IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT GWAGWALADA

THIS THURSDAY, THE 14TH DAY OF MAY 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/716/17

BETWEEN:

TRUNINION AXIS NIG LTD .....PLAINTIFF

AND

BALA JOSIAH JOHN .....DEFENDANT

JUDGMENT

The Plaintiff's claims against the Defendant as endorsed on the Writ of Summons and Statement of Claim dated 25th January, 2017 and filed same date in the Court's registry are as follows:

a. **A Declaration of the Honourable Court that by virtue of the instrument of allocation titled: Offer of Terms of Grant/Conveyance of Approval cum Right of Occupancy No: MFCT/ZA/AMAC/SLE MF 1834 and R of O No: MZTP/LA/05/MISC 8863 in favour of the Plaintiff dated 11th March, 1998 and by virtue of the aforesaid, the Plaintiff is the legal and beneficial owner of plot MF1834 measuring about 1.92Ha at Sabon Lugbe East Extension Layout Abuja.**

b. **A Declaration of the Honourable Court that the Plaintiff is the legal, rightful cum beneficial owner of Plot No: MF1834 Sabon Lugbe East Extension Layout Abuja.**

c. A Declaration of the Honourable Court that the actions of the Defendant of selling cum trespass in Plot No:MF1834 at Sabon Lugbe East Extension Layout Abuja by mobilizing workmen to dig/excavate and trying to fence the said land and to start construction is illegal, wrongful, null and void.

d. An Order of perpetual injunction restraining the Defendant, their Agents cum privies whether acting jointly or severally from trespassing or further trespassing into the Plaintiff's plot No:MF1834 Sabon Lugbe East Extension Layout Abuja.

e. A General damage in the sum of Five Million Naira (N5,000,000,00) Only for the physiological trauma cum stress the Plaintiff pass through during the act of trespass.

f. The cost of prosecuting this action in the sum of Three Million Naira (N3,000,000,00).

g. An award of 39.5% of post judgment interest on the entire judgment sum from the date of Judgment till same is fully liquidated.

The Defendant was duly served and in response filed a statement of defence dated 12th December, 2017 and also filed same date in the Court's Registry.

With the settlement of pleadings, hearing then commenced. In proof of its case, the Plaintiff called only one witness, Dauda Salihu who is a Director in Plaintiff company and testified as PW1. He deposed to a witness statement dated 25th January, 2017 which he adopted at the hearing.

His evidence in substance is that the Plaintiff a limited liability company was originally allocated the disputed plot by Abuja Municipal Area Council (AMAC) through an offer of terms of grant/conveyance of approval No: MZTP/LA/2005/MISC 8863 together with the Right of Occupancy Ref: MFCT/ZA/AMAC/SLE MF1834.

That the Plaintiff then employed the service of a surveyor to locate the site and place beacons on it as the site was then bushy and that they also secured the services of a local guard to secure the site and that they have since then being in quiet and peaceful possession until the Defendant came on to the land.

PW1 further stated that they effected all necessary payments including processing fees for the plot with AMAC. PW1 stated that the Defendant was informed through his agent not to erect any structure on the land but he disregarded this and continued with the excavation and digging on the land and carrying out construction works. PW1 stated that the Plaintiff did not sell the land to anyone and did not authorise the sale to anybody. PW1 tendered in evidence the following documents:

1. Offer of terms of grant/conveyance of approval dated 1st March, 1998 by AMAC was admitted as **Exhibit P1.**

2. Copy of Right of Occupancy rent and fees bill issued by AMAC, Department of Land, Planning and survey was admitted as **Exhibit P2.**

3. Three(3) Receipts of payment by Plaintiff issued by AMAC was admitted as **Exhibits P3a-c**

4. The certificate of incorporation of Plaintiff dated 10th March, 2016 was admitted as **Exhibit P4.**

Under cross-examination by counsel to the Defendant, PW1 stated that Plaintiff was initially a business name before they upgraded it to a limited liability company. He stated that he does not have evidence in court that Plaintiff was a business name or evidence of its cessation as a business name.

He agreed that the Plaintiff was incorporated on 10th March, 2016 and that there is no mistake on the certificate of incorporation **Exhibit P4.** He stated further that the receipts payments made vide **Exhibit P3(a-c)** was paid by Plaintiff, then a business name. That they applied for the land with the appellation limited because they had plans to upgrade the business name to a limited liability company.

