

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI ABUJA
BEFORE HON. JUSTICE S. B. BELGORE

CLERK: CHARITY ONUZULIKE
COURT NO. 10

SUIT NO: FCT/HC/CV/2101/15
DATE: 22/02/2023

BETWEEN:

AMBORG GLOBAL RESOURCES LTD.....PLAINTIFF

AND

- 1. WILBAHI ENGINEERING LTD**
 - 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
- } DEFENDANT**

JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

Interest Reipublicae ut sit finis litium, meaning that there must be an end to litigation. The Claimant by an amended statement of claim granted on 25th May 2016 sought the following reliefs against the defendants:

- (a) A DECLARATION that the Plaintiff is the bonafide and beneficial owner of the Plot of Land situate and known as Plot 56 Cadastral Zone C05, Kafe District Abuja by virtue of Approval Grant dated 16th February 2010, Conveyance of Approval dated 22nd August 2013 and the Lease Agreement granted to it.**
- (b) AN ORDER of perpetual injunction restraining the Defendants, their agents, assigns, workers, servants and any other person whosoever from further entering, interfering with the Plaintiff's occupation and ownership or trespassing on the Plot**

of land situate and known as Plot 56 Cadastral Zone C05, Kafe District Abuja.

- (c) AN ORDER of this Honourable Court nullifying and or voiding the purported Development Approval given to the 1st Defendant over the Plot of land situate and known as Plot 56 Cadastral Zone C05, Kafe District Abuja belonging to the Plaintiff.*
- (d) AN ORDER of this Honourable Court directing the 2nd Defendant to issue the Plaintiff Development Approval over the plot of land situate and known as Plot 56 Cadastral Zone C05, Kafe District Abuja having fulfilled all requirement for the Approval.*
- (e) The sum of N5,000,000.00 (Five million Naira only) being the cost of this case.*
- (f) The sum of N15,000,000.00 (Fifteen Million Naira only) as special and general damages against the Defendants for trespass.*

On the other hand, the 1st defendant equally by the leave of this Honourable Court filed a further Amended Statement of Defence and Amended Counter-claim dated and filed May 2022. The 1st Defendant in its Amended Counter claim sought for the following reliefs:

- (a) A Declaration that the 1st Defendant is the bonafide and beneficial owner of the Plot Number 56, in Cadastral Zone C05 of Kafe District now measuring approximately 156276.827 sqm or 15.628Ha by virtue of Approval grant dated the 28th day of July 2005 and the Lease Agreement between her and the 2nd Defendant dated the 5th of December 2005.*
- (b) A Declaration that the 2nd Defendant is estopped from claiming or maintaining that the 1st Defendant did not comply with the terms of the Development Lease Agreement, having failed to deny the 1st Defendant's claims contained in the 1st Defendant's*

letter of 11th February, 2011 by which the 1st Defendant protested and rejected the purported reallocation of Plot No. 56 to the Claimant on the basis of non-violation of terms of grant of the land to the 1st Defendant.

- (c) An Order of perpetual injunction restraining the Claimant and the 2nd Defendant, their agents, assignees, workers, servants and any other person whosoever from entering or interfering with the 1st Defendant's ownership, occupational and possessory rights of Plot Number 56, in Cadastral Zone C05 of Kafe District now measuring approximately 156276.827 sq. or 15.628 Ha.**
- (d) An Order of the Honourable Court nullifying the Claimant's purported Approval grant dated the 16th of February 2010, Conveyance Approval dated 22nd August 2013 and the Lease Agreement granted to the Claimant.**
- (e) An Order of this Honourable Court restraining the 2nd Defendant whether by its agent, privies, servants or any other person or authority acting for or on its behalf, from withdrawing Plot No. 56, Cadastral Zone C05, Kafe District now measuring approximately 156276.827 sqm. or 15.628 Ha from the 1st Defendant.**
- (f) General damages in the sum of N200,000,000.00 (Two Hundred Million Naira only) against the Claimant.**
- (g) Cost of filing and prosecuting this Counter-claim (inclusive of the legal fees) in the sum of N7,000,000.00 (Seven Million Naira Only).**

The 2nd defendant filed an Amended Statement of Defence on the 23/02/2017 wherein it urged this Court to enter judgment for the Claimant to the extent that the Claimant remains the present lawful allottee to the grant over Plot 56, Cadastral Zone C05, Kafe District, Abuja, the subject matter of this suit and no more.

THE FACTS

The facts of this case are simple and easy to discern from the pleadings of the parties. Sometime in 2005, the 1st Defendant was shortlisted amongst other companies for the allocation of plots for the Mass Housing Initiative (Phase 1) and was later granted Plot No. 56 in Cadastral Zone C05 of Kafe District measuring approximately 20,000 sqm for the development of a commercial Housing Estate. The 1st Defendant thereafter entered into a Development Lease Agreement with the 2nd Defendant executed on **05/12/2005**.

Subsequently, by a Letter of Withdrawal which was also published as a Notice in Thisday Newspaper of **08/05/2009**, the 2nd Defendant informed the general public that all allocations made under the Accelerated/Mass Housing Programmes, whose beneficiaries could not meet the terms and conditions of the Lease Agreement, particularly as to percentage of development, had been withdrawn.

