IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/0819/2018

DATE: : FRIDAY 20TH MAY, 2022

BETWEEN:

MR.ANTHONY OGOCHUKWU UMEH..CLAIMANT

AND

1.THE REGISTERED TRUSTEES OF JESUS GLORY CHAPEL
2. THE HON. MINISTER OF FCT
3. FEDERAL CAPITAL DEVE. AUTH.
} **DEFENDANTS**

JUDGMENT

By a Writ of Summons dated and filed on the 26th January, 2018, the Plaintiff claimed from the Defendants the following:-

1. A Declaration that the Plaintiff herein is the bonafideallotee and lawful owner of Plot 997 Cadastral Zone C02 Situate at Gwarinpa 1, FCT Abuja and measuring approximately 1000 Sqm.

2. A Declaration that the purported allocation of Plot 997 Cadastral Zone C02 Situate at Gwarimpa 1, FCT – Abuja and measuring approximately 1000 Sqm. to the 1st Defendant by the 2nd and 3rd Defendants is illegal, unlawful, unconstitutional and void.

3. A Declaration that the purported withdrawal of allocation of Plot 997 Cadastral Zone C02 Situate at Gwarinpa 1, FCT Abuja and

measuring approximately 1000 Sqm. from the Plaintiff by the 1st and 2nd Defendants is illegal, unlawful, unconstitutional and void.

4. A Declaration that the occupation of Plot 997 Cadastral Zone C02 Situate at Gwarinpa 1, FCT Abuja and measuring approximately 1000 Sqm. by the 1st Defendant is illegal, unlawful, unconstitutional for constituting an act of trespass to the Plaintiff's property being the subject matter of this suit.

5. An Order of this Honourable Court mandating the 2nd and 3rd Defendants to issue to the Plaintiff a certificate of occupancy in respect of Plot 997 Cadastral Zone C02 Situate at Gwarinpa 1, FCT Abuja and measuring

approximately 1000 Sqm. upon the payment by the Plaintiff of the requisite fees.

6. An Order of this Honourable Court mandating the 2nd and 3rd Defendants to demolish any structure on Plot No. 997 Cadastral Zone C02, Gwarinpa 1, FCT – Abuja.

7. An exemplary damages of 20,000,000.00 only.

8. The cost of N2,000,000.00 being the cost of prosecuting this suit.

Upon service of the Writ on the Defendants and after pleadings were exchanged, the suit was set down for hearing.

The case of the Claimant as distilled from the statement of claim and witness statement on oath deposed to by Anthony OgochukwuUmeh, the

Plaintiff in this Suit, is that on the 24th day of April, 2006, he did apply to the 2nd and 3rd Defendants for a grant of a statutory right of occupancy for residential purpose in the Federal Capital and which application was duly received and acknowledged.

That following the Plaintiff's application to the grant of Statutory Right of Occupancy in the Federal Capital Territory, the 2nd and 3rd Defendants did through offer of Statutory Right of Occupancy dated 9th November, 2006, granted residential Plot No. 997 Cadastral Zone C02, Gwarinpa 1, FCT – Abuja to the Plaintiff in accordance with the Plaintiff's application.

That upon the Plaintiff's receipt of the offer letter, he did in compliance with the terms and conditions as stipulated therein accept the offer in writing within

two months as required. In the year 2007 when the Plaintiff was financially ready to develop the Plot and also paid all the bills necessary for the development of the Plot, he instructed the law office of Jireh Chambers to conduct a legal search over the Plot so as to ensure that the allocation or grant was not encumbered in any manner howsoever which was done and the result showed that the grant was still standing to his sole benefit and for residential purpose.

That owing to the reassurance that he got from the legal search report earlier referred to the Plaintiff proceeded to make payment for the site plan of the Plot in accordance with the Statutory Right of Occupancy initial bill obliged him by the 2nd and 3rd Defendants. Upon payment of a sum of N3000.00 for survey and plan as contained in the initial bill, he

was obliged a copy of the Site plan for Plot No. 997 Cadastral Zone C02, Gwarinpa 1, FCT – Abuja.

That the Plaintiff after getting the site plan, commenced the process of paying the sum of N2,029,500.00 to the 2nd and 3rd Defendants as demanded in the initial bill obliged the Plaintiff for the issuance to him of a Certificate of Occupancy. It was in the course of processing the payment necessary that sometime in 2007, the Plaintiff was informed that there is a double allocation over the said plot. The Plaintiff then took a surveyor from Federal Capital Development Authority to locate Plot No. 997 Cadastral Zone C02, Gwarinpa 1, FCT – Abuja and upon getting to the land with the Surveyor, discoveredan illegal squatter on same being the 1st Defendant therein.

That upon getting to the land, a certain man who identified himself as Pastor Moses Enenche and his wife both of whom told the Plaintiff that they are the overseers of the 1st Defendant accosted the Plaintiff demanding to know why he and the Surveyor were on the land which is Plot No. 997 Cadastral Zone C02, Gwarinpa 1, FCT – Abuja. The Plaintiff then explained to them how the said land was allocated/granted to him by the 2nd and 3rd Defendants and also availed the said Pastor the title documents to the land. The Pastor and his wife became so angry and told the Plaintiff that AltineJubrin who at that point was a Director at the Abuja Geographic Information (AGIS) was a member of their Church and had assured them that the Plot here in issue belonged to the 1st Defendant as the plot was designated **'place of worship'.**

That the Plaintiff was surprised at the information from Pastor Moses the overseer of the 1st Defendant herein, he made several inquiries from the land registry office of the 2nd and 3rd Defendants and discovered that the Plot was not by its original plan designated a place of worship as acclaimed by Pastor Moses. The Plaintiff noticed at a point in the year 2007,that an attempt was being made to illegally change the purpose of the said Plot from being residential to being a place of worship to the advantage of the 1st Defendant.

