

**IN THE HIGH COURT OF JUSTICE OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI HIGH COURT NO.4
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO-JUDGE**

SUIT NO: FCT/HC/CV/414/2018

BETWEEN:

**G.W. SCHROEDDER ENGINEERING WORKS LIMITED CLAIMANT
AND**

HON MIN. OF THE FEDERAL CAPITAL TERRITORY DEFENDANT

- **KALU ONUOHA ESQ. FOR THE CLAIMANT**
- **R.J. GOYOL ESQ. FOR THE DEFENDANT**

JUDGMENT

This is a Transferred Case from the Court of Late Hon. Justice Valentine Ashi, and it is a Writ of Summons dated and filed on the 3rd of December 2018, in it the Claimant is seeking the following Reliefs: -

1. A Declaration that the Claimant is the Holder of Statutory Right of Occupancy dated 3rd day of June 2002, referenced (File No: MFCT/LA/MISC 17401) over Plot No. 823 within Idu District, Abuja
2. A Declaration that the Claimant's Statutory Right of Occupancy over Plot No. 823 within Idu District, Abuja, is valid and subsisting.
3. A Declaration that the Payment of the Sum of One Million, Eight Hundred and Eighty-Six Thousand, Two Hundred and Twenty Naira (N1, 886, 220) being the total assessed Rent, Fees, Premium, Survey Fees, Development Levy, etcetera for the issuance of Certificate of Occupancy, represents Full Payment by the Claimant and is valid and subsisting.
4. An Order directing the Defendant to issue the Claimant with the Certificate of Occupancy over Plot 823 within Idu District, Abuja
5. An Order of Perpetual Injunction restraining the Defendant whether by himself, agents or privies from unlawfully revoking and or

expropriating or in any manner howsoever interfering with the Rights, Title of the Claimant or possession by the Claimant of Plot 823 within Idu District, Abuja covered by (File No. MFCT/LA/MISC/17401) and Statutory Right of Occupancy dated 3rd day of June 2002.

6. An Award of the sum of Ten Million Naira (N10, 000, 000.00) as general damages against the Defendant.

The Claimant filed a Witness Statement on Oath dated the 3rd of December 2018, alongside Documents in support.

In response, the Defendant filed a Statement of Defence on the 5th of March 2019, dated the 4th of February 2019.

In Reply, the Claimant filed a Reply to the Defendant's Statement of Defence, a Further Witness Statement on Oath and an Additional Statement on Oath on the 12th of March 2019

Trial commenced on the 18th of November 2019, and Mr. Alphonsus Oshiole testified in proof of the Claimant's Case as PW1. He adopted his Two Witness Statements on Oath dated the 3rd of December 2018 and 12th of March 2019, and tendered the following Documents in evidence: -

1. Offer Letter dated the 3rd of June 2002 admitted as **Exhibit A**
2. Payment Receipt for Land Application Form dated the 6th of October 2000, admitted as **Exhibit B**
3. Acceptance of Offer dated the 6th of June 2002, admitted as **Exhibit C**
4. Bill of Right of Occupancy dated the 23rd of December 2002, and Payment dated the 30th of December admitted as **Exhibit D**
5. Survey Plan and Receipt dated the 10th of December 2002 admitted as **Exhibit E**
6. Cadastral Map, Teller and Receipt dated the 28 of December 2018 admitted as **Exhibit F 1- F3**
7. Application for Re-certification, and Receipt dated the 22nd of March 2005 admitted as **Exhibit G and H**

8. Affidavit dated the 17th of October 2018, for the loss of the Original Deposit Slip issued by the Abuja Geographical Information System (AGIS), admitted as **Exhibit I**

Under Cross-Examination, PW1 stated that he became Managing Director of the Claimant Company in 2007, and could not remember the year the Claimant Company was incorporated or the Date the Claimant made the Application for the Property.

According to PW1, the Claimant attached the Documents listed on the Application Form, and the Plot was allocated to it on the 3rd of June 2002. He claimed to have submitted the Claimant's Acceptance on the 6th of June 2002.

He stated further that aside from the Payment of the 30th of December 2002, the Claimant made other Payments for Site Plans and Maps, but did not make any Payment for Ground Rent because no Bills have been issued to it, and neither had any been applied for.

