

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 5TH DAY OF NOVEMBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/1665/15

BETWEEN:

MAYAKI MATHIAS OMEIZA

AND

SUNDAY ADENIRAN

CELESTINE ONWUMERE

----- } **PLAINTIFF**

----- } **DEFENDANTS**

JUDGMENT

In an amended Statement of Claim the Plaintiff Mayaki Mathias Omeiza claim the following against Sunday Adeniran and Celestine Onwumere:

(1) A Declaration that in all circumstances of this case, the Claimant is the rightful and beneficial owner of plot CRD Zone 07 - 07 Lugbe 1 Layout, Abuja Municipal Area Council, Abuja.

(2) A Declaration that the Defendants are not trespassers having not been allotted plot CRD

987 CAD Zone 07 - 07 (hearing after called day Res) by either Claimant or anybody whatsoever or at all.

(3) An Order of Perpetual Injunction restraining the Defendants by themselves, they are servant, agents and/or privies from trespassing or for the trespassing into the Res.

(4) Ten Million Naira (₦10, 000,000.00) as consequence of the Defendants' trespass.

(5) Ten Million Naira (₦10, 000,000.00) as General Damages.

(6) Cost of the Suit.

Upon receipt of the Writ the Defendant filed Amended Statement of Defence on 31st March, 2016 and Counter Claim.

On his part the 1st Defendant in his Counter claimed the following against the Plaintiff:

(1) The sum of ₦1.2 Million as specific Special Damages for the destruction of the 1st Defendant's premises under construction.

(2) The sum of Thirty Thousand Naira (₦30, 000.00) as medical expenses for the first aid treatment received by wounded construction workers.

(3) Three Million Naira (₦3, 000,000.00) as General Damages.

Note: they are both Counter-Claim was based on the original Amended Statement of Claim of the Plaintiff before the 2nd Defendant was joined as a party. This means that 1st Defendant never filed an Amended Statement of Defence after the 2nd Defendant was joined.

On his part, Celestine Onwumere filed a Statement of Defence and Counter-Claim claiming the following:

(1) A Declaration that he is entitled to Certificate of Occupancy in the name of Stephen Akanbo over the Res Plot No CRD 987, Lugbe I Layout Abuja.

(2) Damages of 30 Million Naira for trespass to PlotNoCRD987, Lugbe I Layout Abuja.

(3) Perpetual Injunction restraining the Plaintiff, his privies, however described from further trespassing upon PlotNoCRD987, Lugbe I Layout Abuja.

After the close of their respective cases, the parties were ordered to file their respective Final Addresses.

The 2nd Defendant claims that he acquired the Res from Oluwole Matami who had a title document issued in the name of Stephen Akambo. That Matami - 2nd Defendant had a registered Power of Attorney Number 203 Volume 1 dated 2009.

The 1st Defendant on his own claim that he purchased the Res from Uche Afuaku. That the original allottee was Olawole Matami via conveyance of Provisional Approval from AMAC dated 27/6/1996. That it was later changed. That upon purchase of same by Uche Afuaku, Uche Afuaku later commenced the process for change of ownership and perfection of the title documents, relevant receipt for development, Levy Form Processing Fee.

That on 16th August, 2006 the conveyance of Provisional Approval was changed to the name of Uche Afuaku. That Rev. Adedotin Kila was yet to commence change of title to the land before assigning his interest in the land to the Defendant.

That all the original copies of all existing Conveyances of Approval over the land meanwhile he had stated that the Rev. Adedotin Kila bought the land from Uche Afoku in June 2012. That Uche Afoku bought from Olawole Matami in 1999.

The plaintiff had claimed that he acquired the land in question from Ismaila Isah in 1999. That the said Isah was given a Conveyance of Provisional Approval dated 27th June, 1996. That he took steps to perfect his title which included the initial Conveyance of Provisional Approval to be changed to his name. He attended the documents - EXH 6 & EXH 7.

The Certificate of Occupancy was admitted as EXH 1. He tendered evidence of Regularization as EXH 5. He erected a perimeter fence and enjoyed peaceful and quiet enjoyment of the Res until 2015 when the 1st Defendant trespassed into the Res. The police were informed, criminal complaint was made and then he filed the present Suit.

