

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA-ABUJA

ON 30TH DAY OF MARCH, 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/CV/1989/16

BETWEEN:

OGONNA NNAMANI

.....

PLAINTIFF

**(Suing through his lawful attorney
Obiageli Okwubanego)**

AND

1. SULE JEZHI (DISTRICT HEAD)

2. ALHAJI AMINU AKUYI (VILLAGE HEAD)

3. TANKO YAMAWO

**(For themselves and on behalf of all the indigenes
of Mabushi Village, FCT)**

DEFENDANTS

CHIDI NWANKWO ESQ WITH RICHARD UBAH ESQ FOR THE CLAIMANT.

JUDGMENT

This suit was commenced by originating summons filed on 16th June 2016 before Hon. Justice F.A. Ojo of Court 13 before her elevation to the Court of Appeal. By her ruling of 15th December 2017 Hon. Justice F.A. Ojo ordered parties to file and exchange pleadings. Consequently the Plaintiff filed his Statement of Claim on 19th December 2017 and served same on the

Defendants at 3:30pm on 12th February 2018, through one Nonso Ngiri, Litigation Secretary of Plot 1346 Ahamdu Bello Way.

The Defendants till date never filed their statement of defence though represented by counsel.

They equally failed, refused or neglected to pay costs of ₦15,000 awarded against them by this court on 7th February 2019 for stalling proceedings, ordered “to be paid by the next adjourned date before the Defendants can be heard.”

In the statement of claim the Plaintiff claimed against the Defendants jointly and severally as follows:

“a) A declaration that the Plaintiff is the rightful owner of Plot 981, Cadastral Zone B06 Mabushi, Abuja having been granted a statutory right of occupancy over same by the Honourable Minister of the Federal Capital Territory, Abuja.

b) A declaration that it is only the Minister of the Federal Capital Territory, Abuja that has the constitutional and statutory powers to grant a right of occupancy in respect of lands within the Federal Capital Territory, Abuja.

c) A declaration that the Defendants not having been granted a right of occupancy over Plot 981, Cadastral Zone B06, Mabushi, Abuja have no proprietary right or interest whatsoever over Plot 981, Cadastral Zone B06, Mabushi, Abuja.

d) A declaration that the activities of the Defendants on Plot 981, Cadastral Zone B06, Mabushi, Abuja constitute a trespass.

e) ~~₦~~200,000,000.00 (Two Hundred Million Naira) only exemplary damages for trespass.

f) ~~₦~~150,000,000.000 (One Hundred and Fifty Million Naira) only general damages for trespass.

g) 10% interest on the judgment sum from the date of judgment till final liquidation of the judgment sum.

h) An order of perpetual injunction restraining the Defendants whether by themselves or through their agents, assigns, hired hands or persons howsoever called from laying claim and further trespassing on the Plaintiff's Plot 981, Cadastral Zone B06, Mabushi, Abuja.

i) ~~₦~~10,000,000.00 (Ten Million Naira) only being the cost of this action."

In support of the claim Obiageli Okwubanego the Plaintiff's attorney and sole witness testified upon affirmation as PW1.

She adopted her witness statement on oath of 19th December 2017 wherein she deposed inter alia that the Plaintiff was allocated Plot 981 Cadastral Zone B06 Mabushi, Abuja measuring about 3,263.01m² by the Honourable Minister of the Federal Capital Territory since 2012. See Exhibit P1.

That the Plaintiff donated a power of attorney in respect of the said property to her. See Exhibit P2.

That she processed the allocation of the said property and managed same for the Plaintiff.

That upon allocation the Plaintiff took possession and brought materials to develop the plot but the Defendants and their co-villagers resisted the step, chasing away the workmen, vandalizing and destroying the materials swearing that the Plaintiff will not enjoy peaceful possession of the plot.

That the Defendants and their kinsmen have turned the plot into a burial ground deliberately to punish and frustrate the Plaintiff and to make development of the site almost impossible.

