

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

**ON THURSDAY, 26<sup>TH</sup> NOVEMBER, 2020**

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

**SUIT NO. FCT/HC/CV/2684/2015**

**BETWEEN**

**HYELAMPA K. T.**

**[Suing by his Attorney, Omon  
Victor Akhaine]**

}

**PLAINTIFF**

**AND**

**1. RAMAOSCA [NIG.] LTD.**

**2. MRS. RAMAT EMEKA**

}

**DEFENDANTS**

**JUDGMENT**

The plaintiff [claimant] filed this suit on 28/8/2015 by writ of summons. The pleadings in this case are: [i] plaintiff's 2<sup>nd</sup> amended statement of claim filed on 21/3/2017; [ii] the defendants' joint statement of defence filed on 19/6/2020; and [iii] the plaintiff's reply to the statement of defence filed on 25/6/2020.

In paragraph 19 of the 2<sup>nd</sup> amended statement of claim filed on 21/3/2017, the plaintiff claims the following reliefs against the defendants jointly and severally:

1. A declaration that the letter of the offer of the Terms of Grant/Conveyance of Approval dated 19<sup>th</sup> of February, 2007 with Old No. 873 and New No. PL 43077 on the Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 31/12/2008 are the genuine title documents in respect of Plot No. 1213 measuring about 3,500sqm in Dawaki Extension [Re-Location] Layout FCT, Abuja.
2. A declaration that the original allottee of Plot No. 1213 measuring 3,500sqm in Dawaki Extension [Re-Location] Layout FCT, Abuja is the Donor, Mr. Hyelampa K. T. with Old file No. PL 873.
3. A declaration that by virtue of the Power of Attorney dated 10<sup>th</sup> of December, 2009, the plaintiff Omon Victor Akhaine is the person in lawful possession of Plot 1213 measuring 3,500sqm with file No. 873 Old and PL 43077 New situate at Dawaki Extension [Re-Location] Layout FCT, Abuja and he is the person entitled to be issued with Customary Right of Occupancy in respect of the aforesaid Plot.
4. An order of perpetual injunction restraining the defendants, their servants/agents and workers in whatever name called from committing further act of trespass on the aforesaid piece of land.
5. The sum of N10,000,000.00 [Ten Million Naira] only as general damages for trespass against the defendants jointly and severally.

At the trial, Dodo Vincent Friday testified as the PW1 pursuant to a *subpoena* dated 5/6/2017 issued by the Court on the Zonal Coordinator, Zonal Planning Office, Bwari Area Council, Abuja. PW1 tendered Exhibits A & A1. Omon Victor Akhaine, the plaintiff's attorney, was PW2. He adopted his statement on oath filed on 21/3/2017 and tendered Exhibits B, C & D. Anthony Oscar Chukwuemeka Mba, a director in the 1<sup>st</sup> defendant, was DW1. He adopted his statement on oath filed on 19/6/2020 and tendered Exhibits E, F, G, H, J, K, L, M & M1. All the witnesses were cross examined.

**Evidence of the plaintiff:**

**PW1: Dodo Vincent Friday:**

PW1 stated that he is attached to Bwari Area Council as a Principal Town Planning Officer. He tendered the file titled: *Investigation Activities Re: Plot 1213 of about 3,500 square metres at Dawaki Ext. [Re-Location]* as Exhibit A; and the receipt for certification dated 19/7/2016 for N5,000.00 as Exhibit A1.

PW1 testified that pages 2 & 3 of Exhibit A contain the offer letter in respect of Plot 1213 Dawaki Extension and the file number is MISC 57140 in the name of Ramaosca Nig. Ltd.; which is the first change of ownership. At page 9 of Exhibit A is the offer letter in respect of the said Plot 1213 in the name of the plaintiff while page 10 is the back page of the said offer letter. Page 12 thereof

is the AGIS Regularization letter to K. T. Hyelampa [the plaintiff] with File No. PL43077.

Page 7 thereof contains a search report in respect of Plot 1213 signed by Nasiru Suleiman, the former Zonal Land Coordinator, Bwari Area Council. The search report at page 7 was addressed to ZakariyaAbdullahi. Page 15 of Exhibit A contains another search report dated 13/10/2015, which was signed by Seyonga I. G. Audu, then Zonal Land Coordinator, Bwari Area Council. The search report at page 15 was addressed to AkhaineGoddy. PW1 stated his observations on the search report at page 7 as follows:

- i. The date on the search report i.e. 20/5/2014 is the same date the applicant applied for the search report. You cannot apply for search report and receive it the same day. The date of the application for search in respect of the search report at page 15 of Exhibit A was 31/8/2015; and the search report was issued on 13/10/2015.
- ii. When Nasiru Suleiman was the Zonal Land Coordinator of Bwari Area Council, he never used the words "*sequel to your application*" in all the search reports he signed. The word "*sequel*" was used by Seyonga I. G. Audu in all the search reports he signed.
- iii. Paragraph 3 of the said search report at page 7 of Exhibit A referred to confirmation by BitrusIshaku Miner; but BitrusIshaku Miner died in 2009 and the report was on 20/5/2014.

The further evidence of PW1 is that page 1 of Exhibit A is a letter from the Police to the Zonal Land Manager, Bwari Area Council dated 4/11/2015. Page 19 thereof has a letter addressed to Director of Urban and Regional Planning dated 8/2/2016 and it was in response to the said letter from the Police. Page 25 is the letter signed by the Acting Director of Urban and Regional Planning, FCDA dated 21/3/2016 addressed to the Office of the Assistant Commissioner of Police, Area Command Headquarters, Kubwa.

During cross examination of PW1, he stated that all the records they have show that the plaintiff is the one that has proper documentation with respect to the said Plot. He has never met Hyelampa K. T. Two persons are claiming title to the Plot in issue; but he does not know who the plaintiff sold the Plot to. Exhibit A is their office reports; his office keeps custody of the records.

