

SUIT NO: CV/3228/22

1. UCHE AFOAKU
2. TON INVESTMENT LIMITED } - - - DEFENDANTS

trespassing into the 2nd Defendant/Counter Claimant's property situate at Plot No 219A Sabon Lugbe South East Layout, Abuja.

3. The sum of Twenty Million Naira only as general damages for trespass to land, intimidation and harassment of the Defendants by the Claimant/Counter Defendant.
4. Cost of this Suit.

During trial, the Claimant opened his case and called a sole witness who adopted his Witness Statement on Oath and tendered several Exhibits. The Defendants also called a sole witness who adopted his Witness Statement on Oath and also tendered several exhibits

The brief facts of the Claimant's case as gleaned from his Statement of Claim and Witness Statement on Oath is that he acquired a plot of land known and called Plot MF219A Cadastral Zone in Sabon Lugbe South East, Abuja through one Abdul Ganiyu A. Saram who was the original Allottee. The Claimant thereafter applied for the Right of Occupancy over the Plot MF219A, which was not issued to Abdul Ganiyu A. Saram before he sold the Land to him. An Offer of the Terms of Grant/Conveyance of Approval was issued to him on 16/8/2006 and subsequently, the Right of Occupancy in response to his application which he acknowledged on 30/12/2008. In order to be sure of the authenticity, he applied for a search, which confirmed the said land as Plot MF 219A, measuring 2,000m² with File No as MZTP/LA/05/MISC 9699.

That by a Power of Attorney many years later in 2018, the Parties executed a Deed of Assignment and Alhaji Abdul Ganiyu Saram in respect of the land in dispute. However, sometime in 2020, during the Corona Virus pandemic and the consequent lockdown, the Claimant was surprised to find that the Defendants had encroached on the Plot. As a result, he reported to the Police Station at Iddo Division FCT Command, Abuja. The Police, upon investigation found out that the documents pertaining to the land were submitted for Area Council Title Regularization by him with File NO. MISC 9699/AN 14145 dated

12/16/2008. As a result, the Police addressed Parties concerned to stay off and steer clear of the Land until the process of the Area Council's Title Regularization is concluded to confirm the authenticity of the title documents submitted by the Claimant.

In spite of that, the Claimant was surprised on visiting the plot in October, 2021, to find that the Defendants had completely fenced the Plot with another adjoining Plot and put a giant gate. Hence, the Claimant instituted this suit.

On the part of the Defendants, the brief facts of their case is clearly shown in paragraphs 6 – 15 of their Statement of Defence, which state as follows:

6. In further reply to these paragraphs, the Defendants state that they did not start any work on Plot No 219A Sabon Lugbe South East Layout as claimed by Claimant. The Claimant and his agents destroyed the fence erected by the Defendants after buying the Plot.
7. The Defendant states further that when they bought the Plot from Abdul-Afeez Olaoye, he executed a Power of Attorney in favour of the 2nd Defendant and gave it the original letter of allocation. The Power of Attorney is hereby pleaded. The Defendants further pleads the letter of acceptance of the offer of the plot together with the receipt of payment by the Original Allottee Abdul - Afeez Olaoye.
8. Upon purchase, the 1st Defendant went to do change of ownership of the Plot. He agent bought form & paid for the processing. The original letter of allocation was cancelled and a new one issued in the name of the 2nd Defendant. Copies of the cancelled original letter of allocation in the name of Abdul- Afeez Olaoye, the new letter of allocation in the name of the 2nd Defendant, the TDP of the plot, Right of Occupancy fees, Receipts of payment for form, Development levy and C of O bill are hereby pleaded and will be relied upon at the hearing.
9. The Defendants subsequently did the regularization of Land titles and documents of the plot and was issued with an acknowledgment. The acknowledgment from AGIS is also pleaded and will be relied upon at trial.

