

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 18TH DAY OF SEPTEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/CV/BW/18/2017

BETWEEN:

1. NYIWO JOHN
2. BAYO BADERINWACLAIMANT

AND

CAPTAIN USMAN NAGOGODEFENDANT

JUDGMENT

In a Writ of summons taken out on 6/2/17 the plaintiff's Nyiwo John and Bayo Baderinwa claim the ownership of plot L251 Kubwa Ext III FCDA Scheme , kubwa Abuja. They claimed that the sign post placed on the land by the Defendant Captain Usman Nagogo is an act of Trespass. They want an Order of this Court directing the Defendant to remove the sign post and perpetual Injunction restricting the Defendant his attorney's, his agents and privies from entering or

committing any act of trespass in the said plot L251 hereinafter known as the Res in this case. They also want N5, 000,000.00 (Five Million Naira) as damages for the said act of trespass and threat of injury to the body of the 2nd plaintiff.

The 1st plaintiff claimed that the house was allocated to him by the Bwari Area Council on behalf of the FCT Minister on the 15/5/2001. That 2nd plaintiff became a beneficial owner by virtue of an irrevocable Power of Attorney. They tendered the two documents as exhibits 1 & 5 respectively. They also tendered AGIS Acknowledgment Receipt and the Survey plan which were also admitted as Exhibits 2 & 3 respectively.

2nd plaintiff erected a perimeter fence around the Res. Shortly after, the Defendant surfaced and started laying claim over the plot. He marked the fence and erected a sign post giving the impression that the land belonged to the Nigerian Army. The plaintiff then instituted this action to seek redress.

The plaintiffs called 2 witnesses of whom, PW2 is Bwari Area Council Accredited Surveyor who identified plot D287 kubwa Ext.III B (Relocation) as the land belonging to the Defendant and not plot L251 as Defendant claims.

The Defendant called one witness who testified on his behalf.

In their Final Address and Reply to the Defendant's Final Address the plaintiffs raised 3 Issues which are:

1. Who between 1st plaintiff and Defendant is the Allottee of the Res?

2. Who between the plaintiffs and Defendant clearly positively legally identified the Res?
3. Are the plaintiffs entitled to Award of damages against the defendant?

Taking the issue 1 & 2 together they submitted that the plaintiffs and defendant have separate titles and that the plot were all allocated at different dates and at different locations though within the same kubwa. That the Res was allocated to plaintiffs while plot D 287 was allocated to defendant. That the 2 plot are not in the same place/location area. One is located in Extension III B (relocation) while the other is in kubwa Extension III, FCDA Scheme.

That Defendant did not claim ownership of the Res and he did not state that in his Statement of Defence or lead evidence to establish that. That since that is the case he urged the Court to resolve the issue No.1 in the plaintiff's favour, as what is not challenged needs no proof. He referred to the case of:

DANBABA Vs STATE (2018) 11 NWLR (PT.1631) 426 @433

INTERDRILL NIGERIA LTD Vs UBA PLC (2017) 13 NWLR (PT.1581) 52@58

That Defendant only claims that his plot D287 is Lex situs where L251 is :

That PW2, the Bwari Area Council accredited Surveyor was able to locate and identify the 2 plots in his testimony in

Court. He identified that plot D287 belongs to Defendant and same land is located directly behind Government Day Secondary School Dutse Alhaji while the Res L251 Ext scheme III FCDA is located about 500 metres, away from Living Faith Church. That both plots are not within the same layout; that one is at kubwa Ext.III B (D287) Relocation while L251 is at kubwa Ext.III (FCDA Scheme) as already stated. That the evidence of the plaintiff's witnesses were consistent and that the Defendant's witness testimony as it relates to the location and identification of the Res is inconsistent and contradictory. That plaintiff's did not contest the ownership of the D287 which the Defendant claims and identified as his land. That statement credited to DW1 in paragraph 12 of his witness statement was not pleaded. He urged Court to discountenance the evidence as it is of no consequence. That after all evidence led on facts not pleaded goes to no issue. He referred to the following cases:

NWANKWO Vs OFOMATA (2009) 11 NWLR (PT.1153) 496 @514

AJAYI Vs FISHER (1956) 1 SC NLR 279

That the whole gamut of Defendant's submission and testimony of his witness are of no tangible value to his case.

