

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA COURT 5, FCT., ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

SUIT NO. FCT/HC/CV/2712/2016

B E T W E E N

MICTONY GLOBAL LIMITED

PLAINTIFF

AND

- 1. HON. MINISTER, FEDERAL
CAPITAL TERRITORY**
- 2. FEDERAL CAPITAL TERRITORY
ADMINISTRATION**
- 3. ABUJA METROPOLITAN MANAGEMENR
COUNCIL**
- 4. ZEECREST VANTAGE LIMITED**
- 5. LOTUS LIFESTYLE LIMITED**

DEFENDANTS

J U D G M E N T

The Plaintiff was allocated Plot No. 439B Co1, District Park measuring 1.8 hectares at Karmo District by the 3rd Defendant, the Abuja Metropolitan Management Council vide a letter dated 10th August, 2007 under reference AMMA/P & R/S 500. Further to the allocation, Plaintiff paid the Management Operation Processing Fees e.t.c. and was duly issued receipts dated 5th September, 2011 and 16th December, 2010. The Plaintiff was thereafter allocated Plot 439B Karmo District

(hereinafter referred to as Plot 439B for outdoor Event, Recreation and snack spot purpose). Also following the allocation, Plaintiff spent huge sums of money in clearing the Plot 439B.

On the 14th September, 2016 the Plaintiff observed that a massive sign board was erected on Plot 439B reflecting thus: *“Open Gate 3 (on sale) developed by Zeecrest Vantage Limited, No. 21 Ngwa Close, Off Olufunmilayo Ransome Kuti, Road, Area 3, by the 4th and 5th Defendants”*

By a letter dated 27th November, 2016, Plaintiff protested against signboard to the Department of Park and Recreation Department.

Aggrieved by the conduct of the Defendants the Plaintiff has now instituted this action and is inter alia praying this Court for a declaration that it is the lawful owner of Plot 439B Co1, Park Karmo District Park, as well as other ancillary reliefs.

The 1st – 3rd Defendants declined to file any process, neither were they represented by Counsel throughout the proceedings. The 4th and 5th Defendants however filed a Statement of Defence wherein they refuted the Plaintiff’s interest in Plot 439B and contended that Plot 439B is not the same as Plot 439 which has been allotted to 5th Defendant by the 1st and 2nd Defendants.

At trial, Plaintiff's witness, P.W.1, one Anthony Uchenna Ezenwekwe, Plaintiff's alter ego and Director, disclosed that the 1st Defendant applied through the 3rd Defendant, the Abuja Metropolitan Management Council for land to be allocated to it for the recreational purpose. P.W.1 further disclosed that vide a letter of allocation dated 15th August, 2007 tendered and admitted as Exhibit P.W.1A¹⁻⁶, Plot 439B C01, District Park was allocated to Plaintiff.

P.W.1 recounted that the Plaintiff paid the sum of ~~N~~575,000.00 (Five Hundred and Seventy-Five Thousand Naira) representing the Management Processing Fee, Operation, Designs, Processing Fee and Certification Fee and tendered Exhibit P.W.1A2.

A demand note titled: "Billing Demand Notice" dated 16th December, 2010 and Treasury receipt in acknowledgement of the sum of ~~N~~688,000.00 (Six Hundred and Eighty-Eight Thousand Naira) paid by the Plaintiff for the monitoring control service and arrears for 2008 and 2009 was admitted as Exhibit P.W.1A5 was admitted in evidence.

Upon the payment of the necessary fees P.W.1 noted that Plaintiff was issued with a clearance letter dated 28th September 2011 issued by the 3rd Defendant, Exhibit P.W.1A6. P.W.1 also tendered the site Plan of Plot 439 which reflects thus: "*General Land Use – Green Area*. It was admitted as Exhibit P.W.1B"

P.W.1 further recounted that the Plaintiff expended a huge sum of money towards clearing Plot No. 439B Karmo District but its activities was halted by Salini Nigeria Limited, a construction company in order to enable Salini construct an underground drainage system along the land.

P.W.1 disclosed that it was upon Plaintiff's visit sometime in 2016 to Plot 43B that it was observed that a massive signboard bearing Open Gate 3(on sale) was discovered on Plot 439B. Plaintiff was constrained to write through its solicitors a letter dated 27th November, 2016 to the Park and Recreation Department. P.W.1 asserts that the Plaintiff's interest in Plot 439B is still subsisting and its purported revocation is not in the overriding public interest.