10. In the past three (3) years, different people have been showing up laying claim to ownership of the Defendants plot because of the strategic nature of where it is situated and when the disputes arise, the parties go to the police who usually send the title documents of the rival claimants to AGIS for verification in the course of investigation. The Defendants title documents have been confirmed at all times.
11. In further reply to these Paragraphs, Defendants states that in February, 2020, the Claimant's agents came to plot and started destroying everything on the Plot. They were stopped and the matter was reported to the police who came to the site and took everybody to Iddo Police Station.
12. At the station, the parties were asked to stop all activities on the Plot. The Defendants waited patiently till the police came out with their report and the Defendants went back to site to continue their work on the Plot. The Defendants only worked on the part destroyed by the Claimant's agents and thugs.
13. The Claimant cleverly ran to Court to save face and prevent the Defendants from taking possession of their Plot.
14. The Defendants states further that the Claimants are the land grabbers in this situation as they have not provided any genuine documents to back their claim to the Defendants Plot.
15. Whereof the Defendants seeks the dismissal of the suit on the grounds that it lacks merit, fortune seeking, speculative, gold digging and an abuse of court process.

ISSUES FOR DETERMINATION:

The Claimant in his Final Written Address prepared by Chijioke Dike, Esq., dated and filed on the 14th day of May, 2024, formulated two (2) issues for determination as follows:

- 1) Whether the Claimant had by evidence proved his case, as to be entitled to judgement in his favour?**
- 2) Whether the Defendants had by evidence on their counter-claim proved their entitlement to judgement on the land in dispute?**

Similarly, the Defendants, through their Counsel, Akharamé Lucky, Esq., filed their Final Written Address on 26th of March, 2024, and nominated a sole issue for determination, namely:

Whether the Defendants have proved their counter claim and entitled to their claims?

CLAIMANT'S LEGAL ARGUMENTS

On the first issue, Counsel submits that there are five (5) acceptable ways of proving title to land as held in the case of **ODUNZE VS. NWOSU (2007)5 SCNJ 234 at 258** and this proof must be done on the strength of the claimant's case, not on the weakness of the defence as was the position in **ANUKAM VS. ANUKAM (2008) 2 S.C.N.J 62 at 76** and **ONISADU VS. ELEWUJU (2006)7 SCNJ 270 at 278**, where it was held that proving one of the methods suffices for the claim of title to land.

Counsel submits that the Claimant proved his title to the land in issue on number 2 of the 5 ways listed in the case of **ODUNZE VS. NWOSU (supra)**, that is, production of title documents, which coalesced into number 4, that is by long possession as adduced in his Statement of Claim. He relied on the case of **KOTUN VS. OLASEWERE (2010)1 NWLR (pt 1175)411 at 436** and his Statement of Claim on the strength of the case of **MR. MOSES BENJAMIN & 2 ORS VS. MR ADEKUNLEKALIO & 1 OR (2018) 15 N.W.L.R (pt.1641)**

Still on issue one, Counsel also submits that he enjoyed quiet ownership until 2020 during the corona virus pandemic when he visited the land and noted some developments on the land. This piece of evidence was not contradicted by the Defendants who admitted at paragraph 13 of their Statement of Defence that they are yet to take possession, properly and legally, hence he referred to them as trespassers and consequently reported the matter to the Police who asked them to maintain status quo pending the conclusion of their investigations. Counsel contends that while he obeyed the directive of the Police, the Defendants did not but went and fenced the land in 2021.

Counsel noted that during the trial, the Defendants' witness belligerent and the court took notice and reprimanded him. Not only that, he could not tell specifics about the land and alleged that the Defendants

repaired their fence on the disputed land destroyed by the Claimant because they felt like just as they also felt like not tendering the Police report on same even though they pleaded it. This the Claimant alleges is a deliberate act by the Defendants because the said Police report is in his favour. He called to his aid the case of **LASISI AREMU VS. ALHAJI LAWAL ADETORO (2007) 16 N.W.L.R part1060 223 444**, where the Court held among other things that in the situation, the Court is entitled to involve Section 149(d) of the Evidence Act and the case of **APC VS. INEC & 7 ORS (2015)8 N.W.L.R (part 1462) 399-603** where the Court held that a party who fails to avail the Court of all vital documents necessary for the determination of his case does so at his own peril and refusal to exhibit vital documents is tantamount to withholding of evidence.

