

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 8TH DAY OF OCTOBER, 2022

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

JUDGE

SUIT NO.: FCT/HC/CV/3423/20

BETWEEN:

SOLOMON ABOH

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}

CLAIMANT

AND

ENGINEER JEFFREY

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DEFENDANT

JUDGMENT

In this Suit the Plaintiff, Solomon Aboh claims that he is the owner and allottee of Plot 664 at Dutse Alhaji Layout measuring about 12sq² to the exclusion of the Defendant, Engr. Jeffrey and every other person.

He claimed that the said Res, Plot 664 was allocated to him on 2nd February, 1995 by virtue of the Conveyance of Provisional Approval dated that same day. He relied on the said document.

He also claimed that he conducted some search at the Bwari Area Council. That as at the time of Allocation the Dutse Alhaji was under AMAC as the Bwari Area Council was not created then. He made all the necessary

payments for Development Plan, Certificate of Occupancy, Form and Processing of the Form.

The said Plaintiff claimed that he donated a Power of Attorney to one Edmund Ogbonna Andeobu for a valuable monetary consideration. He also claimed that the Donee – Edmund Andeobu took possession, erected a dwarf perimeter fence and planted some economic trees and continued to farm in the Res since 31st July, 2015 when the Power of Attorney was donated.

That the Donee never sold or transferred the said equitable interest to the Defendant or anyone else.

Those strangely, on the 30th October, 2017 the Donee's workmen were chased out of the Res by some thugs. That the same people threatened his workmen and claimed that they want to erect a perimeter fence and carry out construction work on the Res.

That upon inquiry the Donee discovered that the power behind the action of the thugs was one Engr. Jeffrey. He was able to collect the Defendant's number from his neighbour in adjoining plot. The said number is 080605500829. He called the number to find out why the said Engr. Jeffrey was encroaching/trespassing into his land. That Defendant told him that he purchased the land from some other person. He asked the Defendant why he was altering his land, the Res by adding additional Block on the already constructed perimeter dwarf fence.

He claims that he does not know the Defendant and never sold the Res or transferred his title to the Defendant or anyone both equitably or legally. That the Defendant's act

is illegal, a trespass and violates his right under the Constitution.

He claimed a declaration against the Defendant for the act of trespass. That he, the Donee, is the owner of the Res having acquired the land from the original allottee.

That Defendant entering the Res and altering the dwarf wall he had erected in the Res is a trespass on the said Res. That the Defendant entering the Res and chasing out the Donee's workers is also a trespass.

He also wants an Order of Perpetual Injunction against the Defendant, his privies, thugs and agents restraining them from further interference, construction or trespass into the said Res.

He wants another Order ejecting and removing the Defendant, his agents, thugs, privies and/or any or all people claiming through the Defendant.

He wants Twenty Million Naira (₦20, 000,000.00) for trespass. Ten Million Naira (₦10, 000,000.00) General Damages. Two Million Naira (₦2, 000,000.00) as cost of the Suit.

According to the Affidavit of the Court Bailiff, initially the Defendant was notified about the Suit via the phone number provided by the Plaintiff. He answered and promised to pick the Writ – Originating Process from the Court when he comes back from his trip. But he never did. He did not disclose his physical address. So when he failed to pick up the document as he promised.

The Plaintiff filed a Motion for Substituted Service in order to ensure that the Defendant was served, so he can make his Defence if any. The Court granted the application and Order on the 21st January, 2021. The Order was to the effect that the Defendant should be served at the Res since no one knows his place of residence or office.

The Court ensured that subsequently he was served Hearing Notices showing the days the matter was scheduled to be heard.

Up till the 19th July, 2021 the Defendant did not file any Statement of Defence. Meanwhile the Plaintiff had opened its case on the 13th July, 2021; called one Witness who is the Donee – Edmund Andeobu. He opened his case and Court adjourned for Defendant to Cross-examine him. But Defendant did not come to Court, enter appearance or represented by a Counsel. The Court further adjourned to enable the Defendant do the needful.