That the plot was allocated to the Plaintiff for residential purposes not for burying of corpses.

That the plot is not within the area designated for burying of corpses in the Federal Capital Territory.

That the plot was not allocated to any of the Defendants or their kinsmen by the Honourable Minister of the Federal Capital Territory and so the Defendants have no right whatsoever over the said plot of land.

That the consequences of the activities of the Defendantson the said plot are outrageous and deserved exemplary damages in that:-

- (a) It is hazardously unhealthy to bury corpses on a plot of land meant for human habitation.
- (b) It will take a huge sum of money to clear all the corpses buried on the said land by the Defendants to make the plot suitable for the purpose for which it was allocated.
- (c) The Defendants turned the said plot into a burial ground despite the existence of government designated burial grounds in the Federal Capital Territory just to punish the Plaintiff for no just cause.

That unless the Honourable court intervenes and calls the Defendants to order they will continue to trespass and bury their dead on the Plaintiff's said residential plot.

That the Defendants trespass has occasioned grave fundamental loss and psychological damage to the Plaintiff.

That the Defendants have always claimed that as indigenes/natives of the Federal Capital Territory, they have the right to do whatever they like on the said plot as the land belongs to their forefathers.

That the Defendants see the Plaintiff's land as part of their ancestral land and refuse to accept and recognise his right of occupancy over the land as granted by the Honourable Minister, Federal Capital Territory.

The learned defence counsel Mr O.J Agu was in court on 23rd January 2020 when PW1 testified. He was aware of the costs of ₦15,000 ordered against the Defendants since 7th February 2019 because when at the commencement of the day's proceedings the court inquired from him whether the costs as ordered had been paid, he responded saying "we hope to pay". Since the Defendants had not paid costs as ordered, the court refused to grant them audience.

It is also on record that on 18th November 2019, when Mr Nwankwo for the Plaintiff informed the court that the Defendants were yet to pay costs ordered on 7th February 2019, Mr Emmanuel Oji who held the brief of Mr. Jacob Jai for the Defendants responded:-

"I am aware. I pray that we shall pay before the next adjourned date."

The matter was thus adjourned to 23rd January, 2020 with an order that the said costs of ₦15,000 must be paid before the Defendants can be heard.

Come 23rd January 2020, the order apparently fell on deaf ears because the order was not obeyed.

The PW1 was thus discharged without cross examination, the Defendants having failed or refused to obey the order of the court on costs.

The Defendants as I earlier indicated filed no statement of defence despite the order of Honourable Justice Ojo (now JCA) since 15th December 2017 for parties to file their pleadings.

The court thus foreclosed their defence and adjourned for adoption of final written addresses.

In his final written address filed on 31st January 2020, learned counsel for the Plaintiff, Mr Chidi Nwankwo urged that the failure of the Defendants to file a statement of defence and lead evidence to rebut the case of the Plaintiff amounts to an unequivocal admission of the Plaintiff's claim citing **OKOEBOR V POLICE COUNCIL (2003) 12 NWLR (PT 834) RATIO 3.**

Nonetheless, the Plaintiff having claimed declaratory reliefs still has the onus to prove his case as he must succeed on the strength of his own case.

Again, that the Defendants having not cross examined the PW1, that the Plaintiff's evidence stands unchallenged and is deemed to have been accepted by the Defendants as the truth and must be accepted by the Honourable court as uncontroverted. See **AGBO V THE STATE (2006) 6 NWLR (Pt 977) 545 at pp 566 paragraphs C- E; 570 paragraph A-C.**

Bearing these in mind, learned counsel raised a sole issue for determination thus:-

“Whether or not the Plaintiff has proved his case on a minimal of proof to be entitled to the reliefs sought in this case.”

Learned counsel answered in the affirmative. He submitted that the Defendants having failed to lead evidence in rebuttal of the Plaintiff’s claim, there is nothing to be placed on the imaginary scale of evidence to weigh against the evidence adduced by the Plaintiff.

