

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

**ON WEDNESDAY, 5<sup>TH</sup> DAY OF OCTOBER, 2022**

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

**SUIT NO. FCT/HC/CV/2657/2012**

**BETWEEN**

- 1. TRUST CONSULTS NIGERIA LIMITED**
- 2. BG HOMES NIGERIA LIMITED**

} **CLAIMANTS**

**AND**

- 1. FEDERAL MINISTRY OF LANDS, HOUSING  
& URBAN DEVELOPMENT**
- 2. THE MINISTER, FEDERAL MINISTRY OF LANDS,  
HOUSING & URBAN DEVELOPMENT**
- 3. MR. IDOWU ABRAHAM TUNDE**
- 4. MRS. DUPE LEDUN**

} **DEFENDANTS**

**JUDGMENT**

The claimants [plaintiffs] instituted this suit on 9/3/2012 vide writ of summons against the 1<sup>st</sup>& 2<sup>nd</sup> defendants. On 20/5/2013, the 1<sup>st</sup>& 2<sup>nd</sup> defendants filed their statement of defence and counter claim. On 31/7/2013, the claimants filed their defence to counter claim.

On 8/12/2014, 1<sup>st</sup>& 2<sup>nd</sup> defendants filed *Motion No. M/2464/2014* for an order to join Mr. Idowu Abraham Tunde and Mrs. Dupe Ledun as defendants in the

suit. The application was granted by the Court on 22/3/2016; Mr. Idowu Abraham Tunde and Mrs. Dupe Ledun were joined as 3<sup>rd</sup> & 4<sup>th</sup> defendants. The Court directed the parties to amend their processes to reflect the joinder of the 3<sup>rd</sup> & 4<sup>th</sup> defendants.

The claimants filed their amended writ of summons and statement of claim on 27/9/2016. The 1<sup>st</sup> & 2<sup>nd</sup> defendants filed their amended statement of defence on 2/11/2016, which was deemed as properly filed by order of the Court granted on 14/11/2016. I note that by the said amendment, the 1<sup>st</sup> & 2<sup>nd</sup> defendants did not incorporate their counter claim to the amended statement of defence. The 3<sup>rd</sup> defendant filed his statement of defence on 6/3/2017.

In paragraph 13 of the amended statement of claim filed on 27/9/2016, the claimants seek the following reliefs against the defendants:

- a) A declaration that the 1<sup>st</sup> plaintiff is entitled to the Statutory Right of Occupancy over all that parcel of land lying and situate at Plot No. CD-26, AA3 Layout, Kuje Area Council, Abuja measuring 1.07 Hectares and bounded by beacon Nos. PB115; PB116; PB117; PB118 & PB119.
- b) An order of perpetual injunction restraining the defendants either by themselves, servants, agents, privies or personal or official representatives or successors from demolishing Plot No. CD-26, AA3 Layout, Kuje Area Council, Abuja measuring 1.07 Hectares and bounded by beacon Nos. PB115; PB116; PB117; PB118 & PB119.

- c) An order of perpetual injunction restraining the defendants either by themselves, servants, agents, successors in title or interest from trespassing or committing any acts of trespass in and over Plot No. CD-26, AA3 Layout, Kuje Area Council, Abuja measuring 1.07 Hectares and bounded by beacon Nos. PB115; PB116; PB117; PB118 & PB119.
- d) Damages for trespass.
- e) Cost of litigation.
- f) General damages.

At the trial, Babangida Mohammed Yola testified as PW1. He adopted his statement on oath filed on 9/3/2012 and tendered Exhibits A, B, C, D1-D5, E, F1, F2 & G. Hassan Bako Kuje, a retired staff of Kuje Area Council, gave oral evidence as PW2 pursuant to a *subpoena* issued by the Court on 16/9/2013. He tendered Exhibit H. Mohammed Sani Iliyasu gave evidence as the PW3 and adopted his statement on oath filed on 31/7/2013.

The 3<sup>rd</sup> defendant testified as DW1. He adopted his statement on oath filed on 6/3/2017 and tendered Exhibits J, K, L, M, N, O, P, Q, R, S1-S4. Offor Yakubu Yohanna Attahfpye testified as DW2. He adopted his statement on oath filed on 2/11/2016 and tendered Exhibits T, U, V & W. On 15/7/2021, learned counsel for the defendants tendered Exhibit X from the Bar. Also, on 5/10/2022, the Court granted leave to the defendants to re-open their case to

tender some documents. The defence counsel tendered Exhibits Y, Z, AA & BB from the Bar.