The Plaintiff opened its case, called his witness - PW1. The 1st Defendant cross-examined the Plaintiff Witness and Plaintiff closed its case. The matter was reserved for Defence. But the 1st Defendant did not appear in Court for over two (2) years to open its Defence.

On the 15th January, 2018 the 2nd Defendant was joined. The 1st Defendant never came to Court. After over four (4) years the Court allowed the 2nd Defendant to open his Defence. So on the 18th February, 2020 the 2nd Defendant opened its case.

The Court had granted the application for recall of the PW1. He was recalled on the 18th February, 2020 and was cross-examined by the 2nd Defendant Counsel. The 2nd Defendant Counsel also opened his case and tendered 7 documents, EXH 9 - EXH 15. There was not a Judgment because the 1st Defendant did not come to Court and also because of the pandemic.

But on the 3rd December, 2020 the Plaintiff Counsel cross-examined the 2nd Defendant Counsel closed their case. The Court had earlier foreclosed the 1st Defendant from opening and closing its Defence and Counter-Claim. Matter was adjourned for Final Addresses.

It is very important to state that the 1st Defendant was duly served and notified timeously about the Proceeding and the scheduled date for Hearing. But he never came to Court or never give any reason for being absent. His Counsel never came to Court. There was equally no Notice of Change of Counsel by the 1st Defendant. See the Ruling on foreclosure of the 1st Defendant.

It is on record that it is only the Plaintiff and 2nd Defendant that filed their respective Final Addresses. The 1st Defendant was duly served with the said Final Addresses. He never filed any and never responded to those served on him.

In his Final Address the Plaintiff had raised an Issue for determination which is:

"Having regard to the facts and circumstances of this case, whether the Claimant is entitled to grant of the relief sought."

He submitted that he has established his title to the land in question by production of documents of title

as well as act of ownership. That he presented Certificate of Occupancy in respect of the land in question. That the title document presented by Defendants in Defence and Counter-Claim in respect of their root of title as has been shown is curious documents which appears to be the same but has different character. That he has established his root of title. That he had shown that the vendor of the land had title to the land which made it possible for Claimant to perfect his title to obtaining a Certificate of Occupancy. That Defendants could not show who the vendors of their title are notwithstanding that they falsely claimed that their title was traced to Oluwole Matami. That none of the Defendants put forward a better title than of the Claimant.

That Plaintiff – PW1 had also laid evidence/testified in this Suit and that the Defendants could not rebut or controvert the Plaintiff's testimony. That Plaintiff acquired title from Ismaila Isah and went ahead to process the title document and erected perimeter fence before the trespass by Defendants.

That the 1st Defendant discovered the gross contradiction and the disparity in his document of title and Statement of Defence, he disappeared and abandoned his Defence and Counter-Claim. That on the side of the 2nd Defendant, he had stated that he never did anything on the Res. He did not explain how the structure on the Res came about especially

the perimeter fence where the 2nd Defendant claimed he wrote his phone number. That 2nd Defendant admitted that there is a perimeter fence on the Res as at when he acquired the land. That the Plaintiff had erected the said fence after he purchased the land and enjoyed peaceful possession till the trespass by the 1st Defendant.

That the 2nd Defendant is a busy and meddlesome interloper who likes to frolic for being a party to a litigation as he said in paragraph 7 of his Statement of Defence, he never knew about the case:

“... he came to Kubwa High Court and discovered that the Plaintiff and 1st Defendant one Mr. Sunday Adeniran were fighting and claiming title to his land.”

That the above statement by 2nd Defendant is curious and strange. That documents presented by the 1st & 2nd Defendants are curious froth with inconsistencies. He relied on the following cases:

**Idundun V. Okumagba
(1976) 9 – 10 SC 227 @ 246**

**Nkado V. Obiano
(1997) 5 NWLR (PT. 503) 31**

**Maranatha Consultants (Nig.) Limited & Anor V.
Dirisu
(2019) LPELR – 47745 CA**

Ogbaji V. Uttahile

(2019) LPELR – 47186 page 37

Participant Property Limited V. Fashola & Ors

(2019) LPELR – 47977 CA

He urged Court to resolve the Issue in Plaintiff's favour and grant all his Reliefs as sought and dismiss the 1st & 2nd Defendants Counter-Claim holding that he had established his right and title to the Res. That Court should also hold that the 1st & 2nd Defendants have failed to successfully challenge his case and had failed to establish their Counter-Claim to the Res.

