

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA ON THE 7TH MARCH, 2024

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/0371/17

COURT CLERK: JOSEPH BALAMI ISHAKU.

BETWEEN:

GILBERT MBAAYEM AKUA TORCLAIMANT

AND

1. MINISTER OF FEDERAL CAPITAL TERRITORY, ABUJA	} ..DEFENDANTS
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY	
3. NUHU SANI	
4. G. C. NWEZE AND CO. LTD	

JUDGMENT

The Claim against the Defendants dated 19/10/2018 vide a Writ of Summons and Statement of Claim against the Defendants prays the Court for the following:

- (1) A declaration that the Claimant is the rightful owner of Plot No. 272 Cadastral Zone A09 Guzape District, Abuja with Old File No. MFCT/LA/BN 2304 and New File No. BN 11477 measuring approximately 1500 M2 vide offer of

Grant/Conveyance of approval dated 17/05/2001 granted to him by the 1st Defendant.

- (2) A declaration that the Claimant's interest as contained in the letter of offer of Terms of Grant/Conveyance dated 17th day of May, 2001 over and in respect of Plot 272 Cadastral Zone A09 Guzape District, Abuja with Old File No. MFCT/LA/BN 2304 and New File No. 11477 measuring approximately 1500 M2 granted him by the 1st Defendant is valid and subsisting.
- (3) A declaration that the purported Reallocation/Grant of the said Plot No. 272 Cadastral Zone A09 Guzape District, Abuja by the 1st Defendant to the 3rd Defendant without a valid and lawful revocation of the Claimant's interest is invalid, null and void.
- (4) A declaration that the purported sale of the said Plot 272 by the 3rd Defendant without a valid title is invalid, null and void.
- (5) A declaration that the Irrevocable Power of Attorney dated 3rd July, 2008 purportedly donated by the

3rd Defendant to the 4th Defendant and registered on 8/11/08 with the 2nd Defendant is null and void ab initio.

- (6) An Order setting aside the purported sale of Plot 272 Cadastral Zone A09 Guzape District and the Irrevocable Power of Attorney issued by the 3rd Defendant to the 4th Defendant as nullity.
- (7) An Order of Perpetual Injunction restraining the Defendants, their agents or assigns by whatsoever name called from doing anything or taking any steps or in any way/manner tampering or interfering with the Claimant's interest as contained in the Letter of Offer of Terms of Grant/Conveyance of Approval dated 17th of May 2001 over and in respect of Plot 272 Cadastral Zone A09 Guzape District, Abuja.
- (8) N2 Million as general damages.
- (9) Cost of the action.

The Writ of Summons and Statement of Claim and all other processes were served on the Defendants. The Defendants filed their Statements of Defence and the Suit set down for hearing.

The Claimant called two witnesses in support of his case. The first Claimant's witness is the Claimant himself. He is Gilbert Mbaayem Akua Tor. He said orally that he is a farmer and a businessman. He deposed to a Witness Statement on Oath on 19/10/2018 and 22/06/20. He adopted same as his oral testimony.

In the Witness Statement on Oath dated 19/10/18, he said he is the original allottee of Plot No. 272 Cadastral Zone A09 Guzape District, Abuja. The 3rd Defendant is the person who purports to lay claim on his Plot. The 4th Defendant is alleged to have bought the said Plot of land from the 3rd Defendant. That he applied to the 1st Defendant for land and upon satisfying the conditions precedent for a grant, the 1st Defendant allocated to him Plot No. 272 Cadastral Zone A09 Guzape District, Abuja vide Offer of Terms of Grant/Conveyance of Approval dated 17/05/2001. That during the recertification exercise of 1st& 2nd Defendants, he submitted his title documents and was duly issued with an acknowledgment by the 1st& 2nd Defendants

dated 7/10/09 with a New File No. BN/11477 over the aforesaid Plot.

He approached the AGIS of the 2nd Defendant for the Certificate of Occupancy bills over the said Plot only to be informed that Plot No. 272 Cadastral Zone A09 Guzape District, Abuja was a subject of double allocation. That after several months of interface with officials of 1st & 2nd Defendants without progress, he made an official complaint to the 1st & 2nd Defendants by a letter dated 6/02/13 which was acknowledged on the 12/02/13. The 1st & 2nd Defendants responded by a letter dated 9/12/13 where he was urged to exercise patience pending when 1st Defendant will resolve the matter.

