

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

**ON THURSDAY, 9<sup>TH</sup> DAY OF JULY, 2020**

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

**SUIT NO. FCT/HC/CV/391/2016**

**BETWEEN**

**HIS IMPERIAL MAJESTY  
OBA LAMIDI ADEYEMI III  
[THE ALAAFIN OF OYO]**

**} PLAINTIFF**

**AND**

- 1. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
- 2. HON. MINISTER OF FEDERAL CAPITAL  
TERRITORY**
- 3. LAWALI BALA SABON-BIRNI**

**} DEFENDANTS**

**JUDGMENT**

The plaintiff [claimant] instituted this action by writ of summons filed on 5/12/2016. The plaintiff filed an amended statement of claim on 26/1/2018 with leave of the Court. In paragraph 36 of the amended statement of claim, the plaintiff prayed the Court for these reliefs:

1. A declaration that Plot No. 317 Mabushi District, Abuja is the property of the plaintiff and for which he is entitled to its peaceful possession and enjoyment.

2. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have no power to allocate the same Plot No. 317 Mabushi District, Abuja to the 3<sup>rd</sup> defendant having allocated same to the plaintiff.
3. An order directing defendants to pay the plaintiff jointly and severally the sum of N50,000,000.00 [Fifty Million Naira] general damages due to stress, psychological pain of losing his said Plot and also general damages for the said encroachment and/or trespass on Plot No. 317 Mabushi District, Abuja.
4. An order of perpetual injunction against the defendants, their servants, agents, assigns or anyone claiming through them from further trespass and/or encroaching on Plot No. 317, Mabushi District, Abuja, property of the plaintiff.

The 3<sup>rd</sup> defendant filed his statement of defence on 22/3/2017. The 1<sup>st</sup>& 2<sup>nd</sup> defendants did not file any process in defence of the action.

Mr. Oyetunji Oladayo Daniel, a staff of the National Library, Abuja gave evidence as PW1 pursuant to a *subpoena* issued by the Court on 10/10/2017. He tendered The Nation Newspaper of Thursday, 2/6/2016 and Peoples Daily of Tuesday, 15/6/2016 as Exhibits A& B respectively. Page 44 of Exhibit A and page 45 of Exhibit B have the following publication dated 19/5/2016 signed by Mr. A. O. Makinde:

*THE ORIGINAL TITLE DOCUMENTS OF TERMS OF GRANT/ CONVEYANCE OF APPROVAL NO. MFCT/LA/07/2019 DATED 25/8/2000, ACCEPTANCE OF OFFER OF GRANT OF RIGHT OF OCCUPANCY WITHIN THE FEDERAL CAPITAL TERRITORY, ABUJA, RECEIPT FOR LAND APPLICATION AND ACCESSING FEES DATED 23/03/2000, ALL ISSUED BY THE MINISTRY OF FEDERAL CAPITAL TERRITORY IN RESPECT OF PLOT NO. 317 MABUSHI DISTRICT, ABUJA ISSUED IN FAVOUR OF HIS ROYAL MAJESTY OBA LAMIDI ADEYEMI III [ALAAFIN OF OYO] AND OTHER DOCUMENTS WERE BURNT IN FIRE OUTBREAK THAT ENGULFED SOME PARTS OF THE PALACE OF ALAAFIN OF OYO ON 24/12/2004. THIS PUBLICATION SERVES AS NOTICE TO AGIS ABUJA AND THE GENERAL PUBLIC.*

Mr. Abiodun Ogboja Makinde testified as PW2. He adopted his statement on oath filed on 5/12/2016. His evidence is that he is a public servant; the Special Personal Assistant to the plaintiff in charge of general duties. The plaintiff is suing by him as his attorney with respect to Plot No. 317 Mabushi District, Abuja; the Power of Attorney dated 8/6/2016 is Exhibit A. On 25/8/2000, the 2<sup>nd</sup> defendant allocated the said Plot measuring 2,000m<sup>2</sup> to the plaintiff vide Offer of Terms of Grant/Conveyance of Approval [Exhibit K]. By his letter dated 16/11/2000 [Exhibit L], the plaintiff accepted the offer of grant of the right of occupancy over the said Plot.

Before the Plot was allocated to the plaintiff, he applied for allocation of plot within the Federal Capital Territory [FCT] and paid N21,000.00 for land application form and processing fee. The 2<sup>nd</sup> defendant granted Ministerial Approval for the allocation of the said Plot to the plaintiff. The document titled: *Recommended Application for Approval* dated 24/8/2000 is Exhibit D. In 2012, the plaintiff applied to AGIS for recertification of the said Plot and he paid the sum of N150,000.00; the receipt dated 3/11/2016 is Exhibit F2. After the Newspaper publications of loss of the original documents in respect of the Plot, the plaintiff obtained the approval of the 2<sup>nd</sup> defendant to get the certification of the land documents and paid N250,000.00 in that regard. The letter of approval for certification of the documents dated 8/9/2016 is Exhibit G; while the receipt for N250,000.00 dated 23/9/2016 is Exhibit F1.

