'ALLOCATION OF LANDS IN AREA COUNCILS' IN THE FEDERAL CAPITAL TERRITORY, ABUJA: THE TITLE VALIDITY QUESTION*

Abstract
The Nigerian Federal Capital Territory, Abuja (FCT) was created by section 1(1) of the Federal Capital Territory Act[1]*. Lands consisted in the area of the prescription of section 1(2) of the FCT Act is vested in the Federal Government of Nigeria (FGN)*[2]*. There appears a lingering fog enveloping the legal status of title deeds to lands allocated 'by Area Councils' of the FCT in view of the ownership of the lands in the FCT by the FGN. Journals, materials from the internet, statutes and case law shall be employed in this work to accomplish its goal. The work recommends inter alia for accelerated performance of the Abuja Geographic Information System (AGIS) to enhance regularisation of title deeds over lands allocated by the Zonal Offices of the Federal Capital Development Authority (FCDA). The key words are FCT, FGN, Area Council, allocation and land.*

Keywords: Allocation of lands, Area Councils, Federal Capital Territory Abuja, Title validity

1. Introduction

The significance of land to human endeavours cannot be overemphasized. For the purposes of food production, housing, business, road construction etc; land is a factor that cannot be dismissed. The legal entitlement to land itself is a factor that has a blood and flesh relationship with land. Whether one wants to build a house, a business premises, farm on land, one must be legally entitled to any given parcel of land required for that purpose. In other words, his title to the land he intends to develop must be a valid one. Incidentally, most of the lands out of the Abuja city centre have been allocated by the FCDA Zonal Land Offices located in the six Area Councils of the FCT. The uncertainties surrounding the validity of such allocations have made this work necessary.

2. The Ownership of Lands in the FCT

The ownership of lands comprised in the land area that constitute the FCT, Abuja is indisputably provided for by section 297 of the Constitution of the Federal Republic of Nigeria, 1999 (CFN). In the words of this provision:

> 297(1) There shall be a Federal Capital Territory, Abuja the boundaries of which are as defined in Part II of the First Schedule to this Constitution[3].
> (2) The ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria.[4]

The administration of lands comprised within the FCT is vested in the President of the Federal Republic of Nigeria (FRN) generally by sections 5(1)(a) and specifically 299 and 301(a) all of the CFN. The above legal position goes without saying that the President of the FRN or his delegate (the Honourable Minister of FCT) is in charge of lands in the FCT. 'Thus, without an allocation or grant by the Hon. Minister for the FCT there is no way any person including the respondent could acquire land in the FCT.'[5]

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[1]Cap. 503, Laws of the Federation of Nigeria (LFN) (Applicable to Abuja), 2007 (which came into force on the 4th day of April, 1976).
[2] Ibid.
[3] See also section 1(4) of the CFN.
[4] See *Madu v Madu* [2008] All FWLR (Part 414) 1604 at 1627, paragraph C-E; where Ona *v Atenda* [2000] 5 NWLR (Part 656) 245 (CA) was cited with approval.
[5] *Madu v Madu* [2008] All FWLR (Part 414) 1604 at 1627, paragraph E.

The power to allocate lands in the FCT, and the delegation rule

It has been settled that lands in the FCT belong to the FGN[6]. The allocation of land in the FCT is a prerogative of the President or his lawful delegate[7]. The delegation rule is unavoidable for the obvious reasons that the work load in the President's office may not permit him to go into allocation of lands in person; and section 302 of the CFN provides for the delegation of the President's powers under section 301(a) of the CFN to administer the FCT in the following terms:

> 302. The President may, in exercise of the powers conferred upon him by section 147 of this Constitution, appoint for the Federal Capital Territory, Abuja a Minister who shall exercise such powers and perform such functions as may be delegated to him by the President from time to time.

Section 18 of the FCT Act has delegated the functions of the President over the FCT, to the Minister of the FCT in the following terms:

> 18. As from the 28th May, 1984, the President, has delegated to the Minister of the Federal Capital Territory, the following functions, that is to say –
> (a) any function or power conferred on the Chairman of the Federal Capital Development Authority under this Act;
> (b) the executive power of the federal government vested in the President pursuant to section 263(a) or any other section of the Constitution of the Federal Republic of Nigeria and exercisable within the Federal Capital Territory;
> (c) any function or power conferred by any law set out in the Second Schedule to this Act vested in the Governor or Military of a State;
> (d) the powers vested in the President by section 1(1)(d)(i) of the Public Officers (Special Provisions) Act; and
> (e) such other functions as the President may from time to time confer on the Minister.

