

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL
TERRITORY**

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI –ABUJA

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE:-22ND NOVEMBER, 2023

FCT/HC/GWD CV/133/2021

BETWEEN

AMEDUSARKI-----

CLAIMANT

(Suing on behalf of the family
of late Sarki Kusa Dagida)

AND

SHEKO BABA-----

DEFENDANT

JUDGMENT

This suit was commenced vide a writ of summons filed on 11th November 2021, wherein the Claimant sought the following reliefs:-

1. A Declaration that the property situated at Zagabut Village, Gudu Keriya Ward Kuje Area Council, Abuja-FCT, and known as Farmland is the landed property of the Claimant.
2. A Declaration that the Claimant is entitled to enjoy peaceful and quiet possession of the piece of land known as situated at Zagabut Village, Gudu Keriya Ward Kuje Area Council, Abuja-FCT.

3. A Declaration that the Defendant has no power whatsoever to appropriate the Claimant's land, the subject matter of the suit to himself or any other person whosoever which act constitutes trespass.
4. A Declaration that the activities of the Defendants on the Plot of land of the Claimant is illegal, null and void.
5. ₦50,000,000.00 (Fifty Million Naira) only as damages for trespass.
6. A perpetual injunction restraining the Defendants by himself, his servants workmen, agents, his privies etc. from entering trespassing and carrying on any activities on the said Plot of land identified as farmland situate at Zagabutu Village, Gudu Keriyyar Ward Kuje Area Council Abuja-FCT
7. An ORDER of Court Mandating the Defendant, his Agents, privies, servants to vacate the piece of land known as Farmland
8. The sum of ₦10,000,000.00 (Ten Million Naira) only being general damages for trespass, harassment, disturbances and embarrassment caused to the Plaintiff by the Defendant.
9. The sum of ₦500,000.00 (Five Hundred Thousand Naira) only as the cost of this action.

The Claimant contends that he is the owner of a plot/farmland Situate at Zagabutu Village, Gudu Keriyyar Ward Kuje Area Council, Abuja FCT. That he inherited his late father's farmland Sarki Kusa Dagida Situate at Zagabutu Village, Gudu Keriyyar Ward Kuje Area Council, Abuja-FCT, 30 years ago through inheritance. That the Claimant's father is the original inhabitant of Zagabutu Village, Gudu Keriyyar Ward Kuje Area Council, Abuja FCT and one of the founders of the village. The Claimant

states that the Area/Size of the Farmland measures about 3.0Ha.

According to the Claimant, he does plant maize, Cassava, Yam, Plantain, Grandaunt, millet, Rice and other crops on the land.

The Claimant further states that his father gave part of the farmland to one Rabi Daniuma and Mariam Ibrahim to farm and they have been farming on the portion of land given to them to farm for 15 years now.

Also, one of the Claimant's brother's son, Yunusa Maikasuwa has been farming on the said farmland for 20 years now.

According to the Claimant, all of them farming on the land have been doing so without any disturbance from anybody since then

However, sometimes in August, 2020, the Defendant went to the Chief, the Agabe of Gwargwada to report him that he has been farming on his land, and that the Chief, Agabe of Gwargwada told them to stop farming on the land.

The Claimant alleges that the Defendant is not an indigene of Zagabutu Village, Gudu Keriyyar Ward, Kuje Area Council, Abuja FCT.

The Claimant further alleged that in the year 2020 he planted Rice on the land but the Defendant went and destroyed the whole Rice farm worth ₦5, 000, 000.00 (Five Million Naira) only.

The Defendant took the Claimant to Area Court Gwargwada and the Court told him to go to the police at Abaji police Command. The Claimant states that the police directed them to go and settle the matter that they don't have power over land matter.

The Claimant states that the committee of the Youths of the village tried to settle the matter, they visited the farmland in dispute and gave their resolution but the defendant refused to agree to it.

The Defendant on his own part filed a defence and counter-claim.