As already stated, the 1st Defendant had after Cross-examining the PW1, abandoned his Statement of Defence and Counter-Claim. He never called any Witness and never Cross-examined the 2DW1. He never filed any Final Address.

In the Final Address filed by the 2nd Defendant, he raised two (2) Issues for determination which are:

- (1) Whether the Plaintiff proved title to the Res Plot No. CRD 987 Lugbe I Layout, Lugbe, Abuja on Preponderance of Evidence before this honorable Court.**
- (2) Whether Defendant/Counter-Claimant's Claim proved a better title to Plot CRD 987 Lugbe I Layout, Lugbe, Abuja and entitled to Judgment of this Court.**

On Issue No. 1, they submitted that Plaintiff has not proved its title to the land because when the Plaintiff was asked if he has any document from Ismaila Isah, he said that he has but did not produce same in Court. That if the documents from Isah exists and is not produced, if produced it is adverse to the party claiming it exists. That the inability of the Plaintiff to produce any link between Ismaila Isah, alleged original title hold to the Res thereby putting the Certificate of Occupancy issued by Chairman AMAC and Receipt of Payment without foundation to stand on. That Plaintiff cannot put something on nothing and expect it to stand. He relied and referred to the following cases:

Nzenwata V. Nzenwata
(2017) 4 WRN 80

Adole V. Gwer
(2008) 8 MJSC 38

Idundun V. Okumagba
(1976) 9 – 10 SC 227

UAC V. Mcfoy
(1992) 1 NWLR (PT. 219)

That the Claimant cannot rely on title that does not have origin and was never in possession as he admitted in paragraph 17 of his Statement of Claims.

That he discovered that someone had erected fence on the land using his blocks. That Plaintiff has not been able to prove his title to the land or shown possessory rights in any form. That Plaintiff's claim cannot be sustained by Defendant's failure to produce evidence in contradiction to the claim for Declaration. That the Claim of Injunction, trespass and damages are ancillary to the success of the main declaration of title to the Plot 987. He referred to the case of:

**Echenim Ofume V. Isaac Ngbeke
(1994) 4 NWLR (PT. 341) 746**

That he filed a Counter-Claim premised on driving ownership of the Res Plot 987 on grant from Stephen Akanbo who got title from Olawole Matanmi with a Registered Power of Attorney as No. 203 Volume 1 dated in 2009. That he tendered the Search Report which confirmed Olawole Matanmi as the true owner of the Plot. That the title document of Stephen Akanbo and Olawole Matanmi, the Regularization from AGIS, Receipt of Payment for Certificate of Occupancy Form and Processing Fee as well as Survey Plan and Power of Attorney all lay credence to his ownership and possessory right and claim over the Res.

That these documents were all admitted in evidence. That he has proved his title to the Res. He relied on the case of:

Salami V. Lawal
(2008) 10 MJSC 124

Idundun V. Okumagba
(1976) 9 – 10 SC 227

Okpuruwu V. Chief Okpokan
(1988) 4 NWLR (PT. 554)

That as a trespass the Plaintiff cannot maintain an action against him who is the true owner. That by the documents he tendered in Court, he has proved and established the origin of his title and that he is the real owner and he is entitled to the right over the Res. He relied on the case of:

Oyebamiji V. Lawson
(2008) 10 MJSC 154 @ 170 paragraph G – A

That his title is uncontroverted. That EXH 14 established his title beyond reasonable doubt. That the Plaintiff's case is weak and as such his Counter-Claim stands. That Plaintiff could not prove the crucial allegation of conspiracy between 1st & 2nd Defendants or trespass to his alleged land. That Plaintiff could not show any link between him and Isah Ismaila though he presented the document of Isah Ismaila.

He urged the Court to grant the Counter-Claim as he has established his Counter-Claim and show that both Plaintiff and the 1st Defendant are fighting and laying claim on his land without success. That since

he has proved title he is entitled to the Counter Claim.

