to outline, based upon proper appraisal of the pleadings of parties and the evidence led on the record; the uncontroverted and established salient and material facts which appear to me to be settled as between the parties in dispute. These facts are set out as follows:

1. That Plot No. 630, T. O. S. Benson Crescent, Cadastral Zone B05, Utako, Abuja, was originally allotted to one **Mr. Musa Hassan** in 2001 by the 1st Defendant; and that the purpose upon allocation, was for residential. See **Exhibit D1**.

2. That subsequently, the 2nd Defendant, approved the plot for construction of a Health Clinic. See **Exhibit D1A** respectively.

3. That the said **Mr. Musa Hassan** leased the plot to the Claimant sometime in 2012, from which time the Claimant had carried on her business of lounge, clubbing and entertainment generally, up until the occurrence of the events that precipitated the filing of the present suit.

4. That the Defendants, being aware that the purpose to which the Claimant has put the plot, at all material times was apparently inconsistent with the purpose for which the plot was originally allotted, began to issue Notices of Land Use Contravention to the Claimant. Some of such notices were issued by the 3rd Defendant on 20/10/2016; 28/02/2017 and27/03/2018 and addressed to **Musa Hassan** and the Claimant. See **Exhibits D3, C2**and**C8** (same as **D4**).

5. That whilst the Defendants served the Claimant with Notices of contravention of Land Use, they went ahead at the same time to surcharge her with annual contravention charges for 2016, 2017 and 2018 respectively at the rate of **₦2,838,638.00** per annum, which sums the Claimant paid. See Exhibits **C3**, **C4**, **C4A**and**C5** respectively.

6. That on 23/02/2018, the Defendants, through their agents, demolished some portions of the plot, including the fence, swimming pool, plastic seats and other unidentified properties within the premises. See *paragraphs 11 and 23*of the *Further Amended Statement of Claim*corroborated by *paragraphs 12, 20and 21*of the *Statement of Defence*. See also the photographs, **Exhibits C14, C14A – C14G**, showing the images of the destruction.

7. That the Claimant renovated parts of the building demolished by the Defendants' agents on 23/02/2018 and continued with her business thereon.

8. That the Defendants served the Claimant with another notice of contravention on 27/03/2018, giving her **thirty (30)** days to wind-up her commercial activities on the premises of the plot.

9. That consequent to the events in paragraphs (6) and (8) above, the Claimant filed the present suit on 22/05/2018 to seek redress for the Defendant's alleged invasion of the premises of the plot where she carried on business.

10. That upon filing the present suit, the Claimant, pursuant to applications filed before this Court, obtained interim and interlocutory

orders of injunction against the Defendants to restrain them from sealing off the premises, denying the Claimant access thereto and giving effect to the Notice to Quit dated 27/03/2017, served on the Claimant, or enforcing the contravention of land use notice, *inter alia*, pending the hearing and determination of the substantive suit. See the enrollment of orders **Exhibits C10** and **C10A** respectively.

11. The Defendants did not deny receiving the said Court orders contained in **Exhibits C10** and **C10A** respectively.

12. That, whilst this suit was still pending, the agents of the Defendants again entered the premises of Plot 630 on 18/04/2019, chased away the Claimant's staff and guests; and

demolished the fence and other properties belonging to the Claimant on the premises.

13. That as a result of the events narrated in (12) above, the Claimant, through her Solicitors, wrote to the 1st Defendant to notify him of the violation of the orders of this Court orchestrated by his agents and to demand for restitution of the Claimant's properties that were destroyed in the process. See the said letter, **Exhibit C11**, written on 18/04/2019 and acknowledged in the office of the 1st Defendant, on 23/04/2019.

14. That despite the Court orders, the Defendants went ahead to serve Notice of Demolition on the property on 10/05/2019. See Notice of Demolition, **Exhibit C12**, dated 10/05/2019, by which the Defendants gave the Owner/Occupier/Developer of Plot 630 48

(forty-eight)hours to remove the illegal development on the plot.

15. That on 13/05/2019, the Defendants, through their agents, demolished and razed to the ground, the entire building comprised in Plot 630. See photographs, **Exhibits C14H – C14 M**, that captured images of the said demolition activities.

16. That whilst the present suit was still subsisting, the 1st Defendant again proceeded to issue Notice of Revocation of Plot 630 on the allottee, Musa Hassan. See **Exhibit C13**, the original revocation notice.