Shortly thereafter, on **16/02/2010**, the 2nd Defendant issued the Claimant with an approval of grant over the said Plot 56 Cadastral Zone C05 Kafe District, Abuja, and thereafter executed a Conveyance of Provisional Approval dated **22/08/2013** as well as a Lease Agreement dated **19/05/2015** in its favour. The Claimant thereafter paid a “**commitment fee**” of **N16,000,000.00 (Sixteen Million Naira)** and commenced development on the site.

Now, the gist of the Claimant’s case as deduced from its Amended Statement of claim filed on **25/5/2016** is that it is the bonafide and beneficial owner of the Plot of Land situate and known as Plot 56 Cadastral Zone C05, Kafe District, Abuja and that the 1st Defendant continued to trespass on the said land, despite the revocation of its lease. The Claimant’s case is essentially that the 1st Defendant has no title, as the Accelerated Development Programme has since been cancelled, along with the 1st Defendant’s Lease, and that the 1st Defendant is therefore a trespasser.

On its part, the 1st Defendant filed a Further Amended Statement of Defence and Amended Counter Claim on **27/05/2022**. The summary of

its position is that, contrary to the Plaintiff's averments, the grant of approval in respect of the land, subject matter of this suit, was never withdrawn or revoked at any time by the 2nd Defendant. It is its case that upon the grant of the approval to it in 2005, it mobilized to site and took possession of the said land and thereafter registered the Development Lease Agreement with the Deeds Registrar as **FC 126 page 126, No. 18 Misc.** and paid the sum of **N2,000,000.00 (Two Million Naira)** as Development Levy. That subsequently, the 2nd Defendant through its Director of Urban and Regional Planning instructed all grantees in Kafe District to halt developmental activities as the 2nd Defendant intended to redesign the entire District, and that this redesign was not concluded until 2010. That upon the completion of the redesign, it paid the sum of **N8,146,645.00** assessed as compensation to the indigenous farmers on the Plot for their economic trees and was duly issued a Valuation Certificate confirming this payment. That it thereafter obtained a Notice of Settlement of Building Plan from the 2nd Defendant's Department of Development Control to the tune of **N27,706,039.90** which it paid, whereafter its Building Plan was approved. That it was subsequently informed "informally" that the said Plot 56 had been reallocated to the Claimant, but it protested this reallocation by a letter dated **11/02/2022** and that the 2nd Defendant is stopped from Claimant that the allocation of the Plot to it had been withdrawn.

The 2nd Defendant filed an Amended Statement of Defence dated **22/02/2017** but filed on **23/02/2017**, wherein it contended that in 2009, the Minister of the FCT acting on the recommendation of a ministerial committee set up to audit the Accelerated Development Programme, withdrew all grants made under the programme that failed to mobilize to site to commence development, and that this decision was communicated to all the affected holders by a Notice published in Thisday Newspaper of **08/05/2009**. That the grant under the ADP is a mere Licence and not a Statutory Right of Occupancy; that pursuant to the said withdrawal, the Plot was subsequently allocated to the Claimant under the Mass Housing Development Programme which replaced the Accelerated Development Programme and that this Court ought to enter judgment for the Claimant.

THE EVIDENCE

Upon the application of Claimant's Counsel, this Court issued a *Subpoena Duces Tecum* on Mrs. Chinyere Onyedim, the Registrar of the F.C.T. High Court (Court 29) presided over by my learned brother, the late Hon. Justice Valentine Ashi, who produced Certified True Copies of the record of proceedings and all the exhibits tendered in this suit before the previous Court which were admitted in evidence and marked as Exhibit 'AX'. Exhibit 'AX' consists of the following documents:

- i. CTC of record of proceedings in the case of Amborg Global Resources Ltd Vs. Wilbahi Eng. & FCDA
- ii. Receipts from FCDA 100776069, 11823637
- iii. Exhibits 'A'-'N'10

The 1st Defendant did not call any witness, however learned Senior Counsel Audu Anuga SAN tendered six documents from the Bar namely: **Approval granted for Plot 56 Cadastral Zone C05 Kafe District dated 28/07/2005; Development Lease Agreement between 1st and 2nd Defendant dated 05/12/2022; Receipt of FCDA No. 0170 dated 21/12/2005; Deposit slip of AGIS at Standard Trust Bank dated 30/06/2005 and 21/12/2005; photocopy of receipt of Department for Resettlement and Compensation FCDA dated 21/11/2015 and FCTA Receipt No. 000288206 dated 08/05/2015** which were all admitted in evidence as **Exhibits XX1, XX2, XX3, XX4(a), XX4(b), XX5 and XY6** respectively.

The 2nd Defendant also did not call any witness but tendered 3 documents from the Bar, namely: **Official Gazette number 84, Vol. 96 of 21/10/2009; Copy of Thisday Newspaper, Vol. 14, No. 5129, page 60** and the **CTC of a letter dated 11/02/2014 on the 1st Defendant's letterhead titled "Request for Intervention in respect of Plot 56 Cadastral Zone C05, Kafe District"**, which were all admitted in evidence and marked **Exhibits ZZ, ZZ2 and ZZ3** respectively.

FINAL ADDRESSES OF COUNSEL

On **17/2/2023** the parties adopted their respective final written addresses in urging me to grant their respective reliefs.

