

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

**BEFORE: HIS LORDS HIP HON. JUSTICE S. U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**  
**COURT NUMBER: HIGH COURT NO. 23**  
**CASE NUMBER: SUIT NO. FCT/HC/CV/247/2019**  
**FAST TRACK NO. FCT/HC/CV/60/2019**  
**DATE: 25/3/2024**

**BETWEEN:**

MALLAM MOHAMMED RABIU....CLAIMANT/1<sup>ST</sup> COUNTER DEFENDANT

**AND**

1. FEDERAL CAPITAL DEVELOPMENT  
AUTHORITY
  2. ABUJA METROPOLITAN MANAGEMENT  
AGENCY
  3. HENRY ONORIODE.....DEFENDANT/COUNTER CLAIMANT
- } 2<sup>ND</sup> & 3<sup>RD</sup> DEFENDANTS/  
COUNTER DEFENDANTS

**JUDGMENT**

**APPEARANCES:**

O.Oka Esq with J.N.D. Erugo Esq for the Counter Claimant.

Zaidu Abdullahi Esq for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim with Idris Ahmadu Esq.

Emmanuel C. Obeta Esq for the 1<sup>st</sup> Counter Defendant.

The Claimant by an amended Writ of Summons dated 31<sup>st</sup> day of October, 2019 and filed on 7<sup>th</sup> day of October, 2020 claims against the Defendants jointly and severally as follows:-

- “(1). AN ORDER of this Honourable Court setting aside the withdrawal of building plan approval dated the 9<sup>th</sup> July 2018 by the Defendants and restoring the conveyance of building plan approval dated 9<sup>th</sup> January, 2017.**
- (2). AN ORDER of perpetual injunction restraining all the Defendants, their agents and any other person claiming through them from further trespassing, disrupting the Claimant’s ongoing building construction or in any manner meddle with the peaceful possession of the Claimant over his FHA Plot CS 21.**
- (3). GENERAL damages in the sum of Five Million Naira against the Defendants jointly and severally.**
- (4). Cost of this action valued at Two Million Naira (N2, 000, 000.00)”**

On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Counter Claimants upon being served with the originating processes, filed their Statement of Defence on the 17<sup>th</sup> day of March, 2020.

The 3<sup>rd</sup> Defendant/Counter Claimant also filed his Statement of Defence on the 26<sup>th</sup> day of March, 2021,

In response, the Claimant filed a reply to the 3<sup>rd</sup> Defendant’s Statement of Defence on 7<sup>th</sup> day of July, 2021.

However, it is important to note that the 3<sup>rd</sup> Defendant filed a Counter Claim by an amended Counter Claim dated 25<sup>th</sup> day of February, 2022 and filed on same date claiming as follows:-

- “(a). AN ORDER that the Counter Claimant is entitled to the Statutory Right of Occupancy over Plot 4096 Cadastral Zone A06 Maitama, measuring an area of about 401. 55**

**Square metre with beacon stones number PB3110, PB3109, PB 99787, PB 99788 and PB 99786.**

- (b). AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants to the Counter Claim, their privies or persons claiming through or no their behalf from trespassing on Plot 4096 Cadastral Zone A06 Maitama measuring an area of about 401.55 square metre with beacon stones number PB 3110, PB 3109, PB99788 and PB 99786.**
- (c). AN ORDER on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to demolish illegal structure put up by the 1<sup>st</sup> Defendant to the Counter Claim on the property of the Counter Claimant forthwith.**
- (d). The sum of N10, 000, 000 (Ten Million Naira) against the 1<sup>st</sup> Defendant to the Counter Claim for trespass.”**

Upon service with the Counter Claim, the 1<sup>st</sup> Defendant to Counter Claim filed his defence to Counter Claim on the 26<sup>th</sup> day of January, 2023.

In response, Counter Claimant initially filed his reply to Statement of Defence on 6<sup>th</sup> day of May, 2022, in respect of the 1<sup>st</sup> Defendant's defence to Counter Claim filed on 7<sup>th</sup> day of July, 2021, before he amended his Counter Claim but on 2<sup>nd</sup> day of February, 2023 his Counsel on housekeeping application before the Court applied that their reply to the 1<sup>st</sup> Defendant defence to Counter Claim be deemed as their reply filed on the 6<sup>th</sup> day of May 2022 stated above.

Trial commenced in this suit with the Claimant opening his case on the 18<sup>th</sup> day of March, 2020 and 29<sup>th</sup> day of June 2020 by calling two witnesses namely Mr. Idongesit Sunday Udoh and Musa Auwal Isa who testified as Pw1 and Pw2 respectively, adopted their Witness Statement on Oath filed on the 7<sup>th</sup> day of July, 2021 and tendered the following documents in evidence which were admitted and marked as follows:

- (1). Offer of Grant/Conveyance of Approval by the Ministry of the Federal Capital Territory dated 7<sup>th</sup> November, 1991 as Exhibit A.
- (2). Acceptance of Offer of Grant of Right of Occupancy within the FCT Abuja dated 15<sup>th</sup> November, 1991 as Exhibit A1.

- (3). Site Plan showing Layout Survey of Blocks, Maitama Housing Estate, Maitama Abuja dated 13<sup>th</sup> February, 2020 as Exhibit A2.
- (4). Offer of land for Corner Shop Development in Maitama Estate Abuja from Federal Housing Authority dated 28<sup>th</sup> September, 1993 as Exhibit A3.
- (5). Offer of Land for Corner Shop Development for Maitama Estate Abuja dated 21<sup>st</sup> August, 2014 as Exhibit A4.
- (6). Site Plan Federal Housing Authority Plan showing Layout of Survey of Block 6 Maitama Housing Estate Maitama FCT Abuja the date of CTC is 13<sup>th</sup> February, 2020 as Exhibit A5.
- (7). FHA Conveyance of Approval for the Development Plan dated 16<sup>th</sup> August, 2011 as Exhibit A6.
- (8). A letter –Re-quest for Information on Plot 2514, Cadastral Zone A06, Maitama District Abuja signed by Acting Co-ordinator Abuja Metropolitan Development Council, the Second Defendant dated 28<sup>th</sup> September, 2017 as the date it was received as Exhibit A7.
- (9). Letter of Confirmation, FHA of Confirmation of piece of land along LS(B) Maitama Estate Abuja directed to the Abuja Geographical Information Systems dated 4<sup>th</sup> October, 2018 as Exhibit A8.
- (10). Conveyance of Approval from Abuja Metropolitan Management Council dated 9<sup>th</sup> of January, 2017 as Exhibit A9.
- (11). A letter issued by AMMC, Abuja Metropolitan Management Council, addressed to Mallam Mohammed Rabiou dated 9<sup>th</sup> July 2018 as Exhibit A10.

Pw1 and Pw2 were accordingly cross-examined by the 1<sup>st</sup> Defence Counsel.

The 1<sup>st</sup> to 3<sup>rd</sup> Defendants did not enter any defence in respect of the Claimant's case.

It is important at this point to note that the main claim was struck out by this Honourable Court on the 25<sup>th</sup> Day of March, 2021 on ground of the suit being statute barred which robs the Court of the jurisdiction to entertain same and accordingly affirmed by the Court of Appeal on the 24<sup>th</sup> day of May, 2022. Now the main focus will be on the Counter Claim filed by the 3<sup>rd</sup> Defendant/Counter Claimant.

However, the Counter Claimant opened its case on the 2<sup>nd</sup> day of February, 2023 by calling two witnesses namely: Inspector Emmanuel Adikwu (a subpoenaed witness) and Mr. Aronkhale Patrick who testified as Pw1 and Pw2 respectively.

Pw1 tendered a copy of the subpoena issued by this Court dated 22<sup>nd</sup> day of June, 2021 which was admitted in evidence and marked as Exhibit 1. Pw2 adopted his Witness Statement on Oath filed on 28<sup>th</sup> day of February 2022 and tendered the following documents in evidence which were admitted and marked as follows:

- (1). An acknowledge copy of application for Grant of Statutory Right of Occupancy dated 18<sup>th</sup> April, 2007 as Exhibit 2.
- (2). A Statutory Right of Occupancy Bill dated 4<sup>th</sup> May, 2017 as Exhibit 3.
- (3). Demand for Ground Rent dated 4<sup>th</sup> May 2017 as Exhibit 4.
- (4). A Survey Plan as Exhibit 5.
- (5). An Offer of Statutory Right of Occupancy dated 10<sup>th</sup> May, 2007 as Exhibit 6.
- (6). Two Revenue Collectors Receipt dated 17<sup>th</sup> May, 2017 and 30<sup>th</sup> May, 2017 as Exhibits 7 and 8 respectively.
- (7). A letter addressed to the Area Commander Metro the Nigeria Police, FCT Command dated 16<sup>th</sup> April, 2018 as Exhibit 9/

Pw2 was cross examined by the learned Counsel to the 1<sup>st</sup> Defendant to Counter Claim.

On the other hand, the Defendant to Counter Claim opened their case on 6<sup>th</sup> day of June, 2022 by calling their sole witness Mr. Williams Ujoh a civil servant working with the Federal Housing Authority who testified as Dw1, adopted his Witness Statement on Oath and tendered the following documents in evidence which were admitted and marked as follows:

- (1). CTC OF AN Offer of Terms of Grant/Conveyance of Approval dated 7<sup>th</sup> November, 1991 as Exhibit 10.
- (2). CTC of Acceptance of Offer of Grant of Occupancy dated 15<sup>th</sup> November, 1991 as Exhibit 11.
- (3). CTC of a Site Plan for Block B, Maitama Housing Estate, Maitama FCT Abuja as Exhibit 12.
- (4). CTC of a letter from Federal Housing Authority addressed to Mal. Mohammed Rabiou dated 28<sup>th</sup> September, 1993 as Exhibit 13.
- (5). CTC of a letter from Federal Housing Authority addressed to Mallam Mohammed Rabiou dated 21<sup>st</sup> August, 2014 as Exhibit 14.
- (6). A CTC of a Site Plan for Block 6 Maitama Housing Estate FCT Abuja as Exhibit 15.
- (7). CTC of a letter from Federal Housing Authority addressed to Mall. Mohammed Rabiou dated 16<sup>th</sup> August 2011 as Exhibit 16.
- (8). CTC of a letter addressed to the Managing Director Federal Housing Authority written and signed by one Safiya T. Umar as Exhibit 17.
- (9). CTC of a Conveyance of Building Plan Approval dated 9<sup>th</sup> January 2017 as Exhibit 18.
- (10). Photocopy of a Federal Housing Authority letter dated 27<sup>th</sup> November, 2017 addressed to the Ag. Cordinator, Abuja Metropolitan Management Council as Exhibit 19.

Dw2 was accordingly cross examined by Counsel on both sides.

It is important to note at this point that 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants did not enter defence but rested their case on the Counter Claimant's case. Evidence having concluded on both sides, the matter was then adjourned for adoption of final Written Address as stipulated by Order 33 of the Rules of High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018.

The 1<sup>st</sup> Counter Defendant's final Written Address dated 16<sup>th</sup> day of October, 2023 and filed on same date. The 1<sup>st</sup> Counter Defendant equally filed a reply to the Counter Claimants final Written Address dated and filed 24<sup>th</sup> of January, 2024.

The 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants on the other hand, filed their final Written Address dated and filed on 24<sup>th</sup> January, 2024.

The Counter Claimant equally filed his final Written Address dated 10<sup>th</sup> day of January, 2023 and filed on 17<sup>th</sup> day of January, 2024.

In the said final Written Address, learned Counsel to the 1<sup>st</sup> Counter Defendant AYODEJI ADEMOLA ESQ, formulated two issues for determination to wit:

- “(1). Whether the 1<sup>st</sup> Counter Defendant is in effective possession of the land and whether the Counter Claimant has proved a better title to displace the 1<sup>st</sup> Counter Defendant's possession.***
- (2). Between the Counter Claimant and 1<sup>st</sup> Counter Defendant who has proved a better title based on the facts before this Honourable Court.”***

On issue one, learned Counsel submitted that the undisputed fact before this Honourable Court is that the 1<sup>st</sup> Counter Defendant is in possession of the land in dispute as throughout his pleadings and reply, the Counter Claimant did not at any point deny or challenge this fact that the 1<sup>st</sup> Counter Defendant was in possession of the land in dispute but the Counter Claimant admitted expressly this fact of possession of the land by the 1<sup>st</sup> Counter Defendant in paragraphs 15, 16 and 31(c) of his Amended Counter Claim where he admitted a building structure by the 1<sup>st</sup> Counter Defendant on the land. Reliance was placed on the cases of ***FABULUMI V***

**AGBE (1985) 1 NWLR (Pt. 2) 299 SC at 299-300 RATIO 5 AND WARIGBELEGHA V OWERRE (2012) 3 NWLR (Pt.1288) 513 CA at 516 RATIO 1.**

Counsel further submitted that the implication of the foregoing facts from the pleadings is that since the 1<sup>st</sup> Counter Defendant has been established to be in possession of the land in dispute even without evidence by the 1<sup>st</sup> Counter Defendant, the burden squarely rests on the Counter Claimant to prove a better title to the land in order to dislodge the 1<sup>st</sup> Counter Defendant's possession and humbly urged this Honourable Court to so hold. In this respect, Counsel cited the case of **UGOJI V ONUKOGU (2005) 16 NWLR (Pt.980) SC 97 RATIO 5.**

In another submission, Counsel stated that only the Minister of FCT can grant a Right of Occupancy in FCT and in the instant case, the Counter Claimant pleaded in paragraphs 7 and 8 of his Amended Counter Claim that the land in dispute which he described as Plot 4096 was granted to him by the FCT Minister via an Offer of Statutory Right of Occupancy dated 10<sup>th</sup> May, 2007 but a close look at the said Offer of Right of Occupancy shows that it was neither signed by the Minister nor any known person for Minister of FCT, rather as it contains is an inscription of signature of an unknown person for Minister Federal Capital Territory and the question raised before this Honourable Court is who signed the purported Offer of a Statutory Right of Occupancy being paraded before this Court by the Counter Claimant and neither the Counter Claimant or even the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants before this Honourable have offered any clue of who signed his document but in the instant case, there is no known person in law who is identified as the person who made or signed this purported Offer of Statutory Right of Occupancy for the Minister and the legal implication of Section 94(1) of the Evidence Act is that for a signature to exist, it must be signed by an existing person known to law but in the instant case there is no person having same name as the maker of the Counter Claimant's purported Right of Occupancy. Reliance was placed on Sections 93(1), 94(1) of the Evidence Act as well as the cases of **BILL & BROTHERS LTD V DANTATA & SAWOE C.C.N LTD (2021) 12 NWLR (Pt.1789) 50 CA at 60 RATIO 8; PANTIYE V KANYA (2009) 4 NWLR (Pt.1130) 13 CA, Pg 39, PARAS F – G; B.L.L.S CO LTD V M.V. WESTERN STAR (2019) 9 NWLR (Pt.1678) 489 SC at 503, PARAS C – G; OKAFOR V NWEKE (2007) 10 NWLR (Pt.1043) 521; ALAWIYE V OGUNSANYA (2013) 5 NWLR (Pt.1348) 570; NIGERIAN ARMY V SAMUEL & ORS (2013) 14 NWLR**



**(Pt.1375) 466; SLB CONSORTIUM LTD V NNPC (2011) 9 NWLR (Pt.1252) 317; S.P.D.C.N V OBONOGWA (2018) 17 NWLR (Pt.1648) 221 CA; S.P.D.C. LTD V EKOSI (2016) 2 NWLR (Pt.1496) 278 CA and R.A OLIYIDE AND SONS LTD V O.A.U ILE-IFE (2018) 8 NWLR (Pt.1622) 564 SC.**

Moreso, Counsel further submitted that in the case of the Counter Claimant's purported Offer of Statutory Right of Occupancy, there is no known person who signed for the Minister of the FCT and that the only unavailable conclusion is that the Counter Claimant's Offer of Statutory Right of Occupancy purportedly signed by an unknown person is not valid and has no probative value and should be totally ignored by this Honourable Court as a worthless document and humbly urge this Honourable Court to so hold.

Consequently, learned Counsel submitted the Counter Claimant has woefully failed to make out even a prima facie case of ownership of the purported Plot 4096 which he claims in order to put a duty on the 1<sup>st</sup> Counter Defendant who is in possession to set up any defence. Counsel referred the Court to the case of **ELEGUSHI V OSENI (2005) 14 NWLR (Pt.945) 348 SC RATIO 8.**

Finally, on issue one, Counsel urged this Honourable Court to hold that the Counter Claimant has failed to even establish a prima facie case on his claim for ownership of the Plot in dispute and resolve issue 1 against the Counter Claimant and in favour of the 1<sup>st</sup> Counter Defendant.

