

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

**ON THURSDAY, 29<sup>TH</sup> DAY OF SEPTEMBER, 2022**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/2697/2016**

**BETWEEN**

**MR. DAVID KEHINDE**

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**CLAIMANT**

**AND**

- 1. ADIGCON BUILDERS LIMITED**
- 2. THE HON. MINISTER, FEDERAL  
MINISTRY OF WORKS AND HOUSING**

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**DEFENDANTS**

**JUDGMENT**

The claimant [or plaintiff] commenced this suit on 10/10/2016 vide writ of summons. The 1<sup>st</sup> defendant was sued as "*Persons Unknown*". On 30/3/2017, the Court granted the 1<sup>st</sup> defendant's *Motion No. M/4640/2017* filed on 17/3/2017, including an order to be substituted for the party sued as "*Persons Unknown*".

On 7/6/2017, the Court granted leave to the claimant to amend his writ of summons and other processes as set out in *Motion No. M/6320/2017* filed on

10/5/2017. The claimant's amended writ of summons and other processes filed on 10/5/2017 were deemed as properly filed and served.

The pleadings in this case are: [i] the claimant's amended statement of claim filed on 10/5/2017; [ii] the 1<sup>st</sup> defendant's amended statement of defence filed on 15/10/2020; [iii] the 2<sup>nd</sup> defendant's statement of defence filed on 21/12/2017; and [iv] the claimant's reply to statement of defence [of the 1<sup>st</sup> defendant] filed on 10/5/2017.

In paragraph 18 of the amended statement of claim, the claimant seeks the following reliefs against the defendants:

- a) A declaration that the plaintiff is the rightful allottee and owner of Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa, Abuja, the subject matter of this suit.
- b) A declaration that the rights and interest attached to the plaintiff's title over Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa, Abuja, is valid and subsisting same having not *[sic; been]* revoked by the appropriate authorities.

- c) A declaration that by virtue of the equitable doctrine of *quic quid plantatur solo solocedit*, the plaintiff is the beneficial owner of all that development, structure and/or building construction erected on the Plot of land known as Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa, Abuja.
- d) An order of perpetual injunction restraining the defendants, its [*sic; their*]privies, attorneys and representatives from interfering with the plaintiff's rights and interests over Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa, Abuja.
- e) The sum of N50,000,000.00 damages for trespass against the 1<sup>st</sup> defendant.
- f) The sum of N2,500,000.00 cost of this suit.
- g) An order of Court nullifying any alienation or transfer of title of the plaintiff's right over Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now

renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa, Abuja.

- h) An order of Court granting possession of Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa, Abuja to the plaintiff.

At the trial, David Kehinde [the claimant] testified as PW1. He adopted his statement on oath filed on 10/5/2017 and his further statement on oath filed on the same date. He tendered Exhibits A & B.

Olufemi Isola, the general manager of the 1<sup>st</sup> defendant, gave evidence as DW1. He adopted his statement on oath filed on 17/3/2017 and tendered Exhibits C, D, E, F & G. Onweluzo Francis, a staff of First Bank of Nigeria, testified as DW2 pursuant to a *subpoena* issued by the Court on 2/12/2019 and tendered Exhibits H & H1. Mrs. Great Edereka Angela Diepreye, a staff of Federal Ministry of Works and Housing, testified as DW3 pursuant to a *subpoena* issued by the Court on 15/10/2019 and tendered Exhibits J&K.

Fatima Emmanuel Williams, a staff of the Federal Ministry of Works and Housing, gave evidence as DW4. She adopted her statement on oath filed in 21/12/2017.

*Evidence of the Claimant - PW1:*

The evidence of the claimant in his statement on oath is that the 1<sup>st</sup> defendant is the occupant of the building on his land located at Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters, and covered by Certificate of Occupancy No. 21/21/79. By the Offer of Lease of Plot dated 19/5/1999, he became the original allottee and owner of the said Plot. He paid the certificate of occupancy processing fees and was issued with Federal Government Certificate of Occupancy dated 20/11/2001 and registered as No. 21 at Page 21 in Volume 79 of the Federal Land Registry Office, Ikoyi, Lagos. With the aid of a Surveyor from the Federal Ministry of Works, he was able to identify and locate the said Plot on ground.

The said Plot has now been renamed as Plot 16, Block 10, Poshanan Street, off Shuaibu Mamman Lafiya Street, Gwarinpa, Abuja following the massive development of Gwarinpa and the re-delineation of streets in the District. He kept the Certificate of Occupancy and other relevant title documents under the custody of his mother, Mrs. Madaki Ali Kehinde Martha, who died sometime in 2012. At the death of his mother, he looked for the title documents but could not trace them. He reported the loss of the document to the Police who advised him to go and swear to an affidavit of loss. He caused a publication of the loss of the title documents to be made in the Leadership

Newspaper of 20/11/2013 and at page 57 of The Nation Newspaper of 28/11/2013.

Mr. David Kehinde further testified that upon payment of the required fee, he was issued a certified true copy of the Certificate of Occupancy over the Plot. He went to the land to take physical possession for the purpose of developing same. He was surprised that the 1<sup>st</sup> defendant had already built a house on the Plot and people were already living there without his knowledge/consent. He made several attempts to know the identity of the trespasser who built the house or the real occupants of the house, but all to no avail. He is the owner of the said Plot and had not at any time transferred his title or interest over the land to anybody. The erection of the building on the said Plot has defaced the land and altered his desired use of same. The illegal occupation of the Plot by the 1<sup>st</sup> defendant has denied him the enjoyment of his rights over the land.

