IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 20TH JUNE, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/134/15

BETWEEN:

1) NUMA WILMERIAN MACKENZIE
2) OKON EDET ONOFIOK
3) MR. CYRIL OGAR
4) OGBAJE FRIDAY
5) PASTOR SAM UZO
6) MATHIAS OBAJE
7) MARCELINUS CHIUOKE
8) ISAIAH ADEBAYO
9) STELLA NENE, IBEH
10) FRANCIS IDUME
11) CHIGOZIE OKEKE
12) ALEXENDER EMMANUEL
13) PASTOR MRS CASMIR IWU
14) BONIFACE UMEZURIK BROWN
15) ANENE NNABUIFE JUSTICE
16) CHUKWUNWEOLU JOSEPH ONU :.........**CLAIMANTS**
17) MR PETER ONMONYA
18) ALEX EMMANUEL
19) RAJI IBRAHIM
20) NDUKWU EUGENE CHIZOROM
21) MR. KINGSLEY OSA'S OSEGHE
22) OKON BONIFACE
23) MRS. DEBORAH F. YAKUBU
24) MR. ARON NJOKU
25) OSITA ANENE
26) YOHANNA YUSUF
27) OLABISI OLUBIYI
28) OYEWUMI S.E.
29) OPARAJI CHRISTOPHER
30) SOLOMON A. SAMUEL
31) AJUDIA ANTHONIA
32) BENJAMIN NDULAKA
33) ANAJE SHUAIBU

34) EGBOH GLORIA
35) CHIBUIKE UGOAMALAM
36) AKINTELU OLUJUMI ADEBOWALE
37) MARY IGBOH
38) ELIJAH NEGEDE
39) ABENU ABIGAIL
40) COMFORT CHUKWU
41) JOSEPH ODO
42) ZACHARIAH OKOSIN
43) RICHARD OMALE
44) JOSEPH EGBO
45) PASTOR NNAMDI ECHEBIRI
46) JAMES OHABA EDOH
47) EMMANUEL AGBO
48) MATTHEW MUSA **:....CLAIMANTS**
49) ANTHONY GODNEAR
50) METHUSELAH SOLOMON
51) IGANNA SUNDAY
52) OKPEH MICHAEL
53) COMFORT NNENNA OSUJI
54) AUGUSTA CHUKWUMA
55) UKE EMMANUEL
56) EWULU CHUKWUMA
57)ABRAHAM EMMANUEL
58) ENWEANI PAUL
59) ADUNG EUGENE
60) NWOKO NNAMDI
61) BARR. EJEZIE EFIOMA
62) CHIDI CHIBUOKE
63) YOHANNA BABA.

AND

1) ABUJA MUNICIPAL AREA COUNCIL
2) FEDERAL CAPITAL DEVELOPMENT AUTHORITY
3) MAKINJIOLA IBRAHIM **:.....DEFENDANTS**
4) HON. MINISTER, FCT
5) MOSES AJAH
6) JULIUS ATOROUGH

Bashiru Ahmad for all the Claimants.
BukolaOsho holding the brief of Ezekiel Ituna for the 2nd-5th Defendants.
Isioma G. Kelebu for the 1st Defendant.

JUDGMENT.

By an amended Writ of Summons dated and filed the 24th day of November, 2017, theClaimants brought this suit against the Defendants claiming as follows:

1. A declaration that Ya-Basu family was the original inhabitant of the area in dispute and has never been relocated from the land or compensated for same by the government after the creation of the Federal Capital Territory, Abuja.
2. A declaration that the Defendants cannot, without following the due process of law as to relocation or payment of adequate compensation, demolish, evict, vacate or forcefully remove the Claimants from the lands in dispute or in any way disturb the Claimants' peaceful possession of same.
3. A declaration that the purported Quit Notice served on the Claimants by agents of the 1st and 2nd Defendants is null and void.
4. An order of perpetual injunction restraining the Defendants, whether by themselves, their agents, privies, cohorts, assigns, and/or those claiming authority through or under them from illegally demolishing or evicting theClaimants from the lands in dispute or from doing any other thing that will interfere with the Claimants' possession and enjoyment of same.
5. An order of mandatory injunction mandating the 4th Defendant to take the necessary legal steps to:
    a. Allocate the land in dispute to the Claimants and regularize their occupation of same;

    Or alternatively:

    b. Pay them adequate compensation for the entire area of land in dispute and the development thereon;

       Or alternatively:

c. Relocate the Claimants to another location within the Federal Capital Territory.

6. An order directing the Defendants to pay the Claimants the sum of N2,000,000.00 (Two Million Naira) only as solicitor's fee which the Defendants caused the Claimants to incur in respect of this case.
7. An order directing the Defendants to pay the Claimants the sum of N500,000.00 (Five Hundred Thousand Naira) only, estimated to be the cost of this action.
8. Any other relief incidental to or consequential upon the Claimants' claim.

The Claimants in the Statement of Claim averred that they are members of the New Dagbana Community in Jikwoyi, Federal Capital Territory, Abuja, which constitutes the subject matter of this suit, and that each of the 1st – 62nd Claimants occupies a house which all of them built on land they acquired from Ya-Basu family which is the family that first settled and founded the area more than a century ago.

The Claimants averred that the land in dispute was first cleared about 200 years ago by the 63rdClaimant's great grandfather, Ya-Basu. They stated how the said Ya-Basu and his descendants have over the years farmed on the land until the 1990s when they started putting up some structures thereon.

The Claimants statedthat the Ya-Basu family gave portions of the land to the 1st to 62nd Claimants who also built houses and other structures thereon where they live peacefully with their families as a community.

They stated that the government did not at any time before and after the establishment of the Federal Capital Territory, made any attempt at relocating the occupants of the area in question or compensating them for the lands but allowed them to

continue to live peacefully thereon without any interference whatsoever. That this state of affairs continued until recently when the 5th Defendant started developing a land adjoining the houses of the 17th and 55th Claimants.

