

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

BEFORE HIS LORDSHIP:  
COURT CLERKS:  
COURT NUMBER:  
CASE NUMBER:  
DATE:

JUSTICE S.E. ALADETOYINBO  
M.S. USMAN & OTHERS  
HIGH COURT THREE (3)  
FCT/HC/CV/457/2012  
30<sup>TH</sup> APRIL, 2018

BETWEEN:

KAL ASSETS MANAGEMENT LTD

PLAINTIFF

AND

1. NIGER DELTA POWER HOLDING CO. LTD
2. FED. CAP. DEVELOPMENT AUTHORITY
3. HON. MINISTER F.C.T.  
(Joined by Order of Court made on the  
6/5/2013)
4. ABUJA MUNICIPAL AREA COUNCIL  
(Joined by Order of Court made on the  
25/3/2013)

DEFENDANTS

Parties absent in court.

Ademola Abimbola appearing along with Folashade Olanipekun  
for the Plaintiff.

A.A. Ibekunle Awopetu (Mrs) appearing for the 1<sup>st</sup> Defendant.

Funmilayo Gudri (Mrs) appearing along with Lilian Chukwuemeka  
for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant.

The 4<sup>th</sup> Defendant counsel absent in court.

## J U D G M E N T

By further amended statement of claim filed before this court on  
the 7<sup>th</sup> Day of June 2016, the Plaintiff sought for the following reliefs  
against the Defendants jointly and severally:

FEDERAL CAPITAL TERRITORY  
JUDICIAL DIVISION  
CERTIFICATE OF JUDGMENT  
Signed: *Justice S.E. Aladetoyinbo*  
Name: ABUTU CALAB U.  
Date: 15/5/2018  
HIGH COURT OF JUSTICE & JUDICIAL DIVISION

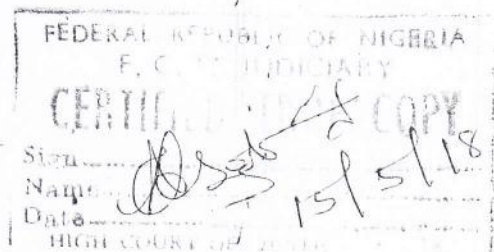
- (a) The sum of N250,000,000.00 (Two Hundred and Fifty Million Naira only) as damages for the trespass committed by the 1<sup>st</sup> Defendant on its land.
- (b) Perpetual injunction restraining all the Defendants whether by themselves, their agents, servants, privies or however described from committing further acts of trespass on the Plaintiff's land.

**In the alternative**

- (c) Compensation in the sum of N473,625,000.00 (Four Hundred and Seventy Three Million, Six Hundred and Twenty Five Thousand Naira only) being the fair market value of the Plaintiff's property before the 1<sup>st</sup> Defendant's act of trespass were committed.

The 1<sup>st</sup> Defendant upon being served with the originating processes of the Plaintiff filed before this court twenty nine paragraphs of statement of defence, where it averred in paragraphs 16, 17, 18, 19 and 28 as follows:

- (16) ***"The 1<sup>st</sup> Defendant posits that the legal title in the land in question resided in the 2<sup>nd</sup> Defendant at the time approval was given to 1<sup>st</sup> Defendant to lay cables along Lugbe route.***
- (17) ***The 1<sup>st</sup> Defendant avers that the approval he got to string electricity cables along Lugbe axis was free of any legal encumbrance.***
- (18) ***It is the 1<sup>st</sup> Defendant's position that the valid approval he got from 2<sup>nd</sup> Defendant being the only body that can***





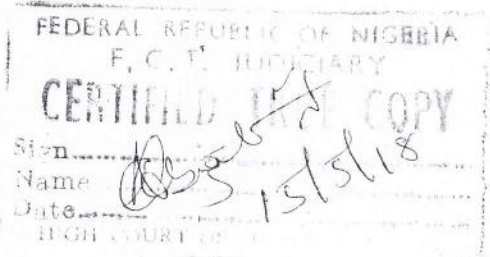
**grant such approvals, overrides the defective title of the Plaintiff.**

- (19) 1<sup>st</sup> Defendant avers that she is not entitled to pay any compensation to the Plaintiff.**
- (28) The Plaintiff lacks any valid title to entitle it to claim of compensation nor damages from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.**
- (29) The 1<sup>st</sup> Defendant denies paragraphs 13 – 19 of the Plaintiff's further amended statement of claim and puts the Plaintiff to the strictest proof thereof.**

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants upon being served with originating processes of the Plaintiff filed joint further amended statement of defence of twenty two paragraphs and aver in paragraph 18 as follows:

- (18) The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants aver that they paid due compensation to persons affected by the act of the 1<sup>st</sup> Defendant after strict and thorough investigation of their titles, the Defendants did not consider the Plaintiff worthy of receiving any such compensation they claimed because its name was not submitted and even if it did, do not have and/or possess valid legal title emanating from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants".**

