IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 15th FEBRUARY, 2023

BETWEEN: **FCT/HC/CV/22/2021**

CHIEF DOMINIC ANIGBO---------- **PLAINTIFF**

AND

RABIU HASSAN IBRAHIM---------- **DEFENDANT**

JUDGMENT

By a writ of summons filed on 23rd February,2021 at the Court's Registry and an amended Statement of Claim dated 8th April,2022 and filed on 11th April, 2022, the Claimant claims the following reliefs against the Defendant:-

1. A DECLARATION that by virtue of outright purchase from Suleiman Danladi, the rightful owner, the Claimant is the holder and rightful owner of the property known as described as Plot No. 453 in Phase AA3 Layout in Kuje Area Council, FCT, Abuja; measuring approximately 2000 square meters with the Regularization of land Titles and Document of the Federal Capital Territory Area Councils dated 5th day of May, 2015.

2. A DECLARATION that the Claimant's interest in respect of Plot No. 453 in Phase AA3 Layout in Kuje Area Council, FCT, Abuja; measuring approximately 2000 square meters with the Regularization of land Titles and Document of the Federal Capital Territory Area Councils, dated 5th day of May, 2015, is valid and subsisting.

3. A DECLARATION that the actions of the Defendant in entering upon the Claimant's land, destroying his fence and raising structures on the said land being Plot No. 453 in Phase AA3 Layout.

4. AN ORDER of perpetual injunction restraining the Defendant, their privies, agents, heirs or assigns by whatsoever name referred, from doing anything or taking any further steps or in any way/manner tampering or interfering with the Claimant's right over Plot No. 453 in Phase AA3 Layout in Kuje Area Council, FCT, Abuja; measuring approximately 2000 square meters with the Regularization of land Titles and Document of the Federal Capital Territory Area Councils, dated 5th day of May, 2015.

5. N1, 000,000.00 (One Million Naira) only, against the Defendant to the Claimant, being damages for entering and clearing the said trespass and erecting structures on Phase AA3 Layout in Kuje Area Council, FCT, Abuja; measuring approximately 2000 square meters with the Regularization of land Titles and Document of the Federal

Capital Territory Area Councils, dated 5th day of May, 2015 thereby altering the character of the above mentioned land.

6. N100, 000.00 (One Hundred Thousand Naira) only as the cost of this action.

The Claimant initially commenced this action against an Uknown person but subsequently through an application for joinder filed and granted by this Court on the 16th of November, 2021, the Defendant was subsequently joined as Defendant. The Defendant in defence of this suit filed an amended Statement of Defence dated 8/12/2021 together with a Counter-Claim dated and filed on the 9/12/2021. The Defendant therein Counter-Claims as follows:

1. A Declaration that the 2nd Defendant is the bona fide owner of Plot No. 453 inAA3 layout situate at Kuje, Federal Capital Territory, Abuja and appurtenances respectively which he bought from Sadiq Momoh Jimoh and Sadiq Momoh Jimoh bought from the original allottee by name Afolayan B. John, the subject matter of this Suit.
2. A Declaration that the action of the Claimant is vexatious, baseless, frivolous and irritating and thereby amounting to an abuse of Court process.
3. The sum of N1,000,000.00 (One Million Naira) only for the psychological trauma and inconveniences the Claimant has made the Defendant to suffer in defending this Suit.

4. The sum of N1,000,000.00 (One Million Naira) only being the cost of defending this Suit.

The Claimant thereafter filed a Reply to Statement of Defence and Defence to the Counterclaim of the Defendant.

