

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 20TH DAY OF JANUARY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: CV/2869/2019

BETWEEN:

CHIEF OBUMNEME NWOGU

CLAIMANT

AND

1. MINISTER FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
3. ABUJA METROPOLITAN MANAGEMENT COUNCIL
4. DEPARTMENT OF DEVELOPMENT CONTROL



DEFENDANTS

JUDGMENT

Before this Court is an Originating Summons dated and filed on the 11th September, 2019. The Claimant, submitted the following questions for the Court's determination to wit:

- “1. Does the Acceptance by claimant of the offer of Terms of Grant/Conveyance Approval of Statutory Right of

Occupancy dated the 07/04/2003 1st Defendant granting him right of occupancy in and over the land known as and situate at plot 470 Cadastral Zone B01 of Gudu District Abuja, FCT (the property) for residential purpose, not bring into being a legal and enforceable contract between the parties.

2. Can the Defendants unilaterally or arbitrarily change the purpose (use) for the grant of right of occupancy to claimant in respect of plot 470 Cadastral Zone B01 of Gudu District Abuja, after claimant had accepted the terms of the offer and relied on the same in expending huge sums of money in making statutory payments and building plans for residential purpose?
3. Can the 3rd and 4th Defendants refuse to grant approval to claimant for the development of plot 470 Cadastral Zone B01 of Gudu District Abuja, FCT (the property) on the pretext that the purpose or use of the property was not clear, notwithstanding the clearly stated purpose of

the grant as contained in the letter of offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003, as accepted by claimant?

4. Whether the Defendants, their agents, departments, servants and or privies can read into the letter of offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003, any purpose or use other than the one contained therein in respect of plot 470 Cadastral Zone B01 of Gudu District Abuja, FCT (the property)?

5. Did the Defendants not violated the claimant's constitutionally guaranteed right to acquire interest in an immovable property in Nigeria as well as his right to fair hearing in the manner they purported to have unilaterally changed the purpose of the grant of the right of occupancy in and over plot 470 Cadastral Zone B01 of Gudu District Abuja, FCT (the property).

6. Whether any of the Defendants can rely on a ground not known to law to refuse to grant Building Plan Approval to claimant consequent upon the submission of a plan prepared in line with the purpose of the grant of right of occupancy as contained in the letter of offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy date the 07/04/2003?”

If the answer to questions numbered 1 and 5 are in the affirmative, and the answer to questions numbered 2,3,4, and 6 are in the negative, the claimant seeks the following reliefs jointly and severally against the Defendants:

1. A declaration that the acceptance by claimant of the offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003 by 1st Defendant granting him right of occupancy in and over the land known as and situate at plot 470 Cadastral Zone B01 of Gudu District Abuja, FCT (the

- property) for residential purpose, did bring into being a legal and enforceable contract between the parties.
2. A declaration that the general purpose (use) for the grant of right of occupancy by Defendant to claimant in respect of plot 470 Cadastral Zone B01 of Gudu District Abuja, was for residential purpose.
 3. A declaration that the Defendants cannot arbitrarily change the purpose (use) for the grant of right of occupancy to claimant in respect of plot 470 Cadastral Zone B01 of Gudu District Abuja, after claimant had accepted the terms of the offer and relied on the same in expending huge sums of money in making statutory payments and building plans for residential purpose.
 4. A declaration that the 3rd and 4th Defendants cannot refuse to grant approval to claimant for the development of plot 470 Cadastral Zone B01 of Gudu District Abuja, FCT (the property) on the pretext that

the purpose or use of the property was not clear, notwithstanding the clearly stated purpose of the grant as contained in the letter of offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003, duly accepted by claimant.

5. A declaration that none of the Defendants, their agents, departments, servants and privies can read into the letter of offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003, any purpose or use other than the one contained therein in respect of plot 470 Cadastral Zone B01 of Gudu District Abuja, FCT (the property).
6. A declaration that the Defendants violated the claimant's constitutionally guaranteed right to acquire interest in an immovable property in Nigeria as well as his right to fair hearing in the manner they purported to have unilaterally changed the purpose of the grant

of the right of occupancy in and over plot 470 Cadastral Zone B01 of Gudu District Abuja, FCT (the property).

