

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

SUIT NO: CV/3450/12

BETWEEN:

MR. STEPHEN SALEH TSOKWA.....PLAINTIFF

AND

MALLAM IBRAHIM HUSSEINI JALINGO.....DEFENDANT

JUDGMENT

(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)

The Plaintiff in this case instituted this suit claiming the following reliefs against the Defendant:

- a. A declaration that the plaintiff is the legal owner of **PLOT 222 CADASTRAL ZONE CO2 GWARINPA** with **NEW FILE NUMBER TR 10106 COVERED BY CERTIFICATE OF OCCUPANCY NUMBER 2012W-61EAZ-565DR-C36EU-10** and as such he is entitled to the Certificate of Occupancy covering this plot.
- b. A declaration that the defendant is in breach of the trust imposed upon him by the Plaintiff as he has no power to sell the Plaintiffs property covered by the said Certificate of Occupancy Number 2012w-61eaz-565dr-c36eu-10.
- c. An order directing the Defendant to immediately return, surrender and handover the said Original Certificate of Occupancy Number 2012w-61eaz-565dr-c36eu-10

covering Plot 222 Cadastral Zone CO2 which is the property of the plaintiff. Or in the alternative, be liable to the plaintiff in detune to the value of the land at the time of this judgment in this matter shall be passed.

- d. General damages in the sum of N20,000,000.00 (Twenty Million Naira) only against the Defendant for breach of trust, hardship caused the plaintiff, emotional trauma, disappointment and loss of expected proceeds caused by the aborted sale of the said property to a buyer due to the Defendants refusal to surrender the Original Certificate of Occupancy.
- e. The cost of this action.

Facts leading to this suit briefly put is that, the plaintiff who is a retired civil servant was allocated the property in dispute i.e. Plot 222 and issued a Certificate of Occupancy over same with C of O number 2012w-61eaz-565dr-c36eu-10.

That sometime in 2009, when the Plaintiff had serious need for money, he contacted the defendant and requested he helps him get a buyer for the said property.

At the time of the request, the original title documents over the property were missing to which the plaintiff had complied with the law by deposing to an affidavit of loss, obtained a police report and made a publication in the newspaper.

The Defendant after a while informed the plaintiff that the amount being offered over the property was too minimal and in order to get a reasonable offer he should go and obtain the original Certificate of Occupancy from Abuja Geographic

Information System and offered to do so at his own cost, and be reimbursed when the property is sold.

The Plaintiff thereby handed over the original affidavit of loss, police report and newspaper publication to the defendant but not without an evidence that the said documents were in possession of the defendant.

While this dragged on, the Defendant offered to buy the property himself, which the plaintiff accepted because he had before then borrowed some money from the Defendant. But when he kept disturbing the defendant for the balance and the defendant couldn't pay up, he informed the plaintiff that his boss, was interested in purchasing the said property. This was also accepted by the Plaintiff but the purchase sum was never paid despite several demands.

Finally the Plaintiff got an offer of N15,000,000 for the property from a totally different buyer. But the buyer requested to conduct a search at the AGIS as is the custom to ascertain that the property indeed belonged to the plaintiff and that there was no encumbrance.

The plaintiff then contacted the defendant to obtain the original documents he had given him, informed him he had a buyer and a search would need to be conducted. It was at this point the Defendant handed over a photocopy of the Certificate of Occupancy over the property to the plaintiff, informed him he had collected the Original but it was with his boss who had offered to buy the said plot but failed to pay the purchase price. He promised to obtain the said original as soon as his boss returns from Kano the following week but same was never done.

The Plaintiff lost the buyer who had indicated interest over the property due to the inability of the plaintiff to provide documents over the property to enable them conduct a search.

