

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 10TH DAY OF DECEMBER, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: CV/3765/2013

BETWEEN:

1. BITOBLESS LINKS NIGERIA LTD
2. GWAGWA VENTURES LTD -----
PLAINTIFFS

AND

1. HON. MINISTER, FED. CAPITAL TERRITORY
2. FED. CAPITAL DEVELOPMENT AUTHORITY
3. ARISE AND SHINE CONCEPT
4. MESIKE NWABIA EUNICE
5. CIVENIX LIMITED
6. ABUJA ENVIRONMENTAL PROTECTION BOARD

} DEFENDANTS

JUDGMENT

The plaintiffs instituted this action against the defendants on the 25/6/2013 by way of Writ of Summons.

The claims of the plaintiffs are hereunder stated as follows:

“1. A declaration of Court that the plaintiffs statutory holding Plot 618A, Cadastral Zone A07, Wuse 2, Abuja lying and situate along Lingu Crescent, Wuse 2, Abuja now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² on the ‘Offer of Terms of Grant/conveyance of Approval’ evidencing the grant but 151796.04 square meters on ground and bounded by the beacons on record and coordinates is subsisting, extant, operative and not revoked.

2. A declaration of Court that the grant of Plot 618A, Cadastral Zone A07, Wuse 2, Abuja lying and situate along Lingu Crescent, Wuse 2, Abuja now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² on the ‘Offer of Terms of

Grant/conveyance of Approval' evidencing the grant but 151796.04 square meters on ground ranks higher in legal significance to the Lease Agreement made/entered between the 3rd, 4th and 5th defendants with the 6th defendant and as such takes or have priority.

- 3. A declaration of Court that the 3rd and 5th defendants at the time of entering into the lease agreement with the 6th defendant over Plot 618A, Cadastral Zone A07, Wuse 2, Abuja lying and situate along Lingu Crescent, Wuse 2, Abuja now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² on the 'Offer of Terms of Grant/conveyance of Approval' but 151796.04 square meters on ground and till date are not juristic persons capable of entering into a lease agreement or holding rights in immovable property.*

4. *A declaration of Court that the 6th defendant whether by itself, its agents and assigns, directors or howsoever called is/are without any legal authority to allocate land to the 3rd, 4th and 5th defendants or anybody else in the Federal Capital Territory or enter into a lease agreement over land as done between her and the 3rd, 4th and 5th defendants over Plot 618A, Cadastral Zone A07, Wuse 2, Abuja lying and situate along Lingu Crescent, Wuse 2, Abuja now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² on the 'Offer of Terms of Grant/conveyance of Approval' but 151796.04 square meters on ground.*

5. *A declaration of Court that the interest of the 3rd, 4th and 5th defendants in Plot 618A, Cadastral Zone A07, Wuse 2, Abuja lying and situate along Lingu Crescent, Wuse 2, Abuja now known as Plot 788, Cadastral Zone*

A07, Wuse 2, Abuja measuring 3.160.29m² on the 'Offer of Terms of Grant/conveyance of Approval' but 151796.04 square meters on ground not being a Statutory Right of Occupancy or one granted by the 1st defendant is void and has no factual or legal significance or force.

6. A declaration of Court that the 3rd, 4th and 5th defendants holding by way of a lease agreement or any other interest in Plot 618A, Cadastral Zone A07, Wuse 2, Abuja lying and situate along Lingu Crescent, Wuse 2, Abuja now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² on the 'Offer of Terms of Grant/conveyance of Approval' but 151796.04 square meters on ground not being a Statutory right of Occupancy is void, lapses and becomes extinguished on the grant of the Statutory

holding in the same plot to the plaintiffs by the 1st defendant.

7. An order of Court granting immediate vacant possession of Plot 618A, Cadastral Zone A07, Wuse 2, Abuja lying and situate along Lingu Crescent, Wuse 2, Abuja now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² on the 'Offer of Terms of Grant/conveyance of Approval' but 151796.04 square meters on ground to the plaintiffs from the 3rd, 4th and 5th defendants whether by themselves, their agents, assigns, attorneys or hired hands.