Regarding the grants of rights of occupancy tendered by the Defendants, Counsel contends that the document apart from bearing different dates was not pleaded and as such should be expunged by the Court. He referred the Court to the cases of **ILODIBAVS.NIGERIA CEMENT COMPANY LTD (1997)LPELR; FABIYI VS ADEYEMI (2000) F.W.L.R (pt. 18)196 SC** and **ETA VS DAZIE (2013)9 N.W.L.R (pt.1359)248**.

Based on the foregoing, Counsel urged the Court to resolve issue one in favour of the Claimant on the ground that he succeeded in proving his title to ownership of the land in issue by his pleadings and evidence rendered in support of same and also by the support inadvertently given by the case of the Defendant.

On issue two, Counsel posits that the counterclaim of the Defendants will not avail them because the Claimant's title is superior to theirs. He relied on the cases of **JIMOH ATANDA & ORS VS. MEMUDU LLIASU & ORS (2012) 12 S.C.J.N pg.181** and **JOHNENEH VS. KEVIN OZOR & 1 ORS (2016) 16 N.W.L.R, (pt. 1538) 173-334** where the Court held that any unlawful interference with possession however slight, amounts to trespass and the person in possession even as a trespasser can sue another person who thereafter comes upon the land.

In conclusion, Counsel prayed the Court to enter judgment in favour of the Claimant.

DEFENDANTS' LEGAL ARGUMENT

Arguing their sole issue, Counsel relying on the case of **OLOKOTINTIN VS.SARUMI (2002) 13 NWLR (PT 784) at 314** asserts that the onus is on a claimant, whether as counterclaimant or not to prove his claim through cogent and credible evidence without recourse to the weakness of the defence.

Counsel submits that there are five ways of proving title to claim of land and civil suits are decided on the preponderance of evidence. He referred the Court to Section 1 of the Evidence Act, 2011 and the case of **ORJI VS. DORJI TEXTILE MILLS (NIG) LTD (2010) 5 WRN 32 AT 68 Lines-45.**

Therefore, Counsel argued that the Defendants proved their case for claim of title by the exhibits they tendered, which includes title documents, the TDP of the Plot, an acceptance letter written by the original allottee, duly executed and registered Power of Attorney from the original allottee to the Defendants. He urged the Court to so hold drawing inference from the case of **UGWU VS. NNAJI (2018) 40 WRN PAGE 125-126 LINES 45-10**

Furthermore, Learned Counsel submits that the 2nd Defendant was in quiet possession and enjoyment of its property from 2006 till 2020 before the area opened up for development and the Claimant trespassed into the Plot, which facts were not denied during trial. This possessory right gives the Defendants the right to sue as held in the case of **INYANG VS. C.C.E.C.C (2020) 39 WRN PAGE 64-65 LINES 45-5.** He urged the Court to take cognizance of the documents tendered and examine same closely as held in the case of **OMEGA BANK NIG PLC VS. O.B.C LTD (2002) 16 NWLR (Pt 794) 483** and accord them more weight over oral evidence. He referred the Court to the **UDERAH VS. NWAKONOB I (2003) 4 NWLR (PT 811) 643 at 678 A-C.**

Again, Counsel contends that when there is a competing interest, the first in time should supercede as held in **DUGBUM VS. ANDZIENGE (2007) ALL FWLR (PT 385) 499 at 526** and upheld in **GOLD MARK NIG VS. IBAFON CO.LTD (2012) 10 NWLR (PT 1308) 291.** He further submits that the onus of prove lies on he who alleges and the Claimants admitted in his pleadings that the Defendants were on the plot earlier than him. He dismissed the testimony of the Claimant's witness that the purchase of the said plot was done in 2006 when agreements pertaining

to same were dated 2018, as untrue and tantamount to approbating and reprobating at the same time. He referred to the Court to the case of **OGUALAJI VS. ATTORNEY GENERAL OF RIVERS STATE & ANOR. (1997) 5 SCNJ 240.**

Counsel argued that the Defendants are entitled to damages sequel to the violation of the 2nd Defendant's right to exclusive possession and enjoyment of its property. He relied on the case of **ADAMU VS. HARUNA GULAK (2013) LPELR- 20844(CA)** and **MR. INOK EDIM MOSES VS. MR. NATHANIEL ONU & ANOR (2013) LPELR- 20348(CA)** where the Court held among others that general damages cover all losses which are not capable of exact quantification.