PW1 also stated that he applied to the Land's Department for a Site Plan, and has physically been to the Property. He claimed the Claimant was put into possession immediately the Right of Occupancy was issued and their Acceptance Letter was received. He further claimed the Claimant took part in the Re-Certification Process, but could not state when.

Further, he was told by the Front Desk of the Federal Capital Development Authority (FCDA) that the File was misplaced, but when asked, he could not say the name of the Officer who gave him the Information.

Learned Counsel to the Defendant then asked how the Claimant got to know that the Plot was sub-divided into Three Plots, and PW1 stated that as an Engineer and a Land Surveyor, when they plotted the co-ordinates of the Site Plan issued by the Defendants, they discovered it had been sub-divided into Plot 1370, 1371 and 1372, and there was no Official Communication to this effect.

Finally, PW1 admitted that the Payment for the Site Plan was made during the pendency of the Trial, and the Claimant is yet to get a Building Plan.

No Re-Examination was done and the Claimant closed its Case.

The Defendant opened their Defence on the 17th of September 2019, and Safiya Garuba testified as DW1. She was sworn to by Affirmation, adopted her Witness Statement on Oath dated the 5th of March 2019, and tendered the following Documents in evidence: -

1. Ministerial Approval List, admitted as **Exhibit J**
2. List of Land Application admitted as **Exhibit K**.

Under Cross Examination, she testified that she was employed on the 16th of September 2009, and she has been working with the Department of Land Administration where she is responsible for issuance of Certificates of Occupancy and Legal Matters. She stated that a Successful Applicant will be issued a Statutory Right of Occupancy, and an Acceptance Letter attached, which is the same as the conveyance of a Minister's Approval. The Applicant is given Copy of the Acceptance Letter and it is scanned into the Database, and this has been the practice since 2009. She further stated that a Successful Applicant is not given the List of Ministerial Approval, as seen in Exhibit J, which is dated the 17th of May 2002, forwarded by the Director of Lands and Resettlement, and approved by the Minister on the 3rd of June 2002, and endorsed by the Permanent Secretary on the 20th of May 2002.

DW1 stated that she is not in charge of issuance of Site Plans. She maintained that the Claimant's Documents are not in the Defendant's Records and did not emanate from the FCTA, that they are Forgeries. Further, that the Property in question does not exist. She stated that she could not present the Satellite Imagery of the said Property and that **Exhibit F3** is not the Satellite Imagery.

Finally, according to DW1, the Claimant's Name is not on the List of Allocations for the year 2000 and the Ministerial List, which was prepared by the Director of Lands before forwarding same to the Minister.

The Defendant filed his Final Written Address dated the 5th of November 2020 via a Motion on Notice dated the 4th of November 2020, and formulated Two Issue for Determination, namely: -

1. Whether the Claimant has any valid Title over Plot 826 within Idu District, Abuja the Subject Matter of this Suit.

2. Whether on the Preponderance of Evidence, the Claimant is entitled to his Claim in this Suit.

The Claimant also filed his Final Written Address dated the 6th of November 2020, and formulated a Sole Issue for Determination, namely: -

1. Whether the Claimant has proved its Case so as to be entitled to the Reliefs sought in the Writ of Summons and Statement of Claim, having regard to the Allegation of Forgery of Title Document raised by the Defendant.

All Arguments of Counsel are duly not on Record.

After a Careful Consideration, this Court finds a Sole Issue for Determination: -

Whether the Claimant has proved his Claims, for the Court to grant the Reliefs sought.

Now, the Case of the Claimant, a Company, is essentially that pursuant to its Land Application, the Defendant issued an allocation for Plot 823 within Idu District, Abuja covered by File No. MFCT/LA/MISC.17401 on the 3rd of June 2002, vide a Statutory Right of Occupancy.

Further, the Defendant issued the Claimant a Receipt for Land Application Form on the 6th of October 2000, and acknowledged the Application Form on the same date. The Claimant then accepted the Offer on the 6th of June 2002.

