



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF



SUIT NO. FCT/HC/CV/464/12

BETWEEN:

BGD PROPERTIES LIMITED.....PLAINTIFF

AND

- 1. THE REGISTERED TRUSTEES OF TIPPER)
- DRIVERS ASSOCIATION ABUJA)
- 2. SUNDAY ONU)
- 3. SUNDAY UZOKWE)
- 4. BABAYO SAMANJA)
- 5. BWARI AREA COUNCIL)
- 6. FCDA)
- 7. HON. MINISTER FCT)
- 8. THE REGISTERED TRUSTEES OF TIPPER)
- OWNERS ASSOCIATION ABUJA).....DEFENDANTS
- 9. THE REGISTERED TRUSTEES OF ABUJA)
- SUPPLIES ASSOCIATION)
- 10. THE REGISTERED TRUSTEES OF HEAVY)
- DUTIES MECHANICS ASSOCIATION ABUJA)
- 11. ALHAJI YA'U MUHAMMAD)
- 12. ALHAJI ABUBAKAR)
- 13. SAMUEL B. MANJING)
- 14. ALH. LAWAL ABDULAZIZ)

JUDGMENT

This matter relates to the ownership of a parcel of land situate and known as Plot No. BDW/B/06, Dawaki Layout, Cadastral Zone – 07 – 05, Abuja. The claim of the Plaintiff is that title in the property vest in the 1st Defendant who conveyed same to the Plaintiff for valuable consideration sometimes in 2008. That the 1st Defendant executed relevant documents to that effect in favour of the Plaintiff. The 2nd – 4th Defendants are trustees of the 1st Defendant who carried out the transaction on behalf of the 1st Defendant association.

The 1st – 4th Defendants were the original Defendants in this suit. However, the 6th – 14th Defendants were joined as parties at various stages of proceedings. The 1st – 4th Defendants admitted that the 1st Defendant indeed sold the disputed property to the Plaintiff and that the transaction remains valid by all intent and purpose. The remaining Defendants on their part held a contrary opinion on the ground that title in the disputed property does not vest in the 1st Defendant who is the Plaintiff's vendor.

The Plaintiff wants the Court to affirm its title and by paragraph 36 of its amended statement of claim the reliefs sought in this case are as follows.

- 1. An order of perpetual injunction restraining the Defendants either by themselves, their Agents, Servants,**

Members or Assigns from further trespass to the Plaintiff's Land situated at Dawaki Layout, Cadastral Zone - 07 - 05 Abuja with Plot No. BDW/B/06 measuring 3 hectares in whatever manner.

- 2. An order of this Honourable Court compelling the Defendants either by themselves, their Agents, Servants, Members or Assigns to forthwith evacuate their Tippers (long vehicles) on the Plaintiff land situate at Dawaki Layout , Cadastral Zone - 07 - 05 Abuja with Plot No. BDW/B/06 measuring 3 hectares.**
- 3. An order of this Honourable Court restraining the Defendants either by themselves and/or their Agents, privies, servants, members or assign from further converting the Plaintiff's Land situate at Dawaki Layout Cadastral Zone - 07 - 05 Abuja with Plot No. BDW/B/06 measuring 3 hectares as a Lorry Park or Tipper Garage.**
- 4. An order of this Honourable Court restraining the Defendants either by themselves and/or their Agents, privies, servants, members and/or successors however so called from further molesting, intimidating, harassing, interfering and or engaging in any act that will run**

contrary to the Plaintiff's right of occupancy on its property at Dawaki Layout, Cadastral Zone - 07 -05 Abuja.

- 5. An order of this Honourable Court directing the Defendants either by themselves, jointly and or severally, their assigns, privies, servants, members or successors to vacate forthwith the Land situate at Dawaki Layout, Cadastral Zone 07 - 05 Abuja with plot NO. BDW/B/06 measuring 3 hectares.**
- 6. An order of this Honorable Court granting the Plaintiff peaceful and quiet possession to the land situate at Dawaki Layout, Cadastral Zone 07 - 05 Abuja with Plot No. BDW/B/06 measuring 3 hectares.**
- 7. An order of this Honourable Court declaring that there exists a valid sale and transfer of title with respect to the land situate at Dawaki Layout, Cadastral Zone 07 - 05 Abuja with Plot No. BDW/B/06 measuring 3 hectares by the Defendants to BGD properties Ltd.**
- 8. The sum of ₦2, 310,000 (Two Million, Three hundred and Ten Thousand Naira) only as demurrage for Nine days of the heavy duty machinery was on site but prevented from working.**

