

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y.HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/730/2010

DATE : TUESDAY 8TH DECEMBER, 2020

BETWEEN

**1. HARINPE INVESTMENT } CLAIMANTS
& PROPERTIES LTD }
2. EROSOD WATER WORKS LTD. }**

AND

MR. JOHN NWAFOR DEFENDANT

JUDGMENT

The Claimants by amended writ of summon claim the following against the Defendant to wit;

1. A declaration that all that property known and described as 4 No. 3 bedroom flat, Plot 24 Block XIII Federal Housing Estate Gwarimpa FCT belong to the 2nd Claimant.
2. A perpetual injunction restraining the Defendant, his agent(s) servant(s) and privies or otherwise however from entering or doing any acts that will disturb the quiet possession of the 2nd Claimant.
3. The sum of N10,000,000.00 (Ten Million Naira) only as damages for the act of trespassing by the Defendant on the property of the 2nd Claimant being the subject matter in this suit.

4. The sum of N2,000,000.00 (Two Million Naira) only being the cost of this suit.

At the close of exchange of pleadings, suit proceeded into hearing.

The case of the Claimants as distilled from the witness statement on oath of the sole witness is that sometime in April, 2009, the 2nd Claimant bought a property described as 4 No. 3 Bedroom Flat at plot 24 Block XIII Federal Housing Estate Gwarimpa Federal Capital Territory, Abuja from the 1st Claimant at the rate of N52,000,000.00 (Fifty Two Million Naira) vide FCMB Cheque No. 00728269 dated 7th April, 2009.

That sequel to the sale of the property, Deed of Assignment was executed in favour of the 1st Claimant by Engr. Charles Unwigbe, and upon

conclusion of sale of the property and transfer of title to the 2nd Claimant, the 1st Claimant through her director introduced the 2nd Claimant to the tenants in the property as the new beneficial owner of the property.

That the 2nd Claimant took possession of the property and began to exercise authority as the beneficial owner of same and rented it to tenants.

It is the averment of the Claimant that the Defendant has willfully and persistently been trespassing on the property by doing the following:-

- a. Consolidated and persistent harassment of lawful occupants of the said property.
- b. Unlawful trespass and damage of keys and other materials connected thereto.

- c. Constituting nuisance to neighbours and generally carrying out acts that are considered annoying and unacceptable in the neighborhood.
- d. Unwarranted introduction of unknown person of questionable character in the said property representing to them that there exist the legal capacities to do so.

The following documents were tendered in evidence by PW1.

- i. Manager cheque dated 7th April, 2009 as Exhibit “A”
- ii. Deed of Assignment dated 30th May, 2008 as Exhibit “B”
- iii. Deed of Assignment undated as Exhibit “C”

- iv. Tenancy Agreement dated 21st August, 2009 as Exhibit “D”.
- v. Tenancy Agreement dated 24th November, 2009 as Exhibit “E”.

PW1 was cross – examined and consequently discharged. Plaintiff closed its case to pave way for defence.

DW1 adopted his witness statement on oath. The case of the Defendant is that there was never a time the 2nd Claimant was introduced to the tenants by the 1st Claimant as the Defendants were at all materials time in occupation of the property and exercised full ownership and authority on the property.

Defendant avers that no single flat was rented by the 2nd Claimant as all the tenant were tenants of the 1st Claimant, and that the Claimants were not by any act

whatsoever in possession of the property and that the Defendant never trespassed on the 2nd Claimant's property or any property at all as he was at all material times in lawful possession of the property by purchase from the 1st Claimant before the 2nd Claimant started laying claim to the property.

Defendant counter claimed against the Claimant as follows:-

- a. An Order setting aside the purported sale by the 1st Counter – Defendant to the 2nd Counter – Defendant of the property known as 4 Nos. 3 bedroom flats, situate at Plot 24 Block XIII Federal Housing Estate Gwarimpa, Federal Capital Territory, Abuja.
- b. A Declaration that the Counter – Claimant is the owner of the property known as 4 Nos. 3

Bedroom Flats, situate at plot 24 Block XIII Federal Housing Estate Gwarimpa, Federal Capital Territory, Abuja by virtue of sale, transfer of interest and title by 1st Counter – Defendant to the Counter – Claim on 2nd of February, 2009 before the purported transfer of title to the 2nd Counter – Defendant as shown by First City Monument Bank Plc. Manager’s cheque dated 7th April, 2009.