The Defendant thereafter issued the Claimant with a Bill for Right of Occupancy Fees on the 23rd of December 2002, and the Claimant made the payment of One Million, Eight Hundred and Eighty-Six Thousand, Two Hundred and Twenty Naira on the 30th of December 2002 in this respect.

Subsequently the Claimant applied for a Site Plan and was issued one on the 16th of December 2002. When the Re-Certification Process commenced, the Claimant paid the requisite Fees and submitted the Letter of Offer of Statutory Right of Occupancy. The Claimant stated that the Bank Teller for the Payment for Re-Certification got missing, and so it obtained a Police Extract.

According to the Claimant, the Defendant ever since has been holding out that the File is misplaced, and therefore could not Recertify. They claimed that the Officers of the Defendant have harassed the Claimant that it has no Title to the Plot and further alleged that the Defendant is about to re-allocate the Plot to another Allotee.

On the part of the Defendant, they denied holding out to the Claimant that the File was misplaced, or showing up at the Property to harass the Claimant.

According to them, the Defendant did not apply for Land and was not allocated Plot 823 Cadastral Zone C16, Idu District, Abuja on the 3rd of June 2002. They explained, through its sole witness working at Department of Land Administration, and the Officer responsible for issuance of Certificates of Occupancy and Legal Matters, the Procedure for Allocation of Land within the FCT. According to this witness, after the Payment of and completion of the Application Form, the Applicant will be issued an Acknowledgment, wherein the Accompanying Documents will be ticked to evidence submission.

Further, the Land Application Form from a Company is accompanied by a Certificate of Incorporation, Tax Clearance Certificate, Memorandum and Article of Association, Feasibility Report of the Project and Bank Draft for the Payment of the Application Fee. It is her evidence that none of these Documents were submitted by the Claimant to the Defendant.

Immediately the Documents and Proof of Payment are submitted, a File Number will then be generated for the Applicant. This File Number follows a Chronological Order and is not duplicated or shared between Two Applicants. Once the Plots are allocated, the Allotted Plots are compiled in a Table Format by the Director of Lands Administration and then forwarded to the Minister for Approval.

When the Minister grants his Approval, the Director of Lands will then issue the Allottees with Letters of Conveyance of Offer of Statutory Right of Occupancy, and same has to be accepted in writing. They will also be issued with the Right of Occupancy Settlement Fees Bill.

The Defendant maintained that the Claimant did not follow this Procedure, and there is no Record of his Application within the Land Registry. They also contended that the Defendant has no Record of granting a Ministerial Approval to the Claimant for the said Plot.

Further, the Defendant maintained that the Claimant did not submit any Title Documents for Re-Certification, and no Site Plan was issued to the Claimant on the 16th of December 2002, or any other Date, as the purported Site Plan did not emanate from the Defendant, and there is no Proof of Payment of a Site Plan.

According to the Defendant, the Statutory Right of Occupancy the Claimant is relying on is different from those issued on the 3rd of June 2002, both in Character and Signatures.

The Defendant further stated that the File Number MISC.17401, the Claimant is relying on, was issued to Fishers Evangelical Bible Church on the 18th of January 2000, and Plot 823 within Idu District, Abuja does not exist, and the FCT Land Registry does not have any Record of the existence of such a Plot.

Now, by **Exhibit B**, the Claimant has shown that it made an Application for Land on the 6th of October 2000, and also presented an Offer of Grant/Conveyance of Approval dated the 3rd of June 2002, as seen in **Exhibit A**. By Paragraph 3 of **Exhibit A**, which states *“the Date of the Commencement of this Right of Occupancy will be the Date of Acceptance as signified by you, and should be within Two Months from the Date of this Letter”*. From **Exhibit C**, it is clear that that the Claimant accepted the Offer in **Exhibit A** on the 6th of June 2002, and it was stamped ‘received’ by the Director of Land, Administration on the same date.

By the Letter in **Exhibit A**, and **Exhibit B** the Land Application, it can be seen that File Number MFCT/LA/MISC.17401 was allotted to the Claimant, which is consistent through all the Claimant’s Document in **Exhibit A-I**.

Turning to **Exhibit D**, it is clear that the Claimant was issued with a Right of Occupancy Bill in the Sum of One Million, Eight Hundred and Eighty-Six, Two

Hundred and Thirteen Naira, Forty-Nine Kobo, and he paid the said Sum on the 30th of December 2002, as seen in the Receipt of Payment in **Exhibit D**.