The Claimants averred that the 5th Defendant who brags about being a staff of the 2nd Defendant approached the said Claimants, asking them to give up part of their land to him to enable him expand the structure he was erecting. That when the 17th and 55th Claimants refused the 5th Defendant's request, the 5th Defendant later claimed that he had obtained an allocation from the 2nd Defendant covering the portions of the houses of the 17th and 55th Claimants which they earlier refused to give up to him. That the 5th Defendant acting on the purported allocation which he never produced, threatened to take the portions in question by force and was resisted by the entire neighbourhood.

The Claimants averred that enraged by the resistance, the 5th Defendant vowed to use his influence to have not only the houses of the 17th and 55th Claimants demolished by the 2nd Defendant, but the entire neighbourhood. That a few days later, on 4th of September, 2015, the 3rd Defendant in company of other agents of the 1st and 2nd Defendants, visited the Claimants' houses and served them with purported notice to quit/demolition within 48 hours, which notice bore the emblem of the 2nd Defendant's Department of Development Control and claimed that the Claimants were occupying the lands illegally. They stated that the 3rd Defendant along with other agents of the 1st and 2nd Defendants subsequently came and marked all the houses of the Claimants, threatening that any moment from then they would commence the process of demolishing the Claimants' houses. That inspite of the explanation offered by the Claimants, the Defendants insisted that the Claimants must

vacate the houses or be forcefully evicted therefrom and the houses demolished as the area has been subject of allocation.

The Claimants averred that no allocation or demarcation into plots by government exist with respect to the land in dispute for more than 33 years after the creation of Federal Capital Territory.

They stated that they were charged the sum of N2m as solicitor's fees in respect of this suit by Messers S. Idris& Co, the solicitors they engaged in respect of this suit.

At the hearing of the case, one DanjumaZhagajiBakobwayi gave evidence for the Claimants. Testifying as PW1, he adopted his witness statement onoath wherein he averred that he is an indigene of Jikwoyi, Abuja and that his family had occupied the land in dispute and used same for agricultural purposes for about two decades ago when they handed the land over to Ya-Basu family who were the founders and original owners of same.

He further affirmed the averments in the Claimants' statement of claim.

Under cross examination by the 1st Defendant's counsel, the PW1 stated that the land in dispute being his father's inheritance, he gave same to the Claimants to build on in 1990. He stated that he knew nothing about the land belonging to the Federal Capital Territory until recently.

Under cross examination by counsel to the 2nd – 5th Defendants, the PW1 confirmed that he is one of the persons who sold the land to the Claimants. He maintained that he is an indigene of Jikwoyi in Federal Capital Territory, stating however, that the area in question, New Dagbana, is a border village with Nasarawa before they were carved out.

While being cross-examined by the 6th Defendant's counsel, the PW1 stated that his brother sold his own land to the Claimants but he himself gave his to them and they appreciated him.

One Yohanna Baba the 63rd Claimant and an indigene of Jikwoyi, Abuja, also gave evidence for the Claimants. Testifying as PW2, he adopted his witness statement on oath wherein he stated that he is a grandchild of Ya-Basu, the founder of New Dagbana village, the area in dispute. He also affirmed the averments in the statement of claim, stating particularly that they gave out portions of the land to the Claimants and other persons who built houses and other structures thereon, where they now live peacefully with their families as a community.

Under cross examination by 1st Defendant's counsel, the PW2 stated that his father, during his life time, gave the land to the Claimants to live on with the understanding that the Claimants would leave their land whenever they would be going from their area. He stated that there was no agreement between the Claimants and his father as to sale of land.

He told the Court, under cross examination by 2nd – 5th Defendants' counsel that they did not know about government when they gave the land to the Claimants.

He maintained that they did not receive any compensation from the Government for their land. He further maintained under cross-examination by the 6th Defendant's counsel, that the other Claimants are on the land as settlers, and that anyone of them who is tired would leave.

The 31st Claimant, AjuduaAnthonia, also testified for the Claimants as PW3. She adopted her witness. Statement on oath wherein she affirmed the averments in the statement of claim. She also tendered a Quit Notice served on the residents

of New Dagbana by the Department of Development Control of Abuja Metropolitan Management Council and same was admitted in evidence and marked Exhibit PW3A.

The PW3 stated under cross-examination by learned 1st Defendant's counsel that she had an understanding with the indigenes who gave her the land she built on. She further stated that the Development Control served her sister personally with the Quit Notice, Exhibit PW3A and marked her house for demolition.

Under cross examination by 2nd – 5th Defendants' counsel, the PW3 stated that she did not buy the land from the indigenes. Rather, that she was given the land as a gift by PW2 for which she appreciate him with a bag of rice and cash of N100,000.00.That she was given the land and asked to develop same. She further stated that the other Claimants got their respective pieces of land the same way she got hers.

The PW3 admitted that she did not apply to any government agency for building plan approval for the building of her house which she described as a 4 bedroom flat.

In defence of the suit, the 1st Defendant filed an amended statement of defence dated 18th January, 2018 and filed the 19th day of January, 2018 wherein it averred that the Claimants do not have title to the lands set out in paragraphs 8 and 22 of the statement of claim, and that in the event that the Claimants built on the purported land, they did so without any valid allocation and building plan approval from the appropriate authority.

The 1st Defendant further averred that it never served any notice to quit on the Claimants and never marked any of the Claimants' building for demolition.

The 1st Defendant however declined to lead any evidence in support of its pleadings and opted to rest its case on that of the Claimants.

The 2nd – 5th Defendants also filed a joint amended statement of defence dated 13th February, 2018 and filed on the 2nd day of March, 2018. They averred that the indigenous people of Dagbana village have no authority whatsoever to purport to grant land allocation or title within the Federal Capital Territory to any person, especially the Claimants. That only the Minister of the Federal Capital Territory can confer a valid title to any individual or persons on all lands comprising the entire Federal Capital Territory.