The 4<sup>th</sup> Defendant who was joined by the order of this court filed six-paragraphs of statement of defence along with witness statement on oath, wherein the 4<sup>th</sup> Defendant contended in paragraph 6 of the statement of defence as follows:



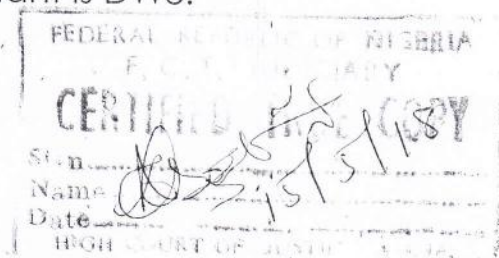
***"The Plaintiff lacks title to the said land in dispute and as such is not entitled to any of the reliefs sought. We therefore urge this Honourable Court to dismiss the suit as it presently constituted in its entirety with cost"***

The witness statement on oath of the 4<sup>th</sup> Defendant in support of its statement of defence was never adopted by Jeremiah Zanze who was the deponent; in other words the 4<sup>th</sup> Defendant did not call its only witness to adopt its witness statement on oath. The statement of defence and the witness statement on oath of the 4<sup>th</sup> Defendant are deemed abandoned. See *SPLINTERS NIGERIA LIMITED & 1 OR v OASIS FINANCE LTD* (2013) 18 NWLR (Pt 1385) 188 at 227 where the court held as follows:

***"A witness statement on oath, not having been duly adopted, based on an abandoned statement of defence cannot be elevated to the level of Affidavit Evidence or any evidence at all. In the instant case, the contention of counsel for the Appellants that the Appellants witness statement on oath, which was not adopted by the witness, was evidence before the trial court was completely misconceived"***

The Plaintiff called four witnesses while the 1<sup>st</sup> Defendant called two witnesses. The 3<sup>rd</sup> Defendant called one witness while the 4<sup>th</sup> Defendant did not call any witness. The four witnesses of the Plaintiff are PW1, PW2, PW3 and PW4 respectively.

The witness of the 1<sup>st</sup> Defendant are DW1 and DW2 respectively. The witness of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant is DW3.





PW1 for the Plaintiff, Otunbade A. Taoeed tendered the Valuation Report of the property of the Plaintiff which he tendered as Exhibit A.

The last two paragraphs of Page 3 of Exhibit A state as follows:

***"We are of the opinion that the fair market value of your leasehold interest in the property was as at 15<sup>th</sup> February 2012 in the sum of N473,625,000.00 (Four Hundred and Seventy Three Million, Six Hundred and Twenty Five Thousand Naira only).***

***We are further of the opinion that the forced sale value of the property was as at the afore-mentioned date, in the sum of N355,218,750.00 (Three Hundred and Fifty Five Million, Two Hundred and Eighteen Thousand Seven Hundred and Fifty Naira only)".***

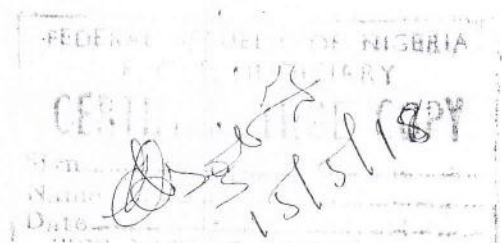
PW2 Ephraim Atajiri attached to Skye Bank Plc Legal Department tendered Certificate of Occupancy of the Plaintiff as Exhibit B. He told the court that the Plaintiff used the said Certificate as collateral for loan granted to it by Skye Bank. A Certified True Copy was produced and the original certificate set to be given back to PW2.

PW3's name is Lasun Adesiyan while the name of PW4 is Sa'a Bisala. The summary of their evidence and the evidence of the Plaintiff is to the effect that the Plaintiff is into Project Management Construction and General Hospitality Business Ventures. Sometimes in the year 2003, the Plaintiff conceived a business plan which involved the construction of a hotel, shopping mall and other entertainment facilities, in order to achieve the stated

business plan, it applied for and was granted allocation of certificate of occupancy Exhibit B by the Abuja Municipal Area Council over Plot MF 971 – MF 975, Cadastral Zone 07 – 07 measuring 10,525 hectares at Lugbe FCT Abuja. Upon the allocation of the land, the Plaintiff entered into discussions with some investors on the project and most of whom after visiting the land, expressed their satisfaction with its suitability.

Sometimes in May 2012, the Plaintiff discovered that 1<sup>st</sup> Defendant with the authority of the 2<sup>nd</sup> Defendant erected a high tension cable mast at the right side of the fence and left side of the Plaintiff's property thereby causing the Plaintiffs' fenced property to be located between two high tension cable masts, the said land of the plaintiff now situate between two high tension electricity masts and high tension cable run across the land thereby making same unsuitable for development owing to the afore-stated acts of the Defendants, some of the plaintiff business partners and proposed investors who had earlier expressed their satisfaction with the suitability of the land have suspended further discussions with the Plaintiff upon sighting the electricity masts erected along the Plaintiff's property by the Defendants.

