

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

**ON TUESDAY, 17<sup>TH</sup> DAY OF JANUARY, 2023**

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

**SUIT NO. FCT/HC/CV/070/2018**

**BETWEEN**

**1. HALIMA SAMUEL**

*[Suing through her lawful attorney*

*Mr. Martin Anagboso*

**2. MR. MARTIN ANAGBOSO**



**CLAIMANTS**

**AND**

**1. MINISTER OF FEDERAL CAPITAL  
TERRITORY**

**2. FEDERAL CAPITAL DEVELOPMNT  
AUTHORITY**

**3. THE DIRECTOR, DEVELOPMENT  
CONTROLDEPARTMENT**



**DEFENDANTS**

**JUDGMENT**

The claimants instituted this suit on 1/11/2018 vide writ of summons. The pleadings in this case are: [i] the claimants' amended statement of claim filed on 23/12/2019; [ii] the defendants' amended statement of defence filed on 4/3/2022; and [iii] the claimants' reply to the defendants' amended statement of defence filed on 16/6/2021.

In their amended statement of claim filed on 23/12/2019, the claimants seek the following reliefs against the defendants jointly and severally:

1. A declaration that the purported Notice of Revocation dated the 21<sup>st</sup> day of September, 2018 is null and void and of no effect.
2. A declaration that the right of occupancy over Plot 1673, Cadastral Zone B05, Utako District, Abuja conveyed to the 1<sup>st</sup> claimant by the 1<sup>st</sup> defendant vide Certificate of Occupancy No. 67duw-12560-5b71r- 3b42u-10 dated 19<sup>th</sup> September, 2013 is valid and subsisting.
3. A declaration that by virtue of the right of occupancy granted to the 1<sup>st</sup> claimant by the 1<sup>st</sup> defendant, the 1<sup>st</sup> claimant is the beneficial owner and holder of the right, interest and title in and over Plot 1673, Cadastral Zone B05, Utako District, Abuja.
4. A declaration that the 2<sup>nd</sup> claimant has a legally cognizable interest in and over Plot 1673, Cadastral Zone B05, Utako District, Abuja and is entitled to legal remedies against the defendants.
5. A declaration that the actions of the defendants are illegal, unwarranted, malicious and vexatious and calculated to illegally expropriate the claimants of their property rights in and over Plot 1673, Cadastral Zone B05, Utako District, Abuja.

6. An order of perpetual injunction restraining the defendants jointly and severally from revoking or, in any other way, manner or guise, tampering with the right of occupancy granted to the 1<sup>st</sup> claimant whether by way of diminution of the plot size, or re-designation of the Land Use and or purpose or howsoever.
7. An order of perpetual injunction restraining the defendants jointly and severally from interfering, stopping, fettering or in any manner disturbing the claimants' on-going development on Plot 1673, Cadastral Zone B05, Utako District, Abuja subject matter of this suit.
8. Order of the Court directing the defendants jointly and severally to pay to the claimants the sum of N14,000,000.00k [Fourteen Million Naira] as general damages.
9. The sum of N7,000,000.00k [Seven Million Naira] as solicitor's fee and costs of prosecuting this suit.

The 2<sup>nd</sup> claimant testified as CW1. He adopted his statement on oath filed on 23/12/2019 and his additional statement on oath filed on 16/6/2021. The CW1 tendered Exhibits 1 - 21. The 1<sup>st</sup> claimant gave evidence as CW2 and adopted her statement on oath filed on 24/6/2021. Jibril Mahmud Usman, a staff of the defendants, was the DW1. He

adopted his statement on oath filed on 4/3/2022 and tendered Exhibits 22, 23, 24, 25A, 25B & 25C.

**Evidence of Martin Anagboso [the 2<sup>nd</sup> Claimant] - CW1:**

The evidence of CW1 is that the 1<sup>st</sup> claimant is the holder of the right of occupancy over Plot 1673, Cadastral Zone B05, Utako District, Abuja. In 2013, the 1<sup>st</sup> claimant was issued a statutory right of occupancy dated 4/4/2013 over the said Plot by the 1<sup>st</sup> defendant. Upon payment of the necessary fees by the 1<sup>st</sup> claimant, the 1<sup>st</sup> defendant acting through AGIS issued the Site Plan of the Plot dated 19/4/2013 and the Certificate of Occupancy No. 67duw-12560-5b71r-3b42u-10 to her. The Certificate of Occupancy is registered as No. 54873 at page 1 in volume 275 of the Certificate of Occupancy Register.