Particulars: D8 Caterpillar : N150,000.00 (One Hundred and Fifty Thousand Naira) Caterpillar Excavator: N180,000.00 (One Hundred and Eighty Thousand Naira) x 9 days= N2,310,000.00 (Two Million, Three Hundred and Ten Thousand Naira)

9. The sum of ~~N~~100,000,000.00 (One Hundred Million Naira) only as general and aggravated damages.

10. The cost of the suit assessed at ~~N~~15,000,000.00 (Fifteen Million naira) only.

The 1st – 4th Defendants filed a joint statement of defence where they affirmed the validity of the transaction between the Plaintiff and the 1st Defendant (with respect to the disputed property) but denied liability for trespass on the ground that they delivered peaceful possession of the land to the Plaintiff company. That they were in no way involved with the allegation of trespass put forward by the Plaintiff which necessitated the presentation of this action.

However, the 6th – 14th Defendants are of the view that title in the disputed property does not vest in the 1st Defendant. Hence the 1st defendant cannot validly sell the property to the Plaintiff as done in this case. Therefore they have respectively filed processes to resist the claims of the Plaintiff. In specific terms the 6th and 7th

Defendants filed a 38-paragraphs joint statement of defence on 28th October, 2016 while the 8th – 14th Defendants filed a joint amended statement of defence of 45-paragraphs. The process was filed with leave of Court on 7th December, 2017.

The 5th Defendant (i.e. Bwari Area Council) did not file any process. It also failed to participate at the trial of this case. Having satisfied myself that the 5th Defendant was duly served with relevant processes, I take it that the 5th Defendant elected not to defend this action and the Court cannot question such exercise of right.

At plenary the Plaintiff, 1st – 4th Defendants and the 6th and 7th Defendants respectively called one witness each while the 8th – 14th Defendants called two witnesses. All the witnesses were duly cross examined by the respective counsel.

For the record, I need to state that one Mr. Richard Adewumi Adedipe, an Estate Manager with the Plaintiff company testified as PWI. The DW1 who testified in support of the defence of the 1st – 4th Defendants is in fact the 3rd Defendant on record (i.e. Chief Sunday Uzokwe who is also the Executive General Secretary of 1st Defendant). The DW2 who testified in support of the defence of the 6th and 7th Defendants is one Mrs. Comfort Udagbo, a Principal Estate Officer (Land) with the 6th Defendant (Federal Capital Development Authority). DW3 is one Lawal Abdulazeez, the 14th

Defendant on record while DW4 is Alhaji Ya'u Muhammad who is the 13th Defendant on record and the Chairman of the 8th Defendant. Both the DW3 and DW4 testified for the 8th – 14th Defendants.

The Plaintiff tendered documents admitted and marked as exhibits BGD1 to BGD7 while two documents were rejected and marked as exhibits 1 and 2 rejected.

On their part the 1st – 4th Defendants also tendered documents admitted and marked as exhibits D1 to D5 while the 8th – 14th Defendants tendered exhibits D6 to D8A.

At the close of trial parties through their respective learned counsel filed and exchanged final written addresses which were duly adopted in the open Court.

The learned Counsel to the 8th – 14th Defendants put forward three issues, viz:

- 1. Whether or not with the totality of evidence before this Court, the Plaintiff have substantiated its claim and is entitled to title to the land in dispute same having been gotten through person who themselves have no title whatsoever to vest on the Plaintiff.**
- 2. Whether or not the suit of the Plaintiff is not an attempt to waste the precious time of the Court having discovered**

that it has negligently not done an intensive due diligence on the said land in dispute to verify the authentic owners of the land before proceeding with the illegal transaction of purported purchase of the land in dispute and thereafter claim title at the detriment and expense of lawful owners.

- 3. Whether or not the 8th - 14th Defendants being persons who have been in peaceful and quiet possession and enjoyment of the said land in dispute carrying out their lawful day to day business activities can lawfully and justifiably be ousted from the said land due to an illegal transaction which none of them was a party nor did any of them derived any benefits there from.**

On his part the learned Counsel to the 1st - 4th Defendants identified two issues.