Besides, P.W.1 asserts that the Plaintiff was not served with a Revocation Notice. In sum, P.W.1 asserts that as at the time Plaintiff was allocated the Karmo District Park on 15th August, 2007 no other right or interest is subsisting on the land. Under cross examination. P.W.1 admitted that he had no evidence of clearing Plot 439B.

He said Salini did not tell the Plaintiff how long their activities on the land would take. He admitted that he informed the Park and Recreation Department orally. P.W.1 recounted that he visited Plot 439B in 2010 and he met Salini workmen on the land. P.W.1 recounted

that he again visited the site in 2016. He also said that he has not collected a certificate of occupancy in respect of Plot 439B.

The 4th and 5th Defendant also called a witness, one Wasiu Olatunde Olajide, the 5th Defendant's Managing Director. He adopted his Witness Statement on Oath dated 24th May, 2018. He recounted that 5th Defendant has a Grant/Regrant of a Statutory Right of Occupancy issued by the 1st Defendant and tendered Exhibit D.W.1A to that effect. Pursuant to Exhibit D.W.1A, D.W.1 asserted that a statutory right occupancy Bill dated 14th July, 2016 dated 14th July, 2016 was also issued to the 5th Defendant together with a demand for ground rent dated 14th July, 2016. They were respectively admitted as Exhibit D.W.1C and Exhibit D.W.1D.

Still on the documents issued by the 3rd Defendant in furtherance of 5th Defendant's interest in Plot 439B, Karmo, D.W.1 tendered a search report wherein the title of the 5th Defendant was confirmed by the 5th Defendant. The report is noted as Exhibit D.W.1E.

D.W.1 also asserted that the 5th Defendant has been in undisturbed possession of Plot 439B since it was allocated to it. D.W.1 however maintained that neither Plot 439B nor any land for that matter was ever allocated to the Plaintiff, consequently, Plaintiff was only given an offer for the lease of Plot 439B following Plaintiff's expression of

interest to develop, manage and operate a designated park and green area in FCT.

Besides, D.W.1 asserts that Plaintiff could not have been given the allocation of Plot 439B or any other land because the Abuja Metropolitan Management Agency has no power to grant title to anyone in the FCT.

D.W.1 also recounted that in furtherance of the 5th Defendant's possessory rights, it appointed the 4th Defendant to develop and market a Housing Estate for and on its behalf being the original allottee of Plot 439B.

Besides, D.W.1 contend that the Plaintiff was only given an offer to lease Plot 439B which approval subject to the fulfilment of the conditions contained in the lease agreement which conditions were never fulfilled by the Plaintiff.

Finally, D.W.1 maintains that all the documents relied upon by the Plaintiff does not disclose any legal interest in favour of the Plaintiff. Whilst under cross examination, D.W.1 confirmed that he is not aware that a lease was granted to the Plaintiff in 2007. He disclosed that the date reflected on the site plan is 12th September, 2011 whilst the right of occupancy is dated 3rd February, 2011. D.W.1 insisted that he had a right to give evidence on behalf of the 5th Defendant.

Upon conclusion of trial, both Counsel filed and exchanged final written addresses, kelechi Oparaku Esq., Counsel for the 4th and 5th Defendants in his written address dated the 9th August, 2019 formulated two issues for determination, they are as follows;

- a) Whether the Plaintiff has adduced credible, compelling and sufficient evidence to warrant the **grant** of the reliefs sought by the Plaintiff
- b) Whether on the strength of evidence before the Court, the 4th and 5th Defendants can be said to have trespassed onto the land allocated to the Plaintiff to warrant a grant of reliefs (h) and (i) of the Plaintiff.

Plaintiff's Counsel, Nnaemeka Oguaju Esq., in his final written address dated the 24th October, 2019 canvassed five issues for determination;

- a) Whether the Plaintiff was duly allocated district Park situate at Plot No. 439B, Karmo District, Cadastral Zone C01 Abuja in view of the evidence before the Court.
- b) Whether the right or interest of the Plaintiff over and above Plot 439B Karmo District Park, Cadastral Zone C01 Abuja are still valid and subsisting in the absence of service of valid notice of

revocation in line with section 28(6) and (7) of the Land Use Act.

