

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 24**  
**CASE NUMBER : SUIT NO: CV/1045/2017**  
**DATE: : MONDAY 4<sup>TH</sup> MAY, 2020**

**BETWEEN:**

**COL. MAHMUD SANTURUKI (RTD) } PLAINTIFF**  
**(Suing through his Attorney T.A Shettima) }**

**AND**

**PAULO HOMES LIMITED ..... DEFENDANT**

## **JUDGMENT**

This is a consolidated Judgment in suits No. FCT/HC/CV/1047/2017 and FCT/HC/CV/741/2017 both filed by the Plaintiff against the Defendant.

The Plaintiff commenced this suit against the Defendant via a Writ of Summons filed on the 27<sup>th</sup> day of February, 2017 seeking the following reliefs;

1. A Declaration of Court that the invasion of the Plaintiff's property known as Plot No. CRD 292 of about 600m<sup>2</sup> situate at Lugbe 1 Layout and evidenced by Right of Occupancy No. FCT/MZTP/LA/05/AD 8536 with Beacon Numbers PB5135, PB5134, PB5159 and PB5158 by the Defendant without the authority, approval, knowledge and consent of the Plaintiff is unlawful, illegal and a trespass.

2. A Declaration of Court that the destruction of the fence and gate house of the Plaintiff by the Defendant without any reason whatsoever is illegal, unlawful, ultra vires, null and void.
3. The sum of N250,000,000.00k (Two Hundred and Fifty Million Naira) only as general damages against the Defendant for invasion and trespass onto the Plaintiff's land by the Defendant and the unlawful and illegal destruction of the Plaintiff's fence and gate house.
4. The cost of this action assessed at N2,500,000.00k (Two Million Five Hundred Thousand Naira) only.

Whereas in suit No. CV/741/2017, the Plaintiff claims the following reliefs:-

- i. A Declaration of Court that the Plaintiff is the lawful, legal and beneficial owner of the property known as Plot No. CRD 292 of about 600m<sup>2</sup> situate at Lugbe 1

Layout and evidenced by Right of Occupancy No. FCT/MZTP/LA/05/AD 8536 with Beacon Numbers PB5135, PB5134, PB5159 and PB5158.

- ii. An Order of Court directing the Defendant, its agents, privies, officers and any person howsoever described, deriving title, instruction and authority from the Defendant to yield up vacant possession of the said Plot No. CRD 292 to the Plaintiff forthwith.
- iii. An Order of Perpetual Injunction restraining the Defendant, its agents, privies, officers and/or any person(s) howsoever described, deriving title, instruction and authority from it from entering, trespassing or continuing to trespass and interfering with or in any way disturbing the Plaintiff's quiet possession, occupation, use and enjoyment of the said Plot No. CRD 292 Lugbe I Layout.
- iv. The sum of N500,000,000.00 (Five Hundred Million Naira) only as general damages against the Defendant

for unnecessary apprehension, pains, trauma, depression caused the Plaintiff (Donee) by the acts Defendant.

The Plaintiff applied for consolidation of his two actions against the Defendant and the Court granted the application and the Plaintiff actions in Suit No. FCT/HC/CV/741/2017 and Suit No. FCT/HC/CV1045/2017 were consolidated.

Eventually hearing commenced with the Plaintiff calling only one witness and tendering different documents which were admitted as Exhibits. The Defendant on its part did not call any witness or tender any Exhibit in this case but rested its case on the Plaintiff's case.

At the conclusion of hearing, this Honourable Court graciously adjourned this matter for adoption of written addresses.

The Plaintiff's case as distilled from the witness statement on oath of PW1 is that the Plaintiff is the lawful and beneficial owner of Plot No. CRD 292 measuring about 660m<sup>2</sup> situate at Lugbe 1 Layout and evidenced by Right of Occupancy No. FCT/MZTP/LA/05/AD 8536 with Beacon Number PB5135, PB5134, PB5159 and PB5158.