That the Plaintiff instructed the law office of Chima, Henry Ebere& Co. to write a complaint to the 2nd Defendant bringing before the 2nd Defendant all the developments on the said Plot No. 997 Cadastral Zone C02, Gwarinpa 1, FCT – Abuja while demanding that justice be done in the matter. Neither

the 2nd nor the 3rd Defendants reacted in any manner whatsoever to the said letter the fact of the receipt of same by them notwithstanding.

That sometime in 2011, when the Plaintiff went to the offices of the Director of lands and the Deeds Registrar of the 2nd and 3rd Defendants for the purpose of following up on his already pending complaint against the illegality being perpetrated on him over the said land, the then Director of Lands and Deeds Registrar collectively prevailed on him to return the original copies of the offer of Statutory Right of Occupancy, the legal search report and the Statutory Right of Occupancy initial bill so that the 2nd and 3rdDefendants may allocate another Plot of land with same features, size and on the same location as Plot No. 997 Cadastral Zone C02, Gwarinpa 1, FCT –

Abuja to him in the overall interest of peace and justice.

That upon the counsel of the said Director of lands and the Deeds Registrar and while believing that they were honest in their plea for peace and justice, the Plaintiff handed them the original copies of the offer of Statutory Right of Occupancy, the legal search report and the statutory right of occupancy initial bill for offer of Statutory Right of Occupancy while being positive that the 2nd and 3rd Defendants will in no distant time allocate another Plot of land to the Plaintiff, he was assured by their agents.

That about five (5) months after the Plaintiff handed the said documents to the Director of lands and the Deeds Registrar, the Plaintiff received a letter dated 28th February, 2012 titled Re: Double Allocation

over Plot No. 997 within Gwarimpa 1,(C02) District, Abuja informing him that the 2nd Defendant has in view of land use mis-match withdrawn the Plaintiff's allocation as said plot is designated a place of worship and that an alternative plot shall be allocated to him in due course. From the said 28th February, 2012 till date, the 2nd and 3rd Defendants have failed to allocate an alternative land to him.

That the withdrawal of the allocation to the Plaintiff by the 2nd and 3rd Defendants on the ground that the land is designated for worship is unlawful as same reason does not amount to overriding public interest.

That as the first, bonafide and lawful allottee of Plot No. 997 Cadastral zone C02, Gwarinpa 1, FCT – Abuja, the Plaintiff has need for same

notwithstanding the change in the purpose illegally affected on same to favour the 1st Defendant.

That unless the 2nd and 3rd Defendants whose acts of omission and/or commission enabled the 1st Defendant's act of trespass on the Plot of land in issue in this suit are ordered to demolish the shanties erected on the land by the 1st Defendant, the Plaintiff will still suffer a grievous injustice even after Judgment had been entered in his favour as it will cost him a lot of fortune to demolish those shanties and clear the debris of the demolition from the said plot of land.

That the Plaintiff incurred a cost of N2,000,000.00 to Prosecute this case and shall during the trials in this suit rely on the receipt of payment issued to him by his Solicitor.

That it will be in the overall interest of justice to grant all his claims against the Defendants herein.

PW1 tendered the following in evidence:-

1. Acknowledgment letter dated 15th May, 2006
2. Site Plan signed on 20th May, 2007
3. Letter from Law Firm dated 19th October, 2007
4. Letter titled Re: double allocation dated 28th February, 2012
5. Letter from Corporate Affairs Commission (CAC) dated the 4th October, 2018

All marked Exhibits "A", "B", "C", "D" and "E" respectively.

Plaintiff closed its case to pave way for Defence.

DW1 (Pastor Grace SammosesEnenche) adopted his witness statement on oath. The case of the 1st Defendant as distilled from the statement of Defence and witness statement on oath of DW1 is as follows:

That the 1st Defendant occupies the said Plot No: 997 Cadastral Zone C02 Gwarinpa 1, FCT Abuja as lawful Occupant and has not been disturbed by anybody under this suit.

That the 1st Defendant is not a party to any transaction between the Plaintiff and the 2nd and 3rd Defendants in respect of Plot No. 997 Cadastral Zone C02 Gwarinpa 1, FCT Abuja.

That the said Plot No. 997 Cadastral Zone C02, Gwarinpa 1, FCT Abuja was by its original master plan designated a place of worship.

That it is not the responsibility of the Plaintiff to decide on the administrative duties of the 2nd and 3rd Defendants.

That the 2ndand 3rdDefendants allocated to the 1st Defendant Plot No. 997 Cadastral Zone C02 of Gwarinpa with an offer of Statutory Right of Occupancy dated 16th January, 2007 and paid all the necessary processing fees, the Statutory Right of Occupancy/Initial Bill dated 27th March, 2007.

That the Plaintiff's action is statute barred as the Plaintiff ought to have commenced any action against the acts of the 2nd and 3rd Defendants within 3 monthsupon receipt of the 2nd and 3rd Defendants' letter of 28th February, 2012.

