

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT 8 NYANYA ABUJA ON THE 20<sup>TH</sup> DAY OF MAY, 2020**  
**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**  
**SUIT NO: FCT/HC/CV/2651/15**

**COURT CLERK: JOSEPH BALAMI ISHAKU & ORS.**

**BETWEEN:**

**1. DR. AYUWAJA NAYAGAWA**  
**2. THE ESTATE OF MR. USAJA AHMADU** } .....CLAIMANTS

**AND**

**1. AMINA OTANYI MUHAMMED**  
**2. CHIEF VICTOR OBI** } .....DEFENDANTS

**JUDGMENT**

The Claimant's Writ of Summons is dated 21/08/15 but amended vide Amended Writ of Summons dated and filed on 15/03/17 whereof the Claimant claims against the Defendants as follows:

1. A declaration that the Claimants are the owners of Plot 136 Gwagwalada Layout No. 7 John Musa Avenue, Gwagwalada, Abuja.
2. A declaration that the use of Bulldozer by the Defendant to demolish and destroy the Claimants' fence on the Claimants' Plot of land amounts to trespass to land and mischief.
3. A declaration that the Defendant does not have the right whatsoever to enter the Claimants' Plot of land to demolish and destroy Claimants' fence and excavate same.

4. An Order of Perpetual Injunction restraining Defendants either by themselves or through some other persons from entering into the Plot of land belonging to Claimants.
5. N1 Million for damaging the fence.
6. N2 Million for General damages.
7. N1 Million as cost of this action.

The Defendants' Joint Statement of Defence is dated 12/04/17 but filed on 21/04/17.

The Claimants opened their case and called four witnesses. The 1<sup>st</sup> Claimant's witness is Dr Ayuwaja Nayagawa. He works at the Federal Medical Centre Keffi, Nasarawa State. He deposed to a Witness Statement on Oath. He adopted it as his oral evidence.

In summary, his evidence is that sometimes on 10/02/95, he jointly with 2<sup>nd</sup> Claimant bought a Plot of land from one Alhaji Aliyu Sarki (Sarkin Gwarin Gwagwalada) an indigene of Gwagwalada Area Council.

That they bought the land for N90,000.00. The said Plot of land is known as Plot 136 located at No. 7 John Musa Avenue beside Pilot Primary School, Gwagwalada Abuja measuring about 150 ft by 75 ft.

That they signed a Sales Agreement with Alhaji Aliyu Sarki (Sarkin Gbagyi, Gwagwalada) on the 10/02/95.

That the Plot they bought is native land.

That after the agreement they took possession and fenced it round with an entrance gate.

They rent out the land to Auto Mechanics.

That since 1995, they have been enjoying quiet possession of the land for over a period of 20 years.

That sometimes on 2/11/2000, they applied to the office of Land Department, Gwagwalada Zonal Office of the FCDA to convert the land to statutory title. They paid the sum of N1,150 as application and processing fee. The 2<sup>nd</sup> Claimant was following up the process until his demise in July 2011.

The 1<sup>st</sup> Claimant continued to follow up the process.

Sometimes on the 10/04/15, the Defendants entered their Plot with a bulldozer, demolished half of the fence.

The Defendant mobilised labourers to the Plot and started digging right inside the Plot to lay a foundation.

The 1<sup>st</sup> Defendant laid claims to the land when the matter was reported to the Police for trespass and mischief.

He wrote a letter through his Solicitor to the land Department, Gwagwalada Zonal Office of the FCDA for enquiries of the status of his file but there was no response. It is dated 30 04/15. He wrote another letter dated 8/06/15. He was informed that their title is traditional and that the land is local/native land.

That he bought title from a traditional ruler who has a valid traditional title.

That the land was part of the land returned to indigenous natives.

That the Defendants just want to foment trouble.

