

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI – ABUJA**

**BEFORE: HON. JUSTICE O.C. AGBAZA**

**COURT CLERKS: UKONUKALU&GODSPOWEREBAHOR**

**COURT NO: 11  
SUIT NO: FCT/HC/CV/2360/16**

**BETWEEN:**

**OWANEMITHEOPHILUS .....CLAIMANT**

**AND**

- 1. THE CHAIRMAN, BWARI AREA COUNCIL**
- 2. THE MINISTER, FEDERAL CAPITAL TERRITORY**
- 3. UNKNOWN PERSONS.....DEFENDANTS**

**JUDGMENT**

This action is in respect of land situate at Plot No. 122, Kubwa Extension II, Abuja FCT. The Claimant case is that the said land was bought on his behalf by the Co-operative of Nigeria National Petroleum Corporation (NNPC) in 2005 and was issued with an Offer of Term of Grant/Conveyance of Approval with Survey Plan by the 1<sup>st</sup> Defendant on 13<sup>th</sup> March 2005. He made the necessary payments to the 1<sup>st</sup> Defendant. That consequent upon directive of the 2<sup>nd</sup> Defendant, sometime in 2006 for all Area Council title holders in FCT, to revalidate, he submitted his titled documents and made the necessary payment which was acknowledged. That he has remained in possession of the subject matter in dispute until the 3<sup>rd</sup> Defendant

trespassed into the land, hence this action. In his assertion of his title to the Plot, commenced this action, seeking for the following reliefs:-

- (1) A declaration that the Plaintiff's allocation of Plot 122 Kubwa Extension II, Abuja FCT is subsisting and valid in law.
- (2) A declaration that the action of the 3<sup>rd</sup> Defendant on Plot 122, Kubwa Extension Abuja, FCT property of the Plaintiff constitute trespass.
- (3) An Order of Perpetual Injunction restraining the 3<sup>rd</sup> Defendant by themselves, their agents, privies from further trespassing on Plot 122, Kubwa Extension II, Abuja FCT property of the Plaintiff.
- (4) An Order for the payment of the sum of ₦10,000,000.00 (Ten Million Naira) only as damages against the 3<sup>rd</sup> Defendant jointly and severally.

The processes was served on the 1<sup>st</sup>/2<sup>nd</sup> Defendants on 16/11/2016 and 18/11/2016 respectively while the 3<sup>rd</sup> Defendant was served by substituted means, consequent upon leave of court granted on 7/12/2016.

While the 2<sup>nd</sup> Defendant through their counsel, Ekpene Ideba, filed a Memorandum of Conditional Appearance, but failed to take any steps further in the matter. The 1<sup>st</sup>/3<sup>rd</sup> Defendants did not enter appearance nor take any steps in the matter. After several adjournments and resolving all pending Interlocutory applications, the matter proceeded for hearing despite the Hearing Notice served on the Defendants.

In proof of its case, the Claimant called one (1) witness, while the Defendants failed to enter appearance to defend.

The Claimant sole witness is one InitimiTheophilus, testified as PW1 on 2/4/2019, adopted his Witness deposition of 15 Paragraphs sworn to on 27/3/18. In proof of the Claimant case, Five (5) Exhibits were tendered and marked as Exhibit "A"- "D" - "D1".

- (1) Exhibit "A" – Letter of Offer of Terms of Grant/Conveyance of Approval dated 13/3/2005.
- (2) Exhibit "B" – A Survey Plan.
- (3) Exhibit "C" – "C1" – Are receipts issued to the Claimant by 1<sup>st</sup> Defendant.
- (4) Exhibit "D" – "D1" – Copies of Bank Tellers for payment of processing fees paid and Regularization of Land Titles Acknowledgement.

First, it is trite law that the burden of proof lies with the party who asserts, see Section 131 – 134 of the Evidence Act, 2011. And the Standard of proof in civil matter of this nature is on preponderance of evidence. This the court must evaluate the evidence from both parties to reach a just decision either way.

In this instance case, the Defendants were dully served with the Originating processes and Hearing Notice on each adjourned date, but failed and/or neglected to either enter appearance or file their defence. The implication of all of these, is that the Defendants are deemed

indifferent to this Suit and consequently, the evidence adduced by the Claimant, is deemed admitted. This position of the law is stated in the case of Muomah Vs Enterprise Bank Ltd (2015) LPELR – 24832 (CA), thus;

“The law is settled that where evidence given by a party to any proceedings and was not challenged by the opposite party, who had the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it,.....Unchallenged and uncontroverted evidence ought to be accepted by the court as establishing the facts therein contained”,

Having carefully considered the unchallenged evidence of Claimant and the submission of counsel and judicial authorities cited, this court find that there is only one (1) issue that calls for determination, that is;

“Whether the Claimant has by his evidence, established his case against the Defendants, to be entitled to the reliefs sought”.

In this instant case, the Claimant is seeking declaratory reliefs in reliefs 1, 2 and Perpetual Injunction in relief 3 and damages for trespass in relief 4.

In a claim for declaratory reliefs, it is trite that a party seeking this relief, in proof established the followings:-

- (a) Produce the materials upon which the court may exercise its discretion.
- (b) To succeed must rely on proof of his declaratory relief and not upon admission or default.

- (c) To succeed on the strength of his case and not on weakness of the defence.

See MrsOlorunshola Grace &OrsVsOmolola Hospital &Ors (2014) LPELR – 22777 (CA).

