

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WEDNESDAY, THE 15TH DAY OF JULY, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/BW/CV/75/18

BETWEEN:

ANAZODO THANKGOD KENECHUKWU ----- PLAINTIFF

AND

OBI MAC OSCAR ----- DEFENDANT

JUDGMENT

On the 14th day of June, 2018 the Plaintiff Anazodo Thankgod Kenechukwu instituted this action against Obi Mac Oscar claiming a declaration that Eddie Nkwocha is the original and Bonafide owner and Allottee of Plot 233 Kubwa Annex Layout of about 800 metres.

That he also has the proprietary right over the Res which he obtained through the purchase/sale of the land.

A Declaration that the ongoing building by the Defendant and his agents and privies on the land without his knowledge and consent amounts to trespass on the land.

Perpetual Injunction restraining the Defendant, his agents, privies and successor in title from continuing the construction on the Res. He also asked for cost of litigation of this Suit and Omnibus prayer. He attached several documents evidencing his claim over the Res. These include Power of Attorney, Deed of Assignment, Sale Agreement, AGIS Receipt for Regularization, FIR Receipt showing the Registration of the Res and the Registered Power of Attorney as well as Letter of Complaint against the Defendant's trespass on the Res.

It is the story of the Plaintiff that by the Letter of Provisional Approval dated 15/5/2001 the land was allocated to Eddie Nkwocha who paid an Acceptance fee to Bwari Area Council as shown in the attached receipt. Eddie was later issued with Right of Occupancy on 31st December 2008, Eddie was issued the FCT AGIS Receipt for regularization and the New File Number of the Plot was DT46595. Eddie later donated a Power of Attorney to one Suleiman Mohammed Jimoh who in turn sold the land to the Plaintiff. He executed Deed/Contract of Sales as well as Power of Attorney irrevocably, as well as Deed of Assignment with the Plaintiff.

Subsequently the Plaintiff noticed act of trespass on the Res by the Defendant and he made a formal complaint in writing to the Police. While investigation was still on the Plaintiff noticed that the Defendant continued with the construction of the building on

the Res, hence he instituted this action against the Defendant claiming all the Reliefs already listed above.

Upon receipt of the Originating Process, the Defendant filed a Statement of Defence and Counter Claim in which he claims the following:

A Declaration that he did not encroach or trespass on the Res as he is the beneficial owner of the Res to the exclusion of all other 3rd parties even the Plaintiff and has not trespassed on the Res or done any other act complained of by the Plaintiff.

An Order that he is a bonafide purchase of value over the land (Res) which is File No. KG54741 (Old No. DT1054).

An Order restraining the Plaintiff/Counter Claimant, his agents, privies, successor-in-title from interference with or trespass over the Res.

Payment by the Plaintiff/Counter Claimant of One Million, Five Hundred Thousand Naira (₦1,500,000.00) as legal fees for prosecution of this defence as caused by the Plaintiff/Counter Claimant for his unlawful interference on the Res. Omnibus prayer.

The Plaintiff called 2 (two) Witnesses PW1 & PW2. He frontloaded all the documents already listed above, all of which were admitted in evidence. This include the Receipt Legal Fee paid to his Counsel.

Upon examination and cross-examination and in his Statement of Defence the Defendant claimed that he obtained his title through the same Emmanuel Dayo who got his title had previously through Power of Attorney donated to him by Eddie Nkwocha.

That Emmanuel Dayo also donated Irrevocable Power of Attorney to him. That they also executed Deed of Assignment between him and the same Emmanuel Dayo. He tendered all these documents. He also tendered Conveyance of Provisional Approval, Receipt from the Bwari Area Council, Right of Occupancy, Conveyance of Development Plan, Picture of the Res showing the excavation thereon and erection of perimeter wall fence, as well as proposed Building Plan. All marked as EXH 5 – 8.

He claimed that Eddie Nkwocha is the original Allottee of the Res which is Plot 233 with File No. KG54741 old File No. 1054. That he paid ₦3.5 Million as purchase price to Dayo as shown in the Deed of Assignment. That he never trespassed on the land as the Plaintiff alleged. That he is the beneficial owner and the person in lawful possession of the Res. That the Res was never revoked as Eddie donated the Power of Attorney to Emmanuel sometime in 2011 and subsequently donated the Power to him in 2016. That Dayo also handed him over every document in title as listed above.

He points the Plaintiff to strict proof of paragraph 4 – 10 of the Statement of Claim which he denies and contest.

That he visited the subject matter with a Surveyor for physical inspection of the Res. That the Res was overgrown with weeds. That he conducted a Window Search and there was no encumbrances. That he then paid and he took physical possession of the Res and took hold of all the documents of title and executed the document.