That the 1st Defendant shall urge the Court to dismiss the Plaintiff's suit being frivolous and an abuse of Court.

DW1 tendered the following documents: in evidence.

Double Allocation letter dated 28th February, 2012.

- Offer of Statutory Right of Occupancy dated 16th January, 2017
- Right of Occupancy Initial Bill with receipt dated 27th March, 2007
- Site Plan with receipt dated 17th August, 2015

All marked Exhibits "DA" and "DB".

DW1 was cross-examined, and subsequently discharged.

DW2 (ChimaIgbozuruike) adopted his witness statement on oath. It is the case of the 2nd and 3rd Defendants as distilled from the statement of defence and witness statement on oath of DW2 that:

The first allottee of Plot No. 997 Cadastral Zone C02 Gwarinpa 1, FCT – Abuja, is the Redeemed Christian Church of God vide offer of Terms of Grant/Conveyance of Approval dated 18th April, 2003 and Certificate of Occupancy dated 18th April, 2003. This is evidenced in the offer letter, Certificate of Occupancy acknowledgment of completed application forms, and the Ministerial Approval of Plot 997 Gwarinpa 1 to the Redeemed Christian Church of God for religious Institution (R1).

That the Plaintiff did not accept the offer of Statutory Right of Occupancy issued to him by the

2nd Defendant in writing within two months as stated in the offer letter, and never fulfilled the condition of his purported allocation.

That the non-fulfillment of the conditions particularly not accepting the offer and not paying for the consideration for the offer negatived the offer.

That the 2nd and 3rd Defendants noticed a case of multiple allocation in respect of Plot No. 997 Cadastral Zone C02, Gwarinpa 1, Abuja as same was also allocated to the 1st Defendant vide an offer of Statutory Right of Occupancy dated 16th January, 2007 for religious purpose with Ministerial Approval covering the said allocation to 1st Defendant.

The 2nd and 3rd Defendants investigated this case of double application over the Plot in issue between

Anthony OgochukwuUmeh and Jesus Glory World Outreach and discovered that:

a. The land use of the area in question is for public institution – a place of worship, thus to allocate same for residential purpose will be contrary to the purpose clause and a distortion of the Abuja Master Plan.

b. That allowing the Plaintiff retain his title will not be feasible in this case considering the land use of the disputed area.

That 2nd and 3rd Defendants resolved that to avoid a scenario of mismatch and a distortion of the Abuja Master Plan which the FCT Administration is rigorously trying to restore, the right and interest over Plot No. 997 Gwarinpa 1, FCT – Abuja should be withdrawn from the Plaintiff and an alternative be

sourced and allocated to Plaintiff (where available),while the 1st Defendant should hold onto her title and develop same in line with the land use of the area, which is a place of worship. This was approved by the 2nd Defendant in a memo titled **"Re: Case of Double Allocation over Plot No. 997 Gwarinpa (C02) District"** dated 31st October, 2011.

That following the recommendation to and approval of the 2nd Defendant in preceding paragraph, a letter dated 28th February, 2012 was written to the Plaintiff withdrawing his allocation over the said Plot issue in view of the land use mismatch and that an alternative Plot shall be allocated to him. Consequently, a letter dated 28th February, 2012 was also issued to the 1st Defendant informing him to retain the Plot in consideration of the fact that the land is designated as **"place of worship in the Abuja Master Plan".**

That the Plaintiff did not follow up on the alternative Plot promised by the 2nd and 3rd Defendants.

That the Plaintiff willingly surrendered his papers and was not forced by or prevailed upon by the 2nd and 3rd Defendants or any of their officers.

That the 2nd and 3rd Defendants maintain that the Plaintiff is not the first bonafide and lawful allottee of Plot No. 997 Cadastral Zone C02, Gwarinpa 1, FCT – Abuja.

The 2nd and 3rd Defendants deny claims of the Plaintiff's Statement of claim and hereby put the Plaintiff to their strictest proof.

The 2nd and 3rd Defendants state that the Plaintiff is not entitled to his claims as contained in his writ of summons and statement of claim.

That the Plaintiff is not entitled to any of the reliefs sought in this suit.

That this Honourable Court is urged to dismiss the claims of the Plaintiff with punitive cost.

DW2 tendered the following documents in evidence:

1. Certificate of Occupancy dated 18th April, 2003
2. Right of Occupancy
3. Memo of General Counsel dated 31st October, 2011
4. Letter of Acceptance dated 17th April, 2007
5. Offer of Terms of Grant and Approval dated 18th April, 2003
6. List of recommended application for approvals by FCT Minister dated 16th April, 2003.

All marked Exhibits “DH”, “DI”, DJ”, DK”, “DL” and “DM”.

DW2 was cross-examined and accordingly discharged.

Accordingly, 1st Defendant filed final written address wherein sole issue was formulated for determination to wit;

> ***Whether the Plaintiff has proved his claim to warrant the grant of his reliefs.***

On the trite position of the law, that he who asserts must proof under Section 131 of Evidence Act, 2011 which provide that whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which asserts must prove that those facts exist, learned counsel contended that Plaintiff in his paragraph 24 of the Statement of

Claimaverred that he returned back the original copies of the offer of statutory right of Occupancy, the legal search report and the Statutory Right of Occupancy initial bill for offer of Statutory Right of Occupancy and that the 2nd and 3rd Defendants will allocate him another plot of land.