The 2nd – 5th Defendants admitted paragraphs 26, 27,28, 29,30 and 31 of the Statement of claim and stated that for any structure to be erected within the Federal Capital Territory, it requires the approval of the Minister for allocation and an approval of building plan by the Department of Development Control.

They stated that the notices for demolition were issued to the Claimants because they do not have any title to any part or parcel of the land and no building plan approval was granted to them by the appropriate authority.

The 2nd – 5th Defendants equally declined to lead any evidence in support of their case. They opted to rest their case on that of the Claimant.

The 6th Defendant on his part filed a statement of defence and counter-claim. Same was dated 5th December, 2017 and filed on 28th December, 2017.

The 6th Defendant averred that the Claimants are illegal occupants of the entire layout, particularly on plots of land

which were legitimately allocated to him by AMAC, namely; Plot Nos. 61 and 156 in Jikwoyi Layout, Plot Nos. 112, 113, 158 and 159 in Jikwoyi Extension 111 layout, Abuja.

He stated that he been occupying some portions of his plots of land, some of which he has been farming on for over ten years.

In respect of his counter-claim, the 6th Defendant/Counter-Claimant averred that he is the legitimate and beneficial owner of Plots Nos. 61 and 156, both in Jikwoyi Layout, Abuja as well as Plot Nos. 112, 113, 158 and 159 all ofJikwoyi Extension 111 layout, Abuja, Municipal Area Council vide a Statutory Right of occupancy.

He stated that he acquired the various plots of land from the original allotteesbut subsequently had the status of the various allocations changed in his favour as the current beneficial owner of the said plots of land.

He further stated that the Claimants/Defendants to Counter-Claim,are illegal occupants on the land in dispute, particularly those encroaching on his said plots of land. That he has personally and through his lawyers severally approached the Claimants/Defendants to Counter-Claim, particularly, those directly encroaching on his plots of land for a peaceful and amicable settlement.

The 6th Defendant/Counter-Claimant averred that the Claimants/Defendants to the Counter-Claim, particularly those who have encroached on his plots of land, have caused him both psychological and mental trauma as well as depriving him of his legitimate acquisition as he does not have any other alternative parcel of land within the Federal Capital Territory to develop and occupy.

He thus counter-claimed against the Claimants as follows:

1. A declaration that the 6th Defendant/Counter-Claimant is the legitimate and beneficial owner of Plot Nos. 61 and 156, both in Jikwoyi Layout, Abuja as well as Plot Nos. 112, Plot no.113, Plot no. 158 and Plot no. 159 all of Jikwoyi Extension 111 layout, Abuja-FCT duly granted/allocated to him by Abuja Municipal Area Council (the 1st Defendant in the main suit) vide a Statutory Right of occupancy.
2. A declaration that the act of illegal occupation of the land in dispute by the 1st – 63rd Claimants who are the Defendants in this counter claim, particularly those encroaching on the Plots of land belonging to the 6th Defendant/Counter-Claimant, described in paragraph 15 above amounts to trespass to land.
3. An order directing the 1st-63rd Claimants who are Defendants in this counter-claim to pay the Counter-Claimant jointly and severally, the sum of N12,000,000.00 (Twelve Million Naira) only, as damages for trespass to his plots of land described in paragraph 15 above.
4. An order directing the 1st – 63rd Claimants who are Defendants in this counter-claim to pay the 6th Defendant/Counter-Claimant the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) only as the cost of this suit.
5. An Order directing the 1st – 63rd Claimants who are Defendantsin this counter-claim to pay interest on the judgment sum awarded at the rate of 10% (Ten per cent) per annum from the date of the judgment until the judgment debt is fully and finally liquidated.

Testifying as DW1 at the hearing of the case, the 6th Defendant adopted his witness statement onoath whereby he affirmed the averments in his statement of defence and counter-claim.

Under cross examination by the Claimant's counsel, the DW1 stated to the effect that although the land he is claiming was allocated to him by Abuja Municipal Area Council, that the allocation was from the Minister of the Federal Capital Territory as the Minister may have delegated hispowers to Abuja Municipal Area Council. He further stated that he was not the original allottee of the land, that he got the land through a Power of Attorney from the original owner. He told the Court that he could not remember who the original allottees were.

The DW1 also stated that he does not have any structures on the plots he is claiming; that he is aware that people are currently living on the said plots, and that he was not farming on the said plots when he relocated to Makurdi. That when he came back, he could no longer find the person who was farming on the land.

Contrary to his averments in his witness statement on oath that he approached the Claimants and discussed possible settlements.The DW1 stated under cross examination that he does not know any of the Claimants; that when he noticed encroachment on his land, he approached a Surveyorto reconfirm that the encroached land was his own and then he spoke with his lawyer who may have approached any of the Claimants on his behalf.

When asked by 1st Defendant's counsel whether he has any document to support his claim that the land was allocated to him by Abuja Municipal Area Council, the DW1 stated that all the documents he has were with his counsel.

On the application of the 6thDefendant's counsel, the right of the 2nd – 5th Defendants to cross examine the DW1 was foreclosed on account of their absence in Court without any excuse.

The parties thereafter filed and exchanged final written addresses which they adopted before the Court on the 29th day of March, 2022.

The learned 6th Defendant's counsel, BenAtetam, Esq, in his final written address, raised three issues for determination, namely;

a) Whether the Claimants have disclosed a reasonable cause of action against the 6th Defendant/Counter-Claimant in this suit?
b) Whether the Claimants are entitled to their claims/reliefs sought?
c) Whether the 6th Defendant/Counter-Claimant has proved his counter claim and therefore entitled to the reliefs sought?

Proffering arguments on issue one, learned counsel contended that the Claimants do not have a cause of action against the 6th Defendant/Counter-Claimant. He posited that where there is no wrong, there can be no remedy.

