

**IN THE SUPREME COURT OF NIGERIA**  
**HOLDEN AT ABUJA**

**ON FRIDAY THE 6<sup>TH</sup> DAY OF MARCH, 2026**

**BEFORE THEIR LORDSHIPS**

**MUHAMMED LAWAL GARBA**

**JUSTICE, SUPREME COURT**

**CHIOMA EGONDU NWOSU-IHEME**

**JUSTICE, SUPREME COURT**

**HARUNA SIMON TSAMMANI**

**JUSTICE, SUPREME COURT**

**STEPHEN JONAH ADAH**

**JUSTICE, SUPREME COURT**

**HABEEB ADEWALE O. ABIRU**

**JUSTICE, SUPREME COURT**

**SC/CV/1005/2020**

**BETWEEN:**

**TRAHUNT LIMITED**

**===**

**APPELLANT**

**AND**

**1. MRS. T.O. AKERELE**

**2. FEDERAL MINISTRY OF ENVIRONMENT**

**HOUSING AND URBAN DEVELOPMENT**

**3. THE ATTORNEY GENERAL OF THE FEDERATION**

**==RESPONDENTS**

**JUDGMENT**

**[DELIVERED BY STEPHEN JONAH ADAH, JSC]**

This appeal challenges the judgment of the Court of Appeal, Lagos Judicial Division, delivered on 21<sup>st</sup> July 2020, in **Appeal No. CA/L/78/2013**. In that judgment, the lower court affirmed the decision of the Federal High Court, Lagos, in Suit No. FHC/L/CS/492/2008. The trial court, in its judgment delivered on 2<sup>nd</sup> November 2012, entered judgment in favour of the 1<sup>st</sup> respondent, who was the plaintiff at the trial court, having found

her evidence cogent and credible. The court granted the reliefs sought in her Statement of Claim dated 6<sup>th</sup> May 2008 and dismissed the counterclaims of the appellant/defendant.

Dissatisfied with the decision of the lower court, the appellant lodged the present appeal.

The facts giving rise to this appeal, as borne out by the record, are as follows:

The 1<sup>st</sup> respondent, as plaintiff, instituted the action at the trial court by a Writ of Summons dated 6<sup>th</sup> May 2008. She asserted that she was the beneficial owner of a parcel of land situate at Plot 4, Block 6, Federal Government Layout, along Osborne Road, Phase 2, Ilubirin Foreshore, Ikoyi, Eti-Osa Local Government Area of Lagos State. Upon that claim, she sought the following reliefs:

- 1. A declaration that she is vested with the beneficial interest in the property known as Plot 4, Block 6, Federal Government Layout, along Osborne Road, Phase 2, Ilubirin Foreshore, Ikoyi, Eti-Osa LGA.**
- 2. An order of perpetual injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants**

from selling, assigning, or otherwise transferring the said property to any third party.

3. An order of perpetual injunction restraining the Defendants from trespassing upon or taking possession of the said property.

