

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

**BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI
COURT CLERKS: T. P. SALLAH & ORS
COURT NUMBER: HIGH COURT NO. 13**

DATE: 12/5/2020

FCT/HC/CV/1663/14

BETWEEN:-

USMAN NUHU-----

PLAINTIFF

**(Suing through his Attorney,
Alhaji Abubakar Mohammed)**

And

MR. CHUKWUJEKWU AGBALIZU CYRIL-----

DEFENDANT

JUDGMENT

This suit was initially commenced against one Amaka Agbalizu by the Plaintiff by a writ of summons and statement of claim accompanied with other processes filed on the 30th May, 2014. The Plaintiff later amended his statement of claim pursuant to the order of this Court granted on 28th October, 2015. The initial Defendant was served with the processes in this suit by substituted service by posting at plot no. 258 Gbanzango layout, Kubwa, Abuja, the subject matter in dispute.

The Plaintiff commenced trial on the 25th January, 2016 and closed its case on 16th March, 2016. Upon the order of this Court for parties to file final written address on 16th March, 2016, the plaintiff's Counsel filed his final written address on 13th April, 2016.

Later, two sets of Counsel at different times upon filing notice of change of Counsel filed several processes which were eventually determined by the Honourable Court. The third Counsel on record is from Beverly Hill Chamber and he filed a notice of change of Counsel on 28th November, 2016. He equally filed an application on the same 28th November, 2016 seeking for an order striking out the name of the initial Defendant and then leave of Court to join the proper party in the suit, one Mr. Agbalizu Chukwujekwu Cyril in this suit. The application was granted without objection on the 23rd January, 2017 wherein the initial Defendant in the suit commenced on 30th May, 2014 was struck out and Mr. Agbalizu Chukwujekwu Cyril was properly joined as the Defendant in the instant suit.

By the order of this Court granted on 23rd January, 2017, the Plaintiff amended his writ of summons and statement of claim and same was served on the Defendant.

Thus, by the amended statement of claim filed on 21st February, 2017 pursuant to the order of this Honourable Court granted on 23rd January, 2017, the Plaintiff claims against the Defendant as follows:-

- (1) A declaration that the Plaintiff is the title holder and bonafide owner of plot No. 258 of about 600square meters lying and situate at Gbazango layout bearing Usaman Nuhu on the paper.
- (2) An order of perpetual injunction restraining the Defendant whether by himself, his agents, privies or whosoever is claiming through him from any further act of trespass over the plaintiff's aforementioned plot to enable the Plaintiff enjoy quiet possession of the land.
- (3) General damages for trespass in the sum of N5,000,000.00 only.
- (4) Punitive or exemplary damages based upon the extreme ill-will and malice exhibited by the Defendant towards the Plaintiff in the sum of N5,000,000.00 only.
- (5) One million Naira only being the solicitor's fee for this action.

The Defendant equally filed an amended statement of defence pursuant to the order of this Honourable Court granted on 23rd January, 2017.

Then on 29th June, 2017, the Defendant's application to recall PW1 for the purpose of cross examination was granted. On 15th May, 2018, PW1 was cross examined by the Defendant's Counsel and later re-examined by the Plaintiff's Counsel and then discharged. The Defendant also

opened his defence on the 28th June, 2018 and close same on 23rd January, 2019.

Having put the records as it were, as i said earlier, on the 25th January, 2016, the Plaintiff opened his case for trial by calling one witness, Abubakar Muhammad who testified as PW1. PW1 adopted his witness statement on oath deposed to on 20th January, 2016 as his evidence in this case. The following documents were admitted in evidence through PW1 thus:-

- (a) Conveyance of approval dated 2nd February, 1995 is exhibit 1;
- (b) A photocopy of a power of attorney between Usaman Nuhu and Alhaji Nuhu Muhammad Abubakar is exhibit 2;
- (c) Exhibits 3,4 ,5 and 6 are survey plan, Regularization of land title documents acknowledgement dated 8th November, 2011, search application dated 15th January, 2013 and department receipt of Bwari Area Council issued to Usaman Nuhu.

The brief facts and evidence of the Plaintiff's case is that he acquired plot no. 258 of about 600 square meters situate at Gbazango layout from one Usaman Nuhu who was the original allottee.