17. That the Defendants admitted to demolishing structures found on Plot 630 on the said date, as alleged. See *paragraph 31(h)* of the *Statement of Defence*.

As I had stated earlier on, facts narrated in the foregoing, backed by uncontroverted and established evidence led on the record, mostly uncontroverted documentary evidence, constituted matters upon which parties are not in dispute in this case. Without any further ado therefore, I find the said facts, outlined in the foregoing, as having been firmly established as between the parties in dispute in this case.

This being the case, I consider that the issues now germane for determination between the parties in this suit, without prejudice to the issues already formulated by the respective learned counsel, can be succinctly distilled as follows:

1. ***Whether or not the destruction of the Claimant's properties, at various times,on Plot 630, occupied by her at all material times to this suit, as undertaken by the Defendants through their***

agents, were so undertaken by due process of law.

2. ***If issue two is resolved in the negative, whether or not the Claimant is entitled to the damages claimed as a result of the said destruction of the Claimant's properties on the plot.***

In proceeding to determine these issues, I place on record that I had taken due benefits of the arguments canvassed by the respective learned counsel for the contending sides in their copious final written addresses. I shall however endeavour to make reference to aspects of the addresses I consider germane in determining these issues as I proceed with this judgment.

DETERMINATION OF ISSUES

ISSUE ONE:

In order to put issues in dispute in proper perspectives, it is proper to note that, as already established by evidence, the Defendants invaded of the premises of Plot 630 on three different occasions, material to this suit. The first occasion was on 23/02/2018, when the Defendants demolished portions of swimming pool constructed by the Claimant on the plot; and other properties belonging to her on the premises. The case of the Claimant is that she restored the demolished items with the sum of **₦6.3 Million** and continued to carry on her business in the premises. She also proceeded to file the instant action against the Defendants to claim damages for losses she allegedly suffered as a result of the invasion.

However, whilst this case was pending and after the Claimant had secured orders of injunction to restrain the Defendants from interfering with his access and occupation of Plot 630, pending the hearing and final determination of the suit, the Defendants thereafter,

and despite the Court orders, invaded the premises on two occasions – on 18/04/2019, when the Claimants' workers and guests were chased away from the premises; and demolished the fence of the building and other properties belonging to the Claimant. Thereafter, on 13/05/2019, the Defendants, through their agents, carried out a total demolition of the building erected on Plot 630, and in the process, destroyed the Claimant's properties therein.

PRE-COURT ACTION INVASION:

For ease of appreciation, I shall proceed to deal with the invasion incidents, one after the other, as the evidence on record revealed. I will at first deal with the incident of 28/02/2018, which occurred prior to the filing of the present suit.

As I had stated earlier on, the Claimant did not lay claim to ownership of Plot 630. She made it abundantly clear in *paragraph 2* of her Reply to the

Defendants' Statement of Defence that she was a lawful tenant of **Mr. Musa Hassan,** the rightful allottee of the plot. The Claimant's sole witness confirmed this position, under cross-examination by the Defendants' learned counsel, when he testified as follows:

> ***"The plot was not allocated to Caramelo Lounge & Suites Ltd. The property was already developed at the time Caramelo obtained lease of it."***

The Claimant's case is further that she was in exclusive possession and occupation of the premises at all material times relative to the events that resulted in this suit.

The Defendants did not deny the Claimant's contention in this regard. Evidence of notices served by the Defendants on the Claimant on the premises further established the fact that the Claimant was indeed in occupation of the premises at the material times. For

instance, documents being Notices of Land Use Contravention; Charges for Land Use Contravention in respect of Plot 630, CAD, Zone B05, Utako District, Abuja, admitted as **Exhibits C2,C3, C5**and**C8** were addressed either to the Claimant directly or to **Musa Hassan** but for the Claimant's attention.

Furthermore, receipt for payment of the sum of **₦2,838,638.00** as contravention charges on 08/01/2018, **Exhibit C4A,** was issued in the Claimant's name.

Again, the Claimant testified as to the improvements she carried out on the plot which were later removed by the Defendants on grounds of land use contravention, as also supported by evidence on record; and on the basis of which the Claimant instituted the present action to claim damages, *inter alia*.

Furthermore, the uncontroverted evidence on record is that as at 13/05/2019, when the Defendants executed the demolition and razing down of the building on Plot 630, the Claimant was still in occupation of the same.