**PW2: Omon Victor Akhaine [the plaintiff's attorney]:**

The evidence of PW2 in his 20-paragraph statement on oath is that he is the Donee of Power of Attorney created by Hyelampa K. T. in respect of Plot 1213 measuring about 3,500 square metres in Dawaki Extension [Re-Location] Layout FCT, Abuja; the Irrevocable Power of Attorney dated 10/12/2009 is Exhibit B. Hyelampa K. T. is the original allottee and holder of Offer of Terms of Grant/Conveyance of Approval in respect of the said Plot vide old file number PL873 dated 19/02/2007; the said offer letter is Exhibit C. The Donor applied for regularization of his title at Abuja Geographic Information System [AGIS] and was issued Regularization of Land Titles and Documents

of FCT Area Council Acknowledgment with new file number Plot 43077 dated 31/12/2008 [Exhibit D]. Plot 1213 was acquired for him [PW2] by his father [Goddy Akhaine] from Hyelampa K. T. for valuable consideration.

The Donor handed over to him [PW2] all original documents relating to the Plot and also put him into physical possession of the Plot. He and his father re-established the beacons. Without his permission or that of his father, the defendants and their agents/servants and workers entered into the Plot in July, 2014 and destroyed the beacon pillars and started constructing fence on the Plot. The act of trespass was reported by his father to the Police and the defendants also reported the matter to the Police accusing his father of theft. The matter was eventually transferred from Kubwa Divisional Headquarters of the Nigeria Police to the office of the Assistant Commissioner of Police Area Command Headquarters Kubwa, Abuja for thorough investigation.

PW2 further stated that at the Police station, the defendants presented a letter of Offer of Terms of Grant/Conveyance of Approval dated 19/02/2007 issued to Ramaosca [Nig.] Ltd. with old file number MISC. 2033 and Regularization of Land Titles and Documents of FCT Area Council Acknowledgment dated 14/11/2014 in favour of Ramaosca [Nig.] Ltd. with New File number MISC 57140 as evidence of their title over the Plot. The Police vide a letter signed by ACP Arungwa Nwazue requested the Zonal Land Manager, Bwari Area Council, Abuja to state the rightful owner of the Plot and resolve the two conflicting search reports presented by the parties.

On 21/3/2016 the Department of Urban and Regional Planning vide letter signed by TPL WoleAderinto, AG. Director Urban and Regional Planning, replied the office of Assistant Commissioner of Police Area Command, Kubwaconfirming thatPlot 1213 bearing Hyelampa K. T. as contained on the allocation letter is genuine and charted in favour of PL873.Only the title documents in his[PW2] possession given to him by the donor are genuine and valid;other documents in respect of the said Plot are not authentic.

When PW2 was cross examined, he stated that the plaintiff handed over the Power of Attorney to his father and his father gave it to him. He was not aware when the problem on the land started; he was in school then. When asked if he will be surprised to hear that at the time his father bought the property,plaintiff was no longer in Abuja, PW1 stated that he will not be surprised because someone can come to a State and do a transaction and travel back to where he resides. When PW1 was asked if he will be surprised to hear that the land was sold as far back as 2006, he saidhe did not think that the land was sold before his father bought it; but he will not be surprised.

**Evidence of the defendants:**

**DW1 - Anthony Oscar ChukwuemekaMba:**

The evidence of DW1 in his 47-paragraph statement on oath is thatin 2006, he [then a bachelor] resided in Kubwa village and was living next compound toKanimaleTumbaHyelampa from Adamawa State. Mr.Hyelampa was

working with Arab Contractors. He had a wife, a boy [called Tizhe] and a girl. He narrated how Mr.Hyelampa lost his job and life became difficult for him. At a time, he lent N25,000 to Mr.Hyelampa. While the N25,000 was yet to be refunded, he further lentMr.Hyelampa N50,000. In November 2007, Mr.Hyelampa approached himto buy the land in issue to enable him settle his debts and relocate to his State with his family.Mr.Hyelampa agreed to sell the land to him [DW1] forN750,000. Since he did not have enough money to pay for the land, he sought the assistance of hisfiancée[the 2<sup>nd</sup> defendant], who contributed N450,000 for the purchase of the land.

In order to ensure that the land is jointly owned by him and 2<sup>nd</sup> defendant, they decided to form a company; they formed the company name“*Ramaosca Nigeria Limited*” from their respective names.The 2<sup>nd</sup> defendant gave the said name to her lawyer [ChibuzorOnyuikeEsq.] to register at Corporate Affairs Commission[CAC] and upon being informed that the name was reserved for registration, they used the name to buy the land. Mr.Hyelampa handed the original letter ofOffer of the Terms of Grant/Conveyance of Approval dated 19/02/2007 to him.The transfer of title to the land was effected via a Deed of Assignment dated 12/11/2007 made between KanimaleHyelampa and the 1<sup>st</sup> defendant.The 2<sup>nd</sup> defendant later engaged the services of ChibuzorOnyuikeEsq.to effect change of ownership at the Registry of Bwari Area Council from Hyelampa K. T. to Ramaosca Nigeria Ltd. and same was done.



The further testimony of the DW1 is that they noticed that the date on the document of change of ownership was the same date with the original letter of allocation issued to Mr.Hyelampa. When they sought clarification from the lawyer, he told them that the error is immaterial and does not affect their title. After his marriage to the 2<sup>nd</sup> defendant in 2013, they went to open a bank account in the name of Ramaosca Nigeria Ltd. They were later informed by the bank officials that they conducted search at CAC and the search report revealed that the company was not registered. Utterly amazed, he and the 2<sup>nd</sup> defendant contracted another solicitor to register the company. After the registration of the company in June 2014, they submitted the land document for title regularization at AGIS; the acknowledgment by FCT Administration is dated 14/11/2014.

DW1 further testified that the defendants were in undisturbed possession of the land, surveyed it, fenced it with gate and built a security house without any interference by anybody. In 2015, defendants bought iron rods, blocks, chips etc. and kept on the land preparatory to commencing building project. The defendants went to the land and discovered that the items kept on the land were carted away and a part of the fence was pulled down by unknown person. The defendants engaged the service of a security guard who later reported to them that a man who claims to be a lawyer had been visiting the land. The man was later traced and identified as Mr.Panaf O. Olakanmi. The 2<sup>nd</sup> defendant reported the criminal act of trespass by Mr.Olakanmi to the

Police at Kubwa Police Station and that led to his arrest. Mr. Olakanmi informed the Police that he was acting on behalf of Mr. Gordy Akhaine.