See **NEWBREED ORGANIZATION LIMITED V ERHOMOSELE (2006) 5 NWLR (PT 974) 499 AT 507, RATIO 11.**

He implored the Honourable court to meticulously scrutinize the evidence led with a view to finding answers to the following questions:-

- a) Who has the legal right to allocate land in the Federal Capital Territory Abuja?
- b) To whom was Plot 981, Cadastral Zone B06, Mabushi, Abuja allocated?
- c) Is customary land tenure system operational within the Federal Capital Territory, Abuja?
- d) Whether by virtue of Section 297 and 302 of the Constitution of the Federal Republic of Nigeria (as amended) and Section 1 (3) of the Federal Capital Territory Act 1976, the Defendants claiming to be indigenes of the FCT can rightly or legally claim ownership or any interest in Plot No 981, Cadastral Zone B06, Mabushi District, Abuja duly allocated to the Plaintiff by the Honourable Minister of the Federal Capital Territory.

e) Whether the activities of the Defendants on Plot No 981 Cadastral Zone B06, Mabushi District, Abuja, duly allocated to the Plaintiff by the Honourable Minister of the Federal Capital Territory does (sic) not constitute a trespass and if they do, whether the Plaintiff is entitled as claimed.”

Learned counsel submitted that by virtue of Section 297 (2) of the Constitution of the Federal Republic Nigeria (1999) as amended (hereinafter referred to as the Constitution):-

“The ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria.”

That Section 297 (2) of the Constitution having vested all lands in the Federal Capital Territory in the Government of the Federation as represented by the President, Section 302 of the said Constitution provides that:-

“The President may, in exercise of the powers conferred upon him by Section 147 of the Constitution appoint for the Federal Capital Territory, Abuja, a Minister who shall exercise such powers and perform such functions as may be delegated to him by the President, from time to time.”

Furthermore that Section 18 of the Federal Capital Territory Act Cap 503 Laws of the Federation of Nigeria, 1990 confers the Minister of the Federal Capital Territory with exclusive power to grant statutory right of occupancy over lands within the Federal Capital Territory to any person.

See **MADU V MADU (2008) 6 NWLR (PART 1083) 296 AT 324-325 PARAGRAPH 8** where the said section was given judicial interpretation.

Learned counsel submitted that the cumulative effect of the above statutory provisions is that ownership of land within the Federal Capital Territory is vested in the Federal Government of Nigeria, who through the Minister of the Federal Capital Territory vests same to Nigerian citizens through grant of statutory right of occupancy.

He therefore argued that the Defendants as indigenes of the Federal Capital Territory cannot rightly claim ownership of any plot of land within the Federal Capital Territory, including Plot 981 Cadastral Zone B06, Mabushi, Abuja duly allocated to the Plaintiff by the Minister of the Federal Capital Territory, Abuja.

See the Court of Appeal decision in **ONA V ATENDA (2000) 1 NWLR (PT 656) 244 AT 268 PARAGRAPH G-H** per Akintan JCA, and the unreported ruling of this Honourable court in **Suit No FCT/HC/CV/1563/14 GEORGE GOZHEWORS V THE MINISTER, FCT & 2ORS**, delivered on 21st April 2016.

Further that the Defendants have no right to deprive the Plaintiff of land allocated to him by a constituted authority. See Section 44 of the 1999 Constitution (as amended).

That the only way the Defendants can prove a superior title to that of the Plaintiff in the Federal Capital Territory is by providing documents of title, be it a certificate of occupancy or deed of assignment issued under the hand of or given with the consent of the Minister of the Federal Capital Territory as the other ways to prove title as allowed in **IDUNDUN V OKUMAGBA (1976) N.S.C.C (VOL 10) 445** are inapplicable in the Federal Capital Territory particularly that customary right of occupancy has no place in the Federal Capital Territory. See Section 51 (2) of the Land Use Act; **ONA V ATENDA (supra)**; **MADU V MADU (supra)**.

