

THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 30TH DAY OF JANUARY 2020
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

SUIT NO: FCT/HC/674/09.

BETWEEN

- 1. MR. HUSSEIN ABBA AMIN.....1ST PLAINTIFF**
- 2. ALPHA PLUS ASSOCIATES LIMITED.....2ND PLAINTIFF**

AND

- 1. ENGR. A.C. OJOBO.....1ST DEFENDANT**
- 2. DR. O. ANEYAN.....2ND DEFENDANT**
- 3. ENGR. B.B. YAHAYA.....3RD DEFENDANT**
- 4. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA).....4TH DEFENDANT**
- 5. THE MINISTER, FEDERAL CAPITAL TERRITORY, ABUJA.....5TH DEFENDANT.**

JUDGEMENT.

The plaintiffs by a 2nd further Amended Statement of claim filed on 22nd December, 2014 claims against the Defendants jointly and severally as follows:

- i) A Declaration that the 1st plaintiff is the beneficial owner of plot 1420, Cadastral Zone A07, Wuse 11, Abuja.
- ii) An Order of specific performance directing the 4th and 5th Defendants- Federal Capital Development Authority (FCDA) and the Honourable Minister of the Federal Capital Territory, Abuja, to issue the 1st Plaintiff with the relevant Certificate of

Occupancy over plot 1420, Cadastral Zone A07, Wuse 11, Abuja.

- iii) An Order of perpetual injunction restraining the Defendants, agents, servants, privies or howsoever called, from interfering, intimidating, disturbing or otherwise, trespassing unto the 1st plaintiff's property situate and known as plot 1420, Cadastral Zone A07, Wuse 11, Abuja.
- iv) N20 million special and general damages for aggravated trespass against the 1st, 2nd and 3rd Defendants.

ALTERNATIVELY

1.) An Order directing the 4th & 5th Defendants - Federal Capital Development Authority (FCDA) and the Minister of the Federal Capital Territory, Abuja, to provide the plaintiff an alternative plot of land in same Wuse 11 area, of the Federal Capital Territory, Abuja.

2). N300 million (Three Hundred Million Naira) as aggravated, special and general damages against the said 4th defendant.

3). Cost of this suit.

The 1st, 2nd and 3rd Defendants in response to the plaintiffs claim against them filed on 5th November, 2009 their Statement of Defence and Counterclaim, with accompanying processes whereof the Defendants/Counter Claimants claims against the plaintiffs jointly and severally as follows:

a. A Declaration that the 1st plaintiff is not the Beneficial owner of all that property known as plot 1420, Cadastral Zone A07 Wuse 11, Abuja.

b. An Order of perpetual injunction restraining the plaintiffs whether by themselves or by their servants, agents or proxies or otherwise howsoever from trespassing unto the estate.

c. 50 million Special Damages for aggravated trespass against the defendants and the disturbance of quiet enjoyment of their estate.

The 4th Defendant filed on 15th of February, 2017 an amended Statement of Defence.

The plaintiffs/Defendants to the counter claim filed on 11th January, 2010 a Reply/Defence to counter claim.

On the 18th of May, 2010 Hussein Abbah Amin testified as PW1 and adopted his witness statement on oath filed 3rd of February, 2009 and a further and Better witness statement on oath filed on 11th of January, 2010. He tendered the following Exhibits:

Exhibit A is copy of the Offer of Statutory Right of Occupancy.

Exhibit B is copy of the Settlement of building plans fees.

Exhibit C is copy of the Conveyance of building plan approval

The full statement on oath is before the Court.

Under cross examination by 1st to 3rd Defendants, PW1 testified that:

He wouldn't know if the plot in question was ever allocated to Federal Environmental Protection Agency(hereinafter referred to as FEPA). He has visited the land in contention which is an open space within the estate, where there are some buildings there. The first time he visited the land, he went through the entrance gate of the estate and there were security men there. Initially the security men wanted to know where he was going and he told them he has a plot in the property. The name of the representative of the builder who reported to the police is Godwin who was initially refused entrance and later prevented from digging.

He's not aware that the plot's title was revoked as far back as 2008 for being swampy, because up till now he has not received any notice of revocation. It was when plaintiffs tried to pay the balance of 50% of the Certificate of Occupancy and defendant refused to accept it, that they knew something was wrong. But up till now they haven't received any written notice. Upon enquiry he was informed verbally that the land had been revoked. No reason was given to him for the revocation. The step he took to find out why it was revoked was to brief his Lawyer. He's been to the land in question about 5 times.

He would be surprised if Counsel says the land is water logged and swampy in nature. He is not aware that because of revocation due to the nature of the land, the Ministry is also giving a go ahead for replacement of the land. He is also not aware that his builder once demolished the fence to the estate.

On 19th of October, 2011 Dr. Oluwole Aneyan gave evidence on oath and testified as DW1. He adopted his witness statement on oath before the court.

Under cross examination by plaintiffs' Counsel, DW1 testified that:

There are many houses in the estate and cannot say the number of people occupying the estate as each house is occupied by a certain number of people. They have interest in that estate which he thinks is common. He has seen the revocation letter and he was told and believes his lawyer may have a copy. He cannot tell by Exhibit C that the plaintiffs had a right to develop that property. By paragraph one of the statement on Oath, he meant they were trying to enter and were prevented. One of their people entered and then others followed.

There was no building going on in the site that they instructed their security men to stop. They didn't close plaintiffs foundation. It's correct that the plaintiffs reported them to the police. He cannot recollect if he made a statement at the police station. They were invited by the police and the police DPO

informed them that the plaintiffs came to report that they were prevented from entering the estate.