Mr. Gordy Akhaine later showed up at the Police Station and was detained by the Police as he failed to produce his documents to the said land. The defendants pleaded with the Police to charge Mr. Akhaine to court but they refused and released him on bail. The 2<sup>nd</sup> defendant filed a direct criminal complaint at Grade 1 Area Court, Kubwa, FCT in *Case No. CR/350/2015: Mrs. Ramat Emeka v. Panaf O. Olakanmi & Anor*. Since it was a complaint of criminal trespass, the court sent the matter to the Police Area Command in Kubwa to investigate the genuineness of the land documents in possession of the parties and report back to the court. On arrival at the Police Area Command in Kubwa, the cordial relationship displayed by some of the Police officers with Mr. Gordy Akhaine was such that gave the 2<sup>nd</sup> defendant concern as to whether the parties would be treated evenly.

In order to avoid likelihood of bias, the 2<sup>nd</sup> defendant applied vide a Motion on Notice dated 26/11/2015 to the same court for the transfer of the matter from Police Area Command, Kubwa to the Commissioner of Police, FCT, Abuja for investigation. Upon hearing the Motion, the court transferred the case to A.I.G. Zone 7, Wuse, Abuja for investigation. The Police in Zonal Headquarters, Zone 7, Wuse invited the parties and the plaintiff refused to show up; it was only the 2<sup>nd</sup> defendant that turned up and made statement. On 22/1/2016, the plaintiff filed a Notice of Appeal against the said order,

which he did not follow up. It was shocking to the defendants to see the purported certified true copy of the document titled: *“Re Investigation Activities Plot No. 1213 Dawaki Extension [Re-location] Layout”* in the plaintiff’s 2<sup>nd</sup> amended list of documents.

The purported investigation report has affirmed the fears that the defendants had against the Police Area Command, Kubwa, which made 2<sup>nd</sup> defendant to seek a transfer to another Police authority. He and the 2<sup>nd</sup> defendant bought the land in issue in the name of the 1<sup>st</sup> defendant and they may not know whether or not their lawyer did the documentation correctly. The person who drafted the Power of Attorney between Mr. Hyelampa and his supposed attorney and the supposed witness of Mr. Hyelampa to the Power of Attorney are staff of Bwari Area Council. The above is suggestive of the fact that the plaintiff’s Attorney is using staff of Bwari Area Council to capitalize on any error whatsoever in the defendants’ documentation at the Land Registry, Bwari to snatch the land from the defendants. The same in-house lawyer of Bwari Area Council who drafted the said Power of Attorney also certified the Police investigation report.

DW1 tendered these documents:

- a) 1<sup>st</sup> defendant’s Certificate of Incorporation dated 30/6/2014: Exhibit E.
- b) Offer of the Terms of Grant/Conveyance of Approval dated 19/02/2007 in the name of the 1<sup>st</sup> defendant and the attached documents: Exhibit F.

- c) Deed of Assignment dated 12/11/2007 between KanimaleTumbaHyelampa and the 1<sup>st</sup> defendant: Exhibit G.
- d) Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 14/11/2014: Exhibit H.
- e) Criminal Complaint with *Case No. CR/350/2015* dated 25/8/2015 between *Mrs. Ramat Emeka v. Panaf O. Olakanmi*: Exhibit J.
- f) *Motion No. M/25/2015* in *Case No. CR/350/2015* dated 26/11/2015: Exhibit K.
- g) Notice of Appeal *No. CRA/2/2016* filed on 22/1/2016: Exhibit L.
- h) Letter dated 18/1/2016 titled: *Transferred Case for Investigation, CR/350/2016* with the stamp of the Area Command, Kubwa, FCT: Exhibit M; a copy of the said letter with the stamp of AIG, Zone 7 Headquarters, Abuja: Exhibit M1.

During cross examination of DW1, he stated that the original file number of his land is not PL 873. From Exhibit H, his original file number is MISC 2033. When he bought the land from Hyelampa K. T., he gave him [DW1] the original right of occupancy bearing his name. He gave it to a solicitor to effect change of ownership. The solicitor came back with the crossed copy of the first right of occupancy with the original right of occupancy bearing the name of Ramaosca Nig. Ltd. and the receipt of payment for change of ownership. He said the Bwari Area Council collected the original right of occupancy in

the name of Hyelampa K. T.; the Area Council has the original copy. At the time he signed the Deed of Assignment [Exhibit G] as a director of the 1<sup>st</sup> defendant, it was not incorporated. He did not know that his file number MISC 2033 is not in respect of Plot 1213, the land in dispute.

**Issues for determination:**

At the conclusion of trial, S. M. Jimmy Esq. filed the defendants' final address on 19/8/2020. Chief Karina Tunyan, SAN filed the plaintiff's final address on 11/9/2020. Mr. S. M. Jimmy filed the defendants' reply on points of law on 15/9/2020. The final addresses were adopted on 16/9/2020.

In the defendants' final address, S. M. Jimmy Esq. formulated one issue for determination, which is:

Whether the plaintiff has established his case against the defendants to be entitled to the reliefs sought in this Court.

In furtherance of his submissions on the above issue, learned defence counsel further posed two questions, which he referred to as sub-issues. These are:

1. Whether a mere production of power of attorney, letter of offer and Regularization of Title Acknowledgement i.e. Exhibits B, C and D respectively is a conclusive proof that the title to the land is vested in the plaintiff.

2. Whether Mr.Hyelampa K. T., having sold the land in issue to the 1<sup>st</sup> defendant on 12<sup>th</sup> November, 2007 as pleaded and proper foundation laid in paragraph 10[a]-[m] of the Statement of Defence and paragraphs 2 to 14 of the Witness Statement on Oath, had any other genuine document of title [Exhibit C] to transfer to the plaintiff.

For his part, learned senior counsel for the plaintiff distilled these two issues for determination:

1. Whether the plaintiff adduced credible evidence entitling plaintiff to the grant of the declaratory reliefs.
2. Whether it is apt to grant an order of perpetual injunction restraining the defendants, their servants/agents and workers in whatever name called from further trespassing on Plot 1213 Dawaki Extension [Re-located] Layout FCT, Abuja and award of damages against the defendants.

