

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 12TH DAY OF MAY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/3498/2021

BETWEEN:

MR. FELIX NDUBISI DANIEL --- APPLICANT/PLAINTIFF

AND

MRS. EBOH TITILAYO OLUFUNMILAYO ---- DEFENDANT

JUDGMENT

On the 16th December, 2021 the Plaintiff/Applicant filed this Originating Summons raising 5 questions for this Court to interpret. The Suit is against Mrs. Eboh Titilayo Olufunmilayo. It is premised on ownership of the rightful owner of the Plot 231, File No. OY 21572, Cadastral Zone B14, Certificate of Occupancy No. 4C4UW – 8932 – 53FDR – 12CFA – 10 dated 20th August, 2009.

The questions raised include:

- 1. Whether it is appropriate in law for this Court to declare the Applicant as the rightful owner of the**

property Plot No. 231, File No. OY 21572, Cadastral Zone B14, Certificate of Occupancy No. 4C4UW – 8932 – 53FDR – 12CFA – 10 dated 20th August, 2009 situate at Dutse, Apo, FCT Abuja having regards to the facts of this case.

- 2. Whether it is appropriate in law for this Court to compel the Respondent to relinquish the property known as Plot No. 231, File No. OY 21572, Cadastral Zone B14, Certificate of Occupancy No. 4C4UW – 8932 – 53FDR – 12CFA – 10 dated 20th August, 2009 situate at Dutse, Apo, FCT Abuja of the Respondent to the Applicant.**
- 3. Whether the Court can make a declaration conferring title to the Applicant on the said property known as Plot No. 231, File No. OY 21572, Cadastral Zone B14, Certificate of Occupancy No. 4C4UW – 8932 – 53FDR – 12CFA – 10 dated 20th August, 2009 situate at Dutse, Apo, FCT Abuja.**
- 4. Whether the Applicant is bound to deal with the property Plot No. 231, File No. OY 21572, Cadastral Zone B14, Certificate of Occupancy No. 4C4UW – 8932 – 53FDR – 12CFA – 10 dated 20th August, 2009 situate at Dutse, Apo, FCT Abuja as directed by the Respondent if this application is granted.**

5. Whether the Court can compel the Respondent to execute other title documents as regards to the property aforementioned.

There are consequential Orders sought to be granted too by the Applicant. He supported the application with an Affidavit of 15 paragraphs. He attached 5 documents as EXH A – E. The documents are Affidavit of the Defendant made on 9th June, 2020 where she handed over the title documents of the Res and Cheques – Zenith Bank Cheques dated 8/7/2020, 8/8/2020 and 8/9/2020. Notice of Foreclosure of Right over the property in issue. The letter is dated 14th September, 2020. Memorandum of Sale made between the Defendant and the Applicant made on the 10th of June, 2020. There is also the Power of Attorney dated 10th June, 2020.

In the Written Address he raised 3 questions for determination which are:

1. Whether having regards to the Exhibits accompanying this application the Applicant is entitle to a declaration of title over the property **Plot No. 231, File No. OY 21572, Cadastral Zone B14, Certificate of Occupancy No. 4C4UW – 8932 – 53FDR – 12CFA – 10 dated 20th August, 2009 situate at Dutse, Apo, FCT Abuja** having regards to the facts of this case.
2. Whether it is appropriate in law for this Court to compel the Respondent to forfeit property **Plot No. 231, File No. OY 21572, Cadastral Zone B14,**

Certificate of Occupancy No. 4C4UW – 8932 – 53FDR – 12CFA – 10 dated 20th August, 2009 situate at Dutse, Apo, FCT Abuja to the Applicant having regards to all the Exhibits attached to this application.

3. Whether the Applicant is bound to deal with the property **Plot No. 231, File No. OY 21572, Cadastral Zone B14, Certificate of Occupancy No. 4C4UW – 8932 – 53FDR – 12CFA – 10 dated 20th August, 2009 situate at Dutse, Apo, FCT Abuja** as directed by the Respondent as envisage by the Affidavit and document of title.

