

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 12

DATE: 9/10/2020

BETWEEN: -

FCT/HC/CV/828/2016

**1. ALHAJI NUHU GADO
2. DOMNIC GABRIEL**]

PLAINTIFFS

AND

**1. MICHAEL ONIFADE
2. MR. EMMANUEL TSAMDU**]

DEFENDANTS

JUDGMENT

The instant suit is one consolidated for hearing with suit No. FCT/HC/CV/829/2016 between **MALLAM IBRAHIM MOHAMMED & ANOR V. MICHAEL ONIFADE & ANOR.**

The Plaintiffs in the instant suit originally commenced this action vide Writ of Summons and Statement of Claim filed on 1st February, 2016 against the 1st Defendant. Pursuant to an application brought by him, the 2nd Defendant was subsequently joined as a party to the Plaintiffs' suit by order of Court made on 4th December, 2017. The Plaintiffs thus amended its writ of summons for the record to reflect the joinder. The reliefs sought by the Plaintiffs through their Amended Writ of Summons are reproduced hereunder:-

1. A Declaration that the 1st Plaintiff is the allottee and owner of Plot 488 measuring about 960m² situate at

- Karu Extension II Layout, Abuja by virtue of the Statutory Right of Occupancy and grant dated 7th December, 2001.
2. A Declaration that the 2nd Plaintiff is the Lawful Attorney of the 1st Plaintiff in respect of Plot 488 measuring about 960m² situate at Karu Extension II Layout, Abuja.
 3. A Declaration that the Defendants trespassed on Plot 488 measuring about 960m² situate at Karu Extension II Layout, Abuja.
 4. An Order of perpetual injunction restraining the Defendants and their agents, privies and assigns from further trespassing the said Plot 488 measuring about 960m² situate at Karu Extension II Layout, Abuja.
 5. General damages of N10,000,000.00 (Ten Million Naira).

The 1st Defendant entered appearance and filed his statement of defence to which the Plaintiffs filed a Reply pleading. The 2nd Defendant did not file any competent statement of defence in accordance with the Rules of this Court as ordered by the Honourable Court on the 28th June, 2018. The 2nd Defendant did not also testify or call evidence in this suit.

As a result of consolidation, both the instant suit and suit No. FCT/HC/CV/829/2016 went through a single trial with the 2nd Plaintiff testifying as PW1 in support of the Plaintiffs' case. In his own defence, the 1st Defendant testified as DW1. Both witnesses were cross-examined while the following documents were tendered by the Plaintiffs and admitted in evidence and marked as follows:-

1. Exhibit 1:- Offer of Terms of Grant/Conveyance of Approval dated 7th December, 2001.
2. Exhibit 1A:- Development Levy Receipt.
3. Exhibit 1B:- Departmental Receipt.
4. Exhibit 2:- Site Plan.
5. Exhibit 3:- Photocopy of letter to the Divisional Police Officer dated 27th January, 2016.
6. Exhibit 4:- Irrevocable Power of Attorney between Alhaji Nuhu Gado and Dominic Gabriel.

7. Exhibit 5:- Letter of Offer of Terms of Grant/Conveyance of Approval dated 7th December,2001.
8. Exhibit 5A:- Photocopy of AGIS Deposit Slip dated 1th August,2006.
9. Exhibit 5B:- Right of Occupancy Rent and Fees.
10. Exhibit 5C:-Regularisation of Land Title Documents Acknowledgment.
11. Exhibit 5D:-Development Levy Receipt.
12. Exhibits 5E& 5F:- Two Departmental Receipts.
13. Exhibit 6:- Site Plan.
14. Exhibit 7:-Irrevocable Power of Attorney between Mallam Ibrahim Mohammed and Med Homes Limited.
15. Exhibit 8:- Copy of letter to the Divisional Police Officer, Karu, FCT.
16. Exhibit 9:- Letter dated 13th May,2012 addressed 'To whom it may concern' by Med Homes Limited.

