

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR
ON THIS 1ST DAY OF JULY, 2024

SUIT NO.: CV/3241/2022

BETWEEN:

MR. ENITAN OYEKANMI CLAIMANT

AND

1. FEDERAL CAPITAL TERRITORY ADMINISTRATION
 2. THE HON. MINISTER OF FEDERAL CAPITAL TERRITORY
 3. EMEGHARA KINGSLEY
- } DEFENDANTS

JUDGMENT

DELIVERED BY HON. JUSTICE J. ENOBIE OBANOR

This suit was instituted by Writ of Summons filed on 28th September, 2022 seeking the following reliefs:

1. A Declaration that the Claimant is the lawful Allottee or holder of the Statutory Right of Occupancy over the property known and described as Plot No. 2738 Cadastral Zone 07 07, Lugbe 1, Extension, Abuja Measuring about 1,000Sqm
2. A Declaration that the 3rd Defendant's purported Defendant's Claim of title over Plot No. 2738 Cadastral Zone 07 07, Lugbe 1, Extension, Abuja Measuring about 1,000Sqm and the act of entry of the said plot/land without the authorization of the Claimant is an act of trespass

3. A Declaration that the acts of the 3rd Defendant trespassing on the property, the subject matter of this suit is illegal and unconstitutional
4. AN ORDER of this Honourable Court setting aside any allocation to the 3rd Defendant by the 1st and 2nd Defendants of Plot No. 2738 Cadastral Zone 07 07 Lugbe 1, Extension, Abuja Measuring about 1,000Sqm
5. AN ORDER of perpetual injunction restraining the Defendants by themselves, their agents or privies or whatever name so called from disturbing or interfering with the Claimant's possession and equanimity over Plot No. 2738 Cadastral Zone 07 07 Lugbe 1, Extension, Abuja Measuring about 1,000Sqm

The Defendants in this suit failed and/or neglected to file their respective Statements of Defence despite service of the Originating processes and hearing notices on them neither did they enter an appearance for themselves or through legal Counsel.

The Claimant opened his case on 20th June, 2023 and testified as CW1. He adopted his Witness Statement on Oath filed on 28th September, 2022. CW1 tendered the following documents in evidence:

1. Offer of Terms of Grant/Conveyance of Approval dated 8th June, 2001 – Exhibit A
2. Right of Occupancy dated 17th January, 2007 Exhibit B
3. Federal Capital Territory Administration document for regularization of Land Title and Documents dated 6th August, 2007 – Exhibit C.
4. Ecobank Receipt for Accelerated Area Council Title Reissuance Scheme dated 11th March, 2014 – Exhibit D.

5. AsoSavings and Loans Plc receipt for Regularisation of Land Titles – Exhibit E
6. Right of Occupancy dated 27th August, 2002 – Exhibit F
7. Certified True Copy of Police Investigation Report – Exhibit G
8. Receipt of Payment dated 21st January, 2002 – Exhibit H
9. Receipt of Payment dated 8th May, 2002 – Exhibit I
10. Receipt of Payment dated 14th May, 2001 – Exhibit J

The Claimant testified that he is a Nigerian citizen and businessman residing in Abuja. He holds a Statutory Right of Occupancy for Plot No. 2738 Cadastral Zone 07 07 Lugbe 1, Extension, Abuja, granted on June 8, 2001. The plot, measuring 1,000 square meters, was acquired from Emmanuel ChukwunonyelumOkoli in 2001, who obtained it from Abdullahi Aliyu Rabiati. The Claimant claims he fenced the plot and holds a Power of Attorney from Emmanuel ChukwunonyelumOkoli.

He further testified that during the land title regularization and revalidation exercises by the 1st and 2nd Defendants, the Claimant made various payments and submitted documents, which were acknowledged. Receipts for these payments, including development levies and fees for the Certificate of Occupancy, were provided as evidence.

He stated that in 2016, the 3rd Defendant trespassed into the plot, claiming ownership of the plot, leading to a police investigation that confirmed the Claimant's ownership. The Claimant asserts that his rights have not been lawfully revoked that no notice of revocation was served on him and that he has not consented to the 3rd Defendant's trespass.

