

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 7TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N.OGBONNAYA
JUDGE

SUIT NO.:FCT/HC/CV/70/17

BETWEEN

KENNETH ARINZE

}

CLAIMANT

AND

UNKNOWN PERSON

}

DEFENDANT

JUDGEMENT

In a Writ filed on the 6th day of June 2017, Kenneth Arinze seeks the following against the unknown person:

That he is the bonafide owner of Plot 446 Kubwa Extention 11 Layout and that he has been in active possession since 1996 until the unknown person trespassed into it.

An Order mandating the unknown person to pay him the sum of **One Million, Five Hundred and Forty Two Thousand, Eight Hundred Naira (N1, 542,800.00)** only as specific damages for the cost of destroyed fence in the Res and for the destroyed constructed self-contained apartment therein and an Order mandating the Defendant to pay him **Fifteen Million Naira (N15, 000,000.00)** only as general damages and also to restrain the Defendant, his Privies, Agents,

assigns and workers from further act of trespass and or construction in the said Res. **Two Million Naira (N2, 000,000.00)** only as cost of the litigation of the Suit.

Because the Defendant was unknown person, the Court granted an application for service of all processes in the Suit to the Defendant at the only known address which is at the Res. The Court also ensured that the Defendant was served with Hearing Notice for all the days the Suit was scheduled to be heard.

On the 30th day of May, 2018 the Plaintiff Counsel opened the case for the Plaintiff and PW1 testified in Chief and tendered Six (6) documents. The matter was adjourned several times to see if the Defendant can surface to file Statement of Defence and to cross-examine the PW1. All to no avail.

After over 2 years and 5 months, on the 13th day of November 2019, the Plaintiff Counsel applied that the Defendant be foreclosed to open and close its Defence in this Suit. The Court granted that application because it will not wait for the Defendant in perpetuity. As at that day the same Defendant was still unknown. The Court then adjourned the matter for final addresses.

The Defendant did not file any Final Address. But the Plaintiff filed his own after and served same on the Defendant. This was over 1 year and 6 months after the Plaintiff closed its case.

On the 20th day of January 2020, the Plaintiff Counsel adopted his Final Address and Court reserved the matter for Judgment.

It is imperative to reiterate that the Defendant did not enter appearance; he did not file any process in defence, he did not have any legal representation in Court. He never appeared in person too.

As I deliver this Judgment he is still an unknown person with no name. So this Judgment is based on the Processes filed by the Plaintiff which were served on the Defendant. It is also based on the submission made by Plaintiff Witness 1 in his testimony in Court as he was never cross-examined by Defendant. The Judgment also covers a very critical and in depth analysis of the 6 Exhibits tendered by the Plaintiff Witness 1.

In this Final Address the Plaintiff raised an issue for determination which is:

“Whether the Claimant has proved his case on a preponderance of evidence in the circumstance of this case.”

He answered the question in the affirmative, stating that the Plaintiff has fulfilled the three (3) essential qualities as required and stated in the Supreme Court case of:

**Ansa V. Archibong Ishie
(2005) 22 NSC QR 790 @ 782 Ratio I.**

That the Plaintiff has stated his case with these qualities precision clarity and quality to enable the Court to fully understand and arrive at a just determination of the issue in dispute.

That the Plaintiff has succinctly pointed out the plot in issue which is Plot 446 Kubwa Extension II Layout, the subject matter in question. By so doing the Plaintiff has assisted the Court to pinpoint the area in question. He referred to the case of:

Ntoe Ansa V. Archibong Ishie (Supra).

That the Plaintiff has been able to prove his case by the testimony of Plaintiff Witness 1 and through the documents tendered by him. That

he has also discharged the onus placed on him and had proved this case based on the strength of the credible evidence and testimony and did not rely on the weakness of the case of the Defendant who never appeared in Court or filed any Process in defence.

That in this instant case the Plaintiff had been able to establish superior title to the Res by presenting before this Court all the documents of title to the land. That the Defendant was not able to tender any document in title at all as he never came to Court or file any Process in defence of this Suit. That the title document which the Plaintiff presented was not challenged or put in issue by anyone, the Defendant inclusive. That by so doing the Plaintiff has been able to prove exclusive possession of the Res.

That the Plaintiff had successfully proved title by the presentation of the title document and evidence of being in possession and ineffective occupation which is evidenced by the perimeter fencing in the Res as well as the “self contained” building constructed in the Res which he alleged that the Defendant trespasser demolished as shown in EXH 5, which are the picture showing the demolished building and wall. These documents were not challenged by the Defendant.

That where there is unchallenged oral and documentary evidence, they are deemed admitted. He referred to the case of:

**Odubeko V. Fowler
(1993) 11 SCNY 185 Para 35 – 46**

That the Plaintiff’s claim has not been controverted in any form orally or by way of documentary evidence. That since that is the case the Court should grant the reliefs sought by entering Judgment in the favour of the Plaintiff. He urged the Court to so hold.