8. An order of perpetual injunction restraining the 3rd, 4th and 5th defendants whether by themselves, their agents, assigns, attorneys, hired hands or howsoever known from trespassing in anyway howsoever into Plot 618A, Cadastral Zone A07, Wuse 2, Abuja lying and

situate along Lingu Crescent, Wuse 2, Abuja now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² on the 'Offer of Terms of Grant/conveyance of Approval' but 151796.04 square meters on ground.

9. An order of Court directing the 1st and 2nd defendant's together with their agents and agencies known as the Department of Development Control, The Abuja Metropolitan Management Agency (AMMA) and the Abuja Metropolitan Management Council (AMMC) to approve the plaintiffs building design to be resubmitted for private park, garden, open space, and Green Area consistent with the use of the statutory grant if they conform to lawful specifications.

10. An order of Court directing the 1st and 2nd defendant's and their agents known as Abuja Geographic Information System, the Abuja

Metropolitan Management Agency, servants, employees or howsoever known to accord to the plaintiffs all land rights known to law over Plot 618A, Cadastral Zone A07, Wuse 2, Abuja lying and situate along Lingu Crescent, Wuse 2, Abuja now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² on the 'Offer of Terms of Grant/conveyance of Approval' but 151796.04 square meters on ground consistent with the use of the plot.

11. An order of Court awarding damages of N100 Million only against the 3rd, 4th and 5th defendants for trespass to property.

12. An order of Court awarding the sum of N20 Million only against the 6th defendant for acting ultra vires its powers and continuing to accord to the 3rd, 4th and 5th defendants land rights when the 6th defendant was already aware of the statutory grant to the plaintiffs.

13. Cost of this suit against the 3rd to 6th defendants.”

It should be noted that the defendants were served personally with the originating processes save for the 4th defendant who was served by substituted means vide the Order of Court granted on the 4/2/2014. The 1st – 5th defendants despite service of several hearing notices failed to file any defence. After several adjournments for hearing, the case of the plaintiff was struck out for lack of diligence in prosecution. Upon the application by the plaintiffs, the suit was relisted on the 19/4/2016. Hearing commenced on the 1/3/2017 with the plaintiff's witness testifying as PW1. The following documents were tendered through this witness:

- Exhibit A – Statutory Right of Occupancy
- Exhibit A1 – CTC of Deposit slip for payment of ground rent and certificate of occupancy

- Exhibit A2 – CTC of Acknowledgment dated 10/7/2004 for recertification exercise
- Exhibit A3 – CTC of Note showing the coordinates of the plot
- Exhibit A4 – CTC of a Memo from the 6th defendant
- Exhibit A5 – Acceptance of grant of right of occupancy dated 26/6/2003.
- Exhibit A6 – Zenith Bank receipts for computer search at the CAC dated 21/6/2013.

The matter was then adjourned for cross examination of PW1. The 1st – 5th defendants yet again were served with hearing notices but they elected not to cross examine the witness. The 6th defendant was represented in Court by A.H. Falaki Esq who also informed the Court that he was not cross examining the plaintiff's witness. The Court discharged PW1 and the case adjourned for defence. On that date, C.O. Okaro Esq appeared for the 6th defendant

holding the brief of A.H. Falaki Esq. Learned counsel moved the motion M/4050/18 dated 19/3/2018 to put in the 6th defendant's Statement of Defence out of time and this was granted by the Court. The 1st – 5th defendants who did not file any process and absent from Court with no explanation were foreclosed from defence.

The 6th defendant eventually fielded one Oten John who testified as DW1 on the 26/3/2019. His evidence is that the 6th defendant was entrusted by 1st defendant to manage and supervise all green areas/open space parks in the FCT and in that capacity granted temporary lease to the 3rd – 5th defendants for use as green area. Upon the creation of the Department of Parks and Recreation, the control and management of parks was detached from the 6th defendant. That all dealings, management and control carried out by the 6th defendant on the subject matter prior to 2004 was done under the acceptable and approved procedure.