A synopsis of the Claimant's claim per his Statement of Claim is that on the 23rd of April, 1993 one Suleiman Danladi was issued in his name, a conveyance of Provisional Approval by the Kuje Area Council F.C.T Abuja Planning/Survey/Land Department in respect of Plot No. 453 in Phase AA3 Layout in Kuje Area Council, FCT, Abuja; measuring approximately 2000 square meters. The Claimant states that upon acquiring the said parcel of land, he entered into an agreement to purchase the property from Suleiman Danladi for the sum of N1, 800,000.00) (One Million Eight Hundred Thousand Naira) only and thereafter a sales agreement dated the 13th day of March 2013 executed between them. The Claimant further avers that he built a fence round the parcel of land and sometime in December 2020 on a visit to the land, he discovered that the Defendant has cleared the land and fell down the trees and the fence built by the Claimant and have commenced building on the parcel of land. The Claimant posits that the Defendant encroached upon his land, entering and clearing the said land and erecting structures therein on Plot No. 453 in Phase AA3 Layout in Kuje Area Council, FCT, Abuja. The Claimant asserts that he is the holder and rightful

owner of the said property and the Defendant has carried out acts of trespass against the said land.

The Defendant on his part, denied all the averments of the Claimant and Counterclaimed that he is the real and legitimate owner of the Plot No. 453 in Phase AA3 Layout measuring about 2000 square metres on grand 2141.84sqm in Kuje Area Council, FCT, Abuja and he is in absolute possession of his plot of land. The Defendant posits that the said plot of land was originally allotted to Afolayan B. John who in turn sold to Sadiq Momoh Jimoh from whom he bought the plot from and that the plot has a certificate of right of occupancy in the name of Afolayan B. John.

At the hearing of this Suit, the Claimant testified as a sole witness, he adopted his witness statement on oath and tendered the following documents in evidence:-

1. Regularization of land title and documents of FCT Area Council dated 5/05/2015 marked as Exhibit 1.
2. Conveyance of provisional approval dated 23/4/93 marked Exhibit 2.
3. Sale Agreement between Dominic Anigbo and Suleiman Danladi marked Exhibit 3.
4. 5 Receipts bearing the name of Suleiman Danladi marked Exhibit 4.
5. Survey Plan and Data, Departmental receipts bearing the Name of Suleiman Danladi marked Exhibit 5.

The Claimant during examination in Chief gave evidence as to how he bought the said plot of land from one Suleiman Danladi and thereafter tendered the above documents in evidence. The Claimant was cross-examined and thereafter he closed his case and the matter was adjourned for Defence.

Upon closure of the case of the Claimant, the matter came up for Defence on the 29th of September 2022. The Defendant testified as DW2 and called two other witnesses, Dw1 and Dw3, both subpoenaed witnesses.

The Dw1 who is a subpoenaed witness from Kuje Area Council, Planning and Survey said his name is Mr. Sunday Ezekiel. The Dw1 testified that the Documents evidencing Conveyance of Provisional Approval and evidence on Right of occupancy were moved to Abuja Geographic Information System (AGIS) in 2007 for further processing. The Dw1 asserted that the Kuje Area Council do not have the files in respect to the plot in contest at the moment but that he can verify that the plot of land actually exists.

On the 24th of October 2022, Dw2 who is the Defendant was led in evidence, he adopted his statement on oath and testified that he is the owner of the said Plot No. 453 in Phase AA3 Layout in Kuje Area Council, FCT, Abuja and that he bought the said plot of land from one Sadiq Momoh who sold the plot to him which he is still in possession. The Dw2 tendered the following documents in evidence:-

1. Customary Certificate of Occupancy bearing the name of Afolayan B. John marked Exhibit Dw1.
2. Conveyance of provisional approval belonging to Afolayan B. John marked Exhibit Dw2.
3. Agreement made in compensation of land marked Exhibit Dw3.
4. Regularization of Land Titles dated 14th February,2007 marked Exhibit Dw4.
5. Irrevocable Power of Attorney made by Afolayan B. John in favour of Sadiq Momoh marked Exhibit DW5.
6. Power of Attorney between the Defendant and Sadiq Momoh.

The Dw1 was cross examined and subsequently discharged.