The Claimants witness tendered Exhibits A – A4 which are:

1. Land Sales Agreement.
2. Application for regularisation of land purchased locally.
3. Land allocation Receipt.
4. Letter from S.I. Ameh SAN & Co. dated 30/04/15.
5. Another letter from S.I. Ameh SAN & CO. dated 8/06/15.

Under Cross-examination, the witness answered as follows:

He is a medical practitioner.

He bought the land, the subject matter. He does not have an allocation letter from the Federal Capital Territory Minister.

To another question, he answered that the Chairman of the Area Council gave them the land and they sold it to them.

He did not build because he relocated to Keffi.

He is still waiting for the conversion of the land to statutory right of occupancy.

That there has not been any response to his Solicitor's letter.

To another question, he answered that he is not aware that lands within the FCT belongs to Government. He is also not aware that lands sold by natives is not valid.

He does not have a report of the investigation by the Police.

The 2<sup>nd</sup> Claimant's witness is Alhaji Aliyu Sarki. He lives in Sabon Gari, Gwagwalada . He remembers making a Witness Statement on Oath. He adopts same as his evidence on Oath.

In the said Written Statement on Oath sworn to on 05/03/16, he deposed that he is the traditional ruler and an indigenous citizen of Sabon Gari Gwagwalada, Abuja FCT.

That sometimes on the 10<sup>th</sup> day of February 1995, he sole his Plot of land which he inherited from his father to Claimants jointly. They all signed Sales Agreement which was witnessed by one Mr. Usaja Ahmadu, Mrs. Martha Usaja and Mr. Alex Musa.

The Plot of land is known as Plot 136 located at No. 7 John Musa Avenue Beside Pilot Secondary School Gwagwalada – Abuja measuring 150ft x 75 ft.

That he inherited the said Plot of land from his late father Gwamna Sarki, who also inherited the land from his late father.

That his grand father was the first to clear the land as a virgin land to settle thereon.

That they all enjoyed quiet possession of the land without any adverse claims from anybody even after he sold same to the Claimants.

That when Government needed land to construct Pilot Secondary School now known as Demonstration Primary School, the

Government approached them for a parcel of land in that area and carved out some part of their land even without compensation.

That after the construction of the school, the Government gave back the remaining unused land to them.

That he sold his own portion of the land to Claimants as local title at the sum of N90,000 only on the 10<sup>th</sup> of February 1995. The Claimants took possession and fenced round the land with a security gate.

That the houses in the area where Claimants Plot of land is located were bought from them being the local people.

That the Claimants have been enjoying quiet possession of the Plot of land and nobody has ever challenged his title.

That there was no time Gwagwalada Area Council revoked any portion of his land and assigned to anybody.

That Plot 136 located at No. 7 John Musa Avenue besides Pilot Secondary School Gwagwalada Abuja measuring about 150 ft x 75ft belongs to the Claimants.

That the Defendants claim the Claimant's Plot of land is false, fraudulent and provocative.

He urges the Court to grant all the claims of the Claimant.

Under Cross-examination, he answered that he is a traditional ruler.

That he knows the law concerning allocation of land in the FCT.

That it is a Plot of land he gave for a Government Secondary School. That it is the rest of the Plot he sold.

To another question, he answered that there is no layout there. It is within their town. That it is land he inherited from his father that he sold. There is no paper to show that Government returned land to him. There is also no paper to show that Government requested for land from him. He knows that it is only FCT Minister that can allocate land but he inherited this Plot of land from his father.

The 3<sup>rd</sup> Claimant's witness is Alex Musa. He lives at Sharp Corner, Gwagwalada Abuja FCT.

He remembers making a witness statement on oath. He adopted same as his oral evidence.

He stated that sometimes in 1995 he was called upon by Alhaji Aliyu Sarki, the 2<sup>nd</sup> Claimant's witness, a traditional ruler and native of Sabon Gari, Gwagwalada to get a buyer for his Plot of land known as Plot 136 located at No 7 John Musa Avenue, beside Pilot Secondary School Gwagwalada – Abuja measuring about 150ft x75ft. That in February 1995, the Claimants indicated interest to purchase the Plot of land and he took them to Alhaji Aliyu Sarki for negotiation.

