

IN THE HIGH COURT OF JUSTICE OF THE F. C.
T.

IN THE ABUJA JUDICIAL DIVISION
HOLDING AT APO, ABUJA
ON TUESDAY, THE 04TH DAY OF APRIL, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/3449/2022

BETWEEN:

- 1. SHRODDER NIGERIA LIMITED**
- 2. MOHAMMED BAHJATU SALEH**

CLAIMANTS

AND:

- 1. MINISTER OF FEDERAL CAPITAL TERRITORY**
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**

DEFENDANTS

JUDGMENT

By an Originating Summons dated the 13th of October, 2022 and filed on the 14th of October, 2022, the Claimants instituted this action seeking the determination of the following questions:-

- 1. Whether the forceful take over and occupation by the Defendants of the Plaintiffs' Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22 Maitama District, Abuja, FCT on the 5th day of October, 2022 is not unlawful, ultra vires, and a violation of the Claimants' fundamental right to property.*
- 2. Whether the forceful take over and occupation by the Defendants of the Plaintiff's Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-*

55f5r-ee98u10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT on the 5th day of October, 2022 is not an act of trespass.

Upon a determination of the above questions, the Claimants seek the following reliefs from this Honourable Court:-

- 1. A Declaration that the forceful take over and occupation by the Defendants of the Plaintiffs' Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT on the 5th day of October, 2022 is unlawful, ultra vires and a violation of the Claimants' fundamental right to property.*
- 2. A Declaration that the forceful take over and occupation by the Defendants of the Plaintiffs' Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT on the 5th day of October, 2022 constitutes an act of trespass.*
- 3. A Declaration that the 1st Plaintiff being the beneficial owner of Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT is entitled to the lawful use, quiet possession, occupation and enjoyment of the property without hindrance from the Defendants.*

4. *An Order of Injunction mandating the Defendants to vacate the Plaintiffs' Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT forcefully taken over and occupied by the Defendants on the 5th day of October, 2022; and to remove the mobile Policemen posted on the said Plaintiffs' property forthwith.*
5. *An Order of perpetual injunction restraining the Defendants from commission of further acts of trespass on the Plaintiffs' Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja.*
6. *An Order of Perpetual Injunction restraining the Defendants from further interference with the 1st Plaintiff's lawful use, quiet possession, occupation and enjoyment of Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT.*
7. *The sum of ₦1,000,000,000.00 (One Billion Naira) only general damages for violation of the 1st Claimant's fundamental right to property.*
8. *The sum of ₦1,000,000,000.00 (One Billion Naira) only general damages for trespass to the 1st Claimant's Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT.*

9. *Cost of action.*

10. *10% statutory interest on the judgment sum from the date of judgment until the judgment sum is fully liquidated.*

In support of the Originating Summons, the Claimants filed the supporting affidavit and a written address. Exhibits were attached to the affidavit. These are the certificate of occupancy of the plot in question marked as **Exhibit A**, approval of consent to assign the plot marked as **Exhibit B**, the receipt of payment for the consent to assign marked as **Exhibit B1**, the Deed of Assignment between the 1st and the 2nd Claimants in respect of the said plot marked as **Exhibit C**, the receipt of payment for the assignment marked as **Exhibit D**, receipt of payment for ground rent marked as **Exhibit D1**, settlement of building plans fees marked as **Exhibit E**, and receipt of payment for the building plans fees marked as **Exhibit E1**.

On the other hand, the Defendants, after applying for and obtaining the leave of the Court to file their Counter-Affidavit and other processes out of time, filed the said processes on the 23rd of December, 2022. On the 10th of January, 2023, the Claimants filed their Further Affidavit in support of their Originating Summons and in response to the Counter-Affidavit and Written Address of the Defendants. The said Further Affidavit was deposed to by the selfsame Mrs Nwamaka Udenze, a director in the 1st Claimant.

This suit came up in this Court for the first time on the 27th of October, 2022. On that day, this Court granted the reliefs contained in the Motion with Motion Number M/11743/2022 dated the 13th of October, 2022 and filed on the 14th of October,

2022 wherein the Claimants prayed the Court for an order of interim injunction. This Court extended the life of the interim order on the next hearing, that is, the 10th of November, 2022. The Defendants eventually appeared through their Counsel in this Court for the first time on the 7th of December, 2022. Their application for adjournment to enable them file their processes was opposed to by the Learned Senior Counsel for the Claimants. This Court, in its considered Ruling, granted the application for adjournment, but awarded a cost of ₦50,000.00 (Fifty Thousand Naira only) against the Defendants and in favour of the Claimants. I note with dismay that this cost has remained unpaid up to this moment. On the 10th of January, 2023, learned Counsel for the Defendants moved their application for an order of Court regularizing the Defendants' processes in Court. The Motion, with Motion Number /FCT/HC/GAR/M/102/2022 dated the 23rd of December, 2022 and filed same date was granted by this Court. Thereafter, the Court proceeded to hear the substantive suit.

In the affidavit in support of the Originating Summons, the deponent, one Mrs Nwamaka Udenze who described herself as a director of the 1st Claimant swore that the 2nd Claimant was the original allottee of Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT. This is evidenced by **Exhibit A**. In 2006, the 2nd Claimant sold his interest in the property to the 1st Claimant.