In his further statement on oath, the claimant maintained that he never sold the said Plot to the 1<sup>st</sup> defendant or signed any instrument of transfer of same in its favour. Also, his mother did not sign any deed of assignment or power of attorney as her signature is radically different from the signature on the said documents. His mother is a shareholder in Limpex Nigeria Ltd. and signed its memorandum and articles of association.

The claimant tendered: [i] the Certificate of Occupancy No. 21/21/79 dated 20/11/2001 in the name of the claimant as Exhibit A; and [ii] the memorandum and articles of association of Limpex Nigeria Ltd. as Exhibit B.

When PW1 was cross examined by the 1<sup>st</sup> defendant's counsel, he stated that his full name is David Dapo Kehinde. He was born in 1977. He obtained an application letter from the 2<sup>nd</sup> defendant, filled same, paid the required fees to the 2<sup>nd</sup> defendant and submitted it to the 2<sup>nd</sup> defendant through a worker who worked for his step-father. He signed the application letter. His signature on his statement on oath is the same as his signature on the application letter. He did not collect the documents personally from 2<sup>nd</sup> defendant; he received the documents through his step-father, Garba Madaki Ali. His step-father was a Minister in the Ministry of Works and Housing. His mother never told him that she sold the Plot and he was not aware of any sale. He knows Bisi Balogun as a visitor in his family house. He is from Oyo State.

The claimant further testified during cross examination by the 1<sup>st</sup> defendant's counsel that he got married in 2010. He will not be surprised that the application form completed before 1999 showed that the applicant was married because when he filled the form, he was advised to state that he was married. Some aides of his step-father advised him on how to fill the form; so, he filled that he was married. It is not true that among his siblings, he is the only one who never knew that his mother sold the Plot.

When the claimant was cross examined by the 2<sup>nd</sup> defendant's counsel, he stated that his Certificate of Occupancy in respect of the Plot has not been revoked by the 2<sup>nd</sup> defendant. He sued the 2<sup>nd</sup> defendant to come to Court to clarify the matter about the Plot.

*Evidence of the 1<sup>st</sup> Defendant's Witnesses:*

*Evidence of Olufemi Isola – DW1:*

The evidence of DW1 is that he participated actively in the sale of the said Plot to the 1<sup>st</sup> defendant. The Certificate of Occupancy to the Plot was issued in the name of the plaintiff [David Kehinde] and it was duly sold to the 1<sup>st</sup> defendant for valuable consideration on 19/12/2006. Prior to the execution of the deed of assignment, power of attorney and sale agreement, the 1<sup>st</sup> defendant paid N4,600,000 as consideration for the purchase of the Plot. The sale of the Plot was facilitated by Mr. Bisi Balogun. Mr. Bisi Balogun introduced 1<sup>st</sup> defendant to the Plot and supplied the account details into which the said sum of N4,600,000 was paid on 14/11/2006 i.e. First Bank account number 4062010493697 [new account No. 2006967011] belonging to the deceased mother of the plaintiff [Kehinde Ali Martha]. Mr. Bisi Balogun presently lives in Canada.

Following the sale, the Certificate of Occupancy for the Plot was handed over to the 1<sup>st</sup> defendant. It was the mother of the plaintiff that sold the Plot to the 1<sup>st</sup> defendant. It was the mother of the plaintiff who applied to 2<sup>nd</sup> defendant



for the Plot principally for her own benefit even though the Plot was eventually granted in the name of the plaintiff. The plaintiff never took any part in the process that led to the allocation of the Plot. Some [if not all] the siblings of the plaintiff were aware of the sale of the Plot by their mother before she died.

The further testimony of Mr. Olufemi Isola is that 1<sup>st</sup> defendant has completed structures on the Plots since 2009 and the two buildings have been in use since then. A demand notice for ground rent dated 24/8/2015 was served on the premises and the 1<sup>st</sup> defendant raised a draft dated 9/11/2015 for the payment of same. Until the death of the plaintiff's mother and the filing of this case, nobody came to the Plot to disturb the occupant or raised issues concerning the title to the Plot. Even though the plaintiff has full knowledge of the sale of the Plot to the 1<sup>st</sup> defendant, he filed this case because his mother is no longer alive to confirm the sale of the Plot to the Court.

DW1 tendered the following documents:

- i. Sale agreement between the claimant and 1<sup>st</sup> defendant dated 19/12/2006: Exhibit C.
- ii. First Bank teller dated 14/11/2006 for N4,600,000: Exhibit D.
- iii. Receipt dated 4/1/2016 for N68,200 being ground rent for the said Plot: Exhibit E.

- iv. Letter from Federal Ministry of Lands, Housing and Urban Development to the claimant dated 24/8/2015: Exhibit F.
- v. Guaranty Trust Bank draft for N68,200 dated 9/11/2015: Exhibit G.

When DW1 was cross examined by the claimant's counsel, he stated that he believes that the claimant's mother who sold the said Plot signed the deed of assignment, power of attorney and sale agreement with the consent of the claimant. DW1 was asked if the 1<sup>st</sup> defendant got any authority from the claimant to his mother to sell the Plot on his behalf since the Plot is not in her name. In response, DW1 stated that until this case, they believed that the Plot belonged to the claimant's mother as Kehinde is a unisex name and the search they made showed that the application for the land was made by a female.