That in the course of fencing the Res some persons trespassed and broke into the Res. He instructed Dayo to report to the Police and warrant of arrest was issued against the identified trespasser who is one Rauf Kassim.

Please note that he applied to tender the Warrant of Arrest but the Plaintiff objected to it. The Court noted it. The Plaintiff gave no reason for objecting to it though it was pleaded and they have notice of same.

It is imperative to state that the Court has right to look at all documents before it whether tendered in evidence, rejected when tendered and or withdrawn from being tendered.

In this case the Warrant of Arrest was made against Kassim Rauf. He was charged with the offence of Criminal Trespass and Criminal Intimidation under S.348 & 397 Penal Code Law. This document

confirms the statement of the Defendant in this case on the action by the Kassim Rauf.

After the above Warrant was issued the Defendant continued with the development of the Res, completed the fence and installed the gate and commenced construction of the Security House. He attached pictures to buttress his claims.

He stated that it was at this point that the Plaintiff interfered and came up with the adverse claim. The Plaintiff petitioned the Police subsequently and he the Defendant petitioned that the matter be taken from the Kubwa Police to FCT Command for investigation. He challenged the Plaintiff to present any report to show that he the Defendant was identified or accused of being a trespasser to the Res by the Police. He pleaded the Plaintiff's statement to the Police EXH 4.

He urged Court to dismiss the claims of the Plaintiff as it is lacking in merit, malicious, frivolous, distracting and vexatious as well as gold-digging attempt calculated to obtain unnecessary gain from him.

In his Counter Claim he restate paragraph 1 – 18 of Statement of Defence. He urged Court to hold that he is the beneficial owner in possession of the Res to the exclusion of any 3rd party.

He urged Court to award ₦1.5 Million as cost of litigation paid to his Counsel. He attached receipt as evidence. He urged Court for declaration that he is

not a trespasser on the Res as claimed by Plaintiff. That he is a bonafide purchaser for value and beneficial owner of the Res.

And for an Order of Perpetual Injunction against the Plaintiff, his agents, privies and successor from interfering with or trespassing over the Res, Plot 233.

N1.5 Million as cost of prosecution of this case. He was the only Witness for the Defence.

In reply to the Final Address by the Plaintiff he submitted that he has a better title to the Res on the ground of first in time and priority of interest/Estate by the maxim.

Qui prior est tempore potior est jure (The first in time is the first in law).

That it is trite that mere production of documents without more does not constitute proof of ownership. That a Plaintiff must go further to prove proper root of his title. He relied on the case of:

Lawson V. Ajibulu
(1997) 6 NWLR (PT. 507) 14 @ 31

Usman V. Garke
(1999) 1 NWLR (PT. 587) 466 R. 6.

He submitted that the Plaintiff failed to prove a robust and unassailable and better root of his title. That he failed, refused and neglected to produce his predecessor in title despite having listed him as a Witness in this Suit.

That Plaintiff did not attack or discredit the Power of Attorney between Dayo and Eddie Nkwocha, the original allottee, dated 2011, which preceded the Plaintiff's own root of title from Jimoh who purportedly acquired interest from the same Eddie Nkwocha before selling same to the Plaintiff. That Plaintiff not challenging the facts means that he has admitted same. He referred and relied on:

**Cappa D'Alberto V. Akintilo
(2003) 9 NWLR (PT. 824) 49**

That it has been held in plethora of cases that the first in time gets the title since there is nothing left for the vendor to sell to the second purchaser. He urged Court to so hold as regard the purchase of the Res between the Eddie Nkwocha and Emmanuel Dayo, and Eddie Nkwocha and Suleiman Mohammed Jimoh. He relied on the cases of:

**Adike V. Obiareri
(2002) FWLR (PT. 131) 1907 R. 2**

**Aminu V. Ogunyebi
(2004) 10 NWLR (PT. 482)**

That Plaintiff could not have acquired title from a person who has no title to offer according to the legal maxim **Ex Nihilo Nihi Fit Nemo Dat Qud Non Habet.**

He referred to the case of:

Bala Aanbazo V. Hassan Sule & ors

(1996) 7 NWLR (PT.461) 479

On registration of Registrable documents as contained in paragraph 3 of Plaintiff's Final Address he submitted that as at that time the documents were not registered and that the Defendant could not have registered them as they were/they are not registrable then.