It is also the submission of learned counsel that the averment at paragraph 24 of the Plaintiff's statement of Claim is an admission that he has relinquished his interest of that Plot originally granted to him hoping to be allocated another plot, that defeats his claim over the same Plot No. 997 Cadastral Zone C02 situate at Gwarinpa 1 FCT Abuja moreso the Plaintiff under cross examination by the 1st Defendant admitted that he has not paid the fees meant for the allocation of the statutory right of occupancy as contain in paragraphs 2 and 3 of the said offer

ofStatutory Right of Occupancy as well as the pleadings of the 2nd and 3rd Defendants at paragraphs 4 and 5 of their Statement of Defense hence the Plaintiff cannot benefit from his wrong therefore he has failed to prove that the said Plot No. 997 Cadastral Zone C02 situate at Gwarinpa 1, FCT – Abuja right belongs to him. ***AMADI VS. AMADI (2017) 7 NWLR (Pt. 1563)*** Page 108 at 133 paragraphs A - Fwas cited.

The Plaintiff having admitted not paying the fees which is a pre-condition of the legality of the offer of Statutory Certificate of Occupancy under cross-examination amount to clear admission of facts of his own case, Section 20 Evidence Act, 2011 and ***KAYILI VS. YILBUK (2015)7 NWLR (Pt. 1457) Page 26 at 64 Paragraphs A – B***were cited.

Learned counsel further argued that from the available evidence before the Court, the only remedy open for the Plaintiff is to request for another land and not to sue in respect of the same land he had relinquished as a party cannot benefit from his own wrong, ***MTN (NIG) COMM. LTD. VS. C.C INV. LTD. (2015) 7 NWLR Pt. 1459 Page 437 at 466 Paragraph F*** was cited.

From the pleadings, and evidence of the Plaintiff under cross-examination, it has been established that the Plaintiff has woefully failed to proof his case based on the balance of probabilities as required by Section 134 of Evidence Act, 2011 which signifies that the burden of proof in civil cases shall be discharged on the balance of probabilities, or preponderance of Evidence which means that in Civil proceedings,Judgment is given to the party with

thegreater weight or stronger evidence, learned counsel urged the Court to enter Judgment in favour of the Claimant.

INTERSRILL NIGERIA LIMITED & ANOR VS.UNITED BANK OF AFRICA PLC. (2017) LPELR – 41907 (SC) (P. 26), Paragraphs C – Dwas cited.

On the Doctrine of estoppel, learned counsel contended that same is applicable against the Plaintiff over his claim on Plot 997 Cadastral Zone Gwarinpa 1, FCT – Abuja, even though the 1st Defendant did not expressly plead estoppels. It is learned counsel's argument that estoppel can be inferred from the facts, as same need not be particularly pleaded.

MEZU VS. COOP & COMM BANK (NIG) (2013)12 WRN Page 22 lines 45 was cited.

Learned counsel concludes by urging this Honourable Court to resolve the lone issue formulated by the 1st Defendant and to dismiss this suit.

On their part, 2nd and 3rd Defendants filed their final written address wherein two issues were formulated for determination to-wit:-

1. ***From the totality of pleadings and the evidence adduced thereon, whether the Plaintiff has established any case to be entitled to the reliefs sought in the statement of claim.***

2. ***Whether the Plaintiff is not bound by the equitable doctrine of waiver and estoppel by conduct.***

Issues 1 and 2 argued together

Learned counsel argued that, the main function of pleadings is to ascertain with as much certainly as possible the various matters that are in dispute between parties and those in which there is agreement or those on which issues have not been joined.***OLOWOOFOYEKU VS. OLOWOOFOYEKU (2011)1 NWLR 9 (Pt. 1227) 177 @ 201*** was cited.

It is similarly the argument of counsel that in an action for declaration of title to land, the Plaintiff has the duty to prove his case. He has the duty to establish his case on the strength of his own case and not on the weakness of the case of the adversary.***KODILINYE VS. ODU (1935)2 WACA 336*** was cited.

Learned counsel further submits, that it is opposite to state that in law, the mere production of title documents does not automatically prove ownership. Where therefore, the validity of title documents is in issue as in the case, certain material questions needs to be considered.

Learned counsel also contended, that the relationship between the Plaintiff (the grantee) of supposed Plot 997 would largely be governed by the terms of the contract between him and the grantor, that is, the 2nd and 3rd Defendants. The conditions of grant are contained on the face of the Plaintiff's Exhibit "F", that is payment of requisite fees and written acceptance of the offer as provided in clause 3 of Exhibit "F", only then will the contractual relationship exist to creates in favour of the Plaintiff an equitable interest which matures into a legal

interest upon the fulfilment of other condition and issuance of a Certificate of Occupancy. The Plaintiff in his case placed so much reliance on the Exhibit "F"as his root of title which his pleadings and evidence led showed that the offer was never accepted and neither did he furnish any evidence of its acceptance or payment of consideration of the offer to be a bona fide entitled to right over Plot 997.

Learned counsel further stared, that the law on contract; that a contract in which consideration has not been met is one that can be said to have breached and is unenforceable as consideration is one of the terms of contract. ***CHABASAYA VS. ANWASU (2010) 25 WRN 30 at Page 46***was cited. The 2nd and 3rd Defendants by their joint defence stated that Plaintiff's supposed rights over the subject did not crystallized having not fulfil the condition of the offer

of statutory rights, more so if such rights ever existed the Plaintiff by his conduct has waived such rights and interest. In the statement of claim, the reasonPlaintiff gave for the alleged surrender of his right and interest over Plot 997 is to seek an alternative Plot from the 2nd and 3rd Defendants, which Exhibit "D" clearly illustrated that 2nd and 3rd Defendants acted on the Plaintiff's surrendered of right and interest over the purported subject Plot.