As such, the issue as to whether or not the Claimant had *locus* to have instituted the instant action does not arise. In the same vein, I dismiss the Defendant's contention that they had dealt with the allottee of the plot at the material time and not the Claimant. The evidence on record, as I had highlighted in the foregoing, does not support this contention. I so hold.

Now, as to the issue as to whether or not the Defendants had the power to remove purported illegal structures in any plot within the FCT, it is proper to put in perspectives that indeed the purpose for which the 1st Defendant allocated Plot 630 to Musa Hassan, the Claimant's landlord, was originally

residential. This is clearly stated in the offer document, Exhibit D1. However, when the allottee applied for Building Plan processing and Approval, the purpose stated on the Form is Health Clinic, as shown on Exhibit D1A. Invariably, even though the plot was allocated for residential purpose, the building plan approval was granted for commercial (health clinic) purpose. I make reference also to the approvals contained in **Exhibits D1B** and **D1C** respectively.

In his evidence under cross-examination by the Defendants' learned counsel, the **CW1** admitted so much when he testified as follows:

> ***"It is correct that the Claimant redesigned the property to suit the nature of my business. A restaurant called Calabar Kitchen operated at the place before the Claimant took over. The swimming pool was the only significant re-designing I did to the property."***

It is also in evidence that at various times between 2016 and 2018, prior to the first time the Defendants carried out demolition exercise of some portions of the premises on 23/02/2018, the 3rd Defendant had served notices of land use contravention on the Claimant on the premises. **Exhibits D3** and **C2** clearly established this fact.

However, evidence on record is further that the Defendant imposed annual charges on the Claimant for land use violation on the Plot, in the sum of **₦2,838,638.00**. Evidence on record revealed that the Claimant paid the said sums for the years 2016, 2017 and 2018 respectively. The Defendants, having received the said sums, clearly condoned the contravention for the said periods up until 23/02/2018, when they turned around to seek to enforce the purported illegal conversion of land use by demolishing the swimming pool built by the Claimant and other attachments to the main building,

as depicted in the pictures tendered in evidence as **Exhibits C14, C14A – C14G**respectively.

Now, the Defendants' contention is that their action in invading the premises of Plot 630 as afore-stated was sanctioned by the law. Their learned counsel had relied on the provisions of **s. 7** of the **FCT Act** and the provisions of **Ss. 47, 48** and **60** of the **Nigerian Urban and Regional Planning Act (NURPA)**as the basis of the Defendants' authority to so demolish the attachments built on Plot 630.

I have examined the provisions of the law cited by the Defendants' learned counsel under which the Defendants purported to have derived the powers to perpetrate the act of invading the premises of Plot 630 on 23/02/2018, with armed policemen, military and civil defence officers to arrest the Claimant's staff, and demolishing the swimming pool built by the Claimant on the premises and destroying her other

properties on the premises. The provisions of **Ss. 47** and **48** of the **Nigerian Urban and Regional Planning Act** make it mandatory for the Defendants to serve enforcement notice on the owner of a premises for any unauthorized development being undertaken within the premises. By the provision of **s. 48(1)** of the **Act,**

> ***"an enforcement notice served pursuant to subsection (1) of section 47 may direct the developer to alter, vary, remove, discontinue a development."***

The provision of **s. 60** of the **NURPA** provides the steps the Defendant ought to take where the enforcement notice issued pursuant to **Ss. 47** and **48** are not complied with, which, mainly is to request the developer to carry out necessary alterations in line with the approved plan, re-instate the land to the state it was before the alteration or pull down the building.

With due respect, there is nothing in the **Act** that empowers the Defendants to undertake the work of pulling down a building where contravention occurs. The Defendants are only entitled to demolish a building, by virtue of **s. 61** of the **Act**, only on one ground – where the structure ***"is found to be defective as to pose danger or constitute a nuisance to the occupier and the public."***

The demolition sanctioned by **s. 61**could only be carried after the necessary notice in that regard is issued and served on the developer/owner/occupier of the building, pursuant to **s. 62** of the **Act**.

In the instant case, the 3rd Defendant issued and served Charges for land use contravention with respect to Plot 630 on the Claimant on February 8, 2018, requesting the Claimant to pay the sum of **₦2,838,638.00** for the 2017, *vide***Exhibit C5**. According to the Claimant, prior to the issuance of **Exhibit C5**, she had proceeded to pay the said sum of

₦2,838,638.00 for the year 2018, on January 30, 2018. She tendered evidence of payment as **Exhibits C4** and **C4A** respectively.