It was at this point the plaintiff who had trusted the Defendant all along began to suspect possible foul play. He instructed his lawyer to write to the defendant formally demanding his original documents. The Plaintiff's lawyer who also testified before the court, informed the court that when he went to deliver the letter to the Defendant, the defendant refused to collect same insisting that the original was with his boss who was in Kano, he gave them a date i.e. 7th March, 2012 when his alleged boss would be coming back to enable him collect the certificate from him and return same to the plaintiff.

The said date came and passed yet he never returned the Certificate nor communicate to the plaintiff.

It was when the plaintiff did a petition to the Nigerian Police, and after he had made it clear to the Defendant that he was no longer interested in selling the land to him or his alleged boss that the Defendant brought some money allegedly as further part payment, which the plaintiff refused to accept having terminated any contract that existed (if at all) between them.

In prove of all the above facts or narration, the plaintiff called two witnesses – PW1 & PW2.

PW1 – Is Stephen Saleh Tsokwa. Adult male of JAMB Quarters, No. 4, Opposite CBN Quarters, Gudu, testified on affirmation. He adopted his previously sworn statement on Oath as his evidence in this case. That was on 5/2/14.

Exhibits A, B, C and D were admitted in evidence through this witness. Exhibit A is a bundle of documents contained:

- (1) A letter of authority to collect Certificate of Occupancy dated 18/11/09.
- (2) AGIS acknowledgment letter dated 27/4/05 with TDP survey.
- (3) General Form of affidavit, extract from police station diary, newspaper publication, Re-original documents dated 8/9/11.

Exhibit B is a photocopy of a Certificate of Occupancy No. 2012w-61eaz-565dr-c36eu-10.

Exhibit C is a letter of demand dated 5/3/12

Exhibit D is a petition dated 19/3/12

This PW1 was cross examined but not re-examined under XX, this is what he said;

“My first contract with the Defendant is some years back. It was at Wuse Zone 3. I first met him at a Corner Shop at Wuse Zone 6. It is upto 10 years now. He assisted me to sell one land. I can't remember whether I gave him original or photocopied documents. He told me because of the area the land is situated, he could not sell. He said to make the land more viable on the need to pay the ground rent etc. the Defendant paid for all these and responsible for getting the C of O. Our agreement on this is oral. I can't remember the exact amount he paid for all these. I was giving him papers acknowledging the receipt of all these payments. It is in the region of N1.1 million. I did not enter it into a new contract with anybody”.

PW2 – By name Sechap Tsokwa, a legal practitioner testified on oath. Like PW1, he too adopted his sworn statement on oath as his evidence. He is the son of the plaintiff.

Under XX PW2 testified as follows:

“I am not aware of any relationship between the Plaintiff and Defendant. The Plaintiff is my father. My father didn't consult me before handing over title documents to the Defendant. I came to know of this transactions in 2011. I was not aware of any part payment of the land. No document as to reflect payment was in my possession when I filed this statement of claim. I am very surprised with these document showing part payment of the land. The Plaintiff told me Defendant was responsible for payment of ground rent, C of O etc. I didn't check how much is the total payment the Defendant made. There can't be valid contract in the absence of considerable money. I personally served Exhibit 'C' on the Defendant. I went alone”

In defence of the Defendant's case, two witnesses were called. They were DW1 and DW2.

DW1 is Mallam Useni Ibrahim. Testified on affirmation he adopted his sworn statement on oath as his evidence. Exhibit X which is the acknowledgment book showing receipt of N1.1 million as total received on 4/7/11, 22/7/11 and 4/11/11 was received by evidence through him.

Under XX, DW1 said:

“I had good relationship with the Plaintiff. He is my friend. Even my brother. It is not true

that I have sold the land. I have spent over N2.4 million on the land. The documents of the lands are with me. There was a time the Plaintiff came to me with N2million to release the papers to him. I refused. The Plaintiff sold the land to me before I collected the C of O and other documents. He sold the land to me with photocopy documents because he said he lost the original. I am the one that processed the documents after. I have some documents to show all the payments I made in getting C of O of the land. I have been paying Plaintiff in cash. Only once I paid him N50,000 through the Bank”.