The Defendant subsequently led his final witness DW3 in evidence, the Dw3 was a subpoenaed witness from Abuja Geographical Information System (AGIS). She was led in evidence and she testified saying her name is Comfort Derrick Nuhu and confirmed on being in Court based on a subpoena served on her office in respect of the subject matter before the Court. The Dw3 testified to the fact that documents relating to plot no. 453 in AA3 Layout Kuje were brought to the Lands Department of AGIS and as at then they were not documented on the system because as at then the Minister of the Federal Capital Territory, Abuja placed an embargo on all the Area Councils under the

Federal Capital Territory. The Dw3 testified as to the fact that on the system in the land administration department where she works in AGIS, the real allotee can be found which is Afolayan B. John and that the information of the said Afolayan B. John are still on the system and then in Kuje Area Council, she further asserted that the buyer in person of Mr. Rabiu Ibrahim Hassan is there in Kuje Area Council.

The DW3 was subsequently cross-examined.

At the close of hearing, the matter was adjourned for adoption of final addresses by both parties.

The Defendant raised 2 (Two) issues for determination before this Honourable Court to wit:-

1. Whether or not the Claimant has discharged the burden placed on him to prove that the land in dispute does not belong to the Defendant.
2. Whether the Plaintiff has proved its case to be entitled to any of the reliefs sought.

Arguing on issue 1, Learned Counsel to the Defendant cited the cases of ***IDUNDUN & ORS V OKUMAGBA (1976) LPELR-1431 (SC) and ODUNUKURE V OFOMATA & ANOR (2010) LPELR -2250 (SC)*** *i*n submitting that the Claimant has not been able to show that he is the owner of the said land by using any of means of proving title to land known to law.

Learned Counsel to the Defendant stated in conclusion on issue 1 that the Claimant never exercised any right of

possession over the said plot of land and the documents he is laying claim on have no legal foundation or backing whatsoever. Counsel further submitted that the Claimant has equally not proved or established any act of trespass against the Defendant whatsoever. Learned Counsel urged this Court to resolve issue one in favour of the Defendant as the Claimant has not established any link of traditional history or long possession, neither has he put forth title documents that have any legal footing before this Honourable Court.

On issue 2 raised by the Defendant, Learned Counsel to the Defendant posited that the Claimant has not been able to prove its case to be entitled to any of the relief sought in this matter. Counsel cited the case of ***UAC NIGERIA V SOBODU (2006) LPELR-7740 (CA)*** in asserting that from the totality of the evidence adduced by the Claimant before this Honourable Court, there is no iota of truth in his evidence to convince any reasonable Court in granting any of the reliefs sought by the Claimant.

Counsel thereafter submitted that the Court should resolve issue 2 in favour of the Defendant and accordingly dismiss the Claimant's suit with cost and judgment be entered in favour of the Defendant.

The Claimant in its final address raised the following questions for determination to wit:-

1. Whether the Plaintiff/Claimant had proved his case under the extant evidential laws with respect to declaratory matters?
2. Whether the Plaintiff has discharged the burden of proof.
3. Whether the Plaintiff has proved his title before the Court.
4. Whether the Plaintiff's case has been controverted or impugned in any manner by the Defence.
5. Whether the Defendant has proved his counterclaim.

Arguing on question 1, Learned Counsel to the Claimant advanced the case of ***AYOADE ADENIYI V ANDREW ODUKWE (2005) 7SC (Pt. 11) 1, p.11***, that in an action for declaration of title, the onus of proof lies on the Claimant and he must succeed on the strength of his own case and not on the weakness of Defence except where the Defendant's case supports the Claimant's case. Counsel stated that it is on the above submission that the Claimant testified in chief and tendered documents to show how he acquired the land in question before this Court.

On question 2, Learned Counsel to the Claimant cited the case of ***IDUDUN V OKUMAGBA (1976) 9-10 SC 227*** in submitting that the Claimant has proved one of the ways of ownership as he tendered documents relating to the land in question.

On question 3, Learned Counsel to the Claimant submitted that the Claimant has proved by documentary evidence

pursuant to section 128 that he purchased the said land from one Suleiman Danladi who was the original allottee from Kuje Area Council. Learned Counsel to the Claimant posited that these facts need no proof by virtue of Section 124(1) b of the Evidence Act and Section 168 (1) E.A neither can the Court receive controverting evidence orally or otherwise to contradict any of such documents.

