

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON TUESDAY, THE 6TH DAY OF DECEMBER, 2019

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/1339/17

BETWEEN:

**HONNS ALUMINIUM CO. LTD -----
APPLICANT**

AND

1. **MR. NICE CHIJOKE** (Trading under
the name and style of Nwafather Ventures) } **RESPONDENT**
2. **SHEDRACK & ELLAH ESTATE** }

JUDGMENT

On the 31/3/17 Honns Aluminium Company Ltd filed this action against the Mr. Nice Chijioke trading in the name of Nwafather Ventures and Shedrack & Ellah Estate.

He later on the 25/10/18 amended his claim. In the new amended claim, he claims the following jointly and severally against the Defendants:

- (1) An Order declaring the Plaintiff as the Bonifide owner entitled to Certificate of Occupancy over the Plaintiff in the issue – plot No CD-158 measuring about 5 Hectares situate at Lugbe 1 Layout, Abuja.**
- (2) An Order of Perpetual Injunction restraining the Defendants their prives, agents, assigned or whosoever described from further trespassing in to the said plot here in after called the Respondent.**
- (3) Twenty Million Naira (N20, 000,000,000.00) only as Damages for trespass.**
- (4) Two Million Naira (N2, 000,000.00) only as cost of the suit.**

The Defendants were served with the processes filed by the Plaintiff, they entered appearance. The 2nd Defendant who is an Estate Developer entered appearance filed a statement of Defence. After several adjournments at the instance of the 2 Defendants, the 2nd Defendant applied for extension of time to open its case but it never did. After the foreclosures it applied for extension of time to open its case.

It is important to point out that it was a herenhean task to serve the Defendants with the processes filed by the Plaintiff. The Defendants were absent several times but the Court always ensured that the 2 Defendants were served with the Hearing Notices indicating that the matter will come up on the designated dates.

On the 4/7/17, the Plaintiff opened its case. The 2nd Defendant was represented by a Counsel of his choice – Victor Olugbemi. The Plaintiff Witness 1 tendered 3 documents marked as EXHIBIT 1 – 3.

On the 30/11/17, the 2nd Defendant opened the case of the 1st Defendant since the 1st Defendant never entered appearance or filed any processes in Defence of the suit.

So this Judgment is made up of the processes filed by Plaintiff and the 2nd Defendant who filed Statement of Defence. The 1st Defendant did not file any process though it was served with the process filed by the other parties. This Court deem as admitted by the 1st Defendant the claims of the Plaintiff as contained in their statement of claims.

The Plaintiff Counsel closed the case of the Plaintiff after the Plaintiff Witness 1 had fully testified and adjourn matter to 18/1/18. On the successive 3 occasions, the Defendant never came up to open their case.

After 4 – 5 adjournment, the Defendant ----- 2nd Defendant who had examined the Plaintiff Witness 1 never came to open its case though it had filed a Statement of Defence.

The Plaintiff after opening and closing its case sought for amendment to file its statement of claim. The Court granted same, Ordered that they serve the Defendants. He only served the 1st Defendant. There is no evidence that he served the 2nd Defendant.

Rather than apply to recall his witness to testify on the amend writ he applied for final address barely 5 minutes after the Court had granted his application to amend and the deeming Order. The Court adopts as part of its Judgment for the said Ruling on the Plaintiff

application for final address after he had amended his statement of claim delivered on 10/10/18. Matter adjourn to 5/11/18.

In a twist on the 5/11/18, the 1st Defendant who never entered appearance or filed any process in defence appeared in Court, he stated that he does not know the 2nd Defendant. He does not know the Respondent or has anything to do with the Respondent.

The Plaintiff did not open its case after the Court had ordered that after the amendment of his statement of claims and Reliefs sought.

On the 15/5/18, none of the Defendants was in Court. The Court adjourned the matter for final address based on the old. Since 15/10/18 the matter had been from one adjournment to the other. There is fundamental sore abnormally and something fishy about this case.

The 1st Defendant said he has nothing to do with the land and does not even know the location of the land. The 2nd Defendant who filed a process never came up to open its case.

