

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 07TH DAY OF FEBRUARY 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/2594/2021

BETWEEN:

**1. MORENIKE O. OLAWUNMI-AYO
2. JOHNSON ATTAH**

CLAIMANTS

AND

**1. MINISTER, FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEV. AUTHORITY
3. FEDERAL CAPITAL TERRITORY ADMINISTRATION**

DEFENDANTS

JUDGMENT

By a Writ of Summons dated and filed on the 7th of October, 2021, the Claimants instituted this action seeking the following reliefs:-

- 1. A Declaration of Court that the 1st Claimant's title over Plot 484 Cadastral Zone B06 Mabushi District, FCT, Abuja measuring 1,624.00m² granted by the 1st Defendant to the 1st Claimant on the 22/11/1993 and covered by a Certificate of Occupancy dated 12/04/2005 is not forged as alleged by the 1st, 2nd and 3rd Defendants and their agents and agencies and same is extant, subsisting and operative.*
- 2. A Declaration of Court that it is wrongful, illegal and oppressive for the 1st, 2nd and 3rd Defendants together with their agents and agencies to be the allegers, investigators and further adjudging the 1st Claimant's*

Certificate of Occupancy in Plot 484 Cadastral Zone B06 Mabushi District, FCT, Abuja measuring 1,624.00m² granted to the 1st Claimant by the 1st Defendant on the 22/11/1993 to be forged without first inviting the 1st Claimant to make any representation as to the allegation and to proceed therefrom and flag the 1st Claimant's title file forged.

- 3. A Declaration of Court that by the purchase of Plot 484 Cadastral Zone B06 Mabushi District, FCT, Abuja measuring 1,624m² by the 2nd Claimant from the 1st Claimant, the 2nd Claimant acquired an equitable interest in the plot recognizable in law.*
- 4. A Declaration of Court that the 1st Claimant having been issued with the bills for ground rents by the Defendants which bills, the Claimant cleared, the Defendants are estopped from flagging the 1st Claimant's title file as forged and barring the Claimants from being issued further bills pertaining to the plot for payment.*
- 5. An Order of Court rescinding and voiding the action of the Defendants flagging the 1st Claimant's title file as forged in respect to Plot 484 Cadastral Zone B06 Mabushi District, Abuja measuring 1,624.00m² and directing the Defendants, whether by themselves or through their agents and agencies known as the Director of Land, Deed Registrar, the Development Control Department or however known to continue to recognize the 1st Claimant as the lawful holder of the Statutory Right of Occupancy and the Certificate of Occupancy in the plot and the 2nd Claimant as her lawful attorney.*
- 6. An Order of Court directing the 1st and 2nd Defendants together with their agents and agencies to, forthwith, vacate the hold placed on the 1st Claimant's title file on the alleged reason of forgery or any other ground and issue the Claimants with the ground rent bills in respect of the plot.*

7. *An Order of Court awarding compensation in the sum of ₦5,000,000.00 (Five Million Naira) only against the 1st, 2nd and 3rd Defendants for declaring the 1st Claimant's Certificate of Occupancy to be forged without first inviting the 1st Claimant to make representation as to the allegation(s) of forgery.*
8. *An Order of Court restraining the 1st, 2nd and 3rd Defendants from revoking the 1st Claimant's allocation of Certification of Occupancy in Plot 484 Cadastral Zone B06 Mabushi District, Abuja measuring 1,624.00 m² within the residue of the period granted in the instrument of grant to the 1st Claimant.*
9. *Cost of this suit against the Defendants jointly and/or severally as may be adjudged due to the Claimants.*

The Writ of Summons is accompanied with other originating processes as stipulated in the Rules of this Court.

The suit came up in this Court for the first time on the 17th of February, 2022. On that day, learned Counsel for the Defendants moved an application to regularize the Defendants' Statement of Defence and other accompanying processes in this suit. On the 06th of April, 2022, the Claimants opened their case, with the 2nd Claimant testifying as PW1. The PW1 was sworn and proceeded to adopt his Witness Statement on Oath.

In his Witness Statement on Oath, the PW1 narrated how the 1st Defendant conveyed the property properly described as Plot 484 Cadastral Zone B06 Mabushi District, Abuja measuring about 1,624m² on the 22/11/1993 to the 1st Claimant. As evidence of this conveyance, the 1st Defendant issued a Certificate of Occupancy to the 1st Claimant on the 12th of April 2005.

According to the PW1, the 2nd Claimant had been in peaceful occupation of the property and had been paying the ground rents and other bills upon being served with the notice to pay same by the Defendants. This state of affairs continued until 2017 when the 2nd Claimant went to the Lands Administration Department of the Defendants to demand for that year's ground rent only to be informed by the Desk Officer that the Certificate of Occupancy he held in respect of that land was forged. Upon inquiry he found that the 1st Claimant's title was flagged as forged.