At paragraphs 5-10 of the amended statement of claim supported by PW1's sworn testimony avers that the original allottee Usaman Nuhu after the purchase of the Plot of land handed over to him

conveyance of provisional approval dated the 2nd February, 1995, exhibit 1, the TDP or site plan also received in evidence as exhibit 3 and the power of attorney admitted in evidence as exhibit 2, The Plaintiff through PW1 asserts that upon his application for recertification/regularization of title documents and payment of prescribed fees, an acknowledgement was issued to the Plaintiff by Abuja Geographic Information System (AGIS) dated 8th November, 2011. The acknowledgment was received in evidence as exhibit 4.

The Plaintiff avers that on the 28th November, 2012 he applied and paid prescribed fees for the search report. The search report and receipt of payment were admitted in evidence as exhibits 5 and 6 respectively.

In conclusion, PW1 urged me to grant the Plaintiffs reliefs.

On the other hand, the Defendant called two witnesses to support his case. DW1 is the Defendant himself and he adopted his witness statement on oath deposed to on 3rd March, 2017 as his evidence in this case. Exhibits 7, 8, 9, 9(a), 10, 10(a) and 11 were admitted in evidence through DW1. Exhibit 12 and 12 (a) were also received in evidence through DW1 during cross examination by the Plaintiff's Counsel.

DW2 is Dodo Vincent Friday, a principal Town Planning Officer with Bwari Area Council. He testified pursuant to a subpoena Ad Testificandum served on him to appear on 28th June, 2018 to give evidence specifically on the title of Usaman Nuhu with certificate

no. FCT/BZTP/LA/FCT/850 and Usaman Nuhu with certificate no. FCT/B2TP/LA/FCT/2002/850.

The brief facts and evidence of the Defendant's case is that the Plaintiff did not acquired plot no. 258 situate at Gbazango Layout from Usaman Nuhu. According to the Defendant as avers at paragraphs 3-9 of his amended statement of defence and support by the Defendant witnesses testimonies is to the effect that one Christopher Odiakaose was in possession of the plot in dispute at all material times and had executed irrevocable power of attorney between himself and Usaman Nuhu. The irrevocable power of Attorney between Christopher Odiakaose and Usaman Nuhu was admitted in evidence as exhibit 12.

DW1 avers that Christopher Odiakaose also executed an irrevocable power of attorney between himself and the Defendant and same was received in evidence as exhibit 12 (a). According to DW1, he then took possession of Plot 258 and that his lawyer, Barrister Mrs. Amaka Agbalizu also conducted search report to ascertain the genuineness of the land in dispute. DW1 further states that having executed exhibit 12(a), the irrevocable power of attorney, the said Christopher Odiakaose handed over to him the following title documents:-

- (a) Exhibits 12 and 12 (a)
- (b) A copy of conveyance of provisional approval received in evidence as exhibit 10;

- (c) Certificate of occupancy together with a TDP bearing the name of Usaman Nuhu admitted in evidence as exhibit 10(a).

At paragraphs 10-14 of the statement of defence supported by the evidence of DW1, the Defendant states that it is not true that the Plaintiff bought or acquired the Plot in dispute but rather forged the said documents and doctored same and therefore cannot lay claim to the said plot. He further testified that application for recertification and the search report were a deceit tailored to mislead the public in respect of the plot and that the Plaintiff was never in possession neither had he erected any fence and that he never encroached into the Plaintiff's plot.

Further, at paragraphs 15-17 of the statement of defence, DW1 testified to the effect that in 2013 he made an application for revalidation of the certificate of occupancy to Abuja Geographic Information System (AGIS) and acknowledgement issued in the name of Usaman Nuhu was admitted in evidence as exhibit 7. DW1 testified further that in 2014 he made an application for building plan approval to Abuja Metropolitan management Area Council, Department of Development Control upon payment of N244,956.10. The building plan approval, proposed residential development and settlement of building plan fees were received in evidence as exhibits 8,9 and 9 (a) respectively.

Then at paragraphs 18-21 of the statement of defence, DWs1 and 2 testified that in 2013 when the controversy over who was the valid purchaser of the Plot arose, his lawyer wrote a letter to Bwari Area Council and the Plaintiff and the Defendant were invited and they were asked to bring with them title documents in their possession in respect of the land in dispute. The letter of the Defendant's lawyer dated 3rd July, 2012 was tendered in evidence and admitted as exhibit 11. DW2 testified as to the Council's findings and bundle of certified true copies were collectively admitted in evidence as exhibit 13. The Defendant further states that the dispute also got to the Kubwa police station and the Plaintiff was asked to present his title documents which he did not and later came to this court and instituted the instant action.