Pursuant to the sale of this property, the 1st Claimant applied for the consent of the 1st Defendant to the assignment. It also paid the required consent fee. The consent

of the 1st Defendant and the fees for the consent are attached as **Exhibits B and B1** respectively. Having fulfilled the required conditions precedent to a valid assignment, the 1st and 2nd Claimants executed a Deed of Assignment on the 2nd day of August, 2013. This Deed of Assignment is attached as **Exhibit C**. As the owner of the property the 1st Claimant paid the statutory fees levied on the property. The evidence of these payments are attached as **Exhibits D and D1**.

It was the case of the Claimants that in 2008 the 2nd Defendant recommended that the 1st Claimant embark on the construction of serviced apartments on the plot. The evidence of this recommendation are **Exhibits E and E1** respectively. Having made the payment, the 1st Claimant began the construction of the apartments. The deponent averred that when the construction had got to roofing stage and the 1st Claimant had spent approximately ₦500,000,000.00 (Five Hundred Million Naira) only, the 1st Defendant, on the 4th of October, 2022 paid an unscheduled visit to the property and, on the 5th of October, 2022, that is, the next day, a detachment of mobile policemen invaded the plot and took possession of the property. The deponent swore that the detachment of mobile policemen was still on the property and had prevented the 1st Claimant from enjoying its proprietary and possessory rights as the owner of the property thereof. It is the concern of the deponent and the 1st Claimant that the action of the Defendants was not unconnected with the interest of certain persons in its property. The deponent also feared that the Defendants were intent on destroying the property of the 1st Claimant and reallocating the same plot to other persons.

In the Written Address in support of the Originating Summons, learned Counsel for the Claimants jointly argued the two questions he formulated in the Originating Summons. He prefaced his submissions by asserting that the conduct of the Defendants in invading the property of the 1st Claimant and deploying a contingent of armed mobile Policemen to prevent the 1st Claimant from enjoying its proprietary and possessory rights over same was a breach of the 1st Claimant's right to acquire and own immovable property anywhere in Nigeria. He referred to sections 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 to underscore the fundamental nature of the right to own immovable property and the sanctity and inviolability of the proprietary right of a person over their property.

Counsel further submitted that the actions of the Defendants fell short of the legal requirements for the compulsory acquisition of property as envisaged under the law. He referred to sections 28(1), (6) and (7) and 44 of the Land Use Act He added that what the Defendants did amounted to trespass because, pursuant to the provisions of section 9(1)(a), 14 and 15 of the Land Use Act, the 2nd Claimant was entitled to the exclusive rights of enjoyment, possession and use of the property provided for in the Certificate of Occupancy. He added that the Certificate of Occupancy was evidence of a valid contract between the Claimants and the Defendants, and that the actions of the Defendants amounted to a breach of the terms contained or implied in the Certificate of Occupancy. He therefore urged the Court to resolve the two questions formulated for determination in favour of the Claimants and grant the reliefs sought by the Claimants.

For all his submissions on the two questions, learned Counsel cited and relied on the following cases: *Adekunle & Anor v. Governor of Lagos State & Anor (2020) LPELR-49587 (CA)*; *Agricultural Development Association, Obitti, Imo State v. Okedi (2004) 11 NWLR (Pt. 884) 369 at 394 – 395*; *Master v. Mansur & Ors (2014) LPELR-23440 (CA) at 28 – 29*; *Nigeria Engineering Works Ltd v. DENAP Limited (2001) 18 NWLR (Pt. 746) 726 at 757, paras C – E*; *Auta v. Ibe (2003) 13 NWLR (Pt. 837) 247 at 226, paras E – G*; *Kolo v. Lawan (2018) CIL Risk & AssetMgt. Ltd v. Ekiti State Govt (2020) 12 NWLR (Pt. 1738) 203 at p. 270 paras C – F*; *Obi v. Minister, FCT (2015) 9 NWLR (Pt. 1465) 610 at 631, para D*; *Larmie v. Data Processing & Maintenance Ltd (2005) 18 NWLR (Pt. 958) 438*; *Alhaji Ayisatu Akintola v. Madam Falilatu Lasupo (1991) 3 NWLR (Pt. 180) 515 at para F – G* among other cases.

Responding to the Counter-Affidavit and Written Address in support of same filed by the Defendants, learned Counsel for the Claimants adopted the Claimants' Counter-Affidavit and Reply to the Counter-Affidavit and Written Address of the Defendants. In the said Further Affidavit, the deponent expressed shock at what she called "the barefaced denials of the Defendants" in their Counter-Affidavit. She drew the attention of the Court to the contents of **Exhibit Providus 3** which she claimed did not contain particulars of denial. Further to this, she pointed out that the Defendants, having not responded to **Exhibit F**, should be deemed to have admitted its contents thereof.

The deponent swore that the property was still under seal by the Defendants, with mobile policemen positioned at the gate of the property. She gave the name of the

policemen as SUPOL Arigu Julius and ASP Edwin DebulusAbalis. She attached photographs marked as **Exhibits F1, F2, F3, F4, F5 and F6** as evidence of those averments. She also attached a Daily Trust report on Thursday, 6th October, 2022 which reported the incident. This news report was attached as **Exhibit G**. She added that the Federal Capital Territory Administration was not a party to the suit of the Claimants, adding that the Defendants did not have the power to alter the parties as constituted in the Originating Summons.