The Claimants averred that the 2nd Claimant wrote to the Defendants severally demanding for details of the forgery but none of the letters elicited a reply. The pleas of the Claimant for the Defendants to explain the allegations of forgery were also rebuffed. The PW1 added that while the 1st Claimant's title remained flagged, it had not been revoked.

In the course of his testimony, the PW1 tendered the following documents in evidence. Same were admitted in evidence and marked as exhibits accordingly. A Power of Attorney from the 1st Claimant to the 2nd Claimant, Certificate of Occupancy from the 1st Defendant to the 1st Claimant, Ground Rent Bills and the receipts of payment, FCDA receipts, and a letter from the 2nd Claimant to the 1st Defendant. These documents were marked as **Exhibits A1 – A4, B1 – B2, C1 – C3, D1 – D2 and E1 – E2** respectively.

During cross-examination, the PW1 admitted that he did not make the application forms for payment but he insisted that he made the payments for ground rent. He conceded that he was not familiar with the process of allocation of land within the Federal Capital Territory, Abuja. He agreed that it was only the Minister of the Federal Capital Territory that had the power to allocate land within the Federal Capital Territory. He also admitted that he was not familiar with the process of recertification of land within the Federal Capital

Territory, adding that he did not make any payment for recertification. There was no re-examination. The PW1 was discharged, the Claimants' case closed and the Court adjourned for the Defendants to open their defence.

On the 15th of June, 2022, the Defendants opened their defence. The DW1, one Mr Ugonna Onunkwo, was sworn as a witness. He proceeded to adopt his Witness Statement on Oath. In his Witness Statement on Oath, the DW1 denied that the 1st Defendant allocated the property the subject of this suit to the 1st Claimant. He also denied that the 1st Claimant conveyed the property to the 2nd Claimant since there was no evidence that the Power of Attorney which purported to assign the interest in the property to the 2nd Claimant was ever registered with the Department of Lands Administration. He further stated that the Claimants did not comply with the procedure for the allocation of land within the Federal Capital Territory.

The DW1 further swore that the demand for payment of ground rent was issued to the Claimants in error the same way the Certificate of Occupancy was issued to the 1st Claimant in error. He stated that the error was discovered when the 1st Claimant submitted her documents for recertification and the system disclosed that the allocation for the plot did not have ministerial approval. He claimed that the plot could not have been occupied since it was never allocated to the 1st Claimant in the first place, adding that it was not possible that the Defendants could be attempting to deprive the Claimants of the ownership of the property since it was never allocated to the 1st Claimant in the first place. He therefore urged the Court to dismiss the claims of the Claimants.

During cross-examination, the DW1 confirmed that there was a Register of all the allottees of land in the Federal Capital Territory, adding that only allottees from the Minister of the Federal Capital Territory were required to pay ground

rent. He also confirmed that the Certificate of Occupancy and the notices for the payment of ground rents issued to the 1st Claimant were issued in error. Upon being asked a question to that effect, he admitted that he did not have the list of allottees of land in the Federal Capital Territory to confirm that the 1st Claimant's name was not thereon. He insisted that the discovery that the Minister did not allocate any land to the 1st Claimant was made when she came for recertification. When asked a question to that effect, however, he conceded that there was no report that the Claimant's land did not have ministerial approval. He also confirmed that no revocation letter had been issued to the Claimant.

There was no re-examination of the DW1. The Court therefore adjourned for the adoption of Final Written Addresses. On the 8th of November, 2022, the parties adopted their respective Final Written Addresses.

In the Final Written Address of the Defendants dated and filed on the 9th of September, 2022, the Counsel for the Defendants formulated three issues for determination, *videlicet*: “(a) *Whether land can be allocated to any person in the Federal Capital Territory without the due approval and authorization of the Defendants; (b) Whether the Certificate of Occupancy mistakenly issued by the 1st Defendant is valid in view of the fact that the Right of Occupancy relied on by the Claimants is forged; and (c) Whether the Claimants have proved their case to entitle them to the reliefs claimed.*”

In his argument on the first issue he formulated, learned Counsel submitted that ownership of land in the Federal Capital Territory is vested in the Minister of the Federal Capital Territory by virtue of sections 1(3) and 2(1) of the Federal Capital Territory Act CAP 503 Laws of the Federation of Nigeria 2004 as well as sections 297(2) and 302 of the Constitution of the Federal Republic of Nigeria, 1999. Citing the cases of ***Ona v. Atanda (2000) 5 NWLR (Pt. 656)***

244 and **Grace Madu v. Dr Betram Madu (2008) LPELR-1806 (SC)**, Counsel contended that since all lands within the Federal Capital Territory are vested in the Minister of the Federal Capital Territory, any occupier of land who does not have the approval of the Minister of the Federal Capital Territory is an illegal occupier; as only the Minister of the Federal Capital Territory had the powers to issue Certificate of Occupancy in respect of any land within the Federal Capital Territory.