The Claimant filed a final address dated **28/02/2022** but filed on **15/03/2022**. In the said address, Claimant submitted **four (4)** issues as follows:

- i. Whether the Claimant has proved its case before this Honourable Court.***
- ii. Whether the Claimant has proved and is entitled to special and general damages.***
- iii. Whether the evidence of PW1 that was taken before the late trial Judge was properly adopted before the present trial Court?***
- iv. Whether the 2nd Defendant can raise an issue that was never canvassed during trial on his Final Written Address and also argue against their position during trial.***

In arguing the issues, it is Counsel's contention that the Claimant adduced credible evidence during trial to be entitled to the reliefs sought, having tendered **Exhibits H, I, L & M-Mi**, which were part of the documents tendered by the subpoenaed witness. It is his further contention that PW1's previous evidence in the trial before my learned brother, the **Late Hon. Justice V. B. Ashi**, was properly adopted in this proceedings; that none of the facts relied on by Claimant were contradicted by the Defence; that PW1's case was unchallenged through cross-examination; that even though the 2nd Defendant did not call a witness this Court can look at its records and take cognizance of paragraph 18 of 2nd Respondent's Statement of Defence which supports Claimant's case; that Claimant has proved its entitlement to special and general damages and that the 2nd Defendant cannot in its final address take a position contrary to that taken during trial. Counsel concluded by urging this Court to grant all of the Claimant's claims.

On its part, the 1st Defendant vide its Learned Senior Counsel, Audu Anuga, SAN, submitted a final written address dated and filed on **27/05/2022**, where he formulated a sole issue, viz:

Whether from the totality of evidence adduced by the Claimant vis-à-vis the evidence of the 1st Defendant, the case of the Claimant ought to be dismissed in its entirety?

On his part, Counsel SAN contended that the Claimant did not adduce any credible evidence which would entitle it to the declaratory reliefs sought; that the only evidence put before the Court is Exhibit AX which was tendered by a subpoenaed witness who is not the maker and could not be cross-examined, as such constituting hearsay; that the 1st Defendant's documents of title were first in time and take precedence over the Claimant's own documents of title were first in time and take precedence over the Claimant's own documents; that no notice of revocation was served on the 1st Defendant; that the 1st Defendant was not one of those persons affected by the withdrawal/revocation of approval made by the Minister of the F.C.T. in 2009; and finally that the Claimant failed to discharge the burden imposed on him by law. He then prayed me to resolve its sole issue in the 1st Defendant's favour on the strength of his arguments and the authorities relied on in his address.

For the 2nd Defendant, Ola Tolulope Abiola Esq. submitted a final written address dated and filed on **30/05/2022**, wherein a sole issue was formulated, given as: ***“Whether, having regards to the circumstances of this case, is the claimant is (sic) entitled to the reliefs claimed.”*** In his argument, Counsel relying on various authorities vigorously argued that the Claimant did not call any oral evidence but merely called a subpoenaed witness who “dumped” Exhibit ‘AX’ on the Court; that no witness was called to link Exhibit “AX” to the claims; that Claimant did not establish any prima facie case against the Defendants to warrant any defence and that the 2nd Defendant lawfully tendered certified true copies of documents from the Bar to show that it withdrew the lease agreement between it and the 1st Defendant. Counsel concluded by urging me to dismiss the Claim and refuse all the reliefs sought.

I have carefully considered all of the parties' respective arguments and the authorities cited in their support.

The law is well settled that a Court has the duty to consider all issues submitted to it for determination. See **APP VS. OBASEKI & ORS (2021) LPELR-58374 (SC); OLAYEMI & ORS VS. FHA (2022) LPELR-57579 (SC).**

Equally, the Court has powers to reformulate issues in the interest of justice and the complete determination of the contending issues of parties. In my view, the issues formulated by the Plaintiff is riddled with duplicity and to the point of verbosity. The Court as a neutral arbiter will consider all the issues but under a simpler head. To this end, I will formulate a lone issue that will dispose of all the disputes in this claim, that is:

Whether having regard to the facts and circumstances of this suit, the Plaintiff is entitled to their reliefs?

Before I proceed, the Claimant Counsel raised a preliminary point of law on the admissibility of **Exhibits XX5 and XX6.**

It was his submission that, being photocopies of public document they are inadmissible. Learned Counsel further urged me to treat the suit as undefended as against the 1st Defendant, this is so because the 1st defendant's further Amended Statement of Defence did not have any witness statement on oath. He submitted that this being the case, the 1st Defendant is in law deemed to have abandoned its case. See **BANJOKO VS. OGUNLAYE & ANOR (2013) LPELR – 20373 CA**, where it was held that pleadings without evidence goes to no issue.

The 1st Defendant in response submits that exhibits **XX5** and **XX6** are not public documents. That they are receipts, the originals of which are in the custody of the person making the payment.

On the issue of filing a further amended statement of defence without any witness statement on oath, Learned Silk admitted that the further amended statement on oath was filed without a witness statement on Oath but argued that they were relying on the earlier witness

statement filed in their earlier statement of defence. By this submission, the Learned Senior Counsel must be referring to the witness statement of Wilma Aguite sworn on the 13th day of July, 2015.

RESOLUTIONS

Section 102 of the Evidence Act, 2011 clearly defines what a public document is. It states as follows:

“The following documents are public documents:

- (a) Documents forming the acts or records of the acts of**
 - (i) The sovereign authority;**
 - (ii) Official bodies and tribunals, and;**
 - (iii) Public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; and**
 - a. Public records kept in Nigeria of private documents.”**

I have carefully examined **Exhibits XX5 and XX6**, I hold that they are public documents within the meaning of Section 102 of the Evidence Act, 2011. The next step is whether I can utilize them having admitted them in evidence already. This brings me to the provision of Section 105 of the Evidence Act, 2011 which provides:

“Copies of documents certified in accordance with Section 104 may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies”.