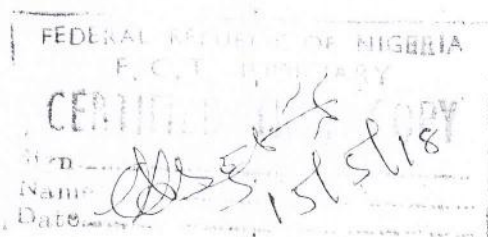
The 1<sup>st</sup> witness of the 1<sup>st</sup> Defendant is DW1 Engineer Claudius Ogunrinde who told the court through his witness statement on oath that the 1<sup>st</sup> Defendant was incorporated by three tiers of government in Nigeria in order to revitalize and add capacity to Nigeria's electricity supply system through the implementation of generation transmission distribution and gas supply projects nationwide.





That in order to achieve this, there are 30 new transmission lines nationwide; one of which is Gwagwalada-east main – Kukwaba – Apo power grid which runs through Lugbe environs.

That in order to actualise this laudable goal of the three tiers of government, the 1<sup>st</sup> Defendant following due process sought the approval of the Federal Capital Development Authority (FCDA) the 2<sup>nd</sup> Defendant to erect and string the transmission lines through the Gwagwalada-East Main – Kukwaba – Apo route. The 2<sup>nd</sup> Defendant conveyed its approval to 1<sup>st</sup> Defendant vide letter dated 27<sup>th</sup> Day of August 2008 admitted in evidence as Exhibit G1 and G2 respectively. After the approval was granted, the 1<sup>st</sup> Defendant compiled all the list of the plots that would be affected by the stringing of the cables along with the approval route and sent to the 2<sup>nd</sup> Defendant. That the 2<sup>nd</sup> Defendant thereafter informed the 1<sup>st</sup> Defendant that a number of the affected plots would either be earmarked for re-designing of plots re-allocation of new plots or outright compensation where necessary. The 2<sup>nd</sup> Defendant informed the 1<sup>st</sup> Defendant that such magnanimity will not be extended to plots within Lugbe axis as most of the plots are without valid title documents. The 1<sup>st</sup> Defendant began to string the electricity cable along the route map as provided in Exhibit G2. The Plaintiff can only claim compensation where it can establish valid title; it is only the 3<sup>rd</sup> Defendant that can allocate land within FCT. The Plaintiff's title document was issued to it by the 4<sup>th</sup> Defendant who has no authority to issue same. That the valid approval 1<sup>st</sup> Defendant obtained from the 2<sup>nd</sup> Defendant

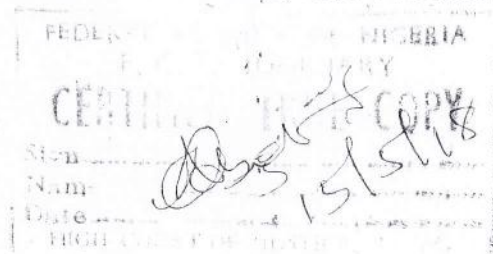


overrides the defective title of the Plaintiff therefore the Plaintiff is not entitled to any compensation from the 1<sup>st</sup> Defendant.

The approval given by the 2<sup>nd</sup> Defendant for the 1<sup>st</sup> Defendant to string cable along Gwagwalada-east Main – Kukwaba – Apo route which purportedly affected Plaintiff's land is for overriding public interest. The Valuation Report of the plot as tendered by Plaintiff is over inflated. The 1<sup>st</sup> Defendant requested Gersh Henshaw & Co to value same. The valuator's report Exhibit H indicated the value of the Plot as N9,932,760.00. that the Plaintiff lacks any valid title to entitle it to claim compensation or damages from the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The valuation report of the 1<sup>st</sup> Defendant was tendered in evidence by DW2.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant opened their defence with the evidence of DW3 Fatima Bello who claimed that the Plaintiff is a holder of Customary Certificate of Occupancy issued by the 4<sup>th</sup> Defendant, same was submitted to the 2<sup>nd</sup> Defendant for regularization and Exhibit C issued to the Plaintiff as acknowledgment receipt for regularization.

Sometimes in 2007, the 1<sup>st</sup> Defendant applied for approval to string cable along Gwagwalada-east Main – Kukwaba – Apo route. The 2<sup>nd</sup> Defendant conveyed its approval to the 1<sup>st</sup> Defendant vide Exhibits G1 and G2; that the Plaintiff has no business with the 1<sup>st</sup> Defendant as the approval issued to the 1<sup>st</sup> Defendant was in accordance with statutory regulation. That the Plaintiff is not entitled to any compensation or damages under the law because the Plaintiff has no valid title documents to the land; the Plaintiff's





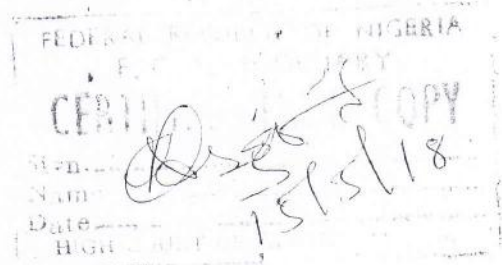
title is not from the 3<sup>rd</sup> Defendant who is statutorily empowered to issue title documents.