The Defendant is a limited liability company duly registered under relevant laws in Nigeria and the owner of RIVER PARK ESTATE Lugbe and the person who trespass on the Plaintiff's land.

That Plaintiff vide a letter of offer of the terms of Grant/Conveyance of approval dated 27<sup>th</sup> June, 1996 issued by the Abuja Municipal Area Council on the authority of the Minister of the Federal Capital Territory was allocated Plot No. CRD 292 situate at Lugbe 1 Layout, Abuja, and that since the allocation of the said plot to the Plaintiff he enjoyed quiet possession and in 2006 the Plaintiff processed his land and was issued a

Right of Occupancy along with TDP in respect of the said land, to wit; Right of Occupancy No. FCT/MZTP/LA/05/AD 8536 with Beacon Number PB5135, PB5134, PB5159 and PB5158.

Plaintiff avers that sometimes in 2013 he executed an irrevocable power of attorney in respect of the said Plot CRD 292 Lugbe 1 in favour of his lawful Attorney T.A Shettima, and that till date the Plaintiff's rights and title over Plot CRD 292 Lugbe 1 Layout has not been revoked to his knowledge by any authority.

That the Plaintiff's Attorney having acquired interest in Plot CRD292 Lugbe 1 Layout from the Plaintiff immediately took possession of the said plot CRD 292 Lugbe and erected a perimeter fence round the plot and also built a security house on it without any interference.

It is further the case of the Plaintiff that his Attorney was surprised and shocked when Defendant sometimes in December, 2016 went into the said plot and bulldozed the

Plaintiff Attorney's erected fence together with the security house on the plot without his consent or knowledge.

Plaintiff stated that Defendant was mobilizing to site to start work on the Plaintiff's plot to his surprise when same has not been revoked by any authority or transferred to the Defendant by the Plaintiff or his Attorney.

Plaintiff further stated that he has not at any point in time received any revocation notice from any agency of government so empowered informing him of the revocation of his proprietary right over the said Plot No. CRD 292 Lugbe 1 Layout.

That the Plaintiffs title over the said Plot No. CRD292 having not been revoked in accordance with any known law is still valid and extant hence the unauthorized and violent trespass on to the said Plot No. CRD 292 by the 1<sup>st</sup> Defendant is unlawful, illegal and very provocative.



Plaintiff tendered the following document in evidence;

- i. Provisional Approval as Exhibit “A”
- ii. T D P tendered as Exhibit “B”
- iii. Power of Attorney as Exhibit “C”
- iv. Six pictures photograph and certificate of Compliance as Exhibit “D”.

PW1 was then cross – examined by learned counsel for the Defendant and under cross – examination,he stated that he bought the land from Col. Mahmud Santuruki (RTD) and that he is now the owner of the property, and that he secured two conveyance of approval of customary right of occupancy in the land. The original and photocopy of conveyance of approval tendered as Exhibit “E”, and that he does not know who inscribed the word “change” in Exhibit “E”.

That he did not seek for the name of SammailaMamman to be cancelled on Exhibit “E”.

That he investigated and that the titled sold to him by Santuruki was Valid and he did not investigate whether the consent of Abuja Municipal Area Council was sought for before the land was sold to him.

That he built the gate house and perimeter fence in 2013 and Col. Santuruki was given two years to erect structure on the land. That he did not obtain approval before he built gate and perimeter fence. And that he want the court to grant him and not Santuruki the relief.

PW1 was discharged after cross – examination. Plaintiff closed its case to pave way for defence. Defendant on it part, rested their case on that of Plaintiff.

Parties filed and adopted their respective final written addresses to give way for this judgment.

That Plaintiff formulated a sole issue for determination to wit; whether from the stated pleadings and evidence led in support of same, Plaintiff has discharged the burden of

prove placed on him and consequently entitled to the reliefs claimed.

It is the contention of the Plaintiff that he who assert must prove in line with the provision of section 131 of Evidence Act, 2011.

