

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 20<sup>TH</sup> DAY OF FEBRUARY, 2023.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**  
**SUIT NO.:-FCT/HC/CV/1646/18**

**BETWEEN:**

**1. ADEYEMO A. OMOTUNDE**  
**2. ABDULRASAK SEKONI**  
**3. TUNDE SAKA**  
**4. THOMAS P. TERHEMBA** } :.....**CLAIMANTS**

**AND**

**KYC INTER-PROJECT LTD:.....DEFENDANT**

Isaac Ibuoye for all the Claimants.  
J.K. Kolawole for the Defendant.

**JUDGMENT.**

The Claimants, by a Writ of Summons dated the 26<sup>th</sup> day of April, 2018 and filed on the 30<sup>th</sup> day of April, 2018, brought this action against the Defendant, praying the Court for the following reliefs:

- I. A declaration of this honourable Court that the Claimants are the sole bona-fide, lawful allottees, beneficial owners and in physical possession of the property known as and called “Plot No. 186, Plot No. 188, Plot 189 and Plot No. 191 located at Sabon Lugbe East layout, Airport Road, Abuja.”
- II. A declaration of this honourable Court that the Defendant has no legal right whatsoever to trespass into, interfere with or disturb the Claimants’ possession,

use and development of the said property known as and called "Plot No. 186, Plot No. 188, Plot 189 and Plot No. 191 located at Sabon Lugbe East layout, Airport Road, Abuja."

- III. A declaration of this honourable Court that the trespassory acts of the Defendant in encroaching upon the Claimants' land, making of blocks, making of road, chasing away the Claimants' workers from the said land and threatening to seize and sell the land and the working materials deposited thereon, including covering the hole dug for fence, is trespass, wrongful, unlawful and illegal.
- IV. An Order of injunction perpetually restraining the Defendant by themselves, their Directors, their agents or servants, from trespassing into, interfering with or disturbing the Claimants' possession, use and development of the said(sic) known as and called "Plot No. 186, Plot No. 188, Plot 189 and Plot No. 191 located at Sabon Lugbe East layout, Airport Road, Abuja."
- V. The sum of N160,000,000.00 (One Hundred and Sixty Million Naira) only, being special and general aggravated damages against the Defendant for trespassing into, interfering with and disturbing the Claimants' possession, use and development of the said property and destruction of same land known as and called "Plot No. 186, Plot No. 188, Plot 189 and Plot No. 191 located at Sabon Lugbe East layout, Airport Road, Abuja."
- VI. The sum of N2,000,000.00 (Two Million Naira) only, being cost of legal and professional fees to Messrs Isaac Ibuoye & Associates, for filing and prosecuting this suit.

- VII. Interest of 15% per annum on the judgment sum from the date of judgment and thereafter until the judgment sum is fully liquidated.
- VIII. And for such order or further orders or reliefs as the honourable Court may deem fit to make in the circumstances of this case.

Stating their case in the Statement of Claim, the Claimants averred that on 11<sup>th</sup> of March, 1998, pursuant to their applications dated December, 1997, they were severally and individually granted statutory Rights of Occupancy in respect of the land known as and called Plot No. 186, Plot No. 188, Plot 189 and Plot No. 191 located at Sabon Lugbe East layout, Airport Road, Abuja, with Title Deed Plans thereof.

They averred that owing to the activities of people encroaching on the undeveloped plots of land in Sabon Lugbe East Layout, Airport Road, Abuja where the said land is situate, they have been clearing the bushes on the land each year to indicate ownership and maintain presence and control on the land, and that they even allowed petty vegetable farming on the land, as well as paying a security personnel to watch over the land for them.

The Claimants averred that as the years went by, they decided to construct perimeter fence round their land and put a guard over the land jointly, and that in preparation for the commencement of the construction, they bought 15 trips of sand, gravel, chippings; 20 bags of cement, planks and bundles of iron rods, which were all deposited on the land preparatory to the construction works. That when they went to clear the site on Saturday, 10<sup>th</sup> February, 2018, they were accosted by the Defendant's workmen who surrounded them and began ordering them to leave and vacate their own land.

