

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

ON WEDNESDAY, 6TH MAY, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJ

SUIT NO. FCT/HC/CV/1363/2016

BETWEEN

HYELHIRRAH TARFA

PLAINTIFF

AND

- 1. FATIMAH UMAR NGIKI**
- 2. STANLEY ORAKPO**
- 3. INSPECTOR-GENERAL OF POLICE**
- 4. POLICE SERVICE COMMISSION**
- 5. MUSA DAN KADUNA**



DEFENDANTS

JUDGMENT

This suit was instituted on 31/3/2016 by LarabaTarfa against 6 defendants; Barrister S. M. Jimmy was the 3rd defendant. On 4/7/2018, the plaintiff's counsel applied to withdraw the suit against Barrister S. M. Jimmy. His name was struck out of the suit. As a result of the death of LarabaTarfa, the Court on 21/11/2018 granted the application to substitute the name of LarabaTarfa with HyelhirrahTarfa. The Court deemed the amended originating processes filed on 16/7/2018 as properly filed and served.

The pleadings in this case are: [i] the plaintiff's amended statement of claim filed on 16/7/2018; [ii] the statement of defence of the 1st& 2nd defendants filed on 27/2/2018; and [iii] the plaintiff's amended reply to 1st& 2nd defendants' statement of defence filed on 16/7/2018.

In paragraph 31 of the amended statement of claim, the plaintiff seeks the following reliefs against the defendants jointly and severally:

1. The sum of One Hundred Million Naira as general damages for the defendants' acts of trespass against the plaintiff's property.
2. The sum of One Hundred Million Naira aggravated and exemplary damages against the 3rd, 4th& 5th defendants' nefarious actions, condemnable and malicious role in legitimizing the said actions of the 1st and 2nd defendants.

Sheik Tarfa, the son of Laraba Tarfa, testified as the PW1. He adopted his statement on oath filed on 31/3/2016 and tendered Exhibits A, B, C, D, E & F. Fatimah Umar Ngiki, the 1st defendant, gave evidence as DW1. She adopted her statement on oath filed on 27/2/2018 and tendered Exhibits G, H, J, K & L. The 3rd, 4th& 5th defendants did not participate in the proceedings.

Evidence of the plaintiff:

The evidence of Sheik Tarfa is that the plaintiff was a retired civil servant. The 1st defendant is a business woman. The 2nd defendant is a legal practitioner. In

2004/2005, an offer for the sale of Block 25, Flat 4, Birao Street, Wuse II, Abuja [hereinafter referred to as "*the flat*"] was extended to LarabaTarfa by the Federal Government through the Federal Capital Development Authority [FCDA] being the civil servant in occupation. She accepted the offer and purchased the flat through some arrangements and assistance of Nelson Henshaw and his company [Nellyani Properties Ltd.]. The duo made money available to her, which she used to defend a suit filed by Aishatu Mamman against her in connection with the flat. The arrangement was for the sale of the flat and the proceeds shared as agreed. In the process of selling off the flat, LarabaTarfa had a misunderstanding with the duo because of their greed and selfish motive to sell the flat at a price far above the amount she told them to sell it; and to remit a lesser amount to her.

Based on the misunderstanding, LarabaTarfa cancelled the agreement she had with the duo, which they accepted. She issued some cheques to Nelson Henshaw and his company as part payment of the amount of money they had advanced to her. Based on the fact that the cheques were not honoured, they started harassing and threatening her with the officers of the 3rd & 4th defendants and those of the Department of State Services, who arrested her and seized her two cars. She was charged to court for some criminal offences. LarabaTarfa filed a suit against the duo and the officers of the 3rd & 4th defendants in the then High Court No. 8, FCT, Abuja. The Court made an order directing the Chief Registrar of the Court to take over the management and control of the flat and recover certain amounts from it.

The flat was under the management and control of the Chief Registrar from 2009-2012 when LarabaTarfa filed a suit for the flat to be handed over to her, the purpose for which the order was made having been achieved. The trial court delivered judgment and directed the Chief Registrar to hand over the control and management of the flat to LarabaTarfa. The Chief Registrar vide a letter handed over the management and control of the flat to her including paying over some excess rents collected on the flat to her. LarabaTarfa, in exercise of her control and management of the flat, applied to the Execution Unit of the Court for the eviction of the tenants occupying the flat based on the fact that they refused to pay rent.

Sheik Tarfa further stated that the tenants were ejected from the flat and the keys to the flat were handed over to LarabaTarfa through him [PW1]. He moved into the flat and accommodated the security guard in charge of security of the flat as the security post was gutted by fire then. On 30/6/2014, the 1st& 2nd defendants [with some other young men] went to the flat and physically broke the locks on the entrance door, removed all the things he had put therein and changed some of the doors and the locks. On that day, he and the plaintiff's lawyer, having been told that 1st& 2nd defendants [with Barrister S. M. Jimmy] were inside the flat, reported the case at the Divisional Police station, Wuse Zone 3, Abuja. A Police officer was assigned to go and bring them to the station, and he did. He [PW1], the 1st& 2nd defendants and the security guard made statements at the Police station.

