

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON FRIDAY 3RD JULY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N.
OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/BW/CV/824/2020

BETWEEN:

ODERA UNAGO

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PLAINTIFF

AND

**UNKNOWN PERSONS
(AMOS ADUMI AND
IRIMIYA AMOS AWOSHEKWODNA)**

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}

DEFENDANTS

JUDGEMENT

On the 15th day of January, 2020 the Plaintiff filed this Originating Summons against unknown persons who eventually surfaced as Amos Adumi and Irimiya Amos Awoshekwodna. In the Originating Summons the Plaintiff wants this Court to interpret the following question which is:

“Whether the Defendant have the right to claim from him compensation for unexhausted improvement on Plot 5669 (File No: IM 64901) measuring approximately 2,128.64m² purchased by the Plaintiff and registered as No: FC 193 at P193 Vol 81PA in the FCT Land Registry”.

The Plaintiff therefore claims the following declaration and consequential Reliefs:

- (1) **A Declaration** that by virtue of the Power of Attorney registered as described in the above question, the Plaintiff is bonafide owner of the property which is the Res in this Suit and is entitled to all that is attached thereto.
- (2) **A Declaration** that the Defendants are not entitled to receive from the Plaintiff any compensation for the crops growing on the property in issue.
- (3) **An Order** restraining the Defendant's, their agents, privies, servants, workers or anyone acting by any authority of the Defendants from interfering with the Plaintiff's right to the physical possession of the said Plot covered by the Power of Attorney registered as FC **193 at P193 Vol 81PA** in the Land Registry of FCT and doing anything or act inconsistent with or contesting with the Rights and Interest of the Plaintiff over the land subject of the said Power of Attorney.
- (4) Omnibus Prayer

The Originating Summons is supported by Affidavit of 17 paragraphs which he deposed to in person. He attached 3 documents marked as EXH A – C

Certificate of Occupancy of the Res with TDP

Deed of Assignment with Obinna Nneji

Power of Attorney donated by Obinna Nneji to Plaintiff.

In the Written Address the Plaintiff raised 2 Issues for determination which are:

- (1) **Whether from the facts in the Affidavit and the accompanying 3 Exhibits the Plaintiff can institute**

this action against the Defendants whose identity was not known to him.

- (2) Whether he is liable to pay the Defendants compensation or any charge demanded relating to the unexhausted improvement on the Plot of land.**

On Issue No.1 the Applicant submitted that he did not know the Defendant until the time he wanted to clear the land for some development when they surfaced claiming to have planted some cashew trees in the Res. Hence this action commenced against them as unknown persons. That as such he has a right of recovery of possession against them. He urged Court to commence the action against them as unknown persons. Meanwhile before the Originating Summons was heard the Defendants surfaced and their identity was known and they filed a Counter Affidavit challenging this Originating Summons.

So this Court cannot grant the said prayer No.1 since the issue has been overtaken by event of the Defendants' names been known and their subsequent filing of the Counter which they adopted and Plaintiff replied to same on point of law. That now means that the 2nd issue is the only issue before this Court for full determination by this Court in the Written Address to the Originating Summons. Issue No.1 no longer exists as Respondents are known. Plaintiff can institute the action against them as known persons.

On Issue No.2 he submitted that he is not liable to make any payment to the Defendant on the use, possession and occupation of the Res in respect of which a Certificate of Occupancy has been issued as shown in **EXH A** attached to the said Affidavit which shows where the right of the Plaintiff on the Res emanated from. That the said Certificate of Occupancy grants Plaintiff the exclusive

and possessory right over the Res by virtue of **SS.14 and 15 (a) Land Use Act 1978.**

That on the issue of payment of compensation for improvement/crops on the said land as claimed by the Defendants, the Plaintiff submitted that once a Statutory Right of Occupancy is granted on a parcel of land, it extinguish all previous rights to the use and occupation of the said land. He referred to **S.15 (2) of Land Use Act 1978.** He also cited the case of:

Abioye V. Yakubu
(1990) 5 NWLR (PT.190) 130

Titiloye V. Olupo
(1991) 7 NWLR (PT. 705) 219

That the Plaintiff whose right over the Res is derived from the Statutory Right of Occupancy has exclusive right to possession of the crops on the said land. This then means that he is the owner of whatever crops/trees in the land. That he alone can claim any right of the said crops/trees on the land. That is in line with the principle of **Quic Quid Plantatur Solo Solo Cedit** – whatever is fixed on the land becomes part of the land. So the owner of the land is also the owner of whatever is attached to the land. He referred to the case of:

Registered Trustee of Master's Vessels Ministries Nigeria Incorporated V. Emenike & or
(2017) LPELR – 42836

That from the decision of the Court and provision of S. 14 & 15 Land Use Act 1978, the Defendants has no right to demand compensation from the Plaintiff as regards the said economic trees – cashew trees planted by them on the said land. That he is not equally liable to pay

the Defendants any compensation whatsoever for the trees growing on the said land. That the action of the Defendants are unlawful and an attempt to deny Plaintiff of the physical possession and occupation of the Res. He urged Court to grant all his reliefs as sought in this Suit.

Upon receipt of the Originating Summons the Defendants filed jointly a Counter Affidavit of 21 paragraphs deposed to by Irimiya Amos Awoshekwoona, the 2nd Defendant. They attached 4 documents marked as **EXH D1 – D5**. These documents included an Originating Summons filed against the Defendants and FCDA by the Plaintiff on 24/4/18 in the **Suit No.: FCT/HC/CV/1578/18**. **EXH D2 is the Memorandum of Appearance** filed by the 1st Defendant Amos Adumi & **EXH D3 is the Preliminary Objection** filed by the same Amos Adumi challenging the said **Suit CV/1578/18**. While **EXH D4 is a Notice of Discontinuance** of the said Suit filed by the Plaintiff on the **28/11/18**. While **EXH D5 is a Letter** by the Plaintiff informing the Defendant that the new date for the hearing of the Notice of Discontinuance of the case **CV/1578/18** is on 12/12/18. That letter was dated 7/12/18.

In the Written Address in support of the Counter Affidavit the Defendants raised 4 Issues for determination which are:

- (1) **Whether Plaintiff is the bonafide owner of the Res, Plot 5669 Kpaduma Hills CAD AO4 Asokoro Guzape, Abuja, by virtue of the said Power of Attorney.**
- (2) **Whether the Defendants have the legal right to claim for compensation on all the economic trees planted by them on the Res and for the Psychological loss of their great grandparent's grave on the said land.**

- (3) **Whether the Plaintiff did not mislead and abuse Court's Process when he claimed that Defendants are unknown and obtained an Order for substituted service when it is on record that he had earlier filed a similar Suit CV/1578/18 on the same matter.**
- (4) **Whether the non attachment of Certificate of pre-action cancelling, fixing of NBA seal by the Plaintiff Counsel and non signing of Affidavit by Commissioner for Oaths does not render the Originating Process null and void and liable to be set aside.**

On Issue No.1 they submitted that the purported registered Power of Attorney and Deed of Assignment without consent of FCT Minister first had and obtained, makes the Plaintiff not to have any right as the bonafide owner of the Res. The Plaintiff therefore does not have any legal capacity as proper owner to sue or be sued in this Suit. They urged Court to dismiss the Suit with cost. They referred to the case of:

Ude V. Nwara
(1993) 2 NWLR (PT. 278) 638

Amadi V. Nsirim
(2004) 17 NWLR (PT. 901) 111

On Issue No.2 on whether the Defendants have right to be compensated for the economic trees thereon, they submitted that from **paragraph 3, 4, 14, 16, 17 & 20** of the Counter Affidavit, as well as **paragraph 3** of Plaintiff's Affidavit the Defendants are farmers and have been farming in the said Res for so many years. That since their right is connected with a land which is a thing not a person they are entitled to compensation by the Plaintiff and damages for the said economic trees and for the cost of their

grandfathers' graves. They referred to the sections of **Land Use Act S. 29 (1 – 7)**.