In 2016 when the 1<sup>st</sup> claimant sought to appoint him as her attorney to represent her in all matters pertaining to her said Plot, he applied to AGIS for a legal search on the status of the property. AGIS, vide a Legal Search Report dated 24/05/2016, confirmed that the statutory right of occupancy over the Plot was conveyed to Halima Samuel [the 1<sup>st</sup> claimant]. The 2<sup>nd</sup> defendant acting through AGIS also required the 1<sup>st</sup> claimant to settle the then outstanding ground rent. He, on behalf of the 1<sup>st</sup> claimant, made payment in the assessed sum of N110,109.00.

The CW1 further testified that the 1<sup>st</sup> claimant duly appointed him as her lawful attorney on 17/6/2016 and he later applied for registration of the Power of Attorney with AGIS and paid N102,000.00 for registration. The Power of Attorney was registered by AGIS as No. FC81 at page 81, Vol. 76PA of Lands Instruments Register on 22/10/2016. His appointment as the 1<sup>st</sup> claimant's lawful attorney was made for valuable consideration and being coupled with an interest is irrevocable.

In paragraphs 15 to 22 of his statement on oath, CW1 narrated how he wrote to the 2<sup>nd</sup> defendant's Department of Urban & Regional Planning for approval for development of a high-density structure on the Plot in line with the designation of the Plot in the site plan. In response, the Director of Urban and Regional Planning informed him vide a letter that the land use designation of the Plot is '*residential - low Density*'. Later, he submitted another architectural design for a low-density development on the Plot to the Department of Development Control.

Upon payment of the assessed Building Plan fee of N358,010.50, the Director of Development Control, on behalf of the Coordinator of Abuja Metropolitan Management Council [AMMC], conveyed the approval of the building plan which required that the development of the Plot should commence within 6 months from the date of approval, failing

which the approval will lapse. On 23/04/2018, the director of Development Control duly signed the building plan. Due to the requirement for immediate commencement of development on the Plot, he procured several building materials, entered into various contracts with different professionals and commenced the development of the approved house types on the Plot.

The further evidence of Martin Anagboso is that to his utter amazement, AMMC's Department of Development Control served on him a *Stop Work Notice* alleging non-compliance with development permit/approval for the Plot. They did not specify how he violated the development approval given to him. He has not in any way deviated from the approved building plan. On 14/9/2018, the law firm of Hezdeking & Co. wrote to defendants on his behalf to seek clarification in respect of the Stop Work Order. His solicitors wrote a reminder letter, which was delivered to the defendants on 17/10/2018. On 27/11/2018, the defendants replied and pleaded for patience pending the conclusion of their investigation on the Plot.

The said Stop Work Notice has prevented the professionals he engaged from giving the value for the monies he paid to them in pursuance of the contracts for service he entered with them; and is also causing the

wasting and washing away of some of the building materials he procured for the development of the building on the land. The materials that have wasted include 25 trips of laterite, 20 trips of sharp sand, 5 trips of aggregates and 50 Nos. 12 x2 inches boards. He has been put to great financial losses and other costs as stated in paragraph 32 of his statement on oath on account of the actions and directives/counter directives of the defendants and their agencies.

CW1 further stated that on 1/11/2018, he and the 1<sup>st</sup>claimant issued a writ of summons against the defendants challenging the said Stop Work Notice. The defendants attached a purported Notice of Revocation of the right of occupancy of the 1<sup>st</sup>claimant dated 21/9/2018 to their statement of defence filed on 14/11/2019 claiming that the claimants' said Plot and other adjoining Plot Nos. 1674 and 1675 are encroaching on the corridor of the interception Sewer Line Schedule 6. The assertion that there is a sewer line is "*chary*" as claimant's Plot is the only underdeveloped Plot in that section which comprises about 7 properties; all the other adjoining properties have been fully developed.

In the said approved building plan for the Plot, the sewer line was clearly shown, which traverses non-designated area for building into the adjoining plot at the back of Plot 1673. The adjoining plot at the back of

the said claimants' Plot has been built up and occupied. The reason for the purported revocation of the claimants' Plot was contrived in bad faith with a view to wresting possession of the Plot from the claimants and giving to a third party for a humongous amount of money.

CW1 concluded that the defendants never served him or the 1<sup>st</sup> claimant any notice of intention to revoke their interest in the said Plot or notice of revocation of the said Plot. The purported Notice of Revocation was hurriedly prepared and back-dated. He and the 1<sup>st</sup> claimant retained the services of the firm of Arthur Obi Okafor SAN & Associates at great financial cost to prosecute this action and has paid the sum of N7,000,000 to the learned Senior Advocate.