The plaintiff was later issued re-certification and re-issuance of C of O Acknowledgement for the said Plot by AGIS dated 27/10/2016 [Exhibit E] upon submission of the required documents. However, to the chagrin of the plaintiff, the officials of the 1<sup>st</sup>& 2<sup>nd</sup> defendants in AGIS inserted in the Acknowledgment [Exhibit E] the following: *“This receipt is made to capture information and qualify applicants for alternative plot of land”*. This is strange because what the plaintiff applied for was recertification of his said Plot and not for an alternative plot of land.

Mr. Abiodun Ogboja Makinde further stated that sometime in 2016, he and the plaintiff went to make routine check on the said Plot and discovered that

someone had commenced building perimeter fence around the Plot. He and the plaintiff were informed that the 3<sup>rd</sup> defendant was the person building the fence. The photographs showing the fence are Exhibits H1, H2 & H3; the Certificate of Compliance with section 84[4] of the Evidence Act dated 27/11/2017 signed by the PW2 is Exhibit J. The plaintiff was never served with revocation notice with respect to the Plot and the 1<sup>st</sup> & 2<sup>nd</sup> defendants are yet to provide full infrastructure for the area where the plot is located.

The defendants' act of encroachment on the said Plot has prevented the plaintiff from developing the Plot and the cost of development of structure on the Plot keeps increasing due to inflation. The act of the 3<sup>rd</sup> defendant in erecting perimeter fence on the Plot amounts to encroachment for which the plaintiff has suffered general damages due to stress and psychological pain of losing his Plot. He and the plaintiff went to AGIS to inquire about the 3<sup>rd</sup> defendant with respect to the Plot and learnt that the 3<sup>rd</sup> defendant was claiming that he was allocated the same Plot through allocation paper dated 12/8/2002.

PW2 concluded his evidence in-chief on 20/6/2019. The defendants and their counsel were absent. The case was adjourned for cross examination of PW2. When the case came up on 28/10/2019, the defendants and their counsel were absent in spite of the hearing notice served on them. The Court granted the application of the plaintiff's counsel to foreclose the right of the defendants to cross examine the PW2. When the matter came up on 19/2/2020 for defence,

the defendants and their counsel were absent in spite of the hearing notice served on them. The Court foreclosed the right of the defendants to defend the action based on the application of the plaintiff's counsel. The parties were directed to file and exchange their final addresses.

Akin Adewale Esq. filed the plaintiff's final address on 6/3/2020, which was served on the defendants on 23/3/2020. The defendants did not file their final address. On 16/6/2020, Mr. Akin Adewale adopted the plaintiffs' final address.

As I said earlier, the defendants did not give evidence in defence of the claims of the plaintiff; although the 3<sup>rd</sup> defendant filed his statement of defence. The law is trite that pleadings not supported by evidence are deemed abandoned. See **Agballah v. Chime [2009] 1 NWLR [Pt. 1122] 373.** Since the 3<sup>rd</sup> defendant did not give evidence, the averments in his statement of defence are deemed abandoned.

However, notwithstanding the fact that the defendants did not adduce any evidence, the plaintiff has a duty to lead credible evidence to prove his case especially as his first and second reliefs are declaratory and the success of the third and fourth reliefs for damages and perpetual injunction is dependent on the success of the declaratory reliefs. I agree with Mr. Adewale that the issue for determination in this case is whether the plaintiff has proved his case to be entitled to favourable judgment of the Court.

As rightly stated by learned counsel for the plaintiff, the primary mode of acquisition of land within the FCT is by allocation from the Hon. Minister of FCT [the 2<sup>nd</sup> defendant] in exercise of the powers delegated to him by the President of the Federal Republic of Nigeria. In proof of the allocation of the said Plot to plaintiff, PW2 tendered the Offer of Terms of Grant/Conveyance of Approval dated 25/8/2000 [Exhibit K] and the letter of acceptance of the offer of grant dated 16/11/2000 [Exhibit L]. PW2 also tendered Exhibit D, i.e. the Ministerial Approval list dated 24/8/2000 for the allocation of the said Plot to the plaintiff; his name is number 74 on that list. The defendants neither challenged nor discredited Exhibits D, K & L and the oral evidence of PW2 that the plaintiff's right of occupancy over the said Plot was never revoked.