He referred to **Obazee v. Ekhosuehi (2019) 17 NWLR (Pt.1701)249** and **Ibe&Anor v. Bonum (Nig) Ltd (2019) LPELR 46452 (CA)** on what constitutes cause of action, and submitted that the Claimants in their claims and evidence before this Court were unable to show the wrongful act done by the 6th Defendant/Counter-Claimant to warrant any liability in this suit.

On the claim for damages;learned counsel posited that damages are a civil judicial remedy used to monetarily compensate a party for wrong or injuries caused by the wrongful conduct of another, resulting in loss, injury, or other detriment to another. He contended that the Claimants having

failed to prove the nexus of theirclaims and reliefs sought against the 6th Defendant/Counter-Claimant is not liable to pay for any expenses incurred by the Claimants in terms of damages be it general or specific damage.

He urged the Court to resolve issue one against the Claimants and in favour of the 6th Defendant/Counter-Claimant.

In issue two, on “whether the Claimants are entitled to their claims/reliefs sought,” learned counsel argued that it is not in doubt that the Claimants’ root of title is the alleged ownership and possession of the portions of lands which the Claimants claimed to have bought from the indigenous people of the village who are deemed holders of traditional title which they inherited prior to the promulgation of the Federal Capital Territory Act, 1976. He contended that the said claim is not tenable and that same is contrary to the explicit provision of law establishing the Federal Capital Territory. He referred to Section 51(2) of the Land Use Act, 1978 and the case of **Madu v. Madu (2008)6 NWLR (pt.1083)296 @ 325.**

He argued that a thorough perusal of the Claimants’ averments reveals that the pieces of land in dispute owned by them individually, were not subject of allocation by the honourable Minister of the Federal Capital Territory who enjoys the sole statutory flavour of vesting ownership of land in the Federal Capital Territory to the citizenry upon application, which the Claimants herein have failed or neglected to do.

He further referred to Section 6(3) of the Federal Capital Territory Act.

Arguing further, learned counsel contended that it is not enough for the Claimants through their witnesses – PW1 and PW2, to tell the Court that they are the original inhabitants of the area in

dispute without proving the boundaries of the disputed lands irrespective of whether they are relying on traditional history. He posited that thestandard proof required of the Claimants is such that a Surveyor taking the record produce a plan showing accurately the land in dispute. He referred to **Aremu v. Adetoro (2007) (Pt.1060) 16 NWLR pg. 224 at 266.**

He further contended that whatever customary or traditional title claimed by the Claimants does not fall within the instruments of title envisaged by the Land Use Act as it affects the FCT, Abuja, and that since land cannot be acquired outside the procedure provided in the Land Use Act, powerfully supported by Section 297(2) 1999 Constitution (as amended) and the FCT Act, the Claimants' claims, both in the Writ of Summons and the statement of claim cannot be granted.

He referred to **Christian Soronnadi&Anor v. AriyiDurugo&Anor (2018)LPELR 46319 (SC).**

Arguing is issue three on whether the 6th Defendant/Counter-Claimant has proved his counter-claim and therefore entitled to the reliefs sought, learned counsel posited that the 6th Defendant/Counter-Claimant has proved his counter claim based on the list of documents attached and the evidence adduced at trial.

He argued that the list of documents attached by the 6th Defendant/Counter-Claimants show that he is the true and lawful owner of the plots of land as contained on the allocation papers. He urged the Court to so hold and on grounds of equity, to grant all the reliefs sought by the 6th Defendant/Counter-Claimant.

He further urged the Court in conclusion, to dismiss the Claimants' suit in its entirety for lack of reasonable cause of

action, failure to establish their right over the land in dispute, and above all, for lacking inmerit, and to grant the reliefs of the 6th Defendant/Counter-Claimant as per his counter-claim.

On the part of the 2nd – 5th Defendants, their learned counsel, Ezekiel O. Ituma, Esq, also raised three issues for determination in his final written address, namely;

a) Whether this suit as constituted is not statute barred by virtue of the reliefs sought vis-a vis the provisions of Section 6(3) and (4) of the Federal Capital Territory Act?
b) Whether this suit has disclosed a reasonable cause of action against the 2nd and 4th Defendants?
c) Whether this Honourable Court can entertain this suit or grant the reliefs sought by the Claimants?

Proffering arguments on issue one, learned counsel posited that this suit as presently constituted, is statute barred, especially by virtue of the reliefs sought by the Claimants.

He contended that the claims for adequate compensation, injunction and damages must fail in view of the provision of Section 6(3) and (4) of the Federal Capital Territory Act which has provided the modality and time frame for bringing application for compensation and resettlement for the settlers within the Federal Capital Territory.

Relying on **Egbe v. Adefarasin (No.2) (1987) NWLR (Pt.47) 1,** he posited to the effect that any action instituted outside the period prescribed by a statute of limitation, must be struck out as not being properly instituted before the Court.

Learned counsel contended that a combined reading of paragraphs 9 to 23 of the statement of claim manifestly shows that the wrong complained of by the Claimants is the acquisition of their alleged inherited land without compensation.

He argued that the Claimants became aware of the promulgation of the FCT Act since February, 1976, whereas the Writ of Summons was filed in 2015, 39 years after the promulgation of the Federal Capital Territory Act, pursuant to which lands in the Federal Capital Territory are vested on the Federal Government of Nigeria and outside the 12 months period provided for in Section 6(3) and (4) of the Federal Capital Territory Act, 1976for anyone claiming interest to apply for compensation. He posited that the Claimants' action is caught up by the said provision of the Federal Capital Territory Act.

Placing reliance on **Abibola v. Kolawole (1996) 10 NWLR (Pt.476) 22 at 25,** he submitted that knowledge is not a pre-condition for the operation of the Act, and cannot operate to extend time within which one can apply for such claims or reliefs.