Plot 1402 is within the estate because the estate is fenced. The estate was designed for FEPA as a show piece estate. It was designed not for every space to be occupied as shown in the master plan. The land in question was already allocated to Federal Environmental Protection Agency by FCDA. On the left hand outside the estate there are developed structures. He studied Environmental Science and knows a house can be built on water and it depends on what you want to achieve.

It's not correct that his argument is that the plaintiff can't build on swamp. They didn't report to the police when plaintiffs were trying to enter, they only briefed their security men not to allow in unauthorized persons.

On 5th of May, 2015 Mr. Andrew Ojobo testified as DW2. He adopted his witness statement on oath filed on 5th of November, 2009. He also adopted his further and Better statement on oath filed in 2015. He tendered the following Exhibits:

Exhibit D the Letter from FEPA Estate Residents Asso. to Ex. Sec FCTA dated 16/07/07.

Exhibit E a document titled 'file view' and dated 12/5/09.

Under cross examination, DW2 testified that:

He acquired his interest in the property in the estate during the last monetisation programme of the Federal Government and lived there. FCDA allotted the property and all the appurtenances to him. The plot 1402 mentioned belongs to the estate. They made the complaint about plot 1402 and it was revoked and they were told the allocation was done in error.

The plaintiff reported this matter to the police and he made a statement to police who invited him. It was when 1st plaintiff broke into the estate that he became aware he was laying claim to the plot on the basis that it was allocated him.

That the letter Exhibit D says the plot was allocated. They obtained Exhibit E by requesting for a file view and when the issue was getting protracted they sought for evidence. His grouse is that the place is within the estate and is water logged and is the flood plain for Aminu Kano and Parakou Crescent where the water flows to. He's aware a property can be built on water but not on flood plain.

The Director of development apologised that he was misled as per the approval of the plot. He heard that the plot was allocated to somebody, it was later that he learnt that it was to former Attorney General, whom he never met him in this matter. His title is that plot 1420 is part of plot 250, which is the original plot number. Plot 1420 was carved out of plot 250. Plot 250 was the plot number of the whole estate. That his claim before this Court is for the whole estate based on the fact that he is the Chairman of the resident's Association. His house is far away from the place, precisely two blocks away. The signatures on his statements on oath are his. He signed Exhibit D. The signature there is not the same as that on his statement on oath.

Upon re-examination by Defence Counsel, DW2 further testified that the signatures in his statement and Exhibit D were different because at the time he signed his first statement, he asked somebody to sign for him because he was not in town. The statement was signed by somebody other than himself. He was told it was permissible. The same person signed his other statement on oath. But the signature on Exhibit E is his.

On 5th of October, 2016 Engr. Bayaro O. Yahaya testified as DW3 and adopted his witness statement on oath filed on 5th of

November, 2009. He also adopted another witness statement on oath filed 5th November, 2015.

DW3 tendered Exhibit F which is a signature specimen document.

Under cross examination, DW3 testified that:

He lives in one of the 14 duplexes (C1) in the estate. He does not know plot 1420 belonging to the plaintiff. The duplex he occupies is the 2nd from the gate. It was FCDA that allocated that property to him. He is aware the plaintiff reported a case of trespass to the police. He was invited by the police. He knows there is a problem but he does not know plot 1420.

They heard there was somebody who invaded the estate and was claiming a flood prone area of the estate. Their security refused to grant him access and there was a pandemonium and it was on that basis the police was invited. He is not aware the 1st plaintiff obtained a building approval over Plot 1421. As an Engineer, he's aware that a property can be built on top of water.

In his statement on oath he stated that his gatemen were assaulted. He wasn't there when the assault started, but while it was going on, he went there. The alleged assault on the gatemen was reported to the police. He cannot remember the date it was reported. It wasn't him that reported the matter to the police.

He is not aware that plaintiff dug a foundation on plot 1420. His name is on Exhibit D and his alternate signature is on it. The signature on his statement on oath are also his signature. He said he doesn't know plot 1420. He admitted that there was a problem but he couldn't remember the plot number as shown. It's correct he said in his statement that plot 1420 has been revoked. He knows a piece of land was speculated to have been given to someone. They wrote a letter that someone was encroaching on a flood plain hence the parcel of land was revoked. He didn't see the notice of revocation. He is not

aware the same parcel of land was re-allocated to the then Minister of Justice, Mohammed Adoke.

The 4th and 5th defendants abandoned their statement of defence by not leading any evidence in respect thereof.

At the close of trial, counsel on behalf of the plaintiffs, 4th defendant and 5th defendant filed, served and adopted their final written addresses on 5th of November, 2019.

The plaintiffs in their final written address filed on 5th February, 2019 formulated four issues for determination:

1. Whether 1st Plaintiffs (sic) proved her rights /interest over plot 1420, Cadastral Zone A07, Wuse 11, Abuja, to be entitled to reliefs /claim sought.
2. Whether the 1st - 3rd Defendants have the necessary locus standi and cause of action in law to maintain their counter-claim over plot 1420, Cadastral Zone A07, Wuse 11, Abuja. AND/OR whether the 1st - 3rd Defendants proved their counter-claim.
3. Whether in the face of joinder of Mohammed Bello Adoke upon application of 4th Defendant (Federal Capital Territory Authority (FCDA)) on the premise that same - plot 1420, Cadastral Zone A07, Wuse 11, Abuja - was re-allocated to Mohammed Bello Adoke, did not destroy the defence/fact (if any) that the plot of land was revoked for being swampy and water logged.
4. Whether it can seriously be argued in the circumstance that plot 1420, Cadastral Zone A07, Wuse 11, Abuja, was properly revoked in law.

