

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 30, NYANYA, ABUJA.

SUIT NO: FCT/HC/CV/3091/17

BEFORE HIS LORDSHIP:
HON. JUSTICE MUAWIYAH BABA IDRIS

CLERK OF THE COURT: O. TOBI BLESSING

BETWEEN
TENIMASUNWON BROTHERS ENTERPRISE
(Suing through his Lawful Attorney)
"MESSRS SNOWBALL LIMITED" PLAINTIFF

AND
1. MINISTER OF FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY } DEFENDANTS
3. UNKNOWN PERSON

08/5/19

CLERK: The defendants have been served.

JUDGMENT

The reliefs claim in the statement of claim are as follows:

1. A declaration that the Plaintiff is the owner of Plot No. 207 measuring about 3768.12Sqm at Cadastral Zone C1 Karmo District within the FCT Abuja whether reshaped, renamed in whatsoever manner by the defendants.
2. A declaration that the Plaintiff's right over the property have not been revoked according to the Land Use Act.
3. An order of perpetual injunction restraining the defendants and their agents from trespassing on the Plaintiff's land and causing damage or demolishing the Plaintiff's building/fence.

4. An order directing the 1st and 2nd defendants to issue a new certificate of occupancy in respect of Plot 202 measuring about 3768.12Sqm at Cadastral Zone C01 Karimo District within FCT Abuja.
5. An order against the 3rd Defendants (SIC) to pay the Plaintiff the sum of 5million Naira for trespassing on his by fencing the land in dispute.
6. An order against the defendants to 2Million Naira to Plaintiff as cost of this suit.

STATEMENT OF CLAIM

1. The plaintiff at all material time is a business enterprise.
2. The 1st defendant is an agent of the Government and the Administrator of the 2nd defendant.
3. The 2nd defendant is an Agency of the Government.
4. The 3rd defendant is an unknown person who broke into the premises of the Plaintiff and starts to fence it up.
5. The Plaintiff averred respectfully that he was granted a right of occupancy on the 6th day of September 1992, pursuant to her application for statutory right of occupancy on the 3rd of April 1992. We hereby give notice to the defendants to produce the application of her right of occupancy dated 3rd of April 1992. Copy of the letter of allocation is hereby attached and marked as ANNEXTURE A.
6. That upon the grant of the plot of land to the plaintiff, the plaintiff immediately forwarded acceptance letter in respect thereof to the ministry of the Federal Capital Territory the defendant is hereby given notice to produce same.
7. The plaintiff further state the upon the acceptance of offer of the statutory right of occupancy, she paid all the necessary fees and ground rents necessitating the issuance of certificate of occupancy in the name of the plaintiff on the 17th of August 1995 the certificate of occupancy and demand for payment and receipt of ground rents are hereby annexed and marked ANNEXTURE B1-4.
8. That sometime on the 14th day of March, 2005 the plaintiff donated power of Attorney Messer snowball to act as Attorney in her stead and this power of Attorney is registered with AGIS a department in the 2nd defendant organization.
9. That thereafter building plans approval in respect of the plot was duly approved on the plot 202 C 1, Karimo district within FCT Abuja

sometime in 2005. The said building plan is hereby annexed and marked as ANNEXTURE C.

10. The Plaintiff averred that prior to the administration of the El-Rufai (the former Minister of the Federal Capital Territory) the Plaintiff had always used the certificate of occupancy as collateral for security in her bank.
11. That when the regime of El-Rufai came and mandated that all the holders of land and certificate of occupancy within Federal Capital Territory Abuja should recertify their title and submit their C of O for a new and unified certificate of Occupancy, the plaintiff requested her bank to release her C of O to the Abuja geographical information system; a department in the 2nd defendant agency.
12. That the recertification was done in respect of this plot on the 24th of March 2005, showing clearly that she has right of occupancy dated 23/02/2007. The said acknowledgment of the recertification is hereby annexed and marked as ANNEXURE D.
13. The plaintiff again averred that she took possession of the plots with a certificate of occupancy issued to her and signed by General Jeremiah Oseni the then Minister of FCT under the military regime. And she had continued to take care of the plot and furnished his obligation under the law by paying the necessary ground rent.
14. The Plaintiff state that she has altered her position and has paid all the necessary fees in respect of the said property and even certificate of occupancy had since been issued by the then military Government.
15. The Plaintiff state that sometime in 2007, the bank that released the C of O for recertification wherein she replace her collateral on the bases that their legal department informed them that the plot have been revoked. The letter from the bank is hereby annexed and marked as ANNEXURE E.
16. The plaintiff immediately decided to direct one of her agent to do a search on her behalf to find out the issues and to the Plaintiff's chagrin she discovered that indeed the 1st and 2nd defendants was(SIC) trying to replace her title which was allocated to her in 1992 as commercial plot with another allocation in Kabusa C12 plot no 1485 a residential allocation. The said search report is hereby annexed as ANNEXURE F.