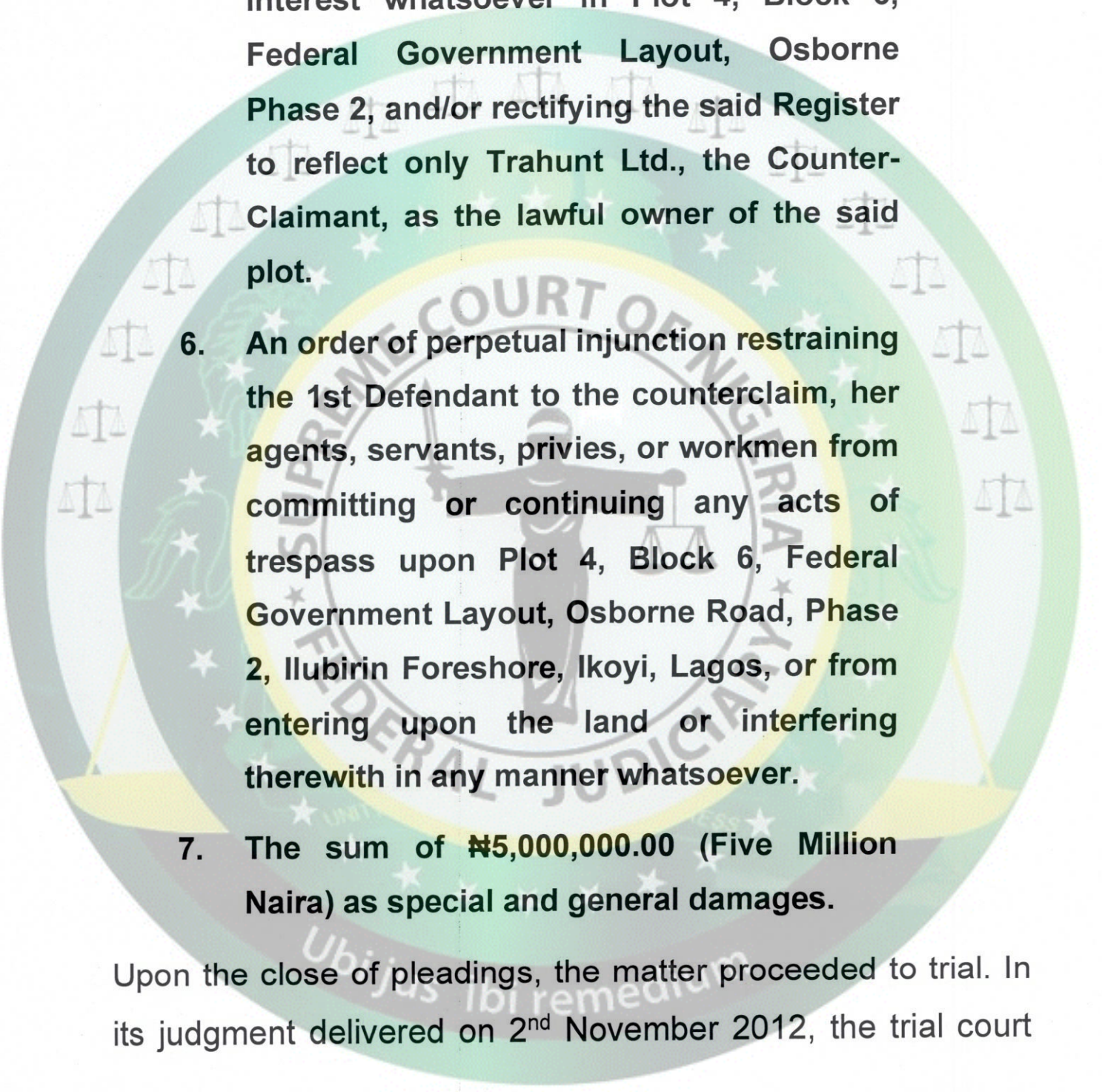
Responding to the suit, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein as 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the suit filed a 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Amended Statement of Defence on the 14<sup>th</sup> November, 2011, before the trial court. The appellant on his own part filed a Statement of Defence and Counterclaimed before the trial court as follows:

1. A Declaration that the Certificate of Occupancy registered as No. 90 at page 90 in Volume 44 kept at the Federal Land Registry Office, Ikoyi, Lagos, dated 9<sup>th</sup> November, 1998, in favour of the counterclaimant herein is valid and subsisting on the terms of its issuance by the Federal Ministry of Environment, Housing and Urban Development.
2. A Declaration that the purported Certificate of Occupancy registered as No. 74 page 74

**Volume 77(74/74/77) purportedly issued by the 2nd Defendant by counterclaim, to the 1<sup>st</sup> Defendant by counterclaim is incurably null and void and of no legal effect in all circumstances of this case.**