The above provisions read in community with sections 301 and 302 of the CFN confer on the Minister of the FCT the powers of the Governor of a State over lands but as a delegate of the President[8]. Paragraph (a) of section 18 of the FCT Act confers on the Minister the powers that include 'the preparation of a master plan for the Capital city and of land use with respect to town and country planning within the rest of the Capital Territory...'[9]; 'to hold and manage moveable and immovable property'[10] and the omnibus power 'to exercise such other powers as are necessary or expedient for giving full effect to the provisions of this Act.'[11] A household reading of sections 297(2), 299, 301(a), 302 of the CFN, sections 18(b)(e), 4(1) (b), 4(2)(b) and (h) of the FCT Act would lead to the inevitable conclusion that the Minister of the FCT is a delegate of the President of the FRN in charge of allocation of lands within the FCT, Abuja.

The *delegatus non potest delegare* rule in land allocation in the FCT, Abuja

Just like the President has been noted to be saddled with a lot of work and would not be reasonably expected to sign the allocation of every piece of land in the FCT to persons; the Minister, who is his delegate in this regard, faces the same challenge. A check on the allocation of lands within the FCT, starting from lands allocated from the office of the Minister or what is commonly referred to as FCDA allocations, the letters that convey the offer of a Right of Occupancy (R of O), are signed by the Director of Lands or any other authorised agent of the Minister. The process of the allocation is consummated by the signing of the Certificate of Occupancy (C of O) by the Minister himself over any piece of land that is conveyed by an R of O signed by his appointee, the Director of Lands. The act of the Minister in signing the C of O appears to supersede that of his agent that signed the R of O; yet the truth remains that the R of O is the foundational title deed upon which the C of O rests[12]. There appears in the circumstances

[6] Sections 297(2) of the CFN, 1(3) of the FCT Act and *Ona v Atenda* (supra).
[7] Section 302 of the CFN; section 18 of the FCT Act which has made the Minister of the FCT the delegate of the President. See also *Madu v Madu* (supra) 1604 at 1627, paragraph C-E.
[8] Section 18 of the FCT Act.
[9] The FCT Act, Cap. 503, Laws of the Federation of Nigeria (LFN) (Applicable to Abuja), 2007, section 4(1)(b).
[10] Ibid, section 4(2)(b).
[11] Ibid, section 4(2)(h).
[12] Submissions on this would be put in abeyance for now.

a war between the principle of law denoted by the Latin maxim *delegatus non potest delegare* **(**a delegate cannot sub-delegate a delegated power) with the practice of the Minister of the FCT delegating his delegated authority to anyone to sign letters of offer of the R of O over lands in the FCT without a statutory provision permitting him to do so. This shall be fully dealt with presently but after considering 'Area Councils' allocation of lands within the FCT.

3. Lands 'allocated by Area Councils'

The inverted commas in the above sub norm indicate our dispute over any claim that lands allocated in Area Councils of the FCT are Area Councils' allocations. The following reasons are advanced in support of the position that they are not:

a. The Area Councils' Zonal Land Managers have always been members of staff of FCDA (a corporation that the Minister is the Chairman) and have always been assigned to work in the FCDA Zonal Land Offices located in each of the six Area Councils; they sign what is in some cases referred to as the 'customary' R of O.
b. There is no allocation of land by these Zonal Land Managers that is not founded on a layout approved by the Minister.
c. There was a time in the early 1990s that the Development Control unit of FCDA had building plans vetting and approval committees in all the Area Councils of the FCT. Their function was to vet and approve building plans meant for execution on lands allocated within Area Councils and by the Zonal Land Managers assigned by the FCDA.
d. The acceptance of 'title deeds' over Area Councils' allocated lands for title deeds regularisation by the Abuja Geographic Information System (AGIS). It is in recognition of the part played by it in the allocation of lands in Area Councils that AGIS accepts 'title deeds'[13] to land emanating from Area Councils for title deeds regularisation[14] just in the same way title deeds to lands allocated by FCDA are accepted for regularisation . In the unreported case of *Blessed and Precious Children Academy Ltd and ors. v Federal Capital Development Authority and ors.*[15], Affen J. of the FCT High Court referred to submission of title deeds emanating from the Area Councils for regularisation by AGIS as acknowledgment of fundamental defects in those title deeds. With respect to his Lordship, this conclusion does not appear to be quite correct. It is an over generalisation that has no proper foundation on the reasons for founding AGIS[16] or even the definition of regularisation. 'Regularization' has been defined to mean 'to make regular', 'conform to a rule, principle etc.'[17] It does not suggest a void situation which no regularisation can make regular on the principle that no regularisation can make anything out of 'nothing'.

