

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

DELIVERED THE 28TH JUNE, 2021

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI- YUSUF

SUIT NO. CV/587/18

BETWEEN

REMIGIUS IKECHUKWU

[Suing through his Attorney MOSES S AJEHSON] PLAINTIFF

AND

- **MR. HARUNA**
- **UNKNOWN AND UNAUTHORISED PERSON DEFENDANT**

JUDGMENT

The Claimant Remigius Ikechukwu [suing through his Attorney Moses. S. Ajehson] filed a writ of summons on the 14th December, 2018 against the defendants. The claimant claims against the defendants jointly and severally as follows:

- A Declaration that the Plaintiff is the bonafide owner of all that properties known as Plots 1809, Kubwa Ext. IIIB, layout.

- A Declaration that the acts of the 1st and 2nd defendants in entering and trespassing on the said plots 1809, Kubwa Ext. IIIB, layout without the consent of the plaintiff is illegal and amount to trespass.
- An Order of perpetual injunction restraining the defendants from further trespassing into plots 1809, kubwa Ext. IIIB, layout.
- The sum of One Hundred Million Naira (#100,000,000.00) only for the act of trespass committed in respect of plots 1809, Kubwa Ext.IIIB, Layout Abuja
- The cost of the suit.

Learned counsel to the claimant on the 6th of March, 2019 applied for an order of substituted service on the defendants and same was granted. Afterwards, the defendants were served at every adjourned date via substituted means. The defendants despite being served with the hearing notices failed and/or neglected to defend this matter.

The claimant's attorney Moses Sunday Ajehson testified as the sole witness for the claimant. He adopted his witness statement on oath on the 15/1/2020. It is the evidence of the witness that sometimes in 2003 he purchased plot 1809 situate at Kubwa Ext.IIIB layout from the claimant; that the plot is about 1000sqm. He stated that both of them entered into an irrevocable power of attorney; that pursuant to the purchase of the said plot a deed of assignment was executed between the claimant and himself in

respect of the said plot. He stated further that he received the original and clean copies of conveyance of provisional approval issued by the Bwari Area Council dated the 15th May, 2001, letter of acceptance of offer of grant dated 14th June 2001, receipt of payment for land form processing and payment for certificate of occupancy from the claimant [Remigius Ikechukwu]; that he immediately took possession of the said plot and caused some beacons to be placed on the plot, after which he erected a perimeter fence with 9 inches block round the plot and also mounted an iron gate to ward off trespassers.

It is further the evidence of the PW1 that he continued to enjoy the act of ownership over the plot without let or hindrance until sometimes in 2018 when the 1st and 2nd defendants laid claims to the said plot; that he submitted his title document for recertification at the Abuja Geographical Information System and was issued with AGIS acknowledgements. The Pw1 stated that he is not desirous of engaging in any discussion to alienate his right in respect of the said plot. This is the case of the claimant.

The following documents were admitted in evidence:

- Exhibit A is the Bwari Area Council Departmental Receipt No 0034019 issued to Remigius Ikechukwu for the payment for processing fee development and certificate of occupancy.

- Exhibit B is the FCTA Regularization of Land Titles and Documents File Number AN 2012 dated 23/01/2007.
- Exhibit C is a document headed the Bwari Area Council Abuja – Nigeria which reflects the Acceptance of offer of grant of right of occupancy within the Abuja Municipal Area Council Federal Capital Territory, Abuja dated the 14th June, 2001.
- Exhibit D is headed Bwari Area Council; Conveyance of Provisional Approval in respect of plot 1809, 1000sqm in Kubwa Ext. IIIB layout dated the 15th May, 2021 and addressed to the claimant.
- Exhibit E is the Power of Attorney made on the 13th of June, 2003 between Remigius Ikechukwu [Donor] and Moses S. Ajehson [Donee] in respect of piece of property known as Plot No. 1809 Kubwa Ext IIIB Layout.
- Exhibit F is the Deed of Assignment made on the 13th of June, 2003 between Remigius Ikechukwu [Assignor] and Moses S. Ajehson [Assignee] in respect of piece of property known as Plot No. 1809 Kubwa Ext IIIB Layout.