In his defence, the Defendant stated that his name is Danshikwo Baba and not Sheko Baba, and that he is the true and legitimate Owner of the Plot and farmland situate at Zagabut Village, Gudun Karya, Kuje Area Council of FCT, Abuja, that he legitimately inherited the large portion of farmland in Zagabut Village from his Father, the Late Pa Godini 30 (thirty) years ago in accordance with authority of Gade Native Law and Custom within the Gudun Karya District and in the Federal Capital Territory, Abuja.

The Defendant averred that it is false that the claimant planted maize, cassava, yam, plantain, groundnut, millet, rice and other crops on the land, that the only thing the Claimant unlawfully planted on the land was guinea corn in 2020 and the illegal planting on the land is the genesis of the issue. That he respectfully approached the Claimant upon seeing him on his land when he was clearing the land, told the Claimant to leave, but he refused and continued clearing.

According to the Defendant, he is the person that gave the land to Rabi Danjuma and Mariam Ibrahim to farm on pending when he will need same and the Defendant gave the same land earlier to one Hauwa Pakuru (now late) to farm on 22 years ago and a Gbagyi man to farm on a portion in 2008, Defendant gave his land to Rabi Danjuma and Mariam Ibrahim 13 (thirteen) years ago in 2009.

The Defendant avers that he gave his land to Rabi Danjuma to use because Rabi Danjuma had married his younger brother (Uku Baba) now late and that the duo of Rabi Danjuma and Mariam Ibrahim are lying on Oath before this noble Court because the Claimant (Amedu Sarki) is the younger brother to Rabi Danjuma's Father (her Uncle and one Maikasuwa Sarki is her biological Father who is also the elder brother to the mother of Mariam Ibrahim (Uncle).

That the land being a traditional land, the Agabe of Gwargwada is the head of the Chieftdom as Gwargwada is a chieftdom and the land located in Gudun Karya is under the Gwargwada Chieftdom and the Defendant avers further that before the formal report to the Agabe of Gwargwada, one Baba (Mr. Amedu Gwogutuso) of over 89 years old and other elders promptly and diligently looked into the matter and knowing the land rightly belonged to the Defendant prevailed on the Claimant not to encroach on same but he refused, the reason for report to the Agabe of Gwargwada.

That the Chief, Agabe of Gwargwada upon the report to him detailed some chiefs with known integrity to carry out investigation on land to ascertain the true Owner, and upon a thorough investigation done, the Chiefs realized truly that the Defendant is the true Owner of the land and the Chief, Agabe of Gwargwada advised that since the two women (Rabi Danjuma and Mariam Ibrahim) are farming on the land and the Claimant and Defendant do not have issues with same as the women are not contesting land, they should be allowed to farm on same till the Defendant have need for same.

The Defendant further stated that he did not at any time ever destroy any alleged whole rice farm worth ₦5,000,000.00 (Five Million Naira) only of the Claimant or any amount in any way.

Accordingly, the Defendant Counter-Claimed against the Claimant as follows:-

1. A DECLARATION of the Honourable Court to the effect that the farmland situated at Zagabutu Village, Gudun Karya at Kuje Area Council, Abuja, FCT is the property of the Counter Claimant and he is entitled to quiet and peaceful enjoyment of same.
2. A DECLARATION that the Claimant/Defendant has no reason howsoever to continue his encroachment on the Counter Claimant's property (farmland) situated at Zagabutu Village, Gudun Karya at Kuje Area Council, Abuja, FCT as same is unlawful and void.
3. AN ORDER of this Honourable Court restraining the Claimant/Defendant to stop forth with any form of encroachment of the Counter Claimant's farmland situate at Zagabutu Village, Gudun Karya, Kuje Area Council, Abuja, FCT.
4. AN ORDER of this Honourable Court perpetually restraining the Claimant/Defendant by himself, his Agents, Servants and Proxies from trespassing or doing anything howsoever on the Counter Claimant's farmland situate at Zagabut Village, Gudun Karya, Kuje Area Council, Abuja, FCT.
5. AN ORDER of this Honourable Court compelling the Claimant/Defendant to pay the sum of ₦100, 000,000.00 (One Hundred Million Naira) only as special and exemplary damages to the Defendant/Counter Claimant for the unquantifiable, emotional, anxious and psychological trauma the Defendant/Counter Claimant and family members innocently suffered in the harsh hands of the Claimant/Defendant.