On issue two which is between the Counter Claimant and 1<sup>st</sup> Counter Defendant who has proved a better title base on facts before this Honourable Court. Counsel submitted that in the instant case, both the Counter Claimant and 1<sup>st</sup> Defendant to Counter Claim are claiming ownership to the land in dispute, at his paragraph 7 of his Amended Counter Claim the Counter Claimant pleaded that this land was granted to him by the Minister of the Federal Capital Territory in 2007 and tendered a purported Offer of a Right of Statutory Occupancy signed by an unknown person on behalf of the Minister of the FCT while on the other hand, the 1<sup>st</sup> Counter Defendant in paragraph of his defence to Counter Claim pleaded that the land in dispute was originally granted to the Federal Housing Authority in 1991 as Plot 2514 from where the FHA now sub-allocated same to the 1<sup>st</sup> Counter Defendant as Plot CS21 and the 1<sup>st</sup> Counter

Defendant called a staff of FHA as witness who testified to the fact that the land in dispute was granted to FHA as Plot 2514 and that FHA sub-granted the land to the 1<sup>st</sup> Counter Defendant as Plot CS21 and the 1<sup>st</sup> Counter Defendant also tendered Offer of a Right of Occupancy dated 7<sup>th</sup> November, 1991, Acceptance letter by the FHA to the Minister through the 2<sup>nd</sup> Counter Defendant, (FCDA), two allocation letters by FHA to the 1<sup>st</sup> Counter Defendant, building plan approval by the 3<sup>rd</sup> Counter Defendant written by one Safiyat Umar to FHA which confirms that the 1<sup>st</sup> Counter Defendant's Plot CS21 fell within Plot 2514 granted to FHA by the Minister and 1<sup>st</sup> Counter Defendant also placed reliance on the pleadings and Witness Statement on Oath filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to the Counter Claim (then as 2<sup>nd</sup> and 3<sup>rd</sup> Defendants) on the 13<sup>th</sup> of March, 2020 wherein the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants expressly admitted that the FCT Minister granted Plot 2514 to FHA. Counsel cited the case of **AJIBULU V AJAYI (2014) 2 NWLR (Pt.1392) 483 SC at 487 Ratio 2.**

Submitted further, learned Counsel stated that these facts presented to DW1 are direct oral evidence of a staff of FHA who has personal knowledge of these facts and throughout the trial and proceedings, the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants through whom this plot was alleged to have been allocated to FHA and who were in Court and represented by Counsel did not challenge these facts pleaded by the 1<sup>st</sup> Counter Defendant of his historical ownership of the Plot in dispute meaning that they admitted same and the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants had in their previous Statement of Defence and Witness Statement on Oath filed before this Honourable Court on 1<sup>st</sup> of March 2020 clearly admitted in paragraphs 2, 5(c), 9, 10, 12 of that Statement of Defence, that Plot 2514 was granted to FHA by the Minister of the FCT in 1991.

Moreso, Counsel submitted these processes i.e 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants Statement of Defence filed on 13<sup>th</sup> of March 2020 has formed part of record of this Honourable Court which is under a duty to take judicial notice of its record notwithstanding that the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants did not present any defence and/or witness in this suit. In this respect, reliance was placed on the case of **ADALMA TANKERS BUNKEERING SERVICES V C.B.N (2022) 11 NWLR (Pt.1842) 405 at 418, RATIO 14 (SC), JIMOH V MIN. F.C.T (2019) 5 NWLR (Pt.1664) 45 SC at 56 Ratio 25, A.G ANAMBRA STATE V OKEKE (2002) 12 NWLR (Pt.782) 575 SC and ANYAKORAH V P.D.P (2022) 12 NWLR (Pt.1843) 1 SC.**

In another submission, learned Counsel stated that the Counter Claimant in his amended Counter Claim and reply did not also deny that Plot 2514 was granted to Federal Housing Authority in 1991 as alleged by the 1<sup>st</sup> Counter Defendant and the Counter Claimant admitted the allocation of the land to FHA by the Minister of FCT in paragraph 13 of his Amended Counter Claim and also pleaded in paragraph 3 of his reply to the 1<sup>st</sup> Counter Defendant's Statement of Defence that does Plot 4096 Cadastral Zone A06 Maitama does not form part of the land allocated to FHA as well as Plots 2514-2517, 2520 and 2148 – 2150 also allegedly allocated to FHA which from the foregoing paragraphs, the Counter Claimant is not denying that Plot 2514 was allocated to the Federal Housing Authority by the Minister at the allocation of the land in dispute and he is also not denying that this land in dispute (Counter Claimant's plot 4096 and 1<sup>st</sup> Counter Defendant's Plot of CS21) does not form part of Plot 2514 or any of the Plots granted to the Federal Housing Authority by the Minister of FCT in 1991.

In addition, learned Counsel submitted that all the facts and information concerning the location of the land in dispute and its relationship with the Plots allocated to the Federal Housing Authority are facts that are within the exclusive knowledge of both the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants who allocated these plots and only a staff of either 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants can testify to them by virtue of their employment to dispute the account given by DW1 and in prove of the Counter Claimant's allegation that the land in dispute does not form part of the land granted to FHA and the 1<sup>st</sup> Counter Defendant on his part called a staff of FHA who testified that it was from same 2514 that FHA allocated Plot CS21 to the 1<sup>st</sup> Counter Defendant and tendered a letter from 3<sup>rd</sup> Defendant written by one Safiya I. Umar a staff of 3<sup>rd</sup> Counter Defendant to FHA where the former admitted that Plot CS 21 allocated by FHA to 1<sup>st</sup> Counter Defendant fall within Plot 2514 and that this evidence presented by Dw1 who is a staff of FHA represents a direct evidence by one who has personal knowledge of the facts to which she testified being a staff of FHA and both the Counter Claimant, as well as the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants did not deny this all important letter which claimed that Plot CS21 fall within 2514 Cadastral Zone granted to the FHA by the Minister and in fact the Counter Claimant admitted the existence of that letter by the 3<sup>rd</sup> Counter Defendant to FHA and Reply letter of 27<sup>th</sup> November, 2017 by FHA in his reply to 1<sup>st</sup> Counter Defendant's defence. Counsel referred the Court to paragraphs 11 -13 of Counter Claimant's reply.

Counsel further submitted that during trial, the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants who were given notice to by the Counter Claimant to produce a site plan showing the land in dispute sharing boundaries with FHA land in Court but the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants did not produce any such plan but abandoned both their pleadings and Witness Statement on Oath during trial and so did the Counter Claimant come to know that this purported plot 4096 is not part of the plots or property granted to the FHA by the Minister but shares fence with it and his witnesses is not a staff of FHA nor FCDA or AMMC and cannot give oral evidence of these facts but in the instant case, the Counter Claimant did not call any witness from either FCDA or AMMC to testified of his personal knowledge that the land in dispute which the Counter Claimant claimed as plot 4096 does not form part of but shares boundary fence with the property allocated to the FHA in same location.

Counsel cited the case of **OMISORE V AREGBESOLA (2015) 15 NWLR (Pt.1482) 205 SC at 228 Ratio 27.**

Consequently, Counsel submitted that the Counter Claimant also pleaded that there is a plan showing that Plot 4096 shares a fence with the Plots allocated to FHA and gave the 2<sup>nd</sup> Counter Defendant notice to produce same in Court and the Counter Claimant who claimed the existence of such document also failed to produce a copy in Court as the giving of notice to produce presupposes that the Counter Claimant has a copy of the said plan which he claimed shows Plot 4096 sharing boundary with FHA plots and where he fails to produce it in Court, the presumption is under Section 167(d) of the Evidence Act is that the contents would have been against him if he so produced and in the instant case, the Counter Claimant must have a copy of this site plan which he claimed shows that Plot 4096 shares boundary fence with the land granted to FHA as he could not have known the content of such a site plan if he does not have seen it. In this respect, reliance was placed on the cases of **BUHARI V OBASANJO (2005) 13 NWLR (Pt.941) 1 Pg.198-199, PARAS H – C (SC) and INUWA V BAYERO UNIVERSITY KANO (2018) 13 NWLR (Pt.1637) 545 CA at 552 Ratio 14.**

Moreso, Counsel submitted that the Counter Claimant deliberately refused to produce the said site plan which he claimed that Plot 4096 shared a common boundary with the land allocated to FHA because if he has produced it, the content would have been against him and the claim by the Counter Claimant that the land in dispute shares boundary or fence with

the allocated to FHA is at variance with the evidence he tendered before this Honourable Court, the Counter Claimant tendered a site plan before this Honourable Court although the site plan was never signed by the Director of Surveying and mapping who purportedly made it, the site plan has no feature of any FHA Plot(s) or fence that shares boundaries with it so called Plot 4096, claimed by the Counter Claimant and the implication of this omission is that the Counter Claimant's site plan which he tendered before this Honourable Court which has no feature of boundary or fence with any FHA land is at variance with his pleadings that Plot 4096 shares fence or boundary with the plots allocated to FHA by the Minister and at paragraph of his Counter Claim, the Counter Claimant claimed that the land granted to him has an area of approximately 351.00 square metres and this is also what is contained in his unsigned Offer of Statutory Right of Occupancy but in his site plan, the land he refers to has an area of 401.55sqms meaning his pleadings are at variance with this site plan he tendered before this Honourable Court and urge this Honourable Court to hold that the Counter Claimant failed woefully to prove his claim that the land in dispute is not part of, but shares fence with the land granted to FHA after tendering a site plan that has no features and refusing to produce the one he claimed has such features. Counsel cited the case of **MOMOH V UMORU (2011) 15 NWLR (Pt.1270) 217 SC at 228 Ratio 15.**

In another submission, Counsel stated that even if the Honourable Court were to agree that the Counter Claimant's Offer of Statutory Right of Occupancy not signed by any person known to law purportedly granted to him in 2007 which he parades before this Honourable Court is valid, it cannot still stand or displace the Right of Occupancy of the 1<sup>st</sup> Counter Defendant whose predecessor-in-title, FHA was granted the land in 1991 since both parties claim their root of title from the same grantor, Minister of Federal Capital Territory. Counsel referred the Court to the cases of **TEWOGBADE V OBADINA (1994) 4 NWLR (Pt.338) 326 SC at 331 RATIO 1; ORIANZI V A-G RIVERS STATE (2017) 6 NWLR (Pt.1561) 224 SC.**

To this end, learned Counsel humbly urged this Honourable Court to hold that the Claimant has failed to prove a better title than the 1<sup>st</sup> Defendant to Counter Claim who is still in possession of the land in dispute and resolve issue 2 against the Counter Claimant and in favour of the 1<sup>st</sup> Counter Defendant.

On the whole, Counsel submitted that the 1<sup>st</sup> Defendant to Counter Claim has showed that through evidence and his written submission that he in possession of the land in dispute and that the Counter Claimant has failed to provide even a prima facie case of ownership of the land in dispute to shift the burden on him to defend such claim as the 1<sup>st</sup> Counter Defendant has also showed they between the Counter Claimant and him, the Counter Claimant has failed to prove a better title to the land and urge this Honourable Court to summarily dismiss the claim of the Counter Claimant with substantial cost.

Equally, learned Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants Zaidu Abdu El-Idde Esq formulated a sole issue for determination to wit:

***“Whether having regards to the facts and evidence adduced by the Counter Claimant, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim can rest their case on the case of the Counter Claimant.”***

In arguing the sole issue, learned Counsel submitted that with respect on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants to Counter Claim, that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim option either to adduce evidence in their course of defence or elect to rest their case on the case of the Counter Claimant as in the instant case and further submitted that at the close of evidence for the Claimant in the instant Counter Claim and when the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim are called upon to enter their defence, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim apply to have rested their case on that of the Counter Claimant, that is a legal strategy not a mistake. Counsel referred the Court to the case of ***AKANBI V ALAO (1989) 3 NWLR (Pt.108) Page 118 at 140 (SC)***.

In another submission, Counsel stated that the 2<sup>nd</sup> Defendant to Counter Claim upon application by the Counter Claimant allocated to Counter Claimant Plot 4096 situates at Maitama, whereas the 2<sup>nd</sup> Counter Defendant in pursuance of the allocation issued all the necessary title documents to the Counter Claimant as required by law and that from the foregoing premise, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim are entitled to rest their case on the case of the Counter Claimant having admitted allocating the said Plot 4096 situate Maitama to the Counter Claimant. In this respect, Counsel referred the Court to the case of ***MEZU V C.X.C.B NIG PLC (2018) 3 NWLR (Pt.1340) Page 188 AT 219 (SC)***.

Counsel further submitted that the 2<sup>nd</sup> Defendant having admitted allocating plot 4096 situate at Maitama to the Counter Claimant, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are in absolute compliance with the condition (b) laid down in **MEZU V C.X.C.B NIG PLC** supra and by that, it justified the position of option chosen by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim in resting their case on that of the Counter Claimant in the instant case and that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' decision not to call evidence to rebut the claim of the Counter Claimant is backed by law both judicial and statutory authorities and as the Counter Claimant is bound to prove the existence of his claims in his Counter Claim as this can be proved by adducing evidence and the Counter Claimant cannot rely on the weakness of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' case but can only succeed on the strength of his own case.

Counsel cited the provisions of Section 131(1), (2) of the Evidence Act and the cases of **FBN PLC V YEGWA (2023) 4 NWLR (Pt.1874) Pg. 323 at 338** and **HANATU V AMADI (2020) 9 NWLR (Pt.1728) Pg. 115 at 128 Paras F – C**.

Moreso, learned Counsel submitted that the law is settled by virtue of Section 133(1) of the Evidence Act that it is when the party on whom the burden of proof lie discharges that burden of proof shifts as in this case, the Counter Claimant having not discharged the burden as required by Section 131 of the Evidence Act, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim need not to disprove same which the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants did not call evidence as there is no basis for same. In this respect, reliance was placed on Section 131(1) and (2) of the Evidence Act.

Consequently, learned Counsel argued on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim that the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants have justified their decision of resting their case on the case of the Counter Claimant having satisfied the requirement of doing so as laid down in the case of **MEZU V C.X.C.B NIG PLC** supra to wit: (B) That the Defendant admits the fact of the case as stated by the Plaintiff and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim have admitted the fact o the Counter Claimant to the extent that the 2<sup>nd</sup> Counter Defendant had allocated Plot 4096 Maitama to the Counter Claimant upon his application and that all necessary title documents were issued to the Counter Claimant as required by law.

Submitting further, learned Counsel submitted that is the argument of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim that the land in dispute has been allocated to the Counter Claimant by the 2<sup>nd</sup> Defendant and likewise the 1<sup>st</sup> Defendant building approval wrongly issued was rightly withdrawn by the 2<sup>nd</sup> Defendant to Counter Claim and the facts pleaded by the 1<sup>st</sup> Defendant to Counter Claim in paragraphs 3, 5, 10, 11 and 16 of his defence claiming that the land in dispute belongs to Federal Housing Authority, who is not a party to the instant case and moreso it could not complained that the land allocated to it by the 2<sup>nd</sup> Defendant has been trespassed upon is not supported by evidence and the land in dispute does not form part of the land allocated to the FHA as evident by Exhibit 5 tendered by the Counter Claimant as the 1<sup>st</sup> Defendant to Counter Claim did not adduced before the Court survey plan to prove its pleading in paragraphs 3, 5, 10, 11 and 12 as argued by the 1<sup>st</sup> Defendant in his final Written Address that the land in dispute forms part of the larger portion of land allegedly allocated to FHA.

In another submission, Counsel submitted that the argument of the 1<sup>st</sup> Defendant in paragraphs 3.7 to 3.18 of his Written Address therein argued making heavy allegation that Exhibit 6 was not signed by a person known to law owing to the fact that the name of the signatory on the document for the Minister of the Federal Capital Territory was not disclosed relying on Sections 93(1) and 94(1) of the Evidence Act in which the learned Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants further submitted that the above Sections relied on by the 1<sup>st</sup> Defendant deal with the proof of due execution of document by either calling the maker or proving the identity of a document by proving the maker of the signature or hand writing on the document where same is alive issue before the Court and therefore, 1<sup>st</sup> Defendant had wrongly argued as the argument canvassed and the authorities cited by the 1<sup>st</sup> Defendant did not represent the correct position of law nor applicable to the instant matter before this Honourable Court as Sections 93(1) and 94(1) of the Evidence Act only apply where an allegation of forgery is raised or there is a dispute as to the signature or handwriting of a person which requires evidence to be adduced to prove that a person with that handwriting or signature exist and the said section is neither relevant nor applicable to the instant case as there is no need to prove due execution where the person against whom it is sought to be proved is a public officer whose duty is to ensure due execution of the document. Reliance was placed on Section 98(1)(b) of the Evidence Act and the case of **BOYE IND LTD V SOWEMIMO (2009) 10 NWLR (Pt.1148) at 161 – 162.**



In addition, Counsel urge the Court to discountenance the submission and argument of the 1<sup>st</sup> Defendant in paragraphs 3.7 to 3.18 of his Written Address as Exhibit 6 was dully issued by the 2<sup>nd</sup> Defendant and dully signed by an authorized official of the 2<sup>nd</sup> Defendant as Exhibit 9 confirmed due execution of Exhibit 6 and further urge the Court to discard the cases of DANTAYE V KANYA and B.L.LS CO LTD V WESTERN STAR cited by the 1<sup>st</sup> Defendant as same are distinguishable from the instant case as the cases cited dealt with adoption of Witnesses Statement on Oath signed by unauthorized persons other than the witnesses themselves which the Court held that such Witnesses Statement on Oath are incompetent while the Minister of FCT can act by himself or through a staff of FCDA signing the said Exhibit.

Submitting further, Counsel urged the Court to discountenance the argument of the 1<sup>st</sup> Defendant in paragraphs 4.1 to 4.5 of his Written Address as the land in dispute does not form part of the Plots allocated to Federal Housing Authority and the 1<sup>st</sup> Defendant reliance on the pleadings and un-adopted Witness Statement on Oath filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the earlier pleadings/original claim struck out by this Honourable Court is of no moment and based on this point, the 1<sup>st</sup> Defendant has no legal basis to rely on an un-adopted Witness Statement on Oath filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as the Court is under no legal duty to evaluate same. Counsel cited the case of **AREGBESOLA V OYINLOLA (2011) 9 NWLR (Pt.1253) at PP. 562 -563 PARAS H – A.I**

In conclusion, Counsel urged the Court to enter judgment as the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to Counter Claim having rested their case on the case of the Counter Claimant.