7. A declaration that none of the Defendants can rely on a ground or reason not known to law to refuse to grant Building Plan Approval to claimant consequent upon the submission of a plan prepared in line with the purpose of the grant of right of occupancy as contained in the letter of offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003.
8. An order of Court directing the Defendants to grant building plan Approval as well as all other requisite approval for the development of a residential property on plot 470 Cadastral Zone B01 of Gudu District Abuja, FCT (the property), upon the fulfilment of requisite grounds for the grant of the same.
9. Exemplary damages of N75. Million Naira only.

10. Cost of this action.

In support of the Originating Summons is a 63 paragraphs affidavit duly deposed to by the Applicant himself. Attached to the application is a bundle of documents, marked as Exhibits A1 – A5. The claimant filed a written address along with the Originating Summons and same was adopted by Abbas Sani Esq.

Upon service of the Originating Summons on the Defendants, one Betty A. Umegbolem Esq. filed a Memorandum of Conditional Appearance on the 22nd November, 2019, indicating interest to represent all the Defendants. However, the said Counsel never appeared before this Court or file any process in opposition to the instant application.

In the written address in support of the application, learned counsel for the claimant **Mazi Afam Osigwe SAN**

raised 6 issues for determination before this Court. The issues are as follows:

1. “Does the acceptance by claimant of the offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated 07/04/2003 by 1st Defendant granting him right of occupancy in and over the land known and situate at Plot 470 Cadastral Zone B01 of Gudu District, Abuja, FCT (the property) for residential purpose, not bring into being a legal and enforceable contract between the parties.
2. Can the Defendants unilaterally or arbitrarily change the purpose (use) for the grant of right of occupancy to claimant in respect of Plot 470 Cadastral Zone B01 of Gudu District, Abuja, after claimant had accepted the terms of the offer and relied on the same in expending huge sums of money in making statutory payments and building plans for residential purpose?

3. Can the 3rd and 4th Defendants refuse to grant approval to claimant for the development of Plot 470 Cadastral Zone B01, of Gudu District, Abuja FCT, (the property) on the pretext that the purpose or use of the property was not clear, notwithstanding the clearly stated purpose of the grant as contained in the letter of offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003, as accepted by claimant?
4. Whether the Defendants, their agents, departments, servants and or privies can read into the letter of offer to Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003, any purpose or use other than the one contained therein in respect of Plot 470 Cadastral Zone B01 of Gudu District, Abuja, FCT (the property).
5. Did the Defendants not violate the claimant's Constitutionally guaranteed right to acquire interest

in an immovable property in Nigeria as well as his right to fair hearing in the manner they purported to have unilaterally changed the purpose of grant of the right of occupancy in and over plot 470 Cadastral Zone B01, of Gudu District Abuja, FCT (the property).

6. Whether any of the Defendants can rely on a ground not known to law to refuse to grant building plan approval to claimant consequent upon the submission of a plan prepared in line with the purpose of the grant of right of occupancy as contained in the letter of offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003.”

Now, upon careful perusal of the reliefs sought by the claimant, the affidavit in support together with all the annexures exhibits, the issue that calls for resolution is:

“Whether the claimant has proved by affidavit evidence his claims before this Court to be entitled to judgment in his favour.”

However, in resolving this issue, this Court will make reference to submissions and arguments canvassed in the written address of the Claimant where necessary.

It is pertinent at this juncture to state briefly the facts that led to this application as set out by the claimant in his supporting affidavit.

The claimant averred that sometimes in 2003 he applied for a plot of land from the Minister of the Federal Capital Territory which was evidenced by a Bank-draft in the Sum of N21,000: (Twenty One Thousand Naira) which the Federal Capital Territory acknowledged the receipt and duly issued the claimant with a receipt dated 21/01/2003. Upon this application, the 1st Defendant, the Minister of the Federal Capital Territory granted to the claimant a Statutory

Right of Occupancy over Plot 470 Cadastral Zone B01 of Gudu District, Abuja with file No: MFCT/LA/FCT. 1382, vide a letter of offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated 07/04/2003.

The claimant duly accepted the offer of the grant of the right of occupancy over the property. The purpose of the grant as stated in the Offer letter was for residential purpose.

It is also the averment of the claimant that he was eventually issued with Bill for Statutory Right of Occupancy which clearly stated that the land use of the property was 'residential' while the specific purpose was for 'private residential'. The claimant was also issued with a Re-Certification and Re-issuance of Certificate of Occupancy (C of O) Acknowledgement. The claimant was severally issued with a Demand for Ground Rent as well as a statutory right of occupancy bill by the 2nd Defendant which the claimant has since paid.