Learned counsel further contended that by the express provisions of Section 2(A) of the Public Officers Protection Act, this suit cannot be maintained against the 3rdand 5thDefendants as actions against public officers must be instituted within 3 months of the complaint or not later than 3 months from the date the cause of action arose.

He referred to **Chigbu v. TonimasNig Ltd (2006) 9 NWLR (Pt.984)** and urged the Court to hold that this suit being statute barred is incurably bad and ought to be dismissed and so dismiss same.

On issue two, learned counsel posited that the Claimants' suit as presently constituted, and the evidence led, does not disclose any reasonable cause of action against the 3rdand 5th Defendants in view of the unchallenged fact and established law that all lands and developments within the entire Federal

Capital Territory, was duly and legally acquired and belonged to the Federal Government.

He referred inter alia, to **Rinco Const. Co. v. Vee Pee Ind. Ltd (2005)9 NWLR (Pt.927)87,Section 18, Federal Capital Territory Act,Madu v. Madu (2008)6 NWLR (Pt.1083) 296 at 325.**

Arguing issue three, on "whether this honourable Court can entertain this suit or grant the reliefs sought by the Claimants," learned counsel argued that having demonstrated that this suit is statute barred and that there is no reasonable cause of action disclosed by the pleadings and evidence led; that this Court cannot therefore, embark on a voyage other than to dismiss this action forthwith.

He referred to **University of Lagos v. Aigoro (1985)1 NWLR (Pt.1) 143, Opoto v. Anaum (2016) 16 NWLR (Pt.1539) 437; Nekka B.B.B. manufacturing Co. Ltd v. A.C.B. Ltd (2004) All FWLR (Pt.198) 1175 @ 1191,** and urged the Court not to waste time in dismissing this suit and the entire claims as they lack merit.

In his final written address, learned counsel for the 1st Defendant, Isioma G. Kelubia, Esq, raised two issues for determination, namely;

a. Whether the Claimants have disclosed a reasonable cause of action against the 1st Defendant in this suit?
b. Whether the Claimants are entitled to their claims/reliefs sought?

Proffering arguments on issue one, learned counsel posited that where there is no wrong, there can be no remedy; that in law, a Claimant cannot sue a defendant against whom he has no cause of action.

He contended that the Claimants in this case, do not have a cause of action against the 1st Defendant herein, as the Claimants in their claims and evidence before the Court, have not been able to show the wrongful act done by the 1st Defendant to warrant this action against her, and neither did they demonstrate before the Court, the role played by the 1st Defendant with the other Defendants to warrant being joined as co-Defendants in this suit.

He referred to **Ajayi v. Military Administrator, Ondo State (1997) 5 NWLR (Pt.504)237 at 272.**

Learned counsel contended that the 1st Defendant, being a local government council in the Federal Capital Territory whose functions are clearly stipulated under the Fourth Schedule of the 1999 Constitution (as amended), allocation of land, grant of right of occupancy and/or Certificate of Occupancy, revocation of title to land, re-allocation of land, award and compensation, are not within its powers but solely that of the Hon. Minister of the Federal Capital Territory, the 4th Defendant.

He argued that the quit notice that purportedly ordered the Claimants to vacate the land they occupy illegally did not originate from any department of the 1st Defendant but from the Department of Development Control of the 2nd Defendant and neither did the 1st Defendant mark the Claimants' buildings.

He posited that the Claimants' claim against the 1st Defendant has failed, the Claimants having failed to set out the infraction done by the 1st Defendant or the failure of the 1st Defendant to fulfil any obligations to them. He referred to **Ibe&Anor v. Bonum (Nig) Ltd (2019)LPELR-46452 (CA).**

In issue two, on whether the Claimants are entitled to their claims/reliefs sought; the learned counsel submitted that by

virtue of Section 1(3) of the Federal Capital Territory Act, 1976 and Section 34(1)(2)(3) of the Land Use Act, 1978, all lands in the Federal Capital Territory, are in the exclusive possession of the Federal Government.

He posited that the summation of Section 6 and 49(1) of the Land Use Act, 1978, is that customary title which the Claimants rely on, does not apply to the Federal Capital Territory.

Relying on **Engr. Ibrahim and 3 Ors v. Obaje (2005) All FWLR (Pt.282) 1965 at 1976-1977,** he posited that there is no deemed right in the Federal Capital Territory. He contended that the Claimants are thus not entitled to the reliefs sought, having based their claim on a purported traditional title.

He further contended, by virtue of the case of **Madu v. Madu (2008) 6 NWLR (Pt.1083)296 @ 325,** that the Claimants have no subsisting legal right in the subject matter of this suit.

Arguing further, learned counsel contended that the 6th Defendant/Claimant assertion at paragraph 15 of his counter-claim that the 1st Defendant granted/allotted six plots of land to him vide a Statutory Right of Occupancy is greatly misconceived, because there is no time the 1st Defendant allocated the said plots of land to the 6th Defendant, that the

6th Defendant also failed to produce any document to prove the alleged allocation.

Relying on **GodspowerOrlu v. Chief Godwin Onyeka (2017) NGSC 11; Aremu v. Adetoro (2007) 16 NWLR (Pt.1060)224 at 261,** he submitted that pleadings in the absence of evidence to establish the facts, go to no issue.

On the Claimants' contention that the 1st Defendant is bound by the Claimants' case, having failed to present any evidence in

support of its case; learned counsel to 1st Defendant argued that the Claimants' contention is resting on a faulty legal reasoning. Relying on **Dumez Nig. Ltd v. Nakhoba (2008)18 NWLR (Pt.1119) 361,** he submitted that where a party seeks declaratory reliefs, he must succeed on the strength of his own case and not on the weakness of the defence, and that a declaratory relief will not be granted even on admission.

He contended that the Claimants and the 6th Defendant have not been able to prove ownership of the lands in dispute or right to compensation and urged the Court to dismiss the suit.