That 3rd Defendant was not allocated the Plot in issue. That 1st Defendant allocated to HAJIYA LADIDI DANTALA Plot No. 840 Cadastral Zone A09 Guzape with File No. YB 425 who in turn donated a Power of Attorney to 3rd Defendant which was registered with 2nd Defendant. The 3rd Defendant recertified Plot 840 Cadastral Zone A09 Guzape and thereafter arbitrarily moved

to Plot 272 Cadastral Zone A09 Guzape District. That the 1st & 2nd Defendants raised several internal memos in respect of this issue. That officials of 2nd Defendant recommended to 1st Defendant to allow him to maintain the said Plot while 3rd Defendant be reinstated to Plot 840 Cadastral Zone A09, Guzape, Abuja.

That the decision to allow him to retain his Plot was truncated by a letter dated 4/07/14 by the Law Firm of Femi Oyekola which was received by 1st Defendant on 07/07/14. That by a memo from the officials of the 2nd Defendant dated 17/02/15 which was received on the 23rd of February, 2015 by the 1st Defendant titled "Rectification of Records/Demand for release of C of O over Plot 272 Guzape A09 District" the 1st and 2nd Defendants proposed and agreed that the allocation to him of Plot 272 Cadastral Zone A09 be withdrawn from him and 3rd Defendant allowed to retain same having paid for Certificate of Occupancy bill over the said Plot while he will be given an alternative Plot of land. He was by a letter dated 13/03/15 notified by the 1st Defendant that the issue of double allocation

over the said Plot of land was resolved in favour of the other allottee in view of the fact that he had already made full payment for the fees incidental to the issuance of Certificate of Occupancy. That he still remains the original allottee of Plot 272 Cadastral Zone A09 Guzape District Abuja and that neither 3rd Defendant nor anyone else was allocated the said Plot of Land to warrant the issue of double allocation. That his title over Plot 272 Cadastral Zone A09 Guzape District has not been revoked. The 3rd Defendant knew or had reason to know that he was not allocated Plot No. 272 Cadastral Zone A09, Guzape Abuja. That the circumstances by how he came into possession is fraught with irregularities.

I have also read the Additional Witness Statement on Oath of the Claimant (PW1). He tendered the following Exhibits A – A5:

- (1) Letter from Claimant to Director of Lands dated 5/02/13.
- (2) Letter from FCDA to Claimant dated 9/12/13.
- (3) Ministerial approval dated 14/06/01.
- (4) Letter from Femi Oyekola & Co. Legal Practitioners dated 4/07/14 to Honourable Minister.

(5) Letter from FCDA to Claimant dated 13/03/05.

(6) Power of Attorney between Sanni Nuhu & G.C Nweze & Co. Ltd.

The Site Plan and Layout are Exhibits A6, A7 and A8. The Witness said the areas verged red are Plots 272 and 840. He said, he pleaded that he was given a Statutory Right of Occupancy. He does not have the original.

Under Cross-examination by the 1st & 2nd Defendants' Counsel, he answered that he was informed to write a letter of acceptance within two months as per the terms of the offer. He further said he accepted the offer. He said the Police report is the evidence of the offer. He later said he accepted the offer but it is missing.

Under cross-examination by the 3rd Defendant, he answered that he is presently in Gboko. That he applied for land in the FCT in writing. That the application is missing. It got missing in 2017. That he did not pay for the land application and processing fees.

He applied for land anywhere in FCT. He did not specify location. When he was referred to paragraph 7 of his oath, seeking to know the conditions he satisfied he insisted the Plot belongs to him. That his case is about double allocation. That Exhibit A is not his signature. That he sent somebody to sign on his behalf.

Upon being cross examined by 4th Defendant's Counsel he answered that he submitted his title document for recertification. That he submitted the Certificate of Occupancy. He also refer to an acknowledgment that it is missing. He confirmed he did not state on his deposition that the acknowledgment is missing. He said he was conversant with the terms of the offer. He has an offer letter. No certificate was issued to him. He accepted the offer. It was in writing. That Exhibit A is a copy of the Acceptance Letter. That he paid charges on the land before he paid for the Certificate of Occupancy. He said there is deposition to that effect.

The 2nd Claimant's Witness is an Assistant Director Lands. She was served with a subpoena to bring documents and testify. She tendered the following Exhibits B – B3.