Arguing Issue Two, Counsel submitted that there was no consensus *ad idem*, one of the building blocks of a valid contract, between the Claimants and the Defendants, to ground the argument that the Defendants allocated the property in question to the Claimants. He submitted that the error in the allocation was fundamental and vitiated the purported allocation of the property to the 1st Claimant. He reminded the Court that the allegation of forgery of the Certificate of Occupancy was not challenged and, therefore, should be given its full evidential value. Citing the cases of **Okike v. L.P.D.C. (2005) 15 NWLR (Pt. 949) 7 471 S.C.**, **Bell & Anor v. Lever Brothers Ltd (1932) A.C. 161** and **Foluke Oju v. Hon. Mini. Of FCT (FCTALR) Vol. 1 (2012) 709**, he urged the Court to hold that since the parties are not in *ad idem* in respect of the property, there could not have been any valid allocation to the Claimants by the Defendants.

On the last Issue, learned Counsel submitted that the Claimants have the onus of establishing their claims before the Court. he pointed out that since land disputes were won on the strength of the Claimant's case and not on the weakness of the Defendant's defence, the Claimants in this suit have the burden of discharging that duty satisfactorily. Referring to sections 131, 132 and 133 of the Evidence Act, 2011 and the cases of **Arase v. Arase(1981) 5 SC at 37**, **Umeojiako v. Ezenamuo (1990) 1 SCNJ 181** and **Iseogbekun v. Adalakun (2013) 2 NWLR (Pt. 1337) 140 at 165, para G** among others,

Counsel urged the Court to hold that the Claimants have failed to adduce credible evidence in support of their claims.

In his Final Written Address, learned Counsel for the Claimants formulated three issues for determination, namely: “(a) *Whether having regard to the pleadings, documents tendered and evidence led at the hearing of this suit, the Claimants can be said to have proved their claim to declaration of title in Plot 484, Cadastral Zone B06 Mabushi District, Abuja, measuring about 1624.00sqm? (b) Whether the 1st Claimant’s Certificate of Occupancy is forged? (c) Whether the Defendants together with their agents, agencies and investigators can pronounce or declare that the 1st Claimant’s Certificate of Occupancy in Plot 484, Cadastral Zone B06 Mabushi District, Abuja, measuring about 1624.00 sqm is forged/issued in error without according to the 1st Claimant fair hearing?”*

In his submissions on the first issue, learned Counsel contended that the Claimants have established the burden incumbent on every claimant who seeks declaratory reliefs in respect of a parcel of land. Placing heavy reliance on **Exhibit B1 – B2** which is the Certificate of Occupancy the 1st Defendant issued to the 1st Claimant, he contended that the Claimant has established his claims to the reliefs he seeks. He referred to ***Ewo v. Ani (2004) 3 NWLR (Pt. 861) 611 at 637 – 638, paras H – A, Ibude v. Saidi (2021) 10 NWLR (Pt. 1785) 567 at 580 paras D – F, Madu v. Madu (2008) 6 NWLR (Pt. 1083) 296 at 324 – 325, paras H – C, Omoyayo v. CSA (2010) 16 NWLR (Pt. 1218) 1 at 31, para A*** among others. He urged the Court in view of these authorities to hold that the Claimants have established their entitlement to the property.

On Issues 2 and 3 which learned Counsel to the Claimants argued jointly, Counsel submitted that the pronouncement by the Defendants that the title of the Claimants over the property was forged or issued in error without allowing

the Claimants right of reply was at variance with the Claimants' right to fair hearing. He also contended that the Defendants' allegation of forgery was incompatible with the rules of pleading since the Defendants neither pleaded it specifically nor prove the allegation according to the standard required of them under the Evidence Act, 2011. In support of his assertions, learned Counsel cited and relied on *Nnachi v. Ibom (2004) 12 WRN 94 at lines 15 – 20, Aina v. Jinadu (1992) 4 NWLR (Pt. 233) 91 at 106 paras E – F, Adeniran v. NEPA (2002) 14 NWLR (Pt. 786) 30 at 50 – 51, paras E – A, Olufeagba v. Abdulraheem (2009) 18 NWLR (Pt. 1173) 384 at 464 paras G – H* among other cases. He urged the Court to hold that the Defendants did not put enough evidence on their side of the imaginary scale of justice as to justify the Court finding in their favour. He therefore urged the Court to grant the reliefs sought by the Claimants.

