

**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/829/2016

**1. MALLAM IBRAHIM MOHAMMED
2. MED HOMES LIMITED**

PLAINTIFFS

AND

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

DEFENDANTS

JUDGMENT

By the order of this Court made on 1st June, 2017, this suit was consolidated for hearing with **SUIT NO. FCT/HC/CV/828/2016** between **ALHAJI NUHU GADO & ANOR V. MICHAEL ONIFADE & ANOR.**

The suit was originally commenced by the Plaintiffs against the 1st Defendant vide Writ of Summons and Statement of Claim filed on 1st February, 2016. The 2nd Defendant was subsequently joined as a party to this suit by Order of this Court made on 4th December, 2017 pursuant to an application of the 2nd Defendant. The Plaintiffs consequently amended its writ of summons to reflect the joinder. The Plaintiffs in their Amended Writ of Summons, seek the following reliefs against the Defendants:-

1. A Declaration that the 1st Plaintiff is the allottee and owner of Plot 489 measuring about 1000m² 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 489 measuring about 1000m² situate at Karu Extension II Layout, Abuja.
 3. A Declaration that the Defendants trespassed on Plot 489 measuring about 1000m² 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 489 measuring about 1000m² situate at Karu Extension II Layout, Abuja.
 5. General damages of N10, 000,000.00 (Ten Million Naira).

The 1st Defendant filed his statement of defence in this action on 3rd March, 2016 and the Plaintiffs filed a Reply to the statement of defence of the 1st Defendant on 8th February, 2019. The 2nd Defendant did not file any competent statement of defence in accordance with the Rules of Court as ordered on 28th June, 2018 and the 2nd Defendant did not also testify or adduce evidence in this case.

Pursuant to the order of consolidation made by this Court, both the instant suit and suit No. FCT/HC/CV/828/2016 commenced through a single trial with one Dominic Gabriel testifying as PW1 in support of the Plaintiffs' case. In his own defence, the 1st Defendant testified as DW1. The following documents were tendered and admitted in evidence through PW1 on behalf of the Plaintiffs' thus:-

1. Offer of Terms of Grant/Conveyance of Approval dated 7th December, 2001 is exhibit 1;
2. Development Levy Receipt is exhibit 1(A).
3. Departmental Receipt is exhibit 1 (B).
4. The site Plan is exhibit 2;
5. The photocopy of letter to the Divisional Police Officer dated 27th January, 2016 was received in evidence as exhibit 3;

6. Exhibit 4 is the Irrevocable Power of Attorney between AlhajiNuhuGado and Dominic Gabriel.
7. Exhibit 5 is a Letter of Offer of Terms of Grant/Conveyance of Approval dated 7th December,2001.
8. Exhibit 5A is photocopy of Abuja Geographic Information System (AGIS) Deposit Slip dated 1st August,2006.
9. The Right of Occupancy Rent and Fees is exhibit 5 (B).
10. Regularisation of Land Title Documents Acknowledgment is exhibit 5 (c).
11. Exhibit 5D is Development Levy Receipt.
12. Exhibits 5E & 5F are Two Departmental Receipts.
13. The Site Plan is exhibit 6;.
14. Exhibit 7 is the Irrevocable Power of Attorney between Mallam Ibrahim Mohammed and Med Homes Limited.
15. While Exhibit 8 is a Copy of letter to the Divisional Police Officer, Karu Site, FCT.
16. Letter dated 13th May,2012 addressed 'To whom it may concern' by Med Homes Limited was received in evidence as exhibit 9.

At the close of evidence by the Plaintiffs and the 1st Defendant, final written address was ordered to be filed and exchanged. However due to the absence from Court of Counsel on the date fixed for adoption of addresses, the 1st Defendant's Counsel's Written Address dated 20th January,2019 and filed on 5th February,2019 was deemed adopted in accordance with **Order 33 Rule 4** of the extant Civil Procedure Rules of this Court which provides that where a party is absent, the final written address would be deemed adopted.

Plaintiffs' Counsel adopted his final written address dated 7th December,2018 and filed on 10th December,2018. The 2nd Defendant did not file any address.

The 1st Defendant's Counsel formulated a single issue for determination of this case 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."