That plaintiffs pleaded and tendered the Survey plan (TDP) in evidence as Exh.3 which is what was used to identify the Res. They submitted that the Defendant did not tender any Survey plan to identify his Plot in his evidence. That the

document the Defendant tendered in evidence was not signed and that an unsigned document has no evidential value and is not admissible in evidence. He referred to the case of:

OJO Vs A.B.T ASSOCIATES INCORP. (2017) 9 NWLR (pt.1570) 167 @193

A-G ABIA STATE Vs AGBARANYA (1999) 6 NWLR(PT.607)

He urged Court not to attach any evidential weight to the unsigned document tendered by the Defendant.

That Defendant did not adduce any evidence to support his claim. That DW1 is neither the owner of the Res nor a Surveyor of the land. That he claims to be a Pharmacist and an agent who facilitated the purchase of the plot by the Defendant. He could not also identify the person who assisted him to identify the Plot. In his testimony he admitted that the plot was developed by someone else other than the Defendant himself. He finally submitted that the Defendant had woefully failed to discharge the burden of proving his title to the Res shifts to him by the plaintiffs who have discharged that onus. He urged Court to grant all the Declaratory Reliefs sought in this case.

ON ISSUE NO.3, they submitted, that they are entitled to the Damages Claimed against the Defendant as Defendant has no justifiable reason to drag possession of the Res with the plaintiffs as the Defendant's documents of title are different

from that of the plaintiffs. Same as the location of his Res. That he did not plead or give evidence to show what he did to identify the exact position of his Plot.

That PW2 properly identified where the location of the 2 plots are and showed DW1 the plot belonging to the Defendant. That Defendant only wanted and actually used his position as a military man to trespass on the Res by placing the sign post with the inscription “MILITARY ZONE, KEEP OFF” purporting to create impression that the land belonged to the Nigerian army. That Plaintiffs have suffered psychological trauma, physical harassment and embarrassment and has equally lost substantial finances because of the trespass.

That Plaintiffs are entitled to award of Damages against the Defendant which flows from the wrongful act of the Defendant. That the plaintiffs also suffered bodily injury as a result of the Defendant’s attempt to forcefully takeover of the Res from them. They urge the Court to grant the award of general Damages against the defendant.

On his own as stated earlier the Defendant called one witness who testified on his behalf. He tendered 5 documents marked as Exhibit 8-12. Defendant claimed that he is the owner of plot D287 which he acquired from Nanbyen Wuyep by virtue of a Power of Attorney. That Claimants claimed that the plot under his possession is plot L251. That the plaintiff did not join the authority that

allocated the plot to them as a party by way of subpoena to clarify the contention on ownership of the Res.

In his Final Address the Defendant raised one issue for Determination which is:

“Whether the Claimants have proved their case on the preponderance of evidence to be entitled to the Reliefs Claimed in their Writ of Summons.”

He submitted that the Claimants have failed to prove their case on the preponderance of evidence to be entitled to the Reliefs sought. He referred to the case of:

EWO Vs ANI (2004) ALL FWLR (PT.200) 1484.

They ought to have joined Bwari Area Council and the FCDA as parties in this suit being the issuing authorities in order to identify the location of the 2 plots in this case and know who is encroaching into the other plot. That plaintiff only established how it derived interest in the land which was never being disputed. That what is in dispute is the location of the Res. That where claimants claim is the location of the Res is the place where plot D287 which belongs to the Defendant is, that plaintiff did not do so.

That the testimony of PW2 should not hold water and that he is not a neutral person to determine who trespassed on the others land and who is in the right possession of disputed land. That no written document tendered by plaintiff emanated from Bwari Area Council or FCDA to show that

these issuing authorities intervened in the dispute as to the issue of location and the rightful allottee of the particular location in contention.

That the 2 bodies are necessary parties in the Suit to ascertain the party in rightful location. That Claimant are not entitled to the claims having failed to prove so in preponderance of evidence.