On the other hand, the learned Counsel to the Counter Claimant Efa Otu Oka Esq, formulated four issues for determination to wit:

- “(1). Whether by virtue of Exhibits 6 and 5, the Counter Claimant is entitled to the Statutory Right of Occupancy over Plot 4096 Cadastral Zone A06 Maitama, Abuja measuring an area of about 401.22 sqm with beacon stones number PB 3110, PB3109, PB 99787 and PB 99786.**

- (2). ***Whether the 1<sup>st</sup> Defendant to the Counter Claim trespassed into the Counter Claimant's property entitling him to an Order of Perpetual Injunction of this Honourable Court.***
- (3). ***Whether by Exhibits 5, 6 and 9, the 2<sup>nd</sup> Defendant has not conclusively established that Plot 4096 Cadastral Zone A06 Maitama, Abuja measuring an area of about 401.55 sqms with beacon stone numbers PB3110, PB3109, PB 99787, PB 99788 and PB 99786 does not form part of the land allegedly allocated to the FHA on the 7<sup>th</sup> of November, 1991 from whom the 1<sup>st</sup> Defendant is claiming title from.***
- (4). ***Whether the 1<sup>st</sup> Defendant to the Counter Claim can raise an issue as to the validity of the Counter Claimant's claim, he not being a party to whatever transaction executed between the 2<sup>nd</sup> Defendant to the Counter Claim and the Federal Housing Authority (FHA)."***

On issues one and two, Counsel submitted that it is trite that title to land can be proved by five different ways to wit: By evidence of traditional history of title, by grant or production of title document, By acts of ownership, By acts of possession long enough to warrant the inference that the person exercising such acts are the owners and by acts of possession of adjoining or adjacent land to the land in dispute. Counsel cited the case of ***OWAKAH V R.S.H & P.P.A (2022) 12 NWLR (Pt.1845) P. 463 at 521 – 522 PARAS D – A (SC).***

In another submission, Counsel stated that the first duty on a Claimant who seeks a Declaration or Order over a piece of land is to give an accurate, precise, certain, unambiguous and satisfactory description of the land he is seeking such declaration or order over and he must first and foremost plead and prove clearly the area of land to which his claim relates and the boundaries thereof and if the size and location of the land is in issue, he must go on to prove the exact location and area being claimed as in the present case, before this Honourable Court, the size of the land is not in issue, the location of the land as described by the Claimant of the Plot is also not in issue, what is in issue is the boundaries and identity of the land while the Claimant's case is that Plot 4096 Cadastral Zone A06 Maitama measuring an area of about 401.55 sqm with ***beacon numbers PB3110, PB3109, PB 99787, PB 99788 and PB 99786*** was allocated to him and

that 1<sup>st</sup> Defendant is mistaken as to where the FHA land is located and the 1<sup>st</sup> Defendant on the other hand claims Plot 2514 was allocated to the Federal Housing Authority from whom he derives his title from and that Claimant's land forms part of the land allocated to the Federal Housing Authority.

Moreso, Counsel submitted that the Counter Claimant, herein after referred to as the Claimant has tendered Exhibits 5, 6 and 9 in proof of his title to Plot 4096 in meeting with condition (b) in OWAKAH's case (supra) as Exhibit 6 is the Offer of Statutory Right of Occupancy issue to the Claimant by the 2<sup>nd</sup> Defendant, Exhibit 5 is the survey plan of the land in dispute stating the exact land size while Exhibit 9 is the letter from the 2<sup>nd</sup> Defendant to the Counter Claimant (hereinafter referred to as the 2<sup>nd</sup> Defendant) dated 16<sup>th</sup> April, 2018, confirming that Plot 4096 Cadastral Zone A06 Maitama belonged to the Claimant and Counsel further submitted that in an action of this nature, the Court would always give judgment to the party with a better title. Counsel cited the cases of **OKOKO V DAKOLO VOL.7 S.C.J.E. (2006-2011)**, **OWAKAH V R.S.H & P.P.A (supra)** and **AWOMIRE V AWOYEMI (1972) 1 ALL NLR 101**.

Submitting further, Counsel stated that it is trite that once trespass has been established from the evidence placed before the Court, the only order of Court is to make in addition to a declaration of title in favour of the person who has proved a better title is an Order of Perpetual Injunction restraining the trespasser from further trespassing on the property as it is clear from the evidence that the Claimant was validly allocated Plot 4096 Cadastral Zone A06 Maitama and has been in possession of same long before the 1<sup>st</sup> Defendant was allocated a Plot CS21 allegedly carved out of a Plot 2514 allocated to the Federal Housing Authority, a Plot which is totally different from the Claimant's land and the 1<sup>st</sup> Defendant to Counter Claim has argued in paragraph 3.1 to 3.6 of his final Written Address that they have been in effective possession of the land in dispute and that although, they pleaded that fact, the Claimant did not deny same therefore same was in their opinion admitted.

Counsel further admitted that evidence of the 1<sup>st</sup> Defendant as gleaned from his sole witness, Dw1 in paragraphs 5 and 7 of his Witness Statement on Oath and documents tendered is that the 1<sup>st</sup> Defendant was allocated a utility shop 15, he then mistakenly developed a utility shops 21LS(B) as seen from the documents tendered by him, which the witness says was

subsequently changed to a Housing Unit CS 21 with no documents to show such change except 1<sup>st</sup> Defendant's witness oral evidence that is unreliable in that 1<sup>st</sup> Defendant's allocation was made on 21<sup>st</sup> of August 2014, his building approval was gotten on the 16<sup>th</sup> of August, 2011 (four years) before he was even allegedly allocated the land by FHA which he claims allocated to him and the question then is, how did he get a building approval over a land he had not yet been allocated only for him to commence building immediately on a yet to be allocated land.

In addition, Counsel submitted that the entire case of the 1<sup>st</sup> Defendant is hinged on an alleged grant of Plot 2514 which forms part of a larger plot of allocated by the 2<sup>nd</sup> Defendant to the Federal Housing Authority and to prove this, the 1<sup>st</sup> Defendant tendered Exhibit 10 (the Offer of Terms of Grant/Conveyance to the Federal Housing Authority) which lists Plot 2514 as one of the Plots of land allocated to FHA as a close look at the Claimant's survey plan (Exhibit 5) it is clear as light and these facts have been established by documentary evidence that Plot 2514 shares a boundary with Claimant's Plot 4096 and they are not one and the same thing as Exhibit 5 shows and establishes that Plot 4096 and Plot 2514 are two distinct plots of land and Exhibits 6 and 9 clearly establish that the land in dispute belongs to the Claimant which is why the building approval wrongly issued to the 1<sup>st</sup> Defendant by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants was rightly withdrawn.

Consequently, learned Counsel contended that the argument in paragraph 3.4 of the final Written Address referring to paragraph 8 of their defence to Counter Claim is of no moment as there is iota of evidence on the record that supports the pleading and so the pleaded facts go to no issue and are deemed abandoned there being no oral documentary evidence to support same and paragraphs 1, 2, 4, 6, 7, 8, 9, 12, 13, 14 and 15 of the 1<sup>st</sup> Defendant's defence to the Counter Claim be deemed abandoned as the 1<sup>st</sup> Defendant refused to call their sole witness to prove the pleaded facts in the above mentioned paragraphs of their pleading as those facts were deemed abandoned and it is trite that pleadings must be supported by evidence as the absence of any evidence on the facts pleaded by the 1<sup>st</sup> Defendant to the Counter Claim, all pleaded facts and evidence led by Claimant are deemed admitted and meets the standard of preponderance of evidence in a civil case. In this respect, reliance was placed on the cases of ***AJIBOLA V ANISERE & ANOR (2019) LPELR-48204 (CA) and REGT.***

**TRUSTEES B.C & S V EDET (2016) 5 NWLR (Pt.1505) Pg. 387 at 403  
PARAS F –G.**

Counsel further contend that what is left of the pleadings and evidence of the 1<sup>st</sup> Defendant is the facts pleaded in paragraphs 3, 5, 10, 11 and 16 of the 1<sup>st</sup> Defendant's defence to the Counter, which in the main is saying that the land in dispute belongs to the FHA who incidentally is not a party to this case and has not complained that her land allocated to her by the 2<sup>nd</sup> Defendant has been trespassed upon as it has a contract with the 2<sup>nd</sup> Defendant and not the 1<sup>st</sup> Defendant and it has no answer to a Claimant's claim in trespass to land for a Defendant to say or show that title to the land is in another person as there can be no such thing as concurrent possession by two persons claiming adversely to each other. Counsel cited the cases of **CHUKWUMA V IFELOYE (2008) 18 (Pt.1118) Pg. 204 at 245 PARAS F – G** and the unreported appeal with Appeal number **CA/A/608/2021 MALLAM MOHAMMED RABIU V FCDA & 2 ORS.**

Arguing further, learned Counsel submitted that in answer to paragraph 3.4 of 1<sup>st</sup> Defendant's final Written Address where they are relying on Exhibit 18 (the building approval) issued to them by the 2<sup>nd</sup> Defendant, the withdrawal of the building plan approval by officials of the 2<sup>nd</sup> Defendant puts to rest their reliance on the document as it is trite that he who has power to issue a thing has a power to withdraw same as the mistake of the 2<sup>nd</sup> Defendant in giving building approval does not on itself confer title of the Claimant's property and the 1<sup>st</sup> Defendant has cited the authorities of **FABUNMI V AGBE and WARIGBELEGHA V OWERRE** as they support the evidence and case of the Claimant placed before this Court which is that the 1<sup>st</sup> Defendant trespassed into land which was in possession of the Claimant after the Claimant had exercised acts of possession by surveying and placing building materials on the land in dispute.

In another submission, Counsel stated that the 1<sup>st</sup> Defendant in paragraphs 3.7 to 3.18 of his Written Address has made heavy wheather about the fact that Exhibit 6 was not signed by a person known to law simply because the name of the signatory on the document for the Minister of the FCT was not disclosed as his argument is not that the person who signed is not authorized to sign Exhibit 6 but that the person is not known law simply because he did not state his name in which the 1<sup>st</sup> Defendant is relying on Sections 93(1), 94(1) of the Evidence Act which has to do with the proof of due execution of a document by either calling the maker or proving the

identity of a document by proving the maker of the signature or handwriting on the document where same is alive issue before the Court.

Counsel further submitted that the argument and authorities cited by the 1<sup>st</sup> Defendant is the correct position of the law as it relates to the matter before this Honourable Court because Sections 93(1) and 94(1) of the Evidence Act only applies where an allegation of forgery is raised or there is a dispute as to the signature or writing of a person which requires evidence being led to show that a person with that handwriting or signature exist and the need for proving due execution is dispensed with where the person against whom it is sought to be proved is a public officer whose duty is to ensure due execution of the document and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in this suit in which the Claimant is seeking to prove is a public officer and that assuming without conceding that there is a dispute as to the due execution of Exhibit 6 by the above decision, Exhibit 9 which was written by a public officer has dealt with Exhibit 6 as one dully executed in her response to an enquiry about the document and Exhibit 9 has gone to confirm the due execution, authenticity and regularity of Exhibit 6. In this respect, reliance was placed on Section 98(1)(b) of the Evidence Act and the case of **BOYE IND LTD V SOWEMIMO (2009) 10 NWLR (Pt.1148) Pg. 136 at PP. 161-162 PARAS D – B.**

Moreso, Counsel further argued that it is trite that by the rules of pleadings, where an issue of due execution, authenticity or forgery is raised, same must be particularly pleaded to enable the opposite party properly traverse same and evidence led in proof of same before it became a live issue to be decided by Court and as this was not done by the 1<sup>st</sup> Defendant and the only time the signature on a document will be an issue is when the person who signed the document or the person on whose behalf the document was signed disputes that they actually signed the document as this is also not the case before this Honourable Court as it does not lie in the mouth of the 1<sup>st</sup> Defendant through their Written Address dispute the signature, due execution or authenticity of Exhibit 6 when the officials of the 2<sup>nd</sup> Defendant who made the documents are not denying Exhibit 6, in fact they have rather confirmed the authenticity and due execution of the document as even if the issue of authenticity, regularity or dispute as to authority of the person who signed Exhibit 6 is in issue, the law is trite that he who asserts must go ahead to prove that assertion as it is the 1<sup>st</sup> Defendant who is asserting that fact that needs to prove that the signature is not that of the Minister of the FCT or a person he has authorized to sign Exhibit 6 on his

behalf or that there is an irregularity and such burden is on him to prove same by calling credible evidence to disprove the signature and not to make passing allegations with no evidence in proof of same in his written and it is trite that a Written Address no matter how well written cannot take the place of raw and hard evidence before the Court. Counsel cited the case of **UGO V UGO (2017) 18 NWLR (Pt.1597) Pg.218 at 239 PARAS D-F and MAITUMBI V BARAYA (2017) 2 NWLR (Pt.1550) Pg. 347 at 392 PART F 394 PARAS C –D.**

Counsel further submitted that the case of **BILL & BROTHERS LTD V DANTATA & SAWOE C. C. N. LTD** cited by the 1<sup>st</sup> Defendant in his Written Address. It is clear that it is the Minister of FCT or his alter ego, the FCDA that has the power to allocate or grant land within the FCT and the Minister can act by himself or through staff of the FCDA as there is no dispute in the land was granted by the Minister of the FCT to the Claimant as the alter ego has admitted that they granted the land to the Claimant and the FCT act unlike the legal practitioners act, does not state a strict/mandatory provision on how documents allocating land to allottees should be signed as once it is shown that the act of allocation of land has been substantially complied with, the law will not allow technicalities to be used to defeat a clear right and justice of a case that exists in favour of a person who actually has no control on how acts of public officers are carried out particularly in this case where the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have confirmed the title documents in favour of the Claimant. It is the law that official or judicial act shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with as this position was further confirmed by Exhibit 9 which is a letter signed by the Director Lands FCT written to the Area Command Metro of the Nigeria Police FCT Command confirming that Exhibit 6 from their record was allocated to the Claimant and there is nothing in their records to show that there was a revocation or any transaction in respect of the land. Counsel cited Section 168(1) of the Evidence Act and the case of **EZECHUKWU V ONWUKA (2016) 5 NWLR (Pt.1506) Pg. 529 at 562 – 563 PARAS H – A.**

To this end, Counsel stated that the 1<sup>st</sup> Defendant cited the authorities of **DANTIYE V KANYA AND B.L.L.S CO LTD V M.U. WESTERN** as they do not apply to the present case as Dantiye case is a decision of the Court of Appeal flowing from an appeal from a decision of an Election Tribunal which was based on two Witness Statement on Oath of Pw1 and Pw2 who

admitted before the Tribunal that they did not sign the Statement on Oath they were both asked to adopt. The Court held that fact that a deponent fails to sign his own Witness Statement on Oath renders the document worthless while B.L.L.S. CO LTD case was an interpretation of Sections 2(1) and 24 of the Legal Practitioners Act on how a document and Court processes (Writ of Summons) should be signed on behalf of a legal practitioner to protect the legal profession from abuse and quackery and the provisions of the Legal Practitioner Act are mandatory statutory requirements of the law for the mode of signing Court processes and the above decision was based on that statutory requirement as this is not the case before this Honourable Court that requires documents of allocation of land in the FCT must meet a particular or certain statutory requirements before same can be valid and none of the above cases are on all fours with the matter before this Honourable Court.

Finally, on issues one and two Counsel urged the Court to resolve issues one and two in favour of the Claimant.

On issue 3 which is whether by Exhibits 5, 6 and 9 the 2<sup>nd</sup> Defendant has not conclusively established that Plot 4096 Cadastral Zone A06 Maitama, Abuja measuring an area of about 401.55 sqm with beacon stones numbers **PB3110, PB3109, PB 99787, PB 99788 and PB 99786** does not form part of the land allegedly allocated to the FHA on the 7<sup>th</sup> of November, 1991 from whom the 1<sup>st</sup> Defendant is claiming title from.