They stated that following the 4<sup>th</sup> Claimant's refusal of the unlawful order to leave and vacate his plot of land, and his demand that the Defendant should produce documents by which it was claiming the land, he was hit with a rod and beaten to a comma, which led to his being admitted at Federal Medical Centre, Jabi, for 7 days.

The Claimants further averred that all attempts to dissuade the Defendant from causing trouble on the land were to no avail, and that notwithstanding the fact that the Defendant does not have any right, title or claim over the land, the Defendant would not allow the Claimants' workmen to even clear the land before excavation.

On the 10<sup>th</sup> day of March, 2020, the Claimants opened their case with the evidence of one Yakubu Dairu, AMAC's Zonal Manager of Lands Department who was subpoenaed to tender the site layout. He tendered the certified true copy of the said document which was admitted in evidence as Exhibit PW1A-A1.

The 2<sup>nd</sup> Claimant on 6<sup>th</sup> day of October, 2020 gave evidence as PW2 as he adopted his witness statement on oath wherein he affirmed the averments in the statement of claim. He also tendered the following documents in evidence:

1. Offer of Terms of Grant/Conveyance of Approval – Exh. PW2A-A1.
2. Photographs – Exhibit PW2B-B6.
3. Certificate of Compliance – Exhibit PW2C.

The PW2 was duly cross examined by the Defendant during which he stated that it was the 1<sup>st</sup> Claimant who helped the other Claimants in obtaining their title to the plots.

The PW2 admitted that there is no evidence of building materials on the site from Exhibits PW2B-B6; the reason, according to him, being that the land had been cleared.

The 1<sup>st</sup> Claimant on the 1<sup>st</sup> day of July, 2021 adopted his witness statement on oath as he testified as PW3. He also tendered his Right of Occupancy (Exhibit PW3A) in support of the case of the Claimants.

Under cross examination, the PW3 stated that the petty vegetable farmers on their land were the villagers who were farming on the land before same was allocated to them.

He told the Court that they decided to take their colleague who was injured by the Defendant to the Police station first, because they needed Police report since the person (PW4) was beaten to a comma. He also stated that he and the other Claimants were childhood friends.

In further support of the Claimants' case, the 4<sup>th</sup> Claimant testified as PW4 on the 27<sup>th</sup> day of September, 2021. He adopted his Witness Statement on Oath wherein he further affirmed the averments in the statement of claim, and also tendered a Certified True Copy of his Right of Occupancy and Medical Report which were both admitted in evidence as Exhibits PW4A and PW4B respectively.

It was also the evidence of PW4 as per paragraphs 11 and 12 of his Witness Statement on Oath, that the Defendant had sent several representatives, including its counsel, Mr. Kolawole, to beg him to sell his land which he declined, and that he knows as a fact that the Defendant was incorporated on 5<sup>th</sup> March, 2010 and could never have signed any Deed in 2005.

Under cross examination, the PW4 stated that the 2<sup>nd</sup> Claimant was his primary school friend, and that he went to the same Polytechnic at Kaduna with the 3<sup>rd</sup> Claimant, while he met the 1<sup>st</sup> Claimant here in Abuja.

He reiterated that the Defendant, since encroaching on his land, has been asking for settlement.

On the 1<sup>st</sup> February, 2022, the 3<sup>rd</sup> Claimant, as PW5, adopted his Witness Statement on Oath in further support of the Claimants' case. He also tendered the following documents in evidence.

1. TDP and Offer of Terms of Grant/Conveyance of Approval – Exh. PW5A-A1.
2. Photographs – Exhibit PW5B-B4.
3. Certificate of Compliance – Exhibit PW5C.

The PW5 was duly cross examined by the Defendant during which he stated that it was the villagers who alerted the Claimants of the Defendant's encroachment on their land.

In defence of the suit, the Defendant filed an amended statement of defence and counter-claim dated the 1<sup>st</sup> day of June, 2022 and filed the 3<sup>rd</sup> day of June, 2022. The Defendant averred in the amended statement of defence that contrary to the Claimants' assertion; that Plot Nos. 186, 188, 189 and 191 located at Sabon Lugbe East Layout, Airport Road, Abuja, were rather allocated to Ninje Mukhtar, Okafor Uche, Ajibola Seun and Shadat A. Sanusi respectively on 11<sup>th</sup> March, 1998 after their application for the various plots sometime in 1997, and that they were issued relevant documents evidencing their title to the respective plots.

