

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON WEDNESDAY, 15<sup>TH</sup> DAY OF JULY, 2020**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/1205/2018**

**BETWEEN**

**AUSTIN PRINCE UBUNAMA**

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**CLAIMANT**

**AND**

**HON. MINISTER OF FEDERAL  
CAPITAL TERRITORY**

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**DEFENDANT**

**JUDGMENT**

The claimant instituted this action by writ of summons filed on 14/3/2018 wherein he claims the following reliefs against the defendant:

1. A declaration of Court that the claimant is the lawful purchaser for value of Plot 1064, Cadastral Zone A03, Garki 2, Abuja measuring about 4454.32 sq. m from Partnengoff Nigeria Ltd. without notice [and] that as at the date Partnengoff Nigeria Ltd. applied for land and was granted land, she was a business-name.
2. A declaration of Court that the claimant having been issued a Search Report on 17/05/2012 by the defendant and his agents and agencies validating/confirming the grant to Partnengoff Nigeria Ltd.; issued Bill

for Ground Rent and Statutory Right of Occupancy and issued and exchanged various other letters/documents with the claimant which the claimant complied with all as at when Partnengoff Nigeria Ltd. was already incorporated without any indication that the Defendant is raising an objection or stricture as to the juristic personality at the point of grant of Plot 1064, Garki District, Abuja to Partnengoff Nigeria Ltd. [the Allottee], the legal situation between the claimant and the defendant is as follows:

- i. The defendant and his agents and agencies are estopped/barred from saying and/or contending that Partnengoff Nigeria Ltd. cannot hold the Statutory Right of Occupancy in the Plot because she was not incorporated at the time of the allocation.
- ii. The instruments founding the relationship between the claimant and Partnengoff Nigeria Ltd. cannot be rejected for obtaining the defendant's consent and registering them on the basis that Partnengoff Nigeria Ltd. was not incorporated at the time of the allocation of the Plot to her when the defendant has issued Search Report to the claimant confirming the grant and accepted payment of fees from Partnengoff Nigeria Ltd. through the claimant after Partnengoff Nigeria Ltd. has become incorporated.
- iii. The notification of the defendant by Partnengoff Nigeria Ltd. that she has become incorporated without the defendant replying the letter or objecting to same cleared Partnengoff Nigeria Ltd. from

any impediments to her juristic standing to hold Plot 1064, Garki 2, Abuja granted to her by the Defendant.

3. A declaration of Court that Plot 1064, Garki 2, Abuja still remains allocated to Partnengoff Nigeria Ltd. and has not been revoked or withdrawn and the only way of extinguishing the allottee's rights in the Plot is by lawful revocation.
4. A declaration of Court that as between the claimant and the defendant, the defendant and his agents and agencies such as the Abuja Geographic Information Systems [AGIS] or howsoever known have full acknowledgement of the juristic standing of Partnengoff Nigeria Ltd. before allocating Plot 1064, Garki 2, Abuja to her by reason of the Search Report issued to the claimant and all payments collected from the claimant in respect of the Plot.
5. An order of Court directing the defendant together with his agents and agencies such as the Abuja Geographic Information Systems [AGIS], Abuja Metropolitan Management Council [AMMC], the Federal Capital Development Authority [FCDA], the Director of Lands or howsoever known to recognise the claimant as the lawful purchaser of the Plot on the representations of the defendant and give consent for the transaction between the claimant and Partnengoff Nigeria Ltd. and register both the Deed of Assignment and Power of Attorney between the claimant and Partnengoff Nigeria Ltd.

6. Cost of this suit against the defendant.

From the records in the case file, defendant was served with the originating processes on 16/4/2018. In the course of the proceedings, hearing notices were served on the defendant. The defendant did not file any process and did not attend Court.