Under cross examination by plaintiffs, DW1 testified that though the action of the 6th defendant was based on the mandate of the Minister, he did not have the mandate, neither did he have the application of the 3rd – 5th defendants for lease and approval of the Minister in Court. The witness could not state whether the 3rd – 5th defendants were registered with CAC. The witness testified that the lease of the 3rd – 5th defendants has been revoked, but he was not aware if they reapplied.

It is noted however that DW1 failed to present himself to be cross examined by 1st – 5th defendants. Therefore this Court will have recourse to the evidence of DW1 as it affects the plaintiff's who had the opportunity of cross examining the witness.

At the close of evidence, only the plaintiff's and 6th defendant filed written addresses out of time. 6th

defendant's written address dated 12/11/2019 was filed by Emmanuel Yatsegha T. Esq and adopted by C.O. Okaro (Mrs) on the 29/9/2020. The 6th defendant raised two issues for determination as follows:

- "1. Whether the 6th defendant acted within its mandate by leasing out the plot/area in dispute to the 3rd, 4th and 5th defendants.*
- 2. Whether the 6th defendant is in contravention of any extant law/regulation when it granted the area in dispute as a lease to the 3rd, 4th and 5th defendants for use as Green Area."*

Counsel submitted that the 6th defendant being a creation of law, pursuant to Section 6 of the Abuja Environmental Protection Board (AEPB) Act, is empowered to do such things that are necessary or expedient for the purpose of enhancing a healthy environment within the

FCT, and the 1st defendant authorized the 6th defendant to manage and regulate Green Areas in the FCT. Learned counsel conceded that the 6th defendant has no mandate to allocate land in the FCT, but could only grant lease for the management of green areas to individuals and corporate bodies. However, in 2004 a department was created called Parks and Recreation saddled with the responsibility of allocation, and maintaining the entire management of green areas in the FCT. That the creation of that department relieved the 6th defendant of those duties, therefore the 6th defendant has always acted within its mandate. He urged the Court to dismiss the case of the plaintiff against the 6th defendant.

Learned counsel for the plaintiff **O.J. Aboje Esq** canvassed two issues for determination in the written address adopted by **T.A. Osaji Esq**. The issues are:

- “1. Whether having regard to the pleadings, document tendered and evidence led at the hearing of the suit, the plaintiffs have proved the grant of the statutory right of occupancy in and therefore entitled to possession of the plot located, situate and known as Plot 618A, Cadastral Zone A07, Wuse 2, Abuja, along Lingu Crescent, now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160m².*
- 2. Whether the lease of the disputed plot by the 6th defendant to the 3rd and 5th defendants can be of any worth in the face of the statutory right of occupancy granted to the 2nd plaintiff by the 1st defendant in respect of the same plot.”*

Learned counsel made reference to the case of Ewo vs. Ani (2004) 3 NWLR (part 861) 611 at 627 where the apex Court listed out five ways upon which title to land may be proved and submitted that the plaintiff has relied on

production of document of title. He added that the only way a person can validly establish a grant of an interest in land is to prove or trace same to an application and/or grant made by the Minister of FCT (1st defendant) pursuant to Section 18 of the FCT Act. That without the allocation of grant from the FCT Minister, there is no way any person can acquire land in the FCT. Learned counsel stated that the plaintiff relied on documentary evidence which was not impugned by cross examination, thus they are deemed admitted. Reference was made to Madu vs. Madu (2008) 6 NWLR (part 1083) 296 at 324 - 325, Omotayo vs. C.S.A (2010) 16 NWLR (part 1218) 1 at 31, WAEC vs. Oshionebo (2006) 12 NWLR (part 994) 258 at 276, Gankon vs. Ugochukwu Chem. Ind. Ltd (1993) 6 NWLR (part 297) 55 at 62.

Learned counsel further submitted that the grant of a statutory right of occupancy by the Governor extinguishes

all rights existing on the land and no business name has the requisite capacity to own land. Reference was further made to Nigerian Engineering Works Ltd vs. Denap Ltd (2001) 18 NWLR (part 746) 756 at 757, Olagunju vs. Adesoye (2009) 9 NWLR (part 1146) 225 at 265 - 266, FCDA vs. Unique Future Leaders Int'l Ltd (2014) 17 NWLR (part 1436) 213 at 244. He urged the Court to enter judgment for the plaintiff's.