DW2, Mr. Ismaila Omeiza testified on affirmation. He too adopted his statement on oath as his evidence and was cross-examined. Part of his cross-examination evidence reads:

“I am well educated. I know everything in this case. I was present when all transactions were carried out by the Defendant and Plaintiff. I signed as a witness. I have no evidence to show that the Defendant sold some of his properties. I don't know how much the debt paid for processing of the C of O. the sale was carried out before collection of C of O. I believe payment were made to the Plaintiff. Payment was made in cash and in tellers. I did not see any teller. I know Barr. Sokwa. I met him once. I know why Plaintiff went to Police. No, the Plaintiff did not go to Police because the Defendant refused to pay the balance. It is not upto N2.8 million. The C of O is with the Defendant. I signed my witness statement on

oath at Police station. I signed the statement on oath after the case was instituted”.

The evidence of the DW1, the Defendant as encapsulated in his sworn affidavit on oath is thus:

- (1) That I know the Plaintiff in this case and I knew him at Zone 6 Corner Shop, Zone 6, Wuse Abuja for up to 13 years before the demolition of the corner shops.
- (2) That flowing from the already established business relationship in paragraph 4 above the Plaintiff told me that he has another land paper which he would bring for me to sell for him.
- (3) That I agreed and the Plaintiff came back the next day with an original land paper which I sold for him and he paid me my agency fee.
- (4) That after the transaction aforesaid in paragraph 3 above, the Plaintiff gave me photocopies of a land papers vis-à-vis a plot of land at Gwarimpa, now the subject matter of this suit, to find a buyer for him.
- (5) That the Plaintiff again gave me another original paper for a land at Jikwoyi Abuja which I sold for him and I was also paid my agency fee by the Plaintiff.
- (6) That one remarkable difference between the land paper given to me by the Plaintiff over the land, the subject matter of the suit and others which I had already sold for him was that while the other papers are in their original form, the one in contest was a photocopy without an accompanying acknowledgment and this

makes it very difficult to procure a buyer as prospective buyers demanded to see the acknowledgment.

- (7) That the Plaintiff then told me he misplaced the acknowledgment but I advise him to try to get even a photocopy of it.
- (8) That the Plaintiff later got the photocopy of the acknowledgment which I received from him and started marketing the land.
- (9) That when after about three years, we could not get any buyer, the Plaintiff came and asked me what to do and it told him that whoever is going to buy the land will spend extra money because:
 - (a) The Land has not been processed to Certificate of Occupancy (C of O); and
 - (b) There are villagers on the land who must be settled and compensated.
- (10) That in view of my disclosure to the Plaintiff in paragraph 14 above, he asked me whether I can buy the land but I told him that I would ask my boss whether he will like to buy the land.
- (11) That because of the nature of the land my boss priced it Three Million Naira (N3,000,000.00) but the Plaintiff refused to sell it at that price and left.
- (12) That after a long time, the Plaintiff came back to ask me about my boss but I told him that my boss had just bought another property and has no money at the moment to buy the land.

- (13) That three years after the event in paragraph 12 above, the Plaintiff came back to me and requested for some money as he has been retired and has no money and more so, that his pension has not been paid and the Defendant, out of sympathy and having also considered the fact that they came from the same State dashed him Fifty Thousand Naira (N50,000.00) only.
- (14) That after sometimes, the Plaintiff came back and asked me to buy the land and I agreed to buy it for Four Million Naira (4,000,000.00) but the Plaintiff refused. I further priced it for Five Million Naira (N5,000,000.00) only but the Plaintiff also refused and left with a promise to discuss with his wife and get back to me.
- (15) That some days later, the Plaintiff came back and asked me to buy the land for Eight Million Naira (N8,000,000.00) only; but we negotiated and finally settles at Six Million, Five Hundred Thousand Naira (N6,500,000.00) only.
- (16) That after settling at N6.5 million, the Plaintiff asked whether I have any money to give him but I told him that I had none at the moment. I also told him that I have to first work on the land papers but due to pressure from him, I gave him the sum of Fifty Thousand Naira (N50,000.00) only that day which he accepted and acknowledged receipt of same from me.
- (17) That it was by this mode of bit-by-bit collection of money from me and/or payment directly into the Plaintiff's account that I paid the Plaintiff the total sum of One Million, One Hundred Thousand Naira (N1,100,000.00) only as part-payment for the land, the subject matter of this suit.