**Evidence of the Claimants:**

**Evidence of Babangida Mohammed Yola – PW1:**

The evidence of PW1 is that he is a director in the 2<sup>nd</sup> claimant. In September 1993, the 1<sup>st</sup> plaintiff applied to Kuje Area Council for a grant of right of occupancy over a piece of land in Kuje. Upon approval of the 1<sup>st</sup> plaintiff's application, Kuje Area Council issued it with a Conveyance of Provisional Approval dated 28/9/1993. In July 2006, Kuje Area Council issued Right of Occupancy No. KAC/FCDA/LP&S/MISC-5547 to the 1<sup>st</sup> plaintiff, which is attached to a Survey Plan drawn by Cadastral Section of Land Survey of Federal Capital Development Authority [FCDA]. The 1<sup>st</sup> plaintiff made every payment set out in the Right of Occupancy, including payment for the preparation of certificate of occupancy.

The 1<sup>st</sup> plaintiff paid all necessary fees and did all things necessary to secure Plot No. CD-26, AA3 Layout, Kuje Area Council, Abuja, measuring 1.07 Hectares and bounded by beacon Nos. PB115; PB116; PB117; PB118 & PB119 allocated to it, but the certificate of occupancy has not been issued to it. In line with the directives of FCDA, on 31/12/2008, 1<sup>st</sup> plaintiff applied to regularize its title with Abuja Geographic Information Systems [AGIS] over the Plot. The 1<sup>st</sup> plaintiff's title over the Plot was regularized by AGIS and it was issued an Acknowledgement on the Regularization of land titles and documentation of

FCT Area Councils dated 31/12/2008. 1<sup>st</sup> plaintiff has always been in peaceful possession of the said Plot until it was sold to the 2<sup>nd</sup> plaintiff on 15/10/2011. PW1 further testified that immediately after the said sale, the 2<sup>nd</sup> plaintiff took possession and ownership of the Plot and has always been in peaceful occupation. On 7/3/2012, the defendants entered the 2<sup>nd</sup> plaintiff's said Plot without its consent and fixed wooden pegs indicating the areas to be demolished. On 8/3/2012, the defendants mobilized men and equipment to the Plot for the purpose of demolishing it. PW1 tendered the following documents:

- a) Conveyance of Provisional Approval dated 28/9/1993 addressed to the 1<sup>st</sup> claimant: Exhibit A.
- b) Right of Occupancy Rent and Fees dated 8/6/2006: Exhibit B.
- c) Survey Plan of Plot No. CD-26, AA3 Layout Kuje: Exhibit C.
- d) Receipt numbers 61001, 61002, 61076, 61077 and 60450 all dated 8/6/2006: Exhibits D1-D5 respectively.
- e) Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 31/12/2008: Exhibit E.
- f) Deed of Assignment between the 1<sup>st</sup> claimant and the 2<sup>nd</sup> claimant dated 15/11/2011: Exhibit F1; Power of Attorney donated by the 1<sup>st</sup> claimant to the 2<sup>nd</sup> claimant dated 15/10/2011: Exhibit F2.
- g) Certificate of Incorporation of 2<sup>nd</sup> claimant dated 29/9/2011: Exhibit G.

During cross examination of PW1, he stated that he is not aware that the land measuring 150 hectares [including the land in dispute] was acquired by the Federal Government for public purpose [i.e. for Site and Service Scheme]. He is also not aware that compensation was paid to over 175 persons whose lands were affected by the acquisition.

**Evidence of Hassan Bako Kuje – PW2:**

PW2 stated that he worked with Kuje Area Council. He retired in 2007 as a Chief Technical Officer [Surveys]; he was in charge of survey jobs in the Area Council. He signed Exhibit C [i.e. the Survey Plan of the said Plot CD-26]. The land in Exhibit C is along Kango/Funtajroad. The distance between Kango/Funtajroad and Kuje/Gwagwalada is about 4 kilometres. He did not know the maker of the document dated 18/3/1994 titled: *Conveyance of Approval of Grant* of land addressed to the 1<sup>st</sup> defendant. He identified the Layout Plan of Site and Service Scheme of the 1<sup>st</sup> defendant at Kuje signed by surveyor M. O. Uzor; same was received in evidence as Exhibit H.

During cross examination, PW2 stated that he would not know if the Plot in Exhibit C was part of land compulsorily acquired by the Federal Government through the 1<sup>st</sup> defendant. He signed Exhibit C in 2002; he signed for the Director of Land, Planning and Survey.

Pursuant to the provision of section 246 of the Evidence Act, 2011, the Court asked PW2 to confirm if the land in the Survey Plan [Exhibit C] is part of the land in the Layout Plan[Exhibit H]. PW2 answered in the affirmative and confirmed that Exhibit C is part of Exhibit H.

