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

THIS WEDNESDAY, THE 22ND DAY OF JUNE, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1948/2018

BETWEEN:

MAYDAL VENTURES LIMITED ..... CLAIMANT

AND

1. **THE INCORPORATED TRUSTEES OF LOKOGOMA BASIC ESTATE OWNERS/ RESIDENTS ASSOCIATION (LBEORA)**
2. **DR. JOSEPH NNOROM**
3. **LOPEZ OSARETIN EKHATO**

…..DEFENDANTS

JUDGMENT

By a writ of summons and statement of claim dated 30th May, 2018 and filed on 31st May, 2018, the claimant prays for the following Reliefs:

1. **A DECLARATION that the Claimant is the right allottee of shop space (block CSH/A3) at Basic properties, Plot No. 9, Cadastral Zone C09 Lokogoma District, Abuja for commercial purpose.**

2. **AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants jointly and severally, their agents, servants and privies or whosoever claiming through the Defendants from interfering with the Claimant's possession over shop space (block CSH/A3) at Basic Properties, Plot No. 9, Cadastral Zone C09 Lokogoma District, Abuja.**

3. **The sum of N50, 000, 000.00 (Fifty Million Naira) against the Defendants jointly and severally being cost of general damages for the trespass and all other illegal acts done by the Defendants, their agents, servants and privies in respect of the plot belonging to the claimant.**

4. **AN ORDER directing the Defendants to remove all or any illegal sign post and borehole on the land known and situate at (block CSH/A3) at Basic properties, plot No. 9, Cadastral Zone C09 Lokogoma District, Abuja belonging to the Claimant.**

5. **A cost N5, 000, 000.00 (Five Million Naira being the legal fees) that the Claimant has incurred due to the wrongful acts of the Defendants that necessitated this action.**

6. **Such further or other reliefs as the honourable court may deem fit in the circumstances.**

The Defendant filed a joint statement of defence dated 11th July, 2019 and in response the claimant filed a Reply dated 13th November, 2019 and filed same date.

The matter then proceeded to trial. In proof of its case, the plaintiff called two witnesses. **Paul Ojogbane**, General Manager with Sahara Homes, the developers of the basic Estate Lokogoma District where the disputed premises is situated testified as **PW1**. He deposed to a witness statement on oath dated 31st May, 2018 which he adopted at the hearing and tendered in evidence the following document:

1. **Letter of allocation of corner shop space (Block CSH/A3) at basic properties, Plot 9 Cadastral Zone C09 Lokogoma District Abuja to Maydal Ventures Ltd dated 23rd October, 2009 was admitted as Exhibit P1**.

PW1 was then cross-examined by counsel to the defendants.

PW2 is **Mr. Dalhatu Baba Adama**, a Director in claimant company who testified as PW2. He deposed to a witness statement on oath dated 31st May, 2018 and a further witness statement dated 13th November, 2019 which he both adopted at the hearing. The following documents were tendered by him as follows:

1. **Copy of Land Use Plan of Plot 84, Lokogoma District Abuja FCC Phase iii allocated to Basic Properties under the mass housing programme was admitted as Exhibit P2.**

2. **Certificate of Incorporation of claimant issued by Corporate Affairs Commission dated 30th November, 2007 was admitted as Exhibit P3.**

3. **Five (5) numbered photographs comprising 2 photographs of developed commercial plots and 3 photographs of the disputed premises with the sign board of the 1st defendant on it together with the Certificate of Compliance were admitted as Exhibits P4 (1-5) and Exhibit P5.**

4. **The letter by the law firm of A.A. Ibrahim & Co. dated 18th July, 2016 titled "Demand Notice" was admitted as Exhibit P6.**

5. **Official Receipt issued by the law firm of A.A. Ibrahim & Co. to Maydal Ventures Ltd for professional fees in the sum of N1, 500, 000 was admitted as Exhibit P7.**

PW2 then identified **Exhibit P1** as the letter of allocation issued to the claimant which was referred to in the statement of claim and his witness depositions.

PW2 was then cross-examined by counsel to the defendants and with his evidence, the claimants closed its case.

The defendants on their part called only one witness. **Lopez Osaretin Ekhato**, the 3rd defendant and one of the trustees of Incorporated Trustees of Lokogoma Basic Estate Owners/Residents Association (the 1st defendant) testified as **DW1**. He deposed to a witness statement dated 11th July, 2018 which he adopted at the hearing and tendered in evidence the following documents:

1. **Site plan showing plot No 9 granted to Basic Properties Nigeria Ltd was admitted as Exhibit D1.**

2. **Land Use Plan of Percel (sic) "D" (9) belonging to Basic properties Ltd was admitted as Exhibit D2.**

3. **Copy of layout plan shewing (sic) land granted to Basic Properties Estate, Lokogoma was admitted as Exhibit D3.**

4. **Letter by the law firm of A.A. Ibrahim & Co dated 27th July, 2016 to the law firm, Kingsley Bernard was admitted as Exhibit D4.**

5. **Letter by the Law Firm of Kingsley Bernard dated 25th July, 2016 to the law firm of A.A. Ibrahim & Co. was admitted as Exhibit D5.**

6. **Two letters by Saraha Homes Ltd titled "Re: Request for consent to operate joint account with G-Unit Global Techn Ltd both dated 8th December, 2011 were admitted as Exhibits D6 a and b.**

7. **Letters by Saraha basic Estate landlords/residents Association dated 8th August, 2011 and 2nd November, 2011 to the Chairman Saraha Homes (Nig.) Ltd were admitted as Exhibits 7a and 7b.**

DW1 was then cross-examined by counsel to the claimant and with his evidence, the defendants closed their case.

At the close of the case, parties filed and exchanged final written addresses. The final address of the defendants is dated 28th March, 2021 and filed on 25th March, 2021.

In the address, one issue was raised as arising for determination:

"Whether on the totality of the case, the Claimant is rightful allottee of Shop Space (block CSH/A3) at Basic properties, Plot No. 9, Cadastral Zone C09, Lokogoma District, Abuja for commercial purposes and has any valid title to be entitled to judgment in this suit having regard to the non-performance of the conditions set out in the offer letter."

On the part of the plaintiff, the final address was filed on 23rd June, 2021.