At the conclusion of his evidence, the Plaintiff close his case.

The defence counsel then informed the court that the Defendant will not be calling any witness and that he will be resting the case of defendant on evidence led by Plaintiff. Let me quickly state here that the implication of the election not to lead evidence in support of the statement of defence is that the defence and the witness deposition of Defendant would be treated as abandoned.

The adoption of the witness deposition or statement is fundamental under the present regime introduced by the Rules of Court. Where a witness does not appear in court to adopt same to support the statement of defence, the implication is that the defence has no evidence to back it up. In **N.I.M.V. Ltd V. F.B.N Plc (2009)16 N.W.L.R (pt.1167)411at 437 D.E**. the Court of Appeal stated thus:

"Pleaded facts on which no evidence was adduced in support are deemed abandoned. Pleadings are the body and soul of any case in a skeleton form and are built and solidified by the evidence in support thereof. They are never regarded as evidence themselves and if not supported by evidence are deemed abandoned."

The implication as stated already is that there is nothing from the other side of the divide to serve as a counter-balance to the case of Plaintiff which then stands unchallenged. In law, it is now accepted principle of general application that in such circumstances, the defendant is assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the plaintiff's unchallenged evidence. See **Tanarewa (Nig.) Ltd. vs. Arzai (2005) 4 NWLR (pt. 919) 593) at 636 C – F; Omoregbe vs. Lawani (1980) 3 – 7 SC 108 and Agagu vs. Dawodu (1990) 7 NWLR (pt. 160) 56.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case **of Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce

evidence … the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24** stated thus:

"… a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all."

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiff to establish his case on a balance of probability by providing credible evidence to sustain his claim irrespective of the presence and/or absence of the defendant. See the case of **Agu v. Nnadi (1990) 2 NWLR (pt. 589)131 at 142.**

Now, with the election of the Defendant not to call evidence, the court then ordered for the filing of addresses in compliance with the Rules of Court. Parties then filed, exchanged and adopted their final written addresses. The Plaintiff's final address is dated 10th July, 2019 and filed same date in the court's registry. Two (2) issues were raised as arising for determination to wit:

a. **Whether the Plaintiff's has (sic) proved his case on the balance of probability as required by the laws.**

b. **Whether the Plaintiff having presented documents evidence of ownership is not entitled to recover his landed properties in all ramifications from the Defendant.**

The Defendant on his part filed his final address dated 2nd August, 2019 and also filed same date in the Registry of Court. Counsel for the Defendant first comprehensively addressed the two (2) issues raised by the Plaintiff before then raising one issue as arising for determination, to wit:

a. **Whether having regard to the evidence led at trial, the Plaintiff has discharged its burden of proof of title to Plot No: MF 1834 measuring about 1.92Ha at Sabon Lugbe East Extension Layout, Abuja ("the property") and thereby entitled to all its other reliefs sought before this honourable Court?**

The Plaintiff then filed a reply on points of law dated 31st January, 2020 in response to the final address of Defendants.

I have set out above the issues distilled by parties as arising for determination. However having regard to the pleadings and evidence, these issues can be harmonised into one single broad issue as follows:

Whether the Plaintiff has proved its case on preponderance of credible evidence and therefore entitled to the reliefs sought on the claim.

The above issue has in the court's opinion brought out with sufficient clarity the pith of the contest which remains to be resolved by the extant judicial inquiry. Let me quickly add that the sole issue is not raised as an alternative to the issues raised by parties, but the issues raised by parties can conveniently be considered under the sole issue formulated by the court. See **Sanusi V. Amoyegun (1992)4 N.W.L.R (pt.237) 527 at 550.**

Let me also quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issue upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas**

Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (pt13)407 at 418, the Supreme Court instructively stated as follows:

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

It is therefore guided by the above wise exhortation that I would now proceed to determine this case based on the issue I have raised and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel.

ISSUE 1

Whether the Plaintiff has proved its case on preponderance of credible evidence and therefore entitled to the reliefs sought on the claim.