6. AN ORDER of the Honourable Court returning the farmland situate at Zagabutu Village, Gudun Karya Ward, Kuje Area Council, Abuja, FCT to the Counter Claimant.
7. AN ORDER of this Honourable Court directing the Claimant/Defendant to pay the Defendant/Counter Claimant the sum of N25, 000, 000.00 (Twenty Five Million Naira) only as general damages for the acts of unlawful trespass and trauma caused the Counter Claimant.
8. The sum of N1, 000, 000.00 (One Million Naira) only as cost of this action.
9. AND for such further order(s) this Honourable Court may deem fit to make in the circumstance of this matter.

The Claimant (Amedu Sarki) opened his case as PW1 on the 5th December 2022, the PW1 adopted his witness statement on oath and thereafter was cross-examined.

PW2 (Rabi Danjuma) adopted her Statement on oath and was thereupon cross-examined, PW2 claimed she farmed on the land for 15 years.

PW3 (Mariam Ibrahim) adopted her Statement on oath and was thereafter cross-examined as to how she came about using the land in dispute, she claimed it was the Claimant (Amedu Sarki) that gave her the said portion of land.

PW4 (Yunusa Aliyu) adopted his Witness statement on oath and was subsequently cross-examined

Upon the conclusion of the evidence of the Claimant, the Defendant/Counter Claimant opened his case and called 5 witness.

The DW1 adopted his Witness statement on oath and tendered a letter written by the Agabe of Gwargwada to the Area Commander, Nigeria Police Force, Abaji, FCT-Abuja (being the

Police Command of which the land is located) and same was admitted by the Court and marked as Exhibit DW1. DW1 was thereupon cross-examined.

DW2 (Goduka Mohammed) was called upon and he adopted his Witness statement on oath, DW2, a Chief in Gwargwada of which Zagabutu village is under was cross-examined by Counsel to the claimant and during cross-examination gave testimony that he investigated upon the land by meeting with elderly and old people, male and female and it was discovered after findings that the defendant is the true and rightful Owner of the land.

DW3 (Suleiman Yakubu) adopted his Witness statement on oath and was cross-examined on the issue thereof.

DW4 (Pa Amedu Gwogutuso), an elder in Zagabut Village adopted his Witness statement on oath, upon Cross-examination, he gave testimony that he is an elder in Zagabut village and that the chief of Zagabutu village delegated him and others to the land and his delegation went before the one sent by Agabe of Gwargwada, who is chief over the chieftom of which Zagabutu village is part of and he knows the land very well.

DW5 (Abu Bawa) Sarkin Pawa, adopted his Witness statement on oath and was cross examined and gave testimony that he knew the farm land thereof and confirmed that the land belong to the defendant.

In his final written address, the Defendant/Counter Claimant through his counsel, raised two issues:-

1. WHETHER FROM THE FACTS AND CIRCUMSTANCES OF THIS CASE AND EVIDENCE ADDUCED IN THE COURSE OF TRIAL, THE PLAINTIFF WAS ABLE TO ESTABLISH HIS CASE BY

CREDIBLE EVIDENCE TO BE ENTITLED TO JUDGEMENT AGAINST THE DEFENDANT.

2. WHETHER THE DEFENDANT/COUNTER-CLAIMANT HAS PROVED HIS CASE BY CREDIBLE EVIDENCE AND THUS ENTITLED TO THE JUDGEMENT OF THIS NOBLE COURT.

On issue 1, the counsel on behalf of the Defendant argued that the Claimant had failed to discharge the evidential burden placed on him in proving his case. Citing several instances, learned counsel to the Defendant observed that the evidence of PW1 to PW4 are completely at variance with their written witness statement on oath which was adopted in open court. He therefore submitted that evidence of PW1 to PW4 is not credible and evidence of a non credible witness has no probative value and ought to be discountenanced. See ***OLAWUYI & 10 V. ADEYEMI, SUIT NO: CA/K/36/89; (1990) 4 NWLR (PT.147), 746 (a) 774.***

Relying on the decision of the Supreme Court in EWO V. ANI (2004) 3 NWLR (PT. 861) (a) 611 (a) 637-638, and in the case of OWHONDA V, ALPHONSUS EKPECHI (2003) 12 NJSC, counsel submitted that the Claimant failed to prove any of the five methods of proving title to land.