I have waded through the evidence on record. My finding is that after the Claimant made the payment *vide***Exhibit C4** and **C4A**, the Defendants did not serve on her a fresh contravention notice before invading the premises on 23/02/2018. I so hold.

Again, I must hold that the Defendant cannot fairly embark on any such invasion of the premises of Plot 630, as they did on 23rdFebruary, 2018, having condoned the contravention by imposing and receiving annual contravention charges from the Claimant. I so hold.

I have equally examined the provision of s. 7 of the FCT Act also cited by the Defendants' learned counsel. That provision will only apply landed property that is materially altered or changed. It is only where land or

any development thereon has been radically altered that the authority could request the developer or owner to remove the alteration or reinstate the land; and in the event of failure of the developer to heed the directive of the authority that the authority may cause the work to be done and recover the cost from the developer. There is nothing in any of the statutes relied upon by the Defendant's learned counsel that empowered the Defendants to invade the premises lawfully occupied by the Claimant to eject occupants of the building, molest staff and destroy properties of the Claimant as was done in the case at hand.

On this basis, I must hold that the Defendants' acts of invasion of Plot 630 on February 28, 2018, with armed policemen, military and civil defence officers to arrest the Claimant's staff; and by demolishing the swimming pool built by the Claimant on the premises and destroying her other properties on the premises,

are unlawful, illegal and clearly unjustifiable in the circumstances.

POST-COURT ACTION INVASION AND DEMOLITION:

The case of the Claimant is that after the invasion undertaken on the premises of Plot 630 by the Defendants on 23rdFebruary, 2018, she renovated the properties that were destroyed and continued with her business on the premises; that there were moves to have an amicable settlement between the parties as a result of which the Defendants invited her to a meeting on 19/03/2018, vide notice of meeting tendered as **Exhibit C6**; that there was no amicable resolution of the land use contravention matter because the Claimant refused to agree to the terms dictated by the 3rd Defendant; that thereafter the matter was tabled before the House of Representatives by Concerned Entertainment and Night Club Operators in Abuja

without any headway with the Defendants; that the 3rd Defendant served another notice of contravention of land use on the Claimant on March 27, 2018, *vide***Exhibit C8**, this time, giving her 30 days within which to wind up commercial activities on Plot 630 and revert to the original approved land use.

The Claimant's case is further that at this point she proceeded to institute the present suit on 22/05/2018 in order to ventilate her rights against the Defendants with respect to the events of 23/02/2018.

It is on record that upon filing the instant action, the Claimant secured, at first, orders of interim injunction on 11/06/2018, restraining the Defendants, inter alia, from sealing off the premises of Plot 630 or interfering with the Claimant's access to the premises, *inter alia*, pending the hearing of the motion on notice. The **CW1** tendered in evidence as **Exhibit C10**, the

enrollment of the said interim order of injunction of this Court.

The records of this Court further bear out that the Defendants were served with the Claimant's motion on notice for interlocutory injunction and the same was heard and granted on 19/06/2018. The enrollment of the interlocutory order of injunction is tendered in evidence as **Exhibit C10A** by the **CW1**.

By the said order of interlocutory injunction, the Defendants were restrained from giving effect to the threats contained in their letter of March 27, 2018, **Exhibit C8**, by which they gave the Claimant 30 days within which wind-up her business activities on Plot 630 and revert to the original land use approved for the plot.

However, according to evidence on record, the Defendants defied the Court order and whilst this suit was still pending, proceeded, at first, to again invade

the premises on 18/04/2019. Thereafter, they served demolition notice on the premises on 10/05/2019 and on 13/05/2019, went on the plot, completely razed it down, and in the process destroying the Claimant's properties thereon.

The Defendants did not deny the acts of invasion and demolition executed on plot 630 at the stated periods. In his evidence under cross-examination by the Claimant's learned senior counsel, the Defendants' sole witness admitted so much when he testified as follows:

> ***"It is correct that the Development Control demolished the building housing Caramelo Lounge & Suites, which also has a restaurant. … I am aware that the Claimant is in Court as a result of the damage done to his property."***

The Defendants'justification for undertaking the demolition, as averred in *paragraph 32(h)* of their *Statement of Defence*, was as a result of the Claimant's

refusal to heed all the notices served on her remove unapproved structures constructed on the plot.