I have reflected on the cases of the parties as set up by them in their pleadings. I have ruminated on their evidence and the legal submissions of their respective Counsel. In determining this suit, I will be formulating the following two issues to enable this Court resolve this suit. The issues are these: ***“(1) Whether the Defendants have not established that the Certificate of Occupancy purportedly issued to the 1st Claimant by the 1st Defendant in respect of Plot 484 Cadastral Zone B06 Mabushi District, Federal Capital Territory, Abuja was forged? (2) Whether the Claimants have not established through a preponderance of evidence that they are entitled to all the reliefs sought in this suit?”***

Comment [B01]:

RESOLUTION OF ISSUE ONE (1)

Whether the Defendants have not established that the Certificate of Occupancy purportedly issued to the 1st Claimant by the 1st Defendant in

respect of Plot 484 Cadastral Zone B06 Mabushi District, Federal Capital Territory, Abuja was forged?

The Defendants, in defending this suit, raised as their defence to the suit of the Claimants, the allegation of forgery of the Certificate of Occupancy issued in respect of Plot 484 Cadastral Zone B06 Mabushi District, Federal Capital Territory, Abuja. The Defendants have also claimed that the allocation of this plot which was made to the 1st Claimant was made in error. The assertion that the issuance of the Certificate of Occupancy, which this Court admitted in evidence as **Exhibit B1 – B2**, and the notice of payment of ground rents and the payments thereof, which were admitted in evidence as **C1 – C3 and D1 – D2**, was done in error formed the basis of the DW1's Witness Statement on Oath as can be seen from paragraphs 12, 13, 14, 15, 17 and 19.

On the other hand, the contention that the Certificate of Occupancy which the Claimants presented as the evidence of the 1st Defendant's title to the property was forged formed the basis of the second issue which learned Counsel for the Defendants formulated in his Final Written Address. His contention was that forgery was established because the issuance of the Certificate of Occupancy and the notice of demand for the payment of ground rents by the Defendants and the payment for the ground rents by the Claimants were made in the mistaken belief that the 1st Claimant had valid allocation to the Plot 484 Cadastral Zone B06 Mabushi District, Abuja.

First, it bears repeating that the arguments of Counsel cannot take the place of evidence. See ***Abimbola v. State (2021) 17 NWLR (Pt. 1806) 399 S.C. at 435, paras. A – B.*** Second, I do not see how error in allocation can translate to forgery. Third, the issue of intention to create and enter into a binding legal relationship is established at the incipience of a contractual relationship and not at the point when the contract has taken roots and parties have performed

their respective obligations under the contract. See **Max Blossom Limited v. Mr. Maxwell T. Victor & Ors (2019) LPELR-47090(CA)**. it is inappropriate to entertain the allegations of error in the allocation at this stage. There is therefore no basis to agree with the Defendants that the parties were not in consensus *ad idem* long after the allocation was made.

The Defendants have made a heavy weather out of the allegation of forgery. The allegation of crime in a civil proceeding is treated as seriously as if it is a criminal trial on its own. I must state at this juncture that forgery is a criminal offence. See sections 363 and 364 of the Penal Code Act applicable to the Northern States and the Federal Capital Territory, Abuja. It is abecedarian that where a crime is alleged in a civil proceeding, the standard of proof is removed from the sphere of proof on a preponderance of evidence and situated squarely within the realm of proof beyond reasonable doubt. Section 135(1) of the Evidence Act, 2011 provides that ***“If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.”*** In ***Afolahan v. The State (2018) 8 NWLR (Pt. 1621) 223 S.C. at 239 – 240, paras G - B*** the Supreme Court held that ***“The offence for which the appellant is charged is a very serious one, and by virtue of section 135(1) of the Evidence Act 2011, the offence must be strictly proved by cogent and convincing evidence that leaves no iota of doubt or skepticism in the minds of the parties and members of the public, and I daresay this court. The section provides: “135. Standard of proof where commission of crime in issue; and burden where guilt of crime etc. asserted. (1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt. (2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it,***

whether the commission of such act is or is not directly in issue in the action.””

Further to this, an allegation of crime in a civil proceeding must be pleaded specifically. In ***Edun v. Provost, LACOED (1998) 13 NWLR (Pt. 580) 52 at 64, paras. F-G***, the Court held that ***“In a civil proceeding, such as in the instant case, allegation of fraud or forgery must be clearly and specifically pleaded so that the other party will know the case against him. Otherwise, he will be taken unawares by the other side. Allegation of fraud or forgery must also be specifically proved.”*** Because allegations of crimes have the potential of depriving a person of their liberty where they are established, the Courts have distilled certain principles which must be adhered to in the course of the proceedings.

In the case of forgery, where forgery is alleged, the document alleged to have been forged must be produced. The document purporting to be the original and from which the forged document is alleged to have been forged must also be produced. Both documents must be placed side by side before the Court to enable the Court to do justice to the case before it. In ***A.P.C. v. P.D.P. (2015) 15 NWLR (Pt. 1481) 1 S.C. at 66-67, paras. H-B***, the Court stipulated the method of proving allegations of forgery in the following words: ***“In order to prove forgery, or that a document is forged, two documents must be produced, viz:- (a) the document from which the forgery was made; and (b) the forgery or the forged document.”*** See also in this regard the case of ***Agi v. PDP (2017) 17 NWLR (Pt. 1595) 386 S.C. at 457, paras. G-H***.