In his additional statement on oath filed on 16/6/2021, Martin Anagbososa said it is false that the Department of Development Control discovered sewage line on their said property after clearance had been given to them by the Department of Urban and Regional Planning.

CW1 tendered the following documents:

1. FCTA/AGIS revenue collector's receipt dated 18/04/2013: Exhibit 1.
2. FCTA/AGIS revenue collector's receipt dated 22/04/2013: Exhibit 2.
3. Site Plan titled: *Site Plan Showing Plot: Utako/B05/1673*: Exhibit 3.



4. Certificate of Occupancy dated 2/9/2013 issued to 1<sup>st</sup> claimant: Exhibit 4.
5. Legal Search Report dated 24/05/2016: Exhibit 5.
6. FCTA/AGIS revenue collector's receipt dated 20/07/2016: Exhibit 6.
7. Power of Attorney dated 17/6/2016 donated by the 1<sup>st</sup> claimant to the 2<sup>nd</sup> claimant: Exhibit 7.
8. FCTA/AGIS revenue collector's receipt dated 09/12/2016: Exhibit 8.
9. The 1<sup>st</sup> claimant's letter to the Director, Urban & Regional Planning titled: *Request for Control in respect of Plot No. 1673, Cad Zone B05, Utako District, FCT, Abuja* dated 5/12/2016: Exhibit 9.
10. Letter of the Director, FCTA Department of Urban & Regional Planning dated 17/03/2017 addressed to the 1<sup>st</sup> claimant: Exhibit 10.
11. Letter of AMMC Department of Development Control titled: *Settlement of Building Plan Fees* dated 12/12/2017 addressed to the 1<sup>st</sup> claimant: Exhibit 11.
12. FCTA official receipt dated 6/4/2018: Exhibit 12.
13. Letter of AMMC Department of Development Control titled: *Conveyance of Building Plan Approval* dated 19/4/2018 addressed to the 1<sup>st</sup> claimant: Exhibit 13.
14. Architectural Design Drawing titled: *Proposed Residential Development for Halima Samuel at Plot No. 1673, Cadastral B05, Utako, Abuja*: Exhibit 14.

15. Stop Work Notice dated 29/08/2018: Exhibit 15.
16. Letter dated 14/9/2018 written by Hezdeking & Co. to the Director of Development Control: Exhibit 16.
17. Letter of Reminder delivered to the Director of the Department of Development Control on 17/10/2018: Exhibit 17.
18. Letter of Reminder delivered to the Director of the Department of Land Administration on 17/10/2018: Exhibit 18.
19. Letter of AMMC Department of Development Control dated 27/11/2018 to Hezdeking & Co.: Exhibit 19.
20. Offer of Statutory Right of Occupancy dated 04/04/2013 addressed to the 1<sup>st</sup> claimant: Exhibit 20.
21. Joint statement of defence of the defendants in this Suit filed on 14/11/2019: Exhibit 21.

During cross examination of CW1, he stated that he did not know what a sewer line is but he saw something like a pit dug like a well in the adjoining plot. The “*facilities*” he had on the Plot like his gate, zinc he used to fence the Plot have been removed and the Plot has been cleared. Only his container is there. He is not aware that the defendants are trying to give him an alternative plot.

**Evidence of Halima Samuel [the 1<sup>st</sup> Claimant] - CW2:**

The evidence of CW2 is that the defendants did not serve any Notice of Revocation on her with respect to the said Plot, which lawfully belongs to her. The purported notice of revocation dated 21/9/2018 attached to the defendants' joint statement of defence filed on 14/11/2019, was hurriedly prepared and back-dated. The reason for the purported revocation notice of her property was contrived in bad faith with a view to wresting possession of the property from her and her lawful attorney and giving same to a third party.

During cross examination of the CW2, she stated that the address she provided when she applied for allocation of plot was No. 212 Nimco Estate, Mararaba, Keffi, Nasarawa State. It is correct that the said address would be the address the defendants will use to communicate any information to her in respect of the Plot. She was not at Nimco Estate in 2018 and she was not served any revocation notice. The revocation notice was hurriedly prepared and back-dated because there was no sewage on the Plot when it was allocated.

**Evidence of Jibril Mahmud Usman - DW1:**

In his evidence, DW1 stated that the defendants issued a statutory right of occupancy to the 1<sup>st</sup> claimant in respect of the said Plot 1673 on

4/4/2013 but same has been revoked on 21/9/2018. After the certificate of occupancy was issued to the 1<sup>st</sup> claimant and a power of attorney between her and the 2<sup>nd</sup> claimant was registered, it was discovered that the said Plot is encroaching on sewer lines or sewage drainage system. The 1<sup>st</sup> defendant received a report alerting him about a development on the said Plot which was believed to have encroached on sewer lines and action had to be taken immediately so as to safeguard the environment and also the life of the allottee of the Plot.