After parties concluded their evidence they filed written addresses. The court had gone through all the written addresses filed by the parties; same cannot be summarized as they form part of the records of this court. The court hereby raise the following issues for determination:

- (1) Whether the case of the Plaintiff relate to issue of trespass.
- (2) Whether the Statutory Right of Occupancy, Exhibit F issued by the Minister of FCT to the Plaintiff including the Customary Certificate of Occupancy, Exhibit B issued by 4<sup>th</sup> Defendant and Acknowledgment of Regularization of Land titles documents of FCT Area Council issued by the 2<sup>nd</sup> Defendant are valid and subsisting.
- (3) Whether the Plaintiff is entitled to compensation.

- (1) The Plaintiff in its reliefs is claiming for damages for trespass at the same time claiming for injunction restraining all the Defendants from further act of trespass by the claim of the Plaintiff which include damages for trespass and injunction against the Defendants, the Plaintiff has put the title of the land in issue. See *AGBAISI v EBIKOREFE* (1997) 4 NWLR (Pt 502) 630 SC where the Supreme Court held as follows:

***"Although an action for trespass to land coupled with a claim for injunction automatically puts in issue the title of the parties"***

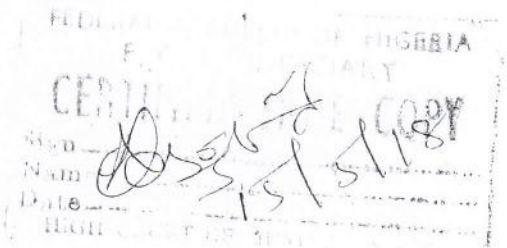


For what constitute trespass see the case of *NDUKUBA v IZUNDU* (2007) 1 NWLR (Pt 1016) 432 CA where the court held as follows:

***"Trespass to land in the wrongful invasion of the private property of another. It is trespass to land provided; the entry into the land of another by a person is not authorized. Trespass to land is rooted in a right to exclusive possession of the land allegedly trespassed. Trespass to land is therefore actionable at the instance of a person in possession of the land".***

The 1<sup>st</sup> Defendant is a limited liability company wholly owned by the Local Government, State Government and Federal Government of Nigeria. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are Federal Government agencies. The approval given by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant to string High Tension Cables over the land of the Plaintiff cannot constitute trespass because same was carried out for public interest and furthermore, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants being government agencies have the power to compulsorily acquire the property of the Plaintiff. See *PROVOST, LACOED – v EDUN* (2004) 6 NWLR (Pt 870) 476 at 509 where the court held as follows:

***"Government has the constitutional right to compulsorily acquire property on payment of compensation that was the provision of Section 40 of the 1979 Constitution; the Constitution that was in force when this matter went to court. It is now Section 44 of the 1999 Constitution. There is no argument about that constitutional power"***





High tension electricity masts and High tension cables have been installed along the land of the Plaintiff by the 1<sup>st</sup> Defendant with the authority and approval of the 2<sup>nd</sup> Defendant. This court cannot make an order of injunction against the Defendants because what had been installed was done for public purpose. See OYADARE v REJI 2005 All FWLR (Pt 247) Pg 1587 where the court held as follows:

***"Once a claim for trespass succeeds, a consequential relief or order for injunction will follow to protect possession"***

The present suit by the Plaintiff has nothing to do with trespass by the Defendants, the only thing is that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who have power to compulsorily acquire the property of the Plaintiff failed to comply with the statutory procedure for compulsory acquisition of the property of the Plaintiff. See PROVOST, LACOED v EDUN (2004) 6 NWLR (Pt 870) 476 at 485 where the court held as follows:

***"There are statutes which provide for the procedure for acquiring property by the government. Government is expected to comply with those statutes and it must as a matter of law comply with those statutes which Government has enacted. Therefore, where Government disobeys its own statutes by not complying with the laid down procedure for the acquisition of private property, it is the duty of the courts to intervene against the Government and in favour of the private citizen"***

There was no notice to the Plaintiff that its property is about to be acquired by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants which is against the law.