That all documents tendered by plaintiffs are only documents of transaction between 1st Claimant and 2nd Claimant. That they only established how 2nd Defendant came into and acquired his interest in the Res. That they did not discharge that onus to be entitled to the Reliefs sought. He referred and relied on the case of:

DADDY Vs NNPC (1998) 1 SCNJ 95

ODOFIN Vs MOGAJI (1978) 4 SC 91

He urged the Court to hold that the testimony of PW1 & PW2 are not probable and are irrelevant to the claim of the plaintiff's. He urges the Court to resolve the sole issue in his favour and dismiss the case of the plaintiff's with cost.

In their Reply on points of Law to Defendant's Final Address the plaintiff's submitted that by paragraph 4.01-4.06 the Defendant has no problem with their ownership of plot L251 as he stated that his authority and interest on the property is not in dispute. That it is an admission on his part which means that plaintiffs have proved and established their title

to the Res and Defendant had admitted that too. They referred to the case of:

ABIDOYE & ORS Vs DOSUMU & ORS (2019) LPELR-47719 (CA)

That in this case the Defendant does not contest that plaintiff's are entitled to their declaratory Reliefs.

That the Counsel to Defendant did not ask the PW2 any credible question to impeach his testimony and evidence in chief. That plaintiff's are right to have called PW2 to testify based on the decision in the case of:

TEJUMADE Vs OLAREWAJU & ORS (2015) LPELR-25984 (CA)

That there is no law that mandate the plaintiff's in this case to join the allocating authorities as parties in a case of dispute as to location of disputed land. That non-joinder of the 2 authorities as parties would not affect the case of the claimants in any way.

That the submission of Defendant that plaintiff's did not tender any document from Bwari Area Council or FCDA is false. This is because the Survey plan was issued by Bwari Area Council. That plaintiffs are not under obligation in any law to call the issuing authority as a witness unless such Survey plan is challenged which is not the case in the present case. That TDP is the only means to identify a land where the title to such land and location is in issue and documentary. He relied on the case of:

EDUN Vs PROVOST LACOED (1998) 13 NWLR (PT.580) 52

That the Survey plan tendered by Claimants show L251 was bounded by plot L249, L250 and L248. The evidence of PW1 & 2 are consistent on the fact that what was fenced by the plaintiffs are plot L251 and not D287. That Defendant did not put evidence that D287 was fenced. He did not give evidence that on how he came to know that the plot in issue is his own.

They urged the Court to discountenanced the submission of the Defendant as it is full of inconsistencies, unsubstantiated mere rhetoric's and an afterthought. He urged Court to grant their claims as sought.

COURT:

The court had summarized the submission and evidence of the parties above. It is imperative to state that it is trite that whoever assert must prove. It is for the plaintiff to prove and establish their case on preponderance of evidence laid in support. Once that is done it is said that the onus has shifted to the Defendant who must also by his own submission and evidence of his witnesses rebut the case. No Court finds in favour of the plaintiff who cannot establish its case. Also no Court finds for a Defendant who has inconsistent testimony and unsubstantiated assertion in defence or should I say in evidence to claim ownership of a Res or in prove of his defence to allegation of trespass made against him by the plaintiff. Whoever claims a fact exist shall prove that those

facts actually is in existence section 131(1) & (2) Evidence Act 2011. Again the burden of proof lies on anyone who would fail if no evidence is given by either side of a case. Section 133 Evidence act 2011.

It has been held in plethora of case that unchallenged facts are deemed and stand admitted and that they need no proof to. See

DANBABA Vs STATE SUPRA

INTERDRILL Vs UBA PLC SUPRA

Any evidence led on facts not pleaded goes to no issue see the case of:

**NWANKWO Vs OTOMATA (2009) 11 NWLR (PT.1153)
496@514**

No Court admits any fact not pleaded Court always rejects any evidence adduced where fact on which evidence is placed was not pleaded as such fact goes to no issue. See

AJAYI Vs FISHER SUPRA

NWANKWO Vs OTOMATA SUPRA

It has been held in several cases that survey plan also known as TDP- Technical Drawing Plan is the only means of identifying a plot of land, particularly its location. Where title to the land is in issue that is what the Court decided in the case of:

EDUN Vs PROVOST LACOED (1998) 13 NWLR (PT.580) 52
where it held

“ where the identity, extend and boundaries of a parcel of land, the subject matter of an action are in dispute or where land is well and very much known and identifiable by parties neither a survey plan nor evidence of boundary men will be necessary but whose as in the instance case the identity of the land is in dispute in which case the exact location is in issue in dispute then, a Survey plan becomes inevitable and vital to proof of possession. (Emphasis mine)

See also Nwankwo Vs Ofomata supra @ pg 520

It is trite that any unsigned document has no life in it. It is weightless and even if admitted in evidence as a matter of courtesy, no weight is attached to it as it will never command any evidential value even if it is admitted in evidence at hearing. Such documents and its weightless content one always rejected discarded and discountenanced. See the case of:

A-G ABIA STATE Vs AGHARANYA (1999) 6 NWLR (PT.607)

Unsigned document has no face it has no origin. It is void and its content weightless. It is regarded as blank and the test of its content bland too. That's the Court decisions see the case of:

TSOKWA Vs IBI (2017) 10 NWLR (PT.1574) 343@418

**OMEGA BANK NIG PLC Vs OBC LTD (2005) 8 NWLR (PT.928)
547**

It is one of the fundamental duties of the Court to expunge any document not admissible in law. Even though the document was admitted during hearing.

It is the responsibility of a party who claims ownership of a parcel of land to adduce enough credible evidence to support his assertion/claim by tendering all credible documents especially the Survey plan if the location of the Res is in issue. Such Survey plan must be signed by the appropriate authority. Showing particulars of the plot. By virtue of Section 136(1) Evidence Act 2011 Burden of proof lies on a party who claims that a particular fact is in existence or lest proved otherwise. That is why it is trite and has been held that whoever asserts must prove.

Once a party has establish that he has suffered injury bodily or financially as a result of the actions or inactions of another party such party is entitled to damages to be quantified by the Court after taking into consideration the facts for and against such proof.

Let me reiterate that claim of ownership to land is based on documentary evidence and not on hearsay.

In the present case the parties are claiming ownership of different parcels of land. To the Plaintiff's they are the owners of L251 of about 500 square metres. To the

defendant he is the owner of D287. The only contention is that the L251 is in the same location as D287. But going by the testimony of the PW2 a Surveyor from Bwari Area Council Office, the 2 plots are located differently in different locations as described in his testimony one L251 is in a fenced place at Kubwa Ext III FCDA scheme while the D287 is in kubwa Ext. III B at Kubwa (Relocation layout, Dutse Alhaji behind the Government Day Secondary School while L251 is about 500 metre away from Living Faith Church.

The allegation is on trespass by Defendant on the L251 where he placed a sign post on which the inscription. "Military zone keep off"

The plaintiff claimed that they suffered bodily harm as a result of the manhandling by the Defendant. They claimed to have suffered some financial loss as a result of the Trespass too. Both tender the documents to support their cases. Surveyor Ishaya Atsen is PW2. It is important to point out that the PW2 is a Subpoenaed witness called by the plaintiff's. He was Summon to appear before this Court via a Supoena served on him personally which he acknowledged in person on the 12/3/18 at 8:24 am. He is a Registered Professional Surveyor and one of the FCT External Consultant Surveyors.

The Defendant filed its Statement of Defence on the 24/5/17. He did not attach any document he pleaded in support to the Statement of defence as at the day he filed it. On 25/5/17 he

filed a motion on Notice for Extension of time to file its Memorandum of Appearance dated 18/4/17 filed on 19/4/17 and Statement of Defence dated 24/5/17. He did not attach any document to claim his title to the Res or Prove that the Res is within his plot which he claimed is D287 kubwa Ext.III D (Relocation).

It is imperative to note that the parties agreed to meet all to present their respective documents of title. They met with the PW2 the accredited Surveyor of FCDA and Bwari Area Council. It is also the Surveyor that worked on the 2 Schemes- Relocation and FCDA scheme where the 2 plots are located. In his testimony as PW2 a subpoenaed witness he Surveyor Atsen confirmed the statement he made in his Oath and what the PW1 and Defendant said in their further statement and statement of Claim that he the Surveyor took the 2 parties/representatives to the 2 plots showed them the location and exact plot of each person.