'Area Councils' letter of offer of R of O versus FCDA letter of offer of R of O

Allocation of land emanating from Area Councils' Zonal Land Offices has largely been seen as illegal or ultra vires from the perspective of the lordship of the President of the FRN over lands in the FCT[18]. Invoking the principle of *nemo dat quod non habet*, an Area Council cannot convey that which it has not or transfer rights over that which it has no right in respect of[19]. Area Councils' 'allocation of lands' may appear to have another setback in the application of the *delegatus non potest delegare* rule since the Minister of the FCT is a delegate of the President of the FRN and consequently cannot lawfully further delegate his function to any other person to allocate land within the FCT.

[13] A customary C of O given under the hand of an Area Council Chairman is not a valid title deed.
[14] Further submissions on this would be made later.
[15] Suit No. FCT/HC/CV/213810, judgment delivered on the 14/03/2011.
[16] See reasons in UE Ekrikpo, 'LEGAL REGIME OF LAND ADMINISTRATION UNDER THE ABUJA GEORGRAPHIC INFORMATION SYSTEM (AGIS)' p. 71 (being a thesis for the award of a Masters' degree in Art and Law submitted to the Ahmadu Bello University, Zaria, School of Post Graduate Studies, 2016). Kubanni.abu.edu.ng visited on the 12/02/2021.
[17]BS Cayne et al (Editors), *The New Webster Dictionary of English Language International Edition* (New York: Lexical International Publishers, Guild Group, 1992) 839.
[18] Sections 297, 299(a) and 301(a) of the CFN.
[19] This is the position taken by his Lordship Otaluka J. in the unreported case of *Ashiut Eng. Ltd v Hon. Minister of FCT and ors.* Suit No. FCT/HC/CV/1858/13 delivered on 18/10/2017.

Sound as the reasoning above may appear to be, there is in it the inherent danger to even claims to lands allocated by FCDA, the office of the Minister of the FCT[20]. The sledge hammer of the *delegatus non potest delegare* rule may fall on even the land the Presidential Villa in Abuja is built on as the R of O must have been signed by someone on behalf of the Minister ! Bureaucratic requirements make an exception to the rule of *delegatus non potest delegare* inevitable in what has come to be judicially known as the 'Carltona rule'. A minister with delegated statutory functions is by this rule justified in acting through officers of his ministry the validity of whose actions defy the *delegatus non potest delegare* rule. The rule took its name from the case of *Carltona Limited v Works Commissioner*[21]. In this case the argument was that the person who had the delegated power to act for the Commissioner of Works under the relevant statute was the First Commissioner but that the person that, in fact, acted for the First Commissioner was the Secretary; therefore his action was unlawful as a sub-delegate under the rule of *delegatus non potest delegare*. In the light of the enormous responsibilities of the beneficiaries of such delegated authority *visa-a-vis* the application of the rule of *delegatus potest non delegare,* Lord Green MR held that:

> In the administration of government in this country, the functions which are given to ministers...are functions so multifarious that no minister could personally attend them...The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the minister's. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before the parliament for anything that his officials have done under his authority.

This legal position was taken by the Supreme Court of Nigeria in the case of *Nwosu v Imo State Environmental Sanitation Authority* [22]per his Lordship Nnameka-Agu JSC thus:

> Although the Courts are strict in requiring that statutory power shall be exercised by persons on whom it is conferred and by no one else, they make liberal allowance for the working of the official hierarchy at least so far as it operates within the sphere of responsibility of the minister. This is embodied in the Latin maxim: *qui facit per alium facit per se* i.e. he who does an act through another is deemed in law to do it himself.[23]

The above decisions constitute a ground for contending that an R of O signed by a Zonal Land Manager, an officer from FCDA (headed by the Minister) assigned to allocate lands at Area Council level is the act of the Minister in circumstances that defy the rule of *delegatus non potest delegare*.