- (1) Memo to Honourable Minister by Director of Lands dated 3/10/13 titled Complaint on Double Allocation over Plot 272, Guzape District.
- (2) Memo to Honourable Minister from the Director of Lands dated 17/02/15 titled Rectification of Records/Demand for Release of Certificate of Occupancy over Plot 272, Guzape A09.
- (3) Letter signed on 05/04/13 addressed to D. D. Lands by Abdulhamed J. W.
- (4) File view of the land in issue.

She could not bring the Offer of Terms and Grant of Approval, Application made to the Director of Lands for the CTC of documents. She could not lay her hands on them or find them in the system.

She also tendered Exhibits C – C1 viz:

- (1) Application for CTC of documents made by M. D Zubaratihu, Director of Lands dated 3/12/18.
- (2) Application for CTC of Suit No. CV/0371/17.

She said from Exhibit C an application was made for Offer of Terms. Exhibit C1 is for an application for CTC of Suit CV/0371/18. That they don't have the CTC of the documents sought in Exhibit C & G. That based on official records, the Plot 272 Cadastral Zone A09 was allocated to Claimant. Exhibit A3 is the Ministerial approval. It is dated 14/06/21. Exhibit A3 precedes the Ministerial approval. It is dated 14/06/21. That Exhibit A3 precedes the issuance of the Statutory Right of Occupancy. That double allocation means a Plot given to 2 persons in the same location. That she did not find any letter of revocation of the land in issue to the Claimant.

On being cross examined by the 1st & 2nd Defendants' Counsel she said she does not know if there is any letter of acceptance by the Claimant in the records. She does not know if Claimant was offered with a letter of offer. She answered to a question by 3rd

Defendant's Counsel. That Exhibit B is a recommendation to the Honourable Minister. Exhibits B & B1 are on the same subject matter. That Exhibit B was not approved by the Honourable Minister. Exhibit B1 was approved by the Honourable Minister.

Under Cross Examination by the 4th Defendant she said. The new allottee is 3rd Defendant. In Exhibit A3, the Plot No. is LD/272. The size is 1500 square metres. In Exhibit A6, the Plot is No. 272. The Plot size is 780.83 Square metre. It is dated 31/01/19. Exhibit B1 is dated 17/02/15. At the time Exhibit A6 was made Exhibit B1 had been allocated to the 3rd Defendant. The allocation to the Claimant was withdrawn on 17/02/15 vide Exhibit B1.

Under Re-examination she answered that B1 is not a letter of allocation. On being asked by the Court as to the current owner of the land she said the 3rd Defendant is the current owner of the land. The above is the case of the Claimant.

The 1st Defendant's witness is the same Efosa Kate, PW2 subpoenaed to give evidence by the Claimant. She deposed to a Witness Statement on Oath on 5/03/20. She adopted the said Witness Statement as her evidence. She said Plot 272 Cadastral Zone A09 Guzape District was offered to Claimant in 2001 with File No.BN 2304 and later File No. BN 11477. That Nuhu Sani was a Donee of a Power of Attorney in respect of Plot 840 Cadastral Zone A09 Guzape District which was already committed. That in a bid to resolve the double allocation created in paragraph 3 above, Nuhu Sanni was given Plot 272 Guzape District as replacement because the Claimant did not comply with the terms and conditions of the offer given him.

That the action in paragraph 4 above further led to double allocation between Claimant and 3rd Defendant which was not envisaged until Claimant submitted his title documents for recertification in 2009. That when Claimant wrote complaining of double allocation he was told to exercise patience as the office was working on it. The 3rd Defendant further donated a Power of Attorney to G. Nweze Ltd the 4th Defendant in 2008.

The then Minister approved that 3rd Defendant retain the Plot 272 because he had paid all the bill in full and had further donated Power of Attorney to the 4th Defendant. The Claimant was promised an alternative plot which the 1st and 2nd Defendants' office was working towards.

Under cross examination by the 3rd Defendant, she answered that offer is made subject to terms and conditions. That acceptance of offer is part of the condition. That payment of fees is also part of the condition. That acceptance of offer has a time limit. That an allottee can be moved from one plot to another.

On being cross examined by the 4th Defendant, she said she cannot remember the size of the land offered to the Claimant. She can also not remember the size of the land finally offered to the 3rd Defendant. She stands by her deposition in paragraph 4 of her Oath. In an answer to the Claimant's Counsel, she answered that by paragraph 2 of her Oath, Plot 272 Cadastral Zone A09 was offered to Claimant. There is only one Plot 272

inGuzape District. Exhibit A3 is Ministerial approval. It means the land is approved for allocation by the minister. The Claimant's name is Serial No. 208 on the list. That Exhibit A6 is the Site Plan of Plot 272.