They negotiated and agreed on the purchase price of N90,000. The Claimants paid and a Sales Agreement was signed by the parties.

He knows as a fact that the Claimant immediately took possession of the Plot of land and fenced it completely.

That Claimant also installed an entrance gate to the Plot of land. He rented out the Plot to a vehicle mechanic while Rev. Samuel M. Luku was farming inside the Plot.

That all through the years, the Claimant enjoyed quiet possession without any adverse claim from anybody until some times in April 2015, when the 1<sup>st</sup> Defendant came to demolish the Claimants fence and began to lay claim to the Plot.

That Plot 136 located at No. 7 John Musa Avenue, beside Pilot Secondary School, Gwagwalada measuring about 150ft x 75ft belongs to Claimants.

The Defendants' claim over the land is false and fraudulent.

Under Cross-examination, he answered that he is the agent that witnessed the transaction.

That he knows the law as it relates to land in the FCT.

He knows it is only the Minister or his agent that can allocate land in Abuja.

There is a written Agreement between allottee and the person who was allotted the property.

The 4<sup>th</sup> Claimant's witness is Rev. Samuel Lulu.

He is a teacher and Minister in ECWA Church.



He also resides in Gwagwalada behind the Demonstration Primary School also known as Pilot Science Primary School.

He remembers making a statement in writing.

His passport is on it. He also endorsed it.

He adopted it as his oral evidence.

He states that the aforesaid Plot of land belongs to the Claimants.

That some times in 2003, he approached the Claimants to allow him to farm inside the Plot of land and assist in watching over it.

That Claimants allowed him to take care of the land and there were also mechanics on the land.

That for the period he stayed, there was no adverse claim until sometime in April 2015 when the Defendant demolished the Claimants' fence and began making claims over the land.

The Defendants' claim over the land is false.

Under Cross-examination, he answered that he farmed in the land between 2003 – 2015.

To another question, he answered that it was not necessary for Claimants to show him title documents from the FCT Minister.

In 2003 when he moved in, he saw the land fenced with a gate.

He was interested in using it for agricultural purposes. He did his findings.

He discovered that it belongs to Late Usaja Ahmadu. He allowed him to use it. Nobody came to complain that it was his own.

The above is the case of the Claimants.

The Defendants opened their defence and called one witness.

He is Victor Obi of Plot 1245 Sapele Street, Garki II, Abuja. He is a contractor under a construction Company.

He knows the 1<sup>st</sup> Defendant. She was his sub Contractor.

He gave her a job to fence his Plot of land i.e Plot 136 Old Gwagwalada.

He remembers deposing to a Witness Statement on Oath.

He adopts the said statement dated 21/04/17.

He stated that the 1<sup>st</sup> Defendant is only a contractor who he employed to develop the land on his behalf for residential purpose.

That the property Plot 136 Gwagwalada Abuja Old Layout/No. 7 John Musa Avenue, Gwagwalada belongs to him.

That upon investigation by the Police pursuant to Claimants' complaint, he was discovered to be the rightful owner of the Plot of land.

He directed the 1<sup>st</sup> Defendant to erect a fence on the land.

That the Claimants' Suit is frivolous.

Witness tendered Exhibits B and B1 i.e Certificate of Occupancy in the name of witness and Regularisation of land titles

He urges the Court to dismiss the suit.

Under Cross-examination, he answered as follows:

That he is the owner of the land.

To a further question, he answered that it is Plot 136. It is about 1000sq metres. He applied for land around 1992. It was allocated to him by the Area Council.

The above is the case of the Defendants.

Parties were ordered to file Written Addresses.

The Defendants' Final Written Address is dated 15/11/19. He adopted same as his oral submission. He posited two issues for determination which in my view is only one.

It is whether from the circumstances of this case, the Claimants have proved their case to warrant the grant of the reliefs sought.

Learned Counsel canvasses that the Claimants must succeed on the strength of their own case.

