IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 6th DAY OF DECEMBER, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
COURT 28

SUIT NO.FCT/HC/CV/3180/19

BETWEEN:

1. **REV.UGWU AUGUSTINE**
2. **PASTOR WILSON NWACHUKWU**
3. **PASTOR WILFRED OKOYE**
4. **ELDER CHARLSE EROBUTE**
5. **PASTOR CHUKWU UDE**
6. **BROTHER BITRUS I. SENCHI**
7. **ENVANGELIST FAITH ADEOYE**
8. **BROTHER EMEKA ANI**
9. **BROTHER EMEKA OKOYE**
10. **EVANGELIST PROSPER NGENE**
11. **BROTHER CHARLES EROBUTE**

(SUING FOR THEMSELVES AND ON BEHALF OF CONCERNED MEMBERS OF CHRISTIAN TRADERS MARKET FELLOWSHIP OF GARKI MARKET, ABUJA)

---------- **CLAIMANTS**

AND

1. **MINISTER OF THE FEDERAL CAPITAL TERRITORY ABUJA**
2. **ABUJA MARKET MANAGEMENT LIMITED (AMML)**

----- **DEFENDANTS**

RULLING/JUDGMENT

On the 10/10/19, 11 Nigerians residing within the FCT for and unbehalf of themselves and others members of the Christian Traders Market Fellowship of Garki Market, Abuja, lead by Rev. Ugwu Augustine, instituted this action requesting this Court for the interpretation of the 2 question raised in their Originating Summons. The questions are:

1. "Whether or not by virtue the provision of section 38(1) of the 1999 Constitution as amended, the claimants' and other members of the Christian Traders market Fellowship of Garki market Abuja have their unfettered constitutional right to build their Fellowship church/place of worship in designated area by 2nd defendant for carrying out their religion obligatory rights as the 2nd Defendant provided for the other religious faiths in the said Garki Market.

2.Whether or not by virtue of the Provision of Article.18,10(1) 13 (3) and 19 of the African Charter and Human and People Rights ratified and domesticated by Nigerian Government, the Claimants and their members of Christian Traders market Abuja have their unfettered Constitutional and Human Right to build their fellowship (centre)/Church in the area that may be designated by the 2nd respondent to carry out their religions Obligatory rights as the 2nd Defendant had provided for other religious Faith in the said Garki market.

The Claimants jointly and severally seek for the following reliefs against the Respondents who are FCT Minister and Abuja market management limited (AMML)

The Reliefs are as follows:

1. A Declaration that the claimants and their members are entitled to build their own fellowship/Church (centre) in the Garki market Abuja, at a place to be designated by the 2nd Defendant as the 2nd had provided for other religious faiths.
2. A Declaration that the 2nd defendant is to pay the Claimants and their members the sum of N50, 000,000.00 (Fifty Million Naira) only as damages for violating the right of the Claimants by refusing them their unfettered right for a designated place of worship for a considerable number of years, having consistently demanded for same from 2nd Defendant.
3. An order compelling the 2nd from further violating any legal existing right of the Claimant and their members in the said Garki Market.
4. Omnibus prayer/ relief

The Claimants supported the Originating Summon by an Affidavit of 16 paragraphs deposed to for and our belief of the fellowship by the 1st Claimant – Rev. Ugwu Augustine

It is the story of the Claimants that the fellowship has on several occasions written letters to the 2nd Defendant seeking to have their right to have a fellowship centre/ Church in ANY AREA that may be designated by the 2nd defendant as the 2nd Defendant have provided for other religious faith.

That the 2nd Defendant kept making empty promises to the Claimants since 2016 never fulfilled same.

The Claimants attached one of the latest letters written to the Defendants on the 23rd August, 2017 as **EXHIBIT A**. The said letter was acknowledged by the 2nd Defendant AMML. The said letter is seeking for approval of the 2nd Defendant and FCDA where the 1st Defendant is the author and finisher. They also attached an application for approval of Building Plan drawing

written by Claimants' Counsel to the Managing Director of the 2nd Defendant, requesting for approval to build their Fellowship/Church on a place to be designated by the 2nd defendant just as the 2nd Defendant, have approved for other religious faiths. The letter/application was written on the 12th July, 2017, But according to them, the 2nd Defendant refused the request made in the said letter of 12th July, 2017. That letter is attached and marked as **EXHIBIT B**, dated 24/11/17 and receive on 28/11/17. They also furnished the 2nd Defendant with the said Building Plan, that document is attached as **EXHIBIT C.** In another letter to the 2nd Defendant, the Claimants undertook to abide by the relevant Terms and Condition as well as standard as may be prescribed by the Defendant for the development of a convenient place of worship in the said market as other religious faith did. This letter was also received and acknowledged by the 2nd defendant.

They claimed that the right to have a place of worship as the Claimant are seeking is a legal right as 2nd Defendant have provided for other religious faiths.

That the Defendants had orally without any documentation or Letter of Allocation, verbally allocated a place to them situate between toilet A and B at the said Garki market. That since the verbal allocation the 2nd defendant has not issued any letter of allocation or physically handed over the said place to the Claimants till date.

The Claimants also alleged that they wrote another letter of reminder dated 23rd November, 2017: That in the said letter of 23rd November, 2017 the Claimants also wrote to 2nd Defendant complaining about the suffering they encountered whenever they worship under rain and other tough weather condition in the open. But the 2nd Defendant according to them has not done anything to alleviate their suffering. That this suffering is peculiar to the fellowship as other religious outfit worship under very conducive

atmosphere designated to them by the same 2nd Defendant, who has failed, and or refuse to come to the aid of the fellowship, as they have done for other religious faith.

Utterly disappointed and helpless, these law-abiding Nigeria citizens, instead of taking the laws into their hand, decided to seek redress in this Court by asking this Court to interpret the question they raised in this Originating Summons in order to ascertain if they are or are not entitled to allocation of a place of worship like other religious faith in the same premises, who have been given a place of worship by the same 2nd Defendant in the same premises.

In the written address in supporting of the Originating summon the Claimants' Counsel on their behalf did not raised any issue in particular for determination but argued and submitted as follows:

That a closer look at the facts in Affidavit in support and the 3 documents which the Claimants attached as **EXHIBIT A-C,** shows existing rights of the Claimants as provided for in **Section 38(1) 1999 Constitution as Amended** . He also cited in full the provisions of **Art 8, 10 (1) 13 and 19 African Charter of Human and Peoples Right.**

The learned Counsel went on to submitted that by the clear interpretation of the **Art.19 African chanter** will give the Court a road map for the 2nd defendant to allow other religious faith to practice their religious beliefs by providing them a designated place at the Garki market to the exclusion of the claimants and their members with a space to build their Fellowship Centre to enable them operate and worship according to their faith. That such exclusion is a clear and gross violation of the provision of **Section 38 (1)1999 Constitution as Amended,** As well as all the extant Articles of the African Charter of Human and People Right which the Claimants seek to be

interpreted by this Court in this cause. He urged the Court to hold that the action of the Defendants is a true violation as stated and therefore grant all the reliefs of the Claimants.

He again submitted that all the reliefs by the Claimants in the Originating Summon are all Right that are permitted to seek for damages of violated. He referred the Court to the case of **Ajaji vs A-G Federation (1998) HRLRA 373** .