In conclusion, Counsel urged the Court to dismiss the claim of the Claimant and grant the Defendants' counterclaim and award a cost of N20,000,000.00 against the Claimant as damages for trespass to their property.

RESOLUTION OF ISSUES

Upon consideration of the pleadings and evidence presented by both Parties, the issues nominated by Counsel can be consolidated into a single, determinative issue:

Based on the pleadings and evidence presented by both parties, who has the superior title to the land in dispute?

As argued by Counsel on both sides, our judicial system has established clear principles for proving title to land, which can be demonstrated in five ways:

- (a) by traditional evidence
- (b) by production of documents of title, which are duly authenticated (Section 143, Evidence Act, 2011)
- (c) by acts of selling, leasing, renting out all or part of the land, or farming on it, or on a portion of it
- (d) by acts of long possession and enjoyment of the land
- (e) 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

(Section 35, Evidence Act, 2011) See: **IDUNDUN V. OKUMAGBA (1976) 9 -10 SC. 227; MBOHO V. A.G OF CROSS RIVER STATE & ORS (2024) LPELR-61967(CA) (PP. 15-16 PARAS. D-D) and AMADI V. ORLU (2023) 14 NWLR (PT. 1904) 319 (SC).**

It's important to note that the Claimant does not have to prove all five methods at once. He only need to successfully prove one of the five ways, which is enough to support his case and evidence in court. If he chooses to use multiple methods, it is just a precautionary measure to reinforce his argument, as proving just one method is enough to establish title. See **MBOHO V. A.G OF CROSS RIVER STATE & ORS (supra).**

In the instant case, it is apparent that both the Claimant and the Defendants/Counterclaimants are relying on proof of title by documentary evidence. The Claimant in a bid to proof his title, presented the following documents:

- 1) Offer of terms of Grant/Conveyance of Approval dated 29/6/98, Exhibit A
- 2) Offer of terms of Grant/Conveyance of Approval dated 16/8/06, Exhibit B.
- 3) Regularisation of Land Titles and Documents of FCT Area Councils Acknowledgement, Exhibit C
- 4) Re-application for search of Plot No: MF219A Sabon Lugbe South East Layout dated 7th May, 2015 – Exhibit D.
- 5) Deed of Assignment between Abdul Ganiyu A. Saram and Chigozie Mbanugo dated 10th March, 2018 – Exhibit E.
- 6) Irrevocable Power of Attorney between Abdul Ganiyu A. Saram and Chigozie Mbanugo dated 10th March, 2018 – Exhibit F.
- 7) Re: Police Investigation Activities. Case of Criminal Trespass, Criminal Conspiracy and Forgery dated 1st June, 2021 – Exhibit G.
- 8) TDP dated 11th July, 2011 – Exhibit H.

The Defendants/Counterclaimant in opposition and in support of their counterclaim tendered the following documents:

- 1) Power of Attorney between Abdul-Afee Olaoeye and Ton Investments Ltd.– Exhibit Y1.
- 2) Photocopy of a Certified True Copy of Acceptance of Offer of Grant of Right Occupancy dated 16/06/1998 – Exhibit Y2.

- 3) Offer of Terms of Grant/Conveyance of Approval dated 11/3/98 – Exhibit Y3.
- 4) Certified True Copy of Offer of the Terms of Grant/Conveyance of Approval dated 16/8/06 – Exhibit Y4.
- 5) TDP dated 22/08/2006 – Exhibit Y5.
- 6) Right of Occupancy Rent and Fees – Exhibit Y6.
- 7) Three (3) Revenue Receipts issued by AMAC marked as Exhibit Y7.