Learned counsel contended that, it is the unchallenged evidence of the Plaintiff before the court that the Plaintiff is the lawful and beneficial owner of Plot No. CRD 292, the subject matter of litigation and that the Plaintiff has proven this by tendering Exhibit “A” which is the letter of offer of term of grant, Exhibit “B” which is the TDP and Right of Occupancy and Exhibit “C” the Power of Attorney.

Counsel also argued that from the above, it is obvious that Plaintiff has established its case to be entitled to the Judgment of this Honourable Court.

Upon service, Defendant filed it written address and formulated the following issues for determination to wit;

- a. Whether in view of the evidence led by Plaintiff to the effect, that his root of title is vide a customary Right of Occupancy granted or issued by the chairman of Abuja Municipal Area Council (AMAC), a declaration of Customary Right of Occupancy to plot No. CRD 292, Lugbe 1 Layout can be validly made in favour of the Plaintiff.
- b. Whether it is not inappropriate in law for the Plaintiff to claim reliefs Nos. ii & iii in the same cause of action for trespass and whether this Honourable Court should not under the circumstance strike out or dismiss these reliefs as being speculative, contradictory and self – defeating.
- c. Whether in view of the fact that the Plaintiff failed to lead any evidence of pains, trauma and depression allegedly suffered by him as a result of the Defendant

perceived or purported Acts, this Honourable court should not dismiss the Plaintiff's pecuniary claims for N500,000,000.00 (Five Hundred Million Naira).

**On issue 1, Whether in view of the evidence led by the Plaintiff to the reflect, that his root of title is vide a customary Right of Occupancy granted or issued by the chairman of Abuja Municipal Area Council (AMAC), a declaration of Customary Right of Occupancy to plot No. CRD 292, Lugbe 1 Layout can be validly made in favour of the Plaintiff.**

Learned counsel submit that, it is settled law that a court of law cannot make a declaration over a right which is not recognised in law or by the court. ***INTERNATIONAL TEXTILE INDUSTRY (NIG) LTD VS ADEREMI (1999) 8 NWLR (Pt. 614) at page 260 at 302.***

Counsel submit further that, the declaration claims by the Plaintiff does not relate to a legal right that is recognised by law, in that, the law does not recognised Customary

Right of Occupancy in the Federal Capital Territory. And court was urged to so hold and dismiss the action of the Plaintiff.

On issue 2, Whether it is not inappropriate in law for the Plaintiff to claim reliefs Nos. ii & iii in the same cause of action for trespass and whether this Honourable Court should not under the circumstance strike out or dismiss these reliefs as being speculative, contradictory and self – defeating.

Learned counsel submits and argued that it is settled law that a claim for recovery of possession in effect concedes that a claimant is not in possession. The Plaintiff, cannot therefore maintain an action in trespass since he is presumed not to be in possession of the land anymore. ***GEORGE & COMPANY LTD VS AFINOTAN & ORS (2014) LPELR 22982 (CA), was cited in support of the argument.***

Learned counsel submit that reliefs ii & ii of the Plaintiff's statement of claim are misconceived, and therefore court should dismiss same in the interest of justice.

On issue 3, Whether in view of the fact that the Plaintiff failed to lead any evidence of pains, trauma and depression allegedly suffered by him as a result of the Defendant perceived or purported Acts, this Honourable court should not dismiss the Plaintiff's pecuniary claims for N500,000,000.00 (Five Hundred Million Naira).

Learned counsel argued that in a claim for a special damages, the Plaintiff must prove to the satisfaction of court that he suffered pains, trauma and depression for him to be entitled to the relief, and that the Plaintiff has failed to establish this aims of claim and therefore same should be refused and dismiss.

Upon service, the Plaintiff replied on point of law wherein it stated that the Plaintiff has proven that he is the owner

of the land in question and that the power of attorney tendered as Exhibit “C” clearly shows that there was transaction.

Learned counsel finally urged the court to grant all the reliefs sought.

Court:-I have gone through the pleadings of Plaintiff and the corresponding evidence both oral and documentary tendered by the Plaintiff and the implication of the Defendant resting his case on that of the Plaintiff.