However, on the 5/11.19 over one year and one month after the Plaintiff Witness 1 closed its case and the Plaintiff Counsel asked for and was granted an amendment of his statement of claim the Plaintiff Counsel – this time not Anyebe Esq. but E. Maji came to Court and move the final address after serving the same NICE chijioke the 1st Defendant who had said he does not know and has no interest in the Respondent. Suspiciously, the Plaintiff Counsel did not serve the 2nd Defendant who had filed and served the Plaintiff and Plaintiff Counsel their Statement of Defence.

This Court had allowed the Plaintiff Counsel move and adopts the final address. The Defendant never filed any amendment Statement of Defence having filed a Statement of Defence earlier.

The Court will go on based on the spirit of front loading deem as moved in the Statement of Defence filed by the 2nd Defendant. Since the 1st Defendant had stated he had nothing to do with with the Respondent and is not interested. The Court will as already done record him.

The Court by the power it has in ensuring that substantial justice is done will look at every document filed in this suit before coming out with its final decision in this Judgment.

The 2nd Defendant filed a Statement of Defence. He did not file any statement on oath of any of the Defendant Witness. However, he listed the names of 3 people. Mr. Olarewaju David Ajibedi, Mr. Uche Afuaku and Arc. Rotimi of C2Q Properties & Investment Ltd as 2nd Defendant witness. None of these men filed any statement on Oath.

It is on record that the 2nd Defendant filed a Motion on Notice M/9378/18 dated 10/10/18 seeking for Order of this Court for enlargement of time to open and close its case out of time.

The said 2nd Defendant in the said motion also sought for an Order to deem as already filed and served the said Statement of Defence and other accompanying process as properly filed and served. But a closer look at the said process shows that the 2nd Defendant did not attach any statement on Oath of any of those listed would be witness. He had not filed any Evidence as I deliver this Judgement. The same 2nd Defendant never open or closed its case. As started earlier their Counsel was in Court and examined the plaintiff witness 1 who is the sole witness of the Plaintiff aside from the 45 paid bank statement the 2nd Defendant only attached a copy of a letter of terms of conveyance Approval dated 14/3/2001 issued to pank lane ventures.

In the 15 paragraphs statement of Defence, the 2nd Defendant alleged that it assured ownership and possession of the Res when he purchased 3 hectares out of the 5 hectares from its respondents in 2015. Meanwhile the 1st Respondent had told this Court in record that he does not know the 2nd Defendant and does not also know the land in issue. That he never had any transaction with any one on any land in his none or on his behalf. One day he said so the Defendant Counsel was present in Court.

He alleged that the said 3 hectares was sold to it through the 1st Defendant brother one Uche Afuahu-**paragraph 5**. That the agreed price of the 3 hectares is N30m. As agreed between him and the 1st Defendant.-Paragraph 6. That he made payment of N5m in 2 instalments to the 1st Defendant in Skye bank account. He did not state the Account number through the name of the Account holder is Olarewaju Ajibade. He pleaded the Account statement which he hoped to rely on at hearing which never was.

He alleged that 2nd Defendant agreed to have and execute a formal contract of sale and transfer of ownership agreement upon full payment of the price by the 2nd Defendant. He did not attach any of such agreement of sale. He never pleaded any too. That 1st Defendant handed him as AMAC title Document. Term of grant/conveyance of Approval granted in favour of the pank lane venture. The pleaded this Document which Court had earlier referred to in the course of this Judgement. That 2nd Defendant took possession of the 3 hectares and had same being in possession following the agreement between the parties. To fulfil its desire to acquire move land in the Res the 2nd Defendant “approached, this time an Estate Developing firm C2Q property and investment limited and of formal contract of allocation was executed where the 2nd Defendant was allocated 2D plot subject to Roll on to mother 20 plots. He pleaded

the said Document but never attached it in the statement of Defence it filed before this Court

He claimed that the agreement was signed on 27/2/17. They claimed that they obtained from C2Q property and investment limited an AMAC offer of term of grant/conveyance of Approval in favour of a company, this time from "Park lane ventures as against the 'Park lane' ventures where they alleged to have gotten the 1st allocation of 3 Hectares through it pleaded the Document, 2nd Defendant never attached the sign Document of title.