The matter was adjourned for cross examination. It is on record that the defendants were served with hearing notices at all adjournments; they however failed to appear in court to defend the matter. Thus the defendants were foreclosed. Learned Counsel to the plaintiff filed a written address on

the 18/1/2021 and same was adopted the 2/ 3/ 2021. As it is, the evidence before the court is unchallenged and one sided.

I am however quick to say that the fact that the defendants didn't file a statement of defence or enter appearance does not mean the plaintiff will have an automatic victory. The plaintiff has a duty to prove his assertions with cogent and credible evidence. In MTN NIGERIA COMMUNICATIONS LIMITED v. MUNDRA VENTURES NIGERIA LIMITED (2016) LPELR-40343(CA)"...the law is that evidence that is unchallenged or uncontradicted by the adverse party is good to be acted upon by the Court unless it is either irrelevant or palpably false or worthless by itself. Therefore, the mere fact that evidence is unchallenged is not tantamount to proof as such unchallenged evidence must also be credible and relevant in relation to the facts it seeks to establish. See CAMEROON AIRLINES V. MIKE OTUTUIZU (2005) 9 NWLR (PT. 929) 202. SEE ALSO ISHOLA LAWSON V. AFANI CONTINENTAL CO NIG LTD (2002) 2 NWLR (PT. 752) 585; OMOREGBE V. LAWAN (1981) 3 SC 108; ODUOLA V. COKER (1981) 5 SC 197."

The plaintiff formulated an issue for determination, that is:

- *Whether the Plaintiff has by credible evidence proved his case on the balance of probabilities or preponderance of evidence.*

The learned counsel to the plaintiff cited the case of CALABAR CENTRAL CO-OPERATIVE THRIFT & CREDIT SOCIETY LTD & 2 ORS V BASSEY EBONG EKPO (2008) 6 NWLR PT 1083 PAGE 362 AT PG 371 and some authorities to buttress the

fact that the burden of prove lies on who asserts. He states that the plaintiff in this case has discharged the burden of prove required in civil cases. He urged the court to rely on the evidence and all the exhibits tendered by the plaintiff, more so that the defendants didn't appear to controvert the evidence adduced by the plaintiff. He cited EBENWE V STATE (2011) LPELR SC. 39/2009; OKOYE V LPDC (2005) 15 NWLR (PT 494) PG 471; OKPOKO COMMUNITY BANK LTD V IGWE (2012) LPELR – 19943 (CA) to urge the court to enter judgment for the plaintiff as the evidence before the court is not controverted.

I shall decide the case based on the issue formulated by the plaintiff.

- *Whether the Plaintiff has by credible evidence proved his case on the balance of probabilities or preponderance of evidence.*

In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See *Section 133(1) of the Evidence Act 2011*. Again *Section 132 of the Evidence Act 2011* provides:-

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. See MTN NIGERIA COMMUNICATIONS LTD v. OLAJIRE A. ESUOLA (2018) LPELR-43952(CA)

The claim of the plaintiff is for this court to declare him the bonafide owner of the land in question and to also hold that the acts of 1st and 2nd

defendants' amount to trespass and to further grant an order of perpetual injunction restraining the defendants from further trespassing into the said land. To be entitled to these claims, the plaintiff has to establish his title to the land in any of the five ways known to law.