Thereafter, the Claimant is seen in **Exhibit E** as having paid and received a Survey Plan from the Defendant on the 10th of February 2002, and he was shown the Size of the Plot. This Document and Receipt of Payment appears to have emanated from the FCDA, as the Court can see their Revenue Collector's Receipt evidencing the Payment for the Survey Plan. To all intent and purposes, the Claimant's Documents appears regular, lending to his belief that he validly acquired the Property in Plot 823 within the Idu District.

The Court notes that from the Claimant's Documents and Evidence, nothing else occurred between 2002 to 2005, when the Recertification Exercise began. The Claimant stated that it submitted its Documents for Recertification, and in proof tendered **Exhibit G and I**. The Court can see that the Application was stamped as received on the 22nd of March 2005.

Now this is where the problem started.

According to PW1, when they went to the FCDA they were informed by an unnamed Front Desk Official that the File was misplaced.

Now, turning to the evidence of the Defence, the Defendant denied holding out that the File was misplaced.

Essentially, the Defence claims that the Defendant did not have in their possession the Required Documents for a Company applying for Allocation such as the Certificate of Incorporation, Tax Clearance Certificate, Memorandum and Article of Association, Feasibility Report of the Project and Bank Draft for the Payment of the Application Fee, which needed to be part of the Land Application Form. This is strange indeed as it calls to question the procedure adopted by the Claimant in his own processing, more so when the Documents presented have the official insignia of the Defendant. The only way to resolve this question is by the production of the File. The Officer who informed the Claimant that this file was misplaced was not called to testify that he conveyed that information to the Claimant upon their enquiry. This

would have greatly helped the Claimant as it would have indicated a Prima Facie evidence that a File of this nature did in actual fact, exist.

The question of the File being misplaced by a Desk Officer who the Court does not know must be balanced and weighted on a Scale with the Statement by an Officer of the Defendant who testified as to the procedure of obtaining a legitimate allocation from the Defendant, and who has told the Court that the File does not exist.

There was no evidence from the Claimant to show that indeed the Documents required by the Defendant for a Company Application were submitted. The PW1, who was expected to shed more light on the Application Process, testified that he did not know the actual date the Company was incorporated or the date of the Application. Presumably he was not in the employ of the Claimant at the time of the Application, to give the Court Oral Proof to counter the fact that the Documents required for a Company's Application were not submitted.

The Second Issue is that according to DW1, the Director of Lands Administration compiles the Names of the Applicants in a Table Format and forwards it to the Minister for Approval. When the Approval is granted, then the Director of Lands will then issue the Allottees with Letters of Offer of Grant/Conveyance Approval. DW1 testified that the Defendant did not have anywhere in their Records, any evidence of an Approval by the Minister to the Claimant, in regard to the said Plot. In essence, the Offer of Grant for the Plot in question, issued to the Claimant ought to be reflected on the Ministerial List.

The Court has had a very close look at the Certified True Copy of the Ministerial List in **Exhibit J**, which covered Approvals for the period of 2002 at the point of Allocation, and notes that it did not contain the Claimant's Name, Plot Number or Size. This lends credence to Statement by the DW1 that the Documents tendered by the Claimant, did not emanate from the Defendant.

Which now begs the question, where did the Claimant's Documents in **Exhibit A-I** emanate from?

On the surface, the Documents tendered by the Claimants appear to be consistent with the Procedure as narrated by DW1. The only fact that still hangs in the air is the absence of a File.

The Claimants Land Application in **Exhibit B**, bears the same File Number as that of the Fishers Evangelical Bible Church, as seen in **Exhibit K**, which was issued on the 18th of January 2000, before the Claimant was issued the File Number they claimed belonged to them.

From **Exhibit K**, the Court can see that the File Numbers were issued serially and chronologically, which is in line with the evidence of DW1, who stated that no two Applicants could have the same File Number.

In this Document, there is a File Number allotted to another Applicant on the 18th of January 2000, which bears the same File Number allotted to the Claimant in the later part of the same year 2000, by the same Defendant. This raises a Red Flag.