Taking all the questions together and answering them in Affirmative, the Plaintiff/Applicant submitted that from the evidence presented before the Court that the Defendant swore Affidavit of her indebtedness in favour of the Applicant. In the Affidavit she relinquished the property to the Applicant. She also signed a Memorandum of Sale and Power of Attorney donated to the Applicant by the Defendant transferring the title to the Applicant. That all the facts as deposed to in the Affidavit are sufficient enough to persuade the Court to grant the Reliefs as sought in this application.

That all Exhibits referred to were attached and were not challenged as the facts in the Affidavit. That by Order 2 Rule 3 of the FCT High Court Rules 2018. Hence this application seeking for the determination of the questions

raised therein which is for a declaration of the Rights of the Applicant. That this Court is vested with the jurisdiction to entertain the application. That Court is empowered to interpret the content of the instrument which were exhibited in the application and thereby make declaration there from.

They urged the Court to grant the application as it is the appropriate thing to do in this case.

COURT

In this case the Plaintiff has raised 5 questions which all are centered on the Declaration of the Plaintiff as the owner of the Plot in issue.

The first question is whether the Court can declare the Plaintiff the rightful owner of the **Plot No. 231, File No. OY 21572, Cadastral Zone B14, Certificate of Occupancy No. 4C4UW – 8932 – 53FDR – 12CFA – 10 dated 20th August, 2009 situate at Dutse, Apo, FCT Abuja** based on the facts in this case.

In answer to the question this Court answers in the Affirmative in that given the facts in the Affidavit and the documents attached, this Court holds that the Applicant has established ownership of the Plot as required by law. That was done by the presentation of the document of title given to him legitimately by the Defendant. He proved with the said documents how he come about the Plot in that based on her indebtedness to the Plaintiff to the tune of

One Hundred and Forty Seven Million Naira (₦147,000,000.00) and she donated/deposited the document of title – Certificate of Occupancy and other documents through the Power of Attorney to the Applicant – **EXH E**. Besides, the Defendant had deposed to an Affidavit dated 9th June, 2020 stating that because of her indebtedness to the Plaintiff she deposited the said documents as security for the loan. The Affidavit is attached as **EXH A**. In the Affidavit she gave vivid description of the document, state the Certificate of Occupancy Number of the said property. She equally averred that she had equally issued in addition some Zenith Bank Cheques as referred to in paragraph 3 of the Affidavit of 6th September, 2020. In paragraph 4 she stated what the money and the title documents were for – to offset her indebtedness to the Plaintiff – paragraph 3 of the Affidavit of 9th June, 2020. That if she fails to liquidate the debt before 20th September, 2020 that the Plaintiff is at liberty to sell or transfer the title to the property without recourse to her.

By tendering the Affidavit, the Plaintiff stated before this Court how he came into possession of the property which is one of the mandatory elements to be proved by anyone claiming ownership to any land in tussle. The tendering of the Affidavit, EXH A suffices and based on that this Court hereby declares the Plaintiff the owner of the said land.

This Court has the jurisdiction to declare the Plaintiff the owner of the land in issue because this Court has as a High Court the jurisdiction to entertain this issue as it

concerns dispute in land. It is only a High Court that has that original jurisdiction to entertain issues concerning tussle over land.

Going by EXH C – Letter of 14th September, 2020 notifying the Defendant about the foreclosure of her right over the land. The letter was written by the Plaintiff to the Defendant after the Defendant failed to fulfill her promise as stated in her averment in paragraph 4 – EXH A in which she promised to liquidate the loan on or before 8th September, 2020. Also in paragraph 5. The said letter written on 14th September, 2020 shows that the Defendant was not able and had failed to liquidate the debt. Hence the Plaintiff had written to notify her that based on the Affidavit and Power of Attorney she is foreclosed (having failed to liquidate the debt) from getting back the property and from the right and title over the said property. Paragraph 2 of the letter of 14th September, 2020 refers. By the foreclosure notification the Power of Attorney – EXH E dated 10th June, 2020 came into effect as the Defendant averred in paragraph 5 of the Affidavit – EXH A. that letter was a notification in which the Defendant was given up to 21st September, 2020 to liquidate the indebtedness. But she failed to do so up till now. From the letter, after 21st September, 2020 the Plaintiff had right to perfect the title over the property as agreed in EXH A. Since the Defendant failed to liquidate the loan the property's right went to the Plaintiff. Hence the Plaintiff became the legitimate owner of the property going by the Power of Attorney – EXH E, Deed