This is a restatement of the law as crystallised in a number of decisions of the Court of Appeal and the Supreme Court. Learned Counsel for the Claimants quoted copiously from the *ratio decidendi* of the Courts in the cases of ***Nnachi v. Ibom (2004) 12 WRN, page 94 at lines 15 – 20*** and ***Aina v. Jinadu (1992)***

4 NWLR (Pt. 233) 91 at 106 paras E – F. I agree with the reasonings of the Courts in those two decisions not only because I am bound by the decisions therein pursuant to the doctrine of stare decisis, but because the learned jurists of the appellate Courts could not have been more correct.

Allegations of crime are grave because where they are proved, the liberty of the person against whom it is made could be abridged. See section 35(1)(a) of the Constitution of the Federal Republic of Nigeria, 1999. It is for this reason that our providence grants any person who is accused of a criminal offence the right to defend themselves. See section 36 (4) and (6) of the Constitution of the Federal Republic of Nigeria, 1999. The right to fair hearing has been described as a fundamental aspect of adjudication. Without it, a trial cannot be said to be fair. See **Longterm Global Capital Ltd v. Stanbic IBTC Bank (No. 1) (2022) 14 NWLR (Pt. 1851) 505 S.C. at 533, paras D – E, 535, paras G – H, 536, para A.**

The PW1 in paragraphs 7 and 8 of his Witness Statement on Oath swore to the facts of the flagging of his plot of land without his knowledge. He further deposed how he wrote **Exhibit E1 – E2** to the 1st Defendant. He further averred how the 1st Defendant to whom the letter was written failed, refused or neglected to reply his letter. He also stated on oath how, indeed, the officials of the 2nd and 3rd Defendants rejected his pleas to be heard on their allegation that the Certificate of Occupancy which the 1st Defendant had issued to the 1st Claimant was forged. I have studied the Witness Statement on Oath of DW1. Apart from the general denial that the 1st Defendant issued the Certificate of Occupancy to the 1st Claimant, which denial was repeated in every other paragraph of the DW1's Witness Statement on Oath, the Defendants did not address the averments of the PW1 as contained in paragraphs 7 and 8 of his Witness Statement on Oath. The law is settled that a piece of evidence which

is not controverted is deemed admitted. See ***State v. Oray (2020) 7 NWLR (Pt. 1722) 130 S.C. at Pp. 151-152, paras. H-C.***

Furthermore, though the DW1 swore in his Witness Statement on Oath that there is a list containing the names of approved allottees of plots, and he confirmed the existence of this list, or register, during his cross-examination, he did not produce the list, or register, in Court. He also did not produce any document to support his claim that the **Exhibits B1 – B2, C1 – C3 and D1 – D2** were issued in error. In fact, he stated during cross-examination that “*I don't have any list to show that the 1st Claimant's name was not among those that were allocated with land by the Minister.*” This Court cannot turn a blind eye to the inherent implications of this testimony. Section 167(d) of the Evidence Act, 2011 provides thus: “***Evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.***”

The 1st Defendant, thought vested with the powers to revoke an allocation of land, must not exercise such powers arbitrarily. If the allocation is not revoked on the ground of overriding public interest, then, it must be for the reason of fraud, misrepresentation, mistake or any other vitiating element. Before he reaches a decision one way or the other, the holder of the allocation must be allowed to prove that their allocation is valid. See ***Abba v. Abba Aji (2022) 11 NWLR (Pt. 1842) 535 S.C. at 577 – 578, paras G – E.*** Sadly, the Defendants did not adhere to the rule of law when they purported to flag the file of the Claimants in respect to the plot of land as forged.

It is in view of the foregoing that I have no hesitation in arriving at the inescapable conclusion that the Defendants have failed to establish that the Certificate of Occupancy issued to the 1st Claimant by the 1st Defendant and which Certificate of Occupancy was tendered and admitted in evidence in this

case as **Exhibit B1 – B2** was forged. Similarly, I refuse to agree with the Defendants that there was an error in the allocation of Plot 484 Cadastral Zone B06 Mabushi District, Federal Capital Territory, Abuja was done in error. Conversely, I agree with the Claimants that the flagging of the file of Plot 484 Cadastral Zone B06 Mabushi District, Abuja on the ground of forgery of the Certificate of Occupancy without affording the Claimants the opportunity to be heard in respect of the allegation was a grievous breach of their fundamental right to fair hearing. Issue One (1) is hereby resolved against the Defendants.