In the Claimants' Reply to the Defendants' Written Address, learned Counsel argued that the Defendant's Counter-Affidavit was incompetent because the Defendants described the 2nd Defendant as 'Federal Capital Territory Administration' instead of 'Federal Capital Development Authority' being the authority that the Claimants sued as the 2nd Defendant. It was the contention of the Claimants' Counsel that the alteration rendered the Counter-Affidavit incompetent. He cited the case of *Re: Access Bank & Ors (2018) LPELR-45949 (CA); Senator Rashidi Adewolu Ladoja v. Senator Abiola Adeyemi Ajimobi & Ors (2016) LPELR-40658 (SC); Agbaje v. INEC & Ors (2015) 10 SC 42 and PPA v. INEC (2012) 13 NWLR (Pt. 1317) 215 at 237*. He urged the Court to hold that the Counter-Affidavit being incompetent, and to treat the suit of the Claimants as unchallenged.

Arguing the substantive Reply, learned Counsel contended that the Claimants had adduced further evidence in support of their claim that the Defendants invaded their property and stationed a detachment of policemen to prevent the Claimants from gaining access into their property. Counsel also contended that the failure of the Defendants to respond to his letter of 14th of October, 2022 was an admission of the

contents thereof. He cited the cases of *Kabo Air Ltd v. Mumi Bureau de Change Ltd (2020) 4 NWLR (Pt. 1715) 488 at 506, para G; Rematon Services Ltd v. NEM Ins. Plc (2020) 14 NWLR (Pt. 1744) 281 para B*. Counsel also pointed out that **Exhibits F1, F2, F3, F4, F5 and F6** were conclusive proof that the Defendants' Counter-Affidavit was populated with falsehood.

Referring to the cases of *RINCO Construction Company Ltd v. VEEPEE Industries Ltd & Anor (2005) 9 NWLR (Pt. 929) 85 at 96, paras B – D, Ibrahim v. Osim (1988) 3 NWLR (Pt. 82) 257, Barbus & Co. (Nig.) Ltd v. Okafor-Udeji (2018) 11 NWLR (Pt. 1630) 298 at 309, paras F – H* among other cases, learned Counsel insisted that the Claimants' Originating Summons disclosed a reasonable cause of action against the Defendants, adding that the suit of the Claimants was not speculative. He therefore urged the Court to grant the reliefs sought by the Claimants.

After the submissions of the Claimants, the Defendants, through their Counsel, adopted their processes in opposition to the suit of the Claimants. In the said Counter-Affidavit of the Defendants which was deposed to by one Ugonna Onunkwo, an Assistant Director, Land, in the Department of Land Administration, the deponent admitted paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of the affidavit in support of the Originating Summons. He confirmed that the Claimants had valid title to the property. In support of this averment, he exhibited **Exhibit Providus 1**.

He however denied that the Defendants interfered or attempted to interfere with the Claimants' property. He denied paragraphs 11, 15, 16, 17, 18, 19, 20, 21, 22, and

23 of the affidavit in support of the Originating Summons. He insisted that the depositions of the Claimants in the affidavit did not disclose any reasonable cause of action against the Defendants. According to the deponent, an inquiry was sent to the Committee on Sale of Federal Government Houses in relation to the allegations of the Claimants that they were being deprived of the use and enjoyment of their property. It was his averment that the Committee responded that the Claimants' rights over the property was intact. This communication was evidenced by **Exhibits Providus 2 and 3**.

In the written address in support of the Counter-Affidavit, the learned Counsel for the Defendant formulated a sole issue for determination, to wit: *"Whether from the totality of the Claimants' affidavit evidence before this Court, the Claimants have shown any reasonable cause/prima facie case to entitle them to the reliefs sought in this suit."*

In his argument on this sole issue, learned Counsel submitted that the Claimants have failed to adduce cogent evidence to enable this Court grant the reliefs they seek from this Court because there was nothing in the facts contained in the affidavit in support of the Originating Summons that ground the claims of trespass and illegal acquisition against the Defendants. He added that the claims of the Claimants were speculative.

Learned Counsel contended that the claim for declaratory reliefs was an invitation to the Court to make far-reaching pronouncements on the legal status of the parties, adding that the standard of proof was usually higher. Learned Counsel

insisted that the Defendants did not interfere with the rights of the Claimants over the property, adding that the Claimants did not attach any evidence to the contrary to be entitled to the claims sought.

It was the submission of the Defendants that they were contesting the title of the Claimants. He maintained that the onus was on the Claimants to establish the allegation of trespass and interference with their proprietary and possessory rights. Counsel argued that upon a dispassionate examination of the evidence before this Court, it could be seen that the Claimants had not discharged the burden of proof incumbent on them. He also added that the Claimants had not established a reasonable cause of action against the Defendants. He therefore urged the Court to find that the Claimants were not entitled to the reliefs sought.