Mr. Olufemi Isola further stated under cross examination by the claimant's counsel that there was no board resolution of the 1<sup>st</sup> defendant for the purchase of the Plot. The major shareholder that is running the affairs of the 1<sup>st</sup> defendant gave directive that the land should be purchased. The mother of the claimant did not sign the documents of sale in his presence.

**Evidence of Onweluzo Francis – DW2:**

DW2 tendered the statement of account of Ali Martha Kehinde in First Bank of Nigeria for November 2006 as Exhibit H; the certificate of compliance with section 84 of the Evidence Act, 2011 dated 15/11/2019 as Exhibit H1.

When DW2 was cross examined by the claimant's counsel, he stated that he did not know the transaction in issue in this case. There are various credits into the account of Ali Martha Kehinde with names of persons that credited the funds into the account.

**Evidence of Mrs. Great Edereka Angela Diepreye – DW3:**

DW3 tendered the document titled: Sites and Service Programme as Exhibit J; and receipt dated 13/3/2001 for N15,500 as Exhibit K. She stated that letter of allocation was given to the applicant as well as certificate of occupancy.

When DW3 was cross examined by the claimant's counsel, she confirmed that the name on Exhibits J & K is Mr. David Kehinde.

**Evidence of Fatima Emmanuel Williams [DW4]; Witness for the 2<sup>nd</sup> Defendant:**

In her evidence, the DW4 stated that the plaintiff applied and was allotted the said Plot. The plaintiff paid the requisite fees and was issued with a Certificate of Occupancy dated 20/11/2001 and registered in the Federal Land Registry Office, Ikoyi, Lagos. From the record in the custody of the 2<sup>nd</sup> defendant, the plaintiff is still the beneficial owner of the Plot and has not transferred his title or interest over the land to the 1<sup>st</sup> defendant or any other person. The plaintiff's title over the Plot is valid and subsisting, same having not been revoked by the 2<sup>nd</sup> Defendant.

During cross examination of DW4 by the 1<sup>st</sup> defendant's counsel, she stated that she was not involved in any process concerning the property in issue. Her evidence is not based on what she heard; her evidence is based on the records in the Ministry.

**Issues for Determination:**

At the conclusion of trial, H. O. Akintola Esq. filed the final address of the 1<sup>st</sup> defendant on 28/2/2022 while S. I. Imokhe Esq. filed the final address of the claimant on 21/3/2022. H. O. Akintola Esq. filed the 1<sup>st</sup> defendant's reply on points of law on 29/3/2022. On 30/6/2022, learned counsel for the 1<sup>st</sup> defendant and for the claimant adopted their respective final addresses. Olumide O. Adaramola Esq., who appeared for the 2<sup>nd</sup> defendant, informed the Court that the 2<sup>nd</sup> defendant is relying on the claimant's final address.

In the 1<sup>st</sup> defendant's final address, H. O. Akintola Esq. formulated two issues for determination, to wit:

1. Whether the claimant has made out a case upon which he is entitled to the judgment of this Court.
2. Whether failure of the claimant to file reply to the amended statement of defence filed by the 1<sup>st</sup> defendant on 15/10/2020 is not an admission upon which this Court is entitled to dismiss all the claims of the claimant in this case.

On the other hand, S. I. Imokhe Esq., distilled one issue for determination in the claimant's final address, which is:

Whether given all the facts and circumstances of this case, especially having regard to the state of the pleadings and evidence on record, the claimant has proved his claims as required by law so as to be entitled to the reliefs sought in this suit.

The claimant's reliefs [a], [b] & [c] are declaratory reliefs. In relief [a], the claimant seeks a declaration that he is the rightful allottee and owner of the Plot in issue. Relief [b] is a declaration that the rights and interests attached to the claimant's title over the said Plot are valid and subsisting same not having been revoked by the appropriate authorities. There is no doubt that the success or otherwise of the other reliefs sought by the claimants will largely depend on the decision of the Court on the declaratory reliefs.

As rightly stated by learned counsel for the 1<sup>st</sup> defendant, it is trite law that a party seeking a declaratory order or relief must adduce credible and sufficient evidence to prove his case. He must succeed on the strength of his case and not on the weakness of the case of the adverse party. See **Arowolo v. Olowookere [2011] 18 NWLR [Pt. 1278] 280.** However, where the evidence of the defendant supports the claimant's case, he is perfectly entitled to rely on such evidence. See **Anyi & Ors. v. Akande & Ors. [2017] LPELR-41973 [CA].**

In the light of the foregoing and from the case presented by the parties, the Court is of the opinion that there are three issues for determination, which are:

1. Whether from the pleadings and evidence before the Court, the claimant is the allottee and owner of Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, renamed as Plot 16, Block 10, Poshanan Street, off Shuaibu Mamman Lafiya Street, Gwarinpa, Abuja.
2. If the answer to Issue No. 1 is in the affirmative, whether the sale of the said Plot to the 1<sup>st</sup> defendant by the claimant's mother, Mrs. Kehinde Ali Martha, was/is valid.
3. Is the claimant entitled to his reliefs?

