

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONUKALU&GODSPOWEREBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/1510/2015

BETWEEN:

- 1. MRS. UGA HELEN ERIBA**
- 2. DR.C.I. ALILE.....CLAIMANTS**

VS

- 1. THE MINISTER, FEDERAL CAPITAL TERRITORY ADMINISTRATION**
- 2. EGAERIBA**
- 3. HAJIYA RABI ISHIAKU.....DEFENDANTS**

JUDGMENT

This action is in respect of a Plot of land known as plot No. 27 Phase 1 Residential Layout 11, Gwagwalada, FCT. It is the Claimants case that the 1st Claimant was the original allottee of the land by virtue of Certificate of Occupancy (Customary) number FACT/GAC/RLA/BN. 108 dated 30th March, 1996 issued by the 4th Defendant under the authority and approval of the 1st Defendant. That consequent upon the re-certification, and submission of the Claimants title documents to the 1st Defendant, the 1st Defendant through its agencies issued the Claimants acknowledgement for re-certification, settlement of building Plan, fees and an approval vide a letter dated 25/2/2010, titled "Conveyance of Building Plan Approval. That there

was no Notice of Revocation of the Title to the Plot allocation to the 1st Claimant. That sometime on the 27/2/2015, the Claimant through one Gani A. Ojagbohunmi on routine visit to the Plot, found on the land a trespasser who claimed to be owner of the land, with another set of documents. The said Writ of Summons was Amended pursuant to the leave of court granted on 28/3/2017. Consequent upon this, the Claimants commenced this action, claiming the following reliefs:-

- (1) A Declaration that the 1st Plaintiff is the allottee and holder of the title to Plot No. 27, phase 1 Residential Layout 11, Gwagwalada, Federal Capital Territory measuring approximately 1016.436 square metres and covered by Certificate of Occupancy No. FACT/GAC/RLA/BN. 108 dated 30th March, 1996 and registered as No. 419 at page 20 of Volume 2 in the Customary Certificates of Occupancy Registry in the Land Registry Office at Gwagwalada Area Council, Gwagwalada FCT.
- (2) An Order of this Hon. Court granting vacate possession of Plot No. 27, Phase 1 Residential Layout II, Gwagwalada, Federal Capital Territory measuring approximately 1016.4536 square metres and covered by Certificate of Occupancy No. FACT/GAC/RLA/BN.108 dated 30th March, 1996 to the 1st Plaintiff.
- (3) An Order of Perpetual Injunction restraining the Defendants jointly and severally either by themselves, their servants,

agents privies or assigns however described from trespassing on or interfering with the title of the Plaintiff to the said Plot of land known as Plot No. 27, Phase 1 Residential Layout II, Gwagwalada, Federal Capital Territory measuring approximately 1016.436 square metres and covered by Certificate of Occupancy No. FACT/GAC/RLA/BN.108 dated 30th March, 1996 allocated to the 1st Plaintiff.

- (4) General damages of Two Million Naira only (₦2,000,000.00) against the Defendants jointly and severally.

The Defendants were duly served with the processes. The 1st Defendant was represented by counsel, C.O. Agashieze Esq, but did not file any Statement of Defence, but cross-examine the Claimants witness – PW1. The 2nd – 4th Defendants though served with all processes including Hearing Notices failed to put up appearance, nor represented by counsel.

The Claimant sole witness was Mr. GaniOjagbohunmi, testified as PW1, on 21/6/2018 and adopted his Witness Statement on Oath. The said depositions are in line with the Claimant's Amended Statement of Claim dated 24/4/2017.

The following documents were tendered and admitted in evidence in course of the Evidence -in-Chief.

- (1) Original Copy of Certificate of Occupancy No. FACT/GAC/RLA/BN/108 as Exhibit "A".