At the close of examination in chief, the suit was adjourned to 26th September, 2023 for cross-examination of CW1. However, on that day, the Defendants were equally absent and unrepresented and were subsequently fore-closed from cross-examining and defending. This Court consequently ordered parties to file their Final Written Addresses.

The Claimant's Counsel on 10th May, 2024 filed his Final Written Address which he adopted on 16th May, 2024. In this Written Address he raised a single issue for the determination of the Court as follows:

Whether the Plaintiff is the Holder of Plot 2738, Cadastral Zone 07 07 Lugbe 1, Extension, Abuja.

Counsel contended in his Address that his claims are unchallenged and uncontroverted and the Court should act on it. He referred to the cases of OSHAFUNMI & ANOR V. ADEPOJU & ANOR (2014) LPELR-23073 and N.I.I.A. V. AYANFALU (2011) 24 NWLR (Pt. 67). He further contended that the Claimant has discharged the burden of proof on him as required by Section 131(1) of the Evidence Act and has also discharged the evidential burden placed on him by tendering several documents to prove his ownership of the said plot.

Having reviewed the pleadings and evidence presented, I will raise a single issue for determination as follows:

Whether from the evidence before the Court the Claimant has established sufficient evidence to be entitled to the reliefs sought.

In the introductory part of this judgment, I noted that this suit was undefended and unchallenged. However, it is a well-established principle in law that in matters of title to land, the Claimant must

discharge the burden of proof, regardless of whether there is a defence. The Claimant must succeed based on the strength of their own case, not on the weakness of the Defendant's case.

It was decided in *LUKA & ANOR v. SAIDU*(2024) LPELR-62033(CA)Per ONYEKACHI AJA OTISI, JCA (Pp 20 - 21 Paras D - D) that:

"Where a declaratory claim is for title to land, the well-established position of the law is that, the claimant must establish, to the satisfaction of the Court, through the evidence adduced by him, that he is entitled to such a declaration. The claimant must rely on the strength of his own case and not on the weakness of the case of the defendant, whose duty is merely to defend. If the onus of proof is not discharged, the weakness of the defendant's case will not help him and the proper judgment would be for the defendant. See Elias v. Omo-Bare (1982) LPELR-1116(SC) at page 20; Mogaji&Ors v. Cadbury (Nig) Ltd (1985) LPELR-1889(SC), (1985) 2 NWLR (Pt. 7) 393; ... See also Sections 131, 132 and 134 of the Evidence Act, 2011. A claimant for declaration of title is therefore required to establish his claim by preponderance of sufficient and satisfactory evidence."

In civil cases, decisions are generally made based on the balance of probabilities. This principle also applies to declarations of title to land. The key test is whether the Claimant can demonstrate to the Court's satisfaction that they have a better title than the Defendant. The standard of proof for a declaration of title is the same as in other civil cases. This burden of proof considers the imaginary scale used to determine which side the evidence favours. If the Claimant presents admissible and satisfactory evidence in the context of the

case and the Defendant provides none, the case will be decided with a minimum of proof, thereby making the burden lighter for the Claimant. See ADELEKE & ORS v. IYANDA & ORS(2001) LPELR-114(SC).

It is now essential to closely examine the evidence presented by the Claimant. The Claimant provided evidence that he became the legal and beneficial owner of Plot 2738, Cadastral Zone 07 07 Lugbe 1 Extension, Abuja, when he acquired the property from the previous owner, Emmanuel Chukwunonyelum Okoli, in 2001. Okoli had initially acquired the plot from Abdullahi Aliyu Rabiat. Subsequently, the Claimant received an Offer of the Terms of Grant/Conveyance of Approval dated 8th June, 2001 (Exhibit A) and was issued a Right of Occupancy (Exhibit F). The Claimant also testified that he has taken several steps to perfect his title, including the regularization of the land title documents. He submitted receipts as evidence of payments made for the Certificate of Occupancy, processing fee, and change of ownership (Exhibits H, I, and J). He further gave evidence that he had been in possession of the said plot until 2016 when the 3rd Defendant trespassed on the land.