To a question, she answered that it is not unusual for size of land to increase or reduce after site plan. That the root of title of 3rd Defendant is Plot 840 Guzape District Exhibit A7 and A6 are different. She answered that she cannot say 3rd Defendant was allocated Plot 272 Guzape District. That allocation of Plot 272 to 3rd Defendant is in the System. That Exhibit B1 is what brought 3rd Defendant to Plot 272. That Exhibit B1 is not a letter of allocation. To another question she said there is no letter of revocation in respect of the Claimant's allocation.

The DW2 is Sani Nuhu of Plot 2967 Judges Layout Asokoro. He is a Land Surveyor. On the 6/03/2020, he deposed to a Witness Statement on Oath. He adopted same as his oral evidence. His evidence is that he became a beneficial owner of Plot No. MD/840 Cadastral A09 Guzape District Abuja measuring 1,780

Square Metres vide a purchase from the original allottee Hajia Ladidi Dantala vide a Letter of Offer of Terms of Grant/Conveyance of approval dated 11/09/2001. That he was handed over the original paper and also executed an Irrevocable Power of Attorney. He took immediate possession. He continued with the process of perfecting his title when 1st Defendant requested all title owners within the FCT to regularize their title deeds. He submitted his papers for regularization and registered his Power of Attorney. That 2nd Defendant's registry processed a new File No. KG 13201 and new Plot No. 272 Cadastral Zone A09 Guzape District in his favour. The 1st & 2nd Defendants sent him bill bearing the new details File No. KG 13201 and Plot 272 Cadastral No. A09, Guzape measuring 1,780.83 Square metres. He paid the entire fees incidental to the issuance of Certificate of Occupancy. He donated an Irrevocable Power of Attorney in favour of 4th Defendant.

The 2nd Defendant vide a letter dated 13/03/15 conveyed the 1st Defendant's approval to him to retain Plot 272 having resolved an issue of Double Allocation over the said Plot. He was issued

with a Site Plan, Title Deed Plan and a Certificate of Occupancy. That 4th Defendant applied for a Building Plan which was approved. That Claimant was offered Plot LD 272 Cadastral Zone A09, Guzape but failed to comply with the terms and conditions. That the letter of Femi Oyekola & Co. merely requested for the release of his Certificate of Occupancy already prepared in his name. That by 13/03/15, the Claimant was notified of the withdrawal of his allocation in respect of Plot 272 Guzape. That he and 4th Defendant were and are enjoying peaceful possession of the said Plot of Land. That Claimant has no existing legal interest or right to Plot 272. He is not entitled to any reliefs.

DW2 tendered Exhibits D – D4. They are:

- (1) Offer of Terms of Grant.
- (2) Acceptance of offer of terms dated 27/09/21.
- (3) Statutory Right of Occupancy bill dated 30/07/2009.
- (4) Payment receipt dated 31/07/09.
- (5) Demand for ground rent bill dated 30/07/09.
- (6) Payment receipt dated 31/07/09.

- (7) Demand for ground rent bill dated 6/03/15.
- (8) Payment receipt dated 26/03/15.
- (9) Demand for ground rent bill dated 14/10/16.
- (10) Payment receipt dated 20/12/16.
- (11) Payment receipt dated 17/03/17.
- (12) Payment receipt dated 21/07/17.
- (13) Letter dated 13/03/15.
- (14) Certificate of Occupancy dated 14/04/15.
- (15) Title Deed Plan dated 14/04/15.

Under cross-examination by the 4th Defendant, he said Exhibit D2 is meant for Plot 272. That it was pursuant to Exhibit D2 that Exhibit D13 was issued. That D4 – D8 are bills and receipt for payment for Plot 272.

Answering questions from Claimant's Counsel, he said Hajia Ladidi is the original allottee of Plot MD/840. That at the time he bought it was MD/840. That Exhibits A6 – A7 are 2 separate Plots of land. That it was after regularization and processing that 2nd Defendant gave him a new Plot and File Number. That

Plot 272 is far from Plot 840 in the layout Exhibit A8. There is no Plot 840 (272) in Exhibit A8. That Exhibit D12 says the issue of Double allocation was resolved in his favour. To a further question, he said nobody has a letter of offer bearing Plot 272. That Exhibit A3 is LD/272 and not 272.