On Issue No.3 on abuse of Court Process by the Plaintiff on claiming not to know the Defendants. That the Plaintiff obtaining Court Order to serve the Defendants was intended to mislead the Court in order to get a Default Judgement after ambushing the Defendants. That any proceeding like this case which is an abuse of Court Process should therefore be dismissed. They referred to the case of:

Arubo V. Ayeleru

(1993) 3 NWLR (PT. 280) 126 @ 142 paragraph A – B per Nnaemeka Agu.

CBN V. Ahmed

(2001) 11 NWLR (PT. 724) 369 @ 409

On Issue No.4 on non attachment of NBA stamp and no filing of Certificate of Pre-action cancelling by Defendant Counsel they submitted that the failure to comply with these action makes the Suit to be incompetent and liable to be set aside. They relied on **Order 2 Rule 8 & 9 FCT High Court Rules** and on the case of:

Oyegun V. Nzeribe

(2010) 7 NWLR (PT. 1194) 577 @ 593

They urged to Court to dismiss the Suit for lacking in merit and for being an abuse of Court Process.

Upon receipt of the Counter Affidavit the Plaintiff Counsel filed a Reply on Points of Law. Taking the issues one after the other the Plaintiff submitted relying on **S. 15 Land Reg. Act CAP 515 Laws of FCT**, that the Power of Attorney was duly registered as required by law and as such can and actually confess all the rights in favour of the Donee, the Plaintiff and has been tendered as in this

case, before the Court as a valid instrument that transferred title from the grantor to the Plaintiff the grantee/donee. He relied on the case of:

Bestway Hotels & Anor V. Minister FCT & 2 ors
Unreported Judgement of Justice Folashade Ojo
delivered on 2016

Simon Apala Aboshi V. Manase Fele & or
(2012) LPELR – 8610 (CA)

He submitted that Defendants have not produced better titles to the land and therefore that makes them trespasser for which an injunction should be the best remedy against them. That the Power of Attorney was properly registered by the right office and the Plaintiff has right to do anything on the Res as he has been conferred with all the right to do so by the same Power of Attorney. That Plaintiff is right to have pleaded the document in evidence as a valid instrument transferring title to him from the grantor. He urged Court to hold that he is the bonafide owner of the land to the exclusion of the Defendants who are trespassers in this case by virtue of the said Power of Attorney and Certificate of Occupancy. That the Plaintiff is also right to maintain an action against the Defendants as trespassers over the land.

On Issue No.2 they held that Plaintiff by virtue of the Power of Attorney has sufficient valid title to the Res. That there is nothing before the Court to show that Defendants ever has any title to the Res.

That by S. 34 & 35 Land Use Act, it is the Governor on whom all land is vested and who issues Certificate of Occupancy that has the duty to pay compensation to families, group, or person whose land have been affected where there is any improvement on after due

computation as specified in S. 29 of this Act. That Defendants should seek compensation from the FCT Minister in the Department that is set up for that purpose and not from the Plaintiff. That Defendants cannot, base on their claim, prevent the Plaintiff from the use and enjoyment of the said land. They cannot therefore prevent the Plaintiff from taking full possession of the said land as doing so will amount to trespass.

On Issue No.3 – abuse of Court Process, he submitted that the earlier case filed was struck out as it has not been adjudicated on and nothing prevents the Plaintiff from filing another case against unknown person as the previous case was abandoned and struck out or refreshed or resuscitated. That striking out the case was extinguishing same. That filing of the present Suit is separate and can stand on its own as there is no Order of the Court to prevent Plaintiff from doing so. That the Defendants are at liberty to file a Joinder if they feel that they have a defence. He urged Court to hold that the Suit is not an abuse of Court Process. He referred to the cases of:

Maigari V. Adamson
(2016) LPELR – 40774 (CA)

Ape V. PDP
(2017) LPELR – 40745 (SC)

Onuoha V. National Bank
(1999) LPELR – 8134 (CA)

On Issue No.4 on no fixing of NBA that the Processes filed by the Plaintiff were proper as he properly complied with the requirements of the law in that regard. There are NBA Seal and Pre-action Certificate. He referred to:

A-G Federation V.Uwazuruike & ors

(2006) LPELR – 11858 (CA)

He urged Court to discontinuance the Counter Affidavit of the Defendants and enter Judgement in Plaintiff's favour.