It is not novel in law what the recognized methods of proving title to land are. These methods have been outlined in numerous cases, one of which is the case of ALLI & ANOR v. ALESINLOYE & ORS(2000) LPELR-427(SC) where it was held by ANTHONY IKECHUKWU IGUH, JSC at (Pp 24 - 25 Paras E - B) as follows:

"Now, the law is well settled that there exist five recognized methods by which ownership of land may be established. These, briefly, comprise as follows:- (i) Proof by traditional history or traditional

evidence (ii) Proof by grant or the production of document of title. (iii) Proof by acts of ownership extending over sufficient length of time, numerous and positive enough as to warrant the inference that the persons exercising such acts are the true owners of the land. (iv) Proof by acts of long possession; and (v) Proof by possession of connected or adjacent and in circumstance rendering it probable that the owner of such land would to addition be the owner of the land in dispute. See Idundun v. Okumagba (1976) 9-10 SC 277, at 246 - 250, Atanda v. Ajani (1989) 3 NWLR (Pt. 111) 511; and Anyanwu v. Mbara (1992) 5 NWLR (Pt. 242) 386 etc."

It has been established that land ownership can be proven through five distinct methods, and a Claimant is not required to utilize more than one method to successfully establish their title. see ONWUBUARIRI & ORS v. IGBOASOYI & ORS(2011) LPELR-754(SC) and OLAWOLAGBA V. BAKARE (1995) 4 NWLR (PT. 387) 116 AT 124.

However, in the suit before me, it glaring that the Claimant has utilised the 2nd, 3rd and 4th methods as expressed in ALLI & ANOR v. ALESINLOYE & ORS(SUPRA).

From the evidence before me, the Claimant has successfully enumerated how he obtained title through the documents tendered. He has also expressed acts of ownership in Paragraph 7 when he states, "*That I erected thereon a perimeter fence with gate on the property, the subject matter of this suit*". The Claimant has equally proved that he has been in exclusivelong possession of the subject matter since he obtained possession of the subject matter in 2001 till date.

Ultimately, the Defendants in this suit have chosen not to put up a defence to the suit, and as such the evidence produced by the Claimant is unchallenged and uncontroverted and this Court has so reasons not to act on them.

A party who can prove exclusive possession of a parcel of land has the right to bring a trespass action against any party, unless that party can present a superior claim to the land. Even someone in possession without a valid or defective title can pursue legal action for trespass. Trespass to land and the declaration of title to land are distinct and separate. In a trespass claim, the Claimant is only required to prove exclusive possession, not title. As established in this case, the Claimant has indeed demonstrated exclusive possession. It is important to note that a trespass claim does not hinge on the declaration of title, as the key issues revolve around the Claimant's actual possession of the land and the Defendant's trespass. See OZUZU v. EMEWU(2019) LPELR-55273(SC).

On the issue of trespass, I hereby hold that the Claimant was in peaceable possession of the property from 2001 until 2016, when the 3rd Defendant trespassed on the said land.

In the face of the overwhelming cogent and credible evidence before the Court, this Court has no other option but to enter judgment in favour of the Claimant.

The claims of the Claimant are meritorious and succeed. Judgment is hereby entered in his favour as follows:

1. A Declaration that the Claimant is the lawful Allottee and holder of the Statutory Right of Occupancy over the property known

and described as Plot No. 2738 Cadastral Zone 07 07, Lugbe 1, Extension, Abuja Measuring about 1,000Sqm

2. A Declaration that the 3rd Defendant's entry of the said plot/land situate at Plot No. 2738 Cadastral Zone 07 07, Lugbe 1, Extension, Abuja Measuring about 1,000Sqm without the authorization of the Claimant is an act of trespass.
3. AN ORDER of perpetual injunction restraining the Defendants by themselves, their agents or privies or whatever name so called from disturbing or interfering with the Claimant's possession and equanimity over Plot No. 2738 Cadastral Zone 07 07 Lugbe 1, Extension, Abuja Measuring about 1,000Sqm

I so hold.

HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

For the Claimant; Jeremiah Idakwoji, Esq.

For the Defendants; No representation.