Learned counsel also submits, that it is the Plaintiff's case that he submitted his original title for an alternative plot while PW1 testified under cross-examination by 2nd and 3rd Defendants' counsel when that ***"he did not go back to inform the 2nd and 3rd Defendants that he was no longer willing to wait for an alternative plot"***even though when the Plaintiff had earlier refused to answer the question

posed to him that his evidence has always been that he will be given an alternate plot. It is submitted that the doctrine of Waiver and Estoppel move hand in hand, in that, once a person has been shown to have waived a right or privilege, such a person will be estopped from raising the same again. ***FASADE VS. BABALOLA (2003) 11 NWLR (Pt. 830) 26 at 47*** was cited.

Learned counsel further maintained that to urge the Honourable Court to grants the reliefs sought by the Plaintiff in spite of the fact that the pleadings and evidence of the Plaintiff are at variance to which the declaration sought relates, will amount to urging the Court to speculate that the title document were returned for purposes of investigation. It is submitted that this will be too speculative a position for the Court to take or place her decision on. The

law is that a Court does not base her decision on speculation or conjecture. ***OBASI BROS. CO. LTD. VS. MERCHANT BANK OF AFRICA SECURITIES LTD. (2005)9 NWLR (Pt. 929) 117 at 132*** was cited.

Learned Counsel equally argued that before a party can get to this issue of priority of interest, he must first cross the hurdle of showing that his prior interest relates to the piece of land to which he seeks declaration. In this case the Plaintiff did not even establish the primary requirement for the proof of title which legal right or title. It is submitted that a Court cannot make a declaratory Order in the air as the Plaintiff seems to urge in this case. The law is well settled that where, as in the case, evidence which has been rendered inadmissible by law under any circumstance has been admitted by consent or by

default, the trial cannot act upon it and the Court has the jurisdiction to extract it at the point of writing Judgment.***ALADE VS. OLUKADE (1976)2 SC. I83*** was cited.

It is trite that the test of admissibility of any evidence whether oral of documentary, is relevant. Once the document or evidence is relevant to a fact in issue, it is admissible. However, after a document has passed the admissibility test, the probative value to be attached to the evidence is a different matter. In other words, admissibility of a document does not convey the weight to be attached to the admitted documents. Section 6 of Evidence Act; ***FBN PLC. VS. JIBO (2006)9 NWLR (Pt. 985) 255*** were cited.

It is the submission of learned counsel that though a person who is not the maker can tender a document but

the Judge should not attach any probative value to such document because it is only the maker that canbe cross-examined on the document. The exceptions to this rule are:

a. If the maker is dead

b. If the maker is unfit by reason of bodily or mental condition to attend as a witness

c. If the maker is beyond the sea level and it is not reasonably practicable to call him

d. If all reasonably effort to get him to attend as a witness have been futile

e. If undue delay or costs will be caused if the maker of the document is to come and testify.

INIAMA VS. AKPABIO (2008) 17 NWLR (Pt. 1116) 225 at 3000 was cited.

Learned counsel submits that, Exhibit "E" is a letter dated 4th October, 2018 by Corporate Affairs Commission tendered by the PW1 who is not the maker of the document, and consequently admitted same under cross examination. It is settled that a document tendered by a witness who is not the maker and cannot answer questions on it, such document will be expunged as same will serve no probative value. ***BUHARI VS. INEC (2008) 19 NWLR (Pt. 1120) Page 246*** was cited. Attention of the Court is also drawn to the Exhibit "F" i.e photocopy of Offer of Statutory Right of Occupancy. The Plaintiff has pleaded that the Original of Copy of the Exhibit "E" is with the 3rd Defendant – an official body. By virtue of the original copy being in custody of 2nd and 3rd Defendants as the pleadings of parties clearly agreed, Exhibit "F" is deemed a

public document within the confine of Section 102 and 103 of Evidence Act, 2011.

Learned counsel concludes by urging this Honourable Court to dismiss the Plaintiff's case with substantial cost.

Plaintiff on his part, filed written address wherein three issues were formulated:-

i. Whether the Plaintiff by his evidence before this Honourable Court has established that Plot 997 Cadastral Zone C02, Gwarinpa 1, FCT, Abuja was validly allocated to him thereby making him the title holder to same.

ii. Whether the allocation of Plot 997 Cadastral Zone C02, Gwarinpa 1,FCT Abuja to the Plaintiff was validly revoked by the 2nd and 3rd Defendants.

iii. Whether the allocation of Plot 997 Cadastral Zone C02, Gwarinpa 1, FCT Abuja to the 1st Defendant by the 2nd Defendant is valid in law.