**3. A Declaration that the erection of a low wall on parts of the said Plot 4 Block 6 Osborn Road, Lagos by the 1<sup>st</sup> Defendant by counterclaim constitutes acts of trespass.**

**4. An order directing the cancellation, withdrawal, setting aside, or otherwise nullifying the purported offer and/or grant of Statutory Right of Occupancy over the parcel of land known as Plot 4, Block 6, Federal Government Layout, Osborne Road, Phase 2, Ilubirin Foreshore, Ikoyi, Eti-Osa LGA, measuring approximately 1,504.773 square metres and more particularly delineated and verged "RED" on Survey Plan No. L425A, allegedly issued by the Federal Ministry of Housing and Urban Development (howsoever described) to Ms. T.O. Akerele, the plaintiff herein.**

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- 5. An order directing the removal of the plaintiff's name from the Register of the Federal Lands Registry in respect of any interest whatsoever in Plot 4, Block 6, Federal Government Layout, Osborne Phase 2, and/or rectifying the said Register to reflect only Trahunt Ltd., the Counter-Claimant, as the lawful owner of the said plot.**
  - 6. An order of perpetual injunction restraining the 1st Defendant to the counterclaim, her agents, servants, privies, or workmen from committing or continuing any acts of trespass upon Plot 4, Block 6, Federal Government Layout, Osborne Road, Phase 2, Ilubirin Foreshore, Ikoyi, Lagos, or from entering upon the land or interfering therewith in any manner whatsoever.**
  - 7. The sum of ₦5,000,000.00 (Five Million Naira) as special and general damages.**

Upon the close of pleadings, the matter proceeded to trial. In its judgment delivered on 2<sup>nd</sup> November 2012, the trial court

granted the reliefs sought by the 1<sup>st</sup> respondent in her Statement of Claim.

Aggrieved by that decision, the appellant appealed to the lower court. The Court of Appeal heard the appeal and, in its judgment delivered on 21<sup>st</sup> July 2020, affirmed the decision of the trial court and dismissed the appeal.

Still dissatisfied with the judgment of the Court of Appeal, the appellant further appealed to this Court by a Notice of Appeal dated 4<sup>th</sup> August 2020. The appellant urged this Court to set aside the judgment of the lower court and, in its stead, allow the appeal.

The parties, through their respective counsel, duly filed and exchanged briefs of argument in accordance with the Rules of this Court regulating the hearing of civil appeals.

Learned counsel for the appellant Chief B.C. Igwilo, SAN, distilled two (2) issues for the determination of this appeal in the Appellant's Brief of Argument filed on 3<sup>rd</sup> February 2021.

The issues are framed as follows:

- 1. Whether the 1<sup>st</sup> respondent, as plaintiff at the trial court, made in her pleadings any specific and sufficient allegations of fraud against the 2<sup>nd</sup> and 3<sup>rd</sup>**

respondents to justify the affirmation by the Court of Appeal of the trial court's finding that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were liable for fraud, fraudulent manipulation and forgery, and its conclusion that they forged and fraudulently issued Certificate of Occupancy No. 90/90/44 to the appellant. (Distilled from Grounds 1 and 2 of the Notice of Appeal).

2. Whether the Court of Appeal was correct in law in upholding the conclusion founded on the letter written by the 2<sup>nd</sup> respondent to the 1<sup>st</sup> respondent, informing her of the revocation of Certificate of Occupancy No. 74/74/77 issued to her, on the ground that it was erroneously issued in view of a prior subsisting Certificate of Occupancy No. 90/90/44 over the same parcel of land. (Distilled from Ground 3 of the Notice of Appeal).

Learned counsel for the 1<sup>st</sup> respondent, in the 1<sup>st</sup> Respondent's Brief of Argument dated and filed on 6<sup>th</sup> July 2021, distilled two (2) issues for the determination of this appeal, namely:

1. Whether the Court of Appeal was correct in affirming the finding of the High Court that the Certificate of Occupancy issued to the plaintiff/1<sup>st</sup> respondent was valid and subsisting, its issuance not having been in dispute between the parties, and there being no evidence before the court establishing its lawful revocation.
2. Whether the Court of Appeal was right in holding that there was no other subsisting and lawful grant over the same property in favour of the appellant.