I have considered the evidence of the plaintiffs, the 6th defendant and the written submissions of learned counsel. The only issue that has arisen for determination is:

“Whether the plaintiffs have proved their case on the preponderance of evidence to be entitled to the reliefs sought.”

It is settled law that in an action for declaration of title to land the onus is on the plaintiff to satisfy the Court that he is entitled on the evidence brought by him to a

declaration of title. In the discharge of this onus, the plaintiff must rely on the strength of his own case and not on the weakness of the defendants case. See Madubuwonwu & ors vs. Nnawe & ors (1999) LPELR - 1809 (SC), Chukwueke vs. Nwankwo & ors (1985) LPELR - 858(SC).

In Fabunmi vs. Agbe (1985) LPELR - 1221 (SC), the Court per Obaseki JSC at page 38 held that:-

“A claim for declaration of title is not established by admission as the plaintiff must satisfy the Court by credible evidence that he is entitled to the declaration. The Court does not grant declaration on admission of parties. It has to be satisfied that the plaintiff owns the title claimed.”

Thus the Courts will not readily without good and sufficient evidence exercise its discretion to grant a declaratory order. That is why declaratory reliefs cannot be granted without oral evidence even where the defendant

expressly admits liability in the pleadings. See Nzurike vs. Obioha (2011) LPELR – CA/PH/101/2003, Vincent Bello vs. Magnus Eweka (1981) 1 SC 101 at 182.

The law is thus established that to obtain a declaratory relief as to a right, there has to be credible evidence which supports an agreement as to the entitlement to such a right. The right will not be conferred simply upon the state of the pleadings or by admission therein. The point from the above circumstance is simply that declarations are not made because of the stance or position of parties in their pleadings but on proof by credible and convincing evidence at the hearing.

Apart from the above, it is now well established principle of law that a party claiming declaration of title to a statutory or customary Right of Occupancy to land does not need to plead more than one of the prescribed methods of

proof of title to land to succeed. The five ways which have received judicial blessings are:-

- (1) By traditional evidence,
- (2) By Production of document of title duly authenticated and executed,
- (3) By acts of ownership extended over a sufficient length of time numerous and positive enough as to warrant the inference of true ownership,
- (4) By acts of long possession and enjoyments, and,
- (5) Proof of possession of connected or adjacent land in instances rendering it probable that the owner of such connected or adjacent land would, in addition be the owner of the land in dispute.

See Yusuf vs. Adegoke & anor (2007) 4 SC (part 1) page 126 at 137, Idundun vs. Okumagba (1976) 9 - 10 SC page 227, Ogunnaike vs. Oluyemi (1987) 3 SC 215, Oyadare vs.

Keji & anor (2005) LPELR – 2861 (SC), Dabo vs. Abdullahi (2005) 2 SC (part 1) page 75 at 91.

The plaintiffs through PW1 tendered Exhibit A, Offer of Terms of Grant to the 2nd plaintiff being plot No. 618A having approximately 3,160.29m² square meters in Cadastral Zone A07 Wuse II District. It was the testimony of the plaintiff that the offer was duly accepted by filling and signing the acceptance form via Exhibit A5. PW1 further testified that the plaintiff participated in the recertification exercise and acknowledgment was given via Exhibit A2. The coordinates of the plot were listed vide Exhibit A3.. There is no doubt that the above Exhibits are all cogent and credible evidence in proof of the title of the plaintiffs to plot No. 618A.

Generally speaking, it is long settled that in the Federal Capital Territory, only the Minister as delegated by the President of the Federal Republic of Nigeria Pursuant to

Section 18 of the FCT Act, is the sole authority to grant title to land and no other. See Madu vs. Madu (2008) LPELR – 1806 (SC) Per Aderemi JSC where the Court held thus,

“By virtue of Section 18 of the Federal Capital Territory Act Cap 503 LFN 1990, the power to grant Statutory Right of Occupancy over land situate in the Federal Capital Territory to any person is vested in the Minister for the FCT through whom the Federal Government operates in that respect.”