- (2) Acknowledgement of receipts of Title documents – In Re-Regularization of Land dated 16/10/2007 as Exhibit "B".
- (3) A Certified True Copy of Settlement of Building Plan Fees issued by Department of Development Control dated 8/1/2010 as Exhibit "C".
- (4) Certified True Copy of official receipts from FCTA dated 19/2/2010 as Exhibit "D".
- (5) Certified True Copy of Conveyance of Building Plan dated 25/2/2010 as Exhibit "E".

The Claimant witness wants the court to grant all the reliefs of the Claimant as set out in their Writ of Summons and Statement of Claim.

Cross-examined by the 1st Defendant counsel, admitted that the Plot of land was allocated to the Claimant by the 4th Defendant, with the belief that it is on the authority of the 1st Defendant. He admitted the Power of Attorney donating Power to him was not duly registered, but that of the original allottee and the donee.

He admitted that he is party to the Suit, by virtue of his Power of Attorney donating Power to him; and does not know if the grant to the original allottee, was a customary grant. He admitted knowing the 3rd Defendant, who claimed the Plot was sold to her by an official of Gwagwalada Area Council, but not the 2nd Defendant.

At the close of cross-examination of PW1 by the 1st Defendant Counsel, the case was adjourned for cross-examination by 2nd – 4th Defendants, the 2nd – 4th Defendants despite service of Hearing Notice failed to appear in court nor through their Counsel to cross-examine, consequently, at the next adjourned date being 7/11/2018, upon application of the Claimant Counsel, the PW1 was discharged and the Claimant closed their case and case adjourned for defence again.

On 17/1/2019, the case was called for defence, but all the Defendants failed to appear or be represented despite service of Hearing Notices, the case was again adjourned to 18/3/2019 for defence. Again on the said 18/3/2019, all the Defendants failed to appear or be represented by Counsel, consequent upon the Claimant Counsel, the Defendants were foreclosed from defence. Thereafter case was adjourned for adoption of Final Written Addresses.

On 24/5/2019 when the case came up for Address, only the Claimant had filed the Defendants failed to respond despite service of the Claimant's Address and Hearing Notice. Consequently, the Claimant Counsel with Leave of Court proceeded to adopt their Final Written Address.

In the Written Address of the Claimant, settled by E.S. Oluwabiye Esq, Claimant Counsel only one (1) issue was distilled for determination that is;

“Whether the Claimants have discharged the burden of proof placed on them to be entitled to the reliefs claimed in this Suit”

And submits in summary, relying copiously on facts stated in Paragraphs 3, 4, 5, 9, 10, 11, 12, 13, 14 and 15 of the Witness Statement on oath, Paragraphs 6, 7, 8, 9, 13, 14, 15, 16, 17, 18 and 19 of the Statement of Claim to contend that the Claimant has by these facts, inclusive of Exhibits "A" – "E" in support, established and discharged the onus placed on the Claimant in an action for declaration of title to land. In doing so, has relied on the strength of his own case.

In proof of the Claimant's Claim, submits is built on proof of title by production of documents of grant. Exhibit "A", also evidence of the 1st Claimant been in long possession and enjoyment of the Plot for more than twenty years of the grant from 4th Defendant in 1995 vide Exhibit "A". On the issue of trespass, submits that by the acts of long possession established, in the absence of better title as established by the Claimant, the presence or acts of the 2nd/3rd Defendants on the land in dispute are acts of trespass, therefore entitled the Claimant to damages against the Defendants. In all to assuage this court to hold that the Claimant has established their case, thus entitled to the reliefs sought, learned counsel, referred the court to the following, judicial authorities, AdeyemiVsOvba (2017) ALL FWLR (PT. 870) 1004 @ Pg 1038 – 1039 Para F – E, Pg 1014 Para C-D; AdesanyaVsAderonmu (2000) FWLR (PT.15) SC 2492 (Pg 2502 Para B – C). OgundenyiVsGaniu (2016) ALL FWLR(PT. 854) 1930 CA (P. 1945); Para B – E; IdundunVsOkumagba (1976) LPELR – 1431 SC at Pg 22 – 26 Para D; AwodiVsAjagbe (2015) ALL FWLR (PT. 769) SC 1129 @ P. 1141; Para B – G; P 1144 Para C) AdakoleVsOgbuagu (2015) ALL FWLR (PT. 782) C.A 1751 @ Pg 1777 Para C – E; BakareVs Dada (2017) ALL

FWLR (PT. 867) C.A. 557. Para E – F; Isaac VsImasuen (2016) ALL FWLR (PT. 823) SC 1894 @ Pg 1904 Para B – C.

