

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

ON THURSDAY, 2ND DAY OF FEBRUARY, 2023

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2808/2016

BETWEEN

COZY OIL AND GAS LIMITED --- CLAIMANT

AND

<p>1. NIGERIAN ARMY</p> <p>2. HON. MINISTER, FCT ABUJA</p> <p>3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY [FCDA] ABUJA</p>	}	<p>DEFENDANTS</p>
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JUDGMENT

This suit was instituted on 21/10/2016 vide writ of summons. The claimants were *EnyiEnyi Int. Ltd., Milton Nig. Ltd.* and *Cozy Oil and Gas Ltd.* [as the claimants] and *Nigerian Army* [as the defendant]. In the course of the proceedings, the claimants sought and obtained the leave of the Court to strike out the names of the 1st& 2nd claimants; Cozy Oil and Gas Ltd. became the only claimant. Later, the 2nd& 3rd defendants were joined to the suit.

The suit was transferred to me by My Lord, the Hon. Chief Judge by a Transfer Order dated 14/10/2021. The pleadings in this matter are: [i] the claimant's amended statement of claim filed on 21/6/2019; [ii] the 1st defendant's statement of defence filed on 23/3/2020; [iii] the 2nd& 3rd defendants' statement of defence filed on 8/7/2020; [iv] the claimant's reply to the 1st defendant's statement of defence filed on 14/7/2020; and [v] the claimant's reply to the 2nd& 3rd defendants' statement of defence filed on 1/9/2020.

The claimant seeks the following reliefs against the defendants as set out in paragraph 29 of the amended statement of claim filed on 21/6/2019:

1. A declaration that the plaintiff is the equitable, rightful owner and beneficial owner of the property described as Plot No. 585 [also referred to as Plot No. PFS 585] of about 1500m² in Zuba II Part II Layout, Abuja.
2. An order of this Honourable Court restraining the 1st defendant either by itself, privies, his agents, servants, members and or successor however so called from further molesting, intimidating, harassing, interfering and or engaging

in any act that will run contrary to the plaintiff's right to possession of the property described as No. 585 [also referred to as Plot No. PFS 585] of about 1500m² in Zuba II Part II Layout, Abuja.

3. An order of perpetual injunction restraining the 1st defendant either by itself, his agents, privies, servants, members and or successors however so called from further molesting, intimidating, harassing, interfering and or oppressing the plaintiff, its agents, servants, privies, workers or any person working/residing in the property at No. 585 [also referred to as Plot No. PFS 585] of about 1500m² in Zuba II Part II Layout, Abuja.
4. The sum of N10,000,000.00 [Ten Million Naira] only as general and aggravated damages against the 1st defendant.
5. The cost of this action.

Idris Mohammed Mamu, the claimant's managing director, gave evidence as CW1. The CW1 adopted his statement on oath filed on 21/6/2019; his additional statement on oath filed on 14/7/2020; his

additional statement on oath filed on 1/9/2020; and his 2nd additional statement on oath filed on 17/2/2021. He tendered Exhibits C1-C17.

On 28/3/2022, the 1st defendant sought and obtained the leave of the Court to rely on the evidence of Lt. Jugu Jeremiah Tiri [as the DW1] in his statement on oath filed on 23/3/2020, which he adopted on 26/11/2020 together with the cross examination when the matter was before My Lord, *Hon. Justice Peter O. Affen, J. [as he then was]*. The Court also granted leave to the 1st defendant to rely on the documents tendered by Lt. Jugu Jeremiah Tiri on 26/11/2020. On 9/6/2022, the 1st defendant's counsel tendered the documents earlier tendered by Lt. Tiri from the Bar; the documents were marked Exhibits D13-D19.

Similarly, on 9/6/2022, the 2nd & 3rd defendants sought and obtained the leave of the Court to rely on the evidence of Shafiu Ahmed [as the DW2] in his statement on oath filed on 8/7/2020 and adopted on 26/11/2020 together with the cross examination when the matter was before My Lord, *Hon. Justice Peter O. Affen, J. [as he then was]*.

Evidence of Idris Mohammed Mamu:

The evidence of CW1 in his statement on oath filed on 21/6/2019 is that on 2/4/2001, Gwagwalada Area Council, by a Conveyance of Provisional Approval, approved the allocation of Plot No. 585 having about 1500m² in Zuba II, Part II Layout to EnyiEnyi Int. Ltd. On 31/12/2003, Gwagwalada Area Council issued to EnyiEnyiInt. Ltd. a Certificate of Occupancy [Customary] No.FCT/GAC/RLA/MISC/4077 in respect of the Plot. On 31/3/2008, Abuja Geographic Information Systems [AGIS] acknowledged receipt of the original Certificate of Occupancy for regularization of land titles and/or recertification.

On 17/5/2010, the Federal Capital Territory Administration [FCTA] replied Kabiru Suleiman and authenticated the title of EnyiEnyi Int. Ltd. to the land. Plot 585 is the same thing as Plot PFS 585 [PFS means Petrol Filling Station which is the purpose for the allocation]. On 4/12/2013, EnyiEnyi Int. Ltd. paid N2,723,222.14 to FCTA as fee for the approval of building plan for the Plot. On 13/3/2014, the Abuja Metropolitan Management Council, Department of Development Control issued a Conveyance of Building Plan Approval to EnyiEnyi Int. Ltd.

On 24/6/2008, EnyiEnyi Int. Ltd. transferred its equitable interest in the property to Milton Nig. Ltd. via a Deed of Assignment, Sale Agreement and Power of Attorney dated 24/6/2008. Milton Nig. Ltd. transferred its interest to the claimant by Deed of Assignment and Power of Attorney executed on 17/12/2013.

CW1 further stated that while its staff and workers were on site on 3/6/2014 and 4/6/2014, men and officers of the 1st defendant forcefully entered into the land, chased away its staff and workers, marked the property for demolition and threatened to deal severely with anyone found on the land on ground that the land belongs to the Nigerian Army and Nigerian Army properties Ltd.

The claimant instructed the firm of Messrs. Yunus Ustaz Usman [SAN]&Co. to write to the Chief of Army Staff on 6/6/2014, narrating its title to the property. The 1st defendant did not respond to the letter despite being served on 9/6/2014. On 14/8/2014, the FCDA issued a confirmation form to the claimant. Sometime in September 2016, 1st defendant served on the claimant a letter dated 1/9/2016 threatening it to quit the premises on or before 1/12/2016.