The DW3 is Dr Sylvester Awachie of House A9 B, His Grace Pavilion Estate, Wumba, Apo. He works with the 4th Defendant. He is an Executive Director. On 6/03/20, he made a Witness Statement on Oath. He adopted same as his Oral Evidence. The 4th, Defendant's evidence is that he acquired the subject matter from the 3rd Defendant on 3/07/2008. That he caused a search to be conducted in AGIS and found no encumbrance on the property. That 3rd Defendant was revealed as the bonafide owner of Plot 840 (272) Cadastral Zone A09 Guzape. He identified Exhibit A5 as the Power of Attorney he referred to in Paragraph 4 and 8 of his Oath.

Under Cross-examination by Claimant's Counsel, he said he has PHD in Metallurgical Engineering from the University of

Queensland, Australia. The above is the case of the Defence. The 1st& 2nd Defendants' Counsel adopted his Final Written Address dated 7/11/23 as his final argument and posited two issues for determination.

- (1) Whether the offer of Plot 272 Cadastral Zone A09 Guzape District Abuja can be said to be genuinely allocated to the Claimant by 1st& 2nd Defendants.
- (2) Whether Claimant has proved his case from the evidence before the Court.

On issue 1, Learned Counsel refers to Section 8 of the Land Use Act. He argued that Claimant was given offer of terms of grant subject to the terms and condition. That Claimant's offer letter dated 17/05/01 was expected to be accepted on or before 17/07/01 which he never did. That the offer lapsed by effluxion of time. Secondly the Claimant did not furnish any consideration in form of annual rental payment to 2nd Defendant. Failure of consideration is a fundamental breach of the offer. That without consideration there is no valid contract. The Claimant seeks declaratory reliefs, the burden is

therefore on him to establish his case. That Claimant has not adduced substantial and convincing evidence. He urges the Court to dismiss the suit.

The 3rd Defendant's Final Written Address is dated 06/11/23. He adopted same as his final argument. He posited a lone issue for determination which is Whether from the state of Pleadings and evidence, the Claimant or 3rd Defendant/Counter-claimant has discharged the burden of proof placed on them and consequently entitled to judgment.

He argued that the Claimant has not discharged the burden of proof placed upon him and consequently not entitled to the reliefs claimed. That Claimant's offer of terms of grant/conveyance was validly withdrawn via Exhibit A4 as a result of a breach of the terms and conditions of the offer.

The evidence of title, offers of terms of grant was not tendered before the Court. The fact that the said offer was lost is not pleaded. That there is no valid contract between the Claimant

and the 1st Defendant to vest ownership on the Claimant. That Claimant failed to fulfill the conditions stipulated in the offer. No title or ownership can vest on the Claimant without evidence of the fulfillment of the conditions precedent as contained in the offer letter. The 1st Defendant withdrew the offer as can be seen in Exhibit A4. That Claimant is unable to identify the land he is claiming. On the other hand, the 3rd Defendant has discharged the burden of proof placed on him and is entitled to all the reliefs in the Counter-claim.

The 4th Defendant's Final Written Address is dated 2/11/23 but filed on 3/11/23. He raised two issues for determination which are in fact one. It is whether the Claimant or 3rd Defendant has made out a case to be entitled to Judgment. I have read the said Final Written Address which is akin to 3rd Defendant's Final Written Address.

The Claimant Final Written Address is dated 24/11/23. He argued that the letter of offer of the Claimant is attached to Exhibit C & C1. That the Court should rely on it to reach a decision. The PW2 and DW1 confirmed the offer of Terms of

Grant to the Claimant. He urges the Court to hold that the Claimant was indeed allocated Plot 272 Cadastral Zone A09, Guzape District, Abuja. That the discrepancies in size is not unusual with land allocation. He also canvassed that whether the Plot is 272 or LD/272, there is only one Plot 272 in Guzape District. That parties are ad idem as to the identity of the land. Learned Counsel argues that the Claimant's interest in the Plot in issue still subsists. The title has not been revoked in accordance with the Land Use Act. That no Revocation Notice was served. That even if the offer is not accepted, the Claimant's offer remains valid and subsisting. That there is no provision in the Land Use Act which states that failure to accept an offer of grant renders a grant void.