- c) Whether the Plaintiff is entitled to damages for trespass against the 4th and 5th Defendants
- d) Whether the Plaintiff is entitled to general damages against the 1st and 2nd Defendants for purportedly issued right of occupancy in respect of Plot No. 439B Karmo District to the 5th Defendant when the right and interest of the Plaintiff is still valid and subsisting.

Finally, Kelechi Oparaku Esq., Defendants' Counsel filed the 4th and 5th Defendants' reply on points of law dated 7th November, 2019.

In considering the issues for determination I will examine the Plaintiff's first issue as well as the 4th and 5th Defendants' issue for determination as first.

Learned Counsel for the Plaintiff, N. Oguagu Esq., has submitted that the Plaintiff was given approval for Park B No. 439B, Karmo District and drew the attention of this Court to Exhibit P.W.1A¹⁻⁶. He then raised the poser, that is, whether failure to comply with paragraph 11 of Exhibit P.W.1. The letter of intent to develop manage and operate the designated park site amounted to revocation of the approval for leasing of District Park?

Plaintiff's Counsel has argued in the negative contending that pursuant to Exhibit P.W.1A¹⁻⁶, the Plaintiff has been paying associated fees in respect of the plot, similarly a clearance letter had been issued in the Plaintiff's favour. Counsel has also argued that the Plaintiff, pursuant to the demand notice dated 16th December, 2010 and the 26th September, 2011, the 3rd Defendant is a statutory authorized body to manage all green areas designated for outdoor events e.t.c hence it is statutorily **issue** a Statutory Right of Occupancy in favour of the Plaintiff.

This Court's attention was further drawn to the fact that the site plan, Exhibit P.W.1B is dated 9th September, 2011 whereas the 5th Defendant's right of occupancy, Exhibit D.W.1A was issued on the 3rd February, 2011. It is also submitted by Plaintiff's counsel that the Defendant proceeded to obtain site plan dated 30th September, 2012.

Plaintiff's Counsel has further argued that this Court is to use the Plaintiff's site plan for the purposes of determining the officially designated use of the land in dispute.

I have carefully examined Exhibit P.W.1B and note that it reflects the following title site "Plan Showing Plot: Karmo/C01/439". Much as the Plaintiff contends that the general land use of the land is for green area, this Court cannot discountenance the fact that Exhibit P.W.1B is in respect of Plot 439 whilst the Plaintiff has predicated its case on the fact

that it was allocated Plot 439B. No explanation was elicited by the Plaintiff on the variance in the reference to Plot 439B as Plot 439. It is recounted that the Plaintiff is praying this Court for a declaration of ownership in respect of Plot 439B and not Plot 439. It follows that the document tendered by Plaintiff is with Plaintiff's pleading.

It is also noteworthy that the 4th and 5th Defendants joined issues with the Plaintiff on the identity of the land in issue. The Defendant averred in paragraph 15 of the statement of defence that whatever payments was made by the Plaintiff on the land allocated to it is not in connection with Plot 439 which is the land claimed by the Defendant. The deduction that can be garnered from the Defendant's statement of defence is that the plot paid for by the Plaintiff was not in respect of Plot 439 but another **plot entirely**. The Plaintiff failed and/or neglected to file a reply in this case in reaction to Defendant's assertion on this point. Having joined issues with the Plaintiff on the identity of the land in dispute, it behoves on the Plaintiff to have filed a reply in reaction to the Defendant's pleadings, whilst the Plaintiff is contending that the land allotted to it and subsequently paid for is Plot 439B and the Defendant is conceding that Plaintiff paid for land but it is in respect of another land other than Plot 439 which it is occupying.

Since Defendant maintains it owns Plot 439, it behoves on the Plaintiff to file a reply indicating that Plot 439 and Plot 439B are one and the same plot. It is settled that the burden of proof shifts from one party to the other, Section 132 of the Evidence Act of 2011, provides thus:

Section 132: "The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section 133(1): In civil cases, the burden of first proving existence or non existence of a fact lies on the party against whom the Judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

Section 133(2): If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the Court that the fact sought to be proved is established, the burden lies on the party against whom Judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with"

Flowing from the foregoing settled rules of evidence, the onus shifted on the Plaintiff to prove that the identity of the land which was referred to in its pleadings as Plot 439B upon which he tendered the Survey Plan Exhibit P.W.1B which referred to the land as Plot 439 is the same as Plot 439B referred to in its pleadings. This evidence is at

variance with Plaintiff's pleadings hence it ought to and will be discountenanced by the Court.