- (18) That because of the incomplete documents the Plaintiff gave the Defendant, the Defendant, with his authority spent the sum of Three Million, Seven Hundred Thousand Naira (3,700,000.00) only in processing and obtaining the Certificate of Occupancy (C of O) covering the land, the subject matter of this suit and I was issued receipts and other ancillary documents covering payment of application fees, ground rents and other chargeable fees prior to the issuance of the Certificate of occupancy.
- (19) That sometimes, in March, 2012, the Plaintiff forwarded a petition against me to the office of the Assistant Inspector-General of Police, Zone 7 Abuja but the Police upon investigation discovered that it was a sales agreement and advised me to pay up the balance of his money.
- (20) That I sold some of my properties to raise the sum of Two Million, Eight Hundred Thousand Naira (N2,800,000.00) only which I deposited with the Police; but when the Plaintiff was invited by the Police to come and collect the deposit, he declined saying that the money must be completed before he can collect it.
- (21) That the ownership of Plot 222 Cadastral Zone CO2 Gwarimpa with new file number TR10106 covered by Certificate of Occupancy No. 2012w-61eaz-565dr-c36eu-10 now resides in me following the sales agreement between me and the Plaintiff aforesaid and there is no basis for a declaration by this Court or any other Court for that matter that the Plaintiff is the legal owner.

- (22) That even if there is any trust, at all, between me and the Plaintiff, the said trust extinguishes from the moment the Plaintiff sold his interest in the land, the subject matter of this suit to me and there is therefore no basis for a declaration of breach of trust by this Court.

Before I proceed further, I must mention the fact that this case was unduly delayed, not only by the seemingly obvious facts of COVID 19, End SARS Protest, or Tribunal assignment, I was engaged-in in 2013, 2015 and 2016, but also by the attitudinal approach of the Defendant and his Counsel in this case. The matter suffered series of adjournments at their instance. On one of such application for adjournment on 1/12/16, I was so infuriated that I slammed a cost of N20,000 against the Defendant. For purposes of some illumination of facts, this is what I said in my Ruling on that day:

“I have considered this application for adjournment and the other application asking for cost. I have also adverted to all the circumstance leading to these applications this morning. On the last adjourned date, the Defendant wrote a letter as expected asking for an adjournment because their sole witness travelled to the village to attend to his sick mother. We obliged his application and fixed for today which is one of the dates he too suggested. Thisnow, the Counsel is in Court but the sole intended witness remains in the village of the same reason given earlier. Hence the application for adjournment. The learned Counsel for the Plaintiff did not stricto sensin opposed the application for bail. May be because of the Defendant’s Counsel.”

But he has asked me for order of cost of N50,000 against the Defendant. This is because they concluded their case as far back as 5/2/14. And since then the Defendant has not been able to open their defence. I have perused the record of this Court. Since the Plaintiff closed their case on 5/2/14, the Court had sat in this case six times i.e. 27/3/14, 20/5/14, 28/10/14, 4/3/15, 3/2/16 and 19/10/16. On all those adjournment dates, the Defendant were at the instance of the Defence. Today again, a date suggested by them, they are not ready to proceed. Not because the Defendant is sick but because his mother is sick. And the Plaintiff's Counsel has not objected to the prayer for an adjournment.

