IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS MONDAY, THE 26TH DAY OF JUNE, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1251/2016

BETWEEN:

MR. USMAN USMAN KHAN ..... CLAIMANT

AND

1. **MR RICHARD OKOZI**
2. **ABUJA GEOGRAPHIC INFORMATION SYSTEM (AGIS)**
3. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
4. **HON. MINISTER, FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
5. **LT. COL. M. MANGA (RTD)**

.... DEFENDANTS

JUDGMENT

By a Further Amended Writ of Summons and Statement of Claim dated 18th January, 2017 and filed on the same date at the Court's Registry, the plaintiff claims for the following Reliefs:

i. **A DECLARATION that the Plaintiff is the rightful allotee and lawful/beneficial owner of Plot Number 78 within Wuye, Cadastral Zone B03 Wuye District, Abuja demarcated by the property Beacons Nos.: PB4034, PB229, PB230, PB231, PB227 and PB226 covered by Offer of Statutory Right of Occupany Number 011674 dated 28th day of May, 2015 with file No.JG 61341 and being of approximate area 1,492.28 square metres ("the Property").**

ii. A DECLARATION that the illegal Self-Help acts of the 1st and 5th Defendants their privies, agents and servants in breaking into the Plaintiff's fenced – property and entering on the said property without Plaintiff's consent or permission, or without any Court Order constitute an act of lawlessness, wanton destruction of Plaintiff's property and trespass to the said Plaintiff's landed property located and known as Plot No. 78 Cadastral Zone B03 Wuye District, Abuja covered by Offer of Statutory Right of Occupancy Number 011674 dated 28th day of May, 2015 with file No. JG 61341 (hereinafter referred to as "the property").

iii. A DECLARATION that the acts of breaking into the Plaintiff's fenced property, entry and interference with the said Plaintiff's property by the 1st defendant, his agents, privies and servants are not only unlawful and illegal but also constitutes acts of trespass to the said Plaintiff's landed property.

iv. A DECLARATION that the 1st and 5th Defendants by themselves or their privies, assigns, agents, servants, attorneys and by whatever name called are liable to the Plaintiff in trespass occasioned by their wrongful conduct and entry into the plaintiff's said property.

v. A PERPETUAL ORDER OF INJUNCTION restraining the 1st and 5th defendants, their privies, cronies, assigns, agents and servants and whosever by whatever name known or called from entering into, moving near, building and/or attempting to erect any structure on the plaintiff's said property located and known as Plot No. 78 Cadastral Zone B03 Wuye District, Abuja as demarcated by the property Beacon Nos.: PB4034, PB229, PB230, PB231, PB227 and PB226 covered by Offer of Statutory Right of Occupancy dated 28th day of May, 2015 with file No. JG 61341.

vi. AN INJUNCTION restraining the said persons mentioned in prayer 4 above from interfering with the plaintiff's title, occupational rights, interest and enjoyment of the said property in any manner whatsoever.

vii. AN ORDER against the 2nd, 3rd and 4th defendants restraining them from dealing with and/or recognizing the 1st and 5th defendants restraining them from dealing with and/or recognizing the 1st and 5th defendants or any other person whatsoever apart from the plaintiff as having any right, interest or title over the said Property.

viii. **The sum of N10, 000, 000.00 (Ten Million Naira) only Aggravated/General Damages against the 1st and 5th Defendants for their wrongful, unlawful, illegal, acts of trespassing into the Plaintiff's land and harassment, threats and intimidation of the plaintiff, which acts have kept the Plaintiff from building or developing his property for the accommodation of himself and his family; and exposed them to continued hardship due to living in a rented apartment uptil date.**

ix. **Cost of this action and legal fees.**

The 1st and 2nd defendants filed a joint statement of defence dated 19th January, 2018 and set up a counter claim against the plaintiff as follows:

a. **A Declaration that the 5th Defendant/counter-claimant is the rightfully owner and original allotee of Plot Nos. 1 L22-78 (also known as Plot No. 78, Wuye District, Abuja) measuring about 1346.34m2 within Wuye District Abuja by virtue of the offer of terms of grant/conveyance of approval dated 2nd September, 1992.**

b. **A Declaration that the 5th Defendant/counter-claimant is entitled to all the benefits and interests attached to Plot Nos. 1 L22-78 Wuye District Abuja also known as Plot Nos. 78 Wuye District Abuja being the original allotee.**

c. **An order of this Honourable Court nullifying any subsequent allocation granted by the 3rd and 4th defendants over Plot Nos. 1 L22-78 Wuye District Abuja which is one and the same with Plot No. 78, Wuye District, Abuja.**

d. **An Order of perpetual injunction restraining the plaintiff, the plaintiff's agents, privies, attorney, workers or representatives from interfering with the 5th defendant/counter-claimant's possessory right over plot Nos. 1 L22-78 also known as Plot 78 Wuye District Abuja.**

e. **Damages in the sum of N50, 000, 000.00**

The 2nd, 3rd and 4th defendant filed a statement of defence on 8th June, 2017.

The claimant then filed an Amended claimants Rely and defence to the 1st and 5th defendants joint statement of defence and counter-claim on 30th November, 2020.

The 1st and 5th defendants/counter-claimants then filed a Reply to the Amended claimants defence to the counter-claimant.

The above pleadings essentially streamlined the facts and issues in this case. Hearing then commenced.

In proof of his case, the plaintiff called only one witness. Khan Salihu testified as PW1 and the "authorized agent and attorney" to the plaintiff.

He deposed to a witness statement on oath dated 14th December, 2016 which he adopted at the hearing. He tendered in evidence the following documents:

1. Offer of Statutory Right of Occupancy dated 28th May, 2015 in the name of Usman Usman Khan was admitted as **Exhibit P1a**.
2. Copy of Site Plan showing Plot Wuye/B03/78 was admitted as **Exhibit P1b**.
3. Application for grant/re-grant of a statutory right of occupancy acknowledgment dated 23rd January, 2014 was admitted as **Exhibit P2**.
4. Two (2) Revenue collectors Receipt issued by Abuja Geographic Information Systems (AGIS) dated 15th July, 2015 and 10th November, 2015 were admitted as **Exhibits P3a and b.**
5. Statutory right of occupancy bill dated 38th May, 2015 was admitted as **Exhibit P4**.
6. Motion on notice with Motion No: M/522/18 in Suit No: FCT/HC/CV/12516/16 filed on 9th November, 2016 between Mr. Usman Usman Khan and Mr. Richard Okozi and 4 ors was admitted as **Exhibit P5**.

PW1 was then cross-examined by counsel to the 1st and 5th defendants/counter-claimants and in the process, a counter-affidavit in opposition to the 1st and 5th defendants/applicants motion on notice dated and filed on 9th November, 2016 was admitted in evidence as **Exhibit P6**. Counsel to the 2nd – 4th defendants then cross-examined PW1.

The plaintiff then at that point closed his case.

The matter was then adjourned for defence. On the record, the 1st and 5th defendants had then not filed their defence but they were given time to do the needful and call their witness but they were not able to do so and their defence was then foreclosed.

The 2nd, 3rd and 4th defendants then opened their defence. **Hauwa Modu** testified as DW1 and the only witness. She deposed to a witness statement on oath dated 8th June, 2017 which she adopted at the hearing. She tendered in evidence the following documents:

1. Offer of statutory of occupancy to Usman Usman Khan dated 28th May, 2015 was admitted as **Exhibit D1**.
2. Letter of acceptance of offer of grant of right of occupancy dated 16th June, 2015 was admitted as **Exhibit D2a**.

DW1 was then crossed examined by counsel to 1st and 5th defendants and counsel to the plaintiff and with her evidence, the 2nd – 4th defendants closed their case.

Parties were then ordered to file their final addresses. The 1st – 5th defendants/counter-claimants then filed an application to re-open their case and to file their defence and counter-claim, which was not opposed and was granted.