The plaintiffs' counsel full submissions in respect of the issues he canvassed for determination are before the court and would be referred to in the course of this judgement where found necessary.

In conclusion, he urged the Court to grant all the reliefs of the plaintiffs and dismiss the counter - claim of the 1st - 3rd Defendants with substantial cost.

The 4th and 5th Defendants in their final written address filed in January, 2019 raised 3 issues for determination:

1. Whether the suit discloses any reasonable cause of action against the 4th and 5th defendants.
2. Whether the Court is bound to attach any weight to a document not pleaded.
3. Whether from the circumstances of the case and evidence tendered the plaintiffs are entitled to the reliefs sought.

The 4th and 5th defendants' counsel's submissions in respect of their formulated issues are before the court and would be particularly referred to when the need arises in the course of this judgement.

In conclusion, he urged the Court to dismiss the suit of the plaintiffs as lacking in merit and to hold that the plaintiff has no genuine grievance against the 4th and 5th defendants.

I have considered the case of the plaintiff before the court, the defence of the defendants and the written and oral addresses of counsel on behalf of parties.

And I am of the view that the main issues arising for determination are:

1. Whether there's a cause of action disclosed against the 4th and 5th defendants in the statement of claim of the plaintiffs.
2. Whether Exhibits A, B and C were properly placed in evidence and whether they can be relied on for judgement in this case.

3. Whether the plaintiffs have successfully established the act of trespass against the defendants.
4. Whether the plaintiffs are entitled to the reliefs they seek in their statement of claim.
5. Whether the 1st – 3rd defendants have the locus standi to make their counter claim before the court .
6. And whether the defendant/counter claimants are entitled to the reliefs in their counter claim.

Before determination of these highlighted issues, it is pertinent to briefly recount the history of this case and clarify a preliminary issue that has become necessary in view of the further final address of plaintiff's counsel before the court.

This suit was instituted in 2009 and the statement of claim finally relied on by plaintiff was further amended in 2014 for the above stated reliefs. The 1st 2nd and 3rd defendants responded via a statement of defence and counter claim which has been recounted above. The 4th defendant and the 5th defendant who was subsequently joined, filed statement of defence. Order for recall of witnesses was obtained at a point. Parties also in the course of the proceedings explored settlement out of court, which was later reported to have failed. Plaintiff's application for joinder of a new defendant was granted on 6th July, 2017. After the evidence of the 1st to 3rd defendants, the 4th and 5th defendants failed to call their witness(es) after several adjournments at their instance. Since it appeared that they had abandoned their statement of defence their case was foreclosed. Both the plaintiffs and 4th and 5th defendants finally adopted their written addresses and the matter was adjourned to 22nd January 2020 for judgement. The 1st, 2nd and 3rd defendants did not present any address after their evidence.

In the course of consideration of the evidence before the court, the court observed that certain uncertified photocopies of Public documents were tendered in evidence. Since this issue was not raised in the final address of any of the parties, they were therefore invited to address court on the propriety and legal justification for

reliance on such documents admitted by consent of parties in the final judgement. In this instance specifically the consent of the 1st to 3rd defendants counsel, who are ordinarily not in custody of the originals.

At this point the plaintiff sought for an adjournment which was granted for the said further address. The plaintiff's counsel returned for the further address on the 24th January 2020. He submitted that a public document not certified being a secondary evidence cannot be admitted by consent of parties. He referred to Section 91(C) of the Evidence Act 2011. He opined further that where the document is an original however, the law is that it is admissible and in such a case, it doesn't require any certification. He relied on KASSIM V. THE STATE (2018) 4 NWLR PT. 1608 PG. 20 @ 47 Paras B-D and ANAGBADO V. FAROUK (2019) 1 NWLRPT. 1653 @ PG. 292 @ 306. That in any case they tendered originals and do not require any further certification.

In the light of the fact that counsel submitted that they tendered originals, and being that Exhibits A,B & C are photocopies, the court for purpose of clarity inquired from the plaintiff's counsel where the originals of the said Exhibits were. The plaintiff's counsel responded that they tendered same on the 18th May 2010.

It is imperative therefore to observe that on the said 18th May 2010 the plaintiff upon consent of the 1st, 2nd and 3rd defendant's counsel tendered said documents in evidence which were marked Exhibit A, B and C. It became necessary in the circumstance and in view of the submission of learned plaintiff's counsel, to peruse the case file to see whether his submission of having tendered original documents was preceded by a requisite search of the case file. There's nothing in the records of the case file to indicate any such application for search. And neither did the plaintiff's counsel at anytime inform the court that it searched the case file.

Ordinarily, one would have expected that the court, having stated that uncertified photocopies were tendered, the plaintiffs' counsel would take steps to verify this, even if he believed he tendered originals on behalf of the plaintiffs. Except of course, unless they

considered such verification to be unnecessary for their case at that stage.

One thing is clear from the records of the court, and that is, Exhibits A, B and C are uncertified photocopies of Offer of Statutory Right of Occupancy, Settlement of Building Plan Approval and Conveyance of Building Plan Approval respectively.

And for further clarification of the documents tendered on said 18th May 2010 and circumstance of admissibility of same I would reproduce hereunder an excerpt of the said court proceedings:

PW1

“ In paragraph 6 of my statement I referred to statutory documents of property in question. I can identify these documents if seen. These are the documents I referred to”.

LD CC:

“We seek to tender these documents in evidence and agree with the defence counsel to submit photocopies.”

DF CC:

“No objection”.

COURT:

“The Offer of Statutory Right of occupancy, settlement of building plan fees and Conveyance of building plan approval are hereby admitted in evidence and upon agreement of parties photocopies of same tendered are hereby accordingly marked Exhibits A, B and C respectively”.