A team led by the Coordinator, Abuja Metropolitan Management Council [AMMC] visited the said Plot and discovered that one of the District's terminal sewer line and a service line for two adjacent plots are traversing Plot 1673 to the trunk sewer line running parallel to the adjoining stream thereby making it impossible for any building to be constructed on the Plot. There are internal Memos dated 11/9/2018 stating the reports of the investigation carried out by the Coordinator, AMMC and the Engineering Services Department after visiting the said Plot. After the reports of the investigation were submitted to the Executive Secretary, FCDA, he also sent this final report dated 11/9/2018 to the 1<sup>st</sup> defendant regarding the Plot and other affected plots that the sewer lines crossed.

It was after the 1<sup>st</sup> defendant received the above report that he instructed that the affected plots including the said Plot 1673 be revoked for overriding public interest. A revocation notice dated 21/9/2018 was issued by the 1<sup>st</sup> defendant to the claimants, revoking their rights and interests in the said Plot in order to maintain the Abuja Master Plan. The rights of occupancy covering all other plots/properties close to the said Plot 1673 or within its immediate vicinity found to be obstructing government sewage system have all been duly revoked or in the process of being revoked.

Jibril Mahmud Usman further testified that the defendants' powers under the applicable Land Use Legislations were duly and validly exercised as revocation of the said Plot and other adjoining properties obstructing government or public sewage system was carried out in the overriding interest of the public. The notice of revocation was "*personally served on the claimant.*" The defendants are already in the process of allocating an alternative plot to the claimant for development.

DW1 tendered these documents:

1. Memo signed by Engr. S. H. Ahmad, FNSE [Director, Engineering Services] dated 11/9/2018 addressed to the Executive Secretary, FCDA: Exhibit 22.

2. Memo signed by Engr. U. G. Jibrin, FNSE, OON [Executive Secretary, FCDA] dated 11/9/2018 addressed to the Hon.Minister, FCT: Exhibit 23.
3. Letter signed by Engr. U. G. Jibrin, FNSE, OON [Executive Secretary, FCDA] dated 11/9/2018 addressed to the Coordinator, Abuja Metropolitan Management Council: Exhibit 24.
4. Notices of revocation all dated 21/9/2018 addressed to 1<sup>st</sup> claimant, Fatima Felicia Sani and LetamWugayeWiwa: Exhibits 25A, 25B & 25C respectively.

During cross examination of DW1, he said he was not the one that served the notice of revocation. It was suggested to DW1 that in the Memos, Exhibits 22, 23 & 24, the observation related to sewage line as opposed to engineering service line as stated in the letter, Exhibit 19. In response, he stated that the Department of Engineering Services is responsible for constructing sewer lines in the whole of the FCT; and that engineering includes construction, sewer line, drainage, etc.

**Issues for Determination:**

When trial concluded, Chukwuka J. OliobiEsq. filed the defendants' final written address on 29/9/2022. Arthur Obi Okafor, SAN filed

claimants' final written address on 17/10/2022. The final written addresses of the parties were adopted on 24/10/2022.

In the defendants' final address, Chukwuka J. Oliobi Esq. formulated one issue for determination, which is:

Whether having regard to the facts contained in the claimants' statement of claim and the defendants' joint statement of defence and also evidence before this Honourable Court, the claimants have sufficiently made out a case to warrant this Honourable Court to grant the reliefs sought.

On the other hand, Arthur Obi Okafor, Senior Advocate of Nigeria also posed one issue for determination in the claimants' final address, to wit:

Whether the purported notice of revocation dated 21<sup>st</sup> September, 2018 can operate to expropriate, divest or extinguish the claimants' right of occupancy over the land in dispute.

In reliefs 1 to 5, the claimants seek declaratory orders. It is trite law 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 this case, the

claimants have the burden to establish by credible and sufficient evidence that they are entitled to the declaratory reliefs and the other reliefs sought.

It is not in dispute that the 1<sup>st</sup> defendant granted a statutory right of occupancy over Plot 1673, Cadastral Zone B05, Utako District, Abuja to the 1<sup>st</sup> claimant by virtue of the Offer of Statutory Right of Occupancy dated 4/4/2013 [Exhibit 20]. On 2/9/2013, 1<sup>st</sup> defendant issued a Certificate of Occupancy dated 2/9/2013 [Exhibit 4] to 1<sup>st</sup> claimant. The 1<sup>st</sup> claimant donated a Power of Attorney dated 17/6/2016 [Exhibit 7] to 2<sup>nd</sup> claimant. The main issue in dispute is whether the 1<sup>st</sup> claimant's right of occupancy over the said Plot has been revoked by the defendants.