That going by the decision of the Court in the above case the Court has a right to award damages in favour of the Claimants and also reinstate the Rights and reliefs brought by the Claimants by compelling the Defendants to provided the Claimants' all their right as pleaded. They urged the Court to so hold.

That the Court is clothed with the power to grant damages as claimed in the Originating Summons in where a party fails to observe any of the provisions of the African Charter on Human and People Right. He referred the Court to the case of

Odogwu Vs. A-G fed. (2000) 2 HRLRA 82.

He further submitted that the Provisions of the **Section 38 (1) 1999 Constitution** makes it clear that the present claim as sought within the power of the Court to grant. He cited in support the case of **M.D.P.D.T. VS Okonkwo (2001) FWLR (paragraph 44) 542.** All the right as attached in this regard are preserved in the **Section S.S 37 and 38 1999 Constitution as Amended.** He also referred to the case of **Registered Trustee of Holy Apostolic Church VS Ayeni (2002) FWLR (PT115) 708.** He further submitted that it is crystal clear that the claimants reliefs are what the Court is empowered to and which the Court can grant in claimants favour.

He concluded that in view of the above prevision of the Constitution, particularly **Section 38(1) as well as the extant Articles of the African Charter Art 8,9,10 and 19**, it is clear that the reliefs brought in this case can be granted. He prayed that Court to grant all the said reliefs.

Upon receipt of the Originating summons the 1st Defendant Minister of FCT, filed a 19 paragraph Counter Affidavit deposed to by Ngozika Ruth Owoh-ohaa staff of the FCT Admin in the Admin Department. The 1st Defendant initially filed Counter Affidavit on the 14/11/19 but later filed 2nd Counter Affidavit on 20/11/19, which this Court recognised after the 1st Defendant's Counsel had applied to withdraw the Counter Affidavit of 14/11/19.

The 1st defendant vehemently opposed the Originating summons which they see as gold-digging and the Claimants trying to reap where they did not sow. That there is no Evidence to show that the Claimants obtained any Form or applied for allocation of Land by filling any Land Allocation Form. That they did not pay for processing any fees or obtained the 1st respondent's approval. That there is no record to show that the Claimants had ever applied to the 1st Defendant for any land within the subject matter or obtained any approval. That the area in questions known as Garki market and was allocated to the 2nd Defendant via a **Certificate of Occupancy No:840uw-15496-51f7r-5280u-6ul with file No:misc:119152**

That the allocation to the 2nd Defendant was strictly for commercial purpose. Based on Building Plan Approved by the Development Control. That it is not within the power of the 2nd defendant to alter the existing structure within the Garki Market. That the 1st defendant is not privy to any arrangement between the Claimants and the 2nd defendant and has not infringed on the right of the Claimants as alleged. They urged the Court to so hold and dismiss this suit with punitive cost as that will serve the best

interest of Justice in this matter. He 1st Defendant did not attach any Document they referred to in their Counter Affidavit.

In the Written Address the learned Counsel for the 1st Defendant submitted that on behalf of the 1st Defendant as follows, raising two issues for determination which are:

1. **"Whether the non-grant of allocation of land to the Claimants by the Defendants amount to violation of Constitutional Right to Freedom of Thought, Conscience or Religious."**
2. **"Whether the Claimants are entitled to the relief sought in the Originating Summons."**

On Issue No1, the learned Counsel submitted that the Evidence before the Court indicated that the 2nd Defendant in this case is the allotee of the parcel of land situated and known at Garki market which was granted to it by the 1st Defendant for purpose of building market stall/shops. That the use of the land is for commercial purposes only. That being the case the non-grant of a portion there for a place of worship is not a violation of the Claimants Right to Freedom of Religion as enshrined in the 1999 Constitution as Amended, especially **Section 38(1**) which the Claimants relied on. That entitlement as envisaged by the Constitution is as to freedom of thought conscience and religion not on allocation of land for purpose of worship. That the Claimants has not shown that 1st Defendant or his agent has in any way deprived them of Freedom of Religion or Worship. That if that is so, they should have gone by any Application for the Enforcement of their Fundamental Right. That allocation or non-grant of land is not one of the Fundamental Rights guaranteed by the Constitution; that non-grant of land for purpose of building a place of worship is not part of the Fundamental Right as provided for in **Section 38 (1)1999 Constitution**

That being the case the claimants' Constitutional right was not breached in any way in this case by the 1st defendant.

The learned Counsel further submitted that the claim before the Court is not for enforcement of fundamental right but whether or not Claimants are entitled to a portion of land within Garki Modern Market. That invocation of the fundamental right is only incidental to the main claim. The learned Counsel cite the case of Habu **vs Nig. Union of Teachers Taraba State (2005) All FWLR (PT 270) 2062 CA**

That the Claimants' case is that the Defendants have not handed over their application for a portion of land within the said Garki modern market for them to build a place of worship. That has not in any way amounted to breach of the claimant freedom of religion and worship. They urged the Court to so hold.

On Issue No 2, "whether the claimants are entitled to the Reliefs sought," the Counsel referred to **Section 131(1) EA 2011** as Amended and submitted that the claimant having alleged that Defendants refused to grant them a space to build a place for worship and as such their fundamental right to freedom of thought, conscience and religion has been violated must prove same to the Court to be entitled to the Reliefs sought.

They submitted that grant of land in Nigeria is regulated by the land use **Act-CAP L5 LFW.2004** and not the Constitution. That by virtue of section 45 1999 Constitution is to the effect that provision relating to **Section 38,39 and 40** etc shall not invalidate any law that is reasonably justifiable in a democratic society in the interest of public order among other things .That by virtue of the provision of **Section 1 and 51(2) Land Use Act**, the 1st defendant is the trustee of all lands in FCT and has the right to allocate same to any person who met the requirements and condition for such

allocation. He further submitted that the C of O for the said Land was granted to 2nd Defendant for commercial purpose only. That any re-allocation will be with the Consent and approval of the 1stDefendant. He referred the Court to **Section 22 Land Use Act**. He urged the court to so hold. He further submitted that there are procedure for allocation of land in the FCT and that the requirement in respect of the Garki Market.

He concluded that Claimants have not shown in any way that Defendant have violated their fundamental right. They have equally not shown that they met the requirement for the grant of statutory right of occupancy to want an order of the Court compelling the Defendants to allocate land to them. That the said place of land at the Garki market had already been allocated to 2nd Defendant for commercial purposes. He urged the Court to dismiss the suit as it lack merit.

Upon receipt of the Originating Summon, the 2nd Defendant filed a 14 paragraphs Counter affidavit disposed to by Felix Edache. The learned Counsel submitted on behalf of the 1st Respondent that there is no such group known as Christian Traders Market Fellowship Garki, Abuja. That 2nd Defendant is the manager of the entire market. They attached a copy of the Certificate of Occupancy issued by the 1st Respondent over **Plot 1808 CADZONE AO3** Garki ii Abuja.

That the law as designed in the Certificate of Occupancy is for commercial purpose only. That the 2nd Defendant has the right to deal with the property as he wishes in accordance with the use for with the grant was made. That they have no business with the Claimants and that the Claimant has never paid any money to the 2nd Defendant for whatever purpose in the Garki Market for building of any place of worship.

That the 2nd Defendant not designated any place of worship inside the market for the building of Churches or place of worship for any religious organization or faith. That 2nd Defendant only gave a portion of land out of her magnanimity to Garki Model Market comprising of all faiths to build their respective offices. That they have no control over how the Garki Model Market Association partitioned the land and they never allocated any land to any particular faith for building of a place of worship. That the 2nd Defendant does not owe the Claimants any obligation to allocate separate land for Claimants to build any place of worship.