COURT:

To start with there is an NBA Seal and Pre-action Certificate on the Process filed by the Plaintiff. Again non fixing of NBA Seal does not and cannot vitiate the action in a Court. There are plethora of Court decision to that effect. On that the Counter Affidavit is discontinuance and is dismissed because there is a Pre-action Certificate and there is an NBA Stamp too.

On Issue of the question posed for interpretation the Plaintiff has a right to institute this action against unknown persons. **Order 13 Rule 9 FCT High Court Rules 2018**. The reasoning is because going by the Certificate of Occupancy, the Deed of Assignment and the Registered Power of Attorney, it is not in doubt that the Plaintiff has by these documents the legal and possessory right over the land in issue. The Power of Attorney irrevocably transferred all the right to act for and on behalf of the Donor – Obinna Nneji who has the Certificate of Occupancy issued to him by the rightful authority – the FCT Minister.

It is important to point out that by the provision of **S. 1 (1) Land Use Act 1978**, all land in every state was given to the Governor and in this case to the FCT Minister. The same Act had provided that where there is acquisition of land by the FCT or Governor of a State and there is a need for compensation. The office designated for such should quantify the claim for compensation and recommend that to the Governor or FCT Minister as in this case. Then the same FCT Minister will approve the said payment. For that to be possible there

must be a claim for compensation in writing duly submitted to the office of the FCT Minister. Any claim that does not follow this laid down procedure cannot stand.

To start with it is the same FCT Minister who after the acquisition of all land by virtue of the said extant provision of the Land Use Act that allocates the land to a person. Once that is done, the same FCT Minister in his own hand issues the Statutory Certificate of Occupancy to such individual/person. Before he does that it is believed that there is no encumbrances on such land and the holder has exclusive possession **S. 14 & 15 Land Use Act** in that where there is any cause to pay compensation. It is already assumed to have been paid before the grant of the Certificate of Occupancy. This means that any land in which Certificate of Occupancy had already been issued by the Governor/Minister of FCT, the person who the grant is given has no business with any individual or persons who come around to claim compensation from the person. If there is any room for compensation it should be directed to the body that issued the Certificate of Occupancy, who this Court believed must have paid any required compensation before the land in issue was acquired and subsequently allocated.

By the Certificate of Occupancy, Deed of Agreement and Power of Attorney the claim of ownership or legal right by the Claimant is not in doubt. The question of Consent as postulated by the Defendants can only come if there is issue of mortgage of the land. There is no sign that Obinna Nneji had mortgaged the property to the Plaintiff. So the Power of Attorney is only for the Claimant to stand in the “stead’ of the owner – Obinna Nneji. There is therefore no need for the consent. Moreover the Power of Attorney is registered as required by **S. 15 (1) – (3) FCT Land Registration Act** that authenticates the transaction and Plaintiff’s legal right over the land.

Again there is no document by Defendants showing what they are claiming as compensation. Going by the Land Use Act, claim of compensation should be in writing and quantified monetarily. It should not be a blanket claim. Amount claimed as compensation must be known and ascertainable.

The Defendant did not follow that in this case. Therefore their claim cannot stand. More so such claim of compensation should be directed to the FCT Minister who acquired the land in the first place. To make the above reasoning clear, it is imperative to quote verbatim the provision of the **Land Use Act S. 15 (2)**, it states:

“Upon the grant of Statutory Right of Occupancy under provision of subsection 1 ... all existing right to the use and occupation of the land which is the subject of the Statutory Right of Occupancy shall be extinguished”.