Learned counsel therefore urged that the Plaintiff having tendered his right of occupancy Exhibit P1, has discharged the burden of proof on him to establish his statutory right to the plot in dispute. The onus now shifts to the Defendants to establish that the Plaintiff's right of occupancy is either not valid or that the Honourable Minister of the Federal Capital Territory who made the grant had no authority or capacity to do so. The Defendants were also to lead evidence to prove their grant which ranked prior to that of the Plaintiff all of which they have failed to do. See Section 133(2) Evidence Act 2011 and Court of Appeal decisions in **ASHIEK V MEDIA TRUST NIGERIA LTD (2010) 14 NWLR (PT 1215) 114 RATION 28; DABO V ABDULLAHI (2005) 7 NWLR (PT 923) 181.**

Learned counsel urged that the Plaintiff having proved possession and right to it, coupled with title, that the adverse claim and resultant activities of the Defendants on the said plot of land amount to trespass. See the Supreme Court authority of **ONAGORUWA V AKINREMI (2001) 13 NWLR (PT 729) 38 RATIO 4.**

And, where trespass is proved, the consequential relief of damages for trespass and injunction will follow to protect possession. See **OYADARE V KEJI (2005) 7 NWLR (PT 925) 571 RATIO 10; EGWA V EGWA (2007) 1 NWLR (PT 1014) 71 RATIO 13.**

He urged the court to award exemplary damages to damnify the Defendants in their wilful and outrageous conduct of burying their dead on the Plaintiff's land, despite the availability of officially designated burial grounds within the Federal Capital Territory.

Finally, the court was urged to answer the sole issue as framed in the affirmative and enter judgment in favour of the Plaintiff.

RESOLUTION.

I have considered the unchallenged evidence of the Plaintiff before me. The law is indeed trite that where credible evidence led by the Plaintiff is unchallenged and uncontroverted, it is deemed admitted and the court can act on it. See **AUGUSTINE IDUNG V THE STATE (2014) LPELR-23443 (CA) PG 28 PARA F; DEPUTY SHERIFF, KADUNA STATE HIGH COURT V KEYSTONE BANK LIMITED (2015) LPELR-25876 (CA) PAGE 17 PARAGRAPH B-C.**

Also, where a Defendant fails to file a statement of defence, he is deemed to have admitted the averments in the statement of claim and judgment may be entered against him, in favour of the Plaintiff on the basis of the averments in the statement of claim. See **GABBY STORES NIGERIA LIMITED V ZACHARIAH J. MAGAJI & ANOR (2015) LPELR- 40381 (CA) PAGE 15 PARA B-D; per Abiru JCA; MALLE V ABUBAKAR (2007) ALL FWLR (PT 360) 1569.**

However, a Plaintiff who seeks a declaratory relief is duty bound to lead cogent and credible evidence which will entitle him to the reliefs sought. It is not granted even on admission of the other party. See **JOSEPH OYEBODE & ANOR V ELDER SIMON AWE & ORS (2011) LPELR-4372 (CA) PG 31 PARAS A-B per Uwa JCA; ALHAJI SAIDU SANUSI DONGARI & ORS V ALHAJI SAHEED SA'ANUN (2013) LPELR-22084 (CA) per Onyemenam JCA AT PAGE 27-30 PARAS F-A; SAIDI V IBUDE (2010) LPELR- 4521 (CA).**

In the instant case the onus is on the Plaintiff to establish his claim to the declaratory reliefs sought.

This the Plaintiff did by producing Exhibits P1 – a Certified True Copy of Offer of Statutory Right of Occupancy dated 16th July 2012 issued to him by

“Mainasara B.G. Director of Land Administration, For: Minister Federal Capital Territory.”