From the pleadings and evidence of the parties, it is not in dispute that the original allottee of Plot 1213, Dawaki Extension [Re-location] Layout, Abujais Hyelampa K. T. by virtue of the Offer of the Terms of Grant/Conveyance of Approval dated 19/02/2007. The evidence of PW2 is that the said Plot was acquired for him by his father [GoddyAkhaine] from Hyelampa K. T. for a valuable consideration; and Mr.Hyelampa donated the Irrevocable Power of Attorney dated 10/12/2009 [Exhibit B] to him.

On the other hand, DW1 narrated how he and the 2<sup>nd</sup> defendant contributed money to purchase the Plot in issue from Kanimala Tumba Hyelampa for the sum of N750,000.00; and the transfer of title was effected via the Deed of Assignment dated 12/11/2007 between Mr. Hyelampa and the 1<sup>st</sup> defendant [Exhibit G]. In paragraphs 3 & 4 of the statement of defence, the defendants averred that *“the 1<sup>st</sup> Defendant is the current holder and owner of the plot of land in issue”*; and *“the Plaintiff’s father did not acquire the land in issue for the Plaintiff as title to the land was already vested in the 1<sup>st</sup> Defendant before the purported acquisition by the Plaintiff.”* However, the defendants did not counter claim for an order that the 1<sup>st</sup> defendant is the owner of the said Plot.

The plaintiff’s reliefs 1, 2 & 3 are for the declaratory orders already set out. The success or otherwise of relief 4 [for an order of perpetual injunction] and relief 5 [for general damages for trespass] largely depends on the decision of the Court in respect of the declaratory reliefs. As rightly stated by Mr. S. M. Jimmy and Chief Karina Tunyan, SAN, it is trite law that a party seeking a declaratory order/relief must adduce credible and cogent evidence to prove his case. See the case of **Arowolo v. Olowookere [2011] 18 NWLR [Pt. 1278] 280**. The party must succeed on the strength of his case and not on the weakness of the case of the adverse party.

Against this backdrop, I am of the considered opinion that there are three issues for determination in this action. These are:

1. Whether the Court can rely on Exhibits B, C & D to grant the plaintiff's declaratory reliefs.
2. Whether the Court can rely on the investigation report of Zonal Planning Office, Bwari Area Council contained in the letter dated 8/2/2016 and the letter dated 21/3/2016 respectively at pages 19 and 25 of Exhibit A.
3. Is the plaintiff [Hyelampa K. T.] entitled to his reliefs against the defendants?

## **ISSUE 1**

*Whether the Court can rely on Exhibits B, C & D to grant the plaintiff's declaratory reliefs.*

The evidence of PW2 is that Hyelampa K. T. "handed over to me all original documents relating to the aforesaid piece of land ..." He tendered Exhibits B, C & D in support of the plaintiff's claims. For clarity, Exhibit B is the Irrevocable Power of Attorney dated 10/12/2009 donated by Hyelampa K. T. to Omon Victor Akhaine [the PW2]. Exhibit C is the original of the Offer of Terms of Grant/Conveyance of Approval dated 19/02/2007 in the name of Hyelampa K. T. Exhibit D is the Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 31/12/2008.



As correctly stated by S. M. Jimmy Esq. and Chief Karina Tunyan, SAN, the law is that mere production of a deed of conveyance or any document of title does not automatically entitle a party to a claim for declaration of title to land. See Ayanwale v. Odusami [2011] 18 NWLR [Pt. 1278] 328. The court must satisfy itself, *inter alia*, that the document is genuine and valid. Thus, in the instant case, the Court has a duty to determine the genuineness or validity of the documents tendered by PW2.

Learned counsel for the defendants argued that the PW2 did not lay any foundation by way of pleadings on how he acquired Exhibits B & C. PW2 did not give evidence on where the transaction took place and how much his father paid as purchase price for the land. The father of PW2 did not give evidence on how he met with Hyelampa to acquire the land for PW2 and no person who witnessed the transaction was called to testify. Mr. Jimmy further argued that the PW2 expressed reservation as to the genuineness of the purported land transaction between his father and Hyelampa K. T. when he stated under cross examination that he would not be surprised to hear that the land had earlier been sold to the 1<sup>st</sup> defendant. Therefore, the inference is that *“Exhibit C flaunted by the Plaintiff is not genuine as there could not be two genuine Letters of Offer in respect of the same land.”*

The learned defence counsel further submitted that assuming Mr. Hyelampa had two letters of offer; the fact that he signed a Deed of Assignment and handed over his letter of offer of grant to the defendants deprive him of the

authority and capacity to have made any other grant to PW2. Counsel relied on the principle that where two contending parties in a land dispute derive title from a common grantor or vendor, the first in time takes priority. He cited the cases of Omiyale v. Macaulay [2009] 7 NWLW [Pt. 1141] 597 and Zaccala v. Edosa [2018] 6 NWLR [Pt. 1616] 528. S. M. Jimmy Esq. emphasized that Mr. Hyelampa no longer had what he proposed to grant to PW2 vide the Power of Attorney [Exhibit B].

On the other hand, the submission of learned Senior Advocate of Nigeria on behalf of the plaintiff is that Exhibit C is the title document of the plaintiff. In paragraph 3 of the statement of defence, the defendants admitted that the title of Hyelampa K. T. is genuine and authentic as he is the original allottee of the Plot. The case of the defendants is that the land was transferred to them via the Deed of Assignment dated 12/11/2007 between the original allottee and the 1<sup>st</sup> defendant, which was not a juristic person as at 12/11/2007. He posited that the 1<sup>st</sup> defendant as at 12/11/2007 cannot enter into any legal transaction with any person and cannot be vested with any equitable or legal title in land.

Chief Karina Tunyan, SAN further submitted that the defendants failed to explain the whereabouts of the original letter of allocation of Hyelampa K. T., which is with the PW2. Learned senior counsel also relied on the evidence of PW1 that Hyelampa K. T. was the original allottee of the said Plot 1213.