The learned Claimants' counsel, Bashir S. Ahmed Esq, in his final written address, raised two issues for determination, namely;

1. Whether the Claimants have established the beneficial ownership of the land in dispute by the 63rd Defendant's (sic) family, that is, Ya-Basu family?
2. Whether the 63rd Claimant's family, that is Ya-Basu family, as the founders of the land in dispute, are entitled to compensation/re-allocation, and if the answer is the affirmative, whether the Defendants have paid the compensation/re-allocation/resettlement to Ya-Basu family and by extension, to the Claimants?

On issue one, learned counsel submitted that by virtue of Section 135 – 137 of the Evidence Act, 2011, for a Claimant to succeed in an action, before a Court of law, he must proffer credible and quality evidence to entitle him to judgment since by law, he bears the evidential burden.

He argued that from the pleadings filed by the parties in this suit and the evidence led by the parties in the course of trial, that the Claimants have been able to establish the beneficial

ownership of the land in dispute by the Ya-Basu family.He referred to **Ole &Ors v. Ekede&Ors (1991) 4 NWLR(Pt.187) 569 at 585** on ways of establishing title to land, and posited to the effect that the Claimants have established title to the land in dispute by traditional history and various acts of ownership over several years

He further argued that the 6th Defendant who relied on documentary evidence to counter-claim against the Claimants over some portions of the land in dispute, failed to produce and/or tender any document to prove his claim. He urged the Court to hold that the claim of the 6th Defendant has failed.

He referred to**Atanda v. Iliasu (2013)6 NWLR (Pt.1351) 557.**

Proffering arguments on issue two, learned counsel posited that the Claimants have established their title to the land in dispute by traditional history and are thus entitled to compensation or re-allocation from the 2nd and 4th Defendants.

He argued that even though the Federal Capital Territory Act might have compulsorily acquired and vested the lands of the Claimants in the 2nd and 4th Defendants, that it did not by thatacquisition ipso facto extinguish the rights of the Claimants to compensation and relocation and access to Court for the determination of their existing interest on the land prior to the Act.

Learned counsel posited that theClaimants' claim is anchored around their right to compensation and protection of possession and not claim for declaration of title based on deemed customary right of occupancy.

He submitted that Section 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), recognises the fundamental right of every citizen to compensation upon

compulsory acquisition of his property, as well as the unimpeded and uncircumscribed right to approach the Court for the determination of his interest connected thereto.

He further posited that the Claimants' right of action was derivedfrom the combined effect of Section 6(6)(b) and 44(1) of the Constitution, and that Sections 1, 2 and 6 of the Federal Capital Territory Act must be read in community with the said constitutional provisions.

Learned counsel submitted further, that the Claimants' right of action, being a donation of the constitution, cannot be taken away or circumscribed in any way by any law, including the FCT Act, which itself must submit to the primacy and supremacy of the Constitution. He referred to **A.C.B. v. Okonkwo (1997) 1 NWLR (Pt.480)194 at 207.**

Placing reliance on **Adole v. Gwar (2008)11 NWLR (Pt.1099) S.C. 562 at 608-609,** he submitted that this Court is enjoined by law while interpreting expropriatory statues such as the Federal Capital Territory Act against the provisions of the constitution, to construe such statutes strictly "in such a manner as to preserve the citizen's right to property" in question.

He urged the Court to consider the evidence of the Claimants that they have never been paid compensation by the 2nd and 4thDefendants or any agent of the Federal Government vis-à-vis the fact that the government had never made any attempt at taking actual possession of the land since 1976 until quite recently when the quit notice dated 4th September was served by the 2nd Defendant on the Claimants which was what prompted the Claimants to seek the Court's protection by ensuring that due process of the law is followed before the Claimants and their families are evicted from the lands in question.

He contended, in conclusion, that the Claimants have led sufficient and cogent evidence to entitle them to the declarations and reliefs they are seeking in this suit, and urged the Court to uphold the case of the Claimants while dismissing the 6thDefendant's counter-claim in its entirety.

Inthedetermination of this suit, the questions that calls for consideration are:-**(1) Whether Section 6(3) & (4) of the Federal Capital Territory Act, has ousted the jurisdiction of this Court from entertaining any claim for compensation or resettlement in respect of compulsory acquisition of land in the FCT? (2) Whether the Claimants have proved their claims against the Defendants. (3) Whether the claim against the 3rd and 5th Defendants being staff of 1st and 2nd Defendants is against the public interest?**

It is a notorious fact, that by virtue of theFederal Capital Territory Act, which came into effect on 4th February, 1976, the ownership of all land comprised in the Federal Capital Territory, became vested in the Government of the Federation. (See Section 1(3) of the Act).

It is also a notorious fact, that prior to the coming into effect of the Federal Capital Territory Act, there were indigenous inhabitants in various parts of the areas forming the Federal Capital Territory. The rights, lives and livelihoods of the said original inhabitants did not become automatically extinguished by the vesting of the lands comprised in the Federal Capital Territory in the Federal Government. This explains the provision for payment of compensation in respect of lands comprised in the Federal Capital Territory in Section 6 of the Federal Capital Territory Act.

The Claimants in this case, are not claiming for declaration of title to the land whereon they inhabit. On the contrary, their

claim is for a declaration that the Ya-Basu family was the original inhabitants of the said area of land, pursuant to which they are seeking for an order mandating the 4th Defendant to either allocate the said area of land to the Claimants, or to pay them adequate compensation, or still, to relocate them to another location within the Federal Capital Territory, following the Quit Notice served on them by the agents of the 2ndDefendant.

The 2nd-5th Defendants have however, contended that the Claimants' suit is statute-barred, pursuant to Section 6(3) and (4) of the Federal Capital Territory Act, and as such, that this Court lacks the jurisdiction to entertain the suit.