Having allocated the Right of Occupancy to the plaintiff, his vested right to the occupation of the land can only be extinguished under the powers conferred upon the Minister under Section 28 of the Land Use Act. In essence the Minister can only act within the purview of the Land Use Act particularly in regard to divesting an individual of his right over the land. The Right of Occupancy granted is

irrevocable except under the instances specified in Section 28 of the Land Use Act. The stated instances are:-

- a) For overriding public interest.
- b) For public purpose.
- c) For breach of the provisions imposed by Section 10 of the Land Use Act.
- d) For breach of any term envisaged by Section 28 of the Act; and
- e) For failure to comply with the requirement specified in Section 9(3) of the Act.

See B.M.N.L vs. Ola Ilemobola Ltd (2007) 5 SC page 84

It is noted that none of the instances stated above have arise in this situation. Now, I am mindful that the plaintiff's claim declaration of title to the land in dispute. By this, the law places the onerous burden on a plaintiff to succeed on the strength of his case and not on the weakness of the defence. See Awoonuti vs. Salami (1978) 3 SC page 105 at

110, Sunmonu vs. Sapo (2001) LPELR – 9954 (CA), Tallen & ors vs. Jang & ors (2011) LPELR–9231(CA), Alibe vs. Yaro (2001) LPELR – 7022 (CA), Odum vs. Uganden (2009) 9 NWLR (part 1146) page 281. The exception is however that where a defendant based his case on facts which support the claimants case, the latter can use those facts which support his case to establish his own case.

The evidence given by the plaintiffs through PW1 remained unchallenged and uncontroverted by the defendants. Where there is an averment in a pleading on a relevant issue and evidence led on it and it is unchallenged by the adverse party, both the averment and the evidence led on it are deemed to be admitted. See Lawal vs. P.G.P (Nig) Ltd (2001) 17 NWLR (part 742) page 393 at 404 – 405.

The offer of Statutory Right of Occupancy issued to the plaintiffs from the evidence was clearly not made in error and the plaintiffs did not obtain the offer by fraud. The 6th

defendant only alluded to the lease granted to the 3rd – 5th defendants, while the 1st defendant who is the grantor failed to challenge the title documents presented by the plaintiff or controvert the evidence given by PW1. The totality of the evidence adduced indicates that the plaintiff's holding in Plot No. 618A, Cadastral Zone A07, Wuse 2, Abuja now known as plot No. 788 Cadastral Zone A07 Wuse 2 Abuja, measuring 3,160.29m² bounded by the beacons and coordinates on record, is subsisting, extant, operative and not revoked. The said title of the plaintiff's rank higher in legal significance and takes priority.

Furthermore, it is a principle of law that you cannot give what you do not have as expressed in the maxim "*Nemo dat quod non habet*". See Ononuju & anor vs. Att. Gen. Anambra State & ors (2009) LPELR – SC 29/2000. The Court of Appeal in the case of Abdullahi vs. Bani (2014) LPELR – 22833 (CA) relying on the Supreme Court case of

Ilona vs. Idakwo (2003) 11 NWLR (part 830) page 53 Edozie

JSC, had this to say:

“Where there is a subsisting right of occupancy, it is good against any other right. The grant of another right of occupancy over same piece of land will therefore be merely illusory and invalid.”

The grant of the statutory right of occupancy is good against any interest given to the 3rd – 5th defendants by the 6th defendants. Therefore the 6th defendant has no legal authority to allocate land to the 3rd – 5th defendants. Moreso, Section 18 of the FCT Act vest allocation of land solely on the Minister of the FCT and not any agency, department or unit of the Federal Capital Territory Administration (FCTA). Exhibit A4 is the memo written by one Engr. Y.S. Mohammed, Director Abuja Environmental Protection Board (AEPB) to one D(LAR) on the 22/08/2003. It was stated in the memo that the space was leased out to

the 3rd – 5th defendants as a Green Area. The Lease Agreement is not before the Court. In any event, the Lease Agreement if it still exists not being a Statutory Right of Occupancy lapses and becomes extinguished on the grant of Statutory Right of Occupancy in the same plot to the plaintiff.