Again, under cross-examination by the Defendants' learned senior counsel, the **DW1** testified that he was personally unaware of the Court orders, **Exhibits C10** and **C10A** respectively, because the orders have been made much earlier in June, 2018; whereas he joined the employment of the 2nd Defendant in November, 2018.

I had earlier on held that the provisions of the law relied upon by the Defendants to invade the premises of the Plot on 23/02/2018, did not avail them. Now, with respect to the invasion carried out on 18/04/2018, the testimony of the **CW1** is as contained in *paragraph 71 and 72* of his *Statement on Oath*, where he stated as follows:

> ***"71. That I know as a fact that on 18th April, 2019, while the Claimant's guests were celebrating birthday***

with their families and friends in the premises, the Defendants came to the Claimant's premises at about 1:15am midnight with heavy armed security men and arrested the customers and detained them till 6pm on that same day without any lawful justification and the detained customers were released on bail after I paid the sum of N300,000 (Three Hundred Thousand Naira) for their bail.

72. That I know as a fact that at about 6.30 am in the morning of 18th April, 2019, as if that arrest was not enough to decimate the Claimant's business, the Defendants, through their agents and privies, entered the Claimant's premises, demolished the fence, destroyed the stored drinks and wines, tables and chairs and other properties."

In their response to the allegations of invasion of the Claimant's premises on the said 18th April, 2018, all that the Defendants said, through their witness, is as contained in *paragraphs 28 and 29* of his *Statement on Oath*, where he testified as follows:

"28. That paragraph 30 of the Statement of Claim is not correct at all and I vehemently deny same on behalf of the Defendants and I state that up till this moment, there has not been any known report of any extortion of money from anybody as alleged or at all.

29. With reference to paragraph 31 of the Amended Statement of Claim already denied, I hereby state on behalf of the Defendants that the demolition of the unapproved structures on the plot was done after due notices were served on the Claimant."

The effect of the Defendants' denial of the invasion of the Claimant's premises on 18/04/2018 is that even though the invasion took place, money was not extorted from anyone and that the invasion was on the heels of notices being served in that regard on the Claimant.

I had analyzed in the foregoing, the procedure prescribed by the provision of the **Nigerian Urban and Regional Planning Act** cited supra, for demolition

of any building in the FCT. The **Act**, by **Ss. 47** and **48** thereof, empowers the Defendants, by serving the requisite notice, to demand that unapproved structures in any premises be removed, altered or varied, as the case may be.

There is no evidence before the Court that prior to the invasion of the Claimant's said premises on the said date, the Defendants served a notice of enforcement on the Claimant, stating, as required by the provision of **s. 50** of the **NURPA**, their proposed action and the reason(s) for the proposed action. In other words, the Defendants failed to comply with the statutory condition precedent to taking any actions with relations to the structures on Plot 630 at the material time, as was done in the circumstances under consideration.

In *Adesanoye Vs. Adewole [2006] 14 NWLR (Pt. 1000) 242*, the Supreme Court, *per* **Tobi, JSC** (of blessed memory) held as follows:

> ***"Where a statute clearly provides for a particular act to be performed; failure to perform the act on the part of the party will not only be interpreted as a delinquent conduct but will be interpreted as not complying with the statutory provision. In such a situation, the consequences of non-compliance with the statutory provision follow notwithstanding that the statute did not specifically provide for a sanction. The Court can, by the invocation of its interpretative jurisdiction, come to the conclusion that failure to comply with the statutory provision is against the party in default."***

See also *Gambari& Ors. Vs. Gambari& Ors. [1990] 5 NWLR (Pt. 152) 45&EjilemeleVs. Okpara [1998] 9 NWLR (Pt. 567) 587* (cited by the Claimant's learned counsel).

I must, in the circumstances, agree with the arguments of the Claimant's learned counsel that the Defendants failed to satisfy the statutory pre-conditions before

they invaded the premises of the Claimant on 18/04/2019 and I so hold.