In the address only one issue was also raised as arising for determination to wit:

"From the facts of this case and evidence adduced before this Honourable Court, whether the claimant has proved her case to be entitled to judgment."

The defendants then filed a joint reply on points of law on 7th September, 2021.

I have set out above the issues as distilled by parties. The issues formulated by parties traverse the same compass even if differently worded. The central key

issue as delineated on the pleadings has to do with who is the rightful allottee of a corner shop space (Block CSH/A3) at Basic properties, plot 9 Cadastral Zone C09 Lokogoma District Abuja hereinafter referred to as the demised or disputed property. The claimant contends that the property belongs to them while the defendants contend otherwise.

In the circumstances, on a careful consideration of the pleadings and evidence on record, it appears to me that the issues raised by parties can conveniently be accommodated within the purview of the issue formulated by plaintiff which the court will slightly modify or alter in the following terms:

"Whether on a preponderance of evidence or balance of probabilities, the claimant has proved its case to entitle it to all or any of the reliefs sought against the defendants."

The above issue has thus brought out with sufficient clarity, the pith of the contest which remains to be resolved shortly by the extant judicial inquiry. This issue is not raised as an alternative to the issues formulated by parties. Rather all the issues distilled by parties can conveniently and cumulatively be taken under the above issue. See **Sanusi V Amoyegun (1992) 4 NWLR (pt.237) 527 at 530**.

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

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

however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

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

ISSUE ONE

"Whether on a preponderance of evidence or balance of probabilities, the claimant has proved its case to entitle it to all or any of the reliefs sought against the defendants."

I had at the beginning of this judgment stated the claims of the plaintiff. The cause of action seems to be predicated on who the rightful allotee is to the demised or disputed corner shop already identified above. A determination of this question will involve determining the person or body responsible for the allocation; who it made the allocation to and whether the allocation was impugned in any manner as to render it invalid.

As earlier alluded to, the case of plaintiff on the pleadings and evidence is that it is the rightful allottee of the demised premises and has an enforceable agreement with Saraha Homes, the developer of Basic Estate Lokogoma District where the demised premises is situated with respect to the sale of the corner shop in question.

On the other side of the aisle, the case of the defendants essentially is that the demised premises does not belong to the claimant and was not allocated to them by Saraha homes on the basis that when the property inventory was handed over to 1st defendant by the developer, Saraha Homes, the demised premises was not captioned as belonging to the claimant but that the property was captioned as an area marked out for the common use of the estate and accordingly that the said demised premises belongs to the defendants.

It is therefore to the pleadings which has streamlined the issues and facts in dispute and that evidence led that one must now beam a critical judicial search light in resolving the contested assertions.

In this case, the plaintiff filed a twenty four paragraphs statement of claim and a twenty seven paragraphs Reply to the joint statement of defence of defendants. I shall refer to specific paragraphs where necessary to underscore any relevant point. The evidence of the two witness for the claimant were largely within the structure of the pleadings they filed.

The defendants on their part filed a joint twenty six paragraphs statement of defence and I shall equally refer to specific paragraphs where necessary. The evidence of 3rd defendant and sole witness for the defendants was equally largely within the structure of the defence.

I shall in this judgment deliberately and in extenso refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Indeed the pleadings and evidence in this case is critical because I note that in the final address of the defendants in particular, the conduit of the address has been used to alter in fundamental respects, the trajectory of the narrative of the defendants in a manner different from that projected on the pleadings. I will return to this point later on.

Before going into the merits, let me state some relevant principles that will guide our evaluation of the evidence on Record.

Because the contested assertions have some elements of contract, it may not be out of place to situate what it entails. Now, generally in law, a contract is an agreement between two or more parties which creates reciprocal legal obligations to do or not to do a particular thing. To bring a contract to fruition where parties to the contract confer rights and liabilities on themselves, there must be mutual consent and usually this finds expression in the twin principles of offer and acceptance. The offer is the expression of readiness to contract on terms as expressed by the offeror and which if accepted by offeree gives rise to a binding contract.

It should be pointed out clearly that the offer itself is not the contract in law but the taking of preliminary steps that may or may not ultimately crystallize into a contract where the parties eventually become *ad-idem* and where the offeree signifies a clear and unequivocal intention to accept the offer. See **Okubule Vs Oyegbola (1990)4 N.W.L.R (pt. 147) 723.**

Putting it more succinctly, the basic elements in the formation of a contract are:

1. The parties must have reached agreement (offer and acceptance)
2. They must intend to be legally bound, that is an intention to create legal relation.
3. The parties must have provided valuable consideration.
4. The parties must have legal capacity to contract.

See Alfotrim Ltd VsA.G Fed (1996)9 NWLR (pt.475) 634 SC; Royal Petroleum Co. Ltd.Vs FBN Ltd (1997)6 NWLR (pt.570) 584: UBA Vs. Ozigi (1991)2 NWLR (pt.570)677.

All the above streamlined ingredients are autonomous units in the sence that a contract cannot be formed if any of them is absent. In succinct terms, for a contract to exist in the law, the above elements must be present. See **Orient Bank (Nig.) Plc V Bilante Int'l Ltd (1998) 8 NWLR (pt.515) 37 at 76.**

It may also be relevant to state certain principles that are now fairly constant and universal which guides the court in the process of evaluation of evidence. It is now settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore

be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

A convenient starting point is to determine the precise situational basis pertaining to the relationship of parties on record, **if any or at all**. I prefer to take my bearing from the pleadings of parties. In paragraphs 2, 3, 4, 5, 6, 10, 11 and 12, the claimant pleaded as follows:

"2. The 1st Defendant is an incorporated trustees registered under part C of Companies and Allied Matters Act, 2004 (CAMA) as an association of owners and residents of basic Estate, Lokogoma District Abuja.