On question 4, Learned Counsel to the Claimant posited that the Defendant in evidence could not contradict the Claimant's claim before the Court. Counsel contended that the Claimant came into possession of the land sometime in 2013, whereas the Defendant Mr. Rabiu Hassan Ibrahim only came into possession sometime in the year 2020. Counsel stated that the position of equity is clear that where there are two competing equities, the 1st in time takes precedence.

Counsel to the Claimant posited that the Defendant's claim to title is based upon a power of Attorney that was executed between him and a certain Sadiq Momoh which in the main was unregistered and cannot confer title upon him at law. Counsel stated that although same was admitted by the Court, the Court must weight its probative value in the case pursuant to the law of Evidence. Counsel cited the case of ***DABO V ABDULLAHI (2005) 2SC (Pt.1) 167.***

Counsel to the Claimant stated that the testimonies of Dw1 and DW3 are statements that qualify as hearsay, that Dw3

admitted that she was informed by colleagues at Kuje Area Council, that she also admitted that they had no access to the documents but was able to sight the name of the original allottee. Counsel urged the Court to discountenance this evidence as it runs afoul of the Hearsay Rule. Counsel argued that Dw1 informed the Court that all the information he was given had existed before he was employed and he was reading what he was told to come and say and what he obtained from information that was not in any form of documentary or oral evidence before the Court. Counsel submitted that this testimony falls short of the Hearsay rule and should be discountenanced by the Court.

On question 5, Learned Counsel to the Claimant stated that the Defendant has not proved his counter-claim before the Court and therefore adopted all its arguments against the Defence and counter-claim on the same grounds to establish that they have not proved any right to title over the land in dispute neither have they led any cogent evidence and ought to be discountenance by the Court as it goes to no issue.

Counsel to the Claimant in conclusion commended the Court to the case of ***JOHN OGBU V BERT WOKOMA (2005) 7SC (Pt. 11) 123*** submitting that in the instant case, the Claimant having led more credible evidence in support of his title than the Defendant ought to be granted title. Counsel prayed this Court to grant the reliefs of the Claimant as per its statement of claim and writ of summons.

The Defendant thereafter filed a reply on points of law in response to the Claimant's final address. Counsel to the Defendant argued that the testimony of the Dw3 cannot be said to be hearsay evidence and in addition that the sections of the evidence Act cited is inapplicable to the argument sought to be canvassed by the Claimant's Counsel. Counsel stated that Section 128 of the Evidence Act cited by the Claimant talks about evidence in terms of judgments, contracts, grants and other dispositions of property reduced to documentary form and that same does not apply to the instant case in any way.

Counsel to the Defendant stated that the argument canvassed by the Claimant Counsel on issue four raised by him is in the affirmative. Counsel stated that the Claimant has never been in possession of the said land in contest, Counsel stated that saying that the Claimant has been in possession since 2013 is not only misleading but fallacious. Counsel posited further that the argument of competing equity does not arise in the instant case, that assuming but not conceding that such argument is to be looked into, it will be in favour of the Defendant who has been in possession and have exercised every right of possession over the said land unchallenged.

Counsel thereafter submitted that the Claimant's case be dismissed with substantial cost as he has failed woefully to establish his case.

In view of the settled position of the law as it relates to the facts and substance of this case, the submissions of Counsel on both ends, the issues formulated by the parties can be accommodated under the sole issue formulated by the Court thus:-

> *"Whether the Claimant has proved its claims on a balance of probabilities to entitle it to any or all of the Reliefs sought and whether the Defendant has proved its claims on a balance of probabilities to entitle it to any or all of the Reliefs sought in its Counter Claim".*

The above issue is not raised as an alternative to the issues raised by parties, but the issues canvassed by parties can and shall be cumulatively considered under the above issue. See ***SANUSI V AMOYEGUN (1992) 4 NWLR (Pt. 237) 527.***

The issue thus raised has in the Court's considered opinion brought out with sufficient clarity and focus, the pith of the contest which has been brought to Court for adjudication by parties on both sides of the aisle.