At the close of evidence, final written address was ordered. The 1stDefendant's Counsel was absent from Courton the date the matter came up for adoption of addresses and so did not personally adopt his Written Address dated 20thJanuary,2019 and filed on 5th February,2019. His said written address was thus deemed adopted by this Court in accordance with **Order 33 Rule 4** of the extant Civil Procedure Rules of this Court.

Counsel to the Plaintiffs adopted his final written address dated 7th December,2018 and filed on 10th December,2018. The 2ndDefendant did not file an address.

In the determination of the instant suit, the issue formulated by the 1stDefendant's Counsel in his address is as follows:-

"Whether the Plaintiffs have proved their case on preponderance of evidence to be entitled to the reliefs claimed in its writ of summons."

The Plaintiffs' Counsel on the other hand formulated the sole issue for determination to be thus:-

"Whether the Plaintiffs have proved their claim to be entitled to judgment in the in their having regard to the pleadings and the evidence in support thereof."

Both parties' issues are practically the same. I shall adopt the issue as formulated by the 1st Defendant's Counsel as my own. The issues therefore is:-

"Whether the Plaintiffs have proved their case on preponderance of evidence to be entitled to the reliefs claimed in their writ of summons."

The Plaintiffs' case is presented by their pleadings and the evidence of the 2nd Plaintiff (PW1). In giving evidence at trial, the 2nd Plaintiff adopted his witness statements on oath deposed to on 1st February, 2016 and 8th February, 2017 filed in the instant Suit No. CV/828/2016 as his oral testimony in support of the Plaintiffs' case. It is the Plaintiffs' case that the 1st Plaintiff is the beneficial allottee of Plot No. 488, Karu Extension II (Relocation) Layout, Abuja measuring about 900m² (subject matter of the instant Suit No. 828/16). Exhibit 1 admitted in evidence at trial is the letter of Offer of Grant dated 7th December, 2001. It is the Plaintiffs' case that the 1st Plaintiff appointed the 2nd Plaintiff as his lawful attorney in respect of the Subject Matter. The Irrevocable Power of Attorney between the 1st and 2nd Plaintiffs was admitted in proof thereof as Exhibit 4. The 2nd Plaintiff testified that the 1st Plaintiff recertified his title documents and was issued with an acknowledgment. It is the 2nd Plaintiff's testimony that he fenced the Subject Matter in 2012 and put one David and John thereon for the purpose of farming on the land. That he (2nd Plaintiff) has since been in peaceful and quiet possession of the Subject Matter as the 1st Plaintiff's attorney and no one (including the Defendant) has ever challenged him. That the Defendant however demolished part of his fence, commenced construction work and has been

building on the Subject Matter since 26th January,2016. It is the Plaintiffs' case that the Defendant unlawfully encroached and trespassed on their land.

The 2nd Plaintiff further testified that the Defendant entered into the Subject Matter, deployed workers and started to excavate to erect his building and, in the process, destroyed the Plaintiffs' fence and all economic trees planted thereon. That the said Subject Matter is also known as Karu Village Extension II, (Relocation) Layout demarcated by beacon No. PB486, PB479, PB480, PB481 and PB482. Exhibit 4 was admitted in evidence as the Site Plan.It is the 2nd Plaintiff's testimony that he wrote a petition against the Defendant to the Divisional Police Officer, Karu Site Divisional Headquarters and copied the Commissioner of Police FCT Command via letter dated 27th January,2016. A copy of the said petition was admitted in evidence as Exhibit 3. That pursuant to the petition, the Police intervened by inviting the Defendant and the 2nd Plaintiff to the Karu Site Divisional Police Headquarters whereat the Defendant was ordered to stop excavation by the Police. That before he was stopped by the Police, the Defendant had already destroyed the 2nd Plaintiff's fence and all the economic trees he planted on Plot 488 (Subject Matter of this suit). The 2nd Plaintiff testified that he suffered emotional, psychological and economic pain from the Defendant's action and thereafter proceeded to this Court to seek redress.