Finally, submitted that in all, despite service of the processes and Hearing Notices on the Defendants, the Defendants failed to lead any evidence to the contrary, in effect are deemed to have admitted all the averments established by the Claimant through PW1. Referred to case FUTMinna&OrsVsOlutayo (2017) LPELR-43827 (SC) @ Pg 17 – 18 Para F – E; in urging the Court to grant all the reliefs sought.

On 18/11/2019, when the case came up for judgment, the court rather than proceed to deliver the said judgment, the court called upon the Claimant to Address it, on whether or not this court can grant the reliefs based on Customary Right of Occupancy. Consequent upon, that the Claimant Counsel, E.S. OluwabiyiEsq, filed an Address on behalf of the Claimant, and served on the Defendants, and submits, relying on Statutory and judicial authorities cited in assuaging the Court, and contend that this court indeed can proceed to consider a grant of the reliefs sought. In doing so, referred to, Sections 6 (6) (6) of the Constitution of Federal Republic of Nigeria 1999, Section 5 (1) (a) of Constitution of Federal Republic of Nigeria, Section 318 Constitution of Federal Republic of Nigeria, Section 18 of the Local Government Act Cap 8, Volume 3, The Laws of the FCT, Section 135 (2) of the Local Government Act, FCT Laws, case of Attorney General, Abia State &OrsVs Attorney General of Fed. (2002) FWLR (PT.101) 1419.OnaVsAtenda (2000) 5 NWLR (PT. 656) 244 Pg 277 Para H.Also referred the court to the unreported decision of My Learned

brother, Affen J. in case of Blessed and Precious Children Academy Ltd &OrsVsFCDA&Ors (In Suit FACT/HC/CV/2138/10.

Having giving an insightful consideration to the pleadings as well as the unchallenged testimonial and documentary evidence, the written submission and judicial authorities cited by Learned Counsel for the Claimant, the court finds that only one (1) sole issue callsfor determination; that is;

“Whether the Claimant has established her case by credible evidence, thus establishing her right to judgment as claimed”

In this instant, the Claimant is seeking a declaration of title to land as the rightful allottee and other reliefs in this Suit, having complied with all the necessary process required, based on an allocation granted to her by the 4th Defendant on behalf of the 1st Defendant far back as 1995, a period over twenty years and have been in possession, until the act of the 2nd/3rd Defendants. As rightly contended by the Claimant Counsel, it is settled law that in an action for declaration of title to land, the onus is on a Claimant to prove on the strength of his case and not on the weakness of the Defendant. See MrsOlorunshola Grace &OrsVsOmotola Hospital &Ors (2014) LPELR – 22777 (CA), Per MuhtarJCA.Also, on burden of proof See; AdamuVsGulak (2013) LPELR – 20844, when it stated.

“The law is loud and clear that the burden of proof of title to land is on the Plaintiff and he must discharge that burden to obtain judgment.”

See also Section 137 and 139 of the Evidence Act 2011.

On proof of title, the court had this to say in the case of *OlomuVsAmayo&Ors* (2011) LPELR – 4785 CA as;

“Proof of title to warrant a declaration can be made if it was shown to the satisfaction of the court that a Claimant has exercised acts of ownership over the land, such acts include selling, leasing or renting etc, also act of long, enjoyment and possession of land may be prima facie evidence of ownership of the particular piece or quantity of land”.