3. **The 2nd Defendant is the Chairman of the Incorporated Trustees of Lokogoma Basic Estate Owners/Residents Association (LBEORA) in Abuja within the jurisdiction of this Court.**

4. **The 3rd Defendant is the Secretary of Incorporated trustees of Lokogoma Basic Estate Owners/Residents Associaiton (LBEORA) in Abuja within the jurisdiction of this Court.**

5. **The Claimant avers that Basic Properties is the allottee of Plot 84, Lokogoma District, Abuja FCC Phase III (Basic Estate Lokogoma District Abuja).**

6. **The Claimant avers that Saraha Homes Limited is the developer of Basic Estate Lokogoma District Abuja pursuant to a of joint venture agreement between Saraha Homes Limited and Basic properties.**

11. **The Claimant avers that Saraha Homes Limited allocated plots to other interested individuals including persons who later formed the Defendant's association.**

12. **The Claimant avers also that both the Claimant and the 2nd and 3rd Defndants were allotted plots by Saraha Homes Limited."**

The defendants did not join issues with the above averments. Indeed in paragraphs 2 and 14 of the defence, they pleaded as follows:

"2. The Defendants admitted paragraphs 2, 3, 4, 5, 6, 11 and 12 of the Statement of Claim.

14. The Defendants admit paragraph 10 of the Statement of Claim ONLY to the extent that despite the cautions, admonitions and advise by the 1st Defendant about the nullity of the purported allocation to the Claimant, the Claimant entered into possession of the said plot and commenced construction of buildings therein."

The above admitted averments are clear and unambiguous and situates the following facts:

1. **Basic properties is the original allotee of plot 84 Lokogoma District, Abuja FCC Phase III (Basic Estate Lokogoma District Abuja) where the subject matter of dispute is situated.**

2. **It is equally admitted common ground that Saraha Homes Limited is the developer of the Basic Estate Lokogoma District Abuja pursuant to a joint agreement between Saraha Homes Ltd and Basic Properties.**

3. **Saraha Homes allocated plots in this estate to interested individuals including persons who later formed the defendants association (1st defendant).**

4. **The 1st defendant is an incorporated trustees registered under Part c of Companies and Allied Matters Act 2004 (CAMA) as an association of Owners and Residents of Basic Estate Lokogoma District Abuja.**

5. **Both claimant and the 2nd and 3rd defendants were allotted plots by Saraha Homes Limited.**

6. **The claimant was given possession and they commenced construction of there proposed shop with offices attached.**

Let me quickly add that by **Exhibits P4 (1-3)** the photographs tendered by Claimant, the development on the property had reached an advanced stage. The defendants in paragraph 14 of their defence above admitted that the claimant entered into possession and has commenced construction of building therein.

The above streamlined findings clearly are a consequence of the admission by defendant in paragraphs 2 and 14 of the defence highlighted above. The law is settled that facts admitted need no proof. An admission essentially puts an end to proof. This is because by the admission, the parties no more join issues on the matter. Since proof presupposes a dispute and since admission drowns the element of dispute, proof becomes superfluous. See **Akaninwo V Nsirim & ors (2009) 9 NWLR (pt.1093) 439**.

Flowing from the above and as a logical corollary, no magnifying glass is needed to situate the clear fact that on the specific matter of the allocation of the demised shop space at Block CSH/A3 at Basic properties, Plot 9, Cadastral Zone C09 Lokogma District, Abuja **the defendants individually or**

collectively have no role absolutely in the allocation of same. They don't own the plot 84 and they were never allotted the said plot. On the pleadings and evidence and at the risk of sounding prolix, the Basic Estate, Plot 84 belongs to **Basic Properties** who were allotted the plot while **Saraha Homes** Ltd is the developer of the Basic Estate Lokogoma District pursuant to **a joint agreement** between them (Saraha Homes Ltd and Basic Estate). Saraha Homes, on the basis of the joint agreement, then allocated Plots to interested individuals including **claimant**, **2nd and 3rd defendants**. This the defendants admitted. No more. The 1st defendant on the admitted pleadings is a conglomeration of owners and residents of the Estate who registered their association under Part C of CAMA to protect their collective interest but that registration does not alter the legal status of the association to suddenly become the owner or allottee of the said Plot 85 or to give them certain non-existent powers of an overload which they erroneously seek to project in this case.

Now on the evidence, there is no dispute that Saraha Homes Limited vide Exhibit P1 dated 23rd October, 2009 allocated Corner-shop Space (Block CSH/A3) at Basic Properties Plot 9 Cadastral Zone C09 Lokogoma District Abuja to the **claimant** on clear terms as contained in the letter of allocation which claimant accepted. This accepted allocation by claimant containing the terms of the offer in law provides the basis for the mutual reciprocity of legal obligations between them and binds only the parties to the offer letter and not 3rd parties. See **Agareh V Mimra (2008) 2 NWLR (pt.1071) 378 at 412**.

No where however did the **names of the defendants feature in this allocation letter**. Indeed their names cannot appear or feature precisely because they agree or concede that it is **Saraha Homes** that is the developer and the allocating institution of the said Plot 84 based on the joint agreement it had with the original allotee. It is the same Saraha Homes that allocated their own plots which provided the catalyst for registration of even the 1st defendant. In the first place, the claimant therefore legally and factually has no business with the **defendants** with respect to the demised or disputed premises. If at all there should be any issue, over the allocation, logic demands or dictates it should be with Saraha homes. Saraha Homes have here not raised any complaints at all on the allocation of the Shop Space they made to Claimant.

Now on the evidence, the **general manager of Saraha Homes** testified as PW1 and his evidence is very instructive. In his deposition, which I prefer to reproduce at length, he testified as follows:

"1. That I am a General Manager with the Saraha Homes Limited who is the developer of Basic Estate Lokogoma District, Abuja by virtue of joint venture agreement.

2. That I have the authority and consent of my employer to depose to this Statement on Oath. Except as otherwise stated, the facts deposed to herein are within my personal knowledge.

3. That Saraha Homes Limited was the developer of Basic Estate Lokogoma and who was responsible for allocation of plots in the estate to interested individuals.

4. That Saraha homes Limited allotted plots to the members of the Defendant's association as each individual members applied for allotment.

5. That the Claimant applied to Saraha Homes Limited for allocation of plot A3 red plots for commercial purpose.

6. That Saraha Homes Limited allocated to the Claimant plot A3 at basic Estate Lokogoma by a letter dated 23rd October, 2009 for a consideration of N5, 000, 000.00 (Five Million Naira).

7. That Saraha Homes Limited had relinquished development of Basic Estate Lokogoma to the Defendants.

8. That Saraha Homes Limited has not allocated plot A3 to any other person or persons other than the Claimant.

9. That I know that the allocation to the Claimant is valid and the Claimant is the rightful allottee of Plot A3 Basic Estate Lokogoma District, Abuja.