The Defendant averred that it acquired title to the said Plot Nos. 186, 188, 189 and 191 Sabon Lugbe East Layout, Airport

Road, Abuja, from the original allottees in 2005 vide a Power of Attorney and Deed of Assignment.

It stated that the Claimants at no time occupied the land by posting guard or putting any building material on same.

The Defendant further averred that it had been working on the plots it legitimately acquired years back before its personnel suddenly saw the Claimants coming to the site with thugs and breaking down its already constructed fence, claiming that the plots belong to them.

Furthermore, that in furtherance of its real estate development business object, the Defendant partitioned the said Plot Nos. 186, 188, 189 and 191 into service plots, forming part of its Diamond Acres Estate, Phase II, and that various subscribers thereto, have all constructed their individual allotted service plots into standing buildings before the Claimants commenced this suit.

The Defendant stated that none of the Claimants nor their accompanied thugs were injured by its personnel despite serious degree of provocation.

The Defendant averred that the Claimants have no title whatsoever to the said Plot Nos. 186, 188, 189 and 191 Sabon Lugbe East Layout, Airport Road, Abuja, and thus counter-claimed against the Claimants as follows:

- a. An order of the honourable Court that the actions of Claimants in entering the Defendant's land at Plot Nos. 186, 188, 189 and 191 located at Sabon Lugbe East Layout, Airport Road, thereby destroying the fence, blocks of the Defendant is an act of trespass which is wrongful and illegal.

- b. An order that the Defendant is entitled to the title and exclusive possession to Plot Nos. 186, 188, 189 and 191 located at Sabon Lugbe East Layout, Airport Road.
- c. And order of perpetual injunction restraining the Claimants, their agents, privies and assigns from further entering into the Defendant's land, Plot Nos. 186, 188, 189 and 191 located at Sabon Lugbe East Layout, Airport Road.
- d. The sum of N8,000,000.00 (Eight Million Naira) only being the total sum of money for the destroyed fence.
- e. The sum of N250,000,000.00 (Two Hundred and Fifty Million Naira) only as general damages against the Claimants.
- f. The sum of N1,000,000.00 (One Million Naira) only as the cost of defending this suit.

The Defendant opened its defence on the 26<sup>th</sup> day of October, 2022 with one Michael Ayuba Auta testifying as DW1. He adopted his Witness Statement on Oath by which he affirmed the averments in the Defendant's Statement of Defence and counter-claim.

In proof of the Defendant's case, the DW1 tendered the following documents in evidence:

- 1. Offer of Terms of Grant to one Shadat A. Sanusi and other accompanying documents/receipts – Exhibit DW1A-A5.
- 2. Offer of Terms of Grant to one Okafor Uche and other accompanying documents/receipts – Exhibit DW1B-B5.
- 3. Offer of Terms of Grant to one Ninje Mukhtar and other accompanying documents/receipts – Exhibit DW1C-C5.
- 4. Offer of Terms of Grant to one Ajibola Seun and other accompanying documents/receipts – Exhibit DW1D-D5.



At the point of tendering the above documents, the learned Claimants' counsel raised objection to their admissibility, to which both parties respectively proffered arguments and responses. The Court subsequently adjourned the matter to the 27<sup>th</sup> day of October, 2022, for ruling and continuation of the evidence in chief of DW1.

On the said 27<sup>th</sup> day of October, 2022 the defendant, its witness and counsel were absent in Court. Ruling was delivered admitting the above mentioned exhibits, but the evidence in chief of the DW1 could not continue on that day owing to the said absence of the defence team. The Court was thus compelled to further adjourn the case to the 16<sup>th</sup> day of November, 2022 to further afford the Defendant the opportunity to fully present its case.