The C of O over an 'Area Council allocated' land that would be signed by the Minister at the close of the title deeds regularisation process by AGIS would be in all respects on the same footing with the one issued on any land allocated at the FCDA level. The wrong application of the *delegatus non potest delegare* rule would remove the foundation upon which a C of O signed by the Minister over any land allocated at even the FCDA level rests. Such a C of O cannot stand as its situation finds the best of its description in the words of the Supreme Court of Nigeria quoting Denning MR (of blessed memory) in *UAC v Mc Foy*[24] in *Geneva v Afribank (Nig.) Plc.*[25] per his Lordship, Ariwoola JSC in the following terms: 'You cannot put something on nothing and expect it to stay. It will certainly fall.' The application of the *Carltona* Rule would make R of Os of all lands in the FCT (whether FCDA or 'Area Council') signed by delegates of the Minister[26] not only valid but also viable premises that can make legal any C of O that would be issued by the Minister of the FCT later.

[20] The Director of Lands or some other persons authorised by the Minister sign R of Os for the Minister.
[21] [1943] 2 All ER 560 (CA).
[22] [1990] 2 NWLR (Part 135) 688 at 718-719, paragraph H-B.
[23] The decision of the Supreme Court of Nigeria in *Madu v Madu* [2008] All FWLR (Part 414) 1604 at 1627, paragraph C-E is not at variance with the above position and the Carltona Rule. The position of delegate of the Minister signing an offer of an R of O was not pronounced upon by the Supreme Court in this case thus the validity of the decision remains as a general rule that is not inadmissible of at least an exception.
[24][1962]AC 152, [1961] 3 All ER1169.
[25][2013] All FWLR (Part 702) 1652 at 1682.
[26] By virtue of sections 18 of the FCT Act, 301 and 302 of the CFN.

His Lordship Affen J. tried to draw a distinction between 'Area Councils' land allocation letters signed by the Zonal Managers on behalf of the Minister and those signed by them on behalf of the Chairman of their host Area Councils for the purpose of the application of the *Carltona Rule*[27]. He held the rule inapplicable in the second situation; the reason being that an Area Council Chairman has no right to allocate land consequently the rule '*nemo dat quot non habet'* applies[28]. Admittedly, signing for any chairman of an Area Council is wrong; but the facts that the signatory (the Zonal Land Manager) is an officer of the office of the Minister, assigned by the Minister to the office of Zonal Land Manager; and has the mandate of the Minister to sign such allocations; should make the anomaly of signing on behalf of the Chairman of an Area Council to fade into insignificance. An Area Council chairman is not the employer of a Zonal Land Manager heading the Zonal Land Office in his Area Council; he does not direct the Zonal Manager on what to do nor approves any layout for him to allocate; these are done by the Minister. Succinctly put, a Zonal Manager is answerable to only his department under the Minister and not to anyone in the Area Council including the Chairman. If any Zonal Land Manager wrongly describes his authority to sign for the Minister or does not even indicate by whose authority he is signing in the face of the facts of his delegation and assignment to such an office by the Minister, such a wrong description or non-description at all should be treated as a mere abnormally especially that equity sees as done that which ought to be done[29].

The R of O is the contractual offer made to an applicant upon the consideration of his application for land within the FCT. This is the procedure at the FCDA and Area Councils' levels. After meeting the conditions spelt out on the R of O, a citizen to whom the offer was made acquires an equitable interest over the land and the Minister must sign a C of O conveying such land to the citizen. In the words of his Lordship Galumje JSC in *Atiku Aderonpe v Eleran*[30]:

> By prompt payment of these fees within the prescribed period, the Appellant had accepted the offer. There was no more acceptance of offer in the transaction as the agreement had been crystallized into a binding contract. The right of occupancy, in my view is the approval of the Appellant's application which was duly conveyed to him. What was left for the governor of Kwara State, (first Respondent) to do was to issue a certificate of occupancy.

Although the above decision is in respect of a case that emanated from Kwara State, it is of undoubted authority in the FCT whose procedure for acquiring statutory rights of occupancy over land is the same with that of Kwara State. This goes without saying that holders of R of Os of lands in Area Councils are owners of land in equity much in the same way that a holder of an R of O at the FCDA land allocation level is.