On issue 2, counsel submitted that upon a close look at the evidence and Exhibit DW1 tendered and admitted, the Court will assuredly find in favor of the Defendant/ Counter Claimant.

That in the instant case, while the Defendant/ Counter Claimant (DW1) gave testimony and tendered documentary evidence, the Claimant presented none. See the case of ***ARIJE V. ARIJE & ORS (2018) LPELR-44193 (SC)*** the apex Court particular per kekere Ekun, JSC atPP. 36-37, PARAS E-A

Counsel maintained that the Defendant / Counter Claimant had proved the issue of C and D on methods of proofing title to land as listed being:-

C. By acts of a person or persons claiming the land such as selling, leasing, renting and enjoyment of land and

E. By acts of long possession and enjoyment of land.

From the issues of both parties, all they are trying to say in different ways is whether the Claimant proved their case on a balance of evidence vis-a-vis the Defendant/Counter-Claimant.

Having carefully read through the facts and having listened to the testimonies of witnesses during the trial, I believe that both parties in this suit know between themselves who the true owner of the land in question really is. The fact is that in a trial such as this, both parties know the truth, it is the Judge that is on trial. How sad!

Well, the court cannot and will never shy away from discharging its constitutional obligation of dispensing justice according to law even in the face of a dilemma as this, where one person who knows the truth is trying to trick the court to give to him what is not due to him.

In laying this case to rest, I will adopt a single issue:-

“Whether the Claimant or Counter Claimant has proved their case to entitle either of them to the judgment of this court?”

From the facts, it is obvious that the nature of this case is that of a traditional title to land.

It is now trite law that a plaintiff who relies on traditional history in proof of a claim for declaration of title to land must lead evidence to show the root of his title; and this includes how his ancestor had come to own the land in the first place

and how the land devolved over the years on the claimant family until it got to the claimant. See ***NKADO & ORS v. OBIANO & ANOR (1997) LPELR-2043(SC)***

In ***ADDAH VS UBANDAWAKI(2015) All FWLR(Pt.775)P.200 @ 211***, the Court held that: "where a person relies on traditional history as his root of title, the onus is on him to plead the root of title and the names of his ancestors. He must lead evidence to establish same without any missing link in a genealogical tree from the progenitor to the claimant."

The law is also trite that, in a claim of title to land where traditional history evidence is relied on, the claimant must plead the names of all those who owned the land before him, and how each of these title holders came to own the land.

This principle of law has also been enunciated in the case of *Ossai-Ugba vs Agolo (2014) All FWLR Pt. 758 P.919 @ 931*, where it was espoused that: "To prove traditional history relied upon as a root of title a claimant is required to first and foremost plead the names of the founder and those after him on whom the land devolved to the last successor(s). Secondly, the claimant is equally required to lead credible evidence in support of the leadings without leaving gaps or creating mysterious linkage which are unexplainable.

In pleading traditional history in a claim for declaration of titles, the Plaintiff and Counter Claimant, in this case, are expected to narrate the genealogical tree from the original owner, the ancestors in generation appointment to him down the line to the claimant/Appellant. In other words, he must provide who founded and the circumstances leading to it, and the successive person to whom the land thereafter, devolved through an unbroken chain OR in such a way that there is no

gap which cannot be explained. See ***ODI VS IYALA (2004) 8 NWLR(P.T. 875) PG 283.***

In this case, PW1 and all the witnesses of the Claimant, traced the Claimant's title to his late father, Sarki Kusa Dagida of Zagabutu Village, Gudu Keriya Ward in Kuje Area Council, Abuja – FCT (see paragraphs 3, 4, and 8 of the Witness Statement on Oath of PW1). They also claimed that they were put on the land by the Claimant's father and had been farming on the land between 13 to 20 years, respectively, without any disturbance.

In describing the land during cross-examination, PW1 stated that the land is three times the size of a football field.