Again, that they received the letters from the claimant but ignored same as they have no obligation to allocate land to the Claimant.

That claimants have no legal right to build place of worship inside the market as the Garki market is built or designed for market shops and not for place of worship.

That 2nd Defendant never verbally or in writing or in any other form allocated any place at any time to Claimants for building of place of worship. That the 2nd received all the letters attached in support by the Claimants but refused to react to the said letter. That the 2nd Defendant never designated any place to any other religion faith. They urged the Court to dismiss the application.

In the Written Address which they adopted as their oral submission in support of their counter Affidavit the 2nd Defendant raised an Issue for determination which is:

> "**Whether from the AFFIDAVIT Evidence and Documents attached the Claimants have proved their case against the 2nd Defendant before this honourable Court."**

They submitted that the 2nd Defendant owes no obligation on contract or under law to the Claimant to allocate any portion of the land covering Garki Market to them for building a place of worship or for any other purpose. That EXH AA1-Certificate of Occupancy over the land in favour of the 2nd Defendant shows that the land covering the entire Garki market privately belongs to the 2nd Defendant. That the land was specifically granted to 2nd Defendant for commercial purpose shops and not for construction of place of worship.

That Claimants did not produce any Evidence or Document to show that they have a right over any portion of the land. They have not also produced any Contract Agreement to back up their claims showing that they are entitled to the right they are claiming over any portion of land granted to the 2nd defendant by the 1st Defendant. That the claimants have failed to establish ownership of the land in question or possession of same. that by the Document attached the 2nd Defendant has shown that the whole land belong to it and that they have unfettered right to allocate or sub allocate to any person of their choice. That the onus is on the Claimant to establish their right but they were not able to do so. The cited the case of **Jim Jaja vs COP River state (2019)NWLR (PT 1350) 225@231 And Ohah vs Okenwa (2010) NWLR (Pt 1194) 512 (CA)**

That the allegation that 2nd Defendant has allocated some portion of land to some other religious group is false as the Claimant never mentioned the name of any of the said religious group. That the claim that a site was verbally allocated to them is false and however the claimant did not state the time, date and place the verbal allocation was made or the name of the officer who made the verbal allocation. They referred the Court to the case of **Teraki Mills vs Saint Eng.LTD(2009) NWLR (page1136)1 @5.Ration 6.**

That 2nd Defendant had never hindered the Claimants from practicing their Religion going by the interpretation of **Section 38(1) 1999 Constitution as Amended.** That in para 14 the claimants state that they have been worshiping freely in the Garki market. That 2nd Defendant is the title holder of the parcel of land and claimants are not privy to the contract between 1st and 2nd Defendants and so cannot institute any action to seek any relief in the contract between the 1st and 2nd Defendants. They referred to the case of **Mbata vs Amanze (2018) 15 NWLR (PT 1643) 570 (CA)**

Rebold Ind. LTD Vs Magreola (2015) 8 NWLR (PT 1461) 210. They submitted that 2nd Defendant is bound by the terms and conditions in the Certificate of Occupancy which state that the allocation is strictly for commercial use and not for religious activities. That the Claimants has failed to prove their case and as such are not entitled to their reliefs sought.

That in fundamental right action claims for damages must be specifically made and proved. That the Claimants have not done so in this case and they have not also presented any concrete facts to entitle them to the reliefs sought. They referred to

Mbata vs Amanze Supreme

Uwangboe vs State (2008) 12 NWLR (PT 1102) 621

Ladoja vs Ajimobi (2016) 10 NWLR (PT 1519) 87 .

That the 2nd Defendant has not acted maliciously, violently or recklessly against the claimants and had not breached the Claimants' rights to warrant the grant of the reliefs. That since the claimant have not been able to prove their case the Court should dismiss same as is the decision in the case of **Zenith Bank VS Ekereuwem (2012) 4 NWLR(PT 1290) 207**

That the Claimants Affidavit in support is contradictory and speculative and not backed by any concrete evidence. They cited in support the case of

Galadima V. State (2018) NWLR (PT 1333)610 @ 614 Ratio 6

Romrig (Nig) Ltd V. FRN (2018) NWLR (PT162) 284 SC

That the Claimants want to use judicial power to coerce the 2nd Defendant into parting with its land based on the Claimants' spurious claim of breached of right to build a place of worship. They urged the Court to dismiss the suit in it entirely with punitive cost.

Upon receipt of the counter Affidavit filed in opposition by the 1st defendant, the Plaintiff Counsel filed a reply and further Affidavit to the said 1st Defendant Counter Affidavit. The further Affidavit is 20 paragraph and they attached 2 Documents marked EXHIBIT C and D.

In the written address the Plaintiff Counsel raised an issue for determination which is:

"Whether or not Claimants are entitled to the Reliefs sought and whether the 1st Defendant mode of memorandum of appearance is irregular and made the said Counter Affidavit baseless."

NOTE

It is important to point out that the issue of memorandum of Appearance has been laid to rest. So the issue considered is on whether Plaintiffs are entitled to the Reliefs sought based on the fact in support of their claim and submission thereto.

In the written address where they raised the lone Issue they submitted that **EXHIBIT C** Certified copy of the Judgement of FCT high Court-per Justice S.E.

Aladetoyinbo (as he was then) is a clear road map that all facts in the affidavit and further affidavit in this suit are true and that the Affidavit of the 1st defendant in their counter Affidavit are attempts to withhold and conceal the facts and deceive the Court, contrary to **Section 167 EA 2011 as Amended**.

As Evident in EXH C the Claimants have legal right to be enforced against the 1st Defendant but the Defendants are seeking to renege by the facts in their Counter Affidavit. He referred to the case below condemning the action of the 1st Defendant

R.A Oluyida and sons ltd V. F.V.O.A.U (2019) All FWLR (PT 975) 746 SC.

He further submitted that some members of the Claimants and Defendants have amicably reached a settlement which was entered into as (consent) Judgement of the parties by a Court of competent Jurisdiction. By that the Claimants have unfettered constitutional legally existing right to enforce same by either filing an Originating Summon or motion to enforce same.

That the whole essence of this Originating Summon is fact the Claimants are seeking for an interpretation of the enforcement of their already existing legal rights as contained therein and in the Judgement of this Court-**EXHIBI C**.

That Exhibit A, Certificate of Occupancy, in 2nd Defendant Counter Affidavit is a public document which they ought to produce the original but the 2nd Defendant failed to do so. That since neither the original nor the certified copy of the Certificate of Occupancy was attached the Court cannot take judicial notice of its content and as such it is inadmissible. He relied on the case of **Emeka V Chuba-ikpeazu (2019) All FWLR (PT 974) 613 @ 632-624 and 635 Ratio 15 and 16**

That the Document, Certificate of Occupancy, did not meet the requirement of the law as per **Section 104 EA, 2011** and going by the decision of the Supreme Court in the case of **Emeka V. Chiba-ikpeazu.** He urged Court not to rely on the said Document as referred to by the 1st Defendant in paragraph 11 and 12 of their Counter Affidavit as far as the Land allocation is concerned that the 1st Defendant did not attached the land allocation paper or any Evidence that they actually allocated the land to the 2nd Defendant. No letter of or allocation form filed. No receipt of payment for paying fees etc.