In my humble view, **Exhibits XX5 and XX6** were not certified and no proper foundation was laid, the Court was therefore wrong to have admitted same, I so hold.

In the Supreme Court cases of **UBN PLC VS. AJABULE & ANOR (2011) LPELR – 8239 (SC)** the Court held that a Court including Appellate Courts are duty bound to expunge such inadmissible evidence. In a

more recent case of **OJEH V. FRN (2022) LPELR – 58493 (SC)**. It was held thus:

“The trial Court can at a later stage in the proceedings particularly during final judgment expunge wrongly admitted evidence and an Appellate Court can in an appeal before it expunges wrongly admitted evidence during trial...It cannot act on legally inadmissible evidence whether inadvertently admitted with consent of the parties or not.”

From the above authorities which are elementary and without further ado, **Exhibits XX5 and XX6** having been wrongly admitted are hereby expunged.

On the issue of non-filing of a witness statement on oath in support of the further amended statement of defence and amended counterclaim, I hold that determining it at this stage will lead to evaluating evidence which I should consider in the main judgment. Courts have been admonished to consider every defence set up by a party in the interest of fair hearing and rules of the Court, which are meant to be obeyed, cannot shackle the wheels of substantial Justice, may substantial Justice reign. The objection is premature and is hereby overruled.

I now proceed to the main issue which is dispositive of this claim and counterclaim.

The claimant applied for a subpoena before this Court on the ground that the witness cannot attend court having been trapped in UAE as a result of Covid 19 restriction. I earlier dismissed a Motion of the same kind, simply because he urged the Court to adopt it from the records. This Court, being satisfied that the event provided under Section 39(d) has occurred, granted the application for subpoena *duce tecum* and the documents produced upon same were tendered and admitted in evidence and marked as **Exhibit “AX”**. It is Exhibit **“AX”** that forms the evidence of the claimant in this suit, I so hold.

The evidence of PW1 therein Andrew Chikelu Nweke is received in evidence herein, as the witness was cross-examined by the 1st Defendant on the 30th November 2017 and the 2nd Defendant elected not to cross-examine albeit based on his defence. I hold that the evidence qualifies as one which I should evaluate based on record and not on demeanour, I must warn myself. I have no evidence as to why PW2 was not called, as such his evidence is inadmissible and this Court will not act on Exhibits “N” and “O” respectively admitted on 26/03/2019, I so hold.

On the part of the 1st Defendant, the Learned Senior Advocate urged this Court to evaluate the documentary evidence he tendered through the Bar as this suit is fought on documentary evidence. Equally the 2nd Defendant tendered certain documents from the bar, this Court shall consider all of them in the interest of Justice, as they are relevant to the narrow issue in this suit.

The simple issues from the state of pleading are as follows:

For the 1st Defendant:

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5. *The 1st Defendant denies paragraph 17 of the Amended Statement of Claim to the extent that the 1st Defendant trespassed and encroached on the subject matter of this suit and put the Claimant to the strictest proof thereof.*
6. *That 1st Defendant denies paragraph 10 and 11 of the Amended Statement of Claim, puts the Claimant to the strictest proof thereof and avers that the (the 1st Defendant) had always been the owner of the subject matter of this suit.*
7.
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10. *The 1st Defendant avers that sometime in 2005 on the authority of the Federal Executive Council of Nigeria, the 1st Defendant was*

shortlisted among other Companies for allocation of Plots for Mass Housing Initiative (phase 1) in the 2nd Defendant/Defendant's publication on page 43 of Thisday Newspaper of Monday, 27th June 2005. The said Publication is hereby pleaded and will be relied upon at the trial of this suit.

11. The 1st Defendant thereafter paid all relevant fees and complied with all procedure for mass Housing Land allocation in the Federal Capital Territory and was granted Plot Number 56, in Cadastral Zone C05 of Kafe District Measuring approximately 20,0000.00sq. for commercial Housing Estate. Copy of the grant is pleaded and shall be relied upon at the trial of this suit.
12. Upon the receipt of the grant paper and further to the directive of the 2nd Defendant, the 1st Defendant moved to site and took possession of the Plot Number 56, in Cadastral Zone C05 of Kafe District Measuring approximately 20,0000.00 sq.m.
13. A Development Lease Agreement was executed between the 1st Defendant and the 2nd Defendant on the 5th day of December 2005, and subsequently registered by the Deeds Registrar of the 2nd Defendant on the 12th day of January 2006 with the following reference Numbers, FC 126 page 126, No. 18 Misc. the registered Development Lease Agreement is hereby pleaded.
14. The 1st Defendant paid the sum of **N2,000,000.00 (Two Million Naira) only** to the 2nd Defendant as Development Levy and a receipt was issued to the 1st Defendant by the 2nd Defendant acknowledging receipt. The said receipt is hereby pleaded.
15. Sometimes in March 2007 by Newspaper Publication, the 2nd Defendant through its Department of Urban and Regional planning invited all the allottees of Commercial Mass Housing in the whole Kafe District, including the 1st Defendant, for a meeting at the international Conference Centre, Abuja. The said Newspaper Publication is pleaded.