DW1 went further to state that the Offer of Grant Letter in **Exhibit A** is different in Character and Signature from those issued by the Defendant in the year 2002. This allegation hangs in the air, as there was no comparative analysis demonstrated before the Court to justify her allegation of a Forgery.

Now, the Case of **JULES VS AJANI (1980) NSCC 222** has clearly established, quite a while ago now, that where in a Claim for Declaration of Title to Land the Defendant alleges that the Document relied on by the Claimant for the Title he seeks is a Forgery, the Burden is on the Defendant who so alleges to prove that fact.

Notwithstanding the general onus which rests on the Claimant to prove his entitlement to the Declaration he claims, the Evidential Burden of proving Certain Facts occasionally shifts to the Defendant. Such as the burden of proving the Allegation that the Document which the Claimant relies on is a Forgery.

In the Application of the General Principle that he who alleges must prove, there is no distinction between the Claimant and the Defendant.

When an Allegation of Forgery of a Document, or, for that Matter, a Criminal Act is made in a Civil Proceeding, Evidence that would discharge the Burden of Proof on the Person who made the Allegation, must be clear and unequivocal. When Evidence intended to discharge that Burden is ambiguous or is capable of several Interpretations, not at all pointing to the Criminal Act alleged, the Burden cannot be said to have been discharged. See **ADEROUNMU & ANOR VS OLOWU (2000) LPELR-141 (SC) Per AYOOLA, JSC (P. 11, paras. A-B)(P. 12, paras. B-E)**

Having made the allegation, the Court expected that the Defendant would supply the Court with Offer Letters issued around the time **Exhibit A** was purportedly issued, to show the alleged difference and forgery, but they failed to do this. DW1 never informed the Court that she was an Expert for the Court to rely on her assessment of the Claimant.

All the Defendant did was to make Oral Allegations of Forgery without Proof before the Court by Credible Evidence to show that **Exhibit A** was a Forgery. The fact that a Party makes an Allegation without more, does not then make that fact the truth, such a Party must go a step further to demonstrate and prove to the Court that such facts are indeed true. Without such Proof, the Court is only left with mere allegations.

The Supreme Court in the Case of **PAM & ANOR VS MOHAMMED & ANOR (2008) LPELR-2895(SC) Per TOBI, JSC (Pp. 95-96, paras. D-A)** it was held that Forgery as an Offence must be proved beyond reasonable doubt. The Court referred to the Case of **DOMINGO VS QUEEN (1963) 1 ALL NLR 81**, that one of the intents set out in **Section 465 of the Criminal Code** must be proved. In the Offence of Forgery, the Prosecution must prove that the Document is a Forgery and that it was forged by the Accused. The Prosecution must prove facts which will enable the Court to infer mensrea. See **DR. AINA VS JINADU (1992) 4 NWLR (PT. 233) 91**. Where a Party denies making a Document which is a Forgery, the Burden of Proof is on the Party alleging the Forgery, and Proof is by Evidence, and Evidence can only be procured by Facts.

Relying on the above Supreme Court Decision, this Court is dissatisfied with the Defendant's discharge of the Burden of Proof upon him, as he has failed to present before the Court with clear and unequivocal evidence to justify his Allegations of Forgery.

The Court is satisfied that from the Claimant's Documents in **Exhibits A-I** the Claimant duly applied to the Defendant for Land Allocation in 2000, and was made an Offer in 2002, which he accepted. There is evidence of payment of the Required Fees and he was issued with an Offer of Grant/Conveyance Approval on the 3rd of June 2002 for "Plot 823 within Idu District, Abuja".

The Claimant by their Pleadings and Oral Evidence have told this Court that the said Plot 823 had been subdivided into Three Plots. They claimed to have obtained a Survey Plan and by their own findings, came to the conclusion that the Plot was subdivided into Plots 1370, 1371 and 1372.

From the Survey Plan in **Exhibit F3**, titled 'Idu Industrial District B, Cadastral Zone C16, which was obtained from the Abuja Geographical Information System, during the pendency of this Action, on the 31st of December 2018. It is clear the shape of the Plot marked in Red is similar to the shape of the Plot in **Exhibit E**, but it does not show that it was demarcated. The PW1 who testified of making the findings as to the subdivision of the Plot, did not inform the Court or present Proof of his Expertise in Land Mapping and Survey.