In proof of the 1st and 5th defendants case, they called two witnesses. **Alhaji Shehu Muhammed Manga** testified as DW2. He deposed to a witness statement on oath dated 9th February, 2018 which he adopted at the hearing. He tendered in evidence the following documents:

1. Power of Attorney between Lt. Col. M. Manga and Shehu Muhammed Manga was admitted in evidence as **Exhibit D1a**.
2. Certified True Copy (C.T.C) of Offer of Terms/Conveyance of Approval to Lt. Col. M. Manga dated 2nd September, 1992 was admitted as **Exhibit D2b**.
3. CTC of Acceptance of Offer of Grant of Right of Occupancy dated 9th February, 1993 was admitted as **Exhibit D3**.
4. CTC of Preliminary Survey Report of Plot No. 78 in Area B3 of Wuye was admitted as **Exhibit D4**.
5. CTC of verification certificate was admitted as **Exhibit D5**.
6. CTC of T.D.P. of Right of Occupancy No. FCT/ABU/SO.630 was admitted in evidence as **Exhibit D6**.

DW2 was then cross-examined by counsel to 2nd – 4th defendants. Counsel to the plaintiff also commenced cross-examination of DW2 but could not conclude same and prayed for an adjournment which was reluctantly granted. Despite the

ample time given, the plaintiff was not able to conclude the cross-examination and on application, that right was foreclosed and DW2 was then discharged.

The plaintiff on record, then brought an application to be allowed to conclude his cross-examination of DW2 and to re-open his case to recall PW1 to give further evidence in support of his Amended Reply and defence to the 1st – 5th defendants defence and counter-claim.

The application was not opposed and it was thus granted. Indeed the 1st and 5th defendants indicated that in response to the Amended Reply of claimant, to their defence and counter-claim, they had filed a Reply and an additional witness statement. On the basis of the peculiar facts of this case and to make the record of court neater, the court directed that the plaintiffs recalled witness should give his further evidence before the 1st and 5th defendants bring their witness DW2 to enable plaintiff conclude his cross examination and for DW2 to adopt his additional statement which was deemed properly filed and conclude his evidence.

PW1, **Khan Salihu** was **recalled** and he adopted his additional witness statement dated 30th November, 2020.

He was then cross-examined by counsel to the 1st and 5th defendants/counter-claimants. The 2nd – 4th defendants counsel was not in court despite service of hearing notice to cross-examine PW1. Indeed on the record, counsel to the 2nd – 4th defendants stopped coming to court. With the additional evidence of **PW1,** the **plaintiff** finally **closed his case**.

DW2 was then recalled and he adopted his additional deposition dated **5th February, 2021**. Counsel to the plaintiff then concluded his cross-examination of DW2 and he was then discharged.

The last witness for 1st and 5th defendants is a staff of the **FCDA** who was subpoenaed, **Jatau Barde Jatau**, a surveyor with the Department of Survey and Mapping of the FCDA testified as **DW3**. He testified that a subpoena was served on his Director of Survey and mapping and it was minuted to him to appear in court as the district head of Urban Cadastral North. DW3 was then given **Exhibit D2b**, the offer of terms of grant/conveyance of approval to 5th defendant and asked to explain what "**plot Nos. 1 L22-78**" on the offer means.

DW3 then testified and explained that under every district which is designed by a planner of Urban and Regional Department, Plots are designed in specific densities and land uses before it is brought to the survey department.

He stated that the surveyor then digitalizes, i.e giving it coordinate system to wit plot and beacon numbers; the plot is then actualized on ground from the coordinates.

He further testified that every department after designing has a number but the surveyor number appears as the final number.

He stated that based on this offer letter, **Exhibit D2b**, plot Nos. 1 L22-78 means the following:

1. L22- stands for the planners No. or Urban and Regional Planning Department numbers meaning that L22 – stands for low density Plot 22 or put another way, that it is the 22nd plot with low density in that Area or District.

He further stated that after a planner has given his own number(s), he gives the surveyor the map he has designed. That the surveyor now then puts the final plot and beacon numbers as the unique identity of the plot.

He stated that the surveyors numbers been the final numbers of the plot to be used or adopted stands as L22 and the plot is plot 78. He further stated that **Exhibit D2b** is therefore an allocation on **Plot 78** and that **Exhibit D6** is the survey plan of **plot 78.**

DW3 was then given **Exhibits P1b**, a site plan which has **Plot No. 78** on it. DW3 said that the plots on **Exhibits P1b** and **Exhibit D6** are one and the same **plot 78**.

Counsel to the plaintiff chose not to cross-examine **DW3**.

As stated earlier, counsel to the 2nd – 4th defendants stopped appearing in court despite service of Hearing notices. With the evidence of DW3, the 1st and 5th defendants closed their case.

At the conclusion of trial, parties filed, exchanged and adopted their final written addresses.

The final address of 1st and 5th defendants/counter-claimants is dated 30th January, 2023 and filed on 1st February, 2023. In the address, two issues were raised as arising for determination, as follows:

"1. Whether given all the facts and circumstances of this case, especially having regard to the state of pleadings and evidence on record, the claimant has proved his claims as required by law so as to be entitled to the reliefs sought in this suit.

2. Whether from the pleadings and evidence on record the Counter-Claimant has proved his claims against the Claimant and is therefore entitled to the reliefs sought in the Counter-claim."

On the part of the claimant, his address is dated 14th February, 2023 and filed on 16th February, 2023. In the address the plaintiff raised only one issue as arising for determination:

"Whether the plaintiff has proved, on the preponderance of evidence, that he is entitled to the Reliefs sought before the Honourable Court."

The 1st and 5th defendants Counter-claimant then filed a Reply on points of law to the claimant's final address on 15th March, 2023.

I have given a careful and insightful consideration to the issues as distilled by parties. The issues may have been differently worded, but they seem to me in substance, to be in pari materia. I note that the claimant did not specifically raise any issue with respect to the counter-claim, but the submissions made with respect to the lone issue raised projects the position that the claimant has a better title to that of the counter-claimants.

On the pleadings which has precisely defined or streamlined the issues in dispute, the central key issue on which parties are at a consensus adidem relates to the contested claim of ownership of plot 78 at Wuye (hereinafter referred to as the disputed plot). Both parties lay claim to this disputed plot and relying on allocations from a **common grantor**. All other ancillary reliefs claimed by parties on both sides are predicated clearly on successful proof of ownership of this disputed plot. In resolving this issue, the court will equally as a part of this issue of ownership determine whether the plots of land claimed by both parties are even one and the same.

Flowing from the above, there is in this case a claim by plaintiff and a counter-claim by 1st and 5th defendants. It is trite law that for all intents and purposes, a counter claim is a separate, independent and distinct action and the counter claimant(s) like the plaintiff in an action must prove his case against the person counter claimed before obtaining judgment. See **Jeric Nig. Ltd V Union Bank**

(2007) 7 WRN 1 at 18; Shettimari V Nwokoye (1991) 9 NWLR (pt.213) 66 at 71.

In view of this settled state of the law, both the plaintiff and the 1st and 5th defendants/counter-claimants have the burden of proving their claim and counter-claim respectively. This being so, therefore, the issues for determination in this action can be condensed and be more succinctly encapsulated in the following issues as follows:

1. **Whether the plaintiff has established on a preponderance of evidence that he is entitled to all or any of the reliefs claimed.**
2. **Whether the 1st and 5th defendants/counter-claimants have equally established on a preponderance of evidence their entitlement to any or all of the Reliefs claimed.**

The above issues may have slightly modified the issues parties themselves raised but it conveniently covers the issues raised by parties which shall be taken together. The issues thus distilled by court are not raised in the alternative but cumulatively with the issues raised by parties. See **Sanusi V Amoyegun (1992) 4 NWLR.**

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 cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (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 relief 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 now proceed to determine the case based on the issues formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle.

In furtherance of the foregoing, I have carefully read the final addresses of parties respectively. I will in the course of this Judgment and where necessary or relevant refer to submissions made by counsel and resolving whatever issue(s) arising therefrom.

Now to the substance. As stated earlier, the **two issues** raised by court shall be taken together. As I also stated, I will also consider the critical element of whether the plots claimed by parties are the same as I resolve this dispute.

