

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT JABI ABUJA**

DATE: 12<sup>TH</sup> DAY OF JANUARY, 2021  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 9  
SUIT NO: CV/3627/2012

**BETWEEN**

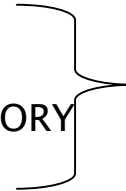
HAJIA RUKIYA DABAI

(suing through her lawful Attorney Nnabuike Ofordile) -----

CLAIMANTS

**AND**

1. FEDERAL CAPITAL DEV. AUTHORITY  
2. MINISTER OF THE FEDERAL. CAPITAL TERRITORY  
DEFENDANTS



3. BINTA A. TSEE  
4. WILSON WUKU

**JUDGMENT**

The claimant instituted this action on the 11/6/2012 initially against the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Upon service of the originating processes, the 1<sup>st</sup> and 2<sup>nd</sup> defendants entered appearance and filed a motion for joinder of the 3<sup>rd</sup>

and 4<sup>th</sup> defendants, and same was granted. Consequent upon the ruling joining the 3<sup>rd</sup> and 4<sup>th</sup> defendants, the claimant amended the originating processes to reflect the parties joined. Service of the processes was effected on the 3<sup>rd</sup> and 4<sup>th</sup> defendants on the 30/3/2016 vide substituted means to wit, by pasting on the subject matter in dispute. This became necessary as personal service proved abortive.

Upon receipt of the originating process, the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a motion M/10219/17 seeking for leave to put in their Statement of Defence out of time. This motion was never moved by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The 3<sup>rd</sup> and 4<sup>th</sup> defendants on the other hand never entered appearance in the suit and failed to file any process.

Hearing in the suit commenced on the 2/10/2016 with one Nnabuike Ofordile testifying as PW1 on behalf of the plaintiff. PW1 adopted his witness statement on oath and tendered the documents stated hereunder.:

- Offer of Terms of grant/conveyance of approval dated 27/11/2002 marked as Exhibit A
- Acceptance form marked as Exhibit A1
- Recertification acknowledgment marked as Exhibit A2
- Statutory right of occupancy bill marked as Exhibit A3.
- Copy of application for regularization marked as Exhibit A4
- Two letters both dated 21/11/2011 addressed to the Hon. Minister FCT, and the other to the Director Lands AGIS admitted and marked collectively as Exhibit A5
- Reminder letters both dated 13/4/2012 marked as Exhibit A6
- Registered Power of Attorney marked as Exhibit A7

The witness was cross examined by learned counsel to the 1<sup>st</sup> and 2<sup>nd</sup> defendants, but there was no representation from the 3<sup>rd</sup> and 4<sup>th</sup> defendants. After several opportunities for the 3<sup>rd</sup> and 4<sup>th</sup> defendants to cross examine the witness,

they were eventually foreclosed from cross examining PW1 and the case adjourned to 4/3/2020 for defence. On that date, there was no representation from all defendants and none of them filed Statement of Defence on record. Eventhough the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a motion to put in their Statement of Defence out of time on the 13/10/2017 the motion was abandoned as they failed to move same before the Court. Upon the application of counsel to the claimant, all defendants were foreclosed from defence and the case adjourned for adoption of written addresses.

The case of the claimant is that she applied for and was allocated a plot No. LD 405, Cadastral Zone A09, Guzape District, Abuja. She accepted the offer and thereafter donated a Power of Attorney to Nnabuike Ofordile. During the recertification exercise, the donee Mr. Ofordile submitted the title documents for recertification to Abuja

Geographic Information System (AGIS). He then proceeded to make payments, for ground rent and also paid 50% of the Certificate of Occupancy charges. When infrastructural development was put in Guzape, her surveyors placed beacons and built a dwarf fence on the plot. She sent her bills so as to get ready for building approval from the 1<sup>st</sup> and 2<sup>nd</sup> defendants. It was at that point that her solicitor was informed that the plot has changed to Plot 441 as a result of infrastructural alterations. She made efforts to get the 1<sup>st</sup> and 2<sup>nd</sup> defendants to recertify her plot with the correct plot number but same was ignored. Hence this action.

