

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 07TH DAY OF JUNE, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/3508/2020

BETWEEN:

STEADY GROWTH PETROLEUM LTD

CLAIMANT

AND

1) THE INSPECTOR-GENERAL OF POLICE, FCT ABUJA

2) THE COMMISSIONER OF POLICE DEPT OF WORKS,

FCT POLICE COMMAND

DEFENDANTS

JUDGMENT

By an Amended Writ of Summons dated and filed on the 9th day of March 2021, the Claimant brought this action seeking the following reliefs:

- 1) *A Declaration that Mrs. Adeola Remi-John of House 1B, Godson Ilodiana off Ayo Babatunde Crescent, Oniru Lekki, Lagos State is the original allottee and vendor of the said plot Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing authority Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size.*

- 2) *A Declaration that the Claimant is the rightful owner of Commercial Plot Block 23-R Provisional, located along 1st Avenue Federal Housing Authority, Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size, having purchased it from Mrs Adeola Remi-John. Which is evidenced by a Federal Housing Authority allocation letter titled "ALLOCATION OF COMMERCIAL PLOT OF LAND AT LUGBE ESTATE" dated 25th April 2013 with reference number FHA/ES/LUG/COMM.*
- 3) *A Declaration that the Claimant purchased the property known as Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing authority Lugbe, Abuja Municipal Area Council Abuja measuring 1979.10sqm in size from one Mrs Adeola Remi-John of House 1B, Godson Ilodiana off Ayo Babatunde Crescent Oniru Lekki Lagos State on the 11th day of June 2015 for the sum of Forty-Five Million Naira Only (₦45,000,000.00).*
- 4) *A Declaration that the 1st and 2nd Defendants are trespassers on the Claimant's plot of land known as Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size, the subject matter of this suit.*
- 5) *A Declaration that by the doctrine of quic quic plantatur solo solo cedit, the Claimant is entitled to any development whatsoever presently on Commercial Plot Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size, the subject matter of this suit.*

- 6) *AN ORDER of perpetual injunction restraining the Defendants, agents, privies, attorney or assignee from interfering with the Claimant's right and interest over Commercial Plot Block 23-R Provisional, located along 1st Avenue Federal Housing Authority, Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size.*
- 7) *AN ORDER of Court granting possession of Commercial Plot Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council Abuja measuring 1979.10sqm in size to the Claimant.*
- 8) *AN ORDER awarding damages against the Defendants in the sum of Seven Million Naira Only (₦7,000,000.00) in favor of the Claimant.*
- 9) *The sum of Five Million Naira (₦5,000,000.00) being the cost of this suit.*

The Writ of Summons is supported by the Statement of Claim, the Claimant's Witness Statement on Oath, Pre-Action Counselling Certificate, list of witnesses, five documentary exhibits which are allocation letter titled "ALLOCATION OF COMMERCIAL PLOT OF LAND AT LUGBE ESTATE" dated 25th April 2013 with reference number FHA/ES/LUG/COMM, Deed of Assignment dated 11th of June 2015 and Power of Attorney dated 28th day of June 2017, Search Report titled "RESULT OF THE SEARCH REPORT CONDUCTED ON THE PROPERTY COMMERCIAL BLOCK 23R-PROVISIONAL WITHIN LUGBE ESTATE, FEDERAL HOUSING AUTHORITY" dated 10th June 2015, A letter of authorization titled "RE: AUTHORITY TO PERFECT DEED OF ASSIGNMENT" dated 15th June 2015, A letter titled "REQUEST FOR ISSUANCE OF ALLOCATION

LETTERS AND SURVEY PLANS FOR THE THREE (3) PARCELS OF LAND ALLOCATED TO THE NIGERIAN POLICE IN THREE DIFFERENT LOCATIONS AT FHA HOUSING ESTATE IN LUGBE, FCT-ABUJA” dated 23rd December 2008.

The Claimant’s case was opened on the 22nd of June 2021. The witness was one Mr Tagbo Uchenna Onyilofor, who was the PW1. Upon being sworn in, the PW1 was led through the preliminaries before he adopted his Witness Statement on Oath which he deposed to on the 9th of March 2021 as his evidence-in-chief in the suit.

In the witness statement of Oath, the PW1, testifying as the only witness stated that he is the Chief Executive Officer of the Claimant, with address at KM 7, Keffi Road, by Total Service Station, Mararaba, Nasarawa State. The Defendants, according to the witness, are officers of the Nigerian Police Force and that they are trespassers alongside unknown persons over the plot of land which is, Commercial Plot Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size, within the jurisdiction of this Honorable Court and at all material time to the bringing of this suit, the Claimant is the rightful owner of the said property in dispute, which is the subject matter of the suit. It was further stated by the witness that the said property was allocated to the vendor, Mrs. Adeola Remi-John, via an allocation letter titled “ALLOCATION OF COMMERCIAL PLOT OF LAND AT LUGBE ESTATE” which was dated 25th of April 2013 with the reference number FHA/ES/LUG/COMM and that the Claimant purchased the plot of land from the vendor via a Deed Of Assignment dated 11th of June 2015.