I need to state the law which is trite that the choice of Defendant resting its case on that of the Plaintiff is an exercise of a legal right which leaves such a Defendant without any other option both at the trial court and or appellate court in the event that judgment is handed down in favour of the Plaintiff. I rely on the authority of ***MOBIL PRODUCING NIGERIA UNLIMITED & ANOR VS MONOKPO & ANOR (2003) LPELR 1886 (SC) OR (2003) 18 NWLR (Pt. 852) 346.***



The Court in this situation is left with the evidence of the Plaintiff to determine the present suit.

I shall therefore look at the case of the Plaintiff to ascertain whether he is entitled to the judgment of this Honourable Court.

Indeed a party who seeks Judgment in his favour is required by law to produce evidence to support his pleadings.

The first relief sought by Plaintiff is declaratory in nature thereby predicating the success of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> reliefs on the success.

Indeed Judicial pronouncements are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence.

***MOTUNWASE VS SORUNGBE (1988) NWLR (Pt. 92)***

**98**

Where the court is called upon to make declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleading.. I rely on ***AGBAJE VS FASHOLA & ORS (2008) 6 NWLR (Pt. 1082)***.

The imperativeness of this arises from the fact that the court has discretion to grant or refuse to grant such declaration.

***SAMESI VS IGBE & ORS (2011) LPELR 4412.***

The foregoing authority remains good law and binds this court as well.

On whether the Plaintiff in the case in view is entitled to the reliefs claimed or not, it becomes most expedient to ascertain his root of title.

There are five ways of proving ownership to land that are recognized by judicial decision. One or more of the modes are usually used in proof, they are:-

- (1) Traditional evidence
- (2) Production of document title
- (3) By proving acts of ownership numerous and positive enough to warrant an inference that the person is the owner.
- (4) Act of long possession and
- (5) By proof of possession of connected or adjacent land.

***AKAOSE VS NWOSU (1997) 1 NWLR (pt. 482) 478 at 492 paragraph B – D.***

As aptly stated by both counsel for the Plaintiff and Defendant and the ensuing evidence and title documents, Plaintiff came about the subject matter of litigation by virtue of allocation of conveyance of provisional approval given by Abuja Municipal Area council.

I need only state at this juncture that the Federal capital Territory came into being by decree No 6 of 1976, with 4<sup>th</sup> February, 1976 as the commencement date.

Section 297 (2) of the 1999 constitution of the federal Republic of Nigeria as amended vests absolute ownership of land within the Federal Capital Territory in the Federal Government of Nigeria.

The said provision is in agreement with section 1 (3) of the Federal Capital Territory Act 2004.

For ease of reference, I shall attempt to reproduce the said sections 297 (2) of the 1999 constitution of Federal Republic of Nigeria as amended and 1(3) of the FCT Act.

Section 1(3) FCT Act.

***“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 the lands comprised in the Federal Capital Territory shall likewise vest absolutely in the Government of the Federation.”*

Section 297(2) of the 1999 constitution.

*“The Ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria.”*

For all intents and purposes, the intention of the law makers on the status of Federal Capital Territory is deliberate.

What Government and the makers of the Federal Capital Territory Act intended was for a verse expanse of land devoid of any form of cultural or hereditary inclination to be set aside for the development of the capital city.

No little wonder, even the original inhabitants who had occupied their ancestral lands were merely paid compensation and asked to move-on, regardless of the fact that generations of their ancestors were buried on such lands. See section 6 of the Federal Capital Territory Act.

There is no gain saying that the issue of deemed grant which is a product of the Land Use Act 1978 was deliberately made inapplicable to lands within the Federal Capital Territory from the construction of the preamble to the Land Use Act and section 49 of the same Act.

Were the Land Use Act meant to apply to Federal Capital Territory, the original inhabitants would have been granted deemed grant and remained on their various lands within the Territory. The Land Use Act must not be read in isolation.