- c. A Perpetual Injunction restraining the 1st and 2nd Counter – Defendants, and any person claiming through it, by or under their authority, or any person howsoever designated claiming against them from further trespassing on the property of the Counter – Claimant.

d. The Sum of N30,000,000.00 (Thirty Million Naira) damages for trespass against the 2nd Counter – Defendants.

DW1 tendered the following document in evidence;

- i. Deed of Assignment two in Numbers as Exhibit “D1”.
- ii. Instrument of Sale as Exhibit “D2”.
- iii. Power of Attorney as Exhibit “D3”.

DW1 was cross – examined and discharged.

Defendant/Counter Claimant closed its case to paved way for filing of final written addresses.

Parties filed and adopted their final written addresses to give way for this judgment.

Learned counsel for the Defendant/Counter – Claimant in his written address formulated two issues for determination to wit;

1. Whether certified true copy (secondary Evidence) of a title Document over – rides original copy (primary Evidence) of same title Document.
2. Whether the counter – Claimant has proved his case on the Balance of probability to be entitled to the reliefs sought on the counter claim.

On issue 1, whether certified true copy (secondary Evidence) of a title Document over – rides original copy (primary Evidence) of same title Document, Learned counsel contended that the best form of evidence is the primary evidence which simply means production of the original copy for the court

to inspect, and that where a party leads evidence as to the existence of a document on a particular issue before the court, the best evidence is production of the document, unless it is proved to the satisfaction of court that the document itself cannot be produced. ***BAMGBOSE VS JIAZA (1991) 3 NWLR (Pt. 177) at 64.***

On issue two, whether the counter – Claimant has proved his case on the Balance of probability to be entitled to the reliefs sought on the counter claim, Learned counsel argued that on the balance of probability, the counter – claimant has established his case and is entitled to the reliefs sought.

Counsel contended that where there is competing interest as in the present case, it is the first in time that shall prevail and that from the document before

the court, the Defendant/Counter Claimant document is the 1st in time. Defendant/Counter Claimant argued.

On their parts, learned counsel for the Claimants formulated a sole issue for determination to wit;

Whether the 2nd Claimant has made out a case to be entitled to the reliefs sought.

Learned counsel argued that there are 5 ways of proving ownership to land, i.e:-

1. Proof by traditional evidence
2. Proof by production of document of title
3. Proof by acts ownership extending over a sufficient length of time.
4. Proof by act of long possession.

5. Proof by possession of connected or adjacent land in circumstances rendering it probable that the owner of such land would in addition be the owner of the land in dispute. *IDUNDUN & ORS VS OKUMAGBA (1976) LPELR 1431 (SC)*.

Learned counsel contended that Claimant had tendered Exhibit “A” and “B” to show that the property belongs to it.

Court was urged to grant all the reliefs sought and dismiss the counter – claim.

COURT: I have gone through the respective cases of the parties as presented before me during trial and the documents tendered therein.

I have equally gone through the written addresses of the parties. I shall be brief but succinct in addressing

the issues at stake in the overriding interest of justice.

It must be borne in mind that the Plaintiffs' relief is declaratory in nature thereby predicating the success of other reliefs on its success.

A party who seeks judgment in his favour is required by law to produce evidence to support his pleadings.

It is an equally established position of law that in cases where declaratory reliefs as in the present case, the Plaintiff must satisfy the court by cogent and reliable proof of evidence in support of his claim. ***AGBAJE VS FASHOLA & OR (2008) 6 NWLR (Pt. 1082)***.

Indeed, judicial pronouncements *ad-idem* that declaratory reliefs are never granted based on admission or on default of filing defence.