The Defendant and his Counsel could not disprove or deny this fact. The same fact was corroborated by the PW1 still stands unchallenged even as I read this Judgment. It is the Law that unchallenged facts are deemed admitted and is held as the truth in the absence of any challenge. It is therefore not in doubt that the parties were shown the different locations of their respective plots which from all indications shows that plot L251 and D287 are located at different places and are far apart from each other. The testimony of the PW2

is there for all to see. It was not challenged by the Defendant and his witness. This Court believes him that the 2 plots are not located in the same place as the Defendant erroneously wants this Court to believe. This Court therefore holds that the plot D287 which defendant claim is his own is not same and not located at the same place as plot L251 which is the Res.

This Court also holds that the action of the Defendant by placing a sign post on the land is an act of gross trespass by the Defendant. He is therefore “Civilly” guilty of Trespass as alleged by the Plaintiffs.

Claim of ownership to land is based on documentary evidence. To succeed in a claim of ownership, possessory right and interest in land, the party must show that it is in possession with the right documents of title. To succeed on issue of trespass the party must show that it is in possession before the imposter came to being. That is exactly what the plaintiff has done in this case.

It is interesting to state that going by the original land documents attached and tendered by both parties in support of their claims to the ownership of the land. There are structural fundamental difference starting from the plot NOs,. the plot Nos of the Conveyance of Approval exhibited by the plaintiff is plot L251, file No.BN4571. that is the Nos in the R of O. The plot Nos of the adjoining land are specified

clearly in the plan. Which is dated 5/10/11. Date of allocation 15/5/01.

The plot Nos of the land tendered by the Defendant is plot D287, file Nos 41694 Dated 15/10/01. The land is in kubwa Ext.III B (Relocation) . Unlike that of the plaintiff which is Ext.III FCDA Scheme. There is also a fundamental difference in the size of the plot. Plot Nos L251 is 1000 sqm while D287 is 500 sqm. These sizes are contained in both the Conveyance of Approval and receipts of payment of Development Levy etc.

Plaintiff paid for the processing fee on the 22/2/07. Defendant paid on the 3/1/05. The Deed of Assignment and Power of Attorney presented by plaintiff shows that the documents were signed and sealed on the 13/2/12. That of the Defendant was seal on the 28/8/2014. The AGIS Receipt of the plaintiff shows the name, Plot No., Plot location Layout and date of conveyance. But the AGIS Receipts attached by the Defendant has his name, plot Nos. It did not state the location of the plot but state a different Nos as the new Nos. it did not state the old Nos. Again the dating 10/6/07 is equally contradictory as far back as 3/1/05 the Defendant has paid for the C of O and the processing fee.

In the TDP tendered by the plaintiff has the plot size clearly written. But that is not the case in the Defendants submission.

The Defendant had tendered a hand written and unsigned undated and document without title. The TDP of the Defendant has no plot size. It only stated 0.38 hectare. No plot size in any TDP is written or explained like that. The TDP of the Defendant did not place the plot Nos of the surrounding plots. The defendant deceptively presented the unsigned documents- Exhibit 12 to stand as TDP. That document has no weight. This Court rejects it too.

If actually the Plaintiff trespassed on the Defendants land or that the Res is same as plot 287, the AGIS would not have issued 2 acknowledgement Receipts to both parties. By issuing the 2 different acknowledgements Receipt shows that there are 2 different plots. That means that plot D287 is not the same as plot L251.

A closer look at Exhibit 17 the pictures showing the sign post mounted at the Res plot L251 with the mobile phone Nos, allegedly mount by the Defendant confirms the allegation of trespass into the Res. The Defendant did not deny mounting that sign post.

From all indication there are 2 fundamentally different Allocation in different places which are awaiting Regularization. The Defendant had stated that he has a different plot from plaintiff. The plaintiff claims that the sign post is trespass.

It is evidently clear that there is a mix in the case. The PW2- the Surveyor had stated in his evidence that he had called

the parties and showed them where their respective plots are located. The parties are to get back to the Bwari Area Council who allocated these parcels of land to the parties help them identify once and for all their respective plots as both agreed that there are 2 plots in existence. Defendant to pay the plaintiff N50, 000.00 for trespass. Defendant to remove the sign post without delay. This is the Judgment of this Court.

Delivered today the.....day of2020 by me.

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K.N.OGBONNAYA

HON. JUDGE