

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 30TH DAY OF JANUARY, 2019
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/535/16

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

SUNLIGHT INTERNATIONAL ALUMINIUM LTD.....PLAINTIFF

AND

KANMA PROPERTIES DEVELOPMENT LTD.DEFENDANT

JUDGMENT

The Claimant's Writ of Summons and Statement of Claim is dated 15/12/16 but filed on the 20th of December 2016. The Claimant Claims against the Defendant, the following:

- (A) A Declaration that the Plaintiff is the holder of the Statutory Right of Occupancy and allottee of Plot 128 Sabon – Lugbe East Extension Layout Abuja and entitled to Certificate of Occupancy thereof.
- (B) A Declaration that the Plaintiff is in exclusive possession of the said Plot 128 Sabon-Lugbe East Extension Layout, Abuja and entitled to Certificate of Occupancy thereof.
- (C) A Declaration that the Defendant trespassed and unlawfully entered into the Plaintiff's Plot 128 Sabon-Lugbe East Extension Layout, Abuja.
- (D) An Order of Perpetual Injunction restraining the Defendants, their agents, privies, workers and representatives howsoever called from further entering encroaching or otherwise trespassing on the Plaintiff's Plot 128 Sabon-Lugbe East Extension Layout, Abuja.

(E)An order of Court compelling the Defendant to pay Plaintiff the sum of N10 Million only as General Damages for trespass on Plaintiff Plot 128 Sabon-Lugbe East Extension layout, Abuja.

(F)N1 Million as cost of this suit.

The Writ of Summons and Statement of Claim was served on the Defendant on the 17th January 2017. The Defendant entered appearance and filed a Statement of Defence on 15/02/17 and 21/04/17 respectively. The Defendants Amended Statement of Defence is dated 29/09/17 but filed on the 30th of November, 2017.

The Plaintiff's reply to Defendant's Statement of Defence is dated 25/05/17. The Claimant opened its case and called one witness in proof of same. He is Suleiman Omuya. He stated orally that he is of DM Plaza, Suite 3026, Wuye Zone 1. That he is into property. He said, he swore to a Witness Statement on Oath. He identified same and adopted it as his oral evidence.

In the said Written Statement on Oath he stated he is the Manager of Omusul Nigeria Limited, the lawful Attorney/Agent of SUNLIGHT International Aluminium Limited (Plaintiff) over Plot 128 Sabon-Lugbe East Extension Layout. That Claimant is the holder of a Statutory Right of Occupancy over and allottee of Plot 128 Sabon-Lugbe East Extension Layout, Abuja by virtue of an allocation of the said Plot to it by the then Minister of Federal Capital Territory Abuja and the offer was accepted. That Claimant paid all necessary fees for the allocation and took actual possession of the land. That it caused beacons to be placed on the land.

Claimant also obtained Technical Design Plan (also commonly called Title Deed Plan) over the land. Claimant has been in exclusive possession of the land from 1998 till date. It donated Power of Attorney to Omusul Nigeria Limited over the Plot of land and placed it as caretaker over the land. That he has been using the land for farming pending when the area will develop and full housing development take place in the area. That Plaintiff allocation and exclusive possession has been recognised by the authorities. That sometimes in September 2016, he noticed that someone has done excavation on part of the land and within a Month of the excavation, an overhead tank was installed on some part of the Claimants Plot 128 Sabon-Lugbe East Extension Layout, Abuja. He immediately sought to know who the men were and his enquiry revealed no particular person. The work thereafter stopped for a while.

On or about the 2nd December 2016, they took some architects to the Plot of land with the intention of fencing it round. He confronted some men on the land and they said they are from the Defendant. That one of them claim to have authority of the Defendant to deal with anyone who dares to disturb them on the land. The incident was reported to the Claimant's management and its Solicitor advised against physical confrontation to avoid breakdown of law and order. That the Police was petitioned to stop Defendant's further criminal activities on the land.

He urges the Court to grant the reliefs sought. The PW1 tendered the following Exhibits A – A2

1. The power of Attorney with stamp duty receipts dated 14/11/14.
2. Offer of Terms of Grant/Conveyance of approval dated 11/03/98 with AMAC Receipts and Survey Plan.
3. Acceptance of Offer dated 12/03/98.

Under cross-examination, he answered that his principal applied to AMAC and paid all necessary fees. The above is the case of the Claimant.

The Defendant on the other hand opened its defence and called two witnesses. The first Defendant's witness is Mrs Kate EfosaOmoruwa. She is the Assistant Chief Land Officer in the Department of Land Administration of FCTA. She carries out registration of Deed of Assignment, Search, verification and confirmation of titles. She also witness for the FCT Minister. That she is in Court to tender document on the confirmation of Plot 128 located at Sabo Lugbe East Extension. That on 7/06/17, they wrote a letter replying a letter from Barrister Ayo Ogundele & Co. She tendered Exhibit B.