As I said earlier, both parties agree that the said Plot 1213 was allocated to Hyelampa K. T. vide the Offer of Terms of Grant/Conveyance of Approval dated 19/02/2007. PW2 testified that Mr.Hyelampa handed over the original of the said document, Exhibit C, to him.DW1 stated that upon payment of N750,000to Mr.Hyelampa as purchase pricefor the said Plot,Mr.Hyelampa handed the originalOffer of Terms of Grant/Conveyance of Approval dated 19/02/2007to him. As rightly stated by Mr. Jimmy, Mr.Hyelampa cannot have two letters of offer in respect of the same Plot 1213. So, who did Mr.Hyelampa hand over his original title document to?

DW1 testified thatChibuzorOnyuikeEsq. effected change of ownership of the said Plot at the Registry of Bwari Area Council from Hyelampa K. T. to the 1<sup>st</sup> defendant.DW1 tendered the Offer of the Terms of Grant/Conveyance of Approval dated 19/02/2007 issued to the 1<sup>st</sup> defendant as Exhibit F. Two documents are attached to Exhibit F. The first is a photocopy of the Offer of the Terms of Grant/Conveyance of Approval dated 19/02/2007 issued to Hyelampa K. T. The second document is a receipt issued to the 1<sup>st</sup> defendant for N5,000.00 described as payment for change of ownership of the said Plot 1213. The receipt is dated 19/02/2007 i.e. about 9 months before the date of the Deed of Assignment between Mr.Hyelampa and 1<sup>st</sup> defendant [Exhibit G].

It is important to point out that throughout the statement of defence and the statement on oath of DW1, nothing was said about the whereabouts of the original Offer of Terms of Grant/Conveyance of Approval dated 19/02/2007

issued to Hyelampa K. T., which DW1 said was handed over to him after the purchase. However, during cross examination, DW1 stated as follows:

*“When I bought the land from Hyelampa K. T., he gave me the original right of occupancy bearing his name. I gave it to a solicitor to effect change of ownership. He came back with the crossed copy of the first right of occupancy with the original right of occupancy bearing the name of Ramaosca Nig. Ltd. and the receipt of payment for change of ownership. He said the Bwari Area Council collected the original right of occupancy in the name of Hyelampa K. T. The Area Council has the original copy.”*

I take the view that the above evidence of DW1 that the solicitor he engaged informed him that *“Bwari Area Council collected the original right of occupancy in the name of Hyelampa K. T.”* is hearsay evidence. Let me also remark that when PW1 [from the Zonal Land Office, Bwari Area Council] was cross examined, Mr. S. M. Jimmy did not make any effort/attempt to elicit evidence from him to support the evidence of the DW1 that Bwari Area Council collected the original allocation letter in the name of Hyelampa K. T. before the allocation letter in the name of the 1<sup>st</sup> defendant [Exhibit F] was issued.

It is also pertinent to point out that the defendants did not allege in their pleadings or evidence that the original letter of allocation of the said Plot issued to Hyelampa K. T. [Exhibit C] was forged or stolen or fraudulently obtained by PW2 or his father or anyone else. The defendants did not also allege that the Power of Attorney donated by Hyelampa K. T. [Exhibit B] was

forged or fraudulently obtained by PW2 or his father or anyone else. I hold that there is nothing before the Court to cast any doubt on, or to impugn the credibility of, the original Offer of Terms of Grant/Conveyance of Approval dated 19/02/2007 issued to Hyelampa K. T. [Exhibit C] and the Power of Attorney donated by Hyelampa K. T to PW2 [Exhibit B].

The argument of learned counsel for the defendants that PW2 did not give evidence on where the transaction took place and how much his father paid as purchase price for the land will not affect the genuineness or validity of Exhibits C, which is the original letter of grant of the Plot to Hyelampa K. T. Mr. Jimmy also argued that the PW2 "*expressed reservation as to the genuineness of the purported land transaction between his father and Hyelampa K. T. when he answered under Cross-Examination that he would not be surprised to hear that the land in dispute had been sold to the 1<sup>st</sup> Defendant before his father's purported transaction.*" The question and answer under reference read:

Q: *Will you be surprised to hear that that land was sold as far back as 2006.*

A: *I do not think that the land was sold before my father bought it; but I will not be surprised.*

It is my respectful view that the above evidence of PW2 does not support the aforesaid argument of learned defence counsel. The evidence of PW2 does not support the argument that the said Plot had been sold to the defendants before the transaction between Hyelampa K. T. and his father.

I have also taken into consideration the evidence of DW1 in paragraph 44 of his statement on oath thus: *"I have noticed that the person who drafted the Power of Attorney between Mr.Hyelampa and his supposed Attorney and the supposed witness of Mr.Hyelampa to the Power of Attorney are staff of Bwari Area Council [BAC]."*I take the view that this piece of evidence, without more, will not affect the genuineness or credibility of Exhibits B & C.

In his effort to discredit Exhibits B & C, learned defence counsel relied on the principle that where two contending parties in a land dispute derive title from a common grantor or vendor, the first in time takes priority. He argued that *"the fact that Mr.Hyelampa K. T had signed a Deed of Assignment and handed over the Letter of Offer in respect of the land in issue to the Defendants deprive him of the authority and capacity to have made any other grant to the Plaintiff. It suffices to state here that Mr.Hyelampa no longer had what he proposed to grant to the Plaintiff via Exhibits B & C."*

The submission of Chief Karina Tunyan, SAN is that the 1<sup>st</sup> defendant as at 12/11/2007 cannot enter into any legal transaction with any person and cannot be vested with any equitable or legal title in land.

It is not in dispute that on 12/11/2007 when the 1<sup>st</sup> defendant purportedly acquired title or interest in the said Plot from Hyelampa K. T. vide the Deed of Assignment [Exhibit G], it was not incorporated as a limited liability company. In other words, the 1<sup>st</sup> defendant was not a juristic person.