For all his submissions on the sole issue he formulated, learned Counsel cited and relied on the following cases: ***Okonkwo v. A.G. of the Federation and Minister of Justice & Anor (2017) LPELR-51365 (CA)***; ***AG Rivers State v. AG Bayelsa State (2013) 3 NWLR (Pt. 1340) 123 at 160 – 161, paras G – B***; ***Adamu v. Nigerian Airforce & Anor (2022) LPELR-56587 (SC) AT 13 – 14, paras E***; ***NEXT Int. Ltd. V. Obatoyinbo (2013) All FWLR (Pt. 701) 1549 at 1570, paras A – B, p. 1574, paras C – D***; ***Nwaogu v. Atuma (2013) Vol. 221 LRCN (Pt. 2) same as INEC v. Atuma (2013) 11 NWLR (Pt. 1366) 494***; ***Governor of Kogi &Ors v. Ahmed &Ors (2019) LPELR-48367 (SC) at 18 – 19 paras A*** and ***UBA Plc v. WADOF Software Consulting Ltd (2017) LPELR-50251 (CA) at 51, paras A***.

The above submissions are the cases of the parties before me. To resolve this dispute, it is important to streamline the issues before me. To this end, therefore, I hereby adopt and modify the issues which the parties have formulated and argued before me and reframe them as follows: ***“Whether the Claimants have not been able to establish that the acts of the officers and men of the 1st and 2nd Defendants in using the officers and men of the Nigerian Police Force in taking over and remaining in continued occupation of the Claimants’ property known and described as Plot No. 1432 located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22 Maitama District, Abuja, Federal Capital Territory and covered with Certificate of Occupancy with Number 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006 was unlawful, ultra vires, a violation of the Claimants’ fundamental right to property and therefore an act of trespass?”***

By way of prefatory remarks, I must rule on the objection of the learned Silk to the competency of the Counter-Affidavit of the Defendants. According to the learned Senior Counsel, the Defendants radically altered the identity of the 2nd Defendant in this suit by changing the name of the 2nd Defendant from ‘Federal Capital Development Authority’ to ‘Federal Capital Territory Administration’ without an order of this Court. I have reflected on the submissions of the learned Silk on this subject. No doubt, the Defendants do not have the powers to alter the names of parties as constituted on the face of the originating processes without an Order of this Court. I would rather consider the inadvertence a misnomer. In *Africa Health Television Ltd (AHTV)&Ors v. Swift Moh Travels and Tours Agents (Nig) Ltd & Anor (2022)*

LPELR-57633(CA) at 42-44, paras. E-A, the Court of Appeal, per Georgewill, JCA held that,

“it is not every error or mistake that is regarded as or would amount to a "misnomer" and therefore, to be of no consequences as thought, but completely erroneously, by the Respondents. In law, a mere misnomer occurs where the natural or legal person actually exists but is sued in a wrong or incomplete name. Thus, in law such misnomer causing no injury or miscarriage of justice, and which case can, nonetheless, be determined on its merit without undue reliance on technicality, cannot be regarded as fundamental. It would also not be allowed to deny a Court of its competency to hear and determine a matter otherwise competently before it. However, the error or mistake is fundamental going to the root of either the claim or the parties, it cannot be regarded as mere misnomer, as no Court has the vires to determine on the merit an incompetent matter no matter how zealous the Court intends to be. In Bank of Baroda v. Iyalabani Company Ltd (2002) LPELR-743 (SC) @ pp. 15-16, the Supreme Court had stated inter alia thus: "A Plaintiff to an action must be competent to institute such an action and if his competency is challenged then the onus of proving that he has a legal capacity to institute the action lies on him. It is only where it is obvious that a party is not a legal person that the matter can be dealt with without much ado and the non-juristic party

struck out or the action struck out if such a party is the Plaintiff..."

See also APGA v. Ubah & Ors (2019) LPELR-48132 (SC) @ pp. 12-14."

I believe that this Court will be leaning heavily on the balcony of technicality if it failed to consider the Counter-Affidavit of the Defendants and the supporting Written Address only on the ground that the Defendants altered the name of the 2nd Defendant from 'Federal Capital Development Authority' to 'Federal Capital Territory Administration'. Since, the Claimants are not prejudiced by this alteration, and there is no mistake as to the identity of the person sued as the 2nd Defendant, this Court will treat the mistake as a misnomer, especially since the 'Federal Capital Development Authority' and 'Federal Capital Territory Administration' are agencies under the direct control and supervision of the 1st Defendant. It would have been different if it was the 1st Defendant that was replaced with another office. Having found that the mistake is a misnomer, I hereby hold that the Counter-Affidavit of the Defendants is competent.

Now, having dispensed with the objection of the learned Silk to the competency of the Counter-Affidavit of the Defendants, I come to the resolution of the issue I have formulated in this suit. It must be stated that this suit is not an action for declaration of title to the property known and described as Plot No. 1432 located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22 Maitama District, Abuja, Federal Capital Territory and covered with Certificate of Occupancy with Number 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006. This is immediately obvious from the reliefs sought by the Claimants. This much, too, has been conceded by the Defendants in paragraph 2 of their Counter-Affidavit where they

admitted paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of the Affidavit in support of the Originating Summons. Those paragraphs relate to the validity of the claims of the Claimants to the ownership of the property in question. They also confirmed in paragraph 3 of their Counter-Affidavit that the title of the Claimants over the property is “sound”. The Defendants’ **Exhibit Providus 3** also confirms this fact.