PW1 also tendered Exhibit P2 – the Power of Attorney donated to her by Ogonna Nnamani, the Plaintiff, dated 13th day of June 2016 empowering her to manage the said property and to sue third parties in all matters relating to the land and to defend actions of any form connected with the land.

By virtue of the fact that the plot in question is in the Federal Capital Territory, Section 297 (1) and (2) of the Constitution of the Federal Republic of Nigeria (as amended) read together with Section 302 of the Constitution are very relevant to these proceedings.

By Section 297 (2) of the Constitution the ownership of all lands comprised in the Federal Capital Territory shall vest in the Government of the Federal Republic of Nigeria.

In **ONA V ATENDA (2000) LPELR-6861 CA; (2005) 5 NWLR (PT 656) 244** cited by Mr Nwankwo for the Respondents, in the Court of Appeal held beyond doubt, inter alia, that the combined effect of Section 49 (1) of the Land Use Act, Section 1 (3) of the Federal Capital Territory Act and Section 261 (2) of the 1979 Constitution as amended (now Section 297 (2) of the 1999 Constitution as amended) has abolished customary right of occupancy in the Federal Capital Territory.

That all land within the Federal Capital Territory vests absolutely in the Federal Government and that only the Minister of the Federal Capital Territory can grant statutory rights of occupancy over lands situate in the Federal Capital Territory. That there is no question of urban and non-urban land in the Federal Capital Territory.

The Court of Appeal equally made it clear that all those occupying any portion of land in the Federal Capital Territory without the consent of the Authority are squatters on such land, and that whatever customary rights of occupancy the original occupiers of the lands had prior to the acquisition of the entire area now known as the Federal Capital Territory, ceased to exist as from 4th February 1976, when the Federal Capital Territory Act came into force.

In **MADU V MADU (2008) LPELR- 1806 (SC)** Onuh JSC at page 34-35 paragraphs B-A in his concurring judgment put it thus:-

“Be it noted that it is well settled that ownership of the land composed in Federal Capital Territory, Abuja is absolutely vested in the Federal Government of Nigeria vide **ONA V ATENDA (2000) 5 NWLR (PART 656) PAGE 244 AT PAGE 267 PARAGRAPH C-D**. See also Section 297 (1) and (2) of the Constitution of the Federal Republic of Nigeria, Section 236 of the Constitution of the Federal Republic of Nigeria 1979 and Section 1 (3) Federal Capital Territory Act 1976. Section 18 of the Federal Capital Territory Act, Cap 503 Laws of the Federation of Nigeria, 1990 vests power in the Minister for the FCT to grant statutory right of occupancy over lands in the Federal Capital Territory to any person. By this law, ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vest same to every citizen individually upon application. Thus without an allocation or grant by the Honourable Minister of the FCT, there is no way any person including the Respondent could acquire land in the FCT.”

In this instant case, the Plaintiff having tendered Exhibit P1 has satisfied this court that he has been allocated the Plot 981 Cadastral Zone B06 Mabushi by the Minister, Federal Capital Territory, the person authorised by law to allocate all land in the Federal Capital Territory.

The Defendants have tendered nothing to contest the allocation of the said Plot to the Plaintiff.

Indeed there is nothing placed by the Defendants on the imaginary scale to tilt the case in the Defendants' favour. The only evidence adduced leans heavily on the side of the Plaintiff. The evidence is cogent and reliable, I therefore act on it.

The Defendants' claim according to the Plaintiff that the said plot is part of their ancestral land/home holds no water in view of the Court of Appeal decision in **ONA V ATENDA (2005) 5 NWLR (PT 656) 244 AT 268 PARAS F-H** where the court per Akintan JCA held unequivocally that:-

“Applying the law as declared above to the facts of the present case, the land in question was acquired under the Federal Capital Territory Act which came into force on 4th February 1976. It is specifically provided in Section 6 (3) of the said Act that claims for compensation by persons affected must be filed within 12 months from the date of commencement of the order made under Section 2 of the Act. The Act is now over 24 years old and if any of the people now described as indigenous occupiers, failed to file any claim for compensation within the time specified in accordance with the provisions of the Act, such a person could be presumed not to have any valid claim. I therefore have no doubt in holding that the Federal Government is entitled to hold that

no further claimants, apart from those filed within the time prescribed in the Act, are in existence.