I agree with the learned SAN that as at 12/11/2007, the 1<sup>st</sup> defendant had no capacity to enter into any legal transaction with any person and cannot be vested with any interest in land. It is the law that an unincorporated body is not a juristic person and cannot enter into any contract or transaction and/or own land in its unincorporated name. See the cases of **Bankole&Ors. v Emir Industries Ltd.[2012] LPELR-19719 [CA];**and **FCDA &Ors. v. Unique Future Leaders Int’l Ltd. [2014] LPELR-23170 [CA].**

In his reply on points of law, Mr. Jimmy submitted that any transaction made on behalf of an unincorporated entity is not void; it is deemed personally made by the individual human agents using the name of the unincorporated body. Thus, the individuals that used the name of the unincorporated body to engage in a transaction are responsible for the benefits and obligations accruing from such transaction. He referred to the case of **E.T. & E.C. [Nig.] Ltd. v. Nevico Ltd. [2004] 3 NWLR [Pt. 860] 327.** Since the 1<sup>st</sup> defendant was later registered, counsel submitted that *“as it stands now, the land was properly bought in the name of the 1<sup>st</sup> Defendant and it belongs to the 1<sup>st</sup> Defendant.”*

With profound respect, the above argument and the decision in **E.T. & E.C. [Nig.] Ltd. v. Nevico Ltd. [supra]** are not applicable to this case. I hold that the Deed of Assignment [Exhibit G] and the Offer of the Terms of Grant/Conveyance of Approval dated 19/02/2007 in the name of the 1<sup>st</sup> defendant [Exhibit F] did not confer or vest any title or interest in the said

Plot 1213 on the 1<sup>st</sup> defendant as it was not a legal person. Therefore, the doctrine of priority of interest does not apply in this case.

I now go to consider the genuineness of Exhibit D, i.e. the Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 31/12/2008. In the statement of defence, the defendants did not allege that Exhibit D is not genuine or valid. In paragraphs 4.21 & 4.22 of his final address, Mr. Jimmy submitted that Exhibit D is “*a product of falsehood and incongruities.*” He also argued that the PW2 lied on oath in paragraph 4 of his statement on oath [same as his pleadings] that he applied for regularization of his title at AGIS on 31/12/2008 even before 10/12/2009 when the Power of Attorney [Exhibit B] was executed. Learned counsel urged the Court not to accord credibility to the plaintiff’s evidence or rely on conflicting pleadings and documentary evidence to grant a declaratory relief. Learned senior counsel for the plaintiff did not respond to this argument.

Now, in paragraph 4 of the 2<sup>nd</sup> amended statement of claim, it is averred:

*The plaintiff avers that on 31<sup>st</sup> of December, 2008 the Donee applied for regularization of his title at Abuja Geographic Information System and was issued a letter of Regularization of land titles and documents of FCT Area Council Acknowledgement with new file No. Plot 43077. ...*

The evidence of PW2 in paragraph 4 of his statement on oath reads:



*That on 31<sup>st</sup> of December, 2008 he [Donor] applied for regularization of his title at Abuja Geographic Information System and was issued a letter of Regularization of land titles and documents of FCT Area Council Acknowledgement with new file No. Plot 43077.*

Clearly, the evidence of PW2 is that the Donor of the Power of Attorney [i.e. Hyelampa K. T.] applied for regularization of his title at AGIS on 31/12/2008; although in paragraph 4 of the plaintiff's pleading, it was averred that the Donee [i.e. the PW2] applied for regularization of his title.

It seems to me that in the above situation, two legal principles come to mind. The first is that a document speaks for itself and one cannot read into a document what is not therein contained. See **Ikemefuna&Ors. v. Ilondior&Ors. [2018] LPELR-44840 [CA]**. The second principle is that a passage in a document is best interpreted by reference to what precedes it and what follows it; this makes it mandatory for one to read the whole document and every part of it should be taken into account. See the case of **Nigerian Army v. Aminum-Kano [2010] LPELR-2013 [SC]**.

I hold the humble opinion that when paragraphs 4, 6 & 7 of the statement of claim are read together, it becomes clear that the plaintiff's case is that the donor applied for regularization of his title at AGIS before he donated the Power of Attorney to PW2. Besides, it is clear from the document [Exhibit D] that the applicant for the said regularization was K. T. Hyelampa; and one

cannot read into Exhibit D what is not therein contained. I hold that the use of the word “*Donee*” in paragraph 4 of the 2<sup>nd</sup> amended statement of claim instead of “*Donor*” will not affect the genuineness or validity of Exhibit D.

From all that I have said, the decision of the Court on Issue No. 1 is that the Court can rely on Exhibits B, C & D to grant the plaintiff’s declaratory reliefs.

## **ISSUE 2**

*Whether the Court can rely on the investigation report of Zonal Planning Office, Bwari Area Council contained in the letter dated 8/02/2016 and the letter dated 21/3/2016 respectively at pages 19 and 25 of Exhibit A.*

The evidence of DW1 is that 2<sup>nd</sup> defendant filed a direct criminal complaint dated 25/8/2015 [Exhibit J] at Grade 1 Area Court Kubwa, Abuja for alleged trespass on Plot 1213. The Area Court referred the matter to the Police Area Command, Kubwa for investigation. On 26/11/2015, the complainant [i.e. the 2<sup>nd</sup> defendant] filed an application [Exhibit K] for an order transferring the case from Police Area Command, Kubwa to the Commissioner of Police FCT, Abuja for investigation. On 13/1/2016, the Area Court transferred the case to A.I.G. Zone 7, Wuse, Abuja for investigation. The Notice of Appeal [Exhibit L] confirms the fact that the Area Court made the order of transfer.

Now, PW1 tendered Exhibit A, which contains documents in respect of Plot 1213 and the investigation report of the Zonal Land Office, Bwari Area Council. Page 1 of Exhibit A contains the letter dated 4/11/2015 from the Area Commander, Kubwa Area Command [ACP. ArungwaNwazue] to the Zonal Land Manager, Bwari Area Council in respect of investigation *“with regards to the genuineness/rightful owner of the said Plot”*.

The PW1 testified that the Zonal Land Office, Bwari Area Council carried out investigation on the documents presented in support of the defendants' claim of ownership of the said Plot 1213, namely. [i] the Offer of Terms of Grant/Conveyance of Approval dated 19/02/2007 in the name of Ramaosca Nig. Ltd. [the 1<sup>st</sup> defendant]; [ii] Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 14/11/2014 in the name of Ramaosca Nig. Ltd. with new File No. MISC 57140 [old File No. MISC 2033]; and [iii] search report dated 20/5/2014 signed by Nasiru Suleiman [Zonal Coordinator, Zonal Planning Office, Bwari Area Council] to Zakariya Abdullahi. These documents are at pages 2, 3, 4, 7 & 8 of Exhibit A.