It is the contention of the Claimant, through the PW1, that by his evidence adduced vide paragraphs 5,6,7,8,9,10,11,and 12 of his Oath which remained unchallenged and the Exhibits "A", "B", "C" and "C1" and "D" and "D1", all allude to the fact that the said Plot was allocated to the Claimant through the 2<sup>nd</sup> Defendant Zonal Manager of the 2<sup>nd</sup> Defendant. That by Para 12 of his Oath, contend that the 3<sup>rd</sup> Defendant entered into the said Plot sometimes in 2005 without any proof of title to the land.

On this pieces of unchallenged evidence of the Claimant witness in proof, the question, that follows, are the documents cogent enough for the court to hold that the Claimant has satisfied the onus of proof so as to be entitled to a declaration as claimed. The Supreme Court in the case of OmotayoVsCo-operative Supply Association (2010) ALL FWLR (PT. 537) 608 @ 610 set out five ways of proving title to land.

- (1) Traditional Evidence.
- (2) Production of documents of title authenticated in the sense that their due execution must be proved, unless they are documents of Twenty or more year old produced from proper custody.
- (3) By positive acts of ownership extending over a sufficient length of time.

- (4) By acts of long possession and enjoyment of the land.
- (5) By proof of possession of connected or adjacent land.

It was further stated by the court that the establishment of any of those five ways is sufficient proof of ownership.

To determine whether indeed there was allocation by an Exhibit "A", a document issued by the Zonal Land Manager of the 2<sup>nd</sup> Defendant in proof, the following question arising from the grant will be of useful assistance to court.

- (a) Can the Zonal Manager of the 2<sup>nd</sup> Defendant at the 1<sup>st</sup> Defendant office, have any powers to allocate land in FCT.

Granted that this is not an issue raised by the Claimant nor the unrepresented Defendants, but from the court to enable it determine it. Granted that by Statutory Provision, only the Minister of FCT can grant or allocate land in FCT, furtherance to the delegated power of the President of the Federal Republic of Nigeria, it is my firm view that in the absence of any challenge to it by the 2<sup>nd</sup> Defendant by way of any express Provision against the authority of the Zonal Manager to act on its behalf, I hold that the said Zonal Manager who purported acted on behalf of the 2<sup>nd</sup> Defendant has the authority to act in this instance, and in support is the Exhibits "D" and "D1" issued from the Departments of the 2<sup>nd</sup> Defendant and not challenged. It is on this basis, I hold that this allocation vide Exhibits "A", is valid and subsisting proof of ownership to the said Plot. This resolves the reliefs 1 in favour of the Claimant.

Granted that this court has held that the Claimant's Plot allocation by the Zonal Manager on behalf of the 2<sup>nd</sup> Defendant in respect of Plot 122, Kubwa Extension, Abuja FCT is valid and subsisting, the Claimant still has the onus to prove that they are entitled to the other reliefs sought.

In reliefs b and c, the Claimant a declaration that the 3<sup>rd</sup> Defendant action on the Plot 122, Kubwa Extension, Abuja FCT constitute Trespass and an Order of Perpetual Injunction restraining the 3<sup>rd</sup> Defendant.

It is the contention of the Claimant vide Para 12, 13, and 14 of the Oath, that the 3<sup>rd</sup> Defendant went into the land and when challenged to show any adverse claim, failed to do so. This piece of evidence by the Claimant witness was never challenged. This court stated the position of the law.

In a claim for trespass and injunction, the court in the case of *Monkon&OrsVsOdili (2009) LPELR – 3927 (CA)* held;

“.....In a claim for trespass and injunction, the party that will succeed as between the Plaintiff and Defendant is the one that hold a better title to the land in dispute, where a claim for trespass is coupled with a claim for injunction, the title is automatically put in issue where the issue is as to which of the Claimants has a better right to possession or occupation of a piece or parcel of land in dispute, the law will ascribe possession to the person who has better title thereto”.

In this instance, the 3<sup>rd</sup> Defendant did not respond to the claim of the Claimant to the reliefs.

In the absence of any contradiction evidence from the 3<sup>rd</sup> Defendant, I shall in the circumstance resolve these reliefs' b and c in favour of the Claimant.

On the relief d, claim for damages against the 3<sup>rd</sup> Defendant jointly and severally.

It is the contention of the Claimant through their witness in Para 14 of their Oath, that upon the activities of the 3<sup>rd</sup> Defendant on the Plot, they are entitled to damages.

Again, the 3<sup>rd</sup> Defendant did not challenge these pieces of evidence and in line with the position of the court earlier held in this judgment shall apply the position of the law in this instance.

It is settled law that only person in possession of land can maintain an action for damages for trespass. See OkpalaEzeokonkwoVsNwaforOkeke&Ors (2002)LPELR – 211 (SC).

It is against this, that the court will resolve this relief in favour of the Claimant.

From all of these, judgment is entered in favour of the Claimant as follows:-

- (1) A declaration that Claimant allocation of Plot 122, Kubwa Extension II, Abuja FCT is subsisting and valid in land.



- (2) A declaration that the action of the 3<sup>rd</sup> Defendant, on Plot 122, Kubwa Extension II, Abuja FCT property of the Claimant constitute trespass.
- (3) An Order of Perpetual Injunction restraining the 3<sup>rd</sup> Defendant by themselves, their agents, privies from further trespass on Plot 122, Kubwa Extension II, Abuja FCT property of the Claimant.
- (4) The sum of ₦500,000.00 (Five Hundred Thousand Naira) only as damages against the 3<sup>rd</sup> Defendants jointly and severally.

This is the Judgment of this court.

**HON. JUSTICE O.C. AGBAZA**

Presiding Judge

29/6/2020

**APPEARANCE**

G.N. BAKO FOR THE CLAIMANT WITH G.C. EHIOROBO

NO REPRESENTATION FOR THE DEFENDANTS