See PROVOST LACOED v EDUN (Supra) at Page 484 where the Supreme Court further held as follows:

***"Where an acquiring authority seeks to acquire private property before the private property is acquired, the acquiring authority must give notice of intension to acquire the property before publishing same in the gazette. In the instant case no quit notice or acquisition notice was given"***

Evidence tend to show that it is not only the Plaintiff's land that was affected by the installation of High tension electricity masts and High tension cables; other plots that were affected the owners were paid compensation by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The reason why the Plaintiff was not paid compensation according to the Defendants was that Exhibit B the Customary Certificate of Occupancy issued to the Plaintiff by the 4<sup>th</sup> Defendant is invalid and therefore the 1<sup>st</sup> and 2<sup>nd</sup> Defendants cannot pay compensation on an invalid customary certificate of occupancy. See LAWSON v AFANI CONT. CO LTD (2002) 2 NWLR (Pt 752) 585 at 591 where the court held as follows:

***"A Certificate of Occupancy granted by a Local Government which purport to grant a Customary Right of Occupancy in respect of a parcel of land which is in an urban and not a rural area is invalid. This is because it is unlawful for a Local Government to grant a Customary Right of Occupancy in respect of land in urban area"***

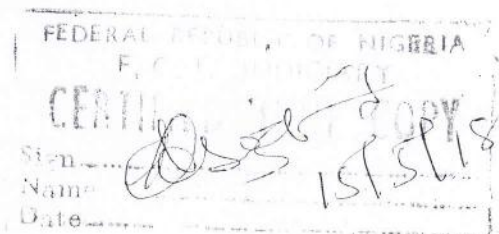
The court is aware that there is no division of land into urban and rural areas by the FCT. Minister and therefore all the land comprised within FCT are urban land which can only be granted



by the Minister of FCT. The court has taken judicial notice that all the land comprised in each of the five local government councils of FCT were allocated by the Chairman of Each Local Government Council on the authority and directive of the Minister of FCT. All the plots of land which have been built up by the citizens in Kubwa, Dutse Alhaji, Gwagwalada, Bwari, Nyanya, Karu, Kuje including the present plot in dispute were allocated to the citizens by the Chairman of each of the Local Government Council by the directive and authority of the Minister of FCT as evidenced by Exhibit E the Statutory Right of Occupancy issued to the Plaintiff in respect of same land covered by Customary Certificate of Occupancy Exhibit B. Exhibit E the Statutory Right of Occupancy of the Plaintiff was issued on behalf of Honourable Minister of FCT signed by W.A.M. Shittu Titilola on behalf of Honourable Minister of FCT. The act of that officer who signed on behalf of the Minister, is the act of the Minister of FCT. See CARTONA LIMITED v WORKS COMMISSIONERS (1943) 2 All E.R. 560 where the court held as follows:

***"Where functions entrusted or delegated to a Minister are performed by an official employed in the Minister's department, there is in law no delegation or sub-delegation because constitutionally, the act or decision of the official is that of the Minister"***

The Abuja Municipal Area Council was acting as an agent of the Minister of FCT 3<sup>rd</sup> Defendant, when it issued Exhibit B Certificate of Occupancy (Customary) to the Plaintiff. See NDOMA EGBA v



CHUKWUOGOR (2004) 6 NWLR (Pt 869) 382 at 400 where the court held as follows:

***"Qui facit per alium facit per se" "He who acts by Another Acts by himself"***

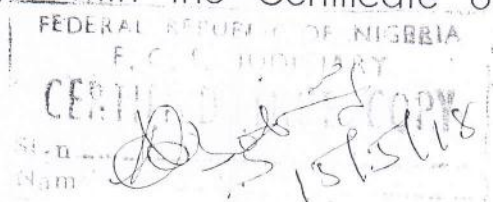
The court agrees that the Abuja Municipal Area Council lacks the power to issue Certificate of Occupancy (Customary) Exhibit B to the Plaintiff because it was the Minister of FCT that issued Statutory Right of Occupancy Exhibit E to the Plaintiff. The issuance of Certificate of Occupancy by the Abuja Municipal Area Council is invalid, but the Statutory Right of Occupancy earlier issued by the Minister of FCT Exhibit E is still valid and subsisting. Exhibit E Statutory Right of Occupancy conveyed valid title to the Plaintiff to enable the Plaintiff get compensation from the 1<sup>st</sup> and 2<sup>nd</sup> Defendant. See KARI v GANARAM (1997) 2 NWLR (Pt 488) 380 SC where the court held as follows:

***"The grant of a Statutory Right of Occupancy over land extinguishes any previous licence granted in respect of the same land by virtue of Section 5(2) of the Land Use Act, 1978"***

See also ILONA v IDAKWO (2003) 11 NWLR (Pt 830) 53 SC where the Supreme Court held as follows:

***"A Statutory Right of Occupancy, on the other hand is not temporary in nature and confers on the holder a legal estate in and over the property in question"***

The Plaintiff who is a holder of Statutory Right of Occupancy can sell, transfer to 3<sup>rd</sup> party or mortgage same Statutory Right of Occupancy has the same weight with the Certificate of





Occupancy. See B.N. PLC. v SONGONUGA (2007) 3 NWLR (Pt 1021) 230 CA where the court held as follows:

***"The law is that it is the owner of a Statutory Right of Occupancy that is obliged to obtain the consent of the Governor of the State in respect of the land which he wishes to sell, transfer or mortgage, et cetera by virtue of Section 22 of the Land Use Act and the relevant provisions of the Land Tenure Law of Northern Nigeria"***