It is trite that, where the language, terms, intent or words to any part or section of a written contract, document or

enactment are clear and unambiguous as in the instant case, they must be given their ordinary and actual meaning as such terms or words used best declare the intention of law maker unless this would lead to absurdity or be in conflict with some other provision thereof. It therefore presupposes that where the language and intent of an enactment or contract is apparent, a trial court must not distort their meaning.

See ***OLATUNDE VS OBAFEMI AWOLOWO UNIVERSITY (1998) 5 NWLR (pt. 549) 178.***

A certificate of occupancy properly issued and where there is no dispute that the document was properly issued by a competent authority raises the presumption that the holder of the documents is the owner in exclusive possession of the land.

The certificate also raises the presumption that at the time it was issued, there was not in existence a customary owner whose title has not been revoked. It should

however be noted that the presumption is rebuttable because if it is proved by evidence that another person had a better title to the land before the issuance of the certificate of occupancy the said certificate of occupancy stands revoked. See *MADU VS MADU (2008) 2-3 SC (Pt. 11), 109*. See *ALLI VS IKUSEBIALA (1985) NWLR (Pt. 4) 630..*

A declaratory relief is a discretionary remedy which is not granted as a matter of course and the court must be satisfied before granting it that the Plaintiff or claimant has a very strong and cogent case both from his statement of claim and from the evidence he adduces in support of his case. The Plaintiff or claimant must satisfy the court that under all the circumstances of the case, he is fully entitled to the discretionary reliefs in his favour, when all facts are taken into consideration.

See *MAKANJOULA VS AJILORE (2001)12 NWLR (Pt. 727) 416*.



The question of urban or non-urban land does not apply and cannot apply to land within the Federal Capital Territory and I must sincerely wish to state on the authority of *ONA VS ATENDA(2000) 1 NWLR (Pt. 656) 244* that no area council within the FCT has the authority to do anything with the lands within the Federal Capital Territory, unless and until the Act of the National Assembly is passed to truly defining the administrative and political structure of the Area Councils within Federal Capital Territory.

The issue of urban or non-urban land is a creation of Land Use Act (LUA) 1978 and to the extent of the creation inapplicable to the Federal Capital Territory.

The question therefore on the powers conferred on and exercised by the Governor of a State under the Land Use Act (LUA) being applicable in the Federal Capital Territory, does not arise in view of the fact that the essence of Land Use Act (LUA) as set out in the preamble

and section 49(1) of the same act, the provisions of the Act are not applicable to title to land held by the Federal Government or any of its agencies.

It then logically follows that the provision of section 3 of Land Use Act (LUA) which empowers the Governor of a state to designate parts of the area of the territory of the state land as urban area is also most inapplicable to the land in the Federal Capital Territory.

If therefore there is no Non-urban land in the Federal Capital Territory, it presupposes that the only title validly and legally acceptable within the Federal Capital Territory is the statutory allocation by the Federal Capital Territory Minister and nonother.

From the foregoing therefore, it is clear that no Area Council Chairman/Administrator within the Federal Capital Territory has the power to allocate land to any person or group of persons as no land within the Federal

Capital Territory exist as non-urban land where customary title could be conferred.

Consequently, to the extend of non – compliance with the statutory provisions, of law, any of such allocation so made, is null, void and unconstitutional.

Let it be known to all and sundry that the mere brandishing of acknowledgment letter from Abuja Geographic Information Systems (AGIS) as evidence of submission of Area Council title documents for regularization does not amount to validation of such a title.

For any such area council allocation, so called, to be in conformity with the statutory provisions of law, the Federal Capital Territory Minister ought to withdraw the said so called Area Council allocation and issue a statutory title.

Once that is not done, the said customary title is ineffective null and void, the title held by Plaintiff in this case, If any, is inclusive.

Poser .. What is the meaning of regularization in English language?

The new lexicon Webster's dictionary of the English language defines it to mean – *“to make regular or cause to conform to a rule, principle.”*

Poser .. Why are all Area Council allocations being regularized?