10. That the 2nd Defendant and 3rd Defendant are aware that the plot belongs to Claimant and only trying to usurp it because of its prime location."

His evidence was not challenged or impugned in any material particular in relation to the **clear specifics** of his evidence with respect to the allocation of the cornershop or the disputed plot to claimant. His evidence coming as it were from the developer of the estate and the allocating body must be accorded significant probative value in the circumstances, in the absence of any credible counter evidence. Under cross-examination, he stated when questioned with respect to his deposition in paragraph 9 where he said that "I know that the allocation to the claimant is valid and the claimant is the rightful allottee of plot A3…"; he stated unequivocally that the application of claimant came through him and upon approval, it passed through him to the claimant. The approval by **Saraha homes** clearly situates the meeting of the requirement of the allocation by claimant.

In law where evidence is unchallenged under cross-examination, the court is not only entitled to act on or accept such evidence, but it is infact bound to act or accept such evidence provided such evidence by is very nature is not incredible. Thus where the adversary fails to cross-examine a witness upon critical matters or issues related to the allocation as in the present case, the implication is that they accept the truth of the matter as led in evidence. Indeed the law is that where evidence given by a witness is not contradicted by any other admissible evidence, the trial judge is bound to accept and act on that evidence, even if it had been minimal evidence. See **Adeleke V Iyanda (2001) 13 NWLR (pt.729) 1 at 22-23 A-C.**

The point to underscore is that the material evidence given by the General Manager of Saraha Homes, PW1 with respect to the allocation to claimant was not challenged or rebutted by the defendants at all who had every opportunity to do so. In such circumstances, it is open to the court to act on such unchallenged evidence before it. See **Insurance Brokers of Nig. V ATMN (1996) 8 NWLR (pt.466) 316 at 327 G**.

Flowing from the above, I have no hesitation or difficulty in finding that the allocation of the **disputed property to claimant was not impugned**. The unchallenged evidence of PW1 with respect to the allocation to claimant was cogent, credible and convincing. Credible evidence in this connection means evidence worthy of belief and for it to be worthy of belief or credit, it must proceed from a credible source and be reasonable and probative in view of the entire circumstances as in this case and there cannot be greater credible source

than the General Manager of the developer and allocating body itself, **Saraha homes**.

Now I had earlier in this judgment referred to the settled position that the pleadings of parties remains the sole template which streamlines and situates the issues that remains to be resolved by the court: anything outside it cannot have any significance in the context of the dispute.

Now in the address of learned counsel to the defendants so much was made of the fact that the claimant did not pay the **consideration** contained in the letter of offer vide **Exhibit P1** and that in that context, there was no binding contract. It is really difficult to situate the basis of such tenous contention precisely for two reasons:

1. The defendants as repeatedly stated are not **Saraha homes**, the developer and allocating body of all plots at Plot 84 and one wonders at the rather misplaced enthusiasm with respect to the alleged failure to pay consideration and failure of contract.

I had earlier referred at length to the evidence of **PW1 and General Manager of Saraha Homes**. They never made any complaint of failure to pay consideration with respect to the allocation. Indeed he stated that **"the claimant is the valid and the rightful allottee of plot A3 Basic Estate Lokogoma District Abuja" (paragraph 9) and that "the 2nd and 3rd defendants are aware that the plot belongs to the claimant and they are only trying to usurp it because of its prime allocation"** (paragraph 10). His evidence as stated already was not challenged or impugned.

Indeed if the claimant did not pay the consideration, would they have been given possession by the developer and allowed to commenced construction works which has reached an advanced stage vide **Exhibits P4 (1-3)**? I don't think so. The lack of complaint by the developer, Saraha Homes gives a clear indication that the claimant complied with all the terms of the allocation which made them give claimant possession and allowed them to commence construction works on the plot. It does not sound to be reasonable or plausible that, the claimant would have been allowed to do all it did on the plot if there was a failure of consideration. The defendants may chose or elect to speculate but the court enjoys no such luxury and only acts on the basis of credible evidence demonstrated in open court.

Most importantly, the defendants did not either on the pleadings or evidence plead or situate that they had any contract with claimant over sale of any property and one then wonders at the heavy weather been made in the final address of defendants of the contract between Saraha homes and claimant. How can a party situate a contract in the present circumstances when it is neither the developer or allottee of the plots in the Estate? I had earlier on in this judgment situated what a contract entails and its elements. At the risk of prolixity, the defendants never made any allusion to having a contract with claimant so a critical determining element of whether there was a meeting of the mind, that is consensus ad-idem, at any time, is conspicuously missing and this is fatal. There cannot be a breach of a non-existent contract.

There is in this case no enforceable contract existing between defendants and claimant over anything. Whatever the defendants may have imagined on the pleadings and evidence does not translate to a **contract between them and claimant**. There can therefore be no consequence of a breach of contract when no contract exists. The defendants did not raise in their pleadings and did not lead any scintilla of evidence of any enforceable contract which was binding on claimant. The contention of a breach of contract by defendants clearly lacks any factual or legal basis and is discountenanced. See **A.G. Rivers State V A.G. Akwa Ibom State (2011) 8 NWLR (pt.1248) at 49**.

The 3rd defendant under cross-examination strengthened further the credibility of the evidence of PW1 and the fact of the non-existent contract with claimant when he agreed that Saraha homes made the allocation in the Estate in question. He agreed that even his own allocation was made by Saraha homes. Still under cross-examination he agreed that his association (1st defendant) is not the developer of the estate and was not involved with the mapping, setting out and design of the Estate. If that is the position, how then and from where did the defendants come about exercising powers over a contract they had no hand in?

The disposition of defendants seeking to retrospectively question a contract they had no business with and which was similarly offered to them on individual basis really beggars belief. I say no more.

Learned counsel to the defendants has tried so much in the final address and the Reply address on points of law to construct a case not based on the structure of the pleadings and evidence led. There is a glaring disconnect between the submissions and the case made out on the pleadings. The point must therefore

be underscored that cases are decided on the pleadings and evidence led in support and not addresses of counsel. Address of counsel is no more than a handmaid in adjudication and cannot take the place of hard facts required to constitute credible evidence. No amount of brilliance in a final address can make up for deficit in quality of evidence to prove and establish or disprove and demolish points in issue. See **Iroegbu V M.V Calabar Carrier (2008) 5 NWLR (pt.1079) 147 at 167**.