Counsel submitted that the Claimant tendered Exhibits 5, 6 and 9 in proof of his claim as Exhibit 5 is the survey plan showing the land in dispute, Exhibit 6 is the Statutory Right of Occupancy dated 10<sup>th</sup> May, 2007 while Exhibit 9 is the letter written by the 2<sup>nd</sup> Defendant to the Area Command Metro of the Nigeria Police confirming that the Claimant is the owner of the land in dispute and Exhibit 6 the letter of allocation gives approximate area of the land as being 351.00sqm while Exhibit 5, survey plan map gives an exact measurement of the size of the land, describes same as being an area of 401.55sqm which the 1<sup>st</sup> Defendant argued in paragraph 4.25 of his Written Address that the Claimant's pleadings and title document claims that the land in dispute has an area of approximately 351.00sqm which is at variance with the survey plan which shows that the land in dispute has an area of 401.55sqm and the Claimant's Counsel refer this Court to the Chambers 21<sup>st</sup> Century Dictionary Reversed Edition and Black's Law Dictionary 8<sup>th</sup> Edition which defines approximately to mean result in



mathematics not rigorously exact or used in the sense of an estimate merely meaning more or less but about and near the amount, quantity or distance specified in which the learned Counsel argued that based from the above definition, it is clear that what was contained in the letter of allocation, Exhibit 6, which came earlier in time was the approximated size of the land as pleaded in the Counter Claim and the actual size was captured in Exhibit 5 after the Claimant requested that 2<sup>nd</sup> Defendant surveyors carryout an exact survey/measurement of the Claimant's property as pleaded and it is trite that facts are what are pleaded in evidence and not evidence as the Claimant pleaded Exhibit 5 (survey plan) and even in his prayer which forms part of his pleadings carryout to cover as 401.55sqm. It is trite that pleaded documents are to be read as part of the pleadings, thus any document referred to in a pleading becomes part of those pleadings as it cannot be separated and the Court is to give the document its legal effect and read same with the pleadings as one. Counsel cited the cases of **ADAMS V LSPDC (2000) 5 NWLR (Pt.656) Pg.291 at 311 PARAS C – D and BANK GENEVOISE DE COMMERCE ET DE CREDIT VS CI MAR ISOLA SPETSAI NO. 2 (1962) 2 SCNLR @ 3110.**

In another submission, Counsel stated that the 1<sup>st</sup> Defendant in his issue two has argued in paragraph 4.1 to 4.5 of his Written Address that the Claimant's plot forms part of the plots allocated to the Federal Housing Authority and that one of the plots, Plot 2514 was further allocated to him as Plot CS21 as his witness tendered the Offer of Right of Occupancy issued to the FHA dated 7<sup>th</sup> November, 1991 which shows the land allocated to FHA as plots 2514-2517, 2517, 2519, 2520 and 2148-2150 within Maitama District by the 2<sup>nd</sup> Defendant which the 1<sup>st</sup> Defendant argues that the unheaded letter written by Safiya Umar confirms that Plot CS21 falls within Plot 2514 as they are further placing reliance on the pleadings and unadopted Witness Statement on oath filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the earlier pleadings of the 1<sup>st</sup> Defendant (then Claimant) original claim struck out by this Honourable Court which they argue is an admission.

In addition, Counsel further argued that on the 1<sup>st</sup> Defendant's argument above refer the Court to Exhibits 5 and 9 tendered by the Claimant which shows that the Claimant's land where the 1<sup>st</sup> Defendant trespassed into is different from the Plot 2514 from which the 1<sup>st</sup> Defendant's plot CS21 was carved out from the Claimant's plot cannot be the same as the Plot

allocated to FHA from which the 1<sup>st</sup> Defendant is claiming title from as Exhibit 5 has established as the pleadings of the Claimant in paragraphs 13 and 14 of the Amended Statement of Claim, paragraphs 3, 4, 5, 8, 9 and 14 of the Claimant's reply to the 1<sup>st</sup> Defendant's defence and paragraphs 14 and 15 of Pw2 Witness Statement on Oath dated 25<sup>th</sup> February, 2022, paragraphs 7, 8, 9, 12, 13, 14 and 15 of Pw2's Witness Statement on Oath is clear as to the land in dispute as the Claimant stated clearly that at no time was Plot 4096 Cadastral Zone A06 Maitama, Abuja allocated or formed part of the land allocated to the Federal Housing Authority by the 2<sup>nd</sup> Defendant, rather the land allocated to FHA which the 1<sup>st</sup> Defendant was alleging was further allocated to him forms a boundary with the land to the Claimant and in proof of this, the Claimant tendered Exhibit 5 (the survey plan) as the 1<sup>st</sup> Defendant has not placed anything before this Honourable Court to contradict the plan showing the position of the two plots as two distinct and different plots as well as to displace the uncontroverted case of the Claimant which is the land allocated to the FHA does not form part of the land allocated to the Claimant.

Submitting further, learned Counsel stated that the above pleadings and evidence is in line with the oral and documentary evidence tendered before this Honourable Court particularly Exhibit 5 the survey plan and the 1<sup>st</sup> Defendant's defence for trespassing into the Claimant's land identified as Plot 4096 is that Plot CS21 was carved out of Plot 2514 allocated to the Federal Housing Authority vide their Exhibit 10 tendered by their witness and a simple look at Claimant's Exhibit 6 will show that Plot 2514 from which the 1<sup>st</sup> Counter Defendant is basing his title on shares a common boundary with the Claimant's land and clearly does not form part of the land allocated to the Claimant as Plot 2514 is different from Plot 4096, the land in dispute and the 1<sup>st</sup> Defendant clearly built on the land that was not his own and it is clear that the 1<sup>st</sup> Defendant made a mistake as to the identity and position of the land that was allocated to the Federal Housing Authority which is why the FHA did not border applying to be joined in this case save a rogue officer who admitted under cross examination that he was not summoned to appear and give evidence in this matter. In other words, the witness did not have the consent or instruction of the FHA to testify in Court on behalf of the 1<sup>st</sup> Defendant and it is clear that the FHA knows that the land in dispute does not belong to her and so is not interested in the matter before this Honourable Court.

Consequently, learned Counsel contended that from the records and documents tendered by the 1<sup>st</sup> Defendant, it is clear that he made several mistakes and missteps in trying to find and determine where the land allocated to him really falls on because the documents tendered by his witness clearly contradict themselves, as while it is trite that a Claimant must succeed on the strength of his own case and not on the weakness of the Defendant's case to prove his own case. It is clear from Exhibit 14 that the 1<sup>st</sup> Defendant developed a plot that was not allocated to him as the records of the Federal Housing Authority shows that the 1<sup>st</sup> Defendant was allocated a shop No. 15 but he went ahead to develop a shop No. 21 LS(B) which is a plot number different from the Plot CS21 referred to in Exhibit 17 which he is saying belongs to him and there is nothing before this Honourable Court establishing a nexus or link between Shop No. 15 or shop No. 21 LSB (B) and the so called Housing Unit (CS21) on the one hand said to be carved out of Plot 2514 allocated to FHA and the land in dispute allocated to the Claimant save the fact the 1<sup>st</sup> Defendant trespassed into Plot 4096 belonging to the claimant without authority.

Learned Counsel further contended that the 1<sup>st</sup> Defendant has also in paragraphs 4.6, 4.7, 4.8, 4.9 and 4.16 of their final Written Address made a heavy weather about the previous Statement of Defence and unadopted Witness Statement on Oath of the witness of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and the need of this Honourable Court to look at the documents in her Courts file which the learned Counsel submitted that while it is true that a Court can look at documents in her records in the resolution of dispute, the power to so do is circumscribed by laid down principles of our superior Courts and the first is that where there are two documents in the Court's file that state two contradictory positions, the Court cannot pick and choose as between both contradictory positions by same party which to believe as a person cannot approbate and reprobate at same time as the 1<sup>st</sup> Defendant has urged the Court to look at the earlier Statement of Defence and unadopted Witness Statement on Oath filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the struck out suit in finding that there is an admission that Plot CS 21 falls within Plot 2514 allocated to FHA by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as the 1<sup>st</sup> Defendant has tactfully not argued that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants also filed a defence and Witness Statement on Oath in this Counter Claim admitting in totality the case of the Claimant that Plot 4096 belongs to the Claimant and that same is different from Plot 2514 allocated to the 1<sup>st</sup> Defendant.

Moreso, the learned Counsel further submitted on this issue that it is trite that once there are two documents that tend to contradict themselves before a Court, the Court is duty bound to reject both documents as canceling themselves out and which cannot be relied upon in deciding the live issue between the parties in the present case and the second principle is that once an amendment has been made to a pleading, the earlier pleading cannot be looked at or relied on as an admission in a subsequent proceedings touching on the issues before the Court as it is trite that a Counter Claim is an independent claim from the original claim before the Court, as an amendment takes effect or relates back to the date the initial process was amended, filed and as such in the eyes of the law the document parties rely on and the Court looks at is the process accepted as the amended process and not that which was earlier filed and what is before the Court and which defined the issues between the parties is the latest Statement of Defence of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed consequential to the amended Counter Claim and the amended Statement of Defence of the Defendant. Counsel cited the cases of **ADOMBA & 3 ORS V ODIESE & 3 ORS VOL.3 S.C.J.E. (1989-1992); AGBALAKA V SAIBU & ORS (1988) LPELR-222 CSO; APC V ELEBEKE & ORS (2021) LPELR-5293 (SC) and FATUNDE VS FAN MILK PLC (2022) 18 NWLR (Pt.1852) 253 (SC).**

In another submission, learned Counsel stated that the Statement of Defence of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants dated the 5<sup>th</sup> of December, 2022 but filed on the 7<sup>th</sup> December, 2022 where the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in paragraphs 2, 3, 6 and 7 and in paragraphs 2, 3, 6 and 7 of their Witness Statement on Oath admitted the case of the Claimant.

Counsel further submitted that the cases of **ADALMA TRAINERS BUNKERING SERVICES V CBN; JIMOH VS MIN. FCT** and all the associated authorities cited by the 1<sup>st</sup> Defendant are inapplicable.

To this end, Counsel submitted that the law is that the tendering of a survey plan is one of the ways to determine the boundaries and identity of a land in dispute and Counsel refer the Court to Exhibit 5 the survey plan that shows clearly that Plot 4096 and Plot 2514 shares a common boundary with each other and the tendering of the survey plan to show that the Plot 2514 which the 1<sup>st</sup> Defendant is claiming was allocated to the Federal Housing Authority whom he allegedly derived his title from is different from Plot 4096 allocated by the 2<sup>nd</sup> Defendant to the Claimant, a land which was

obviously developed mistakenly by the 1<sup>st</sup> Defendant, is conclusive proof of the fact it seeks to prove as it is clear that the survey plan establishes the case of the Claimant and therefore does not need any oral evidence of anyone from the offices of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to establish or prove the facts contained therein. In this respect, reliance was placed on the cases of **AWOYOOLU V ARO (2006) VOL. 135 LRCN Pg. 749, PARAS A-F; OGEDENGBE V BALOGUN (2007) 9 NWLR (Pt.1039) 380; EMIRI V IMIEYEH (1999) 4 NWLR (Pt.599) 442; TANKO V ECHENDU (2011) 18 NWLR (Pt.1224) 253 and MAIGARI V MAILAFIYA (2011) 1 NWLR (Pt.1228) Pg. 379 at 394 PARAS D – E.**

Finally, on issue three, Counsel urged the Court to discountenance and reject 1<sup>st</sup> Defendant's prayer to violate rules of law, the law of evidence and procedure as argued by them in their final Written Addresses and resolve issue three in favour of the Claimant against the 1<sup>st</sup> Defendant.

On issue four which is whether the 1<sup>st</sup> Defendant to the Counter Claim can raise an issue as to the validity of the Counter Claimant's claim, he not being a party to whatever transaction executed between the 2<sup>nd</sup> Defendant to the Counter Claim and the Federal Housing Authority (FHA).

Counsel submitted that the 1<sup>st</sup> Defendant cannot raise an issue as to the validity of the Claimants assuming without conceding that there was even a grant by the 2<sup>nd</sup> Defendant to the Federal Housing Authority touching on the land in dispute as it is trite that the principle of privity of contract recognizes that only parties to a contract can maintain an action thereunder, by the doctrine, it is only a party to the contract in issue that can sue and be sued on it and it cannot in any form be enforced by or against a non-party even if the contract was made for the benefit of the party purports to give him the right to sue or make him liable upon it. Counsel cited the unreported case of **Appeal No. CA/A/287/2014 between Dr. JORDAN L.D. BAKO V FEDERAL CAPITAL DEVELOPMENT AUTHORITY & 3 ORS DELIVERED ON THE 31<sup>ST</sup> OF DECEMBER, 2020 AT PG. 12 PARA 2 and EBHOTA V PIPDC LTD (2005) 15 NWLR (Pt.948) 266.**

Moreso, learned Counsel submitted that based on the decision of the Court of Appeal in the appeal filed by the 1<sup>st</sup> Defendant against the ruling of this Honourable Court and the holding of HON JUSTICE SIR BIOBELE ABRAHAM GEORGEWILL, JCA listed in the unreported case of

CA/A/608/2021 between MALLAM RABIU MOHAMMED V FCDA & 2 ORS delivered on the 24<sup>th</sup> day of May, 2022 at page 29 paragraph 2, lines 6 to 15 that the 1<sup>st</sup> Defendant has no business in this matter as he is a meddlesome interloper who trespassed into land validly allocated to the Claimant as it is worthy of note that their Dw1 who testified in this matter admitted under cross-examination that he was not subpoenaed neither did he have the consent of his employers to testify for the 1<sup>st</sup> Defendant in this matter and the 1<sup>st</sup> Defendant tactfully refused to make the Federal Housing Authority a party in this matter because they know it would not help their case and that the Federal Housing Authority will clearly state that the land allocated to the present Claimant did not form part of the land allocated to them by the 2<sup>nd</sup> Defendant therein. Counsel placed reliance on the case of **OSOKOYA V ONUGEMO (2018) ALL FWLR (Pt.942) Pg. 424 at 437 PARAS C – D (CA)**.

Finally, on issue four, Counsel urged the Court to resolve this issue in favour of the Claimant against the 1<sup>st</sup> Defendant.

On the whole, Counsel urged the Court to hold that the Claimant has established through evidence that Plot 4096 and Plot 2514 area not one and the same plot having different etymology, rather they are two different plots allocated to different people. While the Claimant was allocated Plot 4096, the Federal Housing Authority was allocated Plot 2514 as it has also been established by evidence that both plots share a common boundary and that it has also been showed that the Claimant was in possession of Plot 4096 and that the 1<sup>st</sup> Defendant trespassed into Claimant's land on the mistaken belief that the land was allocated to the Federal Housing Authority.

In other words, Counsel urged the Court to respectfully hold that the Claimant has established its entitlement to the ownership of the land in dispute as the 1<sup>st</sup> Defendant is a meddlesome interloper and as well as trespasser who has no business or interest over the land and grant the claim of the Claimant in its entirety with substantial cost.

In further response, the 1<sup>st</sup> Defendant to the Counter Claim filed a reply to the Counter Claimant's final Written Address by responding to major issues raised in Counter Claimant's final Written Address.

## **ON THE VALIDITY OF THE COUNTER CLAIMANT'S OFFER OF RIGHT OF OCCUPANCY.**

Counsel submitted that the Counter Claimant in paragraphs 4.30 and 4.49 has made a very verbose vain argument trying to cover-up the apparent invalidity of his purported Offer of Right of Occupancy and the Counter Claimant has not derived the fact that there is no known person who signed the document "for the Minister" as he did not state the name of such person as the Counter Claimant has put up false position of law that names of signatories on documents are only required in respect of Court processes or that it applies only to legal practitioners.

Counsel further submitted that this argument by the Counter Claimant is false very unfortunate as signatories are marks by which the person making it has owned up the contents of that document and a signature is only identified by the name of the signatory and a signature without a name is non starter, it is invalid and incurably bad and of no moment or legal consequences whatsoever and the Counter Claimant's Counsel made all his long verbose argument on this issue but failed to cite one single authority either statutory or judicial where the Courts had ever validated a document without the name of the signatory. Counsel cited the cases of ***MAITUMBI V BARAYA (2017) 2 NWLR (Pt.1550) 347 (CA); TSALIBAWA V HABIBA (1991) 2 NWLR (Pt.7446) 480-481; EGBASE v ORIAREGHAN (1985) 2 NWLR (Pt.10) 884; AKINSAYA V FMFL (2010) LPELR-3687 (CA); SAUNDERS V ANBRALIA BUILDING SOCIETY (1971) AC 100, MAMMAN V BWACHA (2017) 1 NWLR (Pt.1547) 425 at 483 (CA) and OMORINBOLA II V MIL GOV. ONDO STATE (1995) 9 NWLR (Pt.418) 201 (CA).***

In another submission, Counsel stated that the Counter Claimant's strenuous introduction of due execution and forgery to cover up his apparent invalid document is of no moment as the issue before this Honourable Court is not that of forgery or due execution but that of none execution and the issue of due execution arises only when there is a dispute over whether a named signatory actually executed a document alleged, it is not when there is a no known person who executed a document and in the case of the Counter Claimant's Offer of Right of Occupancy, there is no person named who signed the document for the Minister. So it was not a case of due execution but that of no execution at all as the document was not signed by any known person and the case

against the Counter Claimant's Offer of a Right of Occupancy is not that of a dispute over signature or due execution. It is a case of a document not signed by a known person and therefore not executed at all as the presumption of due execution under Section 98(1)(b) of the Evidence Act arises where there is a dispute whether the signature of a named person alleged to have executed a document was his as that is not the case before this Honourable Court. In this respect, reliance was placed on the case of **AMADI V ORI SAKWE (2005) 7 NWLR (Pt.924) 385 (SC) RATIO 1 and ADELAJA V FANOIKI (1990) 2 NWLR (Pt.181) (SC) RATIO 5.**

Moreso, Counsel further argued that the argument of the Counter Claimant's Counsel that Exhibit 9 which is the letter written to Area Commander of Nigeria Police has validated hitherto invalid Offer of Right of Occupancy is groundless, the reason is simple as it is the Offer of Right of Occupancy that is the basis of the Counter Claimant's claim and not the letter and even the foundation of the claim has collapsed. Everything put on top it will follow suit as the Counter Claimant also argued that the 1<sup>st</sup> Counter Defendant has no right to dispute the authenticity of the document of title which he relies to claim land against the Defendant as it is the Counter Claimant who relies on the document to claim a right that has the onus of proving the validity and not the 1<sup>st</sup> Counter Defendant as once issues have been joined on the ownership of the land, the Counter Claimant has the duty to prove the authenticity of the document he relies as part of his duty to prove ownership and all the 1<sup>st</sup> Counter Defendant is saying is that the Counter Claimant's Offer of a Right of Occupancy was not signed by a person known to law as every document speaks for itself and the Offer of Right of Occupancy pleaded and tendered by the Counter Claimant speaks for itself and having not been signed by anybody known to law as can be seen on the face of the document itself neither oral evidence of any witness or the vain argument of the Counter Claimant's Counsel or even the purported letter written by Director of Land can add, or vary the content of that document which is the absence of a known signatory. Counsel cited the case of **YADIS (NIG) LTD V G.N. I. C LTD (2007) 14 NWLR (Pt.1055) 584 SC at 590-591 RATIO 4. (SC).**

#### **ON PLOT 2514 VIS-À-VIS LOCATION OF PLOT 4096.**

Counsel submitted that the Counter Claimant has alleged that the 1<sup>st</sup> Counter Defendant claim that Plot 4096 forms part of Plot 2514 at paragraph 0.46 of his final Address which Counsel to the Defendant stated



that this position is false and does not represent the pleadings of 1<sup>st</sup> Counter Defendant before this Honourable Court and the 1<sup>st</sup> Counter Defendant in paragraph 4 of his Amended Statement of Defence had flatly denied the existence of any Plot 4096 at the location of Plot 2514 or that any interest in such plot of land is residing with the Minister of FCT at the time it was purportedly granted to Counter Claimant and it is trite that both the parties and the Court are bound by the pleadings as the Counter Claimant cannot change the case of the 1<sup>st</sup> Counter Defendant and from his pleadings as well as submissions. The Counter Defendant is not denying the existence of Plot 2514 or the fact that it was allocated to Federal Housing Authority. His only claim is that Plot 4096 has boundary with Plot 2514 and that the 1<sup>st</sup> Counter Defendant's Plot CS21 falls on his Plot 4096 and not on Plot 2514 granted to FHA and the Counter Claimant tendered and relied on a site plan purportedly made by the Director of Surveying and Mapping and this same site plan was never signed by the said Director of Surveying and Mapping which makes it an unsigned document. Counsel cited the case of **OMORINBO LA II V MI GOV. ONDO STATE (supra)**.