On the part of the Defendant, they claim the Plot in question does not exist. The Court at this point is faced with two starkly different narrations, and a Court must never make an Order in vacuum.

Where by the Claimant's showing he is stating that the Land has been subdivided, then it means that the Plot 823 no longer exists. By the Claimant's evidence also, if it has been subdivided, then it must have been given to other parties. To add to this fact, the Defendant did not recognize the Claimant's Rights and Entitlement at all, and where the Court grants an Order in his favor, and there is no File belonging to him with the Defendant, where will the

Defendant be able to effect the Order of the Court? On what basis will the Court now grant the Reliefs sought?

Despite all the Documents tendered by the Claimant, the Court finds that the Claim is not proved. This is not to say that it was untypical of the Hon. Minister at that particular time to have issued awry Allocations. Since the Defendant failed to prove that the Claimants Documents were forged, the Court has no other choice but to presume that they appear as genuine.

The other Factors that would have corroborated the Claimant's Documents are the Information in the Database of the Defendant, the Claimant's Name being included in the Ministerial List of Recommended Applications for Approval, and the File Number produced still being the same, but all these Three Factors were absent to prove the fact that the Plot existed. It is also worth noting that the File Number MISC.17401 as indicated in **Exhibit K** was in relation to a different location, and belonged to a Different Entity. As a result of the non-existence of the Plot in the Defendant's Records, there is no way the Defendant can be ordered to create or locate the File, and then carve out a Special Plot 823 for the Claimant.

The only thing the Claimant is entitled to against the Defendant, because there is evidence that he paid the sum of One Million, Eight Hundred and Eighty-Six Thousand, Two Hundred and Twenty Naira in **Exhibit D** is a Refund with Interest of this Sum and Compensation in Damages.

Therefore, in conclusion, the Court finds as follows: -

- A Declaration of Court is not made that the Claimant is the Holder of Statutory Right of Occupancy dated 3rd day of June 2002, referenced (File No: MFCT/LA/MISC 17401) over Plot No. 823 within Idu District, Abuja.
- A Declaration is not made that the Claimant's Statutory Right of Occupancy over Plot No. 823 within Idu District, Abuja, is valid and subsisting.
- The Sum of One Million, Eight Hundred and Eighty-Six Thousand, Two Hundred and Twenty Naira (N1, 886, 220) being the total assessed Rent, Fees, Premium, Survey Fees, Development Levy, etcetera paid by the

Claimant for the issuance of Certificate of Occupancy, must be refunded to the Claimant by the Defendant forthwith.

- The Order to issue the Claimant with the Certificate of Occupancy over Plot 823 within Idu District, Abuja as well as the Order of Perpetual Injunction is untenable, and is accordingly refused.
- In respect of the Claim for General Damages, it is clear that the Primary Object of Award of Damages is to compensate the Claimant or Counter-Claimant for the harm done to him. See the Case of **ADIGUN VS AG, OYO STATE (1987) 1 NWLR PART 53, 678 @ 708 PARAGRAPHS E - F 721 PARAGRAPH G; UBN PLC VS AJABULE & ANOR (2011) LPELR-8239 (SC) Per FABIYI, J.S.C AT PAGE 32, PARAS C-E** General damages are said to be damages that the Law presumes and they flow from the type of wrong complained about by the victim. They are compensatory damages for harm that so frequently results from the tort for which a party has sued; that the harm is reasonably expected and need not be alleged or proved. They need not be specifically claimed. They are also termed direct damages; necessary damages.

In this instant Case, the Claimant certainly suffered loss, not only of Funds but of Expectations, and aside of Damages has also a Separate Action for Compensation with heavy costs. The Claimant only sought for Ten Million Naira (N10, 000, 000.00) as general damages and the Court will award what was sought for as Damages.

The Court therefore Orders the Defendant to pay up the Sum of Ten Million Naira (N10,000,000.00) as General Damages Forthwith.

This is the Judgment of this Court.

HON. JUSTICE A.A.I. BANJOKO

JUDGE