RESOLUTION OF ISSUE TWO (2)

Whether the Claimants have not established through a preponderance of evidence that they are entitled to all the reliefs sought in this suit?

Comment [B02]:

It is instructive at this point to refresh our minds and to remind ourselves that the suit of the Claimants revolves around the validity and authenticity of the Certificate of Occupancy which the 1st Defendant issued to the 1st Claimant. Implicated in the reliefs sought in this suit is the issue of declaration of title to the property known and described as Plot 484 Cadastral Zone B06, Mabushi District, Abuja. The Courts have laid down guidelines on how ownership of a land may be established in Court.

In the *locus classicus* of ***Idundun v. Okumagba (1976) 9 – 10 SC 227***, the apex Court laid down the following timeless guideline in the proof of a case involving declaration of title to land. It held thus:

“The five ways by which title to land may be proved are as follows:

- a. By traditional evidence;***
- b. By production of documents of title;***

- c. By act of a person or persons claiming the land such as selling, renting or farming on it;**
- d. By acts of long possession and enjoyment of land; and**
- e. By proof of possession of connected or adjacent land.”**

The Supreme Court followed this principle in ***White Diamond Property Development Company Limited v. Trade Wheels Limited (2022) 8 NWLR (Pt. 1832) 247 S.C. at 290-291, paras. G-D; 298, paras. C-F*** where it held that

“A claim for declaration of title to land may be proved by any of five ways, to wit: (a) Traditional evidence; (b) Production of document or documents of title; (c) Acts of ownership such as selling, leasing, renting or farming extending over sufficient length of time, numerous and positive enough to warrant the inference that the person is the true owner; (d) Acts of long possession of the land; (e) 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.

However, to succeed in an action of declaration of title to land, a plaintiff or claimant need not prove title by all five ways conjunctively. A plaintiff or claimant can succeed if he is able to prove even one of the ways listed above to show he acquired title to the land.”

It is true that a claimant who seeks declaratory reliefs must succeed on the strength of their own case and not on the weakness of the Defendant’s defence. See ***Mohammed v. Wammako (2018) 7 NWLR (Pt. 1619) 573 S.C.***

at 586, paras. A-B. This rule is so stringent that the standard of proof required and demanded of a claimant who seeks declaratory reliefs is not mitigated by the neglect, failure or refusal of the defendant to file a defence to the claims of the claimant or, even, by the admission by the defendant of the claimant's claims. See ***White Diamond Property Development Company Limited v. Trade Wheels Limited (2022) 8 NWLR (Pt. 1832) 247 S.C. at 289-290, paras. G-G; 291, paras. D-E; 292, paras. A-C; 294, paras. A-B.*** Have the Claimants herein been able to discharge this onerous duty incumbent on them in this regard upon a dispassionate evaluation of the evidence before this Court?

The 1st Claimant in this case has shown how that she was allocated the plot in question by the 1st Defendant. This is evidenced by the Certificate of Occupancy which was issued to her over the land. This Certificate of Occupancy was tendered and admitted in evidence as **Exhibit B1 – B2**. In 2008, the 1st Claimant assigned her interest in the land to the 2nd Claimant by virtue of a Power of Attorney which she donated to him on the 9th of May, 2008. This Power of Attorney was tendered and admitted in evidence as **Exhibit A1 – A4**. Pursuant to the above exhibits, the Claimants paid for the ground rents for the property following the demand for same by the Defendants in this suit. The demand for the payment of the ground rents was tendered and admitted in evidence as **Exhibits C1 – C3** while the receipt of payment of the ground rent was tendered and admitted in evidence as **Exhibit D1 – D2**. Because the Claimants did not receive any demand for payment of ground rent, they, through the 2nd Claimant, on the 22nd of March, 2017, wrote a letter to the 1st Defendant demanding for particulars of the forgery over the said plot. This letter was also tendered and admitted in evidence as **Exhibit E1 – E2**. It was the case of the Claimants that the Defendants did not reply the letter even though there was evidence that the letter was duly received in the

office of the 1st Defendant. See paragraphs 7, 8 and 9 of PW1's Witness Statement on Oath.

The Defendants, in answer to the case of the Claimants, claimed that the allocation of Plot 484 Cadastral Zone B06 Mabushi District, Abuja, was irregular, erroneous and not genuine. They also contended that the assignment by the 1st Claimant of the interest in the property to the 2nd Claimant was null and void as the transfer was not registered. See paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of DW1's Witness Statement on Oath.