PW1:

"I want the court to grant my reliefs in my amended statement of claim. With regard to 1st to 3rd defendants claim it's all totally untrue. I want the court to dismiss the counter claim".

LD CC:

"That would be all."

In the light of the above excerpt of record of proceedings and the authorities referred to by plaintiff's counsel in his further address, it is unnecessary to go on and on about this. The circumstance giving rise to admissibility of Exhibits A, B & C is very clear. The plaintiffs applied to tender photocopies, and those same photocopies were admitted and marked. And the position of the law is very clear on admissibility of public documents in evidence. This preliminary issue having been sorted, the court would proceed to resolve the issues for determination earlier highlighted.

The first issue for determination highlighted above is whether there's a cause of action disclosed against the 4th and 5th defendants in the statement of claim by the plaintiffs.

Cause of action in a suit is the aggregate of facts, which delineate and constitute a cause of institution of a case. In the absence of a reasonable cause of action or any cause of action for that matter the plaintiff would have no locus standi. See

GALADINMA OF ILORIN & ORS V. AG. KWARA STATE & ORS (2004) LPELR- 12626 (CA) PG. 15 paras B-C

UWAZURUONYE V. THE GOVERNOR OF IMO STATE & ORS (2012) LPELR- 20604(SC) PG. 34 paras D-E per RHODES-VIVOUR JSC

And

SOCIETY BIC S.A & ORS V. CHARZIN INDUSTRIES LTD (2014) LPELR-2256 (SC) Pg. 34-35 para E-A per NGWUTA JSC:

“The term “cause of action” is judicially defined as denoting every fact (though not every piece of evidence) which it would be necessary for the plaintiff to prove, if transversed, to support his right to the judgment of the Court. It is any act on the part of the defendant which gives plaintiff a cause to complain. See Lasisi Fadare & Ors. v. A-G of Oyo State (1982) 4 SC 1 at 7; Read v. Brown (1988) 22 QBD 128 at 131, Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1. It is different from the evidence or pieces of evidence necessary to sustain the claim. It is the entire set of circumstances giving right to enforceable claim. See Odutan v. Akibu (2000) 7 SC (Pt. 11) 106”.

Where it is shown that there's no cause of action disclosed by the plaintiff's claim, the action terminates in limine against the defendant. See

ONOGWU & ORS V. BENUE STATE CIVIL SERVICE COMMISSION & ANOR (2012) LPELR-8604(CA) PG. 28 Para D-E
per GUMEL JCA

And

OGBIMI V. OLOLO & ORS (1993) LPELR-2280 (SC) PG. 11 para E per KARIBI-WHYTE, JSC

As earlier pointed out, a claim not supported by a reasonable cause of action is bound to fail. See also

AG. FEDERATION V. AG. OF ABIA STATE (2001) LPELR-24862 (SC) PG. 58-59 Paras G-C.

The 4th and 5th defendants have argued in their final address that there's no cause of action against them in this suit.

I have therefore gone through the entire pleadings of the plaintiffs. The 4th and 5th defendants were only mentioned in three paragraphs of the said statement of claim set out for better understanding hereunder as follows:

Paragraph 5:

“The 4th defendant is the Authority statutorily charged with land allocation, management and administration in Abuja.”

Paragraph 6:

“The 5th defendant is the Honourable Minister of the Federal Capital Territory, Abuja, being the public officer/authority statutorily in charge of issuance of Certificate of Occupancy over lands in the Federal Capital Territory, Abuja.”

Paragraph 11:

“On 31st day of July 2008, the 2nd plaintiff was compelled to report the matter to the police at police station in Maitama, Abuja. And also copied the 4th defendant through its Development Control Department. (The plaintiff shall found on this letter at the trial).”

None of these paragraphs reveals any alleged wrongdoing or omission on the part of the 4th and 5th defendants. No facts were stated about the conduct of the 4th and 5th defendants culminating in the prayers for the reliefs against them for order of specific performance, perpetual injunction, damages, provision of alternative plot of land and cost of this suit. Clearly, there are no facts in the statement of claim showing the circumstances nor facts giving rise to the claims against the 4th and 5th defendants in the 2nd Further Amended Statement of Claim.

Thus the plaintiffs having failed to disclose any cause of action against the 4th and 5th defendants cannot maintain their claim against them. Just like the learned counsel for 4th and 5th defendant has stated, you cannot put something on nothing and expect it to stand. The case of the plaintiffs against the 4th and 5th defendants cannot stand.

Suffice to say that this issue one is resolved against the plaintiff in favour of the 4th and 5th defendants against whom no cause of action has been revealed.

The second issue for determination is whether Exhibits A, B and C were properly placed in evidence and whether they can be relied on for judgement in this case.

Admissibility of public documents in evidence is statutorily regulated. It is settled law that uncertified photocopy of a public document is not admissible in evidence. Outside the original only a certified copy of a public document is admissible in evidence. In addition to KASSIM V. THE STATE (2018) 4 NWLR PT. 1608 PG. 20 @ 47 Paras B-D and ANAGBADO V. FAROUK (2019) 1 NWLRPT. 1653 @ PG. 292 @ 306. cited by counsel, I would, for emphasis refer also to:

OYE V. ALIOKE & ORS (2017) LPELR-43374 PG. 10 Paras B-D
per ABOKI JCA.

And

MRS. EDNA IMUETIYAN OSAGHAE V. MRS ESTHER
AMADASUN (2014)LPELR-23332 (CA) PG. 13 Paras A-C

Where his lordship OGUNWUMIJU, JCA in the same vein reiterated as follows:

“It is trite that where documents are inadmissible by law in any event, consent of the adverse party to its admissibility confers no probative value to it.”