Under Cross-examination she answered that she has been working in the Department of Land Administration since 2012. To another question, she answered that the Urban and Regional Planning Department of FCTA appoints Zonal Land Managers in AMAC. That they are in charge of land allocation. The Director of Urban and Regional Planning signs their appointment. That she has seen a copy of the record of allocation referred to in Exhibit B, but she does not have a record of the allocation in Court. She does not have any idea of a layout in Sabon-Lugbe.

To another question, she answered that she did not see the name of the Defendant in that record. She is also not aware that the Defendant is building on the Plaintiff's land in Sabon-Lugbe. She does not know the Defendant. To another question, she answered that she is competent to testify in this case. The Defendant's 2nd witness is Ekwem Macdonald of Suite F8 Febson Mall, Herbert Macaulay Way Wuse Zone 4, Abuja. He remembers signing a Witness Statement on Oath. He identified it and adopted same as his oral evidence. He

stated thereon that Plaintiff does not own or have any land known as Plot 128 Sabon-Lugbe East Extension Layout. No such Plot has been created. That Plot 128 is non-existent and therefore never issued to the Defendant. He finally urges the Court to dismiss the case.

I must note that this Witness Statement on Oath is couched as if it is a Pleading. It also contains arguments and opinions. It is supposed to be a statement of fact. Since it is couched as an Affidavit, it should to say the least comply with Section 115 of the Evidence Act. The DW2 also deposed to a Further Witness Statement on oath. He states that the Department of Land Administration, FCT Administration, Abuja vide a letter dated 07/06/17 confirmed that Plot CP 128 Sabon-Lugbe East Extension Layout, Abuja does not exist and or is not on the record of allocation in the Department of Land Administration, Abuja.

The 2nd Witness Statement on Oath is similar to the 1st. It is couched as arguments and pleadings. It is far from evidence. I have however read it.

Under Cross-examination, the witness answers as follows. The Defendant is developing Estate known as Kanma Homes. It is located in Lugbe. That the plots were allocated by the Federal Government. That it is a large expanse of land. He does not know the numbers of hectares. The land was allocated for mass housing.

To another question, he answered that he does not know the plot numbers but has document to show same. To another question, he answered that he cannot recall the authority that allocated the land to Defendant. He later said it is the Federal Government. That Defendant had dealings with Land Administration Department. That an award letter was

served on the Defendant. That the Department of Land Administration and Development Control gave building approval.

He cannot specifically remember the plots or buildings for which approval was given. To another question, he answered that he knows the land in dispute. That Plaintiff is claiming that defendant is encroaching on its land. He cannot recall the specific date of allocation and the date Defendant entered the land. To another question, he answered that he does not know the authority that allocates land in Area Council. That they also developed park lane 1 which is already finished. That they have subsisting case in Court. He confirmed receiving Court Processes from the Plaintiff and not a Petition.

To another question, he answered that he cannot remember any physical confrontation with the Plaintiff in respect of the land. The above is the case of the Defendant.

Parties were ordered to file Written Addresses. The Defendant's Written Address is dated 22/10/18 but filed on the 30th of October 2018. He raised one issue for determination which is Whether the Plaintiff is entitled to the grant of the declaratory reliefs being sought. Learned Counsel submits that parties are bound by their pleadings. That the Exhibit A – A3 cannot be accepted to validate the Claimant's claim to title. That the Claimants case prove the contrary. That Claimant's witness said under cross-examination that his principal applied to AMAC and paid all necessary fees. That the above piece of evidence is at variance with claim that the allocation was by the Honourable Minister of the Federal Capital Territory Abuja.

Learned Counsel further submits that since Claimant did not apply for allocation of the said plot of land from the Minister of the Federal Capital Territory Abuja, the said

Claimant cannot send an acceptance of offer to the Minister. That Exhibit A2 bears three different parties

1. Ministry of Federal Capital Territory.
2. Abuja Municipal Area Council.
3. Zonal Planning Office.

That Exhibit A2 is not attributable to any of the Parties mentioned above. That the position and power of the Minister of the FCT are not exercisable co-jointly. That Plaintiff has not established with certainty that it derived its allocation or title from a valid and certain source. That Claimant's account of how it became the alleged allottee of the land is inconsistent, contradictory, unreliable and is full of distortions. That Claimant's plot of land is non-existent. That Claimant has not proved the source and genuineness of the allocation it is parading. That only the Minister of the Federal Capital Territory can validly allocate or grant land to any person or entity including the Claimant. That Area Councils within the Federal Capital Territory do not have conveyancing Powers as all conveyancing powers are vested in the Minister of the Federal Capital Territory. That there is no room for the delegation of its powers within the provisions of the Federal Capital Territory Act. That Exhibit A1 is a document emanating from no one in particular.

The Claimant's Final Written Address on the other hand is dated 8/08/18 but filed on the 29/08/18. Learned Counsel to the Claimant raised five issues for determination amongst which are:

1. Whether having regard to the pleadings and evidence before this Court, the Plaintiff has proved its case on balance of probability to entitle it to judgment.
2. Whether the Defendant trespassed on the Plaintiff's CP Plot 128 SabonLugbeEast Extension, Abuja.