COURT:

Once a party is served with all Processes but decide at any stage to abandon the case or not respond to the Processes so served, it means that such party has abandoned the case and had invariably admitted all the facts which he has not challenged. Facts uncontroverted are all deemed admitted. That is the holding of the Court. The above is the fact of the 1st Defendant, Sunday Adeniran. He showed his face earlier in this Suit. But since the advent of the 2nd Defendant, he never came to Court or challenged the Counter-Claims of the 2nd Defendant. H never testified in Court. He did not call any Witness to testify on his behalf.

It is imperative to note that the Counsel for the 1st Defendant Cross-examined the PW1 on the 5th December, 2016. He was in Court on the 25th January, 2017. His lawyer Okechukwu Udeze was in Court on 6th March, 2017. On the 7th November, 2017 E. Maji appeared as Counsel for interested party. Aniebe I. Esq. appeared for party seeking to joined. He was later joined. Since then the 1st Defendant never appeared before this Court. He never Cross-examined the 2nd Defendant's two (2) Witnesses. He did not file Final Address or respond to the Final Addresses served on him by the Plaintiff

and 2nd Defendant. The Court foreclosed him from Cross-examining and filing of the Final Address and allowed the Plaintiff and 2nd Defendant to adopt their respective Final Addresses and adjourned for Judgment.

Based on the above, this Court holds that the 1st Defendant is deemed to have admitted all the facts in the Counter-Claim filed by the 2nd Defendant since he did not challenge the said Counter-Claim and never responded by filing any Defence to the said Counter-Claim.

Having summarized the for and against in this case, and going by the evidence and testimonies of the Plaintiff and 2nd Defendant/Counter-Claimant's Witnesses, the question before this Court is whether Plaintiff had proved his case/title to the Res on preponderance of his evidence before this Court and is therefore entitled to the grant of his Reliefs? Or whether the 2nd Defendant had proved/established a better title to the Res and is entitled to the Judgment of this Court in his favour and the grant of the Reliefs as contained in his Counter-Claim?

It is the humble view of this Court that the Plaintiff had discharged the onus on him by establishing with his testimonies and documentary evidence tendered in this case before this Court.

As the Court had held over time, it is incumbent on whoever alleges to prove the allegation with credible oral and material evidence.

That is exactly what the Claimant Mayaki Mathias Omeiza had done in this case. He had alleged that the 1st & 2nd Defendants – Sunday Adeniran and subsequently Celestine Onwumere had trespassed into his land which is the Res in this case – Plot 987 Lugbe I Layout, Lugbe, Abuja measuring about 600sqm². He had tendered credible documents to prove his claim. He had tendered the Power of Attorney issued to him by Isah Ismaila. That document was admitted in evidence by this Court. By that he had traced the original of his title and how he came into the plot in the first place. That Power of Attorney was donated to him in 1999 exactly on 25th November, 1999.

He had equally tendered the Conveyance of Provisional Approval issued to Isah Ismaila. Those documents were all in their original raw form. That document was dated 27th June, 1996. He had also tendered the original receipt for Form and Processing Fees of the Plot, evidence of payment for the Certificate of Occupancy and payment of Development Levy. All these documents/receipts were duly signed by the Payee S. Ibrahim and the name of the Cashier who received the monies were

clearly written and it was also dated and signed by S. Ibrahim.

The Plaintiff also signed the column for the payer. All the signature were consistent as required by law in that regard.

A closer look at the Receipt which the 2nd Defendant attached shows fundamental disparities in that the payer, Stephen Akanbo who the 2nd Defendant claimed donated the Power of Attorney to him, did not sign any of the receipts tendered by the 2nd Defendant. The receipt of payment of the Certificate of Occupancy was equally not dated. The name of the Cashier/Revenue Collector was not written.

It is equally very strange that the Receipt for Development Levy and Form and Processing Fees were all paid the same date. Even the dating was mutilated. These receipts have no evidential value to prove the Counter-Claim.

A closer look at the two (2) documents tendered by the 2nd Defendant – Offer of the Terms of Grant/Conveyance Approval dated 16th August, 2006 in his name and the Conveyance of Provisional Approval in the name of Olawole Maranmi dated 27th June, 1996 – EXH 11 & 12 respectively, both shows that the document dated 16th August, 2006 was a Certified Copy. In it the word “**Certified Copy AMAC**” was engraved in it. No one signed that copy.