At the close of evidence by the Defendant on the 23rd January, 2019, final written address was ordered by the Court to be filed and exchanged between the parties.

The Defendant filed his final written address on the 6th February, 2019 which was re-adopted. Then by the order of this Court granted on 2nd April, 2019 the Plaintiff filed his final written address out of time. Both Counsel re-adopted their final written addresses on the 12th September, 2020.

In the final written address of the Defendant's Counsel, the following sole issue for determination was formulated thus:-

" Whether from the admitted evidence in this case the Plaintiff has discharged the burden of proof on him to entitle him to judgment on his claim of title to the land in dispute."

In arguing the above sole issue, at paragraphs 4.1-4.7 of the Defendant's Counsel's final address, he submitted to the effect that the burden of proof lies on the Plaintiff and that in the instant case the Plaintiff fails to discharge the burden by proving any of the five ways of establishing title to land. He relied on the case of ***OLALEYE V TRUSTEE OF ECWA (2011) 28 WRN PAGE 59-62 LINES 40-45.***

He submitted that the plaintiff relies on exhibits 1-6 to prove title over the land in dispute as well as act of long possession. Defendant's Counsel then submitted that production of title documents does not automatically entitled a party to a claim in declaration. Learned Counsel posits that the Plaintiff has to satisfy the conditions laid down in the case of ***JOLASUN V BAMGBOYE, (2011) WRN page 30-31 lines 25-20.***

At paragraphs 4.8- 5.5 of the Defendant's final address Counsel submitted that by exhibits 1-6, the Plaintiff avers that he bought the land from one Usaman Nuhu and the question is whether the title documents handed over to the Plaintiff are genuine. He stated that the title documents are cloned documents when compared with exhibits 7-12 (a) of the Defendant. Counsel posits that there are discrepancies in exhibit 3 of the Plaintiff and exhibit

9 of the Defendant. In exhibit 3 Counsel contended that the land was granted to Usaman Nuhu with file FCT/BZTP/LA/FCT/850 while exhibit 9 of the right of occupancy was granted to Usaman Nuhu with file no. FCT/BZTP/LA/FCT/2002/850. Learned Counsel then referred me to exhibit 13 admitted in evidence through DW2, the Town Planning Officer of Bwari Area Council conclusively show that the Plaintiff's documents are not genuine and valid but rather the Defendant's title documents are valid and genuine. According to Counsel, DW2 testified that by their records and findings the name against plot no. 258 is Usaman Nuhu and not Usaman Nuhu. Learned Counsel further stated that by the testimony of DW2 to the effect that by their records the title documents of the Defendant in the name of Usaman Nuhu are confirmed. He then contended that the oral testimony of DW1 is consistent with the evidence of DW2 and also more credible than the case of the Plaintiff.

In conclusion, learned Counsel submitted that the Plaintiff claimed to have erected a fence round the plot in dispute and that he kept a security man, one Monday to keep watch on the land. Counsel submitted that under cross examination PW1 testified that he had no approval from the land office to erect the fence.

Finally Counsel urged me to dismiss the Plaintiff's claims as lacking in merit.

The Plaintiff's Counsel on the otherhand distilled the following issue for determination:-

"Whether the Plaintiff has led credible evidence to prove his claim to ownership or title to plot 258 of about 600square meters lying and situate at Gbazango layout, Kubwa, Abuja."

In proffering arguments on the sole issue aforementioned, the Plaintiff's Counsel at paragraphs 3.1 and 3.2 of his final written address submitted that the Plaintiff was able to prove that he is the title holder to plot 258 of about 600square meters by pleading facts and tendered in evidence exhibits 1-6, i.e title documents supported by both the Plaintiff's witness statement on oath and his oral evidence in Court. Plaintiff's Counsel posits that PW1 testified to the effect that he was allocated the plot in issue since 1995 and he has perfected his title documents including regularization and recertification as well as preparation of a title plan (TDP), exhibit 3 which carries the number to be used in the certificate of occupancy.