That is what the Court held in the case of:

Abioye V. Yakubu
(1990) 5 NWLR (PT. 190) 130

The same were re-echoed in the following cases also:

Gankou V. Ugochukwu Chemical Ind. Ltd
(1993) 6 NWLR (PT. 297) 55

Lang V. Mohammed
(2001) 3 NWLR (PT. 700) 359

Titiloye V. Olupo
(1991) 7 NWLR (PT. 205) 219

By the interpretation of **S. 14 and 15 Land Use Act 1978.**

It is very clear that the holder of Statutory Right of Occupancy as the Plaintiff, has exclusive Right to the land. He has sole and absolute possession of all the improvement on such land. His title can only be extinguished by revocation of such right by the grantor of the Right in accordance with the provision of the Act in that effect.

The exclusivity of the right of the holder of Statutory Right of Occupancy includes the right to use and occupy and to deal with the land as he should as provided and directed by the Statute Right as contained/conditions in the Certificate of Occupancy. This means that the development on the land in which the Certificate of Occupancy is based must be in compliance and as stated in the condition set thereon. Failure to follow the condition will lead to revocation by the grantor.

There is no such provision in the Land Use Act as extinguishing of existing right to use and occupation of such land because upon the grant of Statutory Right of Occupancy every previous existing right dies or is consumed by the grant of Certificate of Occupancy. They do not exist any longer. That is why once granted, the grantor can only revoke following laid down procedure. Where the grantor fails to follow that procedure, the revocation cannot stand.

Such is the extent of the possessory right and exclusivity of the powers of holder of such right. Such holder has the right to use and right to occupy the said land to the exclusion of every other person. So any interference or action by any other person as far as the land is concerned is trespass to the land. The holder equally has the exclusive right to possession of such land. He has the proprietary interest in the land which no other person has. Where that is the case, the holder has exclusive right over and possession of any crop

on the land as long as the Statutory Right of Occupancy is still in existence and valid.

By the maxim

Quic Quid Plantatur Solo Solo Cedit – whatever is fixed on the land becomes part of the land applies in this case. It is not in doubt that the Plaintiff has Statutory and Possessory Right over the land in issue by virtue of the Certificate of Occupancy attached as well as the Registered Power of Attorney and the Deed of Assignment. This means he has legal possessory right and interest in everything in the land since he has been declared the owner and can do everything for and on behalf of the owner by virtue of the said Registered Power of Attorney. He automatically owns whatever is on the land.

That doctrine operates in Nigeria. The Claimant has exclusive right to the land against all other persons in the world except the issuing authority of the said right who has right to revoke with reason. All the above are what the Court decided in the following cases:

**Regd. Trustee of Master's Vessel Min. Nig. Incorporated
V. Emenike
(2017) LPELR – 42836**

**Obasohan V. Omorodion
(2001) 13 NWLR (PT. 729) 206**

Going by the above can the same grantor of such Statutory Right of Occupancy who has exclusive right and possessory and proprietary interest against every other person be liable to pay compensation for economic trees on the land to any other person who claims such, bearing in mind that by **S. 15 (1) & (2) Land Use Act** provide that upon grant of Statutory Right of Occupancy to any one in

respect of a parcel of land that all existing right to use and occupation of such land so granted extinguishes.

It is the humble view of this Court that Claimant is not bound to pay any compensation to the Defendants.

The story should have been different if the Defendants have shown or have or are holders of Right of Occupancy, they would have had a right to compensation. But there is no document evidence to show that the Defendants have such Right of Occupancy over the land to be entitled to compensation for the value of any economic trees or over any unexhausted improvement upon any revocation. There is no evidence that the land was revoked before it was allocated to the Claimant. So the Defendants are not entitled to any compensation by the Claimant. Claimant is therefore not liable to pay Defendants any compensation whatsoever for the said economic trees on the land.

