

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT MAITAMA COURT 4, F.C.T., ABUJA.

BEFORE HIS LORDSHIP: HON. JUSTICE O. O.GOODLUCK

SUIT NO.: FCT/HC/CV/2757/2017

B E T W E E N:

IDOWU AKHIMIEN
(Suing through his Lawful
Attorney Godilogo Farms Limited)

}

PLAINTIFF

AND

- 1. THE MINISTER OF THE F.C.T.**
- 2. FEDERAL CAPITAL TERRITORY
ADMINISTRATION**

}

DEFENDANTS

J U D G M E N T

The Plaintiff is a holder of a Statutory Right of Occupancy in respect of Plot No. 1352 Cadastral Zone A05, Maitama District, Abuja.

Plaintiff donated a Power of Attorney in respect of Plot No. 1352, Cadastral Zone A05, in favour of Godilogo Farms Limited. Sometimes in November 2004 Plaintiff's Attorney conducted a legal search at the Abuja Geographical Information Systems (AGIS) which search report reflects that Plaintiff was validly allotted Plot 1352, Cadastral Zone A05, Maitama. However, in May, 2009, the Plaintiff's Attorney's attention was drawn to a Notice of revocation in the Plaintiff's file at AGIS to the effect

that the Plaintiff's interest in Plot 1352 Cadastral Zone Maitama had been revoked.

Aggrieved by the Notice of revocation, the Plaintiff through his Attorney has instituted this suit to challenge inter alia the revocation as well as for an order to nullify the Notice of Revocation.

In reaction, the Defendants filed a Statement of Defence wherein they admitted the issuance of a Notice of Revocation in respect of Plot 1352, however they maintain that the Plaintiff was validly served with a Notice of Revocation.

At trial, Johnson Ahurvonye, a legal practitioner and Legal Adviser to Godilogo Farms Limited, the Plaintiff's Attorney testified as the Plaintiff's lone witness. He adopted his Witness Statement on Oath dated 15th January, 2018 as his evidence in chief on the 7th March, 2018.

The facts disclosed in the Witness Statement on Oath in summary are as follows;

P.W.1 testified that the Plaintiff is a holder of a Statutory Right of Occupancy over Plot 1352, Cadastral Zone A05, hereinafter referred to as "Plot 1352". He tendered Exhibit P.W.1B, the **Certificate of Occupancy Number 907uw-d72bz-55/fr-a848u-10 File No. ED10033** issued in favour Idowu Akhimien dated 8th June, 2005. P.W.1 further disclosed that he paid the sum of ₦1,146,448.42 (One Million One Hundred and Forty-Six Thousand Four Hundred and Forty-Eight Naira,

Forty-Two Kobo) and was issued a Treasury Receipt No. 000721741, Exhibit P.W.1F for the issuance of the Registration of the Certificate of Occupancy, Survey, Premium, D/very in respect of Plot 1352.

P.W.1 further disclosed that a search report conducted by Godilogo Farms Limited reflected at AGIS the Plaintiff's valid interest in Plot 1352 in 2004. Following the donation of a Power of Attorney in favour of Godilogo Farms Limited, Plaintiff handed over;

- a) The Revenue Collector's receipt for land application and processing dated 14th June, 2002.
- b) The Original copy of Terms of Grant/Conveyance of Right of Occupancy in respect of Plot 1352 Cadastral Zone A05, Maitama Zone district, Abuja dated 8th April, 2003.
- c) The Right of Occupancy Rent and Fees Bill dated 8th June, 2004.
- d) The Revenue Collectors Receipt for the Right of Occupancy rent and fees Bill dated 8th June, 2004.
- e) The R certification and reissuance of C of O acknowledgment dated 9th January, 2004 which were tendered and admitted in evidence at trial.