I adopt the two issues formulated by the appellant, as they adequately encapsulate the grievances ventilated in this appeal. I shall therefore, consider the two issues together.

### **Issues One and Two:**

Learned counsel for the appellant submitted that the 1<sup>st</sup> respondent did not place in issue the Certificate of Occupancy

No. 90/90/44 issued to the appellant, but rather alleged that the said Certificate was forged by the appellant. He urged the Court to examine the pleadings, particularly paragraphs 3 and 10 of the Amended Reply and Statement of Defence.

Counsel referred to Order 13 of the Federal High Court (Civil Procedure) Rules and contended that the provisions therein disclose two significant limitations to the doctrine of implied joinder of issues. In particular, he drew attention to Rule 11, which provides that a party shall not raise any allegation of fact inconsistent with its previous pleadings. He further argued that the principle of implied joinder of issues cannot apply where its effect would be to permit a party to alter its position on an allegation of fact without formally amending its pleadings.

It was his submission that the doctrine of implied joinder of issues cannot operate to allow the 1<sup>st</sup> respondent to advance inconsistent pleadings in the same proceedings. He maintained that there were no specific allegations of forgery or fraudulent manipulation pleaded by the plaintiff/1<sup>st</sup> respondent against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents sufficient to ground the findings of the learned trial Judge, as affirmed by the lower court.

Counsel further contended that by virtue of Rule 6(10) of Order 13 of the Federal High Court (Civil Procedure) Rules, the plaintiff/1st Respondent could not, at the trial, properly canvass any allegation of fraud against the 2<sup>nd</sup> respondent. According to him, the proper course would have been for the 1<sup>st</sup> respondent to file a reply to the joint defence of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents specifically pleading fraud in relation to the issuance of the Certificate of Occupancy to the appellant.

In support of this submission, he relied on **Mohammed v. Gbugbu & Ors. (2018) LPELR-44494 (CA) at pages 40-41.**

In addition, the learned counsel for the appellant contended that the concurrent findings of the two lower courts were founded on a fundamental misdirection in law. He argued that Certificate of Occupancy No. 90/90/44, duly certified and admitted in evidence, was wrongly adjudged a forgery in the absence of specific pleadings alleging fraud against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. According to him, issues of forgery and fraudulent issuance not arising from the pleadings could not properly form the basis of adjudication, and the trial court's findings thereon, as affirmed by the Court of Appeal, were therefore, perverse and unsustainable.

Counsel further maintained that Certificate of Occupancy No. 74/74/77 issued to the 1<sup>st</sup> respondent on 24/10/2001 was void ab initio, having been granted subsequent to Certificate of Occupancy No. 90/90/44 earlier issued to the appellant on 09/11/1998 over the same parcel of land.

He accordingly urged this Court to allow the appeal and set aside the judgments of the courts below and enter judgment in favour of the appellant in terms of the counterclaim.

In response to the issues raised, learned counsel for the 1<sup>st</sup> respondent submitted that the lower court rightly affirmed the decision of the trial court, having correctly held that the 1<sup>st</sup> respondent's Certificate of Occupancy remained valid and subsisting, there being no evidence before the court of its lawful revocation.

Contrary to the submissions of the appellant's counsel, learned counsel for the 1<sup>st</sup> respondent referred to paragraph 8 of the Amended Reply and Defence to the Defence and Counterclaim of the 4<sup>th</sup> Defendant/appellant, wherein the 1<sup>st</sup> respondent specifically traversed the averment that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had revoked her Certificate of Occupancy.

Counsel further contended that the document purportedly revoking the 1<sup>st</sup> respondent's Statutory Right of Occupancy

was merely a letter and did not amount to a valid Notice of Revocation as required by law. He argued that a proper Notice of Revocation must be published in the Gazette and duly served on the holder of the right of occupancy.