In the letter, the 1st defendant referred to the claimant as an illegal tenant.

Idris Mohammed Mamu further stated that on 28/9/2016, claimant's solicitors wrote a letter to the Chief of Army Staff in response to the quit notice. The 1st defendant is bent on unlawfully ejecting the claimant from the premises and has been harassing the claimant and its workers using military personnel. The claimant has an equitable interest in the Plot and is the rightful and beneficial owner of the property. The 1st defendant is only using its military might to chase away the claimant from its land. The claimant has invested so much money on the land and has given employment to many youths.

In his additional statement on oath filed on 14/7/2020, CW1 stated that the law permits pre-incorporation contract. There is no valid allocation of the land to the 1st defendant by the authority saddled with the responsibility to do so. EnyiEnyi Int. Ltd. had equitable interest over the said land which it transferred to Milton Nigeria Ltd.; and Milton Nigeria Ltd. transferred its equitable interest to the

claimant. The claimant has always been in possession of its said Plot.

In his additional statement on oath filed on 1/9/2020, CW1 stated that as at April 2001 when the said Plot was granted by Gwagwalada Area Council, the 2nd defendant had delegated powers to the 6 Area Councils in FCT to allocate lands within their locations to successful applicants. It was pursuant to the powers granted to Gwagwalada Area Council that EnyiEnyi Int. Ltd. was allocated the said Plot 585. Gwagwalada Area Council acted on the 2nd defendant's instruction through its officers and allocated the Plot to EnyiEnyi Int. Ltd.

In exercise of his powers, the 2nd defendant through one of his agencies [AGIS] called on all beneficiaries of Area Council allocations to submit their title documents for regularization. The claimant submitted its title documents for regularization and was issued with an Acknowledgement. The 2nd defendant verified the documents to be genuine and advised EnyiEnyi Int. Ltd. to submit its application for building plan approval. The 2nd & 3rd defendants are estopped from disassociating themselves from the title

documents presented to them upon which they granted the approval for building plan.

The evidence of CW1 in his 2nd additional statement on oath filed on 17/2/2021 is similar to his additional statement on oath filed on 14/7/2020 save the addition of: *“The Certificates of Incorporation of EnyiEnyi Intl Ltd. and that of the Claimant shall be relied upon”* in paragraph 4 thereof.

CW1 tendered the following documents:

- i. Conveyance of Provisional Approval to EnyiEnyi Int. Ltd. dated 2/4/2001: Exhibit C1.
- ii. Certificate of Occupancy [Customary] issued to EnyiEnyi Int. Ltd.: Exhibit C2.
- iii. Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 03/31/08: Exhibit C3.
- iv. Letter from FCT Administration to Kabiru Sulieman dated 17/5/2010: Exhibit C4.
- v. Receipt issued by FCT Administration to EnyiEnyi Int. Ltd. dated 4/12/2013 for N2,723,222.14: Exhibit C5.

- vi. Conveyance of Building Approval dated 13/3/2014: Exhibit C6.
- vii. Deed of Assignment between Milton Nigeria Ltd. and the claimant dated 17/12/2013: Exhibit C7.
- viii. Deed of Assignment between EnyiEnyi Int. Ltd. and Milton Nigeria Ltd. dated 24/6/2008: Exhibit C8.
- ix. Document titled: *Confirmation Form* from FCDA Gwagwalada Zonal Planning Office dated 14/8/2014: Exhibit C9.
- x. Letter dated 6/6/2014 from the law firm of Yunus Ustaz Usman [SAN] & Co. to the Chief of Army Staff: Exhibit C10.
- xi. Quit Notice dated 1/9/2016 from 1st defendant to the claimant: Exhibit C11.
- xii. Letter dated 28/9/2016 from the law firm of J. J. Usman & Co. to the Chief of Army Staff: Exhibit C12.
- xiii. Certificate of Incorporation of the claimant dated 25/2/2010: Exhibit C13.
- xiv. Certificate of Incorporation of EnyiEnyi International Company Ltd. dated 6/3/2003: Exhibit C14.

- xv. Certificate of Incorporation of Milton Nigeria Ltd. dated 29/11/1995: Exhibit C15.
- xvi. Notice of Appointment/Change of Company Secretary of EnyiEnyi International Company Ltd.: Exhibit C16.
- xvii. Irrevocable Power of Attorney between Milton Nigeria Ltd. and the claimant dated 17/12/2013: Exhibit C17.

During cross examination of CW1 by learned counsel for the 1st defendant, he said he is not aware of the Nigerian Army sign post in the neighbourhood of the land in dispute. The land in issue is already developed and the claimant is conducting business since then. His knowledge about the land started when he bought it and there was no activity on the land as at the time he bought it.

Evidence of Lt. Jugu Jeremiah Tiri - DW1:

The evidence of DW1 is that no company known as EnyiEnyi Int. Ltd. was in existence as a legal person capable of owning land especially in 2001. The land in dispute is part of the 4,509.975 hectares of land allocated to the 1st defendant by the Federal Government in 1989 for the purpose of carrying out its

constitutional functions. The 1st defendant's 4,509.975 hectares of land was part of an initial 7,488 hectares of land allocated to the Ministry of Defence soon after Abuja was designated the Federal Capital Territory. In 1989, the initial 7,488 hectares of land allocated to the Ministry of Defence was partitioned among the Army, Air Force and Navy.

The 1st defendant has been in possession and has been exercising acts of ownership, including erecting beacons and Nigerian Army sign posts, over the entire portion of the 4,509.975 hectares [including the portion claimed by the claimant] since 1989. The 1st defendant did not transfer its rights and interests in the property to Gwagwalada Area Council. The 1st defendant has never transferred or assigned any of its interest to the claimant. The claimant's payment for building plan and approval of building plan do not take away the 1st defendant's interest in the land.