The witness averred that before the purchase transaction between the vendor and the Claimant was made, a search was carried out on the

property on behalf of the Claimant by O. O. Ibiam & CO, a law firm situate at 41 Ademola Adetokunbo, Wuse 2, Abuja and that the search affirms the vendor as the original owner and allottee of the said property, that is, the subject matter of dispute in this suit. Subsequent to the search report, the vendor, on the 15th of June 2015 issued a letter to the Executive Director (Estate Services) of FHA for the authorization of the Claimant to perfect the Deed of Assignment of the property.

It was further deposed by the witness that the Commissioner of Police via a letter titled "REQUEST FOR ISSUANCE OF ALLOCATION LETTERS AND SURVEY PLANS FOR THE THREE PARCELS OF LAND ALLOCATED TO THE NIGERIA POLICE FORCE IN THREE DIFFERENT LOCATIONS AT FHA HOUSING ESTATE IN LUGBE FCT ABUJA" which was dated 23rd December 2008, requested the FHA to confirm three plots of land officially allocated for the construction of Police Stations, and that the property, which is the subject matter in this suit, was not part of the land allocated to the Nigerian Police Force. He added that the Claimant's rights and interest over the said property, which is the subject matter of this suit, is valid and subsisting.

Neither of the Defendants nor their Legal Representatives were in court to cross examine the witness, the Court then adjourned the matter for cross-examination. On the date for cross-examination, the Defendants and their Representatives were not in Court, the Court therefore foreclosed the Defendants from cross-examining the PW1 and adjourned the matter for the Defendants to open their Defence. On the 25th of January 2022, neither the Defendant nor their Legal Representatives were in Court to open their Defence. Upon application of Counsel for the Claimant, the Court

foreclosed the Defendants from defending the suit and adjourned the matter for adoption of Final Written Address.

The Claimant, through its Counsel filed its Final Written Address on the 26th of January 2022, which the Claimant through its Counsel adopted as the oral argument of the Claimant in support of its case. In the Final Written Address, a sole issue was formulated, namely:

“Whether given all the facts and circumstance of this case, especially having regards to the state of pleadings and evidence on record, the Claimant has proven his claims as required by the law so as to be entitled to the reliefs sought by him in this suit”

In his arguments, learned Counsel for the Claimant answered the sole issue formulated in the affirmative by stating that on the ground that the Claimant has satisfactorily proved his claims as required of him by law, the Claimant is therefore entitled to the reliefs sought in the suit. Counsel further argued that at all times in civil cases the Claimant is required to prove his case on the preponderance of evidence or on the balance of probabilities. He relied on section 134 of the Evidence Act, 2011 to support his arguments. Counsel also cited the case of ***Mrs. Vidah C. Ogochukwu v. A.G. (Rivers State) & 2 Ors (2012) NWLR (Pt. 1295) 53 at 84*** and also **Section 133(1) and (2) of the Evidence Act, 2011.**

Arguing further, Counsel submitted that, whether or not the Claimant has established his claims in this case or whether or not it has discharged the burden of proof placed on him to the satisfaction of the law as stated above is a matter of facts and depends on the evidence adduced in support of the claims which is on record. He submitted that the reliefs sought in this suit

borders on title to land and that in a long line of authorities, it has been settled that there are generally five ways of proving title to land, which are: by traditional history or evidence or, by production of title documents or, by various act of ownership, numerous, positive and extending over a length of time as to warrant the inference of ownership or, by acts of long enjoyment or possession of land or by proof of possession of adjacent land in circumstances which render it possible that the owner of such adjacent land would in addition be the owner of the land in dispute. Learned Counsel cited the cases of *Ajibulu v. Ajayi (2014) 2 NWLR (pt 1392) 483 at 500* and the case of *Idundun v. Okumagba (1976) 9-10 SC 227*. Counsel contended that from the evidence on record, it is clear that the Claimant adopted the second method of proof, that is, by the production of title documents.

Referring to the Witness Statement on Oath of the PW1, learned Counsel drew the attention of the Court to what he considered the next logical question which is, whether the Claimant has proved his claims vis-à-vis the legal requirement of the burden of proof. Counsel, in answering the question in the affirmative, maintained that, for all the reasons already stated above and the evidence adduced by the Claimant in this matter, coupled with the analysis of the evidence and treatment of the issues under contention, it is clear beyond doubt that the titles of the original allottee of the land was transferred to the Claimant, making the Claimant an attorney of the original allottee and one with subsisting right over the land, the subject matter in this suit.

