

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 6TH DAY OF MAY, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO: FCT/HC/CV/1000/18

BETWEEN:

DON KEN PHARMACY LIMITED:.....CLAIMANT

AND

M.I. ONIMISI:.....DEFENDANT

George Ukegbu for the Claimant.
Defendant not represented.

JUDGMENT.

By a Writ of Summons dated and filed on 21st February, 2018, the Claimant brought this suit against the Defendant, claiming as follows;

1. A declaration that the Claimant is entitled to the certificate of occupancy in respect of Plot MF 2857, Lugbe 1 Extension, Cadastral Zone 07-07, Abuja, covered by Right of Occupancy No. FCT/MZTP/LA/MISC 9138 dated 14th February, 2010 pursuant to Offer of Terms of Grant/Conveyance of Approval dated 29th June, 1998 with Reference Number MFCT/ZC/AMAC/LUE2857.
2. An Order of Court restraining the Defendant, his agents, privies, and successors in title from interfering with the Claimant's Statutory and equitable rights, peaceful and quiet enjoyment of possession over all that parcel of land known as Plot MF 2857 Lugbe 1 Extension, Cadastral

Zone 07-07, Abuja, covered by Right of Occupancy No. FCT/MZTP/LA/MISC 9138 dated 14th February, 2010 pursuant to Offer of Terms of Grant/Conveyance of Approval dated 29th June, 1998 with Reference Number MFCT/ZC/AMAC/LUE2857.

3. An Order of perpetual injunction restraining the Defendant, his agents, privies and successors in title from further erection of any kind, letting, leasing or otherwise dealing with the said Plot MF 2857, Lugbe 1 Extension, Cadastral Zone 07-07, Abuja, and restore the said Plot to its original state before the Defendant's trespass.
4. The sum of One Hundred Million Naira (N100,000.00) being general damages for trespass.

The case of the Claimant, as per her statement of claim, is that some time in 1998, she applied to the Abuja Municipal Area Council for allocation of a Plot of land, following which an Offer of Terms of Grant/Conveyance of Approval dated 29th June, 1998 with Reference Number MFCT/ZC/AMAC/LUE2857 in respect of Plot MF 2857, Lugbe 1 Extension, Cadastral Zone 07-07, Abuja, measuring about 3,000 square meters, was issued to her by the Abuja Municipal Area Council.

The Claimant averred that she paid for Certificate of Occupancy for the said Plot MF 2857, Lugbe 1 Extension on 20th January, 2006, and was later issued with a Right of Occupancy No. FCT/MZTP/LA/05/MISC/9138 dated 14th February, 2010. That she has been in peaceful and undisturbed possession of the said Plot MF 2857, Lugbe 1 Extension, Abuja since 29th June, 1998 when same was allotted to her by the Abuja Municipal Area Council, until October, 2017 during one of the routine visits to the Plot by her Manager, Friday Ikhile, when he discovered that certain person, later discovered to be the Defendant had trespassed into the Plot. That as at the

time of discovery of the trespass, the trespasser had erected a block of fence stretching from Plots 2857 to Plot 2858 with a gate house and a gate made of zinc as well as a foundation base for a building cutting across the Claimant's Plot 2857 and the adjoining Plot 2858.

The Claimant averred that she took steps to ascertain the identity of the trespasser and to stop the acts of trespass by incidenting the matter with the Police and that while the matter was still pending at the Police station, Mr. Ikhile visited the Plot again in January, 2018 only to discover that Plots 2857 and Plot 2858 have been fully fenced together with blocks, and a gate mounted on the Plot 2857 portion, with a gate house fully constructed.

She averred that despite the Police invitation, the Defendant has failed to either honour the invitation or cease to trespass on the land, which trespass has changed the character and nature of the land and jeopardised the development plans she has for the property; hence this action.

At the hearing of the case, one Mr. Friday Ikhile, Claimant's manager, gave evidence for the Claimant. Testifying as PW1, he adopted his witness statement on oath wherein he affirmed the averments in the statement of claim, and in proof of the Claimant's claims, he tendered the following documents in evidence;

1. AMAC Departmental Receipt for Payment for C of O – Exhibit PW1A.
2. AMAC Departmental Receipt for Payment for C of O Bill – Exhibit PW1B.
3. AMAC Departmental Receipt for Forms and Processing Fees – Exhibit PW1C.
4. TDP in respect of Plot No. MF 2857 – Exh PW1D.