The content of provision of S. 29, 34 and 35 of the Land Use Act is also clear on the issue of who is to pay what compensation to who. By **S. 34 Land Use Act** provides that compensation can be paid to land held under the customary law where there is any improvement on the land before the coming into effect of the Land Use Act. But such payment of compensation is to be paid by the grantor of the Statutory Right of Occupancy who in this case is the Governor/FCT Minister and not the Plaintiff. The grantee of such Right as the Claimant in this case is not the person to pay such compensation as the Defendants are wrongly and deceptively postulating. For clarity the above is fully captured in **S. 35 Land Use Act** thus:

S. 34 of this Act shall have effect notwithstanding that the land was held under a leasehold, whether customary or otherwise of forms part of an Estate laid out by any person or family in whom the

leasehold interest or reversion in respect of the land was vested immediately before the commencement of this Act (Land Use Act 1978)...

If there has been any improvement on the land affected by person, group or family in whom the leasehold, interest or revocation was vested affected, the Governor (FCT Minister as in this case) SHALL in respect of such improvement pay to the person(s), group or family, compensation computed as specified in S. 29 of this Act". (All emphasis mine)

In this case there is no computation as provided in **S. 29 of the Land Use Act**. From the above, it is as stated earlier that where there is need for compensation, it is the Governor/FCT Minister who should pay and the payment will be as specified under **S. 29 of the Land Use Act**.

There must be application, specific qualification before compensation. This means that un-estimated and unquantified demand for compensation cannot stand. In this case there is no specified amount demanded by the Defendants as compensation to be paid to them. There is equally no proof that they are the customary owners or that title was derived from them or handed over to the Claimant from them.

The simple statutory truth is that the Claimant is not liable to pay compensation to the Defendants. If there is any demand for compensation it should be channelled to the Minister of FCT on whom all land in the FCT is vested and who had in his own hand issued the Statutory Right of Occupancy in this land to Obinna Nneji who through the Registered Power of Attorney donated his right

possessory and legal interest to the Claimant in this case. So this Court holds.

The Defendants are advised to channel their demand to the FCDA Department incharge of compensation over lands within the Federal Capital Territory for proper evaluation and if possible compensation.

The action of the Plaintiff is not an abuse of Court Process because there is no evidence to show that the Suit **CV/1578/18** was heard and decision taken by Court. There is an evidence that the matter was withdrawn. It is the law that any matter that was withdrawn after filing dies a natural premature judicial death.

In this case the withdrawal of the said case as exhibited by the Defendants explains it all. The party that filed a Process has the right to withdraw such Process. Once withdrawn, such case is assumed to be struck out. It then means that it can be resurrected either by an application to relist or filing of another new Suit afresh. That is what the Plaintiff did in this case. He has a right to do so too. So this present application is not an abuse of Court Process. So this Court holds.

The present Suit was filed on the 15th of January, 2020. While the EXH A which is Notice of Discontinuance of the Suit **CV/1578/18** filed on the 28th November, 2018 and the notification hearing of the said Notice of Discontinuance was scheduled to hold on 12th December, 2018. That is almost one year and two months before the present Suit was filed. The action of the Plaintiff by filing this present Suit is not an abuse of Court Process. So this Court holds.

The Defendants have no right to claim compensation from the Plaintiff for the unexhausted improvement on the Res.

Plaintiff is right to institute the Suit against the then unknown persons who are known now.

The Claimant is the bonafide owner of the Res having be granted the irrevocable Power of Attorney by the original Allottee of the Res – Obinna Nneji.

The none attachment of NBA Stamp or Pre-action Certificate are mere irregularities which cannot stop the wheel of justice or delay the timeous dispensation of justice. There are acts which the Court has a right to order to be fulfil without it altering the justice of the case or adversely affecting the claims of the Plaintiff or the Defence of the Defendants. It does not also affect and will not adversely affect the right to fair-hearing in this case. Moreover the Supreme Court in the case of **Atiku V. Bugudu** has laid that issue to rest.

There was NBA Stamp in the Process.

The Suit of the Plaintiff is meritorious. This Court answered the question in the Originating Summons in the Negative – Defendants has no Right to claim compensation from the Claimant.

This is the Judgement of this Court.

Delivered today the _____ day of _____ 2020 by me.

K.N. OGBONNAYA
HON. JUDGE