PW1 narrated how the 5th defendant [the then 2i/c of the station] proclaimed what he termed as the 3rd, 4th& 5th defendants' decision on the matter, to wit: that the 1st defendant should retain the possession of the flat having broken into it. Also, that LarabaTarfarepresented by him [PW1] should not go near the flat or he would risk being arrested by officers of 3rd, 4th& 5th defendants. The decision of the 3rd, 4th& 5th defendantsoccasioned a lot of hardship on LarabaTarfaas she temporarily lost her flatto the 1st& 2nd defendants who committed trespass without a valid order of the court or any other genuine reason. The PW1 tendered the following documents:

- i. Judgment in *Suit No. CV/679/2012* delivered on 23/10/2013:Exhibit A.
- ii. Court order in *Suit No. CV/1391/2007* dated 15/4/2008: Exhibit B.
- iii. Letters written by Charles ChimezieEsq. dated 25/10/2013 and 27/1/2014: Exhibits C & D respectively.
- iv. Letter from the office of the Chief Registrar of this Court [signed by IgboyiIgboyi] to the Commissioner of Police, FCT Police Command dated 4/7/2014: Exhibit E.
- v. The handwritten letter by the PW1 to the Head of Enforcement of this Court dated 1/6/2014:Exhibit F.

When Sheik Tarfawas cross examined on 10/5/2017 by Barrister S. M. Jimmy [who was then the 3rd defendant], hestated that the court order [Exhibit B] ejected them from the flat in 2008 but by 2012, the High Court gave the

flatback to them. There was a matter on the flat pending at High Court No. 21 as at the time he went to the Chief Registrar to put them back to the flat. The subject matter in that case is that the 1st defendant sued LarabaTarfaand another person for the flat. PW1 was asked why he went to obtain a judgment to get back the flat that was the subject matter in that case. He said he did so because FCDA sold the flat to his mother.

During cross examination of the PW1 by the 1st defendant's counsel [Stanley OrakpoEsq.], he stated that the original title documents of the flat are in the other court for a similar case; he did not tender the documents in that court. He did not know the position of that case. His mother has not refunded the money to the people who paid for the flat. His mother gave all the original documents to the people to enable them pay FCDA for the flat. She did not give them the documents because of sale of the flat. PW1 agreed that his mother did not sue the original parties in Exhibit B when filing the suit in Exhibit A to get the flat back from the court. The Police did not say that since the case is in court, he and his mother should await the decision of the court on the ownership of the flat.

Evidence of the 1st defendant:

The evidence of the 1st defendant is that in 2007 when she wanted to buy a property in Wuse II, Abuja, she was introduced to Mr. Nelson Henshaw, the managing director of Nellyani Properties and Investment Ltd. Mr. Nelson Henshaw informed her that he is an agent to Engr. Aniekan Ucha who is the

bonafide owner of the flat, which he wanted to sell. The 1st defendant narrated how she bought the flat from Engr. AniekanUchafor the sum of N17 million upon being satisfied -from the documents shown to her - that he purchased the flat from LarabaTarfa who acquired it from FCT Administration through a letter of offer dated 7/11/2006. The documents Engr. AniekanUcha showed to her included original certificate of occupancy of the flat issued to LarabaTarfa, deed of assignment between him and LarabaTarfa and power of attorney donated to him by LarabaTarfa.

In paragraph 1[g] of her statement on oath, theDW1 listed the documents handed over to her by Engr. Uchaat the end of the transaction, which included the original letter of offer and original certificate of occupancy of the flat issued to LarabaTarfa. Some weeks after the transaction, she went to the premises with Mr.Nelson Henshaw to be introduced to the occupant of the flat as the new owner. They met LarabaTarfa who told them that she had instituted an action in court to rescind her transaction with Engr. Ucha. She [DW1] reported the development to Engr. Ucha. Engr. Uchaand his lawyer [Barrister S. M. Jimmy] assured her that LarabaTarfa's case lacked merit and will fizzle out as they believed that she is a "*gold digger*".While she was waiting for the case instituted by LarabaTarfaagainst Engr. Ucha and Mr.Henshaw to abate, Engr. Ucha informed her that one Aisha Mamman filed a motion to be joined as co-defendant to his counter-claim, claiming that she is the bonafide owner of the flat.

DW1 further testified that at this point, she filed *Suit No. CV/1484/09* against Engr. Ucha, Mrs. Laraba Tarfa and Aishatu Mamman. Due to her stake in the property, she visited there regularly. In the course of the visit, she met George Adeboye, the tenant put in the flat by virtue of the order of the High Court. On 31/6/2014, she received a call from George Adeboye that he was packing out and has started removing his properties from the flat. As she was determined to take control of the flat from the tenant, she informed the 2nd defendant [her counsel] and they went to the premises. While they were waiting for George Adeboye, Charles Chimezie Esq. and Sheik Tarfa came with a Police man from Wuse Zone 3 and said they were wanted at the Police station. At the station, they narrated their story and were allowed to go as it was clear that they did not commit any trespass.

The 1st defendant further stated that as at 30/6/2014, Laraba Tarfa was not in possession of the flat. George Adeboye was still the occupant because as at 4/7/2014, the office of the Chief Registrar of this Court applied to the Commissioner of Police for the provision of armed Policemen to assist in the enforcement of the judgment in the case of Mrs. Laraba Tarfa against Chief Registrar of this Court and another. As at 30/6/2014, Sheik Tarfa and the security guard were not in occupation of the flat. When she and the 2nd defendant went to the premises, they met two relations of George Adeboye in the flat who let them into the flat. It is not true that they broke into the flat. The DW1 tendered the following documents:

- i. Record of proceedings in *Suit No. FCT/HC/CV/1487/09*: Exhibit G.
- ii. Letter from the office of the Chief Registrar of this Court [signed by IgboyiIgboyi] to the Commissioner of Police, FCT Police Command dated 4/7/2014: Exhibit H [i.e. the same letter tendered by the PW1 as Exhibit E].
- iii. Application for Plaint filed on 24/10/2016 in *Suit No. CV/1363/16: LarabaTarfa v. Access Network Services Ltd. & George Adeboye*: Exhibit J.
- iv. Demand/Pre-action notice for payment of arrears of rent dated 10/7/2014 signed by ChukaIfezueEsq.: Exhibit K.
- v. Letter dated 17/6/2017 from the office of the Hon. Chief Judge of this Court to the 2nd defendant: Exhibit L.