### **ISSUE 1**

*Whether from the pleadings and evidence before the Court, the claimant is the allottee and owner of Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, renamed as Plot 16, Block 10, Poshanan Street, off Shuaibu Mamman Lafiya Street, Gwarinpa, Abuja.*

#### **Submissions of Learned Counsel for the 1<sup>st</sup> Defendant:**

Learned counsel for the 1<sup>st</sup> defendant stated that the claimant's case is that he filled an application form, which is Exhibit J, consequent upon which he was allocated the said Plot and issued a Certificate of Occupancy. He argued that

some of the contents of Exhibit J are at variance or inconsistent with claimant's evidence during cross examination. The inconsistencies are:

- a) The claimant stated that his name is David Dapo Kehinde but the name on the title document is David Kehinde. The claimant never explained how Dapo became part of his name. He referred to **Esenowo v. Ukpong [1999] 6 NWLR [Pt. 608] 611** where the Supreme Court held that E.J. Esenowo is not the same as J. E. Esenowo.
- b) The evidence of the claimant is that he was born in 1977 [i.e. he was 40 years in 2018 when he was cross examined] but Exhibit J indicated that the applicant for the Plot was born on 4/8/1964.
- c) Exhibit J indicates that the applicant for the Plot is from Plateau State whereas the claimant testified that he is from Oyo State.
- d) The claimant stated that his signature on his statements on oath is the same as the signature on Exhibit J but a close look at the second page of Exhibit J will reveal that this is not true.
- e) The claimant stated that he was married in 2010 whereas Exhibit J indicates that the applicant for the Plot was married at the time of filling the form.

H. O. Akintola Esq. submitted that the above contradictions have "*knocked the bottom off the case of the claimant. All that the claimant has succeeded in doing is to furnish all manner of contradictory lies to this Court just in a desperate effort to get*

*the judgment of this Court in his favour*". He referred to **Odunukwe v. Ofomata [2010] 18 NWLR [Pt. 1225] 404** to support the principle that a plaintiff must satisfy the court that upon the pleadings and evidence adduced, he is entitled to the declaration sought. It was further submitted that when the totality of the evidence of the claimant is considered, the Court will find that his evidence does not support his assertion that he is the allottee of the Plot.

The 1<sup>st</sup> defendant's counsel further relied on the principle that where there are material contradictions in the evidence adduced by a party, the court is enjoined to reject the entire evidence as it cannot pick and choose which of the conflicting versions to follow; the entire evidence must be rejected. The case of **Kayili v. Yilbuk [2015] 7 NWLR [Pt. 1457] 26** was cited in support.

In respect of Issue No. 2 formulated by learned counsel for the 1<sup>st</sup> defendant, he cited the case of **Oshodi v. Eyifunmi [2000] 7 SCNJ 295** and **Unity Bank Plc. v. Bouari [2008] 7 NWLR [Pt. 1086] 372** to support the principle that it is necessary for a claimant to file a reply pleading where a statement of defence raises a fresh issue which was not anticipated by the statement of claim. A reply ought to be filed to plead additional facts which will make any particular defence pleaded in the statement of defence untenable.

Mr. H. O. Akintola referred to paragraph 14[a]-[f] of 1<sup>st</sup> defendant's amended statement of defence and submitted that the averments raised copious issues questioning the identity of the claimant. For clarity, it is necessary to point



out that the averments in paragraph 14[a]-[e]thereof are the five inconsistencies earlier highlighted by H. O. Akintola Esq.between the contents of Exhibit J and the evidence of the claimant.In paragraph 14[f], it is averred that Exhibit J neither carries thepassport photograph of the claimant nor the passport photograph of anyone to enable the Court ascertain the true identity of the applicant and allottee of the said Plot.

Learned counsel for the 1<sup>st</sup> defendant then submitted that theclaimant did not rebutthe issues raised in the said paragraph 14[a]-[f]either by filing a reply pleading or through his evidence.He cited the case of **Ansa v. Ntuk [2009] 9 NWLR [Pt. 1147] 557**to support the view that where a plaintiff fails to file a reply to facts pleaded by the defendant, such a failure is recognised as an admission of those facts. The 1<sup>st</sup> defendant’s counsel urged the Court to hold that the effect of the failure of the claimant to file a reply pleading to paragraph 14[a]-[f] of the amended statement of defence is that he has admitted that the *“person who held himself out as the claimant in this case is not the true allottee of the Plot in dispute”*.

In the 1<sup>st</sup> defendant’s reply on points of law, H. O. Akintola Esq.stressed that in its amended statement of defence,the 1<sup>st</sup> defendant conceded that thesaid Plotwas allocated to *“one David Kehinde”* but contends that having regard to the *“extremely contradictory evidence given by the present Claimant in this Court ... he is not the David Kehinde to whom the plot in dispute was allocated”*. The

claimant never tendered any proof of identification even after the 1<sup>st</sup> defendant has made the issue of his identity an issue before the Court.

**Submissions of Learned Counsel for the Claimant:**

Learned counsel for the claimant cited the cases of **Idundun v. Okumagba [1976] 9-10 SC 227** and **Ajibulu v. Ajayi [2014] 2 NWLR [Pt. 1392] 483** on the principle that there are five ways of proving title to land, one of which is by production of document[s] of title. He stated that the claimant adopted proof of title to the Plot in issue by production of documents. Also, the 1<sup>st</sup> defendant relied on this method of proof in order to disprove the claim of the claimant. It was submitted that from the pleadings and evidence, the following facts have been established:

- a) the said Plot was allocated by the 2<sup>nd</sup> defendant to the claimant and he was later issued the Certificate of Occupancy [Exhibit A] after fulfilment of the terms and conditions of the grant.
- b) the 1<sup>st</sup> defendant has erected a building on the Plot; and
- c) the Plot was not sold to the 1<sup>st</sup> defendant by the claimant.