Again, the evidence on record is that the Defendants proceeded to serve notice of demolition on the property in Plot 630 on 10/05/2019 and effected the demolition of the property on 13/03/2019. The evidence of the CW1 in that regard is contained in *paragraphs 75 and 76* of his *Statement on Oath* which I reproduce as follows:

> ***"75. That I know the Defendants overlooked, neglected and ignored the said letter and order of this Court and on Friday, at about 6.30 pm the 10th day of May, 2019, the Defendants, through their agent, served the Claimant Notice of Demolition and Notice of Revocation of title to Plot 630, TOS Benson Crescent, Cadastral Zone B05, Utako District, Abuja.***
>
> ***76. That I know as a fact that on Monday the 13th day of May, 2019, around 6.00am while the Defendant (sic – Claimant's) staffs and guests were***

still asleep, the Defendant entered the premises with heavy armed men, all the Nigerian security agencies fully represented, chased customers who lodged and staffs of the Claimant away and demolished the entire building and not even an electric bulb was allowed to be removed from the building."

Now, the said demolition notice, **Exhibit C12**, was purported to be issued pursuant to the provision of **s. 61** of the **NURPA, 1992**.

The demolition notice, addressed to the Owner/Occupier/Developer of Plot 630, state in part, as follows:

"THE AUTHORITY OBSERVED WITH DISMAY THAT THE DEVELOPMENT OR STRUCTURE ON PLOT 630 IS DEFECTIVE AND CONSTITUTE DANGER OR NUISANCE TO THE PUBLIC/ADJOINING PLOT.

TAKE NOTICE THAT YOU ARE GIVEN 48 HOURS TO COMPLY BY PULLING DOWN THE STRUCTURE OR HAVE THE ILLEGAL DEVELOPMENT DEMOLISHED IN

ACCORDANCE WITH SECTION 61 OF THE NIGERIA URBAN AND REGIONAL PLANNING ACT 1992"

In view of its relevance to the issue at hand, I take liberty to also reproduce the extant provision of **s. 61** of the **NURPA**, as follows:

> ***"61(1) The Control Department shall have the power to serve on a developer a demolition notice if a structure erected by the developer is found to be defective as to pose danger or constitute a nuisance to the occupier and the public.***
>
> ***(2) Notice served pursuant to subsection (1) of this section shall contain a date not later than 21 days on which the Control Department shall take steps to commence demolition action on the defective structure."***

As I had noted earlier on, the sole reason the Development control is empowered to serve a demolition notice on a property is where it is found or considered that the property is defective so as to pose

danger or constitute a nuisance to the occupier and the public.

Let me quickly add here that the Demolition Notice was clear in its face as to the reason for its issuance. As such, the fact that Revocation Notice was served simultaneously with the Demolition Notice could not have been a justification for the demolition. In other words, in the circumstances of the instant case, the fact of revocation of title to Plot 630 could not have been a justification for carrying out the demolition of the property built on the plot. I so hold.

Now, the question is at what point in time did the Defendants find the building constructed on Plot 630, occupied by the Claimant at the material time, to be defective to warrant its demolition?

According to the Claimant, he had been in lawful occupation of the building since 2012, the same having been leased to her by the original allottee. There is

uncontroverted evidence on record that between the period 2016 and 2018, the Defendants surcharged the Claimant contravention fees which she duly paid. There was never a time prior to the date of issuance of the Demolition Notice, **Exhibit C12**, in so far as the evidence on record could bear out, that the Defendants ever complained to the Claimant or the owner of the building on Plot 630, that the building was defective. Evidence on record shows clearly that up until the issuance of **Exhibit C12**, the only known grouse the Defendants had against Plot 630 was that the premises was being used for a different purpose from that for which the land was allocated.

What then made the building, on which the Defendants had received contravention for change of use charges from the Claimant, to suddenly become defective in 2019 to warrant the issuance of demolition notice?

My finding is that the Defendants have placed no facts before this Court as to the parametres or yardstick they adopted in categorizing the building on Plot 630 as a defective building, to have justified the issuance of a notice of demolition for the pulling down of the same. I so hold.

Again, the provision of **s. 61(2)**of the **Act**empowers the Development Control to give the party to be served with the demolition notice up to **twenty one (21) days** to enable the party time to remove the purported defective building failing which the Development Control shall proceed to carry out the demolition and pass the bill thereof to the developer, as prescribed by the provisions of **Ss. 62** and **63** of the **Act.**

In the present case, the Defendants gave only **48 hours'** notice to the Owner/Occupier/Developer of the Plot to remove the structure thereon. Evidence on

record is that the demolition notice was served around 6.30 pm on Friday, 10/05/2019 and the demolition of the building was effected as early as 6.00amon Monday, 13/05/2019.