In support of this proposition, counsel relied on the decisions in **Adesoye v. Gardner (1997) NNLR 136; Abed Okeke v. Tofi (1980) PLR 601; Provost, Lagos State College of Education v. Edun (2004) All FWLR (Pt. 201) 628; and Ibafo Co. Ltd v. NPA, CA/L/23/95**, delivered on 30<sup>th</sup> March 2000.

He maintained that the 1<sup>st</sup> respondent holds a lawful and subsisting Statutory Right of Occupancy over the property and urged the Court to resolve the issue in her favour.

On the second issue, learned counsel for the 1<sup>st</sup> respondent submitted that in her Amended Reply and Defence to the Defence and Counterclaim of the 4<sup>th</sup> defendant/appellant, she expressly denied that any valid Certificate of Occupancy over the property in dispute was ever issued to the 4<sup>th</sup> Defendant/appellant. She maintained that the Certificate of Occupancy relied upon by the appellant was a forgery and had been procured by fraud.

Counsel referred to the testimony of PW4, an expert witness and Director of Lands and Urban Development in the 1<sup>st</sup>

Defendant, who stated that the original Certificate of Occupancy tendered by the 4<sup>th</sup> defendant/appellant (Exhibit E) had been tampered with on its face and was not genuine. He argued that PW4's evidence clearly demonstrated that the document had been altered and was a forged instrument, and that the alterations could not reasonably have been made prior to the Minister appending his signature to it.

It was further submitted that the defendants failed to produce the Original Certificate of Occupancy because it was prejudicial to their case. Counsel contended that the original registry copy of the document revealed manifest irregularities on its face, thereby clarifying the matter for the lower courts.

He added that the trial court rightly concluded that the defendants' case was fraught with material inconsistencies and was, in effect, wholly unreliable. He therefore urged this Court to resolve the issue in favour of the 1<sup>st</sup> respondent.

From the facts and the arguments of counsel for the parties in the instant appeal, the central issue is whether the 1<sup>st</sup> respondent's Statutory Right of Occupancy was lawfully revoked and whether the 4<sup>th</sup> defendant/appellant established a superior and valid title capable of displacing the 1<sup>st</sup> respondent's interest.

This issue I must say here, is no longer new in our jurisprudence.

Issue of revocation of Statutory Right of Occupancy under Section 28 of the Land Use Act has over the years received the attention of this court in several decisions and pronouncements. The words of Section 28 of the Land Use Act are clear and unambiguous as to what constitutes lawful revocation. Section 28 (1) of the Land Use Act provides that it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest. Overriding public interest has been defined in Subsection (2) (b) in the case of statutory right of occupancy to include "**public purposes**" within the state and in Subsection (3) (a) in the case of a Customary Right of Occupancy to include public purpose within the state." There is no doubt that the Governor has power to revoke a certificate or Right of Occupancy for a breach of the provision which a certificate of occupancy by Section 10 thereof is deemed to contain and also a breach of any terms contained in the certificate of occupancy or any special contract made under Section 8 of the Act. See section 28 (5) (a) and (b) Land Use Act 1978.

It must be emphasized that although the Governor has right and/or power to revoke a right of occupancy, such power must

be exercised with due compliance with the provisions of the Land Use Act, particularly with regard to the giving adequate notice of revocation to the respondents whose name and address are well known. See the cases of **Olomoda v. Mustapha & Ors. (2019) 6 NWLR (Pt. 1667) 36**; **Orianzi v. A.G. Rivers State & Ors. (2017) 6 NWLR (Pt. 1561) 224**; and **CIL Risk & Asset Management Ltd v. Ekiti State Govt & Ors (2020) 12 NWLR (Pt. 1738) 203**. Moreover, it is settled law that Section 28 of the Land Use Act and all the subsections there-under are expropriatory statutes which encroach on a person's proprietary rights which must be construed '*Fortissimo Contra Preferentes*' (i.e. strictly against the acquiring authority but sympathetically in favour of the person whose property rights are being taken away). Thus, the law imposes the duty on the acquiring authority to strictly adhere to the formalities prescribed by the law. The reason or purpose of giving notice is to duly inform the holder of a right of occupancy about the steps being taken to extinguish his right. In the absence of adequate service of the notice of revocation of respondents' Right of Occupancy the purported revocation of his right of occupancy is null and void.