COURT:

In this case, going by the fact that the Defendant is an unknown person and still remains unknown till date and that he never entered appearance in pen or in person and had no legal representation throughout the duration of this Suit and also the fact that the Plaintiff had testified in Court, tendered documents in support and these documents and his testimony were never challenged by the Defendant notwithstanding that the Defendant was duly notified and served with all the Processes in this Court, should this Court enter Judgment in favour of the Plaintiff as his case remains unchallenged? Has the Plaintiff been able to establish his case on preponderance of the evidence in this Suit so much so that this Court should enter in his favour?

It is my humble view that the Plaintiff has successfully established its cause through the testimony of Plaintiff Witness 1 and the Exhibits tendered in support which were not challenged by the Defendant unknown and this Court should enter Judgment in his favour and grant all his claims as appropriate.

To start with, in every case where there is allegation or dispute is predicated on land and ownership to land, the Court base its findings mostly on analysis of documents presented by the person who claim ownership as well as the person against whom ownership is claimed. So where both parties presented documents and where there is allegation of trespass, the Court always believes that whoever has title documents that is older time is the person the Court hold to be the owner of the land. That is even when the person accused of trespass has a document of title in time it will hold that such trespasser should carry the day on the “doctrine” of first in time.

Again in a dispute predicated or based on ownership to land where the Plaintiff seek for declaration or even Injunctive Order of the Court,

it is incumbent on such Plaintiff to prove the identity of land. That is the decision of the Court in the case of:

**Ntoe Ansa V. Archibong Ishie
(2005) 22 NSCQR Page 793 Ratio 4.**

The Plaintiff must identify the Res with such clarity precision and accuracy in order to earn the Reliefs sought. Where a Plaintiff fails to do so, making the Court to forage into foliage of unnecessary vantage in an attempt to know what or identify the where and how of the Res and ownership thereto, the Court will hold that there is inconsistency in the story of the Plaintiff and will naturally refuse to grant the reliefs sought.

It is incumbent on a Plaintiff to succinctly identify the land to which he claims ownership and to be able also to present before the Court the documents of title on which his claim of ownership to the Res is anchored. Anything outside this means that the claim to ownership is fraught with inconsistency. Where that is the case, the claim to ownership is said to be fundamentally defective.

In every case for declaration of title to land, the onus lies on the Plaintiff to prove that he is the owner or bonafide owner of the land. This is done by the document presented and through the testimony of his Witness.

It has been laid down in our jurisprudence through the various decision of our Court that in a claim for declaration of title Plaintiff is duly bound to prove his case with credible oral and documentary evidence, such Plaintiff must at all times heavily rely on the strength of such evidence except when the weakness of the Defendant's case strengthens and support his case. So where the Plaintiff only relies on the weakness of the Defendant's case to prove his case, his case is

bound to fail. That is the decision of the Court as laid down in the Court as far back as 1935 in the case of:

**Kodilinye V. Mbanefo Odu
(1935) 2 WACA 336**

It has also been reiterated and re-echoed in the case of:

**Ugoji V. Onukogu
(2005) 22 NSCQR 715 @ 717 Ratio 2**

Where in any matter there is allegation of trespass to land and the Plaintiff wants a declaration and an order to displace the trespasser, such Plaintiff must ensure that he has a title that is superior to that of the Defendant trespasser. Where the Plaintiff fails to do so, the alleged trespasser shall continue to keep possession of the land as a trespasser.

This means that it is incumbent on the Plaintiff to establish the act of trespass by showing that he has a superior title to the Res, by presenting those documents before the Court in proof of his title. Once the Plaintiff is able to do so, the onus shifts to the Defendant. If the Defendant fails to show that he also has a more superior title, the Court will hold that the Plaintiff is the true owner of the land and will naturally grant all the reliefs sought as the case may be. That is the decision in the case of:

**Pius Anakor V. Benedicta Obiefuna
(1991) 3 SC 67**

Every claim on land is based or rooted in exclusive possession. For a Plaintiff to succeed, he must prove that he has the right to possession of the land or he must establish that he has actual possession of the land in dispute before the trespass by the Defendant.

Once the Defendant also claims to be the owner of that land it is said that the title to the land is in dispute or in issue. So the Plaintiff who had come to Court to fight for the ownership must show that he has superior and better title than the Defendant. Anything outside this, the Plaintiff will not be entitled to the reliefs sought in the case.

It has been a laid down principle that in any dispute as to title to land, the Plaintiff must prove ownership and title through any of these ways:- by traditional evidence, production of documents of title to the land, actual ownership of being in possession and occupation to a sufficient lengthy period of time that warrants the inference that he is the true owner of the land. Such possession must be for a long time. A Plaintiff can also establish ownership by showing he is in possession of connected or adjacent.