At one time Mallam Nasiru El-Rufai, when he was the Minister of the FCT referred to lands allocated to citizens by Zonal Land Offices of the FCT as worthless pieces of papers[31]. This view may find support in the application of the common law notions of *nemo dat quod non habet* and *delegatus non potest delegare*. If lands in the FCT are vested in the FGN whose representative is the Minister of FCT then no one but him or his appointer can validly convey rights over land in the FCT to another person[32]; and that since the Minister himself is a delegate of the President of the FRN, he cannot sub-delegate his authority to allocate land. These positions have their severe limits in the submissions on the *delegatus non potest delegare* rule and the Carltona Rule above. Furthermore, this extreme position is taken in total disregard to the following factors:

[27] *Blessed and Precious Children Academy Ltd and ors. v Federal Capital Development Authority and ors*.(Supra).
[28] This reasoning was partly followed by his Lordship Otaluka J. in Ashiut Eng. Ltd v. Honourable Minister of FCT (supra).
[29] *Atiku Aderonpe v Eleran* [2018] 76 NSCQR (Part 1)255; cf. Lordship Otaluka J. in Ashiut Eng. Ltd v. Honourable Minister of FCT (supra).
[30] [2018] 76 NSCQR (Part 1)255 at 295, paragraph E-F.
[31]This appears to be the view held by his Lordship Yusuf Halilu J. of the Abuja High Court in *Incorporated Trustees of Chikakore Layout Land Lords Association Kubwa and 2 ors. v The Hon. Minister of the FCT and Bwari Area Council* Suit No. FCT/HC/2907/13 (Unreported) cited by Olayimika Olasewere in his 'Registration of Instruments in the Federal Capital Territory, Abuja' Gravitas Review of Business and Property Law Vol. No.4 (Dec., 2016) gravitas review.com.ng accessed 12/02/2021.
[32] *Madu v Madu* (supra).

The 'responsibilities' of AGIS

One of the responsibilities of AGIS as an institution is the resolution of 'unclear situations in land allocation' within the FCT[33]. The 'unclear situations' certainly do not exclude allocation of lands in Area Councils. It is for this reason that AGIS did not exclude lands allocated in Area Councils from its title regularisation exercise.

The factor of the involvement of the Minister/FCDA in the allocation of lands in Area Councils and the law of estoppel

Closely related to the purpose of AGIS is the fact of the involvement of members of the staff of FCDA in the land allocation/administration of the Area Councils. A repeat of the facors already enumerated under the sub norm 'Lands 'allocated by Area Councils' above is hardly necessary[34]. The director of the survey department of FCDA (who is the equivalence of the Survey General of a state of the Federation of Nigeria) signs the title deeds plan (TDP) found in even the certificates issued under the hand of Area Council Chairmen. In its title regularisation drive, all Zonal Land Managers for Area Councils now have their offices in the FCDA Secretariat in the continuation of the title regularisation exercise.

The active participation of the Minister through the agency of FCDA that he leads in the posting of Zonal Managers to Area Councils among other things are a gag in the mouth of the Minister who should not be heard denying the validity of land allocated by his appointed agents in Area Councils. This is more so that thousands of persons that enjoyed such allocations have built houses (some with the approval of the committees mentioned above) on them decades ago and are still building. It is the contention that the participation of the Minister/FCDA in land allocations in the Area Councils of the FCT constitutes an estoppel against any denial of the rights of beneficiaries of lands allocated in the Area Councils. Citing with approval the hoary principle of the law of estoppel in *Central London Property Trust Ltd. v High Trees House Ltd*[35], his Lordship, Eko JSC in the lead judgment of the Supreme Court of Nigeria in *Atiku Aderonpe v Eleran*[36] held that:

> When one person has, either by virtue of an existing judgment, deed or agreement, or by his declaration, act or omission, intentionally caused or permitted another person to belief a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceedings between himself and such person or such persons representative in interest to deny the truth of that thing.[37]

This decision finds statutory footing in the provisions of section 169 of the Evidence Act. It is the contention that the active role of the Minister/FCDA in setting up the land allocation apparatus of Area Councils, its several acknowledgements of these allocations to the last being regularisation of these allocations as it is doing in relation to lands allocated by FCDA, its current action in receiving 'Area Councils' allocations for tile regularisation like those of lands allocated by FCDA are facts that cannot and should not be ignored but which have not been advanced before trial courts. It is the contention that at the very worst, R of Os over 'Area Councils' allocations which have met the conditions spelt out on their faces and certificates already issued or yet to be issued be treated as rights acquired in equity which must crystallise into legal rights that must be given by the Minister[38] except if there are good reasons to the contrary.