P.W.1 further disclosed that during the re Certification/Reissuance of C of O exercise Plaintiff submitted the original copy of the offer of Terms of Grant of Conveyance Approval dated 8th April, 2004 in respect of Plot 1352 which was acknowledged by the Defendants vide a

document titled Recertification and re issuance of C of O acknowledgment.

P.W.1 disclosed that the Plaintiff was made to pay the sum of ₦52,000.00 for the registration of the Power of Attorney, however owing to the Defendants new policy at stopping the Registration of Power of Attorney within "Cadastral Zone A05, Maitama the Plaintiff applied through their lawyers that the registration fee be converted towards the payment of the ground rent.

P.W.1 also disclosed that during this period, the Plaintiff has commenced construction of a foundation fence, security house and other works on the plot.

P.W.1 recounted that in May 2009, the Attorney's attention was drawn to a Notice of revocation of Plot No. 1352 Cadastral Zone by the Defendants. P.W.1 asserts that the pre revocation notice or the notice of revocation was not served on the Plaintiff or on any of his agent or the Attorney.

Though Plaintiff caused his lawyer to petition against the revocation, the Defendants did not reply his letters.

In the light of the foregoing assertion P.W.1 has urged this Court to grant the Plaintiff's relief in the statement of claim.

At the conclusion of the testimony of P.W.1 in chief on the 8th November, 2018, this Court ordered an adjournment to enable the

Defendants or their Counsel to cross examine P.W.1 and open their defence. On the 8th November, 2018 when this suit was adjourned for hearing, the Defendants and or his Counsel failed to appear in Court. No reason was given for their absence.

This Court granted the Plaintiff's Counsel's prayer for the foreclosure of the Defendants from cross examining P.W.1 and as well as foreclosed Defendants for their failure to open the defence. This suit was then adjourned to the 23rd January, 2019 for the adoption of final written addresses.

Only the Plaintiff filed a final written address whilst the Defendants failed and/or neglected to do the needful. Emmanuel Esuene Esq., Counsel for the Plaintiff in his written address dated the 10th December, 2018 formulated two issues for determination.

1. Whether the purported revocation of the Right of Occupancy of the Plaintiff over Plot 1352 Cadastral Zone A05, Maitama, Abuja without service of a pre revocation notice and valid notice of revocation is null and void and of no effect same having been made in contravention of the Constitution of the Federal Republic of Nigeria, 1999 as Amended 2001, the Land Use Act and any other existing laws.
2. Whether the Plaintiff is entitled to damages having suffered illegal revocation occasioned by the Defendants.

On issue one, Learned Counsel for the Plaintiff drew the attention of this Court to Section 28(5) of the Land Use Cap 202, Laws of the Federation of Nigeria, 1990 which provides as follows;

The Governor may revoke a Statutory Right of Occupancy on the ground of;

- d) A breach of any of the provisions which a Certificate of Occupancy is by Section 10 of this Act declined to contain.
- e) A breach of any term contained in the Certificate of Occupancy or in any special contract made under Section 8 of this Act.
- f) A refusal or neglect to accept any pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Governor under Section 3 of sub Section 9 of this Act.

Learned Counsel for the Plaintiff further noted that the Plaintiff through his witness, P.W.1 tendered a Certificate of Occupancy, Exhibit P.W.1B as well as a Revenue receipt for Exhibit P.W.1C2 in proof of payment of the attendant fees for the issuance of a Certificate of Occupancy in his favour.

E. Esuene Esq., rightly referred to the decision in **LATEJU v. FABAYO (2012) 9 N.W.L.R. (PART 1304) page 159 at 178** per Mbaba, JCA wherein his Lordship held that:

“By law, mere production of Certificate of Occupancy is prima facie evidence of title, until the adverse party can establish a better title. See

the case of KAIGOMA v. NANNA (1997) 3 N.W.L.R. (PART 495) page 549 MADU v. MADU (2008) 6 N.W.L.R. (PART 1083) page 296”

Flowing from the foregoing reasoning the Plaintiff’s Counsel has rightly submitted that the Plaintiff is the beneficial owner of Plot 1352 particularly in the absence of any adverse claimant.