When PW2 was re-examined, he testified that he did not sign Exhibit C with the knowledge of the existence of Exhibit H. Exhibit H was made on 6/6/2006 while Exhibit C was made on 12/12/2002.

**Evidence of Mohammed Sani Iliyasu – PW3:**

PW3 stated that he is the 1<sup>st</sup> claimant's property manager. His evidence is similar to the evidence of PW1. In addition, PW3 stated that the said Plot No. CD-26 belonging to the plaintiffs is situate at AA3Layout, Kuje Area Council, but not lying along Kuje/Gwagwalada road, Abuja.

When PW3 was cross examined, he stated that he was not aware that the land in dispute is part of a larger plot compulsorily acquired by the Federal Government in 1994 through the 1<sup>st</sup>defendant. Also, he was not aware that compensation was paid to those whose lands were affected by the acquisition.

**Evidence of the Defendants:**

**Evidence of Mr. Idowu Abraham Tunde [3<sup>rd</sup> Defendant] – DW1:**

The evidence of DW1 is that in May 1999, the 1<sup>st</sup> defendant advertised the availability of plots of land in Kuje Area Council under its "*Sites and Services Programme*" and requested all federal civil servants to apply for the plots. In June 1999, he applied for a plot through Application Form No. H009035. A letter of acknowledgement and receipt dated 12/6/1999 for N250 were issued to him. Later, a letter of Lease of Plot dated 2/1/2002 was issued to him as a successful applicant for Plot No. 44, Block 19. He paid for his Lease of Plot through a bank draft issued by Union Homes Savings & Loans Ltd. in the sum of N101,000. A receipt dated 3/4/2002 was issued to him.

DW1 further testified that on 5/10/2010, he applied to the 1<sup>st</sup> defendant for a Building Plan Approval. He paid the stipulated sum of N22,505 and a receipt dated 18/11/2010 was issued to him. A Building Plan Approval was later given to him. He erected a low fence round the plot. In one of his visits to the site in 2012, he discovered that someone had pulled down his fence and erected another fence around the plot. He took some photographs. He reported the matter to the Divisional Police Officer at Kuje Police Division. On 14/12/2002, he wrote a complaint to the 2<sup>nd</sup> defendant with a request that the illegal occupant on his plot should be removed. It was after the fence which the plaintiffs erected on his plot was marked for demolition that they decided to approach the Court.

The 3<sup>rd</sup> defendant tendered the documents listed below:

- a) Document titled: *Sites and Service Programme* filled by DW1: Exhibit J.



- b) Letter of Acknowledgement addressed to DW1: Exhibit K.
- c) Receipt for N250 dated 12/6/1999: Exhibit L.
- d) Offer of Lease of a Plot at Abuja addressed to DW1: Exhibit M.
- e) Union Homes Savings and Loans Ltd. cheque for N101,000 dated 3/4/2002: Exhibit N.
- f) Receipt dated 3/4/2002 for N101,000: Exhibit O.
- g) Plan showing Layout Plan of Sites and Service Scheme Site: Exhibit P.
- h) Letter dated 22/11/2010 addressed to the DW1 titled: *RE - Building Plan Approval*: Exhibit Q.
- i) Receipt dated 18/11/2010 for N22,505 addressed to DW1: Exhibit R.
- j) 4 photographs: Exhibits S1-S4.

When DW1 was cross examined, he stated that all the documents he tendered are in respect of land owned by 1<sup>st</sup>& 2<sup>nd</sup> defendants where a plot was allocated to him. The 1<sup>st</sup>& 2<sup>nd</sup> defendants' land is located along Kuje/Gwagwalada road.

**Evidence of Offor Yakubu Yohanna Attahfpye – DW2:**

The evidence of DW2 is that he is a surveyor and a staff of the 1<sup>st</sup> defendant. In 1996, the Department of Survey of the former Federal Ministry of Works and Housing was contacted by the department of Lands and Housing of the same

Ministry to carry out the perimeter and topographic survey of the land granted by the Ministry of Federal Capital Territory [FCT] at Kuje, Kuje Area Council. He was directed by the Chief Resident Surveyor, S.M.K. Mohammed to carry out the survey. He narrated how a survey team [with him as the team leader] carried out the survey of the land. The perimeter and topographic survey started in 1996 and was completed in 1997 and its subsequent layout survey started in 1998 and completed in 2006.