Laws governing land allocation and administration in the FCT

It is not whether the Area Councils' C of Os are dubbed 'Customary C of Os' or not that matters, but that they are supposed title deeds signed by persons without authority to sign them. It has been contended by lawyers in arguments that since lands in the FCT are vested in the FGN and the Land Use Act[39] (that provides

[33]UE Ekrikpo, 'LEGAL REGIME OF LAND ADMINISTRATION UNDER THE ABUJA GEORGRAPHIC INFORMATION SYSTEM (AGIS)' P. 71 (being a thesis for the award of a Masters' degree in Art and Law submitted to the Ahmadu Bello University School of Post Graduate Studies, 2016). Kubanni.abu.edu.ng visited on the 12/02/2021.
[34] For security reasons at least a sample of this would have been displayed.
[35] [1947] KB 130
[36] [2018] 76 NSCQR (Part 1) 255 at 280-281, paragraph H-A.
[37] See earlier decision of the Supreme Court on this principle in *Ladipo Akanni v Adedeji Makanju* [1978] 11 SC 13 at 26.
[38] *Atiku Aderonpe v Eleran* (Supra).
[39] Cap L5, LFN, 2004.

for Urban and Rural Lands) does not apply in the FCT, the rules of customary law do not have a place in the administration of land in the FCT. For the avoidance of doubt, in *Ona v Atenda*[40], the Court of Appeal has decided that the Land Use Act (LUA) does not apply in Abuja[41]. In *Ibrahim v Obaje*[42], the issue before the court was whether the Minister's consent was a precondition for the alienation of an interest in land in Abuja but not directly on whether the LUA applies in the FCT or not. The Supreme decided the case in a manner that impliedly endorsed the application of the LUA in the FCT without explicitly saying so[43]. The decision of the Court of Appeal on the issue above[44] is preferred.

In the absence of a statute like the Land Use Act applying in the FCT, land administration in Abuja could not rightly be said be to be governed by no law. At the very least, there are other statutes that deal with the administration of interests in lands[45] but which have hardly been noted before courts. For all practical purposes, the major laws that determine dealings in lands and interests in land are the law of contract and customary law.

The law of contract

The decision of the Supreme Court in *Atiku Aderonpe v Eleran*[46] has left no one in doubt that an R of O is an offer that crystallises into a contract when the grantee accepts the offer by meeting the conditions spelt out on the R of O and that a C of O must be given sequel to the equitable interest so acquired by the grantee upon accepting the offer. The relationship between the grantee of a piece of land in the FCT would largely be governed by the terms of the contract between him and the grantor, the Minister of the FCT. The conditions of grant are contained first on the R of O and are reproduced on the C of O save those conditions on the R of O on the payment of fees for the purpose of the issuance of a C of O. In the LUA regime, section 5(1) provides for the contractual relationship between a grantor and grantee of an R of O but the contractual relationship between a grantor and a grantee in the FCT jurisdiction is contained in the contractual relationship that arises when a grantee accepts and meets the conditions of grant contained in the R of O which creates in favour of a grantee an equitable interest which matures into a legal interest upon the issuance of a C of O.

The contractual relationship under the LUA between a grantor and a grantee is statutory[47]. The LUA provides for the conditions for the revocation of the statutory R of O and does not allow arbitrary revocation except in accordance with the provisions of the LUA[48]. In the FCT, where the LUA does not apply, it is the contention that these statutory conditions could be enforced on the auspices of the contractual relationship created by means of the R of O and its acceptance that gives rise to the issuance of a C of O. A grantee is bound by the terms contained on the C of O once issued; but before its issuance, by the terms contained on the letter of offer of an R of O. Though a relationship subsisting on the strength of a contract and not statute, a person allocated land in Abuja has constitutional protection from arbitrary acquisition of his land by the government[49]. It is a principle of the law of contract that no party to a contract can arbitrarily renege from it to the hurt of the other party thereby leaving him without a remedy[50]. The equitable remedies of injunction,

[40] [2000] 5 NWLR (Part 656) 245. See also TA Yusuf, 'REQUIREMENT OF CONSENT IN THE ALIENATION OF INTERESTS IN LAND IN THE FEDERAL CAPITAL TERRITORY, ABUJA: *UNA V ATENDA* REVISITED', (2019) 1(3) IRLJ p. 139.