On issue one, ***whether the Plaintiff by his evidence before this Honourable Court has established that Plot 997 Cadastral Zone C02, Gwarinpa 1, FCT, Abuja was validly allocated to him thereby making him the title holder to same.***

It is the submission of learned counsel that in establishing his claim, the Plaintiff herein has presented in evidence Exhibit "A" dated the 15th day of May, 2006 and which is the acknowledgement by the 2nd and 3rd Defendants of the Plaintiff's application for allocation of land within the Federal Capital Territory by the 2nd and 3rd Defendants. Sequel to Exhibit "A", the Plaintiff also tendered in

evidence Exhibit "F" being the Offer of Statutory Right of Occupancy in respect of Plot number 997 Cadastral Zone C02, Gwarinpa 1, Abuja which Statutory Right of Occupancy was granted to the Plaintiff on the 9th day of November, 2006 by the 2nd Defendant for a period of Ninety-Nine (99) years and for residential purpose. To further confirm his title to the land, the Plaintiff tendered in evidence property in issue as at 16th day of July, 2007 which report issued to the Plaintiff by the 2nd and 3rd Defendants indicated that the title holder of the Plot in issue as at that date is the Plaintiff and that the land as allocated to the Plaintiff is for residential purpose.

The argument in paragraph 1.3.5 above was not in any way challenged either during pleadings or in the cause of the hearing as same was expressly admitted

by the 2nd and 3rd Defendants in paragraph one (1) of their amended statement of defence thereby making light the burden of proof on the Plaintiff as it relates to his title to Plot number 997 Cadastral Zone C02, Gwarinpa 1, FCT Abuja.

Learned counsel submits that the above is anchored on age-long principle of evidence that fact admitted needs no further proof which principle is in sync with the provision of Section 123 of the Evidence Act, 2011. The provision of the law has received judicial endorsement cum pronouncement in a legion of cases some of which are the case of ***CHIEF DENNIS AFOR OGAR & ORS VS. CHIEF J.I IGBE & ORS (2019) LPELR – 48998 (SC), at Page 11, Paragraphs A – B.***

Learned counsel further submits that applying the above decisions as well as the provisions of Section

123 of the Evidence Act, 2011 to the instant case, we submit with humility that notwithstanding the clear admission of the allocation of Plot number 997 Cadastral Zone C02, Gwarinpa 1, FCT to the Plaintiff herein by the 2nd and 3rd Defendants, the Plaintiff equally did not cogent and credible evidence also prove his title to the said land pursuant to the lawful allocation of same to him by the 2nd and 3rd Defendants and we urge your lordship to so hold.

On issue two, ***whether the allocation of Plot 997 Cadastral Zone C02, Gwarinpa 1, FCT Abuja to the Plaintiff was validly revoked by the 2nd and 3rd Defendants.***

The issue two above formulated can only be resolved by a recourse to the provision of Section 28 of the Land Use Act which enables the 2nd Defendant

hereinto revoke any statutory right of occupancy over any land within the Federal Capital Territory, Abuja and subsequently provides for circumstances that can give rise to exercise of the power of revocation of statutory right of occupancy and how that power can be exercised.

Learned counsel further submits that, the reason for the withdrawal as contained in the said Exhibit "D" is because of "land use mismatch" and because the plot in question is "designated a place of worship in the Abuja Master Plan". This reason for the withdrawal as expressed in Exhibit "D" does not in any way howsoever accord or comply with the provision of Section 28(1),(2),(3) and (4). On this, we refer this Honourable Court to the case of ***DANTSOHO VS. MOHAMMED (2003) LPELR – 926 (SC), Pp. 27 – 28 Paragraphs G – B***.

Another very vital point to note from the contents of Exhibit "D" is that same is not in any way a notice of revocation as the DW2 wanted this Honourable Court to believe. From the said Exhibit "D", it could be clearly gleaned that what the 2nd and 3rd Defendants attempted to do was to divest, albeit illegally, the Claimant of his valid title to the said land to the benefit of the 1st Defendant under the pretext that the said plot of land was designated a place of worship.

Another issue of law bedeviling the conduct of the 2nd and 3rd Defendants in this instant case is that from the available evidence before this Honourable Court, the Plaintiff was never at any time served with any notice of revocation of his statutory right of occupancy over Plot 997 which is the subject matter of this suit.

On the argument in paragraph 1.4.6 above, they submitted that the sole import of the provisions of Section 28(6) of the Land Use Act is that the 2nd and 3rdDefendants in the exercise of their right of revocation of Statutory Right of Occupancy must serve a notice of same to the title holder and in the instant case, the Plaintiff. On the issue of service of notice of revocation as envisaged by Section 28(6) the Supreme Court in the case of ***OLOMODA VS. MUSTAPHA & ORS (2019) LPELR – 46438(SC), Pp. 29 – 32 Paragraphs D – E.***

Learned counsel also argued, that if the evidence of DW2 as regards the revocation of the Claimant's right of occupancy over Plot 997 is anything to be believed, the failure of the 2nd and 3rd Defendants to serve a valid notice of revocation of the said Plaintiff's right of occupancy over the said plot renders ineffectual

thepurported revocation of the Claimant's right of Occupancy over Plot 997 Gwarinpa 1.

Regardless of the above argument on notice, it is considered very vital to state here that the DW2 in his cross-examination and while in an effort to convince this Honourable Court to believe that the title of the Plaintiff to Plot 997 was validly revoked did state that the Plaintiff was served a notice of revocation a copy of which was in the file at the office of the 2nd and 3rd Defendants. To this, it is the submission of learned counsel, that the failure of the DW2 or the 2nd and 3rd Defendants to present the copy of the said notice of revocation as served on the Claimant before this Honourable Court raises an irrebutable presumption that same notice was never served neither is same in existence. This is the position of the law as provided by 167(d) of the Evidence Act, 2011. It is also the

submission of learned counsel, that the entire evidence of the DW2 is not credible as same variously contradicts each other. In the first place, by the contents of Exhibit “D” which was admittedly made by the 2nd and 3rd Defendants and served on the Plaintiff, it was clearly stated that the reason for the withdrawal of the Claimant’s Right of Occupancy was because of the Land Use Mismatch and for the reason of the Plot being designated a place of worship. However, by paragraphs 4 and 5 of the 2nd and 3rd Defendants’ statement of defence as well as paragraphs 5, 6 and 7 of the 2nd and 3rd Defendants’ witnesses’ statement on oath, it was stated on the contrary that the Claimant failed to fulfil the conditions of the grant of the Statutory Right of Occupancy to him.