The purported moving over of 3rd Defendant from Plot 840 to Plot 272 is null and void. There is no letter of offer from 1st & 2nd Defendants to 3rd Defendant. That Exhibit A4/13 which is a letter by 1st & 2nd Defendants to Claimant cannot be termed a letter of revocation because it's contrary to Section 28 of the Land Use Act. The reason for the revocation as contained in the

letter is that the other party has made full payment for the fees incidental to the issuance of Certificate of Occupancy. That 3rd Defendant was never at any point allocated Plot 272. The 3rd Defendant or progenitor also did not accept any offer in respect of Plot 272. The C of O issued to 3rd Defendant is standing on nothing. In fact no offer was made by 1st & 2nd Defendant to the 3rd Defendant. That Exhibit A14 is a nullity. The 3rd and 4th Defendants have not been able to prove their Counter Claim. He finally urges the Court to grant the reliefs as per the claim.

I have read the evidence and considered the Written Addresses of Counsel. The issue for determination as captioned by parties is whether from the state of Pleadings and evidence the Claimant or the 3rd Defendant has proved his case on the preponderance of evidence and balance of probability so as to entitle them to Judgment.

It is now trite that there are five ways of proving or establishing title to or ownership of land:

- (1) Traditional evidence.

- (2) Production of documents of title duly authenticated in the sense that their due execution must be proved by positive acts of ownership extending over a sufficient length of time.
- (3) By acts of long possession and enjoyment of land.
- (4) 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.
- (5) By positive act of ownership extending over a sufficient length of time.

The law is that the establishment of the five ways above is sufficient proof of ownership.

See ***AYOOLA VS. ODOFIN (1984) 11 SC 120***

EWO VS. ARU (2004) 17 NSCQR 36

ADESANYA VS. ADEROUNMU (2000) 6 SC (PT. 11) 18.

NWKO VS. IBOE (1998) 7 NWLR (PT. 558) 354.

However in the Federal Capital Territory the ownership of land vests on the Federal Government of Nigeria.

In ***MADU VS MADU (2008) 2-3 SC (PT. 11) 109***

The supreme Court held:

"Be it noted that it is well settled that the ownership of land comprised in the Federal Capital Territory Abuja is absolutely vested on the Federal Government of Nigeria vide ONA VS ATANDE (2000) 5 NWLR (PT. 656) 244 at page 244 at 297, Section 297 of the Constitution of the Federal Republic of Nigeria 1979 and Section 1(3) of the Federal Capital Territory Act 1979 Section 18 of the Federal Capital Territory Act cap 503 laws of the Federation of Nigeria 1990, vests power on the Minister for the FCT to grant Statutory Right of Occupancy over lands situate in the Federal Capital Territory to any person. By this law, ownership of land within the Federal Capital Territory vests in the Federal Government

of Nigeria who through the Minister of FCT vests same to every citizen individually upon application”.

The subject matter of this Suit is land situate at Plot 272 Cadastral Zone A09 Guzape, District Abuja FCT. Land in the Federal Capital Territory can only be granted by the Minister of the FCT upon an application. Therefore the only way of proving title to land within the FCT is through the production of documents of title.

The Claimant's relief 1, 2, 3, 4 and 5 are declaratory. In a claim for declaration of title to land, a Claimant or Counterclaimant has the burden of proving his case upon his own evidence and cannot rely on the weakness of the Defendant's case. However a Claimant can take advantage of evidence by the Defence which supports his case.

See ***OTANMA VS. YAUDUBAGHA (2006) 2 NWLR (PT. 964) 337 SC.***

DIKE VS. OKOLOEDO (1999) 10 NWLR (PT. 623) 359 SC.

ONISAODU VS. ELEWUJU (2006) 2 NWLR (PT. 998) 517.

A Claimant or Counter-claimant as in this case who seeks a declaration of title to land, where he traces his title to a particular person, he must further prove how that person got his own title or came to have the title vested on him. The burden of proof is not discharged even where the scales are evenly weighed between the parties.

See ***ARCHIBONG VS. EDAK (2006) 7 NWLR (PT. 980) 48 SC.***

OTANMA VS. YAUDUBAGHA (SUPRA).

The act of vesting legal title in respect of a piece of land on a person is a matter of law to be deduced from the facts and evidence admitted.

See ***NASIRU VS. ABUBAKAR (1997) 4 NWLR (PT. 497) 32.***

I have earlier in this Judgment summarized the evidence of parties the PW1, PW2, DW1, DW2 and DW3. The Claimant as PW1 tendered the following Exhibits I shall analyse same. PW1

tendered Exhibits A – A7 while PW2 tendered Exhibits B – B3 and C & C1.