The 1stDefendant denied demolishing the Plaintiffs' fence or commencing construction work on the Subject Matter of this case. He denied encroaching or trespassing on same. In testifying in his own defence, the 1stDefendant adopted his written witness statement on oath deposed to by him in this case on 31st March,2016 as his oral testimony. It is the 1stDefendant's testimony that he never demolished any fence on the Subject Matter of this suit nor has he ever encroached or trespassed on same. He testified that he neither applied for a plot of land nor was he granted any in the area in which the Subject Matter is located. He did not acquire any such land and

is claiming no such land as the Subject Matter of this suit. He testified that he was thus dismayed that the instant suit was commenced against him in respect of the Subject Matter as he never owned any such land in the area.

In his final address, the 1st Defendant's Counsel submitted that the Plaintiffs have failed to prove their case on the preponderance of evidence as to be entitled to the reliefs sought by them. He posited that PW1 (the 2nd Plaintiff) is not the original allottee of Plot 488 (the Subject Matter) and failed to establish that it was actually the 1st Defendant that was working on the land and demolished the fence. Counsel argued that no testimony linked the 1st Defendant with the Subject Matter. He said the Plaintiffs did not establish title to the Subject Matter as documents tendered merely showed transaction between the original allottee and the Plaintiffs. Counsel further referred this Court to DW1's (1st Defendant's) evidence under cross-examination. Counsel to the 1st Defendant finally urged this Court to resolve the sole issue in his favour and dismiss the Plaintiffs' claim with substantial cost.

Conversely, the Plaintiffs' Counsel submitted in his final address that the onus in a claim for declaration of title is on the party seeking the declaration and the evidential burden is discharged by satisfying any of the five ways of proving title. He relied on the case of **IDUNDUN & ORS V. OKUMAGBA (1976) 9 & 10 SC 277**. He posited that the Plaintiffs in this case relied on title documents in proof of their claim for declaration of title. He referred this Court to Exhibits 1A, 1B, 2, 3, 4 and particularly Exhibit 1 which is an offer of terms of grant/conveyance of approval letter signed on behalf of the Honourable Minister. Counsel said none of the exhibits tendered were objected to, challenged or discredited. It is his contention that the exhibits show that the Plaintiffs were issued right of occupancy over the Subject Matter which gives them sole right of ownership. He argued that by their conduct, the Defendants do not have a claim superior to that of the Plaintiffs over the Subject Matter. He submitted that the Plaintiffs have discharged the evidential

burden placed on them by law to warrant the declaration of the Subject Matter in their favour by this Court. He relied on Sections 131(1), 132, 133(1) and 134 of the Evidence Act 2011(as amended).He further submitted that the Power of Attorney (admitted in evidence) executed in favour of the 2nd Plaintiff, which is also coupled with valuable consideration, empowers the Court to make a declaration that the 2nd Plaintiff is the lawful attorney of the 1st Plaintiff in respect of the Subject Matter. He urged this Court to make the aforementioned declaration and referred this Court to a Deed of Assignment and Power of Attorney dated 16th February,2012.

Counsel to the Plaintiffs further argued in his address that the 1stDefendant's evidence that he did not enter the Plaintiff's plot Subject Matter of this suit is an afterthought. Counsel contended that a letter of complaint was written by the Plaintiffs' solicitor based on which the 1stDefendant was invited and ordered to stop work by the police. He urged this Court to hold that the Defendants unlawfully trespassed into the Plaintiffs' plot Subject Matter of this case and destroyed the fence and all economic trees planted thereon. He relied on the case of **CHIEF SUNDAY ORIORIO & 14 ORS V. CHIEF JOSEPH OSAIN & 2 ORS (2012) 16 NWLR (PT. 1327) P. 560** on the definition of trespass. He submitted that once this Court finds as such, this Court will naturally grant injunction and damages. He posited that the Plaintiffs are entitled to the award of N10 Million. Counsel finally urged this Court to enter judgment in favour of the Plaintiffs.