He further submitted on none or belated appearance it is important to note that entering appearance in person life and blood is better than the paper appearance which has no voice, blood or vein in it. It lack the capacity to announce itself unless announce by the Court.

The learned Counsel concluded that the Claimants are entitled to all their reliefs. That going by EXH C in the further Affidavit the Claimants can file afresh its Originating Summons and seek interpretation of relevant laws bordering on the legal right of the claims as granted in EXH C. He referred to case of **Ajuwon V. Adeoti (1990)2NWLR (PT 132) SC Ratio 4.**

Okonkwo V. Akpajie (1992) 2 NWLR (PT 226)636 Ratio 3

That the Court can use EXH C attached to further Affidavit to grant all the Reliefs sought by the Claimants in this case. Again since all the Reliefs sought border on the existing legal right, legal right of the Claimants seeking for interpretation of what is already granted in EXH C (previous decision in favour of the Claimant) he urged the Court to so hold that the Claimants are entitled to the reliefs sought and grant same.

In response to Counter Affidavit of the 2nd Defendant the Plaintiff Counsel filed a further Affidavit of 14 paragraphs. He also filed a reply and written

address. He also attached 2 Documents **EXH C and D** which are **Consent Judgement and a letter to the Managing Director of 2nd Defendant respectively.**

In the written address the Plaintiff Counsel raised an Issue for determination which is:

> **"Whether or not the claimants are entitled to the reliefs sought in this case**."

Answering the question in the affirmative, the Plaintiff Counsel augured and submitted same as in their Reply and Further Affidavit in response to the counter Affidavit of the 1st Defendant. In addition he submitted, and referred to **Order 9 R 1(1) & (3) and R 5 FCT High Court Rules 2018**. He also referred to the case of:

Atanda V. Ajani (1989)3 NWLR (PT111)5112518 ratio 22

He submitted that the Claimants are entitled to the Reliefs sought considering the facts in the Affidavit and further Affidavit as well as all the contents of the EXH C, which show that the Claimant have a existing legal right. He also cited in support of these submission the case of **Ajuwon v Adeoti supra** where S.C held that:

> **"It is perfectly legitimate for examine land suit for a person who has had a previous suit in his favour either to use it as a foundation for an action in trespass or go to Court again to add something new to what what he already got in his previous Judgement in his favour."**

He equally cited the case of **Okonkwo vs Akpajie supra,** where the Court also hold that:

"The Judgement in an earlier case frequently is used perfectly, properly in a later case''

He then submitted that this Court can use EXH C attached to their further Affidavit to grant all the Reliefs sought by the Claimant in this case, since all the Reliefs sought bother on the existing right of the Claimant seeking to be interpreted by as already grant in EXH C. attached to the further Affidavit before this Court, the said EXH C being a Judgement of this Court. He urged the Court to so hold.

COURT:

In every Originating Summon the Court is called upon to interpret and determine the questions raise therein and upon the interpretation, grant every Relief consequentially see **PDP V Ali Modu Sheriff**-decision of this Court delivered in 17 August, 2016.

The consequential Order the Court grants makes or the Reliefs sought are based whatever the interpretation is. So in an Originating Summon the question is the "claims", that is what the Application or Plaintiff want the Court to do. After all the claim of the Plaintiff is what determines whether a Court has Jurisdiction or competence to entertain the suit and not the Reliefs sought per se.

In this suit predicated in Originating Summons, the Plaintiff asked the Court to interpret 2 questions as contained therein and grant the 3 consequential Orders if there is merit in the interpretation.

In a nut shell the question is:

"whether the claimant has an unfettered Constitutional right to build their fellowship Church in the area designated by 2nd Defendant for carrying out their religious obligatory right as 2nd

Defendant provided for other religious faith in the said Garki market."

The above is on whether the Claimants have a right to build their fellowship Church in the area designated by 2nd Defendant for such purpose. It does not mean that the 2nd defendant is claiming ownership obligatorily over the land. Here the obligatory right is to their practising their religion. But the questions is whether claimant has the right to construct on any designated place given to them or designated by the 2nd Defendant, and of course through the allocation by the 1st Defendant given to the 2nd defendant. The Claimant are not challenging the allocation given to 2nd Defendant, they are not claiming that allocation either.

The Provision of **Section 38(1)1999 Constitution** is on Freedom of thought, Conscience and Religion, Freedom to change religion or belief and Freedom to manifest and propagate ones religion or belief in worship teaching, practice and observance.

So the first question in this Originating Summon is whether the Claimants have right to practice their religion and construct a place of worship in an area designated for that purpose by the 2nd Defendant as the same 2nd Defendant has provided for other religious faith in the same market which is in Garki Market.

It is the humble view of this Court that the claimants have the right to so build or construct their Fellowship Church or place of worship in such a designated place by the 2nd Defendant as they have provided for other religious faith.

By the **Provision of section 38(1)1999 Constitution,** the Claimants have freedom of worship and freedom to practice their fellowship centre in a place designated by the 2nd Defendant for that purpose as the 2nd

defendant had done for other religious faith in the same Garki Market. It is not in doubt that the 2nd Defendant has the allocation of the land in Garki Market. It is not doubt that the claimants are not claiming ownership of the Garki market. It is not in doubt that the Claimants have by EXHIBITS attached, solicited for a place of worship from the 2nd Defendant. No one is in doubt that they have over the years asked for a place of worship in the Garki Market to alleviate their suffering of worshiping under rain and harsh sunny weather. Even the 2nd Defendant acknowledged the receipts of the several letters written to them by the Claimants. In that regard they confirmed that in paragraph 11 of the 2nd Defendant's Counter Affidavit thus:

" ... **Paragraph 12 -13 of Claimants' Affidavit are true to the extent that 2nd Defendant received the letters claimed by the Claimants in those paragraphs...**"

The contents of the said letter puts no in doubt as what is meant-solicitation for a allocation and approval to construct a place of worship in order to exercise their right to freedom of worship, right to practice their religion and propagate their religion and belief. That religious right as they want to express are constitutionally guaranteed under **Section 38**. That right is sacrosanct .No one can stop them from exercising it. And by this application the claimants are not stating that the 2nd Defendant is interfering with that right per se. All they are saying is that they have a right to construct their worship centre in any place designated by the 2nd Defendant for that purpose as the 2nd defendant has so designated for other religious faiths in the same Garki Market.

Before I go into the analysis of the Evidence attached by Claimants and Defendants, let me take a look and comment on the 2nd question which further lay bare the intention of the claimants in this Originating summon.

" The Claimants and their members have their unfettered constitutional and human right to build their fellowship Church in the area THAT MAY BE DESIGNATED BY THE 2ND DEFENDANT to carry out their religious obligatory right as the 2nd Defendant provided for other religious/faith in the same Garki market."

The use of the phrase:

"That may be designated by the 2nd Defendant" shows and further confirm that the Claimants are not tussling with the 2nd Defendant over ownership of the Garki Market. They are not equally challenging the ownership by the 2nd Defendant. They are not insinuating that the 2nd Defendant obstructing their freedom under **Section 38 1999 Constitution** or the **Africa Charter Art 8, 10 (1) and 13(3) and Art 19**. The question is whether under the Africa Charter as listed above, the Claimant has right to construct their fellowship centre in any land which the 2nd Defendant may allocate or grant to them?