The Plaintiff tendered four (4) documents in support of his case – Conveyance of Provisional Approval, Search Report, Receipt of Payment for Certificate of Occupancy, Development Plan Approval and Form. He also attached the unregistered Power of Attorney.

The Defendant did not attend Court or file any Process in Defence or even a Counter-Claim on the next adjourned date. He was foreclosed from Cross-examining the PW1 and opening and closing his case. So the Court adjourned the matter for adoption of Final Addresses.

The Defendant did not file any Final Address. The Plaintiff filed and served him his own Final Address but he did not

reply to it. On the 21st September, 2021 the Plaintiff adopted his Final Address and matter was adjourned for Judgment.

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

“Whether the Claimant has proved his case to be entitled to the Reliefs sought.”

He answered the question in the affirmative and submitted as follows:

That in this case, it is the law that in declaration of title to land, the onus is on the Claimant to establish ownership of the land. That he had done so by his deposition in paragraph 3 of the Witness Statement on Oath of Edmund Ogbonna Andeobu where he stated how the Res – Plot 664 was allocated vide the Conveyance of Provisional Approval dated 2/2/1995 allocated by AMAC – **EXH 1**.

That he also tendered the Search Report from Bwari Area Council to confirm the authenticity of the said Plot. That the said Search Report was tendered as **EXH 2**. That in paragraphs 5 & 6 of the Oath of PW1, the Plaintiff showed he had enjoyed the occupation and possession of the Res until he transferred his interest to PW1 for a valuable consideration vide the Power of Attorney dated 31st July, 2015 which was tendered without objection – EXH 4. That by the said Power of Attorney he transferred, PW1 has equitable interest over the said Plot to the exclusion of the Defendant and thus he is the owner of the Plot. That by the Power of Attorney which is a registrable instrument, the PW1 has an equitable interest over the land which is

as good as a legal estate. He urged the Court to so hold. That with all the Exhibits, the Plaintiff had established the ownership of the land. That the Exhibits were not challenged and that the Defendant never appeared in Court or filed any Statement of Defence to this case or Cross-examined the PW1 or tendered any document in challenge of this case. That the failure to do so by the Defendant amounts to admission. That the implication is that the case of the Plaintiff is uncontroverted and unchallenged. He urged the Court to so hold and act on same and accept the evidence of PW1 in support of the claim and hold that the Plaintiff is entitled to his Reliefs as sought and grant same.

On all the above, he relied on the following cases which he cited extensively:

Okoye & Ors V. Nwankwo
(2014) LPELR – 23172 (SC)

Nduul V. Wayo & Ors
(2018) LPELR – 45151 (SC)

Yiwa V. Tata
(2018) LPELR (CA)

Ministry of Land & Housing Bauchi State V. Tirwun
(2017) LPELR – 43314 (CA)

Okoye V. Demez (Nigeria) Limited & Anor
(1985) LPELR – 2506 (SC)

Atunka & Anor V. Aboki & Anor
(2016) LPELR – 41199 (CA)

He equally relied and referred to **SS. 131 (1) Evidence Act S. 134** – on burden of proof. He urged the Court to enter Judgment for him and grant him both the main and ancillary Reliefs as sought.

COURT:

As has severally been pointed out, the Defendant did not enter appearance. He did not file any Statement of Defence or Counter-Claim. He never had Counsel representation or testified or Cross-examined the PW1. By that, the Suit of the Plaintiff is unchallenged and uncontroverted.

But it is imperative to state that notwithstanding that Defendant did not challenge the Suit of the Plaintiff, the Court is still bound to take a deep and judicial look into the evidence and testimony of the Plaintiff to know if he actually established his case.

“Whoever asserts must prove” is a mantra chanted mostly whenever there is a claim over a parcel of land. This means that it is incumbent on the party who claims that he has ownership, legal or equitable interest in land to prove same. Again it is also incumbent on a party who alleges trespass to show that he is in occupation and had enjoyed quiet possession of the Res before the alleged trespass. Once a Claimant is able to establish that, he is said to have established his right over the land and has proved act of trespass.