It is however, my considered view, that Section 6(3) and (4) of the Federal Capital Territory Act, did not oust the jurisdiction of this Court to entertain claims such as are presented before this Court in the instant suit – **Madukolu v. Nkemdilin 1 ACLC 22.**

For ease of reference, the said subsections of Section 6 of the Act provides thus:

> ***"(3) Any person who claims any right or interest in any land comprised in the Federal Capital Territory shall submit, in writing, particulars of his claims to the Executive Secretary on or before the expiration of twelve months from the date of commencement of the order made under Section 2 of this Act or such longer period as the President may, either generally or in relation to any particular claim or claims, prescribe by notice published in the Federal Gazette.***
>
> ***(4) No claim for compensation shall be entertained by the Authority unless a written notice of the claim in accordance with subsection (3) of this Section is***

served on the Authority within the period specified in the said subsection."

From the above subsections, it is very clear that the mandatory requirement for claims for compensation to be made within twelve months from the commencement of the order defining the boundaries of the Federal Capital Territory, relates to where such claims are made by persons to the Federal Capital Development Authority (the Authority) and not claims made to the Court pursuant to an eviction notice.

Now, to the substance of the Claimants' claim; the law is trite that where there is a right, there is a remedy (ubi jus, ibiremedium). See **MTN Nig Communications Ltd v Sadiku (2013)21105 (CA).**

By Section 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended):

"No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things –

(a) requires the prompt payment of compensation therefore;

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a Court of law or tribunal or body having jurisdiction in that part of Nigeria."

The above Section of the Nigeria Grundnorm makes it a constitutional right for anyone whose immovable property or

right thereto, is to be compulsorily acquired by the state, to be paid compensation and that the person so claiming for the compensation should have right of access to the Court for the determination of his right. This constitutional right has not been, and cannot be circumscribed by Section 6(3) and (4) of the Federal Capital Territory Act.

The Claimants claim as referred to in relief I is onbehalf of the Ya-Basu family through whom they acquired the property in question. The 63rd Claimant is the only member of Ya-Basu family. Learned counsel for the 2nd – 5th Defendants raised the issue of the reliefs of the Claimants being statute barred vis-à-vis the provisions of Section 6 (3) and (4) of the FCT Act.

Question is **whether the Claimants can claim on behalf of the Ya-Basu family compensation for the land in Federal Capital Territory.**

It is my strong opinion that the Claimants who claimed to have purchased the land from Ya-Basu family can only claim compensation through the Ya-Basu family if they can prove the purchase of the land from the Ya-Basu family before the creation of the Federal Capital Territory, 1976. Thus, they must comply with the condition for payment of compensation. Section 44 of the 1999 Constitution in conjunction with Section 6(2)(3)&(4) of the Federal Capital Territory Act provide for procedure for adequate compensation to the owners of the land. It therefore follows that non-compliance with the provisions of the law with the above referred Sections renders any application completely null and void. Note that any acquisition of land from the natives in Federal Capital Territory after the creation of Federal Capital Territory in 1976 amounts to a void acquisition.Section 297(2) of the 1999 Constitution provides that ownership of all lands comprised in Federal Capital Territory shall rest in the Government of Federal Republic of Nigeria. It was from this Section 297(2) that the Federal

Capital Territory Act derived its strength from the provision of Section 6(2)(3)&(4).

I have perused Section 2 of the Federal Capital Territory Act, Laws of Federation 1990, which in summary provided that the boundary of Federal Capital Territory shall be accurately surveyedand demarcated as soon as possible after the commencement of the Act.The demarcation of boundaries of Federal Capital Territory is set out and defined in 1st schedule of the Act.Section 2(2) of the Federal Capital Territory Act, further provided for the publication in the Federal Gazette, the limits, distances and bearings demarcated in first schedule.

The Federal Capital Territory Act, 1990 came into force on 4th February, 1976,Section 6(3) of the Federal Capital Territory Act, and provided for compensation procedure. Thus stating any person showing any interest in the land within the Federal Capital Territory must submit in writing, particulars of his claims to the Executive Secretary for purposes of compensation on or before the ***"expiration of a period of 12 months from date of commencement of this Act…".***

The interpretation of the above Sections is that the application for compensation by any person whose act of acquisition of land in Federal Capital Territory by the Federal Government has affected negatively, such application must be made within 12 months after the commencement of the Act which is 4th February, 1976.

The Claimants have not shown or established any application submitted within the required period of 12 months for commencement of this Act.

The learned counsel for the 2nd -5th Defendants profusely argued that in the event of the Claimants not performing the act

required of them within 12 months gap that their action is statute barred. Learned counsel for the Claimants relied on Section 6(6)b and Section 44 of the Constitution and Section 1,2,6 of the Federal Capital Territory Act, to also vehemently argue that the Claimants have right to compensation under the constitution which has supremacy over theFederal Capital Territory Act.

Section 44(1) provides that no moveable or immovable property SHALL be compulsorily taken over in any part of Nigeria, except ***"in the manner and for the purpose prescribed by a lawamong other things (a) requires the prompt payment of compensation thereof...".***

Clearly Section 44(1) of the Constitution has provided against compulsory acquisition of property without payment of compensation. While Section 46 encourages any person alleging a breach of the provisions of Chapter IV of the constitution which includes Section 44 to apply to High Court for redress.

Yes, the provisions of Section 44 of the Constitutionand Section 2, 6(3) and (4) of the Federal Capital Territory Act, as clearly spelt out have no conflict. The constitution says that land acquired compulsorily must be compensated.Federal Capital TerritoryAct, agrees to pay compensation with a clause that the applicant must submit his claims within a specified period of 12 months from date of commencement of the Act,on 4th February, 1976.

In fact, it is specifically stated in Section 6(4) of the Federal Capital Territory Act,

> ***"No claim for compensation shall be entertained by the authority unless a written notice of the claim in***

accordance with subsection (3) of this section is served on the authority within the period specified by the subsection".