When DW1 was cross examined by Charles ChimezieEsq., learned counsel for the plaintiff, she stated that she had no court order to take over the flat. She told the Police at Wuse Zone 3, Abuja that she bought the flat. She is not living in the flat. The house is open. There are people living in the house but there are no doors. She wrote on the flat that the house is not for sale or rent because the plaintiff's son and plaintiff's lawyer wanted to sell the house to the tenant in the flat. When the tenant moved out, both of them wanted to rent the flat to another person. So, she wrote that "*the house is not for sale*" until the case is decided by the Court. The 2nd defendant was not there on the day she wrote the words on the wall of the flat.

Issues for determination:

At the end of the trial, Stanley OrakpoEsq. filed the 1st defendant's final address on 11/9/2019. Ifeanyi Cynthia KaluEsq. filed the 2nd defendant's final address on 26/9/2019. On 18/10/2019, IhearinduemeCharles ChimezieEsq. filed the plaintiff's respective final addresses in response to the 1st defendant's final address and in response to 2nd defendant's final address.

On 13/2/2020, Mr. Chimezie adopted the claimant's final addresses. The Court deemed the final addresses of 1st & 2nd defendants as adopted pursuant to Order 33 rule 4 of the Rules of the Court, 2018 as they were absent without any excuse.

In the 1st defendant's final address, Stanley OrakpoEsq. formulated one issue for determination, to wit:

Whether from the totality of the evidence adduced by the parties in this suit, the plaintiff is entitled to the judgment of this Honourable Court for trespass.

In the 2nd defendant's final address, Ifeanyi Cynthia KaluEsq. distilled these two issues for determination:

1. Whether the 2nd defendant who acted at all material times in this suit as the 1st defendant's counsel can be sued with the 1st defendant in an action for trespass.

2. Whether this action instituted by the plaintiff against the 2nd defendant is not an abuse of court process.

In the plaintiff's final address in response to the 1st defendant's final address, Ihearindueme Charles Chimezie Esq. posed four issues for determination. These are:

1. Whether or not the 1st-5th defendants committed acts of trespass against the property situate at Block 25, Flat 4, Birao Street, Wuse II, OAU Quarters, Wuse II, Abuja which is in the exclusive possession of the claimant.
2. Whether or not the 2nd defendant's [a legal practitioner] appearance for himself as well as for 1st defendant and his conduct of their case in person simultaneously did not violate section 17[5] of the Rules of Professional Conduct for Legal Practitioners, 2007 made pursuant to section 12[4] of the Legal Practitioners Act 1990 [as amended] thus necessitating the discountenance of the defence presented by the duo during trial.
3. Whether or not the actions of the 5th defendant in supporting and sanctioning the acts of trespass of the 1st and 2nd defendants against the property [situate at Block 25, Flat 4, Birao Street, Wuse II, OAU Quarters, Wuse II, Abuja] in claimant's possession as well as his directive that the claimant and her son should not venture close to the flat in question here and that any day they dare to do so they would be

arrested and detained were not in law illegal, unconstitutional and ought to be denounced and condemned by this Honourable Court.

4. Whether or not the claimant proved her case and is thus entitled to all the reliefs sought by her.

In the plaintiff's final address in response to the 2nd defendant's final address, Mr.Chimezie posed these three issues for determination:

1. Whether the 2nd defendant legally speaking, can be said to be acting within the scope of his duties as the 1st defendant's counsel when on the 30/06/2014 he joined her in entering and trespassing on the property in the exclusive possession of the plaintiff as well as whether this suit instituted against the 2nd defendant constitutes an abuse of court process.
2. Whether or not the 2nd defendant's [a legal practitioner] appearance for himself as well as for 1st defendant and his conduct of their case in person simultaneously did not violate section 17[5] of the Rules of Professional Conduct for Legal Practitioners, 2007 made pursuant to section 12[4] of the Legal Practitioners Act 1990 [as amended] thus necessitating the discountenance of the defence presented by the duo during trial.
3. Whether or not the claimant proved her case and is thus entitled to all the reliefs sought by her.

After a careful consideration of the evidence before the Court and the arguments put forward by the learned counsel, I am of the opinion that three issues call for determination in this action. These are:

1. Whether the filing of processes and the conduct of proceedings by Stanley Orakpo Esq. [the 2nd defendant] for himself and on behalf of the 1st defendant rendered such processes and proceedings invalid.
2. Whether the plaintiff proved the tort of trespass against the 1st & 2nd defendants.
3. Is the plaintiff entitled to the reliefs sought?

ISSUE 1

Whether the filing of processes and the conduct of proceedings by Stanley Orakpo Esq. [the 2nd defendant] for himself and on behalf of the 1st defendant rendered such processes and proceedings invalid?

The argument of learned counsel for the plaintiff on this issue stems from the fact that Stanley Orakpo Esq. signed the statement of defence of the 1st & 2nd defendants, which was filed on 27/2/2018. In the course of the proceedings, Stanley Orakpo Esq. appeared only for the 1st defendant on some dates and on some other dates, he announced appearance for himself and 1st defendant. For example, on 21/6/2017 when the PW1 was cross examined, Mr. Orakpo appeared only for the 1st defendant. On 8/5/2018 when 1st defendant testified,

Mr.Orakpo appeared for himself and the 1st defendant. From 4/7/2018, Mr.Orakpo appeared for only the 1st defendant while Ifeanyi Cynthia KaluEsq. appeared for the 2nd defendant [Stanley OrakpoEsq.].I pause to remark that the plaintiff's counsel did not object to the appearance of Mr.Orakpo on the days he appeared for himself and the 1st defendant. He did not also file an application to challenge the competence of the joint statement of defence.