It was marked with the word “**CHANGE**”. It also has the stamp of FCT Administration thus:

“FCT Administration
REGULARIZATION APPLIED FOR
Dated _____
Sign _____
ABUJA GEOGRAPHIC INFORMATION
SYSTEM.”

The above stamp was not signed or dated. It is no secret that for any certified document to be authentic, it must have the name, signature and date of the certification for such document to stand as a true copy of the original.

This document which the 2nd Defendant tendered to prove legitimacy to the Res has no evidential value by virtue of the inconsistency and fundamental anomalies. So this Court holds.

Again the Conveyance of Provisional Approval – EXH 11 issued to Lawole Matanmi tendered by the 2nd Defendant has on its face written in blue ink the word “**CHANGED**”.

It has a signature. The said word was written in between two (2) lines drawn with the blue ink. It was not dated. There is no name of the person who marked the document. There is equally no date on the document to show certification of the document and the date the document was changed. The

document has no evidential value in prove of the Counter-Claim based on the fundamental omission.

On the Acknowledgment Receipt tendered by both Plaintiff and the 2nd Defendant shows that the Acknowledgment by the Plaintiff was dated and printed on the 15th February, 2008 while the Acknowledgment by the 2nd Defendant shows that it was printed on the 22nd August, 2007 while it was dated 9th August, 2007. Again the File Number is 1M 50126 old File Number 1M 7901.

It is imperative to state that the Res in Issue is Plot No. CRD 987 Lugbe 1 Layout. By the document tendered by the Plaintiff the File No. is KG 5942 while the current Number is KG 47587. That Number was also reflected in the TDP submitted by the Plaintiff – EXH 1. The same number was boldly written and printed in the said Certificate of Occupancy tendered by the Plaintiff marked as EXH 1. The FCT Administration/AGIS also stamped the said TDP, dated and signed the day the Regularization was applied for. It was duly signed by the Surveyor and the name of the Surveyor who checked and passed the TDP was boldly written. His name is Ahmed. This is not so for the TDP tendered by the 2nd Defendant. It was signed alright but the name of the Surveyor was not written. That is strange as it shows that the same company prepared the two (2) TDP.

It is imperative to point out that tendering a TDP as Certificate of Occupancy does not make such TDP as Certificate of Occupancy. Every Certificate of Occupancy is a document of title and the TDP which is usually attached only shows the size and area of the land and the demarcation. So tendering a mere TDP and presenting same as a Certificate of Occupancy and believing it is a document of title over a parcel of land is wrong.

In this case, the Plaintiff had successfully tendered the Certificate of Occupancy customary which described vividly the parcel of land in issue and stated the old File Number FCT/MZTP/2000/5942 which now has new File Number KG 47587 by virtue of the Regularization. The same Certificate of Occupancy vividly described both the size, location, area and demarcation of the Res. It was made and issued to the Plaintiff – Mayaki Mathias Omeiza on the 4th July, 2000 made in the hand and seal of the then Chairman of AMAC. The Plaintiff tendered the original of this document and it was marked as EXH 1. That document further established the Plaintiff's entitlement to the Res. That document was also presented to AGIS for Regularization. The information in the document tallies with that in the Regularization Acknowledgment Receipt from AGIS.

Plaintiff equally tendered the Deed of Assignment from Ismaila Isah duly executed by the parties, hence laying open and proving the origin of his title.

A closer look at the documents tendered by the 2nd Defendant in proof of his Counter-Claim to the Res are somewhat strange. The TDP he attached as Certificate of Occupancy is not a Certificate of Occupancy. The land he claims ownership of is quite different from the Res. In the TDP Plot Number is Plot 987 Lugbe I Layout. The File Number in the TDP is LA/05/IM 7901 was granted by Akanbo. There is no other document to show that Certificate of Occupancy was issued to Akanbo or the 2nd Defendant. The AGIS Acknowledgment was dated 9th August, 2007 but it was strangely printed on the 22nd of August, 2007. This inconsistency is worrisome and casts a big doubt in the authenticity of the AGIS Regularization Acknowledgment Receipt. This Court holds that the said inconsistency cast a fundamental doubt on the credibility and authenticity of the documents and this Court therefore holds that the documents has no evidential value and is rejected and dismissed as an evidence.