It is the humble view of this Court that, yes, the Claimants can build/construct in any land which the 2nd Defendant may designate to carry out their religious obligatory right as the same 2nd Defendant had done /provided for other religious faith in the same Garki Market managed by 2nd Defendant, through their officer and agents.

It is imperative to point out that the request for a place of worship by the Claimants is not strange to the 2nd Defendant. A closer work at the exhibit attached by Claimants, especially the letter **EXHIBIT A-D.** Of particular interest is the content of Exhibit C which was attached to the Further Affidavit filed in response to the counter Affidavit of 1 and 2 Defendants. The said Exhibit is a Judgement of this Court. In it are the members of the Garki Market Management Task Force, the Branch Manager of Garki Market management which is obviously the agent and eye as well as the mouth

piece of the 2nd Defendant, as well as the DPO Garki Police Division and the COP Abuja Command. The said Judgement as agreed by the parties stated thus:

> **"The Open Space provided by the Management of Garki Modern Market for the Christian Trader's Market Fellowship Abuja should be constructed to avoid rain and sun from affecting them. Every Christian activity should be carried out by the Christian Traders Market Fellowship inside the constructed place."**

This was before Hon. Justice S.E Aladetoyinbo as he then was. The above puts no one in doubt about the designation of a place of worship for the Garki Christian Traders Fellowship who are the Claimants in this suit.

Also of interest is the letter Exhibit A & B. The 2nd Defendant who are the masters of the management of the Garki market cannot deny that they do not know about the existence of a place of worship which they have designated to the Claimants. Their feeble denial about oral or verbal allocation cannot stand. So also their submission that the Claimant did not fill any form or made payment for allocation. Funny enough, the same 2nd Defendant who claims ownership of the Garki Market (ownership that is not challenged by any one) did not also exhibit the form or receipt of payment of any money made in the course of getting the allocation from 1st Defendant. Also the 1st Defendant did not attach such Document either.

Also of interest is the letter of reminder, letter dated 23/8/17, which the 2nd Defendant received as shown by the acknowledgement on 12/9/17. The letter was for approval of a building plan/drawing which was duly attached and marked as Exhibit B in this case. The letter read in part thus:

"We humbly apply for your kind approval of the building plan/drawing attached here to enable them commences actual development of the

proposed Christian Worship Centre. Kindly recall that a space by transitory in between toilet A&B which was verbally allocated by the Abuja Market Management Ltd 2nd Defendant (emphasis mine).”

The above letter date 23/8/17 was written by the solicitor of the Plaintiff/Claimants. The 2nd Defendant received the said letter as they confirmed in para 11 of the Counter Affidavit of 20/11/19 in opposition to this Originating Summons.

Also of a further interest is the content of another letter **Exhibit B, dated 24/11/17,** 2 years ago. In the letter of reminder the applicants through their Counsel, were lamenting that over 3 months after the letter of August 2017 of the approval of Building Plan/Drawing for the construction of the place of worship, the 2nd Defendant had not responded to their letter and the Claimants’ Counsel put it in the letter – thus:

“ ... We have our Clients’ instruction to remind you sir that up till date, 3 months after the above application for building plan approval, no action seem to have taken.”

The letter went on in paragraph 2 thus:

“Our Clients is really anxious to develop the Worship Centre and therefore appeal to you to deploy the machinery of your good offices to achieve the desired approval in no distant time.”

The above shows that there is a “relationship” between the Claimants and 2nd Defendant. Again that the story of verbal allocation of a Worship Space is not in doubt and the 2nd Defendant in the know and are not in doubt about existence of such approval. If not should the claimant have out of the Blues applied for Plan/Drawing Approval from the Defendants? Of course not. The 2nd Defendant were aware abinitio. They cannot deny that now.

The claimant went further to state the purpose for the approval, which is:

‘‘Our Client is really anxious to develop the Worship Centre and therefore appeal to you good offices to achieve the desired approval in no distant time.”

This letter was received by 2nd Defendant and acknowledge on 28/11/17.

The content of the above letter is very clear and leave no one in doubt the 2nd Defendant did not challenge same. They confirmed and acknowledged that they received the said letter. The Claimants attached the said Building Plan/Drawing to the said letter of 24/11/17 and marked it as an Exhibit.

The 2nd Defendant knew about the existence of these letters but decided to keep mute or ignore same as they claimed in paragraph 12 of their Counter Affidavit, for a reason best know to them.

Again the content of **EXHIBIT D-**paragraph 2 & 3 further clearly shows what the Claimants are after a place of worship in the designated area by Defendant for construction of a place of worship or fellowship. In the letter the Claimants reminded the 2nd Defendant about the letter of 23/8/17 and 24/11/17 that letter was dated 8/3/19 in Paragraph 2 it states:

“The place was allocated to us by the management when Joseph Ibrahim Yahaya was the Branch Manager ... we have not been finding it easy worshipping under rain and sun which makes it difficult for us to carry out our activities in the open SPACE ALLOCATED TO US.”

It is obvious that the open space is what the Claimants have based the drawn Building Plan on, which they want to develop if the approval is given. But the 2nd Defendant never approved the Building Plan. It is imperative to state that the place allocated is not in doubt. The allocation also is equally not in doubt. The story of allocation is not strange to the 2nd Defendant

either, yet they refused to give the approval not withstanding Exhibit C, the consent Judgement of the parties.

Again, the letter of 8/3/19 further referred to the Judgement of the Court delivered on 20/6/16, where it was. It stated thus:

"**IN LINE WITH THE JUDGENT OF THE HIGH COURT IN MAITAMA,ON THE 20/6/16, WE APPLY FOR APPROVAL SO THAT WE CAN START THE ACTUAL DEVELOPMENT OF THE PROJECT ON THE DESIGNATED SITE ALLOCATED TO US BY MANAGMENT(EMPHASASIS MINE)**

PLEASE KINDLY NOTE THAT THE RAINY SEASON IS ALREADLY HERE and THE SAME SITUATION OF HAVING THE (CLAMANTS) WORSHIP IN A HARSH WEATHER IN THE OPEN COULD BE EXPERIENCED AGAIN IF NOTHING IS DONE."

The whole content of the EXHIBIT A-D is clear. They all geared and further confirm the claims of the Applicants as required and their intention to exercise their right under **Section 38(1)1999 Constitution** upon approval by the 2nd Defendant of the designate place set out for construction of fellowship for them as has been provided for other religious faith. But in the case of the Claimants, the 2nd Defendant did not approve for construction of the already designated place going by the **EXHIBIT C-Judgment and the contents of EXHIBIT A, B, D** and Shows there was a place designated between Transitory toilet A and B which the 2nd Defendant has designated and verbally allocated. If this place does not exist and allocation given, can the Claimant prepare any Building Plan/Drawing and serve for approval of the 2nd Defendant of course they cannot dare to do so.

The issue of ownership of the Garki is not in doubt. It belongs to the Abuja Market Management LTD (AMML). The Claimants are not claiming ownership, they are not equally trespassers. They are only soliticiously

asking the 2nd Defendant to approval the Plan/Drawing so that they can go on within the construction as others have done when the 2nd Defendant had given a similar designated place and probably approval.