The DW2 further testified that in 2003, compensation was paid to the indigenes i.e. the original owners of the “*economy trees*” on the said land before the survey team which he headed was allowed to complete the layout survey. The land space which forms part of the subject matter of this suit fenced by the plaintiffs is not in conformity with the Survey Plan attached to the statement of claim. In paragraph 16 of his statement on oath, he described the land area covered by Plot CD-26 on the charting of its Survey Plan on the Federal Ministry of Works and Housing Layout Survey Plan. DW2 tendered:

- a) Document described by DW2 as a Traced Plan of the land allocated to Federal Ministry of Lands and Housing: Exhibit T.
- b) Document titled: *Traverse Computations*: Exhibit U.
- c) Plan shewing Layout of Site and Services Scheme, Federal Ministry of Housing and Urban Development at Kuje, Kuje Area Council: Exhibit V.
- d) Perimeter and Topo Survey of Site and Services Scheme, Kuje Area Council: Exhibit W.

During cross examination, DW2 stated that the Survey Plan [Exhibit V] was not made on 24/2/2015; that date was when it was counter signed by the Surveyor General of the Federation. The survey was carried out from 1998 to 2003 when it was completed. The plan [Exhibit W] was not made on 24/2/2015; that date was when it was counter signed by the Surveyor General of the Federation. The plan was produced in 1997. Exhibits T & U are photocopies and they are unsigned.

On 15/7/2021, learned defence counsel tendered the 1<sup>st</sup> defendant's letter dated 31/1/2014 to the Divisional Police Headquarters, Nigerian Police Force, Kuje from the Bar. It was admitted in evidence as Exhibit X.

The documents tendered by the defence counsel from the Bar on 5/10/2022 are:

- a) Conveyance of Approval of Grant of Land in FCT dated 18/3/1994 addressed to the Federal Ministry of Works and Housing: Exhibit Y.
- b) Acceptance of offer of Grant of Right of Occupancy within the Federal Capital Territory, Abuja dated 22/3/1994 by the Federal Housing Authority: Exhibit Z.
- c) Cadastral Design of the Proposed Site: Exhibit AA.
- d) Plan showing Developments on the Land: Exhibit BB.

**Issues for Determination:**

B. G. Abba Esq. filed the defendants' final address on 5/8/2021. J. E. Abibo Esq. filed the claimants' final address on 18/1/2022. Learned counsel for the parties adopted their respective final addresses on 6/7/2022. At the conclusion of proceedings today, both learned counsel informed the Court that they do not intend to file any further address.

Learned counsel for the defendants formulated five issues for determination, which are:

1. Can Kuje Area Council have *[sic]* power under the Land Use Act and vis-a-vis the 1999 Constitution [as amended] and the FCT Act to Re: allocate land?
2. Whether the Federal Government's power of revocation under the Land Use Act was validly applied and compensation paid, if yes, whether the acquisition was for overriding public interest.
3. Can the Federal Ministry of Land & Urban Development have *[sic]* power under the Land Use Act to acquire land for overriding public interest?
4. Whether the claimants have *locus standi* to institute this case.
5. Whether the claimants have made out a case to entitle them to the declarations and reliefs sought from this Honourable Court.

On the other hand, learned counsel for the claimants distilled two issues for determination, to wit:

1. Whether the plaintiffs have established their title to the land in dispute.
2. Whether the plaintiffs are entitled to the reliefs sought in their Amended Statement of Claim.

The claimants' first relief is a declaratory order that the 1<sup>st</sup> claimant is entitled to the statutory right of occupancy over the parcel of land situate at Plot No. CD-26, AA3 Layout, Kuje, Abuja. No doubt, the success or otherwise of the other reliefs sought by the claimants will largely depend on the decision of the Court on the declaratory relief. The law is that a party seeking a declaratory 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.**

In the present case, the claimants have the burden to prove their declaratory relief and the other reliefs. It must be noted that the defendants do not have any burden of proof as they do not have a counter claim.

In the light of the foregoing, the Court adopts the two issues for determination formulated by the claimants' counsel, which are:

1. Whether the claimants have established their title to the land in dispute.

2. Whether the claimants are entitled to the reliefs sought.

## **ISSUE 1**

*Whether the claimants have established their title to the land in dispute.*

### **Submissions of Learned Counsel for the Defendants:**

Learned counsel for the defendants relied on the case of **Divage Health and Sanitary Service Ltd. & Anor. v. Kenuj Investment Ltd. [2018] LPELR-4597 [CA]** where it was held that the plaintiff/respondent's documents of title i.e. offer of terms of grant/conveyance of approval issued by Abuja Municipal Area Council was invalid because it is only the Minister of FCT that can validly allocate land in the FCT. He submitted that Kuje Area Council has no power to allocate land within the land acquired by the Federal Government and has no right to tamper with the property of the Federal Government.