Every Claimant in a land matter must be ready to state before the Court with facts and material evidence, the origin of the Res. Failure to state and trace the foundation

of the Res will make the Court hold that the Claimant had not established the origin of the Res. Again, where he has not shown and proved that he had been in possession and effective occupation of the Res before the trespass, it will be held that he has not proved the act of trespass against the Defendant. When however is able to do so, it will be held that he has established the act of trespass and proved ownership over the Res. All these he must do by the testimony and averment in the Oath of the Witness and by the documents he had tendered before the Court in support of his claim. Once he is able to do so, the Court will boldly hold that he has established his claim and is entitled to the Reliefs as sought.

In this case, the Plaintiff had through his Attorney, by virtue of the Power of Attorney donated to him – PW1 handed over the equitable interest over the Res. This is so because the Power of Attorney was for valuable consideration and as such it need not be registered as it is as good as the PW1 having the legal estate over the Res. By the said Power of Attorney the PW1 has the right and had stood in the stead and acted for and on behalf of the Plaintiff as if he is the Plaintiff in this case. That Power of Attorney was duly executed. It was tendered in this case and admitted without being challenged and marked as **EXH 4**.

Again, the Plaintiff was able to trace the origin of the Res. He tendered the Conveyance of Provisional Approval dated 2nd February, 1995 allocated to him in his name by AMAC. That document was tendered and admitted in evidence without being challenged and marked as **EXH 1**.

He tendered the Receipts for Form, Certificate of Occupancy and Development Plan issued to him by Bwari Area Council, all showing evidence of the payment made and Acknowledgment of the Receipt of the money by the Bwari Area Council. That Receipt was admitted in evidence and marked as **EXH 3**. It was not challenged.

The Plaintiff also presented a Search Report addressed to him. It shows that the Res was traced to the Plaintiff – Solomon Aboh. Though the Canter Unit stated that it was yet to be charted and that “there is no Policy File Documentation Record to ascertain the authenticity of the title documents.” That Search Report was signed by the Seyonga I.G. Audu the Zonal Co-ordinator of Bwari Area Council and dated 13th June, 2016. The Search Report confirms the ownership of the Res and the beginning of the journey of the Res in this Suit.

The Plaintiff was able to nail home the origin of the Res showing that it was allocated to him and had not been charted. Though it is strange that the Search Report came over a year after he had transferred his right or donated the Power of Attorney to the PW1.

The Plaintiff, Donee/PW1 had in the Statement on Oath alleged trespass on the Res by the Defendant in that the Defendant encroached into the land by adding to the dwarf perimeter fence which he had put in place since the allocation was given to him in 1995.

He had equally claimed that he had been farming in the Res since 1995 and had planted some economic trees in the Res. He had alleged that the Defendant used thugs to

chase out his workers who were farming in the Res. That the Defendant had heightened the dwarf fence in preparation for construction work. He stated that he called the Defendant and confronted him on the issue of trespass but that Defendant said that he purchased the land from same person(s). He presented before Court the phone number of the Defendant which he claimed he used to challenge him on the issue of his trespass on the Res.

He had stated that he never sold the Res to the Defendant or anyone else. That he is the only lawful Attorney of the Plaintiff by virtue of the Power of Attorney donated to him on the 31st July, 2015.

It is the law and had been held in plethora of cases that where evidence to support any claim remains unchallenged by a party or parties who ought to challenge same but failed to do so, the Court is duty bound to accept such evidence in support of such claim. More so, when such party or parties were given all the due notifications and leverage to challenge or controvert such claim but failed to do so for reason only known to them. That is the decision of the Court in the case of:

**Ijebu-Ode LGA V. Balogun & Co. Limited
(1991) LPELR – 1463 (SC)**

**Incar Nigeria Limited V. Adegboye
(1985) 2 NWLR (PT.8) 453 @ 461**

From the totality of the evidence before this Court in this case, can it be said that the Plaintiff has through the evidence of PW1, his Attorney, through the Power of Attorney so donated to PW1 (EXH 4), the oral testimony of

the same PW1 as well as the other documents tendered in this case, established his entitlement to the Res and proved his claims in that regard?