The plaintiff therefore claims for the following reliefs against all defendants:

*“1. A declaration that the plaintiff is the bonafide and beneficial owner in possession of Plot LD 405, Cadastral Zone A09, Guzape, with old file No.*

*MFCTA/LA/AD/1516 and new file No. EN10361, measuring 1595.23m<sup>2</sup>.*

- 2. An order of perpetual injunction restraining the defendants their agents, servants officers, departments or organs from dealing with any person or persons whatsoever called, over the LD 405, Cadastral Zone A09, Guzape, Abuja, other than the plaintiff.*
- 3. An order of mandatory injunction compelling the 1<sup>st</sup> and 2<sup>nd</sup> defendants to release the certificate of Occupancy over the said LD 405, Cadastral Zone A09, Guzape, with old file No. MFCTA/LA/AD/1516 and new file No. EN10361, measuring 1595.23m<sup>2</sup> to the plaintiff.*
- 4. An order of mandatory injunction compelling the department of development control of the defendants to issue development/building plan*

*approval to the plaintiff with respect to the said plot LD 405, Cadastral Zone A09, Guzape, with old file No. MFCTA/LA/AD/1516 and new file No. EN10361, measuring 1595.23m<sup>2</sup>.*

*5. Cost.*

***ALTERNATIVELY:***

*6 The sum of N100,000,000.00 (One Hundred Million Naira) only as compensatory and expectation damages.”*

E.N. Nwoye Esq filed the claimant’s written address dated 18/3/2020 and filed 23/3/2020. He raised one issue for determination, which is:

*“Whether the claimant has proved her case on the preponderance of probability to be entitled to judgment.”*

Learned counsel submitted that in a claim for declaration of title to land, the plaintiff must satisfy the Court by credible evidence and the claim is not satisfied by admission. He cited Fabunmi vs. Agbe (1985) NWLR (part 2) 299, Shoshai Gambo vs. Zindu Turdam (1993) 3 NWLR (part 66) 691.

Counsel listed the five ways of proving title to land and added that for declaration of title to land and injunction, the burden placed on the plaintiff by the law is to prove its case by credible evidence, and the proof of one of the five ways suffices to prove ownership of land. Reference was made to Idundun vs. Okumagba (1976) 9 - 10 SC, Mogaji vs. Cadbury Nigeria Ltd (1985) 2 NWLR (part 7) 393, Dosunmu vs. Dada (2002) 13 NWLR (part 783) 1 at 31 among others.

Learned counsel submitted that the plaintiff tendered title documents in proof of her title and also led evidence to



demonstrate possession of plot of land. He added that documentary evidence is the best evidence and the law is that acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy of a piece of land. He urged the Court to act on the evidence of the claimant as same has not been challenged nor contradicted. He cited Olubodun vs. Lawal (2008) All FWLR (part 434) 1468 at 1525, Dughum vs. Adnzege (2007) All FWLR (part 385) 499, Kopek Construction Ltd vs. Ekisola (2010) LPELR 1703 SC.

It is noted that none of the defendants addressed the Court. In determining this case, the Court will proceed to adopt the sole issue formulated by learned counsel to the plaintiff. The issue is:

*“Whether the claimant has proved her case on the preponderance of probability to be entitled to judgment.”*

It is trite law that one of the recognized methods of establishing title to land is by the production of valid documents. See Piaro vs. Tenelo (1976) 12 SC 31 at 37 and Nwadike vs. Ibekwe (1987) 4 NWLR (part 67) 718.

The Supreme Court laid down five ways of proving title to land.

- (1) By traditional evidence
- (2) By Production of document of title duly authenticated and executed
- (3) By acts of ownership extended over a sufficient length of time numerous and positive enough as to warrant the inference of true ownership
- (4) By acts of long possession and enjoyments and
- (5) Proof of possession of connected or adjacent land in instances rendering it probable that the owner of such connected or adjacent land would, in addition be the owner of the land in dispute.

See Yusuf vs. Adegoke & anor (2007) 4 SC (part 1) page 126 at 137, Idundun vs. Okumagba (1976) 9 – 10 SC page 227, Ogunnaike vs. Oluyemi (1987) 3 SC 215, Oyadare vs. Keji & anor (2005) LPELR – 2861 (SC), Dabo vs. Abdullahi (2005) 2 SC (part 1) page 75 at 91.