The learned plaintiff's counsel argued thatit was legally wrong for the 2nd defendant to appear for himself as well as the 1st defendant fully robed from the Bar. He posited that the 2nd defendant violated section 17[5] of the Rules of Professional Conduct for legal practitioners, which provides:

"A lawyer shall not appear as counsel for a client in a legal proceeding in which the lawyer himself is a party."

Mr.Chimezi referred to **Fawehinmi v. N.B.A. [2008] All FWLR [Pt. 447] 1** and **Audu v. Gideon [2015] 12 NWLR [Pt. 1474] 495** to support the principle that a litigant legal practitioner ceases to be a legal practitioner *qua* that matter and is therefore not competent to represent a co-defendant. He then submitted that the 1st& 2nd defendants cannot rely on the evidence of DW1 as the defence on 8/5/2018 was conducted by StanleyOrakpoEsq. It follows that there was no evidence by the 1st& 2nd defendants in support of their joint statement of defence and the statement of defence is deemed abandoned. He referred to **Oluyede v. Access Bank Plc. [2015] 17 NWLR [Pt. 1489] 596** and

other cases. Learned counsel urged the Court to discountenance and refuse to act on the defence of the 1st& 2nd defendant conducted by Mr.Orakpo. It was further submitted that the 1st& 2nd defendants are deemed to have admitted the case of the plaintiff.

In the plaintiff's final address filed on 17/5/2019, which was withdrawn, Mr.Chimezie canvassed this argument. Thus, Mr.Orakpo responded to the issue at page 15 of the 1stdefendant's final address. He submitted that since the above complaint is that there is a violation of section 17[5] of the Rules of Professional Conduct for legal practitioners, which is an illegal act in breach of an enactment, the plaintiff is bound to plead it by virtue of Order 15 rule 7 of the Rules of the Court, 2018. This is to avoid taking the 1st& 2nd defendants by surprise and any matter not pleaded goes to no issue. He urged the Court to discountenance the argument of the plaintiff's counsel.

First of all, I do not agree with Mr.Orakpo that the complaint raised by the plaintiff's counsel that he violated the Rules of Professional Conduct for legal practitioners is an issue that ought to be pleaded in the statement of claim.

Now, in the case of N.B.A. v. Iteogu [2006] 13 NWLR [Pt. 996] 219, cited by the plaintiff's counsel, it was held that the rules of professional conduct are made for the maintenance of the highest standard of professional conduct, etiquette and discipline in terms of the constitution of the Nigerian Bar Association. In my respectful view, a legal practitioner who is in breach of the Rules of

Professional Conduct can be sanctioned or punished by invoking the disciplinary provisions in the said Rules of Professional Conduct. I hold that the alleged breach of the Rules of Professional Conduct by Stanley Orakpo Esq. will not invalidate or render illegal the processes he filed and the proceedings he conducted for himself and the 1st defendant.

ISSUE 2

Whether the plaintiff proved the tort of trespass against the 1st & 2nd defendants.

Trespass is an unwarranted or unjustifiable entry or intrusion by one person upon land in possession of another. A trespass to land is an entry upon land or any direct and immediate interference with the possession of land. See the cases of **Lewis v. Obawole [2010] LPELR-4432 [CA]** and **Ajero v. Ugorji [1999] 10 NWLR [Pt. 621] 1.** To succeed in a claim for trespass, the plaintiff must prove that he has exclusive possession or the right to such possession of the land in dispute. See **Fagunwa v. Adibi [2004] 17 NWLR [Pt. 903].**

The claims of the plaintiff are predicated on the allegations that the 1st & 2nd defendants trespassed into her flat; and when the trespass was reported at Wuse Zone 3 Police station, the 5th defendant [Musa Dan Kaduna], who is under the employment, supervision and control of the 3rd & 4th defendants, encouraged and legitimized the trespass. It is necessary to first

refer to the antecedents of this case as could be gleaned from the evidence of the PW1 and DW1.

Let me first place on record that it is not in dispute that Laraba Tarfa was the original owner of the flat by virtue of purchase of same from the Federal Government of Nigeria through the FCT Administration. It is also not in dispute that in 2009, Fatimah Umar Ngiki [the 1st defendant] filed *Suit No. CV/1484/2009* against Aniekan Ucha, Mrs. Laraba Tarfa & Aishatu Mamman. That suit is before My Lord, *Hon. Justice C. N. Oji*; Exhibit G [though with *Suit No. CV/1487/2009*], was tendered as the record of proceedings in that case from 15/7/2014 to 24/1/2016. That case was pending as at 30/6/2014 [the date of the alleged trespass] and from the evidence of DW1 when she was cross examined on 8/5/2018, that suit was pending as at that date. In that suit, Fatimah Umar Ngiki is claiming ownership of the flat.

It seems to me that the testimonies of PW1 and DW1 show the respective efforts of Laraba Tarfa and Fatimah Umar Ngiki - who are rival claimants of ownership of the flat - to take over possession of the flat when ownership of same had not been determined in *Suit No. CV/1484/2009*.

Exhibit B is the order of this Court [Coram: *Hon. Justice U. A. Inyang*] made on 15/4/2008 in *Suit No. CV/1391/2007: Mrs. Laraba Theresa Tarfa v. Mr. Nelson Henshaw, Nellyani Properties & Investment Ltd. and The Area Commander, Maitama Police Command*. Pursuant to the said order - which was made by the Court on the application of the defendants in that suit - the Chief Registrar of

the Court evicted the plaintiff [LarabaTarfa] from the flat and took over the management and control of same. A tenant was put in possession of the flat.