From the foregoing, the Court is of the opinion that there are two issues for resolution in this case. These are:

1. Whether the notice of revocation dated 21/9/2018 [Exhibit 25A] revoked or extinguished the 1<sup>st</sup> claimant's statutory right of occupancy over Plot 1673, Cadastral Zone B05, Utako District, Abuja.
2. Whether the claimants are entitled to the reliefs sought.

## **ISSUE 1**



*Whether the notice of revocation dated 21/9/2018 [Exhibit 25A] revoked or extinguished 1<sup>st</sup> claimant's statutory right of occupancy over Plot 1673, Cadastral Zone B05, Utako District, Abuja.*

*Submissions of Learned Counsel for the Defendants:*

Learned counsel for the defendants referred to section 28[1] of the Land Use Act and the case of **Dantsoho v. Mohammed [2003] 6 NWLR [Pt. 817] 457**, which laid down the grounds for revocation of a statutory right of occupancy by the Governor of a State [or the Hon. Minister of FCT]. The grounds for revocation of a statutory right of occupancy include the requirement of the land by the Government for overriding public interest. The reason stated in the revocation letter issued to the claimants was "*overriding public interest*" in line with section 28[1] of the Land Use Act.

Chukwuka J. Oliobi Esq. submitted that the claimants' title over the Plot was revoked because there was the need to restore the Abuja Master Plan as the sewer line is passing through the said Plot; and to allow a structure to be built on it can result to blockage of the sewer line. This will be inimical to the allottee and the general public. It was stated in the notice of revocation that an alternative plot will be allocated to the claimants in due course. Plot 1673 was not the only plot that was

revoked as Plots 1674 and 1675, Utako District, Abuja, which have the same sewer line running through them, were also revoked and revocation notices [Exhibit 25B and 25C] were served on the allottees of the plots.

The further submission of Mr. Oliobiis that the 1<sup>st</sup>claimant was duly and properly served with the revocation notice dated 21/9/2018 [Exhibit 25A] in line with section 28[6] of the Land Use Act. He urged the Court to hold that the claimants do not have any valid title over the Plot as same has been validly revoked by 1<sup>st</sup>defendant in accordance with the provisions

of the Land Use Act. The legal right of the claimants over the Plot in issue became extinguished when they received the notice of revocation as provided by section 28[7] of the Land Use Act.

The learned defence counsel concluded that allocating an alternative plot to the claimants is the only remedy available to them as granting their reliefs will cause more harm to the environment.

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

The learned SAN for the claimants referred to section 44 of the Land Use Act, which provides that for notice of revocation to be valid and capable

of extinguishing the interest of a holder of a certificate of occupancy, such notice must, among other things, be served personally on the said holder. He referred to the case of CIL Risk & Asset Management Ltd. v. Ekiti State Government & Ors. [2020] LPELR-49565 [SC] and other cases to support the submission that the service of notice of revocation on the holder of a right of occupancy is a condition precedent to the revocation of a right of occupancy and the mode of service of the notice is prescribed in section 44 of the Land Use Act.

Arthur Obi Okafor, SAN stated that under cross examination, the DW1 admitted that he was not the person that served the notice of revocation on the 1<sup>st</sup> claimant or the adjoining land owners. It was submitted that the best evidence of service of notice of revocation should directly come from the person who served the notice. Thus, the evidence of DW1 is hearsay evidence. He cited Buhari v. Obasanjo [2005] 2 NWLR [Pt. 910] 241 and other cases to support the principle that hearsay evidence is inadmissible.

Learned senior counsel for the claimants referred to paragraph 17 of the amended statement of defence where the defendants averred that the notice of revocation was *“personally served on the claimant.”* He noted that during the cross examination of the 1<sup>st</sup> claimant [as the CW2], the defence counsel asked questions to the effect that at the time of the

purported service of the notice of revocation, she was no longer living at the address in the records of the defendants or that she had changed her address. It was argued that this line of cross examination is unavailing in view of paragraph 17 of the amended statement of defence. He submitted that:

*“Defendants cannot be allowed to deviate from their pleadings even in the interest of justice. ... In effect, the only evidence that can fit in, into the case of the Defendants is to show that CW2 was served personally and not to begin to pontificate that CW2 changed her address.”*

The learned Senior Advocate of Nigeria relied on **Fabiyi v. Adeniyi [2000] 6 NWLR [Pt. 662] 532** and other cases to support the principle that a court in deciding cases *“must not, even when the interest of justice so demands, stray from the pleadings”* but the court must confine itself within the limits of the pleadings of the parties. He submitted that the defendants failed to prove that the notice of revocation was served on the 1<sup>st</sup> claimant personally. They also failed to prove that the notices of revocation were served on the owners of adjoining plots to the said Plot 1673.