It is trite that there are five (5) ways of proving or establishing title to land. Per ABDU ABOKI, JCA in the case of BABAH MAIKANTI & ORS v. 7UP BOTTLING COMPANY PLC (2013) LPELR-20297(CA) states the five ways as follows:

"...Thus in Nnadozie v. Omesu (1996) 5 NWLR (pt. 446) it was held that: "It is settled law that there are five different ways the proof of one of which suffice, of proving ownership of any land in Nigeria, viz: by (1) Traditional evidence (2) production of document of title duly authenticated unless they are documents twenty years old or more produced from proper custody. (3) Acts of possession in and over the land in dispute extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons in possession are the true owners. (4) Acts of long possession and enjoyment of other land so situated and connected with the land in dispute by locality or similarity that the presumption under s.46 of the Evidence Act applies and the inference can be drawn that what is true of one piece of land is likely to be true of the other piece of land. (5) Proof of possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner to the land in dispute."

The whole evidence of the plaintiff borders more on documentary evidence. It is the law that the production of documents of title alone is not sufficient to discharge the onus on a plaintiff to prove the title he claims; he must go further to trace his root of title to one whose ownership of the land has been established. See **CHIEF ADEYEMI LAWSON v. CHIEF AYO AJIBULU (1997) LPELR-1766(SC)**.

The plaintiff in this case sued the defendants through his attorney. The claim of the plaintiff's attorney is that he derived his title to plot 1809 Kubwa Ext from the plaintiff sometimes in 2003. The plaintiff donated exhibit E, the power of attorney to his attorney to represent him in court against the defendants. The Power of attorney contains the name of the donor and the donee; the signature of the donor and that of his witness is contained therein. Section 150 Evid Act 2011 stipulates that a court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public or any court, judge, magistrate, consul or representative of Nigeria or, as the case may be, of the President, was so executed and authenticated. See **MR CHRISTOPHER UGWUS v. INSPECTOR ERNEST EKE (2015) LPELR-40921(CA)**

The question I ask here- is the exhibit E admissible? I do not hesitate to say No as I find as a fact that the exhibit E was made in the presence of one Chuks Anayo, a businessman, who is not one of the persons listed in

the Evidence Act. It is glaring that the person said to have witnessed the power of attorney falls short of the persons prescribed in the Evidence Act. Therefore, I find the power of attorney inadmissible having failed to execute or authenticate same before any of the persons listed in section 150 Evid Act and I so hold. Exhibit E is hereby expunged from the record of the court.

Should I be wrong in my decision above, I proceed to deal with the case on merit.

The law is that the non-registration of a registrable instrument renders such instrument inadmissible as evidence in a litigation where such instrument is relied upon as evidence of title. See **DR JOSEPH C. OKOYE v. DUMEZ NIGERIA LIMITED & ANOR (1985) LPELR-2506(SC)**

Section 6 and 15 of the Land Registration Act Cap 515 LFN provide thus:

(6) Subject to the provisions of this Act, every instrument executed after the commencement of this Act shall be registered.

(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 proper office as specified in Section 3 of this Act.

It is the evidence of the PW1 that pursuant to the execution of a power of attorney, a deed of assignment was duly executed by the claimant and the attorney in respect of the said property and that he continued to exercise

various act of ownership over the said property without any let or hindrance until sometimes in 2018 when the 1st and 2nd defendants laid claim to the property. Also the plaintiff's first claim as contained in the statement read thus: A declaration that the plaintiff is the bonafide owner of all that properties known a plot 1809, Kubwa Ext.IIIB, layout.

It is stated in exhibit F thus

NOW THIS DEED WITNESS AS FOLLOWS:

In consideration of the sum of ONE MILLION Naira (#1,000,000.00) only paid by the purchaser to the vendor, the receipt of which sum the vendor hereby acknowledges, by initiating or executing this agreement, the vendor as beneficial owner hereby conveys to the purchaser all the property particularly described in the schedule free from encumbrances upon the terms and stipulations hereunder specified.