17. The plaintiff had not at any time applied for change of statutory allocation neither had she been served any revocation letter in respect of plot 202 C01 Karimo within FCT Abuja.
18. That the 1st and 2nd defendant decided to embark on revoking of her plot without notice and thereby allocating same to another person and not for overriding public interest known to law.
19. The Plaintiff express that an unknown person came into her land and started fence it up claiming that he had been allocated with the plot of land.
20. The plaintiff lamented that she has written several letters to the minister on this issue through her solicitors but the minister have not for once replied to those letters.
21. The Plaintiff averred that since he took possession of the land since 1992 up till date of recertification the land was not encumbered at all as stipulated in the recertification and there was no dispute to his land.
22. The Plaintiff maintains that he was the 1st allottee to plot 202, C01, Karimo within FCT Abuja. And any other allocation done in respect of this plot is illegal null and void and shall rely on the document mentioned therein and any other relevant document in proofing his title to this property.

1ST& 2ND DEFEDANTS WITNESS STATEMENT OF DEFENCE

SAVE AND EXCEPT as in herein expressly admitted, the defendants hereby deny every allegation of facts contained therein in the plaintiff's statement of claim as if each has been specifically set out and traversed seriatim.

1. The 1st and 2nd Defendants deny paragraphs 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Statement of Claim.
2. The 1st and 2nd Defendants accept paragraphs 2 and 3 of the Statement of claim.
3. The 1st and 2nd defendants denies paragraphs 8, 10, 11 and 12 of the statement of claim is entirely and puts the plaintiff to the strictest proof thereof.
4. The 1st and 2nd Defendants states that the revocation of plot no 202 C1 Karimo District Federal Capital Territory Abuja was revoked for overriding public interest.

5. The 1st and 2nd defendants in the course of trial shall lead evidence to prove that plot 202 C1 Karimo District Federal Capital Territory Abuja was duly revoked from the Plaintiff.
6. The 1st and 2nd Defendants in response to the paragraphs denied in the Statement of Claim aver:
 - a) The plaintiff is not an incorporated company and not registered in the Federal Republic of Nigeria.
 - b) The 1st and 2nd Defendants in the course of trial shall contend that the purported title documents frontloaded by the Plaintiffs in this suit are self-destructive and materially contradicted and does not by any stretch of imagination confer any title to the Plaintiffs.
7. The 1st and 2nd Defendants state that the Plaintiff is not entitled to the claims as contained in the Writ of Summons and Statement of Claim and further denies the Plaintiffs Claim in its entirety.

1ST& 2ND DEFENDANTS WITNESS STATEMENT ON OATH

1. That I am a Senior Estate Officer.
2. That the revocation of plot no 202 C1 Karimo District Federal Capital Territory Abuja was revoked for overriding public interest.
3. That as at the time plot 202 C1 Karimo District which was purportedly allocated to the Plaintiff by Federal Capital Territory Abuja was revoked; the Plaintiff was already in breach of terms of grant.
4. That the Plaintiff is not an incorporation company and not registered in Federal Republic of Nigeria.
5. That the purported title documents frontloaded by the Plaintiffs in this suit are self-destructive and materially contradicted and does not by any stretch of imagination confer any title to the Plaintiffs.

Under cross examination DW 1 told the Court she is not aware that the Plaintiff has a C of O and that the Plaintiff donated power of Attorney to Snowball Ltd and she is not also aware that the power of Attorney was registered in AGIS. That she do not have search report from C.A.C on the status of the Plaintiff. She is not aware of the Plaintiff's during approval. That is aware that the Attorney Snowball Ltd has been granted alternative plot at Kabusa.

The 3rd defendant did not file statement of defence and did not appear during the proceeding of the Court.

The 1st defendants filed their final written addresses wherein they raised two issues for determination.