That claimed that both Document they receive from 1st Defendant and C2Q property and investments were in respect of CRD CD 158 and NWT CD 158 Lugbe layout. That other several other people are claiming ownership of the said vast land. He urged Court to dismiss the claim of the Plaintiff as it is "destitute of merit.

The 1st Defendant have not filed any Document or entered appearance or unrepresented by any Counsel, had to tell Court that he is not interested and have nothing to do with the Res. This Court believed him. The 2nd Defendant who claimed they got tile from 1st Defendant is in Court when the 1st Defendant stated that he never met or heard about the Res or any of the parties .He said he came to Court as matter of respect for the Court and for the Court and had have so to inform the Court as already recorded

On the part of the Plaintiff , having testified fully opened and closed their case waited for the Defendant to open and close its case and they applied for and obtained for close filed but did not serve the Defendant its final address.

NOTE

The Plaintiff did not serve the Defendant with their final address.

In the said final address the Plaintiff Counsel raised the 2 issues for determination which is

Whether the plaintiff has put before this Court sufficient material to entitle him to a Declaration of ownership of the Res.

B. whether plaintiff is entitled to the claim in damages for trespass and Perpetual Injunction against the Defendants, their privies, Agents and assigns however disenable from further trespassing at lugbe layout lugbe Abuja

Again the 2nd issue first the Plaintiff Counsel on behalf of Plaintiff they submitted that where in a case there is nothing to put on the other side of the scale the standard of proof on the balance of probability is reached.

On issue No 1. They submitted that act of trespass is an injury to the right of possession. That even a trespasser in possession can maintain an action in trespass against another trespasser. He cited the case of

- 1. Momodu olubodum vs Oba Adeyemi lawal (2008)9 MJSC(PT1) 54 Paragraph G-E**
- 2. Salami vs Lawal (2008)10 MJSC 124 @136 Paragraph B page 146 Paragraph A-C**

That in this suit the testimony of Plaintiff Witness 1 in paragraph 12 of his oath, he stated that he took possession of the Resident before 1st and 2nd Defendant started the trespasses. That the fact stand uncontroverted and is deemed admitted by the Defendants. He referred to the case of

Salami vs Lawal supra P.146 paragraph C-A.

That any form of possession and occupation no matter how slight in an action in trespass is sufficient to maintain an action in trespass. The plaintiff placed credence and referred to the case of

Ojo vs Azama (2001)1 MJSC 162 @ 178 paragraph B-E

Faguwa vs abidi (2004) 39 WRN 22 line 25-40

The counsel further submitted that for the defendants to resist the Plaintiff claim it must show that he is the one in possession in actuality or that he has a right of possession he referred to **Faguwa vs Abidi supra at Page 23 line 10-15**. That in the present suit the Defendants did not show that. He referred to Paragraph 9-11 statement of claim.

He finally submitted that even a defective title of a Plaintiff cannot affect or defect the claiming of trespass. He referred to **Yusuf vs Keinsi (2004) 48 WRN 143 @ 161 lines 35-40**. He concluded that even though the 2nd Defendant filed a statement of Defence no Evidence was led to substantiate the Defence and some pleaded facts do not constitute Evidence, it is only the facts and testimony of the Plaintiff that is before this Court that being the case the Defendant are seemed to have admitted the facts as stated or presented by the Plaintiff. He referred in support to the case of

Waziri Anor vs Geidam & ors (2016)2 MJSC 83 @124 Paragraph F

He urged the Court to resolve issue No 2 in the Plaintiff favour.