Now at the commencement of this judgment I had stated the claims of the Plaintiff. It is doubtless that that they incorporate reliefs for title, trespass, injunction and damages for trespass. The implication of these set of reliefs as presented is to put the title of the subject of dispute at the fulcrum of the courts inquiry. See **Odunze V. Nwosu (2007)13 N.W.L.R (pt. 1050)1 at 53; Mafindi V. Gendo (2006)AII F.W.L.R (pt.292)157 at 165F-G.**

The Plaintiff who has here claimed entitlement to be declared owner and in possession of the disputed plot has the evidential burden of establishing its claims and succeeding on the strength of the case as opposed to the weakness of the case of Defendant. See **Kodilinye V. Odu (1935)2 VACA 336 at 337, Nsirim V. Nsirim (2002)12 WRN 1 at 14 and Fagunwa V. Adibi (2004)17 N.W.L.R (pt.903)544 at 568.**

In law, there are five independent ways of proving title to land as expounded by the Supreme Court in **Idundun v. Okumagba (1976) 9/10 SC 221** as follows:

(a) Proof by traditional evidence;

(b) Proof by production of documents of title duly authenticated, unless they are documents 20 or more years old, produced from proper custody;

(c) Proof of acts of ownership, in and over the land in dispute such as selling, leasing, making grants, renting out of any part of the land or farming on it or a portion thereof extending over a sufficient length of time numerous and positive enough as to warrant the inference that the persons exercising such proprietary acts are the true owners;

(d) Proof by acts of having possession and enjoyment of the land which prima facie may be regarded as evidence of ownership; and

(e) Proof of possession 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 of the land in dispute. See also **Oyedoke V The Registered Trustees of C.A.C (Supra)632 A-D.**

In law, proof of title could be by any one of the above listed ways.

In this case, the Plaintiff from the pleadings and evidence of PW1 appear to have found their claim for title on production of title documents. It is trite law that a claimant can establish his title to land in dispute by production of documents. See **Ilona V. Idakwo (2003)12 MJSC 35 at 54; Idundun V. Okumagba (supra).** It may also be apt to restate the general principle that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131 (1) of the Evidence Act**. Similarly by virtue of **Section 133(1) of the Evidence Act**, the burden of first proving the 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.

As a logical corollary to the above, it also must be emphasised that in law it is one thing to aver a material fact in issue in ones pleading and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is

either denied or disputed by the other party, the onus of proof clearly rest on him who asserts such a fact to establish same by evidence. This is because it is an elementary principle of law that averments in pleadings do not constitute evidence unless same is expressly admitted. See **Tsokwa Oil Marketing Co. Ltd V. B.O.M Ltd (2002)11 N.W.L.R (pt.777)9 N.W.L.R (pt.316)182.**

The burden of proof therefore lies on Plaintiff to establish the affirmative contents of his pleadings by credible evidence which will provide both the factual and legal template to sustain the reliefs he seeks.

In proof of their case, the Plaintiff as earlier stated tendered in evidence the following documents:

1. Offer of terms of grant/conveyance of approval dated 11th March, 1998 by AMAC admitted as **Exhibit P1.**

2. Copy of Right of Occupancy Rent and fees issued by AMAC, admitted as **Exhibit P2.**

3. Three(3) receipt payments paid by AMAC by Plaintiff admitted as **Exhibit P3a-c**

4. Certificate of incorporation of Plaintiff dated 10th March, 2010 admitted as **Exhibit P4.**

Now by paragraph 1 of the statement of claim and in particular paragraph 1 of the witness deposition of PW1, it was stated therein that the Plaintiff is a limited liability company and by **Exhibit P4** the incorporation and or registration of Plaintiff's company was however only done at the Corporate Affairs Commission (CAC) on **10th March, 2016.**

Under cross-examination, PW1 agreed that as at the time of the allocation of the property to Plaintiff on 11th March, 1998 vide **Exhibit P1, the** issuance of Right of Occupancy rent and fees bill via **Exhibit P2** and the receipts payments made to AMAC vide **Exhibit P3(a-c),** the Plaintiff was still only a **business name** and not yet registered or incorporated as a **limited liability company.**

Although PW1 in evidence advanced the position that they got the allocation in anticipation of incorporating Plaintiff as a limited company, there is nothing on the pleadings to support or sustain this aspect of his evidence or testimony. The Plaintiff did not in the pleadings make out a case that it is a business name at the time of the allocation or that it applied for the allocation in anticipation of registration as a Limited Liability Company. Furthermore there is no evidence before the court that it was even a business name at any time. It is settled principle now of general application that evidence led in support of facts not pleaded goes to no issue and will be discountenanced.