Then at paragraphs 3.3 and 3.4 of the Plaintiff's address, learned Counsel referred to the title documents of the Defendant and the elicited evidence from DW1 during cross examination and submitted that inaccuracy and imbalance as to the plot number, the subject matter of this suit raises a suspicion. He contended that when DW1 was asked the question as to the Plot number,

that DW1 answered that the plot number is 257 whereas the plot number in dispute is 258.

Counsel further argued on behalf of the Plaintiff that DW1 under cross examination could not say or prove to the Court the person he purchased the land from. Learned Counsel referred me to Dw1's evidence during cross examination by admitting that he met a security structure on the land in dispute and Counsel concluded that DW1 is not a witness of truth. He relied on the cases of ***OLALOYE V A.G, OSUN STATE, (2015) ALLFWLR (pt 774 page 67-68 paragraphs G- A and OSADIM V TAIWO, (2010) 6 NNLR (pt1189) page 180 paragraph C-E*** and he contended that where a witness of a party gave inconsistent or contradictory evidence on a material fact, the evidence on the point must be regarded as unreliable and should be rejected.

In respect of DW2's testimony, Plaintiff's Counsel submitted that exhibit 13 was tendered and admitted in evidence from the bar and that during cross examination, DW2 agreed with him that exhibit 5, the search report was issued by Bwari Area Council and signed by the Zonal Co-ordinator to prove that the Plaintiff acquired and owned the plot in dispute. Plaintiff's Counsel then contended that exhibit 5 was issued pursuant to payment of a token fee to Bwari Area Council in which they issued to the Plaintiff exhibit 6, the receipt of payment. He posits that exhibit 13, the search report tendered by DW2 is not accompanied with a

receipt of payment and thus exhibit 13, (re- application for search) has no bearing and that it be discountenanced.

At paragraphs 4.0- 4.2 of the Counsel's address on behalf of the Plaintiff, he submitted to the effect that the Plaintiff has established and proved his case in accordance with the various ways of proving title to land enumerated in the case of ***IDUNDI V OKUMAGBA, (1976)9-10 SC 227.***

According to Counsel to the Plaintiff the Plaintiff has been able to prove his title to the plot in issue through two (2) ways i.e through production of title documents and evidence of possession over a sufficient length of time. He referred me to paragraph 8 of the statement of claim of long possession before the encroachment and or trespass by the Defendant. He equally relied on the case of ***ADEWOLE V DADA, (2003)13 NSCQR 364.***

Learned Counsel further argued that the material averment of the Plaintiff erecting a security house and put a security man and was farming on the land was not contradicted by the defence and indeed the Defendant admitted during cross examination that there was a security house on the plot and that the Defendant further admitted engaging the services of Development Control of Federal Capital Development Authority to demolish the structure on the said plot 258, the subject matter of this suit.

Counsel therefore submitted that these material facts not denied by the Defendant they are deemed admitted. He relied on the

case of **CAPPA & DALBERTO LTD V AKINTILO, (2003)9 NWLR (pt 824) page 49 at 72.**

In the instant case Plaintiff's Counsel submitted that the Plaintiff has established and proved his title over plot 258, the subject matter of dispute by production of exhibit 3, the right of occupancy granted to Usaman Nuhu and the Usaman Nuhu has been in quiet possession of the land as far back as in 2004 and that the Defendant cannot rely on exhibit 10 (a).

In conclusion, Counsel urged me to disregard the evidence of DW1 and resolve the sole issue for determination on behalf of the Plaintiff and enter judgment for the Plaintiff.

To resolve and determine the issues raised in this suit, i will and i hereby adopt the issue nominated for determination by the Plaintiff's Counsel .The issue reads thus:-

"Whether the Plaintiff has led credible evidence to prove his claim to ownership or title to plot 258 of about 600 square meters lying and situate at Gbazango Layout, Kubwa, Abuja."

Firstly, on whom lies the burden of proof in civil cases, it is trite that in civil cases the onus of proving a particular fact(s) is fixed by the pleadings . The onus does not remain static but shifts from side to side like a pendulum. It stops at a point when the need for further evidence rests on the party who will fail if such evidence is not adduced. See the case of **REV EBUTE JOHN**

ONOGWU & ORS V BENUE STATE CIVIL SERVICE COMMISSION.,(2012) LPELR 8604 (CA).