Learned Counsel to Claimant has canvassed that the Claimant's Statement on Oath is incompetent. That it did not comply with Section 13 of the Oaths Act. That where there is no Statement on Oath stating that it is made Solemnly, conscientiously believing same to be true and correct by virtue of the Oaths Act, it is not an oath so called. That the effect of non compliance is fatal. That Exhibit B should be expunged from the records because it was made during the pendency of this suit.

That Exhibit B is a documentary hearsay. That Claimant's pleadings and evidence are not challenged. That Exhibit A shows that it was the Zonal Manager of the Zonal Planning Office of the Ministry of Federal Capital Territory that signed the allocation for Honourable Minister. That they are empowered to do so by the Honourable Minister as his representatives. That Exhibit A was not challenged or rebutted.

I have read the evidence of parties and considered the Written Addresses of Counsel as summarised above. The issue for determination in my view is Whether the Claimant has by evidence proved title to Plot 128 Sabon-Lugbe East Extension Layout, Abuja.

The law is now trite that in a claim such as this for a declaration of title to land, a Claimant has the burden of proving his case upon his own evidence and cannot rely on the weakness of the Defendant's case.

See *TUKURU VS, SABI (2005) 3 NWLR (PT. 913) 544*

OTANMA VS. YAUDUBAGHA (2006) 13 NWLR (PT. 964) 337 SC.

NZE VS. UNAKALAMBA (1998) 2 NWLR (PT. 537) 308.

It is settled law that there are five ways of proving or establishing title or ownership of land.

These are:

1. By traditional evidence
2. Production of documents of title duly authenticated in the sense that their due execution must be proved.
3. By positive acts of ownership extending over a sufficient length of time,
4. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land, would in addition, be the owner of the land in dispute.

The law is that the establishment of one of the five ways is sufficient proof of ownership.

See *ADANYI VS. ANWASE (2006) 12 NWLR (PT. 993) 183.*

ADESANYA VS. ADEROUNMU (2000) 6 SC (PT. 111) 18.

AYOOLA VS. ODOFIN (1984) 11 SC 120.

It is also the law that production of a Deed of Conveyance or document of title as done in this case does not automatically entitle a party to a claim in declaration. Thus, before the production of a document of title is admitted as sufficient proof of ownership, the Court must satisfy itself that:

- a. The document is genuine or valid.
- b. It has been duly executed stamped and registered.
- c. The grantor has the authority and capacity to make the grant.
- d. That the grantor has in fact what he proposes to grant.
- e. That the grant has the effect claimed by the holder of the instrument.

AYORINDE VS. KUFORJI (2007) 4 NWLR (PT. 1024) 341.

DABO VS. ABDULLAHI (2005) 29 WRN 11, (2005) 7 NWLR (PT. 923) 181 SC.

In proof of its case, Claimant tendered Exhibits A – A3.

Exhibit A is a Revocable Power of Attorney dated 4/11/14 donated by the Claimant to Omusul Nigeria Limited in respect of the Plot of land in issue.

Exhibit A1 is the offer of Terms of Grant/Conveyance of approval with a survey plan and two receipts from Abuja Municipal Area Council.

Exhibit A2 is the Acceptance of the offer dated 12/03/98. The documents of title granted to the Claimant and admitted in evidence in this case are Exhibits A1& A2. The receipts attached to Exhibit A1 are two. The 1st is dated 03/12/97 issued by AMAC. It is for Five Thousand Five Hundred Naira. The purpose of the payment is for forms and processing for commercial plots. The 2nd receipt is dated 8/05/99. The amount paid is not stated on the receipt but it is said to be on account of development levy for three years 1999, 2000 & 2001. It is an empty receipt. The main document Exhibit A is the offer letter dated 11/03/98. It states

“I am directed to refer to your application for Statutory Right of Occupancy with the Federal Capital Territory dated December 1997 and to convey the Honourable Minister’s approval of a Grant of Right of Occupancy in respect of a plot of about 1.2ha (Plot CP 128) within SabonLugbe East Extension Layout on the following terms/conditions...

I. Rent per hectare per annum 5,000.00

II. Improvements N100,000.00.

III. Term – 99 years.

VI. N120,000.00 per ha”.

It is signed by Lugard I. Edegbe for the Honourable Minister.

There is no doubt that it is not the officer who signed the letter that allocated the Plot of Land. He merely conveyed the decision of the Minister of the Federal Capital Territory. From the body of the Exhibit A1 which is reproduced above, the grant was by the Honourable Minister of the Federal Capital Territory. It is clear that the offer of terms of grant in respect of the plot of land is subject to terms and conditions. One of the terms/conditions are the payment of some fees.

I have earlier reproduced the fees payable. From the two receipts earlier analysed, the Claimant merely paid N5,500 for form and processing in 1997 even before the grant and failed to pay any of the sums stipulated in the grant since 1998. Failure to fulfil the conditions of the grant therefore makes the grant invalid.

Aside the above, the Exhibit A1 is not registered, stamped and executed. It is my view and I so hold that Exhibit A1, the document of title and attachments are not valid and credible.

In the circumstance, it is my view that the Claimant has failed to prove its entitlement to the reliefs sought. The case therefore fails and it is dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)
30/01/19