Moreso, Counsel further submitted that the said site plan not having been signed by the maker, has no probative value and this Honourable Court cannot rely on same to determine the location of the Counter Claimant's non-existent Plot 4096 and the 1<sup>st</sup> Counter Defendant does not need to proof that this document is not signed as same is clear on the face of the document itself as neither the oral evidence of any witness, the argument of the Counter Claimant's Counsel can add, vary or subtract from the content of this site plan. In this respect, reliance was placed on the case of **OMEGA BANK (NIG) PLC V O.B.C LTD (2005) 8 NWLR (Pt.928) 547 at 556-557 (SC)**.

In another submission, Counsel stated that the allegation by the Counter Claimant that the 1<sup>st</sup> Defendant's Plot CS21 does not fall within Plot 2514 granted to FHA becomes groundless in the light of the letter written by the 3<sup>rd</sup> Counter Defendant to the FHA signed by one Safiya T. Umar is clear that the Counter Claimant's claim of a Plot 4096 at the location where the 1<sup>st</sup> Defendant's Plot CS21 is located is false and humbly urge this Honourable Court to so hold.

**ON WHO HAS THE RIGHT TO PROTECT PLOT CS 21 BETWEEN FHA AND 1<sup>ST</sup> COUNTER DEFENDANT**

Counsel submitted that Counter Claimant has argued in paragraphs 0.5, 12 – 0.5. 13 that it is actually the Federal Housing Authority and not 1<sup>st</sup> Counter Defendant that should protect Plot CS21 and concluded that FHA did not apply to be joined because they know the land does not belong to them is baseless because the law has always been that a person who has disposed of his interest in land cannot again sue to claim that. Counsel cited the case of **AMUDA V AJOBO (1995) 7 NWLR (Pt.406) 170 at 174 (CA) RATIO 6.**

Counsel further submitted that in the instant case, the documents before the Court shows that FHA allocated Plot CS21 out of their Plot 2514 granted them and by that conduct, FHA has disposed of her interest in Plot CS21 to the 1<sup>st</sup> Counter Defendant and FHA is not a proper party to any suit on Plot CS21 but can only be called as a witness as done by the 1<sup>st</sup> Counter Defendant. Counsel referred the Court to the case of **JINADU V ESUROMBI-ARO (2009) 9 NWLR (Pt.1148) 55 at 62 (SC) RATIO 6.**

Counsel urged this Honourable Court to ignore the vain argument of the Counter Claimant with suspicious unsigned title documents that is the FHA and not the 1<sup>st</sup> Counter Defendant that should sue or defend action to protect the land in dispute.

### **NEXUS BETWEEN PLOT CS21 AND SHOP NO. 21 LS(B)**

Counsel submitted that the argument of the Counter Claimant that there is nothing before the Court showing that there is a nexus between Shop No. LS 21(B) and Plot CS 21 is a clear misconception of facts and an attempt to mislead this Honourable Court as paragraphs 5(3-4) of the 1<sup>st</sup> Counter Defendant's Statement of Defence and paragraphs 5 – 8 of Witness Statement on Oath made it clear on how the 1<sup>st</sup> Counter Defendant's Plot came to become Plot CS21 due to changes in purpose of the land by FHA and these facts were never disputed or denied by the Counter Claimant in his reply or by any of the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants meaning they admitted them and after the 1<sup>st</sup> Counter Defendant's Plot was changed to CS21, he applied to 3<sup>rd</sup> Counter Defendant for building plan approval which upon investigations, the 3<sup>rd</sup> Counter Defendant Abuja Metropolitan Management Agency found that Plot CS21 fell within Plot 2514 granted to FHA and their letter to FHA by Safiya T. Umar as well as the building plan

approval of 9<sup>th</sup> January, 2017 which clearly stated that it was in favour of the 1<sup>st</sup> Counter Defendant is in respect of Plot CS21.

Moreso, Counsel submitted that the Counter Claimant was deliberately silent on these two documents i.e the letter written by 3<sup>rd</sup> Counter Defendant and building approval by the 3<sup>rd</sup> Defendant and his submissions in paragraph 0.4 is that the 1<sup>st</sup> Counter Defendant got approval four (4) years before allocation of the land is of no moment as the approval which empowered the 1<sup>st</sup> Counter Defendant to build on the land was granted to him by the 3<sup>rd</sup> Counter Defendant via the building approval of 9<sup>th</sup> January, 2014 and not that granted by FHA in 2011.

Furthermore, Counsel stated that the Counter Claimant's submission that the building approval granted to the 1<sup>st</sup> Counter Defendant by the 3<sup>rd</sup> Counter Defendant was done in error is of no moment as neither the 2<sup>nd</sup> nor the 3<sup>rd</sup> Counter Defendant had stated so and the Counter Claimant did not call any witness from either 2<sup>nd</sup> or 3<sup>rd</sup> Counter Defendants to prove that point and urge this Honourable Court to disregard that argument as well and presumes this correctness of that building plan approval being the act of a public officer.

### **ON PROOF OF OWNERSHIP OF LAND IN DISPUTE.**

Counsel submitted that the Counter Claimant has in paragraphs 0.4.6 – 0.4.12 stated that he has proved that he land in dispute which he describes as Plot 4096 and 1<sup>st</sup> Counter Defendant described as Plot CS21 out of FHA's Plot 2514 belongs to Counter Claimant and his claim of proof is principally on his Exhibit 6 (Offer of Right of Occupancy) and Exhibit 5 (His site plan) which the learned Counsel to the 1<sup>st</sup> Defendant stated are worthless pieces of paper and invalid for having not been signed by anybody known to law.

Counsel urged the Court to discountenance the baseless submission of Counter Claimant that he has proved ownership of the plot in dispute.

### **ON POSSESSION.**

Counsel submitted that the Counter Claimant's submission in paragraph 0.4.13 of his final Address that he pleaded and lead evidence to show that he exercised acts of possession on the disputed land by surveying and

burying beacon stones as well as putting trips of sand and gravels on the land which learned Counsel to the 1<sup>st</sup> Counter Defendant stated that these facts were stoutly challenged by the 1<sup>st</sup> Counter Defendant in his pleadings as the only evidence of claim of possession by the Counter Claimant was the same unsigned site plan (Exhibit 5) which has no evidential value being a document not signed by the maker and urge the Honourable Court to disregard same.

In another submission, learned Counsel stated that the Counter Claimant's allegation of trips of sand and gravels on the land is of no moment as there is no atom of evidence to support this fact such as who brought these trips of sand, which day and how many of these trips were brought as there was no body called by the Counter Claimant to testified that he brought trips of sand and gravels for the Counter Claimant and he did not state that he has applied and granted building approval to build on the land by the 3<sup>rd</sup> Counter Defendant and on what basis will be bringing sand and gravels on the land when he has not been given approval to build and Counsel there urge this Honourable Court to disregard the claim of trips of sand and gravels on the land as false.

Moreso, Counsel submitted that the 1<sup>st</sup> Counter Defendant in paragraph 8(5) of his Statement of Defence pleaded that immediately approval was given by the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants, he commenced building a one storey office building on the land which is at the decking level but this particular averment by the 1<sup>st</sup> Counter Defendant was never specifically challenged in his reply and there is nowhere in the Counter Claimant's reply to 1<sup>st</sup> Counter Defendant's defence where the Counter Claimant has a building on the land.

To this end, learned Counsel urged the Honourable Court to hold that the Counter Claimant having admitted the building of the 1<sup>st</sup> Counter Defendant on the land, the 1<sup>st</sup> Counter Defendant is therefore in effective possession of the land and dismiss the argument of the Counter Claimant that he was or has ever been in possession of the land.

In conclusion, Counsel urged this Honourable Court to hold that the 1<sup>st</sup> Counter Defendant has showed that he has proved a better title than the Counter Claimant in respect of the land in dispute as the two important documents (Offer of a Right of Occupancy and Site Plan) tendered by the Counter Claimant were never signed by anybody known to law and

therefore has no evidential value as the 1<sup>st</sup> Counter Defendant has showed through the letter written by the 3<sup>rd</sup> Defendant to FHA that the land in dispute falls within Plot 2514 granted to FHA by the Minister of the Federal Capital Territory in 1990 and as such dismiss the Counter Claim of the Counter Claimant with substantial cost.

I have carefully perused the amended Counter Claim and the reliefs sought therein. I have equally gone through the amended Counter Defendant's Statement of Defence to the Counter Claim as well as that of the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants including the Counter Claimant's reply to 1<sup>st</sup> Counter Defendant's defence to the Counter Claim. I have also evaluated the entire evidence adduced before the Court by the parties both oral and documentary in proof of their case. In the same vein, I have studied extensively the final Written Addresses of the parties.

Having done all these, it is my humble view that the issue that calls for determination in this suit is:-

***“Whether the Counter Claimant has proved his case against the Counter Defendants on the preponderance of evidence to be entitled to the reliefs sought.”***

Before I dwell on the issue for determination distilled above, I will first consider the arguments for and against the admissibility of the Exhibits tendered by the Counter Claimant which the 1<sup>st</sup> Counter Defendant's Counsel stated that they reserved their objection till the address stage on the day they were tendered during hearing on the 2<sup>nd</sup> day of February, 2023 arguing that they did not comply with Sections 89(e), (102(b)) and 104 of the Evidence Act, 2011.

However, the 1<sup>st</sup> Counter Defendant's Counsel's argument in his final Written Address is on Exhibit (5) survey plan and Exhibit (6) Offer of a Statutory Right of Occupancy.

It is the argument of the learned Counsel to the 1<sup>st</sup> Counter Defendant on Exhibit 6, Offer of Statutory Right of Occupancy that there is no known person in law who is identified as the person who made or signed this purported Offer of Statutory Right of Occupancy for the Minister as neither the Counter Claimant or even the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants offer any clue as to who signed the document submitted that the legal implication of

Section 94(1) is that for a signature to exist, it must be signed by an existing person known to law as in the instant case. That there is no person having same name as the maker of the Counter Claimant's purported Offer of Right of Occupancy.

However, the Counter Claimant's Counsel in his response stated inter alia that Section 93(1) of the Evidence Act 2011 relied upon by the 1<sup>st</sup> Counter Defendant has to do with proof of due execution of a document by either calling the maker or proving the identity of a document by calling the maker of the signature or handwriting on the document where same is a live issue before the Court.

In addition, Counsel stated that Sections 93(1) and 94(1) of the Evidence Act only applies where an allegation of forgery is raised or there is a dispute as to the signature or writing of a person which requires evidence being led to show that a person with that handwriting or signature exists but the need for proving due execution is dispensed with where the person against whom it is sought to be proved is a public officer whose duty it is to ensure due execution of the document, Counsel cited Section 98(1)(b) of the Evidence Act.

The learned Counsel further submitted that Exhibit 9 which was written by a public officer has dealt with Exhibit 6 as one duly executed in her response to an enquiry about the document. That Exhibit 9 has gone to confirm the due execution, authenticity and regularity of Exhibit 6. Counsel cited Section 168(1) of the Evidence Act which provides that when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. That by Exhibit 9 which is a letter signed by the Director Lands, FCT written to the Area Command Metro of the Nigeria Police force FCT Command confirming that Exhibit 6 from their records was allocated to the Counter Claimant and there is nothing in their records to show that there was a revocation or any transaction in respect of the land.

On the other hand, the learned Counsel to the 1<sup>st</sup> Counter Claimant responded in his reply and stated that the Counter Claimant has not denied the fact that there is no known person who signed the document "for the Minister" as he did not state the name of such person and has put up a very false position that names of signatories on documents are only

required in respect of Court processes or that it applies only to legal practitioners.

In further response, Counsel stated that the argument by the Counter Claimant's Counsel is false and very unfortunate and further stated that a signature without a name is a non-starter it is invalid, incurably bad and of no moment or legal consequence.

Moreso, Counsel responded that the Counter Claimant's strenuous introduction of due execution and forgery to cover up his apparent invalid document is of no moment as the issue before this Honourable Court is not that of forgery or due execution but that of non execution as the issue of due execution arises only when there is a dispute over whether a named signatory actually executed a document alleged. It is not when there is no known person who executed a document and presumption of due execution under Section 98(1)(b) of the Evidence Act arises.

That where there is a dispute whether the signature of a named person alleged to have executed a document was his, is not the case before this Honourable Court and the argument of the Counter Claimant's Counsel that Exhibit 9 which is the letter written to Area Command of Nigeria Police has validated the hitherto invalid Offer of Right of Statutory Occupancy is groundless as it is the Offer of Right of Occupancy that is the basis of the Counter Claimant's claim and not the letter.

Counsel further submitted that the Counter Claimant tendered and relied on a site plan purportedly made by the Director of Surveying and Mapping but this same site plan was never signed by the said Director of Surveying and Mapping which makes it an unsigned document having been signed by the maker who is not named has no probative value and that this Honourable Court cannot rely on same to determine the location of the Counter Claimants non-existent plot 4096. Counsel cited the case of **OMEGA BANK (NIG) PLC V O.B.C LTD (2005) 8 NWLR (Pt.928) 547 at 556-557 (SC)**.

However, the Counter Claimant supplied the Court with two additional authorities filed on the 2<sup>nd</sup> day of February, 2024 and served both the Court and the 1<sup>st</sup> to 3<sup>rd</sup> Counter Defendants on the same date.

It should be note that there are criteria which govern the admissibility of document in Court. This position of law was re-echoed by the Court of Appeal in the case of **CHEVRON (NIG) LTD V ADERIBIGBE (2012) 4 NWLR (Pt.1289) PP. 12-18, PARAS F – A PER JAURO J.C.A** that:

***“The three main criteria that governs the admissibility of a document in evidence are:***

- a. Is the document pleaded?***
- b. Is it relevant to the inquiry being tried by the Court?***
- c. Is it admissible in law?”***

I have taken a close look at the documents sought to be tendered by the Counter Claimant and find that the facts which the Claimant referred to were pleaded in paragraphs 7 and 8 of the amended Counter Claim. Also, it is my humble view that the said documents are relevant to the facts of the case.

Therefore, the question that follows is whether the said documents to wit: Exhibits 5, 6 are admissible in law?

The grouse of the 1<sup>st</sup> Counter Defendant’s Counsel is that Exhibit 6 Offer of Statutory Right of Occupancy was neither signed by the Minister nor any known person for Minister of the FCT. Rather what it contains is an inscription of signature of an unknown person for Minister Federal Capital Territory, contrary to Sections 93(1) and 94(1) of the Evidence Act. Let me reproduce the said Sections for ease of reference:

***“Section 93(1). If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that persons handwriting must be proved to be in his handwriting.”***

***“(Section 94(1). Evidence that a person exists having the same name, address, business or occupation as the maker of a document***



***purports to have, is admissible to show that such document was written or signed by that person.”***

At this juncture, the question that comes to mind is whether the said document falls under official acts to presume regularity, or whether it is an act of a public officer who is not bound to be called to prove the execution.