Now, I ask the question, is the prayer for cost improper in the circumstance of this case? My answer is in the negative. Albeit, the Defendant has not conceded to cost on the usual ground that cost is not punitive. Yes, it is not to be. But cost is meant to defray some expenses incurred in coming to Court repeatedly for a case that is not making progress. And it should ensure to the benefit of the party not at fault. It is for the above reasons that I award a cost of N20,000 in favour of the Plaintiff/Applicant. While I adjourned the case to a further date”.

Then as if some forces were against the conclusion of this case, when the Defendant braced up for defence, their witness who speak only hausa could not testify due to absence of interpreter in Court. This caused delay as the defence could not begin on

16/2/17; 5/4/17; 25/5/17; 26/9/17; 9/10/17 as previously fixed. It was not until 7/11/17 that we secured the services of one Bashir Sheu as interpreter. Thanks to the Chief Registrar who eventually dragged one to this Court.

Following the conclusion of defence on the 25/1/18, we adjourned for address. Up until 2/12/20, the Defendant's Counsel did not file any address. But the Plaintiff's Counsel did.

In his address, learned Counsel to the Plaintiff – A. B. Ojo Esq. submitted a sole issue for determination. It is

“Whether the Plaintiff has proved his case to be entitled to the reliefs being sought for from this Court”.

At this juncture, I consider it pertinent to narrate facts as found by me in this case. They are:

- (1) The Plaintiff in 2009 contacted his friend, the Defendant to help him sell his land covered by Certificate of Occupancy No. 2012w-61eaz-565dr-c36eu-10.
- (2) The Defendant could not get a buyer.
- (3) The original title documents were lost and the Plaintiff deposed to affidavit of loss and also got a Police report and made a newspaper publication of same.
- (4) The affidavit, Police Report and Newspaper Publication were handed over to the Defendant.

- (5) Later the Plaintiff got a buyer at the price of N15 million and requested the Defendant to give him the affidavit, the Police Report and Newspaper Publication back.
- (6) Upon (5) above, the Defendant informed the Plaintiff he had used the documents to obtain the Certificate of Occupancy over the property. But that the Certificate of Occupancy is with his boss in Kano who had indicated interest in buying the property.
- (7) Up till the moment the case land in Court, the Defendant could not hand over the said Certificate of Occupancy to the Plaintiff as requested.
- (8) All the title documents in possession of Defendant and tendered in it bears the name of the Plaintiff.

The above are the salient and germane facts in this case.

Now back to the lone issue framed by the learned Counsel to the Plaintiff A.B. Ojo. He argued that the Defendant is holding on to the Plaintiff's title documents wilfully without justification and only as a punishment for no wrong done to him. According to the learned Counsel, the claim by the Defendant that he spent over N3,700,000.00 (Three Million, Seven Hundred Thousand Naira) only in obtaining the Certificate of Occupancy on behalf of the Plaintiff is not supported by evidence. Mr. A. B. arguing further, learned Counsel said as much as it is agreed that the Plaintiff initially agreed with the Defendant to help him sell the property, this was not done and the Defendant never paid any agreed price to the Plaintiff. He therefore urged me to grant all the claims of the Plaintiff as there is no basis for withholding the Plaintiff's title document to the property. For all his arguments, Mr. A. B. Ojo referred to the cases of **IDUNDUN VS. OKUMAGBA**

(1976) 9 - 10 SC 227; MADU VS. MADU (2008) 6 NWLR (PT. 1083) 296, AGAREH VS. MIMRAH (2008) 2 NWLR (PT. 1071) 391; ODUSOGA VS. RICKETTS (1997) 7 NWLR (PT. 511) 1; MANYA VS. IDRIS (2001) 8 NWLR (PT. 716) 627; ANWASI VS. CHABASAYA (2000) 6 NWLR (PT. 661) 408;

I have considered the case of the Plaintiff and the evidence to back it up.

The Defendant's case as can be gleaned from the evidence is that he had bought the property from the Plaintiff and has even made part payment. The part payment, according to him was the money he expended in securing or obtaining the Certificate of Occupancy from the relevant authority. His case is as simple as that.