Certainly it is to bring them in conformity with the provisions of law on the issue of allocation which is the exclusive preserve of the Federal Capital Territory Minister who enjoys the delegated powers of the President Federal Republic of Nigeria, under section 18 of Federal Capital Territory Act.

I am not a law maker, but an interpreter of law made by a law maker.

The objective of any interpretation is to unravel the intention of the law maker which often, can be deduced from the usage of language.

The duty of court is to interpret and give adequate and as close as possible accurate and ordinary meaning to the words used.

In an attempt to establish its case as required by law, Plaintiff tendered the following documents in evidence;

- i. Provisional Approval as Exhibit “A”
- ii. T D P tendered as Exhibit “B”
- iii. Power of Attorney as Exhibit “C”
- iv. Six pictures photograph and certificate of Compliance as Exhibit “D”.

A trial court has the onerous duty of considering all documents placed before it in the interest of Justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment and act on it. Document tendered before a trial court are meant for scrutiny or examination by the court, documents are not tendered merely for the sake of tendering but for the purpose of examination and evaluation. ***OMEGA BARIK (NIG) PLC VS O .B. C LTD (2002) 16 NWLR (Pt. 794) 483.***

It is the law that a person can sue for trespass even if he is neither the owner nor a privy of the owner. This is because exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong doers except a person who could establish a better title. Therefore, anyone other than the two owner, who disturbs his possession of the land, can be sued in trespass and in other action. See

***PIUS AMAHOR VS BENEDICT OBIEFINA (1974)  
LPELR 452 (SC).***

Plaintiff tendered Exhibit “C” which is a Power of Attorney donated to him by Col. Mahmud Santuruki.

It is the case of the Plaintiff that upon conclusion of sale transaction on the land in issue with the said Col. Santuruki (RTD), he was handed over the provisional approval issued by Abuja Municipal Area Council. This fact was emphasised by PW1 during cross – examination.

It is the law through a long line of cases that an unregistered registrable instrument, though, is not admissible to prove title, is admissible to prove payment of money and coupled with possession of land by the purchaser, it may give rise to equitable interest. See ***FBN PLC VS OKELEWU & ANOR (2013) LPELR 20155 (CA).***

The Land Instrument Registration Act, Cap 515, LFN Abuja has the following provisions:-

**Section 3(1).**

*“There shall be in the FCT, Abuja, a land registry with an office or offices at such place or places as the minister may, from time to time direct”*

**Section 3(2)**

*“The registry shall be the proper office for the registration of all instruments including Power of Attorney affecting land.”*

**Section 15.**

*“No instrument shall be pleaded or given in evidence in a court as affecting a land unless the same has been registered in the lands in question.”*



Qst ... Why did Plaintiff not register Exhibit “C” i.e the Power of Attorney executed between him and the said Col. Santuruki?

Indeed it is contained in Plaintiff’s statement of claims that he bought the said land for a consideration.

Qst... What then shall be the value of the said Power of Attorney in law bearing in mind the provision of the land Registration Act, LFN Abuja, 1990, specifically sections 3(2) and 15?

The said piece of document clearly ought not to have been presented in evidence. Having so presented same, I am under an obligation to expunge same.. Same is hereby expunged.

Where then do we go from this point?

Like the foetus which shall suffocate and die arising from the fact that the umbilical cord, which is foetus’ source of Oxygen, Carbondioxidee.t.c, the Plaintiff in this case shall

so suffer the same faith in view of the fact that the only means possible, legally speaking, for him to show his nexus to the land, is non – existent in view of the non – registration at the applicable registry of the Power of Attorney.

A certificate of occupancy is only prima facie evidence of title to land or exclusive possession of land.

Consequently, if it is successfully challenged, it can be nullified. Where there is evidence to show that the certificate was wrongly obtained, the court is under an obligation to nullify same. ***OTUKPO VS JOHN & ANOR (2012) LPELR 20619 (SC), supports this..***

Indeed in order to succeed in a claim of title to land, a party who held a Certificate of Occupancy as the Plaintiff in this case, will need to show his root of title that is through his vendor or seller who must show valid title to the land over which he purchased, in this case Plaintiff's secured Certificate of Occupancy. This is so because

Certificate of Occupancy can only be valid if title originates from a true owner or Government saddled with the responsibility to so grant.