S. I. Imokhe Esq. cited the case of **Jimmy King Nig. Ltd. v. U.B.A. [2020] 16 NWLR [Pt. 1751] 377** to support the view that with the grant and holding of a certificate of occupancy, the holder becomes the owner of the land to which the certificate of occupancy relates. It was submitted that the claimant - having established that he is the owner of the said Plot - has discharged the

burden placed on him. The burden thus shifted to the 1<sup>st</sup> defendant to show otherwise. He relied on section 133[2] of the Evidence Act, 2011; and the case of **Andrew v. INEC [2018] 9NWLR [Pt. 1625] 507.**

In response to the argument of the 1<sup>st</sup> defendant's counsel with respect to the identity of the claimant as the owner of the Plot, Mr. Imokhe pointed out that in one breathe, the 1<sup>st</sup> defendant claims that the claimant's mother sold the Plot to it in the place of the claimant. In another breathe, it *"makes a volte face and seeks, especially during cross examination and in her final address, to show that it is not the Claimant who was granted Certificate of Occupancy over the land by the 2<sup>nd</sup> Defendant. In this, the 1<sup>st</sup> Defendant is like a drowning man who holds unto anything, even unto a dead leave, to see if she can be saved from drowning. The 1<sup>st</sup> Defendant in this attempt is approbating and reprobating. ..."*

The claimant's counsel referred to the case of **Uwemedimo v. Commandlem Nig. Ltd. [2019] 12 NWLR [Pt. 1685] 1** to support the principle that a party is not allowed to be inconsistent or to approbate and reprobate on the same issue. He submitted that in the circumstances of this case, the only person that can seek to impugn the identity of the claimant as the grantee of the Plot is the 2<sup>nd</sup> defendant who is the grantor; but not the 1<sup>st</sup> defendant. From the evidence before the Court, the 2<sup>nd</sup> defendant never attempted to do so.

**Decision of the Court:**

It is trite law that civil cases are determined on balance of probabilities or preponderance of evidence. See Cyprian Onwuama v. LoiusEzeokoli [2002] 5 NWLR [Pt. 760] 353. The provisions of section 133[1]&[2] of the Evidence Act, 2011 are instructive on burden of proof in civil cases. The provisions read:

- a) *In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.*
- b) *If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.*

From the above provisions, it is clear that the burden of proof in civil cases is not static; it shifts from one party to the other depending on the state of the pleadings. In the case of Ebong v. Ikpe [2002] 17 NWLR [Pt. 797] 504, it was held that the burden of proof may shift depending on how the scale of evidence preponderates.

In the instant case, the claimant tendered the Certificate of Occupancy No. 21/21/79 dated 20/11/2001 [Exhibit A] to prove the fact that he [David Kehinde] is the allottee of the Plot and holder of the said Certificate of Occupancy. From the evidence of the parties, there is no dispute about the

genuineness of Exhibit A. I hold that by Exhibit A, the claimant has adduced "*evidence which ought reasonably to satisfy the court that the fact sought to be proved is established*" i.e. the fact that he is the allottee and owner of the Plot. Thus, I agree with S. I. Imokhe Esq. that by virtue section 133[2] of the Evidence Act, 2011, the burden shifted to the 1<sup>st</sup> defendant to disprove the fact that the claimant is the allottee and owner of the said Plot.

The 2<sup>nd</sup> defendant's evidence through DW4 supports the case of the claimant that he applied for the allocation of a plot and he was allotted the Plot in issue. The claimant was issued the Certificate of Occupancy [Exhibit A] after paying the requisite fees.

The contention of the 1<sup>st</sup> defendant, which is predicated on the averments in its amended statement of defence [especially paragraph 14] is that even though the Plot was allocated to David Kehinde, the claimant is not David Kehinde. It is necessary to first highlight the 1<sup>st</sup> defendant's evidence through DW1.

In paragraphs 10 & 11 of the statement on oath of DW1 filed on 17/3/2017, which were in line with the averments in paragraphs 12 & 13 of the initial statement of defence of the 1<sup>st</sup> defendant filed on 17/3/2017, he testified that: [i] "*it was the mother of the Plaintiff one Mrs. Kehinde Ali Martha that actually sold the said Plot ... to the 1<sup>st</sup> Defendant*"; and [ii] "*it was the mother of the Plaintiff Mrs. Kehinde Ali Martha who applied to the 2<sup>nd</sup> Defendant for the Plot ... [principally for*

*her own benefit] even though the plot was eventually granted in the Plaintiff's name".*

By the above testimonies, the 1<sup>st</sup> defendant unequivocally admitted that the said Plot was "*granted in the Plaintiff's name*" and that Mrs. Kehinde Ali Marthawho sold the Plot to it was the mother of the claimant. It is trite law that facts admitted need no proof. See the case of **Kano v. The Government of Adamawa State [2014] LPELR-24161 [CA]**.

However, on 24/9/2020, the 1<sup>st</sup> defendant filed *Motion No. M/10081/2020* for leave of Court to amend its statement of defence. The claimant opposed the motion but the Court granted the leave sought on 13/10/2020. It is worthy of note that the said motion was filed long after the claimant had closed his case on 31/1/2019 and after the witnesses for the 1<sup>st</sup> defendant [DW1, DW2 & DW3] had testified.

In paragraphs 12 & 13 of the amended statement of defence filed on 15/10/2020, the 1<sup>st</sup> defendant averred that: [i] "*it was the mother of David Kehinde one Mrs. Kehinde Ali Martha that actually sold*" the said Plot ... to the 1<sup>st</sup> defendant; and [ii] "*it was the mother of David Kehinde, Mrs. Kehinde Ali Martha who applied to the 2<sup>nd</sup> defendant for the Plot subject matter of this suit [principally for her own benefit] even though the plot was granted in David Kehinde's name*".