5. Copies of photographs of developments on the Plot – Exhibits PW1E to E1.
6. Further copies of photographs of developments on the Plot – Exhibits PW1F-F1.
7. Certificate of Compliance – Exh PW1G.
8. CTC of Offer of Terms of Grant/Conveyance of Approval dated 29/6/1998 – Exhibit PW1H.
9. Undated Right of Occupancy rent and Fees – Exh PW1J.

Despite service of the writ and repeated hearing notices on the Defendant, the Defendant failed to put up any appearance to defend the suit, in consequence of which his right to cross examine the PW1 and to defend the suit was fore-closed.

The Claimant subsequently filed and adopted her final written address.

Learned Claimant's counsel, George E. Ukaegbu, Esq, raised a sole issue for determination in his final written address, to wit;

“Whether the Claimant has made out a case to be entitled to the reliefs sought in this suit?”

In proffering arguments on the issue so raised, learned counsel relied on **Idundun v. Okumagba (1976) 1 NWLR 200** to posit that there are five ways of proving ownership of land in Nigeria, namely;

- i. By evidence of traditional history.
- ii. By documents of title which are duly authenticated in the sense that due execution must be proved.
- iii. By acts of ownership, such as selling, leasing, renting out or farming on all or part of the land and which are numerous and positive enough and extending over a sufficient length of time to warrant the inference that the party was the true owner of the land.

- iv. By acts of long possession and enjoyment of the land which prima facie may be evidence of ownership.
- v. By proof of possession of connected or adjacent land in circumstances that render it probable that the owner of such connected or adjacent land would be the owner of the land.

He contended that the Claimant, in proof of his entitlement to the land in question, relied on production of document of title, to wit;

Exhibit PW1H – “Offer of Terms of Grant/Conveyance of Approval”, supported by other documents in evidence. He argued that Exhibit PW1H, together with Exhibit PW1J, PW1A, PW1B, PW1C and PW1D, clearly establish the Claimant’s ownership of the property, the subject matter of this suit, and that the Claimant has thus placed before the Court unchallenged evidence upon which this Court can grant the reliefs sought by the Claimant as regards ownership of the land.

On the claim for damages for trespass, learned counsel contended that the Claimant has by Exhibits PW1E-E1 and PW1F-F1 presented vividly before the Court, the Defendant’s acts of trespass, which consist of wall fence erected around Plot MF 2857 belonging to the Claimant. Relying on **Olugunde & Anor v. Adeyoju (2010) 10 NWLR (Pt 676) 562 at 580**, he posited that the Claimant having shown unchallenged evidence that the title to Plot 2857, Cadastral Zone 07-07, Lugbe 1 Extension Layout, Abuja, resides in him, he is entitled to maintain this action in trespass against the Defendant. He further referred to **Fagunwa v. Adibi (2004) 17 NWLR (Pt 903) 544 at 569**.

He urged the Court to resolve the sole issue in favour of the Claimant on the strength of evidence adduced before the Court and the arguments canvassed by counsel and to grant all the reliefs sought by the Claimant.

In the determination of this suit, I will adopt the issue for determination raised by learned Claimant's counsel in his final written address, to wit;

“Whether the Claimant has made out a case to be entitled to the reliefs sought in this suit?”

The principal relief sought by the Claimant in this suit is a declaration of title in Plot No. MF 2857, Lugbe 1 Extension, Cadastral Zone 07-07, Layout, Abuja.

The learned Claimant's counsel correctly identified and stated the five ways of proving title to land as enunciated in the case of **Idundun v. Okumagba (supra)**, and in the instant case, the Claimant has placed reliance on production of documents of title to prove his claim of title to the plot in issue.

The law is however trite that mere production of document of title does not ipso facto entitle the Claimant to a declaration of title in the Plot. See **Elemoro & Anor v. Abiodun (2014) LPELR-23195 (CA)**.

In **Michael Romaine v. Christopher Romaine (1992) LPELR-2953 (SC)**, the Supreme Court held, thus;

“I may pause here to observe that one of the recognized ways of proving title to land is by production of a valid instrument of grant...”