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their case. At the conclusion of trial proper, the real issue(s) which the Court would ultimately resolve must be manifestly clear. Only an

issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of the critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In ***OVERSEAS CONSTRUCTION LTD v CREEK ENTERPRISE LTD & ANOR (1985)3 NWLR (Pt13) 407 at 418***, the Supreme Court instructively stated as follows:-

> **"***By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the reliefs he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins".*

It is therefore, guided by the above wise exhortation that I would proceed to determine this case based on the issue I have raised and also consider the evidence and submissions of Counsel.

The Law is trite that civil cases are decided on the balance of probabilities, that is, preponderance of evidence. The Court arrives at this by placing the totality of evidence by both parties on an imaginary scale to determine which side's evidence is heavier and accordingly preponderates.

The party whose evidence is heavier succeeds in the case. See ***DR. USENI UWAH & ANOR V DR. EDMUNDSON T. AKPABIO & ANOR (2014) 2MJSC (Pt.11) 108 @ 113.*** Moreso, the success or failure of the case of the Claimant is predicated first on the nature of his pleadings and secondly the evidence led in support of his averments. In the same vein, the success or failure of the defence of the Defendant is based on the averment in his statement of defence and the evidence led in support thereof. See ***RAMONU RUFAI APENA & ANOR V OBA FATAI AILERU & ANOR. (2014)6-7 MJSC (Pt.11) 184 @ 188.***

Moving on, in consideration of the facts in issue, it can be gleaned from the submissions of Counsel on both ends, that this matter is predicated upon an alleged trespass and declaration of tile to Land identified as Plot No. 453 in Phase **AA3 Layout measuring about 2000 square metres on grand 2141.84sqm in Kuje Area Council, FCT, Abuja**. The Claimant and Defendant have led before this Honourable Court evidence fueling their respective contentions and the Court will in determination of this matter exert recourse to the testimonies of witnesses and documents pleaded before this Honourable Court.

It is trite that production of documents is one of the ways of proving title to land, however, it has certain conditions attached to it and a Claimant must prove those conditions before the documents of title can ground the Claimant a valid declaration of title. The above position was

enunciated in the case of **ROMAINE V ROMAINE (1992) LPELR- 2953(SC)** wherein the apex Court held as follows:

> *"….One of the recognized ways of proving title to land is by production of a valid instrument of grant". See Idundun v Okumagba (1976) 12 S.C. 31, P.37; Nwadike v Ibekwe (1987) 4 NWLR (Pt. 67) 718."*

The above does not construe the fact that once a Claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance upon such an instrument inevitably carries with it the need for the Court to inquire into whether:-

i. Some or all of the documents have been duly executed, stamped and registered;

ii. Whether the grantor had the authority and capacity to make the grant;

iii. Whether the grantor had in fact what he purported to grant; and

iv. Whether it has the effect claimed by the holder of the instrument. See ***ALHASSAN V THE MINISTER, FCT & ORS (2020) LPELR-51050 (CA).***

On the contention of parties as to possession, title and trespass to land, it is pertinent to state that the testimony of

Dw3, a Personnel of the Lands Department of Abuja Geographical Information System (AGIS) is persuasive as same construes a pointer to the position of things flowing from the contention of parties on both side of the aisle. The Dw3 stated that the Minister withdrew all access regarding the files and documents of the land in question but that the real allottee that can be found is one Afolayan B. John, which the Defendant chronologically inherited the title from. Even though not conclusive, it is important to attach credence to the testimony of Dw3.

Moving further, Learned Counsel to the Claimant admonished this Court on the reliability of the testimony of the Dw3 on grounds that the testimony amounts to a hearsay evidence, urging the Court to dismiss same. I will readily address this issue before proceeding further.