Paragraphs 3, 4, 5, 6, 7, and 8 of the Counter-Affidavit are denials of the averments in the Claimants’ Affidavit in support of their Originating Summons. Following these denials, the Claimants, in further proof of their averments, adduced additional evidence in the form of **Exhibits F, F1, F2, F3, F4, F5, F6 and G**.

The right of a citizen to acquire and own immovable property anywhere in Nigeria is so fundamental that the Constitution recognizes this right as a right worthy to be protected under Chapter IV of the Constitution. The Chapter deals with fundamental rights. These rights have been described as God-given, inalienable rights which are intrinsic to the very nature and existence of a human being. Section 43 of the Constitution provides that “***Subject to the provisions of this Constitution, every Nigerian citizen shall have the right to acquire and own immovable property anywhere in Nigeria.***” Section 44 of the selfsame Constitution reinforces the inviolability of the right protected in section 43 when it stipulates that

“(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any

part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things –

(a) requires the prompt payment of compensation thereof; and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.”

The principal legislation that regulates the ownership and administration of lands in Nigeria is the Land Use Act CAP L5 Laws of the Federation of Nigeria 2004. Embedded in this suit are therefore the questions of whether the actions of the Defendants are covered by sections 28 and 44 of the Land Use Act and section 44 of the Constitution of the Federal Republic of Nigeria 1999. These sections relate to the powers of the Governor of a State, or the Minister of the Federal Capital Territory to revoke a validly allocated plot of land and the procedure to adopt in the revocation of a validly allocated land. Section 28(1) of the Land Use Act provides that ***“It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.”*** Subsections (2), (3), and (5) of the section delineates the circumstances that constitute overriding public interest and also provide for other circumstances under which a validly allocated land can be revoked. The subsections provide thus:-

“(2) Overriding public interest in the case of a statutory right of occupancy means–

(a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder;

(b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;

(c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

(3) Overriding public interest in the case of a customary right of occupancy means–

(a) the requirement of the land by the Government of the State or by a Local Government in the State in either case for public purpose within the State, or the requirement of the land by the government of the Federation for public purposes of the Federation;

(b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;

(c) the requirement of the land for the extraction of building materials;

(d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

(5) The Military Government may revoke a statutory right of occupancy on the ground of –

(a) a breach of any of the provisions which a certificate of occupancy is by section 10 deemed to contain;

(b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8;

(c) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Military Governor under subsection (3) of section 10.”

On the other hand, subsections (4), (6) and (7) stipulate the procedure that must be followed in the process of revocation. The said subsections provide that:-

“(4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the (Head of the Federal Military Government) if such notice declares such land to be required by the Government for public purposes.

(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder.

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him or a notice given under subsection (5) or on such later date as may be stated in the notice.

In other words, no revocation is valid if the revocation fails to comply with the provisions of section 28 of the Land Use Act. As to the manner of how notices contemplated in the Act shall be served, section 44 of the Act provides that

“Any notice required by this Act to be served on any person shall be effectively served on him –

(a) by delivering it to the person on whom it is to be served; or

(b) by leaving at the usual or last known place of abode of that person; or

(c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or

(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending to in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office;

(e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by

delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.”

Where such revocation is to happen, the owner of a property is entitled to the payment of compensation. That is the entire purport of section 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 as well as section 29 of the Land Use Act. I have reproduced the provisions of section 44(1) of the Constitution. I shall reproduce the provisions of section 29 of the Land Use Act. The said section states thus: -

“(1) If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of section 28 or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.

(2) If a right of occupancy is revoked for the cause set out in paragraph (c) of subsection (2) of section 28 or in paragraph (b) of subsection (3) of the same section the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals Act or the Mineral Oils Act or any legislation replacing the same.

(3) If the holder or the occupier entitled to compensation under this section is a community the Governor may direct that any compensation payable to it shall be paid –

(a) to the community; or

(b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or

(c) into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community.

(4) Compensation under subsection (1) of this section shall be, as respects –

(a) the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked;

(b) building, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer;

(c) crops on land apart from any building, installation or improvement thereon, for an amount equal to the value a prescribed and determined by the appropriate officer.

(5) Where the land in respect of which a right of occupancy has been revoked forms part of a larger area the compensation payable shall be computed as in subsection (4) (a) above less a proportionate amount calculated in relation to that part of the area not affected by the revocation but of which the portion revoked forms a part and any interest payable shall be assessed and computed in like manner.

(6) Where there is any building, installation or improvement or crops on the land to which subsection (5) applies, then compensation shall be computed as specified hereunder, that is as respects –

(a) such land, on the basis specified in that subsection;

(b) any building, installation or improvement or crops thereon (or any combination or two or all of those things) on the basis specified in that subsection and subsection (4) above, or so much of those provisions as are applicable, and any interest payable under those provisions shall be computed in like manner.

(7) For the purposes of this section, "installation" means any mechanical apparatus setup or put in position for use or materials set up in or on land or other equipment, but excludes any fixture in or on any building."