It is the humble view of this Court that the Plaintiff has established his claims through those documents and oral testimony of the PW1 who is the lawful Attorney of the Plaintiff.

Can it also be said that from all the above that the case of the Plaintiff is unchallenged?

It is the humble view of this Court that the case of the Plaintiff in this case is not only unchallenged but also uncontroverted since the Defendant did not enter appearance, file any Statement of Defence or Counter-Claim and did not have any Counsel representative or testified in person or through a Witness or Cross-examined the Plaintiff's Witness too. There is no other document presented before this Court to challenge or claim adverse title to the Res. So this Court holds. The Plaintiff has sufficiently asserted the affirmative of the issues in dispute by his pleadings, testimony and evidence of PW1 and proved his case on Preponderance of Evidence.

Again, can it also be said that the Plaintiff had established that the Defendant actually trespassed into the Res in this case?

By the averment in the paragraph of the Statement of Claim and Oath of the PW1 especially paragraphs 9, 10 – 14 and paragraphs 9 – 16 respectively the Plaintiff and his lawful Attorney has established the act of trespass by the

Defendant in that they stated that the Defendant altered and heightened the dwarf fence which the Plaintiff had constructed around the Res. Again, that he had chased away the Plaintiff's workers from the Res, stopping them from doing the farming on the Res.

He had traced the Defendant through the phone number availed to him by his neighbours in the Res. He had called the Defendant and challenged him. But he claimed that he bought the land from another person.

The Defendant was duly notified about the act of trespass. He was notified about the pendency of this case. The Affidavit by the Court Bailiff evidencing services of both the Originating Process and the Hearing Notices all shows that the Defendant is aware of the existence of this case and that he is aware of this allegation of trespass on the Res.

From the above, the Plaintiff had established that the Defendant actually trespassed into the Res. The Defendant did not challenge that fact. So this Court hold.

There is no doubt that the PW1, Attorney of the Plaintiff has equitable interest in the Res. By virtue of the Power of Attorney for valuable consideration of Ten Million Naira (₦10, 000,000.00). Though the Power of Attorney was not registered yet the Donee has paid the said purchase price/money to the Donor he had acquired an equitable interest in the said Res which is as good as a legal estate. Such interest can only be defeated by a purchaser for value without notice of such prior equity. But in this case there is no such purchase for value without notice to such

prior equity. That is what Supreme Court decided in the case of:

**Okoye V. Dumez (Nigeria) Limited & Anor
(1985) LPELR – 2506 (SC) PP. 14 – Paragraph A – B**

This Court therefore declares that the Plaintiff's Attorney has equitable interest over the said Res to the exclusion of the Defendant or anyone else.

This Court also declares that the Defendant entering into the Res and chasing out the workers of the Plaintiff from the Res and altering the dwarf fence erected by the Plaintiff in preparation for construction on the Res is act of trespass and violation of the extant right of the Plaintiff in that regard.

It is the law that once a party has established his claim on Preponderance of Evidence, such party is entitled to its claim more so, where such claims are not challenged or controverted. Again, where the Plaintiff has also established act of trespass and shown that he has suffered some damages, he is entitled to be compensated materially.

The Plaintiff having established his case by the evidence and testimony of PW1 is entitled to his claims as his case is meritorious. **This Court therefore Orders as follows:**

That the Defendant, his agents, assigns and privies are hereby restricted from interfering and further interference, construction or trespass into the Res unless they can prove that they have a better title to the Res by a Court of competent jurisdiction.

The Defendant and his agents, assigns, privies are therefore to vacate the said Res immediately.

The Defendant is to pay to the Plaintiff the sum of Fifty Thousand Naira (N50, 000.00) for act of trespass. He is to also pay to the Plaintiff the sum of Fifty Thousand Naira (N50, 000.00) as damages and further sum of Fifty Thousand Naira (N50, 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