We are left with the assertion of the 4th and 5th Defendants which is to the effect that the land paid for is **Plot 439B and not Plot 439**. The onus shifted to the Plaintiff to establish that it was one and the same plot or plead credible facts by way of a reply in reaction to Defendants' assertion. The Plaintiff failed in this regard hence this Court can only rely on the uncontroverted evidence of D.W.1 that Plaintiff was allocated **Plot 439B and not Plot 439**.

Now turning to the Plaintiff's claim for title, Plaintiff's Counsel conceded that the burden of proof rests with a party who asserts, consequently the onus of proof rests on the shoulders of the party who would fail if no evidence were adduced by either side, he rightly commended this Court to the decision in **NATIONAL BANK OF NIG. LTD. v. U.C. HOLDINGS LTD. (2004) 13 N.W.L.R. (PART 891) pages 436 at 454 paras. F - H, 4616**.

In furtherance of its claim for title, Plaintiff relied in the decision in **AYANWALE v. ODUSAMI (2011) 18 N.W.L.R. (PART 1278) pages 341 at 347 – 345 paras. H – E** where it was held as follows: *"Title or ownership of land may be proved in any of the following ways;*

1. *By evidence of traditional history*

2. *By production of documents of title which are duly authenticated*
3. *By acts of selling, leasing, renting out all or part of the land or forming on it or on a portion of it.*
4. *By acts of long possession and enjoyment of the land*
5. *By proof of possession of connected or adjacent land in the circumstances rendering it probable that the owner of such connected or adjacent land would in addition, be the owner of the land in dispute”*

K. Oparaku Esq. has submitted that the Plaintiff has not established any of the five ways for proving ownership by tendering documentary **evidence**. He then commended this Court to the decision in **AYANWALE v. ODUSAMI (2011) 18 N.W.L.R. pages 341 at 348 – 349**. It was held that the production of a deed of conveyance or any document of title does not automatically entitle a party to claim of declaration of title to land. Before a document of title is admitted as sufficient proof of ownership, the Court must satisfy itself that:

- a) The document is genuine and valid
- b) It has been duly executed, stamped and registered
- c) The grantor has authority and capacity to make the grant,

- d) The grant has the effect claimed by the holder of the instruction
- e) The grantor has in fact what he proposes to grant.

4th and 5th Defendants' Counsel has rightly submitted that the document presented by the Plaintiff is not a Statutory Right of Occupancy, he posits that Exhibit P.W.1A1B at best is an approval of an offer for the leasing of Plot 939B issued by the Department of Parks and Recreation. He argued that the Parks and Recreation Department is not seized with any legal interest in Plot 439B, consequently it cannot confer a legal interest in the Plaintiff.

Exhibit P.W.1A dated the 15th August, 2007 is titled: "*Letter of interest to develop, manage and operate a designated Park Site in the FCT*" The conditions for the offer are set out on Exhibit P.W.1A2, the terms inter alia provides in paragraph 11 thus:

"That the lease agreement shall be given to you upon approval of your detailed technical detailed technical design proposal and payment of all necessary fees"

The inference that can be drawn from the foregoing provision is that there was no valid conveyance of a legal interest to the Plaintiff. Exhibit P.W.1A1 cannot be deemed to have conferred a legal interest, it

does convey any interest, Exhibit P.W.1A1 is merely a letter reflecting the intention of party. It is not a document envisaged in paragraph 2 of the **NATIONAL BANK OF NIG case cited supra**. I am thus of the view and will so hold that no legal interest was conveyed to the Plaintiff by way of a lease or a statutory right of occupancy. I am thus in agreement with the Defendant's Counsel that the Plaintiff has not met any of the five ways for establishing an interest in land.

Learned Counsel for the Plaintiff has also submitted that the Plaintiff can rely on the claim to land by long possession and enjoyment of the land. On this Plaintiff's Counsel has relied on the fact that the Plaintiff cleared the land and expended huge sums of money in clearing same.