The same fate also falls on the rather flawed submission in the reply address of Plaintiff that Truninion Axis Enterprise acted as a promoter and applied for the disputed land which was approved by the issuing authorities. Further that the act of acquiring the property was later **"rectified and adopted by the company now Truninion Axis Nig Ltd."** Reference was made to **Sections 61, 62 and 72 of CAMA.**

Here again, there is no where to situate the above in either the pleadings or evidence of Plaintiff. In the absence of proper pleadings and evidence streamlining these facts, they clearly have no foundational basis to stand on and they will be accordingly also discountenanced. It is equally trite principle that an address of counsel however well written is no substitute for pleadings and evidence. Counsel cannot use the medium of an address as a conduit to expand the remit of Plaintiff's case as projected in the pleadings.

The bottom line is that as at the time **Exhibits P1, P2, P3(a-c)** relating to the allocation of the plot to Plaintiff were all issued, the Plaintiff was not in existence as a **limited liability company**. PW1 unequivocally affirmed this position in evidence under cross-examination. **Exhibit P4,** the certificate of incorporation of Plaintiff issued years after the allocation accentuates this position in clear unequivocal terms. If that is the situation, the question then arises whether as at the time of the allocation in 1998, the Plaintiff had legal capacity to hold and acquire land. The case of Defendant is that the Defendant was not a legal person as at 11th March, 1998 and so could not have been granted a Right of Occupancy over any parcel of land.

In addressing this point, it is important to underscore the principle that in law, the mere production of title documents does not automatically tantamount to ownership. Where a party pleads and relies on documents of title as the proof of his title to land as in this case, the law requires that for the court to accept such document as satisfactory proof of title to land in dispute certain questions must be enquired into and explained as postulated in the case of **Romaine V. Romaine (1992)4 N.W.L.R (pt.238)650 at 662 D-G** where the Supreme Court per Nnaemeka Agu J.S.C (of blessed memory) and I will quote him in-extenso stated as follows:

"…One of the recognized ways of proving title to land is by production of a valid instrument of grant…But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather production and reliance upon such an instrument inevitably carries with it the need for the court to inquire into some or all of a number of questions including:

i. Whether the documents are genuine and valid?
ii. Whether it has been duly executed, stamped and registered?
iii. Whether the grantor had the capacity and authority to make the grant?
iv. Whether the grantor had in fact what he purported to grant; and
v. Whether it had the effect claimed by the holder of the documents?"

The key question flowing from the above and on which the Defendant anchors his case is that the Plaintiff was not a juristic personality at the time of the allocation with capacity to hold land (see paragraph 3 of the defence). That even if there was a grant which is denied, such a grant made to plaintiff in its capacity as a business name is invalid, null and void.

Put another way, the question to address here is whether or not a business name has capacity to acquire and hold title to land.

In addressing this issue, the point must be made clear that the case of the Plaintiff on the pleading is that it was a limited company when the allocation was made. **Exhibit P4** compromises or undermines this assertion. At the time of the

allocation, Plaintiff was not in existence as a limited liability company. So there could not have been such an allocation to a Limited Liability Company.

Now if the case is that it is a **business name**, this was equally not pleaded and there is no evidence to that effect. The question then is who or what entity was the allocation made to? An allocation cannot be made in any vacuum and it cannot simply hang in the air.

It is the duty of the Plaintiff who seeks declaration of title in its favour to creditably provide clear answers to these posers and this it must do by producing sufficient and satisfactory evidence in support of the claim. See **Adewuyi V. Odukwe (2005)14 N.W.L.R (pt.945)473 at 491 C-F**

There is really no clear evidence situating the foundational basis of the entire case of plaintiff relating to any clear allocation to the Plaintiff or an identifiable person or entity and this has served to undermine the claim for declaration of title. It is really difficult to make a declaration of title in such patently unclear and fluid situation devoid of evidence.