That none of the documents upon which the Plaintiff predicated his interest was registered. He urged Court to strike them out since Plaintiff is not the original allottee, he lacks the locus to maintain this Suit. He referred to the case of:

**Owodunmi V. Registered Trustee Celestial Church of Christ
(2000) FWLR 1456**

He urged Court to hold that Plaintiff has not adduced enough evidence to prove his case. He also urged Court to dismiss the Suit and grant his Counter Claim.

In the Final Address the Plaintiff raised an Issue for determination which is:

“Who among the parties has a better title to the Res”?

His Counsel in answer responded by saying that the Plaintiff/Counter Claimant has a better title to the Res going by the documents he tendered in the

course of his testimony and testimony of PW1 – Mr. Kazeem Adeyinka.

That in this case there is an issue as to the real owner of the land going by the Counter Claim of the Defendant and his own claim too. That both parties have tendered documents of title, it is therefore the duty of the Court to evaluate the documents set before it by the parties.

That both documents derived title root from the same source – Eddie Nkwocha from the Provisional Conveyance of Approval dated 15/5/2001.

That it is very evident that there are discrepancies in the documents tendered by the Defendant. That the Defendant in his testimony admitted that there are several errors on the document the Defendant tendered before the Court. The Plaintiff urged the Court to evaluate (look at) the 2 documents of title critically to ascertain which is authentic and which is false.

That to prove his claim of ownership, Defendant tendered unregistered title documents from Emmanuel Dayo. These include Power of Attorney donated to him by the same Emmanuel Dayo and Deed of Assignment between Defendant and the same Emmanuel Dayo. He submitted that the Power of Attorney donated to Defendant has no trace of consideration unlike the Powers of Attorney donated to the Plaintiff which were all registered and had

considerations which invariably conferred and passed title to Plaintiff. He urged Court to hold that the Defendant's Deed of Assignment heavily relied on and made during the pendency of this Suit was not executed by the Defendant and his Assignor.

That he had proved his case with the documents he frontloaded and tendered in the course of the proceeding of this case showing that he is titled to the land and that he is entitled to his claims. That the Defendant got his title document from vendor (Emmanuel Dayo) as he stated in his documents. The the Defendant's testimony is froth with inconsistencies. That Defendant did not frontload the vital documents he pleaded. That the testimony of the Defendant that he got Building Approval before he procured Survey Plan – Right of Occupancy No: **FCT/BZTP/LA/DT/1054** which ordinarily shows the exact measurement of the land in issue is laughable. He urged Court to hold that Defendant was not able to counter the documents presented by the Plaintiff. He is also not able to put forward genuine documents of title to prove his ownership of the Res by his Counter Claim. He urged Court to hold that he was able to trace and prove his title to the Res. He urged Court to grant his claims and dismiss the Counter Claim of the Defendant.

On the Counter Claim the Plaintiff submitted that Defendant was unable to prove his Counter Claim

with facts and credible evidence and as such his claims will fail. He referred to the case of:

**A-G Bayelsa V. A-G Rivers
(2007) 1 MJSC 48**

He also referred to the provision of:

SS. 131 (1) & 140 Evidence Act 2011

That submission of the Defendant that Registration of title has not commenced over Area Council land were laughable. Again that Court should note that the Defendant's documents were not registered unlike those filed by the Plaintiff.

That the Plaintiff's title to the Res came and is prior to that of the Defendant/Counter-Claimant. That the Defendant/Counter-Claimant would not have validly acquired a title from the person who had no title to the Res. He relied on the principle of:

**Nemo Dat quod non Habet
Ex nihilo Nihil fit.**

He cited the case of:

**Echenim Ofuwe V. Isaac Ngbeke
(1994) 4 NWLR (PT. 341) 746 Ratio 1, 3, 4, 6.**

He urged Court to dismiss the Counter-Claim as Defendant was not able to establish his title to the Res with credible documents of title and testimony.

After the summary of the case of Plaintiff and Defendant above, can it be said that the Plaintiff has

established his case with the documents he tendered in that he is the owner beneficial or legal as the case may be of the Res so much so that he is entitled to the claims as sought notwithstanding that the Defendant was first in time?

Or can it be said that the Defendant has been able to controvert the case of the Plaintiff and had established and proved his defence and Counter Claim so much so that he is entitled to his Counter Claim?

Again given the documents tendered by the 2 parties who among them has a better title to the Res, since both had by the documents tendered traced the origin of their title from the same source Eddie Nkwocha?

It is my humble view that the Plaintiff has not been able to establish his title to the Res in this case. Again given the fact that both parties claim to have derived title from the same original Allottee by the principle of first in time, the Defendant has a better title and was able to establish that he is in possession and in effective occupation, and has confirmed to be in possession till date. The Defendant has been able to controvert the Plaintiff's case and the fact on which the said case is premised. It is trite that where there is allegation of trespass it is only a person with better title that can win a case of trespasser. A trespasser in possession and occupation win the way.

