

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 15th JUNE, 2022

FCT/HC/CV/148/2020

BETWEEN:

ALHAJI ABUBAKAR A.S SALE -----

CLAIMANT

AND

UNKNOWN PERSON-----

DEFENDANT

JUDGMENT

This writ was filed by the Claimant against the Defendant dated 17th December, 2020 whereof the Claimant is seeking the Court for the following:-

1. A declaration that by virtue of outright purchase from Kwankwan Nigeria Limited, the rightful owners, the Claimant is the holder and rightful owner of the property known and described as Plot No. CP- 7 in Sector Centre B Layout in Kuje Area Council, FCT, Abuja; measuring approximately 2.5 hectares with the regularization of land titles and document of the Federal Capital Territory Area Council, dated 6th day of January, 1998.
2. A declaration that the Claimant's interest in respect of plot No. CP- 7 in Sector Centre B Layout in Kuje Area Council, FCT, Abuja; measuring approximately 2.5 hectares with the regularization of land titles and document of the Federal

Capital Territory Area Council, dated 6th day of January, 1998 is valid and subsisting.

3. A declaration that the action of the Defendant in entering upon the Claimant's land being plot No. CP- 7 in Sector Centre B Layout in Kuje Area Council, FCT, Abuja; measuring approximately 2.5 hectares with the regularization of land titles and document of the Federal Capital Territory Area Councils, date 6th day of January, 1998 is illegal and unlawful to the Claimant's right over the said land.
4. An order of perpetual injunction restraining the Defendant, their privies, agents, heirs or assigns by whatsoever name referred, from doing anything or taking any further steps or in any way/manner tampering or interfering with the Claimant's right over plot no. CP-7 in Sector Centre B Layout in Kuje Area Council, FCT, Abuja; measuring approximately 2.5 Hectares with the regularization of land titles and document of the Federal Capital Territory Area Council dated 6th day of January, 1998
5. ₦1,000,000.00 (One Million Naira) only against the Defendant to the Claimant being damages for entering and clearing the said trespass and for erecting structures on Plot No. CP- 7 in Sector Centre B Layout in Kuje Area Council, FCT , Abuja; measuring approximately 2.5 hectares with the regularization of land titles and document of the Federal Capital Territory Area Council dated 6th day of January, 1998, thereby altering the character of the above mentioned land.
6. ₦100,000.00 (One Hundred Thousand Naira) only as the cost of this action.

The Claimant in this suit filed his statement of claim which contained detail of his claim against the Defendant, equally the Claimant adopted his witness statement on oath dated 17th December, 2020. I found it not necessary to reproduce both Claimant statement on oath and the witness statement on oath. This can be seen from the processes filed in this case. Having adopted his witness statement on oath same urged the Court to consider same as his evidence in this case. Based on the evidence of PW1 the following documents were admitted in evidence:-

1. Exhibit 1 offer of terms of grant 6th January, 1998 is exhibit 1.
2. Sale agreement /transfer of land dated 6th November, 2012 is exhibit 2.
3. 5 Receipts is exhibit 3

The Claimant prayed the Court to grant his reliefs the same Counsel applied for another date to enable the Defendant cross examined the witness. On resumption the Defendant failed to appear in Court. Consequently the claimants Counsel applied that the right of the Defendant to cross examine the witness be foreclosed Counsel cited order 32 Rule 12 of the Rules of this Court Same also cited the case of **MOHAMMED VS KBELARI (2001) VOL 6 NWLR (pt.770)**. See also **BABORI DENI VS PAPARICE (2017) LPELR 45213 at page 11**. In the circumstance of this case based on the application the right of the Defendant to cross examined the witness was foreclosed.

Similarly on the 3rd March, 2022 the Claimant Counsel apply that the right of the Defendant to defend be foreclosed which was

accordingly granted by the Court and the matter was subsequently adjourned to the 18th April, 2022 for adoption of final written address similarly the Court made an order that the Defendant be served with final written address filed by the Claimant.

On resumption on the 9th May, 2022 the Claimant final written address was dated 13th April, 2022 and same adopted his final written address the Defendant did not file anything throughout the trial.