In the letter of 23/8/17, in paragraph 3 the same claimants have pointed out in the same letter that:

"**Our Clients undertake to strictly abide by the relevant terms/conditions and/or the standards as may be prescribed by you for the development of a convenient and safe Worship Centre in the (Garki) market.**

The above seals the deal. The letter was addressed to the Managing Director of the 2nd Defendant. They cannot therefore deny its content or feel that they can deceive any one by saying that they do not know about the Claimants request or the said verbal allocation and the letter/Application for Building Plan Approval. The Defendants especially 2nd Defendant, know about the whole thing. They know about the plan to construct a fellowship prayer/place of worship. They are the ones, through their manager, Joseph Ibrahim Yahaya, who gave the verbal approval. If the issue of verbal approval is wrong as they claim, the 2nd Defendant would have shown the Court the document –form, that they completed the payment they made before they themselves were given the certificate of occupancy by 1st Defendant. Again the 1st Defendant would have attached the said document of Application and Approval.

It is no secret that markets are not justice built for shops. There are banking halls, hospitals or church/place of worship and even police and security post but in a market. Also mosques are there too and other places of worship, also places of conveniences like toilet facilities. All these are there for the comfort of the public and for use of the market. So the argument of the 2nd Defendant that the Garki market is only for shop and nothing more is

fallacious, misleading and grossly misconstructed. The market has other facilities beyond shops. They are entitled to "allocate" or "designate" places of worship as they have done to other Religious Faiths as the Claimants have alleged. They are supposed to give approval as they have rightly done by the verbal or oral allocation made to the Claimants the content of **EXHIBIT C** is there for all to see. So also the contents of the letters put no one in doubt that there was an allocation which triggered off the letter/Application for the Building Plan Approval. The Judgment of the court puts it clearly thus:

"**The open space provided by the management of the Garki market for Christians Traders Market Fellowship Abuja should be constructed to avoid rain and sun from affecting the worshippers."**

It is imperative to note that this worshipper and invariably the Christian Traders Market Fellowship, the Claimants in his case, have their Constitutional right to practice their religion going by the provision of **Section 38(1)1999 Constitution** in a place designated by the 2nd Defendant.

The refusal/delay in approval of the Building Plan and invariably the construction of the building in the designated place provided by the 2nd Defendant has occasioned some hardship on the claimants. That is the purport of the Reliefs sought – Relief No2. That is why they claim that they are entitled to damages. And to avoid the continuation of the same delay they ask the Court for relief NO 3. All these reliefs are consequential to the 2 questions which they ask this Court to interpret for them.

The submissions of the 1st & 2nd Defendant were mainly on Allocation and procedure of allocation which is not what is before this Court. The Plaintiffs are not trespassers. They are not trying to claim the ownership of the allocation from the 2nd Defendant. They are not challenging it either. The

Claimants are only soliciting for the 2nd Defendant so allow them construct their fellowship centre in a place already given to it whether orally verbally and designated by the same 2nd Defendant as they have provided for other faith group, in no other place but in the Garki market owned by the 2nd Defendant and allocated to 2nd Defendant by the 1st Defendant.

All in all the Claimants have by their submissions in the Written Address, the facts as contained EXH A – D in the Affidavit and further Affidavit, shown and established their case. This Court therefore answer the question posed in the affirmative, and state that by virtue of S. 38 (1) 1999 Constitution as Amended the Claimants and other members of their group have unfettered Constitutional right to build a fellowship church or place in the area designated by 2nd Defendant for carrying out their religious obligatory rights in the said Garki market so this Court hold. The application is meritorious this court therefore grants the Relief to wit.

Relief NO 1 granted as prayed.

The Defendant violated the rights of the Plaintiffs.

On Relief NO 2.

The 2nd Defendant shall not pay to the Claimants any sum of money for the delay they have caused by refusing and delaying the Claimants and refusing them the unfettered right to Construction on the Designated place they had given to the claimant and the delay of the approval for the Building Plan /Drawing.

The Defendants are ordered to approve the Plan as sought and allow the construction without delay at the place which they had already designated for such purpose as sought.

Though the Defendants especially2nd Defendant have violated the Plaintiff's right by the delay, Plaintiffs should not forget that they have solicited for the allocation and construction.

Awarding monetary damage will defeat the whole aim of the solicitation. After all the Defendant did not charge them any amount before the place was designated. This Court did not award any damages because there is no Evidence that the designated place has been paid for by the Claimant or that they suffered any physical loss. So no monetary damage is awarded.

The 2 Defendant are there by ordered to desist from the said delay and further violation of the already existing unfettered legal right of the claimants over the said already designate place of worship given to the claimants and designated by the 2nd Defendant.

This is the Judgement of this Court Delivered today
The ------- day of ------- 2019.

JUSTICE K.N OGBONAYA

JUDGE FCT

He had not file 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 allege 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 tittle 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 ''Parklane ventures as against the 'Parklane' ventures where the allaged 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 claming 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 unpresented 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 the got tille 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 Declaation of ownership of the Res.

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

Again the 2nd issue first the Plainiff unbehalf of Plaintiff they submitted that where in a case there is nothing to put on the other side of the scale the standard of proot on the balsnce of probability is reached.

On the 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 testing of Plaintiff Witness 1 in paragraph 12 of his ------- he stated that he took possession of the Res 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 --------- in an action in trespass is sufficient to maintain on 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 line 35-40**. He concluded that even though the 2nd Defendant filed a statement of Defence no Evidence was led to substantiate the Defenceand some pleaded facts donot 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 Certance 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 line 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 th Court is at liberty to inter that the plaintiff had include damages and award ant amount it deem adequate and approved in the circusterment of this case the plaintiff refered 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 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 uncontrovertal 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 enter 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 allotee 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 convency approval which they, in their statement of defence stated was given to them by parklane according to the 2nd defendant he obtained a title convency 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 .Tthere 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/convecy and of Approval in favour of PARKLINE Ventures all are Plot CD158. Meanwhile he did not attached any of the Document plesded and never cetrel 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 affant. 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 ogbonnaya Nice meanwhile the name of the 1st defendant is Nice Chijioke and not Ogbonnay 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,leese 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 meddled with the plaintiffs title that why they did not attached any title Document 0f any value in support of their defence. It is very obvious tat 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 content and very credible as they are have 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 -------claim to the Res. The Defendant could not discharge the ----on them after the Plaintiff had--------serve to them. The 2nd Defendant 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 establish 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 tha 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 N100,000 thousand against the 2nd Defendant for the trespass into the Res.

The Court also award the sum of N50,000 thousand 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

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON THE 6TH DAY OF December, 2019

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

COURT 28.

SUIT NO.: FCT/HC/CV/3005/17

BETWEEN:

DMT WEBS COMMUNICATIONS LTD ----------CLAIMANT

AND

1. **EBONYI STATE GOVERNMENT ----------DEFENDANTS**
2. **THE ATTORNEY GENERAL OF EBONYI STATE**

RECORD OF PROCEEDINGS OF 14/5/18

APPERANCE

MARTIN ODEY for the Claimant.Caimmant not in a court.

The motion is Exparte and the Defendant are not suppose to be served

Plaintiff Counsel:

M/4208/18 We have a motion Exparte for leave to serve the Defendant outside the jurisdiction of the Court.

Service of the process on the Defendant outsides the Court's Jurisdiction at

Ebony State Government House Abakelike

Date 20/3/18 filed same day

Prayers

1. Leave to the Claimant/Applicant to issue a Writ of Summons and other processes in this case, for service outside the Jurisdiction of this Honourable Court at EBONYI STATE Government House, ABAKALIKI EBONYI STATE NIGERIA.
2. AN ORDER directing the said service on the Defendants to be effected by a registered Currier service.
3. Omnibus prayer.