In this respect, let me refer to the provisions of Section 98(1)(b) and 168(1) of the Evidence Act which for ease of reference I shall reproduce same hereunder:-

***“Section 98(1)(b). A person seeking to prove the due execution of a document is not bound to call the party who executed the document or prove the handwriting of such party or of an attesting witness in any case where the person against whom the document is sought to proved***

***(b). Is a public officer bound by law to procure its due execution and he has dealt with it as a document dully executed.***

***Section 168(1). When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisite for its validity were complied with.”***

See also the case of ***MAMONU & ANOR V DIKAT & ORS (2019) LPELR-46560 (SC) PP. 61-61, PARAS C – E PER EJEMBI EKO J.S.C*** where it was held thus:

***“Equity follows the law, it takes as done that which ought to be done. Section 168(1) of the Evidence Act, 2011 provides that when official acts, as by the presiding officer as in the instant case, is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.”***

Similarly, it was held in the case of **CASH AFFAIRS FINANCE LTD V INLAND BANK (NIG) PLC (2000) NWLR (Pt.658) PP.579, PARAS E – H, 580 PARA F PER OBADINA J.C.A** that:

***“Section 150 of the Evidence Act is on presumption of regularity and Section 150(1) provides that when any judicial official act is shown to have done in a manner substantially regular. It is presumed that formal requisites for its validity were complied with. The presumption of regularity under section 150(1) of the Evidence Act is not irrebuttable presumption for any judicial or official act must be shown to have been done in a manner substantially regular in order to be covered by Section 150(1) of the Evidence Act.”***

In the light of the above, a careful study of Exhibit 6 Offer of Statutory Right of Occupancy as well as the judicial and statutory authorities cited and/or quoted above, will reveal that it is not in dispute that Exhibit 6 was not signed but it was signed without indicating the name of the person signing for the Minister of the Federal Capital Territory, Abuja.

However, a close look at Exhibit 6 will show that it was an official act of a public officer who signed on behalf of the Minister of FCT as such it is presumed regular.

Moreso, Exhibit 6 was issued by the 2<sup>nd</sup> Counter Defendant (Federal Capital Territory Development Authority) who is a public officer being a public department and therefore an artificial person bound by law to procure due execution and not bound to be called to prove due execution as in the instant case by virtue of Exhibit 9, letter signed by the Director Land, FCT written to the Area Command Metro Nigeria Police by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants confirming that the said Exhibit 6 was from their record. Equally confirming that it was allocated to the Claimant and there is nothing in their records to show that there was a revocation or any transaction which in my considered opinion the said Exhibit 6 is therefore genuine and signed by a person known to law. I so hold.

The objection to the admissibility of Exhibit 6 is overruled.

On admissibility of Exhibit 5 (Site Survey Plan) issued to the Counter Claimant by the 2<sup>nd</sup> Counter Defendant. The main argument by the 1<sup>st</sup> Counter Defendant is that Exhibit 5 is an unsigned document having no probative value.

It is a cardinal rule of evidence and of practice in civil cases as well as in criminal cases that documents which do not bear the signatures of their makers should attract little or no weight. An unsigned document is lacking in value and is a worthless paper. An instrument that is unsigned is inadmissible. This position was re-echoed by the Court of Appeal in the case of **DAVIDSON & ORS V INEC (2021) LEPLR -52805 (CA) PP. 50-50 PARAS C – E PER YARGATA BYENCHIT NIMPAR J.C.A** where it was held thus:-

***“It is trite generally that an unsigned document is worthless. A document which is not signed does not have any efficacy in law. As held in the cases examined, the document is worthless and a worthless document cannot be efficacious.”***

However, as stated above, that unsigned document is inadmissible and does not have any probative value, but where there is evidence on record disclosing the authorship of the unsigned document by a party showing that a document given to him or handed over by him was unsigned, then such a document is admissible. In this respect, I commend the additional authority supplied by the Counter Claimant on the 29<sup>th</sup> day of February, 2024 **BABA V YAHUZA (2023) 11 NWLR (Pt.1895) P. 283, PARAS B – H PER TIJJANI ABUBAKAR J.S.C** where it was held thus:-

***“Unsigned documents command no judicial validity and have no evidential or probative value. However, it is not in every circumstance that an unsigned document will be held to be worthless or inadmissible. The legal requirement of signature on a document is to determine the document’s origin and authenticity regarding its maker. Where certain situations exist, an unsigned document could be admissible where there is evidence on record disclosing the authorship of the document. If the pleading or deposition of a party shows that a document given to him or handed over by him was unsigned, then such an unsigned document is admissible in proof of what is alleged by the party.”***

In the light of the above, I have extensively studied Exhibit 5 (Site Survey Plan) and there is nowhere it was signed by the Director Surveying and Mapping.

However, a close look at Exhibit 9, (a letter written by Director of Lands to Area Commander Metro). In response to the letter written to the Director of Land investigating activities of trespass in Plot 4096 Zone A06 Maitama, the 2<sup>nd</sup> Defendant confirmed the ownership of the said Exhibit 5 particularly in paragraph 4 of Exhibit 9 which for clarity is hereby reproduced hereunder.

***“We also confirm to have copies of documents attached as Annexure A in our database. Attached is the certified true copy of the Offer of Statutory Right of Occupancy and other documents in our database for your further necessary action please.”***

A careful study of the above quoted paragraph clearly reveals that Exhibit 5 forms part of the other documents in the database of the 2<sup>nd</sup> Counter Defendant as it is trite law that words in a document are construed in their ordinary meaning, when the language is not only plain but admits one meaning. The task of interpretation is negligible. In other words, words in a document are also to be construed not only in their ordinary meaning but according to the meaning of the words as applied to the subject matter with regard to which they are used. See **SWANTA V AYA (1991) 2 NWLR (Pt.177) P.19 PARA A.**

It is therefore my humble view that Exhibit 5 even though not signed is admissible as it is authored by the 2<sup>nd</sup> Counter Defendant by virtue of Exhibit 9. I so hold.

In view of the above analysis, the said Exhibits 5 and 6 were rightly admitted by the Court as they have passed the admissibility test. I so hold.

Accordingly, the objection to the admissibility of Exhibits 5 and 6 is hereby overruled.

Having cleared the air on admissibility of Exhibits 5 and 6, I will now proceed to consider the issue for determination which is ***“whether the Counter Claimant has proved his case against the Counter***

***Defendants on the preponderance of evidence to be entitled to the reliefs sought.”***

Before I dwell on the issue for determination, it is germane to state that it is the case of the Counter Claimant briefly as distilled from the Amended Counter Claim that he applied to the 2<sup>nd</sup> Defendant to the Counter Claim for allocation of a piece of land where he planned to build a residential and retirement home for himself and his family before his retirement from the public service and was given a document acknowledging receipt of a copy of the application made by the Counter Claimant dated the 18<sup>th</sup> April, 2007.

The Counter Claimant stated that after the 2<sup>nd</sup> Defendant to the Counter Claim by an Offer of Statutory Right of Occupancy, letter with Right of Occupancy file number DT21765 dated the 10<sup>th</sup> of May, 2007 vested interest in all that plot of land referred to as Plot No. 4096 with an area of approximately 351.00sqm in Cadastral Zone A06 of Maitama, Abuja on the Counter Claimant herein and after he was allocated Plot 4096 in Cadastral Zone A06 of Maitama by the Minister of the Federal Capital Territory on the 10<sup>th</sup> of May, 2007. The officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants surveyed Plot 4096 in Cadastral Zone A06, Maitama, allocated to him and buried with ***beacon stones numbers PB 3110, PB3109, PB99787, PB 99788 and PB99786.***

The Counter Claimant further states that he was served with the Statutory Right of Occupancy Bill and a demand for Ground Rent after Plot 4096 was allocated to him for payment of the Ground Rent and fees on the property which the Counter Claimant states that he paid the sum of ***N3, 242, 965.63 (Three Million, Two Hundred and Forty Two Thousand, Nine Hundred and Sixty Five Naira, Sixty -Three Kobo)*** as C-of-O, R-of-O and all fees in respect of Plot 4096 in Cadastral Zone A06, and he also paid the sum of ***N170, 658.75 (One Hundred and Seventy Thousand, Six Hundred and Fifty Eight Naira, Seventy Five Kobo)*** as ground rent.

That the Counter Claimant avers that he put three trucks of sand on the Plot and two trucks of gravel preparatory to putting up a foundation after he applied for his building plan approval from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

That Plot No. 4096 Cadastral Zone A06 of Maitama belonging to the Counter Claimant which shares a common boundary with the fence of the

property allocated to the Federal Housing Authority by the 2<sup>nd</sup> Defendant to the Counter Claim has at all material times been in possession of the Counter Claimant and at the time of the grant there was no prior title over the bare piece of land at the material time before the grant to Counter Claimant. Interest in the land was still in the 2<sup>nd</sup> Defendant to Counter Claim and not in anyone else.

The Counter Claimant avers that when he was ready to develop his property, to his consternation found that the 1<sup>st</sup> Defendant to the Counter Claim has trespassed into his land. And that at the time the 1<sup>st</sup> Defendant to the Counter Claim trespassed into his land, he was not known to the Counter Claimant and did not have an interest in the land.

That the 1<sup>st</sup> Defendant to the Counter Claim was not known to the Counter Claimant save that he was identified as the man who trespassed on and built on the Counter Claimant's plot of land known as Plot 4096 Cadastral Zone A06 Maitama after the Police was invited to investigate the persons who entered the Counter Claimant's land and carried some of his building materials and he immediately proceeded to the Maitama Police Station to lay a direct criminal complaint of criminal trespass on his Plot Number 4096 Cadastral Zone A06 Maitama and also followed up his complaint at the Police with another complaint to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to the Counter Claim. The Counter Claimant decided to lay the criminal complaint to the Police because his property had been trespassed with including materials on the site.

The Counter Claimant further avers that the Police began investigations and it was then that the workers on Counter Claimant's Plot 4096 informed the Police that it was the 1<sup>st</sup> Defendant to the Counter Claim that led them into the property and the Police immediately sent out an invitation to the 1<sup>st</sup> Defendant to the Counter Claim through the workers on the site but he refused to appear to explain his action of trespassing into the Counter Claimant's property which the Police wrote to the 2<sup>nd</sup> Defendant inquiring about the status of Plot 4096 on the 9<sup>th</sup> March, 2018 and the 2<sup>nd</sup> Defendant replied the letter dated 9<sup>th</sup> of March, 2018. On the 16<sup>th</sup> of April, 2018, it confirmed from her records that the Counter Claimant was the rightful allottee of Plot 4096.

The Counter Claimant states that he submitted his title documents and other relevant documents touching on the land to the Police who wrote the

2<sup>nd</sup> Defendant to certify that the documents originated from her and that the property belonged to the Counter Claimant.

The Counter Claimant avers that the 1<sup>st</sup> Defendant in spite of being asked could not produce any valid document of title to Plot 4096 and the Counter Claimant found in the course of investigations by the Police that the 1<sup>st</sup> Defendant to the Counter Claim had applied to the 2<sup>nd</sup> Defendant to the Counter Claim for building approval over Plot 4096 belonging to the Counter Claimant which approval was erroneously given by the 2<sup>nd</sup> Defendant and when the 2<sup>nd</sup> Defendant to the Counter Claim found out that she erroneously approved the building plan of the 1<sup>st</sup> Defendant to the Counter Claim over Plot 4096 Cadastral Zone A06 Maitama, they immediately wrote the 1<sup>st</sup> Defendant to the Counter Claim, withdrawing the approval they gave him.

Counter Claimant states that Plot 4096 Cadastral Zone A06 Maitama does not belong to the 1<sup>st</sup> Defendant to the Counter Claim as the 1<sup>st</sup> Defendant to the Counter Claim does not have any title to the property.

Having briefly pointed out the case of the Counter Claimant, it is trite law that the burden of proof lies on the party who asserts. To put it differently, he who asserts must prove with credible and admissible evidence. This position of law was encapsulated in Section 131(1) of the Evidence Act which provides thus:-

***“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, shall prove that those facts exist.”***

See also the case of ***DEMATIC (NIG) LTD V UTUK & ANOR (2022) LPELR-56878 (SC) PP. 35-35, PARAS B – D PER ADAMU JAURO J.S.C*** where it was held thus:-

***“The law is settled that he who asserts a fact must prove the existence of that fact, otherwise he would not be entitled to the judgment of the Court. The burden of proof lies on that person who would fail if no evidence at all were given on either side.”***

Similarly, it was held in the case of **SHARING CROSS EDUCATIONAL SERVICES LTD V UMARU ADAMU ENTERPRISES (2020) LPELR-49567 (SC) PP. 7-8, PARAS F – A PER EJEMBI EKO J.S.C** 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 empirical facts exists.”***

From the totality of testimony of both Pw1, Dw1 and Dw2, the documentary evidences tendered, as well as the pleadings filed in this Counter Claim, it can be deduced that the bone of contention in this suit is that Plot 4096 was allocated to the Counter Claimant by the 2<sup>nd</sup> Counter Defendant vide an Offer of Statutory Right of Occupancy letter with Right of Occupancy file Number DT21765 dated the 10<sup>th</sup> of May, 2007 with an area of approximately 351.00sqm in Cadastral Zone A06 of Maitama which the Counter Claimant states that it shares a common boundary with fence of the property allocated to the Federal Housing Authority by the 2<sup>nd</sup> Counter Defendant vide a letter referred MFCT/LA/1991 by a Right of Occupancy over Plots 2514-2517, 2519, 2520 and 2148-2150 within Maitama District, which the Federal Housing Authority accepted the Offer of Grant of Occupancy within FCT on the 15<sup>th</sup> November, 1991.

Moreso, the 1<sup>st</sup> Counter Defendant derived his title from Federal Housing Authority after applying to them for building corner shops wherein he was initially allocated No. 15 but later changed to utility Shop 21 out of Plot 2514 allocated to FHA by the Honourable Minister of FCT by letters of allocation referenced FHA/LEM/33 dated September, 1993 and 21<sup>st</sup> August 2014 but later again FHA changed the purpose of the plots it allocated to individuals including the 1<sup>st</sup> Counter Defendant from Corner shops to Housing Unit and the 1<sup>st</sup> Counter Defendant's plot was changed from utility shop 21 to Housing Unit CS21.

However, in the instant case, the main dispute is that Plot 4096 Cadastral Zone A06 Maitama was at all material time before grant to the Counter Claimant residing with Minister of the Federal Capital Territory and does not form part of Plots 2514-2517, 2519, 2520 and 2148-2180 allegedly allocated to the Federal Housing Authority particularly Plot 2514 in which CS21 was carved out of, but only shares a common boundary with the fence of the property allocated to the Federal Housing Authority.



It is trite that a Counter Claim is a claim for relief asserted against an opposing party after an original claim has been made, that is a Defendant's claim in opposition to or as set off against this Plaintiffs claim. In other words, a Counter Claim is a claim by a Defendant against the Plaintiff in the same proceedings. It is regarded as an independent and separate action in which the Defendant/Counter Claimant is in the opposition of the Plaintiff and therefore has the burden of proving the Counter Claim to be entitled to judgment thereon. See **MAOBISON INTER-LINK ASSOCAITED LTD V U.T.C. NIGERIA PLC (2013) LPELR-20335 (CA) PP. 12-12, PARAS B – D.**

Moreso, it is an elementary principle of law that in an action for declaration of title to land that where a party seeks declaratory relief, he must succeed on the strength of his case and not on the weakness of the defence if any, in other words, a declaratory relief must be proved to the satisfaction of the Court notwithstanding default of the defence or admission in Defendants pleading. See **OKOYE & 2 ORS V NWANKWO (2014) 15 NWLR (Pt.1429) and DUMEZ NIG LTD V NWAKHOBA (2008) 8 NWLR (Pt.1119) 361.**

In an action for declaration of title to land, the law has long been settled that a Clamant may rely on any of the five methods of proving title. This position of law was more elaborated by the Supreme Court in the case of **OSIDELE & ORS V SOKUNBI (2012) LPELR-9278 (SC) PP. 19-20 PARAS D – B PER IBRAHIM TANKO MUHAMMAD J.S.C** where it was held that:-

***“It is trite that in a claim of title to land, the Plaintiff can succeed if he establishes his claim through any one of the following five (5) ways to wit:***

- (1). By traditional evidence***
- (2). By production of documents of title***
- (3). By acts of ownership extending over a sufficient length of time which acts are numerous and positive enough to warrant inference that the person is the true owner***
- (4). By acts of long possession and enjoyment of land***
- (5). By proof of possession of connected and adjacent land in circumstances rendering it probative that the owner of***

***such connected or adjacent land would in addition be the owner of the land in dispute.”***

In the instant case, the Counter Claimant who testified through his representative ARONOKHALE PATRICK (PW1) relies on the second method of proving his title by producing title documents during his evidence in chief in which he tendered in evidence the following documents as follows:-

- (1). An acknowledged copy of application for Grant of Statutory Right of Occupancy dated 18<sup>th</sup> April, 2007 marked as Exhibit 2.
- (2). A Statutory Right of Occupancy Bill dated 4<sup>th</sup> May, 2017 marked as Exhibit 3.
- (3). Demand for Grand Rent dated 4<sup>th</sup> May, 2017 marked as Exhibit 4.
- (4). A Survey Plan marked as Exhibit 5.
- (5). An Offer of Statutory Right of Occupancy marked as Exhibit 6.
- (6). Two Revenue Collectors Receipts dated 17<sup>th</sup> May 2017 and 30<sup>th</sup> May, 2017 marked as Exhibit 7 and 8 respectively.
- (7). A letter addressed to the Area Commander Metro, the Nigeria Police, FCT Command dated 16<sup>th</sup> April, 2018 marked as Exhibit 9.