I have asked the question, where is the evidence of agreement to sell or buy the land? No agreement of sale, no Power of Attorney, no Deed of Assignment was tendered. To make the matter worse, no evidence of agreement to use any money to off-set the sale price and no evidence of such payment to the authority. Even if it is conceded that the agreement to sell was oral, can the agreement assume the status of a valid contract when no consideration was paid? Nothing was done by the parties to vest title in the Defendant. All the title documents though in possession of the Defendant still bears the name of the Plaintiff. So, it is difficult for the Defendant to claim title of the Plot in question in the circumstances of this case. In the case of **USUNG VS. NYONG (2010) 2 NWLR (PT. 1177) 83**; it was held that the five (5) ways of proving title to land are;

- (1) By traditional evidence
- (2) By production of documents of title which are duly authenticated.

- (3) By acts of selling, leasing, farming on it or a portion of it.
- (4) By acts of long possessing and enjoyment of the land.
- (5) By proof of possession of connected or adjacent land to the land in dispute in such circumstances to render it probable that the owner of the adjacent land is the owner of the land in dispute.

The Plaintiff has shown by title documents that the land belong to him. The Defendant has tendered none. And he couldn't have any way since he too know the land belong to the Plaintiff. The claim of sale to him by the Plaintiff is a farthom claim, baseless and unsupported by any shrewd of evidence.

It is my view that holding on to the Certificate of Occupancy belonging to the Plaintiff is unlawful, illegal and a show of arrogance.

The claim of the Defendant that he sold to his boss and had given the title documents to the boss in Kano is laughable and cannot stand - *Nemo Dat Quod None Habet* - you cannot give what you don't have.

Perhaps, if the Defendant has any claim against the Plaintiff for having expended some money on his behalf to obtain the Certificate of Occupancy from the relevant authority and upon the Plaintiff's instruction, that would be a different ball game. He can sue for breach of contract to claim back his money. But to hold on to the title documents on flimsy excuse and unsubstantiated claim that the Plot has been sold to him is deceitful, gold digging, and an attempt to play a fast one on the Plaintiff. It cannot stand. I found the conduct and behaviour of this Defendant to be a breach of trust and therefore condemnable.

Finally, claim (a), (b), (c) succeeds. The Plaintiff is the rightful and legal owner of Plot 222, Cadastral Zone CO2 Gwarimpa, with new file number TR 10106 covered by Certificate of Occupancy No. 2012w-61eaz-565dr-c36eu-10. He is therefore ordered to return the original Certificate of Occupancy to the Plaintiff immediately.

The Plaintiff is also claiming general damages in the sum of N20,000,000.00 (Twenty Million Naira) only against the Defendant for breach of trust, hardship, caused the Plaintiff, emotional trauma, disappointment and loss of expected proceeds caused by the aborted sale of the said property to a buyer due to the Defendant's refusal to surrender the Certificate of Occupancy.

Damage may be defined as the disadvantages which is suffered by a person as a result of the act or default of another. Damages therefore, are the pecuniary recompense given by the process of law to a person for the actionable wrong that another has done. See **SHELL PETROLEUM DEVELOPMENT COMPANY NIGERIA LIMITED VS. TIEBO VII & 4 ORS (1996) 4 NWLR (PT. 445) 657.**

The Plaintiff no doubt has been deprived the use of his property by the Defendant. And he has no justification for so doing. This has made the Plaintiff to suffer some trauma, disappointment and loss of possible monetary gain from the property. For this reason, I assess a sum of N1,000,000 (One Million Naira) only as damages against the Defendant in favour of the Plaintiff.

The Plaintiff has also claimed an unspecified amount as cost of this action. This is unverifiable from evidence and therefore not proved. This last claim fails.

In conclusion claim (a), (b), (c), (d) succeeds. (e) fails and it is refused.

SIGNED
(HON. JUDGE)
17/12/2020