2. There is also nothing on the pleadings or defence of defendants turning on the payment of the consideration in Exhibit P1 which counsel has now made the pivot of his final address. The case of defendants is that in the inventory handed over to them by the developer, the property claimant is claiming was earmarked for the "common use" of the Estate.

Let us perhaps situate the relevant averments in the defence thus:

"5. The Defendants deny paragraph 8 of the statement of claim and put the claimant to the strictest proof thereof. In response thereto, the defendants aver that from the property inventory handed over to the 1st defendant by the developer, the said property the claimant is claiming was not captioned as belonging to the claimant, rather the said property was captioned as an area marked out for the common use of the etstate in the plan handed over to the 1st defendant. "The said plan is hereby pleaded and shall be relied upon at trial"

7. Saraha Nigeria Limited the developer upon handover of the estate to the 1st defendant indicated the property in dispute as one marked for common usage by the residents of the estate.

11. Saraha Nigeria Limited the developer on behalf of Basic properties Limited agreed to the request of the 1st Defendant and did earmarked Plot A3 for the Common use of the 1st Defendant.

12. The Defendants deny paragraph 9 of the Statement of Claim and put the claimant to the strictest proof of all the facts as contained in the said paragraph. In response thereto, the Defendants aver that at no time whatsoever did Saraha Homes Limited purportedly allot Plot A3 Red Plot to the Claimant, an act which was completely disapproved by the

defendants as the property had been earmarked for the common use of the 1st defendant.

13. In further response to paragraph 9 of the Statement of Claim, the defendants aver that the 1st defendant through the 2nd and 3rd defendants informed the claimant about the nullity of the purported allocation of the plot or her and advised the claimant to sort herself out with Saraha Homes Limited.

18. The Defendants deny paragraph 16 of the statement of claim and puts the claimant to the strictest proof thereof. In response thereto, the defendants aver that the defendant informed the Claimant and advised the Claimant that it would be in her best interest to stop construction on the plot as there was no purported allocation of the plot to her. The plot having been earmarked for the common use of the 1st defendant, the 1st Defendant erected her sign post to indicate her possessory right over the said plot.

25. The Defendants deny paragraph 23 of the Statement of Claim and put the claimant to the strictest proof thereof. In further response thereto, the Defendants aver that the plot belongs to the 1st Defendant and was earmarked by Basic Properties Limited through Saraha Homes Limited for the common use of the 1st defendant. Any purported allocation by Saraha Homes Limited was done outside the scope of authority as Saraha Homes Limited was properly informed of the earmarking of the said plot for the common use of the 1st Defendant."

The above defence is very clear and unambiguous. There is absolutely nothing on failure to pay consideration as counsel seeks to make out in his final address.

Parties including the court are bound by and confined to the issues precisely raised and streamlined on the pleadings. The address of counsel as stated earlier and however well written or articulated is no conduit to expand the remit of the dispute or issues as joined on the pleadings. The submissions on the above points and indeed some few others in the address of defendants raised outside of what was properly pleaded cannot have any traction now as it will amount to a belated attempt at expanding the remit or boundaries of the dispute and also amount to stealing a match on the adversaries and taking them by surprise and

such course of action would be unfair and indeed prejudicial. The fundamental underpinning philosophy behind filing of pleadings is for parties to as it were properly streamline the facts in dispute allowing the party or parties on the other side to know the case they are to meet in court. See **Bunge V. Governor of Rivers State (2006) 12 NWLR (pt.993) 573 at 598-599 H-B; Balogun V Adejobi (1995) 2 NWLR (pt.376) 131 at 15 C**. Civil litigation is not a game of chess or hide and seek and as such all cards as it is stated in popular parlance must be laid on the table and there is no room for surprises.

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

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

As already stated, Counsel to the defendants have here sought to argue the case of defendants outside the structure of the case properly pleaded and presented on the pleadings and on which evidence was led; that approach is clearly faulty as cases are not decided on the address of counsel however well written or articulated. See **Royal Exchange Ass. Nig. Ltd & 4 ors V. Aswani Textile Ind. Ltd (1992) 2 NWLR (pt.176) 639 at 675**.

The elaborate submissions on the failure to pay consideration really lack validity and are discountenanced and can really only be made meaningfully by **Saraha** homes and not defendants. In any event, it has been held that in a contract of sale of land and by extension landed property, the agreement to sell is concluded when the parties, the subject matter, the nature of the transaction and the consideration are agreed upon and that the possibility of default would

not make the contract invalid, incomplete or non-existent. See **Biyo V Aku (1996) 1 NWLR (pt.422) 1; UBN Plc V Erigbuem (2003) FWLR (pt.180) 1365; Doherty V Ighodaro (1997) 11 NWLR (pt.530) 694**. I leave it at that.

Out of abundance of caution, let us still evaluate the positions advanced in the defence highlighted in the above paragraphs. In **paragraphs 5** and **7**, the defendants averred that from the **"property inventory"** handed to them by the developer, ostensibly Saraha homes, that the property belonging to claimant was marked out for the **"common use"** of the estate.

Firstly, **no evidence of this "property inventory"** was tendered in evidence by defendants to situate where the claimants property was designated for **"common use"** of the Estate. It is trite law that facts deposed to in pleadings must be substantiated and proved by evidence in the absence of which the averments are deemed abandoned. See **Aregbesola V Oyinlola (2011) 9 NWLR (pt1253) 458 at 594 A-B**. Indeed it is trite law that pleadings however strong and convincing the averments may be, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must then be led to prove the facts relied upon by the party or to sustain allegations raised in pleadings. See **Union Bank Plc V Astra Builders (N/A) Ltd (2010) 5 NWLR (pt/1186) 1 at 27 FG**.

If there was any such **property inventory**, why was it not tendered by defendants to support the case made out by them? The failure to tender this inventory allows for the conclusion that:

1. It does not exist and

2. Allows for the invocation of the presumption under Section 167 (d) that its production would have been unfavourable to the case of defendants.