On the 16<sup>th</sup> November, 2022, the defence counsel told the Court that the Defendant cannot continue with its defence on the grounds that they wrote a letter to the Chief Judge of this Court. He told the Court that they are awaiting the response of the Chief Judge as that would determine the next direction of the case.

On the part of the Claimants, their learned counsel reminded the Court that they had long closed their case since 2021 and the fact that since the inception of the case, the Defendant has been in the habit of delaying the proceedings through several letters for adjournment. He consequently prayed the Court to foreclose the Defendant as it is clear that the Defendant is not ready to go through with the trial.

Going through the records of the Court, this Court observed that the Defendant has taken not less than seven adjournments from the inception of the case (all on very flippant reasons) which though contrary to the allowable number of adjournments

by the Rules of this Court, were permitted by this Court for the interest of doing substantial justice.

After taking cognizance of the antecedents of the Defendant in this suit which clearly show an intent on frustrating the proceedings in this case, this Court in the overriding interest of justice refused the Defendant's application for further adjournment and consequent upon the Claimants' application, had the Defendant foreclosed.

The case was consequently adjourned for the adoption of final written addresses.

The Claimants who alone filed their final written address adopted same on the 8<sup>th</sup> day of December, 2022.

The learned Claimant's counsel, Isaac O. Ibuoye, Esq, in the said final written address, raised three issues for determination, namely;

- i. Whether the Claimants has (sic) proved their case including trespass on the balance of probabilities and/or preponderance of evidence to entitle them to the reliefs sought before this honourable Court?
- ii. Whether the Claimants have not proved and discharged the burden of proof placed upon them by law and remained unchallenged, the Defendant having produced an afterthought fake title documents in defence of this suit and call(sic) evidence in rebuttal of the Claimants' claims?
- iii. Whether the Claimants are not entitled to 'everything attached' to the land under the legal principle/maxim of 'Quic quid plantetur cedit'?

Proffering arguments on issue one, learned counsel contended that the Claimants by the witnesses called and evidence adduced

before the Court, were able to prove that not only are they bonafide owners, but also in possession of the plots of land in dispute before the Defendant trespassed into same and carted away their building materials deposited thereon.

He posited that no material part of the testimonies of the Claimants was contradicted by the Defendant under cross examination.

He contended further, that from the evidence adduced by the Claimants on this suit, that there is no gainsaying the fact that the Claimants have established their incontrovertible interests of both legal and equitable in the subject Plot Nos. 186, 188, 189 and 191 Cadastral Zone 07-07, Lugbe 1 Layout, Abuja.

He referred to **Ajibulu v. Ajayi (2014)2 NWLR (Pt.1392)483 at 500** on the judicially established ways of proving title to land, and posited that the Claimants have produced their original title documents in this suit without any protest, contest or objection from the Defendant.

He further referred to **Tanko v. Echendu (2011)18 NWLR pg 253 at 282** on the point that the Court acts on unchallenged evidence and urged the Court to hold that the Claimants have established their title to the dispute plots.

Learned counsel further contended that the Defendant merely made a general traverse regarding the Claimants' allegation of trespass and the assault on the 4<sup>th</sup> Claimant, without more and argued that such evasive denial is in law, generally considered as admission. He referred to **Eke & Ors v. Okwaranyia & Ors (2001)LPELR 1074(SC); Balogun v. UBA Ltd (1992)LPELR-728(SC).**

Arguing issue two, learned counsel relied on **American Cynamid Co. Ltd v. Vitality Pharmaseuticals Ltd (1991)2**

**NWLR (Pt.171)15**, to submit that the law is trite that where evidence of the Claimants, as in the instant case, has not been challenged, contradicted or shaken under cross-examination, and the said evidence are not inadmissible in law, and are in line with the facts pleaded, then the evidence must be accepted as the correct version of what they allege; thus entitling the Claimants to judgment.

He further referred to **KLM Royal Dutch Airlines v. Ayanlaja (1998)13 NWLR (Pt.583)468 at 477** on the point that where the evidence of a party is unchallenged, the onus of proof is naturally discharged on minimum of proof.

He posited that the entirety of the evidence of the Claimants have not been rebutted by any contrary title document(s). He argued that the Claimants' evidence being unchallenged, the Claimants have naturally discharged the burden of proof placed on them by law.