I have exhaustively considered the Plaintiff's pleadings and note that the Plaintiff averred that it "cleared the site before Salini Nigeria Limited, Plaintiff's activity was halted to pave way **for the drainage pipes to be buried on the land. Plaintiff palpably failed to give evidence of the time or date he went into physical possession.**

Indeed, Plaintiff was very vague when it averred that it expended huge sums of money in clearing the land. A party who is relying on a claim to land on the principle that it had long been in possession, must be in a position to say when exactly it got into possession in order to

enable the Court determine whether such length of time is sufficient enough for Plaintiff to claim for a declaration of title. If one is to go by conjectures the period the Plaintiff might have taken possession cannot be before 15th August, 2007 which is surmised from the date the letter of intention to develop and manage Plot 439B was issued by the 3rd Defendant. This date is even a speculation as the Plaintiff has not disclosed the time that it went into physical possession of Plot 439B. It has long been settled that a Court is not to conjecture facts for litigants. The duty is on the party who asserts a fact to lead cogent, credible and plausible evidence in proof of his assertion. The Plaintiff's evidence on physical possession is very equivocal hence it is impossible reasonably **ascertain** when it took possession of Plot 439B.

Learned Counsel for the 4th and 5th Defendants has also observed that no mention was made of Plot 439B on any of the documents relied upon by Plaintiff. The Plaintiff paltry evidence casts doubts on its legal interest in Plot 439B.

The decision in **AYANWALE v. ODUSAMI supra is** quite apt when the Court held at page 340 paragraph 6 that:

“In a claim for declaration of title to land, the starting point is the identity of the land. The identity of the land must be clearly ascertained. It is trite that a Plaintiff must succeed on the strength of his own claim

*and not on the weakened of the defence, where the evidence is in satisfactory, Judgment should be in favour of the Defendant on the ground that it is the Plaintiff who seeks relief but has failed to prove that he is entitled to what he claimed see **UKAEGBU v. NWALOLO (2009) ALL F.W.L.R. (PART 466) pages 881 paras. B – E***

I also find merit in the submission of 4th and 5th Defendants in the reply on points of law wherein the **Defendants'** Counsel, K. Oparaku Esq. has submitted that the Defendant has joined issues on the identity of the land when he pleaded that the 5th Defendant is on Plot 439 whilst the Defendants maintains that it is on Plot 439B. It behoves on the Plaintiff to lead credible, cogent and reliable evidence to establish that the Defendant is in encroachment of Plot 439B.

The decision in **TERIDON NIG. LTD. v. CAMP LARET NIG. LTD. & ORS. (2018) L.P.E.L.R. page 43893** is quite illuminating on the attitude of the Courts which issues are joined on the identity of land, it was held, that:

“Once a Defendant makes the identity of a land in dispute an issue, the onus lies on the Plaintiff who seeks a declaration of title to identify clearly the area of land to which his claims relates; FATUDA v. ONWOAMANAM (1990) L.P.E.L.R. – 1253 (SC), (1990) 3 SC (PART 11)

pages 138, *OLUSANMI v. OSHASONA* (1992) 6 S.C.N.J. 292, 1991 L.P.E.L.R. – 2929 SSC.

The Plaintiff must be able to prove the boundaries which must be established with such certainty. The features and boundaries must be established with such certainty that a surveyor can pick up the ground and produce a plan thereon, ADAMBA v. ODIESE (1990) L.P.E.L.R. – 190 SC OKE v. EKE 91982) L.P.E.L.R. – 2426 SC EZUKWU v. UKOCHUKWU (2004) L.P.E.L.R. 1217 SC, (2004)”

Flowing from the foregoing reasoning, the Defendants has put the identity of the land allegedly trespassed upon in issue. As hitherto noted in this Judgment, the Plaintiff failed to file a reply to show that Plot 439 and Plot 439B are one and the same Plot or at least to alternatively file a composite plan to establish whether the exact location Plots 439B and 439. The onus shifted to the Plaintiff to controvert the assertions of the Defendant in his statement of defence.

In the light of the foregoing considerations, this Court’s answer to Plaintiff’s first issue for determination is answered in the negative. Much as the Plaintiff has presented this Court with Exhibit P.W.1A1-6, the sum effect of the deduction from Exhibit P.W.1A¹⁻⁶ is that there was an intention by the Abuja Metropolitan Management Agency to lease Plot 439B to the Plaintiff. No document was presented to this Court to

establish that a lease hold interest was conveyed to the Plaintiff, all that the Plaintiff has shown through Exhibit P.W.1A1-6 is that monies had been paid in furtherance of the offer to lease, preparatory to a grant of a lease in respect of Plot 439B. There is no evidence to show that the land in the site plan, Exhibit P.W.1B is the same as the land allotted to Plaintiff. Exhibit P.W.1B is showing Plot 439 whilst Plaintiff has predicated its claim on Plot 439B. My inescapable conclusion is that the Plaintiff has failed to elicit evidence on the location of its Plot 439B. in effect, the Plaintiff has failed to establish a legal interest in Plot 439B as well as its exact location.