B. G. Abba Esq. further stated that the Site and Services Scheme is a public interest initiative of the Federal Government towards ameliorating the plight of low-income earners who find it difficult to acquire land and build their houses. The Federal Government compulsorily acquired a large tract of land measuring approximately 150 hectares shown on the Layout Plan of Site and Services, Federal Ministry of Housing and Urban Development at Kuje for

the Federal Site and Services Scheme [part of which is claimed by the claimants].

The defence counsel also submitted that the claimants' contention that they were not served any notice of revocation of their rights of occupancy over their land [which is within the acquired land] and that compensation was not paid to them for the development on their land is misconceived. Counsel argued that revocation contemplated by the Land Use Act only refers to the "holders" of a right of occupancy, which the claimants are not. Those whose lands were affected by the compulsory acquisition were paid compensation. He cited the case of **Yakubu v. ImpresitBakolori Plc. [2011] 6 NWLR [Pt. 1244] 569** to support the view that the 1<sup>st</sup> defendant has power under the Land Use Act to acquire land for overriding public interest.

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

Learned counsel for the claimants stated that the claimants tendered Exhibits A, B, C, D1-D5, E & F2 to establish the allocation of the land to the 1<sup>st</sup> claimant by Kuje Area Council by virtue of the Conveyance of Provisional Approval dated 28/9/1993. Upon the payment of all fees stipulated in Exhibit B, Kuje Area Council issued the right of occupancy and Survey Plan [Exhibit C] drawn up by the Cadastral Section of FCDA. Thereafter, 1<sup>st</sup> plaintiff regularised its title to the land with FCDA upon the directive of the Minister of FCT and Exhibit E was issued to it. He submitted that the claimants have

led positive, credible and cogent evidence to establish that the 1<sup>st</sup> plaintiff acquired a valid title to the land in dispute.

J. E. Abibo Esq. emphasized that the case of the claimants is that they acquired title to the land via a customary right of occupancy granted by Kuje Area Council under the supervision of the Minister of FCT. At the time Exhibit A was granted to the 1<sup>st</sup> claimant, there was no subsisting title on the said land, including the purported title of the 1<sup>st</sup> defendant. The root of the 1<sup>st</sup> defendant's title i.e. the document dated 18/3/1994 was not tendered. He also submitted that in exercise of his powers, the Minister of FCT acknowledged the titles of allottees granted by the Area Councils in FCT through the regularization process. Thus, by the regularization process and the issuance of Exhibit E, the 1<sup>st</sup> claimant's title to the plot was acknowledged by the Minister of FCT.

The claimant's counsel pointed out that the crux of this case is the consideration of the validity of the customary right of occupancy issued to the 1<sup>st</sup> claimant by Kuje Area Council vis-à-vis the acknowledgment by the Minister of FCT. He relied on the case of **Ekwekwuo & Ors. v. Abdullahi [2020] LPELR-51363 [CA]** where the Court of Appeal upheld the decision of the lower court that the FCT Minister performs his duties through zonal land officers of the FCT/FCDA posted to the various Area Councils and that the Area Council Chairmen being under the supervision of the FCT Minister and



the zonal land officers being officers of the FCDA are vested with the powers to issue conveyance letters of provisional approval.

Mr. Abibo also relied on the case of **Registered Trustees of Abuja Furniture Makers Association Dei Dei v. Nwagba&Ors. [2021] LPER-55205 [CA]** where it was held that a letter of allocation of land signed on behalf of the Minister of FCT by a staff of FCDA was a valid allocation and conveyed title to respondents. In the instant case, the bill for the right of occupancy [Exhibit B] was issued by the zonal officer of Kuje Area Council; and the survey plan was issued by the Cadastral Section of the Land Survey Department of FCDA. It was submitted that these acts lend “*unwavering credence*” to the fact that the title of the 1<sup>st</sup> claimant had the backing of the Minister of FCT and the title was further acknowledged by the Minister of FCT vide Exhibit E.

Learned counsel for the claimants referred to **Divage Health and Sanitary Service Ltd. & Anor. v. Kenuj Investment Ltd. [supra]** and argued that the Court of Appeal rejected the title document relied upon by the appellants not because they were issued in the name of Abuja Area Council but because no evidence was led to prove that they were issued on behalf of the Minister of FCT. In the instant case, Exhibits B, C & E were issued by agents of the Minister of FCT. J. E. Abibo Esq. urged the Court not to rely on the decision in the above case as the facts are distinguishable from the facts of this case.