He urged the Court to countenance the pictures admitted in evidence showing acts of trespass by the Defendant on Claimants' plots of land and award damages in favour of the Claimants, especially the 4<sup>th</sup> Claimant who was hospitalized for days as a result of the assault of the Defendant.

On issue three, learned counsel posited that trespass to land is actionable and that the Claimant is entitled to damages and the attachments to the land. He referred to **Akhigbe v. Aigbeze (2018)All FWLR (Pt.950)1075 CA.**

He submitted, with reliance on **NEPA v. Amusa & Anor (1976) LPELR 1956(SC)**, that it is trite law that he who owns the land owns everything that is attached thereto.

Learned counsel contended that the Claimants' plots were vacant plots at the commencement of this suit, but the

Defendant in gross disobedience to the order of Court went into the land and constructed on same while the case was subsisting. He argued that the Claimants having proved their titles are therefore entitled to the land's attachments.

Relying on **Onuwaje v. Ogboide (1991)3 NWLR (Pt.178)147,** he further contended that the Defendant cannot benefit from its violation of the order of Court in any way.

Learned counsel in conclusion, urged the Court to find in favour of the Claimants and grant all the reliefs sought by the Claimants.

The reliefs sought by the Claimants in this case are mainly declaratory in nature. As such, the Claimants are required by law to establish their claims by credible evidence for them to be entitled to the reliefs sought. This is because, the Courts do not grant declaratory reliefs either in default of defence or admission, without hearing evidence and being satisfied by such evidence. See **Fairline Pharmaceutical Industries Ltd & ANor v. Trust Adjusters Nig. Ltd (2012)LPELR-20860(CA).**

In **Bello v. Eweka (1981)1 SC 1010 at 102-103,** the Supreme Court, per Obaseki, JSC, held that:

***“Where the Court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the Court by evidence, not by admission in the pleadings of the defendant that he is entitled. The necessity for this arises from the fact that the Court has discretion to grant or refuse the declaration and the success of a Claimant in such an action depends entirely on the***

***strength of his own case and not in the weakness of the defence.***

The Claimants in this case therefore, have the onus of satisfying this Court by credible evidence, that they are entitled to the declarations forming their principal reliefs in this suit.

Being a civil suit, the standard on which the onus of proof on the Claimants is to be discharged is on a balance of probability or preponderance of evidence. See **Ezemba v. Ibeneme & Anor (2004) LPELR-1205(SC)**.

In the determination of this case therefore, the question to consider is whether the Claimants have established their claims by credible evidence as to be entitled to the reliefs sought.

Citing the case of **Idundun v. Okumagba (1976)NMLR 200 at 210**, the Supreme Court in **Addah & Ors v. Ubandawaki (2015)LPELR-24266(SC)**, held that it is now settled that there are five ways of proving ownership of land, namely;

1. By traditional evidence.
2. By production of documents of title which must be duly authenticated in the sense that their due execution must be proved.
3. By acts of ownership extending over a sufficient length of time and are numerous and positive enough to warrant the inference that the person is the true owner.
4. By acts of long possession and enjoyment of land which may be prima facie evidence of ownership of the particular piece or parcel of land or quantity of land.
5. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land, would in addition be the owner of the land in dispute.

The Claimants in this case have relied on the production of documents of title, to wit; Statutory Right of Occupancies Exhibits PW2A, PW3A, PW4A and PW5A1 in relation to Plot Nos. 188, 186, 191 and 189 Sabon Lugbe East Layout, respectively, being the plots of land in dispute.

A perusal of the said documents show that same were granted by the Minister of the Federal Capital Territory, who alone, is authorised by law, to allocate land in the Federal Capital Territory. See Section 18 of the Federal Capital Territory Act; **Madu v. Madu (2008)All FWLR (Pt.414)1604 at 1627.**

In further examining the said documents of title relied upon by the Claimants vis-à-vis the dictum of the Supreme Court in the case of **Romaine v. Romaine (1992)4 NWLR (Pt.238)650 at 662;** it is my finding that the said documents are genuine and valid, and that they have been duly executed by the relevant authority authorised to so do.