- 1. Whether the Plaintiff as the bonafide owner of Plot No. BDW/B/06 measuring 3 hectares and situate at Dawaki Layout, Cadastral Zone 07 - 05 Abuja is entitled to relief of damages in trespass?**
- 2. Whether there exist a valid sale and transfer of title with respect to the land situate at Dawaki Layout, Cadastral**

Zone 07- 05 Abuja with Plot No. BDW/B/06 measuring 3 hectares by the Defendants to BGD properties Ltd.

In a related development the learned Counsel to the Plaintiff is of the view that one issue will suffice to dispose of the dispute in this case, that is to say:

Considering the entire pleadings and evidence led by the parties in this suit, whether the Plaintiff has proved his (sic) case to entitle her to the being relief sought (sic).

The 6th and 7th Defendants who filed joint statement of defence and also put in one witness did not deem it necessary to file final written address. I take their conduct in that behalf as a waiver of their right to present final addresses which to my mind is in order. Afterall it is not compulsory to file an address.

After a careful consideration of the state of pleadings and the evidence led on behalf of parties I form the view that the focal point in this case is whether the Plaintiff has established a valid sale and transfer of title by the 1st Defendant in respect of the disputed plot.

The resolution of this narrow issue will effectively determine the dispute between parties especially as the Plaintiff's case is built on the contract of sale between the Plaintiff and the 1st Defendant over the subject matter of this suit. All the other claims sought by the

Plaintiff are essentially dependent on the establishment of its right over the disputed property.

ISSUES FOR DETERMINATION

Whether the Plaintiff company has effectively discharged the onus of proof imposed on it by law to warrant the grant of the reliefs sought in this suit.

The law is clear that the Plaintiff has the burden to lead credible evidence to determine its legal entitlement to the reliefs sought in this case.

On this point of law see Section 131-133 of the Evidence Act, 2011 and the following cases:

- 1. ELIAS V. DISU (1962) 1 SCNLR 361;**
- 2. UNIVERSITY PRESS LTD V. I. K. MARTINS NIG. LTD (2004) 4 NWLR (PT.654) 584;and**
- 3. DALHATU V. A-G, KATSINA STATE (2008) ALL FWLR (PT.405) 1651**

The claim of the Plaintiff in that respect is that the property was allocated to the 1st Defendant by the 7th Defendant and that the property was conveyed to the Plaintiff vide a Deed of Assignment executed in favour of Plaintiff. The Plaintiff's relief 7 clearly captured this point as set down below:

“An order of this Honourable Court declaring that there exists a valid sale and transfer of title with respect to the land situate at Dawaki Layout, Cadastral Zone 07 - 05 Abuja with Plot No. BDW/B/06 measuring 3 hectares by the Defendants to BGD properties Ltd.”

In essence the Plaintiff's principal claim is declaratory in nature. If that be the case it is settled law that the Plaintiff must lead evidence to justify the grant of the declaration sought. It is also settled Law that declaratory reliefs are not granted either on admission or default of pleading by the Defendant. On this point of Law see **OKOYE V. NWANKWO (2014) LPELR-23172 (SC)** where the Supreme Court held as follows:

“Faced with a declaratory relief, the Court draws inspiration from consecrated principles one of which is that the party seeking the relief must lead evidence upon which the relief is granted or denied, notwithstanding any admission in the defendant's pleading. The Court has to be satisfied, on the evidence led by the plaintiff, that he is entitled to the relief he seeks. See Motunwase v. Sorungbe (1988) 5 NWLR (Pt. 92) 90. This Court has held, in plethora of decided cases, that a declaration of title or right cannot legally be based on admission in the statement of defence.”

See also: **BELLO V. EWEKA (1981) 1 S.C 101; and ADDAH VS UBANDAWAKI (2015) 7 NWLR (PT. 1458) 325.**

In a dispute of this nature which has to do with declaration of title to land the Law is well settled that the Plaintiff must be able to trace its title to one of the five well established means of proving title to land in Nigeria.

In the most frequently cited case of **IDUNDUN VS. OKUMAGBA (1976) 10 S.C 227 AT 6-250** which has been followed in a long line of decided cases the Supreme Court identified the five mode of proving title to land, to wit:

- (1) By traditional evidence .
- (2) Production of grant or title documents duly authenticated in the sense that their due execution must be proved.
- (3) By act of long possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.
- (4) By positive acts of ownership extending over a sufficient length of time.
- (5) By proving acts of long possession and enjoyment of the land.