Now at the commencement of this judgment, I had stated that there is a claim by plaintiff and counter-claim filed by 1st and 5th defendants respectively. So these identified parties have the evidential burden of establishing their claims and succeeding on the strength of their cases as opposed to the weakness of the case of the other party. See **Kodilinye V Odu (1935) 2 WACA 336 at 337; Fagunwa V Adibi (2004) 17 NWLR (pt.903) 544 at 568; Nsirim V Nsirim (2002) 12 WRN 1 at 14.**

This principle is however subject to the qualification that a claimant is entitled to take advantage of any element in the case of his opponent that strengthens his own cause. What this means is that it is not enough to merely assert that the case of the opponent is weak; there must be something of positive benefit to the claimant in the case of the opponent. See **Uchendu V Ogboni (1999) 5 N.W.L.R (pt.603) 337.** Accordingly, it is important to add that where the claimant fails to discharge the onus cast on him by law, the weakness of the case of the opponent will not avail him and the proper judgment is for the adversary or opponent. See **Elias V Omo-Bare (1982) NSCC 92 at 100 and Kodilinye V Odu (supra).**

It is therefore to the pleadings which has precisely streamlined the issues and facts in dispute and that the evidence that we must now beam a critical judicial search light in resolving these contested assertions.

I had also at the beginning of this judgment identified the **pleadings** filed by parties.

I shall in the course of this judgment refer to specific paragraphs of the pleadings, where necessary to underscore any relevant point. Indeed in this

judgment I will deliberately and in extenso refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

Being a matter involving disputation as to title to land, it is also important to situate the **five independent** ways of proving title to land as expounded by the Supreme Court in **Idundun V Okumagba (1976) 9 – 10 SC 221** as follows:

1. Title may be established by traditional evidence. This usually involves tracing the claimant's title to the original settler on the land in dispute.

2. A claimant may prove ownership of the land in dispute by production of documents of title. A right of occupancy evidenced by a certificate of occupancy affords a good example.

3. Title may be proved by acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant an inference that the claimant is the true owner of the disputed land. Such acts include farming on the whole or part of the land in dispute or selling, leasing and renting out a portion or all of the land in dispute.

4. A claimant may rely on acts of long possession and enjoyment of land as raising a presumption of ownership (in his or her favour) under **Section 146 of the Evidence Act**. This presumption is rebuttable by contrary evidence,

such as evidence of a more traditional history or title documents that clearly fix ownership in the defendant.

5. A claimant may prove title to a disputed land by showing that he or she is in undisturbed or undisputed possession of an adjacent or connected land and the circumstances render it probable that as owner of such contiguous land he or she is also the owner of the land in dispute. This fifth method, like the fourth, is also premised on **Section 146 of the Evidence Act**.

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131.** These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title to succeed but he is eminently entitled to rely on more than one root of title. See **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252.**

It is also important to also at the **onset** address the rather erroneous and misplaced submission projected by the claimant that because the 2nd – 4th defendants admitted in the pleadings that the claimant applied and was allocated plot No. 78 meant that the plaintiff has established his title to the disputed plot. Nothing really could, legally and factually be further from the truth. It is to be noted that the substantive **Reliefs (1-4)** sought by plaintiff are **declaratory** reliefs. Indeed the other **Reliefs (5-8)** are all ancillary and predicated on the success, in the main, of the declaratory reliefs. It is equally to be noted that **Reliefs (a)** and **(b)** on the counter-claim are equally declaratory reliefs and provides basis, equally for the success or otherwise of **Reliefs (c)-(e)** of the counter-claim.

It is therefore obvious that the nature of the critical Reliefs sought in both the **claim** and **counter-claim** are declaratory in nature. That being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.**

The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be

put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

The settled jurisprudence on claims rooted in declarations does not allow for the submissions made by claimant. It is discountenanced without much ado.

A convenient starting point is to understand the precise situational dynamic relating to the allocations relied on by parties. I take my bearing from the pleadings.

The claimant in paragraphs 1, 3, 4, 5, 9 and 18 pleaded as follows:

"1. The Plaintiff is the legal allotee and lawful/beneficial owner of Plot Number 78 within Wuye, Cadastral Zone B03 Wuye District, Abuja demarcated by the property Beacons Nos.: PB4034, PB229, PB230, PB231, PB227 and PB226 covered by Offer of Statutory Right of Occupancy Number 011674 dated 28th day of May, 2015 with file No. JG 61341 and being of approximate area 1,492.28 square metres ("the property").

3. The 2nd, 3rd and 4th Defendants are the statutory bodies/agencies having the statutory responsibility of allocating, recording and maintaining lands within the Federal Capital Territory, Abuja. They duly allocated the property to the plaintiff certifying that there was no subsisting prior title or rights over same at the material time.

4. The Plaintiff states upon the said land being allocated him by the 2nd, 3rd and 4th defendants, he engaged a Surveyor who established the beacons on the said property demarcating the Plaintiff's land from other lands. The Survey/Site Plan, Offer of Statutory Right of Occupancy, payment receipts and Statutory right of Occupancy Bill are hereby pleaded.

5. The Plaintiff further states that he proceeded to fence his said property without any let or hindrance from anyone.

9. The plaintiff states that he has been in undisturbed possession of the said property since 2015 by himself and his agents without let or hindrance when same was allotted to him by the 2nd, 3rd and 4th defendants. There has never been any adverse claim, complaint or protest by the 1st defendant or anyone else to the plaintiff's title and exclusive possession of the property or part thereof since 2015 until a few months to the date of the trespass complained of in this suit.

18. The Plaintiff will rely on the Survey/Site Plan, Offer of Statutory Right of Occupancy, payment receipts and Statutory Right of Occupancy Bill, 1st and 5th Defendants' Motion on Notice dated and filed on the 9th November, 2016 with all the documents attached thereto and all other relevant documents referred to herein and/or relevant to the facts in issue in this case and hereby gives the Defendants notice to produce the originals of same in their possession at the trial."

The above averments with respect to the allocation to the disputed plot by plaintiff which situates his claim of ownership are clear. In evidence the plaintiff tendered the following documents in support to wit:

"1. Offer of Statutory Right of Occupancy dated 28th May, 2015 in the name of Usman Usman Khan was admitted as Exhibit P1a.

2. Copy of Site Plan showing Plot Wuye/B03/78 was admitted as Exhibit P1b.

3. Application for grant/re-grant of a statutory right of occupancy acknowledgment dated 23rd January, 2014 admitted as Exhibit P2.

4. Two (2) Revenue collectors Receipt issued by Abuja Geographic Information Systems (AGIS) dated 15th July, 2015 and 10th November, 2015 admitted as Exhibits P3a and b.

5. Statutory right of occupancy bill dated 38th May, 2015 admitted as Exhibit P4."

On the other side of the aisle, the case of 1st and 5th defendants/counter-claim is equally clear. They pleaded the following relevant paragraphs in their defence as follows:

"3. In response to the averments in paragraph 1 of the claim, the 1st and 5th Defendants aver that by an offer of terms of grant/conveyance of approval dated 2nd September, 1992, the 5th defendant became beneficial owner of the plot of land known and described as Plot Nos. 1 L22-78 (also known as Plot 78) measuring about 1346.34m2 within Wuye District Abuja. The said offer of terms of grant/conveyance of approval is hereby pleaded.

4. The 5th defendants accepted the said offer of terms of grant/conveyance of approval vide a letter of acceptance of offer of grant of right of

occupancy within the Federal Capital Territory, Abuja dated 9th February, 1993. The said acceptance of offer of grant of right of occupancy is hereby pleaded.

6. In further denial of the said averments, the 1st and 5th defendants aver that the said plot Nos. 1 L22-78 (also known as Plot 78) measuring about 1346.34m2 within Wuye District Abuja was allocated to the 5th Defendant.

7. The 1st and 5th Defendants avers that the said plot Nos. 1 L22-78 measuring about 1346.34m2 within Wuye District Abuja which was allocated to the 5th Defendant is the same as Plot 78, Wuye District, Abuja and this is clearly shown in the Cadastral map issued by the 3rd and 4th Defendants to the 5th Defendants and the preliminary survey report and verification certificate from the 3rd Defendant. The said cadastral map issued to the 5th Defendant together with the preliminary survey report and verification certificate are hereby pleaded.

8. The 1st and 5th Defendants further aver that the said Cadastral Map which was issued to the 5th Defendant by the 3rd and 4th Defendants shows the actual size on-ground, i.e. 1492.42 sqm, and same is demarcated with beacon numbers: PB229, PB230, PB227, PB226 and co-ordinates of Plot Nos. 1 L22-78 also known as Plot No. 78, the subject matter of this suit.