It is my further finding that the grantor of the title conveyed by the said documents, had the authority and capacity to make the grant, and that the grantor indeed, had what he purported to grant, being a Statutory Right of Occupancy grantable in the Federal Capital Territory. See **Madu v. Madu (supra).**

In the circumstances, I am satisfied that the said instruments of grant have the effect claimed by the holders thereof-the Claimants.

By the foregoing findings of this Court, the Claimants have thus established their entitlement to a declaration of title to the plots in issue. The question then, **is whether the Defendant has disproved the title so established by the Claimants, or has in any way established a competing interest or a better title to the said plots of land?**

The Defendant who is equally claiming title to the disputed plots of land tendered Exhibits DW1A-A5, DW1B-B5, DW1C-C5 and DW1D-D5. However, it is not only that the said documents lack any nexus to the Defendant, but from the state of the documents, it is evident that same were hurriedly procured for the purposes of this suit.

Exhibits DW1A-A5 are in the name of one Shadat A. Sanusi, Exhibit DW1B-B5 bear the name of Okafor Uche; Exhibits DW1C-C5 carries the name Ninje Mukhtar; while Exhibits DW1D-D5 were purportedly issued to Ajibola Seun.

The Defendant claimed that it purchased the plots in issue from the persons named in these documents. There is however, nothing in evidence before this Court to prove the alleged purchase of the said plots of land by the Defendant from the purported allottees.

In the circumstances, the Defendant has failed to establish any title to the land in dispute, much less a better one. The Defendant by its pleadings admitted entering upon the said plots and building thereon. See paragraphs 11, 14 and 16 of the amended statement of defence. This admission corroborates and further establishes the allegation of trespass made against the Defendant by the Claimants in proof of which the Claimants tendered photographic evidence, Exhibits PW2B-B6, which show excavations and construction works being carried out by the Defendants on the disputed plots. The Claimants had pleaded the fact of their being in possession of the said plots through the vegetable farmers who they let into the plots before the Defendant's interference with their possession.

This interference by the Defendant is unlawful and therefore, constitutes trespass. See **Omorhirhi & Ors v. Enatevwere**



**(1988)LPELR-2659(SC); Yesufu v. Adama (2002)LPELR-12162(CA).**

It is thus, my finding, that the Claimants have on a preponderance of credible evidence established their claims before this Court, and are therefore, entitled to the reliefs sought.

Accordingly, judgment is entered for the Claimants as follows

- I. It is declared that the Claimants are the bonafide lawful allottees and beneficial owners of the property known as and called “Plot No. 186, Plot No. 188, Plot 189 and Plot No. 191 located at Sabon Lugbe East layout, Airport Road, Abuja.”
- II. It is declared that the Defendants have no legal right whatsoever to trespass into, interfere with or disturb the Claimants’ possession, use and development of the said property known as and called “Plot No. 186, Plot No. 188, Plot 189 and Plot No. 191 located at Sabon Lugbe East layout, Airport Road, Abuja.”
- III. It is declared that the acts of the Defendant in encroaching upon the Claimants’ land, making of blocks, making of road, chasing away the Claimants’ workers from the said land and threatening to seize and sell the land and the working materials deposited thereon, including covering the hole dug for fence, constitute trespass, and are wrongful, unlawful and illegal.
- IV. An Order of perpetual injunction is made restraining the Defendant whether by itself, its Directors, agents or servants, from trespassing into, interfering with or disturbing the Claimants’ possession, use and development of the said property known as and called Plot

No. 186, Plot No. 188, Plot 189 and Plot No. 191 located at Sabon Lugbe East layout, Airport Road, Abuja.

V. The sum of N100,000,000.00 (One Hundred Million Naira) is awarded against the Defendant as general damages for trespassing into, interfering with and disturbing the Claimants' possession, use and development of the said property known as and called Plot No. 186, Plot No. 188, Plot 189 and Plot No. 191 located at Sabon Lugbe East layout, Airport Road, Abuja.

VI. The claim for N2m as legal and professional fees of Messrs Isaac Ibuoye & Associates is not proved. The same accordingly fails and is hereby dismissed.

