

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA,**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT: 28**

**DATE: 6<sup>TH</sup> DECEMBER, 2023**

**FCT/HC/CV/70/2022**

- 1. TIJANI SULEIMAN**
- 2. VICTORIA DARE**
- 3. MRS. ARTHUR OKAFOR**
- 4. PAUL AGU**
- 5. NIHU IBRAHIM**

**CLAIMANTS**

**AND**

- 1. MRS. OLAYINKA HARUNA JOHN**
- 2. ALHAJI KAMBA**
- 3. ALHAJI KABIRU BELLO**
- 4. MRS. NKECHI NWOYE**
- 5. UNKNOWN PERSONS**

**DEFENDANTS**

**JUDGMENT**

The Claimant initiated this suit by way of a writ of summons filed on 21<sup>st</sup> October, 2022. The Claimant sought the following reliefs:-

1. A DECLARATION that the claimant is the legitimate and lawful owner as well as possessor of plots B208, B209 and B265 within Sabon Lube Layout, Airport Road, Abuja.

2. A DECLARATION that the invasion of plots B208, B209 and B265 within Sabon Luge Layout, Airport Road, Abuja by the defendants is illegal, unlawful and unconstitutional.
3. A DECLARATION that the invasion of the claimant's plots B208, B209 and B265 within Sabon Lube Layout, Airport Road, Abuja by the defendants with armed men bearing weapons is unlawful and a trespass to the claimant' land.
4. A DECLARATION that the destruction of the claimant's fence by the defendants is trespass and violation of the claimant's right to own and possession immovable property in Nigeria
5. AN ORDER of perpetual injunction restraining the defendants, their agents, privies, assigns, legal representatives or howsoever called from entering and interfering with the peaceful and quiet possession as well as enjoyment of plots B208, B209 and B265 within Sabon Lugbe Layout, Airport Road, Abuja by the Defendant.
6. AN ORDER directing the defendants to pay the sum of ₦50,000,000.00 (Fifty Million Naira) only being exemplary damages for the destruction of the claimant's structures on the subject matter by the defendants.
7. AN ORDER of perpetual injunction restraining the defendants, their assigns, privies, legal representatives or howsoever called from further trespassing on the subject matter.
8. The sum of ₦100, 000,000.00 (One Hundred Million Naira) only being general damages for trespass on the claimant' land.

A summary of the Claimant's case is that the defendants are land grabbers, intruders and trespassers who specialize in taking people's land by force in Abuja.

The Claimant contends that he purchased the Plots No. B208, B209 and B265 Sabon Lube layout from the original allottees in 2001. And that original allottees came into possession of the said plots in 1995 vide allocation by the Minister of Federal Capital Territory through the Zonal Manager, Abuja Municipal Area Council in 1995.

The Claimant further state that they submitted their title documents for regularization in the Lands Department of Federal Capital Territory and they were issued acknowledgement thereto.

That they have been enjoying physical possession of his land several years without challenge, until sometime in March, 2021 when the 1st defendant came claiming one of the plots, B108 with wrong title documents bearing only 208 Sabon Lube Layout.

The 1<sup>st</sup> Defendant caused the arrest of the Claimant by the police but upon investigation, it was discovered that the 1<sup>st</sup> defendant did not have land in that place.

Not being satisfied, the Defendants now started laying claim on the other plots of land adjoining plot B208 owed by the claimants.

The Claimants alleged that the 1<sup>st</sup> Defendant has been using police officers to intimidate and harass the Claimant. That sometime in March, 2022 the claimants discovered that the defendants came to the site with armed men and started harassing the claimants on the same B208, B209 and B265 within Sabon Lugbe Layout, Airport Road, Abuja with impunity.

The Defendants did not enter appearance nor filed any defence to this suit.

On 30<sup>th</sup> May 2023, the claimants opened their case and through their witness PW1, the Claimants tendered Exhibits 1, 1A, 1B, 1C, 2, 2A, 2B, 3, 3A, 3B and 4. The said documents were admitted in evidence and marked as such. The defendants neither cross-examined PW1 nor entered defence in the suit, and on 13<sup>th</sup> June 2023, after repeated hearing notices had been served on the Defendants, without them putting up any appearance, the Defendants were foreclosed from cross examining the Claimant's witness.

At the conclusion of hearing following the failure of the Defendant to appear and to file a defence, the Claimants proceeded to file their final written address on 29<sup>th</sup> September, 2023.

In their final written address, the Claimants through their counsel raised a single issue for determination:-

*"Whether the claimants have proved their case to entitle them to judgment based on the evidence before the Court."*

Counsel argued on behalf of the Claimants that the Claimants has through the several documentary evidence tendered, shown that they are the actual owners and possessors of the subject matter of this suit and that the defendants neither cross-examined PW1 nor entered defence in the suit. Therefore the evidence of the claimants remains unchallenged before the court and should be deemed admitted. **MATANI V DADA (2013) 7 NWLR (PT 1358) 319**

Counsel reasoned that where the defendant who had an opportunity to present his case fails to do so, the evidence adduced by the claimant will be considered sufficient in proof

of his case. See **OGUCHE V BSCSC (2014) 7 NWLR (PT1406) 374.**

The law is well settled that it is for the Claimant to succeed on the strength of his case by adducing evidence and not to rely on the weakness of the defence, though at times the weakness of the defendants' case tends to strengthen the Plaintiffs. The authorities of *S. Kodilinye v. Odu* (1935) 2 WACA 336 and *Piero v. Tenalo* (1976) 12 SC 31 are both in point, as well as that of **AKUNWATANWAGBOGU V. CHIEF M.D. IBEZIAKO (1972) VOL. 2 (PT 1)ECSLR 335 AT 336** a Supreme Court decision. Also, the provisions of the Evidence Act per Sections 136 and 137 are relevant in stating on whom the burden of proof lies as well as the party who has the burden of proof in civil cases.