Again, the Old Number of the File is 7901 and the New File Number is IM 150126. This makes it clear that the Plot which the 2nd Defendant is claiming ownership of is fundamentally different from the Plot in issue.

Again, the Offer of Terms of Grant/ Conveyance Approval tendered by the 2nd Defendant was dated 16th August, 2006 – EXH 11m, while that issued to the Plaintiff was dated 27th June, 1996. The issue and principle of first in time prevails in this circumstance. So this Court holds that the allocation of the Res to Plaintiff having come first in time supersedes any other allocation because as at the time the land was purportedly allocated to the 2nd Defendant it had been allocated to the Plaintiff over Ten (10) years earlier. Based on that, the evidence of the 2nd Defendant in that regard as well as the document EXH 11 which is a “Certified Copy” without any signature, name or date has no evidential value. That document is therefore rejected and the 2nd Defendant Counter-Claim in that regard is not established to merit the grant of the Reliefs sought therein. As at the time the 2nd Defendant’s allocation was purportedly made, there was nothing to allocate as the land was already allocated to the Plaintiff. The purported title of the 2nd Defendant is therefore very defective.

Most importantly, a mere TDP is not and can never transform to a Certificate of Occupancy. Even the so called Letter of Offer to Akanbo has no evidential value too. So also the EXH 14 the Search Report.

A closer look at the Irrevocable Power of Attorney donated to Stephen Akanbo by Olawole Matanmi –

EXH 9 made on the 24th April, 2006 shows that in page 3 that the Power described the land as:

Plot CRD 987 of about 600m at Lugbe I, Lugbe Extension as described in Letter of Offer of 27th June, 1996 when the said Letter of Offer stated that the land is in Lugbe I. There was a cancellation which was not endorsed.

This Court observed that all the documents tendered by the 2nd Defendant were so rough, dog-earned, scruffy and dirty with patches of liquid splashed on the pages of most of the documents and the upper tip and sides of the documents were all torned as if punctured and bitten off. The whole rough handling of the documents had the same pattern as if they were made deliberately by someone who has an intention that it is not credible. Some papers of the documents – Powers of Attorney EXH 9 & 15 looks as if they were matched under foot. It is a common knowledge that world over, land documents are handled with utmost care.

All in all, this Court holds that the Plaintiff – Mayaki Mathias Omeiza has been able to creditably establish his title to the Res and proved his case in this Suit. The 2nd Defendant – Celestine Onwumere has not been able to establish his Counter-Claim.

It is the law and has been established in plethora of cases that once a person has been able to establish

his case with good oral testimony backed with credible documentary evidence as the case may be, he is entitled to the Reliefs/Claim. The Plaintiff having established his claim to the Res is therefore entitled to his Reliefs.

The 2nd Defendant having abandoned the case and having not challenged the Counter-Claim is deemed to have admitted the claim of the Plaintiff and as such the Plaintiff's claims to that extent are uncontroverted and admitted. This Court therefore grant the Reliefs to wit:

That the Plaintiff – Magayaki Mathias Omeiza is the rightful and beneficial owner of the Res – Plot 987 Cadastral Zone 07 - 07 Lugbe 1 Layout, Abuja.

That the 1st Defendant – Sunday Adeniran and 2nd Defendant – Celestine Onwumere are trespassers to the said Res.

This Court hereby grant Perpetual Injunction restraining the Defendants, their servants, agents, privies, successors and beneficiaries and their thugs from trespassing or further trespassing into the said Plot CRD 987 Cadastral Zone 07 - 07 Lugbe 1 Layout, Abuja.

The Defendants are to separately pay to the Plaintiff the sum of Fifty Thousand Naira (₦50,000.00) each as consequences of the trespass.

They are to pay the sum of Twenty Thousand Naira (₦20,000.00) as Damages.

They are equally to pay the sum of Twenty Five Thousand Naira (₦25,000.00) as cost of this Suit.

This is the Judgment of this Court.

**Delivered today the ____ day of _____ 2021
by me.**

**K.N. OGBONNAYA
HON. JUDGE**