The foregoing represents the evidence of parties and the arguments of their Counsel on record. In the resolution of the issue in the instant case, it is very important to note that by the first relief of their amended writ of summons and statement of claim in this case, the Plaintiffsseek declaration of title to land (Subject Matter of this suit).

On onus of proof on a party seeking declaration of title to land, it is trite law that such a party must succeed on the strength of

his own case rather than rely on the weakness of the defence. – see the cases of **HENSHAW V. EFFANGA (2009) 11 NWLR (PT.1151) P. 65**, **UKAEGBU V. NWOLOLO (2009) 3 NWLR (PT. 1127) P. 194** and **EDEBIRI V. DANIEL (2009) 8 NWLR (PT. 1142) P. 15 at P. 34 paragraph B**. In **DIM V. ENEMUO (2009) 10 NWLR (PT. 1149) P. 353** the Supreme Court held that *until the onus is successfully discharged by the plaintiff, the Court is not obliged to look at the Defendant's case*. Further to the above, the position is that a party seeking for a declaration of title to land bears the onerous duty in law to adduce credible and admissible evidence in establishment of such title. See **MADAM LANTOUN OJEBODE & ORS V. AKEEM AKANO & ORS (2012) LPELR-9585(CA)**.

The position of the law is that a plaintiff seeking declaration of title to land must prove title to that land claimed in one of the following ways in order to succeed:-

- (1) by traditional evidence;
- (2) by the production of documents of title duly authenticated;
- (3) by acts of persons claiming land such as leasing, entering etc. which acts must extend over a sufficient period of time;
- (4) by acts of long possession and enjoyment of land
- (5) by proof of possession of connected or adjacent land.

See the cases of **IDUNDUN V. OKUMAGBA (1976) 1 NWLR (PT.200) P. 210**; **EDEBIRI V. DANIEL (supra)** and **NWOKOROBIA V. NWOGU (2009) 10 NWLR (PT.1150) P. 553**.

Successful proof by way of only one of the 5 methods would be sufficient to discharge the burden on the claimant for declaration of title. – see the case of **OLAGUNJU V. ADESOYE (2009) 9 NWLR (PT.1146) P. 225**.

The Plaintiffs in this case tendered documents in proof of their allegation of title to the Subject Matter. They particularly relied on Exhibit 1 (along with Exhibits 1A, 1B, 2, 3 and 4).

However, in the case of **MADU V. MADU (2008) 6 NWLR (PT.1083) P. 296**, the Supreme Court restated its position in **LAWSON V. AJIBULU (1997) 6 NWLR (PT.507) P. 14** that in a claim for declaration of title to land, the production of documents of title alone is not sufficient to discharge the onus on the plaintiff to prove the title he claims.

It is trite position of law that the mere production of title documents in a case such as this does not **ipso facto** entitle a party to declaration of title. The Court has a duty to look at the title documents of parties in order to ascertain the validity and effect of same before granting declaration of title. This Honourable Court is therefore entitled, in fact has a duty, to consider the validity and effect of the documents of title which the Plaintiffs tendered and relied on for its allegation of title in the Subject Matter. In the case of **ROMAINE V. ROMAINE (1992) 4 NWLR (PT 238) P. 600** where the Supreme Court per Nnaemeka-Agu, J.S.C. (delivering the lead judgment) held thus:-

*"I may pause here to observe that one of the recognised ways of proving title to land is by production of a valid instrument of grant: see **Idundun v. OKUMAGBA** (1976) 9-10 S.C.246; **PIARO V. TENALO** (1976) 12 S.C. 31, P37; **NWADIKE V. IBEKWE** (1987) 4 N.W.L.R. (part 67) 718. But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance upon such an instrument inevitably carries with it the need for the Court to inquire into some or all of a number of questions, including:-*