Under Section 4(2) to (9) of the Federal Capital Territory Land Use Regulations 2004, the Minister of FCT must issue another Certificate of Occupancy to the Plaintiff under re-certification. The Minister of FCT has no discretion; the Certificate of Occupancy must be issued to the Plaintiff if the plots of land have not been compulsorily acquired by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Since the property have been compulsorily acquired, regularisation of land titles and documents of FCT Area Councils under Section 4(2) - (a) of the Federal Capital Territory Land Use Regulations 2004, the Plaintiff's Plot No. MFG 71 MF is no more necessary. Exhibit C the acknowledgment of regularization and re-certificate exercise of the Plaintiff's plot issued by the 2<sup>nd</sup> Defendant has become history. Exhibit C is an evidence of agency between the 4<sup>th</sup> Defendants, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants including Exhibit E; the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant are stopped from denying the 4<sup>th</sup> Defendant authority to act on their behalf. See the case of OLUFOSOYE v FAKOREDO (1995) 1 NWLR (Pt 272) 247 at 759 where the court held as follows:

***"Agency by estoppel arises where one person either holds another out as being his agent or allows another to hold***



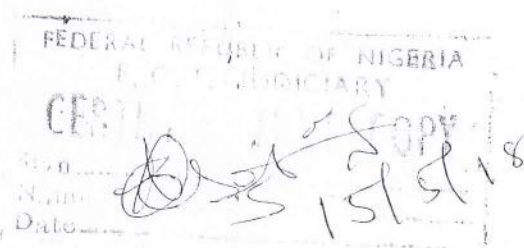
**himself out as his agent even though no such agency exists in fact, the other person will be precluded from denying the existence of the agent's authority to act on his behalf".**

See also RENCO (NIG) LTD v AFRICAN REAL ESTATE & INVESTMENT CO LTD 1978 4 SC 9 at 26 where the Supreme Court held as follows:

**"There are circumstances in which the law recognises agency by estoppel in which case the principal may be stopped from denying that another is his agent and his relationship with third parties may be affected by the acts of that officer"**

The conclusion of this court is that the Plaintiff has a valid statutory right of occupancy of Plot MF 971- MF 975 Sabon Lugbe South-West Extension Layout and such Statutory Right of Occupancy confers on the Plaintiff, a legal estate; in other words, the said Plot is the property of the Plaintiff and the court would not allow the Defendants to interfere with the said property except on condition that the Defendants can support the legality of their action before this court. See ESHIGBAYI ELEKO v OFFICER ADMINISTERING THE GOVERNMENT OF NIGERIA (1931 AC 662 where the court held as follows:

**"It is well established principle of law that a Governor of a State can only act in pursuance of the power given to him by law. Consequently, no member of the executive can interfere with the ownership of property of a citizen except on**





***condition that he can support the legality of his action before a court of justice"***

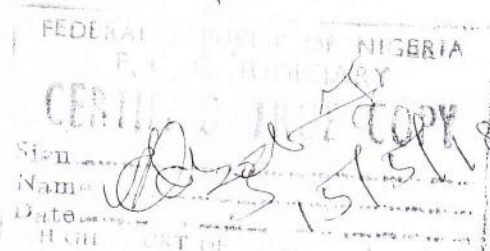
The Defendants who are government agents have the constitutional right to compulsorily acquire the property of the Plaintiff but the Defendants failed to comply with the statutes which provide for the procedure of acquiring property by Government. The Defendants ought to have paid adequate compensation to the Plaintiff before the installation of High Tension Electricity Masts and High Tension Cable along the property of the Plaintiff which rendered same unsuitable for development. See paragraph 3.6.4 of Nigerian Electricity Supply and Installation Standards Regulations 2015 which state as follows:

***"No overhead transmission line shall be installed in Urban areas or other densely populated and built-up areas"***

The Plaintiff's intention to build hotel, shopping mall and other entertainment facilities on the said plot can no longer be possible because of the regulations 2015.

The court has said that the Defendant can compulsorily acquire the said property from the Plaintiff but they ought to pay the Plaintiff adequate compensation before the land is acquired. See N H R.L. v AYOADE (1997) 11 NWLR (Pt 530) 541 SC where the Supreme Court held as follows:

***"The government cannot acquire land from an individual without adequate compensation"***



See also KUKOYI v AINA (1999) 10 NWLR (Pt 624) 633 at 637 where the court held as follows:

***"The right to own property by an individual is well entrenched in the 1979 Constitution. That right to own carries with it the right to dispose of the said property. By virtue of the provisions of the Fundamental Rights enshrined in Chapter IV of the 1979 Constitution the government with all its right cannot acquire the land of an individual without paying adequate compensation"***

The court had said that the Statutory Right of Occupancy, Exhibit E issued by the Minister to the Plaintiff is valid and subsisting, the Defendants in the present action did not counter claim to have the Right of Occupancy in question, declared void, they have not challenged the validity of the Right of Occupancy Exhibit E issued to the Plaintiff by the 3<sup>rd</sup> Defendant. There is therefore no basis for defective title raised by the Defendants. See TENIOLA v OLOHUNKUN (1999) 5 NWLR (Pt 602) 280 at 302 where the court held as follows:

***"The Defendants did not counter claim in the present action to have the Certificate of Occupancy in question declared void.....  
whatever reason there may be, they have not in the proper challenged the validity of that Certificate of Occupancy (Exhibit 3); it follows that there is no basis for the said issue as to the validity of Exhibit 3 which they have raised on this appeal"***





The reason why the 2<sup>nd</sup> Defendant a government agent authorized the 1<sup>st</sup> Defendant to enter the land of the Plaintiff without compensation and installed high tension electricity masts and high tension cable along the property of the plaintiff is that the title of the plaintiff's land was not issued by the issuing authority the 3<sup>rd</sup> Defendant, the fact that the title of the plaintiff's land was not issued by 3<sup>rd</sup> Defendant is not a justification for entering the plaintiff's land or acquiring the Plaintiff's property without payment of compensation because the Statutory Right of Occupancy issued to the Plaintiff on behalf of the Minister is still subsisting and no competent court has set same aside, the Defendant have no power to treat the Statutory Right of Occupancy Exhibit E as if it never existed. See TENIOLA v OLOHUNKUN (1999) 5 NWLR (Pt 602) 280 at 298 where the Supreme Court held as follows:

***"The grants to the Plaintiff were made in exercise of Statutory power vested in the Governor or as the case may be in the Minister wherein the exercise of Statutory Rights of Occupancy have been made without want of authority or capacity the court will not treat the grants as if they have not been made and proceed to determine the rights of the parties as if those grants have ceased to be in existence"***

The Statutory Right of Occupancy Exhibit E allocated to the Plaintiff was issued by official of the Ministry for Federal Capital Territory, Land Planning and Survey Department AMAC Zonal Planning Office; same was issued for and on behalf of the

Honourable Minister of FCT, the Statutory issuing authority. See *CARTTONA LIMITED v WORKS COMMISSIONERS* (1943) 2 All E.R. 560 where the court held as follows:

***"Where functions entrusted or delegated to a Minister are performed by an official employed in the Minister's Department there is in law no delegation or sub-delegation because constitutionally the act or decision of the official is that of the Minister"***

The Minister cannot issue Statutory Right of Occupancy Exhibit E on Plot MF 971 – MF 975 Sabon Lugbe South West Extension layout and the Certificate of Occupancy on the same land issued by Abuja Municipal Area Council, such Certificate of Occupancy issued by Abuja Municipal Area Council Exhibit B is invalid but the invalidity of Exhibit B does not affect the validity of Exhibit E which was validly issued by the Minister of FCT.

Under Section 4(2) – (a) of the Federal Capital Territory Land Use Regulations 2004, the Minister of FCT who is the 3<sup>rd</sup> Defendant has a duty to issue another Certificate of Occupancy under his hand to the Applicant. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have commenced the process of re-certification by issuing Exhibit C Regularization of Land Title and Documents of FCT Area Councils to the Plaintiff but the re-certification exercise of the Plaintiff's land is no more possible as same have been compulsorily acquired by the Defendants. What the court can now order is compensation to the Plaintiff for its property which was compulsorily acquired by the defendants without following the procedure as laid down in

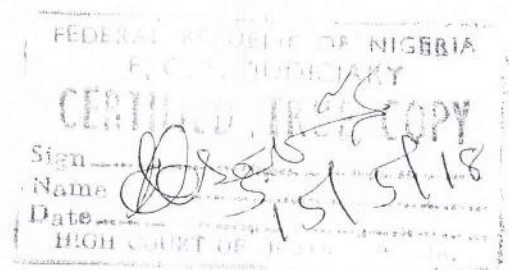


the statutes. The superior courts have held in several cases which were cited earlier in this case that adequate compensation must be paid to any person whose landed property was compulsorily acquired by the Government. The question for determination in this case is what is adequate compensation in this case?

The Plaintiff tendered Exhibit A which is a report of Valuation of the said property by a Registered Estate Surveyor and Valuers Knight Frank. The Fair Market Value of the Plaintiff's property was put to be N473,625,000.00 as at 15<sup>th</sup> February 2012 while the forced sale value was put to be N355,218,750.00.

The 1<sup>st</sup> Defendant equally tendered Exhibit H which is a report of valuation of the property of the Plaintiff by a Registered Estate Surveyors and Valuers Gersh Henshaw & Co who valued the depreciated replacement value of the unexpired interest subsisting in the property to be N9,932,760.00. Exhibit H further recommended to 1<sup>st</sup> Defendant to pay N9,932,760.00 to the Plaintiff as improvement on the land while urging the 1<sup>st</sup> Defendant to liaise with FCDA for a possible re-allocation of alternative plot to the claimant in view of the adverse effect on the Plaintiff's land. From Exhibit H only the improvement on the land and the economic trees were valued at N9,932,760.00. the improvement here means the fencing of the property.