However, during cross-examination, the DW1 who is also claiming title to the land could not describe the size of the land, other than merely describing it as a big land.

What struck me during the trial was that the same Mariam Ibrahim and Rabi Danjuma whom the Defendant claimed to have given some portion of the said land to build, testified that the land was given to them by the Claimant's late father.

Furthermore, during the cross examination of DW1, he admitted that the Agabe of Gwargwada who adjudicated over the dispute, does not know all the lands belonging to every villager in the community and that he is the one that showed the land to the Agabe of Gwargwada.

PW1 in his testimony during cross-examination stated that the Agabe of Gwargwada who ordered him to stop working on the farm did not investigate nor visit the land before deciding that the land belonged to the Defendant.

Nevertheless, there is evidence that the Agaba sent DW3 and DW4 to investigate the complaint. However, the manner and

the means which the delegation used in carrying out their investigation to arrive at their findings that the Defendant was the actual owner of the land leaves much to be desired.

Of serious concern too, is the overbearing involvement of the Agaba of Gwargwada who was supposed to serve as an umpire, in this case. During cross-examination, the DW1 admitted that his statement on oath was written on his behalf by the Agaba of Gwargwada.

The DW1 did not hesitate to admit during cross-examination that he is very close to the Agaba of Gwargwada and that the Agaba of Gwargwada would do anything he asks of him.

Considering all these, a discerning mind would be left to wonder whether the Agaba and his council of chiefs have any special interest in the land in dispute and whether their adjudication over the issue was fair and free from bias.

The Defendant in this case also relied on traditional history in proof of his case. He is expected to plead his proof of title. He too must show in his pleadings who those ancestors of his were and how they came to own and possess the land and eventually pass it to him. This principle also applies to the Respondent. See ***OKOKO VS DAKOLO (2006) 14 NWLR PT 1000 PG 401.***

The Defendant in proof of his case against the Claimants also fielded 5 witnesses who testified that the Defendant is the rightful owner of the land by virtue of inheritance, but none of them testified from the position of a person in possession, or as people who saw and could trace how the Defendant's father came into possession of the land.

Where the Claimant and the Defendant anchor their case on traditional evidence in proving ownership of the land in dispute, the duty of the trial Court is to weigh their evidence on the

imaginary scale and determine which evidence of the two is weightier. Like I said earlier, it is trite that a party seeking for declaration of title to land, who relies on traditional history as proof of his root of title, must plead same sufficiently. That is to say, he must demonstrate in his pleading the original founder of the land, how he founded the land, the particulars of the intervening owners through whom he claims. When a party has not given sufficient information in his pleading as regards the origin OR ownership of the land and the line of succession to himself, he has just laid foundation for the failure of his claim. See ***HYACINTH ANYANWU VS ROBERT ACHILIKE MBARA (1992) 5 SCNJ PG. 90, IDUNDUN VS OKUMAGBA (1976) 9-10 SC PG. 224, ATANDA VS AJANI (1989) 3 NWLR(P.T. II)I PG 511 Per Okoro JSC in ANYAFULU VS MADUEGBUNA MEKA (2014) LPELR 22336***

In this case, I must admit that neither the Claimant nor the Defendant have been able to trace the root of traditional title satisfactorily as required by law. Both of them could only trace the land to their late fathers, and none of them could prove how his late father, grandfather, and forefathers came into the land. PW5 who made a little attempt to trace the Defendant's title could not go beyond stating that he "grew up to meet the Defendant's father always farming on the land".

It is pertinent to stress here that a party relying on traditional history in proving title to land has the burden of pleading and proving facts such as: (a) Who founded the land in dispute, (b) In what manner the land was founded, (c) The successive persons to which the land had devolved and how he came to own the land.

In situations such as this, what can the court do to arrive at a just and fair decision?

The answer was provided in the case of ***KOJO BONSO (SIC) (1957) 1 WLR1223***, where the court held as follows: -

"Witness of the utmost veracity may speak honestly but erroneously as to what took place hundred years or more ago where there is a conflict of traditional history one side or the other must be mistaken, yet both will be honest in their belief. In such a case, demeanour is little guide to the truth."

