

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/2321/2019
DATE: 10TH FEBRUARY, 2020**

BETWEEN:

DR. KELVIN C. EZEM - PLAINTIFF/RESPONDENT

AND

MR. OMALE - DEFENDANT/APPLICANT

Parties absent.

Olelewe Felix appearing with O.A. Olelewe Esq. for the Claimant.

Mustapha Balogun appearing with A.I. Idris for the defendants.

Claimant's Counsel – The matter is for judgment and we are ready to take same.

J U D G M E N T

By a writ of summons dated 30/6/2017 and an amended statement of claim dated 5/2/2019, the Plaintiff claim against the Defendant as follows:

1. A Declaration that the Plaintiff is the legal, lawful and bona fide allottee and owner of all that piece or parcel of land with structure thereon lying and situate at Plot No. A/101

Action Area Layout Bwari Area Council Abuja F.C.T., measuring about 761 square meters.

2. A Declaration that the Defendant is a complete stranger, intruder and trespasser unto the Plaintiff's land.
3. A perpetual injunction restraining the Defendant, his servant, privies agent, assigns and however described from continuing to trespass into the Plaintiff's land and from laying any claims to the structure standing on the Plaintiff's land.
4. The sum of N40,000,000.00 (Forty Million Naira) only as damages for trespass.
5. The sum of N800,000.00 (Eight Hundred Thousand Naira) only as legal fees for the prosecution of this matter.

In prove of the above claim, the Plaintiff filed a 31-paragraph Amended Statement of Claim, 21-paragraph Plaintiff's Reply dated 26/3/2018 and called a sole witness.

The Plaintiff himself testified as PW1 in this case. The PW1 adopted a 29-paragraph witness statement on oath dated 3/7/2017 and a 22-paragraph additional witness statement on oath dated 14/5/2018 as his evidence; the said PW1's statements on oath is accordingly adopted as forming part of this judgment.

The gist of the PW1's evidence is that he is the original allottee of Plot No. A/101 Action Area Layout Bwari Area Council (here-in-after called the land in dispute) by virtue of Offer of Conveyance of Provisional Approval dated 25/8/1998; that after necessary payment were made, the Bwari Area Council issued him with Survey Plan to the land in dispute clearly indicating the Beacon

Numbers of the Plot as PB 1164, PB 1165, PB 1237, PB 1235 and PB 1236.

It is the evidence of PW1 that he was in undisturbed ownership/ possession and occupation of the said land in dispute from 1998 until he sent his lawyer to visit the plot and ascertain the level of development in the area to enable him commence development on the plot.

That upon visiting the plot, his lawyer discovered that the Defendant, a trespasser had trespassed into his land and commenced development at the plot.

That upon this development, he through his solicitor wrote a letter dated 16/5/2017 to the Zonal Lands Officer, Bwari Area Council notifying him about the act of trespass upon his land and requesting the Zonal Land Officer to confirm his plot encroachment upon by the Defendant. That despite the complaint by him, the Bwari Area Council has not responded to him till date.

The PW1 further stated that the Defendant in the course of confiscating his land, destroyed some of the Beacons on the land.

That he paid the sum of N800,000.00 (Eight Hundred Thousand Naira) as legal fees to the firm of Olelewe Olelewe & Co for the prosecution of this suit.

It is the evidence of the Plaintiff that in accepting the allocation of the plot in dispute, he paid all the Land fees in respect of the land to Bwari Area Council.

The Plaintiff further stated that he erected blocks on the four corners of the plot the subject matter of this suit, which blocks, the Defendant destroyed and erected his own fence.

That he is entitled to the reliefs sought in the writ of summons and statement of claim.

In the course of PW1's evidence, the following documents were admitted in evidence as Exhibits:

1. The copy of the Survey Plan – Exhibit A.
2. Medical and Dental Council of Nigeria Certificate dated 29/12/16 – Exhibit B.
3. INEC Voter's Card – Exhibit C.
4. Conveyance of Provisional Approval dated 25/8/99 – Exhibit D.
5. AGIS Acknowledgment dated 27/7/07 – Exhibit E.
6. Copy of Solicitor's letter dated 16/5/18 – Exhibit F.
7. Three (3) Bwari Area Council Departmental Receipts – Exhibits G¹, G² and G³ respectively.
8. Solicitor's receipt dated 20/6/17 – Exhibit H.

The PW1 also adopted an 11-paragraph Additional Witness Statement on Oath dated 6/2/2019; same is further adopted as forming part of this judgment.