Once a Plaintiff has successfully proved title through any of these ingredients or ways to establish his title to the land, the Court will have no option than to grant the request as to ownership of such land and all the declaration sought in the Suit. That is the decision in the case of:

**Ebe Uka & Ors V. Irolo & Ors
(2005) 11 NSCQR 307 @ 310 Ratio 3.**

When there is unchallenged evidence orally made through testimony of a Witness, and in writing through documents tendered, the Court will hold such oral and documentary evidence as the truth and hold that all facts stated therein as admitted. After all unchallenged evidence is deemed admitted. That is the decision of the Court in the case of:

**Odubeko V. Fowler (Supra)
@ Page 195 Para 35 – 40.**

Coming closer home to our jurisdictional sphere in the FCT, in any action pending before our Court within the FCT, if a Defendant who was duly served with the Originating Processes fails to file a response or makes a default in filing Defence, the Claimant in that case may, if he so wish, apply to Court to enter Judgment as sought. Such Judgment must be based on the claim of the Plaintiff and not on any other claim outside that. The Court will not swallow hook line and sinker the fact but must have a critical analysis of those facts and evidence before it can enter such Judgment and grant the reliefs sought by the Claimant according to the merit of the case.

In the instant case, the Defendant did not enter appearance let alone file any Defence in challenge of the Suit of the Plaintiff. This means that the claim of the Plaintiff is uncontroverted. The said claim remains unchallenged and all the facts in the case of the Plaintiff are deemed admitted.

There is no adverse claim to the title of the Res in this case. The Plaintiff has through **EXH 1 – Receipt of Purchase** of the Res traced the origin of the land through the said receipt from Chief Gilbert Okonkwo. Through **EXH 2 – Letters of Allocation** – the Letter of Allocation which bears the name of the Plaintiff – the first one having been cancelled earlier before the second letter was issued.

The said second Letter of Allocation was tendered in its raw original form. Again the Plaintiff tendered Receipt of Purchase of the materials for the construction and development of the “self-contained” apartment and the perimeter fence, one issued by Osaro & Co and the other issued by Austin investment. These documents show and further confirmed that the Plaintiff purchased building materials for the construction of the fence and “self-contained” one bedroom apartment. These Receipts were admitted in evidence as **EXH 3.**

So also the Plaintiff attached the Receipt for cost of labour for the construction of the said apartment and perimeter fence. This is evidenced in the Receipt issued by **ERN Lin** which the Court admitted as EXH 4.

To further establish that he was in possession and effective occupation of the Res before the trespass, the Plaintiff attached the Receipt he issued to his tenant who was living in the one bedroom apartment he constructed at the said Res. The evidence of this Receipt shows and puts no one in doubt that the Plaintiff was in possession and he had completely constructed and rented out the said “self-contained” apartment. That Receipt was admitted in evidence and marked as **EXH 5**. The said exhibit has the name of the tenant too.

Further in establishment of the possession, effective occupation and to justify his claim for special damages and actual trespass into the Res by the unknown Defendant, the Plaintiff tendered pictures of demolition of the both the one bedroom self-contained apartment and the perimeter fence. These documents speak for themselves. It vividly shows the extent of the demolition of the fence and the house at the Res. The pictures were tendered. There is also a Certificate of Compliance to herald the pictures in accordance with provision of **S. 84 EA 2011 as amended**.

Those pictures were admitted as **EXH 6**. There is also evidence of construction by the unknown Defendant in the said Res. This further confirms the allegation of trespass by the Defendant in this case.

All these documents were not challenged. The facts heralding them were not also challenged by the Defendant. The Court ensured that the Defendant was given ample time to challenge the case of the Plaintiff – by ensuring that Hearing Notices were served on the Defendant.

The Plaintiff Witness 1 testified in Chief on the 30th day of May, 2018. There were several adjournments. On the 2nd December, 2019 more than One year and Six months, after the Plaintiff Witness 1 testified, the Court allowed the Plaintiff Counsel to adopt his Final Address which was served on the Defendant as per the Substituting Order of this Court.

From all indication the Plaintiff had established his claims to the ownership of Plot 446 Kubwa Extension II Layout Abuja which is the Res in this Suit. He has also established the act trespass by the Defendant which attracts special damages. This he has done by tendering the pictures and Receipts for purchase of building materials for the construction of the one bedroom apartment and the perimeter fence.

This Court has no reason not to grant his claims/reliefs since his case is very meritorious.

This Court therefore enters Judgment in favour of the Plaintiff and grants his relief to wit:

That the Plaintiff is the bonafide owner of the Res and holder of title to the said Plot 446 Kubwa Extension II Layout Abuja, having been in active possession and occupation of the Res since 2006.

The action of the unknown Defendant amounts to trespass.

Again the Defendant is to pay to the Plaintiff the sum of **One Million, Five Hundred and Forty Thousand Naira (N1, 540,000.00)** only as special damages to the Plaintiff. Defendant is also to pay **One Million, Five Hundred and Forty Two Thousand Naira (N1, 542,000.00)** only as cost of the erected fence and constructed self-contained apartment which the Defendant demolished.

The Defendant, his cronies, privies, agents, workers and servants, contractors and others whatever names so called are restrained from further trespass on the Res in any form whatsoever on the and or any further interference with the right, possession and occupation of the Res by the Plaintiff.

The Defendant is also to pay to the Plaintiff the sum of **Two Hundred Thousand (N200, 000.00)** only as general damages.

No Order as to cost of litigation.

This is the Judgment of this Court delivered today.

The ----- Day of ----- 2020.

K.N. OGBONNAYA

HON. JUDGE