In support is a 13 paragraph Affidavit deposed to by one Micheal Ahmed a businessman of 1090 Muhamadu Buhari way, Garki Abuja reliance was placed on all the averments also annexed to the application are Exhibits A,DK 1-DK 11

respectively. In compliance with the Rules, a written address was also filed in support of the application and same was adopted.

APPEARANCE:

Martin Odey for the Plaintiff/Applicant.

Defendants are yet to be served.

PLAINTIFF COUNSEL:

WE were in court on 24/4/15.we moved ourExparte.

The Court demanded that we filed the writ and, that we have really done that we have complied and the Document is before the Court. We urge the Court to grant us the requisite Order as applied.

COURT:

The Court had on 24/4/18 recorded the motion M/4208/18 seeking for leave to serve the Plaintiff's processes on the Defendant at Ebonyi State. The Court did not complete the Order because that day no document before the Court to show that the Writ has been filed. The Court Ordered the Plaintiff Counsel to ensure that the Writ is attached. Today the Plaintiff Counsel had done so. So this Court have seen that the application is in compliance with the Rule and all other extant law the Court will grant the application. The application therefore granted to wit:

1. Leave is granted to the Plaintiff Counsel to serve the Defendants Plaintiff's process outside the jurisdiction of the court.
2. The process to be served on the 1st defendant through the Attorney general of the Ebony state at Abakaliki.
3. The service of the process is to be effected by the Bailiff of this Court who will act as the Special Bailiff and NOT BY ANY Registered Courier as the Plaintiff Counsel suggested. Hearing notice to be served along with the said Originating process showing the next adjourned date.
4. The originating process to be mark with this word.

"THIS DOCUMENT IS FOR SERVICE OUTSIDE THE JURIDICTION OF THIS COURT AT ABAKALAKI EBONY STATE".

5. Once served, the service shall stand as personal service.

This is the ruling of this court.

Adjourned to the 28th day of June, 2018 for Hearing.

Hon. Judge

Sign

14/5/18

RECORD OF PROCEEDING FOR 28/06/2018

APPEARNCES

Martin Odey for the Claimant, Claimant absent.

1st & 2nd Defendants absent.

No Counsel for Defendants.

Plaintiff Counsel

At the last date the Court granted application for leave to serve the Defendants by substituted means outside the jurisdiction of the Court at Ebonyi State. The Defendants have been served with our process we asked for a date for us to commence hearing.

COURT:

Once a leave is granted for service of process outside jurisdiction it takes 30days from the day the party served received and acknowledge receipt of the process. The Defendants of this Suit were served on the 14/6/18 for the record.

The Plaintiff Counsel application is in Order. This Court has no reason not to grant same.

Matter adjourned to 10/10/18 for hearing.

The Plaintiff Counsel should ensure that Defendants are notified.

Hon. Judge

Sign.

28/6/18

RECORD OF PROCEEDING FOR 10/10/2018

APPERANCES

MATIN ODEY For Claimant, Plaintiff absent.

P.M.AWADA Director Civil Instigation Ebony state Ministry of Justice for the Defendants. Defendants absent.

PLAINTIFF COUNSEL:

Matter is for hearing Defendants have file notice to defend which we have responded by ruling …….to……to court we apply to adopt our process

PLAINTIFF COUNSEL

We have filled the notice out of time.we have ……for extention of time we apply to move the application …….please the court.

PLAINTIFF COUCEL

No objection to the adjournment being moved ON THE 49 RULE 4 Highcourt rule 2018

PRAYER

Extension of time to defendant ……as stated 12 para affidavit

Written address in support dated 28/6/18 we adopt it as our support,we urge the court to grant the motion

PLAINTIFF COUNSEL

No objection

COURT RULING

The court had read the content of the motion for extention of time it is ……..the extent provision of the rule of this court and it is here by granted as prayed

10/10/18

PLAINTIFF COUNSEL

We have a writ hide……so were because we know the defendant has no document on the writ.

Hearing ……. On process they ……notice to defend.We have responded by filing a counter affidavit ……..to court we apply that the Defendant move his notice to defend so that court will allow us move our counter.so we move ……..

COURT

Defendant counsel move your notice to defend .

DEFENDANT COUNSEL

Upon receipt of the plaintiff counsel writ under undefended.We file a notice to defend on merit date 28/6/15……said today.

As requested by rule we file Affidavit disclosing defence merit.12 para deposed to PAUL MGBERDA ANDREW-Director Civil Minister of justice Ebony state Abakaliki

We want to add the Defended list proceed is a very strong furd process.Filed a counter to and after.

We want to say that filing a counter to our …….to defence is not done to law.we have deposited in the Affidavit our defence writ.That there was continient at all and to talk about any reach of it.we urge court to look at all papers exhibited by the claim.there is no contract between claimant and Defendant beside that we urge court to look at paper……. Claim and see that cause of action accused in2003 when the continent where performed.We rare in …….that matter has been statute barred.

Inaddition we want to raise that this court has no territorial jurisdiction to entertain the case .

The contract was executed in Abakelike reside in Abakaliki and does business in Abakalki Again the plaintiff …… Document as to exchange of letter between them and vice president of Nigeria and the House of Representative Minister of inter-central After and special duties.

There is no contract or exchange of letter between clamant and Defend to bend the Defendant in any further.By that we urge court to transfer the matters to the general cause list so that parties can ventilate there grievances

PLANTIFF COUSEL

In response to the notice to defend the claimant filed of 18 paragraph ……we filled a matter adding have

1.Responded to all issuers referenced one by one on matter being stated was referred to to EXH DK 1 in p3 under NO6 By this the course of action ……offer they failed to pay us after 10yrs

2.On the issure of rank of this court.this……..is for Coja To provide sewing so that every where in Nigeria will watches the French.that the …….of KT not file ton Defendant alone

3.The Court having form to we have been the trust.

4.Notice to Defence must be on merit No where is the Affidavit did Defendant Deny benefit of the service we have Evidence they receved it there was coilent Defendant on are not revenged at his state

We urge court to file that the intention not mention and should be discontinued Order 35 R 3 2018 .

There is no sdefendeant before the court

This is another play by Defendant to frantrante the Defendant

We urge the court discontinue and have the case order undefended based on any merit.there is no defence 12 para Defendant.written address suypent date 28/6/18.we adopted as our writ support we urge to grant the motion.

Plaintiff Counsel

No ……..

Court Ruling

The court had read the content of the motion for extention of time.It is in the court the extent provision of the ruling of the court and it is hereby granted as prated.

10/10/18

PLAINTIFF COUNSEL

We have a write ……..undefended list ……so we become we know the Defendant has no defence on the writ.

Hearing reviewed on process they will will notice to defend.

We have responded for filing a counter affidavit.

Surbpretion to court we apply that the Defendant move from notice to defend so that court will allow us move our counter.so we move from the

COURT

Upon receipt of the plaintiff writ under undefended.

We file a notice to defend on writ date 28/6/15.denied said today.As required by rules we file Affidavit disclosing Defence writ 12 paragraph deposed to part MGBEDA ANDREW Director civil minister of Justice Ebony state Abakeleki.