From the above averments in the amended statement of defence, 1<sup>st</sup> defendant changed its case to be that the Plot was granted in the name of

David Kekinde[no longer the claimant]; and that Mrs. Kehinde Ali Martha who sold the Plot to it, was the mother of David Kehinde [no longer the mother of the claimant]. Unfortunately, the change in the pleadings is at variance with the evidence of DW1. I agree with Mr. S. I.Imokhe that in the light of the evidence of DW1, the 1<sup>st</sup> defendant, by the averments under focus,was approbating and reprobating on the same fact. The law is trite that a party is not allowed to approbate and reprobate on the same fact or issue. See the case of Nasco& Anor. v. Bello &Ors. [2020] LPELR-52530 [SC].

I hold the considered view that the evidence of DW1 contradicted the assertion by the 1<sup>st</sup> defendant in its amended statement of defence that the claimant is not David Kehinde and rendered the assertion untenable. For emphasis, the 1<sup>st</sup> defendant did not adduce any evidence to prove its averment that the claimant is not David Kehinde, the allottee of the said Plot. In paragraph 14[d] of the amended statement of defence, the 1<sup>st</sup> defendant averred that the name of the claimant known to all the people who know him is Dapo and not David Kehinde but it did not call any of the people who know the claimant to prove that his name is not David Kehinde. Also, 1<sup>st</sup> defendant did not give evidence that there is someone else called David Kehinde who is the allottee of the Plot.

H. O. Akintola Esq. did argue that the claimant never tendered any proof of identification even after the 1<sup>st</sup> defendant made his identity an issue. I hold the respectful view that since the 1<sup>st</sup> defendant had admitted through the DW1

that the claimant is David Kehinde [the allottee of the Plot], there was no obligation on the claimant to tender a means of identification to prove his identity because facts admitted need no proof. Also, since, as I had said, there was no evidence to prove the averment introduced in the amended statement of defence that the claimant is not David Kehinde [the allottee of the Plot], the claimant had no obligation to prove his identity especially as he had closed his case about two years before the said amendment.

At this juncture, let me consider paragraph 14 of the 1<sup>st</sup> defendant's amended statement of defence where it averred that the claimant never took any part in the process that led to the allocation of the said Plot. The 1<sup>st</sup> defendant pleaded the facts in paragraph 14[a]-[f] - which I had earlier referred to - as proof that the "*purported ownership*" of the said Plot by the claimant is completely false. Paragraph 14[a], [b] & [e] respectively relate to place of origin, date of birth and marital status as stated in Exhibit J [i.e. the application form for the Plot titled: *Site and Services Programme*] on the one hand and the evidence of the claimant elicited during cross examination on the other.

It is correct that the claimant stated during cross examination that he is from Oyo State while the state of origin in Exhibit J is Plateau State. The claimant stated that he was born in 1977 while the date of birth in Exhibit J is 4/8/1964. The claimant's evidence is that he married in 2010 while Exhibit J indicated that the applicant was married. It is worthy of note that the claimant



also stated during cross examination that some of the aides of his step-father advised him on how to fill the form; so, he filled that he was married. I will consider anon if the inconsistencies can invalidate the claimant's ownership of the Plot.

In paragraph 14[c] thereof, the 1<sup>st</sup> defendant averred that the signature in Exhibit J is not in tandem with the signature of the plaintiff in all his statements on oath before the Court. I note that this averment is contrary to the claimant's evidence during cross examination that his signature in his statements on oath is the same as his signature in Exhibit J. The 1<sup>st</sup> defendant did not adduce any evidence - such as the evidence of a handwriting expert - to prove the assertion.

I have compared the signature of the claimant in his statements on oath on the one hand and the signature in Exhibit J on the other pursuant to section 101 of the Evidence Act, 2011 which provides:

*"In order to ascertain whether a signature ... is that of the person by whom it purports to have been written or made, any signature ... admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved although that signature ... has not been produced or proved for any other purpose."*

In my considered opinion, the signature of the claimant in his statements on oath is similar to the signature in Exhibit J. In the light of the similarity and in

the absence of any evidence to the contrary, I believe the claimant's evidence that he signed Exhibit J.

In paragraph 14[d] of the amended statement of defence, it is averred that the name of the plaintiff known to all the people who know him is Dapo and not David Kehinde that he is holding himself out to bear. I have already found that the 1<sup>st</sup> defendant did not adduce any evidence in proof of this averment. Finally, in paragraph 14[f] thereof, the 1<sup>st</sup> defendant averred that Exhibit J neither carries the plaintiff's passport photograph nor the passport photograph of anyone. There is no evidence that passport photograph was a requirement in Exhibit J.

Now, having found that the applicant in Exhibit J is the claimant and that he signed the application form, is the disparity with respect to the state of origin, date of birth and marital status as averred in paragraph 14[a], [b] & [e] of the amended statement of defence of the 1<sup>st</sup> defendant sufficient to invalidate the allocation of the plot to him? I do not think so especially as there is no counter claim to invalidate the allocation to the claimant on account of the information supplied by the claimant in the application form.

The decision of the Courton Issue No. 1 is that from the evidence adduced by the parties, the claimant - David Kehinde - is the allottee and owner of the Plot.