Indeed, it is a requirement of the law that every instrument that purports to transfer an interest in a land must be registered. See sections 3 and 15 of the Land Instruments Registration Act applicable to the Federal Capital Territory, Abuja. However, it is also settled that the non-registration of an otherwise registrable instrument does not void the transfer of the interest. At best, it conveys an equitable title in the land, as well as proof of payment for the property and the right to specific performance. See ***Adeniran v. Olagunju (2001) 17 NWLR (Pt. 741) 169 C.A. at 192, paras G – H; Benjamin v. Kalio (2018) 15 NWLR (Pt. 1641) 38 S.C. at Pp. 50, paras. E-H; 52, paras. C-E; Mohammed v. Farmers Supply Co. (KDS) Ltd. (2019) 17 NWLR (Pt. 1701) 187 S.C. at 216, paras C – D.***

I agree with learned Counsel for the Defendants that a combined reading of sections 1(3) and 2(1) of the Federal Capital Territory Act CAP 503 Laws of the Federation of Nigeria 2004, section 51(2) of the Land Use Act, sections 297(2) and 302 of the Constitution of the Federal Republic of Nigeria 1999 discloses that all lands within the Federal Capital Territory, Abuja are vested in the President of the Federal Republic of Nigeria who exercises power over same through the Minister of the Federal Capital Territory. This position of the

law has been given judicial imprimatur in several decisions of the superior Courts. See, for instance, ***Huebner v. Aeronautical Ind. Eng. (2017) 14 NWLR (Pt. 1586) 397 S.C. at 440, paras B – D; A.D.H. Ltd. v. Min., F.C.T. (2013) 8 NWLR (Pt. 1357) 493 S.C. at 514, paras E – F.***

However, I believe that the allottees of lands within the Federal Capital Territory, Abuja has the inherent rights as owners of the allocated lands to assign same subject to the consent of the Minister of the Federal Capital Territory having been obtained. See ***Associated Discount House Limited v. Minister, F.C.T. & 1 Other (2013) 8 NWLR (Pt. 1357) 493 S.C. at 514 – 515, paras G – A.*** The right to assign, it bears restating, is one of the fundamental attributes of ownership. See ***A.-G., Rivers State v. A.-G., Akwa Ibom State (2011) 8 NWLR (Pt. 1248) 31 S.C. at 188, paras. C-E; 189, paras. D-E.*** See also ***Abraham v. Olorunfunmi (1991) 1 NWLR (Pt. 165) 53 C.A.*** where Niki Tobi JCA (as he then was, later, JSC) held ***at pages 74-75, paras. H-B:***

“It connotes a complete and total right over a property. The owner of the property is not subject to the right of another person. Because he is the owner, he has the full and final right of alienation or disposition of the property, and he exercises this right of alienation and disposition without seeking the consent of another party because as a matter of law and fact there is no other party's right over the property that is higher than that of his. He has the inalienable right to sell the property at any price, even at a give away price. He can even give it out gratis that is for no consideration.

The owner of a property can use it for any purpose; material, immaterial, substantial, non-substantial, valuable, invaluable, beneficial or even for a purpose which is detrimental to his

personal or proprietary interest. In so far as the property is his and inheres in him nobody can say anything. He is the alpha and omega of the property. The property begins with him and also ends with him. Unless he transfers his ownership over the property to a third party, he remains the allodial owner.”

The absence of the consent of the Minister of the Federal Capital Territory to a transaction involving land where the transaction is made subject to the consent of the Minister being sought for and obtained *does not invalidate the transaction; it only renders the transfer inchoate. See **Mohammed v. Farmers Supply Co. (KDS) Ltd. (2019) 17 NWLR (Pt. 1701) 187 S.C. at 209 – 210, paras B – F.*** It is therefore not difficult to hold, and I so hold, that the 1st Claimant’s assignment of her interest in Plot 484 Cadastral Zone B06 Mabushi District, Abuja to the 2nd Claimant was not invalid.

Moreover, the 1st Defendant issued **Exhibit B1 – B2** to the 1st Claimant on the 12th of April, 2005. The 1st Claimant assigned her interest in the property to the 2nd Claimant on the 9th of May, 2008. The Defendants demanded for the ground rent in respect of the property in 2009, 2010 and 2014 and the Claimants paid same as demanded. Though the Defendants did not state when they discovered that the allocation of Plot 484 Cadastral Zone B06 Mabushi District, Abuja was made by the 1st Defendant to the 1st Claimant in error, there was evidence in paragraph 7 of the PW1’s Witness Statement on Oath that the Defendants flagged the 1st Claimant’s allocation as forged some time in 2017. It is inconceivable that it took the Defendants the whole of twelve (12) years, with all its computerized systems at the Abuja Geographic Information Systems (AGIS) to discover an irregular allocation. This Court cannot buy that narrative.