9. The 1st and 5th Defendants deny averments in paragraphs 7, 8 and 9 of the claim and avers that the plot which the 1st and 5th Defendants occupy which is Plot Nos. 1 L22-78 also known as Plot 78, Wuye District, Abuja, measuring about 1346.34 m2 within Wuye District Abuja was first allocated to the 5th Defendant by the 3rd and 4th Defendants on 2nd September, 1992.

10. The 1st and 5th Defendants further aver that they have been in peaceful possession of the said plot of land without any adverse claim of ownership from any third party.

11. The 1st and 5th defendants deny 10, 11, 12, 13 and 14 of the Claim and state that the said Plot Nos. 1 L22-78 measuring about 1346.34m2 within Wuye District, Abuja, belongs to the 5th Defendant."

These averments were equally repeated in the counter-claim vide paragraphs 22-27.

These averments equally project the claim of ownership of the disputed plot by the counter-claimants and in evidence, they tendered the following certified true copies of documents in evidence to wit:

"1. Power of Attorney between Lt. Col. M. Manha and Shehu Muhammed Manga was admitted in evidence as Exhibit D1.

3. Certified True Copy (C.T.C) of Offer of Terms/Conveyance of Approval to Lt. Col. M. Manga dated 2nd September, 1992 was admitted as Exhibit D2.

4. CTC Acceptance of Offer of Grant of Right of Occupancy dated 9th February, 1993 was admitted as Exhibit D3.

5. CTC of Preliminary Survey Report of Plot No. 78 in Area B3 of Wuye admitted as Exhibit D4.

6. CTC of verification certificate admitted as Exhibit D5.

7. CTC of T.D.P. of Right of Occupancy No. FCT/ABU/SO.630 admitted in evidence as Exhibit D6."

The documentary evidence tendered on both sides situates clearly on **allocation** from a **common grantor**, the 3rd defendant over a certain plot No 78.

Before dealing with the claims relating to the contested ownership, it is critical to determine whether the disputed plot and the contrasting claims made by parties relate to the same plot.

The plaintiff in paragraph 1 of his claim referred to this disputed plot as **"plot No. 78 within Wuye, Cadastral Zone B03 Wuye District Abuja demarcated by property beacons nos. PB4034, PB229, PB230, PB231, PB227 and PB226 covered by offer of statutory right of occupancy No 011674 dated 28th May, 2015 with File No. JG 61341** and being of approximate area 1, 492.28 square **meters."**

The 1st and 5th defendants/counter-claim on the other side of the aisle pleaded vide paragraph 3 that **"... the 5th defendant became beneficial owner of the plot of land known and described as plot Nos. 1 L22-78 (also known as plot 78) measuring about 1346.34m2 within Wuye District Abuja..."**

The 1st and 5th defendants counter-claimants then vide paragraphs 7-9 then made the point that the land allocated to the counter-claimants is the same plot 78 been claimed by the plaintiff.

Let me for purposes of clarity, even if at the risk of prolixity, define or situate the averments made in those paragraphs as follows:

"7. **The 1st and 5th Defendants avers that the said plot Nos. 1 L22-78 measuring about 1346.34m2 within Wuye District Abuja which was allocated to the 5th Defendant is the same as Plot 78, Wuye District, Abuja and this is clearly shown in the Cadastral map issued by the 3rd and 4th Defendants to the 5th Defendants and the preliminary survey report and verification certificate from the 3rd Defendant. The said cadastral map issued to the 5th Defendant together with the preliminary survey report and verification certificate are hereby pleaded.**

8. **The 1st and 5th Defendants further aver that the said Cadastral Map which was issued to the 5th Defendant by the 3rd and 4th Defendants shows the actual size on-ground, i.e. 1492.42 sqm, and same is demarcated with beacon numbers: PB229, PB230, PB227, PB226 and co-ordinates of Plot Nos. 1 L22-78 also known as Plot No. 78, the subject matter of this suit.**

9. **The 1st and 5th Defendants deny averments in paragraphs 7, 8 and 9 of the claim and avers that the plot which the 1st and 5th Defendants occupy which is Plot Nos. 1 L22-78 also known as Plot 78, Wuye District, Abuja, measuring about 1346.34 m2 within Wuye District Abuja was first allocated to the 5th Defendant by the 3rd and 4th Defendants on 2nd September, 1992."**

The claimant in response to the above averments pleaded in his Reply and defence to the counter-claimants defence and counter-claim as follows:

"2. **The Claimant who had denied paragraphs 3, 4, 6, 7, 8, 9, 10 and 15 of the 1st and 5th Defendants' Statement of Defence further states in reply thereto that the Claimant's Plot No. 78 within Wuye District being of approximate area 1492.28 square metres was never allocated to the 5th defendant or anyone else; and the said claimant's plot No. 78 within Wuye District, Abuja is not one and the same with Plot Numbers 1 L22-**

78 measuring about 1346.34 square metres which the 5th defendant claims to be allocated to him.

3. **Further to paragraph 2 above, the claimant avers that the 5th defendant/counter-claimant has no root of title over the said Plot No. 78 Wuye District, Abuja as the thoroughly verified records of the 2nd – 4th defendants show clearly that he claimant is the rightful allotee and owner of the said property (Plot No. 78 Wuye, District, Abuja) as there was no prior allocation to the 5th Defendant or any other person."**

The above therefore projects a clear defined dispute over the identity of the land in dispute.

Now the law or principle is fairly settled that before a declaration of title to land is decreed, the land to which it relates must be ascertained with certainty. In other words, definite and precise boundaries of the land claimed must be clear and unambiguous. See **Onu V Agu (1996) 5 NWLR (pt.451) 652 at 662 E.**

The burden of proof of identity of land will not exist when the identity is not a question in issue. The question of identity will only arise when the defendant raised it in his statement of defence or the cross-examination of the adversary and his witness. See **Ilona V Idakwo (2003) 11 NWLR (pt.830) 53 at 85 D-G.**

In this case the defendants/counter-claimants made the case that the disputed land claimed by 5th defendant is the same **plot 78** claimed by plaintiff. In his Reply and defence to the counter-claim, the claimant made the identity of the land an issue by specifically disputing that the land claimed by the counter-claimant which is plot numbers "1 L22-78 measuring about 1346.34 square meters" is not "one and the same" with claimants plot No. 78 measuring about 1492.28 square meters.

The counter-claimants again reiterated their position that the disputed plot claimed by both parties is the same vide paragraphs 9-15 of their Reply to the Amended claimants defence to the counter-claim in the following terms:

"9. The Counter-claimant further avers that the said plot Nos. 1 L22-78 measuring about 1346.34m2 within Wuye District Abuja which was allocated to him is the same as Plot 78, Wuye District, Abuja and this is clearly shown in the cadastral map issued by the 3rd and 4th defendants to the Counter-claimant, and the preliminary survey report and verification certificate from the 3rd defendant.

10. The Counter-claimant further avers that after the land was allocated to him as aforesaid the Directorate of Land, Planning and Survey of the 3rd and 4th Defendants charted for him a Title Deed Plan (TDP) or Cadastral Map or Survey Plan over the land dated 16/2/98, with his name boldly written on the top of the TDP in recognition of the allocation of the land to him (Counter-claimant).

11. The Counter-claimant further avers that on the said TDP or Cadastral Map or Survey Plan, the said land is described as Plot No. 78 with beacon numbers PB229, PB230, PB227 and PB226.

12. The Counter-claimant further avers that the TDP or Cadastral Map or Survey Plan relied upon by the Claimant, but dated 20th November, 2015, is the same as the Counter-claimant's TDP above described, with the same plot No. 78 and same beacons stone numbers, but without the name of the claimant on it.

13. The Counter-claimant shall contend at the hearing that, as a policy, when the 2nd and 3rd defendants have allocated a plot of land to one person and charted a TDP or Cadastral Map or Survey Plan in favour of that person, no other TDP or Cadastral Map or Survey Plan can be charted in favour of another person over the same plot of land.

14. Further to the averment in paragraph 13 above, the Counter-claimant avers that the 2nd, 3rd and 4th defendants recognize that the land has already been granted to the Counter-claimant and that is why they failed to inscribe or insert the name of the Claimant on the TDP relied on and paraded by him in this suit.