The claimant gave evidence as PW1. He adopted his statement on oath filed on 14/3/2018. His evidence is that he is the assignee/attorney by way of purchase in 2012 of the residue of the statutory right of occupancy of Partnengoff Nigeria Ltd. in Plot 1064, Cadastral Zone A03, Garki, Abuja, which was granted to it by defendant. He bought the Plot from Partnengoff Nigeria Ltd. for N80 million. Partnengoff Nigeria Ltd. made an application for allocation of land upon payment of N100,000.00. The defendant granted a statutory right of occupancy over the Plot measuring about 4,454.32 square meters for commercial purpose [shopping mall/plaza] to Partnengoff Nigeria Ltd. vide the offer of statutory right of occupancy dated 23/03/2010. Partnengoff Nigeria Ltd. accepted the offer of grant. He never knew that the grant of the said Plot to Partnengoff Nigeria Ltd. was made by the defendant when it was not incorporated and her alter ego and directing mind was using the name as a business name.

The ground rent bill and certificate of occupancy bill were issued by the defendant and his agency known as AGIS to Partnengoff Nigeria Ltd. and

these were part of the documents handed over to him when negotiations were on-going for the purchase the Plot. He conducted a search and the search report was a validation and/or confirmation of the grant of the Plot to Partnengoff Nigeria Ltd. by the defendant. The search report issued by the defendant bolstered his confidence in purchasing the Plot. Without the search report, he would not have committed himself to buying the Plot. He cleared the ground rent bill demanded by the defendant and his agents/agencies to be paid by Partnengoff Nigeria Ltd. Since then, he has been paying all ground rent bills and gradually defraying the statutory right of occupancy bills demanded by the defendant and his agents and agencies.

PW1 further stated that he approached the Development Control Department of the defendant to discuss ways and means to do building designs and secure building approval and he was requested to present the original copy of the title document to the said Plot for verification. Later, he was informed by the Director of Lands of the defendant that the grant to Partnengoff Nigeria Ltd. is good but that the Plot lies within a green area where only recreational facilities and other things associated with a green area can be erected. Before then, he had felled trees in the Plot as a result of his efforts to fence same. When he was stopped from fencing and occupying the Plot, an abatement notice was served on him stopping further development and for payment of penalty for felling the trees in the Plot. He paid penalty fees arising from the abatement notice.

The Director of Development Control requested him to see the defendant's Director of Urban and Regional Planning to rectify the indication in the records that the title in the Plot lies on a green area. He wrote to the Urban and Regional Planning Department in the name of Partnengoff Nigeria Ltd. The Urban and Regional Planning Department wrote a reply restoring the use of the Plot as contained in the letter of offer of 23/3/2010. The defendant and his agents/agencies were aware of the juristic personality of Partnengoff Nigeria Ltd. when it applied to be allocated land in FCT and even thereafter.

The further evidence of Austin Prince Ubunama is that on 5/5/2017, he went to the Lands Registry of the defendant to know the outcome of their bid to secure the defendant's consent for his transaction with Partnengoff Nigeria Ltd. over the Plot and registration of same. He was informed by one Mr. Zaccheaus heading the Deed of Assignment and Power of Attorney Unit of the Lands Registry that same cannot be proceeded with because Partnengoff Nigeria Ltd. was not incorporated at the time of the grant. He showed Mr. Zaccheaus all the transactions he had carried out on the Plot together with the search report issued by the defendant. Mr. Zaccheaus informed him that he has to receive clearance from the defendant before proceeding any further. The said Plot has not been revoked or withdrawn from Partnengoff Nigeria Ltd. till date.

The PW1 tendered the following documents:

1. Power of Attorney donated by Partnengoff Nigeria Ltd. to the PW1:  
Exhibit 1.
2. Deed of Assignment between Partnengoff Nigeria Ltd. and the PW1:  
Exhibit 2.
3. Statutory right of occupancy bill dated 01/07/2013 issued to Partnengoff Nigeria Ltd.: Exhibit 3.
4. 6 receipts from FCT Administration to Partnengoff Nigeria Ltd.:  
Exhibits 4A-4F.
5. Offer of statutory right of occupancy dated 23/03/2010 issued to Partnengoff Nigeria Ltd.: Exhibit 5.
6. Statutory right of occupancy bill dated 23/03/2010 issued to Partnengoff Nigeria Ltd.: Exhibit 6.
7. Demands for ground rent issued to Partnengoff Nigeria Ltd. dated 04/02/2013 and 14/02/2014: Exhibits 7A & 7B respectively.
8. Certificate of incorporation of Partnengoff Nigeria Ltd. dated 26/4/2012:  
Exhibit 8; Form CAC 7 of Partnengoff Nigeria Ltd.: Exhibit 8A.
9. Legal search report dated 17/05/2012: Exhibit 9.
10. Letter of acceptance of offer of grant of right of occupancy by Partnengoff Nigeria Ltd. dated 30/04/2010: Exhibit 10.
11. Application for grant/re-grant of a statutory right of occupancy Acknowledgement dated 19/10/2009: Exhibit 11.