Mr. Akin Adewale referred to the case of **Popoola v. Owena Press [2011] Vol. 52 WRN 85** to support his view that a party can use the content of pleadings of his opponent to prove his case. He then referred to the averments in the 3<sup>rd</sup> defendant's statement of defence that: [i] his title to the disputed Plot was derived from the grant of same by the 2<sup>nd</sup> defendant to Fajinmi Pegba on 3/6/2002; and [ii] Fajinmi Pegba donated a power of attorney to him. It was submitted that the allocation of the said Plot to the plaintiff was first in time. He cited the case of **Kari v. Ganaram [1997] 2 SCNJ 38** to support the principle that where there are competing interests by two or more parties claiming title to the same land from a common grantor, such competing interests will *prima facie* rank in order of their creation based on the maxim *qui prior est tempore potior est jure*.

The above represents the position of the law. The maxim *qui prior est tempore potiores est jure* means that he who is earlier in time is stronger in law. See also the cases of **Ugwunze v. Adeleke [2008] 2 NWLR [Pt. 1070] 148** and **Ilona v. Idakwo [2003] 11 NWLR [Pt. 830] 53** on this principle. It is also the law that after a party has fully divested himself of interest in land, no right vests in him to deal with the land by way of further alienation.

Therefore, I hold that the grant of statutory right of occupancy over the said Plot to the plaintiff on 25/8/2000 vide Exhibit K will rank before, and is superior to, the grant to FajinmiPegba on 3/6/2002. Also, after the grant of the statutory right of occupancy to the plaintiff on 25/8/2000, the 2<sup>nd</sup> defendant divested himself of the right to grant the right of occupancy over the said Plot to FajinmiPegba or any other person. The plaintiff has adduced cogent and credible evidence to prove the declaratory orders sought.

In the third relief, the plaintiff claims general damages of N50 million against the defendants for trespass and for stress and psychological pain of losing his Plot. Learned counsel for the plaintiff stated that the 3<sup>rd</sup> defendant erected a fence and gate house as shown in the photographs, Exhibits H1-H3. By this, the 3<sup>rd</sup> defendant is in adverse possession of the land against the plaintiff's right of possession. He relied on **Akinterinwa & Anor. v. Oladunjoye [2000] 6 NWLR [Pt. 659] 92** to support the principle that where two persons are in adverse possession of land, possession can only be ascribed to the person with a better title. Mr. Akin Adewale submitted that since the plaintiff has



established a better title to the Plot, he has established trespass to the Plot against the 3<sup>rd</sup> defendant. Thus, plaintiff is entitled to damages for trespass and the quantum of damages awarded is at the discretion of the Court.

I agree with the plaintiff's counsel that since the plaintiff has established a better title to the Plot in issue, the 3<sup>rd</sup> defendant is in adverse possession of the Plot against plaintiff's right of possession. See also Ogunbiyi v. Adewunmi [1988] 5 NWLR [Pt. 93] 215. I hold that the 3<sup>rd</sup> defendant is a trespasser on the Plot. No doubt, the 3<sup>rd</sup> defendant's unjustifiable interference with the Plot has prevented the plaintiff from the use and enjoyment of his Plot. Therefore, the plaintiff is entitled to general damages. In assessing the quantum of damages, I have considered the fact that the fence around the Plot and the gate house erected by the 3<sup>rd</sup> defendant as shown in the photographs [Exhibits H1-H3 are now for the benefit of the plaintiff. My decision is that the plaintiff is entitled to nominal damages of N1,500,000.00 against the 3<sup>rd</sup> defendant for trespass.

The plaintiff's fourth relief is an order of perpetual injunction. I agree with Mr. Akin Adewale that since the plaintiff has established a better title to the Plot, he is entitled to an order of perpetual injunction to restrain or prevent further trespass to his Plot.

## CONCLUSION

I enter judgment in favour of the plaintiff against the defendants as follows:

1. A declaration that Plot No. 317 Mabushi District, Abuja is the property of the plaintiff and he is entitled to the peaceful possession and enjoyment of the said Plot.
2. A declaration that the 1<sup>st</sup>& 2<sup>nd</sup> defendants have no power to allocate the same Plot No. 317 Mabushi District, Abuja to the 3<sup>rd</sup> defendant having allocated same to the plaintiff.
3. The sum of N1,500,000.00 payable by 3<sup>rd</sup> defendant as general damages for trespass on the plaintiff's Plot No. 317 Mabushi District, Abuja.
4. An order of perpetual injunction restraining the defendants, their servants, agents, assigns or anyone claiming through them from further encroaching or trespassing on Plot No. 317, Mabushi District, Abuja, property of the plaintiff.
5. Cost of N100,000.00 payable by the 1<sup>st</sup>& 2<sup>nd</sup> defendants to the plaintiff; and cost of N70,000.00 payable by the 3<sup>rd</sup> defendant to the plaintiff.

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HON. JUSTICE S. C. ORIJI  
(JUDGE)

*Appearance of counsel:*

1. Akin Adewale Esq. for the plaintiff; with Mary Ogungbesan Esq.
2. Yusuf Bolaji Abdulrahman Esq. for the 1<sup>st</sup>& 2<sup>nd</sup> defendants.