## **ISSUE 2**

*If the answer to Issue No. 1 is in the affirmative, whether the sale of the said Plot to the 1<sup>st</sup> defendant by the claimant's mother, Mrs. Kehinde Ali Martha, was/is valid.*

**Submissions of Learned Counsel for the 1<sup>st</sup> Defendant:**

Learned counsel for the 1<sup>st</sup> defendant did not canvass any argument that the purported sale of the Plot to the 1<sup>st</sup> defendant by the claimant's mother was/is valid. However, in arguing that there is no legally sustainable basis upon which damages can be awarded against the 1<sup>st</sup> defendant, Mr.H. O. Akintola put forward an argument that is relevant to this Issue. He submitted that by paying for the said Plot, an equity has been created and it is the Court that has discretion to determine how the equity will be satisfied. In support, he quoted the decision of the Supreme Court in **Bosah v. Oji [2002] 3 SCNJ 55** thus:

*"Where a person has expended on the land of another in the expectation, induced or encouraged that he will be allowed to remain in occupation thereof, an equity is created such that the Court would protect his occupation of the land and the Court has the power to determine in what way the equity will be satisfied."*

**Submissions of Learned Counsel for the Claimant:**

For his part, S. I. Imokhe Esq. stated that 1<sup>st</sup> defendant claimed that it bought the Plot from the claimant's mother who, to its knowledge, is not the owner of the land. The law is that one cannot give out what he or she does not have

as expressed in the Latin maxim: *nemo dat quod non habet*. Counsel referred to **Orianzi v. A. G., Rivers State [2017] 6 NWLR [Pt. 1561] 224** and other cases.

The claimant's counsel further contended that the circumstances surrounding the alleged sale of land to the 1<sup>st</sup> defendant "*reduce the entire transaction into a fraud and an apparent illegality. It smacks of fraud and illegality in that a person cannot purport to sell another's property on behalf of that person without that person's knowledge, consent and authority. ...*" He submitted that a court should not allow itself to be used as a vehicle to enforce illegality and no person is allowed to benefit from his own illegality and illegality confers no right.

Mr. Imokhe also canvassed the following arguments to discredit 1<sup>st</sup> defendant's assertion that the claimant's mother [Ali Martha Kehinde] sold the Plot to it:

- a) The claimant relying on Exhibit B [i.e. memorandum and articles of association of Limpex Nig. Ltd.] established that the signature on the sale agreement [Exhibit C] is not the signature of Ali Martha Kehinde because the signature on the sale agreement is different from her signature on Exhibit B.
- b) The case of the 1<sup>st</sup> defendant is that the sale of the Plot by the claimant's mother was facilitated by Mr. Bisi Balogun who now lives in Canada and that the claimant's siblings were aware of the sale. Mr. Bisi Balogun and the claimant's siblings were not called to testify.

*Decision of the Court:*

The two points put forward by the claimant's counsel to discredit the assertion that claimant's mother sold the Plot to the 1<sup>st</sup> defendant are valid. Also, DW1 testified that after the sale of the Plot to the 1<sup>st</sup> defendant, the claimant's mother handed over the original Certificate of Occupancy of the Plot to it. However, the 1<sup>st</sup> defendant did not tender the original Certificate of Occupancy in order to support the assertion that the Plot was sold to it. I will say no more on this since the 1<sup>st</sup> defendant has no counter claim and therefore has no burden to prove that the sale to it was/is valid; and that it is the owner of the said Plot.

Now, if the Court accepts the evidence of the 1<sup>st</sup> defendant that the Plot was sold to it, the critical question is whether the sale by the claimant's mother was/is valid. It is not in dispute that the claimant's mother was not the holder of the Certificate of Occupancy over the Plot [Exhibit A]. In the ordinary course of events, a reasonable man who has an offer to buy a plot made by the mother of the owner ought to ask some basic questions, such as: [i] since the owner of the plot [or the person whose name is on the title document] is your son, where is he?; [ii] can we see him? [iii] is he aware that you intend to sell his land?; and [iv] did he give you any authority in writing to sell the land on his behalf?

If the reasonable man is satisfied with the answers to the above questions and gets to the stage of payment for the plot, he would ordinarily request for the

bank account details of the owner of the plot from his mother or a document from the owner authorizing the payment of the purchase price for the plot to the bank account of his mother.

It appears to me that the above questions will constitute due diligence which a person who intends to buy a property ought to exercise where the offer is not made by the owner of the property, like the 1<sup>st</sup> defendant in the instant case. It is clear, at least to me, that the 1<sup>st</sup> defendant did not exercise due diligence before it purportedly bought the Plot in issue from the claimant's mother. The unchallenged and uncontroverted evidence of the claimant is that he neither knew nor authorized the sale of his land by his mother.

The principle in the case of **Bosah v. Oji [supra]** relied upon by Mr. Akintola is akin to the doctrine of *estoppel* by conduct. I am of the humble view that in the circumstances of this case, the principle is not applicable since there is no evidence that the claimant induced or encouraged the 1<sup>st</sup> defendant to enter and/or build on the Plot.

By letter dated 27/6/2022 addressed to the Court by S. I. Imokhe Esq. and filed on 28/6/2022, which was served on the defendants, he forwarded the case of **Goddy Edosa v. Eguagie Ehimwenma & Ors. [2022] 5 NWLR [Pt. 1823] 215** to further buttress his view that the purported sale of the Plot by the claimant's mother to 1<sup>st</sup> defendant was/is not valid. H. O. Akintola Esq., while adopting

the final address of the 1<sup>st</sup> defendant, submitted that the decision in the said case is not applicable to this case.