The Law is that the establishment of one of the five ways is sufficient proof of ownership.

On this point of Law see the following cases:

- (1) AYOOLA VS. ODOFIN (1984) 11 S.C 120.**
- (2) ADEDIBU VS. ADEWOYIN 13 WACA 191; and**
- (3) JOHNSON VS. LAWANSON (1971) 1 ALL NLR 50.**

In this case it is clear that the Plaintiff is relying on the second mode of proving title to land, that is to say, by the production of duly authenticated title documents. Parties are ad idem that the 1st Defendant is the party who sold the disputed property to the Plaintiff. That being the case the narrow issue is whether title in the disputed property vest in the 1st Defendant in order to validate the transaction between the said 1st Defendant and the Plaintiff.

The pleading of the Plaintiff and evidence led in support is to the effect that title in the disputed property vests in the 1st Defendant who was the original allottee. The 1st Defendant aligned itself with the Plaintiff and maintained that it got its allocation from the 7th Defendant. As a matter of fact the 1st Defendant pleaded its root of title in paragraph 2, 3, and 5 of the joint statement of defence of the 1st – 4th as follows:

2. The 1st – 4th Defendants also admits paragraph 6, 7 and 8 of the Plaintiff's statement of claim and in addition states that the 1st Defendant through its 4th Defendant as the then Chairman applied for a parcel of land for its Tipper Garage to the 6th and 7th Defendants, the 6th and 7th Defendants on the 9th day of May 2000 granted a customary right of occupancy to the 1st Defendant through the Zonal Planning and Survey Department application through the 4th Defendant (sic). The 1st – 4th Defendants shall reply (sic) on the photocopy of Application Letter dated 29/9/1997 signed by the 4th Defendants and all correspondences from the 5th Defendant's office.
3. That the 1st – 4th Defendants admits paragraph 10 of the Plaintiff's Statement of Claim and further states that 1st – 4th Defendants are bona fide owners of Plot No. BZTP/BDW/COM/B/06/MISC/977 and New File No. MISC 90616 and as bona fide owners have enjoyed quiet and peaceful possession of its property known and situate at Dawaki Layout, Cadastral Zone 07-05 Abuja with Plot No, BDW/B/06 since year 2000 without any interruption whatsoever or adverse claim from the 8th – 14th Defendants.

4. In further answer to paragraph 10 of the Plaintiff's Statement of Claim the 1st – 4th Defendants avers that upon the allocation of the Plot, the 1st Defendant through the 3rd Defendant commenced processing of certificate of occupancy at the 5th Defendant's office by making adequate payments in respect of the issuance of the certificate of occupancy in respect of the said Plot and was issued an Old File No. BZTP/BDW/COM/B/06/MISC/977 and New File No. MISC 90616.

The 1st Defendant as captured above pleaded and led evidence to the effect that it applied to the 7th Defendant and was allocated the disputed property. Arising from the foregoing I have carefully examined the allocation paper tendered by the Plaintiff as Exhibit BGD1 and contrary to the pleaded facts the allocation was not made in favour of the 1st Defendant. The allocation was made in favour of **ABUJA TIPPER ASSOCIATION** and not **TIPPER DRIVERS ASSOCIATION ABUJA** which is the 1st Defendant's name on record. What has played out here is that the 1st Defendant pleaded and led oral evidence to the effect that it applied for land allocation and was issued Exhibit BGD1 to support it allocation, but the document itself does not agree with the pleadings and the oral evidence in support.

Exhibit BGD1 is undoubtedly a piece of documentary evidence and it speaks for itself. The Law is settled that in dealing with this type of scenario the Court must give preference to the documentary evidence. I refer to the case of **OJEGBE & ANOR V. OMATSONE & ANOR (1999) 6 NWLR (PT.608) 591** where it was held as follows:

“Where there is oral evidence as well as documentary evidence, the documentary evidence should be used as a hanger on which to assess the oral testimony.”