The claimant further averred that in 2017 he submitted duly prepared and sealed Building Plan to the 3rd and 4th Defendants for approval to commence development on the plot in issue, but he was told that the land use for his property from the Department of Urban and Regional Planning (URP) could not be traced. When the issue could not be resolved, the claimant called his solicitors to write a letter to the Director Urban and Regional Planning (URP) to confirm the use of the plot. It was then that a letter was written to him stating that the purpose of the property was General Land use: Commercial, while the Detailed Land use was Shopping.

Officers of the 3rd Defendant consistently informed the claimant that they would neither process nor give approval for the development of the private residence contained in the Building Plans he submitted. Despite the claimants insistence on a written communication, all the departments

of the Defendants have refused to state in writing the reason for the proposed change of use of the property.

Generally, the originating summons procedure is a means of commencement of action adopted in cases where the facts are not in dispute or there is no likelihood, of their being in dispute and when the sole or principal question in issue is or is likely to be one directed at the construction of a written law, constitution or any instrument or of any deed, will, contract or other document or other question of law or in a circumstance where there is not likely to be any dispute as to the facts. In general terms, it is used for non-continuous actions or matters i.e. those actions where facts are not likely to be in dispute, in actions commenced by originating Summons, pleadings are not required rather affidavit evidence are employed. See: Director, State Security Service vs. Agbokaba (1999)3 NLWR (Part 595) 314, ASOR vs. INEC & Ors. (2013) LPELR – 20695 (CA).

In the instant case, the claimant's crucial contention is whether the acceptance by the claimant of the offer of terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated 07/04/2003, issued by the 1st Defendant over Plot 470 Cadastral Zone B01 of Gudu District, Abuja, for residential purpose, does not bring into existence a legal and enforceable contract between the parties.

Secondly, whether the Defendants can unilaterally change the purpose (use) for the grant of right of occupancy with respect to Plot 470 Cadastral Zone B01 of Gudu District, Abuja, after the claimant had accepted the terms of the offer.

Now, the pertinent question that begs for an answer is what is the implication of a valid allocation of the offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy?

At paragraphs 2.1 to 2.5 of his written address, the Learned claimant's Counsel submitted to the effect that the acceptance by the claimant of the offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated 07/04/2003 issued by the 1st Defendant over Plot 470 Cadastral Zone B01 of Gudu District, Abuja, for residential purpose created a legal and enforceable contract between the parties. He submitted that parties enjoy freedom of contract. This freedom enable them to agree on the terms of such contract prior to the conclusion of the contract. The freedom carries with it the inevitable implication of sanctity of their contract. Counsel further submitted that the claimant and 1st Defendant, both entered into a binding contractual relation by virtue of the terms of agreement (offer of terms of grant of statutory right of occupancy). Learned counsel referred this Court to the following authorities:

- Sparkling Breweries Ltd vs. Union Bank of Nig. Ltd (2001) FWLR (part 71) 1682 at 1702
- A.G. of Rivers State vs. A.G. Akwa Ibom State (2011) 8 NWLR (part 1248) 31 at 83

Mr. Osigwe further relied on A.C. Abalogu vs. S.P.D.C Ltd (2003) 13 NWLR (part 837) to submit that by the operation of estoppel, a party is not allowed to say a certain statement of fact is untrue in contradiction of his earlier position which another person had relied on, whether in reality it is true or not. Reference was made to the dictum of Achike JSC, in Bank of the North Ltd vs. Yau (2001) 5 SC (part 1) 121 where the Court held:

“Estoppel prohibits a party from proving anything which contradicts his previous acts or declarations to the prejudice of a party, who relying upon them, has altered his position. It shuts the mouth of the party.”

Learned counsel went on to submit that the defendants are estopped from refusing to grant approval to the claimant for the development of the property on the pretext that the purpose or use of the property was not clear. Counsel submitted that the defendants cannot rely on a ground not known to law to refuse to grant Building Plan Approval to the claimant consequent upon the submission of a plan prepared in line with the purpose of the grant of Right of Occupancy as contained in the letter of offer of Terms of Grant dated 7/4/2003.

It was posited further that the defendants action was arbitrary having not accorded the claimant a hearing. That the defendant's actions run foul of Section 44(1) of the 1999 Constitution. Learned counsel finally submitted that the claimant has successfully proved his case on a preponderance of

evidence and therefore urged the Court to grant the claimants prayers.

In a case of simple contract like this which involve offer and acceptance of terms of grant of a right of occupancy, the parties, are bound by the agreement, they are ad idem on its terms at the time of the making of the contract.