Similarly, I also hold that all those occupying any portion of the land in the Federal Capital Territory without the consent of the Authority are squatters on that land.”(Emphasis supplied)

See also the unreported Ruling of this court in **Suit No: FCT/HC/CV/1563/14 GEORGE GOZHEWO & ORS V THE MINISTER FCT & ORS** delivered on 21st April 2016.

The Defendants as indigenous occupiers of the land were divested of their customary right of occupancy as from 4th February 1976, and if they did not claim compensation from the Federal Government in accordance with Section 6 (3) the provisions of the Federal Capital Territory Act, have lost their right to any claim they might have had.

I therefore hold that Defendants have no proprietary right or interest over the Plot in question.

The Defendants burying their dead on the Plaintiff's plot amounts to trespass for which the Plaintiff is entitled to general damages. Considering that by the local customs and traditions, the dead are considered sacred, and cannot be moved from their resting place without due ceremonies and great expense, the act of the Defendants burying their dead on the Plaintiff's plot is a deliberate act to prevent the Plaintiff from occupying his plot of land as rightfully allocated to him by the Honourable Minister, Federal Capital Territory. It is an act for which the Plaintiff is entitled to exemplary damages.

I therefore hold that the Plaintiff has proved his case not just on minimal proof, but on a balance of probabilities. I enter judgment in favour of the Plaintiff against the Defendants jointly and severally as follows:-

- (a) I declare that the Plaintiff is the rightful owner of Plot 981 Cadastral Zone B06, Mabushi, Abuja, having been granted a statutory right of occupancy over same by the Honourable Minister of the Federal Capital Territory, Abuja.
- (b) I declare that it is only the Honourable Minister of the Federal Capital Territory, Abuja that has the constitutional and statutory powers to grant a right of occupancy in respect of lands within the Federal Capital Territory, Abuja.
- (c) I declare that the Defendants having not been granted a right of occupancy over Plot 981 Cadastral Zone B06, Mabushi, Abuja have no proprietary right or interest whatsoever over Plot 981 Cadastral Zone B06, Mabushi, Abuja.
- (d) I declare that the activities of the Defendants on Plot 981 Cadastral Zone B06, Mabushi, Abuja constitute a trespass.
- (e) I award exemplary damages for trespass in the sum of ₦50,000,000 in favour of the Plaintiff against the Defendants.
- (f) I award general damages for trespass in the sum of ₦10,000,000 in favour of the Plaintiff against the Defendants.
- (g) The Plaintiff seeks a perpetual injunction against the Defendants. In **MADU V MADU (2008) LPELR- 1806 PAGE 30 PARAS B-D**, the Supreme Court relied on its decision in **CHIEF DADA, THE LOJAOKE V CHIEF**

SIHITTU OGUNREMI & ANOR (1967) NMLR 181 AT 184 wherein the court held that:-

“It is improper to grant a perpetual injunction at the instance of a limited owner when, the owner of the absolute interest is not a party to the case.”

In the instant case, the absolute owner of the Plot is the Honourable Minister, Federal Capital Territory. The Plaintiff is an allottee or a lessee of the plot – a limited owner. The Honourable Minister Federal Capital Territory has not been made a party to this case.

Accordingly, I therefore make an order of injunction restraining the Defendants whether by themselves or through their agents, assigns, hired hands or persons howsoever called, laying claim and further trespassing on the Plaintiff's Plot 981 Cadastral Zone B06, Mabushi, Abuja.

I award ~~N~~100,000 as costs of this suit in favour of the Plaintiff.

I award post judgement interest of 10% per annum from today until the judgment sum is fully liquidated.

Hon. Judge