Finally, Mr. Abibo submitted that the purported compulsory acquisition of the land as argued by the defendants was invalid as it was not in compliance with the provisions of section 28[4], [6] & [8] of the Land Use Act, which require service of a notice of revocation of a right of occupancy on the holders of the right of occupancy or the occupiers of the land. He referred to **Garba & Ors. v. Director General, Bureau of Lands, Kwara State & Anor. [2019] LPELR-47722 [CA]** and other cases on the need to serve notice of acquisition when land is to be acquired for public purpose.

**Resolution by the Court:**

The case of **Idundun v. Okumagba [1976] 9-10 SC 227** established the principle that there are five ways of proving title to land, one of which is by production of document[s] of title. In the FCT, Abuja, the production of document[s] of title is the prevalent way to prove title to a parcel of land. Thus, a party seeking a declaration of title to land in the FCT, Abuja has to rely on document[s] evidencing the grant of a right of occupancy.

It must be noted that where a document of title is relied upon by a party, the Court has a duty to satisfy itself, *inter alia*, that the document relied upon is genuine and valid and that the grantor has the capacity and authority to make the grant. See the cases of **Prince Ngene v. Chike Igbo & Anor. [2000] 4 NWLR [Pt. 651] 131** and **Ayanwale v. Odusami [2011] 18 NWLR [Pt. 1278] 328.**

In this case, the claimants relied on the Conveyance of Provisional Approval dated 28/9/1993 addressed to the 1<sup>st</sup> claimant [Exhibit A] as their root of title to the land in issue. Exhibit A, which was signed for Secretary, Rural Land Use Adjudication Committee, Kuje Area Council conveyed to the 1<sup>st</sup> claimant “*the Honourable Deputy Mayor’s approval of a Customary Right of Occupancy*” in respect of the Plot in dispute. As rightly stated by J. E. Abibo Esq., the crux of this case is the consideration of the validity of the customary right of occupancy issued to the 1<sup>st</sup> claimant by Kuje Area Council. Let me refer to some statutory provisions and cases relevant to the issue under focus.

Section 297[2] of the 1999 Constitution [as amended] provides: “*The ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria.*” By section 18 of the FCT Act, as from 28<sup>th</sup> day of May, 1984, the powers exercisable by the President of the Federal Republic of Nigeria in the FCT were delegated to the Minister of FCT. Thus, the power to allocate land in the FCT is vested in the Minister of FCT.

In the case of **Ona v. Atenda**[2000] 5 NWLR [Pt. 656] 244, the Court of Appeal held that there is no customary right of occupancy in the FCT. It was further restated that by virtue of section 18 of the FCT Act, only the Minister for the FCT can grant statutory rights of occupancy over lands situate in the FCT. Also, in **Divage Health and Sanitary Service Ltd. & Anor. v. Kenuj Investment Ltd.** [supra] cited by the defence counsel, the Court of Appeal considered the issue whether a letter from the Abuja Municipal Area Council

conveying approval for the grant of certificate of occupancy is a document of title and held thus:

*"In resolving this issue, the law is settled that all land in the Federal Capital Territory vests absolutely in the Government of the Federation, and only statutory right of occupancy can be issued in the Federal Capital Territory, being an urban area. The implication of this is that it is only the Minister of the FCT acting pursuant to Section 302 of the Constitution and Sections 13 and 18 of the FCT Act that can validly allocate land in the Federal Capital Territory. ....See the cases of MADU VS MADU [2008] 6 NWLR PT.1083 PG 296; LAWSON VS AFANI CONSTR. CO. LTD [2002] 2 NWLR PT.752 PG 585 AT 592. ...*

*I have carefully perused the record of appeal, and particularly the plaintiff's/Respondent's title documents, it is my view that the plaintiff/Respondent ... could not be said to have derived its title from the Minister of FCT Abuja.*

*In view of all the above, I do not agree with the Respondent's counsel contention that the Respondent was the rightful allottee, notwithstanding the issue of allocation from Abuja Municipal Area Council. ..."*

However, in the case of **Ekwekwuo&Ors. v. Abdullahi [supra]** cited by claimant's counsel, the Court of Appeal held:

*“Exhibit A2, the Certificate of Occupancy [Customary] in my view and humbly, was correctly deemed given the provision of Section 9[1] of the Land Use Act to be made by the Minister of the FCT. The Court below so found and held thus on page 191 of the Record correctly:*