15. The Counter-claimant further avers that the TDP or Cadastral Map or Survey Plan prepared by the Claimant in this suit was orchestrated or procured for the purpose of prosecuting or fighting this suit."

Now in evidence, both parties essentially led evidence to support the positions asserted. An appraisal of the documents, firstly of claimant situates that the offer of statutory right of occupancy dated 228th May, 2015 vide **Exhibit P1a** is in respect of plot 78 in Cadastral Zone B03 of Wuye with an area of approximately 1492.28 m2. The site plan attached vide **Exhibit P1b** which has no defined name of any allottee on it shows the clear demarcation or delineation of **plot 78** with the size, area and the beacon numbers. The statutory right of

occupancy bill vide **Exhibit P4** issued to plaintiff refers to this plot 78 at Wuye B03 with the same size or area as denoted in **Exhibits P1a** and **P1b.**

On the other side of the aisle, the offer of terms of grant/conveyance of approval of statutory right of occupancy to 5th defendant vide **Exhibit D2b** dated 3rd September, 1992 is in respect of plot of about "1346.34m^2 (plot Nos. 1 L22-78) within Wuye District."

There is at this early stage, no real clarity on the basis of only **Exhibit D2b** that the **allocation** to the counter-claimant is in respect of the same **plot 78** allocated to the plaintiff vide **Exhibit P1a**, in view of the size and the identification numbers used before the number 78.

What is however interesting here is that the other documents of title tendered by 5th defendant projects with greater clarity that the said **plot 78** appears to be the same with that allocated to **plaintiff**.

The CTC of preliminary survey report prepared by 2nd defendant, the allocating authority vide **Exhibit D4** situates that plot 78 in Area B03 of Wuye District was allocated to the 5th defendant. The area of the plot on the Exhibit is 149.292 square meters with Beacon No. FCT B3 PB226, PB229, PB250, PB231 and PB227. There is here a small differential in size when contrasted with the size in **Exhibit P1a** allocated to plaintiff.

The certified true copy of verification certification vide Exhibit D5, prepared by 2nd defendant again refers to the plot allocated to 5th defendant as the same plot 78, Wuye district – B3.

Secondly, the CTC of the Title Deed Plan (TDP) chartered by the 2nd defendant dated 16th February, 1998 vide **Exhibit D6** with the name of 5th defendant clearly written on it described the land plot No. 78 with beacon numbers PB229, PB230, PB227 and PN226.

There is here no dispute or confusion that this **Exhibit D6** prepared as far back as 16th February, 1998 with the name of 5th defendant is again substantially the same as the site plan attached by plaintiff as **Exhibit P1b** said to have been prepared by 2nd defendant on 20th November, 2015. The plot numbers and beacon numbers are the same except as stated earlier the small differential in area or size. The allocation to 5th defendant reads 1492.42 sqm while that of plaintiff reads 1492.28 sqm. The differential in size is however not such a

significant feature to in any way affect the clear contents of the allocation which clearly affects or relates to the same plot 78.

Indeed in **Exhibit D5**, the surveyor and cartographic officers of 2nd defendant in the said Exhibit appear to strengthen the credibility of the narrative of the allocation of plot 78 to 5th defendant having gone through the file and data and all plans related to the plot as charted on the intelligence sheet and the prepared TDP.

These documents, all **certified true copies** issued by the Deeds Department of the 2nd defendant, projects that the allocation to 5th defendant is in respect of plot 78 claimed by plaintiff and these documents were not challenged or impugned in any manner by plaintiff and their value cannot be glossed over. I will return to these documents later on.

Now apart from the evidence of PW1 who obviously is not a staff of the allocating authority, the plaintiff did not call anybody from the allocating authority to testify and give evidence in support of his contention or the case made that the plots of land are different. The evidence of DW1 as stated earlier was to state that there was only one allocation of the plot 78 to plaintiff.

The 1st and 5th defendants/counter-claimants on their part subpoenaed a staff of the 2nd defendant and allocating authority, specifically a surveyor from the department of survey and mapping of the FCDA. He gave detailed evidence which I had earlier reproduced on the meaning and import of L22-78 used in identifying the plot allocated to 5th defendant and he stated that the alphabets and figures used are put in their by the planner in the survey department to situate the planners numbers, in the urban and regional planning department, the density of the land or the particular area or district where the plot is situated. He also stated that after the planner has given the numbers, he gives the surveyor who then puts the final plot and beacon numbers as the unique identity of the land as done in this case.

He unequivocally testified that **Exhibit D2b**, the statutory allocation to 5th defendant is an allocation on plot 78.

DW3 equally stated that the site plan tendered by plaintiff vide **Exhibit P1b** and the site plan tendered by 5th defendant vide **Exhibit D6** are one and the same over the same disputed **plot 78**. These survey plans tendered by parties clearly therefore spoke to the fact that the disputed plot No 78 as depicted in survey plans tendered vide **Exhibits P1a** and **D6** are one and the same.

In law, the easiest and most common way of establishing identity of land is by survey plan. See **Kyari V Alkali (2001) 11 NWLR (pt.724) 412 at 433 E.** Indeed in law, there are essentially two (2) ways a party can establish the identity of the land in dispute as follows:

1. Oral description that any surveyor acting on such description can produce a survey plan of land in dispute.
2. A party may file a survey plan showing the feautures and boundaries. See **Awote V Owodunni (1987) 2 NWLR (pt.57) 367 at 371 E-G.**

As alluded too already and confirmed by DW3, the two survey plans tendered in this case by parties show clearly that the dimensions of the land, the boundaries and other features are substantially the same.

Indeed, DW3, a surveyor from the department of survey and mapping of the FCDA where both plans emanated from confirmed in evidence that the two survey plans relate to the same **plot No. 78**. The evidence of DW3 coming, as it were, from the survey department of the issuing authority of land in the FCT, must be accorded significant probative value in the circumstances.

Surprisingly, at the hearing, the plaintiff's counsel chose or elected not to cross-examine **DW3** at all. It is indeed strange that the plaintiff did not call any witness from FCDA to give evidence on the critical issue of identity of the land or to cross-examine DW3 from the allocating authority who asserted that the allocations of both parties particularly the survey plans tendered by both parties vide **Exhibits P1b** and **D6** relate to the same **plot No. 78**.

In law, where a witness is unchallenged under cross-examination, as in this case or present situation, the court is not only entitled to act on or accept such evidence, but it is infact bound to do so provided such evidence by its very nature is not incredible. Thus where the adversary fails to cross-examine a witness upon a particular matter, the implication is that he accepts the truth of that matter as led in evidence. See **Ofortete V State (2000) 12 NWLR (pt.681) 45 at 436 B-C**.

Indeed, the failure of plaintiff to cross-examine DW3 upon such a critical question of identity of the disputed plot 78 is a tacit acceptance of the truth of the evidence of DW3. See **Gaji V Paye (2003) 8 NWLR (pt.823) 583 at 605 A-C.**

The evidence of DW3 was thus not contradicted, challenged or rebutted in any manner by any other admissible evidence; the court is accordingly bound to accept and act on such unchallenged evidence before it. See **Insurance Brokers of Nig. V ATMN (1996) 8 NWLR (pt.466) 316 at 327 G; Kopek Const. Ltd V Ekisola (2010) 3 NWLR (pt.1182) 618 at 663 C-D; Adele V Iyanda (2001) 13 NWLR (pt.729) 1 at 22-23.**

On the whole, on the basis of the unchallenged evidence tendered by the counter-claimants and the evidence of DW3 from the survey department of the FCDA or issuing authority of land allocations in the FCT, which I do not find incredible or falling below accepted standards, I have no doubt that the disputed land claimed by both parties in this case is the same **Plot No. 78 at Wuye District in the FCT.**

Having so found, it is obvious or logical to hold that there cannot be concurrent allocation or ownership of the same plot 78 to two different persons. As a logical corollary, where two parties claim possession, the law ascribes possession to one who can show a better title. See **Iseru V Catholic Bishop Warri Diocese (1997) 3 NWLR (pt.495) 526.**

Now in this case, I had earlier streamlined the allocations of both parties. Indeed on the evidence there are two allocations to the same disputed plot 78 to wit:

1. The offer of statutory right of occupancy to the plaintiff is dated 28th May, 2015 vide **Exhibit P1a.**
2. The offer of terms/conveyance of approval to 5th defendant dated 2nd September, 1992 was admitted as **Exhibit D2b.**

Both parties duly accepted the offers on the evidence. Both allocations as already alluded to were from the same issuing authority, the FCDA. I am therefore not in any doubt that both plaintiff and 5th defendant, having found already that the two allocations relate to the same plot, were unfortunately allocated the same **plot No. 78** at Wuye district.