In otherwords, the burden of proof in civil case is on the balance of probabilities and lies on the Plaintiff that he who asserts must prove.

See **AKINGBULU & ORS V OBA ADEOYE IDEPE-FOR & ORS (2015) LPELR 25793(CA).**

In the instant case, the principal or main relief of the Plaintiff in his statement of claim is a declaration that the Plaintiff is the title holder and bonafide owner of plot 258 of about 600 square meters lying and situate at Gbazango Layout, Kubwa, Abuja.

Thus, from the above main reliefs sought by the Plaintiff the law is that the Plaintiff must adduce credible evidence in prove or support of his claim. This is to say, the Plaintiff, in a claim for declaration of title to land must succeed on the strength of his case and not on the weakness or admission of the defence. The Court of Appeal in the case of **EFFANGA HENSHAW V EFFANGA ESSIEN EFFANGA & ANOR, (2008) LPELR 4075** held as follows:-

"However, before a Court can grant a declaratory relief sought by a Plaintiff (now Appellant), he must plead and lead evidence to entitle him to the declaration sought. An admission by the Defendant will no way relieve the Plaintiff from the onus placed on him of proving his claim. He cannot rely on perceived

admission by the Defendant. Courts do not make declarations of right either on admissions or default in defence.

In a declaratory relief the Court must satisfy itself, by evidence, not by admission in the Defendant's pleading, that the Plaintiff has proved his claim."

See also **NKWOCHA & ORS OFURUM & ORS, (2002) 5 NNLR (pt761)page 506 at 511 and BELLO V EWEKA (1981) 1SC 101.**

Arising from the above, by the amended statement of claim of the Plaintiff at paragraphs 3-8, the Plaintiff avers that sometimes in March, 2004 he acquired plot no 258 of about 600 square meters, the subject of the this suit from one Usaman Nuhu by purchase and Usaman Nuhu handed to him exhibits 1-6 being title documents of the land in dispute. PW1 in his witness statement on oath led credence to paragraphs 3-8 of the amended statement of claim.

Further, in the final written address of the Plaintiff's Counsel, he is of the view that the Plaintiff has proved and established ownership or title holder of the land in dispute through production of title documents granted to him by Bwari Area Council as well as long or sufficient possession of the land in dispute.

Now i have perused the documents i.e exhibits 1-6 of the Plaintiff admitted in evidence to prove his title over the land he is claiming. Exhibit1 is the conveyance of provisional approval by

Abuja municipal Area Council dated 2nd February, 1995 bearing the name Usaman Nuhu as against the name Usman Nuhu pleaded at paragraph 3 of the amended statement of claim. And a close perusal of all the exhibits admitted on behalf of the Plaintiff, the documents bear Usaman Nuhu and not Usman Nuhu. I therefore consider this minor mistake as a typographical error in the process of preparing the pleadings. However, by our 2018 Rules of Court, it appears, at this stage i have no power to amend or correct the typographical error either suo moto or by parties as provided by order 25.

In any event, as i said earlier, exhibit 1 is a provisional conveyance granted by Abuja Municipal Area Council to Usaman Nuhu while exhibits 5 and 6, the search report and receipt evidencing payment for the search report were issued by Bwari Area Council and same bearing Usaman Nuhu. Thus, by the evidence of the Plaintiff as PW1, he is claiming or seeks the declaratory order of this Court as the lawful grantee of plot 258 Gbazango layout, Kubwa by his production of title documents exhibits 1, 2, 3,4,5 and 6 granted to him by Abuja Municipal Area Council. In otherwords, the Plaintiff is relying on the Title documents issued to him by the authority to establish his claim to the land in dispute. In the case of ***IDUNDUN V OKUMAGBA (supra)***, the Supreme Court held that title to land can be established or proved in any of the following five ways:-

(a) Traditional evidence;

- (b) Production of documents of title duly authenticated in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract.
- (c) Acts of possession extending over a sufficient length of time numerous and positive enough as to warrant the inference that the person in possession is the true owner,
- (d) Acts of long possession and enjoyment of other land so situate and connected with the land in dispute which inference can be drawn that he is the true owner of the other piece of land.
- (e) Proof of ownership of connected or adjacent land in circumstance rendering it probable that the owner of such connected or adjacent land would in addition be the owner to the land in dispute.