The only plot that has been identified is by Exhibit P.W.1B, which is referred to as Plot 439, in the document presented before this Court. There is no evidence by the Plaintiff to rebut the Defendants' assertion that both plots are one and the same piece of land.

Turning to the 4th and 5th Defendants' second issue for determination, that is, whether the 4th and 5th Defendants are in trespass of Plot 439B. I am inclined to agree with the Defendant's Counsel that the onus of proof is on the Plaintiff who asserts trespass to establish by credible evidence that the Defendants are in encroachment of Plot 439B. The onus of proof only shifts to the Defendants when the Plaintiff has established its legal right and possession on the Plot 439B and or Plot

439. I find the telling remarks in the case of **UKAEGBU v. NWOLOLU 92009) ALL F.W.L.R. (PART 4660 pages 1881 paras. B – E** quite apt to the instant scenario, it was held thus:

“A Plaintiff must succeed on the strength of his own case and not on the weakness of the defence. Where the evidence is unsatisfactory, Judgment should be in favour of the Defendant on the ground that it is the Plaintiff who seeks relief but has failed to prove that he is entitled to the land he claims, where in an action, evidence has been adduced by both parties and the Plaintiff fails to prove his case”

Applying the foregoing reasoning of that case, I am of the view and will so hold that the Plaintiff failed to prove that it has a leasehold interest in Plot 439B, all Plaintiff has shown is that he took necessary steps towards fulfilling the terms of offer given the 3rd Defendant, however it failed to establish a conferment of a leasehold interest in Plot 439B by the 3rd Defendant.

4th and 5th Defendants’ Counsel has commended this Court to the decision in **AKOSILE v. ADEYEYE supra** at, it was held that once the Court finds that a party has a better title to the land, a claim for trespass and injunction is easily sustained. Counsel further submitted that where a claim for title fails, the claim for trespass and injunction necessarily fails.

This takes me to the third issue for determination formulated by the Plaintiff, which is whether the Plaintiff is entitled to damages for trespass. Plaintiff's Counsel has submitted that trespass to land is wrongful entry into land and is actual or constructive possession by another. A person who cannot prove that he is in possession cannot sue in trespass. He reasons that trespass is rooted or based on exclusive possession or right to possession. In trespass to land, all the Plaintiff needs to prove is that he has exclusive possession or he has the right to such possession of the land in dispute. See **ENEH v. OZOR (2016) N.S.C.Q.R. Vol. 67 pages 650 at 679.**

Learned Counsel for the Plaintiff contends that the Plaintiff took over possession of the land since August 2007 when the land was a bush. I have carefully examined the Plaintiff's pleading and note that Plaintiff did not state categorically when it cleared the land. It has been said that the submission of Counsel cannot be a substitute for evidence. See paragraph 13 of the Plaintiff's statement of claim. Besides, it is expressly pleaded by the Plaintiff in the aforestated paragraph 13 that the land allocated to her is Plot No. 493B Karmo District which the Defendant contends that it is different from Plot 439 which it had been enjoying undisturbed possession.

Considering that the Defendant maintains that it is on Plot 439 it behoves on the Plaintiff to lead credible evidence to show that Plot 439 claimed by the 4th and 5th Defendants is one and the same with the land in dispute in this suit i.e., Plot 439B, this being the case I am unable to hold that the 4th and 5th Defendants are in trespass of Plot 439B in the absence of cogent evidence to this effect.

On the 4th issue for determination, the Plaintiff has submitted that it is entitled to damages against the 1st and 2nd Defendants for purportedly issuing a right of occupancy in respect of Plot 439 Karmo District in favour of 5th Defendant. Plaintiff's Counsel relied on the treasury receipts issued in acknowledgment of the payment made to the 3rd Defendant in furtherance of its allocation of Plot 439B.

Again, it must be emphasised that the determination of whether the Plaintiff is entitled to damages rests on Plaintiff's proof that the Plot allocated to the 5th Defendant is one and the same with Plot 349B.

In other words, Plaintiff has the burden of proving a case of double allocation of the same plot by the 3rd Defendant. As hitherto noted in this Judgment, Plaintiff's case is for declaration of title in respect of Plot 439B whilst the Defendants contend that it is on Plot 439. Unless and until the Plaintiff establishes that the same allocation was given to the 5th

Defendant by the 3rd Defendant. Plaintiff's claim for damages cannot succeed.