That the Claimants' case does not fall within the exception wherein the Defendants' case supports the Claimants.

That the burden of proof lies on the Claimant to establish their case on a balance of probability by providing credible evidence to sustain their claim irrespective of the presence of the Defendant.

That title is in issue in this matter.

The Claimants rely on traditional title in proof of their purported title to the res.

That by Section 1 (3) of the FCT Act, ownership of land in the FCT is vested absolutely on the Federal Government of Nigeria.

Also refers to Section 51(2) of the Land Use Act which in turn vests the land comprised in the FCT on the Minister of the FCT who holds same in trust for the common benefit of all Nigerians.

That ownership of land in the FCT by an individual State upon the commencement of the FCT Act in 1976.

See also Section 297 of the 1999 Constitution.

The purported title of the Claimants is defective, null and void.

The purported reacquisition by the PW2 after same was initially acquired by the Government has no basis in law.

That the Claimants have on the whole failed to establish their case with credible evidence.

He urges the Court to dismiss the Claimants' case for lack of merit with substantial cost.

The Claimants' Counsel adopted same as his final argument.

He canvassed that the Claimants' title is a traditional title.

That PW2 inherited the land in dispute from his fathers. That the above evidence is not challenged. That the uncontroverted evidence of PW2 stands established.

That Section 51 of the Land Use Act recognises Customary Right of Occupancy. That traditional title to land based on customary laws as held by the PW1 is recognised by law.

That the title of PW2 predates that of the Defendants.

That a Certificate of Occupancy issued under the Land Use Act is not a conclusive proof of title neither is it superior to other forms of title.

That Exhibits A – A3 admitted in evidence are credible and convincing to prove Claimants' claim.

He finally urges the Court to hold that Claimant is entitled to judgment and grant all the reliefs sought.

The res in this matter is Plot 136 otherwise known as No. 7 John Musa Avenue, beside Pilot Secondary School, Gwagwalada, Abuja FCT measuring about 150ft by 75ft.

The Claimant contends that he is the legitimate owner of the said Plot of land having purchased it from Alhaji Aliyu Sarki, a traditional ruler and native of Sabon Gari. The Claimants seek a declaration that they are the owners of the said Plot 136. Gwagwalada.

Claims 2, 3, 4, 5, 6 and 7 are all dependent on the 1<sup>st</sup> claim summarised above.

Section 1, (1-3) of the Federal Capital Territory Act 1976 states:

- “1. There is hereby established a Capital Territory in and for the Federal Republic of Nigeria to be designated as the Federal Capital Territory, Abuja (hereinafter referred to as the Federal Capital Territory).***
- 2. The Federal Capital Territory shall consist of the area described in Part II of the First Schedule to this Court.***

***3. The area contained in the Capital Territory shall as from the commencement of this Act cease to be a portion of the States concerned and shall henceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of lands comprised in the Federal Capital Territory shall likewise vest absolutely in the Government of the Federation.***

Similarly by virtue of the provisions of Land Use Act 1978 which also applies to the FCT, Courts no longer grant a declaration of title.

The Courts can only make a declaration of entitlement to right of occupancy.

See ***U.B.A. PLC VS. SAMBA PETROLEUM CO. LTD (2002) 16 NWLR (PT.793) 361. ARHURHU VS. DELTA STEEL CO. LTD (1997) 3 NWLR (PT. 491) 82 at 85.***

Therefore what this Court can grant if proved in the instant case is not that the Claimants are the owners of the land in dispute but that they are entitled to a right of occupancy.

However, the onus of proof of title to land is always on the party seeking declaration in respect thereof. Not until the burden is discharged, it will never shift.

See ***UGWUNZE VS. ADELEKE (2008) 2 NWLR (PT.1070 P.148.***

The 2<sup>nd</sup> claim is that the Defendants used bulldozer to demolish the Claimants' fence which was on the Claimants' land thereby committing trespass.

Claim 4 is for a Perpetual Injunction.