I have taken the liberty to reproduce these constitutional and statutory provisions *in extenso* because it is important this suit and the facts therein are properly situated within the appropriate context. By the combined effect of sections 43 and 44 of the Constitution and sections 28 and 29 of the Land Use Act, therefore, every citizen of Nigeria, including the Claimants in this suit, has that fundamental right to own any immovable property anywhere in Nigeria and to enjoy that property free from unlawful interference. See ***Asika v. Atuanya (2008) 17 NWLR (Pt. 1117) 484 C.A. at 513 – 514, paras G – B; A.-G., Rivers State v. A.-G., Akwa Ibom State (2011) 8 NWLR (Pt. 1248) 31 S.C. at 188, para D; Orakul Resources Ltd. v. N.C.C. (2022) 6 NWLR (Pt. 1827) 539 S.C. at 609, paras F – H.***

Before the right of a citizen to acquire and own immovable property may be truncated, it must be in accordance with the provisions of section 44 of the Constitution and sections 28 and 29 of the Land Use Act. In other words, the power of a Government to revoke the right of occupancy granted to a citizen as well as the powers of the Government to acquire compulsorily the property of a citizen for the purpose of overriding public interest must be exercised in accordance with the law. See ***Messrs Singoz & Co. (Nig.) Ltd. v. U.M. Co. Ltd. (2022) 18 NWLR (Pt. 1862) 203 S.C. at 230, paras B-C; 240, paras. E-F, 241 paras. A-B, 244 paras A-F 244 paras. D-H, 250-251, paras. F-C.***

It therefore follows that any action that falls short of these explicit constitutional and statutory provisions as well as these unambiguous judicial pronouncements would translate automatically and without more to trespass. The **Black's Law Dictionary (8th edition, 2004) at page 4685** defines 'trespass' as "***An unlawful act***

committed against the person or property of another; especially, wrongful entry on another's real property." In *White Diamond Property Development Company Limited v. Trade Wheels Ltd. (2022) 8 NWLR (Pt. 1832) 247 S.C. at 294, paras B – C*, the Court defines trespass as ***"Trespass to land is an unjustified interference or intrusion with exclusive possession of land. If the defendant placed a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if he had walked half a mile on it."***

The foremost law lexicon in its classification of trespass identifies "trespass *quare clausum fregit*" [Latin "why he broke the close"] as a form of trespass and defines it at page 4687 as ***"1. A person's unlawful entry on another's land that is visibly enclosed. This tort consists of doing any of the following without lawful justification: (1) entering upon land in the possession of another, (2) remaining on the land, or (3) placing or projecting any object upon it. 2. At common law, an action to recover damages resulting from another's unlawful entry on one's land that is visibly enclosed."***

In his *Commentaries on the Laws of England (1768)* at pages 209–10 quoted at page 4688 of the law lexicon, Williams Blackstone explains that ***"Every unwarrantable entry on another's soil the law entitles a trespass by breaking his close; the words of the writ of trespass commanding the defendant to shew cause, quare clausum querentis fregit. For every man's land is in the eye of the law enclosed and set apart from his neighbour's: and that either by a visible and material fence, as one field is divided from another by a hedge; or, by an ideal invisible boundary, existing only in the contemplation of law, as***

when one man's land adjoins to another's in the same field. And every such entry or breach of a man's close carries necessarily along with it some damage or other: for, if no other special loss can be assigned, yet still the words of the writ itself specify one general damage, viz. the treading down and bruising his herbage.”

The law of trespass recognizes and seeks to protect the possessory rights of a person over a land. In *White Diamond Property Development Company Limited v. Trade Wheels Ltd. (2022) supra at 294, C – H*, the Court held that,

“Any form of possession so long as it is clear and exclusive and exercised with the intention to possess is sufficient to support an action for trespass. Even a trespasser can maintain an action in trespass against the world except the true owner. Therefore, for a plaintiff to institute or commence action on trespass, he must show that he is in exclusive possession, exclusive in the sense that he does not share his right of possession with any other person. A plaintiff needs not show ownership of the land, proof of actual possession can sustain an action on trespass. To resist the plaintiff's claim, a defendant must show either that he is the one in actual possession or that he has a right to possession. Put differently, trespass is actionable at the suit of the person in possession of the land. The slightest possession or any form of possession by the plaintiff, enables him to maintain an action for

trespass against a wrongdoer so long as it is clear and exclusive, and if the defendant, cannot show a better title...

It is against these unimpeachable authorities that I return to the facts of the case before me. It is significant that the Defendants acknowledge the sound and unimpeachable title of the Claimants over the property known and described as Plot No. 1432 located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22 Maitama District, Abuja, Federal Capital Territory and covered with Certificate of Occupancy with Number 178ew-6200z-55f5r-ee98u-10. This acknowledgement is further established by the Defendants' **Exhibits Provided 1 and 3**, which is the file report on Plot No. 1432. The averments in paragraphs 2 and 3 of the Defendants' Counter-Affidavit as well as **Exhibits Provided 1 and 3** constitute admission by the Defendants of the Claimant's proprietary rights over the property. this admission is consistent with the case which the Claimants set up in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the affidavit in support of the Originating Summons and **Exhibits A, B, B1, C, D1, E and E1**.