Now the 1st Defendant testified that it applied to the 6th and 7th Defendant for land allocation and tendered exhibit D3 to support this point. Exhibit D3 dated 29th September, 1997 was issued on the letter head of TIPPER DRIVERS ASSOCIATION ABUJA FCT and addressed to the Director of Planning, FCDA, Abuja. There is no endorsement to show that the letter was received by the FCDA. And there is nothing to suggest that the 1st Defendant obtained and submitted any formal application form for land allocation at the office of the 6th and 7th Defendants. Thus Exhibit D3 in my view is of doubtful origin. This view is supported by Exhibit D5 tendered by the selfsame 1st Defendant. Exhibit D5 shows that the 1st Defendant made payment at Bwari Area Council for processing of land document. If the allocation of the 1st Defendant was indeed made by

the 7th Defendant I do not see any reason why the 1st Defendant would have to process its title document with Bwari Area Council. The 1st Defendant contrary to its pleading has impliedly admitted that it has no allocation from the 7th Defendant. This is very instructive as the 1st Defendant cannot approbate and reprobate at the same time.

On their part the 6th and 7th Defendants filed joint statement of defence where the purported title of the 1st Defendant was vehemently denied. This is quite critical because under the Land Use Act the 7th Defendant is the proper authority to allocate landed property in the Federal Capital Territory. On this point it was pleaded on behalf of the 6th and 7th Defendants in paragraphs 10, 17, 19 and 20 as follows:

10. The 6th and 7th Defendants deny Paragraph 10 of the Statement of Claim. The 1st Defendant was never the owner of any land purportedly situated at Dawaki Layout as averred by the Plaintiff in paragraph 10 of the Statement of Claim . There is no title documents in the name of either “Registered Trustees of Tipper Drivers Association, Abuja” or “Tippers Drivers Association, Abuja”. The Plaintiff is put to strict proof

of the averment in the said paragraph 10 of the Statement of Claim.

17. That the 6th and 7th Defendants deny averment in paragraph 17 of the Statement of Claim and in further response states that Tipper Drivers Association has no title in its name over the purported land, the subject matter of this suit.

19. Paragraph 19 of the Statement of Claim is equally denied, and the Plaintiff is put to the strictest proof thereof. In further response to the said paragraph 18 and 19 of the Statement of Claim, the 6th and 7th Defendants states that Tipper Drivers Association never had any title to the purported land, the subject of transaction and execution of Power of Attorney and Deed of Assignment let alone transfer same to the Plaintiff.

20. The 6th and 7th Defendants deny Paragraph 20 of the Statement of Claim and shall put the Plaintiff to the strictest proof thereof. In further response to the Paragraph 20 denied, the 6th and 7th Defendants states the even if the Plaintiff paid the alleged sum to the 1st Defendant as consideration for the purported

land as averred in the said paragraph, such payment was made without any title vested in the 1st Defendant whatsoever.

The 6th and 7th Defendants in paragraphs 30 – 35 further pleaded as follows:

30. That Abuja Tipper Association never applied for any land allocation in any of the 6th or 7th Defendants office and the 7th Defendant never granted or allocated the alleged plot subject matter of this suit to Abuja Tipper Association.

31. That the so called allocation letter thus conveyed no grant or allocation by the 7th Defendant as no such grant or allocation was made by the 7th Defendant.

32. The purported letter being relied upon as title document never crystallize into a contract with any of the 6th and 7th Defendant.

33. That all land area comprising the Federal Capital Territory, Dawaki Layout inclusive is urban land as no area in the Federal Capital Territory has been designated as rural land either by the President or the Minister of the Federal Capital Territory.

34. The Right of Occupancy being granted by the Honourable Minister of the Federal Capital Territory is Statutory Right of Occupancy and no other.

35. It is only a Statutory Right of Occupancy granted by the Honourable Minister of the Federal Capital Territory, that confers title over any parcel of land in the Federal Capital Territory which the subject matter of this suit is inclusive.

The above traverse of the 6th and 7th Defendants is instructive especially when considered side by side with paragraph 2 of the joint statement of defence of the 1st – 4th Defendants to the effect that:

“The 1st – 4th Defendants also admits paragraph 6, 7 and 8 of the Plaintiff’s statement of claim and in addition states that the 1st Defendant through its 4th Defendant as the then Chairman applied for a parcel of land for its Tipper Garage to the 6th and 7th Defendants, the 6th and 7th Defendants on the 9th day of May 2000 granted a customary right of occupancy to the 1st Defendant through the Zonal Planning and Survey Department....”