Revocation must be for overriding public interest and must be effected strictly in the manner prescribed by law. The revocation becomes operative only upon the issuance and service of a proper Notice of Revocation on the holder of the right of occupancy. The statutory scheme does not recognize an informal communication or mere administrative correspondence as sufficient to extinguish vested proprietary rights. The requirement of formal notice is mandatory, not directory. Furthermore, by virtue of Section 44 of the Land Use Act, revocation carries with it statutory consequences relating to compensation, thereby underscoring that revocation is a solemn executive act that must be evidenced by due compliance with the procedural safeguards laid down by statute.

In the instant case, the document relied upon by the appellant as evidence of revocation was shown to be a mere letter, neither gazetted nor proved to have been formally served as required by law. No credible evidence was led to demonstrate compliance with the mandatory requirements of Section 28. In the absence of strict proof of lawful revocation, the presumption of continuity and validity attaching to the 1<sup>st</sup> respondent's Certificate of Occupancy remains intact. The lower court was

therefore correct in affirming the trial court's finding that the 1<sup>st</sup> respondent's Statutory Right of Occupancy subsists.

On the competing claim of title, it is trite that where two parties lay claim to title founded on Certificates of Occupancy, the court must examine the validity and authenticity of the instruments relied upon. The 1<sup>st</sup> respondent specifically traversed the appellant's pleading that a Certificate of Occupancy was validly issued in his favour, alleging that the document relied upon was forged and fraudulently procured. The evidential burden thus shifted to the appellant to establish the authenticity of the instrument.

The unchallenged expert testimony of PW4, the Director of Lands and Urban Development, established that Exhibit E bore patent alterations on its face and was inconsistent with official registry records. The alterations were such that they could not reasonably have preceded ministerial execution of the instrument. The appellant's failure to produce a credible, unaltered original further weakened his case. Where a document forming the root of title is shown, through cogent and credible evidence, to have been materially altered and doctored, the court is entitled to hold that it is a forgery. A forged instrument is a *nullity ab initio* and conveys no legal or

equitable interest capable of defeating a subsisting statutory right of occupancy.

In these circumstances, the concurrent findings of the two lower courts—that there was no lawful revocation under Section 28 of the Land Use Act and that the appellant's purported Certificate of Occupancy was inauthentic—are firmly grounded in evidence and law. The 1<sup>st</sup> respondent's Statutory Right of Occupancy therefore remains lawful, valid and subsisting.

In the circumstances, the concurrent findings of the two lower courts that the appellant's case was riddled with material inconsistencies and that the purported Certificate of Occupancy was inauthentic cannot be faulted. The 1<sup>st</sup> respondent's Statutory Right of Occupancy remains lawful and subsisting.

In the final analysis, both issues distilled for determination in this appeal are resolved against the appellant. Consequent upon the resolution of the said issues, it is manifest that the appeal is devoid of merit. Accordingly, the appeal is hereby dismissed.