In the instant case the Plaintiff's Counsel at paragraph 4.1 of his final written address submitted that the Plaintiff has been able to prove his title to the plot in issue through 2 ways i.e by production of title documents and acts of possession.

The Defendant on the otherhand also tendered in evidence title documents tracing his root of title to the same grantor i.e Abuja Municipal Area Council. The title documents are exhibits 7,8,9,10,10(a),11,12 and 12 (a) respectively to show and

prove the fact that plot 258 Gbazango was granted to him. To further prove his case the defendant called DW2, Dodo Vincent Friday, a town planning officer with Bwari Area Council who tendered in evidence certified true copies of allocation of the plot of land in dispute.

Now considering the various documents tendered and admitted in evidence by the respective parties to prove title to the disputed land, the issue to first be determined is how was the land in disputed acquired in the circumstance of this case?.

As rightly submitted by the Defendant' s Counsel at paragraphs 4.5 and 4.6 to the effect that mere production of title documents or deed or transfer does not automatically entitle a party to a claim for declaration.

In the case of ***TIJANI JOLASUN V NAPOLEON BAMGBOYE, (2010) LPELR 1624***, he Supreme Court of Nigeria held:-

“Generally speaking, where an Applicant is lying on an instrument of grant like a conveyance, mere production of a valid instrument of grant does not necessarily carry with it an automatic grant. The Applicant for a free hold interest in the property cannot succeed unless certain questions are inquired into by the Court as follows:-

- (a) Whether document is genuine and valid;
- (b) Whether it has been duly executed stamped and registered;

- (c) Whether the grant or had the authority and capacity to make the grant;
- (d) Whether the grantor had in fact what he purported to grant;
- (e) Whether it had the effect claimed by the holder of the instrument.

See also ***ENILOBE V ADEGBESAN, (2000)11 NWLR (pt698)page611, AYORINDE V KUFORJI, (2007)4 NWLR (pt1024) page 341, and DABO V ABDULLAHI, (2005) 29 WRN P11.***

In the instant case the Defendant at paragraphs 10, 18 and 19 of his amended statement of defence avers that the tile documents of the Plaintiff are fake and not genuine and that pursuant to his Counsel's letter of complaint, exhibit 11, the Bwari Area Council invited both parties to present their title documents in order to ascertain the genuine title documents and that the Counsel discovered that the Plaintiff's title documents are fake and not genuine. The Plaintiff did not deny these averments of the Defendant by way of filing a reply.

Now a scrutiny of the title documents admitted in evidence on behalf of the Plaintiff, firstly , on the 15th May, 2018, PW1 testified under cross examination as follows:-

"I can see exhibit 2. The original of exhibit 2 is in possession of the person that supposes to buy the land from me."

Exhibit 2 the irrevocable power of attorney between Usaman Nuhu and Alhaji Mohammad Abubakar was admitted in evidence on 25th January, 2016. And by the evidence of PW1 under cross examination, exhibit 2 admitted in evidence is not the original document and a close perusal of the proceedings of 25th January, 2016, the conditions prescribed under section 89 of the Evidence Act, 2011(as amended) PW1 did not lay the necessary foundation for the admissibility of the secondary evidence of the original document and the whereabouts of the original document itself.

The law is that evidence that is inadmissible but was wrongfully admitted in the course of trial, the trial judge or Court at the time of writing its judgment has unfettered powers to expunge such inadmissible evidence from its records.

See the cases of **ZENITH BANK PLC V GEORGE IGBOKWE, (2018)LPELR 44777 (CA) , ROYORIC (NIG) LTD V A.G & C.J SOKOTO STATE, (2017) LPELR 42506 (CA),SHANU V AFRIBANK (NIG) PLC, (2002) 17 NWLR (pt795) page 185 and BROSSETTE MANUFACTURING (NIG)LTD V M/S OLAILEMOBOLA LTD & ORS (2007) LPELR 809 (SC).**

In the instant case, exhibit 2, the irrevocable power of attorney, having been wrongfully admitted in evidence, it is accordingly expunged from the records of this case.

Although exhibit 2, which confers authority on Mohammed Abubakar to deal with the subject matter in dispute in any manner including commencing action in Court has been

expunged, i will still proceed to consider the title documents each party tendered in evidence having traced their root of title to the same grantor, Abuja Municipal Area Council to ascertain whether in fact the two grants emanated from the same grantor and their genuineness.