VII. Interest of 10% per annum on the judgment sum from the date of judgment until same is fully liquidated.

VIII. For further orders; this Court orders that all the buildings erected by the Defendant during the pendency of this suit on the said land, Plot No. 186, Plot No. 188, Plot 189 and Plot No. 191 located at Sabon Lugbe East layout, Airport Road, Abuja, owned by the Claimants and in disobedience to the injunctive order of this Court, be forfeited to the Claimants on the basis of the maxim 'Quic quid plantetur solo solo cedit'.

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**HON. JUSTICE A.O. OTALUKA.**

Regarding the Defendant's counter-claim wherein she has claimed the contrary of the Claimants' claims in the main suit. The Defendant has relied on Exhibits DW1A-A5, DW1B-B5, DW1C-C5 and DW1D-D5.

In scrutinizing the exhibits before this Court and drawing attention to the earlier Statement of Defence and documents attached including receipts, this Court has observed that Exhibit DW1A – A2, Exhibit DW1B – B2, Exhibit DW1C –C2 and Exhibit DW1D – D2 tendered by the Defendant are freshly prepared documents purported to be the original. Likewise, Exhibits DW1A3 – A5, Exhibit DW1B3 – B5, Exhibit DW1C3 – C5 and Exhibit DW1D3 – D5 are equally freshly prepared receipts purporting to be for Developmental levy, Processing fee and payment for the Certificate of Occupancy.

These documents do not represent the ages on them with regard to date of payment and meanwhile they were processed and produced in 1998.

The signatures on these documents of the earlier statement of defence dated 14<sup>th</sup> November, 2018 are irregular on their faces when compared with the same documents attached to the amended statement of defence dated 1<sup>st</sup> June, 2022 and filed 3<sup>rd</sup> June, 2022.

In quest for justice, my attention was drawn to the Statement of Defence, the Witness Statement on Oath and the title documents with receipts attached, dated 14/11/18.

I still repeat, I discovered that the photocopies of the title documents and receipts attached to the statement of defence are not a replica of the original copies of Exhibits DW1A – A5, DW1B – B5, DW1C – C5 and DW1D – D5 tendered by the Defendant. If these photocopies were actually made from Exhibits DW1A – DW1D, they should be exactly the same documents.

Without mincing words, it is obvious that these documents (Exhibits DW1A – A5, DW1B – B5, DW1C – C5 and DW1D - D5) are not genuine.

Placing reliance on **Agbahomoro v. Eduyegbe (1999) 3 NWLR (Pt.594)170**, a Judge has a right to look and refer to any document in the Court's file which was not tendered as an exhibit. See also Section 122 Evidence Act 2011 **Ezechukwu Onwuka (2016)5 NWLR Pt 1506 p.526.**

Thus, the Defendant in one of her Counter Affidavits to the Claimants' motion No. M/5438/18 dated and filed on 29/6/18, in paragraph 17 thereof, at page 70 of the Court's file, described Plot 191 purportedly allocated to Shadat, A.Sanusi and Sujamah Nig. Ltd as "Customary Certificate of Occupancy" while she only tendered the "Offer of Terms of Grant/Conveyance of Approval" dated 11/3/98 – Exh DW1A-A2 as referred to in paragraph 7 of his amended Statement of Defence page 908.

For more emphasis however, I will reiterate my finding that the documents of title on the basis of which the Defendant is claiming title to the disputed property, lacks any scintilla of nexus to the Defendant. On whether mere production of document of title is sufficient in a claim for declaration of title to land. In **Kome v. Ifenkwe (2018)LPELR-44987(CA)**. The Court of Appeal held that;

***“The mere production of a document of title does not automatically entitle the Claimant to a declaration of title. The Court must be satisfied that the document is indeed sufficient proof of ownership.”***

It is trite that the production of a document and reliance upon it as instrument of grant compels the need of the Court to inquire

into the questions as laid down in **Ramaine v. Romaine (1992)4 NWLR (Pt. 238)650, Agoola v. UBA (2011)LPELR-9353 SC.**

It is very obvious from my observations that the said documents are not genuine. I so hold that Exhibits DW1A-DW1D are not genuine and are expunged.