While on the otherhand, the Plaintiffs' Counsel 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."

To determine the instant suit, I hereby adopt the issue as formulated by the 1st Defendant's Counsel as my own as the issues distilled by both parties are the same. The issue for determination is therefore as follows:-

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

The brief facts of the Plaintiffs case is that the 1st Plaintiff is the beneficial allottee of Plot No. 489, Karu Extension II (Relocation) Layout, Abuja measuring about 1000m² (subject matter of the instant Suit No. 829/16) while the 2nd Plaintiff is its lawful attorney in respect of same. That the 2nd Plaintiff fenced the Subject Matter in 2012 and put one David and one John thereon for the purpose of farming on the land. The 2nd Plaintiff has since been in peaceful and quiet possession of the Subject Matter since its appointment as the 1st Plaintiff's attorney and no one (including the Defendants) had ever challenged it. That the Defendants however demolished part of the Plaintiffs' fence, commenced construction work and has been building on the Subject Matter since 26th January, 2016. It is the Plaintiffs' averment that the 1st Defendant unlawfully encroached and trespassed on their land. Subject Matter of this case.

The Plaintiffs further alleged in their Reply pleading that the 1st 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. PB489, PB478, PB479 and PB486. It is the Plaintiffs' allegation that they wrote a petition against the Defendant to the Police who intervened by inviting them and the Defendant to the Karu Police Station whereat the Defendant was ordered to stop the excavation. That the Defendant is laying claim to the Subject Matter.

In giving evidence in support of all these allegations, PW1 adopted his witness statements on oath deposed to on 1st February, 2016 and 8th February, 2017 filed in the instant Suit No. CV/829/2016 as his oral testimony. PW1 testified that the 1st Plaintiff is the beneficial allottee of Plot No. 489, Karu Extension II (Relocation) Layout, Abuja measuring about 1000m² (subject matter of the instant Suit No. 829/16). Exhibit 5 was admitted in evidence at trial as the letter of Offer of Grant dated 7th December, 2001. PW1 testified that the 1st Plaintiff recertified its title documents and was issued with an acknowledgment. Exhibits 5A, 5B and 5C were admitted in proof thereof. PW1 testified that the 1st Plaintiff appointed him (PW1) as his lawful attorney in respect of the Subject Matter land. Irrevocable Power of Attorney between the 1st and 2nd Plaintiffs was admitted in evidence as Exhibit 7. He also testified that he is a representative of the 1st Plaintiff's lawful attorney. Exhibit 9 is a letter of authority dated 13th May, 2012 from the 2nd Plaintiff. It is PW1's further testimony that he fenced the Subject Matter in 2012 and put one David and one John thereon for the purpose of farming on the land. That he 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.

PW1 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 6 was admitted in evidence as the Site Plan. It is PW1'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 8. That pursuant to the petition, the Police invited him and the Defendant to the Karu Site Divisional Police Headquarters whereat the Defendant was ordered to stop excavation. That by the time he was stopped by the Police, the Defendant had already destroyed PW1's fence and all the economic trees he planted on the Plot 489 (Subject Matter of this suit). PW1 testified that he suffered emotional, psychological and economic pain from the Defendant's action and thereafter proceeded to this Court to seek redress.

On the otherhand, the 1st Defendant 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 1st Defendant adopted his written witness statement on oath deposed to by him in this case (i.e. Suit No. CV/829/2016) on 31st March, 2016 as his oral testimony. It is the 1st Defendant'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.

Arguing the issue for determination in his final address, the 1stDefendant'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 is not the original allottee of Plot 489 (the Subject Matter) and failed to establish that it was actually the 1stDefendant that was working on the land and demolished the fence. Counsel argued that no testimony linked the 1stDefendant 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 (1stDefendant's) evidence under cross-examination. Counsel to the 1stDefendant finally urged this Court to resolve the sole issue in his favour and dismiss the Plaintiffs' claim with substantial cost.

In the final written address of the Plaintiffs, the Plaintiffs' Counsel submitted that the onus in a claim for declaration of title is on the party seeking the declaration and the evidential burden can be 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 5A, 5B, 5C, 5D, 5E, 6 and particularly Exhibit 5 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. 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 1st Defendant'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 1st Defendant 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 as damages. Counsel finally urged this Court to enter judgment in favour of the Plaintiffs in its entirety.