Where a competent authority issues a Certificate of Occupancy, it raises the presumption that the holder is the owner in exclusive possession of the land which the certificate relates.

It also raises the presumption that at the time it was issued, there wasn't in existence any customary owner whose title has not been revoked.

Above presumption is rebuttable where it is proved by evidence that another person had a better title to the land before the issuance of Certificate of Occupancy, the court can revoke it.

The mere production of Certificate of Occupancy in a declaration of title to land case, as in this case, does not itself entitle the party to a declaration of title to land. It

must be shown by evidence that the possession was rightly conferred.

See ***FBN PLC. VS OKELEWU & ANOR (2013) LPELR 20155, OKPALUGO VS ADESOYE (1996) NWLR (Pt. 476) 77 (SC).***

From the evidence i.e oral documentary, Plaintiff at best is a trespasser for the reasons adduced in the preceding part of this Judgment.

Having led evidence to show act of possession in the subject matter, it is my judgment that Plaintiff even though a trespasser who's in possession can maintain an action against the whole world except a true owner who can show better title to that of Plaintiff.

I rely on the case of ***SALAMI & ANOR VS LAWAL (2008) 4 FWLR 7795 SC, AJUKWARA & ORS VS IZUOJI & ORS (2002) 6 SC (Pt. 11) 116.***

The claims of Plaintiff in both suits consolidated on the preponderance of evidence and settled position of the law succeeds in part and I hereby make the following orders:-

1. The invasion of Plaintiff's property known as Plot No. CRD 292 of about 600m<sup>2</sup> situate at Lugbe 1 Layout and evidenced of Right of Occupancy No. FCT/MZTP/LA/05/AD/8536 with Beacon Nos. PB5135, PB5134, PB5159 AND PB5158 by the Defendant without the authority, approval, knowledge and consent of the Plaintiff is unlawful, illegal and a trespass.
2. The destruction of the fence and gate house of the Plaintiff by the Defendant without any reason whatsoever is illegal, unlawful, ultra vires, null and void.
3. Defendant and its agents, privies, officers and any person howsoever described, deriving title, instruction and authority from the Defendant to yield up vacant

possession of the said Plot No. CRD 292 to the Plaintiff forthwith.

4. An Order of Perpetual Injunction is hereby made against the Defendant, his privies, agents, officers and or persons deriving title, instruction and authority from the Defendant from entering, trespassing or continuing to trespass and interfering with or in any way disturbing the Plaintiff's quiet possession, occupation, use and enjoyment of the said plot in question.

The next relief to consider necessary is general damages.

General damages in law is presumed to be damages flowing from the wrong complained of by the victim i.e the Plaintiff in this case. Such damages need not be specifically pleaded and proven..general damages are compensating damages awarded for harm resulting from the tort for which the party has sued.

I find solace for this in the case of *HUSSENI VS MOHAMMED (2015) 3 NWLR (Pt. 1445) 100*.

Clearly, Plaintiff who even though has been adjudged a trespasser but who has the protection of law, has clearly gone through trauma and psychological imbalance arising from the Defendant's action.

I hereby award the sum of N2Million damages against the Defendant.

Cost of this action assessed at N200,000.00. other reliefs are refused and dismissed.

Before I put a full stop to this Judgment, permit me to say that Defendant who had all the opportunity to have put before the court its documents, if any, did not take the right decision when its counsel decided to rest its case on that of the Plaintiff, thereby abandoning all its pleadings and the frontloaded witness statements on oath.. this, to

my mind, though an exercise of a legal right, is clearly suicidal.

I thank you all.

*Justice Y. Halilu*  
*Hon. Judge*  
*4<sup>th</sup> May, 2020*