He further submitted and quite rightly too that the power to revoke the Plaintiff’s Statutory Right of Occupancy can only be in accordance with the provisions of the Land Use Act.

Learned Counsel for the Plaintiff went on to draw this Court’s attention to the legal consequences of Section 28(6) and Section 44 of the Land Use Act as it relates to the mode of Revocation of a Statutory Right of Occupancy. He has argued that failure to comply with the manner prescribed in the two provisions for revocation and service of a Revocation Notice of a Statutory Right of Occupancy will invalidate the revocation on account of noncompliance.

He rightly submitted that by virtue of Section 28(2) of the Land Use Act, any revocation of a right of occupancy shall be signified under the hand of a public officer, duly authorized in that behalf by the Governor and Notice thereof shall be given to the holder.

Besides, Learned Counsel reasons that Section 44 of the Land Use Act prescribes personal service of the notice of revocation on the holder of a Statutory Right of Occupancy. It must be recounted here that

P.W.1 was consistent in his testimony that the Plaintiff was not served with a Notice of Revocation by the Defendants.

This assertion was not impugned under cross examination. Indeed, the Defendants failed to lead evidence in furtherance of their pleadings, consequently the averments contained in the Statement of Defence goes to no issue it will be treated as abandoned.

In effect, the testimony of P.W.1 remains uncontroverted and will be deemed as being true in the absence of any evidence in rebuttal of the Plaintiff's assertion.

The decisions relied upon by the Plaintiff's Counsel on the noncompliance with Section 44 of the Land Use Act are unanimous that where there is no personal service of the Notice of Revocation of a statutory right of occupancy, such notice is invalid and ineffective in law.

It is needful to restate here the decision in **OLATEJU v. COM. L & H KWARA STATE (2010) 14 N.W.L.R. (PART 1213) pages 297 at 322** per Denton West JCA as she then was held:

"The Respondents claimed that the revocation was on a gazette. The question is, does a gazette comply with Section 28 of the Land Use Act on the ground that the notice must be served personally on the holder of the land. There is a plethora of judicial authorities on this point and it was held that a gazette cannot take the position of personal notice to the holder of a land that is about to be revoked. That Land Use Act

*has prescribed a manner or method of giving notice to a holder of a Statutory Right of Occupancy of which is sought to be revoked by the issuing authority, the procedure must therefore be followed, for failure to so follow will render the exercise void. See **UDE v. NWARA (1993) 2 N.W.L.R. (PART 278) page 638.** The failure of the Defendant/Appellant to show that the said notice was served on the Plaintiff/Respondent renders the revocation void...*

Similarly, in **JEGEDE v. CITICAN NIG. LTD. 4 N.W.L.R. (PART 702) page 112 at 138 paras. B-C** per Oguntade JCA as he then was held:

*“This court decided in **NITEL v. OGUNBAGI (1992) 7 N.W.L.R. (PART 255) page 543 at 557**that without the service of the Notice of Revocation on the holder or occupancy sought to be revoked, the revocation is ineffectual”*

The telling remarks of Abdullahi JCA in **LUFADEJU v. FABAYO (2012) 9 N.W.L.R. (PART 1204) page 159 at 183** is also apt and is further illuminating on this point which his Lordship held:

*“The only notice which could revoke a right of occupancy is as provided for under Section 28(6) and (7) of the Land Use Act. The notice envisaged in the said section must be served personally on the holder of the Certificate of Occupancy see **CSS BOOKSHOPS LTD. v. REGISTERED TRESTEES OF MUSLIM COMMUNITY RIERS STATE***

(2006) 11 N.W.L.R. (PART 992) 530. A cursory look at Exhibit D2 would reveal the fact that it is not a Notice of Revocation as contemplated by Section 28(6) and (7) of the Land Use Act. This being the case, the Exhibit cannot revoke the Respondent's Certificate of Occupancy"