In proof of the 1st defendant's rights, interests and acts of ownership over the land in dispute and the wider expanse surrounding the land in dispute, the 1st defendant relies on Committees Reports; Official Documents; Survey Plan SJ063; Plan showing Land set aside for Ministry of Defence; Plan showing Nigerian Army portion

of the land; and plan showing suggested use of Land Reserved for Nigerian Army. Both legal and equitable interests in the disputed land reside in the 1st defendant. The plaintiff has no interest in the land.

The further evidence of the DW1 is that the 1st defendant peaceably notified those on the land to stop trespassing on it. The 1st defendant did not use force or threat of force against any agent of the claimant or any other person trespassing on the land. A confirmation form purportedly or actually issued by the FCDA or any other person or authority does not divest the 1st defendant of its rights and interests in the said land.

Despite the 1st defendant's earlier caution to the claimant to stop further acts of trespass on its land, the claimant erected some structures on the land. The 1st defendant, on realizing the claimant's acts of trespass, wrote a letter demanding it to quit the land. The 1st defendant neither harassed nor intimidated anyone using military personnel or at all. Before the purported existence of the claimant or its supposed predecessors in title, 1st defendant had

been exercising acts of possession and ownership of the disputed land as part of a large expanse owned by the 1st defendant.

The documents earlier tendered by DW1 on 26/11/2020 before *Hon. Justice Peter O. Affen, J. [as he then was]* and tendered from the Bar by counsel for the 1st defendant on 9/6/2022 are:

- i. Survey Plan SJ063: Exhibit D13.
- ii. Letter dated 16/1/1981 from Ministry of Defence to the Chief of Army Staff titled: *Survey of MOD and Armed Forces Land at Abuja*: Exhibit D14.
- iii. Document titled: Survey of AFLA, Abuja Submission of Film Positives and Settlement of Bill N183,330: Exhibit D15.
- iv. Letter dated 3/12/1983 from Esjay Surveys Ltd. to the Permanent Secretary, Ministry of Defence: Exhibit D16.
- v. Letter dated 24/7/1989 from Esjay Surveys Ltd. to the Commander, Corps of Engineering, Lagos: Exhibit D17.
- vi. Document from the Nigerian Army dated 25/10/1989 titled: Report on Visit of the Committee to AELA on 5 - 6 October, 1989: Exhibit D18.

- vii. Document from the Nigerian Army dated 2/4/1990: Exhibit D19.

During cross examination of the DW1 by learned counsel for the claimant, he said Exhibits D13-D19 are internal communications within the Ministry of Defence; none of the documents came from the Minister of FCT or FCDA.

Evidence of Shafiu Ahmed - DW2:

DW2, a staff of FCDA, stated that only the 2nd defendant has statutory power to allocate land within the FCT, Abuja, and issue certificates of occupancy. The 2nd & 3rd defendants dissociate themselves from the Certificate of Occupancy [Customary] and the other alleged title documents issued over the said Plot PFS 585 by Gwagwalada Area Council, as the documents did not emanate from them. The 2nd & 3rd defendants did not mandate Gwagwalada Area Council to issue the Certificate. It is only AGIS that is given the power and duty to determine the genuineness and authenticity of any plot of land.

The 2nd defendant can only allocate land when a proper layout of the district or area within the FCT ready for allocation has been

done by Urban and Regional Planning Department and same approved by 2nd defendant.No staff working under the 2nd defendant at any point [including the Zonal Managers/Coordinators] has the authority to allocate land in the FCT on behalf of the 2nd defendant.

In paragraph 10 of his statement on oath,Shafiu Ahmed[DW2] set out the administrative procedure for allocation of land in and part of FCT. He concluded that the claimant's purported Conveyance of Provisional Approval allegedly issued by Gwagwalada Area Council is unknown to the 2nd& 3rd defendants.

During cross examination of DW2 by the senior counsel for the claimant, he confirmed that *"before 2006, Area Councils in Abuja used to allocate lands."*From 2006, the FCTA requested all allottees of Area Council lands to come for regularization. There are Zonal Land Managers in every Area Council, who are employees of the FCTA.Exhibits C1-C6are from the FCDA and they are a regularization of the Certificate of Occupancy issued by Gwagwalada Area Council [Exhibit C2].

Issues for Determination:

The final written addresses filed in this action, which were adopted by learned counsel for the parties on 3/11/2022 are:

1. The 1st defendant's final written address filed on 30/6/2022 by Dr. Elijah Oluwatoyin Okebukola;
2. The 2nd & 3rd defendants' final written address filed on 2/11/2022 by Felix U. Ibanga Esq.;
3. The claimant's final written address filed on 5/10/2022 by J. J. Usman, SAN; and
4. The 1st defendant's reply on points of law filed on 19/10/2022 by Dr. Elijah Oluwatoyin Okebukola.

Learned counsel for the 1st defendant distilled these five issues for determination:

1. Whether given the procedural history of this case, the plaintiff has a valid 2nd additional witness statement on oath on which it can rely.
2. Whether given the procedural history of the case, the plaintiff has a valid writ of summons before the court.

3. Whether the Claimant can have a valid interest in the land in dispute without an allocation or grant by the Honourable Minister of the FCT.
4. Whether a non-existent company can acquire title or interest in land.
5. Whether legal or equitable interest that is first in time will rank above the latter competing equitable interest.

Learned counsel for the 2nd& 3rd defendants formulated one issue for determination, which is:

Whether the claimant is entitled to the reliefs claimed having regards to the decision of the Supreme Court in **Madu v. Madu [2008] 6 NWLR [Pt. 1083] P. 296.**

For his part, learned senior counsel for the claimant posed one issue for determination, to wit:

Whether having regard to the pleading and evidence in the case especially Exhibits C1-C17, the claimant has discharged the burden of proof on it to be entitled to the reliefs sought in this suit.

Now, the claimant's first relief is a declaration that he is entitled to the equitable, rightful and beneficial ownership of Plot No. 585 [also referred to as Plot No. PFS 585] of about 1500m² in Zuba II Part II Layout, Abuja. It is trite law that a party seeking a declaratory relief must adduce credible and sufficient evidence to prove his case. The party seeking a declaratory relief must succeed on the strength of his[or its] 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 instant case, the claimant has the burden to prove by credible and sufficient evidence that it is entitled to the declaratory order in relief 1 and the other reliefs sought. I pause to remark *albeit* in passing that the 1st defendant has no counter claim; thus, it has no burden of proof.