12. Abatement notice from Department of Parks and Recreation addressed to Partnengoff Nigeria Ltd. dated 16/7/2012; Exhibit 12; the attached receipt dated 18/7/2012: Exhibit 12A.

13. Letter from the Department of Urban and Regional Planning to the MD of Partnengoff Nigeria Ltd. dated 29/7/2012: Exhibit 13.

14. Letter from Partnengoff Nigeria Ltd. to the Director, Urban and Regional Planning dated 25/7/2012: Exhibit 14.

After the evidence in-chief of PW1 on 2/12/2019, the case was adjourned for his cross examination and continuation of hearing. When the case came up on 20/2/2020, the defendant was absent in spite of the hearing notice served on him on 13/1/2020. On the application of learned claimant's counsel, the Court foreclosed the right of the defendant to cross examine the PW1. The case was then adjourned to 5/3/2020 for defence.

On 5/3/2020, the defendant was absent in spite of the hearing notice served on him on 21/2/2020. On the application of learned claimant's counsel, the Court foreclosed the right of the defendant to defend the suit. The parties were directed to file and exchange their final addresses.

O. J. Aboje Esq. filed the claimant's final address on 11/3/2020, which was served on the defendant on 20/3/2020. Mr. Aboje adopted the claimant's final address on 10/6/2020.



As I said before, the defendant did not file any defence to the claimant's suit and did not adduce any evidence. It is trite law that where evidence is led by a party and there is no contrary evidence from the other party, the evidence will be deemed to be true and accepted. See the case of Okoebor v. Police Council & Ors. [2003] 12 NWLR [Pt. 834] 444. Since the claimant's evidence is unchallenged, the Court is entitled to accept it as true.

However, it is noteworthy that four of the claimant's reliefs are declaratory orders. As correctly stated by Mr. O. J. Aboje, the claimant has the burden to adduce credible evidence to prove that he is entitled to the declaratory reliefs. This is because it is trite law that declaratory reliefs are not granted on the admission of the defendant or on failure of the defendant to file a defence. The claimant must succeed on the strength of his case; not on the weakness of the defence. See Onukogu v. Onuigbo & Ors. [2015] LPELR-24574 [CA]. Against this backdrop, I agree with Mr. Aboje that the issue for determination is whether by the pleadings and evidence adduced, the claimant has proved his entitlement to the reliefs sought.

From the unchallenged evidence of the claimant, the defendant granted a statutory right of occupancy over the said Plot to Partnengoff Nigeria Ltd. on 23/3/2010 vide Exhibit 5. Partnengoff Nigeria Ltd. accepted the offer of grant on 30/4/2010 vide Exhibit 10. The claimant bought the Plot from Partnengoff Nigeria Ltd. sometime in 2012. After the purchase of the Plot, he paid fees to the agencies of the defendant on behalf of Partnengoff Nigeria Ltd. in respect

of the Plot. At the time of the grant of the right of occupancy of the Plot to Partnengoff Nigeria Ltd. and the acceptance of same, it was not incorporated. From its Certificate of Incorporation, Exhibit 8, Partnengoff Nigeria Ltd. was incorporated as a limited liability company on 26/4/2012. The claimant did not know this fact at the time he purchased the Plot.