1. Whether or not business has legal capacity to hold land in its name.
2. Whether the plaintiff adduced credible and convincing evidence in proving her case as required by law to warrant this Court to grant the reliefs sought?

The Plaintiff in its final written address raised the following 3 issues:

1. Whether the plaintiff has a legal right over plot No. 202 Cadastral Zone C01 Karmo upon the title document granted to him (SIC) by the 1st and 2nd Defendants.
2. Whether the 1st and 2nd Defendants can deny the plaintiff the right over the property without due process of the law.
3. Whether the plaintiff has proved his (SIC) case to be entitled to possession of the total piece of land referred to as plot 202 Cadastral Zone C1 karimo.

I have read the written addresses of the learned counsel for the parties.

Issue I raised by the 1st and 2nd Defendants learned counsel:

Whether or not a business name has the legal capacity to hold land in its name.

The 1st and 2nd defendants in their statement of defence at paragraph 6a averred that:

The plaintiff is not an incorporated company and not registered in the Federal Republic of Nigeria.

The above paragraph of the statement of defence of the 1st and 2nd Defendants effectively challenged the legal capacity of the plaintiff to institute this action and its competence to maintain same.

It is the argument of the learned counsel that the plaintiff has failed to prove that it is a juristic person and that it was incorporated under the company decree. Citing *CARLEN (NIG) LTD. Vs. UNIVERSITY OF JOS & ANOR* (1994)1 NWLR (PT. 323) 631.

Learned counsel argued that the onus is on the claimant to prove its legal capacity. Learned counsel further relied on *Aguda: Practice and procedure* (1980) paragraph 10-04.

In his response learned “counsel for the Claimant in his written address stated that the counsel to the 1st and 2nd defendants misconstrued the law by saying that the plaintiff is not incorporated.”

It should be noted that the Claimant did not file reply to the statement of defence to counter paragraph 6a of the defence of 1st and 2nd defendants that question its legal capacity.

The law is that where the legal capacity of a plaintiff is challenged it is its duty to prove that it has capacity or legal status: see the case of OSTANKINO SHIPPING CO. LTD. (OWNERS OF MT. “OSTANKINO”??) vs. THE OWNERS OF THE MT. “BATA 1” (2011) LPELR – 4806 (CA) where it was held that

“Where a juristic status is put in issue, the plaintiff must prove that legal capacity by producing the company’s certificate of incorporation.”

In MOTHERCAT NIG. LTD vs. REGTD. TRUSTEES OF FULL GOSPEL ASSEMBLY NIG. (2013) LPELR -22118 (CA) it was held that it is duty of the Claimant to establish its juristic personality, except if it is admitted by the opposing party.

The effect of failure to produce certificate of incorporation when it is required is stated by the Supreme Court in the case of DAIRO & ORS vs. REGTD. TRUSTEES OF THE ANGLICAN DIOCESE OF LAGOS (2017) LPELR-42573 (SC) per Rhodes vi vour where his Lordship state:

“My lord, the legal personality of a company, Registered Trustees, is established on the production of its Certificate of incorporation. There is no evidence that the Plaintiff/Respondent is a legal person since the Plaintiff/Respondent failed to prove its incorporation, this is fatal to its case. the plaintiff/Respondent has no power to sue as it is not a juristic person capable of suing or being sued. Judgment cannot be given in favour of a non-existent body such as the Plaintiff/Respondent.”

It is trite that Snowball Ltd, being a Donee of the power of Attorney (Exh. 4) can only sue in the name of TENIMASUNWON BROTHERS ENTERPRISE.

See UNITED NIGERIA CO. LTD. Vs. NAHMAN & ORS (2000) 9 NWLR (PT. 671) P. 177.

Since the principal fails the test of legal capacity I am of the view that the whole action fails as non-existent body cannot sue or be sued.

In the circumstance of this case the plaintiff has no legal capacity to sue. In BADAGRY PETROLEUM REFINERY LTD. & ANOR vs. ALH. RASAKI AWAYE WA SERERE (2002) LPELR – 1217 (CA) It was held that where a plaintiff is adjudged to lack the necessary locus standi to initiate proceedings the proper order to make is an order striking out the action.

Consequently, this action is struck out.

There is no need to consider other issues.

Hon. Justice Muawiyah Baba Idris

8/5/19

APPEARANCE

ADEKUNLE OLADAPO OTITOJU Esq. for the Claimant.