In law, as stated earlier, there cannot be concurrent ownership of the same plot by different persons. In the prevailing situation, the law is settled that where two or more competing documents of title upon which parties to a land dispute rely for their claim originate from a common grantor as in this case, the doctrine of priorities pursuant to the well-recognised maxim, *qui prior est tempare,*

potior est jure, meaning that he who is first has the strongest right, dictates that the first in time takes priority. See **Atanda V Ajani (1989) 3 NWLR (pt.135) 745; Uzor V D.F (Nig.) Ltd (2010) 13 NWLR (pt.1217) 553 at 576 and Gege V Nande (2006) 10 NWLR (pt.989) 256**.

In this case on the evidence, **Exhibit D2b** dated 2nd September, 1992 issued to 5th defendant was clearly earlier in time and the 5th defendant accepted the offer as far back as 9th February, 1993 vide **Exhibit D3**. The offer of the same plot to plaintiff vide **Exhibit P1a** dated 28th August, 2015 and his acceptance on 16th June, 2015 occurred more than **two decades** after the allocation to 5th defendant.

On the authorities, in the absence of any evidence situating a proper and legal revocation of **plot 78** to 5th defendant, there cannot in law and in fact be any cognizable allocation to another person or party.

Now it is true that DW1 who gave evidence for the 2nd – 4th defendants may have stated that the plaintiff applied for the disputed plot 78 and was allocated same by the Minister, FCT. She then added vide paragraph 6 of her deposition that "the 4th defendant has never granted title over plot No. 78. Cadastral Zone B03 Wuye District, Abuja, to anyone other than plaintiff."

This assertion and the claim that **Plot No. 78** was never allocated to anyone other than plaintiff was effectively controverted by the evidence of DW3, an officer and colleague of DW1 and the **certified true copies of documents** issued by or from the offices of 2nd – 4th defendants where she works. All the itemized documents of title tendered by 5th defendant vide **Exhibits D1a – D6** were all certified true copies denoting clearly the earlier and prior allocation of **plot no 78** to the 5th defendant. The certification of all these **documents** it must be underscored was done by the **Deed Registrar** from the officers of the **2nd – 4th defendants**.

The question to ask here is this: if these documents had always existed, how could one legitimately explain the evidence of DW1 that there was no other allocation to Plot No. 78 except that of plaintiff which has turned out to lack credibility on the basis of the documents presented from her own office?

It should equally be noted that the evidence of DW3 from the same office of DW1 contradicted her evidence when he stated that the site plans or TDP tendered by both parties refer to the same plot which meant or projected the existence of an earlier allocation before that of plaintiff. Is it that DW1 did not

make the necessary checks in the land and deeds office or she was simply a witness with a selfish purpose to serve?.

The court will not speculate as to which purpose she sought to serve by coming to give the evidence she gave, but the evidence of DW3 from the same office and most importantly, the certified true copies of documents tendered from again her own office showed the falsity in her evidence and it accordingly would not be accorded any probative value in the circumstances.

In law, all the **certified true copies** of the allocating documents of the disputed Plot 78 tendered by 1st and 5th defendants enjoy the presumption of genuineness by virtue of Section 146 (1) and (2) of the Evidence Act until proved to the contrary. See **Okola V Adeleke (2004) 13 NWLR (pt 890) 306 at 325 E-F.**

Exhibits D1a – D6 are public documents and certified by the deed registrar who is duly authorized to exercise the powers of certification and wholly projects the existence of the allocation to 5th defendant of **Plot no. 78** at all material times prior to the later allocation to plaintiff.

The attempt by plaintiff to as it were rely on the pleadings of 2nd – 4th defendants and the evidence of DW1 as constituting some sort of admission of plaintiff's case, we had earlier indicated clearly was not availing. The plaintiff must prove his case with credible and cogent evidence. The attempt to therefore ignore the evidence of **DW3** and the existence of certified true copies of **Exhibit D1a – D6** clearly will not fly.

Any conclusion or indeed submissions which is made by any party in disregard or denial of valid oral and documentary evidence, in this case, the evidence of DW3 and the Certified true copies of **Exhibits D1a – D6** cannot be seen to fly in the face of the accepted relevant oral and documentary evidence. If it flies at all, it will be contradictory and perverse and the court must reject such submission.

No party is thus entitled to assume that it is within his exclusive province to make submissions or deductions when such conclusion depends on not only credible oral evidence but much on documentary evidence. Such submission must reasonably reflect the contents of the oral evidence and documents in question as a whole so as to be seen as a true understanding of its contents. It is really difficult to see how **Exhibits D1a – D6**, can be ignored by parties especially the plaintiff in the context of the contested assertions in this case. It is a well known truism that a document when admitted in evidence speaks for

itself and where any oral evidence on an issue is given in a case and there is cogent documentary evidence on the same issue, it is the duty of the trial judge to test the reliability of the oral evidence against the said documentary evidence. To put it in now familiar expression, it helps the trial judge to reach a fair finding by using the relevant document as a hanger on with which to assess the oral testimony. See **Kimdey V Gov. Gongola State (1988) 2 NWLR (pt.77) 445 at 473**.

On the facts and evidence, the doctrine of priority clearly operates in this case and enures in favour of 5th defendant. The interest plaintiff acquired over **plot 78** clearly was later in time. The right of occupancy granted 5th defendant vide **Exhibit D2b** on the evidence was not **revoked** at any time. Indeed while the Governor of a State or in the case of the FCT, the Minister can revoke a right of occupancy, the revocation must be for overriding public interest and public purposes. Any revocation outside the purview or as prescribed under **Section 28** of the land use Act is against public policy and the intention of the Act and will be declared null and void. See **Dantsoho V Mohammed (2003) 6 NWLR (pt.817) 457 at 482; 483 D-E**. Accordingly a revocation ought to precede a subsequent grant under **Section 5 (2),** even where the prior grant is a customary right of occupancy vide **Section 28 (3)**. See **Dantsoho V Mohammed (supra) 457 at 485 – 486 C**.

The plaintiff on the pleadings averred vide paragraph 9 of his Amended reply and defence to the 1st and 5th defendants joint defence and counter-claim that for over 22 years from 1993 to 2015, neither the 1st nor 5th defendant even took any step to **rectify or otherwise** perfect title to any land despite several notices by the 2nd – 4th defendants.

Firstly, this averment appears to be a tacit acceptance by plaintiff of the fact of the prior allocation to the defendant. Secondly, absolutely no proper facts was put forward in the pleadings or evidence situating what those **"steps to rectify or otherwise perfect title despite several notices by 2nd – 4th defendants"** were that was not complied with by 1st and 5th defendants and the court cannot speculate. There is no clarity as to what this contention really mean? Furthermore, no single **notice** or any of the **alleged notices** issued by 2nd – 4th defendants was tendered in evidence. The contention clearly was not properly pleaded and even if it is assumed or accepted that the issue was properly pleaded, it is obvious that there is absolutely no evidence to support the alleged failure to take steps to "rectify or perfect title despite several notices by the 2nd –

4th defendants" and this is fatal. It is trite law that facts deposed to in pleadings must be substantiated and proved by evidence, in the absence of which the averments are deemed abandoned. See **Aregbesola V Oyinlola (2011) 9 NWLR (pt.1253) 458 at 594 A-B; Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27.**

Thirdly, there is nothing from the issuing authority streamlining any wrong doing on part of 5th defendant after the allocation of the plot to him.

In this case, there was no revocation of the allocation to 5th defendant, at any time on any ground(s), so there cannot legally be another allocation or offer of grant to plaintiff in the face of this existing allocation over the same plot 78.