Finally, learned Counsel submitted that the purported takeover of the land by the 1st and 2nd Defendants by force and intimidation has no foundation in law and therefore does not exist in the eyes of the law. Counsel therefore

urged this Honorable Court to resolve this issue in favor of the Claimant who, he claimed, is entitled to the reliefs sought.

Above is the case of the Claimant before me. I have considered the issue formulated by the Learned Counsel of the Claimant in his Final Written Address. But before I go further it should be noted that, the Claimant's pleadings and evidence in this case were unchallenged and uncontroverted by the Defendants who neither appeared nor filed any defence throughout the proceedings despite opportunities granted to them to do so. It must also be noted that while it is the duty of litigants and their Counsel to ensure that processes of Court are served on their adversaries, and the duty of the Court to ensure that this duty is dutifully carried out to the letter, it is not the responsibility of the Court to compel an unwilling litigant to appear in Court or to respond to the claim against them. See the cases of: ***Mekwunye v. Imoukhuede (2019) 13 NWLR (Pt. 1690) 439 SC at 496, paras D-F per Abba Aji, JSC; Ukwuyok v. Ogbula (2019) 15 NWLR (Pt. 1695) 308 SC at 324 – 326, paras H-A, 326, paras C-D, 327, paras B-C SC per Okoro, JSC; Segun Akinsuwa v. The State (2019) 13 NWLR (Pt. 1688) 161 at 195-196, paras H-D.***

Once a party to an action in Court has been served with the Court processes and is aware of the days the matter has been fixed but chooses not to file any process in response or to appear in Court to tell their own side of the story, the action of the Claimant and the evidence relating thereto will be treated as unchallenged and uncontroverted. It is a settled principle of law that averments in an affidavit that are neither controverted or unchallenged are deemed admitted. The Court must, therefore, act on same as long as it is reasonable, credible, cogent and compelling. That is to say, as far as the affidavit evidence does not appear to be notoriously

and patently wrong, the Court is duty-bound to accept same. See the case of **Mr Sylvester Chuks Ujoma v. Mr Francis Sonola Olafimihan & 1ors (2021) 10 NWLR (pt 1784) CA**, where the court of appeal held that;

“the law requires the court to treat unchallenged and uncontroverted dispositions of facts in an affidavit as duty established and proved where proof, as a matter of law, is required. Where a respondent does not file a counter affidavit to challenge and controvert the depositions in an applicant’s affidavit, he is expressly and by presumption of the law deemed to have admitted to be true and correct all the contents of the depositions of fact contained in the applicant’s affidavit in support of the motion.”

See also the case of **Dike v. State (2018) 13 NWLR (pt 1635) 35**, where it was held by the court that:

“where an affidavit filed in support of an application was not denied or countered by way of counter-affidavit, the averments deposed to in such affidavit are deemed admitted and the court is duty-bound to act on them once the facts deposed therein were put before the court...”

This position was reemphasized in **NB Plc v. Akperashi, (2019) LPELR-47267 (CA)**, where the Court of Appeal at pages 33 – 35 paras A – F per Otisi, JCA held that,

“It is trite law that any fact in an affidavit which is neither challenged nor contradicted is undisputed and is deemed admitted by the adversary and the Court will so hold and act

thereon... See also Jim Jaja v. Cop Rivers State & Ors (supra), (2012) LPELR-20621(SC)."

In the case of ***The Honda Place Limited v. Globe Motor Holdings Nigeria Limited (2005) LPELR-3180 (SC)***, Edozie, JSC succinctly stated, at page 33 of the E-Report that:

"The position of the law is that when in a situation in which facts are provable by affidavit, one of the parties deposes to certain facts, his adversary has a duty to swear to an affidavit to the contrary, if he disputes the facts. Where such a party fails to swear to an affidavit to controvert such facts, they may be regarded as duly established."

Flowing from the above authorities, I hereby regard the unchallenged and uncontroverted evidence led by the Claimant in this case as unchallenged and uncontroverted. The question then is, ***"Whether the Claimant has been able to prove to the satisfaction of this Honorable Court, that he has title to the said property, which is known as Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council, Abuja, measuring 1979.10sqm in size, the subject matter in this suit?"***

On the Claimant's claim for declaration of ownership of Commercial Plot Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe Municipal Area Council Abuja measuring 1979.10sqm in size, it is trite law as laid down in the *locus classicus* of ***Idundun v. Okumagba (1976) 9-10 SC 227*** and other cases following it that proof of ownership of land can be established through any of the following five ways:

- 1) By traditional evidence
- 2) By production of document of title which are duly authenticated
- 3) By acts of selling, leasing, renting out of all or part of the land or farming on it or on a portion of it
- 4) By acts of long possession and enjoyment of the land and
- 5) By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