In the light of the above cited authorities which are grounded on the Evidence Act and particularly SECTIONS 89(E) & (F), 90(C), 102 and 104 of the EVIDENCE ACT 2011, I find that Exhibits A, B and C, albeit admitted upon consent of both counsel, cannot be relied upon by this court as they are inadmissible evidence. My perspective in this regard is further fortified by the court’s reasoning

**in ROSEHILL LTD V. GTB PLC (2016) LPELR- 41665 (CA) PG. 24
Paras B-C.**

Thus Exhibits A, B and C would not be relied upon in the course of this judgement. Issue two is therefore resolved against the plaintiffs in favour of the defendants.

Issue three is whether the plaintiffs have successfully established the act of trespass into their land against the defendants. The plaintiff's case is that the defendants trespassed into their plot, stopped the construction work, closed up the already dug foundation and physically chased out NEPA/PHCN staff that came to relocate electricity line. The defendants on the other hand deny these allegations of the plaintiffs and the DW1 under cross-examination by plaintiff's counsel reiterated that the plaintiffs were only prevented from entering the FEPA estate. That the plot in question is within their estate and allocation of same to plaintiffs had been revoked by the FCDA who had already previously allocated same to Federal Environmental Protection Agency.

Trespass in law is an unlawful act committed against the person or property of another especially wrongful entry on another's real property. See BLACK'S LAW DICTIONARY which goes further to define trespass to land as:

'A person's unlawful entry on another's land that is visibly enclosed. This sort consist of doing any of the following without lawful justification. 1.) entering on to land in the possession of another, 2.) remaining on the land, or 3.) placing or projecting any object on it.'

Judicial interpretation has also been given to this term in several decisions of the Apex court. See

UMESIE & ORS V. ONUAGULUCHI & ORS (1995) LPELR-3368(SC)Pg. 31-32, paras E-A per ADIO JSC

"Trespass is an unjustifiable interference upon a parcel of land in possession of another. See: Ogunbiyi v. Adewumi (1988) 5

NWLR (Pt. 93) 215 at P.221. It is, therefore, the duty of a plaintiff suing for damages for trespass to prove that he was in exclusive possession of the land in dispute at the time of the alleged trespass. See; Adelaja v. Fanoiki (1990) 2 NWLR (Pt. 131) 137.”

And in order to successfully maintain an action for trespass, the plaintiff is expected to have or prove his possessory title or right to the land to which his claim for damages for trespass relates. See

ENYIOKO & ORS V. ONYEMA & ORS (2017) LPELR- 42623 (CA)
PG. 22-23 per Oredola JCA

EME NDUKWE V. UMA ACHA & ORS (1998) LPELR – 1977 (SC)
PG. 12 Paras F-G

The plaintiffs in the instant case have not successfully placed any valid documents of title before this court nor have they led evidence establishing exclusive possession. There's nothing outside the testimony of the PW1 that the 1st plaintiff owned the plot. The defendants have denied this and gone further to assert that the said plot is within the Estate allocated to FEPA where their houses are located. The PW1 testified under cross examination confirming that the plot in question is an open space within the said FEPA estate and that he has visited the plot. That the first time he went to the plot he was interrogated by the security men at the gate of the estate who wanted to know where he was going and he told them he has a plot in the property. He stated further that his builder was initially refused entry to the estate, hence he reported to the police.

The simple quandary that arises for resolution here is firstly, whether the plaintiffs have established exclusive possession over the plot in question and secondly, whether the right of exclusive possession if present has been breached by the defendants.

The defendants contend that the plot in question is a swampy water plain within their estate. And that allocation of same to the plaintiffs was done in error and has since been withdrawn. While the plaintiffs do not dispute that the plot is within the estate of the

defendants they however insist that the 1st plaintiff's right of occupancy remains intact. And that they therefore have been in possession of said plot.

From a glean of attempts at definitions of the word possession in several authorities and dictionaries it would appear to mean the exercise of dominion over property, that is, the right under which one may exercise control over something to the exclusion of all others. I refer to:

BLACKS LAW DICTIONARY 10TH EDITION

And

**MOSES v. ONU & ANOR(2013) LPELR-20348(CA) PG. 49-50
Para G-A.**

EKRETSU & ANOR v. OYOBEBERE & ORS (1992) LPELR-1099(SC) PG. 27-28 Para E-C

And BLACKS LAW DICTIONARY has also defined the word exclusive in legal parlance as

'Limited to a particular person, group, entity, or thing'.

See also for guidance **ABUBAKAR & ORS V. YARADUA & ORS (2008) LPELR-51 (SC) Pg. 40-41, Paras. F-B** where the supreme court per Katsina -Alu, JSC. reiterated on the word 'exclusion' as follows:

"The word "exclusion" stands on its own and has been defined to mean "keeping out, barring, prohibited, eliminated, ruled out" – Buhari V. INEC(2008) 4 NWLR (PT. 1078) 546 @ 646".

The undisputed evidence before the court is that the developer, 2nd plaintiff's personnel was prevented from entering the estate where the plot is situated. The 1st plaintiff testified that he had been to the plot several times. The plaintiffs also led evidence to the effect that they had already begun construction at the site which was stopped

and derailed by the defendants who covered same up and prevented their workers from working. However, this was outrightly denied by the defendants and there's nothing before this court to support the evidence of the PW1 in this regard. There are no pictures showing the state of the site or plot ante litem. The plaintiffs also called no other witness to attest to the state of work or construction already done on the plot to further support their alleged acts of possession. Considering that the defendants deny plaintiffs' ownership or possession of the plot, it would have been helpful to their claim for trespass, to have provided further particulars of exclusive possession. The act of trespass cannot be maintained in law without first establishing exclusive possession. The 1st to 3rd defendants denied any trespass and posit that all they did was to prevent the plaintiffs from forcing their way into the FEPA estate. This can be gleaned from the evidence of DW1.