of Sale – EXH B and Averment in the Affidavit of the Defendant made on the 9th of June, 2020 – EXH A. This is as contained particularly in EXH A paragraph 5 & 6 which states thus:

“... should I fail to liquidate the said indebtedness on or before the due date (8th September, 2020) the Power of Attorney, Deed of Sale Memorandum,

Paragraph 6 page 2 Affidavit of 9th June, 2020

... he is at liberty to sell transferring title of my property ... he is at liberty to sell my property without RECOURSE TO ME.”

(All emphasis mine). By the above the Defendant has relinquished her right over the property having failed to pay her indebtedness.

Having proven how he got into the property this Court holds that the Plaintiff is entitled to be declared the owner. The Plaintiff is therefore entitled to be declared the owner of the said Res in this Suit. So this Court holds. Besides, the Defendant having not challenged the Suit makes the Suit of the Plaintiff and his claim of title over the property to be unchallenged and uncontroverted. There is equally no other adverse claim to the said property by any other person. Again the Defendant has not filed any Defence to the action or Counter Affidavit. On that ground alone, the Plaintiff has established how he came into effective occupation and legitimate possession of the Res. Those

claims have not been disputed too. After all, unchallenged facts are deemed admitted especially where the person who ought to challenge it were given all the judicial leverages but failed to do so for reason best known only to her as in this case. It is imperative to point out that the Defendant was served with the Originating Summons. She was equally served all the Hearing Notices as per the subsisting Order of this Court made on the 6th July, 2022. The Court also had adjourned the matter on 28/4/2022, 6/7/2022, 2/11/2022, 7/2/2023 and 6/3/2023. The Defendant was duly notified about all those days. The Court had on all those occasions suo motu adjourned the matter and insisted that the Defendant be matter be adjourned notwithstanding that the Defendant was notified and that the Plaintiff was in Court on all those days.

On question No. 2, this Court as a High Court is compelled to declare the Applicant as the owner of the Res given the documents which he had tendered or attached to this Originating Summons which are uncontroverted. Besides, he had both in his Affidavit shown his possession. This Court has the power to compel the Defendant to relinquish all the title documents to the Applicant. This is so because parties are bound by the Agreement they had entered into – Pacta sunt servanda. It is not in doubt that the Defendant is indebted to the Applicant. The content of the Affidavit of 9th June, 2020 as well as the letter of 14th September, 2020 and the Power of Attorney and Deed of

Sale referred to in paragraphs 3 – 6 of the Affidavit of 9th June, 2020 is clear in that regard. In the Power of Attorney the Defendant stated thus:

“That I Mrs. Eboh Titilayo Olufunmilayo do hereby constitute, elect and appoint the “Donee” (Mr. Felix Ndubisi Daniel) my true and lawful Attorney in my name and on my behalf to do all things and acts

To take immediate possession of our property located at Plot 231 Certificate of Occupancy No. Dated 20th August, 2009.”

The Defendant had in the early paragraph of **EXH E** stated thus:

“I Mrs. Eboh Titilayo Olufunmilayo do hereby irrevocably appoint Mr. Felix Ndubisi Daniel – (Applicant) As my true and lawful Attorney in the name of all the residence of the term of years and subject henceforth to do on my behalf and execute all of the act and things.”

She further concluded in the Power of Attorney thus:

Paragraph 5

“This Power of Attorney hereby created shall be IRREVOCABLE.”