On issue No 1, whether Plaintiff placed sufficient material to warrant the declaration of ownership of the Defendant submitted that declaration title in contestation is made in favour of the party that has proved better title with evidence and current and credible facts, he referred to the case of **Adole vs Gwar (2008) 5 MJSC 38 @ 67-68 paragraph G**

He further submitted that a party seeks a declaration in his favour must establish the root of his title by credible Evidence in Order to succeed. He referred to **Adole vs Gwar supra page 56 paragraph D-f**

That the Plaintiff in this suit have placed before this Court credible Evidence to establish the root of his title to the Res. He referred Court to letter of allocation to the Original allocate and the one which was changed to plaintiff name from-----**EXHIBIT I**. He also referred the court to. He referred Court to the other Document TDP attached as EXHIBIT # together with **EXHIBIT 2** which are the 2 registered power of Attorney registered at the deed registry-**EXHIBIT 2**

He further submitted that there is no other Document before this Court from the Defendant. He equally submitted that the production of title Documents and acts of ownership of title are same if the way to place title to land. He referred to **Salami vs Lawal supra @145 paragrapg A-d**

The Plaintiff Counsel opened that the Plaintiff has say plead the document of title and has also exhibited act of possession of the res. He refereed Court to the entire **EXHIBIT TENDERED AND ADMITTED** by Plaintiff. This suit with remand uncontroverted by the Defendants. He referred the Court to the case of

Faleye & ors vs Dada & ors (2016) 3-4 MJSC 121 @145-146 paragraph C-G

He went on to submit that a party seeking for declaration of title to land as the plaintiff in this case is seeking. Must establish with certainty and precision the area of law which he is claiming. He referred the Court to the case of

**Ekpemopolu & ors vs Ekpemode & ors (2009) 3 MJSC 63 @ 82-83
paragraph F-G**

He further submitted that the identity of the land in issue over which Plaintiff seeks declaration is certain and precise. He referred to EXHIBIT 1 and EXHIBIT 3. That being the case the Plaintiff has discharged the burden placed on it to entitle to a declaration of the title to the res. That 1&2 Defendants did not put up any defence or Counter claim and as such the case of Plaintiff is deemed admitted by them. He referred to the case of **Cappeltd vs Akinti (2003) 27 WRN 1@ 7 lines 25-40**

On the issue of damage the Plaintiff submitted that this Court has the Discretion to award general damages on this case since the Plaintiff has proved that Defendants has trespassed into the Res. That during the testimony of plaintiff witness 1, that Defendants did not testify order that facts. They only stated that the 2nd Defendant is own in the statement of claim but they never led any Evidence to that effect. That the Court is at liberty to inter that the plaintiff had include damages and award ant amount it deem adequate and approved in the circumstance of this case. The plaintiff referred to the case of:

Akinkugbe vs. Ewulum 920180 b MJSC 134 @146 paragraph D-C

That Plaintiff having discharged the burden placed on him in law is entitled to his claim. He urged Court to resolve all the issue in the Plaintiff favour and grant all reliefs

COURT

It has been held in pletion of cases. That uncontroversial facts are deemed admitted as those facts still reaming unchallenged. Even unsubstantiated facts are deemed worthless too. It is the law that for

any facts to be accepted in any case pending before a Court of competent Jurisdiction such facts must be sworn to by the person making such fact before Court can take judicial notice of such facts.

Again in a matter before the court any defendant who intends to defend a case against him must come by way of Statement of Defence and oath sworn to by the world be wit. Such statement of define such facts, more so, when the dispute is predicated on title to land and trespass.

To be entitled to acclaim over land where there is allegation of trespass the Plaintiff in order to win the day must show that he has and was in possession of the Res long before the trespass. Any trespasser can have a better title to another trespass once such trespasser can show that he was first in possession.

In this case the plaintiff had tendered Documents of title which from the dating shows that the was in possession and occupation pretty long before the Defendants going by Paragraph 5 of the plaintiff amend statement of Defence and statement on oath he award.

“...that the root of his title is traced to the Original allottee park lane ventures was allocated the land on the 14 day of march 2001 and later transferred the same vide on irrevocable power of attorney donated to Dalcon International Agencies Ltd who in turn transferred the same to the Plaintiff vide another irrevocable powers are expressly pleaded and will be relied upon at the hearing.”