The plaintiff in their reply and evidence in chief did not specifically deny this averment that they tried to force their way on defendants estate to enter the plot in question nor deny that the defendants ever at any time prevented them from entering as alleged in defendants paragraph 7 & 8 of their statement of defence and Counter Claim and PW1'S evidence. They only concentrated on denying in their own paragraphs 5 of Reply/Defence to counterclaim that they did not trespass into the defendants estate and beat up the security men as averred in paragraph 7 of counter claim. As a matter of fact they admitted that the defendants prevented the plaintiff's workers from entering the estate.

It is well settled that a denial of pleadings must be specific and unequivocal to amount to a proper traverse or denial of specific averments of the pleadings of the adverse party. See

MURPHIS BURGER LTD & ANOR v. THOMAS & ORS (2019) LPELR-47319(CA) Per OBASEKI-ADEJUMO, J.C.A Pp. 31-33, paras. F-E where the court of Appeal held that:

"... In BAUCHI STATE HOUSE OF ASSEMBLY & ORS v GUYABA (2017) LPELR (CA) on whether general denial is sufficient traverse of specific averment; this Court held that; "A

proper traverse must be a specific denial or specific admission. See Lewis Peat (NRL) v. Akhimien (1976) 1 ENR 80, Akintola Solano (1986) 2 NWLR (Pt. 598). It is trite law that averments which are general denials, in situations where specific are required, do not amount to a proper traverse of the case of the other party and they rather amount to an admission of the case of the other party. For a traverse in pleadings to amount to a denial, it must be explicit; unequivocal and should not leave any one in doubt as to the intention sought to be portrayed. See Union Bank of Nigeria PLC v Chimaeze (2014) 9 NWLR (Pt. 1411) 166.”

Where the evidence before the court is not sufficient to establish exclusive possession, then the court has no option but to make the reasonable inference that the plaintiffs were not in active nor exclusive possession of the plot. For support on such finding, I rely on:

JOSEPH LADIPO & ORS v. WILLIAM AJANI & ANOR(1997) LPELR-1736(SC) PG. 14 Para C-E

“It is trite law that the claim for trespass and injunction postulates that the plaintiff is in possession. And possession in law means exclusive possession. But whether or not the act proved is sufficient to establish possession is a question of fact to be decided on the merits of each particular case. Cultivation of a piece of land, erection of a building or fence thereon, demarcation of land with pegs or beacons are all evidence of possession (see for example Mogaji v. Cadbury (1972) 2 S.C. 97; Alatishe v. Sanyaolu (1964) 1 All NLR (Pt.1) 398; Wuta Ofei v. Danquah (1961) 3 AER 596.”

And

HASSAN v. VIXEN ENT (NIG) LTD & ANOR (2015) LPELR-40357(CA) Per SANKEY ,J.C.A (Pp. 45-46, paras. E-B)

“On whom lies the burden of proof in the case of trespass to land It is the duty of the plaintiff to prove conclusively that,

before the alleged trespass, he was in exclusive possession. Where he fails to discharge this onus of proof, he has failed to establish his claim and therefore it must be dismissed. Besides, the law is trite that he who asserts must prove. In addition, the burden of proof in civil cases is on him who will fail if no evidence at all on either side is adduced. See Sections 131, 132 and 133 of the Evidence Act, 2011; Egharevba V Osagie (2009) LPELR-1044(SC); Noibi V Fikolati (1987) LPELR-2064(SC); Okoye V Kpajie (1972) LPELR-2508(SC)."

Per SANKEY ,J.C.A (Pp. 45-46, paras. E-B)

Ostensibly, the effect of a plaintiff's failure to prove ownership and/or exclusive possession of the land in dispute under the circumstance is that their claim for trespass cannot be sustained. See

ONOVO & ORS v. MBA & ORS (2014) LPELR-23035(SC) PG. 62 paras C-D Per OGUNBIYI, J.S.C

"I repeat again that the consequential effect of the plaintiffs' failure to prove ownership and/or exclusive possession of the land in dispute is that their claim must fail as rightly found by both lower Courts."

In order to prove exclusive possession therefore, a claimant must leadconvincing, evidence showing acts and circumstances of exclusive possession.

It does appear to me that the plaintiffs have not been able to sufficiently place before the court credible evidence that establishes exclusive possession at the time of institution of this action. Based on the totality of the credible evidence placed before this court by both parties, I find the evidence of the defendants particularly via DWI in respect of what transpired before litigation more believable and the balance of available evidence preponderates more in favour of the defendants.To my mind and upon careful consideration of the evidence of parties as presented before the

court, I find it difficult to believe plaintiffs that they own and were in exclusive possession of the said plot 1420. On the significance of proof of exclusive possession to sustain a claim in trespass and acts that qualify as trespass, I again refer to the authorities cited herein before above. See

ONOVO & ORS v. MBA & ORS (Supra)

JOSEPH LADIPO & ORS v. WILLIAM AJANI & ANOR(Supra)

The court cannot be expected to make a case for a party where none exist nor go on a voyage of discovery which would likely lead to speculation and conjecture unsupported by credible evidence before the court. It is only the facts and circumstances of a case as presented by the parties that can determine whether acts of trespass have been committed by the defendant. And where no act of interference has been positively shown as it is in this instance, the court would have to find that no trespass has been occasioned against the plaintiffs. Thus, the plaintiffs having failed to prove ownership have also failed to prove, not only exclusive possession but that there was any act of trespass by the defendants on the plot.