The plaintiff also prayed for immediate vacant possession of the plot from the 3rd – 5th defendants. The law is that where two persons claim to be in possession or to be owners of land at the same time, the law ascribes possession to one with better title. This is because there cannot be such thing as concurrent possession by two persons. See Echanomi vs. Okotie & 2 ors (2011) LPELR – 4969 (CA).

Having shown better title to the plot in question, the plaintiff is entitled to enjoy vacant possession of the plot. This relief is thus granted.

There is also the relief for perpetual injunction restraining the 3rd – 5th defendants whether by themselves, agents, assigns, attorneys, hired hands or however known from trespassing in any way with the subject matter of this suit. For an order of perpetual injunction to be granted, the plaintiff has to establish by credible evidence that he has a right to be protected by the grant of an injunction. The grant of the relief of perpetual injunction is a consequential order which naturally flows from the declaratory order sought and granted by the Court. The essence of granting perpetual injunction on a final determination of the rights of the parties is to prevent permanently the infringement of those rights and obviate the necessity of bringing multiplicity of suits in respect of every repeated infringement. See Hon. Minister FCT vs. Fayode & anor (2015) LPELR – 41674 (CA), Goldmark Nig. Ltd & ors vs. Ibafo Co. Ltd & ors (2012) LPELR – 9349 (SC).

This Court has already granted declaratory reliefs in favour of the plaintiff and found that the interest of the 3rd – 5th defendants on the plot is extinguished. Therefore it is only commonsensical and in the interest of justice to grant this relief. It is granted as prayed.

The plaintiff's also prayed for an order directing the 1st and 2nd defendants to approve the building design of the plaintiff. This Court cannot delve into the administrative dealings of the 1st and 2nd defendants. This Court can only admonish the 1st and 2nd defendants to act within the confines of the law, and approve the building designs when resubmitted, upon the plaintiffs complying with due process and conforming with lawful specifications.

Having declared that the plaintiffs allocation is extant and subsisting, the 1st and 2nd defendants their agents i.e. Abuja Geographic Information System (AGIS), Abuja Metropolitan Management Agency (AMMA), servants,

employees, howsoever known shall accord the plaintiffs all land rights known to law. This shall be subject to the plaintiff's meeting the requirements of the law.

As for damages of N100 Million against the 3rd – 5th defendants for trespass, in matters of trespass to land, the principles governing award of damages are trite. A Court cannot award damages for trespass as way of compensating the claimant, outside the nominal damages awarded in recognition of the claimant's proprietary interest over the land in dispute, unless it is claimed as damages and properly pleaded and proved. See Madubonwu vs. Nnalue (1992) 8 NWLR (part 260) 440, Haruna & anor vs. Isah & anor (2015) LPELR – 25894 (CA).

In Barr. Magaji Henry Danjuma vs. S.C.C. Nig. Ltd & ors (2016) LPELR – 41553 (CA) the Court held thus:

“It is the law and our Courts have held time without number that trespass to land is unlawful

*interference with exclusive possession of another.
It is the slightest disturbance to the possession of
land by a person who cannot prove a better right of
possession.”*

If a defendant placed a part of his foot on the plaintiff's land unlawfully, it is in law as much trespass as if he had walked half a mile on it. See Osuji vs. Isiocha (1989) 3 NWLR (part 111) 623. The law is that every unlawful or unauthorized entry into land in the possession of another is trespass for which an action in damages lies even if no actual damage is done to the land or any fixture thereon. See Hunsonnu vs. Denapo (2007) LPELR - 8701(CA).

The underlying word is 'unlawful or unauthorized entry'. The plaintiff in the instant case must prove that he is in actual possession. This is because the person who brings an action for trespass is one whose possession is disturbed. See Olubodun vs. Lawal (2008) 6 - 7 SC (part 1) page 1.