As shown above the pleadings set out by the Plaintiff is that its vendor (i.e. the 1st Defendant) applied for land to the 6th and 7th Defendants and was allocated Plot No.BDW/B/06, Dawaki Layout, Cadastral Zone -07, Abuja. However the evidence led by the Plaintiff clearly show that the alleged plot was allocated to Abuja Tipper Association (and not the Plaintiff) by Bwari Area Council.

The Law is trite that in civil cases the claims of parties are fought on the basis of pleadings. Therefore if evidence is led which is at variance with the pleaded facts such evidence go to no issue. I refer to a few cases on this point of Law:

- 1. GEORGE & 2 ORS V. DOMINION FLOUR MILLS (1963) 1 ALL NLR 71;**
- 2. NIPC V. THOMPSON (1969) NMLR 99;**
- 3. EMEGOKWE V. OKADIGBO (1973) 4 S.C 113;**
- 4. ALADE V. OLUKAYODE (1976) 2 S.C. 183; and OKOKO V. DAKOLO (2006) ALL FWLR (PT.336) 201.**

Evidence before the Court has shown that Bwari Area Council was indeed the authority that purportedly made the disputed allocation. What that means is that the evidence of the 1st to 4th Defendants is at variance with their pleadings that the Minister made the disputed grant. Evidence which is at variance with pleaded facts are inadmissible and ought to be rejected or ignored by the Court.

The position of the 6th and 7th Defendants that the 1st Defendant's purported allocation is unknown to them supports my earlier finding that the 1st Defendant has not shown that it was granted any allocation by the 7th Defendant. In any case the allocation put forward by the 1st Defendant was not made in its name and there is nothing before the Court to suggest any form of relationship between the 1st Defendant and the purported allottee on the face of Exhibit BGD1. It is therefore reasonable to hold that the 1st Defendant is a stranger to Exhibit BGD1 and I so hold.

I am not done with this point. The 7th Defendant in disowning Exhibit BGD1 stated that it does not make customary allocation. That it only make statutory grant. This point has been well settled by the apex Court and need not attract any controversy. I refer to **MADU V. MADU (2008) 2-3 S.C (PT.II) 296; (2008) 6 NWLR (PT.1083) 296** where Onu, JSC has this to say:

“Be it noted that it is well settled that the ownership of the land comprised in the Federal Capital Territory, Abuja is absolutely vested in the Federal Government of Nigeria *vide Ona v. Atenda (2000) 5 NWLR (Part 656) page 244 at page 267 paragraphs C - D.*

See also section 297(1) & (22) of the Constitution of the Federal Republic of Nigeria, section 236 of the Constitution of the Federal Republic of Nigeria, 1979 and section 1(3) Federal Capital Territory, Act 1976. Section 18 of the Federal Capital Territory Act, Cap.503 Laws of the Federation of Nigeria, 1990 vests power in the Minister for the FCT to grant statutory rights of occupancy over lands situate in the Federal Capital Territory to any person. By this law, ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vest same to every citizen individually upon application. Thus without an allocation or grant by the Hon. Minister of the FCT there is no way any person including the respondent could acquire land In the FCT.”

It is also curious that the 1st Defendant who want the Court to believe that the 7th Defendant made the dispute allocation in its favour has nothing to put forward from either the office of the 6th or 7th Defendants by way of title document. Apart from Exhibit BGD3 there is nothing before the Court to show that the 1st Defendant had any interaction with the 6th and 7th Defendants. Exhibit BGD 3 in my

view put a lie to the allegation that 1st Defendant's purported allocation emanated from the Hon. Minister. The heading of Exhibit BGD3 is self-explanatory. It read thus:

“REGULARISATION OF LAND TITLES AND DOCUMENTS OF FCT AREA COUNCILS ACKNOWLEDGEMENT.

It is also important to remind the Plaintiff and the 1st Defendant who is its root of title that acknowledgement of submission of its purported title document cannot miraculously crystallized into valid title being vest on the said 1st Defendant. When the DW2 who testified for the 6th and 7th Defendant was cross examined by Mrs. Okaro of Counsel for the 1st to 4th Defendant she said among other things that:

“It is true that in 2005 the 7th defendant (Minister FCT) called for regularization of land titles in the FCT. The act of regularization does not correct title to property. I have seen exhibit BGD3 and it is not a sign of regularization. Exhibit BGD3 was issued by the 6th and 7th Defendant.”