Where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleading.

SAMESI VS IGBE & ORS (2011) LPELR 4412.

The court has a duty to satisfy itself that the Plaintiff's evidence upon assessment is credible and sufficient to sustain the claim.

In proof of its case, Plaintiff called a sole witness in the person of Mr. OduNtaji who adopted his witness statement on oath and tendered the following documents in evidence;

1. Bank Draft dated 7th April, 2009 as Exhibit "A"
2. Certify True Cope of Registered Deed of Assignment as Exhibit "B".

3. Unregistered Deed of Assignment as Exhibit “C”.
4. Tenancy Agreements as Exhibit “D”.

On his part, the Defendant/Counter Claimant equally called a sole witness in the person of NuraHaruna who adopted his witness statement on oath and tendered the following documents.

- i. Deed of Assignment as Exhibit “D1”
- ii. Instrument of sale as Exhibit “D2”.
- iii. Power of Attorney as Exhibit “D3”.

Indeed, a trial court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment or act on it.

Documents tendered before a trial court are meant for scrutiny or examination and evaluation.

MOHAMMED VS ABDULKADIR (2008) 4 NWLR (Pt. 1076) 11 at pages 156 – 157.

It is the case of the Plaintiffs that its became owners of 4 Nos 3 bedroom flats, plot 24 Block xiii, Federal Housing Estate, Gwarimpa, Federal Capital Territory, Abuja by virtue of purchase from Harinpe Investment and Properties Limited.

Plaintiff tendered Exhibit “A”, which is a manager’s cheque of FCMB in the sum of N52,000,000.00. (Fifty Two Million Naira). The original copy of the cheque was collected by one Abdulsalam A. Rauf.

After the payment as evidence in Exhibit “A” above Exhibit “C” was executed between the party

i.e.undated Deed of Assignment between the 1st Plaintiff and the 2nd Plaintiff.

It is the law that an unregistered registrable instrument, though, is not admissible to prove title, is admissible to prove payment of money and coupled with possession of land by the purchaser, it may give rise to equitable interest see ***FBN PLC. VS OKELEWU & ANOR (2013) LPELR 20155 (CA)***.

The Land Instrument Registration Law, Cap 515, LFN Abuja has the following provisions;

Section 3(1)

“There shall be in the FCT, Abuja, a land registry with an office or offices at such place or places as the minister may, from time to time direct.”

Section 3(2)

“The registry shall be the proper office for the registration of all instruments including power of Attorney affecting land.”

Section 15

“No instrument shall be pleaded or given in evidence in a court as affecting a land unless the same has been registered in the land in question.”

Qst... Why did 2nd Plaintiff fail to register Exhibit “C” i.e the Deed of Assignment executed between it and the 1st Plaintiff?

Qst.. What then shall be the weight of the said Deed of Assignment in law bearing in mind the provision

of the land Registration Act, LFN Abuja, 1990 specifically sections 3(2) and 15?

The operative word under the afore – reproduced section is “shall”. “shall” in our jurisprudence connotes mandatoriness and shall be given an obligatory meaning as denoting compulsion and has the irresistible consequence of excluding the thought of discretion to impose a duty which must be enforced.

See CPC VS INEC & ORS in Suit No. CA/A/EPT/PRES/1/2011 (R).

Having not registered the said Deed of Assignment, same ought not to have been tendered in evidence in the first place. Having tendered same, the proper thing to do is expunge same. Same is accordingly expunged.

On his part, the Defendant/Counter Claimant tendered Exhibit “D2” which is an instrument of sale between Harinpe Investment and Properties Ltd and the Defendant. The said Exhibit “D2” is dated 2nd February, 2009.

Similarly, the Defendant tendered Exhibit “D1” which is Deed of Assignment and Power of Attorney dated 2nd February, 2009 between Harinpe Investment and Properties Ltd and the Defendant.

It is the Defendant’s argument that where two contesting parties trace their title in respect of the same piece of land to the same grantor, that the latter in time cannot maintain an action against the party who first obtained a valid grant of the land from such common grantor.