It is pertinent at this juncture, to highlight some of the antics displayed by the Defendant/Counter-Claimant. At the commencement of this suit, this Court on the application of the Claimants, made an interlocutory order for injunction restraining all the parties from tampering with the subject matter of the suit pending the hearing and determination of the suit.

On the 14<sup>th</sup> day of November, 2018, the Claimants moved Motion No. M/9791/18 seeking the issuance of Forms 48 and 49 against the Defendant for disobeying the said order of injunction. Following the denial of the Defendant in its counter affidavit to the Motion on Notice M/9791/18 that it was carrying on construction work on the disputed land, the Claimants requested for the Court's visit to the locus inquo, which request was granted by the Court.

With the agreement of counsel on both sides, the case was then adjourned to 10<sup>th</sup> December, 2018 for a visit to the locus to ascertain the veracity of the claims by the Claimant vis-à-vis the Defendant's denial.

On the said 10<sup>th</sup> December, 2018, the Defendant's counsel was in Court in the morning. When it was time for the visit to the locus, the said Defendant's counsel, Mr. Kolawole disappeared, meanwhile he informed the Claimant's counsel that he would be at the locus waiting for the Court. Until the conclusion of the visit, the Defendant's counsel was nowhere to be found.

Several phone calls were put to him, but he failed to come. Meanwhile, at the locus in quo, this Court observed indeed, that the Defendant was busy carrying on excavation and construction works on the disputed plots in utter disregard to the order of this Court. This goes to confirm Exh PW2B-B6, PW5B-B4 pictures showing the excavation and construction of building at the disputed property in defiance to Court's orders of injunction and restoring the parties to status quo. Grant of injunction in law is for the purpose of preservation of the res and to combat or arrest a fait accompli which the Defendant attempted to foist. In the present case it is my finding that the Defendant forcefully took over the subject matter – **Akpo v. Hakeem Habeeb (1992)6 NWLR (Pt.247) 266.**

Furthermore, the Claimants had challenged the legal status and capability of Defendant to purchase the land in 1998 when the Defendant/Counter-Claimant was only registered with Corporate Affairs Commission in 2005. Defendant never disputed or debunked this by production of her Certificate of Registration with Corporate Affairs Commission.

It is trite law that juristic personality of a company is proved or established by the production of its Certificate of Incorporation – **Goodwill & Trust Investment Ltd v. Umeh (2011) 8 NWLR(Pt.1250)500.**

Furthermore, all through the duration of the trial, the Defendant/Counter-Claimant tried all it could to frustrate the proceeding through incessant and frivolous applications for adjournments. When the Defendant/Counter-Claimant eventually opened its case and produced a witness DW1, Michael Ayuba who testified in chief on 26<sup>th</sup> October, 2022. On the same 26<sup>th</sup> October, 2022, in the course of trial, the Court rose for a short break and on resuming for the cross

examination of DW1 by the Plaintiff's counsel, the Defendant's witness in the witness box disappeared and never came back on that day for cross examination leaving the Court and counsel frustrated. For the interest of fair hearing, the Court adjourned to a subsequent date, Defendant's counsel failed to produce his witness for cross examination, and subsequently abandoned the case.

The legal effect of the failure of the Defendant to present her sole witness for cross examination and conclusion of her evidence is that the evidence of the said witness is abandoned and goes to naught. See **Isiaka v. State (2010)LPELR-11864(CA)**.

But even if the evidence of DW1 were to be considered in the circumstances, I have already made a finding in the main suit to the effect that same does not support the case of the Defendant/Counter-Claimant as the purported instruments of grant have no nexus to the Defendant/Counter-Claimant and failed the test in **Romaine v. Romaine (supra)**.

It is thus my finding, that the Defendant/Counter-Claimant has failed to prove its Counter-Claim. The said Counter-Claim therefore, fails in its entirety, and same is accordingly dismissed with a cost of N200,000.00 (Two Hundred Thousand Naira).

**HON. JUSTICE A. O. OTALUKA**  
**20/2/2023.**