The grant of a Right of Occupancy like **Exhibit P1a** to plaintiff without revoking the earlier Right of Occupancy granted 5th defendant vide **Exhibit D2b** does not amount to the revocation of the earlier existing Right. This later grant by itself does not also give life or validate Exhibit P1a by any stretch of the imagination. The grant of any Right of Occupancy done in violation of the provision of Section 28 of the Land Use Act is invalid, null and void and confers no title. See **CSS Bookshops Ltd V Registered Trustees of Muslim Community in Rivers State (2006) 11 NWLR (pt.992) 530 at 567 – 568 H-F.**

Here again, it is apposite to state the familiar legal truism that you cannot put something on nothing and expect it to stand. The inevitable collapse of putting something on nothing is only a natural consequence that unfortunately is the fate of **Exhibits P1a – P6** tendered by plaintiff.

Again, I note that in the same paragraph 9 of the same Amended Reply and Defence to the defence and counter claim of 1st and 5th defendants, the claimant sought to rely on the doctrine of standing by, or laches and acquiescence or estoppel by conduct.

The question here again is whether the evidence on record situated these equitable defences? A starting point is to situate what laches and acquiescence connotes? In the case of **Alhaji Abatcha Rolo V Alhaji Mohammed Lawan (2018) 13 NWLR (pt.1637) 493 at 521**, the Apex Court instructively defined laches and acquiescence thus:

"Laches and acquiescence refers to a party's conduct in recognizing the existence of a transaction and showing intention to permit it to be carried into effect. The doctrine connotes neglect to assert a right or claim, which

taken together with the lapse of time and other circumstances causing prejudice to adverse party, operates as a bar in the court of equity, as equity aids the vigilant and not those who slumber on their rights."

Indeed in law, laches is not delay alone; the owner must see him and encourage him. See **Akanni V Makanju (1978) 11 NSCC 526 at 533-534 line 5-35 per Obaseki JSC**.

Equally, it is settled principle that the acquiescence which will deprive a man of his legal right must amount to fraud. A high degree of acquiescence is required to obliterate the original owners reversionary right in favour of the occupier. A man is not to be deprived of his legal rights unless he has acted in such a way as would made it fraudulent for him to set up those rights. See **Okereke V Nwankwo (2003) 9 NWLR (pt.826) 592 at 617-618 H-A; 623 C-D**.

The principles highlighted above are clear. Let us now situate whether they have application to the facts of this case. As stated earlier, it is to the pleadings and evidence that we must take our bearing to see whether laches and acquiescence as described by all the three decisions of the Apex Court above was made out. Paragraphs 5-13 of the claim and evidence led in support appear relevant here.

Now on the pleadings and evidence, the disputed plot No. 78 was allocated to plaintiff sometime on 28th May, 2015 which he said he fenced. By paragraph 6, the plaintiff averred that by 4th March 2016, just some few months after the allocation, that the 1st defendant allegedly broke "the plaintiff's fence, brought in some artisans, heaped some sand and mounted a sign reading Military Zone – Col. Manga and generally started terrorizing the plaintiff and his agents."

In paragraphs 7 and 8, the plaintiff averred again that he had to involve the police as the 1st defendant was preparing to move into the "property by force."

In paragraph 9, the plaintiff averred that he has been in undisturbed possession since the allocation to him in 2015 "until a few months to the date of the trespass complained of in this suit." And in paragraph 10, the plaintiff averred that "in late 2015, the 1st defendant sent some men to the property who stated that same belongs to the 1st defendant."

The plaintiff further averred that he invited 1st defendant to bring his title documents so that they can discuss; they engaged in discussions but that by

paragraph 13 1st defendant broke off discussions and "continued the acts of trespass and use of force complained of since 4th day of March 2016."

I have at length situated the pleadings of claimant above and supported by the evidence of PW1 and it is clear that the 1st and 5th defendants started asserting their rights over the land in 2015, some few months after the allocation to claimant and clearly and certainly before any developments could have commenced. The assertion of this right by 1st and 5th defendants on the pleadings of claimant himself was done robustly, vigorously and assertively which compelled his having to involve the police to possibly avert any break down of peace, law and order.

On the basis of the pleadings and evidence, laches and acquiescence unfortunately for claimant has no basis and will not fly. I cannot situate any delay, neglect or failure to assert a right or claim by 1st and 5th defendants in the circumstances. Equity it is well known aids the vigilant and not the indolent. The 1st and 5th defendants cannot be said to be indolent or to have slept on their rights to the prejudice of the claimant.

The above critical findings provides broad factual and legal basis to now determine whether the Reliefs sought by parties will be availing. I start with the Reliefs of claimant.

With respect to **Relief (i)**, on the basis of the findings above, particularly having found that the allocations of both parties relates to the same **plot No. 78** and having found that the 5th defendant already has a valid and prior allocation before that of claimant, **Relief (i)** sought by claimant cannot be availing. The 5th defendant/counter-claimant has established a better title to the disputed plot 78. **Relief (i) fails.**

Reliefs (ii), (iii), (iv) and (viii) essentially are Reliefs on trespass and damages for trespass and having found that the 5th defendant has established that he has a better title and is deemed to be in possession of the disputed plot No. 78, these set of Reliefs clearly appear undermined.

Trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of the owner is an act of trespass actionable without any proof of damages. See **Ajibulu V Ajayi (2004) 11 NWLR (pt.885) 458**.

The claim of trespass is therefore rooted in exclusive possession. In law the principle is settled that where there is a dispute as to which of the two persons is in possession as in this case where both plaintiff and 1st and 5th defendants claim on the pleadings and evidence to be in possession, the presumption is that the person having title to the land is in possession. See **Basill V Fajebe (2001) 11 NWLR (pt.725) 592 at 617 C-D**.

Having found that the 5th defendant/counter-claimant has better title to the land in possession, he is deemed to be in possession and therefore the claims or Reliefs on trespass cannot be availing in the circumstance.

Reliefs (ii)-(iv) and **(viii)** fail and are not availing.

With the failure of **Relief (i)** on title, **Reliefs (v)** and **(vi)** for injunction essentially to restrain 1st and 5th defendants from entering or moving near, building or attempting to erect any structure on the disputed plot 78 or interfering with plaintiff's right over the said plot clearly has no factual or legal basis and fails.

Relief (vii). With the failure of Relief (i) this Relief (vii) must fail for equally the same reasons. The 2nd – 4th defendants cannot be restrained from dealing with the person or 5th defendant whom the court has found to the rightful owner of the disputed plot 78 in matters relating to the plot.

With the failure of **Reliefs (i)-(viii)**, the **Relief (ix)** for **cost** must equally fail in the absence of any basis to sustain it.

Now with respect to the **Counter-Claim** and the issue raised and which I indicated will be taken together, it is obvious that the findings on the substantive action provides both factual and legal basis to determine whether the Reliefs sought in the counter-claim are availing.

Now having found that the 5th defendant has established that he has a prior, better and existing allocation or offer of grant to the disputed plot 78 vide **Exhibit D2b** before the purported allocation of an offer of grant of the same plot 78 to the claimant, and having found that the allocations to both parties on the evidence relate to the same **Plot 78,** it follows that the subsequent allocation to the claimant is flawed, invalid, null and void.

As stated earlier, there cannot be another allocation of a parcel of land already allocated and which has not been validly revoked. The authorities are clear that where there are such double allocations to a single plot, the first in time will

take or have priority, in this case, the allocation of 5th defendant. At the risk of prolixity, competing interest as in this case rank in order of their creation. See **Dauda V Bamidele (2000) 9 NWLR (pt.671) 199 at 211 C-E**. Indeed the principle is settled that where two parties trace title to a common grantor, the latter in time cannot maintain an action against a party who first obtained the grant. The *lain maxim is nemo dat quod non habet* – See **Dantsoho V Mohammed (2003) 6 NWLR (pt.1817) 457 at 487 B-F**. **Relief (a)** is availing and succeeds.

With the success of **Relief (a)**, **Relief (b)** seeking a declaration that the 5th defendant is entitled to enjoy all incidents of ownership of Plot 78 being the original allottee clearly has considerable merit and is availing.