See the cases of: ***Adamawa State Min Land & Survey v. Salisu (2021) 2 NWLR (pt 1759) 1 per Uwa (JCA); Ayoola v. Odofin (1984) 11 SC 120; Nkado v. Obino (1997) 5 NWLR (pt 503) 31; Ariyo v. Adewusi (2010) 15 NWLR (pt 1215) pg 78 at 91 paras B-D; Arum v. Nwobodo (2013) LPELR-20390 (SC) per Rhodes-Vivour JSC.***

In this Instant case before me, the PW1 has in his oral evidence contained in paragraphs 6 – 11 of his adopted Witness Statement on Oath dated 9th of March 2021 and adopted on the 22nd of June, 2021, testified as follows:

- 6) *That the Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council Abuja, measuring 1979.10sqm is size, was allocated to the vendor Mrs Adeola Remi-John of House 1B, Godson Ilodiana, off Ayo Babatunde Crescent, Oniru Lekki, Lagos State via Allocation Letter titled “ALLOCATION OF*

COMMERCIAL PLOT OF LAND AT LUGBE ESTATE” dated 25th April 2013 with reference number: FHA/ES/LUG/COMM.

- 7) That the Claimant purchased the plot of land from the vendor Mrs Adeola Remi-John of House 1B, Godson Ilodiana off Ayo Babatunde Crescent Oniru, Lekki, Lagos State via a Deed of Assignment dated 11th of June 2015.*
- 8) That before the purchase transaction between the vendor, Mrs Adeola Remi-John, and the Claimant was made, a search was carried out on the property on behalf of the Claimant by O. O. Ibiam & CO, a law firm situate at 41 Ademola Adetokunbo Wuse 2 Abuja, and the search affirms the vendor Mrs. Adeola Remi-John as the original owner and allottee of the Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council Abuja, measuring 1979.10sqm in size.*
- 9) That the vendor Mrs. Adeola Remi-John on the 15th day of June 2015, issued a letter to the Executive Director (Estate services) of FHA for the authorization of the Claimant to perfect the Deed of Assignment of the Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing authority Lugbe Municipal area Council Abuja, measuring 1979.10sqm in size.*
- 10) That the commissioner of police via a letter titled “REQUEST FOR ISSUANCE OF ALLOCATION LETTERS AND SURVEY PLANS FOR THE THREE PARCELS OF LAND ALLOCATED TO THE NIGERIAN POLICE FORCE IN THREE DIFFERENT LOCATIONS AT FHA HOUSING ESTATE IN LUGBE, FCT-*

ABUJA” dated 23rd December 2008 requested the FHA to confirm three plots of land officially allocated for the construction of Police Stations.

11) That the Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe Municipal area Council Abuja, measuring 1979.10sqm in size, is not part of the plots of land allocated to the Nigerian Police Force.

In addition to the above oral evidence, the PW1 tendered the following documentary evidence, which are:

- a) **Annexure 1:** An Allocation letter titled “ALLOCATION OF COMMERCIAL PLOT OF LAND AT LUGBE ESTATE” dated 25th April 2013 with reference number: FHA/ES/LUG/COMM.
- b) **Annexure 2:** A Deed of Assignment dated 11th of June 2015, between Mrs Adeola Remi-John and the Claimant and a Power of Attorney dated 28th day of June 2017 donated by Mrs. Adeola Remi-John to the Claimant.
- c) **Annexure 3:** Search Report titled “RESULT OF THE SEARCH REPORT CONDUCTED ON THE PROPERTY ‘COMMERCIAL PLOT OF LAND AT LUGBE ESTATE FEDERAL HOUSING AUTHORITY’” dated 10th of June 2015.
- d) **Annexure 4:** A letter of authorization titled “RE: AUTHORITY TO PERFECT DEED OF ASSIGNMENT” dated 15th June 2015.
- e) **Annexure 5:** A letter titled “REQUEST FOR ISSUANCE OF ALLOCATION LETTERS AND SURVEY PLANS FOR THE THREE

PARCEL OF LAND ALLOCATED TO THE NIGERIAN POLICE FORCE IN THREE DIFFERENT LOCATIONS AT FHA HOUSING ESTATE IN LUGBE, FCT ABUJA” dated 23rd December 2008.

It is trite law that where, as in this instant case, there are oral and documentary evidence, the Court is enjoined to use the documentary evidence as a hanger to test the veracity of the oral evidence. In the case of *Chiduluo v. Attanse* (2020) 6 NWLR (Pt 1719) 102 at page 124 paras D-F, the Court of Appeal per Hussaini JCA held that:

“The importance of documentary evidence is that it can be used to resolve an issue or conflicting evidence. It can be used as a hanger from which to test the veracity of oral testimonies. Once documentary evidence supports oral evidence, oral evidence becomes credible.”