Now, in the case of GoddyEdosa v. EguagieEhimwenma&Ors. [supra], the Supreme Court held as follows:

- a) The appellant sought to establish that there was authority or consent of the 1<sup>st</sup> respondent to the 2<sup>nd</sup> respondent [his mother] to sell the disputed property. However, whether or not the 2<sup>nd</sup> respondent was the agent or representative of the 1<sup>st</sup> respondent, the title to the land did not lie in her but in the 1<sup>st</sup> respondent.
- b) Where an agent such as the 2<sup>nd</sup> respondent, [the 1<sup>st</sup> respondent's mother] was authorized to sell disputed property, it ought to have been in writing. Such written authority or consent should have been demanded by the appellant.
- c) A mere parent-child relationship does not birth an agency relationship. Nothing was presented at the trial court to show that the 2<sup>nd</sup> respondent, [the 1<sup>st</sup> respondent's mother] had the authority to sell his property to the appellant or any other person.
- d) Whoever intends to buy a piece or parcel of land must make necessary and due search of, *inter alia*, the authority to sell or transfer by the vendor before agreeing to buy and part with his money for the land otherwise he would buy nothing as the transaction will be void *ab initio*.

The Court is of the opinion that the above principles apply with equal force to this case and support the decision of the Court that the purported sale of the Plot in issue to the 1<sup>st</sup> defendant by the claimant's mother was/is not valid. Therefore, Issue No. 2 is resolved against the 1<sup>st</sup> defendant.

### **ISSUE 3**

#### *Is the claimant entitled to his reliefs?*

In the light of the decisions of the Court on Issue Nos. 1 and 2, I hold that the claimant is entitled to the declaratory orders sought in paragraph 18[a], [b] and [c] of the amended statement of claim. The reliefs are granted. Also, the orders sought by the claimant in paragraph 18[d], [g] and [h] thereof are granted.

In paragraph 18[e] of the amended statement of claim, the claimant claims the sum of N50,000,000 as damages for trespass against the 1<sup>st</sup> defendant.

The 1<sup>st</sup> defendant's counsel relied on the case of **B. B. Apugo & Sons Ltd. v. O.H.M.B. [2016] 13 NWLR [Pt. 1529] 206** and posited that the primary object of an award of damages is to compensate while the secondary object is to punish the defendant for his conduct in inflicting harm. He asked whether the 1<sup>st</sup> defendant who had expended N4,600,000 to buy the Plot and built a house on same has done anything wrong upon which the punitive sanctions of the Court can be invoked. He submitted that there is no legally sustainable basis upon which damages can be awarded against the 1<sup>st</sup> defendant.



On the other hand, the claimant's counsel stated that trespass in relation to property law means to interfere with another person's property or to enter unlawfully upon another person's property. It is enough that the right of the owner or person in possession was invaded. He relied on the case of RRCC Nig. Ltd. v. Mohammed Alhassan [2020] 9 NWLR [Pt. 1729] 233. He submitted that the claimant, whose title over the land is not in dispute, is entitled to damages for trespass.

As rightly stated by Mr. S. I. Imokhe, trespass to land is committed where a person interferes with the property of another or unlawfully enters upon the property of another. I agree with the claimant's counsel that the 1<sup>st</sup> defendant unlawfully entered into the claimant's land. Thus, the 1<sup>st</sup> defendant is liable for trespass and the claimant is entitled to general damages.

In assessing the amount to be awarded to the claimant as damages for trespass, the Court has taken into account the fact that 1<sup>st</sup> defendant incurred expenses in building structures on the Plot. Also, the Court has granted a declaration that by the equitable doctrine of *quic quid plantatur solo solocedit*, the claimant is now the owner of the structures or buildings erected on the Plot. In the circumstance, I am of the humble opinion that it will be just and equitable to award nominal general damages for trespass to the claimant. I award general damages of N750,000.00 to the claimant against the 1<sup>st</sup> defendant.

## **Conclusion:**

All said, the Court hereby enters judgment for the claimant and grants the following reliefs:

1. A declaration that the claimant is the rightful allottee and owner of Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa.
2. A declaration that the rights and interest attached to the claimant's title over Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa, Abuja is valid and subsisting same having not been revoked by the appropriate authorities.
3. A declaration that by virtue of the equitable doctrine of *quic quid plantatur solo solo cedit*, the claimant is the beneficial owner of all that development, structure and/or building construction erected on Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16,

Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa.

4. An order of perpetual injunction restraining the defendants, their privies, attorneys and representatives from interfering with the claimant's rights and interests over Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa.
5. An order of Court nullifying any alienation or transfer of title of the claimant's right over Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa.
6. An order granting possession of Plot No. 16, Block X, Federal Government Layout, Gwarinpa, Abuja, measuring approximately 1,228.683 square meters in size, and covered by Certificate of Occupancy No. 21/21/79, now renamed as Plot 16, Block 10, Poshanan Street, off ShuaibuMammanLafiya Street, Gwarinpa to the claimant.
7. The sum of N750,000.00 as general damages for trespass against the 1<sup>st</sup> defendant.

8. Cost of the sum of N100,000 payable by the 1<sup>st</sup> defendant.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of Counsel:*

1. S. I. Imokhe Esq. for the claimant; with Isaac Enamudu Esq.
2. H. O. Akintola Esq. for the 1<sup>st</sup> defendant.