- The vendor as the beneficial owner and with the consent of the Honourable Chairman of Bwari Area Council, Bwari Abuja hereby assigns unto the Assignee all that property known as plot no. L 3 Kubwa ext III (FCDA SCHEME) layout, Bwari known and more unto and the use of the assignee for the unexpired residue of term of 99 years granted by the Land Use Act and for all the period of renewals which Honourable Chairman of Bwari Area Council, Abuja-FCT might

grant subject to the payment of rent and performance and observances of covenants on the part of the assignee.

The question here is – whether the deed of assignment admitted as exhibit F was registered under the Land Registration Act.

It is crystal clear from the evidence before the court as well as the content of the deed of assignment that the deed of assignment in question was tendered to prove title of the property in question.

In PASTOR J. AKINLOLU AKINDURO v. ALHAJI IDRIS ALAYA (2007) LPELR-344(SC) *"Land Instruments Registration Law has substantially universal contents in all the States in Nigeria. Under Section 2 of the Law the word "INSTRUMENT" is defined to mean a document affecting land in the state whereby one party usually called the grantor confers, transfers, limits, charges or extinguishes in favour of another party called the grantee any right or title to or interest in the state. Going by Section 15 aforesaid, an unregistered document affecting land must not be pleaded and neither is it admissible in evidence. See Ogunbambi v. Abowaba 13 WACA 222; Olowoake v. Salawu (2000) 11 NWLR (Pt.677) 127 and Adesanya v. Aderonmu (2000) 6 SC. (Pt.11) 18; (2000) 9 NWLR (Pt. 672) 370. And if such a document is pleaded a trial Judge upon an application made to it, must strike out paragraphs of pleadings where such unregistered document is pleaded. See Ossai v. Nwajide & Anor (1975) 4 Sc. 207. Even where the unregistered document was*

mistakenly admitted in evidence; part of the evidence relating to that unregistered document should be expunged for reason of lacking evidential value."

A careful consideration of exhibit F, the deed of assignment, shows that the instrument was not registered as required under the registration Land Registration Act and it is my view that it is inadmissible in evidence and I so hold. Therefore the Exhibit F is hereby expunged from the court's record.

Again looking into the exhibits C and D, can those documents be said to be valid or a good title to the claimant? The answer is No; the reason is that I find the contents of exhibits C and D contradictory, in the sense that it is absurd that a particular Area Council will issue an offer letter and the acceptance letter will state the land is within another Area Council. At this stage I find it pertinent to reproduce the documents under reference.



**BWARI AREA COUNCIL
ABUJA – NIGERIA**

NO 55A, HIGH TENSION ROAD,
OPPOSITE THRILLER FAST FOOD,
AROOMA JUNCTION,
AWKA, ANAMBRA STATE.
DATE: 14TH JUNE, 2001.

The Chairman,
Rural Land Use Adjudication Committee,
Abuja Municipal Area Council,
Abuja.

***ACCEPTANCE OF OFFER OF GRANT OF RIGHT OF OCCUPANCY
WITHIN THE ABUJA MUNICIPAL AREA COUNCIL FEDERAL CAPITAL
TERRITORY; ABUJA.***

I wish to refer to your letter No: FCT/BZTP/LA/AN/2006/2012 of 15TH MAY, 2001 and accept the terms and conditions of grant of the right of Occupancy as conveyed to me by your above quoted letter.

I will submit my building plans to you for approval before I commence any improvement on the site and on completion of improvement I will get your completion certificate before occupation of the building.

Yours faithfully

Signature

Name:

.....

**BWARI AREA COUNCIL
ABUJA NIGERIA
LAND, PLANNING & SURVEY DEPT.**

Our Ref:

REMIGIUS IKECHIKWU

Date: 15th May, 2001

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CONVEYANCE OF PROVISIONAL APPROVAL

I am pleased to convey the Hon. Minister's approval of a Customary Right of Occupancy in respect of:

Plot No: 1809 of about 1000 sq. m. in KUBWA EXT. IIIB LAYOUT.