During cross-examination, the Claimant acknowledged that he is not the original allottee of the plot in question. He testified that the letter changing the name on Exhibit B (Offer of terms of Grant/Conveyance of Approval) to his name was dated August 16, 2006. Additionally, he stated that the Deed of Assignment (Exhibit E) and Power of Attorney (Exhibit F) between Abdul Ganiyu A. Saram and himself were executed on 10th of March, 2018, twelve years after the change in Exhibit B. When presented with the Police Investigation Report (Exhibit G), the Claimant declined to comment on its authenticity, stating that it was issued by the Police. He did, however, read from paragraph 3 of Exhibit G, which states that the title document's authenticity cannot be confirmed until the Area Council Regularization process is completed, particularly since it did not originate from the Lands Department. Despite this, the Claimant maintained that AMAC had verified his ownership of the land through a search report.

Under cross-examination, the Defendants' Witness (DW1) testified that he has been the Project Manager for the Defendants for a significant period, having started work at the age of 27. He identified the plot in question as 219A, Sabon Lugbe South East. The witness acknowledged that no development had commenced on the land at the time of purchase, but stated that they initiated development works subsequent to the purchase. He further testified that the process of changing the name on the land from the original allottee to the Defendant's name was undertaken in AMAC as the land in question is under the jurisdiction of AMAC, not FCDA.

When asked to produce documents supporting his earlier deposition regarding the ownership of the land, the witness cited a conflict on the land with multiple claimants, and stated that the matter was reported to the IDU Police Station. The parties were instructed to submit their documents and a report was generated by AGIS, which is still subject to

further investigation. The witness claimed that the report was verbally conveyed to them at the Police Station but no copy was provided. When questioned why he did not bring the report to court if it favoured their case, the witness responded that he would do so if required.

Now, from the evidence of the Parties before the Court, the Claimant admitted that he is not the original Allottee of the subject matter in dispute. However, the Claimant failed to provide conclusive evidence of his ownership, relying on a Power of Attorney and Deed of Assignment executed many years after the original allottee sold the land to him. This is evident from his answers during cross examination. For claritysake, the cross examination is as follows:

Cross Examination: you filed an earlier writ in this case sometime in November 2021, am I correct?

CW1: Yes sir

Cross Examination: In that your writ, you did not mention anything about an agreement between you and the 1st allottee. Am I correct?

CW1: No

Cross Examination: you only mentioned an agreement after the defendant has filed their statement of defense

CW1: Yes

Cross Examination: your purported letter of change Exhibits B to your name, what date is on that document?

CW1: 16/8/2006

Cross Examination: what is your educational background?

CW1: I can't answer you

Cross Examination: Now, you are not the original allottee of this plot, am I correct?

CW1: Yes

Cross Examination: and so if you do not have an agreement as at 2006 with the party involved, how did you get this whole thing changed and this thing done as somebody that is learned you should know that if you buy a land from somebody there has to be something to show there has been a transfer to you, am I correct?

CW1: Yes

Cross Examination: take a look at these 2 Exhibits, Exhibits E and F; those 2 are the purported agreement you had with the original allottee, am I correct?

CW1: yes

Cross Examination: What dates are on those documents? Tell the court

CW1: 10th March 2018

Defence Counsel: Show him this other document

Cross Examination: Now that document was done 12 years after this was done; am I correct? 12 years after.

CW1: this was done 16/8/2006

Cross Examination: 12 years after

CW1: I didn't calculate the date

Cross Examination: 18 minus 6?

CW1: 12

Cross Examination: Now, take a look at Exhibit G.

CW1: Yes

The cross-examination reveals a puzzling discrepancy. The Claimant requested a name change in 2006 but the Power of Attorney and Deed of Assignment were not executed until 2018, a 12-year gap. It is perplexing how someone without a title transfer could apply for a name change without evidence of transfer. The law dictates that land title represents exclusive ownership, encompassing all rights. Ownership is absolute, unless transferred to another party. See **IDOWU V. AJAYI & ORS (2016) LPELR-41339(CA) (PP. 27 PARAS. A); OYEDEMI V. FALADE (2021) LPELR-52892(CA) (PP. 26 PARAS. A); OKPOKO V. HON. MINISTER OF ENVIRONMENT, HOUSING & URBAN DEVT & ORS (PP. 63-65 PARAS. C)**. The Claimant's inconsistent testimony and lack of evidence cast doubt on his claim.