See also the case of: *Bunge v. Governor Rivers State* (2006) 12 NWLR (pt 995) 573; *Interdrill (Nig) Ltd v. UBA Plc* (2017) 13 NWLR (pt 1581) 52.

In this Instant case, the exhibit, **Annexure 1**, which is, the original letter of Allocation dated 25th of April 2013 and titled “ALLOCATION OF COMMERCIAL PLOT OF LAND AT LUGBE ESTATE” with reference number: FHA/ES/LUG/COMM to **Mrs Adeola Omolewa Remi-John**, supports the PW1’s oral assertion that Mrs Adeola Omolewa Remi-John is the original allottee of the Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area

Council, Abuja, measuring 1979.10sqm is size which is within the jurisdiction of this Honorable Court.

Further, **Annexure 2** is a Deed of Assignment dated 11th of June 2015, between Mrs. Adeola Remi-John and the Claimant and an irrevocable Power of Attorney donated by Mrs. Adeola Remi-John to the Claimant which mandated him to take possession of the said property. In addition, **Annexure 3** is the search report done by the law firm of O. O. Ibiam & CO, which clearly shows that the original allottee of the Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority, Lugbe, Abuja Municipal Area Council Abuja, measuring 1979.10sqm is size, is Mrs. Adeola Remi-John.

As I have pointed out, and it bears repeating, ownership of land would be proved once any one of the five ways is established, See the case of: ***Ayanwale v. Odusami (2011) LPELR-8143(SC), per Adekeye JSC at pages 26-27, paras G-B.*** From the unchallenged and uncontroverted oral testimony and documents placed before this Honorable Court by the Claimant herein, it is evident to me that the Claimant has satisfied three out of the five ways of proving ownership of land as stated in ***Adamawa State Min Land & Survey v. Salisu (2021) 2 NWLR (pt 1759) 1***, where the Court of Appeal per Uwa JCA held that ***“the five ways by which a declaration of title could be proved are by:***

- 1) Traditional evidence***
- 2) Production of title documents***
- 3) Proving acts of ownership numerous and positive enough to warrant an inference that the person is the true owner***

4) Proving acts of long possession and enjoyment under section 45 of the evidence act and

5) Proof of possession of connected or adjacent land.”

See also the cases of *Ayoola v. Odofin (1984) 11 SC 120*, *Nkado v. Obiano (1997) 5 NWLR (pt 503) 31 pp. 21-22 paras G-A*. The Claimant has not only produced the documents of title to the said land (Annexure 1), it has also testified that there is transfer of ownership of the land from the vendor Mrs. Adeola Remi-John, to the Claimant via a deed of Assignment and a power of attorney dated the 11th of June 2015 (Annexure 2).

The position of the law in considering the legal effect of the unchallenged and uncontroverted evidence is held in a plethora of judicial authorities. In the case of *Union Bank of Nigeria Plc V Government of Anambra State (2001)12 NWLR (Pt 726)*, the Court of Appeal held that;

“a court should accept, deem and rely on uncontroverted and undenied evidence as true. Moreover unrebutted facts are taken to have been admitted and therefore need no proof. Therefore, if evidence of the plaintiff is unchallenged, the plaintiff should be entitled to judgement”

See also the case of *Dike v. State (2018) 13 NWLR (Pt 1635) 35*, where the court held that;

“Where an affidavit filed in support of an application was not denied or countered by way of counter affidavit, the averments deposed to in such affidavit are deemed admitted and the court is duty bound to act on them once the facts deposed therein were put before the court. In this instant

case, the respondent did not file any counter affidavit in opposition to all the prayers sought in the application and was absent when the motion came up for hearing despite being served with hearing notice. Clearly implying that he had no intention of opposing the setting aside of the court's earlier judgement dismissing the appeal of the appellant"

I therefore have no hesitation in finding and holding that the Claimant has by his unchallenged and uncontroverted testimony established his ownership of the said plot Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size. Further, I also have no difficulty in finding and holding that Mrs. Adeola Remi-john is the original allottee and vendor of the said plot, and that the Claimant purchased the said plot at the price of ₦45,000,000.00 (Forty-Five Million Naira) from Mrs Adeola Remi-John. Therefore, the Claimant is entitled to the declaratory reliefs he sought in Reliefs 1 - 2 of his Statement of Claim.