*“... that, the Minister of the FCT operates/performs [sic] its duties through his officials which include the zonal officers staff of the FCT/FCDA posted to the Zonal Land officer [sic] in the Area Council who performs the duties of the Minister on his behalf ... so also the Chairmen of the Area Councils who are under the supervision and control of the Minister of the FCT and the zonal land officers being staff of the FCT/FCDA are vested with powers to issue conveyance letter of provisional approval and in doing so it has been the practice with the FCT which the Honourable Court has taken judicial notice of same and doing so is within the ambit of the law.”*

*In consequence, Exhibit A2, the Certificate of Occupancy [Customary], given to the 2<sup>nd</sup> Respondent can stand as a valid root of title on the basis of which the title to land in dispute was awarded to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. ...”*

The decision of the Supreme Court in **Madu v. Madu [2008] 6 NWLR [Pt. 1083] 296@ 324-325, H-C** [Per Sylvester Umaru Onu, JSC] is instructive. His Lordship held:

*“Be it noted that it is well settled that the ownership of the land comprised in the Federal Capital Territory, Abuja is absolutely vested in the Federal Government of Nigeria vide Ona v. Atenda [2000] NWLR [Pt. 656] page 244 ... By this law, ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vest same to every citizen individually upon application. Thus without an allocation or grant by the Hon. Minister of the FCT, there is no way any person including the respondent could acquire land in the FCT. ...”*

Now, by the inflexible doctrine of *stare decisis* or judicial precedent, this Court is bound by the decision of the Supreme Court. When the decision is applied to the instant case, the result will be that the grant of a customary right of occupancy in respect of the land indisputably to the 1<sup>st</sup> claimant by the Deputy Mayor of Kuje Area Council vide Exhibit A was/is not valid as the land was not granted by the Minister of FCT.

There is nothing to show that the said grant by the Hon. Mayor of Kuje Area Council to the 1<sup>st</sup> claimant was authorized by the Minister of FCT or was on behalf of the Minister of FCT. From the evidence of PW1, the 1<sup>st</sup> claimant's application in September 1993 for allocation of land was made to Kuje Area Council. The 1<sup>st</sup> claimant did not apply to the Minister of FCT for allocation of land. It follows that the said allocation of land to the 1<sup>st</sup> claimant by Kuje Area Council was not made by, or on behalf of, the Minister of FCT.

The claimants relied on Exhibits B, C, D1-D5 & E in urging the Court to hold that the grant of the land to the 1<sup>st</sup> claimant was/is valid. Exhibit B [Right of Occupancy Rent and Fees] dated 8/6/2006 was issued and signed for "*Chairman, Task Force on Revenue For Hon. Chairman K.A.C.*" Clearly, Exhibit B did not emanate from, and was not authorized by, the Minister of FCT.

Exhibit C is the Survey Plan of Plot No. CD-26, AA3 Layout Kuje. Exhibit C has a remark that it was prepared by Cadastral Section of Land Survey of FCDA, Abuja. However, the evidence of PW2 - who said he signed Exhibit C - is that he worked with the Kuje Area Council. The Court is of the respectful view that there is nothing to show that Exhibit C was prepared with the approval or authority of the Minister of FCT. In any event, since, as I have found, the land was not validly allocated to the 1<sup>st</sup> claimant, the survey plan cannot confer title to the land on the 1<sup>st</sup> claimant.

Exhibits D1-D5 are receipts issued by Kuje Area Council on 8/6/2006. The receipts have nothing to do with the Minister of FCT or FCDA. The Court holds that the receipts do not support the claimants' case that the land was allocated to the 1<sup>st</sup> claimant on behalf of the Minister of FCT.

Exhibit E is the Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 31/12/2008; it emanated from AGIS, which is under the FCT Administration. The submission of Mr. J. E. Abibo is that by Exhibit E, the 1<sup>st</sup> claimant's title to the plot was acknowledged by the

Minister of FCT. It is noteworthy that Exhibit E has a Disclaimer, which reads: *“This acknowledgement does not in anyway validate the authenticity of the documents described above. All documents are subject to further verification for authenticity.”* The Court holds that Exhibit E does not validate, or acknowledge the validity of, the purported grant of the land to the 1<sup>st</sup> claimant vide Exhibit A.

From all that I have said, the decision of the Court on Issue 1 is that the claimants have not established their title to the land in dispute.

## **ISSUE 2**

*Whether the claimants are entitled to the reliefs sought.*

### **Submissions of Learned Counsel for the Defendants:**

B. G. Abba Esq. referred to the evidence of the defendants that 150 hectares of land was acquired by the 1<sup>st</sup> & 2<sup>nd</sup> defendants at Kuje Area Council for Site and Service Scheme and compensation was paid to the owners of unexhausted improvements on the land. The claimants are not land owners in the acquired land. He submitted that the claimants failed woefully to prove their case and there is no tangible evidence to prove their claims.