Secondly, it is curious that the defendants did not ask any question or pose any question to PW1 related to this alleged **"property inventory"** which they claimed captioned the disputed property for common use of the estate. There was no better body that would have spoken about this "property inventory" than the body which allegedly gave it to defendants. The conspicuous silence and failure to make any inquiries from PW1 who was available completely detracts from the credibility of their narrative that claimants property was designated as for "common use" of the estate.

Thirdly and finally, even if there was such **"property inventory"** and none was produced, it is difficult to situate its legal basis and how it can alter or change the contents of Exhibit P1, the letter of offer allocating the disputed property to claimant. The law is settled that where parties have embodied the terms of their contract in a written document such as **Exhibit P1**, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written agreement. See **Larmie V D.P.M & Services Ltd (2005) 18 NWLR (pt.958) 88 at 459 E**. See **Section 132 (1) of the Evidence Act**.

The reason for this stringent position is to ensure that a party to a contract in writing does not change his position midstream in his undeserved advantage and to the detriment of the unsuspecting adverse party. See **Larmie V D.P.M Services Ltd (supra) 88 at 469 A-B**.

The bottom line is that even if such document exist and none was presented in evidence, it cannot change the legal status and character of **Exhibit P1**. It is really difficult to situate how an unascertained arrangement can retrospectively apply to abrogate an allocation properly made.

Again even on the basis of the defence of defendants, the allocation of the disputed or demised premises has not been factually or legally impugned. What was really handed over to defendants by the developer clearly is only in respect of **infrastructural development** of the Estate and not for them to expropriate illegally other people's property. PW1, the General Manager of Saraha Homes stated this explicitly in his evidence in paragraph 7 thus:

"That Saraha Homes Limited had relinquished development of Basic Estate Lokogoma to the Defendants."

The above is clear. What was relinquished to defendant is the "development" of the Estate. No more.

Again this position is captured by the averments in paragraph 16 of the defence thus:

"16. The Defendants admit paragraph 14 of the statement of claim ONLY to the extent t hat the developer of the estate, Saraha Homes Limited, after collecting well over 70% of the monies earmarked for infrastructure failed to provide same. Members of the 1st defendant secured an agreement from the Saraha Homes Limited that the 1st defendant will take over the provision of infrastructure in the estate

and henceforth manager the estate themselves. The said letter handing over the provision of infrastructure and estate maintenance to the 1st defendant is hereby pleaded and shall be relied upon at trial."

The above is clear. The 1st Defendant was allowed to "take over the provision of infrastructure in the estate and henceforth manage the estate themselves." Again at the risk of prolixity, no where in the defence and evidence was anything delineated and supplied by defendants to support any of their claim(s) to exercise powers of revocation of a plot duly allocated by the developer or Saraha homes.

The letters tendered by Defendants in evidence accentuates this position. **Exhibits D7(a)** is a letter by defendants demanding from Saraha homes for provision of quality infrastructure at Saraha Basic Properties Estate Lokogoma District. It is dated 8th August, 2011. **Exhibit D7(b)** is another letter by defendants to Saraha homes dated 2nd December, 2011 seeking consent to operate a joint account with a certain company to make payments for provision of infrastructure. **Exhibit D6 (a)** and **(b)** both dated 8th December, 2011 is the response by Saraha homes agreeing to the request by defendants to operate a joint account for purposes of providing infrastructure for the Estate.

I deliberately referred to these letters because they were written about 2 years **(2011)** after the allocation to claimant which was in **2009** and shows that the Saraha homes was still in charge long after the allocation to claimant and the defendants were seeking necessary clearance from them before taking any action(s) relating to infrastructural development, so that even when they handed over the management of the Estate to defendants and on the pleadings and evidence, no time line was defined or stated when this handover was done, it cannot by any stretch of the imagination mean that the defendants can now revoke allocations already and properly made by Saraha homes. There is no where the defendants were given such powers.

The above findings and pronouncements by court provides broad factual and legal template to now address the question whether the reliefs sought by claimant are availing.

Relief (1) seeks a declaration that the claimant is the right allottee of shop space (block CSH/A3) at Basic properties, Plot No. 9, Cadastral Zone C09 Lokogoma District, Abuja for commercial purpose.

On the basis of the findings as already extensively demonstrated above, I found that the allocation to claimant of the disputed corner shop vide **Exhibit P1** was not factually or legally impugned. The unchallenged evidence on record situates that claimant is the rightful allotee and the evidence of the developers of the estate vide PW1, further affirmed for the validity of the allocation to claimant.

The defendants for reasons that are not clear but certainly not salutary reasons, sought to exercise powers they don't have to illegally seek to expropriate or dispossess the landed property of claimant and they sought to even do so arbitrary taking the laws into their hands, through a dubious contraption of a "property inventory" which they refused to tender and which they contend stated that the property of claimant is for "common use." The developers of the estate by the evidence of PW1 completely demolished such deliberately concocted excuse and affirmed the claimant as the valid and rightful allotee of Plot CSH/A3 at Basic Properties Estate, Lokogoma District Abuja. **Relief (1) has merit and is availing**.

With the grant of Relief (1), **Relief (2) seeking for an Order of Perpetual injunction restraining the Defendants jointly and severally, their agents, servants and privies or whosoever claiming through the Defendants from interfering with the Claimant's possession over shop space (block CSH/A3) at Basic Properties, Plot No. 9, Cadastral Zone C09 Lokogoma District, Abuja** equally has merit. Having found that the claimant is the valid and rightful allotee of the disputed property, this order is availing to protect and assure of the integrity of their quiet possession and enjoyment of the property free from any manner of disturbance by defendants and their agents or privies. **Relief (2) is thus availing**.

Relief (3) is for the sum of N50, 000, 000.00 (Fifty Million Naira) against the Defendants jointly and severally being cost of general damages for the trespass and all other illegal acts done by the Defendants, their agents, servants and privies in respect of the plot belonging to the claimant.

This relief is predicated generally on trespass. Now trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of that owner is an act of trespass actionable without any proof of damages. See **Ajibulu V. Ajayi (2004) 11 N.W.C. R (pt 885) 458 at 48)**

The claim for trespass is therefore rooted in exclusive possession. All a plaintiff suing in trespass needs to prove or show in order to succeed is to show that he is the owner of the land or that he has exclusive possession.

