

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

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/4650/2013
DATE: 21ST MARCH, 2019**

BETWEEN:

DTV & CO. LTD

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PLAINTIFF

AND

- 1. HON. MINISTER OF F.C.T.**
- 2. FED. CAPITAL DEV. AUTHORITY**
- 3. DEVELOPMENT CONTROL, F.C.D.A.**

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DEFENDANTS

Parties absent.

Johnson Ahuruonye for the Plaintiff.

Plaintiff's counsel – The matter is for judgment and we are ready.

J U D G M E N T

By a writ of summons dated 30/8/2013 and filed on same date, the Plaintiff claim against the Defendants as follows:

1. A Declaration that the demolition of the Plaintiff's fence as void, illegal and amount to an abuse of court process and power.
2. The sum of N41,331,444.36 against the Defendants being the cost to replace the fence.

In prove of this claim, the Plaintiff filed 18-paragraph statement of claim dated 29/8/13, 12-paragraph Amended Reply to the statement of defence; the said reply is dated 15/5/18 and called three (3) witnesses.

Mr. Samuel Ibrahim testified as PW1. In his evidence-in-chief, he adopted a 22-paragraph statement on oath dated 25/2/15 as his evidence; the said PW1's statement on oath is adopted as forming part of this judgment.

The gist of PW1's evidence is that the 1st Defendant granted the Plaintiff a Statutory Right of Occupancy for Plot No. 21 of about 2 hectares within Onex, Kubwa Expressway, Abuja. That the Plaintiff paid the sum of Ten Thousand Naira (N10,000,00) to participate in the re-certification process. That the Plaintiff applied for a change of purpose clause of the said plot upon the payment of N1.5 Million.

The PW1 went further to state that the 1st and 2nd Defendants informed the Plaintiff when it wrote to AGIS to confirm if the re-certification was completed, he was advised to apply to AACTRIS for Certificate of Occupancy in respect of the plot since they classified the land as Area Council.

The Plaintiff paid the sum of N100,000.00 only to apply to AACTRIS.

It is the evidence of PW1 that the Plaintiff has a legal and equitable interest over the said land that has been in its possession since same was allocated to it. That the Plaintiff constructed a fence on the property immediately the property was allocated to

it. That the Plaintiff's Statutory Right of Occupancy in respect of the property is still subsisting and has not been revoked by the Defendants at any time.

PW1 went further to state that when the Plaintiffs were threatened by the defendants, with an ejection notices, the Plaintiff instituted Suit No. CV/2510/13 against the Defendants at the F.C.T. High Court. That despite the fact that the Defendants were served with the suit, they still went ahead to demolish the Plaintiff's fence on the property on 3/6/2013 without due process of law.

It is the contention of the Plaintiff that it would cost her the sum of N41,331,444.36 to replace the damaged fence.

In the cause of PW1's evidence, the following documents were admitted in evidence as exhibits:

- 1, CTC of writ of summons and Motion on Notice in Suit No. CV/2510/13 – Exhibit A & B respectively.
2. CTC of Offer of Terms of Grant/Conveyance of Approval dated 2/6/98 – Exhibit C.
3. CTC of the Receipt of Payment and AGIS Acknowledgement dated 11/10/2004 – Exhibit D & E respectively.
4. Solicitor's letter to the Defendants and the Defendant's reply to the letter – Exhibit F & G respectively.
5. The 2 Solicitor's letters written to AGIS dated 26/10/2009 and 13/12/2011 – Exhibit H & I.
6. The copy of Solicitor's letter dated 28/8/2007 – Exhibit J.

7. The copy of the letter dated 29/11/2007 and GTB Bank Draft dated 17/1/2008 – Exhibit K & L.
8. CTC of Oceanic Bank Deposit Slip dated 15/1/2012 and acknowledgment – Exhibit M and N. Respectively.

The Defendants were given opportunity to cross-examine the PW1 but they failed to utilize same. Their right to so cross-examine the PW1 was foreclosed.

Mr. Tunde Malumi testified as PW2. In his evidence-in-chief, he adopted 14-paragraph statement on oath dated 16/3/2018 as his evidence; the said PW2's statement on oath is adopted as forming part of this judgment.

The gist of the PW2's evidence is that the Defendants granted the Plaintiff a Statutory Right of Occupancy over the subject matter that was subject to renewal. That the Defendants renewed the Plaintiff's Statutory Right of Occupancy of the said subject matter by conduct through their promise to relocate the Plaintiff to another plot at Industrial layout Idu, Abuja.

He further stated that the Defendant gave approval to the Plaintiff to construct a fence on the subject matter. That the letter of approval of the Plaintiff was damaged when the Defendants demolished the Plaintiff's fence and other properties on the subject matter. That despite the fact that the Defendants were aware of Suit No. CV/2510/13, the Defendants still went ahead to demolish the Plaintiff's fence and damage its properties on the

subject matter. That because of the size of the plot it would cost the sum of N41,331,444.36 to replace the fence.

PW2 was discharged due to the continuous absence of the Defendants in court.

Miss Lucy Achobe testified as PW3. In her evidence-in-chief, she adopted a 6-paragraph statement on oath dated 16/3/2018 as her evidence.