What is in issue here is very simple and straightforward. The Plaintiff took exhibit BGD1 to the 6th and 7th Defendants for regularization and exhibit BGD3 was issued to acknowledge the

receipt of the document. After the acknowledgment the Plaintiff and the 1st to 4th Defendants both in their pleadings and evidence led in support did not tell the Court the outcome of the application for regularization. If indeed exhibit BGD1 was successfully regularized it is now a notorious fact which the Court is entitled to take judicial notice that a new title deed would have been issued in favour of the 1st Defendant. Unfortunately I have no evidence to support such finding in favour of the 1st Defendant. On the debit side the witness who testified for the minister of the FCT has made it clear that a defective title document such as exhibit BGD1 cannot be legalized through regularization and I agree with her on this point. Put in another way the simple fact that exhibit BGD1 was submitted for regularization as demonstrated by exhibit BGD3 does not add any value to the case of the Plaintiff and the defence of the 1st to 4th Defendants respectively.

From the foregoing background, it is obvious that the allocation relied upon by the 1st Defendant emanated from Bwari Area Council and not the Minister of the Federal Capital Territory. In any case the allocation was not made in favour of the 1st Defendant as held elsewhere above. It is therefore clear to me that Plaintiff's purported root of title is a customary allocation which has nothing to do with the Minister of the Federal Capital Territory.

When Mr. Adegboye of Counsel to the Plaintiff cross examined the DW1 the witness stated inter alia that:

“It is correct that it is the trustees of the association that applied for the land. The application for the land was made on 29/9/1997. The land was allocated by the land and survey department of Bwari Area Council.”

This point is well corroborated by paragraph 2 of the purported allocation letter (exhibit BGD1) which read as follows:

“I am to add that the following conditions will also be inserted in the Customary Rights of Occupancy evidencing the grant of this Rights of Occupancy.

- (i) Within two years from the date of commencement of the Right of Occupancy to erect and complete on the said land the buildings or other works specific in detailed plans approved or to be approved by the Bwari Area Council, or other officer appointed by the Minister, such building or other works to be of such value not less than (N2,000,000.00) and to be erected and**

satisfaction (sic) of the Bwari Area Council or other officer appointed by the Hon. Minister, FCT.”

From all that have played out in this case I am of the firm view that the Plaintiff has not satisfied the Court that it got valid title from the 1st Defendant. The 1st Defendant cannot give what it doesn't have. This point is well expressed in the Latin maxim *nemo dat quod non habet*.

If the Plaintiff wants the Court to enter judgment in its favour in this case it ought to show by credible evidence that the 1st Defendant's title is good. The rationale behind this principle of Law is very simple and admits of no controversy. And it is to the effect that if the 1st Defendant's title is defective it also means that what was passed to the Plaintiff is worthless and of no legal significance. This point of Law was well captured by Iguh, JSC in **ALLI VS. ALESINLOYE (2006) 6 NWLR (PT.660) 177** as set out below:

“It is not in doubt that once a party pleads and traces his root of title in an action for a declaration of title to land action to a particular person or source and this averment, as in the present case, is challenged, the party, to succeed, as a plaintiff in the suit must not only establish his title to such land, he must also

satisfy the court as to the title of the person or source from whom he claims. He cannot totally ignore the validity of his grantor's title where this has been challenged and concentrate only on his own title to such land as he would not have acquired a valid title to the land if in fact his grantor at all material time has no title thereto. (Underlining supplied for emphasis)

See also: MOGAJI AND ORS V. CADBURY FRY (EXPORT) LTD. (1985) 2 NWLR (PT.7) 393.

In the final analysis I hold as I should that the declaratory relief sought by the Plaintiff is not proved. If that be the case all the accessory claims tied to the declaratory relief must of necessity collapse.

The law is settled that where a party's principal claim fails the accessory claims that are appendages to it will also fail. This cardinal principle of law was espoused by the Supreme Court in the cases of **FAGUNWA V. ADIBI (2004) 17 NWLR (PT. 903) 544** and **AKINDURO V. ALAYA (2007) 15 NWLR (PT. 1057) 312.**

The principle traces its paternity to the latin maxim - *accessorium sequitur principale* - which means, “an accessory thing goes with the principal to which it is incidental to”.