While it is general knowledge that any evidence amounting to hearsay is inadmissible by virtue of **Section 38 of the Evidence Act 2011.** There are however exceptions to the rule of admissibility of hearsay Evidence and this must be considered accordingly to readily ascertain if the statement made by Dw3 can be grounded as hearsay or if same falls under any of the exceptions provided for under **Section 39 and 42 of the Evidence Act 2011.** In ***KHOLABE CONSOLIDATED (NIG) LTD V DAUDA (2020) LPELR-49960 (CA)*** the Court stated emphatically thus:-

> *"Section 37(a) of the Evidence Act is a codification of the common law principle of hearsay as postulated in Subramanian v Public Prosecutor (1956) IWLR 965 which is to the effect that where a piece of evidence being a statement (oral or written) made by a person who is not called as a witness in a proceeding is offered in proof of the truth of that statement; it is hearsay.* ***But if it is offered in proof of the fact that the statement was made then it is not hearsay****. See* ***ANDREW V INEC (2018) 9 NWLR (PT. 1625) 507, 556."***

It is also instructive to refer to Section 42 of the Evidence Act, 2011. Section 42 provide thus: -

> *"A statement is admissible where the maker had peculiar means of knowing the matter stated and such statement is against his pecuniary or proprietary interest and – (a) he had no interest to misrepresent the matter, or (b) the statement, if true, would expose him to either criminal or civil liability".*

Flowing from the above, it is pertinent to restate the fact that a Subpoenaed witness is a witness of the Court and although in any case initiated by a party to a matter, such witness remains a witness of the Court and not vice versa. The Dw3 testified in relation to information at her disposal

further to the subpoena issued on her office, I do not see any pecuniary interest that the said witness has in this matter. The Case above is instructive on the admissibility of a testimony of a witness, alleged to be hearsay. The position remains that where a piece of evidence being a statement whether oral or written in a proceeding is offered in proof of the truth of that statement, it is hearsay, but if same is offered in proof of the fact that the statement was made, then it is not hearsay. The testimony of Dw3 was made in ascertainment of facts and not intended to be construed as the truth. Therefore it is out of place for the statement to be construed as hearsay.

A careful evaluation of the Documents presented by parties is pertinent at this point. The Claimant and Defendant have both presented before this Court a Certificate of Regularization of Land titles and documents of FCT Area Councils but it is important to at this point pay a closer look at the documents and the dates wherein which these documents were issued. The Certificate of Regularization of Land titles and documents of FCT Area Councils evidenced by the Claimant was issued on 5th May,2015 while that of the Defendant was issued on 14th February,2007. This Court is also minded to bring to fore the fact the Customary Certificate of Occupancy adduced in evidence by the Defendant showing a conveyance of title to the alleged Original Allottee of the land in question. I have carefully perused the documents advanced by the Claimant and I

am yet to see a Certificate of Occupancy be it Customary or otherwise showing an allocation of the said land to the Original Allottee of the Claimant.

The Claimant has adduced other documents in proving title and likewise the Defendant who has equally advanced documents, all fueling their respective claims.

While attempting to trace the title of the parties in this suit with the aim of arriving at a just determination, It is notable that the title documents exhibited by the Claimant as proof of the title of the Claimant and documents exhibited by the Defendant are quite similar particularly Exhibits 1 and Dw4 (Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement). Both documents were purportedly issued by the Administration of Land Department of the Federal Capital Territory Administration on different dates and to different persons. While one was issued to one Afolayan B. John, the other was issued to one Suleman Danladi. It is opined that one of the two title was first in time and genuine, as it will be impracticable for the FCTA to issue title documents to two different persons over a sole plot of land.

In considering the above, it is instructive to note that prior to the setting up of the Abuja Geographic Information System (AGIS) by the Federal Capital Territory Administration, the Area Councils in the FCT were saddled with the responsibility of allocating lands in their respective councils. It was in 2004

that AGIS commenced regularization exercise to enable all holders of Certificate of Occupancy to regularize their titles. Though it is the Minister of FCT that has right to issue a right of occupancy over any land in the Federal Capital Territory, it is not out of place to take into consideration, a Customary Right of occupancy when tracing the history and root of title to land in the Federal Capital Territory.