As I said earlier, the 1st defendant in this suit filed *Suit No. CV/1484/2009: Fatimah Umar Ngiki v. Engineer AniekanUcha, Mrs.LarabaTarfa and AishatuMamman* claiming ownership of the flat in 2009. While *Suit No. CV/1484/2009* was pending, LarabaTarfa filed *Suit No. CV/679/2012* against:[i] Chief Registrar of this Court; and [ii] the High Court of Justice, FCT Judiciary. The purpose of the suit was for her to regain possession, control and management of the flat from the Chief Registrar of the Court. That case was before My Lord, Hon. *Justice Hussein Baba Yusuf*. It is noteworthy that LarabaTarfa did not join Nelson Henshaw and the two others who sought and obtained the order made by *His Lordship, Hon. Justice U. A. Inyang* in *Suit No. CV/1391/2007*. Also, *Suit No. CV/1484/2009* was pending when LarabaTarfa filed *Suit No. CV/679/2012*.

LarabaTarfa obtained judgment in *Suit No. CV/679/2012* on 23/10/2013; the judgment is Exhibit A. The Court ordered the Chief Registrar to “*relinquish possession of house No. 4, Block 25, OAU Quarters, belonging to the plaintiff and hand over same to her forthwith.*” I note that by this order, the Court declared that the flat belongs to LarabaTarfa because she did not disclose that the ownership of the flat was in dispute in *Suit No. CV/1484/2009*.

On the other hand, the evidence of the 1st defendant also shows her effort to take over possession and control of the flat while *Suit No. CV/1484/2009* was

pending. In paragraphs 1[m] & [n] of her statement on oath, the 1st defendant stated that because of her stake in the flat, she visited the flat on regular basis and in the course of her visit, she met George Adeboye, the tenant in the flat. She said she was “*determined to take control of the flat from the tenant*”. From her evidence, the opportunity presented itself when George Adeboye informed her through phone call on 31/6/2014 that he was packing out of the flat. The 1st defendant did not obtain any court order before, according to her, she took possession of the flat from George Adeboye.

In the light of the foregoing, I am of the opinion that the determination of the claims of the plaintiff for trespass turns upon two questions. These are:

- i. Can the Court adjudge the 1st defendant and her lawyer [2nd defendant] as trespassers in the flat when the ownership of the flat is in dispute?
- ii. Did the plaintiff prove that she was in actual possession of the flat on 30/6/2014 and that the 1st& 2nd defendants broke into the flat and removed the properties of the PW1?

Question [i]

Can the Court adjudge the 1st defendant and her lawyer [2nd defendant] as trespassers in the flat when the ownership of the flat is in dispute?

Learned counsel for the 1st defendant stated that it is clear from the pleadings of the parties and from the record of proceedings [Exhibit G] that title to the

flat is in issue and therefore the plaintiff has the burden to prove that she has a better title to the flat. He relied on the case of **Garan v. Olomu [2014] All FWLR [Pt. 711] 1514; [2013] LPELR-20340 [SC]**, where it was held that:

Ordinarily, since appellant's claim is for trespass to land, all he needs to establish to succeed is that he either has exclusive possession or the right to such possession of the land in dispute. However, since the respondent has asserted ownership of the land in dispute also, title to the land has automatically been put in issue thereby making it necessary for the appellant to establish better title than that of the respondent in order to succeed.

The above principle was also upheld in **Alao v. Kure & Anor. [2000] LPELR-10467 [CA]**. Mr. Orakpo submitted that the plaintiff neither established better title to the flat nor was she able to establish that she was in exclusive possession of the flat at the time of commission of the alleged trespass. Counsel stressed that Exhibit G shows that there is a pending suit before *Hon. Justice C. N. Oji* where *"the 1st defendant and the plaintiff in this suit are locked in a title fight over the ownership of the flat the subject matter of this current suit."*

On the other hand, learned counsel for the plaintiff stated that the plaintiff is not *"locked in a title fight"* with the 1st defendant who is claiming that she acquired the flat from Engr. Aniekan Ucha and who she claimed acquired the flat from the plaintiff. He submitted that the defence that the 1st defendant bought the flat from Engr. Ucha is not tenable because if she is the owner of the flat in issue, why is she in court seeking to be declared the owner? The

bottom of the said defence is knocked off when DW1 admitted during cross examination that she had no order or judgment of the court authorizing her to take over the flat or to enter inside it. Mr.Chimezie urged the Court to hold that the said title contest between 1st defendant and plaintiff is a farce.

The plaintiff's counsel also argued that the case of Garan v. Olomu [supra] no longer represents the position of the law on trespass. He relied on Ozuzu v. Emewu [2019] 13 NWLR [Pt. 1688] 143, where it was held that a person who is able to prove exclusive possession of a piece of land can maintain an action in trespass against any person, unless such a person can prove a better title to the land. A person in possession even without a valid title or with a defective title can sue in trespass. It was also held that the claim for trespass is not dependent on the declaration of title. He submitted that it is no longer the plaintiff that is to prove better title whenever a defendant asserts ownership of the property that was trespassed on. In the instant case, the 1st & 2nd defendants have the burden to prove better title over the flat they trespassed onto to displace plaintiff's claim in trespass.

In my humble view, the principles in the cases of Garan v. Olomu [supra]; and Ozuzu v. Emewu [supra] are valid legal principles; the one applicable to a case depends on the facts of the case. It is my view that the principle in Garan v. Olomu is applicable to this case as the plaintiff's case is that the 1st defendant is in possession of the flat since 30/6/2014 and, as I have found, title or ownership of the flat has been put in issue. In the case of

Adegbesan&Anor. v. Ilesanmi [2017] LPELR-42552 [CA], it was restated that where one in possession of land is said to be a trespasser, the onus is on the person asserting such an allegation to establish that he has a better title to the land than the person in possession.