Arthur Obi Okafor, SAN drew the attention of the Court to the Power of Attorney [Exhibit 7] which was duly registered in AGIS. He reasoned

that if indeed the defendants were desirous of serving any notice of revocation on the claimants, they could have served it on the 2<sup>nd</sup> claimant [the CW1]; assuming the 1<sup>st</sup> claimant could not be reached to be served.

Finally, learned senior counsel argued that the purported notice of revocation was contrived and made in bad faith to wrongfully wrest the said Plot from the claimants. This is because there is no proof that there was revocation of other adjoining plots. Also, in the defendants' letter dated 27/11/2018 [Exhibit 19] addressed to claimants' solicitor, they stated that investigation was still being carried out on the said stop work order served on the claimants and asked them to exercise patience until investigation into the matter was concluded. It was submitted that it is against reasoning, common sense and natural flow of events for the defendants to come up in 2019 with a notice of revocation dated 21/9/2018.

**Decision of the Court:**

The reason stated by the defendants in the notice of revocation [Exhibit 25A] for revoking the 1<sup>st</sup> claimant's *"rights, interests and privileges over Plot No. 1673 within Utako [B05] District"* is *"... for overriding public interest [restoration of Abuja Master Plan]."* Exhibit 25A also stated that:

*“This decision was reached following the discovery that Plot No. 1673 and adjoining Plot No. 1674 & 1675 [B05] are encroaching on the corridor of the interception Sewer Line Schedule 6. ...”*

Chukwuka J. OliobiEsq.is correct that the 1<sup>st</sup> defendant has power under section 28[1] of the Land Use Act to revoke a statutory right of occupancy over a plot for overriding public interest. However, the position of the law is that such revocation must comply with the provisions of section 28[6] & [7] of the Land Use Act, which provide:

*[6]. The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder.*

*[7]. The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection [6] of this section or on such later date as may be stated in the notice.*

Also, the revocation of a right of occupancy by the 1<sup>st</sup> defendant cannot be effective unless there is compliance with section 44 of the Land Use Act, which provides for service of notices. The section reads:

*Any notice required by this Act to be served on any person shall be effectively served on him -*

- a) *by delivering it to the person on whom it is to be served; or*
- b) *by leaving it at the usual or last known place of abode of that person; or*
- c) *by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or*
- d) *in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office; or*
- e) *if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises [naming them] to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.*

It is the law that service of notice of revocation on a holder of a right of occupancy is a condition precedent to revocation of right of occupancy or title to land under the Land Use Act.

In **Nigeria Engineering Works Ltd. v. Denap Ltd. [2001] 18 NWLR [Pt. 746] 726**, it was held that by virtue of section 28[6] & [7] of the Land Use

Act, 1978, notice must be given to the holder of a right of occupancy before the revocation of his right and the service of the notice must be in accordance with the provisions of section 44 of the said Act. See also Adole v. Gwar [2008] 11 NWLR [Pt. 1099] 562 and Administrators/Executors of the Estate of General Sani Abacha [Deceased] v. Eke-Spiff & Ors. [2009] 7 NWLR [Pt. 1139] 97.

By section 28[7] of the Land Use Act, the title of the holder of a right of occupancy shall only be extinguished on receipt by him of a notice of revocation. The critical question is whether the defendants established by credible evidence that the notice of revocation [Exhibit 25A] was served on the 1<sup>st</sup> claimant. In paragraph 17 of the defendants' amended statement of defence, they averred that *"the Notice of Revocation was personally served on the Claimant."*

I agree with the learned SAN that the defendants did not adduce any credible evidence to prove their assertion that they served the notice of revocation on the 1<sup>st</sup> claimant or the 2<sup>nd</sup> claimant [her lawful attorney] personally. There is also no evidence that the notice was served on any of the claimants through any of the modes of service prescribed in section 44 of the Land Use Act. The Court holds that the evidence of DW1 that



the *“Notice of Revocation was personally served on the Claimant”* is - as rightly submitted by the learned SAN - hearsay and therefore unreliable.