In the instant case, Pw1 was asked under cross examination inter alia thus:-

***Question: You told this Court you have the consent of the Counter Claimant to testify today is that correct?***

***Answer: Yes.***

***Question: So do you have a written document to that effect?***

***Answer: No.***

**Question: It is also correct that Plot 4096, you don't know its location?**

**Answer: I know the location.**

**Question: You told the Court that Plot CS21 is the same with Plot 4096, is that correct?**

**Answer: I never said so.**

**Question: Please read your paragraphs 4 and 17 of your deposition dated 25<sup>th</sup> February, 2022, so Plot CS21 which is the subject matter of the dispute before the Court is the same one you were shocked you found someone developing.**

**Answer: 4096 is the location of that plot. The Plot under contention.**

**Question: Plot 4096 is it your plot?**

**Answer: It belongs to the person I am representing Henry Ejenake. So it is not my plot.**

**Question: You told this Court that 4096 shares fence with FHA?**

**Answer: Yes.**

**Question: Please tell the Court when the offer was made?**

**Answer: 10<sup>th</sup> May, 2007.**

**Question: When did you pay for this offer?**

**Answer: We paid for C of O not Offer and made payment for grant rent.**

**Question: The payment of N3, 242, 965.63 is for which purpose?**

**Answer: It is for the Certificate of Occupancy payment for Plot 4096. It is for the issuance of Right of Occupancy for the Plot.**

Pw1 was further cross-examined by the Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants inter alia thus:

**Question: Exhibit 9 was sent pursuant to a letter written by the Police?**

**Answer: Yes.**

**Question: You are asking the Court to direct the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to demolish the building on the land?**

**Answer: Yes.**

**Question: To your knowledge was there any approval given before development on the land?**

**Answer: We don't know.**

**Question: What is the stage of the development as at today?**

**Answer: It is on decking level.**

Furthermore, a careful examination of the Exhibits tendered particularly Exhibits 2, 5, 6 and 9 will show that Counter Claimant made an application for grant of Statutory Right of Occupancy on 17<sup>th</sup> day of April, 2007 wherein he was given Exhibit 2 that is the acknowledgment copy of application for grant, whereupon on the 10<sup>th</sup> day of May, 2007 he was given Exhibit 6 an Offer of Statutory Right of Occupancy with file DT21765 in respect of Plot 4096 with an area of approximately 351.00sqm in Cadastral Zone A06 in Maitama and he was issued with Exhibit 5 Survey Plan in respect of Plot 4096, Cadastral Zone A06 in Maitama by AGIS.

Moreso, in view of the complaint made to the Police by the Counter Claimant over trespass to his land Plot 4096, Cadastral Zone A06 in Maitama, a letter was written to the 2<sup>nd</sup> Counter Defendant by the Police requesting information over Plot 4096, Cadastral Zone A06 in Maitama in order to aid their investigation which the 2<sup>nd</sup> Counter Defendant responded by virtue of Exhibit 9, a letter addressed to the Area Commander Metro of the Nigeria Police FCT Command on 16<sup>th</sup> April, 2018 where it confirmed

from her records that the Counter Claimant is the rightful allottee of Plot 4096, Cadastral Zone A06 in Maitama.

At this juncture, the question that comes to mind is whether Exhibit 5 (Surveying Plan) is accurate enough with salient features required of a survey to establish the location, square metres in tandem with their pleading and boundaries of the main contention of the instant suit that Plot 4096, Cadastral Zone A06 in Maitama was at all material time before grant to the Counter Claimant residing with the Minister of the Federal Capital Territory and does not form part of Plots 2514-2517, 2519, 2520 and 2148-2180 allegedly allocated to the Federal Housing Authority particularly Plot 2514 which CS21 was carved out from but only shares a common boundary with the fence of the property allocated to the Federal Housing Authority.

It is settled law that the easiest way of showing the specific area of land being claimed by a party is to file a survey plan properly oriented, drawn to scale and accurate, a plan reflecting the boundary features. This position of law was more elaborated by the Court of Appeal in the case of **ZUBAIRU V JOSEPH & ORS (2015) LPELR- 4075 (CA) PP.46-47, PARAS A – A PER HABEEB ADEWALE OLUMUYIWA ABIRU, J.C.A** that:

***“It is trite law that where a party relies on a survey plan, the law is that the party must show that the plan corresponds with the land to which he lays claim. It may not be enough for a party simply to file or tender a plan and rest content that the boundaries have been defined when there is nothing in the pleading and evidence against which to test the boundaries and even as well as the location and features of the said land. Where the description of land in dispute contradicts a survey plan this will defeat a Claimant’s claim in an action for declaration of title. A plan is supposed to be a mirror or picture of the evidence led by a party.”***

Similarly, it was held in the case of **GONIMI V BOLORI (2021) LPELR- 55155 (CA) PP. 24 -27 PARAS D –C PER EBIOWEI TOBI J.C.A** that:-

***“For any party claiming title to land to succeed in his claim, it is the requirement of the law that he must lead credible evidence***

***as to the identity of the land. This is to say the land must be ascertainable. The description of the land must be such that a survey following the description will be able to draw a survey plan of the land. In doing that, it will be necessary to state the size, the features, dimension and the boundary neighbours. This is essential, so that the Court will know the land which its Order will cover. If the land is not ascertainable, the Court cannot grant the prayer for declaration of title. A Plaintiff failing to prove (how much more satisfactorily, the boundaries of the land he asserts to be in dispute (as in the instant case leading to this appeal) and also, if a Plaintiff did not properly and satisfactorily describe the land in dispute and if the description contradicts the plan, he fails in the declaration of title that he seeks. This is also because an inaccurate plan should and will defeat a Plaintiff's claim."***

Let me highlight Exhibit 5 (the survey plan)

LAND GRANTED TO HENRY ONORIODE EJENAKE  
 FILE NO: DT 21765  
 DISTRICT: MAITAMA  
 CADASTRAL ZONE: A06  
 PLOT NO: 4096

DIRECTOR OF SURVEYING AND MAPPING



SCALE: 1:1000

SCHEDULE: AS DESCRIBED IN GRAPHICS ABOVE

BEACON No.		DIST	BEARING
FROM PB3109	TO PB3110	= 14.25m AT	36° 54'
FROM PB3110	TO PB99786	= 10.96m AT	33° 25'
FROM PB99786	TO PB99788	= 15.73m AT	127° 15'

NOTE:

FULL BEACON NUMBER FCT A06 PB 3109  
 COORDINATES OF PB 3109  
 N. 1,04,837.16  
 E. 331,926.28  
 COORDINATE SYSTEM UTM ZONE 32N

CADASTRAL MAP 1:1000

---	334/1002/NW2
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**CERTIFIED TRUE COPY**  
 INVESTIGATION  
 SURVEYED BY: FCDA Land Surveyors Jan 2005  
 Department of Land Administration  
 FCT Land Registry  
 PREPARED BY: Abuja Geographic Information Systems 16th August 2017

FOR DEEDS REGISTRAR  
 [Signature]  
 [Signature]  
 [Signature]

Having highlighted Exhibit 5 (the survey plan) it is clearly shown from what was pleaded in paragraphs 7 and 8 of the amended Counter Claim as well as the contents of the survey plan to some extent, satisfy some of the features of a survey plan, the name on the Counter Claim and survey plan tallies (Henry Onoriode Ejenake) file number tallies (DT 21765); district, Cadastral Zone, Plot number tallies (Plot 4096, Cadastral Zone A06 Maitama) the beacon stones numbers also tallies (PB3110, PB3209, PB99787, and PB 99786) it was also shown to be sharing boundaries with Plot 2514 from which CS21 was carved out.

Moreso, it is important to note that there is a discrepancy on the square metre pleaded in paragraph 7 of the Amended Counter Claim and the one indicated on Exhibit 5 (survey plan), in paragraph 7, the Counter Claimant is claiming the square metre to be an area of approximately 351.00 sqm while on Exhibit 5 (survey plan) the square metre is 401.55m. The question that must therefore be asked is from what area in particular has the extra square metre (particularly shown in Exhibit 5) upon which this suit accrued By the arithmetical calculation, it means that the area of land which the Counter Claimant is claiming in this suit extends 351.00 sqm beyond that upon which he is claiming which is evident based on Exhibit 5.

In my humble view this is fatal to the case of the Counter Claimant. I so hold.

Furthermore, it is trite that evidence which is at variance with the pleading goes to no issue. In the instant case by virtue of Exhibit 5 (survey plan) used in showing the specific area of the land including the boundaries and square metre is at variance with the facts pleaded in paragraphs 7 and 8 of the Amended Counter Claim which for ease of reference I shall reproduced same hereunder.

Paragraph 7 reads thus:

***“That after 2<sup>nd</sup> Defendant o the Counter Claim by an Offer of Statutory Right of Occupancy yet with Right of Occupancy filed number DT21765 dated the 10<sup>th</sup> of May, 2007 vested interest in all that Plot of land referred to as Plot No. 4096 with an area of approximately 351.00 sqm in Cadastral Zone A06 of Maitama, Abuja on the Counter Claimant herein. Counter Claimant pleads the Offer of Statutory Right of Occupancy dated 10<sup>th</sup> May, 2007.”***



Paragraph 8 read thus:

***“Counter Claimant states that after he was allocated Plot 4096 in Cadastral Zone A06 Maitama by the Minister of the Federal Capital Territory on the 10<sup>th</sup> of May, 2007 that officers of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants surveyed plot 4096 in Cadastral Zone A06, Maitama, allocated to him and buried beacon stones numbers PB3110, PB3209, PB99787, and PB 99786. Counter Claimant pleads the survey plan and puts the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on notice to produce the original.”***

In the light of the above, facts pleaded and evidence led particularly Exhibit 6 (Offer of Statutory Right of Occupancy) reveal that the said Exhibit 6 is at variance with the facts pleaded as the square metres on Exhibit 6 is reading 351.00sqm while on Exhibit 5 (survey plan) the square metre is reading 401.55sqm.

Therefore, by virtue of Exhibit 5 (survey plan) facts pleaded in paragraphs 7 and 8 of the Amended Counter Claim are at variance with the evidence lead as Exhibit 5 is reading 401.55M<sup>2</sup> used in drawing the square metres, boundaries of the land in dispute. While paragraph 7 quoted above and Exhibit 5 (Offer of Statutory Right of Occupancy) is reading 351.00 sqm which it is my considered opinion that Exhibit 5 (survey plan) is at variance with the facts pleaded and does not support the claim of the Counter Claimant deemed abandoned and thus inadmissible. I so hold.

On this note see the case of ***STATOIL NIGERIA LTD V INDUCON NIGERIA LTD & ANOR (2021) 7 NWLR (PART 1774) 1 AT 101 PER AGIM JSC*** that:-

***“Issues are joined in the pleadings and not on the evidence. Any evidence that is at variance with the issues joined in the pleading goes to no issue and is inadmissible.”***

Similarly, it was held in the case of ***ADDY V UNIMAID (2022) LPELR-57186 (CA) PP. 53-55, PARAS F – E, PER PETER OLABISI IGE JCA*** that:-

***“The document Exhibit K1 relied upon by the Appellant does not support his claim for \$6000 USD which he failed to explain how***

***the figure came about as rightly found by the lower Court. His claim to the sum of \$600 USD is at variance with his pleadings. Evidence which is at variance with pleadings goes to no issue and shall be rejected and if admitted shall be expunged.”***

It is important at this juncture to consider the case of the 1<sup>st</sup> Counter Defendant. The 1<sup>st</sup> Counter Defendant avers in paragraphs 4, 5(1), (2), (3), (4), (6), 8(1), (2), (3), (4), (6), (7), (12), (13) and (14) reproduced hereunder for ease of reference:

Paragraph 4 read thus:-

***“1<sup>st</sup> Counter Defendant flatly denies paragraphs 7, 8, 9, 10 and 11 of the Counter Claimant’s Statement of Claim and put same to his strictest proof of thereof. 1<sup>st</sup> Counter Defendant avers that there was never any vacant land known as Plot 4096 Cadastral Zone A06 or with any other description whatsoever at the place where the land in dispute is situated which interest is residing with the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants or even the Minister of FCT as at the time the so called Right of Occupancy was allegedly granted to the Counter Claimant in 2007 as such interest was already residing in the 1<sup>st</sup> Counter Defendant before then.”***

Paragraph 5(1) read thus:

***“In further response to Counter Claimant’s paragraphs 7, 8, 9, 10 and 11 of his Statement of Claim, the 1<sup>st</sup> Counter Defendant avers as follows:***

- (1). The Minister of Federal Capital Territory via a letter referenced MFCT/LA/90/MISC-6608/20 dated the 7<sup>th</sup> November, 1991 granted a Right of Occupancy to Federal Housing Authority over Plots 2514-2517, 2519, 2520 and 2148 - 2150 within Maitama District. The said grant was also accepted via letter by the Federal Housing Authority herein referred to as FHA in this suit dated the 15<sup>th</sup> November, 1991. 1<sup>st</sup> Counter Defendant hereby pleads and shall rely on the following:-***

- (a). **Letter referenced MFCT/LA/90/MISC-6580/20 dated 7<sup>th</sup> November, 1991.**
- (b). **Acceptance of Offer of Grant of Occupancy within Federal Capita Territory Abuja dated 15<sup>th</sup> November, 1991.**
- (c). **Paragraphs 2, 5(a) 5(c), 9 and 10 of the 1<sup>st</sup> Defendant's Statement of Defence filed before this Honourable Court on 17<sup>th</sup> day of March, 2020 by the present Counter Defendant.**

**Notice is hereby given to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to produce their own copies of the three (3) aforementioned documents."**

Paragraph 5(2) read thus:

**"Federal Housing Authority commenced the development of the entire land by first surveying it and producing a site plan for same and divided them into smaller plots of land for housing units and utility shops and subsequently allocating same to individuals who made application in that respect for the building of Corner shops. A copy of the site plan is pleaded and shall be relied upon at the hearing of this suit."**

Paragraph 5(3) read thus:-

**"Based on his application, the FHA initially allocated utility plot no. 15 to the 1<sup>st</sup> Counter Defendant but later changed his allocation to utility Shop 21 out of Plot 2514 allocated to FHA by the Honourable Minister of Federal Capital Territory. Copies of the letters of allocation referred FHA/LEM/33 dated 28<sup>th</sup> September, 1993 and 21<sup>st</sup> August, 2014 are hereby pleaded and shall be relied upon at the trial."**

Paragraph 5(4) read thus:

**"FHA later changed the purpose of the plots it allocated to individuals including the 1<sup>st</sup> Counter Defendant from Corner Shops to Housing Units and 1<sup>st</sup> Counter Defendant's plot was**

***changed from utility Shop 21 to Housing Unit CS21 and a site plan was produced for him. A copy of the site plan is hereby pleaded and shall be relied upon at the hearing of this suit.”***

Paragraph 6 read thus:

***“The 1<sup>st</sup> Counter Defendant further avers that there was never anytime the Counter Claimant was ever allocated or granted plot 4096 or any plot of whatsoever description at the site of the 1<sup>st</sup> Counter Defendant land as the Right of Occupancy in the land in question belongs to the 1<sup>st</sup> Counter Defendant via the FHA as at the date Counter Claimant alleged it was granted to him. The 1<sup>st</sup> Counter Defendant avers that the said Offer of Statutory Right of Occupancy dated the 10<sup>th</sup> May, 2007 and the survey plan pleaded by the Counter Claimant are dubious, illusory and an imaginative fabrication of the Counter Claimant as none of them was ever signed by any person known to law.”***

Paragraph 8 read thus:

***“1<sup>st</sup> Counter Defendant in further response to paragraphs 12 and 13 of Counter Claimant’s Statement of Claim further avers as follows:***

***(1). That he later also applied for building approval to FHA and the application was approved via a letter referenced FHA/ABJ/EST/MA/2010/4 dated the 16<sup>th</sup> August, 2011. A copy of the letter is hereby pleaded and shall be relied upon at the trial.”***

Paragraph 8(2) read thus:

***“He also applied to the 3<sup>rd</sup> Counter Defendant for a building plan and after granting his building approval, 3<sup>rd</sup> Counter Defendant wrote to the FHA informing FHA that the 3<sup>rd</sup> Counter Defendant was granted building approval to the 1<sup>st</sup> Counter Defendant on FHA Plot CS21 which they admitted fell within Plot 2514. 3<sup>rd</sup> Counter Defendant requested information on Plot 2514 from FHA. Copy of the letter referenced FCDA/DC/BP/PHS11/11198***

***signed by one Safiya T. Umar is pleaded. 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants are hereby given notice to produce their own.”***

Paragraph 8(3) read thus:

***“Federal Housing Authority replied to the 3<sup>rd</sup> Counter Defendant in paragraph 8(2) above via a letter referenced FHA/BD/ES/001 dated 27<sup>th</sup> November, 2017 and attached all the documents requested by the 2<sup>nd</sup> Defendant. A copy of the reply is hereby pleaded and shall be relied upon at the hearing of this suit. 2<sup>nd</sup> Defendant is hereby given notice to produce original copy in her custody.”***

Paragraph 8(4) read thus:

***“3<sup>rd</sup> Counter Defendant upon confirmation from FHA later gave him approval for building on the land. A copy of the building approval granted to the 1<sup>st</sup> Counter Defendant via a letter referenced FCDA/DC/BP/CID/PHS/15318 dated 9<sup>th</sup> January, 2017 is hereby pleaded and shall be relied upon at the hearing of this suit. Notice is hereby given to 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants to produce their copy.”***

Paragraph 8(6) read thus:

***“Sometime in June 2018, two staff of the 2<sup>nd</sup> Defendant came to the 1<sup>st</sup> Counter Defendant’s site and asked him and his workers to stop work because there is another person claiming the land but did not tell 1<sup>st</sup> Counter Defendant or his workers who this person is or show him any document as evidence that the land validly belong to that person.”***

Paragraph 8(7) read thus:

***“Sometime in the month of July, 2018, the 3<sup>rd</sup> Counter Defendant through its Department of Development Control wrote 1<sup>st</sup> Counter Defendant a letter referenced FCDA/DC/BP/CID/PHS.1/15318 dated 9<sup>th</sup> July 2018 withdrawing the earlier building plan approval given to him. A copy of the***