NASKO & ANOR VS. BELLO & ORS (2020) LPELR - 52530 (SC), Page 9, Paragraphs B – E was cited.

On issue three,***whether the allocation of Plot 997 Cadastral Zone C02, Gwarinpa 1, FCT Abuja to the 1st Defendant by the 2nd Defendant is valid in law.***

Learned counsel submits, that the DW1 tendered in evidence in defence of this action Exhibit "DB" being a letter of offer of Statutory Right of Occupancy dated the 16th day of January, 2007. Following the admission of Exhibit "DB" in evidence, DW1 also tendered in evidence Exhibit "DG" being an acknowledgment of receipt of original application for the grant/re-grant of Statutory Right of Occupancy dated the 25th day of January, 2007.

Learned counsel further submits, that it is manifestly obvious that the purported allocation of Plot 997 Cadastral Zone C02 Gwarinpa 1, FCT to the 1st Defendant by the 2nd Defendant was made about Nine(9) days before the 1st Defendant applied to the 2nd Defendant for an allocation of land. This exposure brings us to the answers elicited from the DW2 during his cross-examination when he was asked "whether he has seen where an approval for land was made before an application is made and he clearly answered in the negative". The DW2 was again asked "whether it is possible to have an allocation made before an application for such an allocation and again, he answered in the negative.

Learned counsel also submits, that on the other hand, a comparism of Exhibits "DB" and "DG" with Exhibit "F" being the letter of offer of statutory right

of occupancy to the Plaintiff dated 9th day of November, 2006 shows even to the blind that Exhibit "F" was earlier in time than Exhibit "DB" which is dated the 25th day of January, 2007. It therefore follows that as at the time/date of issuance of Exhibit "DB" or allocation of the Plot in issue to the 1st Defendant, the said land was already lawfully allocated to the Plaintiff herein and which allocation to the Plaintiff was still subsisting as at the date of allocation of the same land to the 1st Defendant even as same land allocated to the Plaintiff was not and has not till date been revoked in anyway howsoever pursuant to the provisions of the Land Use Act. ***TORONTO HOSPITAL (NIG) LTD. VS. UKPAKA (2018)5 NWLR Pt. 1613, Page 426, at 445, Paragraphs E – F*** was cited.

Learned counsel concludes by urging this Honourable Court to grant the Claimant's relief in view of the overwhelming evidence in proof of same and which evidence was not in any manner howsoever contradicted, discredited or shaken as same remained like the biblical rock of Gilbraltar.

COURT:-

It is instructive to state from the onset that the principal reliefs sought by the Claimant against the Defendants are declaratory in nature. The law is settled in this area of jurisprudence. A party such as in this case, who seek declaration of right, must win on the strength of his case and not on the weakness or absence of the defence.

Indeed, declaratory reliefs is one that seeks the pronouncement of the court as to the status of a

namedmatter, things or situation, ***NWAGU VS FADIPE (2012) LPELR 7966 COURT OF APPEAL.***

By the indorsement and claim of Plaintiff on the Writ of Summons, he seeks declaration that the grant in 2006 to him by 2ndDefendant (Hon. Minister FCT) of Statutory Right of Occupancy File No. EN21710 over and in respect of Plot 997 Cadastral Zone C02 within Gwarinpa 1, FCT, Abuja, Nigeria for 99 (Ninety Nine) years is still existing, valid, legal, lawful, subsisting, regular and effective till date and at all times material to this suit and other reliefs as clearly captured in the preceeding part of this Judgment.

Judicial pronouncement are ad-idem that declaratory reliefs are never granted based on admission or on

default of filing defence***MOTUNWASE VS SOURUNGBLE (1998) NWLR (Pt. 92) 90.***

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

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

SAMESI VS IGBE & ORS (2011) LPELR 4412.

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

The Plaintiff in an effort to satisfy this Honourable court to enter judgment in his favour called a sole

witness and tendered documents to establish that indeed, the land in question was dully allocated to himand to convince the court to enter judgment in his favour.

1st Defendant filed their statement of defence and amended same with a sole witness statement on oath of Pastor Grace SammosesEnenche who adopted the said witness statement on oath and tendered some documents in urging the court to dismiss the action.

On their part, 2nd and 3rdDefendants called a sole witness in the person of ChimaIgbozuruike who adopted his witness statement on oath and tendered some documents and urge the court to dismiss the action.

From the state of pleadings and evidence, it is not in doubt that Plaintiff and 1st Defendant were allocated

thesame land i.e Plot 997 Cadastral Zone C02, Gwarinpa 1, FCT, Abuja, but for the difference in thesize of the plots. This can easily be gleaned from the title documents tendered.

I shall for the purposes of this Judgment proceed to consider the arguments of Counsel for the Plaintiff and the Defendants on the issue of the land.