Having put the pleadings and evidence of parties as well as the arguments of Counsel on record as it were, in the resolution of the instant issue it is imperative to note that the Plaintiffs are seeking declaration of title to land (Subject Matter of this case) by virtue of the first relief of their amended writ of summons and statement of claim.

It is trite law that a party seeking declaration of title to land bears the onus of succeeding 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 115)1 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).***

It is well settled position of law 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.***

Thus, successful proof by way of any 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 5 (along with Exhibits 5A, 5B, 5C, 5D, 5F, 6, 7, 8 and 9 to establish title to the subject matter of this suit.)

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. – See 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 5 is an original copy of Offer of Terms of Grant/Conveyance of Approval dated 7th December, 2001 issued in favour of Mallam Ibrahim Mohammed in respect of Plot No. 489 (of about 1,000Sqm) in Karu Extension II, Layout (Subject Matter of this case). I have looked carefully at Exhibit 5 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. Exhibit 5 conveys the grant of a Statutory Right of Occupancy in the Subject Matter to the 1st Plaintiff by the Minister of the FCT.

It is a fairly settled and 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 5 (or any of the documents admitted in evidence at trial through the Plaintiffs witness, PW1 for that matter). In the absence of anything to the contrary, there is presumption that Exhibit 5 was properly issued by the Minister of the FCT (albeit on his behalf). The effect of Exhibit 5 is that the 1st Plaintiff has a Statutory Right of Occupancy in the Subject Matter. It follows that Exhibit 5 firmly supports the Plaintiffs' allegation of title (in favour of the 1st Plaintiff) in the Subject Matter of this case.

Now, 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 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 and the first relief is accordingly granted.

On the second relief of the Amended Writ of Summons, the Plaintiffs seek a declaration that the 2nd Plaintiff is the lawful attorney of the 1st Plaintiff in respect of Plot 489 (Subject Matter of this case).

Paragraph 5 of the witness statement on oath deposed to on 1st February, 2016 by the Plaintiffs' only witness (PW1) in this case reads as follows:-

"5. That the 1st Plaintiff appointed me as his Lawful Attorney of the said plot."

Having adopted his aforementioned witness statement on oath, the above is PW1's oral testimony before this Court. Thus, PW1's oral testimony before this Court is that he (PW1) was the person appointed by the 1st Plaintiff as the 1st Plaintiff's lawful attorney in respect of the Subject Matter. What the Plaintiffs however pleaded in their Statement of Claim (see paragraph 2) is that it is the 2nd Plaintiff that is the lawful attorney of the 1st Plaintiff in respect of the Subject Matter. They also tendered Exhibit 7 which itself is an Irrevocable Power of Attorney between the 1st and 2nd Plaintiffs and not PW1. PW1 is not the 2nd Plaintiff in this suit. Thus, while the Plaintiffs pleaded that the 2nd Plaintiff is the 1st Plaintiff's lawful attorney in respect of the Subject Matter, the oral evidence adduced is quite different as PW1 (who is not the 2nd Plaintiff in this case) testified that he

is the one that is the 1st Plaintiff's lawful attorney in respect of the Subject Matter. In view of the second relief being sought from this Court vide the Amended Writ of Summons, I hold the view that the evidence adduced is materially at variance with the fact pleaded in this case and I so hold. The law is that parties are strictly bound by their pleadings and where a piece of evidence is at variance or in conflict with averment in pleadings, such evidence goes to no issue and must be disregarded. – see the cases of **OKEBULU V. ABAAH (1988) 2 NWLR (PT.77) P. 498**, **ILIYA & ANOR V. LAMU & ANOR (2019) LPELR-47048(CA)** and **IDRIS V. SEINE (2019) LPELR-46993(CA)**.

Furthermore, PW1's oral evidence that he was appointed lawful attorney by the 1st Plaintiff in respect of the Subject Matter is grossly inconsistent, contradictory and conflicts with Exhibit 7 which purports to show that it was the 2nd Plaintiff that was appointed the lawful attorney of the 1st Plaintiff in respect of the same Subject Matter. In such a situation, this Honourable Court is not at liberty to pick and choose which piece of conflicting and contradictory evidence to rely on. As such, this Court must reject both PW1's contradictory oral evidence and documentary evidence adduced on the issue of who the lawful attorney of the 1st Plaintiff is in respect of the Subject Matter. – see the case of **OMEREDE V. ELEAZU (1996) 6 NWLR (PT. 452) P. 1**.