In this case a closer look at the documents tendered especially the Irrevocable Power of Attorney donated by Eddie Nkwocha to Emmanuel Dayo, shows that it was dated 11/10/11. The one donated by the same Eddie Nkwocha to the Jimoh who Plaintiff claims from was dated was sometime in 2014. It did not state any specific date or month 2014 when it was donated. That is – EXH 3.

The stamp of the Commissioner for Oath was dated 1/4/16. Meanwhile as at that day the application for Recertification had already been file and AGIS acknowledgement receipt had already been issued since the 24th February, 2016. That is a month and eight (8) days before the Irrevocable Power of Attorney of the Plaintiff was registered.

Based on the principle of the first in time – **Qui prior est Tempore Potior est Jure** – the first in time is first in law, the Defendant was first in time to the Res in that Eddie Nkwocha had donated the Power of Attorney to Emmanuel Dayo long before. That means that as 2014 or 2016 when the Plaintiff claim that Suleiman Mohammed Jimoh received the donated Power of Attorney from Eddie, the said Eddie has nothing else to give or donate as he had since 2011 donated the Res to Emmanuel. This Court therefore holds that the Defendant in this case has a better claim to the Res than the Plaintiff going by the story behind the root of his title to the Res.

Again the AGIS Receipt tendered by the Defendant was dated 24/2/16, the same day it was printed. It covers the same Res Plot 233 File No: K.G54741. In the Receipt the AGIS acknowledged the original Right of Occupancy for Eddie Nkwocha, the original Allottee of both parties. A closer look at the AGIS Receipt presented by the Claimant shows that it was dated 31/12/08. Strangely the same Receipt was going by date of printing it was printed on the 28th day of March, 2011. This means that it was printed many years after the date it was issued. This inconsistency in the date has caused fundamental doubt in the Plaintiff's claim of ownership of the Res as well as the genuineness of that document and all other documents tendered by the Plaintiff in his claim of ownership of the Res. This Court does not believe that the document is genuine. The Court does not also believe that he has a better title.

Again the receipt attached by the Plaintiff purportedly issued by the Bwari Area Council has no date of Issuance. The receipt attached by the Defendant has a date of issue 1/7/07. Again in the face of it the Number of the Plot – 1054. The date on the Right of Occupancy presented by the Plaintiff is illegible unlike the date in that of the Defendant so also the spacing. The signature in the Plaintiff's Right of Occupancy is puckered. All these make the Court has some doubts about genuineness of the documents tendered by the Plaintiff in support of his case.

The approval for Development Plan and Statement of Building Plan Approval Fee all laid credence to the genuineness of the documents in support of the Defendant's Counter Claim.

Going through the pictures tendered, one sees that it confirmed the statements made by the Defendant in his defence, that the Res is a virgin land with no development as it was covered with forest. These pictures speak for themselves. It shows that the Defendant was and I believe is still in possession and effective physical occupation of the Res.

Again the withdrawn document Warrant of Arrest puts no one in doubt that he was in occupation and before Rauf Kazeem, agent of the Plaintiff came to disturb his quiet enjoyment of the Res. Meanwhile the Plaintiff had alleged that he noticed the trespass by Defendant since 2016 but only decided to sue on 14th June 2018. The Warrant of Arrest confirmed the allegation of trespass made by the Defendant against the Plaintiff. In the Warrant the PW1 was charged for criminal trespass into the Res occupied and possessed by the Defendant. Hence the Defendant's claim in his Counter Claim.

The said letter was dated 31/10/16 and received on 1/11/16, by then the Defendant had already started construction. He had already gotten the Recertification Acknowledgement Receipt issued by AGIS, acknowledgement of the receipt of Right of

Occupancy from the original Allottee Eddie Nkwocha since the 24th day of February, 2016.

In the letter, the Plaintiff claimed that he bought the Res from Suleiman Jimoh on the 15th day of July, 2016 long after Defendant had started construction. The claim by the Plaintiff of having the AGIS acknowledgement cannot stand because AGIS cannot ordinarily issue 2 acknowledgements at the same time over the same Plot. There is no document to backup the Plaintiff's claim that there was an embargo putting on hold the receiving of payment and application for Registration of Title Deeds from Area Council. He did not present any document on government policy to establish that claim. He did not tell the Court the period of the embargo. So also he did not show the Building Plan which Architect Dozie drew and evidence of Plan Approval. Under cross-examination when he was asked about the Building Plan he reneged and stated that he had not built on the Res and that he was getting the process of approval step by step which is contrary to what he wrote to the Police.