Another legal principle relevant to the issue under consideration is that a person who has title over a piece of land, though not in *de-facto* possession, is deemed in law to be the person in possession. This is because the law attaches possession to title and ascribes it to the person who has title. See the case of **Lawani&Anor. v. Grillo&Ors. [2018] LPELR-44914 [CA]**.

From the above principle, it follows that he who has title to the flat has possession or the right to possession of the flat. Put in another way, the right to possession of the flat is inextricably tied to the right of ownership, which is yet to be determined in *Suit No. CV/1484/2009*. I hold the considered opinion that if the Court grants the claim of the plaintiff that the 1st defendant and her lawyer [2nd defendant] trespassed on the flat, the effect will be that the Court has impliedly or tacitly adjudged the plaintiff as the rightful owner of the flat. Also, if the Court holds that the 1st defendant and her lawyer [2nd defendant] trespassed on the flat, and the verdict of the Court in *Suit No. CV/1484/2009* turns out to be that the flat belongs to the 1st defendant, the two decisions will be incongruous and absurd.

I need to emphasize the fact that *Suit No. CV/1484/2009* was pending on the date of the alleged trespass, i.e. on 30/6/2014. The plaintiff and her counsel did not bring the alleged trespass to the attention of *Hon. Justice C. N. Oji* in *Suit No. CV/1484/2009* until 31/3/2016 when the present suit was instituted. From the record of proceedings [Exhibit G], Sheik Tarfa [son of the plaintiff] testified in that case on 15/7/2014 as DW3; and Mr. Chimezie [who is also the counsel to Laraba Tarfa in that case] was in Court. Fatimah Umar Ngiki and her lawyer [Mr. Orakpo] - the alleged trespassers - were also in Court. One wonders why Sheik Tarfa and/or Mr. Chimezie did not bring the alleged trespass to the attention of *His Lordship, Hon. Justice C. N. Oji*.

From all that I have said, I answer Question [i] in the negative and hold that in the circumstances of this case, the Court cannot adjudge the 1st defendant and her lawyer [2nd defendant] as trespassers in the flat when the ownership of the flat is still in dispute between the 1st defendant and the plaintiff.

Question [ii]

Did the plaintiff prove that she was in actual possession of the flat on 30/6/2014 and that the 1st & 2nd defendants broke into the flat and removed the properties of the PW1?

The learned counsel for the 1st defendant posited that the case of the 1st defendant is that as at 30/6/2014, the plaintiff was not in actual possession of the flat and that the tenant let into the flat by the Chief Registrar was still in

occupation of the flat. There is nothing in the Exhibits tendered by the PW1 to show that the order for the Chief Registrar to hand over possession of the flat to the plaintiff was carried out by the Chief Registrar by handing over physical possession of the flat to the plaintiff. He argued that Exhibit E, which is a letter dated 4/7/2014, showed that as at 30/6/2014, the plaintiff had not been granted physical possession of the flat by the Chief Registrar of the Court through any execution. Therefore, Exhibit F acknowledging receipt of keys to the flat cannot be correct.

Mr.Orakpo also contended that the letter dated 25/10/2013 [Exhibit C] and the letter dated 27/1/2014 [Exhibit D] are applications for issuance of writ of possession and execution of judgment. There is no evidence that any warrant of possession was issued and that any execution took place pursuant to the warrant of execution. So, the plaintiff cannot talk about keys given to her by the Chief Registrar. The 1st defendant's counsel also stated that the security guard was not called as a witness to support the claim of the plaintiff. It was submitted that the evidence of PW1 that he was told that 1st& 2nd defendants broke into the flat is hearsay and is not admissible. It is the unnamed person who gave the information to the PW1 that should testify. Having failed to call this vital witness, the plaintiff failed to prove that the 1st& 2nd defendants broke the door of the flat and entered it.

For his part, learned counsel for the plaintiff referred to the evidence of PW1 and Exhibit A; and submitted that the 1st& 2nd defendants trespassed into the

flat when exclusive possession of same resided in the plaintiff as at the time of the said trespass [28th, 29th and 30th June, 2014]. He relied on Exhibit F to support his view that the Chief Registrar handed over the flat to the plaintiff through her son [the PW1] on 14/6/2014. By virtue of the handing over of possession and key of the flat to the plaintiff, she became clothed with the exclusive possession of the flat. He noted that the DW1 admitted that the Police officer who came with PW1 and the plaintiff's lawyer to the flat on 30/6/2014 saw her and the 2nd defendant inside the flat. He relied on **Kano v. Magaji [2011] 17 NWLR [Pt. 1275] 139** on the principle that actual possession is sufficient to entitle a party to maintain an action in trespass.

Mr.Chimezie further submitted that plaintiff was the one with reversionary right to the flat; thus, when the tenant vacated the flat as stated by DW1, the exclusive possession of same reverted to the plaintiff by virtue of Exhibit A. The action of the 1st& 2nd defendants is self-help, which is not approved by our courts and which renders the perpetrators liable in damages in trespass. He cited the case of **Ojukwu v. Governor of Lagos State [1985] 2 NWLR [Pt. 10] 506**. It was also submitted that the 1st& 2nd defendants did not call the brothers of Mr. George Adeboye to testify in proof of their averment.

Now, by sections 131 & 132 of the Evidence Act, 2011, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist; and the burden of proof in a suit or proceeding lies on that person who would fail if

no evidence at all were given on either side. Thus, the plaintiff has the burden to prove that on 30/6/2014, she was in actual or physical possession of the flat and that the 1st & 2nd defendants broke into the flat and removed the properties of the PW1 who, according to the plaintiff, was put in possession of the flat.