In the light of the foregoing consideration, Plaintiff's claim against the Defendants fails. For whatever it is worth.

Leg one fails. Plaintiff is praying the Court for a declaration that it is the rightful owner of Park No. 439.

Having held that the Plaintiff has not been able to establish any of the 5 ways of proving ownership of land, this leg of relief must fail. Plaintiff's contention of long possession cannot hold, considering that there is a global acquisition of land from all those in long possession by virtue of the constitution.

It must be noted that by the operation of the 1999 Constitution. It must recounted that by virtue of Section 297(1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) ownership of all lands comprised in the Federal Capital Territory, Abuja vests in the Government of the Federal Republic Of Nigeria. Similarly, by the operation of the Land Use Act, the ownership of land in the Federal Capital Territory has been delegated to the Minister of the Federal Capital Territory.

This being the case, the 3rd Defendant cannot alienate legal interest in land even by way of a lease in favour the Plaintiff, this can only be validly done by the 1st Defendant.

Indeed, Plaintiff was only issued with an intention to develop Plot 439B which intention is on the same pedestal as an offer, it does not create a legal right or interest in Plot 439B in favour of the Plaintiff.

Leg two of the Plaintiff's reliefs fails, the Plaintiff has not established a Statutory Right of Occupancy in respect of Plot 439B or any other land for that matter. Exhibit D.W.1A, titled offer of statutory right of occupancy does not create a legal interest, it is also an offer to convey land subject to the terms and conditions of Exhibit D.W.1A, this being the case, the Plaintiff's prayer for a declaratory order fails in the absence of a Statutory Right of Occupancy as defined by the Land use Act. Plaintiff's proof of land ownership can only be established by a presentation Certificate of Occupancy issued by the 1st Defendant in its favour.

Having held that the 5th Defendant's interest is in Plot 439, this leg of Plaintiff's relief must fail. Plaintiff's right over Plot 439B is unfounded having failed to present this Court with a valid and subsisting leasehold interest over Plot 439. Besides, one would have held that an agreement to lease evolved between the Plaintiff and the 3rd Defendant, but this

right would fail in the light of the site plan, Exhibit P.W.1B which is a plan in respect of Plot 439 instead of Plot 439B. The validity of such an agreement to lease would fail, considering that the 3rd Defendant has no legal right to convey legal interest in land.

Leg 'e' of the Plaintiff's claim will also fail, the Plaintiff having failed to establish that any adverse interest or right in Plot 439B. Plaintiff has also failed to establish that Plot 439B was allocated to a third party.

Leg 'f' of the Plaintiff's claim must fail. The Plaintiff's case is that the 5th Defendant trespassed on Plot 439B, District Park, Karmo whereas, the Defendant has shown that it is in occupation of plot 439 and not Plot 439B. A case of trespass cannot lie where there is no cogent evidence on the encroachment of the land in dispute by the Defendant.

This leg of the Plaintiff's claim accordingly fails.

Leg 'g' of the Plaintiff's claim for an order to compel 1st Defendant to issue a certificate of occupancy in respect of Plot No. 439B C01 fails. There is no evidence of any offer or agreement between the Plaintiff and 1st Defendant to convey Plot 439B.

Plaintiff's case is that it was issued a letter of intention by the Abuja Metropolitan Agency to enter into a Lease Agreement. It has had

any dealings with the 1st Defendant in respect of Plot 439B. Whatever transpired between the Plaintiff and 3rd Defendant does not bind the 1st Defendant hence this leg of the Plaintiff's relief is lacking in merit and it accordingly fails.

Plaintiff's leg 'h' of the reliefs sought also fails. Not being a holder of a Statutory Right of Occupancy and not having shown any valid legal interest in Plot 439B, the Plaintiff's prayer regarding leg 'h' fails.

Plaintiff's claim for damages against the Defendants fails having failed to establish any wrong or illegal act carried out by the Defendants in respect of Plot 439B.

Plaintiff's case is hereby dismissed.

O. O. Goodluck
Hon. Judge
7th May, 2020

Appearances

Parties absent

Nnaemeka Oguaju Esq. with me is Emmanuel Chukwu Esq.: For the Plaintiff.

Kelechi Oparaku Esq.: For the 4th and 5th Defendants.