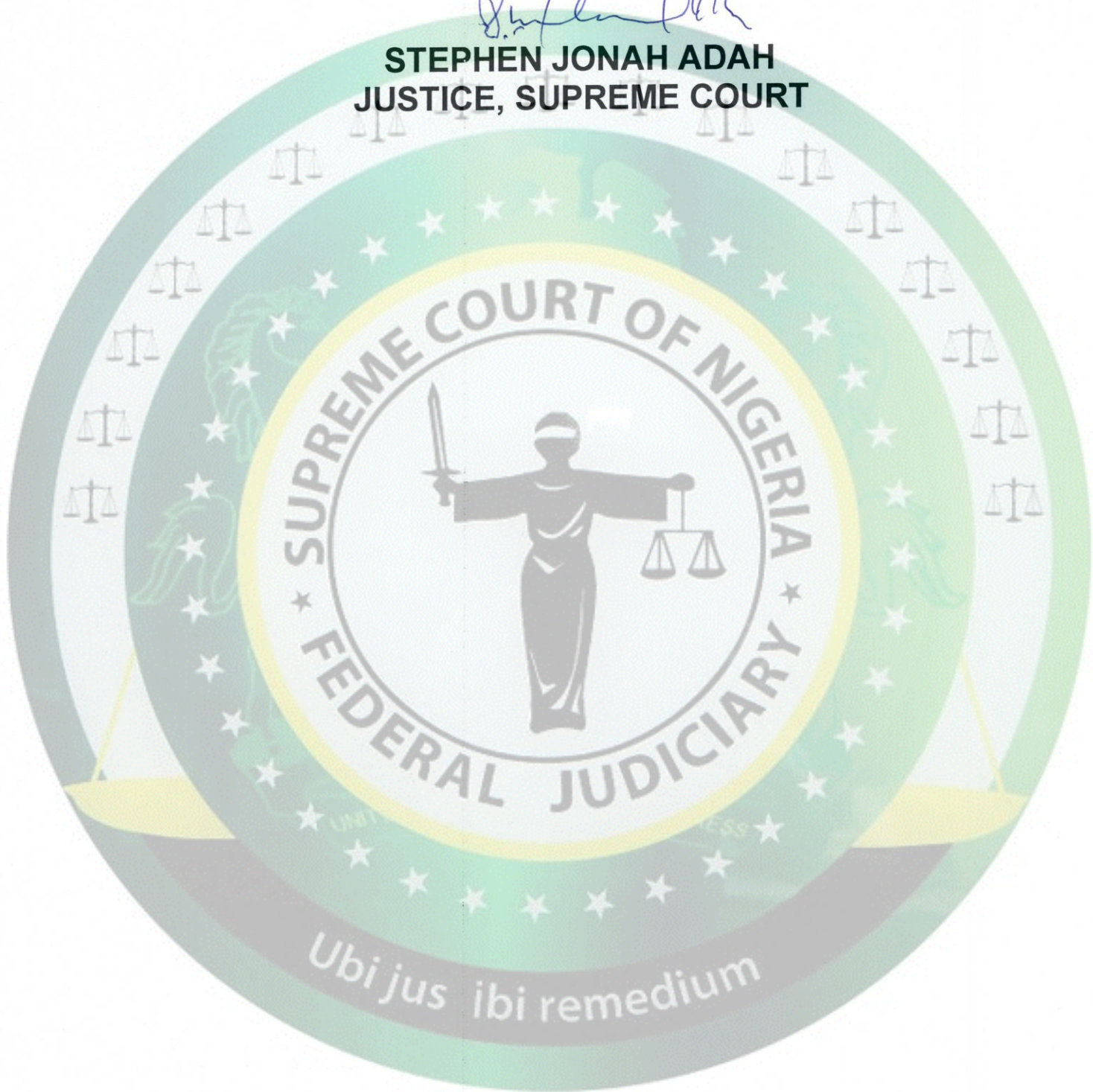
The judgment of the Court of Appeal, Lagos Judicial Division, delivered on the 21<sup>st</sup> day of July, 2020, is hereby affirmed.

Parties are to bear their respective costs.

Appeal Dismissed.



**STEPHEN JONAH ADAH  
JUSTICE, SUPREME COURT**



**APPEARANCES:**

Chuks Nwachukwu, Esq., with Jeffrey Ucheh, Esq., **for the Appellant.**

Adegboyega Edu, Esq., **for the 1<sup>st</sup> Respondent.**