The question relating to whether or not a business name which PW1 claims Plaintiff was at the time of the allocation has the capacity to hold land would appear to me entirely now redundant since as stated earlier the pleadings of Plaintiff never averred that the allocation or offer letter was to a business name but to a limited liability company. As stated severally already, there is equally no evidence before me that the Plaintiff was a business name at any time. Any inquiry as to the capacity of a business name to hold land would appear in the circumstances to be wholly academic.

The evidence, **Exhibit P4,** shows that the Plaintiff was only incorporated in 2016 and there could not have been an allocation in 1998 to a non-existent legal entity.

Now to avoid accusations of being unnecessarily pedantic or technical, let me however still address the question of whether a business name has capacity to hold land in its name. The relevant provisions of **Section 37 and 679 of CAMA** appear to underscore the point that while an incorporated company upon incorporation acquires the capacity to hold land in its name but there is no such provision of law empowering a registered Business Name. In that wise, a registered business name

does not possess the legal capacity to hold or have title in land vested in it. I have carefully read both Sections of the Companies and Allied Matters Act. **Section 37** which deals with incorporated companies provides thus:

"As from the date of incorporation mentioned in the Certificate of Incorporation the subscriber of the memorandum together with such other persons as may from time to time, become members of the company shall be a body corporation by name contained in the memorandum capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this act."

Section 679(1) which deals with Incorporated Trustee on its part provide as follows:

"From the date of registration, the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal and power to sue and be sue in its corporate name as such trustee or trustees and subject to Section 685 of this PART of this Act to hold and acquire and transfer assign or otherwise dispose or any property or interest therein belonging to or held for the benefit of such association, in such manner and subject to such restrictions and provisions as the trustees might without incorporation hold or acquire, transfer, assign or otherwise dispose of the same for the purpose of such community, body or association of persons."

From the foregoing it is apparent that while **Section 37 of the Act** imbues an incorporated Limited Liability Company with the capacity or status to acquire and hold land, similar capacity was given to an Incorporated Association having trustees in **Section 679**. A close reading of the whole of **Sections 652 to 672** of the Act which deals with Business Names shows no such capacity to hold or acquire land was given to a Business Name upon its registration. I do agree with the contention that if indeed the legislators had intended a Business Name to enjoy similar capacity to acquire or hold land as given to a limited liability company and

Incorporated Trustee, they would have expressly stated or provided for it in those Sections relating to Business Names or indeed any other Section of the Act.

It is settled law of general application that the duty of court is to interprete clear and unambiguous words of a statute according to there ordinary, natural and grammatical meanings and no one must not add to or remove any words therefrom. The well established cannon of interpretation requires that, if the intention of the framers of a statute or constitution must be ascertained, it can be from no other source than the words used by them in couching the provisions and it is there their intention is entrenched. See **Action Congress V. INEC (2007)12 N.W.L.R (pt.1018)220 at 318 E-H.** Against the background of the foregoing, I come to the view that if Plaintiff was indeed a business name at the time of allocation, it does not posses the legal capacity to hold or acquire land. This implies that it does not have the legal capacity or standing to have title in land vested in it.

The only point to add is that capacity to sue or be sued *eo nomine* provided for under the rules of court or an enactment is not the same thing as capacity to acquire and hold land provided for specifically under an enactment; while the former relates to capacity to sue or be sued, the latter relates to capacity to acquire or hold land. The latter in essence has to do with the status to enjoy perpetual succession.

Flowing from the above, I hold that **Reliefs (a) and (b)** seeking declarations that the Plaintiff is the legal and beneficial owner of Plot No:MF1834 measuring 1.92Ha Sabon Lugbe East Extension Layout Abuja clearly appears fatally compromised. If at all, there was a purported allocation to a business name, it is in law invalid *ab-initio*. It cannot be validated by subsequent acts even if valid; this is because you cannot put something on nothing and expect it to stand. See **UAC Ltd v. Macfoy (1961)3 AII ER 1160.** The bottom line is that there cannot be in an allocation to a non-existent entity. Furthermore, there cannot equally be a valid allocation of land to a business name