- (i) whether the document is genuine and valid;*
- (ii) whether it has been duly executed, stamped and registered;*
- (iii) whether the grantor had the authority and capacity to make the grant;*

- (iv) *whether the grantor had in fact what he purported to grant; and*
- (v) *whether it has the effect claimed by the holder of the instrument."*

See also the cases of **AKINDURO V. ALAYA (2007) 15 NWLR (PT. 1057) P. 312** and **W.A.C. LTD. V. YANKARA (2008) 4 NWLR (PT. 1077) P. 323**.

Exhibit 1 is an original copy of Offer of Terms of Grant/Conveyance of Approval dated 7th December, 2001 issued in favour of Alh. NuhuGadoin respect of Plot No. 488 (of about 960 Sqm) in Karu Extension II, Layout (Subject Matter of this case). I have looked carefully at Exhibit 1 before me. It emanated from the Ministry of the Federal Capital Territory and is signed on behalf of the Honourable Minister of the Federal Capital Territory by one W.A.M. Shittu-Titilola, Zonal Manager. For all intent and purpose, Exhibit 1 conveys the grant of a Statutory Right of Occupancy in the Subject Matter to the 1st Plaintiff by the Minister of the FCT.

I think it is a fairly settled and a notorious fact that it is the Minister of the FCT that can validly grant statutory right of occupancy in respect of land in the FCT. – see the case of **ERIBENNE V. UG & ANOR (2007) LPELR-4172(CA). And MADU V MADU (supra)** By virtue of **Section 45 of the Land Use Act**, the Minister of the FCT can delegate his power to grant right of occupancy and issue certificate of occupancy.

The Defendants in this case did not adduce any evidence whatsoever to challenge or discredit Exhibit 1 (or any of the documents admitted in evidence at trial through the Plaintiffs for that matter). In the absence of anything to the contrary, there is presumption that Exhibit 1 was properly issued by the Minister of the FCT (albeit on his behalf). The effect of Exhibit 1 is that the 1st Plaintiff has a Statutory Right of Occupancy in the Subject Matter. It follows that Exhibit 1 firmly supports the Plaintiff's allegation of title (in favour of the 1st Plaintiff) in the Subject Matter of this case.

The only Defendant who filed a competent statement of defence in this case and adduced evidence before this Court is the 1st Defendant. From an assessment of the 1st Defendant's defence and evidence however, he is on record that he is not laying any claim whatsoever to the Subject Matter. No contrary superior title has thus been established to defeat the title shown by the 1st Plaintiff in the Subject Matter. Consequently, the 1st Plaintiff's title to the Subject Matter stands unchallenged in this case. The Plaintiffs have therefore succeeded in establishing the 1st Plaintiff's title to the Subject Matter as to be entitled to the declaration of title sought vide the first relief of the Amended Writ of Summons in this case. Accordingly, relief 1 of the statement of claim of the Plaintiffs is hereby granted.

The second relief of the Amended Writ of Summons is for a declaration that the 2nd Plaintiff is the lawful attorney of the 1st Plaintiff in respect of Plot 488 (Subject Matter of this case).

Now, the 2nd Plaintiff's oral testimony before this Court is that he was appointed by the 1st Plaintiff as his lawful attorney in respect of the Subject Matter. The Defendants did not discredit this part of the Plaintiffs' testimony in any way under cross-examination. Neither did they adduce any contrary evidence to challenge this piece of evidence. The Plaintiffs further tendered Exhibit 4 which is an Irrevocable Power of Attorney made on 18th February, 2008 by which the 1st Plaintiff appointed the 2nd Plaintiff as his lawful attorney to act as stated in Exhibit 4 in respect of the Subject Matter of the instant suit. Exhibit 4, which clearly supports the Plaintiffs' case, was also not challenged or discredited by the Defendants. It is trite that where documentary evidence supports oral testimony, such oral testimony becomes more credible as the documentary evidence serves as a hanger from which to assess oral testimony. – see the cases of **JERRY & ANOR V. IGP & ORS (2014) LPELR-24625(CA)** and **NDAYOKO V. MOHAMMED (2006) 17 NWLR (PT. 1009) P. 655**.