Before the purchase of the Plot, the claimant conducted a search at the Lands Registry of the defendant and the Legal Search Report dated 17/5/2012 [Exhibit 9] was issued. The Search Report validated or confirmed the grant of the said Plot to Partnengoff Nigeria Ltd. It was on the basis of the contents of, or representations in, the Search Report that the claimant agreed to purchase the Plot. When the claimant went to the Lands Registry of the defendant on 5/5/2017 to find out the position of his bid to secure the defendant's consent for his transaction with Partnengoff Nigeria Ltd. over the said Plot and registration of same, he was informed by Mr. Zaccheaus [an officer of the defendant] that the request cannot be proceeded with because Partnengoff Nigeria Ltd. was not incorporated at the time of the allocation of the Plot.

Learned counsel for the claimant referred to the demand notices and bills issued by officers of the defendant to Partnengoff Nigeria Ltd. [Exhibits 3, 7A & 7B], abatement notice [Exhibit 12], the receipts issued by the officers of the defendant for payments made by claimant on behalf of Partnengoff Nigeria Ltd. [Exhibits 4A-4F & 12A] and the Legal Search Report [Exhibit 9] all issued/made by the defendant after the incorporation of Partnengoff Nigeria

Ltd. on 26/4/2012. Mr. O. J. Aboje asked: can the defendant who issued these documents be allowed to walk out of the representations made therein to the detriment of the claimant who acted on the representation and purchased the said Plot from Partnengoff Nigeria Ltd.?

The claimant's counsel submitted that the law and equity do not give the defendant the liberty to approbate and reprobate based on the doctrine or rule of estoppel. He relied on the case of Sylva v. INEC [2018] 18 NWLR [Pt. 1651] 310. He reasoned that when the defendant issued the Legal Search Report [Exhibit 9] on 17/5/2012 declaring or confirming that the said Plot is validly allocated to Partnengoff Nigeria Ltd., it was an undertaking to the claimant that the defendant has overlooked and/or waived any lapse in the status of Partnengoff Nigeria Ltd. He referred to the case of Obi v. Minister, FCT [2015] 9 NWLR [Pt. 1465] 610 on waiver. Mr. Aboje urged the Court to hold that the defendant cannot be heard to say that Partnengoff Nigeria Ltd. was not incorporated when it was allocated the said Plot.

Mr. Aboje further posited that the claimant has acquired an equitable title in the Plot having paid the purchase price and having taken possession of the Plot. He referred to Zaccala v. Edosa [2018] 6 NWLR [Pt. 1616] 528 to support the view that a purchaser of land who has paid and taken possession of the land by virtue of a registrable instrument which has not been registered has thereby acquired an equitable interest which is as good as a legal estate.

Now, in the Legal Search Report dated 17/5/2012 [Exhibit 9], the defendant stated the “*Present Status*” of the grant of the said Plot to Partnengoff Nigeria Ltd. thus:

*THIS IS A STATUTORY RIGHT OF OCCUPANCY [R OF O] GRANTED TO PARTNENGOFF NIGERIA LIMITED WITHIN CADASTRAL ZONE A03 GARKI FOR SHOPPING MALL/PLAZA, PURPOSE, AS AT THE DATE OF THIS REPORT.*

I hold the considered opinion that the content of Exhibit 9 is an unequivocal declaration, representation and confirmation by the defendant that the said Plot was validly allocated to Partnengoff Nigeria Ltd. It has been established by the evidence of the claimant that he did not know that Partnengoff Nigeria Ltd. was not incorporated when the Plot was allocated to it; and that he relied on the representation in the Search Report to purchase the Plot. That being the case, can the defendant be allowed to act contrary to his declaration or representation in Exhibit 9 or to deny the truth of the representation? Section 169 of the Evidence Act, 2011 provides:

*“When one person has either by virtue of an existing court judgment, deed or agreement, or by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceedings between himself and such person or such person’s representative in interest, to deny the truth of that thing.”*

In Unity Bank Plc. v. Olatunji [2013] LPELR-20305 [CA], it was held that estoppel, by its very nature, is so important, so conclusive, that the party whom it affects is not allowed to plead against it, or adduce evidence to contradict it. Estoppel prohibits a party from providing anything that contradicts his previous acts or declarations to the prejudice of a party who, relying upon them, has altered his position. It shuts the mouth of a party. See also the case of Bank of the North Ltd v. Yau [2001] 10 NWLR [Pt. 721] 408.