In paragraphs 18 & 20 of the amended statement of claim, the plaintiff averred that pursuant to the order in Exhibit A, the Chief Registrar of the Court handed over the management and control of the flat back to her; and that the tenants were ejected from the flat and the keys to the flat were handed over to her through her son [Sheik Tarfa] who signed for them on that day. The PW1 gave evidence in paragraphs 19 & 21 of his statement on oath in support of the above averments. However, no letter was tendered to show that the Chief Registrar handed over the flat to the plaintiff on 14/6/2014 or any other date and, as rightly argued by Mr. Orakpo, there is no evidence that the Chief Registrar issued any warrant of possession of the flat.

Also, there is no evidence by PW1 or document to support Mr. Chimezie's argument in paragraphs 4.9 and 8.5 of his final address that the tenant in the flat was removed on 14/6/2014 and the PW1 signed for and collected the key to the flat from the office of the Chief Registrar on the same day. He relied on Exhibit F to support his view.

Exhibit F is the handwritten letter by the PW1 addressed to: "*The Head Enforcement [sic], High Court of FCT, Maitama, Abuja*". The letter reads:

I write to acknowledge the receipt of key to flat no. 4 Block 25 OAU Qutrs Wuse two Abuja which possession was taken in Judgment of a case Mrs. Theresa Tarfa -v- Chief Registrar of FCT H/C.

I shall be grateful for the cooperation rendered to me in the course. ...

Mr. Orakpo argued that the purported certification of Exhibit F does not bear the name or designation of the person who certified it and there is no receipt/evidence of payment for its issuance. He referred to the requirements for certification of public documents in section 104 of the Evidence Act, 2011; and the case of **Tabik Investment Ltd. v. GTB Plc. [2011] LPELR-3131 [SC]**. The 1st defendant's counsel urged the Court to discountenance Exhibit F as it is not admissible in evidence.

In his response, learned plaintiff's counsel argued that absence of signature, receipt, name and designation of the officer who certified Exhibit F only affects the weight to be attached to it; but did not render it entirely worthless as it was issued by an officer of the Court and it was substantially in the form in which it should be; hence presumption of regularity applies. He referred to sections 146[1] & 168 of the Evidence Act; and the case of **A.G. Federation v. Ugo [2018] All FWLR [Pt. 930] 402.**

In **Tabik Investment Ltd. v. GTB Plc. [supra]; [2011] LPELR-3131 [SC]**, the Supreme Court held that a public document is certified if: [i] it was paid for; [ii] there is an endorsement/certificate that it is a true copy of the document in

question; and [iii] the endorsement/certificate must be dated and signed by the officer responsible for certification with his name and official title. It is clear to me that Exhibit F falls short of the requirements of the law for admissibility of a public document. It has no date of certification; and there is no name and official title of the officer who purportedly certified it. The presumption of regularity canvassed by Mr.Chimezie is not applicable to Exhibit F. I agree with Mr.Orakpo that Exhibit F is inadmissible. It follows that Exhibit F was wrongly admitted by the Court at the trial.

It is trite law that where a trial court wrongly admitted any document during trial, even without objection, it has a duty to expunge such wrongly admitted document from the record of the Court in its judgment. See the cases of **Kubor v. Dickson [2013] 4 NWLR [Pt. 1345] 534**; and **Surakatu v. Adekunle [2019] LPELR-46412 [CA]**. Therefore, Exhibit F is hereby expunged from the record of the Court.

However, even if Exhibit F is not expunged from the record of the Court, it does not prove that the Chief Registrar of the Court handed over possession of the flat or the key to the PW1 on 14/6/2014. I say so because firstly, Exhibit F is dated "1-6-14", which was earlier than 14/6/2014. In paragraph 8.6 of his final address, Mr.Chimezie stated that Exhibit F "*clearly bore the date of 1-6-14 which ought to be 14-6-14 being the date that the flat was handed over*" to the plaintiff. It is trite that the address of counsel will not take the place of evidence. See **Nnadi & Ors. v. Ariri [2015] LPELR-24575 [CA]**.

Secondly, by letter dated 4/7/2014 - which was tendered by PW1 as Exhibit E and tendered by DW1 as Exhibit H - IgboyiIgboyi for H.O.D. [Enforcement] of this Court requested the Commissioner of Police FCT Police Command “for provision of two [2] Armed Policemen to assist in carrying out Execution in respect of the above suit number on the 9TH JULY, 2014.” The suit referred to is: *Mrs.Laraba Theresa Tarfa vs. The Chief Registrar High Court of Justice FCT Judiciary and Another*. This letter clearly shows that as at 4/7/2014, no execution had been carried out in the flat and possession or key to the flat could not have been handed over to the plaintiff or PW1 on 14/6/2014.

The third reason - which is related to the second - is that in paragraph 4[p] of their statement of defence, the 1st& 2nd defendants averred that:

The 1st and 2nd defendants stated that as at the 30th June 2014 the plaintiff was never in possession of the subject property as Mr. George Adeboye was still the bonafide occupant of the said flat having not been ejected by the court because as at 4th July 2014 the office of the Chief Registrar, High Court of the Federal Capital Territory applied to the Commissioner of Police vide their letter ref: FCT/HC/CO/679/2012 dated 4th July 2014 for the provision of armed Policemen to assist in the enforcement of the Judgment in the case of Mrs.LarabaTarfa vs. The Chief Registrar High Court of Justice FCT Judiciary and one other. This letter is hereby pleaded.