Yahaya JCA in **OBI v. MINISTER OF FCT (2015) 9 N.W.L.R. (PART 610) at 639** held:

*"The service of notice of revocation on the holder of a right of occupancy is a condition precedent to the validity of the revocation – **ODOGWU v. ICOMBU (2007) 8 N.W.L.R. (PART 1037) page 488 at 516** Section 28(6) of the Land Use Act requires notice of revocation of a right of occupancy to be given to the holder"*

Flowing from the foregoing plethora of cases, I am of the view and will so hold that merely seeing a purported Notice of Revocation in an AGIS file or records will not suffice as an effective and valid notice prescribed by the Land Use Act. This Court's answer to issue one formulated by the Plaintiff's Counsel is answered in the affirmative, I hold that the Notice of Revocation discovered by the Plaintiff in the AGIS file records is null and void and of no effect whatsoever.

That said, I now turn to the second issue for determination formulated by the Plaintiff's Counsel on whether the Plaintiff is entitled to damages having suffered illegal revocation occasioned by the Defendants.

Learned Counsel for the Plaintiff has rightly submitted that where a wrong has been done a remedy compensation flows naturally. Generally damages are presumed once a wrong has been occasioned. He also reasons and this Court alludes to his reasoning that general damages need not be specifically pleaded.

In **AMOS v. IDOKO (2017) 1 N.W.L.R. (PART 1547) page 485 CA** Jauro JCA held that:

“General damages are damages which the law presumes to flow naturally from the wrong complained of, they are damages implied by law and need not be proved specifically”

In the case of **MTN COMM. LTD. v. ACFS LTD. (2016) 1 N.W.L.R. (PART 1493) page 339 CA** per Bada JCA, the Court held:

“General damages are those damages the law implies in every breach and in every violation of a legal right. It is the loss which flows naturally from the Defendants act and its quantum need not be pleaded or proved as it is generally preserved by law”

Arising from the erudite reasoning of their Lordships in the cases cited supra I am not left in doubt that the Plaintiff is naturally entitled to general damages flowing from the unlawful conduct of the defendant without having to plead the inconveniences occasioned in setting the records straight by this avoidable suit.

Plaintiff's claim succeeds. I will now proceed to examine the reliefs sought by the Plaintiff.

Leg 'a' succeeds. It is hereby declared that the purported revocation of the right of occupancy of the Plaintiff over Plot No. 1352 Cadastral Zone A05, Maitama district, Abuja without service of a valid Notice of Revocation as prescribed by the Land Use Act is null and void and of no effect, same having been made in contravention of the Land Use Act.

Leg 'b' will be discountenanced by this Court. The Plaintiff is praying this Court for a declaration that Clause 4 of the **Certificate of Occupancy Number 907uw-d72bz-55/fr-a848u-10 File No. ED10033** within which the Plaintiff must develop Plot No. 1352 Cadastral Zone A05 started to run from the 10th April, 2003. Having held that there is no valid and effectual Notice of Revocation, this relief is achedemic you cannot build something on nothing and expect it to stand in so far as this Court has held that there was no revocation, the Plaintiff's Statutory Right of Occupancy remains unfettered.

Leg (c) and (d) of the Plaintiff's claim is likewise discountenanced for the same reason given in leg (b) supra.

The Revocation or Notice of Revocation purportedly nullifying the Plaintiff's Statutory Right of Occupancy or Certificate of Occupancy is null void and of no effect whatsoever.

The Plaintiff's relief in leg (f) succeeds, albeit, partially. The Defendant is hereby ordered to pay general damages in the sum of ~~N~~1,000,000.00 (One Million Naira) in favour of the Plaintiff.

O.O. Goodluck,
Hon. Judge.
4th July, 2019.

APPEARANCE

Parties are absent

I. C. Odeh Esq.: For the Plaintiff