With regards to the Claimant's claim in Relief 3 in his Statement of Claim, that the 1st and 2nd Defendants are trespassers on the Claimant's plot of land known as Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority, Lugbe, Abuja, Municipal Area Council, Abuja measuring 1979.10sqm in size, the subject matter of this suit, section 131(1) of the Evidence Act, 2011 provides that whoever requires any Court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. That is, he who asserts must prove. See the case of ***Dematic (Nig) Ltd v. Utuk & Anor (2022) LPELR 56878 (SC) at pg 35-35 paras B-D***. The Claimant has the burden to prove his assertion that the 1st and 2nd Defendants are

trespassers on the Claimant's plot of land known as Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size, the subject matter of this suit. The Claimant stated in its Statement of Claim, paragraphs 5, 6 and 10, that since the Claimant purchased the land in 2015 it has not been able to take possession of the land due to illegal trespass, restraint and harassment by the Nigerian Police Force and that due to these threat and trespass by the 1st and 2nd Defendants, it has frustrated the business of the Claimant and has denied it of business opportunities and benefits. It had averred further that the Claimant just recently visited the plot of land with the view of commencing development, only to discover that alongside the agent of the 1st and 2nd Defendants, some unknown persons, selling cement, have trespassed/encroached on the said plot of land and are still in full occupation of the land with the signboard of the 1st and 2nd Defendants conspicuously displaying warnings.

From the Claimant's Statement of Claim and from the unchallenged and uncontroverted testimony of the PW1, the Claimant has proved to have rightful ownership of the said plot, by showing a better title to the plot, and as the rightful owner of the property, the claimant has the right to use the property in any legal manner he wishes. Inherent in this proprietary right is the right to keep other individuals away from entering this property. See the case of *Ricketts & Ors v. Hassan (2001) LPELR 5860 (CA) at pp 17-18 paras C-E*, where the Court of Appeal per Suleiman Galadima JCA held that:

“...the appellants by their evidence, did show that they could successfully maintain an action against any other claimant and did show a better title. The respondent has failed to show

a better title than the appellants. Accordingly, their case for trespass should succeed.”

I have no hesitation in finding that the 1st and 2nd Defendants are trespassers on the Claimant’s plot of land known as Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority, Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size, the subject matter of this suit and that the Claimant is therefore entitled to the declaratory relief he claimed in Relief 3 of its Statement of Claim.

Relief 4 of Claimant’s claim is on the applicability of the doctrine of *quic quid plantatur solo solo cedit*, to the effect that the Claimant is entitled to any development whatsoever presently on the Claimant’s plot of land known as Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size, the subject matter of this suit. The bone of contention here is where the ownership of the development and the improvement on the land is not carried out by the real owner of the land in question, can this doctrine be claimed by the real owner of the land? It is pertinent to stress that, the application of the doctrine largely depends on the consent of the owner of the land. Thus, consent is a determinant factor to the application of the doctrine. See the case of ***Kamba v. Ndagi & Ors (2020) LPELR-50245 (CA) at pp 91-92 paras A-A***, the Court of Appeal per Emmanuel Akomaye Agim JCA (as he then was) held that:

“...The trial Court correctly invoked the principle of quic quid plantatur solo, solo cedit in favour of the 1st respondent as the holder of the right of occupancy to Plot 172 on which the buildings were erected by the appellant without the

knowledge and permission of the 1st respondent. Since the buildings are affixed to the land of Plot 172, they form part of the land of the plot and therefore belong to the owner of Plot 172. S. 3 of the Interpretation Act Cap 192 LFN defines land as including "land and everything attached to the earth or permanently fastened to anything which is attached to the earth and all chattels real" and Ibrahim v. Mohammed (2003) (Pt 817) 615. The trial Court correctly relied on the Supreme Court decision in Dantsoho v. Mohammed (2003) 6 NWLR (Pt 817) 457 at 490 that "since title to the land is in the respondent, everything that accedes to the land belongs to the respondent on the principle of quic quid plantatur solo, solo cedit. I think that principle is consequent on a declaration of title. It need not be claimed nor does it need an order of Court for it to operate in favour of a person who has succeeded in the title claimed. Any argument that the Court is wrong to pronounce on it because it was not sought as a relief is an utter misconception." See also Unilife Dev. Co. Ltd v. Adeshigbin & Ors (2001) LPELR - 3382 (SC)."

From the foregoing, I am of the view that, from the unchallenged and uncontroverted testimony of the Claimant, and considering the fact that the Claimant has proved to be the rightful owner of the said plot, his consent was not gotten before any development was done on the plot, and as such any development done on the land belongs to the land. The Claimant is entitled, therefore, to the declaratory relief he claimed in Relief 4 of his Statement of Claim.