The copy of letter written to the Director Lands, AGIS, Abuja dated 27/3/18 was also admitted in evidence as Exhibit I.

Under cross-examination by the Defendant's counsel, the PW1 stated that before he instituted this matter he was at the land in dispute. He further stated that it is not true to say that the land he is claiming is not Plot A101 Action Layout Bwari Area Council. That his claim in respect of the land is genuine.

The PW1 was discharged and that is the case for the Plaintiff.

In defence of this claim the Defendant filed a 9-paragraph statement of defence dated 26/3/18 and called a sole witness.

The Defendant himself testified as the sole witness DW1. In his evidence-in-chief, he adopted a 12-paragraph witness statement on oath dated 27/3/2018 as his evidence; the said DW1's statement on oath is adopted as forming part of this judgment.

The gist of DW1's evidence is that the plot of land the subject matter of this suit is known as Plot N. BA/101 Action Area Layout Bwari Area Council and Bwari Area Council had no right in law to have allocated the plot of land the subject matter of this suit to the Plaintiff. That the Plaintiff did not erect blocks in the four corners of the plot of land the subject matter of this suit.

The DW1 further stated that the regularization purportedly carried out by the Plaintiff cannot vest title on him. That the Plaintiff was never in possession of the plot of land; that he had obtained the

due approval and had erected a bungalow on the plot. The DW1 urged the court to dismiss this suit.

Under cross-examination by the Plaintiff's counsel, the DW1 stated that the Claimant came to his house and dropped a phone number that the place the DW1 was occupying is owned by Dr. Kelvin C. Ezem.

That he sighted the allocation letter the Claimant brought and he told the Claimant that his Plot is Plot BA 101 and not A 101.

DW1 further stated that the Plaintiff and himself went to Bwari Area Council and they both presented their title documents. That he build on the plot with Building Approval.

The DW1 further stated that he has been working in the F.C.T. Area Council Services Commission for 32 years; that he knows Area Council in FCT was allocating land before they were stopped by a certain Minister of F.C.T.

That it was Bwari Area Council that issued Exhibit D to the Plaintiff.

No re-examination, DW1 was discharged and that is the case for the Defence.

The Defendant's Counsel filed a final written address dated 25/10/2019 wherein counsel formulated an issue for determination, thus:

“Whether the Claimant has proved lawful title to the plot of land purportedly known as Plot A/101 Action Area Layout

Bwari Area Council, Abuja to warrant this Honourable Court to grant an order of declaration of title and other reliefs claimed in this suit in favour of the Claimant”

On this sole issue, it is the submission of counsel that a person who seeks a declaration of title to land has the onus of proof squarely rested on his head. See *EYO v ONUOHA* (2011) 11 NWLR (Pt 1257) 1 at ratio 6.

It is submitted that mere production of title document by a claimant does not automatically entitle the Claimant to relief of declaration of title to land; this Honourable Court has the enormous responsibility to interrogate the validity of the documents relied upon by the Claimant. See *RAMAINE v ROMANE* (1992) 4 NWLR (Pt 238) 650, *OYEBOLU v FCDA* (2018) 14 WRN 116.

It is the submission that by the provision of Section 5 (2) of the Land Use Act (LUA) 1978, the ownership of land in the FCT Abuja is vested in the Federal Government of Nigeria and the exercise of the power to administer land in FCT is vested in the President of the Federal Republic of Nigeria who has delegated same power to the Hon. Minister of the FCT. See *MADU v MADU* (2008) 2 SCNJ 245 at 267, *ONA v ATENDA* (2000) 5 NWLR (Pt 656) 244 at 289 Paras E – F.

It is the contention by counsel that a scrutiny of the title documents being branded by the Claimant in his quest to lay claim to the plot of land in dispute, would reveal on the face of

these documents that these documents are incapable of granting title to land within the FCT, since the documents were issued by Bwari Area Council and not by the Hon. Minister of the FCT as provided by the law.

It is submitted that Customary Right of Occupancy is alien to land ownership and administration within the FCT. Court is referred to Section 297(2) of the FCT Act Cap 503; Section 49(1) and Section 51(1) of the Land Use Act. Case of IBRAHIM v OBAJE (2005) 8 WRN 85 AT 89 Lines 10 – 25.

It is further submitted that the Honourable Minister of FCT by the provision of Section 18(b) of the FCT Act cannot lawfully sub-delegate this authority to Bwari Area Council or the Rural Land Use Adjudication Committee or any other person. See EMUZE v VICE-CHANCELLOR (2003) 8 MJSC 1 at 16 Paras C – D.