He could not show any evidence of application for Building Plan Approval. He said under the heat of cross-examination that Architect Dozie never applied for Building Plan claiming that they were looking at the Building Plan before "this matter came up" (SIC). He also said that he was in the process of engaging the same Architect Dozie before this matter came up

when the Defendant Counsel asked for evidence that Claimant engaged Dozie. He stated that he has no Police Report showing that the Defendant trespassed into the Res. He could not substantiate the allegation that Police ordered the Defendant to stop work in the Res. It is also strange that the Plaintiff reported the matter to the Police in October 2016 and filed the case in June 2018 as earlier stated.

It is strange that the Claimant who believes that he has the right to the Res should allow and tolerate advice of his Solicitor telling the supposed trespasser to come for an amicable settlement of the trespass. Also the alleged lodging of complaint against the Defendant/Counter Claimant by Kazeem Rauf against who a Warrant of Arrest was issued because of crime of criminal trespass. That is far from the truth. There is no evidence of the official entry allegedly made by the PW1 – Kazeem Rauf. Meanwhile the PW1 had claimed in paragraph 6 that there was amicable settlement of the issue in favour of the Plaintiff. Again the same the PW1 had in paragraph 17 of his Oath stated that Suleiman Mohammed Jimoh the Donor of the Power of Attorney to the Plaintiff built a dwarf perimetre fence on the land and that Defendant had started laying new blocks on top of that when Defendant trespassed. Under examination in chief and cross-examination the Rauf – agent of the Plaintiff, told Court that he has no proof that wall was built by Suleiman who was described as Rauf's

cousin. No doubt the testimony of PW1 is full of inconsistencies.

It is strange that the Plaintiff failed to call Suleiman Mohammed Jimoh as his Witness even after he filed Witness Statement on Oath. Yet he called Rauf who the Police had issued Warrant of Arrest for criminal trespass based on the report made by the Defendant to the Police. Again the same Plaintiff vehemently opposed the tendering of the FIR.

Rauf had under cross-examination claimed that there was a fence on the Res and that he was the one that put the fence (paragraph 5 of his Oath) yet he could not present any evidence of material he bought for the erection of the low fence he claimed he built under examination in chief. Rauf claimed he helped Suleiman to purchase the land in 2011. Meanwhile Suleiman claimed that he purchased the land in 2014 going by the Power of Attorney and other documents tendered before the Court. In his own words Rauf confirmed that the Defendant was in occupation even before the matter went to Police. This confirm the Defendant's Counter-Claim.

From all indications there were a lot of inconsistencies in the testimony of the PW1 and PW2. This Court does not believe them. Most importantly, the Defendant is even first in time and as such he is the holder of the interest in the land earlier than the Plaintiff. He was in effective occupation and possession of the Res long before the Plaintiff based

on the principle of the first in time. This makes all the other documents with which the Plaintiff used to buttress his claims to be “worthless” coupled with the inconsistency in the testimony of PW1 & PW2 and particularly the AGIS acknowledgement Receipt tendered by PW2.

The donation of Power of Attorney to Emmanuel Dayo in 2011 long before the same Eddie Nkwocha purportedly donated to Suleiman Mohammed Jimoh seals the deal. As at that time Eddie has no right to donate the Power of Attorney as has nothing to donate. There is no evidence that he had revoked the one he donated previously either.

The Defendant was able to support his Counter Claim with documents of title to the Res. He proved that he was not a trespasser rather that it was the Plaintiff that has trespassed into the Res by action of Rauf, his agent and Witness. The Plaintiff failed to prove his case and his case is therefore dismissed.

The Defendant having proved his Counter Claim, he is entitled to the Reliefs in his Counter Claim. The Plaintiff failed also to rebut the same Counter Claim.

The Court therefore Order as follow:

The Defendant did not encroach into or trespassed on the Res Plot 233. Plaintiff did.

Defendant is the bonafide purchaser of value and beneficial owner of the said Plot 233 and all

appetencies too having been in possession and effective occupation before the Plaintiff.

An Order of Perpetual Injunction is hereby granted restraining the Plaintiff Anazodo Thankgod Kenechukwu, his agents, privies, assigns, successor in title from interfering with or trespass over the said Plot 233 Kubwa Annex Layout Abuja, the Res in this case and from disturbing the Plaintiff quite enjoyment and occupation of the Res.

Cost of litigation not awarded. Parties are to bear their respective costs.

This is the Judgement of this Court.

Delivered today the ___ day of _____ 2020 by me.

**K.N. OGBONNAYA
HON. JUDGE**