From the case presented by the parties and the submissions made on their behalf, the Court is of the considered view that four issues call for resolution in this action. These are:

1. Whether the 2nd additional witness statement on oath of CW1 filed on 17/2/2021, which he adopted on 28/3/2022, can be relied upon by the claimant.

2. Whether the claimant has a valid writ of summons before the Court.
3. Whether the Conveyance of Provisional Approval granted to EnyiEnyi Int. Ltd. [the claimant's predecessor in title] by Gwagwalada Area Council on 2/4/2001 before EnyiEnyi Int. Ltd. was incorporated as a limited liability company is valid.
4. If the answer to Issue 3 is in the affirmative, whether the claimant has proved that the grant of the said Plot to EnyiEnyi Int. Ltd. [its predecessor in title] by Gwagwalada Area Council is valid; and that it is entitled to the reliefs sought.

ISSUE 1

Whether the 2nd additional witness statement on oath of CW1 filed on 17/2/2021, which he adopted on 28/3/2022, can be relied upon by the claimant.

Submissions of Learned Counsel for the 1st Defendant:

Learned counsel for the 1st defendant argued that the claimant's 2nd additional statement on oath filed by CW1 on 17/2/2021 is not valid as it was not filed with the writ of summons and leave was not

sought and obtained to file and use it. He referred to Order 2 rule 2[2][c] of the Rules of the Court, 2018 which provides that all civil proceedings commenced by writ of summons shall be accompanied by: “*Written statements on oath of the witnesses, except a subpoenaed witness*”.

Dr. Elijah Oluwatosin Okebukola submitted that the evidence and documents presented through the said process i.e. the certificates of incorporation of the claimant and that of EnyiEnyi Int. Ltd. go to no issue. It was further submitted that the claimant has not established that it is a juristic person who can sue and be sued. Counsel urged the Court to dismiss the case as the claims will have no foundation to stand in the absence of a valid claimant.

Submissions of Learned Senior Counsel for the Claimant:

Learned senior counsel for the claimant stated that the matter started *de novo* before this Court, which implies a new hearing of the matter conducted as if the original hearing had not taken place. This means that the claimant “*is given another chance to relitigate the same matter and restructure it as each may deem fit.*” He referred to **Governor of Borno State & Anor. v. Ali [MNI] & Ors. [2014]**

LPELR-23544 [CA] and other cases on the meaning and effect of a matter starting *de novo*.

J. J. Usman, SAN argued that the above argument of learned counsel for the 1st defendant was not an issue during the trial and adoption of the 2nd additional statement on oath of CW1. He submitted that the 1st defendant's counsel has not placed anything before the Court to support his argument and same should be discountenanced.

Decision of the Court:

Learned counsel for the 1st defendant is correct that the 2nd additional statement on oath filed by CW1 on 17/2/2021 was not filed with the leave of the Court. I note that the 2nd additional statement on oath of CW1 was attached as Exhibit B to claimant's motion *No. M/1392/2021* filed on 17/2/2021 for, *inter alia*, leave of the Court to re-open the claimant's case which was closed on 26/11/2020. From the records in the case file, the said motion was not argued or moved; so, the leave sought therein was not granted by the Court.

With due respect, I do not agree with the view of the learned senior counsel for the claimant that since hearing in the case started *de novo*

the claimant *“is given another chance to ... restructure”* its case as it deemed fit. My humble view is that leave of the Court was required to file the 2nd additional statement on oath of CW1.

Be that as it may, the question is whether the 2nd additional statement on oath of CW1 now under attack is invalid as it was filed without leave of the Court. In my humble opinion, the filing of an additional statement on oath is a procedural step and failure to obtain leave of Court before filing it is a procedural irregularity by virtue of Order 5 rule 1[2] of the Rules of the Court, 2018, which provides:

“Where at any stage in the course of or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to time, place, manner, or form, such failure may be treated as an irregularity. ...”

Order 5[2][1] of the Rules of the Court provides for application to set aside any procedural irregularity thus:

“An application to set aside for irregularity any step taken in the course of any proceedings may be allowed where it is made within a

reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.”

In **Ayanwale v. Atanda[1988] LPELR-671 [SC]**, the Supreme Court held that where a party has consented to a wrong procedure at the trial and in fact suffers no injustice, it would be too late to complain that the wrong procedure was followed. It was also held that where a statement of claim was filed out of time, served on the defendant as such and the latter filed a statement of defence without protest and allowed the case to proceed to trial and final determination, it would be too late for such defendant to complain on appeal against the statement of claim.

Flowing from the foregoing, I hold that the filing of the 2nd additional statement on oath of the CW1 without leave of Court is a procedural irregularity, which can be waived. Since 1st defendant did not raise any objection when the CW1 adopted his 2nd additional statement on oath on 28/3/2022 and did not file any application within a reasonable time to set it aside, it is deemed to have waived the irregularity. As rightly stated by J. J. Usman, SAN, this issue cannot be raised in the final address.

The decision of the Court is that the 2nd additional witness statement on oath of the CW1 filed on 17/2/2021 which he adopted on 28/3/2022 can be relied upon by the claimant. Issue1 is hereby resolved in favour of the claimant.

ISSUE 2

Whether the claimant has a valid writ of summons before the Court.

Submissions of Learned Counsel for the 1st Defendant:

Dr. Elijah Oluwatosin Okebukola stated that on 27/2/2019, the Court [Coram: *Hon. Justice Peter O. Affen, J. as he then was*] directed the claimant to join the Hon. Minister of FCT and FCDA as defendants. The claimant filed the amended writ of summons out of time on 21/6/2019, a period of about 120 days from the date of the order to amend. The claimant sought and obtained the order of the Court for extension of time to file the amended writ of summons and an order to deem same as properly filed and served.

Learned counsel for the 1st defendant argued that a writ of summons is not a process that can be deemed as properly filed and served

because it is a process that commences proceedings. In support of his view, he referred to Chidobi v. Ujieze [1994] 2 NWLR [Pt. 328] 554 and other cases listed in paragraphs 4.16 & 4.17 of the 1st defendant's final address. Dr. Okebukola concluded that the claimant does not have a valid writ of summons before the Court.