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20. The 1st Defendant vide a letter dated the 25th of November 2010 forwarded necessary documents to the 2nd Defendant through 2nd Defendant's Department of Mass Housing for evaluation and approval. The letter was acknowledged by Department. The acknowledgment copy is hereby pleaded.

21. The 2nd Defendant, through its Department of Mass Housing, vide a letter dated the 15th day of September 2011 directed the 1st Defendant to report to the 2nd Defendant's Department of Survey and Mapping and that of Resettlement and Compensation to obtain Survey data of Plot 56, C05 Kafe District and pay compensation to the indigenous farmers of the Plot for their economic crops thereon. The said letter of the 15th day of September 2011 is hereby pleaded and shall be relied upon at the hearing of this suit.

22. The Survey data obtained by the 1st Defendant in respect of her Plot Number 56, in Cadastral Zone C05 of Kafe District, upon the completion of the redesigning of the entire Kafe District, the size of Plot Number 56, in Cadastral Zone C05 of Kafe District has reduced from approximately 20,0000.00 to approximately 156276.82 sq.m or 15.628Ha. the site plan with all its coordinate of the said Plot 56, C05, Kafe District granted the 1st Defendant is hereby pleaded.

23. The 2nd Defendant through its Department of Resettlement and Compensation assessed and evaluated the sum of N8,146,645.00 (Eight Million, One Hundred and Forty-Six Thousand Forty-Five Naira) only as the value of compensation payable by the 1st Defendant to the indigenous farmers of Plot Number 56 in Cadastral Zone C05 of Kafe District now measuring 156276.827 sq.m or 15.628Ha for their economic crops on the Plot.

24. The 1st Defendant paid the entire sum to the farmers through the Department of Resettlement and Compensation of the 2nd Defendant. The Valuation Certificate dated the 3rd day of July 2013 issued by the 2nd Defendant's Department of Resettlement and Compensation to the farmers in respect of Plot 56 Kafe District is hereby pleaded.

25. The 1st Defendant applied to the Department of Development Control of the 2nd Defendant through the Abuja Metropolitan Management Control (AMMC) for approval of the 1st Defendant's Composite Building Plan Designs vide a letter dated the 24th of February 2012 and same was acknowledged by the Department of Development Control vide 27th February 2012. Acknowledgment copy of the 1st Defendant letter and the acknowledgment letter of the Abuja Metropolitan Management Council (AMMC) are pleaded.

26. The Department of Development Control issued, to the 1st Defendant, a Notice of Settlement of Building Plan fees to the tune of **N27,706,039.90 (Twenty-Seven Million, Seven Hundred and Six Thousand, Thirty-Nine Naira, Ninety Kobo)** only dated the 5th day of July 2012 and same was paid by the 1st Defendant. The said Notice and Receipt of payment are pleaded.

27. The 2nd Defendant through its Department of Development Control consequently conveyed lawful approval of the 1st Defendant's Building plan in respect of 1st Defendant's Plot Number 56, in Cadastral Zone C05 of Kafe District measuring approximately 156276.827 sq. m or 15.628Ha vide an approval Conveyance letter dated the 16th day of August, 2012. The Approval Conveyance letter is hereby pleaded.

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35. The 1st Defendant further avers that the Minister of the Federal Capital Territory did not at any time withdraw Plot No. 56, Cadastral Zone C05, Kafe District from the 1st Defendant for any reason whatsoever.
36. The 1st Defendant states that the purported Notice published in Thisday Newspaper of 8th May, 2009 that “The general public is hereby informed that all allocations made under the Accelerated Development/Mass Housing Programmes whose beneficiaries could not meet the terms and conditions of the Lease Agreement, particularly in terms of percentage of development have been withdrawn” relates to grantees whose allocations had been withdrawn prior to the said publication.
37. The 1st Defendant’s Plot No. 56, Cadastral Zone C05, Kafe District allocation under the Accelerated Development Programme was not at any time withdrawn prior to the said publication as the 1st Defendant was not served with any Notice of Withdrawal of Plot No. 56 by the Minister of the Federal Capital Territory or any other person or authority as required under the Land Use Act and/or the Development Lease Agreement executed by the 1st and 2nd Defendants.
38. The 1st defendant further states that the said purported Notice published in This Day Newspaper of 8th May, 2009, which notified that all “all ministerial approvals given for allocations of Plots effective 17th May, 2007 – 28th May, 2007, have been cancelled and consequently, all allocations of Plots made based on the said approvals have been withdrawn having been made without the requisite authority”, does not affect the 1st Defendant’s Plot 56 as

the allocation of Plot 56 was made to the 1st Defendant in 2005, before the period of covered by the Notice.

39. The 1st Defendant avers that after it was informally informed about the purported reallocation of Plot 56 to the Claimant, the 1st Defendant promptly protested against and rejected the reallocation to Claimant by it letter dated 11th February, 2011. In the said letter, the 1st Defendant unequivocally affirmed its subsisting right in Plot 56, having submitted all the required documents and made all necessary payments relating to the land.
40. Upon receipt of the Defendants said letter, the 2nd Defendant did not deny or countermand the claims of the 1st Defendant in the letter thereby representing to the 1st Defendant that the Claims of submission of all required documents and making of all necessary payments in relation to the land, as contained in the letter, are true.
41. Having failed to deny or challenge the 1st Defendant's claim of compliance with the conditions for grant of Plot 56 to the 1st Defendant which the 1st Defendant believed to be true and relied on, the 2nd Defendant is estopped from claiming or maintaining that the 1st Defendant did not comply with the Development Lease Agreement or that the Defendant allocation of the land had been withdrawn.