In the case of **NSUGBE V. OKOBI & ANOR (2012) LPELR-2448 (CA)** the Court of Appeal stated the law thus:

“The principal claim of the appellant was for a declaration that he is entitled to a statutory right of occupancy over the disputed land. The claim for damages for trespass and injunction are like leeches the success of which was dependent on the principal claim succeeding. Since the principal claim was not granted the Lower Court was right in refusing to grant the reliefs of damages for trespass and injunction against the 1st Respondent. The legal principle is that the principal having fallen through the adjunct would equally be taken away. See **ADEGOKE MOTORS Vs ADESANYA (1989) 3 NWLR (PT. 109) 250 AT 260.”**

See **TUKUR V. GOVT OF GONGOLA STATE (1989) 4 NWLR (PT. 117) 517 AT 544-565; and UNILORIN TEACHING HOSPITAL V. ABEGUNDE (2013) LPELR- 21375 (CA).**

Before I round off this Judgment I need to comment on the submission of the learned counsel to the 8th – 14th Defendants that his clients are entitled to the protection of the Law on account of acts of long possession having admitted that they have no title to the disputed property. This line of argument put forward by the learned counsel to the 8th – 14th Defendants is thoroughly misconceived for the important reason that the 8th – 14th Defendants have no counter claim in the this case. Therefore no remedy can enure in their favour in this judgment.

The case of the 8th – 14th Defendants was simply that they co-owned the disputed property with the 1st Defendant. Having found that the disputed property does not belonged to the 1st Defendant what is the fate of the 1st Defendant also befall them. For the avoidance of doubt the 8th – 14th Defendants does not have any right or interest in the disputed property which should be protected.

Secondly both in the pleadings and evidence led by the 8th – 14th Defendants they did not indicate when they came upon the land such as being on the land before the coming into being of the Land Use Act. It is therefore clear that the submission of Counsel as to acts of long possession of the disputed land by the 8th – 14th Defendants is not borne out of evidence before the Court. The effect in Law is to jettison it. To accede to such unsubstantiated argument would

operate to whittle down the statutory power of the 7th Defendant as the trustee of the landed property comprised in the Federal Capital Territory. On this note I overrule learned counsel to the 8th – 14th Defendants on this point.

In the final analysis the Plaintiff's claims are lacking in merit. They are refused and dismissed in its entirety.

I must add as a rider that none of the parties between the Plaintiff, the 1st Defendant as well as 8th – 14th Defendants has acquired any interest in the disputed property in this case.

Before I round off this judgment I must also remark that the joinder of the 3rd and 4th Defendants who are trustees of the 1st Defendant is irregular and indeed a clear case of misjoinder of parties. Exhibit D1 revealed that the 3rd and 4th Defendants are registered trustees of the 1st Defendant. If that be the case they cannot be sued in their individual names for the roles they played on behalf of the 1st Defendant.

The Law is settled that the 1st Defendant as a corporate entity can sue and be sued in its registered name. On this point of Law I refer to the case of **PASTOR EMMANUEL JOVI AGBROKO & ANOR V. THE DIVINE CHURCH OF GOD & 3 ORS (2013) LPELR-20884 (CA)** where Tom-Yakubu, JCA (of blessed memory) held as follows:

“The effect of the registration of the trustees of the 1st respondent and the issuance of the certificate of incorporation to her as a body corporate, by CAMA, is that the said registered trustees have the power to sue and be sued in its corporate name.”

See also:

- 1. ADEGOKE V. ONA IWA MIMO C & S (2000) FWLR (PT.28) 2134; and**
- 2. OPARA V. REGISTERED TRUSTEES C.M.Z.C (2004) FWLR (PT.190) 1419.**

I am surprised that this wrong joinder did not occur to me and none of the parties raised it during the trial of this case.

SIGNED

**HON. JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
12/01/2020**

Appearance

**O.A. Adegboye Esq – For the Plaintiff
(appears with Chima C. Obi Esq)**

**C.O. Okaro Esq - For the 1st – 4th Defendants
5th Defendant was absent and not represented**

Hezekiah Ivoke Esq – For the 6th and 7th Defendants

Usman Ibrahim Esq – For the 8th – 14th Defendants

SIGNED
HON. JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
12/02/2020