In the 1st defendant's reply on points of law, learned counsel for the 1st defendant stressed that the deeming of an originating process is not a procedural issue that can be waived but it has been held to be unlawful by the Supreme Court.

Submissions of Learned Senior Counsel for the Claimant:

J. J. Usman, SAN stated that on 27/2/2019, the Court [Coram: *Hon. Justice Peter O. Affen, J. as he then was*] ordered that the Hon. Minister of FCT and FCDA be joined as parties to the suit. The claimant did so within time and filed the amended writ of summons on 11/3/2019. On the date slated for hearing of the suit, the 1st defendant objected that the order made was to join FCDA and not FCTA. The claimant applied for and obtained the certified true copy of the record of proceedings and found that the order made was to join FCDA.

The claimant then filed an application for extension of time to amend pursuant to the order for joinder and a deeming order, which the 1st defendant did not oppose. The Court granted the application and deemed the amended writ of summons and statement of claim already filed on 21/6/2019 as properly filed and served. Thereafter, the defendants filed their respective statements of defence.

Learned senior counsel argued that the amended writ of summons is valid as there is no provision in Order 25 of the Rules of the Court to the effect that the Court cannot make a deeming order when a writ of summons is amended with the leave of the Court. Assuming the Court ought not to have made the deeming order, the 1st defendant, having consented or acquiesced to the procedure and filed its statement of defence, cannot be heard to complain at this stage. He cited Ndayako & Ors. v. Dantoro & Ors. [2004] LPELR-1968 [SC] and Phenix Associates Ltd. & Anor. v. Ore [2019] LPELR-47584 [CA].

Decision of the Court:

Now, Order 25 rules 1 & 4 of the Rules of the Court, 2018 provide:

1. *A party may amend his originating process and pleading at any time before the pre-trial conference and not more than twice during the trial but before the close of the case.*

4. *If a party who has obtained an order to amend does not do so within the time limited for that purpose, or if no time is limited, then within 7 days from the date of the order, such party shall pay an additional fee of N100 [One hundred Naira] for each day of default.*

By the above provision, I do not agree with learned counsel for the 1st defendant that an originating process [such as writ of summons] which was amended with the leave of the court cannot be deemed as properly filed by the Court. My humble opinion is that the Court has the discretionary power to deem an amended originating process filed out of time as properly filed upon payment of the default fee for late filing prescribed by Order 25 rule 4 of the Rules of the Court. The cases cited by 1st defendant's counsel are not applicable to this case.

I note that since the deeming order was made by the Court about 3 years ago, the 1st defendant did not complain and did not apply to

set aside the order. The 1st defendant filed its statement of defence in response to claimant's amended processes and the matter proceeded to trial. I adopt my view under Issue 1 that even if the deeming order was a procedural irregularity or error, the 1st defendant is deemed to have waived the irregularity or error and ought not to complain at the stage of final address.

Finally on this Issue, the deeming order now challenged by the 1st defendant was made by My Lord, *Hon. Justice Peter O. Affen, J. [as he then was]* in exercise of the discretionary powers of the Court. If the 1st defendant is peeved or displeased by the exercise of the Court's discretion, the proper step to take, in my respectful view, is to appeal against the order. The Court cannot set aside the deeming order or treat the writ of summons as invalid. Thus, the decision of the Court is that the claimant has a valid amended writ of summons, which was filed on 21/6/2019.

ISSUE 3

Whether the Conveyance of Provisional Approval granted to EnyiEnyi Int. Ltd. [the claimant's predecessor in title] by

Gwagwalada Area Council on 2/4/2001 before EnyiEnyi Int. Ltd. was incorporated as a limited liability company is valid.

Submissions of Learned Counsel for the 1st Defendant:

The 1st defendant's counsel contended under his Issue No. 3 that Gwagwalada Area Council cannot validly allocate land in FCT. His contention on the issue under focus is that even if Gwagwalada Area Council could convey a valid title in respect of land in FCT, such title could not have been conveyed to EnyiEnyi Int. Ltd. [the claimant's predecessor in title] because the company was not in existence at the time the said land was purportedly conveyed to it.

Dr. Okebukola noted that by the Certificate of Incorporation [Exhibit C14], EnyiEnyi Int. Company Ltd. was incorporated on 6/3/2003; and EnyiEnyi Int. Company Ltd. is not the same as EnyiEnyi Int. Ltd. Thus, there is no evidence of the existence of EnyiEnyi Int. Ltd. It was argued that even if the Certificate of Incorporation [Exhibit C14] belongs to EnyiEnyi Int. Ltd., it was not in existence [or was not a legal entity] in 2001 when Gwagwalada Area Council purportedly granted or allocated the said land claimed by the claimant.

The 1st defendant's counsel relied on Georgewill v. Ekine [1998] 8 NWLR [Pt. 562] 454 to support the view that a company becomes a body corporate from the date of its incorporation. He also cited the case of S.G.B. [Nig.] Ltd. v. S.G.F. [1991] 3 NWLR [Pt. 384] 497 to support the view that an offer or acceptance cannot be made to or by a non-existent person. He submitted that the transaction between Gwagwalada Area Council and EnyiEnyi Int. Ltd. in 2001 was illegal and invalid; and the claimant cannot acquire a valid interest from the said illegal and invalid transaction.

Dr. Elijah Oluwatosin Okebukolapositioned that the Court cannot lend its aid to the claimant whose cause of action is based on an illegal act of allocation of land to a non-existent entity. He concluded that the purported conveyance or grant to EnyiEnyi Int. Ltd. in 2001 is void *ab initio* and invalid. Therefore, EnyiEnyi Int. Ltd. did not acquire any interest in land and could not pass any interest to the claimant.

Submissions of Learned Senior Counsel for the Claimant:

The viewpoint of J. J. Usman, SAN is that a pre-incorporation contract is generally made by the promoters of a company with the

intention that such contracts would be ratified or adopted or otherwise taken over on incorporation. He cited Trans Bridge Co. Ltd. v. Survey Int'l Ltd. [1986] LPELR-3263 [SC] in support. At page 41 of the claimant's final address, the learned senior counsel submitted that:

"... the court is bound by the evidence before it and that the first promoters of a Company can enter into contract on behalf of the company and such contract would be ratified or adopted when Incorporation of the company is done. And which is the position of EnyiEnyi Int. Ltd. before it was incorporated. Therefore, the argument of the 1st Defendant is lame and cannot be adopted."