For the Claimant, his pleadings are as follows:

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5. The Plaintiff avers that sometime in February, 2010, it applied for and was granted permission to participate in the Mass Housing Development Programme of the Federal Capital Territory. The Plaintiff was issued with an approval of grant over Plot 56 Cadastral Zone C05 Kafe District Abuja. The Plaintiff hereby pleads this Grant dated 16th February 2010.

6. The Plaintiff further avers that sequel to this Grant, the 2nd Defendant issued it with a Conveyance of Provisional Approval dated 22nd August 2013 and Plaintiff further entered into a Lease Agreement with the 2nd Defendant over the property situate and known as Plot 56 Cadastral Zone C05 Kafe District Abuja. The Plaintiff shall during trial rely on this Conveyance of Provisional Approval and the Lease Agreement.
7. The Plaintiff avers that it immediately took possession of the said property and was directed by the 2nd Defendant through its letter dated 23rd April 2015 to pay the non-refundable land commitment fee of **N16,000,000.00 (Sixteen Million Naira)** Only which the Plaintiff paid. The Plaintiff hereby pleads the receipt of this payment, the letter dated 27th April 2015 notifying the Defendant of the payment and the letter dated 23rd April 2015.
8. It is the Plaintiff's averment that Valuation Certificate dated 25th May 2015 was issued to it after the payment of compensation was made as directed by the 2nd Defendant in its letter dated 13th May 2015. The Plaintiff hereby pleads this Valuation Certificate and the 2nd defendants letter.
9. Prior to all these, the Plaintiff avers that it has notified the 2nd Defendant's trespass and the encroachment on the land in issue through it letters dated 25th November 2014, 20th January 2015 and 19th May 2015. The Plaintiff shall during trial rely on these letters
10. The Plaintiff avers that the 1st Defendant illegally and fraudulently obtained a Development Approval over the land in issue notwithstanding that it does not have any title over the property.
11. The Plaintiff further avers that the 1st Defendant is hinging its act of trespass on the land in use on a revoked/withdrawn Letter of Accelerated Development programme issued to it.
12. It is the averment of the Plaintiff that the grant of offer of land under the Accelerated Development Programme as aforesaid is not

a grant of Statutory Right of Occupancy. By the Accelerated Development Lease Agreement between FCT Administration containing terms and conditions of the allocation under the Accelerated Development programme, title over the land will be given to the Lease only after due compliance with the terms and condition of the Accelerated Lease Agreement.

13. A fundamental terms of the Accelerated Lease Development Agreement signed by the parties is that the Lease must reach the first Slab of the building before it becomes a title or grant of a Statutory Right of Occupancy.
14. The Plaintiff avers that the 1st Defendant did not even obtain a Development Approval to start building talk-less of moving into site to start the first slab of the building hence its grant of the Accelerated Development Programme was withdrawn.
15. The Plaintiff further avers that the Accelerated Development Programme has since been cancelled by the 2nd Defendant and those lessees that has not developed their Lease were withdrawn/revoked and the 1st Defendant is among those lessees that did not Develop hence its Lease was withdrawn/revoked.
16. The Plaintiff further avers that the 2nd Defendant has refused to issue it with the Development Approval over the property in issue even after fulfilling all the requirement for the approval.
17. The Plaintiff further avers that even after its complaints, the 1st Defendant continued its trespass and encroachment on the land hence this suit.
18. It is the Plaintiff Statement that it paid its counsel (**IKECHUKWU UZUEGBU & CO**) the sum of **N5,000,000.00 (Five Million Naira Only)** as professional fees to institute this action. The Plaintiff hereby pleads the receipt of this payment.

Finally, the 2nd Defendant in his Amendment of Defence Stated:

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3. By way of response to the whole claim, the 2nd Defendant aver that upon Application to the Honourable Minister of the Federal Capital Territory, the Plaintiff was granted Plot 56, Cadastral Zone C05, Kafe District, Abuja, on 16th February, 2010, under the Mass Housing Development Programme. The said Letter of Grant dated 16/2/2010 is hereby pleaded.
4. The said grant which is pursuant to the Honourable Minister's power to issue special contracts is subject to the Plaintiff acceptance of the offer in accordance with the terms and conditions as stipulated in the Letter of Grant, and also executing a Development Lease Agreement. The said Development Lease Agreement between the Plaintiff and the 2nd Defendant dated 19th May, 2005 hereby pleaded.
5. The 2nd Defendants further aver that Plot 56, Cadastral Zone C05, was initially allocated to the 1st Defendant under the Accelerated Development Programme (ADP) by a letter of grant dated 28/7/2005. The said letter of Grant dated 28/07/2005 is hereby pleaded.
6. The Letter of Grant to the 1st Defendant is subject to her acceptance of the offer in accordance with the terms of conditions stipulated in the letter and also executing a Development Lease Agreement. The Development Lease Agreement dated 5th December, 2005, is hereby pleaded.
7. The 2nd Defendant aver that the grant to the 1st Defendant under the Accelerated Development Programme (ADP) is subject to the grantee commencing immediate development and reaching decking level within Six (6) Months of the grant upon which the grantee will then be issued with a Statutory of Right of Occupancy over the land.
8. The 1st Defendant failed to mobilize to site to commence work after executing a Development Lease Agreement.