From the evidence of the claimant, it is not in dispute that 1st Defendant granted a Statutory Right of Occupancy over Plot 470 Cadastral Zone B01 Gudu District, to the claimant.

On the face of exhibit A2 i.e. letter of offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated 07/04/2003, it is clearly stated that the purpose or use of the property was for residential purpose.

The 1st – 4th Defendants did not file any counter affidavit to deny, challenge or controvert the facts

contained in the claimant's affidavit. The law is that where an affidavit is not challenged by a counter affidavit, the facts deposed to in the affidavit remain unchallenged. See: A.G. Rivers State vs. Ude (2006)7 SC (Part 11) page 81.

Further, the law is settled that where deposition in an affidavit are not denied by way of a counter affidavit, they are generally deemed admitted and the Court is to act thereon. However, for such a presumption to be correct, the facts in the affidavit must have been properly put before the Court. In other words, an unfettered burden lies on the Applicant's affidavit to stand or fall on its own merit. This is synonymous with the requirement placed on a Plaintiff to succeed on the strength of his own case and not rely on the weakness of the defence. See: Micah & Ors. vs. Hon. Minister FCT & Anor. (2018) LPELR – 4491 (CA); Tukur vs. UBA & Ors. (2013)4 NWLR (Part 1343) 90.

In this instance, from the claimant's depositions in the supporting affidavit and documents attached thereto,

particularly exhibits A1,A2,A3 and several receipts attached evidencing payments of ground rents and other expenses over the plot, (subject matter of this suit) by the claimant, it is established that there exist a binding contractual agreement between the claimant and the 1st Defendant.

The law has long been settled that parties are bound by the contract they voluntarily entered into and cannot act outside the term and conditions contained in the contract and neither of the parties to a contract can alter or read into a written agreement a term which is not embodied in it. See: Unity Bank Plc. vs. Olatunji (2014) LPELR – 24027 (CA).

In Afrotech vs. MIA & Sons Ltd (2000) 12 SC (part 11) page 1 at 15, the Court held:

“The trite position of the law is that parties are bound by the terms of contract contained in an agreement without any subtraction or addition. The

Court has no power to rewrite the contract. The intention of the parties in a written contract, is always to be gathered from the document itself. The terms of the contract are to be determined by the parties and not the Court. All that a Court does is to construe the words used by the parties in the agreement.”

Similarly in the case of BFL Group Corp vs. B.P.E. (2012) 18 NWLR (Part 1332) 209 at 238 – 9, the Supreme Court, Per Fabiyi JSC delivering the lead judgment held as follows:-

“It must be reiterated here that the Court must treat as sacrosanct the terms of an agreement freely entered into by the parties. This is because parties to a contract enjoy their freedom to contract on their own terms, as same is lawful. The terms of a contract between parties are clothed with some degree of sanctity, and if any question should arise with regard to the contract, the terms in any document which

constitute the contract are invariably the guide to its interpretation. When parties enter into a contract, they are bound by the terms of the contract as set out by them. It is not the business of the Court to rewrite a contract for the parties.”

See, Dantata vs. Dantata (2002) 4 NWLR (part 756) page 144.

Thus, as rightly submitted by the claimant’s Counsel the Defendants cannot unilaterally or arbitrarily change the purpose (use) for the grant of right of occupancy after the claimant had accepted the terms of the offer and relied on same in expending huge sums of money in making statutory payments for the plot in dispute. Parties in this suit had voluntarily entered into a binding agreement upon the grant made to the claimant and his acceptance of same. This Court is at one with the submissions of the learned senior counsel that the parties are bound as long as they entered into the agreement fully conscious of what they

were doing, willingly signed same, defendants collected and enjoyed the consideration; and the subject matter of the agreement is lawful. Parties are bound by the principle of *'Pacta sunt servanda'* Agreements must be kept.

In the instant case, having considered the averments of the claimant in the supporting affidavit which remained unchallenged and the documents exhibited, I hold that the acceptance of the offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003 issued by the 1st Defendant over Plot 470 Cadastral Zone B01 of Gudu District, Abuja for residential purpose, created a legal and enforceable contract between the parties.

I also hold that the Defendants cannot unilaterally change the purpose for the grant of right of occupancy and refuse to grant approval to the claimant for the development of Plot 470 Cadastral Zone B01 of Gudu District, Abuja.