[41] This is contrary to the wrong notion held by UE Ekrikpo, 'LEGAL REGIME OF LAND ADMINISTRATION UNDER THE ABUJA GEOGRAPHIC INFORMATION SYSTEM (AGIS)' P. 61 (being a thesis for the award of a Masters' degree in Art and Law submitted to the Ahmadu Bello University School of Post Graduate Studies, 2016). Kubanni.abu.edu.ng visited on the 12/02/2021. This wrong notion was held by the court in the unreported case of Joshua v Engr. Jude Suit No. FCT/HC/CV/3089/13 per Halilu J. in a judgment delivered on the 29/07/2013.

[42] [2018] All FWLR (Part 937) 1682.

[43] Musale J. in *Adijat Mohammed and anr. v Musa Yusuf and ors.* Unreported Suit No. FCT/HC/CV/4403/2012, judgment delivered on the 25/01/2018.

[44] *Ona v Atenda*(supra).

[45] Registration of Titles Act, Cap. 546, LFN (Applicable to Abuja), 2007, Land Registration Act, Cap. 515, LFN (Applicable to Abuja), 2007.

[46] (Supra) at 295, paragraph E-F.

[47] Ibid at 278, paragraph E.

[48] Orianzi v AG of Rivers State [2017] 70 NSCQR 1131 at 1198 - 1199, paragraph F.

[49] Section 44(1) of the CFN.

[50] *Alli v Ahmed* [2019] All FWLR (Part 990) 1444 at 1468, paragraph F-G (SC), *British Airways v Atoyebi* [2013] All FWLR (Part 676) 444.

specific performance would be available to the party adversely affected by the reneging attitudes of a contractual partner. The constitutional backing above secures the contract rights of a grantee of land in Abuja against any likely aggressive conduct of the grantor. Thus an offer of an R of O that the 'offeree' has met the stipulations thereof in the FCT is a good ground for an action for a decree of specific performance against the FCT Minister to issue a C of O just as he could be compelled by mandamus to perform his mandatory and not discretionary official duty of doing so.

Rules of customary law

The notion of the application of rules of native law and custom in FCT lands administration may not only sound strange but also preposterous. This is because of the already established law and fact that all lands within the enclave of the FCT belong to the FGN. This led his Lordship Musale J. of the Abuja High Court in the unreported case of *Adijat Mohammed and anr. v Musa Yusuf and ors.*[51] to hold that:

> In the FCT, Customary right of occupancy has been abolished by Section 1(3) FCT Act which provides-
> The area contained in the Capital Territory shall as from the commencement of this Act, cease to be a portion of the states concerned and shall henceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and ownership of lands comprised in the FCT shall likewise vest absolutely in the Government of the Federation. (Emphasis supplied).

With respect to his Lordship Musale J., does the crown of ownership on the head of the FGN over lands in the FCT by the above provision of law conclude for the FGN the laws that govern the administration of lands in the FCT? It behoves on the FGN to decide to pass a law like the LUA particularly for Abuja; or to extend the application of the LUA to the FCT, *mutatis mutandis*, to allow the allocation of lands to be governed by the law of contract or to even permit the application of the rules of native law and custom side by side with the law of contract as it is in the FCT currently. His Lordship Musale J. placed reliance on the decision of the Supreme Court of Nigeria in *Madu v Madu*[52], where the Apex Court confirmed ownership of lands in the FCT by the FGN and that it is the Minister of the FCT that can grant statutory R of O over lands to applicants within the FCT. It is the conclusion of the Apex Court that no one gets a valid statutory R of O save by the hand of the Minister of the FCT by the combined effect of section 1(3) and 18 of the FCT Act. The Supreme Court in this case or any other case has never said that the choice as to which law applies in the administration of land within the FCT is not that of the Federal Government. Customary land law has been accorded a place in the land administration of the FCT, by section 9 of the Registration of Titles Act[53]. The section provides:

> 9(1) If a person opposing an application for first registration claims and proves to the registrar that the land is family land under customary law, the registrar shall, unless the family consent to registration, dismiss the application.
> (2) If a person opposing an application for first registration claims and proves to the registrar that the land, although not family land, is subject to customary law and by virtue of the customary law he has rights or interest, contingent or otherwise, in respect of the land...

The legislative recognition of the application of the rules of customary land law to land in the FCT does not need further explicit provision for the application of customary laws. This submission finds footing in the principle underlying the decision of the Supreme Court in *FRN v Osahon*[54], where it was the view of the Court that a right that is legally recognised need not be created explicitly. This Court took this position when construing section 174(1) (b) of the CFN. The Apex Court held the view that:

> …the Section recognizes the right of that "other authority or person" to institute any criminal proceedings…I hold the view that the relevant constitutional provisions need

[51] Unreported Suit No. FCT/HC/CV/4403/2012, judgment delivered on the 25/01/2018.
[52] [2008] All FWLR (Part 414) 1604 at 1627, paragraph D-F, [2008] 2 SCNJ 245 at 267; per his Lordship Onu JSC in his concurring judgment.
[53] Cap. 546, LFN (Applicable to Abuja), 2007.
[54][2006]25 NSCQR512 at 572 paragraph F-G per his Lordship, Onnoghen JSC (as he then was).