In paragraph 16 of the plaintiff’s reply to the 1st& 2nd defendants’ statement of defence, she averred that:

Paragraph 4 [p] is denied as George Adedayo was removed from the flat on the 14/06/2014 by the High Court Enforcement Unit in the execution of the judgment in Suit No. CV/679/12. The application dated 4th July, 2014 by the High Court to the Police to assist in the enforcement of the said judgment was actually the second of such applications and was meant to be used to remove the persons who had on the 30th and 31st June, 2014 taken over possession of the flat after the first execution was done on the 14/06/2014 but the move was frustrated by the 1st and 2nd defendants using their normal negative influence peddling gimmick and thus the said further execution was carried out [sic].

The evidence of the 1st defendant in support of the above averment is in paragraph 1[p] of her statement on oath. On her part, the plaintiff did not adduce any evidence in support of the above averment as PW1 did not file additional statement on oath in support of the reply pleading. It is trite law that an averment not supported with evidence is deemed abandoned. See **Agballah v. Chime [2009] 1 NWLR [Pt. 1122] 373.** So, the said averment in paragraph 16 of the plaintiff's reply pleading is deemed abandoned. There is no evidence that George Adeboye was removed from the flat on 14/6/2014 and that the letter dated 4/7/2014 was "*the second of such applications and was meant to be used to remove the persons who had on the 30th and 31st June, 2014 taken over possession of the flat after the first execution was done on the 14/06/2014*".

In his effort to persuade the Court to hold that the plaintiff proved that the Chief Registrar removed George Adeboye from the flat on 14/6/2014,

Mr.Chimezierelied on the last evidence of the DW1 during cross examination on 8/5/2018. Hereunder are the question and answer:

Q: *You and the 2nd defendant went to the house and wrote that the house is not for sale or rent.*

A: *We did so because the plaintiff's son and you wanted to sell the house to the tenant in the house. When the tenant moved out, both of you wanted to rent the house to another person. So, I wrote that the house is not for sale until the case is decided by the Court. The 2nd defendant was not there with me on the day I wrote the words.*

The plaintiff's counsel argued that: [i]this evidence is an admission by the DW1 that the tenant in the flat was removed by the Chief Registrar before 30/6/2014 and that possession of same was handed over to the plaintiff before 30/6/2014; and [ii] by the above evidence, the DW1 admitted that she started writing the words: "*this house is not for sale or rent*" on the wall of the flat "*days before she and the 2nd defendant entered the flat*". The Court is not persuaded by this argument because the evidence of DW1 must be taken as a whole; the evidence of DW1 in issue cannot be taken in isolation. In the case of **Orakwe v. Orakwue & Ors. [2018] LPELR-44763 [CA]**, it was held that for an admission against interest to be relied on and accepted by the Court as proof of the matter or a fact in issue, it must be weighed along with the entire evidence on record in order to determine its correct and proper probative value.

The Court notes the evidence of DW1 during cross examination that:[i] she is not living in the flat; [ii] the house is open; and [iii] there are people living in the house but there are no doors. It is the law that for an admission against interest to have probative or evidential value, it must be clear, precise and unequivocal. See Osemwenkha v. Osemwenkha [2012] LPELR-9580 [CA]. The evidence of the 1st defendant in issue may also mean that she started writing the words: *"this house is not for sale or rent"* on the wall of the flat after the tenant moved out to prevent the plaintiff's son and her lawyer from selling or renting the house since she was not living there and there were no doors. My humble view is that the evidence of DW1 is not an admission that the tenant in the flat was removed by the Chief Registrar before 30/6/2014 and that possession was handed over to the plaintiff before 30/6/2014.

Finally on Question [ii], the plaintiff's case is that her son and her lawyer were *"told"* that the 1st & 2nd defendants [and Barrister S. M. Jimmy] were inside the property having broken into it ..." The PW1 did not state the name of the informant and, as rightly submitted by Mr. Orakpo, the plaintiff did not call the informant to testify that the 1st & 2nd defendants broke into the flat and removed the properties of the PW1. I agree with Mr. Orakpo that the evidence of the PW1 that the 1st & 2nd defendants broke into the flat and removed his properties is hearsay evidence and is not admissible to prove the assertion. Also, the PW1 did not tender any evidence like photographs to support his claim that his properties were removed from the flat.

Mr.Chimezie did submit that 1st& 2nd defendants did not call the brothers of Mr. George Adeboye to testify in proof of their averment.As I said earlier, the plaintiff has the evidential burden to prove her allegation. My view is that the failure of the 1st& 2nd defendants to call the brothers of Mr. George Adeboye to testify is not fatal to their defence.

The decision of the Court on Question [ii] is that the plaintiff failed to prove that she was in actual possession of the flat on 30/6/2014;and that the 1st& 2nd defendants broke into the flat and removed the properties of the PW1.

ISSUE 3

Is the plaintiff entitled to the reliefs sought?

From the decision of the Court under Issue No. 2, the plaintiff's claim of N100 million against the 1st& 2nd defendants as general damages for trespass is dismissed.It has therefore become unnecessary to consider the issues raised in 2nd defendant's final address as to:[i] whether the 2nd defendant, who acted as the 1st defendant's lawyer, can be sued for trespass with the 1st defendant; and [ii] whether the suit against the 2nd defendant is an abuse of court process.The consideration of these issues has become academic.

With respect to the claim for aggravated and exemplary damages of N100 million against the 3rd, 4th& 5th defendants, the plaintiff's counsel is correct that they did not defend the action. However, the plaintiff still has the duty to

prove her claim against them. The basis for the claim is that they legitimised the trespass by the 1st & 2nd defendants. In the light of the decision that the plaintiff failed to prove the allegation of trespass, this claim cannot succeed.

CONCLUSION

The suit is dismissed. The parties shall bear their costs.

**HON. JUSTICE S. C. ORIJI
[JUDGE]**

Appearance of counsel:

1. Ihearindueme Charles Chimezie Esq. for the plaintiff.
2. Stanley Orakpo Esq. for the 1st defendant.