By the provision of **s. 15(4)** of the **Interpretation Act**, ***"where by an enactment any act is authorized or required to be done within a particular period which does not exceed six days, holidays shall be left out of account in computing the period."*****Sub-section 5** of **s. 15**of the **Act**proceeded to interprete "holiday" to mean a day which is a Sunday or a public holiday."

In the instant case, the Defendants gave the Claimant served the Demolition Notice on the Claimant in the evening of Friday, 10/05/2019, giving her 48 hours to pull down the building or else have it demolished by the authorities. Going by the **provision of s. 15(4)** and **(5)** of the **Interpretation Act**, the Sunday preceding Monday, 13/05/2019, when the demolition was carried out by the Defendants, ought

to have been discounted from the 48 hours. In other words, the Defendants contravened and disregarded their own notice in carrying out the demolition. I so hold.

What is more, when the statute prescribed that in the circumstance where a developer/Owner/Occupier of a property is required to pull down a defective building, time, up to twenty one (21) days shall be given for that purpose. In the instant case, as is seen on the Demolition Notice, the issuer of the Demolition Notice, **TPL Kaka Mallam Umar,** cancelled out **"21 DAYS"** printed on the Notice and in long hand wrote **"48 hrs."** This shows that the standard time such notice is given is for 21 Days, but to further show that in the instant case, the Defendants' actions were actuated by extreme malice, the **21 days** was reduced to **48 hours.**

From the totality of the circumstances here, I must hold that the issuance of the Demolition Notice, **Exhibit C12,** by the authority of the Defendants was afflicted by three viruses, namely:

i. The Notice was effected on a property that was not shown to be defective;

ii. The 48 hours' notice given for the pulling down of the property contravened the clear provision of **s. 61(2)** of **NURPA** and the Defendants' standard practice;

iii. The **48 hours'**actual notice given had not elapsed, going by the provision of **s. 15(4)** and **(5)** of the Interpretation Act, when the Defendants effected the demolition exercise.

Most grievously and unfortunately also, is the act that the demolition was carried out during the pendency of this suit and particularly in defiance of the order of interlocutory injunction made by this Court on

19/06/2018 (**Exhibit 10A**), restraining the Defendants from undertaking such an action pending the determination of this suit.

On the basis of the analysis in the foregoing, therefore,this Court cannot but declare and I hereby declare that acts of the Defendants in issuing Demolition Notice on Plot 630 and the demolition of the property built thereon in the manner described by evidence on record were not only unlawful, illegal and in defiance of valid Court order; but were actuated by extreme malice, vindictiveness and crass impunity.

Let me quickly state that I have noted the decision of my learned Brother, Ashi, J (now of blessed memory), in Suit No. FCT/HC/CV/1960/2014 between Divention Holding Ltd. Vs. Abuja Metropolitan Management Council & 2 Ors. delivered on 16/03/2016, relied upon by the Claimant's learned council for the contention that the Defendants cannot

validly demolish and seal off the premises of the Claimant without an order of competent jurisdiction. Learned counsel had urged upon this Court to be persuaded by that decision in holding that the Defendants' demolition of Plot 630, without first obtaining a valid Court order, was illegal and unlawful.

I had carefully examined that authority. It is pertinent to note that the questions the Claimant in that action placed before that Court, essentially, was as to whether or not the Defendant in that case (3rd Defendant in the present case), was authorized by any Act of the National Assembly to impose annual land use contravention charges and other levies as penalty for using and/or operating an office within the premises of any land within the FCT; and whether it was therefore proper and lawful to collect the sum of ₦500,000.00 from the Claimant in that case as annual land Use Contravention charges in respect of the Plot

she carried on business within the FCT. Clearly the cause of action in the present suit is not the same with the cause of action in that case. As such, the Court's pronouncement that the Defendant had no power to seal off the premises of the Claimant in that case without Court order could said to be made per incuriam, since it was not predicated on the reliefs claimed before the Court or the issues for determination in the case. As such, the decision of the Court in that case is not applicable to the cause of action in the present case. I so hold.

On the basis of the analysis of the evidence led on record and the application of the law as undertaken in the foregoing, I hold that the Claimant has established her entitlement to the declaratory relief claimed in relief (5) of the instant suit, to the extent that the respective acts of the Defendants in invading the premises of Plot 630 on 23/02/2018, 18/04/2019 and 13/05/2019 respectively, without due regard for

due process of law, and destroying properties belong to the Claimant thereon, constituted illegal and unlawful acts and I so declare.