The Zonal Land Office Bwari Area Council also carried out investigation on the documents presented in support of the plaintiff's claim of ownership of the said Plot 1213 i.e. [i] the Offer of Terms of Grant/Conveyance of Approval dated 19/02/2007 in the name of Hyelampa K. T.; [ii] Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 31/12/2008 in the name of Hyelampa K. T. with new File No. PL 43077 [old

File No.PL 873]; and [iii] search report dated 13/10/2015 signed by Seyonga I. G. Audu [ZonalCoordinator, Zonal Planning Office, Bwari Area Council]to Akhaine O. Goddy. These documents are at pages 10-15 of Exhibit A.

The report of the Zonal Coordinator, Bwari Area Council addressed to the Director, Department of Urban and Regional Planning, FCDA dated 8/2/2016 is at page 19 of Exhibit A. It reads:

*RE: POLICE INVESTIGATION ACTIVITIES*

*PLOT NO: 1213 DAWAKI EXTENSION [RELOCATION] LAYOUT*

*Above subject matter refers please.*

*You may wish to be informed that after a careful investigation into the request by the NPF, the zonal planning office found the following:*

- I. Plot 1213 measuring about 3500 sqm within Dawaki Extension [Relocation] layout bearing Hyelampa K. T. as contained on the title documents submitted is traced on the allocation list.*
- II. The Carto unit confirmed that plot 1213 is charted in favour of Pl 873.*
- III. The liaison officer to Land Admin confirmed that plot 1213 Dawakiext layout was duly processed in favour of Hyelampa K. T. vide policy file No. PL 873.*
- IV. The policy file MISC 2033 of Ramaosca Nig. Ltd. is in favour of another allottee and not Ramaosca Nig. Ltd. as claimed. Moreso, the search*

*report attached BZTP/GEN/697/5259 is in respect of a different case file and not in respect of search for plot 1213 Dawakiext [Relocation].*

- V. *Furthermore, paragraph iii of the purported search report attached dated 20/5/2014 stated that the “former zonal manager [BitrusIshaku Miner] confirmed that the original R of O bearing Hyelampa K. T. is genuine.” The late Bitrus Miner passed away sometime in year 2009.*

*You may however wish to know that this report is based on the available records for your information and guidance, please.*

Based on the above, TPL WoleAderinto, Ag. Director of the Department of Urban and Regional Planning wrote a letter dated 21/3/2016 to the Office of the Assistant Commissioner of Police, Area Command Headquarters, Kubwa, Abuja, which is at page 25 of Exhibit A. The letter reads:

INVESTIGATION ACTIVITIES

RE: PLOT NO. 1213 OF ABOUT 3,500SQM WITHIN DAWAKI EXTENSION [RELOCATION] LAYOUT

*Above subject matter refers, please.*

*You may wish to be informed that after a careful investigation into your request dated 4<sup>th</sup> November, 2015 the Bwarizonal planning office found the following:*

2. *Plot 1213 measuring about 3,500 sqm within Dawaki Extension [Relocation] layout bearing HYELAMPA K. T. as contained on the allocation letter submitted is traced on the allocation list.*
3. *The cartographic unit confirmed that plot 1213 is charted in favour of file no. Pl 873.*
4. *The liaison officer to Land Admin confirmed the plot 1213 is duly processed in favour of HYELAMPA K. T. vide policy file no. Pl 873.*
5. *You may however wish to know that this report is based on the available record for your information and guidance please. ...*

The submission of learned counsel for the defendants is that Exhibit A has no probative value because the investigation was carried out after withdrawal of authorization by Grade 1 Area Court to Police Area Command, Kubwa to investigate the matter. Thus, the investigation was conducted in defiance to the order of a court and the Court cannot rely on the outcome of the Police investigation. Mr. Jimmy cited the case of **INEC v. Oguebego [2018] 8 NWLR [Pt. 1620] 88** to support the view that a document procured in disobedience of a court order cannot be accorded any probative value.

Now, the letter from the Office of the Assistant Commissioner of Police, Area Command, Kubwa, Abuja to the Zonal Land Manager, Bwari Area Council at page 1 of Exhibit A was dated 4/11/2015. It is clear that before the motion for the transfer of the case from Area Command, Kubwa was filed on 26/11/2015

and before the order of transfer was made on 13/1/2016, the Zonal Land Manager, Bwari Area Council had commenced investigation into the issue of ownership of the said Plot 1213. There is no evidence that the Zonal Land Manager, Bwari Area Council was aware of the said court order or that he was directed to stop the investigation based on the said court order.

In these circumstances, the Court is not persuaded by the contention of S. M. Jimmy Esq. that the investigation by the office of the Zonal Land Manager, Bwari Area Council was conducted in defiance to the order of the Grade 1 Area Court, Kubwa. The Court holds that the outcome of the investigation was not procured in disobedience of a court order.

Before I conclude Issue No. 2, let me comment on the evidence of DW1 that his original [or old] file number was MISC 2033. This number is reflected in the Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 14/11/2014 in the name of 1<sup>st</sup> defendant [Exhibit H]. On the other hand, the original [or old] file number of Hyelampa K. T was PL 873, which is reflected in his Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 31/12/2008 [Exhibit D].

From the letter dated 8/2/2016, the *“policy file MISC 2033 of Ramaosca Nig. Ltd. is in favour of another allottee and not Ramaosca Nig. Ltd.”* This means that in the records of the Zonal Land Office, Bwari Area Council, the 1<sup>st</sup> defendant's

allocation letter dated 19/02/2007 [Exhibit F] did not emanate from, and is not traceable to, the allocation of Plot 1213 to Hyelampa K. T.

The decision of the Court in respect of Issue No. 2 is that it will rely on the letters dated 8/2/2016 and 21/3/2016, which contain the report from the official record of the Land Zonal office, Bwari Area Council on Plot 1213.