Now the fact that **Reliefs (a)** and **(b)** relating to allocation to land has failed does not mean the other **Reliefs (c)-(e)** relating to trespass, injunction and damages must necessarily fail also. The law is settled that where a claim for declaration of title fails as in this case, the claim for trespass and injunction may succeed. The success or failure of these latter set of reliefs is not predicated on the success of the

claim for declaration of title. See **Monkon V. Odili (2010)2 N.W.L.R (pt.1179)419 at 446; Owhonda V. Epkechi (2003)17 N.W.L.R (pt.849)326 at 345; Wachikwu V. Owunwane (2011)14 N.W.L.R (pt1266)1 at 39**

The Supreme Court in **Runsewe V. Odutola (1996)4 N.W.L.R (pt44)143 at 153 C-E** made it clear that:

"A claim for trespass does not necessarily postulate title."

Again in **Adewole V. Dada (2003)4 N.W.L.R (pt810)369 at 378 F-H,** the Apex Court **reiterated that:**

"a claim for trespass is not dependant on a claim for declaration of title as issues to be determined in trespass is whether the claimant has established his actual possession of land and the Defendant trespassed on it."

Furthermore in the case of **Monkon V. Odili (2010)2 N.W.L.R (pt.1179)419 at 450 G-H,** The Court of Appeal again made the point that where a claim for declaration of title fails, a claim for trespass and injunction may succeed. In a claim for damages for trespass and injunction, it is only necessary to establish that the claimant was in possession. The question of establishment of title only becomes necessary, where there is a **competing claim for possession**. In this case, there is on the evidence no **competing claim for possession** by defendant or anybody.

In the light of this clear and established position of the law, the contention by learned counsel to the Defendant in paragraph 4.33 of his address is with respect flawed. The said paragraph is as follows:

"…the law is trite that the grant of any relief in trespass is consequent upon proof of title to a property and possession which are inextricably linked or connected. Thus, where a party seeking declaration of title to land fails to prove his title to the disputed land, any consequent relief in trespass sought form the Court would automatically fail in the light of the fact that there is prima facie presumption that the person with good title or the owner is the person in possession."

Learned counsel clearly with respect misconceived the position of the law on the issue and with respect misapplied the decisions he cited. The point therefore must be underscored that in a claim for declaration of title to land, damages for trespass and injunction, the claim for trespass is not dependent on the claim for for declaration of title. This is so because the issue to be determined in the claim for trespass are whether the Plaintiff has established actual possession of the land and the Defendant trespassed on it which are separate and independent issues to that on the claim for declaration of title which is determined on a different set of legal requirements.

Furthermore, a claim for injunction is also not necessarily bound to fail after a claim for declaration of title fails, provided the area of land in respect of which an injunction is sought is clearly defined and ascertained. See **Opoto V. Anaun (2016)16 N.W.L.R (pt.1539)43;** see also **Ajero V. Ugoriji (1999)10 N.W.L.R (pt621)1.** I shall now take the reliefs on trespass and damages for trespass together.

Now, what constitutes trespass to land? Trespass to land constitutes the slightest disturbance to the possession of land by a person who cannot show a better right to possession. See **Imona-Russel V. Niger Construction Ltd (1987)3 N.W.L.R (pt.60)298SC; Ojomo V. Ibrahim (1999)12 N.W.L.R (pt.631)415 at 417 CA.**

Trespass to land is actionable at the instance of the person in possession. Exclusive possession gives the person in possession the right to retain the land and to undisturbed possession of it against all wrong doers except a person who can established a better title. The key phrase here is a **better title**. See **Agu V. Nnadi (1999)2 N.W.L.R (pt.589)131 CA; Adepoju V. Oke (1999)3 N.W.L.R (pt.594)154.**

Now in this case on the pleadings and the evidence of PW1, the case made out is that Plaintiff was allocated the disputed parcel of land vide **Exhibits P1 and P2.** The Court may have found that the Plaintiff does not have capacity to hold or acquire land as a business name and that it could not have been allocated the plot well before its registration as a Limited Liability Company but that is distinct from the fact of the allocation and the fact that plaintiff has moved to the plot carrying out overt acts of possession. The Defendant as stated earlier did not lead evidence

in support of the averments in his pleadings. There was therefore nothing impugning the fact of allocation from AMAC; the issuing authority. There was a *de facto* fact or act of allocation here even if legally, it is not accepted as existing or availing.