Exhibit 1 is a conveyance of provisional approval in favour of the Plaintiff dated 2nd February, 1995 bearing the name USAMAN NUHU. On the otherhand, exhibit 10 is in favour of USMAN NUHU also dated same date i.e 2nd February, 1995. To resolve the instant conflict, DW2 was summoned pursuant to a subpoena Ad testificandum served on him by this Honourable Court including a hearing notice. In his evidence in- chief, DW2 stated as follows:-

“On receiving the subpoena from the Court the office traced the list of allottees against plot 258. The name against the plot in question was confirmed to be Usman Nuhu and then the office went further to confirm the certificate of occupancy and we found that the records through the desk officer of Bwari Council in Abuja Geographical Information System (AGIS), from the registered record of certificate of Occupancy, plot 258 was registered in the name of Usman Nuhu and duly processed.”

Further, through DW2, certified true copies of the subpoena Ad testificandum, acknowledgment slip of file no. FCT/850 in favour of Usman Nuhu dated 6th May, 2007, conveyance of provisional approval in favour of Usman Nuhu, certificate of occupancy (Customary) in favour of Usman Nuhu, site plan or TDP of Plot

258 in favour of Usman Nuhu, application for search report pursuant to a letter dated 30th August, 2012 and Bwari Area Council's response confirming plot 258 in favour of Usman Nuhu, settlement of building plan fees, planning observations and Zenith Bank draft cheque of N244,956. 10, all collectively confirmed Usman Nuhu as the allottee of plot 258 Gbazango layout Kubwa, Abuja.

Then under cross examination by the Plaintiff's Counsel, DW2 testified as follows:-

"I am not aware of the search report applied by the Plaintiff to Bwari Area Council. I am not aware of the re-issuance of application for recertification issued to the Plaintiff by Bwari Area Council. I am not aware of the departmental receipt in respect of the search report."

Then as a demonstration in open court, Counsel to the Plaintiff requested for exhibits 13,5 and 6 to be given to the witness, DW2. DW2 then testified under cross examination as follows:-

" I can see exhibit 13. There is no receipt in exhibit 13. I can see exhibits 5 and 6. The letter head of exhibit 5 bears the address of Bwari Area Council. Exhibit 5 was signed by Nasiru Suleiman. Exhibit 5 was addressed to Usaman Nuhu."

DW2, under cross examination testified also " I can see exhibit 13 and i can read the same document as in exhibit 5"

Finally, Dw2 under cross examination says:-“You are not correct that Bwari Area Council issued conflicting report as in exhibit 5 and 13.”

The Plaintiff’s Counsel at paragraph 3.5 of his final written address made a heavy weather on the elicited evidence of DW2 under cross examination to the effect that by exhibits 5 and 6 , i.e search report and receipt of payment for the search from Bwari Area Council , DW2 agreed that the land in dispute is that of the Plaintiff.

This view of the Plaintiff’s Counsel is completely erroneous and that is not the testimony of DW2. Before i however proceed on this misrepresentation at paragraph 3.5 of the Counsel’s address, let me quickly address the erroneous view of Plaintiff’s Counsel when he submitted thus:-

“On the 23rd January, 2019, Dw2 Dodo Vincent Friday, who appeared on a subpoena from Bwari Area Council testified while exhibit 13 (certified true copies of correspondences) was tendered from the bar.”

The proceedings of 23rd January, 2019 when DW2 testified in – chief does not represent the position of the Plaintiff’s Counsel. DW2 in the course of his testimony says:-

“ I have with me certified true copies of the correspondences from the office of the plot in question.”

Okafor:- I seek to tender in evidence the certified true copies of the correspondences of Bwari Area Council.

Abubakar:-No objection.

Court:- The bundle of documents referred to by DW2 being certified true copies are hereby admitted in evidence and marked exhibit 13 on condition that the evidence of payment of fees be produced in the next 7 days, filed in Court and same served on the Claimant's Counsel as well".

There was therefore no application by the Defendant's Counsel to tender the certified true copies of the public documents in evidence from the bar. Such a held position is only a figment imagination of the Plaintiff's Counsel and not supported by the records or proceedings of 23rd January, 2019.