Indeed, I agree with the Defendant that it is the position of the law as aptly stated in the case of *TEWOGBADE VS OBADINA (1994) 4 NWLR (Pt. 338) 326 at 347 – 348.*

The question is, has Defendant registered his document in line with the provision of section 3(1),(2) and section 15 of the Land Instrument Registration Act Cap 515 LFN Abuja as captured in the preceding part of this judgment to clothe him with the valid title and claims of first in time?

A perusal of Exhibit “D1” and “D2” will reveal that the said documents were never registered in compliance with section 3(1)(2) and 15 of the Land Instrument Registration Act.

The implication of above revelation is that the said document suffers the same fate as the Claimants’

documents. Consequently said Exhibits “D1” and “D2” tendered are hereby expunged from the record of this court.

Qst.. Where then stand the Plaintiffs and Defendant in law in respect of the subject matter of litigation?

Like the foetus which shall suffocate and die arising from the fact that the umbilical cord, which is the foetus’ source of oxygen, carbondioxide both Plaintiffs and the Defendant in this case suffer the same fate in view of the fact that the only means possibly, legally speaking for them show their nexus with the subject matter of litigation were both not registered at the appropriate land registry.

Indeed, in order to succeed in claim to title to land, a party must proof the following:-

a. Proof by traditional evidence

- b. Proof by production of document of title
- c. Proof by acts of ownership extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the person exercising such act are the true owners of the land.
- d. Proof by acts of long possession.
- e. Proof by possession of connected or adjacent land in circumstance rendering it probable that the owner of such land would in addition be the owner of the land in dispute. ***IDUNDUN & ORS VS OKUMAGBA & ORS (1976) NSSC 453 paragraph 40 – 50.***

Having expunged both the Plaintiff and the Defendant's documents that connected them with the property, the subject matter of litigation, I shall

beams my search light on the document before the court to ascertain who indeed is in possession of the property.

It is the case of the Plaintiffs that 2nd Plaintiff has been in possession of the subject matter of litigation and in establishing this assertion Plaintiff tendered Exhibit “D” and “E” which are tenancy Agreement Plaintiff had with tenants in the subject matter of litigation.

Exhibit “D” read in part, as follows:-

Tenancy Agreement between Erosod Water Works Ltd and Barr. Mohammed Sallau in respect of the 2 Bedroom flat situate at plot 24 block xiii Federal Housing Estate Gwarimpa, FCT, Abuja. The agreement was made 21st August, 2009. Whereas Exhibit “E” was made 24th November, 2009.

It is clear from above that 2nd Plaintiffs has been in possession of the subject matter. I so hold.

I am not in agreement with the argument of Defendant that he has been in possession of the subject matter as no such verifiable evidence was tendered.

Possession which is either de jure or de facto is sufficient to exclude other persons from interfering. See the authority of ***BURAIMOH VS BAMGBOSE (1989) 3 NWLR (Pt. 109) page 352 at 366 paragraph D-E.***

Having determined the fact that Claimants are in possession of the subject matter, I have no difficulty entering judgment in their favour.

Judgment is hereby entered in favour of the Claimant and in consequence, I hereby make the following declaration as follows:-

- a. A declaration that all that property known and described as 4 No 3 bedroom flats, plot 24 Block xiii Federal Housing Estate Gwarimpa, FCT belong to the 2nd Claimant by act of possession is hereby granted.
- b. An Order of Perpetual Injunction restraining the Defendant, his agent(s) servant(s) and privies or otherwise however from entering or doing any acts that will disturb the quiet possession of the 2nd Claimant interest is hereby granted.

I make no Order as to the general damages.

On the counter claim of the Defendant, I shall not venture into same as that will amount to academic exercise. Consequently same is hereby dismissed.

Justice Y. Halilu
Hon. Judge
8th December, 2020

APPEARANCE

IKECHUKWU E. – for the 1st and 2nd Claimants.

FRANCIS ADEJO – for the Defendant/Counter Claimant.