It is also pertinent to point out that by letter dated 27/11/2018 [Exhibit 19], the defendants acknowledged receipt of the claimants’ solicitor’s letter requesting for clarification on the stop work notice served on the said Plot dated 31/8/2018. The letter advised the claimants *“to be patient pending when investigation on the matter is concluded.”* I hold the considered opinion that if the notice of revocation dated 21/9/2018 had been served on any of the claimants, the defendants would have, in the ordinary course of events, said so in their letter [Exhibit 19] instead of advising the claimants to be patient pending the conclusion of investigation on the matter.

The decision of the Court on Issue 1 is that the notice of revocation dated 21/9/2018 [Exhibit 25A] did not revoke or extinguish the 1<sup>st</sup> claimant’s statutory right of occupancy over the said Plot since the defendants did not prove that the notice of revocation was served on the 1<sup>st</sup> claimant or the 2<sup>nd</sup> claimant [her lawful attorney] personally or at all.

## **ISSUE 2**

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

In the light of the decision of the Court under Issue 1, the claimants' declaratory reliefs 1, 2 and 3 are granted. The Court is of the view that the facts of this case do not support the grant of the declarations sought in relief 5 that the defendants' actions are illegal, unwarranted, malicious and vexatious and calculated to illegally expropriate the claimants of the rights over the said Plot. This relief is refused.

In relief 4, the claimants seek a declaration that the 2<sup>nd</sup> claimant has a legally cognizable interest in and over the said Plot and is entitled to legal remedies against the defendants. The 2<sup>nd</sup> claimant is the lawful attorney of the 1<sup>st</sup> claimant who is the holder of the statutory right of occupancy over the said Plot. The position of the law is that a power of attorney is not an instrument that transfers or alienates any title or legal interest in land. It is merely an instrument that delegates powers to the donee to stand in the position of the donor and do the things he can do. See Ude v. Nwara [1993] 2 NWLR [Pt. 278] 638 and Industrial Consultants Ltd. v. Mabayoje & Ors. [2017] LPELR-50214 [CA].

The Court is of the view that since a declaration has been granted in relief 3 that the 1<sup>st</sup> claimant is the beneficial owner and holder of the right, interest and title over the Plot, the declaration in relief 4 in favour of the 2<sup>nd</sup> claimant cannot be granted. The 2<sup>nd</sup> claimant does not have any

legally cognizable right or interest over the said Plot. It does not matter that the Power of Attorney [Exhibit 7] is registered.

In reliefs 6 & 7, the claimants seek orders of perpetual injunction. Learned counsel for the defendants posited that an order of perpetual injunction can only be granted after a full trial and where the applicant has proved or established his right and an actual or threatened infringement of that right. He referred to **U.B.A. Plc. v. Okeke [2004] NWLR [Pt. 872] 973** and **Adeniran v. Alao [1992] 2 NWLR [Pt. 223] 350**. He concluded that the claimants are not entitled to an order of perpetual injunction since their title over the Plot has been revoked.

In the case of **Goldmark Nig. Ltd. & Ors. v. Ibafor Co. Ltd. & Ors. [2012] LPELR-9349 [SC]**, it was held that the grant of perpetual injunction is a consequential order which should naturally flow from the declaratory order granted by the court. The essence of granting a perpetual injunction on a final determination of the rights of the parties is to prevent permanently the infringement of those rights and to obviate the necessity of bringing multiplicity of suits in respect of every repeated infringement. See also **Akpoaisi & Ors. v. Mowoe & Anor. [2020] LPELR-52680 [CA]**.

The Court has granted declaratory orders that the 1<sup>st</sup> claimant's right of occupancy over the said Plot is valid and subsisting and that the notice of revocation dated 21/9/2018 is of no effect. Thus, the grant of the orders of perpetual injunction naturally flows from the declaratory orders. The decision of the Court is that the claimants are entitled to the orders of perpetual injunction in reliefs 6 & 7.

The claimants in relief 8 claim the sum of N14,000,000 as general damages. Chukwuka J. Oliobi Esq. argued that the claimants did not lead evidence to show that they incurred enormous costs in producing the architectural drawing for the high-density development of the Plot and they did not tender receipts or any document in proof thereof. Counsel referred to the case of Dibiamaka v. Osakwe [1989] 3 NWLR [Pt. 107] 101 and other cases to support the view that he who asserts must prove and the claimants have the burden to establish their claims. He urged the Court to hold that the claimants did not prove the claim for general damages.