It is the submission that there is no division of land into urban and rural areas within the FCT, Abuja. All the land comprised within FCT can only be categorized as urban land, therefore Bwari Area Council like any other Area Council within FCT has no authority to allocate land to the Claimant or any other Applicant. See LAWSON v AFANI CONST. CO. LTD (2002) 2 NWLR (Pt 752) 585.

It is the contention that going by the evidence before this court, the Defendant has been in long possession and enjoyment of the land in dispute; this act of possession and enjoyment of the land by the Defendant is a prima facie evidence that the Defendant has the ownership right over the land in dispute. See ONOVO v

MBA (2016) WRN 83 Pg 120 – 121 Lines 45 – 15. Court is urged to dismiss this suit.

The Claimant's counsel also filed a final written address dated 4/12/2019 wherein counsel formulated a sole issue for determination, thus:

“Whether the Claimant having regard to the facts of this case and evidence adduced before this Honourable Court has proved his case on the preponderance of evidence to be entitled to the reliefs sought in this suit”

On this sole issue, it is the submission of counsel that in all civil cases, claims are proved on the preponderance of evidence and balance of probabilities. See AKINYEMI v OJO (2011) 18 WRN 52 CA Pg 52 at 57.

In prove of his case, the Claimant called the PW1 and tendered eleven (11) exhibits which are direct, credible and unchallenged evidences and therefore entitled to the judgment of this Honourable Court as per the reliefs sought in this claim.

It is submitted that to succeed in the claim of trespass, a Claimant must prove that he is in actual possession. See OLUBODUN v LAWAL (2008) 51 WRN 1 SC Pg 1 at 29 and Paragraphs 3, 4, 9, 10, 11 and 12 of the Claimant's Amended Statement of Claim.

It is further submitted that the testimony of PW1 has shown that the claimant was duly allocated the plot and in exclusive possession of the plot and such possession gives the Claimant the right of

undisturbed enjoyment of same against wrong doers. See BALOGUN v AKANJI (2005) 25 WRN 1 SC Pg 1 at 12.

It is submitted that where two parties claim possession, the law ascribes possession to one who can show a better title. See ISERU v CATHOLIC BISHOP WARRI DIOCEASE (1993) 3 NWLR (Pt 495) 517 at 526.

It is the contention of counsel that the Defendant after filing their pleading did not lead cogent evidence in support of their pleadings, it is trite law that pleading without evidence to support same goes to no issue. See AWOYEMI v FASUAN (2005) 17 WRN Pg 57 at 158.

It is submitted that the Defendant's final written address failed to consider whether the Defendant had any title to the land where the Defendant built. And that the Defendant never led in evidence the facts raised in the Defendant's final address. The law is that the argument of a counsel to a party, however brilliant cannot form or be valued as evidence in favour of a party or take the place of evidence. See OBITUNDE v ONYSOM COMMUNITY BANK LTD (2014) 36 WRN Pg 1 at 9. More so, the Defendant during his testimony admitted that Bwari Area Council were allocating land as at the time the land in dispute was allocated to the Claimant. Court is urged to enter judgment for the Claimant.

I have carefully considered the processes filed, evidence of PW1, DW1 and submission of learned counsel on both sides, this case poses no complexity. I am in one with the Defendant's counsel

that the sole issue that begs for determination is whether the Claimant has proved lawful title to the plot of land known as Plot No. A 101 Action area layout Bwari Area Council, Abuja to warrant this court to grant an order of declaration of title and other reliefs claimed in this suit in favour of the Claimant.

It is trite law that ownership of land can be proved by any of the following five (5) ways:

1. Traditional Evidence
2. Production of documents of title.
3. Act of ownership extending over a sufficient length of time.
4. Act of long possession and enjoyment of the land.
5. Proof of possession of connected or adjacent in the circumstance rendering it probable that the owner of such connected or adjacent land in addition, be the owner of the land in dispute.

See *IDUNDUN v OKUMAGBA* (1976) 1 All NLR 200.

In the instant case by the evidence adduced and exhibits tendered, it is without doubt that the Claimant in proving ownership of the said plot in dispute by the production of title document.