On the evidence, there is no doubt as found on the pleadings and evidence that the claimant is in exclusive possession evidenced by the overt acts of construction carried out on the plot vide **Exhibits P4 (1-3).** The claimant through PW2 in evidence stated that the 1st defendant instructed their agents to restrain claimant from having access to their plot and put a sign post of their association there and that as a result they could not complete construction of the shop and that they have been denied a ready source of income and caused untold hardship and trauma.

Now on the pleadings and evidence the defendants admitted to digging a bore hole on claimants plot and also put a sign post of their association on the plot. Apart from these admissions, they denied all the other allegations made by claimant.

On the evidence, there is really no clear evidence to support or show those responsible for restraining claimant from going to site. There is nothing in evidence to support the allegation that the "1st defendant instructed her agents and security personnel to restrain claimant from having access to the plot…" and the court cannot speculate.

I find it strange that in the claimants solicitors demand notice dated 18th July, 2016 vide **Exhibit P6**, apart from the reference to sign post placed on the property, absolutely no allusion was made of the fact that claimant was restrained from having access to the plot and that they were prevented from continuing construction works on the plot. Again the reply written by plaintiffs solicitors to the letter by counsel to the defendants dated 27th July, 2016 vide **Exhibit D4** did not make any such complaints. There is therefore no clarity with respect to the nature of the unjustified interference by defendants as it relates to the acts by unknown persons which prevented claimant from concluding construction works on the plot. It is logical to hold that there certainly must be persons engaged by claimant to carry out these constructions works. It is curious that not one single person was produced to show or establish how they were prevented from going to site and by whom. PW2 is a Director in claimant and he has equally not furnished court with any credible evidence of how the defendants "spear headed" the acts complained of. These

issues cannot be a matter of guess work or conjecture. The court must be supplied with cogent evidence to be able to situate whether the complaints have been established.

In such fluid situation, I have not been put in a commanding height to hold that the defendants used their agents and security personnel to prevent claimant from having access to its site to complete construction works and how any loss of income and hardship from failure to complete construction can be attributed to them. It is to be noted that under cross-examination, DW1 stated that their association are not in occupation of the disputed plot. No counter evidence was supplied by claimant to challenge this assertion.

Notwithstanding the above observations, I had stated that the defendants both in their pleadings and the evidence of DW1 under cross-examination conceded that they **dug a bore hole** and put **a sign post on claimants plot**. That in law is a clear unjustified interference with claimants right of possession and as stated earlier is actionable without any proof of damages. Damages is thus availing but certainly not in the huge amount claimed.

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

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

However as stated earlier, the actions of defendants in going on to the land of claimant and digging a bore hole and putting a sign post on claimants property clearly is an unjustified and arbitrary intrusion and wrongful. Whatever the grievance the defendants may have, there is absolutely no tolerance, support or room for resort to self help by anybody or group. The laws of all civilized societies have always deeply forward at self help if for no other reason that they

engender breach of the peace and confusion. If every body resorts to seeking redress outside the regular legal process by taking matters into one's own hands, that can only be a recipe for chaos and disorder. We must all strive to create a society governed by laws or rules and then keep strict fidelity to the laws.

There must however be consequences for the unjustified interference by defendants here. Accordingly it is my considered view that an amount of **N250, 000** will be just and reasonable as damages for trespass in the circumstances of this case.

Relief (4) is for an order directing the Defendants to remove all or any illegal sign post and borehole on the land known and situate at (block CSH/A3) at Basic properties, plot No. 9, Cadastral Zone C09 Lokogoma District, Abuja belonging to the Claimant.

Flowing from our consideration of Relief (3) particularly the admissions of defendants, that they put up a sign post and dug a bore hole, then it is only fair that they takes steps to remove what they wrongfully put on claimants land. **Relief (4)** succeeds.

Relief (5) is for cost of N5, 000, 000 (Five Million Naira being the legal fees) that the claimant incurred due to the wrongful acts of the defendants that necessitated this action.

The claimants tendered **Exhibit P7** as evidence for fees paid to the solicitors in the sum of **N1, 500, 000**. The claim for solicitors fees is in the nature of special damages. What is the jurisprudence on this type of Relief.

I had course to address this issue in the unreported case of **Suit No. HC/CV/1499/14 – Between: Mr. Ibrahim Mohammed & 1 Anor and Minister FCT and 2 ors** delivered on 17th December, 2020. I prefer to repeat what I stated therein as follows:

"Let me however state that in law, costs are no more than an indemnity to the successful party to the extent that he is justly damnified for costs reasonably incurred in the ordinary course of the suit or matter having regard to its nature but not to any extra-ordinary or unusual expenses incurred arising from rank, position or wealth or character of either of the parties or any special desire on his part to ensure success. See generally the book **Civil Procedure in Nigeria (2nd Edition) by Fidelis Nwadialoat pages 752-753**. Indeed the learned author in the same book at **page 753** posited and referred to a decision in **Smith Vs**

Butler (1875) LR 19Eq.475 where it was held that any charges merely for conducting litigation more conveniently may be called luxuries and must be paid by the party incurring them.

I now come to the question of whether a claim for solicitors fees is one that can be granted under the present state of Nigerian Law. In **Guinness Nigeria Plc V Nwoke (2000) NWLR (pt.689) 135 at 150**, the Court of Appeal held unequivocally that a claim for solicitors fees is outlandish and should not be allowed as it did not arise as a result of damage suffered in the course of any transaction between parties. After this decision, there are however now a plethora of cases from the Court of Appeal which appear to have adopted a clear radical position contrary to that espoused in the **Nwoke** case. These later decisions postulates or recognises that a claim for solicitors fees forms part of Nigerian Legal Jurisprudence and where established can be granted. See the cases of **International Offshore Construction Ltd & ors V Shoreline Liftboats Nig. Ltd (2003) 16 NWLR (pt.845) 157; Divine Ideas Ltd V Umoru (2007) All FWLR (pt.380) 1468, Lonestar Security Ltd (2011) LPELR – 4437 (CA).**