In the circumstance therefore issue number three is resolved against the plaintiffs in favour of the defendants.

Issue four is whether the plaintiffs are entitled to the reliefs they seek in their statement of claim.

The reliefs sought in the statement of claim would be considered seriatim and resolved accordingly.

The first relief is a declaration that the 1st plaintiff is the beneficial owner of the said plot number 1420.

It is well settled that there are five main ways of proving ownership of land in law. These five methods have been set out in several court decisions where this principle has been considered. I refer to the locus classicus on this:

IDUNDUN & ORS V. OKUMAGBA (1976) LPELR – 1431 (SC) particularly @ PG. 23 -26 per FATAI WILLIAMS JSC

And

FRANCIS O. IKHUMETSE V. AKENZUA ERAGBE (2015) LPELR-25684(CA) PG. 17-18 Paras B-A per SAULAWA JCA

See also

I.A.D. (NIG) LTD v. SAMPARACO (NIG) LTD (2019) LPELR-47137(CA)PG. 11-12 Para E.

And

CHIEF JAMES ADEBAYO OYEWUSI & ORS v. OBA SUNDAY OLAGBAMI & ORS (2018) LPELR-44906(SC) PG. 28 para C-G.

Where the Supreme Court reiterated as follows:

“In a claim for declaration of title to land, the claimant may prove his case in any of the following ways:

- 1. By traditional evidence;*
- 2. By production of documents of title duly authenticated and executed.*
- 3. By acts of ownership extending over a sufficient length of time numerous and positive enough as to warrant the inference of true ownership.*
- 4. By acts of long possession and enjoyment.*
- 5. By acts of possession of connected or adjacent land in circumstances rendering it probable that the owner of such adjacent or connected land would in addition be the owner of the land in dispute.*

See: Idundun vs Okumagba (supra); Nkado vs Obiano (1997) 5 SCNJ 33 @ 47; Owhonda Vs Ekpechi(2003) 9 11 SCNJ 1 @ 6 .”

The plaintiffs have not led credible evidence in respect of any of these five methods in support of their case. Documents of title were referred to in the statement of claim however the said documents haven't been duly placed before this court to substantiate their averments.

This claim being for declaration of title to land ought to be proved on the merit and to the hilt. It is well settled that grant of declaratory reliefs must be on the strength of the claimant's evidence before the court. The law is also settled that a declaratory relief is not granted as a matter of course or on admission of the other party. It is a discretionary remedy which can only be granted upon cogent, credible and satisfactory evidence being placed before the Court.

It is also settled that a party seeking a declaratory relief must succeed on the strength of his own case and not on the weakness of the defendants case.

See

PCN v. LAMLEX (PHARMACY) (NIG) LTD & ORS(2018) LPELR-44686(CA) PG. 25-26 Para E-C

And

KWAJAFFA & ORS. V. B. O. N. LTD. (2004) 13 NWLR (PT. 889) 146 AT 172 (D-E).

MAJA V. SAMOURIS (2002) 7 NWLR (PT. 765) 78.

Suffice to say that the plaintiffs have failed to prove their entitlement to the claim for declaration as the beneficial owner of the plot 1402. Same therefore cannot succeed.

The fate of the second relief is subsumed in the resolution of main issue number one, that there's no cause of action shown against the 4th and 5th defendants in this case. Thus as earlier canvassed no action can be successfully made out against them in this suit

The third relief is for an order of injunction against the defendants. Clearly the plaintiffs have also failed to establish entitlement to this relief as the prayer for declaration of ownership in their favour has failed. The grant of an injunctive order is unconscionable apropos of claimant's failure to prove legal title or possessory right to the plot of land. See

AKU v. ANYEBE & ORS (1994) LPELR-14113(CA)PG.13-14 para F-D.

“ It should be noted that the essence of the grant of injunction is to protect the existing legal right or recognisable right of a person from unlawful invasion by another; Kotoye v C.B.N . (1989) 1 NWLR (Pt. 98) 419. The claim for an injunction is won or lost on the basis of the existence of competing legal rights. Thus the Court has no power to grant an injunction where the applicant has not established a recognisable legal right. See Obeya Memorial Hospital v. Attorney General for the Federation (1987) 3 NWLR (Pt.60) 325 and Akapo v. Hakeem Habeeb (1992) 6 NWLR (Pt.247) 266 . An application for injunction will only be granted to support a legal right, it therefore follows that for a party to succeed, he must establish that he has a legal right which is threatened. Ojukwu v. Governor of Lagos State(1986) 3 NWLR (Pt.26) 39 .”

There is no basis established for the grant of an injunctive order. The claim in respect thereof cannot succeed.

The fourth claim is for special and general damages. The same reasoning in respect of the claim for perpetual injunction also applies in this instance for award of damages. Entitlement to same hasn't been proven, it cannot therefore be granted.

The same also goes for the alternative claim, in view of the finding that there's no cause of action against the 4th and 5th defendants and that the plaintiffs have not successfully established entitlement to the declaratory relief for ownership and trespass as claimed. And no credible evidence has been led to substantiate the claim for cost of this action a fortiori when the plaintiffs have failed to prove entitlement to their substantive claims. These alternative prayers also cannot be granted in the circumstance.

Having considered and resolved the claim of the plaintiff before the court, the next step is to proceed to consider the fifth and sixth issues for determination which will be considered simultaneously. They are whether the 1st – 3rd defendants have the local standi to make their counter claim before the court and whether the defendant/counter claimants are entitled to the reliefs in their counter claim.