Within those twelve years, the Defendants had been issuing demands for payment of ground rents and the Claimants had been paying same. The 2nd Claimant has been in occupation of that property since he purchased it from the 1st Claimant and has altered his position so radically within that period in relation to the land that it will not only be unjust and unconscionable to agree with the Defendants, but also inequitable to nullify the allocation of Plot 484 Cadastral Zone B06 Mabushi District, Abuja by the 1st Defendant to the 1st Claimant, thereby depriving the 2nd Claimant of the use and occupation of the same property which he purchased from the 1st Claimant. The Defendants, having stood by all these twelve years, cannot validly claim in this Court that they made the allocation to the 1st Claimant in error and that demand for and the payments of the ground rents were made in error. See *Kayode v. Alhaji J. A. Odutola (2001) LPELR-1682(SC) at 14 paras B – C; Vihishima Igbum v. Alhaji Baba Nyarinya & Anor (2000) LPELR-9938(CA) at 38-45, paras. C-F.*

Having arrived at this ineluctable conclusion, this Court is left with no option than to grant all the reliefs sought by the Claimants in this suit on the following terms:-

- 1. THAT the 1st Claimant's title over Plot 484 Cadastral Zone B06 Mabushi District, FCT, Abuja measuring 1,624.00m² granted by the 1st Defendant to the 1st Claimant on the 22/11/1993 and covered by a Certificate of Occupancy dated 12/04/2005 is valid and subsisting, the Defendants having failed to establish that the grant is invalid and that the Certificate of Occupancy is forged.**
- 2. THAT the flagging by the 1st, 2nd and 3rd Defendants together with their agents and agencies as forged the 1st Claimant's file in respect of Plot 484 Cadastral Zone B06 Mabushi District, Abuja granted to the 1st Claimant by the 1st Defendant on the 22/11/1993 and their**

verdict that the 1st Claimant's Certificate of Occupancy over Plot 484 Cadastral Zone B06 Mabushi District, FCT, Abuja measuring 1,624.00m² issued to the 1st Claimant by the 1st Defendant was forged without allowing the 1st Claimant to be heard on the allegation of forgery was wrongful, illegal, unconstitutional and a breach of the 1st Claimant's right to fair hearing.

3. THAT by the purchase of Plot 484 Cadastral Zone B06 Mabushi District, Federal Capital Territory, Abuja measuring 1,624m² by the 2nd Claimant from the 1st Claimant, the 2nd Claimant acquired an equitable interest in the plot recognizable in law.
4. THAT the 1st Claimant having been issued with the demands for the payment of ground rents by the Defendants and the 1st Claimant having paid the said ground rents, the Defendants cannot claim that the 1st Claimant's title is invalid after standing by for over twelve years and on that basis bar the 1st Claimant from being issued with demands for payment of ground rent in respect of Plot 484 Cadastral Zone B06 Mabushi District, Federal Capital Territory, Abuja.
5. THAT the flagging as forged and invalid the 1st Claimant's title in respect of Plot 484 Cadastral Zone B06 Mabushi District, Abuja measuring 1,624.00m² by the Defendants is hereby declared null and void and of no effect whatsoever.
6. THAT all the Defendants, whether by themselves or through their agents and agencies known as the Director of Land, Deed Registrar, the Development Control Department or however known are hereby ordered to continue to recognize the 1st Claimant as the lawful holder of the Statutory Right of Occupancy and the

Certificate of Occupancy in respect of Plot 484 Cadastral Zone B06 Mabushi District, Federal Capital Territory, Abuja and the 2nd Claimant as her lawful attorney.

- 7. THAT the 1st and 2nd Defendants together with their agents and agencies are hereby ordered to vacate immediately the restrictions placed on the 1st Claimant's title file on the unproven ground of forgery or any other ground not cognizable by law.**
- 8. THAT the Defendants are hereby ordered to serve on the Claimants the demand for payment of ground rents in respect of Plot 484 Cadastral Zone B06 Mabushi District, Federal Capital Territory, Abuja as and when due.**
- 9. THAT all the Defendants are hereby restrained from revoking the 1st Claimant's allocation of Certification of Occupancy in Plot 484 Cadastral Zone B06 Mabushi District, Abuja measuring 1,624.00 m² within the residue of the period granted in the instrument of grant to the 1st Claimant on the ground that the 1st Claimant's title was forged or that it was obtained with the Minister's approval or for any reason not cognizable by law.**
- 10. THAT the 1st, 2nd and 3rd Defendants are hereby ordered to pay to the Claimants the sum of ₦1,000,000.00 (One Million Naira) only for the unconstitutional, unlawful and illegal steps they have taken in respect of the 1st Claimant's title over the property known as Plot 484 Cadastral Zone B06 Mabushi District, Federal Capital Territory, Abuja.**
- 11. THAT ₦1,000,000.00 is hereby awarded in favour of the Claimants and against the Defendants jointly and severally as cost of this suit against the Defendants jointly and severally.**

This is the Judgment of this Court delivered today, the 07th day of February, 2023.

HON. JUSTICE A. H. MUSA
JUDGE
07/02/2023

APPEARANCES:

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FOR ALL THE DEFENDANTS

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