Exhibit A is a letter dated 06/02/13 by the Claimant. It states:

"I was allocated the subject Plot (272 Guzape District) as far back as 2001. I later submitted my documents to AGIS for recertification. After recertifying the title I came back to AGIS to follow up in order to settle my bills and process the new certificate.

However to my greatest surprise, I was told that there is a problem of double allocation. I therefore urge you to kindly use your good office and resolve the matter amicably please".

The above document showed that the Claimant submitted his title documents in respect of Plot MD 272 Guzape District with File No. BN 11477 to the 1st & 2nd Defendants for recertification.

Exhibit A1 is a letter from the 1st and 2nd Defendant to the Claimant dated 13/03/15. It states:

"I am directed to inform you that the Honourable Minister FCT has withdrawn your allocation over Plot 272 within Guzape (A09) District. This became necessary in view of the fact that the other allottee has made full payment for the fees incidental to issuance of Certificate of Occupancy.

However, an alternative Plot of land shall be allocated to you for your development in due course".

The Claimant had earlier been told to be patient with 1st& 2nd Defendants in Exhibit A2 as they work towards resolving the problem they call double allocation. Exhibit A3 is lands recommended for approval. It shows the land in question was allocated to Claimant. Exhibit B is an internal memo of the 1st& 2nd Defendants. It reveals that the Claimant was allocated Plot

272 within Guzape A09 District vide Ministerial approval dated 14/06/01. And that Claimant submitted title documents for recertification and was acknowledged with File No. BN 11477 on 07/10/09. And further that in the course of processing for the C of O, however it was disclosed that there was another allottee having the same Plot in LIS Database by name Nuhu Sani (KG 13201) who acquired the title from Ladidi Dantala. That the title in favour of Hajia Ladidi Dantala submitted for recertification by Nuhu Sanni is over Plot 840 Guzape District and not 272. That Nuhu Sanni was arbitrarily moved to Plot 840 because of an existing earlier subsisting title holder to Plot 840. The 1st& 2nd Defendants through Plot 272 of the Claimant was uncommitted because he had not come to do recertification.

I have also carefully read Exhibit B1 which is also an internal memo of the 1st& 2nd Defendant and the recommendation thereon. It shows clearly that the Claimant is the first allottee in time yet it recommended that his title be withdrawn. In Exhibit C & C1, the Claimant's Solicitors wrote on 3/12/18 and 30/09/20 Certified True Copy of the offer of terms granted to Claimant.

On the other hand the DW2, the 3rd Defendant tendered Exhibits D – D14. Exhibit D is offer of terms of grant to Ladidi Dantala dated 11/09/01. The offer is in respect of Plot No. MD 840 within Guzape District. Exhibit D1 is the acceptance of the offer in Exhibit D. Exhibit D2 is Statutory Right of Occupancy bill dated 30/07/09 to Nuhu Sanni in respect of Plot 272. I have also read Exhibits D5 – 11 which are receipts of payment of bills in respect of Plot 272, Guzape District. Exhibit D 13 is a Certificate of Occupancy to 3rd Defendant in respect of Plot 272 Cadastral Zone A09 measuring 1,780.83 square metres. DW3 identified Exhibit D5 as the Irrevocable Power of Attorney donated to him by Sani Nuhu upon which he derives his title.

It is now clear that the Claimant by Exhibit A – A7, B – B3 and C & C1 is allocated Plot 272 Cadastral Zone A09. The Claimant by Exhibit C & C1 applied for the Certified True Copies of the document but the 1st and 2nd Defendant refused to avail him. By their admission in Exhibits B & B1, they confessed that Claimant submitted his title documents for recertification but when

Claimant wanted the recertified documents, the 1st & 2nd Defendants failed, refused and neglected to hand over the said documents to the Claimant on the allegation of a phony double allocation. They also admitted in the said Exhibits that the Claimant's title subsists and valid which corroborates Claimant's evidence that he accepted the offer.

The 3rd Defendant was allocated Plot MD 840 by Exhibit A6 & A7 & A8. Plot 272 is far away from Plot 840. By Exhibit A Ladidi Dantala from whom Sani Nuhu derived his title was allocated Plot 840 measuring 1,750 square metres. Plot 272 allocated to the Claimant is 1,500 square metres.