### **Submissions of Learned Counsel for the Claimants:**



In paragraphs 5.05 to 5.10, Mr. Abibo stated that the plaintiffs led cogent and unchallenged evidence that they were in exclusive and peaceful possession of the land when the 1<sup>st</sup> & 2<sup>nd</sup> defendants encroached thereon. He cited the case of Amakor v. Obiefuna [1974] 3 SC 67 where it was held that trespass to land is actionable at the suit of the person in possession of the land. It was submitted that the plaintiffs are entitled to be protected against the defendants by an order of injunction unless they are able to show a better title to the land. Having established their title to the land, the plaintiffs have satisfied the requirement of the law for the grant of the orders of perpetual injunction to protect their possessory rights to the land. He referred to Oyeleke v. Oyediran [2020] LPELR-52098 [CA]. The plaintiffs are also entitled to damages for trespass.

**Resolution by the Court:**

In the light of the decision of the Court under Issue 1, the claimants' relief [a] for a declaration that the 1<sup>st</sup> claimant is entitled to the statutory right of occupancy over the land in dispute is dismissed.

The claimants' other reliefs for orders of perpetual injunction, damages for trespass and general damages are predicated or hinged on the declaratory order. Based on the decision of the Court that the claimants are not entitled to the statutory right of occupancy over the said land, I hold that there is no basis to grant the other reliefs.

I am mindful of the principle of law that trespass to land is actionable at the suit of the person in possession of the land. However, in the case of **Uzoije v. Uzochukwu [2018] LPELR-44264 [CA]**, the position of the law was restated that where a plaintiff claims damages for trespass and an injunction against a defendant and the defendant avers in his defence, without necessarily making a counter claim, that the land in dispute belongs to him, title has been squarely put in issue. In order to succeed, the plaintiff has to prove not only that he was in possession at the material time that the alleged trespass was committed, but also that his own title to the land is better than that of the defendant. Thus, a claim for trespass and injunction puts title of the plaintiff over the land in issue. See also **Ufomba v. Ahuchaogu [2003] 8 NWLR [Pt. 821] 130.**

In the instant case, title to the land in dispute was put in issue by the pleadings of the parties. Thus, the claimants had a duty to prove that their title to the land is better than that of the defendants, which they failed to do. The defendants tendered the Conveyance of Approval of Grant of Land in FCT dated 18/3/1994 [Exhibit Y] to show that the parcel of land measuring about 150 hectares [which includes the land purportedly allocated to the claimants by Kuje Area Council] was allocated to the 1<sup>st</sup> defendant by the Hon. Administrator of FCT. The Court holds that the claims for orders of perpetual injunction, damages for trespass and general damages against the defendants have not been proved.

For the sake of completeness, it is pertinent to determine whether the claimants proved that they were in exclusive possession of the land. In paragraphs 10 & 11 of the amended statement of claim, the claimants averred that they have always been in peaceful possession and occupation of the land until 7/3/2012 when the defendants entered the land and fixed wooden pegs indicating the areas to be demolished. Apart from the *ipsi dixit* of PW1 and PW3, the claimants did not place anything before the Court to prove their assertion or averment.

On the other hand, the evidence of the 3<sup>rd</sup> defendant [DW1] is that he obtained a building approval from the 1<sup>st</sup> defendant and erected a low fence round his Plot. In 2012, he discovered that someone had pulled down his fence and erected another fence around the plot. In proof, he tendered the photographs, Exhibits S1-S5. He reported the matter to the Divisional Police Officer at Kuje Police Division and, on 14/12/2012, he wrote a complaint to the 2<sup>nd</sup> defendant with a request that the illegal occupant on his plot should be removed. It was after the fence which claimants erected on his plot was marked for demolition that they decided to approach the Court.

I note that on 24/6/2013, upon hearing the claimants' motion for interlocutory injunction, the Court made an order for parties to maintain *status quo* on the land in dispute. This means that since 24/6/2013, the land has remained without any activity or development as shown in the photographs, Exhibits S1-S5.

In these circumstances, I hold that there is no credible evidence before the Court that the claimants were in exclusive possession of the land. The decision of the Court is that the claimants are not entitled to the reliefs for orders of perpetual injunction, damages for trespass and general damages.

**Conclusion:**

All said, the conclusion of the matter is that the claimants' suit lacks merit. The claims are hereby dismissed.

The parties shall bear their costs.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

**Appearance of Learned Counsel:**

1. J. E. Abibo Esq. for the claimants.
2. Chindo B. Umar Esq. for the defendants.