With regards to the Claimant's claim as contained in the fifth relief in its Statement of Claim, to wit: an order of perpetual injunction restraining the 1st and 2nd Defendants, their agents, privies, attorneys or assignees from interfering with the Claimant's right and interest over the plot of land known as Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size, the subject matter of this suit, it is settled law that a Claimant seeking the equitable relief of injunction must establish to the satisfaction of the Court that he has a vested right worthy of protection from irreparable damage unless the injunction is granted. See the case of ***Mohammed & Anor v. Abubakar (2017) LPELR-43429 (CA) pp 37-38 paras C-C***, where the Court of Appeal held that:

“A perpetual injunction is an injunction which finally disposes of the suit and is indefinite in point of time. It is granted at the conclusion of the suit and the Court will grant a perpetual injunction at the suit of a claimant in support of a right known to law or equity - Afrotec Technical Services (Nig.) Ltd Vs MIA & Sons Ltd (2000) 15 NWLR (Pt. 692) 730, Rector, Kwara Polytechnic Vs Adefila (2007) 15 NWLR (Pt. 1056) 42. Where a party claims a relief of perpetual injunction, it is sufficient if the evidence led shows a right or interest the Court could protect by that order and an actual, threatened or likely infringement or violation of that right or interest by the other party - Biyo Vs Aku (1996) 1 NWLR (Pt. 422) 1, Rector, Kwara Polytechnic Vs Adefila (2007) 15 NWLR (Pt. 1056) 42. In other words, where a person's legal right has been infringed or invaded and there is a continual invasion or

threat of continuance of such an invasion and the legal rights of the parties have been determined in a final judgment, the successful party is entitled to a perpetual injunction - Enang Vs Adu (1981) 1112 SC 25, Ho Vs Abubakar (2011) 12 NWLR (Pt. 1261) 323."

It is therefore only grantable where the Claimant has established his rights. See the case of ***Oyeleke v. Oyediran (2020) LPELR-52098 (CA) at pp 50-50 paras A-G*** and the case of ***Yahaya v. Bawa (2015) LPELR-26009 (CA) at pp 26-26 paras C-D***. It is therefore a consequential order which flows after the grant of a declaratory relief.

I have earlier held that the Claimant, through its unchallenged and uncontroverted evidence, has established its entitlement to the declaratory relief it seeks in respect of the ownership of the plot of land known as Commercial Plot, Block 23-R Provisional, located along 1st Avenue Federal Housing Authority Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size, the subject matter of this suit. The Claimant, through the witness of the PW1, has in paragraph 4 of the adopted Witness Statement on Oath, testified that the Defendants have been trespassing upon his land alongside unknown persons. Further, in the Claimant's Statement of Claim, in paragraph 5 and 6, he swore that since the Claimant purchased the land, it has not been able to take possession of the land due to the trespass, restraint and harassment by the Nigerian Police Force. The witness had averred that unless the Court comes to the aid of the Claimant, the Defendants will continue to trespass on its land. It is, therefore, clear that based on the evidence led by the Claimant, he is deserving of the protection of his vested right on the subject property. I therefore find and hold that the Claimant has established his entitlement to the perpetual

injunction against the 1st and 2nd defendants, the unknown persons, their agents, privies and attorneys, which he sought in Relief 5 of his Statement of Claim.

On the Claimants claim for the sum of ₦7,000,000.00(Seven Million Naira) against the Defendants, I must first state that damages are awarded in any action to compensate any wrong complained of, which was caused to any person either to himself or his property and which have led to actual damages occurring. Damages are assessed not on the basis of any specific rule; it is usually at the discretion of the Court to decide the amount of such damages. In this instant case, in the Claimant's Statement of Claim and the PW1 adopted Witness Statement on Oath, it is clear that the Claimant has suffered a lot of restraint and harassment by the Defendants, and has not been able to take possession of its land. This act of the Defendants has frustrated the business of the Claimant and has denied it of business opportunities and benefits. By the Claimant's unchallenged and uncontroverted evidence, it has established its declaratory relief to the ownership of the plot, which means he has possessory right over the land. For a Claimant to have successful claim to damages, this possessory right has to be established. See the case of ***Adamu v. IGP & Ors (2013) LPELR-22812(CA) pp 10-10 paras C-E***. Given the circumstances as borne out by the evidence in this case I am of the view that the Claimant has established his claim for the sum of ₦5,000,000.00(Five Million Naira Only) damages against the 1st and 2nd Defendants.

On the Claimant's claim for the sum of ₦5,000,000.00(Five Million Naira only) against the Defendants, being the cost of the suit, it is the trite position of the law, that it is unethical and against public policy to pass solicitors fee to an opponent where the said fees arose after the occurrence

of the cause of action. See the case of *Audu v. Atkins (2019) LPELR-49701 (CA) pp 41-45 paras B-A*, where the Court of Appeal per Mudashiru Nasiru Oniyangi (JCA) held that:

“In my view what is to be considered is whether or not the solicitor's fees considering the fact of this case forms part of the cause of action in the counter claim by the Defendant. (Respondent) before the trial Court. It is trite that a cause of action arises from circumstances containing different facts that give rise to a claim that can be enforced in Court, and this leads to the right to sue a person responsible for the existence of such circumstance. There must be a wrongful act of a party sued which has injured or given the Plaintiff a reason to complain in a Court of law of consequent damage to him. See the case of ARABAMBI & OR V. ADVANCE BEVERAGES INDUSTRIES LIMITED NSCQLR VOL. 24 (2005) 530. In the case of READ V. BROWN (1888) 22 Q. B. D. 128 Pg 131 - 151 Lord Esher M.R. stated what the term denotes or means, thus: "Every fact which it would be necessary for the Plaintiff to prove, if traversed in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to be proved." In the case of AMODU V. DR. AMODE AND KWARA STATE COLLEGE OF TECHNOLOGY (1990) 5 NWLR (PT.150) 356 - 357 cause of action is described thus: "all those things necessary to give right of action whether they are to be done by the Plaintiff or a third person" In CHIEF AFOLAYAN V. OBA OGUNRINDE AND 3 ORS (1990) 1 NWLR (PT.127) 369 at 371, Karibi -

Whyte, JSC Stated that a cause of action mean "(a) A cause of complaints; (b) A civil right or obligation for the determination by a Court of law. (c) A dispute in respect of which a Court of law is entitled to invoke its judicial power to determine." It is also added that "It is a factual situation which enables one person to obtain a remedy from another in Court with respect to injury. That it consist of every fact which it would be necessary for the Plaintiff to prove if traversed in order to support his right to judgment" Going by the foregoing definitions, it is my humble view that for a cause of action to arise there must be a wrongful act of a party sued which has injured or given the Plaintiff a reason to complain and seeking for consequential damages. The right to hire a counsel of one's choice is provided for under Section 36 (5) (c) of the 1999 Constitution of the Federal Republic of Nigeria. In exercise of that right, if a party in a suit decides to hire a Counsel of his own choice, that will not amount to a wrongful act of the adverse party creating any injury to the Plaintiff or creating an avenue to complain and seeking for consequential damages. After all, the need to hire a Counsel is for the benefit of the party that hire the Counsel be it a Plaintiff or Defendant or a counter claimant as in the case at hand. I therefore find no hesitation in adopting the view of my learned brother Ibiyeye JCA (of blessed memory) as submitted by the learned Counsel representing the Appellant in the case of GUINNESS NIGERIA PLC VS NWOKE (2000) 15 NWLR (PT.689) 135 at 150. Hear his Lordship. "A claim for solicitors fees is outlandish and should not be

allowed as it did not arise as a result of damages suffered in the course of any transaction between the parties. It would seem that the established legal position is that it is unethical and an affront to public policy for a litigant to pass the burden of cost of an action including his solicitor's fees to his opponent in the suit. This is on the basis of the self evidence truth that solicitors fees do not form part of the wrong on which the Plaintiff pivoted his cause of action. It is outside it. It is therefore, improper to allow a Plaintiff to pass his financial responsibility to a Defendant. It seems that the reliefs which a Plaintiff in an action is entitled to, if established by evidence, are those reliefs which form part of the Plaintiff's cause of action. It cannot be disputed that a claim for solicitors fees does not form part of the Plaintiff's cause of action". Applying the forgoing dictum to this issue; renders issue number 3 to be competently resolved against the Respondent and in favour of the Appellant. In consequence, the order for the payment of the legal fees incurred by the defendant to be paid by the Plaintiff is hereby set aside."

In line with this settled legal position, I hereby hold that the Claimant is not entitled to Relief 7 of his statement of claim.

From all the foregoing, I hereby resolve the sole issue for determination in this suit in the affirmative and hold that the Claimant has established his claim against the 1st and 2nd Defendants and, accordingly, is entitled to the relief sought in this suit. Accordingly, judgement is hereby entered for the Claimant against the 1st and 2nd Defendants as follows:

- 1) THAT it is hereby declared that the Claimant is the rightful and lawful owner of Commercial Plot Block 23-R Provisional, located along 1st Avenue Federal Housing Authority, Lugbe, Abuja Municipal Area Council, Abuja measuring 1979.10sqm in size and all the appurtenances and attachments thereto.
- 2) THAT an Order of perpetual injunction is hereby made restraining the 1st and 2nd Defendants whether by themselves, agents, privies, heirs and assigns from trespassing on Commercial Plot Block 23-R Provisional, located along 1st Avenue Federal Housing Authority, Lugbe Municipal Area Council, Abuja measuring 1979.10sqm in size, or in any way infringing the proprietary and possessory rights of the Claimant over the said property.
- 3) The 1st and 2nd Defendants are hereby ordered to pay the Claimant the sum of N7,000,000.00 (Seven Million Naira) being the sum of damages by the Defendants against the Claimant.

This is the judgement of this court delivered today, the 7th day of June 2022.

HON. JUSTICE A. H. MUSA
JUDGE
07/06/2022

APPEARANCE:

For the Claimant:

Elohor E. Odebala-Alonu Esq

No appearance for the 1st and 2nd Defendants.