Section 123 of the Evidence Act, 2011 provides that "***No fact needs to be proved in any civil proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.***" See ***Lawan v. F.R.N. (2022) 7 NWLR (Pt. 1829) 279 C.A. at 339, paras D – F, 341-342, paras. B-A.***

Paragraphs 4, 5, 6, 7, 8 and 9 of the Counter-Affidavit contain *ipse dixit* denials. In the light of the averments in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 of the affidavit in support of the Originating Summons, the denials of the Defendants are insufficient. The law is settled that in cases that are fought on the basis of affidavit evidence, the parties have a duty to adduce cogent and compelling evidence in support of their cases if they want the Court to give Judgment in their favour. See *Kayili v. Yilbuk (2015) 7 NWLR (Pt. 1457) 26 S.C. at 57 – 58, paras H – A, 70, paras C – E; First Bank of Nigeria Plc v. Standard Polyplastic Ind. Ltd. (2022) 15 NWLR (Pt. 1854) 517 S.C. at 550, paras. G-H; Onwuta v. State of Lagos (2022) 18 NWLR (Pt. 1863) 701 S.C. at 721, paras. E-H. In Incorporated Trustees of Ladies of Saint Mulumba, Nigeria v. Ekhaton (2022) 15 NWLR (Pt. 1852) 35 S.C. at 61, paras B – C*, the Court held that **“Affidavit evidence constitutes evidence. Therefore, any deposition that is not challenged is deemed admitted.”**

In refuting the denials of the Defendants in their Counter-Affidavit, the Claimants filed a Further Affidavit and exhibited **Exhibits F, F1, F2, F3, F4, F5, F6 and G**. **Exhibit F** is the letter from the Senior Counsel for the Claimants to the Defendants. Paragraph 3 of the letter, the learned Silk writes: *“Following the visitation of the plot by your good self on the 4th of October, 2022 the plot was taken over, sealed off and armed mobile policemen posted thereon on the 5th October, 2022.”* Paragraph 4 of the exhibit notes that *“the plot was never abandoned”* and that *“a perusal of the list of abandoned properties in the FCT published by the FCT Administration in the Daily Trust Newspaper of Wednesday, December 22, 2021 shows that our client’s*

plot was not included as an abandoned property. No notice(s) of any default whatsoever as stipulated by law was served by any agency of the FCT in respect of our client's plot. Our client was never communicated the reason for the action taken on the plot."

There was no response to this letter. The Defendants had opportunity to challenge this exhibit and the averments to which it relates, but they did not challenge their veracity. The law is settled that where an official communication which by its nature requires a reply is sent to a person, and the recipient did not reply the letter, the recipient is deemed to have admitted the contents of the correspondence. See ***Gwani v. Ebule (1990) 5 NWLR (Pt. 149) 201 C.A. at 217, paras G – H.*** I have no hesitation in applying this principle to the case before me.

An examination of **Exhibit F1** will show a building whose construction has advanced significantly. **Exhibit F2** depicts a policeman caught in the process of sealing the premises. **Exhibit F3** is the picture of the property with the following notice clearly inscribed on it: "*Sealed by Development Control/AMMC 05/10/2022*". **Exhibits F4, F5 and F6** show a police vehicle and at least a policeman stationed at the entrance of the property. **Exhibit G** is a news report on Daily Trust. Dated the 6th of October, 2022, the report reads: "*As effort to ensure the security of lives and property in the FCT intensifies, the Department of Development Control of the FCT Administration (FCTA) has sealed off an uncompleted three-storey building on Plot 22 Cadastral Zone on A05 Udi Hills Street, Maitama District, which is reportedly abandoned and posing security threat to residents. This followed the directive of the FCT Minister, Mallam Muhammad Musa Bello, who led a team of FCTA and*

security officials to the location on Tuesday.” It must be noted that ‘Tuesday’ as stated in the report was the 4th of October, 2022. This information is consistent with the averment of the deponent in paragraph 15 of the affidavit in support of the Originating Summons to the effect that the Minister of the Federal Capital Territory actually visited the property on the 4th of October, 2022. This also put the lie to the denial of the Defendants in paragraph 4 of their Counter-Affidavit of the visit of the Minister to the property. What is more? The Defendants and the policemen they installed on the property are still on the property – an action which constitutes continuing trespass. See paragraphs 10, 11 and 12 of the Further Affidavit of the Claimants.

It is instructive to note that the Defendants do not have an answer to these exhibits. The law is settled that documents attached to affidavits form part of the affidavit. See *Mr. Dikko Ali Hashim v. Aso Savings & Loans Plc (2022) LPELR-57061(CA) at 35 – 37, paras A- F per Ugochukwu Anthony Ogakwu, JCA; Zakhem Oil Serve Ltd. v. Art-in-Science Ltd. (2021) 18 NWLR (Pt. 1808) 341 S.C. at 358, paras. A-B; 358, paras. F-G.* Since the Defendants have not challenged the veracity of the exhibits, they are deemed to have admitted the contents thereof. See *SIL Estate Development Limited & Ors v. Hon. Ignatius Amodu (2022) LPELR-58701(CA) at 28 – 31, paras B – A, per Peter Olabisi Ige, JCA (Pp. 28-31, paras. B-A).*

No doubt, the persons arrested on the premises by the security operatives and who they described as ‘squatters’ in **Exhibit G** must be the security guards of the 1st Claimant which they swore were arrested by the Defendants. See paragraph 15 of

the affidavit in support of the Originating Summons. Yet, the Defendants in the Counter-Affidavit denied visiting the property, stationing policemen thereat, sealing of the property, or arresting anybody on the property. These denials do not align with the evidence before me.