Having put the records as they were the evidence of DW2, both in chief and under cross examination and re-examination is consistent to the effect that Plot 258 Gbazango layout, Kubwa, Abuja, from their records in the office and bundle of documents marked exhibit 13 is charted or allocated to Usman Nuhu. In otherwords, the grantor of Plot 258 are not aware, from their records of the list of allottees of one Usaman Nuhu. Exhibit 13 received in evidence through DW2 are the conveyance of provisional approval, the certificate of occupancy (customary) site plan or technical deed plan (TDP) letter dated 23rd January, 2013 settlement of building plan fees and evidence of payment and

approval by the Development Control tallies with the documents produced in evidence by the Defendant i.e exhibits 7,8,9,10,10(a) and 11. In comparison, exhibits 1,3,4,5 and 6 issue to Usaman Nuhu does not exist in their records. In otherwords, by exhibits 1,3,4,5 and 6 of the Plaintiff and exhibits 7-12 of the Defendant and juxtaposing same with the certified true copies collectively marked exhibit 13, by the evidence of DW2, the exhibits 1,3,4,5 and 6 in the name of Usaman Nuhu does not exist and the genuine title documents of plot 258 Gbazango layout, Kubwa, Abuja are the title documents produced by the Defendant. Further, by the testimony of DW2, the title documents of the Defendant have been duly registered with Abuja Geographical Information Systems (AGIS) of the FCT. Thus, by the evidence of DW2 and the certified true copies of title document in favour of the Defendant and its facts of registration, the presumption of genuineness is in favour of the Defendant. See the case of ***GROUP CAPTAIN OGAH (RTD) & ANOR V MALLAM GARBA ALIGIDADO & ORS, (2013) LPELR 20298 (CA)***.

Further, exhibit 10(a) having been registered with the lands registration of Abuja Geographical Information System (AGIS) as supported by the evidence of DW2 in favour of the Defendant, the presumption of genuineness and regularity inure in favour of the Defendant except the contrary is shown.

In this case, the Plaintiff in fact failed to even deny or controvert the assertion of the Defendant that his title documents are not

genuine and that they are fake while his (the Defendant) are the genuine title documents. Lack of such denial by a way of reply to the statement of defence of the Defendants is an admission. See **CHIEF SIR CYRIL U. NNAOMA V CHIEF MARK AHUNNANYA & ORS (2018) LPELR 44700 (CA)**.

In the instant case therefore, by the evidence of DWs1 and 2 and the exhibits before me, i hold the firm view that the title documents of the Plaintiff are not or did not emanate from Bwari Area Council or Abuja Municipal Area Council and i so hold.

Equally, i hold the considered view that by the title documents exhibits 7-13, the Defendant is the title holder of plot 258, the Gbazango Layout Kubwa, Abuja and i so hold.

Thus, by exhibits 8,9,i.e the settlement of building plan fees and conveyance of building plan approval by the Abuja Metropolitan management Council as well as exhibit 9 (a), the Approved drawing plan by the Development Control on plot 258 in favour of the Defendant,, i hold the view that the Defendant is not a trespasser on plot 258 Gbazango layout Kubwa, Abuja and i so hold.

In otherwords, by the credible evidence adduced by the Defendant in support of his own case, i believe on the balance of probabilities, the case of the Defendant and against the Plaintiff. Accordingly, the Plaintiff is not entitled to the declaration sought or any other relief as per his amended statement of claim. The claims are therefore refused and dismissed. The sole issue

distilled for determination by the Plaintiff's Counsel is hereby resolved against the Plaintiff and in favour of the Defendant.

A cost of N50,000.00 is hereby assessed in favour of the Defendant and against the Plaintiff.

That is the judgment of this Court.

HON. JUSTICE D. Z. SENCHI
PRESIDING JUDGE
12/05/2020

Parties:- Defendant present in Court.

Plaintiff:- Absent.

Abubakar I. Kolawole:- For the Plaintiff.

O.C Okafor:-For the Defendant.

Abubakar:- In the circumstances of this case i apply to re-adopt our final address in this case. The Plaintiff's final written address is dated 18th March, 2019 and filed same date. I adopt same as our arguments in this case in support of our case and urge the Court to deliver judgment on our behalf.

Okafor:- The Defendant's final written address was filed on 6th February, 2019 and dated same 6th February, 2019. We adopt our final written address as our argument and urge the Court to dismiss the case of the Plaintiff.

Sign
Judge
12/05/2020