9. The 2nd Defendant states that due to the flagrant abuse and disregard of the Terms of the Accelerated Development Programme by some of the committee to Audit and review the operating of the Programme, in May 2009.
10. The committee aforesaid upon completion of its assignment submitted a report Recommending the Cancellation of Accelerated Development Programme, and the withdrawal of the grants of grantees who have not mobilized to site after executing a Development Lease Agreement.
11. The above Recommendation of the committee which was sent to the Minister through a Memorandum by the Chief of Staff of the Honourable Minister was approved by the Minister.
12. In furtherance of the approval by the Honourable Minister, all grants made under the Accelerated Development Programme that failed to mobilized to site to commence development were withdrawn including the 1st defendants, and same was communicated to them, and published in the Thisday Newspaper Publication are hereby pleaded.
13. The 2nd Defendant state that after the cancellation of the Accelerated Development Programme and the withdrawal of the 1st Defendant's grant, the 1st Defendant moved to the site to commence work.
14. The 2nd Defendant contend that the grant under the Accelerated Development Programme is a mere license by the Honourable Minister of the Federal Capital Territory and is not a Statutory Right of Occupancy.
15. The 2nd Defendant further aver that it was only after the withdrawal of the 1st Defendant's grant over Plot 56, Cadastral Zone C05, Kafe, that same plot of land was allocated to the Plaintiff under the Mass Housing Development Programme which replaced the Accelerated Development Programme.

16. *The Accelerated Development Programme and the Mass Housing Development were policies of the Federal Capital Territory Administration aimed at Accelerating housing development in the FCT and grants under the Programme are at the pleasure of the Minister of the Federal Capital Territory.*
17. *The 2nd Defendant shall contend at the trial that the 1st Defendant did not acquire any interest or valid title of Plot 56, Cadastral Zone C05, Kafe, Abuja as there was no Statutory Right of Occupancy granted to it, and it had breached its Development Lease Agreement with the 2nd Defendant which led to its termination.*
18. *The 2nd Defendant shall at the trial urge the Honourable Court to enter judgment for the Plaintiff to the extent that it remains the present lawful allottee to the grant over Plot 56, Cadastral Zone C05, Kafe Abuja.*

The law is well settled that parties and the Court are bound by their pleadings: see **ODOM & ORS V. PDP & ORS (2015) LPELR-24351 (SC)**, **OSUJI V. EKEOCHA (2009) LPELR-2816 (SC)**.

The 1st Defendant has admitted that it had knowledge of the reallocation. Hear the 1st Defendant at paragraph 39 and 40 of its further amended Statement of defence where it avers:

39. The 1st Defendant avers that after it was informally informed about the purported reallocation of Plot 56 to the Claimant, the 1st Defendant promptly protested against and rejected the reallocation to Claimant by it letter dated 11th February, 2011. In the said letter, the 1st Defendant unequivocally affirmed its subsisting right in Plot 56, having submitted all the required documents and made all necessary payments relating to the land.

40. Upon receipt of the Defendants said letter, the 2nd Defendant did not deny or countermand

the claims of the 1st Defendant in the letter, thereby representing to the 1st Defendant that the Claims of submission of all required documents and making of all necessary payments in relation to the land, as contained in the letter, are true.”

Equally the 2nd Defendant conceded totally the claim of the claimant by his pleadings, as such his arguments in his Written Address contrary to the position expressed in his pleadings, I say, is not reprehensible. A party must be consistent with his case, he is not allowed to approbate and reprobate. See the case of **ADDO VS. STATE (2020) LPELR-55521 (SC)** where the apex Court of Nigeria held thus:

“A party is expected to be consistent always on his position. He cannot blow hot and cold at the same time, nor can he approbate and reprobate on the same issue. See Suberu V. The State (2010) 8 NWLR (Pt. 1197) 586.”

Exhibit **“M”** was issued to the Claimant by the 2nd Defendant on 16/02/2010, which granted the Claimant approval of Plot Number 56 in Cadastral Zone C05 of Kafe measuring 156277.06m². The 2nd Respondent on the 13th May 2015 issued a Valuation for compensation of crops and Economic trees to the Claimant: see Exhibit **“D”**. On the 25th May 2015, the 2nd Defendant equally issued a valuation Certificate to the claimant. The 2nd Claimant demanded **N16,000,000 (Sixteen Million Naira only)** on 23rd April 2015 and which was paid as evidenced in Exhibit ‘I’. I am satisfied that the Claimant was duly allocated Plot 56 in Cadastral Zone C05 of Kafe Measuring **156277.06m²**.

I hold that the allocation does not have the status of a Certificate of Occupancy. I equally find that it was after the cancellation of the licence granted to the 1st Defendant that the 2nd Defendant proceeded to issue a fresh licence with a letter of approval that is Exhibit **“M”** to the Claimant. I hold that the 1st Defendant fell into grave error when it elevated the status of the licence to that of a Right of Occupancy or letter of Allocation pursuant to the Land Use Act. This is not the case here, I so hold.