The Plaintiff then stated that on been allocated the plot, which was bushy then, they got a surveyors to locate the plot and who then put beacon numbers on the land and that they then employed the services of a local guard to secure the site and that they have been in quiet undisturbed possession until the Defendant went into land and started digging and excavating same and also commenced construction. These facts or evidence by Plaintiff was not in anyway challenged or controverted and I do not find them as stated earlier, improbable or incredible. The law has always been that were evidence given by a party to any proceedings is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it; See **Agagu V Dawodu (supra) 169 at 170.**This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale, the weight of evidence tilts. Consequently where a defendant chooses not to adduce evidence, the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G. Oyo State V. Fair Lakes Hotels Ltd (No.2) (1989) 5 N.W.L.R (pt 121)255; A.B.U V Molokwu (2003) 9 N.W.L.R (pt 825) 265.**

The evidence by PW1 was not in any material particulars challenged or controverted by Defendant during cross-examination. Indeed the Defendant did not cross examine PW1 at all on the specifics of his evidence relating to actions they took to secure the Plot after the allocation and the infractions or interference with the land made against Defendant. The effect of failure to cross-examine PW1 on these streamlined matters is a tacit acceptance of the truth of the evidence of the witness. It is not proper for a Defendant not to cross-examine a Claimant witness on material points and to call evidence on the matter after the Claimant had closed his case. See **Gaji V. Pape (2003)8 N.W.L.R (pt.823)583 at 605 A-C.**

At the risk of prolixity, the Defendant chose not cross-examine PW1 on critical elements of the acts of possession by plaintiff and the interference with their land and also did not lead evidence at all in support of his defence. The implication is

that there is nothing on the other side of the scale of evidence to compare with that presented by Plaintiff. There is here absolutely no evidence by Defendant showing that he was in possession or that he has a better right of possession or title to the disputed plot of land. In an action for trespass, to defeat the Plaintiffs claim, a Defendant must show either that he is the one in actual possession or that he has a right to such possession or title to the disputed plot. See **Ojomo V. Ibrahim (1999)12 N.W.L.R (pt.631)415.**

The defendant did not adopt or rely on any of these streamlined options. If it was a gamble by Defendant to not lead evidence in defence and to rebut the case of interference with the possession of Plaintiff during cross-examination, the gamble clearly has spectacularly failed. The point to again emphasise at the risk of prolixity is that a Plaintiff in an action for trespass to land need only, in the first instance, allege possession. This is sufficient to support his action against a wrongdoer, but it is not sufficient as against the lawful owner. See **Kano V. Maikaji (2011)17 N.W.L.R (pt.1275)139**

On the unchallenged and uncontroverted evidence of Plaintiff showing they were in possession of the land even if minimal at the time of the trespass, there clearly is and I so hold an unjustified interference or intrusion by Defendant with the possessory right of the Plaintiff over the subject matter for which they are entitled to damages. In **Atunrase V. Sunmola (1985)1 SC 349,** the Supreme Court held that where title sought to be proved by both **parties is defective**, damages for trespass would still be awarded in favour of the party who was earlier on the land than the other. In this case, as stated severally, the Defendant never made any claim of title or possession or even lead evidence in respect of either claims. The Plaintiff made a claim of title which the court found to be defective, but they have on the evidence proved to be in possession and thus entitled to damages for the proven unlawful interference on the land by Defendant.

However I do not see from the pleadings and evidence how the sum of **N5,000,000** claimed as damages by Plaintiff can really be justified under the circumstances. Apart from the unchallenged evidence that the Defendant encroached on the land and started construction work even if the nature of the construction was not streamlined or established in the pleadings or evidence, I am unable to find the basis to award the sum of N5Million as damages for trespass. There is also no

evidence to support the allegation of sale of part of the disputed plot. It is important to point out that general damages are not awarded as a matter of course but on sound and solid legal principles and not on speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

Finally I only need to add that on the authorities, damages in a case of trespass should be nominal to show the courts recognition of the plaintiff's proprietary right over land in dispute. If the plaintiff as in this case wanted more damages, they should claim it under special damages which they should properly plead and prove. See **Madubuonwu V. Nnalue (1992)8 N.W.L.R (pt.260)440 at 455 B-C; Armstrong V. Shippard & Short Ltd (1959)2 AII ER 651.**

In this case, the claim of N5Million for damages for trespass is not availing. The sum of **N100,000** will in the court's considered opinion be reasonable as General damages for the Plaintiff against Defendant.