The law is that where there is a claim for trespass coupled with injunction, it is incumbent on the trial Court such as this Court to consider the question of title to the land or exclusive possession of it.

See ***HAWAD INT. SCHOOL LTD VS. MIMA PROJECTS VENTURES LTD (NO. 1) (2005) 1 NWLR (PT.908) 552.***

Although a claim for trespass is rooted in exclusive possession, once the Defendants assert ownership of the land in dispute as in this case, title thereto is automatically put in issue and for the Claimants to succeed, they must establish a better title than that of the Defendants.

See ***FASIKUN II VS. OLURONKE II 1999 2 NWLR (pt.589) 1 at 4 SC.***

***ICHU VS. IBEZUE (1999) 2 NWLR (591) 437 C.A.***

There are five ways of establishing title or ownership of land.

These are:

1. Traditional evidence.
2. Production of documents of title duly authenticated in the sense that their due execution must be proved.

3. By positive acts of ownership extending over a sufficient length of time.
4. By acts of long Possession of enjoyment of land.
5. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owners of such connected or adjacent land would in addition, be the owner of the land in dispute.

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

***AYOOLA VS. ODOFIN (1984) 11 SC 120.***

***EWO VS. ANI (2004) 17 NSCQR 36***

***NKADO VS. OBIANO (1997) 5 NWLR (PT.503) 31 AT 34.***

***NKWO VS. IBOE (1998) 7 NWLR (PT.558) P.354.***

However in the Federal Capital Territory and all other States in general, production of documents i.e normally the evidence of exclusive possession and the rights provided for in favour of the person in possession such Certificate.

See ***AUTA VS. IBE (2003) 13 NWLR (PT.837) 247 SC.***

In proof of their title, the Claimant's gave evidence that they bought the subject matter of this suit which is Plot 136 Gwagwalada from the traditional ruler, Alhaji Aliyu Sarki (Sarki Gwarin Gwagwalada) an indigene of Gwagwalada Area Council.

That the Plot is a native land. That the Claimant title is a traditional title.



That the land is part of the land returned to indigenous natives.

The Claimants witness also gave evidence stating, the type of land and the interest he sold to the Claimants.

He said the Plot of land is known as Plot 136 located at No. 7 John Musa Avenue beside pilot Secondary School Gwagwalada – Abuja FCT measuring 150ft by 75ft.

That he inherited the said Plot of land from his late father Gwamna Sarki who also inherited it from his late father.

That his grand father was the 1<sup>st</sup> to clear the land as a virgin land to settle thereon.

I have looked at the Claimants' documents Exhibit A – A4.

It does appear that the Claimants claim is that their title is a native or customary title bought from a traditional ruler, the 2<sup>nd</sup> Claimants' witness.

I want to reiterate the position of the law i.e Section 1(3) of the Federal Capital Territory Act by drawing attention to the case of *MADU VS MADU (2008) 2 – 3 SC (PT. 2) P. 109* particularly at p 138 paragraph 15 – 30 where the Supreme Court held:

***“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 VS.***

*ATANDA (2000) 5 NWLR (PT.656) 244 AT 267*

*paragraphs C – D.”*

See also Section 297(1) and (2) of the Constitution 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 1990 vests power in the Minister for FCT to grant statutory right of Occupancy over lands situate in the Federal Capital Territory to any person.

By this law ownership of land within FCT vests in the Federal Government of Nigeria who through the Minister of FCT vests same to every citizen individually upon application.

In the Federal Capital Territory, Customary Right of Occupancy has been abolished.

See *ONA VS ATENDA (2000) 5 NWLR (PT.656) 244 CA.*

MY lord ISA ABUBAKAR MANGAJI JCA puts it palpably when he stated

*“... The questions of Customary Right of Occupancy does not arise in respect of lands that comprised the Federal Capital Territory.*

It follows that from the 4<sup>th</sup> day of February (1976) there is no other title other than a Statutory Right of Occupancy on the Federal Capital Territory.