Under cross-examination, the maker of Exhibit H DW2 summarised as stated as follows:



DW2 *"I did not see the title documents of the land before we conducted valuation report, the entire plot is 10 hectares. It is not all the land and fence that were valued by our firm.*

*The total economic trees in the land are 71 in numbers but not listed in Exhibit H. I valued part of the fence affected and the economic tree"*

There is contradiction or inconsistency between documentary evidence prepared and tendered by DW2 Exhibit H and the oral evidence elicited during cross-examination. In Exhibit H DW2 valued the structure (fence) and economic trees as follows:

Structure	N9,671,760.00
Economic trees	<u>N261,000.00</u>
	N9,932.760.00

During cross-examination he admitted that not all the fence and land of the Plaintiff were valued by him and the title of Exhibit H is **VALUATION REPORT OF FENCED PLOT AND ECONOMIC TREES LOCATED ALONG AIRPORT ROAD, SABON LUGBE – ABUJA**

See U.N.I.C. v U.C.I.C. LTD (1999) 3 NWLR (Pt 593) C.A 17 where the court held as follows:

*"Although a trial court can believe part or a testimony and reject the other under certain circumstances, it cannot pick and choose among inconsistent pieces of evidence. It*





***cannot accredit one piece of evidence and discredit the other. In the instant case, the contradiction or inconsistency in the oral and documentary evidence adduced by PW1 impugns her credibility. The trial court should have on a proper perception and evaluation of the evidence before it held that the Respondent has not made out its case"***

On the above authority, the valuation of the Plaintiff's land by DW2 as stated in Exhibit H is unreliable particularly as regards the fence and the land.

The court is now left with Exhibit A the Valuation Report by the Plaintiff's witness which estimated the fair market value of the land to be N473,635,000.00 as at 15<sup>th</sup> February 2012 and the forced market value of the Plaintiff's land to be N355,28,750.00 which is too high in the eyes of the court. In the decided case by this court between MALLAM MAHMOOD MOHAMMED v F.C.D.A. & 2 OTHERS, Suit No. FCT/HC/CV/4387/12. The 3<sup>rd</sup> Defendant in the said suit was made to pay N12,553,172.00 for 2496.02 square metres size of land in 2012 as land bills at N5029 per square metre, if we go by the principle of replacement cost, it would cost the Plaintiff the sum of N502,900,000.00 to pay for 10 hectares of land in 2012 as land bill if there is replacement by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

The size of the Plaintiff's land is 10 hectares which is equivalent of 100,000.00 square metres very very massive land, it is highly ridiculous to say that less than N10,000,000.00 was used to fence such massive land. The type of fencing erected by the Plaintiff on

it massive plot is indicated in Exhibit D4 and D3 which the court can describe as expensive fencing.

The court hereby estimate the value of the fence erected round the plot to be N100,000,000.00 (One Hundred Million Naira only) and the value of the land to be another N100,000,000.00 (One Hundred Million Naira only) making the sum of N200,000,000.00 to be paid to the Plaintiff by the Defendants as compensation for the Plaintiff's land Plot No. MF 971 – MF 975 of about 10 Hectares in Sabon Lugbe South-West Extension Layout,, which was compulsorily acquired by the Defendants without payment of compensation. If there is any part of the Plaintiff's land still buildable same will be allocated to desiring allottees by the 3<sup>rd</sup> Defendant, Minister of FCT. The judgment sum of N200,000,000.00 (Two Hundred Million Naira) only awarded to the Plaintiff represents the total value of the improvement and value of the land.

The Defendant to pay 10% annual interest on the judgment sum with effect from 30/4/2018 until the whole judgment sum is liquidated.

This court noted with dismay that the Defendant's counsel in their written addresses heavily relied on the case of ONA v ATANDA (2000) 5 NWLR (Pt 656/244 which had been set aside by Supreme Court long time ago. It is against Legal Practitioner Professional Ethics to cite cases that had been set aside by the Supreme Court but the court views this as a mistake on the part of Defence Counsel.

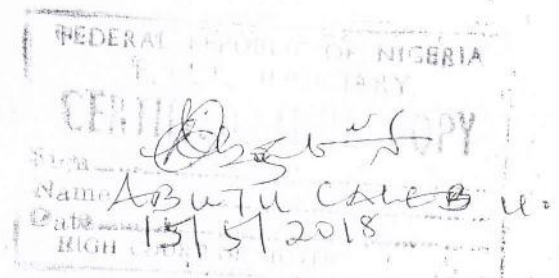


(Sgd)  
Hon. Justice S.E. Aladetoyinbo  
(Presiding Judge)  
30/4/2018

Ademola Abimbola – We are grateful for the judgment.  
Funmilayo Quadri appearing along with Oladayo Odunlami and  
Lilian Chukwuemeka thank the court for the judgment.

A.A. Ibekunle – We thank the court for the judgment.

(Sgd)  
Hon. Justice S.E. Aladetoyinbo  
(Presiding Judge)  
30/4/2018



ACR 11