Where a party relies on acts of ownership and possession as his proof of title in dispute to land;

“Must lead credible and satisfactory evidence in proof of acts of ownership and possession in and over the land in dispute, extending over a sufficient length of time and numerous and positive enough as to warrant the inference that he is the true owner of the land, he has discharged the burden reposed on him by the land and he will be entitled to the declaration of title sought”. See *Ajibare&OrsVsAkomolafe&Ors* (2011) LPELR – 3748 CA”.

In all these, the Claimant, place reliance on the evidence and Exhibits “A” – “E” and counsel urge the court to note that the Defendants never challenged these pieces of evidence.

To determine whether or note the Claimant has established her claim from the unchallenged evidence before the court, it is necessary to find if the

Claimant has indeed established her case and that as in this instance, this court can indeed proceed if it is proved can proceed to grant on a claim based on Customary Right of Occupancy in face of the law.

In this instant, the Claimant by her evidence through PW1, stated facts establishing right to the land allocated to her vide Customary Right of Occupancy in 1995, and placed reliance on Exhibit "A" – "E".

On the other hand, the Defendants who were duly served of the processes inclusive of hearing notice failed to file any processes; the 1st Defendant through their counsel merely cross-examined the PW1 and took no further steps in the matter.

The documents relied on by the Claimant are Exhibits "A", original copy of Certificate of Occupancy, Exhibit "B" – Acknowledgement receipt of title documents by the AGIS. Exhibits "C", Certified True Copy of settlement of Building Plan issued by Development Control; Exhibit "D", official receipt from FCTA acknowledgement payment; Exhibit "E" Certified True Copy of settlement of Building Plan issued by Development Control.

Apart from the Exhibit "A", certificate of Customary issued by Gwagwalada Area Council on 30th March, 1996 and duly registered as No. 419 Page 20, Vol. 2 at the Lands Registry in Gwagwalada Area Council all other documents were issued by the various administrative bodies under the 1st Defendant. Granted that the 1st Defendant did not file any process, thus not challenging the case of the Claimant in any form, the cardinal question that calls for answering is whether in the face of the law, Section 49 (1) of the Land Use Act, and the authorities cited by Claimant Counsel, that is

OnaVsAtenda (Supra) and the unreported judgment of My Learned Brother Affen J. in blessed and precious Children Academy Ltd &OrsVsFCDA&Ors (Supra), wherein Claimant Counsel urge the court not to follow, rather distinguished it. Granted that this court can indeed proceed to distinguish this case based on facts before it and those cases referred,I find that in this instant case, it is true that the Claimant has shown that they were allocated the said land, subject matter of the Suit, however, careful perusal of the document leading to the grant to the Claimant Counsel in this instant, the court finds that document, the irrevocable Power of Attorney was never registered in line with the law. This fact was acknowledged by the witness – PW1 under cross-examination. The law is clear on the position of none registration of land title, sought to evidence change of title. The fact that the Claimant Claim to have been allocated the land, by Exhibit "A" and issued Exhibit "B" – "E" by the 1st Defendant is not enough for this court to hold as postulated by Claimant Counsel that the contra profereritem– (Ambiguity Doctrine)should enure in favour of the Claimant so as not to suffer any injustice by acts of the 1st Defendants agencies.

In establishing proof of title, the Claimant has failed, in my firm view, any link to the grant by the 1st Defendant who by the law is only authority to allocate such lands in FCT, the mere proof of payment to the relevant agencies without more, in my view is not enough to convince the court that the doctrine relied by Claimant should work against the 1st Defendant and in favour of the Claimant; all in the face of the land as it affects lands in the FCT, by virtue of Land Use Act.

In all of these, this court finds that the Claimant has failed to sufficiently prove to the satisfactory of court that they are entitled to the reliefs sought.

Accordingly, this claim fails and is hereby dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

4/3/2020

APPEARANCE:

E.S. OLUWABIYI FOR THE CLAIMANT

NO APPEARANCE FOR THE DEFENDANTS