It is upon a dispassionate consideration of the facts that I have no option than to answer the two questions presented for determination in the affirmative. The Defendants have invited this Court to answer the question of “*whether from the totality of the Claimant’s Affidavit Evidence before this Court, the Claimants have shown any reasonable cause/prima facie case to entitle them to the reliefs sought in this suit.*” I hasten to answer their query in the affirmative. The Claimants have established their entitlement to the reliefs they seek in this suit. Having established that their right to peaceable and quiet enjoyment of the property has been violated by the Defendants, the Claimants are entitled to the award of damages to assuage their hurt. Similarly, having established that the Defendants trespassed on their property, the Claimants are entitled to recover damages from the Defendants. Similarly, this Court is clothed with the vires to grant injunctive reliefs against the Defendants. See ***Joseph Madugba & Anor v. HRH Eze Emmanuel Ahukanna & Anor (2022) LPELR-56853(CA) at 61, para D – E; Joseph Akinbinu Akinnawo v. Solomon Fabusuyi (2022) LPELR-58015(CA) at 21 – 22, paras D – A; James Elegbede & Anor v. Tanloju Peter & Anor (2022) LPELR-57740(CA) at 38, paras B – C.***

The actions of the Defendants in respect to the property of the Claimants is unlawful, illegal, *ultra vires* and unconstitutional. It is a violation of the fundamental

right of the Claimants to acquire and own immovable property. Being unconstitutional, unlawful, illegal and *ultra vires*, the actions of the Defendants constitute an invasion of the possessory rights of the Claimants over the property, and, thus, amounts to trespass. The Defendants cannot be allowed to deprive the citizens of this great country of their lawfully acquired property. There must be an end to the unconstitutional, unlawful and illegal violation of the rights of the citizens to their property. Impunity must be halted.

Accordingly, all the reliefs sought by the Claimants in this suit are hereby granted as follows: -

- 1. THAT the forceful take over and occupation by the Defendants of the Claimants' Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT on the 5th day of October, 2022 is unlawful, ultra vires and a violation of the Claimants' fundamental right to property.**
- 2. THAT the forceful take over and occupation by the Defendants of the Claimant's Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT on the 5th day of October, 2022 constitutes an act of trespass.**
- 3. THAT the 1st Claimant as the beneficial owner of Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018,**

Cadastral Zone A05/22, Maitama District, Abuja, FCT is entitled to the lawful use, quiet possession, occupation and enjoyment of the property without hindrance from the Defendants.

- 4. THAT the Defendants are hereby ordered to vacate with immediate effect the Claimant's property particularly described as Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT, unseal the property and to remove forthwith the mobile policemen they had unlawfully and illegally installed on the property since on the 5th day of October, 2022.**
- 5. THAT an Order of perpetual injunction is hereby made restraining the Defendants from trespassing on the Claimants' property particularly described as Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja or otherwise interfering with the proprietary and possessory rights of the Claimants over the said property.**
- 6. THAT an Order of perpetual injunction is hereby made restraining the Defendants from further interfering with the 1st Claimant's lawful use, quiet possession, occupation and enjoyment of Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT.**

7. THE Defendants are hereby ordered to pay to the to the 1st Claimant the sum of ₦2,000,000.00 (Two Million Naira) only as general damages for the violation of the 1st Claimant's fundamental right to property.
8. THE Defendants are further ordered to pay to the 1st Claimant the sum ₦2,000,000.00 (Two Million Naira) only as general damages for trespass to the 1st Claimant's Plot No. 1432 with Certificate of Occupancy No. 178ew-6200z-55f5r-ee98u-10 dated 27th October, 2006, located at 37 Udi Street, with File No. BA 30018, Cadastral Zone A05/22, Maitama District, Abuja, FCT.
9. The Defendants are hereby ordered to pay to the 1st Claimant the sum of ₦1,000,000.00 (One Million Naira) only as the cost of this action.
10. The Defendants are also ordered to pay the cost of ₦50,000.00 (Fifty Thousand Naira) only which this Court awarded against them on the 7th of December, 2022 and which has remained unpaid till date.
11. The Defendants are hereby ordered to pay 10% post-judgment interest on the entire Judgment sum from the date of Judgment until the entire Judgment sum is fully liquidated.

This is the Judgment of this Court delivered today, the 04th day of April, 2023.

HON. JUSTICE A. H. MUSA
JUDGE
04/04/2023

APPEARANCES:
FOR THE CLAIMANTS
J. C. Njikonye, SAN
I. A. Nnana, Esq.

L. O. Samuel, Esq.

**FOR THE DEFENDANTS:
Haruna Rashid, Esq.**