I need to mention frontally that Plaintiff from his evidence did say that he had returned the original title documents to 2nd and 3rd Defendants in anticipation of replacement allocation which has not been made till date.

Clearly, therefore, this action was brought against the Defendants because Plaintiff was not allocated a replacement of land… issue has been narrowed to the non-replacement.

I have considered the evidence of both parties on the one hand and the legal arguments on the other hand.

Permit me to state that where there exist an offer, acceptance, consideration and an intention to create a legal relationship, a contract would then be deemed in law to have been established.

See ***S.P.D.C VS. FRONTLINE TELEVISION LTD. (2011)LPELR 4952 (CA).***

From the evidence of Plaintiff before the Court, the ownership of Plot 997 Cadastral Zone C02, Gwarinpa 1, FCT – Abuja, seem to be amidst. Both Plaintiff and 1st Defendant who have laid claims to the land by virtue of allocation made by 2nd and 3rd Defendants, have tendered documents to that effect.

2nd and 3rd Defendants proceeded to amend their statement of defence wherein they raised the issue of the fact that Plaintiff who submitted his initial title documents to the said land in anticipation of re-allocation of alternative plot has waived any such right or interest over and in such land and is infact estoppel to contest any such title to the said land. The argument of 2nd and 3rd Defendants is founded principally on the fact that Plaintiff failed to file reply to their said amended statement of defence where they raised the said issue of waiver of right and estoppel by conduct.

Plaintiff has this to say in his pleadings;

> ***"The Plaintiff further maintained that he continued following up on his complaint against the development on the land at the***

various offices under the 2nd Defendant until the year 2011 when he was prevailed upon and/ordeceived by the Director of land to submit all the original copies of his title documents as well as the search report over the land for the allocation to him of another plot of land within the same area and with the same features on the plot in issue in the interest of peace. That believing that the Director was sincere and honest, he handed his documents to the office while awaiting the fulfilment of the promise made to him by the Director of land."

I have carefully juxtaposed the pleadings of Plaintiff and evidence on how he voluntarily surrendered the title document of the said Plot 997 in issue to the allocating authority i.e 2nd and 3rd Defendants on the

basis of double allocation and hence the need for replacement allocation of another land.

On the one hand, and the argument on the issue of waiver of right to contest interest on the said land on the basis of Estoppel.

The act of Plaintiff, as it were of submitting his original title documents to the land to the same authority which allocated to him for the reason that there exist double allocation of the said Plot and in anticipation of a replacement allocation of land which Plaintiff stated in evidence, amounts to admission that an agreement had been reached between Plaintiff and 2nd and 3rd Defendants i.e FCT Minister and FCDA on the issue of re-allocation of alternative plot as replacement.

This is an admission against interest in law.

See ***MARAFA & ORS VS. DAN ALHAJI & ORS (2019) LPELR – 47012 (CA)***

See also Section 24 Evidence Act, 2011 as amended.

It is similarly the argument of 1st Defendant that Plaintiff did not file reply to its amended defence where it raised the issue of waiver of right and Estoppel by conduct.

It is the argument of learned counsel for the 1st Defendant that Plaintiff clearly waived any such rights to contest ownership of the land in issue; same having willingly surrendered all original title documents to the 2nd and 3rd Defendants in expectation of a replacement allocation, and that having so relinquished his title document, he is estopped in law to come back and claim the same land.

I have considered the said argument on waiver of right and Estoppel by conduct… ***Supreme Court in the case of BAKARE VS. LAGOS STATE CIVIL SERVICE COMMISSION (1992) LPELR 711 (SC), defined waiver of right to mean abandonment of right, which is either express or implied from conduct. A right that has been waived is lost in that once the other party acts upon the waiver; the party waiving such right cannot go back on the waiver and act as if it was never waived.***

See also Vol. 14, Hals. Laws of England, 3rd Edition.

Plaintiff by his pleadings and evidence has admitted surrendering the original title document of the land to the authority that allocated to him in anticipation

of a replacement allocation which was not made, hence the present action against the Defendants.

It is in evidence that 2nd and 3rd Defendants upon retrieval of the title document of the said Plot 997, allocated same to the 1st Defendant.

Plaintiff has clearly waived his right over the said Plot of land and cannot in law return to same as a beneficial owner bearing in mind the fact that the FCT Minister in exercise of his right under Section 18 of the FCT Act, has re-allocated same to the 1st Defendant for the reason given in the preceeding part of this Judgment.

Plaintiff cannot blow hot and cold at the same time.

Having waived/surrendered the same title documents to the land which has now been allocated to the 1st Defendant by the same authority, Plaintiff is clearly

estopped in law to bring any such claim as done in this case.

See ***IDEAL FINANCE AND INVESTMENT COMPANY LTD. & ANOR VS. FINANCIAL OPPORTUNITY CENTRE LTD. & ANOR (2015) LPELR – 24646 (CA).***

The claim of Plaintiff against the 1st Defendant has no basis at all since 2nd and 3rd Defendants acted within its right in law.

The claim of Plaintiff clearly has not been proved in law. I shall dismiss same for the reason given.

Said Suit No. **FCT/HC/CV/0819/2018** is hereby dismissed.

Justice Y. Halilu

Hon. Judge
20th May, 2022

APPEARANCES

ObinnaUgwu, Esq. – for the Plaintiff.

U.B Ekong, Esq. – for the Defendant

I.T. Momoh, Esq. – for the 2nd and 3rd Defendants.