From the evidence before this Court Plot 272 allocated to the Claimant is not involved in any double allocation. It is Plot 840 that had double allocation because the said Plot 840 had an earlier allottee. Instead of the 1st & 2nd Defendants acceding to the voice of reason decided to foist upon the Claimant and his Plot an issue of double allocation. It is akin to solving a problem by creating another problem. There was no time the 1st &

2nd Defendants offered to Ladidi Dantala an offer of terms of Grant/Conveyance of approval in respect of Plot 272. She can therefore not pass any title in Plot 272 to 3rd Defendant and from 3rd Defendant to 4th Defendant.

Exhibit D4 is a letter of allocation issued to 3rd Defendant Nuhu Sanni in respect of Plot 272. It is dated 30/07/09. The Plot size is 1,789.83 while that same Plot had earlier been allocated to Claimant 8 years earlier. The Plot 272 allocated to the Claimant was still subsisting as at the time the Plot was reallocated to the 3rd Defendant. There is no evidence before me to suggest that the Right of Occupancy earlier granted the Claimant was revoked.

Exhibit A1 is a letter of withdrawal. A letter of withdrawal is not the same as letter of revocation. Even if it's the fact that another allottee has made full payment is not a reason in law for revocation of a Right of Occupancy. The Claimant was not given or served a Notice of Revocation as envisaged by law. The Claimant was thrown into confusion, agony by fighting to retain

his Plot. Land is only extinguished once a notice signified by a public officer authorized by the FCT Minister in that behalf is served on the holder of a Right of Occupancy in other words, notice must be given to the holder of a Right of Occupancy before the revocation of his Right of Occupancy and the notice must be served in accordance with the provision of Section 44 of the Land Use Act.

See ***N E W VS. DENAP LTD (1999) 10 NWLR (PT. 525) 481***

The Defendant's evidence is deficient of the above facts and therefore Claimant's right over Plot 272 Cadastral Zone A09 subsists. The production of documents of title is one of the recognized ways of proving title as earlier stated but such documents must be of such character as to be able to confer valid title on the party relying on it. It does not mean that once a Claimant produces what he claims to be an instrument of grant he is automatically entitled to a declaration that the property which such instrument purports to grant is his own.

In this instance, at the time the 1st & 2nd Defendants purportedly granted the 3rd Defendant the Right of Occupancy over the Plot 272 Cadastral Zone A09 they do not have the capacity and authority to make the grant having not revoked the interest of the Claimant in accordance with the law. The Exhibits D & D13 therefore do not have the effect of a Statutory Right of Occupancy as claimed by the 3rd Defendant. 3rd Defendant in effect had nothing to donate to the 4th Defendant.

The Claimant's evidence, oral and documentary is credible, cogent and compelling, while the Defence is weak and empty in foundation and content. In the circumstance of this case, it is my view and I so hold that the Claimant has proved his case on the preponderance of evidence and balance of probability and is entitled to the reliefs sought. The 3rd Defendant's Counterclaim fails and it is accordingly dismissed.

That upon the failure of the 3rd Defendant's Counterclaim, the 4th Defendant Counterclaim crumbles as it has no foundation to stand. Great in my view is the fall.

Judgment is entered in favour of the Claimant against the Defendants as follows:

- (1) It is declared that the Claimant is the rightful owner of Plot 272 Cadastral Zone A09 Guzape District Abuja with Old File No. MFCT/LA/BN 2304 and New File No. BN 11477 measuring approximately 1,500 Square metres vide offer of Terms of Grant/Conveyance of approval dated 17/05/2001.
- (2) The Claimant's interest in the aforesaid land granted by the 1st Defendant is still valid and subsisting.
- (3) A declaration that the purported reallocation/grant of the said Plot to the 3rd Defendant without a prior valid and lawful revocation and further sale to 4th Defendant is invalid, null and void.
- (4) An order of Perpetual Injunction is hereby issued restraining the Defendants' agents, assigns by whatever name referred from doing anything or taking any steps or in any manner tampering or interfering with the Claimant's interest as contained in the said letter of offer.

- (5) N2 Million as general damages.
- (6) N500,000 as cost of the action.

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HON. JUSTICE U.P. KEKEMEKE, ACIArb (UK), FICMC
(HON. JUDGE)
07/03/2024

APPEARANCE

Parties absent

Sherif Mohammed with Victor Orih holding the brief of Ali Zuberu for the Claimant.

Patrick Offiah with K. N. Numen for 3rd Defendant.

John Akubo for the 4th Defendant with N. Emmanuel and Martins Ekpa for the 4th Defendant.

Signed
Hon Judge
07/03/2024