On the following terms/conditions:

Survey fees	₦ 3,000.00
Layout fees	₦ 3,000.00
Term	99 YEARS
Rent Revision	5 YEARS
Purpose	RESIDENTIAL
Premium	₦
Grand Rent	₦2,500.00
Preparation/Registration of C of O	₦1,500.00

2. I am to add that the following conditions will also be inserted in the Customary Right of Occupancy evidencing the grant of this right of Occupancy.

- i. Within two years from the date of commencement of the Right of Occupancy to erect and complete on the said land the buildings or other works specified in detailed plans approved or to be approved by the Bwari Area Council, or other officer appointed by the Minister such building or other works to be of such value not less than (₦200,000.00) and to be erected and satisfaction of the Bwari Area Council or other officer appointed by the Hon. Minister of F.C.T.
- ii. Not to erect or build or permit to be erected or build on the said land any building other than those permitted to be erected by virtue of this Customary Right of Occupancy not to make or permit to be made any addition or already erected on the land except in accordance with plans and specifications approved by the chairman or other officer appointed by the Minister on his behalf.

iii. Not to alienate the Right of Occupancy hereby granted or any part there by site, assignment, mortgage, transfer of possession, sublease or bequest or otherwise however, without the consent of the Chairman's first had and obtained.

3. The date of commencement of this Right of Occupancy will be the date of acceptance as signified by you, and should be within two months from the date of this letter.

4. I attach herewith (two copies of) letter of acceptance for your completion and thereafter, return a copy of same to me for my record purposes, please.

Yours faithfully,

SECRETARY.

RURAL LAND USE ADJUDICATION COMMITTEE

Exhibit D the conveyance of provisional approval was issued by the Bwari Area Council on the 15/5/2001; exhibit C has the heading of Bwari Area Council, while the body reads thus: Acceptance of offer of Grant of Right of Occupancy within the Abuja Municipal Area Council Federal Capital Territory, Abuja; there is also a reference number quoted as FCT/BZTP/LA/AN/2006/2012 of 15th May, 2001.

The provision of section 3 (6) CFRN [as amended] states that there shall be Seven Hundred and Sixty-Eight Local Government Areas in Nigeria as shown in the second column of Part 1 of the First Schedule to this Constitution and Six Area Councils as shown in Part 11 of that Schedule.

The Area Councils as stated in Part 11 of the First Schedule are namely: Abaji, Abuja Municipal, Bwari, Gwagwalada, Kuje and Kwali. By the provision, it is clear that the each Area Council in Abuja has its own boundary and independent of each other: geographically, none can perform the function of another.

It is obvious that these two documents contradict one another. A contradiction is material if it relates or affects the live issues in the matter. These two documents are the basis of this case, which tend to give title to the claimant and the failure of the claimant to have a good title means he cannot transfer or sell what he doesn't have. You can only give what you have! Once evidence contradicts another evidence; that is, it says the opposite of what the other evidence has stated and not when there is just a minor discrepancy between them. Two pieces of evidence contradicts one another when they are themselves inconsistent on material facts." See **KENOR MADINA TAL & ORS v. ABDULLAHI SHUAIBU ANAMPARA & ORS (2016) LPELR-40799(CA)** Based on my findings on exhibits C & D and the entire evidence put forward by the claimant, I find as a fact that the claimant cannot lay claim over the said plot as he failed to establish or prove his title to the land in question and I so hold.

In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any

presumption that may arise on the pleadings. See ***Section 133(1) of the Evidence Act 2011***. Again ***Section 132 of the Evidence Act 2011*** provides: -
The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

The claimant, having failed to present cogent and credible facts as well as documentary evidence before the court, I hold that he is not entitled to any of the reliefs sought and the matter is dismissed in its entirety.

ASMAU AKANBI-YUSUF

(HON. JUDGE)

APPEARANCES:

Paul Akogwu Esq, for the Claimant.

Defendant absent and not represented