It is the evidence of PW1 that by Exhibit D Conveyance of Provisional Approval dated 25/8/98 the Claimant was allocated the plot in dispute. The Claimant also tendered Exhibit A, a Survey Plan of the Plot in dispute duly issued by Bwari Area Council. The PW1 also tendered Exhibits G1, G2 and G3 being payment

receipts issued by Bwari Area Council to the Claimant for the payment of Statutory fees for the plot. Also tendered by the Claimant is Exhibit E being Acknowledgment issued by Abuja Geographic Information System (AGIS) to the Claimant for the re-certification of the plot.

On the part of the Defendant, the Defendant in his oral testimony never tendered any title document or survey plan in respect of the plot the Defendant built upon the subject matter herein.

Under cross-examination of DW1, he stated thus:

“The plot I am living in has title document i.e. Plot Allocation letter and Approval of Building Plan. They are part of the photocopies of the documents we sent to the court through my lawyer”

It is instructive to note that the Defendant never tendered the purported title document he claimed he had.

It is trite law that where two persons claim to be in possession of a piece of land at the same time, the law ascribes possession to one with better title. See *AWOYOOOLA v ARO* (2006) 4 NWLR (Pt 971) 481 (SC); *THOMPSON v AROWOLO* (2003) 7 NWLR (Pt 818) Pg 163 at 208.

The Defence of the Defendant is that Bwari Area Council has no authority under the law to allocate land to the Claimant or any other persons. However, under cross-examination of DW1 he stated as follows:

“I know that Area Council in FCT was allocating land before they were stopped by a certain Minister of FCT. There are 6 Area Council in the FCT”

It was Bwari Area Council that issued Exhibit D. The Plot No. A 101, Size 761 sqm, Action Area Layout. Exhibit D was issued to Dr. Kelvin C. Ezem. Top of Exhibit A read “Right of Occupancy No. BZ/LA/IM/1020. The 2nd line reads “Land Granted to Mr. Kelvin C. Ezem Plot No. A/101”

The DW1 went further to state:

“Part of Exhibit E reads “This to acknowledge the receipt of photocopy of original of Right of Occupancy for Dr. Kelvin C. Ezem in respect of Plot No. A 101 Area Council Bwari”

At this point, it is pertinent to reproduce the heading of Exhibit E as follows:

“Federal Capital Territory Administration Regularization of land title and documents of FCT Area Councils”

I am of the considered view that by the content of Exhibit D the Federal Capital Administration headed by the Honourable Minister of FCT has adopted/regularized the actions of the Bwari Area Council with respect to the issuance of title documents to the Claimant. I must also state that there is no evidence before this court by the FCTA that the documents submitted by the Claimant are not authentic or valid. Accordingly by the provision of Section

168 (2) of the Evidence Act, it is presumed that Exhibit D is properly issued.

In the case of BASIL v FAJEBE (2001) 11 NWLR 9Pt 725) Pg 592 the court held that where there is a dispute as to which of two persons is in possession, the presumption is that the person having the title to the land is in possession.

In the instant case, it is without doubt that the Claimant is the presumed to be in possession having tendered his title documents. The Defendant did not have any title document to the land in dispute having tendered non.

Now, with respect to the claim of N800,000.00 as legal fees for prosecuting this matter, the law is clear that a claim for solicitor's fees s outlandish and should not be allowed as it did not arise as a result of damage suffered in the course of any transaction between parties. See GUINNESS NIGERIA PLC v NWOKE (2000) NWLR (Pt 689) 135 at 150.

In the light of the above, the Claimant's claim for solicitor's fees must fall like a pack of card, I so hold.

In conclusion, I am of the considered view that the Claimant has adduced credible and cogent evidence to warrant this court enter judgment in his favour. Accordingly judgment is entered in favour of the Claimant against the Defendant as follows:

1. That the Claimant/Plaintiff is the legal, lawful and bona-fide allottee and owner of all that piece or parcel of land lying

and situated at Plot No. A/101 Action Area Layout Bwari Area Council, Abuja F.C.T. measuring about 761 square meters.

2. That the Defendant is a stranger, intruder and trespasser unto the Claimant/Plaintiff's land.
3. The Defendant, his servants, agents, assigns and however described are restrained from continuing to trespass unto the Claimant/Plaintiff's land and from laying any claim to the structures standing on the Claimant's/Applicant's land.
4. The sum of N500,000.00 (Five Hundred Thousand Naira) only is awarded as general damages for trespass.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
10/02/2020

Claimant's Counsel – We are grateful for the judgment. We appreciate the judgment just delivered.

Defendant's counsel – We equally appreciate the judgment just delivered by the court.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
10/02/2020