The defendants filed a counter claim for the reliefs as earlier stated. The plaintiffs however have submitted in their written address that the defendants do not have the locus standi to make the claims in their counter claim. That they are neither claiming ownership of the plot nor asserting that the plot was allocated to them. That they also failed to prove their allegation that plaintiffs' title to the plot was revoked.

The first issue to resolve is whether the defendants have the locus standi to make the counter claim before the court.

Locus standi simply put means 'standing or capacity to sue'. The plaintiffs also contend that there are other residents occupying the estate other than the 1st to 3rd defendants who are suing the plaintiffs in their individual capacities rather than in a representative capacity. The question to be answered here is whether the 1st to 3rd defendants have demonstrated to this court that they have the requisite locus standi for their counter claim in this action.

It is settled law that in order to show requisite locus standi the claimant must show sufficient interest in the claims. And the question of sufficient interest usually arises from the particular facts

and circumstance of each case. This position of the law has been illustrated in several decided cases such as:

FAWEHINMI v. PRESIDENT OF FRN & ORS (2007) LPELR-9005(CA) PG. 40-44 Para D-A.

SENATOR ADESANYA V. THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA PG. 49 Para B-F.

The statement of claim, which in this instance is represented by the counter claim will be the determinant of whether or not the claimants have shown sufficient interest in the case articulated in their counter claim. See

OWODUNNI V. REGISTERED TRUSTEES OF CCC & ORS. (2000) LPELR-2852 (SC) PG.53, paras. B-F.

SENATOR ADESANYA V. THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA PG. 49 Para B - F.

The counter claimants have averred inter alia in their pleadings that the plaintiffs/defendants to counter claim's statutory right of occupancy in respect of the plot 1420 was withdrawn as a result of the swampy and water logged nature of the plot, before this action was instituted. They averred further that the estate wherein the said plot 1420 is situated was allocated to FEPA in 1990 and known as plot 250. That they were staff of FEPA at the relevant time pursuant to which they acquired their properties in the estate. And that building a structure on the plot 1420 will result in flooding of the whole area as the plot of land served as a water channel that takes away water from their estate and around Aminu Kano Crescent. They also assert further that the plaintiffs trespassed into their estate, beat up their security men on duty and took them to the police. Their evidence is to the effect that there are other occupiers in the estate who are not parties in this suit. It is also on this basis that the defendants to counter claim are objecting that they have no locus to institute this counter claim without joining the other occupiers in the estate or suing in a representative capacity on their behalf.

The law is well settled that in order to establish locus standi in a matter the claimant must show sufficient interest and that his rights have been infringed upon or likely to be infringed upon. See

ALHAJI USMAN GARKI & ORS v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS(2013) LPELR-20488(CA) PG. 18-20 Para B-E.

Suffice to say in my humble view that the counter claim shows that the counter claimants have sufficient interest and that breach or likely breach of their civil rights is imminent by actions of the plaintiff/defendants to counter claim. I am fortified in this view by the cases referred to above on this issue. Be that as it may, whether or not the said interest shown is sufficient to sustain the claim is another matter which will be determined herein after.

The defendants have counter claimed against the plaintiffs for declaration that the plaintiffs are not the beneficial owners of plot 1420, for perpetual injunction and special damages of N50million for aggravated trespass by the plaintiffs.

The plaintiffs have rightly observed that the counter claimants are not claiming ownership of the plot in their counter claim. They haven't placed before this court any document of title nor any valid notice of revocation issued to them nor the plaintiffs from the requisite authority. Without much ado I find that their first prayer is unsustainable as it lacks any merit nor substance for proof of same and it is no wonder the plaintiffs contend that the defendants have no cause of action against them. The law is trite that he who asserts must prove. See

COL. MOHAMMED SAMBO DASUKI (RTD) v. FEDERAL REPUBLIC OF NIGERIA & ORS(2018) LPELR-43897(SC) PG. 13 Para D-F

HON. RAMBI IBRAHIM AYALA v. HON. RABI DANIEL & ORS (2019) LPELR-47184(CA) PG. 34 Para A-D.

Being a declaratory relief, it must be proved on the merit and on its own strength and not even on the weakness of the defence. See

ACHIR & ANOR v. CHABO & ORS (2019) LPELR-48763(CA) PG.26-28 Para A-E

KUBURI INTL TRADING CO. LTD & ANOR v. MUSTI & ANOR (2018) LPELR-44004(CA) PG. 29-32 Para G-C

The first counter claim would therefore have to fail. The other two reliefs sought in the counter claim for perpetual injunction and aggravated damages at this point have no legs to stand on. And it is trite that you cannot put something on nothing. Unfortunately for the counter claimants they have failed to back up their claims with credible evidence. And the law is well settled that he who asserts must prove. See cases earlier referred to above on this principle.

In the circumstance therefore the counter claimants have failed to discharge the onus of proof placed upon them by law to establish entitlement to the reliefs claimed. The entire counter claim of the defendants therefore fail.

In the final analysis therefore, I hold that having found the 4th and 5th defendants not to be proper parties for failure of establishment of any cause of action against them, they are not proper parties before this court and their names are hereby struck out as parties. The plaintiffs and counter claimants have not succeeded in proving their respective cases before this court, they would therefore all have to fail.

Consequently, and in the light of the foregoing the entire claims of the plaintiffs and defendants/counter claimants are hereby accordingly dismissed.

Signed

Honourable Judge.

Appearance:

Nwachukwu Obinna Esq for Plaintiffs.
Alex Marama Esq. for 1st, 2nd and 3rd defendants.
E. Constance Mrs. for the 4th and 5th Defendants.