I further hold that the Claimant has successfully established relief (6) in part to the extent that the act of the Defendant in issuing and serving Demolition Notice dated 10/05/2019 on Plot 630, whilst this suit was still pending and whilst the order of interlocutory injunction made by this Court on 19/06/2018, and served on the Defendants, were still pending, was illegal, unlawful, null and void and of no effects whatsoever.

Accordingly I resolve issue one in favour of the Claimant.

ISSUE TWO:

Having resolved issue one in favour of the Claimant, it becomes pertinent to determine whether or not she is

entitled to the reliefs for general, special and exemplary damages claimed in the circumstances.

The Court has held in the foregoing that the invasion of Plot 630, where the Claimant carried on her business at all material times, by the Defendants on 23/02/2018, 18/04/2019 and 13/05/2019 respectively, were carried out without due regard for due process of law. On that basis alone, the Claimant is ordinarily entitled to general damages.

However, in the instant case, the Defendants' sins and violations were more so grievous in that the invasion of Plot 630 on 18/04/2019 and 13/05/2019 respectively, were done whilst this suit was still pending and without due regard to the subsisting order of interlocutory injunction issued by the Court restraining the Defendants from giving effect to the treat contained in the 3rd Defendant's notice of contravention issued and served on the Claimant on

27/03/2018, inter alia. In other words, the Defendants engaged in self-help in invading the plot on 18/04/2019 and 13/05/2019 respectively; in the process, demolishing the entire building and causing destruction to the Claimant's properties on the plot.

ON CLAIM FOR GENERAL DAMAGES:

The position of the law with respect to damages is clear and settled. A claimant's entitlement to damages, whether general or special, must be attributable to the established wrongful act of the Defendant. See the cases of **ELOICHIN (NIG.) LTD. Vs. MBADIWE (1986) 1 NWLR (Pt. 14) 47; ATTORNEY GENERAL OF OYO STATE Vs. FAIRLAKES HOTELS LTD. [No. 2] (1989) 5 NWLR (Pt. 121) 255; ELF PETROLEUM LTD. Vs. UMAH (2007) 1 NWLR (Pt. 1014) 44; ODOGWU Vs. ILOMBU (2007) 8 NWLR (Pt. 1037) 488**.

The law is also settled that the measure of general damages is awarded to assuage such a losswhich

flows naturally from the defendant's act. It needs not be specifically pleaded. It suffices if it is generally averred. They are presumed to be the direct and probable consequence of that complained of.Unlike special damages, general damages are incapable of exact calculation. The Court is therefore afforded a fair latitude in determining the quantum of general damages on the basis of the facts and circumstances of each case as presented before it. See again the authorities of *Taylor Vs. Ogheneovo [2012] 13 NWLR (Pt. 1316) 46* (cited by the Claimant's learned counsel); *Federal Mortgage Finance Ltd Vs. Hope EffiongEkpo [2004] 2 NWLR (Pt. 865) 100 at 132.*

The Claimant has claimed the sum of ₦5,000,000,000.00 (Five Billion Naira) only as general damages for the Defendants' alleged invasion of Plot 630 at the stated occasions and in the process destroying the Claimant's properties. These allegations were successfully proved. The Defendants' defence,

which has been shown to be unfounded in law, is that the invasions were carried out in execution of notices previously served on the Claimant.

Considering the totality of the circumstances of this case therefore, the Court considers that an ward of the sum of ₦50,000,000.00in favour of the Claimant will be a fair and reasonable as general damages for the Defendants' unlawful conducts.

ON CLAIM OF SPECIAL DAMAGES:

As correctly submitted by the Claimant's learned counsel, an award of special damages, unlike general damages, is not based on the discretion of the Court, but on credible and reliable evidence adduced before the trial Court which strictly proves the Claimant's entitlement. Where various items are claimed under special damages, the Claimant is entitled to be awarded any of the items which he could prove with sufficient evidence, even if he is not able to prove all

of them. See *Taylor Vs. Ogheneovo (supra); Anazodo Vs. P. I. T. Nig. Ltd. [2008] 6 NWLR (Pt. 1084) 529.*

In the present case, the Claimant specifically pleaded the special damages he suffered as a result of the Defendants' infractions and destruction of her properties on Plot 630 as the material times in paragraph 40 of the Statement of Claim, where the items of loss and special damages were clearly listed with the costs.