Who is the authority?The authority required by law is Honourable Minister, Federal Capital Territory. The provisions are clear and distinct, simple and with an unambiguous language and therefore a liberal interpretation and effect must be given to the provisions of Section 6(4) Federal Capital Territory Act, I place reliance on **Okoties-Ebo v. Manager (2004) 18 NWLR (Pt.905) 242**, **Gankon v. UgochukwuChem Industries Ltd (1993) 6 SCNJ 263.**

Essentially, interpretation of a statute is to ensure that the law makers intention are established and it is incumbent on the Courts to ensure that the aim is established. The Claimants claiming through the Ya-Basu family ought tohave complied with the provisions of Section 2, 6(3) and (4) of the Federal Capital Territory Act, which is due process of the law for payment of compensation. The primary function of the Court in interpretation of law as said earlier is to give literal and ordinary meaning which I have done in this regard. Therefore, failure of the Claimants and Ya-Basu family to comply with the provisions of Federal Capital TerritoryAct, definitely rids the claimants of their reliefs.

I am inclined to mention the case of**Jos Electricity Distribution PLC v. Muhammed(2015) LPELR-24461(CA),** the Court of Appeal held,

"All native lands and all rights over same are hereby declared to be under the control and subject to the disposition of the Minister and shall be held and administered for use and common benefit of the natives and no title to the occupation and use of any

such lands by non-native shall be valid without the consent of the Minister…"

The above decision of Court of Appeal excludes the non-natives from acquiring land belonging to the natives without the consent of the Honourable Minister Federal Capital Territory.

In my opinion, the Federal Capital TerritoryAct, has not come to defeat the obvious ends of the Constitutionas argued by Claimant's counsel rather it was designed to meet its justiciable end.The reading of the provisions of the Constitution and Federal Capital Territory Act, in respect of compensation for compulsorily acquired landis construed to give the procedure and time limit within which the affected persons must comply to apply for the compensation. Time for payment of compensation has a statutory period withinwhich Applicants must comply.

I can only pitiably say that the Claimants slumbered over their rights to request for prompt payment of compensation. Ignorance of the law is not an excuse. Based on these findings, I therefore hold that the claims of the Claimants failed and are dismissed.

In considering the 3rd issue, it is not in doubt that the 2nd and 5th Defendants are staff of 1st and 2nd Defendants and are public officerswho acted on the directive of the 1st and 2nd Defendants. The objective of public officers' protection statutes is to protect public officer who have acted on the authority pursuant to the duties of their offices from being harassed and intimidated with claims and Court proceedings.

I am convinced that 2nd and 5th Defendants must have acted in the course of their public duties and therefore must not be held liable for the acts of their employer who are parties to this suit.

Therefore the 2nd and 5th Defendants names are struck out as the claim lacks cause of action against them.

Unfortunately the Claimants failed to comply with the necessary requirements of Federal Capital Territory Act LRN 1990 for payment of compensation and their reliefs are dismissed. The said lands are subject to the disposition of the Minister Federal Capital Territory.

………………………………………
HON. JUSTICE A. O. OTALUKA.

The 6th Defendant who sought and obtained the leave of this Court to be joined as a defendant to the suit filed a counter-claim, claiming for a declaration that he is the legitimate and beneficial owner of Plot Nos. 61 and 156, Jikwoyi, layout Abuja, as well as Plot Nos. 112, 113, 158 and 159, JikwoyiExtension 11 layout, Abuja.

The 6th Defendant/Counter-Claimant pleaded Statutory Right of Occupancy as his title to the said plots. At the hearing of the case however, the 6th Defendant/Counter-Claimant failed to tender any credible admissible documentary evidence in proof of his claims.

The law is settled that a Counter-Claimant has the burden to prove satisfactory with credible evidence his counter-claim in order to be entitled to same, and that failure to prove the counter-claim will lead to the dismissal of the counter-claim. See **Olokode&Ors v. Ijaola&Ors (2005) LPELR-11428 (CA).**

The various ways of proving title to land have long be established in the case of **<u>Idundun v. Okumagba (2002) 20 WRN 127</u>,** thus:

1. By traditional evidence.
2. By document of title.
3. By various acts of ownership and possession numerous and positive to warrant inference of ownership.
4. By acts of long possession and enjoyment of land.
5. By proof of possession of adjacent land in dispute in such circumstances which render it probable that the owner of the adjacent land is the owner of the land in dispute.

The counter-claimant herein, who has relied on document of title as the basis of his claim, has the duty to produce such document of title before the Court. This duty or burden remains on the counter-claimant, and does not shift until same is discharged. Thus in **<u>Ugwunze v. Adeleke (2008) 2 NWLR (Pt.1070) 148 at 175,</u>** the Court of Appeal, per Muktar, J.C.A. held that:

> ***"The onus of proof of title to land is always on the party seeking declaration in respect thereof. Not until the burden is discharged, it will never shift."***

The 6th Defendant/Counter-Claimant failed to discharge the burden of proof on him by production in evidence documents tracing his title to the 4th Defendant, Honourable Minister Federal Capital Territory within whom all land in Federal Capital Territory resides. The Supreme Court has held repeatedly in **<u>Adole v. Gwar (supra)</u>*"that once a party pleads and traces his root title to a particular source (in this case theHonourable Minister Federal Capital Territory) and the title is challenged, to succeed, the party must not only establish his title to the land in issue, he must also satisfy***

the Court as to the title of the source from whom he claims, see Ali v. Alesinloye (2000) 4 SCJN 764".

Further, it is trite that a Claimant must not only rely on the strength of his case to succeed but must succeed on credible evidence **Kodlinye v. Odu 1 ACLC 192.**

In the circumstances therefore, the 6th Defendant/Claimant failed to prove the basis upon which he founded his title, his counter/claim fails and is hereby dismissed.

No cost awarded.

HON. JUSTICE A. O. OTALUKA
20/6/2022.