### **ISSUE 3**

*Is the plaintiff [Hyelampa K. T.] entitled to his reliefs against the defendants?*

From the decisions of the Court on Issue Nos. 1 & 2, the Court holds that the plaintiff [Hyelampa K. T.] has proved by cogent and credible evidence, especially vide Exhibits B, C & D, that he is the original allottee of Plot 1213 and that he donated a Power of Attorney dated 10/12/2009 to the PW2. The plaintiff has also proved that his old file number was PL 873 while his new file number is PL 43077. Therefore, the plaintiff is entitled to the declaratory orders in reliefs 1 & 2. These reliefs are granted.

The plaintiff's relief 3 has two parts. The first is a declaration that by virtue of the Power of Attorney dated 10/12/2009, "the Plaintiff Omon Victor Akhaine" is the person in lawful possession of Plot 1213. I note that Omon Victor Akhaine [the PW2] is not the plaintiff in this suit; Hyelampa K. T. is the plaintiff. It is evident from the Power of Attorney [Exhibit B] that Omon



Victor Akhaine is the person in possession of the said Plot by virtue of the powers donated to him by Hyelampa K. T. This part of relief 3 is granted.

The second part of relief 3 is a declaration that Omon Victor Akhaine is the “*person entitled to be issued with Customary Right of Occupancy in respect of the aforesaid Plot.*” In opposing the grant of this relief, learned counsel for the defendant submitted that a power of attorney is incapable of transferring land title to a donee. He relied on Ude v. Nwara [1993] 2 NWLR [Pt. 278] 638.

For his part, the learned Senior Advocate of Nigeria argued that the Power of Attorney [Exhibit B] “*creates and vests on the PW2 equitable interest/legal estate on Plot 1213 ....*” He cited the case of Mrs. Gladys Appah v. Mrs. Chinyere Egwuatu [2012] LPELR-20847 [CA] to support the principle that a registrable instrument which has not been registered is admissible in evidence to prove an equitable interest and to prove payment of purchase money or rent. Such equitable interest in the land is as good as a legal estate which can only be defeated by a purchaser of the land for value without notice of the prior equity.

Mr. Jimmy is correct that a power of attorney is not a document or instrument that transfers or alienates title to land to a donee. In Ude v. Nwara [supra], it was held that a power of attorney merely warrants and authorizes the donee to do certain acts in the stead of the donor and is not an instrument which confers, transfers, limits, charges or alienates any title to the donee; rather it

could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. See also the case of Ekengwu v. Ekengwu [2018] LPELR-45070 [CA]. The principle in Mrs. Gladys Appah v. Mrs. Chinyere Egwuatu [supra] cited by the learned Senior Advocate of Nigeria is good law; but it is not applicable to this case. I need to add that a customary right of occupancy sought in the second part of relief 3 is not grantable in the FCT, Abuja. The second part of relief 3 is refused.

In relief 4, the plaintiff seeks an order of perpetual injunction. In relief 5, he claims general damages of N10 million for trespass. The submission of the learned defence counsel is that from the evidence, the plaintiff is not the person in lawful possession of the land. The defendants are the persons in lawful possession since 2007 without interruption having acquired a valid title from the original allottee, Hyelampa K. T. He urged the Court not to grant reliefs 4 & 5.

For his part, learned senior counsel for the plaintiff submitted that title to Plot 1213 is vested on Hyelampa K. T. through his attorney, PW2. The acts of the defendants on the Plot confirm them as trespassers. The defendants have no title to Plot 1213 as the Deed of Assignment relied upon by the defendants is founded on nothing. Thus, the defendants cannot assert possession. He urged the Court to grant reliefs 4 & 5.

As rightly stated by S. M. Jimmy Esq. and Chief Karina Tunyan, SAN, the position of the law is that the party with a better title is deemed to be the

party in possession. See Chief S. O. Awoyoolu v. Sufianu Yusuf Aro [2006] 4 NWLR [Pt. 971] 481.

In Carrena v. Akinlase [2008] 14 NWLR [Pt. 1107] 262, it was held that a person who has title over a piece of land, though not in *de facto* physical possession, is deemed in the eyes of the law to be the person in possession. This is because the law attaches possession to title. Conversely, a trespasser, though in actual physical possession of the land, is regarded in law not to be in any possession since he cannot by his own wrongful act of trespass acquire any possession recognised by law.

To succeed in an action for trespass, the plaintiff is required to establish that he has exclusive possession or the right to possession of the land in dispute. See Garan v. Olomu [2013] LPELR-20340 [SC]. The Court had held that the plaintiff has proved that he is the original allottee of Plot 1213; and that he donated a Power of Attorney to PW2. Thus, the plaintiff is deemed to be the person in possession of the said Plot; and the defendants' acts on the Plot are acts of trespass. I agree with the learned SAN that the plaintiff is entitled to an order of injunction. The plaintiff is also entitled to damages for trespass, which I assess as N1,000,000.00.

## CONCLUSION

I enter judgment for the plaintiff against the defendants as follows:

1. A declaration that the letter of the Offer of the Terms of Grant/Conveyance of Approval dated 19/02/2007 with old No.873 and new No. PL 43077 on the Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement dated 31/12/2008 are the genuine title documents in respect of Plot. No. 1213 measuring about 3,500 square metres in Dawaki Extension [Re-Location] Layout FCT, Abuja.
2. A declaration that the original allottee of Plot No. 1213 measuring about 3,500 square metres in Dawaki Extension [Re-Location] Layout FCT, Abuja is Mr.Hyelampa K. T. with old file No. PL 873.
3. A declaration that by virtue of the Power of Attorney dated 10/12/2009 donated by Hyelampa K. T. to Omon Victor Akhaine, Omon Victor Akhaine is the person in lawful possession of Plot 1213 measuring about 3,500 square metres inDawaki Extension [Re-Location] Layout FCT, Abuja.
4. An order of perpetual injunction restraining the defendants, their servants, agents and workers in whatever name called from committing further acts of trespass on the aforesaid piece of land.
5. The sum of N1,000,000.00 [one million Naira] as general damages for trespass.
6. Cost of N50,000.00.

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HON. JUSTICE S. C. ORJI  
[JUDGE]

*Appearance of Counsel:*

1. I. G. KelubiaEsq. for the claimant; with Oscar C. NnadiEsq.
2. S. M. Jimmy Esq. for the defendant; with Richard ObianuEsq.