The doctrine of estoppel as espoused in the case of Lawal vs. U.B.N. Plc (1995) 2 NWLR (part 378) at 19 - 20 rightly cited by the claimant's counsel has caught up with the defendants. The Court per Ogwuegbu JSC, held:

“The doctrine of estoppel is that where one party has by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his words and acted on it, the one that gave the promise or assurance cannot afterwards be allowed to revert to the previous relations as if no such promise or assurance had been made by him.”

I hold therefore that the defendants are bound by the letter of offer and grant of Right of Occupancy, and nothing can be read or added to the terms contained therein.

It is noted that the claimant claims exemplary damages of N75 Million. The claimant in his deposition stated that the defendants unjustifiable action caused him to suffer damage.

In the case of Williams vs. Daily Times of Nig. Ltd (1996) 1 NSCC page 15 the Supreme Court held that:

- “1. Exemplary damage is awarded in order to punish a defendant whose conduct has been outrageous or scandalous.*
- 2. Exemplary damages are usually awarded where statutes prescribe them and also for oppressive arbitrary and unconstitutional actions by servants of the Government.”*

Before exemplary damages can properly be awarded by a trial Court, there must be evidence in proof of the facts and circumstances which on the balance of probabilities, satisfy it that there is prima facie justification for such an

award. In other words, the claim for exemplary damages must be pleaded and proved before it can be awarded. See Sonuga & anor vs. Minsiter, FCT Abuja & anor (2010) LPELR - 19789 (CA). In the case of Odogu vs. A.G. Federation (1996) 6 NWLR (part 456) 508 at 519 - 520 the Supreme Court had held thus:

“Before aggravated and exemplary damages can be awarded, it must be specifically claimed and proved.”

See also Eliochin vs. Mbadiwe (1986) 1 NWLR (part 14) at 47, Onagoruwa vs. I.G.P (1991) 5 NWLR (part 193) page 647.

Thus, exemplary damages fall within the class of special damages that calls for specific pleading and proof by evidence before it can be granted or awarded. In the premise, they also fall within the exception to the general principle of law that what is admitted needs no further

proof. See Sonuga & anor vs. Minister FCT, Abuja & anor (cited supra).

I am of the considered view that the conduct of the defendants in this case do not attract the award of exemplary damages as no malice is disclosed. The claim for exemplary damages is thus refused.

On the whole, the claimant's case has considerable merit and I proceed to answer questions 1 and 5 submitted for determination in the affirmative, while questions 2,3,4 and 6 are answered in the negative. It follows therefore that the reliefs sought by the claimant are availing. I grant same in the following terms:

- It is hereby declared that the acceptance by claimant of the offer of Terms of Grant/Conveyance Approval of Statutory Right of Occupancy dated the 07/04/2003 by 1st Defendant granting him right of occupancy in and over the land known as and situate at plot 470

Cadastral Zone B01 of Gudu District Abuja, FCT (the property) for residential purpose, brought into being a legal and enforceable contract between the parties.

- It is declared that the purpose (use) for the grant of Right of Occupancy to the claimant in respect of Plot 470 Cadastral Zone B01 of Gudu District Abuja, was for residential purpose and the defendant cannot arbitrarily change the purpose (use) of that grant.
- It is further declared that the defendants cannot refuse to grant approval to the claimant for the development of the Plot 470 Cadastral Zone B01 of Gudu District Abuja, on the pretext that the purpose (use) was not clear notwithstanding the clearly stated purpose in the Approval of Statutory Right of Occupancy dated 7/4/2003. And none of the defendants can read into the letter of Terms of Grant/Conveyance of Approval of Statutory Right of Occupancy, any purpose (use) other than that contained therein.

- It is also declared that the defendants violated the claimants constitutional guaranteed right to fair hearing and acquire immovable property in the manner they purported to have unilaterally changed the purpose of the grant made to the claimant over the plot in dispute.
- None of the defendants can rely on a ground not known to law to refuse to grant building plan approval upon the submission of a plan prepared in line with the purpose of the grant contained in the Offer of Terms of grant. In effect, the defendants shall grant Building Plan Approval as well as all other required approvals upon the fulfillment of requisite grounds for the grant of same.
- Claim for exemplary damages is refused.
- Cost of N100,000.00 (One Hundred Thousand Naira) against the defendant.

Hon. Justice M.A. Nasir

Appearances:

Mazi Afam Osigwe SAN with Abbas Sani Esq and Chidinma Eke Esq – for the plaintiff

Betty A. Umegbolem Esq – defendants