The best way to test the traditional history is by reference to the facts in recent years as established by evidence and by seeing which of the two competing witnesses is the more probable. In effect, it is when the trial Judge cannot find any of the two history (sic) probable or conclusive that he will declare both inconclusive and proceed to decide the case on the basis of numerous and positive acts of possession and ownership."

It is perhaps appropriate at this stage to remind oneself of how ownership of land is proved where title of the land is in dispute. This is shown in the case of ***IDUNDUN V. OKUMAGBA(1976) 9-10 SC 227***, they are: 1. By traditional evidence; 2. By production of document of title duly authenticated and executed; 3. By acts of ownership extending over a sufficient length of time numerous and positive enough as to warrant the inference of true ownership. 4. By acts of long possession and enjoyment. 5. By 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 of the land in dispute.

It needs be said that all the five methods do not have to be present before proof of the said ownership can be said to have been established as only one of the methods above stated is sufficient and this the plaintiff must prove by cogent,

satisfactory and conclusive evidence. I rely on ***AIKHIONBARE V. OMOREGIE (1976) 12 SC 11.***

It is not in dispute that the person in possession of the subject matter of this case before this dispute arose, was the claimant.

The claimant and his witnesses all testified to have been in possession of the land all these year without any disturbance whatsoever. There is no evidence that the Defendant/Counter Claimant has ever been in possession of the land in dispute which he claims to have inherited from his Late father.

The Claimant's root of title is predicated both on traditional history as well as acts of ownership.

Well, the laws are settled that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title. But, where he relies on traditional history and in addition to acts of ownership and long possession predicated on the traditional history as pleaded, he is not entitled to a declaration of title based on the evidence of acts of ownership and long possession where the evidence of traditional history is unavailable. See ***BALOGUN V AKANJI (1988) 1 NWLR (prt.70) 323 at 301, ERONINI V IHENKO (1988) 3 SC (prt.1) 30 and EZEUKWU V UKACHUKWU (2004) 7 SC (prt.1) 96 at 107-108.***

Ordinarily, where traditional history pleaded has not been proved, then it will be unnecessary to consider acts of possession for the acts then become no longer acts of possession but acts of trespass. See ***ELEGUSHI V OSENI (2005) 14 NWLR (prt. 945) 348, EZE V ATASIE (2000) 10 NWLR (prt.676) 470 and REGISTERED TRUSTEES, DIOCESE OF ABA V NKUME (2002)1 SC 19 at 28.***

However, in a situation such as this, where both the Claimant and the Defendant who relied on traditional root of title could

not successfully prove, the court will be left with no other choice than to award the land in dispute to the party who has been in possession and has exercised long acts of ownership.

Moreover, it is obvious that in the Federal Capital Territory, in view of its peculiar creation by law, title to land cannot be established by traditional history alone without more. There must be evidence of a grant by the Minister of the Federal Capital Territory.

After careful consideration of all the evidence and the facts as presented by the parties, the balance of probability tilts in favour of the Claimant who has satisfactorily proven possession and acts of ownership for a period of 20 years.

Consequently, the Claimant's case succeeds, and Reliefs 1, 2, 3, 6, and 7 in the Claimant's Claim is hereby granted in favour of the Claimant.

However, reliefs 4, 5, 8, and 9 are hereby refused as the Claimant did not satisfactorily prove acts of trespass and destruction of the crops of the Claimant by the Defendant.

The law is that a claim in trespass is not dependent on proof of title to land. This principle was stated in detail by Oguntade, JSC., in ***BALOGUN VS AKANJI (2005) LPELR-722(SC)***"...the claim for trespass is not dependent on the success of a claim for declaration of title. Both are quite separate and independent of each other." See ***OLUWI V. ENIOLA (1967) N.M.L.R. 339***. I have no doubt in my mind that the Defendant Counter Claimant have failed to provide any sufficient evidence to justify the granting of the Counter Claimant and I so hold.

The Defendant's counterclaim is hereby dismissed for lacking in merit.

**HON. JUSTICE M.S
IDRIS**
(Presiding Judge)

Appearance

Usman Adams :-

For the Claimant

Emmanuel Ojodale:-

For the Defendant/Counter Claim