We want to add the Defendant list procesd is a very strong fund procedure.The clanmant have filed a counter of Affidavit.

We want to say that filing a counter to our intention to defence is not done to law.

We have disposed in affidavit our defence on writ.That there was no continant at all and to talk about any reach of it.we urge court to look at all papers exhinted by the claim.there is no continent between and Defendant beside that we urge court to look at papers filed in clam and see that cause of action accrued in 2003 when the contient over performed.

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Inaddition we writ to raise that this court has no terrtional jurisdiction to entertain the case.

The contance was executed in Abakalaki resides in Abakalka and does business in Abalaki Again the plaintiff amuses document as to exchange of letter between them and vice president of Nigeria and the House of Representative Mineral of inter-……..After and special duties.

There is no contract or exchange of letter between clamant and defendant to bend the Defendant in any further By that we urge court to transfer the matter to the general course list so that parties can ventilate their agreement.

Document

We respond thatprocedure to file court to Affidavit disclosing Defendant on merit in undefended is not known to law.

It is true that when writ is taken the Defendant file Affidavit to defend the court looks out the Document to determine whether undefended or general course list.

Again from where no notice to defend the court can sue motion determine whether thee case should writ the undefended

Obi V.Nknounkt

Intercontineal Bank V.brufain Assuming we have not disclose Defendant on merit this court is urged to look at all processes by clamant consider since to find out if the clamant is entitled to product under undefended list.

COURT

On the next adjured date the court will complet with its Ruling

AH Ti 7/12/18 for Ruling.

10/10/18

Appearance

M.D.ANYAN file the B.A OKOH for the plaintiff.plaintiff absent.

Defendant absent

The

Court

It is on record that the Defendabt were duely notified about todays date.The court will go on to deliver its ruling.Ruling delivered on open court before all present from ……..25/11/19

PLAINTIFF COUNSEL

MATTER IS FOR RULING WE ARE READY subject to the courts command we are ready.

COURT

Since the ruling was delivered disrupt the Defendant motive of intension to refund the sint of the Plaintiff the court delivered it judgment this matter hence CLOSED Today 25/1/19

APPERANCE

M.D.ANYARM.Futher J.Creditor.J.C absent

JUDMENT COURT

We have an application before motion experience if it please court we will like to move the motion

COURT

IT IS ……to ……. The ……..that the court will not have the motion today since the ……..is very time at this point please accept the court apology and come matter adjured tomorrow 11/4/19

EXPART …….

APPERANCE

M.D ANYAN for the J.C I AYBY

Party absent

M/4896/19

Prayer

PLAintiff counsel

I want to make correction before I ……

COURT

Convention as already effected

11/4/19

Prayer

Order Nisi to attaché all money of J.D.Bank and in the Alc NOS as continence

UBA 100 1527985

Zenth Bank

Of the Ebony state court order to Ganishee to present thestatment of ALI before the court.

3.10% on jugement since from day of judgment to final ……..

4.pay to the judgment to the spoliator of the Judgment court in their GTB ALI NO

……

A pani.Attached to the Affidavit is a document anlyicate of ……the court.EXH A writer add and adopt in support.wereby on all address and written EXH we urge the court to grant service to front the order

COURT RULING

The court will deliver its ruling on his application on 12/4/19 apply to 12/4/19 for ruling

APPERANCE

M.D Apanyarm Further J.C.J .C absent

Plaintiff counsel

Matter is for Ruling for order WISI.We ……

COURT

The court was approached ……for the grant of the relief sought by the J.C for an order Nisi in fulfilment of the judgment of this court delivered since 21/1/19.

The application is adopt and in compre ne with the rule of this court in that regard.this court will grant the application because not doing so will deny the JUDMENT Court the transit of his judg ment.

The court hereby grant the application

1.Order Nisi is here by giving to the

2. chambere her attah all the money of the J.D accuring and behaving to the J.D which are in the custody of the Garinshee-UBAAN and Zenth Bank for the purpose satisfiying the sum arising from the judgment of this court delivered in 25/1/19 in same Cv/1884/18 to the time of N85M in the said account which the Judgement Delivered openales in the said Garnishee Banks pantioularly in UBA Account No 1001527985 and in the Judgement Delivered Account Zenith Bank.

The Garnishee are to produce the summary of the Account and theoutstanding balance in the said Account as at today 12/4/19.before this court

3.The amount to be Garnishee method all interest payable as counted in the said judgment till date at the specified interest rate stated in the said judgment which is payable to the judgment creditor for the satisfiey of the judgment sum.

It is also ordered that the said judgment sum and the acucured interest be paid into the account of the judgment creditors soliciator Account details as for when the order Nisi made absolute.

Behaking Odey & Associate No:0152772155(Current Account)Garnisheey Trust Bank

The bank should show cause while this order Nisi should not be made absolute against the Garnishees.This is the Ruling of the court

12/4/19

APPERANCE

Mantin Odey for the claimant Judment Court.JUdment court absent

P.M.Awada for the J.D.Director civil litigation from chamber of AG-Ebony state.

Abdul Razak Alfa with G.E Oti for the 1st Ganishee UBA.

Victor Agboywu for the 2nd Garnishee Zenth Banking plc

Plaintiff counsel

Matters is for hearing we have order NISI Garnishee granted 12/4/19 we have followed the Garnishee who are to show come so that the court can make the order absolute since one of the 2nd Garnishee they show cause that they have enough money to offset the judgment sum.

1st Garnishee

After the recept of the order Nisi we filed our affidavit to show cause on 6/11/19.The account of the Judgment Delivered 1st Garnishee has been closed it does not affention.We apply to be discharged from the order Nisi

2nd Garnishee

We filed a 10para affidavit dated 12/11/19 filed same day.

We have put under them judgment sum-only 85M.We adured for the further order from the court.

Plaintiff Counsel

Since the judgment sum has been attached we apply that the 2nd Garnishee be discharged to the extend of the judgment and we pray which an order Nisi against the 2nd Garnishee and other Garnishee for thelinteast of the Judment-10% interest of the Judgment sum of N85% million till final Liquidation.

COURT

This court hereby discharge the 1st Garnishee from the order Nisi made against it since it does not have any money belonging to the Judment Delivered line as today.

The court also discharge the 2nd Garnishee who have attached the amend (Judment sum)of the N85m belonging to the Judgment Delivered as for the order Nisi.

The said N85m should be paid into the account of the judgment accord the detail as countered in the order Nisi

Judgment court

Since the court has discharged 1&2 Garnishee we apply for the court for and order Nisi on the 10% of the judgment sum from date of the today,the day of the final Liquidation of the Judgment summon.

We apply that the order be chileted at the 2nd Garnishee

Court

This oral application made by the Judicial court on the order Nisi to be made against the 2nd Garnishee who had today shown case why this order Nisi of 24/3/19 should not be made absoluteby attaching in file the said judgment sum of N85m.

This court will prefer that the Judgment court case make this application in writing so that the court will be from the sened of the fault uponcourt the application is based.This is the ruling of this court

19/11/19

Court

The 1&2 DC please move your application

Judgment Delivered

We will not move this application since the court has made the order absolute.This application has been overtaken by event.since the 2nd Garnishee has shown course.

Court

The court will end this case since there is nothing else pending and the 1&2 Judgment Defendant counsel has started the can not move his applicant since it has been overtaken byevent.that being the case the motion M/939/19 is should court in lumre.matter adjured since Due.