In law, the proof of any of these methods by credible evidence would be sufficient to ground an action for declaration of title to land. The claimants offer of Statutory Right of Occupancy was signed by Mallam M.S.U. Kalgo, the Director Land Admin and Resettlement. The offer is for Plot No. LD405, within Guzape District. It is shown that the claimant accepted the offer of the Grant of Statutory Right of Occupancy and there is evidence of payment of Statutory Right of Occupancy bill. There is the Revenue Collectors Receipt written out in the Attorney's name Nnabuike Chukwudimnia Ofordile. There was no denial of the fact that all these documents emanated from the 1<sup>st</sup> and 2<sup>nd</sup>

defendants. The plot number on the Acknowledgment and recertification Exhibit A2, tally with Exhibit A the offer of Terms of Grant/Conveyance of Approval, which demonstrates that the documents all relate to the same file and the same land allocation.

If there is an internal arrangement which necessitated the change in plot number, that arrangement should not affect the claimant. The plot number 441 alleged to have been forged does not belong to the plaintiff whose plot is numbered Plot No. LD405 within Guzape District. Assuming it is the same plot as the one allocated to the plaintiff, the defendants failed to pinpoint or identify the person who forged the document. It is also clear that there was no allegation that it was the claimant who forged the document.

Section 18 of the Federal Capital Territory Act Cap 503, LFN 1990 expressly vest the power to grant Statutory Right

of Occupancy over land situate in the FCT on the Minister. See the case of Madu vs. Madu (2008) 2 – 3 SC (part II) page 109. Thus without an allocation or grant made by the Minister, there is no way any person could acquire land in the FCT. There is no competing interest or better title shown from any quarters to challenge the title of the claimant. This Court is satisfied that the claimant has led credible evidence to prove her title to the plot in dispute.

In the circumstance, the Court finds as follows:

- 1. A declaration is made that the plaintiff is the bonafide and beneficial owner in possession of Plot LD405, Cadastral Zone A09, Guzape District, with file Number AD1516.**

Relief 2 is for perpetual injunction restraining the defendants, their agents, servants, officers, departments or organs from dealing with any other person or person

whatsoever called over the subject matter other than the plaintiff.

It is trite that the grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by the Court. The essence of its grant is meant to prevent permanently the infringement of those rights being complained of and to obviate the necessity of bringing multiple suits on the issue in the future. See Goldmark Nig. Ltd & ors vs. Ibafo Co. Ltd & ors (2012) LPELR – 9349 SC.

The issue here is whether a perpetual injunction can be granted against the Governor of the State, in this instance the Minister, FCT? Section 2(1)(a) of the Land Use Act which provides that:

*“As from the commencement of this Act, all land in urban areas shall be under the control and management of the Governor of each state.”*

See also Section 18 of the FCT Act.

In the first place, a holder of any land allocation is a limited owner to a term of 99 years, and most importantly, the Governor has a right of revocation for overriding public interest, or to deal on the land with any person in respect of the land. Then the question is, can the Court rightly restrain the governor in the performance of that statutory duty placed on him? The obvious answer is in the negative. The Supreme Court in the case of Akinduro vs. Alaya (2007) LPELR – 344 SC held that it is improper to grant an order of perpetual injunction at the instance of a limited owner.

Thus the defendants, their agents, servants or privies shall only be restrained by an order of injunction from dealing with any other person or person whatsoever called over the plot No. LD405 Cadastral Zone A09, Guzape District, Abuja other than the plaintiff, except by due process of law.

Reliefs 3 and 4 are for mandatory injunction compelling the 1<sup>st</sup> and 2<sup>nd</sup> defendants to release the certificate of occupancy of the subject matter and to issue building plan approval to the plaintiff. The provision of Section 9(1)(a) of the Land Use Act is to the effect that it shall be lawful for the Governor of a State (or the Minister FCT) when granting a Statutory Right of Occupancy to any person *‘to issue a certificate under his hand in evidence of such right of occupancy.’* I hold that since the Minister has granted the Statutory Right of Occupancy in respect of the said plot to the claimant, it becomes obligatory for the defendant to issue a Certificate of Occupancy to the claimant in respect of the plot upon the claimant meeting the statutory requirements.

I award cost of N100,000.00 (One Hundred Thousand Naira) from the 1<sup>st</sup> and 2<sup>nd</sup> defendants only in favour of the claimant.



Signed  
Honourable Judge

Appearances:

E.N. Nwoye Esq – for the claimant

O.M. Tenuche Esq – for the 1<sup>st</sup> and 2<sup>nd</sup> defendants

3<sup>rd</sup> and 4<sup>th</sup> defendants absent and not represented