It appears to me apposite here to specifically refer to the case of **Naude V Simon (2014) All FWLR (pt.75) 1878**, where the Court of Appeal made these interesting pronouncements when endorsing the point that a claim for solicitors fees is in the realm of special damages and is cognisable under Nigerian Law. In the said case, one of the issues submitted to the court for determination, was whether the trial court was right in awarding costs of charges incurred by the Respondent in the prosecution of its case against the appellants. In determining this issue in the affirmative, the Court of Appeal considered the earlier cases that held that a claim for solicitor's fees are unethical and unrecoverable and held that they do not represent the current position of the law. The Court per **Akomolafe-Wilson JCA at pp. 1904-1906H-H** stated as follows:

"The authorities cited by the appellants' counsel in my view have been overtaken by more recent authorities that permit the payment of solicitor's fees as expenses for litigation in Nigeria. The principle of law is that a successful party is entitled to be indemnified for costs of litigation which includes charges incurred by the parties in the prosecution of their cases. It is akin to claim for special damages. Once the solicitor's fee is pleaded and the amount is not unreasonable and it is provable, usually by receipts, such

a claim can be maintainable in favour of the claimant… Having regard to the above recent cases, it is no more in doubt that damages for cost, which includes solicitor's fees and out of pocket expenses, if reasonably incurred are usually paid by courts if properly pleaded and proved. In short, the decision of this honourable court in the cited cases Ihekwoaba V ACB Ltd and Guinness (Nig.) Plc V Nwoke, where this court held that the payment of solicitor's fees as damages is not supported in this country does not represent the present state of mind of the courts in this country. In more recent times, it is common for solicitors to include their fees for prosecution of cases and pass same to the other party as part of claims for damages, which have been awarded by the courts once the claims are proved."

I had specifically referred to this very clear pronouncement for the important reason that it specifically referred to the Court of Appeal cases of **Nwoke (supra)** and that of **Ihekwoaba V ACB Ltd (1998) 10 NWLR (pt.571) 590** which is in agreement with the decision in **Nwoke** and her lordship Akomolefe-Wilson J.C.A stated that these cases do not **"represent the present state of the mind of the courts in this country."**

The cases unfortunately "**on the present state of the minds of court with respect to claim for solicitors fees"** may not with the greatest respect be availing in view of the pronouncement of the Apex Court which affirmed the position in **Ihekwoaba's case (supra)** on the impropriety of a claim for solicitors fees. In **Nwanji V Coastal Services Ltd (2004) 36 WRN 1 at 14-15**, His noble Lordship Samson Odenwigie Uwaifor JSC expounded the law on this point in the following graphic and instructive terms:

> ***"There is the award of N20,000.00 as professional fees allegedly paid by the respondent in respect of Fougerolle's case. It was fees said to have been paid by the Respondent to defend a suit brought against it by Fougerolle in regard to non-delivery of the goods in question. I can find no basis for this award… Secondly, it is an unusual claim and difficult to accept in this country as things stand today because as said by Uwaifo, JCA in Ihekwoaba V ACB Limited (1998) 10 NWLR (pt.571) 590 at 610-611:***
>
> ***"The issue of damages as an aspect of solicitor's fees is not one that lends itself to support in this country. There is no system of cost taxation to get a realistic figure. Costs are awarded arbitrarily and***

certainly usually minimally. I do not therefore see why the appellants will be entitled to general or any damages against the auctioneer or against the mortgage who engaged him in the present case, on the ground of solicitor's costs paid by him."

It is needless to say that the above decision is binding on the Court of Appeal and all subordinate or lower courts to the Apex Court under the doctrine of stare decisis. See **Osakwe V FCE (Technical) Asaba (2010) 10 NWLR (pt.1201) 1.** I also note that this decision was not referred to in the decisions of the Court of Appeal which gives an indication that their conclusions may have been different if their attention was drawn to it. Before rounding up, it is important to draw attention to the case of **Rewane V Okotie-Eboh (1960) NSCC (vol.1) 135 at 139** where the Supreme Court per Ademola CJF, page 135 at 139 stated thus:

"Costs will therefore be awarded on the ordinary principles of genuine and reasonable out of pocket expenses and normal counsel cost usually awarded for a leader and one or two juniors"

I am not sure that this pronouncement can be over stretched to apply to a claim of solicitors fees as special damages. The pronouncement was not made in the context of legal fees as special damages expended by a litigant which is passed on to the adversary. The cost the court was referring too here is the usual cost or indemnity the courts award to a successful party for costs reasonably incurred in the course of the suit or proceedings but not to any extra-ordinary or unusual expenses incurred arising from rank or position or wealth or character of either of the parties or indeed any special desire on his part to ensure success.

Even if I am wrong with respect to the correct import of the said decision in **Rewane V Okotie-Eboh (supra),** it is clear that the decision of **Nwanji V Coastal Services Ltd (supra)** is clearly a later decision and in law where there are conflicting decisions, lower courts are bound by the latter or last decision of the Supreme Court. See **Osakue V F.C.E (Technical) Asaba (supra)**. On the whole, I am bound to kowtow to the said decision of the Supreme Court. I therefore entertain no reluctance whatsoever in disallowing the head of claim without much ado."

I need not add to the above. **Relief (5)** couched as legal fees cannot be availing.

On the whole, the single issue raised is answered substantially in favour of the claimant. For the avoidance of doubt, I accordingly make the following orders:

1. **It is hereby declared that the Claimant is the rightful allotee of shop space (Block CSH/A3) at Basic Properties, Plot 9 Cadastral Zone C09 Lokogoma District Abuja for commercial purpose.**

2. **The Defendants and their servants, agents, privies or whosoever claiming through defendants are restrained from acts capable of affecting the lawful and subsisting interest of claimant over shop space (Block CSH/A3) at Basic Properties, Plot No. 9, Cadastral Zone C09 Lokogoma District, Abuja as guaranteed under the Land Use Act and the 1999 Constitution.**

3. **The sum of N250, 000 (Two Hundred Thousand Naira) is hereby awarded in favour of claimant against the Defendants as general damages for the acts of Trespass committed by Defendants on Claimants property.**

4. **The Defendants are hereby directed to remove forthwith the sign post placed by them and the bore hole dug on the Claimants property.**

5. **Relief (5) fails and is dismissed.**

6. **I award cost of this action assessed at N100, 000 payable by Defendants.**

…….

Hon. Justice A.I. Kutigi

<u>Appearances:</u>

1. ***A. Ibrahim SAN with Chioma Ochai for the Claimant.***

2. ***Kingsley Nwangwu, Esq., for the Defendants.***