I have reproduced in part the evidence of the Claimant in this case as well as all the exhibits tendered in the cause of the trial. It should be noted that right from the inception of this case the Defendant was served with the processes filed by the Claimant by way of substituted means. This was done by the ex parte application filed by the Claimant Counsel. Accordingly the said application was granted by this Court. It should also be noted that right from the inception of this case the Defendant did not file his statement of defence whatsoever. Despite the facts that the Defendant was duly aware based on the order granted by this Court. "Additionally throughout this trial the Defendants was duly served with hearing notices precisely 11 times but still same decided not to appear and defend the claim brought against him. This can be seen that the Defendant have no defence. It is imperative that there should be an end to every litigation. The Claimant to my opinion has proved his case based on balance of probability. The issue to be considered as per the written address filed is whether from the pleadings and evidence before the Court the Plaintiff has proved his case based on balance of probability.

The law is settled that in an action for declaration of title to land, the burden of proof is on the claimant to prove his title to the declaratory relief by adducing credible evidence in this regard. This burden remain on the Claimant even in the absence of a defence by the Defendant see ***NRUAMAL & ORS VS EBUZOEM & ORS (2013) LPELR 19771 (SC) PP17-18 paragraphs F-E.*** See also ***MOHAMMED VS WAMMAIKO & 2ORS (2017) LPELR 42667 (SC) page 24 paragraphs A-B.***

Held as follows, generally judgments are not granted on admission in default of defence see ***OKOYA VS SATILLI (1990) 2 NWLR (pt131) 172 NTUKUSVS NPA (2007) 13 NWLR (pt 1050) 392, ADDAL VS UBANDAWALIA (2015) 7 NWLR (pt 1458) 325.*** It follows in this case therefore that although the Defendant's by his failure to defend the claim of the Claimant have admitted the claim. Yet the claimant must succeed on the strength of his case and not on the admission of the Defendants. See ***AJIBOYE VS ISHOLA (2006) LPELR 301 SC P 27 paragraphs A-G.*** Settled the position of the law on proof of title to law it held as follows:-

"It has been settled by long line of authorities from this Court that ownership or title to land may be proved by any of these five methods viz:-

- (a) By traditional evidence*
- (b) By producing of documents of title which are duly authenticated.*
- (c) By act of selling, leasing, renting out all or part of the land for farming on it or on a portion of it.*
- (d) By act of long possession and enjoyment of the land and*

(e) *By proof of land 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 of the land in dispute."*

Where evidence before the Court is unchallenged, it is the duty of that Court to accept and act on it as it constitute sufficient proof of a party's claim in proper cases. See ***A.G OF THE FEDERATION VS ALFORIN LTD (1996) 12 SCNJ 236***. On the issues of general damages "it is trite law that every entry unlawfully and unauthorized entry into land in possession of another is actionable and for which damages would be awarded. Such damages are awarded as may compensate for the legal injury which a Defendant has committed on the property of the claimant see ***ATTORNEY GENERAL BENDEL STATE VS AIDEYA (1986) 4 NWLR (pt. 188) 646, IBRAHIM VS MOHAMMED (1996) 3 NWLR (pt.437) 457, AJAYI VS JOLAOSHO (2004) 2 NWLR (pt.356)89***. Thus a successful action in invasion of land per-se attracts damages and even where no damages or loss is caused, the claimant is entitle to - minimal damages see ***SPRING BANK PLC VS ADEKULE (2011) I NWLR (pt.1229) 581 ADEGUO VS ADEGUA (2009) 13 NWLR (pt. 1159) 445***. From the totality of the evidence adduced above and the exhibits tendered I can safely determined that the Claimant have established their claims against the Defendant consequently the reliefs sought by the Claimant especially relief 1,2,3,4 are hereby granted while in respect of the issue of damages. I hereby ordered that the

Defendant shall pay the sum of ₦100, 000.00 as general damages. No order as to cost of filing this action.

HON. JUSTICE M.S IDRIS
(Presiding Judge)