The 2<sup>nd</sup> Claimants' witness therefore had no title when he sold Plot 136 at No. 7 John Musa Avenue, Gwagwalada Abuja to the Claimant.

Consequently the sale agreement between the Claimants and the 2<sup>nd</sup> Defendant is null and void as the agreement did not and was not capable of transferring any interest on land to the Claimants.

It is trite that you cannot sell or transfer what you do not have. The original grantor had no land at the time he purportedly sold the subject matter to the Claimant.

In the circumstance of this case, the Claimant has failed to prove that he has title to the land in question.

However, I shall proceed to consider the issue of exclusive possession.

I have taken a cursory look at the title documents of the Defendant. Exhibit B is Regularisation of land titles and document of FCT Area Council acknowledgment. Exhibit B1 – Certificate of Occupancy (Customary) issued and signed by the Executive Chairman of the Gwagwalada Area Council.

The Chairman of the Gwagwalada Area Council lacks the power to grant land to any person within the Federal Capital Territory.

Secondly the title purportedly granted the 2<sup>nd</sup> Defendant i.e Customary Right of Occupancy does not exist in the Federal Capital Territory.

Trespass to land means any unjustifiable interference with land in the possession of a party. It constitutes the slightest disturbance to possession of land by a person who cannot show a better right to possession.

See *QUEEN VS. UCHE (1994) 6 NWLR (PT. 350) 329.*

*EZE VS. OBIEFUNA (1995) 6 NWLR (PT.404) 639 SC.*

It is settled law that every person in exclusive possession of land can bring an action for trespass against any person other than the true owner or a person with better title in respect of any interference with his possession.

Therefore, for a Claimant to succeed in an action for trespass, he must establish exclusive possession of the land at the material time.

See *ADELAJA VS. FANOIKI (1990) 2 NWLR (PT.131) 137 SC.*

*AMAYO VS. ERINMWINGBOVO (2006) 11 NWLR (PT.992) 669 SC.*

*OGBIMI VS. NIGER CONST. LTD. (2006) 9 NWLR (PT. 986) 474 SC.*

The evidence is that the Claimant bought the land from the said traditional ruler aforesaid. He fenced it round and mounted a gate house. The Claimants were in possession.

The Defendants came into the land, bulldozed the fence and started excavating the land for a foundation.

The evidence of the defence witness is that he directed the 1<sup>st</sup> Defendant who is a contractor to put up a fence on the land. The evidence to say the least is dodgy.

How do you put up a fence on a land where there is already an existing fence?

I believe the evidence of the Claimants and their witnesses.

The Claimants were in exclusive possession.

Every unjustifiable entry into a land amounts to trespass and often the remedy is an injunction to deter repeated acts of trespass.

The Claimant seeks for specific damages in respect of the fence.

The law is that special damages are specifically pleaded and proved. For a claim in the nature of special damages to succeed, it must be proved strictly. The Court is not entitled to make its own estimate on such claim. It is those pecuniary losses which have crystallised in terms of cash and value before the trial.

They must be pleaded and particularised while general damages are those damages which the law implies in every breach. It is generally presumed.

In this case, the specific damages are not specially pleaded, and or particularised.

There is no evidence in respect thereof.

There is also no evidence of the cost of the action.

In the circumstance of this case, Claim 1, 5 and 7 fail and they are refused.

Claim 2, 3, 4 and 6 succeeds.

Judgment is entered in favour of the Claimant against the Defendants as follows:

1. The use of Bulldozer by the Defendants to demolish and destroy the Claimants' fence amounts to trespass to land.
2. The Defendants do not have the right whatsoever to enter the said land to demolish and destroy the Claimants' fence and excavate same.
3. The Defendants, agents or privies are hereby restrained from entering the said land.
4. N1 Million is awarded in favour of the Claimants against the Defendants as general damages.

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HON. JUSTICE U.P. KEKEMEKE  
(HON. JUDGE)  
20/05/20.