The sections reproduced state:

*"136 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.*

*137(1) 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.*

*(2) if such party adduces evidence which ought reasonably to satisfy a jury that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively until all the issues in the pleadings have been dealt with."*

In the matter under consideration, the Claimant is claiming the ownership of the title to plots B208, B209 and B265 within

Sabon Luge Layout, Airport Road, Abuja over and above the defendants. In the absence of any counter-claim/defence by the defendants, the plaintiff had the burden to produce evidence in order to succeed. It is mandatory for the Claimant in the spirit of Section 136 of the Evidence Act to produce some sort of evidence or else the total absence of which would lead to failure especially where they are the initiators. By the interpretation of Section 137(2) supra, it is not enough that the plaintiffs adduce evidence, but that "which ought reasonably to satisfy a jury that the fact sought to be proved is established." Thus, there is a need for credible, cogent, reliable, and convincing evidence.

For purpose of emphasis, it is settled law that in an action for declaration of title to land, just like in all declaratory actions, the burden lies throughout on the Plaintiff to adduce sufficient and credible evidence that will satisfy the Court that he is entitled to the relief sought. Therefore, declaratory reliefs are not granted in the absence of credible evidence from Plaintiff, or because Defendant had made admissions or failed to lead evidence. It also means that a plaintiff in an action for declaration of title to land is required, in proving his title to the land in dispute, to rely on the strength of the evidence he adduced. Such a plaintiff may, however, benefit from that aspect of the defendant's case that supports his claim. See ***ANTHONY OSUJI V. OGBONNA OSUJI & ANOR (2014) LPELR - 23769 (CA); CHIEF L.K. AJIBARE& ANOR V. JAMES AKOMOLAFE& ANOR (2011) LPELR - 3948 (CA); JOHNSON OFIGO V. GILBERT EZEIKE (2019) LPELR - 46953 (CA); OWHONDA V. EKPECHI (2003) 17 NWLR (PT.849) 326 AND ELIAS V. OMO-BARE (1982) ALL N.L.R.75.***

Thus in the case of ***Akinduro v. Alaya (2007) 15 NWLR (pt.1057) 312***, Aderemi, JSC held as follows: -

*"It is trite law that a plaintiff who claims declaration of title to land has a compelling duty to establish his case by credible evidence to the satisfaction of the Court; the weakness of the case for the defendant will not avail him unless it is seen that there are averments in the statement of defence or even the testimonies of the defendant and/or his witnesses which support the case of the plaintiff...."*

It, therefore, follows that, in determining the claim, the trial Court must start by considering the evidence led by the plaintiff to see whether the plaintiff has led evidence that is satisfactory. If the evidence adduced by the plaintiff is unsatisfactory, then he has not made out a prima facie case, in which case, the trial Court does not have to consider the case of the defendant at all. See ***SANUSI V. AMEYOGUN (1992) 4 NWLR (PT.237) 527 AT 547; DURU V. NWOSU (1989) 4 NWLR (PT.113) 24, OYEFESO V. COKER (1999) 1 NWLR (PT.588) 654 AT 660 AND AGU V. NNADI (1999) 2 NWLR (PT.589) 131 at 142.***

In an action for declaration of title to land, where the defendant has not Counter-claimed, the only duty of the trial Judge is to ascertain from the evidence adduced by the plaintiff, whether the claimant has discharged the onus of proof on him so as to entitle him to the declaration sought. Thus, where the Court finds from the totality of the evidence adduced by the plaintiff, that the Claimant has prima facie proved his title and in the absence of rebuttal evidence from the defendant, title will be declared for the plaintiff.

In the instant case, the claimants through the documentary evidence presented have shown that they are the actual owners and possessors of the subject matter of this suit.

Furthermore, Exhibit 4, which is a Certified True Copy of police investigation in respect of the plots, contained the Report from the Federal Capital Territory Administration confirming the authenticity and genuineness of the claimants' title documents in respect of the subject matter.

The court is satisfied that the Claimants have established a prima facie ownership of the several plots of land in issue.

In the absence of any defence/counter-claim, I am convinced that the Claimants have sufficiently established their title to the said plots. There is also evidence of alleged encroachment on the land by the Defendants.

Consequently, reliefs 1, 2, 3, 4, 5 and 7, as contained in the Statement of Claim are hereby granted in favour of the Claimant.

The Defendants are hereby ordered to pay the sum of ~~₦~~2,000,000.00 being exemplary damages for acts of trespass on the said plots by the defendants

Let me also use this medium to advice the Claimants to apply for, pay the requisite fees and obtain a proper grant by the Minister of the Federal Capital Territory over the said plots B208, B209 and B265 within Sabon Lube Layout, Airport Road, Abuja, in order to secure their rights over the plots.

-----  
**HON. JUSTICE M.S  
IDRIS**



**(Presiding Judge)**

Appearance

Dr. T.AMbalian:- For the Claimants.