The testimony before the Court is that the plot was allocated in 2003. Despite submitting the building designs for approval, it was not until 2007 that plaintiff was informed of a memo in the title file stating that the plot has been leased by the 6th defendant to 3rd – 5th defendants. The plaintiffs did not visit the plot until 2012 when they tried to contact the occupants of the plot.

It is the duty of the plaintiff to prove conclusively that, before the alleged trespass, he was in exclusive possession. Where he fails to discharge this onus of proof, he has failed to establish his claim and therefore it must be dismissed. See Hassan vs. Vixen Ent. (Nig) Ltd & anor (2015) LPELR – 40357 (CA), Egharevba vs. Osagie (2009) LPELR – 1044 (SC), Noibi vs. Fikolati (1987) LPELR – 2064 (SC).

Exhibit A4 referred to the lease entered with the 3rd – 5th defendants on the 18/11/2002. The 3rd – 5th defendants were not aware of the grant made to the plaintiff.

From the evidence before the Court, the 3rd – 5th defendants were in possession before the offer of Statutory Right of Occupancy was granted to the plaintiff's on the 19/6/2003. Trespass is a wrong to possession. It is my view that the 3rd – 5th defendants cannot be held liable for trespass and therefore cannot be liable in damages.

For N20 Million damages against the 6th defendant for acting ultra vires its powers and continuing to accord to the 3rd – 5th defendants land rights. As hitherto noted, as at the time the 6th defendant entered into a lease with the 3rd to 5th defendants, there was no statutory grant to the plaintiffs. Again, the 1st defendant who is vested with the power and authority over all lands in the FCT was duly aware of the actions of the 6th defendant. The plaintiffs' witness stated that it was at the point when the 1st and 2nd defendants refused to approve the building design that they sought audience with the 1st defendant and it was

discovered from the title file that the plot had been leased out to the 3rd – 5th defendants.

I hold therefore that the 1st and 2nd defendants were duly aware of the lease and therefore it will be wrong to believe that the 6th defendant acted ultra vires its powers. There is no evidence before the Court showing that the 6th defendant gave any land rights to the 3rd – 5th defendants after they became aware of the statutory holding of the plaintiffs. This relief is thus refused.

In the circumstance, judgment is entered for the plaintiff's in the following terms:

- It is hereby declared that the plaintiffs statutory holding in Plot 618A now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² is subsisting, extant, operative and not revoked.

- It is also declared that the offer granted to the plaintiffs over Plot 618A now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² ranks higher in legal significance to the lease agreement made/entered between the 3rd – 5th defendants with the 6th defendant, and as such takes or have priority.

- It is declared that the 6th defendant whether by itself, its agents and assigns, Directors or howsoever called is/are without any legal authority to allocate land to the 3rd – 5th defendants or anybody else in the FCT or enter into any lease agreement over land.

- It is further declared that the 3rd – 5th defendants interest/holding by way of a Lease Agreement in Plot 618A now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² on ground not

being a Statutory Right of Occupancy or one granted by the 1st defendant is void and has no legal significance or force. The Agreement becomes extinguished on the grant of the statutory holding in the same plot to the plaintiff's by the 1st defendant.

- The 3rd, 4th, and 5th defendants whether by themselves, their agents, assigns, attorneys or hired hands shall deliver immediate vacant possession of Plot 618A now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m² to the plaintiffs.
- The 3rd – 5th defendants whether by themselves, their agents, assigns, attorneys, hired hands or howsoever known are restrained by an order of perpetual injunction from trespassing on Plot 618A now known as Plot 788, Cadastral Zone A07, Wuse 2, Abuja measuring 3.160.29m².

- The 1st and 2nd defendants together with their agents and agencies shall approve the plaintiffs building design to be re-submitted for private park, garden, open space, and green area consistent with the use of the statutory grant upon conforming with the law.
- All land rights known to law shall be accorded to the plaintiff's upon satisfaction of the administrative and legal requirements.
- No order is made as to cost.

Hon. Justice M.A. Nasir

Appearances:

O.J. Aboje Esq – for the plaintiffs

A.H. Falaki Esq – for the 6th defendant

1st – 5th defendant absent and not represented