It meansthat as at the time of the name change application, he had no legal capacity to do so. The law requires evidence of transfer to show exclusive title to land, so the name change is void and the title documents are invalid. The Claimant had no title to protect in the first

place. His cross-examination answers have discredited his claim. It is no surprise that he appeared agitated and uneasy during the trial.

I have also reviewed the Police Report submitted by the Claimant, and in my opinion, it does not support his case. The Report neither confers title on him nor does the application for recertification as shown on the acknowledgment copy. Therefore, the report is of no benefit to the Claimant's claim.

Without further deliberation, the Claimant has failed to establish his case based on the preponderance of evidence. As a result, his case is hereby dismissed due to a lack of sufficient evidence.

Now that the Claimant's case has failed, it is necessary to consider the Defendants' counterclaim, which is regarded as a separate lawsuit. As established by law, a counterclaim is a distinct and independent action, typically filed alongside a defence to the original claim. The Counter-claimant bears the burden of proving his counterclaim to the same extent as the original claimant. To succeed, the counter-claimant must prove his case to the Court's satisfaction, just as in the original claim. The counter-claimant's success depends on the strength of his own case not on the weakness of the defence. See **TROPICAL CULTURE LTD & ANOR V. AKINOLA (2020) LPELR-52214(CA) AT 82-83(F-J); ABE & ANOR V. DAMAWA & ANOR (2022) LPELR-57829(SC) AT 62-65 (D-F); and ONYEKA V. OFOCHEBE (Pp. 16-17 paras. E-E)**. Even if the defendant fails to file a defence or present evidence regarding the counterclaim, the law still requires the counterclaim to be proven as required.

I have previously set out the Defendants' counterclaim and the Exhibits tendered by them in this judgment. I have also carefully considered the Defendants' case and the testimony given during cross-examination. Notably, the Defendants identified the plot in question as 219A, Sabon Lugbe South East, which aligns with the title documents presented in Court. The Defendants also produced receipts of payment for Right of Occupancy Rent and Fees, marked as Exhibit Y. During cross-examination, the Defendants acknowledged that no development had commenced on the land at the time of purchase but confirmed that they initiated development works subsequently, demonstrating acts of possession. Upon a close look at the documents presented by the Defendants/Counterclaimants, I am of the view that they have

presented sufficient evidence through title documents and acts of possession to establish superior title over that of the Claimant. The Defendants' evidence regarding title to the land overwhelmingly favours them. Consequently, relief 1 of their counterclaim is hereby granted.

Relief 2 seeks a perpetual injunction. To obtain this, the plaintiff must demonstrate with credible evidence a right worthy of protection through an injunction. The grant of a perpetual injunction is a natural consequence of a declaratory order, aiming to permanently prevent infringement of established rights and avoid multiple lawsuits. See **GOLDMARK NIGERIA LTD & ORS V. IBAFON COMPANY LTD & ORS (2012) LPELR-9349(SC)** and **COMMISSIONER OF WORKS BENUE STATE V. DEVCON LTD (1988) 3 NWLR (PT. 83) PAGE 407**). Based on these authorities and the Defendants'successful case, relief 2 is granted.

The Defendants/Counter-claimants' third and fourth reliefs are dismissed due to lack of sufficient evidence presented by the Defendants to support their claim that the Claimant/Defendant to the Counter-claim destroyed their fence. Additionally, the Defendants failed to provide evidence of the costs incurred. Therefore, reliefs 3 and 4 are denied.

On the whole, reliefs one and two on the face of theCounterclaim are hereby granted as prayed. The reliefs sought by the Defendants/Counterclaimants therefore succeed in part.

That is the judgment of this Court.

HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

Chijioke Dike, Esq for the Claimant

Akharamé Lucky, Esq for the Defendants/Counter-claimants