Further to the above and the case before this Court, it is pertinent to state that where parties make conflicting claims to title and possession of the same land, the law ascribes possession to the party who can prove better title to the land in dispute. This was the position of the Supreme Court in ***PROVOST, LACOED v EDUN (2004) 6 NWLR (PT 870) 476.*** The Law is trite that in the event of conflicting claims to title or ownership to a piece of land and where each of the opposing parties is able to establish proof of ownership of the said piece of land, then the party that establishes better title will be entitled to the Judgment of the Court. See the case of ***OGAH & ANOR V GIDADO & ORS (2013) LPELR – 20298 (CA)*** where this Court held that:

> "*The law is equally well settled that, in a situation of conflicting claims, where each of the opposing parties can establish proof of ownership by any of the acceptable methods of proof of title to or ownership of the same piece or parcel of land, then the party that establishes better title will be entitled to the*

> *Judgment of the Court". See also* ***FASORO v BEYIOKU (1988) 2 NWLR (Pt.76) 263; OYENEYIN V AKINKUGBE (2010) 4 NWLR (Pt. 1184) 265.***

The document advanced by the Claimant and Defendant most especially the Regularization of Land Titles and Documents of FCT Area Councils Acknowledgment is not a proof of title to land, it is only but an acknowledgement of steps taken by a party to regularize his/her land. This is further given credence by the Disclaimer beneath the Documents thus;

> "*This acknowledgment does not in any way validate the authenticity of the documents described above. All documents are subject to further verification for authenticity*".

The above goes to further buttress the fact that an acknowledgement is not and cannot convey a valid title. The parties at par with ownership of the land in question had a recondite duty to take steps in evidencing title to land through documents conveying title.

Flowing from the above, the only document valid enough to persuade this Court is the Customary Certificate of Occupancy presented before this Court by the Defendant showing or tracing his title to the land in question. The said document captures a stamp of the FCT Administration at the top right corner asserting that an application to regularize same has been applied for by the alleged

Original Allottee, one Afolayan B. John and the date captured in the said stamp is in correlation with the date on the acknowledgement of regularization of land titles and documents of FCT Area Councils tendered in evidence by the Defendant dated 14th February, 2007.

It is therefore not only proper but also imperative on this Court to evaluate the documents tendered by both parties in terms of the date of issuance, issuing authority and the validity of same in establishing title to land.

It is on the above premise that this Court is minded to state that the Claimant asserting title to land ought to have advanced a copy of the title document which was admitted for regularization by the FCT Administration in further proof of his title, the Claimant did not advance same. While considering the title documents advanced by the Claimant by the Kuje Area Council, it is pertinent to state that those documents are not and cannot be construed as establishing a valid claim to land.

This Court is therefore minded after a careful analysis of the facts in issue and the documents advanced by parties to be persuaded by the evidence of the Defendant. The title documents advanced by the Defendants can be gleaned from the face of the documents particularly Exhibits Dw4 and Dw1 to have been issued earlier in time than that advanced by the Claimant. The doctrine of equity only conveys an all but important duty on this Court to always

give credence to an earlier right where there are two (2) conflicting rights in equity.

As a logical corollary, I therefore hold that the Defendant in any event has convinced this Court through evidential documents and act of possession that he possesses a better title to the land in question. Therefore, this case is resolved in favour of the Defendant per his counter-claim against the Claimant as follows:-

> "*A Declaration is hereby made that the Defendant is the bonafide owner of Plot Np. 453 in AA3 Layout situate at Kuje, Federal Capital Territory, Abuja and the appurtenances respectively which he bought from Sadiq Momoh Jimoh and Sadiq Momoh Jimoh bought from the Original allottee by name Afolayan B. John, the subject matter of this Suit.*"

The Defendant having failed to credibly establish other reliefs (b-d) sought as per its Counter-claim, this Court is not a father Christmas to be persuaded in granting reliefs not substantiated before it. Therefore other reliefs sought by the Defendant particularly reliefs b-d are accordingly dismissed.

HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)

Appearance

A.E Odidi:- For the Defendant
Okoroafor James :- For the Claimant