Relief (e) is for an order of perpetual injunction restraining the Defendant, their Agents cum privies whether acting jointly or severally from trespassing or further trespassing into the Plaintiff's plot No:MF1834 Sabon Lugbe East Extension Layout Abuja.

This relief is an ancillary relief predicated on the success of the relief on trespass. The Plaintiff here vide **Exhibits P1 and P2** has identified clearly the disputed land in their possession which the Defendant trespassed on. The law is settled that where a court finds a party liable in trespass, the court ought to necessarily make an order of perpetual injunction against the trespasser. Thus, where damages are awarded against a party for trespass to land and there is also a claim for injunction, the court will grant the injunction to prevent multiplicity of actions. See **Oriorio V. Osain (2012)16 N.W.L.R (pt.1327)560**. It is however correct that a perpetual injunction cannot be granted at the instance of a limited owner when the owner of the absolute interest is not a party in the case as enunciated in the case of **Chief Dada, the Iadoke V. Chief Shittu Ogunremi & Anor 1967 N.W.L.R 181.** This principle was reiterated by the Supreme Court in **Grace Madu V. Dr. Betrain**

Madu (2008) vol. 5 M.J.S.C 213 at 230 par G. It is obvious that the absolute owner of the dispute plot is the FCT which is not a party in this case and so perpetual injunction may not be availing but the principle is not that an injunction in such situation cannot be granted.

The salutary principle is that for a person to remain on another's land without that other's authority or consent, the person in possession is entitled to protection as appropriate and the protection is by way of an injunction. Indeed in law, even where an injunction was not sought where a court has found trespass, it has jurisdiction to grant the equitable remedy of injunction. An injunction can be made as a consequential order and it will not amount to a court giving or granting to a party what he did not claim. See **Njaba L.G.C V. Chigozie (2010)16 N.W.L.R (pt.1218)166; Adepoju V. Oke (1999)3 N.W.L.R (pt.593)154; Motunwase V. Sorungbe (1988)5 N.W.L.R (pt.92)90.** This Relief accordingly has merit subject to a slight modification in terms hereunder.

Relief (f) is for cost of prosecuting the action in the sum of N3,000,000. The Plaintiff did not provide any scintilla of evidence streamlining how they incurred the cost of **N3Million** in prosecuting this claim. What the plaintiff is entitled to under **Order 56 Rule 1 (3) of the Rules of Court** is the right to be indemnified for the expenses to which he has been necessarily put in the proceedings as well as compensation for his time and effort in coming to court. Having taken into account all the circumstances of this case, I consider the sum of N20, 000 as reasonable costs in this case.

The final **Relief (g)** is for the award of 39.5% post judgment interest from the date of judgment till same is fully liquidated. The grant of post judgment interest is predicated on the provision of **Order 39 Rules 4 of the Rules of Court.** Having granted the relief of general damages predicated on the proof of trespass against Defendant, I am of the considered opinion that this relief is not availing, the Plaintiff having been already sufficiently compensated in the circumstances.

On the whole, the single issue raised is partially answered in favour of the Plaintiff. For the avoidance of doubt, I hereby make the following orders:

1. **Reliefs (a), (b) and (g) fail and are dismissed.**

2. **It is hereby Declared that the actions of the Defendant in mobilising workmen to dig/excavate on the disputed plot preparatory to construction works constitutes act(s) of trespass and thus unlawful.**

3. **An order of injunction is granted restraining the Defendant, either by himself, his agents, servants whether acting jointly or severally from trespassing or further trespassing on the disputed plot No: MF 1834 Sabon Lugbe East Extension Layout Abuja.**

4. **The Defendant is ordered to pay the sum of N100,000 as General damages for trespass in favour of Plaintiff**

5. **Cost assessed in the sum of N20,000 payable by the Defendant to the Plaintiff.**

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Hon. Justice A.I. Kutigi

<u>Appearances:</u>

1. **Y.A Sarki Baba, Esq. for the Plaintiff**

2. **Ugbede Ojo Charles Abalaka Esq. for the Defendant.**