Without doubt it is very clear that the Plaintiff has a traceable title to the Res more so he attached the said Documents of title to further prove his case testimony of plaintiff witness 1. The 2nd Defendant had no such title they did not attached any such Document or power

of Attorney. The only Document they attached was a copy of letter offer of conveyance approval which they, in their statement of defence stated was given to them by parkline. According to the 2nd defendant he obtained a title conveyance only 3 hectare out of 5 hectare from one 1st Defendant there was no power of attorney showing he has any right over the said 3 hectare .There was no agreement of sale. There was no Document to show that 3 hectare was demarcated from the 5 Hectares.

Again in paragraph 12 of the statement of Defendant the 2nd Defendant stated that they receive from C2Q properties and investment a Document handed offer of term of grant/conveyance and of Approval in favour of PARKLINE Ventures all are Plot CD158.

Meanwhile he did not attach any of the Document pleaded and never calved any wit from the 2 people where he claimed to have gotten title Document from. The 2nd Defendant had alleged that he had paid the 1st defendant N5m o 2 instalments; he never showed any evidence to that effect. The only resemblance to that fact is a transaction which took place on 24/3/16 where n3m was a debited showing that the money was paid to one Ogonnaya Nice meanwhile the name of the 1st defendant is Nice Chijioke and not Ogonnay mee. There is no Evidence of acknowledgment of that amount from any one there in no agreement to show there was any transaction or sell, lease or power of Attorney donated to the 2nd Defendant. They did not call any witness or filed any statement on oath this Court does not believe that the 2nd Defendant has any title to the land. They are only trespasser who decided to meddle with the plaintiff's title to the Res. That is why they did not attach any title Document of any value in support of their defence. It is very obvious that they have no Document to show entitling than to res. If they have they would have obviously presented them before this Court. They also

have no witness that why they never filed any statement on oath of any one of the 3 people whose names appeared in the list of witness.

Even in their claim they only started that Court should dismiss the claim of the Plaintiff. They were not bold enough to ask the Court to hold that the 2nd Defendant should be given the title for hold that they have a better title than the Plaintiff. Obviously the 2nd Defendant have no better title to the Res.

The Plaintiff also tendered receipt of payment for the Certificate of Occupancy. They attached the Certificate of Occupancy and even the ---Document of acknowledgement too. All these Documents tendered through Plaintiff Witness 1. Further strength the claim of the Plaintiff to better title to the Res.

These evidence – cogent and very credible as they are, has show that plaintiff had established this title to the Res. Plot CRD 158Lugbe Abuja. Conveying approximately 5 Hectares as show in the TPP and Certificate of Occupancy attached as EXHIBIT in this case. As it is there is no diverse claim to the Res. The Defendant could not discharge the ----on them after the Plaintiff had shifted service to them. The 2nd Defendants were trespasser. The Plaintiff having able established its title to the Res in this case; this Court has no reason not to grant their reliefs. The said reliefs are granted to wit.

- 1. An order is hereby made declaring that the Plaintiff is the bonifide owner entitled to the certificate of occupancy over plot No CD 158 measuring approximately 5 hectares at lugbe layout lugbe Abuja FCT.**
- 2. An order of perpetual injunction is hereby made restraining the Defendants their agents, privies assign and thugs and successors in title and by who so ever called or descended**

from further trespassing into plot No CD 158 measuring about 5 hectares situate at lugbe layout, lugbe Abuja FCT.

It is important and imperative to point out that where a person has establishment that another has trespassed into his land that such person is entitled to payment of damages which the Court has the discretion to award. In this suit the Plaintiff had been able to establish that 2nd Defendant had trespassed into the Res going by the testimony of the Plaintiff Witness1 and as contend in the statement of oath and his testimony in Court.

The 2nd Defendant did not deny that going by statement in their statement of claim. That being they are the Plaintiff is entitle to damages here establish trespass against the Defendant. This Court therefore award the sum of One Hundred Thousand Naira (N100, 000.00) only against the 2nd Defendant for the trespass into the Res.

The Court also award the sum of Fifty Thousand Naira (N50, 000.00) only against the Defendant as cost of this suit to be paid to the Plaintiff Counsel.

This is the Judgement of this Court on 6 day of December 2019.

JUSTICE K.N.OGBONNAYA
JUDGE