Relief (c) on the counter-claim equally has factual and legal basis. Having found for the legal validity of the prior allocation of 5th defendant to the disputed plot No. 78, there cannot really be any legal allocation of the same plot to another party. The Right of Offer vide **Exhibit P1a** subsequently issued to claimant ordinarily raises a presumption that at the time it was issued, there was not in existence another existing allocation which has not been revoked. The presumption it must be stated is rebuttable. If it is proved as done by 5th defendant that there is in existence a prior offer or grant of title to the disputed land before the latter allocation, then the court can lawfully revoke or set aside such grant as invalid, null and void. See **Eso V Adeyemi (1994) 4 NWLR (pt.340) 558 at 573 G-H; Mani V Shanono (2007) All FWLR (pt.345) 303 at 324 C-D**. **Relief (c)** has merit and will be granted.

With the success of **Relief (a)** on title, **Relief (d)** for injunction has merit and will be granted on terms as streamlined hereunder to assure of the integrity and enjoyment of the said Plot 78 duly allocated to 5th defendant/counter-claimant.

The final **Relief (e)** claimed by the 5th defendant/counter-claimant is for "Damages in the sum of N50, 000, 000.00."

There is here no real clarity as to the basis of the Relief and it is not the duty of the court to speculate as to what the counter-claimant is claiming here. Any Relief claimed in law must not be vague or equivocal. The principle is well settled that a court can only consider and grant a Relief properly claimed and then creditably established. Indeed a prayer for a relief must be specifically stated and the relief or remedy sought clearly spelt out. See **Olowokere V African Newspapers (1993) 5 NWLR (pt.295) 583 at 597 B-E**. Indeed it is

elementary and settled law that a court will not normally grant any Relief to a party which has not been specifically claimed. See **Fatunbi V Olunloye (2004) 12 NWLR (pt.887) 229 at 256 D-E**. The rationale for this is not farfetched. A court of law is not a charitable institution doling out reliefs which have not been claimed. See **Ilona V Idakwo (2003) 11 NWLR (pt.830) 53 at 86 F-G**. Relief (e) should as a consequence ought to be discountenanced and is not availing but if out of abundance of caution, it is taken that the relief is predicated on trespass, then I will consider whether a case has been properly made out by the counter-claimant.

I had earlier defined what trespass means. Now in paragraphs 26 and 27 of the counter-claim, the 5th defendant pleaded as follows:

"26. The 5th Defendant/Counter-claimant further avers that he has been in peaceful possession of the said plot of land without any adverse claim of ownership from any third party from the time granted till sometime in 2016 when one Salihu Khan a police officer came and used his power/office as a police officer, to disposes the 5th defendant/counter-claimant of possession.

27. The 5th Defendant/Counter-claimant avers that the said Salihu Khan asserted that the subject matter of this suit was allocated to his purported principal the Plaintiff/counter defendant, sometime in 2015 years after the same plot was allocated to the 5th Defendant/counter-claimant."

Now on the evidence, the 5th defendant counter-claimant has proven that he was duly allocated the disputed plot 78. There is equally on the evidence no argument that the plaintiff was equally allocated the same disputed plot 78 by the same issuing authority and it was on that basis that he went on the disputed land. The case here and unfortunately the entire dispute arose more out of or due to the avoidable negligence and or lapses of the issuing authority which made allocations of the same plot to two different individuals without revoking the earlier or first allocation. As demonstrated on the evidence, the issuing authority issued statutory right of occupancy bill to the claimant vide Exhibit P4 and charged and received payments on the land vide Exhibits P3 a and b. As already alluded to in the substantive claim, the witness subpoenaed by 5th defendant from the FCDA or issuing authority agreed that the site plan issued to claimant vide Exhibit P1b is the same site plan issued to the 5th defendant vide Exhibit D6.

It appears to me that this will appear to be a case of double allocation and it cannot be right or fair under the unclear and fluid situation that the claimant will be held liable for trespass occasioned by the avoidable lapses of responsibilities by the **issuing authority**.

I only need that even if trespass has been clearly established, and here, it was not, I do not even see from the paucity of pleadings and evidence on the point how the sum of N50, 000, 000.00 (Fifty Million Naira) claimed as damages can even be justified. There is absolutely no factual or legal basis for it.

General damages are not awarded as a matter of course, but on sound and solid legal principles and not on speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

Now because of the huge amount claimed as damages for trespass, it may be apposite to just add that on the authorities, damages in a case for trespass should be nominal to show the courts recognition of the plaintiff's proprietary right over land in dispute. If the 5th defendant/counter claimant in this case wanted more damages, they should claim it under special damages which they should properly plead and prove. See **Madubuonwu V. Nnalue (1992)8 N.W.L.R (pt.260)440 at 455 B-C; Armstrong V. Shippard & Short Ltd (1959)2 AII ER 651.** The relief for damages for trespass in the humongous amount claimed therefore fails.

As I round up, it is important to call on the FCDA or issuing authority to exhibit more circumspection as they discharge the responsibility of allocating lands to innocent Nigerians. The process of allocating land in the FCT is not done in a vacuum. It has well defined processes and or modalities and usually subject of streamlined Records. It is because the records are streamlined and kept that allowed the Deeds Registrar to produce Certified True Records of the allocation to the 5th defendant.

Now if these records are readily available, then it is difficult to accept or justify the subsequent allocation of the same plot to another party and the avoidable expenses he was made to incur on a clearly flawed allocation.

It is equally a matter of great concern that in the light of these records, a staff and a senior land officer from the department of land of the FCDA (DW1) will appear in court and seek to project a narrative that diametrically conflicts with the records of the department she works in. It is equally strange and situates a lack of synergy between the departments in the FCDA, that another staff (DW3) from the survey department will appear in court and proffer evidence that contradicts the evidence of a fellow staff.

The bottom line here is the pressing need for the 2nd – 4th defendants to critically reevaluate the process of allocations of land to avoid the recurrent incidences of double allocations and also to harmonize the relationship of its various departments to project a united front in matters concerning allocations of land in the FCT. That way, the avoidable confusion created in this case will not repeat itself. As an aside, a copy of this judgment be furnished to the 2nd – 4th Defendants to allow them take action on these lapses and to take remedial steps to reduce the losses suffered by claimant in terms of allocating an alternative parcel of land. I leave it at that.

In conclusion and for the avoidance of doubt, the first issue raised for determination with respect to the substantive claim is answered wholly in the negative. With respect to the issue raised in relation to the counter-claim, it is answered substantially in the positive in favour of the 5th defendant/counter-claimant who has established he has a better title and right of possession over the disputed plot No. 78.

In the final analysis and for the avoidance of any doubt, I accordingly make the following orders:

ON PLAINTIFF'S CLAIMS

1. **The Plaintiffs claims fails in its entirety and is hereby dismissed.**

ON THE 5TH DEFENDANTS COUNTER-CLAIM

1. **IT IS HEREBY DECLARED that the 5th Defendant/Counter-claimant is the rightful owner and original allotee of Plot Nos 1 L22-78 (also known as plot No. 78, Wuye District Abuja) measuring about 1346.34 m2 within Wuye District Abuja by virtue of the offer of terms of grant/conveyance of approval dated 2nd September, 1992.**
2. **IT IS HEREBY DECLARED that the 5th Defendant/Counter-claimant is entitled to all the benefits and interest attached to Plot Nos. 1 L22-78**

Wuye District Abuja also known as Plot Nos. 78 Wuye District Abuja being the original allottee.

3. AN ORDER is granted nullifying any further or subsequent allocation granted by 3rd and 4th defendants over plot Nos. 1 L22-78 Wuye District Abuja which is one and the same with plot 78, Wuye District, Abuja.
4. The plaintiff and his agents, privies, servants or representatives are restrained from acts capable of affecting the lawful and subsisting interest of 5th defendant/counter-claimant over plot Nos. 1 L22-78 also known as Plot 78 at Wuye District, FCT as guaranteed under the Land Use Act and the 1999 Constitution.
5. Relief (e) fails and is dismissed.

No order as to cost.

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Hon. Justice A.I. Kutigi

Appearances:

1. U.Y. Hassan Duku, Esq. with E.F. Ekanem for the Claimant/Defendant to the Counter-Claim.
2. Mohammed Garba Bawa, Esq., for the 2nd – 4th Defendants.
3. S.I. Imokhe, Esq., for the 5th Defendant/Counter-claimant.