I agree with Mr. Aboje that the doctrine of estoppel is applicable to this case. The defendant cannot be allowed to act contrary to his declaration or representation in Exhibit 9 or to deny the truth of the said representation or declaration, which the claimant relied upon and altered his position. As the claimant stated in his evidence, it was the representation or confirmation in Exhibit 9 that made him to buy the Plot from Partnengoff Nigeria Ltd.

The defendant did not lead any evidence to show why in the circumstances of this case the title of Partnengoff Nigeria Ltd. is no longer valid. Assuming the title of Partnengoff Nigeria Ltd. may be invalid because it was not a limited liability company when the right of occupancy over the Plot was granted, the defendant cannot make that assertion in the light of the representation or declaration in Exhibit 9. In Attorney General of Lagos State v. Purification Tech. [Nig.] Ltd. [2003] 16 NWLR [Pt. 845] 1, it was held that estoppel is part of the law of evidence. Its sole function is to place an obstacle in the way of a

case which might otherwise succeed or to remove an impediment from the way of a case which might otherwise fail.

It is pertinent to note that in the Application for grant/re-grant of a statutory right of occupancy Acknowledgement dated 19/10/2009[Exhibit 11],the defendant listed the documents submitted by Partnengoff Nigeria Ltd. along with its application for grant/allocation of land, which included its business registration certificate. Defendant clearly stated in Exhibit 11 that Partnengoff Nigeria Ltd. did not submit its certificate of incorporation and particulars of directors. The inference from Exhibit 11 is that the defendant knew that PartnengoffNigeria Ltd. was notincorporated as a limited liability company at the date of its application; yet the defendant allocated the said Plot to it.

I hold that it will be unjust and inequitable for the claimant to suffer for the defendant's decision or discretion to grant the Plot to Partnengoff Nigeria Ltd. when it was not incorporated as a limited liability company.

In the light of the reasons I have given, my decision is that the claimant's suit has merit. I enter judgment for the claimant and make the following orders:

1. A declaration that the claimant is the lawful purchaser for value of Plot 1064, Cadastral Zone A03, Garki 2, Abuja measuring about 4,454.32 square metres from Partnengoff Nigeria Ltd. without notice that as at the date Partnengoff Nigeria Ltd. applied for land and was granted land, it was a business name.

2. A declaration that the claimant having been issued a Search Report on 17/5/2012 by the defendant and his agents and agencies validating and/or confirming the grant to Partnengoff Nigeria Ltd. and the defendant having issued bills for ground rent and statutory right of occupancy when Partnengoff Nigeria Ltd. was already incorporated:
  - i. The defendant and his agents and agencies are estopped/barred from saying that Partnengoff Nigeria Ltd. cannot hold the statutory right of occupancy in the said Plot because it was not incorporated at the time of the allocation.
  - ii. The instruments founding the relationship between the claimant and Partnengoff Nigeria Ltd. cannot be rejected for obtaining the defendant's consent and registering them on the basis that Partnengoff Nigeria Ltd. was not incorporated at the time of the allocation of the Plot to it.
3. A declaration that Plot 1064, Garki 2, Abuja still remains allocated to Partnengoff Nigeria Ltd. and has not been revoked or withdrawn and the only way of extinguishing the allottee's rights in the said Plot is by lawful revocation.
4. An order of Court directing the defendant together with his agents and agencies such as the Abuja Geographic Information Systems [AGIS], Abuja Metropolitan Management Council [AMMC], the Federal Capital Development Authority [FCDA], the Director of Lands or howsoever

known to recognise the claimant as the lawful purchaser of the Plot based on the representations of the defendant; give consent for the transaction between the claimant and Partnengoff Nigeria Ltd.; and register both the Deed of Assignment and Power of Attorney between the claimant and Partnengoff Nigeria Ltd.

No order as to costs.

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**HON. JUSTICE S. C. ORIJI**  
**(JUDGE)**

**Appearance of counsel:**

O. J. AbojeEsq. for the claimant; with M. N. OdimbaEsq.