The 1st Defendant from the evidence and state of pleading before this Court, was aware of the cancellation of his licence, failed to take steps to challenge same, rather in paragraphs **39, 40 and 41** of its Amended Statement of Defence, the 1st Defendant claimed that after writing the 2nd Defendant without reply he took it that there was no issue. This is preposterous, as there is a presumption of regularity in favour of acts performed by the 2nd Defendant. Having not challenged same since 11th February 2011, being an act performed by a public officer protected by the Public Officers Protection Act, the 1st Defendant is stopped in law from asserting that right. I am not unmindful of the learned SAN's position that the case is about ownership of land and therefore no issue of POPA. But in all sincerity, POPA applies because, the act of reallocation is a public duty by a public officer which should have been challenged timeously. See submission of SAN and Ike on 17/2/23.

The law is now settled that the claims and counter claims though different and independent actions are tried together. When a decision is reached in the main claim, it impacts the counter claim. See **MEDITERRANEAN SHIPPING CO. (NIG) LTD VS. PEWIS ENT. LTD (2021) LPELR-53190 (CA)** where the Court of Appeal held thus:

“It is commonsensical that, given the facts upon which the claim of the Respondent and the counterclaim of the Appellant were predicated, the grant of one would necessarily negate the grant of the other. Both of them could not be granted....The law is that where the facts are intertwined and interwoven as regards a plaintiff's action and a defendant's counter claim, the success of the plaintiff's claim would mean the failure of the defendant's counter claim.”

See also: **AJAO VS. OGUNTOLU & ANOR (2021) LPELR-56076 (CA)**.

This is the case in the instant suit, having held the Claimant's allocation is valid and subsisting, same has impacted negatively on the 1st Defendant's Counterclaim. Coupled with my finding that this case is

caught up by the Public Officers Protection Act (POPA), the Counterclaim must fail. I so hold.

Finally, the law on special damages is that same should be specifically pleaded and strictly proved. **A. G. LEVENTIS (NIG) PLC VS. AKPU (2007) 17 NWLR (PT. 1063) 416 & NDPHC PLC VS. MR. SHIMAVE ANTIV (2022) LPELR-57538 (CA).**

In the instant case, the Claimant failed woefully to prove and specify the particulars of the special damages he suffered as a result of the acts of the defendants and strictly prove same. The claim for special damages fails, is hereby dismissed. Equally there is no credible to hold that the 1st defendant trespassed on the said land, as such I decline to make the declaration on trespass, I so hold.

On the issue of the claim for legal fees, the law is that Solicitor's fees are not recoverable as part of costs of an action, on grounds of public policy. See the decision of the Supreme Court in **NWANJI VS. COASTAL SERVICES LIMITED (2004) 11 NWLR (PT. 885) 552**, where **Uwaifo J. S. C.** held thus:

“There is the award of N20,000.00 as professional fees allegedly paid by the Respondent in respect of Fougerolle’s case. It was fees said to have been paid by the Respondent to defend a suit brought against it by Fougerolle in regard to non-delivery of the goods in question. I can find no basis for this award... Secondly, it is an unusual claim and difficult to accept in this country as things stand today because as said by Uwaifo, JCA in IHEKWOABA VS. ACB LIMITED (1998) 10 NWLR (PT. 571) 590 at 610-611: ‘The issue of damages as an aspect of solicitor’s fees is not one that lends itself to support in this Country. There is no system of cost taxation to get a realistic figure. Costs are awarded arbitrarily and certainly usually minimally. I do not therefore see why the Appellants will be entitled to general or any damages against the auctioneer or against the mortgagee who

engaged him in the present case, on the ground of solicitor's costs paid by him."

On the whole, I hold that the Claimant's claim in its Amended Statement of Claim has merit, succeeds in part and it is hereby granted. The 1st Defendant's Amended Counter Claim is incompetent and same is hereby struck out. Since I am not the final Court, assuming I am wrong that the suit is incompetent, on the merits having found for the claimant, read all the exhibits tendered from the bar and the totality of the evidence before this Court including the oral submission of Counsel, I cannot see my way in faulting exhibit 'M'. I hold that the amended Counterclaim is devoid of merit and the reliefs contained therein fails, they must be and are hereby dismissed.

Consequently, it is ordered as follows:

- a. **A DECLARATION** that the Plaintiff is the bonafide and beneficial owner of the Plot of Land situate and known as Plot 56 Cadastral Zone C05, Kafe District Abuja by virtue of Approval Grant dated 16th February 2010, Conveyance of Approval dated 22nd August 2013 and the Lease Agreement granted to it is hereby granted.
- b. **AN ORDER** of perpetual injunction restraining the Defendants, their agents, assigns, workers, servants and any other person whosoever from further entering, interfering with the Plaintiff's occupation and ownership or trespassing on the Plot of land situate and known as Plot 56 Cadastral Zone C05, Kafe District Abuja is hereby granted.
- c. **AN ORDER** of this Honourable Court nullifying and or voiding the purported Development Approval given to the 1st Defendant over the Plot of land situate and known as Plot 56 Cadastral Zone C05, Kafe District Abuja belonging to the Plaintiff is hereby granted.
- d. **AN ORDER** of this Honourable Court directing the 2nd Defendant to issue the Plaintiff Development Approval over the plot of land situate and known as Plot 56 Cadastral Zone C05, Kafe District

Abuja having fulfilled all requirement for the Approval is hereby granted.

- e. The sum of **N5,000,000.00** (Five million Naira only) being the cost of this case is hereby refused and dismissed.
- f. The sum of **N15,000,000.00** (Fifteen Million Naira only) as special and general damages against the Defendants for trespass is refused and dismissed.

Parties to bear their respective costs.

Signed
S. B. Belgore
(Judge) 22/2/2023