Learned SAN referred to the argument of the 1st defendant's counsel as *"a figment of speculation"* and submitted that it behoves on the 1st defendant who asserted that EnyiEnyi Int. Ltd. and EnyiEnyi Int. Company Ltd. are not the same to prove it. He reasoned that there is no difference between the names; it is just an addition of *"Company"* to the name.

Decision of the Court:

As rightly stated by counsel for the 1st defendant, the name in the Certificate of Incorporation [Exhibit C14] is “*EnyiEnyi International Company Limited*” while the name in the Conveyance of Provisional Approval dated 2/4/2001 [Exhibit C1] is “*EnyiEnyi Int. Limited.*” The Court is of the view that the addition of the word “*Company*” to “*EnyiEnyi Int. Limited*” in Exhibit C14 is not fundamental as to lead to the conclusion that Exhibit C14 is not the Certificate of Incorporation of EnyiEnyi Int. Ltd.

The Court will consider Issue 3 on the premise that Exhibit C14 is the Certificate of Incorporation of EnyiEnyi Int. Ltd. [the claimant’s predecessor in title]. The question to resolve is whether the grant or allocation of the said Plot to EnyiEnyi Int. Ltd. on 2/4/2001 when it was not incorporated and therefore was not a legal or juristic person is valid.

In **FCDA & Ors. v. Unique Future Leaders Int’l [2014] LPELR-23170 [CA]**, one of the issues before the Court of Appeal was whether Tahfeezul Quran is a registered business name, with capacity to own land. It was held that a business name, such as the 3rd appellant, does not have the requisite capacity to hold land in its name. The Court of Appeal [Per *Mustapha, JCA*] further held that:

"... an unincorporated body is not a juristic person and cannot enter into any contract or transaction and/or own land in its unincorporated name, save through trustees:Bankole &Ors. v. Emir Industries Ltd [2012] LPELR-19719 [CA]."

I hold that the above decision applies to the instant case with equal force. The effect is that the grant of the said Plot to EnyiEnyiInt. Ltd. on 2/4/2001 by Gwagwalada Area Council when it was not a juristic or legal person was/isinvalid. As at 2/4/2001, EnyiEnyi Int. Ltd. did not have the legal capacity to own land. I agree with 1st defendant's counsel that the said grant was *void ab initio* and therefore invalid.

The argument of the learned Senior Advocate of Nigeria predicated on pre-incorporation contract is not applicable to this case. The case of **Trans Bridge Co. Ltd. v. Survey Int'l Ltd. [supra]** relied upon by the learned senior counsel is not helpful to the claimant's case. In that case, it was restated that before a company is incorporated, a valid contract can be made with the promoter of such company; it is not a contract made with the company which is in law non-existent.

In any event, the claimant's case is not that the said Plot was granted to the promoters of EnyiEnti Int. Ltd. and later ratified by the company after it was incorporated as a limited liability company. The case of the claimant in paragraph 5 of its amended statement of claim is that on 2/4/2001, *"Gwagwalada Area Council by a Conveyance of Provisional Approval, approved the allocation of Plot No. 585 ...to EnyiEnyi Int. Ltd."*

In my respectful view, the submission of the learned SAN that the promoters of EnyiEnyi Int. Ltd. entered into a pre-incorporation contract on behalf of the company and same was ratified by the company after its incorporation are issues of fact which ought to be pleaded and proved.

Finally on Issue 3, I have considered the fact that the Certificate of Occupancy [Customary], Exhibit C2, was issued to EnyiEnyi Int. Ltd. by the Chairman of Gwagwalada Area Council on 31/12/2003 after its incorporation. However, the term of 55 years granted by the Certificate of Occupancy [Customary] commenced on 11/11/2002 before the date of incorporation of EnyiEnyi Int. Ltd.

In the opinion of the Court, the fact that the Certificate of Occupancy [Customary] was issued after the incorporation of EnyiEnyi Int. Ltd. will not affect the decision of the Court because by section 9[1] of the Land Use Act, a certificate of occupancy is evidence of an existing grant of a right of occupancy; it is not a fresh grant. See the case of Citec [Int'l] Estate Ltd. v. Eyiboh [2018] LPLER [44458] [CA].

From the foregoing, the decision of the Court is that the Conveyance of Provisional Approval granted to EnyiEnyi Int. Ltd. [the claimant's predecessor in title] by Gwagwalada Area Council on 2/4/2001 before EnyiEnyi Int. Ltd. was incorporated as a limited liability company is invalid. Thus, EnyiEnyi Int. Ltd. did not have any legal or equitable right or title over the Plot to transfer to Milton Nigeria Ltd.; and Milton Nigeria Ltd. did not have any legal or equitable right or title over the Plot to transfer to the claimant.

The claimant's suit ought to be dismissed on the basis of the above decision. However, bearing in mind that this Court is not a final Court, I will consider Issue 4 in the event that the Appellate Court

finds that the above decision is wrong and that the answer to Issue 3 is in the affirmative.

ISSUE 4

If the answer to Issue 3 is in the affirmative, whether the claimant has proved that the grant of the said Plot to EnyiEnyi Int. Ltd. [its predecessor in title] by Gwagwalada Area Council is valid; and that it is entitled to the reliefs sought.

Submissions of Learned Counsel for the 1st Defendant:

Dr. Elijah Oluwatoyin Okebukola referred to Ona v. Atenda [2000] 5 NWLR [Pt. 656] 244 and Madu v. Madu [2008] LPELR-1806 [SC] to support the view that by virtue of section 18 of the FCT Act, only the Minister of FCT can grant statutory right of occupancy over all lands in FCT. He submitted that there is no way Gwagwalada Area Council could have conveyed a valid title to EnyiEnyi Int. Ltd. [the claimant's predecessor in title].

The 1st defendant's counsel argued that the letter of authentication dated 17/5/2010 [Exhibit C4] purportedly issued by the Department

of Land Administration of the 3rd defendant and signed by HusainiSalihu A. Ismaila cannot change the reality that the certificate of occupancy issued by Gwagwalada Area Council was invalid and incapable of conveying land to EnyiEnyi Int. Ltd. The evidence of DW1 is that no officer under the Minister of FCT is authorized to allocate land. It was submitted that Exhibit C4 cannot give life to the “worthless” certificate of occupancy issued by Gwagwalada Area Council.