In the circumstances, there is no credible evidence before this Court that the 2nd Plaintiff is the 1st Plaintiff's lawful attorney in respect of the Subject Matter. The Plaintiffs have thus failed to establish their entitlement to the declaration sought that the 2nd Plaintiff is the 1st Plaintiff's lawful attorney in respect of the Subject Matter. The second relief of the Amended Writ of summons and statement of claim is hereby refused and dismissed.

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

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**.

Having already found that the 1st Plaintiff is the party with title (Statutory Right of Occupancy) in respect of the Subject Matter of this suit, he is the owner entitled to peaceful possession under the law.

From the entire evidence presented by the Plaintiffs in this case regarding trespass, it would appear 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 8) 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 1stDefendant's Counsel, PW1 said he knew the 1stDefendant in 2016 when the latter called him and that was when the 1stDefendant demolished part of the fence of the Subject Matter. He said he was however not there when the 1stDefendant destroyed the economic trees. He stated that the 1stDefendant was laying claim to the land at the Police Station when he (PW1) reported the matter to the Police.

Under cross-examination by the Plaintiffs' Counsel, the 1stDefendant admitted meeting PW1 at the Police Station once. The 1stDefendant 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 (i.e. Exhibit 8). 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.

Having considered all the evidence before this Court regarding the allegations of trespass, I am of the view that the Plaintiffs have not provided specific details of facts regarding when and how the 1stDefendant had destroyed the fence and economic trees on the Subject Matter. There is nothing before this Court to show the buildings the 1stDefendant 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. Conjectures and speculation are not part of the tools of this Court. – see the case of **R.E.A.N. PLC V. ANUMNU (2003) 6 NWLR (PT. 815) P. 52.**

Exhibit 8 seems to be the pivot of the Plaintiffs' allegations of trespass against the 1stDefendant and the Plaintiffs' Counsel has made heavy weather of this document in his address. I have looked at Exhibit 8. 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 489 Subject Matter of the instant suit.

The findings of the Police in respect of the complaint in Exhibit 8 is not before this Court. There is also nothing before this Court to show that the Police did order the 1st Defendant to stop work on the Subject Matter. Exhibit 8 is good for establishing that the Plaintiffs made allegations against the 1st Defendant to the Police. What Exhibit 8 does not prove is that the 1st Defendant did carry out those alleged acts. The 1st Defendant has admitted being invited by the Police. All these however does not establish the Plaintiffs' allegations that the 1st Defendant was responsible for the acts complained of. On the preponderance of evidence, I cannot come to the conclusion that it is the 1st Defendant 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 1st Defendant on the preponderance of evidence. In the circumstances the action for trespass fails in its entirety.

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

An order of injunction is granted to protect right of possession. Having proved the 1st Plaintiff's title to the Subject Matter and his entitlement to declaration of title to same, the 1st Plaintiff is generally entitled to an order of injunction protecting his 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 1st Plaintiffs therefore entitled to the order of perpetual injunction sought via the fourth relief of the Amended Writ of Summons 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 489 measuring about 1000m² situate at Karu Extension II Layout, Abuja

The word 'further' implies that the Defendants have already trespassed on the Subject Matter, and that has not been established before this Court.

The fifth relief of the Amended Writ of Summons for general damages must fail as the Plaintiffs have failed to prove trespass against the Defendants. The Plaintiffs have failed to show that the Defendants are liable for such damages.

In conclusion, the issue for determination is resolved partly in favour of the Plaintiffs and against the Defendants. The Plaintiffs' claim succeeds in part and Relief No. 1 of the Amended Writ of Summons is hereby granted as prayed. The order of perpetual injunction sought in Relief No. 4 is granted in the following terms:-

An order of perpetual injunction is hereby made restraining the Defendants and their agents, privies and assigns from trespassing the said Plot 489 measuring about 1000m² situate at Karu Extension II Layout, Abuja.

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