In the case of Adamawa State Government & Anor. v. Umaru & Ors. [2021] LPELR-55659 [CA], it was held that general damages are damages that the law presumes once a claim has been successfully established and they flow from the type of wrong complained about by the victim. They are compensatory damages for harm that results from

the wrong for which a party has sued. In the case of Mbata & Anor. v. Amanze [2017] LPELR-45212 [CA], it was restated that general damages need not be specifically pleaded and strictly proved. It is at the discretion of the Court to award general damages.

In the instant case, the evidence of the 2<sup>nd</sup> claimant is that when he obtained the building plan approval from the defendants, he procured several building materials, entered into various contracts with different professionals and commenced development on the land. As a result of the Stop Work Notice dated 29/8/2018 served on him by the defendants, he stopped development on the Plot and suffered financial losses including the wasting and washing away of some of the building materials he procured for the development. These include 25 trips of laterite, 20 trips of sharp sand, 5 trips of aggregate and 50 Nos. of 12 x2 inches board.

The defence counsel is correct when he argued that the claimants did not tender any receipt or document to prove the loss complained of. Be that as it may, the fact remains that the evidence of CW1 that he commenced development on the land based on the building plan approved by the defendants is unchallenged. In the Memo of the Executive Secretary of FCDA to the Hon. Minister of FCT dated 11/9/2018 [Exhibit 23], he stated that *"The Honourable Minister may wish to*

*note that, construction is ongoing on Plot 1673, with work at sub structure level.*"[Underlining mine].

The evidence of CW1 that he stopped development on the Plot as a result of the Stop Work Notice is also unchallenged. On this ground, I am of the respectful view that the claimants are entitled to general damages, which I assess and fix as N4,000,000.

Finally, in relief 9, the claimants claim the sum of N7,000,00 as solicitor's fee and the costs of prosecuting this case. In paragraph 39 of the amended statement of claim, the claimants averred that they have retained the services of the firm of Arthur Obi Okafor SAN & Associates to prosecute this action and have made part payment of N3,000,000 to the learned Senior Advocate of Nigeria. However, in paragraph 41 of his statement on oath, the 2<sup>nd</sup> claimant stated that he and the 1<sup>st</sup> claimant have paid the sum of N7,000,000 to the learned Senior Advocate of Nigeria.

This is a claim for special damages, which must be strictly proved. I note that the receipt of payment pleaded in paragraph 39 of the amended statement of claim in proof of this claim was not tendered. Be that as it may, the crucial question that arises from this claim is whether a party

in litigation can pass on the burden of his solicitor's fee to the other party.

In Guinness Nig. Plc. v. Nwoke[2000] 15 NWLR [Pt. 689] 135, the Court of Appeal held that it is unethical and an affront to public policy to pass on the burden of solicitor's fee to the other party. It was also held that this type of claim is outlandish to the operation of the principle of special damages and should not be allowed. See also the case of Ibe & Anor. v. Bonum [Nig.] Ltd. [2019] LPELR-46452 [CA]. In the light of the foregoing, the claim for N7,000,000 as solicitor's fee is dismissed.

**Conclusion:**

I enter judgment for the claimants. I grant the following orders in favour of the claimants against the defendants jointly and severally:

1. A declaration that the purported Notice of Revocation dated the 21<sup>st</sup> day of September, 2018 is null and void and of no effect.
2. A declaration that the right of occupancy over Plot 1673, Cadastral Zone B05, Utako District, Abuja conveyed to the 1<sup>st</sup> claimant by the 1<sup>st</sup> defendant vide Certificate of Occupancy No. 67duw-12560-5b71r- 3b42u-10 dated 19<sup>th</sup> September, 2013 is valid and subsisting.

3. A declaration that by virtue of the right of occupancy granted to the 1<sup>st</sup>claimant by the 1<sup>st</sup>defendant, the 1<sup>st</sup>claimant is the beneficial owner and holder of the right, interest and title in and over Plot 1673, Cadastral Zone B05, Utako District, Abuja.
4. An order of perpetual injunction restraining the defendants from revoking or, in any other way, manner or guise, tampering with the right of occupancy granted to the 1<sup>st</sup>claimant whether by way of diminution of the plot size, or re-designation of the land use and or purpose or howsoever.
5. An order of perpetual injunction restraining the defendants jointly and severally from interfering, stopping, fettering or in any manner disturbing the claimants' on-going development on Plot 1673, Cadastral Zone B05, Utako District, Abuja.
6. General damages of N4,000,000.00.
7. Cost of N200,000.00.

---

**HON. JUSTICE S. C. ORIJI**  
**[JUDGE]**



*Appearance of Learned Counsel:*

1. M. O. Ikorosq. with Maxwell EzumezuEsq. for the claimants.
2. L. A. AsaoluEsq. for the defendants.