> not create the power to institute criminal proceedings once it recognizes the existence of that right to so institute criminal proceedings.

It is the contention that the recognition of the application of customary law in the land administration system of the FCT, has left the President or his delegate, the Minister, with the option of adopting same to govern land administration at least where indigenes of the FCT, Abuja dwell. This is the basis of the earlier submission that it is not the description of C of Os purportedly signed by Area Councils Chairmen as 'Customary Certificate of Occupancy' that is wrong, but the impropriety of the persons that signed them. The application of the rules of custom do not and should not be seen as setting up an adverse authority over land in the FCT to that of the FGN but as a system that shall be subject to the authority of the FGN who is the owner of all lands in the FCT. This is the notion held by Otaluka J. in *Ashiut Eng. Ltd v. Honourable Minister of FCT* [55] where he treated an R of O over a land in Abuja Municipal Area Council of the FCT described as 'customary' as unlawful[56] in complete disregard to the fact that the person that signed the conveyance of approval was a delegate of the Hon. Minister of the FCT thus if the C of O was not lawfully signed, the R of O would have remained valid for the purpose of the title deeds regularisation drive of the FCT government.

4. The status of 'C of Os' signed by the Chairmen of Area Councils in FCT

It has been seen that at both the FCDA and Area Councils' levels, R of Os are not signed by the Minister in person but by officers working in the FCDA. It has also been noted that R of Os convey equitable interests once the grantees meet the conditions set out on them. At the FCDA level, the Minister signs the C of O; at the Area Councils' level the practice before the title deeds regularisation exercise began was that an Area Council Chairman would sign what, in some cases, was referred to as Customary C of O. It is the submission that such certificates are void by the fact of the signature of any Area Council Chairman. The Minister, who is the delegate of the President and governor of all lands in the FCT[57], is the appropriate person to sign a C of O. It is the contention that a holder of a 'customary' C of O issued under the hand of a chairman has no more than an R of O issued to him and on the basis of which the C of O was purportedly issued. The R of O in such a person's possession based on the submissions above is the legal basis that the Minister can sign a C of O sequel to the title deeds regularisation exercise going on in AGIS.

5. Conclusion and Recommendation(s)

There are samples of the points made above i.e. samples of R of Os from the Minister's office signed by officers other than the Minister himself that are held valid and one signed by a Zonal Manager appointed by the Minister at the Area Council that is clothed with illegality when both should either be illegal by the *delegatus non potest delegare* rule or both be held to convey rights in equity that the Minister would perfect through the title deeds regularisation process and finally at least a letter from the director, Urban and Regional Planning of FCDA confirming the validity of an 'Area Council' allocation[58]. These aside, there is the master plan/layout of the FCT consisting of all layouts (including those in the Area Councils) that have always been prepared by FCDA and approved by the Minister of the FCT. These facts constitute the gag in the mouth of the Minister of the FCT against any denial of the validity of allocation of lands to citizens in the Area Councils by officers of his organisation, the FCDA. It is strongly recommended that holders of titles to lands in FCT Area Councils be treated with no difference from those holding titles that emanated from FCDA as their foundational titles, the R of Os, have a common source in the representatives of the Hon. Minister of FCT. The engagement of AGIS to regularise titles is a step that is encouraged in view of the engagement of FCDA in land allocations and development at the Area Councils' level.

[55] (supra).

[56] Cf. His Lordship Otaluka J.'s decision in *Ashiut Eng. Ltd v. Honourable Minister of FCT* (supra).

[57] Associated Discount House Ltd. v The Hon. Minister of the Federal Capital Territory and ors. [2014] All FWLR (Part 713) 1864 at 1876, paragraph G, per his Lordship, Aka'ahs JSC in the lead judgment.

[58] The authors would have displayed some copies of documents to back up their submissions on the recognition and involvement of the Minister/FCDA but for the security of such lands owners. It suffices to say that the master plan of Abuja in FCDA is a testimony of some of the things said above.