In his address, the Plaintiffs' Counsel referred this Court to a Deed of Assignment dated 16th February, 2012. There is however no such document before this Court. Nevertheless, in view of the unchallenged credible oral and documentary evidence before this Court, I hold the view that the Plaintiffs have been able to successfully establish the fact that the 2nd Plaintiff is the lawful attorney of the 1st Plaintiff in respect of Plot 488, the Subject Matter of the instant suit and I so hold. They are thus entitled to the declaration sought by the second relief of the Amended Writ of Summons and statement of claim and relief 2 is hereby granted.

The third relief which the Plaintiffs seek via their Amended Writ of Summons and statement of claim is a declaration that the Defendants trespassed on the land Subject Matter of this case.

Trespass to land is an unjustified interference or intrusion with exclusive possession of another person over land/property. A person in possession of land or the owner can maintain an action in trespass against anyone who cannot show a better title. See the cases of **TUKURU V. SABI (2013) 10 NWLR (PT. 1363) P. 442** and **EGWA V. EGWA (2007) 1 NWLR (PT. 1014) P. 71**. The law thus places the burden of proof on a claimant to establish exclusive possession of the land in question or right to such possession in order to succeed in the suit. – see the cases of **EKONG ARCHIBONG V. UTIN J. UTIN (2012) LPELR-7907(CA)**, **OFU OSADIM V. CHIEF E. E. TAWO (2009) LPELR-8209(CA)** and **ODUM V. UGANDEN (2009) 9 NWLR (PT. 1146) P. 281**.

I have already found that the 1st Plaintiff is the party with title (Statutory Right of Occupancy) in respect of the Subject Matter of this suit while the 2nd Plaintiff is his lawful attorney in respect of same. The 1st Plaintiff is the owner while the 2nd Plaintiff exercises possession through the 1st Plaintiff.

I have looked carefully at the evidence put forward by the Plaintiffs regarding trespass. It would appear therefrom that the

Plaintiffs' allegation of trespass is directed specifically at the 1st Defendant. Their case is that the 1st Defendant demolished part of their fence, destroyed their economic trees and started construction work on the Subject Matter since 2016. That the Plaintiffs wrote a petition (Exhibit 3) complaining of the 1st Defendant's said actions to the Police who invited him and ordered him to stop work on the Subject Matter.

The 1st Defendant however denied the allegations of trespass and gave oral evidence to the effect that he never encroached, trespassed or even laid any claim on the Subject Matter.

Under cross-examination by the 1st Defendant's Counsel, the 2nd Plaintiff said he knew the 1st Defendant in 2016 when the latter called him and that was when the 1st Defendant demolished part of the fence of the Subject Matter. He said he was however not there when the 1st Defendant destroyed the economic trees. He stated that the 1st Defendant was laying claim to the land at the Police Station when he (2nd Plaintiff) reported the matter to the Police.

Under cross-examination by the Plaintiffs' Counsel, the 1st Defendant admitted meeting the 2nd Plaintiff at the Police Station once. The 1st Defendant remembers being a witness during the transaction of the purchase of the Subject Matter by persons who purchased same. He said he was not arrested by the Police and wouldn't know how his phone number got to be on the Plaintiffs' letter of complaint to the Police. He said he is not the owner of the Subject Matter and was not ordered by the Police to stop work or further develop the land.