In paragraph 4 of the said statement on oath, the PW3 stated that the Plaintiff's Manager briefed her to evaluate the cost of constructing the fence on Plot No. 21 at Onex along Kubwa Expressway, now known as Dawaki District Abuja.

That she inspected the property on the 2/4/13 and after the inspection, she gave a report on the cost of replacing the fence of the Plaintiff demolished by the Defendants.

2 certificates were admitted in evidence and marked as follows:

1. Quantity Surveyors Registration Board of Nigeria Certificate dated 11/7/2013 – Exhibit O.
2. Nigeria Institute of Quantity Surveyors Diploma Certificate dated 30/7/2012 – Exhibit P.

Also admitted in evidence is a Report dated 17/7/2013 as Exhibit Q.

Thereafter the PW3 was discharged.

In defence of this suit, the defendants filed a 26-paragraph statement of defence dated 6/6/2016 and called one witness.

Ogah Galadima Agnes testified for the Defendants as DW1. In her evidence-in-chief, she adopted a 30-paragraph statement on oath dated 9/6/16; the said DW1's statement on oath is accordingly adopted as forming part of this judgement.

The gist of the DW1's evidence is that although it is true that Statutory Right of Occupancy was sometime in the past granted to the Plaintiff over and in respect of the subject matter of this suit, the said Statutory Right of Occupancy was for a period of 5 years and same had expired since the year 2003. That no renewal was granted to the Plaintiff.

That the Plaintiff therefore has no title over and in respect of the said plot. That the application for change of purpose was misconceived as Plaintiff has no title whatsoever over and in respect of the plot to enable her apply for change of purpose of the plot.

The DW1 further stated that no approval was granted to the Plaintiff to construct any structure on property. That the plot of land in issue was been granted to a 3rd party who holds a valid and subsisting title over the said plot.

The witness further stated that the Plaintiff was promptly given notice to remove the unapproved structure erected on the plot, when it refused to so do; the 3rd Defendant had to effect the removal.

That this present suit is an abuse of the process of this Honourable Court in the light of the existence of Suit No. CV/2510/13 which is still pending.

Under cross-examination by the Plaintiff's counsel, the DW1 stated that the 3rd Defendant is an agent of the 1st and 2nd Defendant.

That she cannot say that the 3rd Defendant was aware of the suit before they demolished the fence.

That the claim in the present suit and the Suit No. CV/2510/2013 are not the same.

No re-examination, DW1 was discharged and that is the case for the Defence.

The Plaintiff's counsel filed a 7-page final written address dated 12/2/2015 and filed on 15/2/16 therein counsel formulated the following issues for determination:

1. Whether the demolition of the Plaintiff's property was proper, notwithstanding that there was a pending suit before this Honourable Court.
2. Whether the act of the Defendants constitutes trespass to land, requiring the payment of damages.
3. Whether the evidence of the Plaintiff can be deemed as admitted by the Defendants, for the court to give judgment in favour of the Plaintiff.

On Issue 1, it is the submission that on commencement of litigation, counsel should caution parties from any action that may

alter the nature of the res in defence to the legal doctrine of *lis pendis*, but in the instant case, the Defendants having been served with the writ of summons and court process, filed before this Honourable Court still went ahead to demolish the Plaintiff's fence; thereby disregarding the fact that the subject matter is under litigation. See S.B.N. PLC v NDIC (2004) 11 NWLR (Pt 883) Pg 60 at 65.

The Plaintiff having received threats from the Defendants with an ejection notice, filed a suit in court and also filed an application for injunction restraining the Defendants from ejecting it out of the subject matter. The Defendants still destroyed the property of the Plaintiff disregarding the process served on them.

It is submitted that the essence of the court process served on the Defendants were to preserve the existing status quo until the final determination of the pending application. This court has a duty to preserve the res during the pendency of a suit. See EFFIOM v IRONBAR (2000) 3 NWLR (Pt 650) 545 at 562.

It is submitted that the Defendants have abused the process of this Honourable Court by their conduct and as a result the Plaintiff is entitled to damages/compensation for the demolished fence.

On Issue 2, it is the submission that the claim in trespass is rooted in exclusive possession or right to such possession of land in dispute. See ODUM-UGANDEN AMAYO v ERIMININGBOVO (2006) 19 NWLR (Pt 992) Pg 669.

It is submitted that it is a settled principle of law as to the claim of damages for trespass to land, the law says that for a claimant to claim damages for trespass to land, the claimant must be in possession at the time the wrong of trespass took place, even if he may not be the superior owner but he can be an owner through freehold, leasehold, license, or exclusive possession, even when the possession is not legal e.g. a squatter may sue a trespassing third party. See ANYANWU v UZOWUAKA (2009) 13 NWLR (Pt 1159) Pg 445 at 453.

On Issue 3, it is the submission that where a party to a suit fails to conform or comply or defaults in complying with the rules of court and subsequently prevents the issues from being presented before the court, the court in that circumstance grants judgment in favour of the complaint party.