It was further contended on behalf of the 1st defendant that the power to allocate land in the FCT is delegated by the President of the Federal Republic of Nigeria to the Minister of FCT. Thus, the Minister of FCT could not have delegated the power to Gwagwalada Area Council; the principle is *delegatus non potest delegare*. The claimant took steps to attempt to cure the defect in its title, but the steps did not cumulate into the allocation of the said Plot by the 2nd defendant.

Dr.Okebukola submitted that the 1st defendant has legal or equitable interest over the land in dispute that was first in time and therefore ranks above the competing claimant’s “supposed equitable interest”.

He cited Barbedos Ventures Ltd. v. F.B.N. Plc. [2018] 4 NWLR [Pt. 1609] 241 to support the view that estates and interests rank in the order of their creation. Counsel reasoned that the survey plan and the other “*administrative documents*” tendered by the DW1 are consistent with the 1st defendant’s assertion that it has legal interest in the land. The claimant has not denied the authenticity of the documents [Exhibits D13-D19] and the fact that the land in dispute falls within the wide expanse described in the documents.

In the 1st defendant’s reply on points of law, Dr. Elijah Oluwatoyin Okebukola relied on the case of Engr. Yakubu Ibrahim & 3 Ors. v. Simon I. Obaje [2005] All FWLR [Pt. 282] 365 to support the view that certificate of occupancy [customary] is unknown in FCT.

Submissions of Learned Counsel for the 2nd & 3rd Defendants:

Learned counsel for the 2nd & 3rd defendants stated that the claimant relied on Exhibits C1 and C2, which purportedly emanated from Gwagwalada Area Council, as the root of its title to the land. By section 1[3] of the FCT Act, ownership of the lands in FCT was vested in the Government of the Federation while section 18 of the

said Act vested power in the Minister of the FCT to grant statutory rights of occupancy over such lands to any person.

Felix U. Ibanga Esq. referred to Ona v. Atenda [supra] to support the view that the provision of the Land Use Act which designated lands into urban and rural [or non-urban] is not applicable to lands in FCT; and there is no customary right of occupancy in FCT. He also relied on Madu v. Madu [supra]. He urged the Court to hold that Exhibits C1 and C2 are null and void and cannot confer title to the claimant having not emanated from the Hon. Minister of FCT.

Submissions of Learned Senior Counsel for the Claimant:

J. J. Usman, SAN stated that the claimant, in order to establish title to the said Plot, tendered Exhibits C1-C6 & C9; which were issued by the 2nd & 3rd defendants. He referred to the evidence of DW2. By issuing Exhibits 3, 4, 6 & 9, the 2nd & 3rd defendants regularized the title of EnyiEnyi Int. Ltd. Where there is regularization of title to land by the 2nd & 3rd defendants, as in the instant case, every previous allocation has been ratified. He cited the case of Carlen [Nig.] Ltd. v. Unijos [1994] 1 NWLR [Pt. 323] 631 and other cases on the effect of ratification.

The learned SAN argued that even though the decisions in *Ona v. Atenda* and *Madu v. Madu* are good law based on what they decided, they are not applicable to the instant case. In those cases, there was no evidence of the employees of the 2nd & 3rd defendants acting for the Minister of FCT or the ratification of the acts of the employees. He submitted that the acts of the employees of 2nd & 3rd defendants are the acts of the 2nd defendant especially where same had been ratified or regularized by collecting money from EnyiEnyi Int. Ltd. for regularization and approval.

The learned senior counsel relied on the unreported decision of *Hon. Justice Peter O. Affen, J. [as he then was]* dated 14/3/2011 in *Suit No. FCT/HC/CV/2138/2010: Blessed and Precious Children Academy Ltd. & 2 Ors. v. Federal Capital Development Authority & 2 Ors.* and the case of *Caltona Ltd. v. Works Commissioners [1943] 2 All ER 560* to support the principle that the powers of the Minister can be exercised by experienced officials under his Ministry.

It was submitted on behalf of the claimant that by the evidence of CW1 and the Deeds of Assignment [Exhibits 7 & 8], the claimant has proved that it has equitable and beneficial interest in the land in

dispute. The documents tendered by DW1 [Exhibits D13-D19] are internal documents of the Ministry of Defence. None of the exhibits is a title document. Exhibits D13-D19 cannot confer legal or equitable title on the 1st defendant. The argument that 1st defendant's equitable interest ranks above that of the claimant is predicated on nothing.

Decision of the Court:

Learned counsel for the 1st defendant and for the 2nd & 3rd defendants are correct that by the decision in the case of Madu v. Madu, only the Minister of FCT can grant statutory right of occupancy over all lands in FCT. In Ona v. Atenda, it was held that there is no customary right of occupancy in FCT. Both learned defence counsel relied on these decisions and argued that the grant to EnyiEnyi Int. Ltd. is invalid.

However, it appears to me that the facts of this case are peculiar. It is correct that the Conveyance of Provisional Approval and Certificate of Occupancy [Customary], Exhibits C1 and C2, were issued to EnyiEnyi Int. Ltd. by Gwagwalada Area Council. The evidence of CW1, which is unchallenged, is that the 2nd defendant through

AGI Scalled on beneficiaries of Area Council allocations of land to submit their title documents for regularization. The claimant submitted its title documents and was issued an Acknowledgement[Exhibit C3] by the 2nd& 3rd defendants.

There is a Disclaimer in Exhibit C3 that: *"This acknowledgement does not in any way validate the authenticity of the documents described above. All documents are subject to further verification for authenticity."* By letter dated 17/5/2010 [Exhibit C4] from Department of Land Administration of the 2nd& 3rd defendants signed by Husaini Salihu A. Ismaila [for: Director Lands], the verification/authentication envisaged in Exhibit C4 was conveyed. The letter addressed to Kabiru Suleiman c/o EnyiEnyi Int'l Ltd. reads:

RE-APPLICATION TO AUTHENTICATE MY LANDED PROPERTY SITUATED AT ZUBA II PLOT NO. PFS 585 IN GWAGWALADA AREA COUNCIL.