***letter of withdrawal of approval is attached and pleaded and shall be relied upon at the hearing of this suit.”***

Paragraph 8(12) read thus:

***“The 1<sup>st</sup> Counter Defendant vehemently denies paragraphs 20 and 21 of the Counter Claimant’s claim and put same to his strictest proof thereof. 1<sup>st</sup> Counter Defendant further avers that no such land as Plot 4096 was ever granted or allocated to the Counter Claimant by either FCT Minister or anybody acting for him. All payments allegedly made by the Counter Claimant in respect of the Plot in dispute are fabricated imagination of the Counter Claimant and false. 1<sup>st</sup> Counter Defendant was never invited by the Police either in writing or through his workers on the land.”***

Paragraph13 read thus:

***“The 1<sup>st</sup> Counter Defendant flatly denies paragraphs 22, 23, 24 and 25 of the Counter Claimant’s Statement of Claim and put same to his strictest proof thereof. 1<sup>st</sup> Counter Defendant avers that there is no such land as Plot 4096 granted or any other description allocated to the Counter Claimant on the land in dispute which land belong to the 1<sup>st</sup> Counter Defendant. 1<sup>st</sup> Counter Defendant was also never invited by the Police and has never at any time requested by the Police to produce his title documents. Counter Claimant is merely day-dreaming.”***

Paragraph14 read thus:

***“The 1<sup>st</sup> Counter Defendant admits paragraphs 26, 27 and 28 of the Counter Claimant’s Statement of Claim only to the extent that he applied and was granted a building plan approval by the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants but denies that the approval was in error. 1<sup>st</sup> Counter Defendant avers that this Counter Clamant is a very good imaginer dreaming of a non-existent plot 4096 on 1<sup>st</sup> Counter Defendant’s FHA CS21.”***

In the light of the above quoted paragraphs of the 1<sup>st</sup> Counter Defendant’s defence to Counter Claim, it can be gleaned as to how he came about his

title to Plot CS21 carved out of Plot 2514 which is the fulcrum of this suit. The 1<sup>st</sup> Counter Defendant is therefore under a duty to file a Counter survey plan with all the features required of a survey plan showing that Plot 4096 was not in existence at the time Plot 2514 was allocated to Federal Housing Authority from whom he derived his title from. In this respect, let me refer to the case of **OBI V OZOR (1991) 9 NWLR (Pt.213) 94 at 105 (CA) per KOLAWOLE J.C.A**, where it was held thus:-

***“The purpose of filing a Counter –survey plan by a Defendant in a land matter is to indicate very clearly that the Plaintiff’s plot does not accurately represent the correct position of the features on the land in dispute or that the land in dispute is wrongly delineated.”***

See also the case of **NWAIRO V ESO MONU & ANOR (2014) LPELR-24138 (CA) PP. 22 -23, PARAS C – D PER FREDERICK OZIAKPOMO OHO J.C.A** where it was held that:-

***“It is trite law that a Defendant who puts the identity of land in dispute in issue must successfully contradict the Plaintiff’s survey plan of the land in dispute with his own survey plan otherwise he would fail on that issue.”***

In this instant, let me highlight the contents of Exhibits 13 and 15.

Tendered & marked  
as EXH. 13  
on the 6/2/23



Tendered & Admitted  
As Exhibit #3  
on 18/3/20

# FEDERAL HOUSING AUTHORITY

Federal Housing Authority Sekou Toure Crescent  
Off Ecowas Secretariat Road, Asokoro (P.M.B 101 Garki) Abuja F.C.T  
OFFICE OF THE MANAGING DIRECTOR

SECRET

Ref. No. FHA/LEM/33

Mall. Muhammadu Rabiu  
P.O. Box 8738  
Wuse, Abuja

Dear Sir/Madam,

OFFER OF LAND FOR CORNER SHOP  
DEVELOPMENT IN MAITAMA ESTATE, ABUJA

**CERTIFIED TRUE COPY**  
SIGNED.....  
**EXECUTIVE DIRECTOR**  
BUSINESS DEVELOPMENT  
Federal Housing Authority  
Asokoro, Abuja.  
DATE 29/8/15

20th Sept., 1993

*Handwritten signature*

We refer to your letter of application in which you requested this Authority to allocate to you a plot for the development of a corner shop in Maitama Estate Abuja. The Authority is pleased to inform you that your request has been approved. It is therefore confirmed by this letter that you are to develop the parcel, located along LS(B) Road covering an area of about 200 square metres.

Please note that this offer is without prejudice to any of the provisions of the Land Use Decree as they relate to Federal Government Land Holdings or that of its parastatals or to any law, rules and regulations that the Federal Housing Authority may make from time to time as they affect the overall control of Developments in the Maitama Estate. Some of the main terms and conditions of this offer are as follows:-

- (i) that the Authority is willing to grant you a land for a term of 60 years with an option to renew for another period of 30 years which option must be exercised within one year before the expiration of the main lease;
- (ii) that you have agreed to pay an annual ground rent of N25.00 per square metres per annum payable in advance on every anniversary of the lease i.e.  $N25.00 \times 200m^2 = N5,000.00$ ;
- (iii) that you would pay 3 (three) years advance rent within 30 days from the date of this offer  $N5,000 \times 3 = N15,000.00$ ;
- (iv) that the Authority reserves the right to revise the rent reserved after the first five years (5) of the lease
- (v) that you have agreed to reconstruct all the kiosks affected by this allocation in Sandcrete block before you commence any development;
- (vi) that you have agreed that the Authority could determine the lease and re-enter the land and the appurtenances thereto should you default in the payment of your annual ground rent, if it is overdue for over twelve calendar months.

.../2.

**HIGH COURT OF F.C.T**  
**CERTIFIED TRUE COPY**  
Biliku Abdull  
Registrar  
Date 2/9/20



- (vii) that you would develop the above site for the purpose of this grant (i.e. for the development of a corner shop within 18 months (eighteen months) from the date the site is physically handed over to you;
- (viii) that you have agreed to pay to this Authority any extra amount she may incur should it be called upon to remove any of your commercial refuse.
- (ix) that you shall not commence with development of any sort without first submitting for vetting and approval details of the first floor plans, elevation and sections of the developments which should be submitted in six copies to this Authority. The structural details of the proposed development should also be submitted for vetting and approval.
- (x) that you have agreed to submit all your building plans for vetting and approval by this Authority;
- (xi) that you have agreed to pay the Authority's development charge which would be communicated to you as soon as your plans are submitted. The fees for approving the plans would be communicated to you by the Planning Officer if and when you submit the plans;
- (xii) that you have agreed to pay all your water rates, electricity and all township rates and all other dues that may be paid to any lawful Authority from time to time;
- (xiii) that you have agreed to pay survey fees which would be incorporated for the perfection of the instrument of transfer;

Please note that the above terms and conditions would be incorporated in the formal conveyancing instrument this Authority would prepare for execution by both parties.

Finally, it should be noted that your acceptance of this offer and the payment of the amount therein constitute a valid contract between you and the Authority.

This offer should be accepted within 30 days from the date of this offer.

Yours faithfully,

*afabo*  
 ENGR. ABUBAKAR ALLYU YABO  
 MANAGING DIRECTOR/CHIEF EXECUTIVE  
 FEDERAL HOUSING AUTHORITY.

**CERTIFIED TRUE COPY**  
 SIGNED.....  
**EXECUTIVE DIRECTOR**  
**BUSINESS DEVELOPMENT**  
 Federal Housing Authority  
 Asokoro, Abuja.  
 DATE..... 29/8/19.....

*Hajera A. Pedini*

FEDERAL HOUSING  
 PLAN SHEWING LAYO  
 OF  
 BLOCK 6, MAITAMA HOUSING ESTATE  
 MAITAMA, FCT ABUJA.  
 F.C.T. ABUJA.

*Tendered & Admitted  
 as Exhibit (A5)  
 on 18/3/20*

SCALE: 1:1000  
 ORIGIN: UTM ZONE 32

*for Court processes only*



**CERTIFIED TRUE COPY**  
 SIGNED... *H. A. Kama* ...  
**EXECUTIVE DIRECTOR**  
**BUSINESS DEVELOPMENT**  
**Federal Housing Authority**  
**Asokoro, Abuja.**  
 DATE... *17/3/2020* ...

Co-ordinates of PB 49  
 E 334941.410 N 1004856.569  
 CO-ORDINATES SYSTEM UTM

This plan superceeds plan No.  
 FHAMA/BLOCK 6 produced  
 by:-LAND SURVRY UNIT,  
 2011 AUGUST, 1999

*M. J. Hill*

PLAN FHAMA/MAITAMA/BLOCK 06/A  
 RE-PRODUCED BY: LAND SURVEY UNIT,  
 F.H.A ABUJA  
 NOV. 2013

**HIGH COURT OF THE FCT**  
**CERTIFIED TRUE COPY**  
*Bilkisu Abdul*  
 Registrar  
 Date... *2/9/20* ...

Having highlighted Exhibit 13 and 15, it is evident that the 1<sup>st</sup> Counter Defendant was initially allocated a parcel of land to build a Corner shop located at LS (B) covering an area of about 200 square metres.

Moreso, a close look at Exhibit 15 the (Counter Survey Plan) filed by the 1<sup>st</sup> Counter Defendant established the identity of the land he claimed, the correct position of the location and extent of the land in dispute as well as the boundaries to wit: Block 6 Maitama Housing Estate, Maitama FCT Abuja, scale:-1:1000, origin UTM Zone 21, it also shows that in the said Exhibit that is CS21 was sharing boundaries with LS(B) Road, LS(B) E Road, LS (B) E Road, there is also beacon stones PB49, PB50, PB51, PB52 but it was not shown that, it was sharing boundaries or fence with Plot 4096.

However, the bone of contention is that the square metres on Exhibit 13 is reading 200 sqm while on Exhibit 15 it is reading 399.47 sqm which in my considered opinion Exhibit 15, the Counter Survey Plan is inaccurate as it does not successfully contradict the Counter Claimant's survey plan thereby having no evidential value. I so hold.

Under cross examination Dw1 was asked inter alia thus:-

***Question: Take a look at Exhibit 14, read it please: So, from your letter in paragraph 2, the Defendant developed a different plot from the one allocated to him by you?***

***Answer: I don't understand.***

***Question: Now, look at Exhibit 13, 1<sup>st</sup> paragraph, the last line towards the end, mentions about 200sqm that is what your letter of allocation states.***

***Answer: Yes.***

***Question: Now plot CS21 has an area almost double that as seen in Exhibit 15, is that what the document says?***

***Answer: Yes.***

***Question: The land is which the Counter Claimant is claiming?***

**Answer: Yes.**

In the light of the above, Dw1 under cross examination answered in affirmative that Plot CS21 as seen in Exhibit 15 (survey plan) has an area almost double as to what was indicated in Exhibit 13 which in my humble view such evidence confirmed the discrepancy of both Exhibits 13 and 15 as well as the inaccuracy of the Counter survey plan and evidence elicited from cross examination of the defence witness (Dw1) is relevant and admissible. See the case of **FALOYO V FALOYO (2021) 3 NWLR (Pt.1762) p. 135, PARAS A – C PER, RIDWAN MAIWADA ABDULLAHI J.C.A** where it was held that:-

***“Evidence elicited under cross examination is not generally inadmissible. It is as good as evidence-in-chief which the trial Court is entitled to rely upon. It has the same probative value and is as valid as evidence elicited during examination-in-chief if it relates to a fact in issue.”***

It is worthy of note that the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants did not call any witness but rather rested their case on the Counter Claimant's claim which in effect means that they stand or fall by the evidence of the other party and by failing to give evidence at the trial, their Statement of Defence is deemed abandoned because pleadings by their nature and character cannot speak, they speak through witnesses and as long as a party refuses or fails to call witnesses to articulate their content, they remain dormant processes in Court's file as a matter of law they are moribund and no Court of law is competent to resuscitate or revive them. See **DUROSARO V AYORINDE (2005) 8 NWLR (Pt.927) P. 425 (SC), PARAS D – E, B – C.**

Moreso, where a party to a civil suit decides not to call evidence or not to testify in his own behalf and keeps quiet or indifferent to the whole issue, the inference is that such a party has nothing to offer in his favour and must be bound by the result of the case led by the other party. In other words, where a Defendant rests his case on the Plaintiffs, he is in effect submitting that the Plaintiff has failed to make a prima facie case and electing in consequence not call evidence in support of his own case. The legal position is that he is bound by the evidence called by the Plaintiff. See **ALECHENU V OSHOKE (2002) 9 NWLR (PART 773) (CA) PP. 538-539, PARAS D – E, G – C.**

In the instant case, it is my humble view that by the action of the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants resting their case on the Counter Claim are thereby bound by whatever outcome of the Counter Claim. I so hold.

At this juncture, it shall be emphasized that the standard of proof in civil case is in the balance of probability on that note, see the case of **HUSSEINI V MOHAMMED (2015) 3 NWLR (Pt.1445) p. 128, PARAS F-G, PER NGWUTA JSC** where it was held thus:-

***“Civil cases are determined on the balance of probabilities, which in itself means preponderance of evidence. The trial Court places the evidence adduced before it by the parties in the imaginary scale to see which side of the scale is heavier, not by the number of witnesses called by each party but by the qualitative or probative value of the witnesses. This is the import of deciding a case on balance of probabilities.”***

In the light of the foregoing, it is my considered opinion that based on the totality of evidence adduced by both the Counter Claimant and 1<sup>st</sup> Counter Defendant, the imaginary scale of justice does not tilt in favour of either the Counter Claimant or the 1<sup>st</sup> Counter Defendant as there is no satisfactory evidence enabling the Court to give judgment to either of the parties which to my mind non-suit appears to be the situation this Honourable Court finds itself. I so hold.

It is trite that a non-suit arises when there is no satisfactory evidence enabling the Court to give judgment to either of the parties and wronging neither. So, where a Plaintiff fails to adduce sufficient evidence on a crucial point in the matter and the state of evidence does not entitle the Defendant to judgment, the proper order to make is one of non-suit. Therefore, the Order of Non-Suit is to be granted where a Plaintiff has only failed to get judgment on account of a mere technical hitch of which the defence is not, in the opinion of the Court, entitled to take an advantage. See **ADELUSOLA V AKINDE (2004) 12 NWLR (Pt.887) P. 317, PARAS G – H (SC)**.

In the light of the above, a careful study of the entire evidence adduced by either parties both oral and documentary will reveal that the Counter Claimant during trial tendered several documents in evidence as to how he

derived his title to Plot 4096 Cadastral Zone A06 in Maitama which he claimed was sharing boundary and fence with Plot 2514 in which CS21 was carved out of which the 1<sup>st</sup> Counter Defendant claim was initially allocated to Federal Housing Authority by the 2<sup>nd</sup> Counter Defendant from whom he derived his title stating that at the time Plot 2514 was allocated to FHA, Plot 4096 was not in existent as it is just a fabrication and imagination of the Counter Claimant.

However, the discrepancies observed in Exhibit 5 (survey plan) tendered by the Counter Claimant and Exhibit 6 (Offer of Statutory Right of Occupancy) as well as the facts pleaded in paragraphs 7 and 8 of the Amended Counter Claim where the Counter Claimant was claiming that Plot No. 4096 has an area of approximately 351.00 sqm while the square metre indicated on Exhibit 5 was 401.55M<sup>2</sup> as it is the requirement of the law that a survey plan be must accurate to clearly define the features and boundaries in a land dispute including the square metres. The two Counter survey plans of the 1<sup>st</sup> Counter Defendant (Exhibits 12 and 15) as well as Exhibit 13 (Offer of Land for Corner Shops in Maitama) allocated to the 1<sup>st</sup> Counter Defendant by FHA also show there was a discrepancy in respect of the square metres.

Moreso, it is therefore my considered opinion that the appropriate Order to make in the circumstances of this instant case is non-suit as the Counter Claimant has not failed in toto or entirely to prove his case, the 1<sup>st</sup> Counter Defendant is not in any event entitled to the Court's judgment as the main suit that gave birth to this Counter Claim in which he was the Claimant seeking the Order of this Honourable Court setting aside the withdrawal of building plan approval dated 9<sup>th</sup> July 2018 by the 2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants was struck out by this Honourable Court on the ground of it being statute barred and also affirmed by the Court of Appeal where it was held by Georgewill JCA that on the pleadings, there are no facts alluding to or showing the existence of any contract between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents (2<sup>nd</sup> and 3<sup>rd</sup> Counter Defendants) but at best there could be contract existing only between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the Federal Housing Authority but certainly not with the appellant. And in law, 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the Federal Housing Authority which he has no authority of contract being not a party to the said contract even if at best it was made for his own benefit and no wrong or injustice would be caused to the Defendant by such Order. I so hold.

See ***ETETI ROROJE V OKPALETE II (1991) 5 NWLR (Pt.193) (SC) P. 537, PARAS A – B and MALLAM RABIU MOHAMMED V FCDA & 2 ORS CA/ABJ/CV/608/2021 Pg 29.***

On that note, let me refer to the case of ***EKWEALOR V OBASI (1990) 2 NWLR (Pt.131) (CA) P. 261, PARA H*** where it was held that:-

***“In a case where evidence as to boundary is inconclusive, a non-suit may be properly ordered.”***

In the final analysis and based on the totality of evidence before the Court as well as the interest of justice, I hereby order a non-suit of the Counter Claim.

***Signed:***

***Hon. Justice S. U. Bature  
25/3/2024.***