It is submitted that the Plaintiff is entitled to his claims, having adduced credible evidence in support of his case. Also the Plaintiff has suffered a wrong and it has come to the temple of justice for a remedy to that wrong committed against it. Court is urged to enter judgment for the Plaintiff.

The Defendant's counsel in his wisdom elected not to file a written address.

I have carefully considered the processes filed, testimonies of PW1, PW2, PW3 and DW1; this case poses no complexity.

It is not in doubt that the Plaintiff was granted a Statutory Right of Occupancy over and in respect of Plot No. 21 of about 2 hectares

within ONEX, Kubwa Expressway, Abuja also referred to as Dawaki District Cadastral Zone F.18 vide Exhibit C. This, the Defendant admitted in paragraph 5 of their statement of defence and paragraph 9 of DW1's statement on oath.

The contention of the Defendant is that the said grant was for a period of 5 years and same had expired since the year 2013, being the five years from the date of the said grant.

A careful perusal of Exhibit C shows that the Statutory Right of Occupancy given to the Plaintiff was renewable as it was for a term of five years for first instance.

It is in evidence that the Plaintiff did applied for an extension of the term of the Statutory Right of Occupancy as per Exhibit F and the 1st Defendant replied the Plaintiff to the effect that the 1st and 2nd Defendant were considering relocating all site yards including the Plaintiff to Industrial Zone at Idu – Abuja.

For want of doubt paragraphs 3, 4 and 5 of Exhibit G is reproduced, thus:

“I am directed to inform you that the Authority of F.C.T. Administration is presently considering relocation of all site yards to the Industrial Zone at Idu.

In view of the above, I am to inform you to exercise a bit of patience while you will be communicated as soon as the exercise is concluded.

Thanking you for the interest shown in the development of the Federal Capital Territory, Abuja”

The Plaintiff by a letter dated 28/8/2007 Exhibit J applied to change the purpose clause of the subject plot and the Defendants by a letter dated 29/11/2007 acknowledged Exhibit J and stated as follows:

“This is to acknowledge the receipt of your application for change of Land Use/Residential density in respect of Plot 21 ONEX District dated 01/11/2007 and to further inform you that your request is receiving due attention”

It is also in evidence that the Plaintiff paid various sums of money to the Defendants i.e. N10,000.00 to participate in the re-certification process, N1,500,000.00 for change of land use as per Exhibit L and N100,000.00 for application to AACTRIS as per Exhibit M and N.

In the light of the above, I am of the firm view that the Defendants by their conduct have extended the life of the Offer of Terms of Grant/Conveyance of Approval as per Exhibit C, I so hold.

It is also in evidence that the Plaintiff constructed a fence on the property immediately the property was allocated to it and that the Plaintiff has temporary structures, machine, equipment and properties on the said land and it is the premises that the Plaintiff is using as a site yard for all its projects within the F.C.T.

It is in evidence that when the Defendants were threatening the Plaintiff with an ejection notice, the Plaintiff commenced Suit No.

CV/2510/13 against the Defendants at the F.C.T. High Court and also filed an application to restrain the defendants from ejecting the plaintiff from the subject matter as in Exhibit A and B respectively. That despite the fact that the Defendants were served with the suit and the pending application, the Defendants still went ahead to demolish the Plaintiff's fence on the property on the 3/6/2013 after the suit was filed on 5/4/2013.

It is without gainsaying that the essence of the court process served on the Defendants were to preserve the existing status quo until the final determination of the suit. It is not in question that this court has a duty to preserve the res during the pendency of a suit. See *S.B.N. PLC v NDIC (Supra)*; *GOV. OF LAGOS STATE v OJUKWU (1986) 1 NWLR (Pt 18) 621*.

It is pertinent to state here that the Defendants did not denied demolishing the Plaintiff's fence but their weightless defence was that the Plaintiff was given notice to remove the structure but when it failed, the 3rd Defendant then carried out the said demolition while the suit is pending in court.

It is my considered view that the act of the Defendant in demolishing the Plaintiff's property while the matter in Suit No. CV/2510/13 was still pending is not only wrongful but also an abuse of the process of court and should not be encouraged.

It is trite law that in an action where the claim is for damages for trespass, two separate and independent issues must be considered; these are:

- (a) Whether the Plaintiff established his actual possession of the land and;
- (b) Whether the Defendant trespassed on it. See ANYANWU v UZOWUAKA (Supra).

In the instant case going by the evidence before me, it is clear that the above two conditions has been met by the Plaintiff.

It is also instructive to state that the evidence of PW3 as qualified Quantity Surveyor and Valuer was never challenged or contradicted in any material way. The law is trite evidence that is unchallenged is deemed admitted.

In conclusion, I am of the considered view that the Plaintiff has proffer credible and material evidence to warrant this court enter judgment in its favour.

Accordingly, judgment is entered in favour of the Plaintiff against the Defendants as follows:

1. That the demolition of the Plaintiff's fence by the Defendants is void, illegal and amount to an abuse of court process and power.

2. The sum of N41,331,444,36 is awarded against the defendants being the cost to replace the fence.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
21/03/2019

Claimant's Counsel – We thank the court for the judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
21/03/2019