The above refers.

I am directed to inform you that your title document in respect of Plot No. PFS 585 cadastral zone 04-07, Gwagwalada covered by Certificate of Occupancy No. FCT/GAC/RLA/MISC 4077 was verified and found genuine.

You are therefore advised to submit your application for building plan approval to the department of development control [AMMC].

Thank you.

In line with the advice in Exhibit C4, EnyiEnti Int. Ltd. submitted its building plan to the Development Control Department of the 2nd& 3rd defendants for approval. The Director of Development Control Department [Yahaya A. Yusuf] issued the document titled: *Settlement of Building Plans* Fedated 15/3/2012 to EnyiEnyi Int. Ltd. wherein he stated the sum of N2,723,222.14 as the fee for building plan approval. EnyiEnyi Int. Ltd. paid the said fee and was issued the receipt dated 4/12/2013 [Exhibit C5].

By the letter dated 13/3/2014 [Exhibit C6], Yahaya A. Yusuf conveyed the building plan approval to EnyiEnyi Int. Ltd. CW1 also tendered the document titled: *Confirmation Form* dated 14/8/2014 [Exhibit C9] issued by the Gwagwalada Zonal Planning Office of 3rd defendant which confirmed that EnyiEnyi Int. Ltd is the title holder of the right of occupancy over the said Plot 585.

The 2nd& 3rd defendants did not dispute or deny the above facts and the authenticity of Exhibits C3, C4, C5, C6 and C9. When DW2 was cross examined, he confirmed that: [i] before 2006, Area Councils in Abuja used to allocate lands; [ii] from 2006, the FCTA requested allottees of Area Council lands to come forward for regularization; [iii] there are zonal managers in every Area Council who are employees of FCTA; and [iv] Exhibits C1-C6 & C9 are from FCDA.

In the light of these peculiar facts, can the 2nd& 3rd defendants assert or claim that they did not regularize or ratify the grant of the said Plot 585 by Gwagwalada Area Council to EnyiEnyi Int. Ltd.? The case of Caltona Ltd. v. Works Commissioners [supra] cited by the learned SAN is apt on this issue. My Lord, *Hon. Justice Peter O. Affen, J. [as he then was]* applied the principle in that case in the Judgment in *Suit No. FCT/HC/CV/2138/2010: Blessed and Precious Children Academy Ltd. & Ors. v. FCDA & Ors.* dated 14/3/2011.

In Caltona Ltd. v. Works Commissioners [supra], the argument relating to sub-delegation of statutory powers was that the person who had the power to act for or on behalf of the Commissioners of

Works under the relevant statute was the First Commissioner, but that the person who in fact acted for the First Commissioner was the Assistant Secretary. *Lord Greene, MR*, in rejecting the argument that the First Commissioner [being the delegate of the Commissioners of Works] did not personally direct his mind to the matter, held at page 563 of the Report thus:

“In the administration of government in this country, the functions which are given to ministers ... are functions so multifarious that no minister could personally attend to them... The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the [minister’s] department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before the Parliament for anything that his officials have done under his authority...”

In the instant case, the Court holds that responsible officials in the office of the 2nd& 3rd defendants like Husaini Salihu A. Ismaila and Yahaya A. Yusuf can validly act on behalf of the 2nd defendant

unless the duty is such that can only be performed by the 2nd defendant personally. The Court also holds that Exhibits C3, C4, C5 and C6 were issued by responsible officials of 2nd& 3rd defendants in furtherance of the policy of the 2nd& 3rd defendants for the regularization of plots of land allocated by Area Councils in FCT.

There is no credible evidence to suggest that the 2nd& 3rd defendants were not aware of Exhibits C3, C4, C5 and C6. For instance, in Exhibit C4, Husaini Salihu A. Ismaila stated: *"I am directed to inform you ..."* Also, in the document titled: *Settlement of Building Plan Fees*, Yahaya A. Yusuf stated: *"I am directed to inform you ..."* Moreover, the 2nd& 3rd defendants collected the sum of N2,723,222.14 paid by EnyiEnyi Int. Ltd. as building plan fee and issued the receipt, Exhibit C5.

The decision of the Court is that the 2nd& 3rd defendants, by Exhibits C3, C4, C5 and C6, regularized or ratified the grant of the said Plot 585 made by Gwagwalada Area Council to EnyiEnyi Int. Ltd. and approved its building plan to develop same. The evidence of DW1 is that EnyiEnyi Int. Ltd. assigned its equitable title over the Plot to Milton Nigeria Ltd. vide the Deed of Assignment [Exhibit

C8].Milton Nigeria Ltd. also assigned its equitable title over the Plot to the claimant vide the Deed of Assignment [Exhibit C7].

The result of the foregoing is that the claimant has established that it has equitable and beneficial interest in the said Plot. The Court is in agreement with J. J. Usman, SAN that the legal or equitable interest claimed by the 1st defendant in respect of the Plot in dispute is not supported by any title document granted by the 2nd defendant or at all. Exhibits D13-D19 are not documents of title to land. In the light of the foregoing, the claimant is entitled to the declaration in relief 1 and the orders of perpetual injunction in reliefs 2 and 3.

In respect of relief 4 for general damages of N10,000,000, there is no evidence to support the grant of the relief as the claimant's case is that it is still in possession of the Plot in issue. The quit notice dated 1/9/2016 served on it by the 1st defendant led to the institution of this suit on 21/10/2016. Relief 4 is refused.

Conclusion:

As I said before, the consideration of Issue 4 became necessary in the event that My Lords of the Appellate Court find that the

Court's decision on Issue 3 is wrong. Based on the Court's decision on Issue 3 that the grant of the said Plot to EnyiEnyi Int. Ltd. [the claimant's predecessor in title] on 2/4/2001 before it was incorporated on 6/3/2003 is not valid, this suit is dismissed. No order as to costs.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Learned Counsel:

1. G. O. Elias Esq. for the claimant.
2. Prof. Elijah O. Okebukola for the 1st defendant; with Reuben Chaku Esq. and Emmanuel Haruna Esq.
3. O. M. Adebambo Esq. for the 2nd & 3rd defendants; holding the brief of Mohammed Garba Bawa Esq.