But it does not mean that once a Claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the

property which such an instrument purports to grant is his own. Rather, production and reliance on such an instrument inevitably carries with it the need for the Court to inquire into some or all of a number of questions, including;

- i) Whether the document is genuine and valid;***
- ii) Whether it has been duly executed, stamped and registered;***
- iii) Whether the grantor had the authority and capacity to make the grant;***
- iv) Whether the grantor had in fact what he purported to grant; and***
- v) Whether it has the effect claimed by the holder of the instrument.”***

In the determination of the instant case, the question that is very germane, is question (v);

“Whether it has the effect claimed by the holder of the instrument.”

The instrument being relied upon by the Claimant as his root of title, is Exhibit PW1H. The said exhibit is titled: “OFFER OF TERMS OF GRANT/CONVEYANCE OF APPROVAL”, and it conveys “the Honourable Minister’s approval of a Grant of Right of Occupancy in respect of a Plot of about 3,000m² (plot 2857, within Lugbe 1 Extension” subject to the fulfilment of certain conditions.

Evidently, Exhibit PW1H is not a document of title. It is an instrument conveying the Honourable Minister’s approval of a grant which will be crystalized upon fulfilment of the pre-conditions stipulated therein. One of such pre-conditions is the acceptance of the offer, the date of which would mark the

commencement of the grant. There is nothing in evidence to show that the offer was accepted by the Claimant, and that only means that the grant never crystalized as the Claimant claims.

The Claimant averred in paragraph 8 of her statement of claim that she was issued with a Right of Occupancy. There is however, no evidence in proof of that claim. What the Claimant tendered in evidence is a TDP dated 14th February, 2010, which is clearly not an instrument of grant.

From the foregoing, this Court makes a finding that Exhibit PW1H, and indeed all other documents tendered in evidence by the Claimant do not have the effect claimed by the Claimant.

In **Yusuf v. Adegoke (2008) vol. 40 WRN 1 at 62-63**, the Supreme Court, per Chukwuma-Eneh, Obaseki, Muhammad, JJSC, held that;

“Over the years, it is one of the repeated catch phrases but a well settled principle of law that in a claim for declaration of title, the Plaintiff must succeed on the strength of his own case (evidence) although any evidence by the defence which is favourable to the Plaintiff’s case will go to strengthen the case for the Plaintiff.

As the Plaintiffs are seeking a discretionary relief of declaration of title to the land in dispute, the burden in such cases rests squarely on them as Plaintiffs and it is a heavy one as they must establish by evidence called by them to the satisfaction of the Court that they are otherwise entitled to such a declaration, more importantly, they must rely on the strength of their case as Plaintiffs to succeed and not on the weakness

of the defence case that is merely to serve as a defence.

... where the onus of proof in such cases as here is not discharged, the weakness of defence case will not help the Plaintiff's case and the proper judgment is for the defence. Meaning that in the event of the instant Plaintiffs failing to discharge the onus on them, in this regard their claim is bound to be dismissed out rightly."

The Plaintiff's claim and evidence before this Court is not strong enough to establish an equitable interest.

In considering relief (1), the Claimant is seeking a declaratory relief entitling him to Certificate of Occupancy pursuant to the grant of the offer of terms of Grant/Conveyance. This order can only be effectively made on the body responsible for the issuance of the Statutory Right of Occupancy which is the Federal Capital Territory Minister. The minister is not made a party to this suit throughout the proceedings. Where a Claimant is seeking a declaration of title over a land, the burden lies on the Claimant to bring all necessary parties to bring effect to the order being sought. The Defendant is not in a position to grant the Claimant the Certificate of Occupancy. The burden still rests on the Claimant to establish his case.

In respect to relief II, evidence of the Claimant established that it was the Defendant that was in physical possession of the land by erecting walls demarcating the land. The Claimant claims to have been offered the land in 1998, with no evidence of acceptance of offer, and physical possession of the land for 19 years. Then he discovered a trespasser who has erected fencing walls in 2017 establishing the presence of possession. It is glaring to me that the evidence by way of exhibits presented

by the Claimant, does not have the effect of title claimed by the Claimant.

It is evident that the Claimant has not discharged the primary onus of acts of possession to establish a prima facie case that he is entitled to a declaration of title to the land.

Therefore, the Claimant herein having not satisfied this Court by credible evidence that she is entitled to the reliefs sought in this suit, the Claimant's case therefore, fails and same is accordingly dismissed.

HON. JUSTICE A. O. OTALUKA
6/5/2020.