I have considered all the evidences before this Court regarding the allegations of trespass. It would appear that there are no details provided by the Plaintiffs regarding when and how the 1st Defendant was supposed to have destroyed the fence and economic trees on the Subject Matter. Nothing before this Court to show the buildings the 1st Defendant is alleged to be constructing on the Subject Matter or why such building should

be attributed to him. Details are very important in such a situation as this where the 1stDefendant has denied such acts and is indeed adamant about it. Anything short of considering details would amount to conjecture and speculation by this Court. Naturally, conjectures and speculation are not the forte of this Court as it acts based on hard facts. – see the case of ***R.E.A.N. PLC V. ANUMNU (2003) 6 NWLR (PT. 815) P. 52.***

Exhibit 3 seems to be the pivot of the Plaintiffs' allegations of trespass against the 1stDefendant. The Plaintiffs' Counsel has made heavy weather of Exhibit 3 in his address. I have looked at Exhibit 3. It is a letter of complaint to the Police naming the 1stDefendant specifically as the culprit behind acts of destruction of fence and all economic trees as well as excavation and building on the Plaintiffs' Plot 488 Subject Matter of the instant suit.

The findings of the Police in respect of the complaint in Exhibit 3 is however not before this Court. Neither is there anything before this Court to show that the Police did order the 1stDefendant to stop work on the Subject Matter. Exhibit 3 is good for establishing that the Plaintiffs made allegations against the 1stDefendant to the Police. What Exhibit 3 is not good for is proof that the 1stDefendant did carry out those alleged acts. The 1stDefendant has admitted being invited by the Police. But does that establish the Plaintiffs' allegations that the 1stDefendant was responsible for the acts complained of? I think not, considering the 1stDefendant has denied responsibility for such actions. On the preponderance of evidence, I cannot comfortably come to the conclusion that the 1stDefendant did carry out such acts complained of by the Plaintiffs on the Subject Matter. The Plaintiffs have thus failed to establish their allegations of trespass against the 1stDefendant on the preponderance of evidence. In the circumstances the action for trespass fails.

The fourth relief of the Amended Writ of Summons and statement of claim is for an order of perpetual injunction.

Now, an order of injunction is granted to protect right of possession. Having proved the 1st Plaintiff's title to the Subject Matter and their entitlement to declaration of title to same, the Plaintiffs are generally entitled to an order of injunction protecting their right to possession of the Subject Matter. – see the cases of **AMORI V. IYANDA (2008) 3 NWLR (PT. 1074) P. 250** and **ABIARA V. REGISTERED TRUSTEES OF THE METHODIST CHURCH OF NIGERIA (2007) 11 NWLR (PT 1045) P. 280**. See also the case of **GOLDMARK (NIG) LTD & ORS V. IBAFON CO LTD & ORS (2012) LPELR-9349(SC)** where the Supreme Court held as follows:-

"The grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by Court."

The Plaintiffs are therefore entitled to the order of perpetual injunction sought via the fourth relief of the Amended Writ of Summons and statement of claim but with slight modification by deleting the word 'further' to wit:-

An Order of perpetual injunction restraining the Defendants and their agents, privies and assigns from trespassing the said Plot 488 measuring about 960m² situate at Karu Extension II Layout, Abuja

The word 'further' in that context implies that the Defendants have already trespassed on the Subject Matter, and that has not been established before this Court. Thus, the fourth relief of the statement of claim is hereby granted.

On the fifth relief claimed by the Plaintiffs the Plaintiffs having failed to prove trespass against the Defendants, the fifth relief of the Amended Writ of Summons and statement of claim for general damages must also fail. The Plaintiffs have failed to show that the Defendants are liable for such damages and the relief is hereby refused and dismissed.

In sum, the issue for determination is resolved partly in favour of the Plaintiffs and against the Defendants. The Plaintiffs' claim succeeds in part.

And that is the judgment of this Honourable Court.

HON. JUSTICE D. Z. SENCHI
(Presiding Judge)
9/10/2020

Parties:-Absent

A.O Ige:-For the Plaintiffs

S.O Yahaya:- For the 1stDefendant

S.T Sanni:-For the 2ndDefendant.

Sign
Judge
9/10/2020