All the above need no further elucidation because by it the Defendant relinquished her ownership. She had agreed to

do so and this Court is only called up to Order that she should as the Defendant, fulfill her own side of the Agreement and perfect the Power of Attorney by relinquishing the documents of title to the Applicant if she had not done so already.

It is imperative to state that the Power of Attorney is to come into effect if the Defendant failed to liquidate her indebtedness on or before 8th September, 2020. She failed to do so as she promised in paragraphs 3 – 6 of her averment in the Affidavit of 9th June, 2020. By not fulfilling the said agreement in the Affidavit, she had as stated in the Affidavit given the Applicant the right and had transferred automatically to the Applicant the title and right over the property. By the failure to liquidate as promised, the Power of Attorney came into effect. Besides, the said Power of Attorney is irrevocable too.

Going by the Agreement and the Affidavit, she lost her right over the property in issue since 9th September, 2020 after she failed to liquidate as promised. Even though the Applicant gave her up to 21st September, 2020 to liquidate, she failed to do so. Hence since the 22nd September, 2020 the Defendant stopped being the owner of the property as the Applicant had become the owner.

The Court also referred to Deed of Sale – EXH D made between the Applicant and the Defendant on the 10th of June, 2020. In it the Defendant gave the Applicant the

power to sell the property upon her failure to liquidate her indebtedness to the Applicant.

On question No. 3, it is the law and has been decided over the years that where before a Court, a party has established ownership of a parcel of land and such ownership has not been challenged, that the Court should declare such party as owner of the said parcel of land. But for Court to so declare, the person/party must have presented before the Court how it came into being in possession of such land. This must be done by presenting documentary evidence to that effect or oral testimony where the title is based on tradition.

In this case the Applicant had shown how he came into the Res which was donated to him by the Power of Attorney. Again, by the Deed of Sale the Defendant transferred to the Applicant her right in that regard. So going by the two (2) documents as well as the Affidavit of 9th June, 2020 this Court has the power to state that the parties especially the Defendant has relinquished her rights over the land and had donated all her power over it to the Applicant. The Court has no reason not to declare the Applicant as the owner since he has presented before this Court all the necessary documentary evidence to back up his claim of ownership of the land. Moreso, there is no adverse claim. Where that is the case, this Court has no reason not to declare the Applicant as the rightful owner of the Res and confer the title of the Res to him having established the ownership as required.

It is imperative to state that once a party can establish ownership of land in issue through any or combination of this that the Court will declare such party the owner of the land. That ways are:

Traditional evidence. Production of documents of title which are duly authenticated. Acts of ownership such as selling, leasing, renting, farming or other methods like where the land was used as collateral for a loan by the owner and the owner fails to liquidate the indebtedness. In that case the Plaintiff must show how ownership has come to be and suffice length of time, numerous and positive enough to warrant inference of true ownership. Again, there must be act of possession whether long possession of short possession and enjoyment of the land. Also there must be proof of possession connected to the land in issue in circumstances rendering it probable that the owner of such land is the owner of the land in issue which she had relinquished through any Power of Attorney or Deed of Sale or both. The above is what the Supreme Court decided in the case of:

Orlu V. Onyeka

(2018) 3 NWLR (PT. 1607) 467 @ 487 paragraph B – E (SC)

See also the case of:

Piara V Tenalo

(1976) 2 JSCN 19 @ 26 Para 35 – 40 Page 28 Para 5 – 20

The Applicant had established how he came into possession, a fact that the Defendant did not deny. Unchallenged facts are deemed admitted. The Defendant did not challenge or file any Counter Affidavit in challenge of those facts. See the cases of:

Adesanya V. Adewole
(2019) 9 NWLR (PT. 671) 145

Orianzi V. A-G Rivers State & Ors
(2017) LPELR – 417373 (SC)

As severally stated above by the establishment of ownership through the **EXH A – E**, the Applicant has established ownership over the Res. The Defendant had not challenged same. He had shown that he is in active possession by those facts in Affidavit and the documents annexed to his Affidavit in this case.

In all land matter, holding Certificate of Occupancy shows that the holder has a better and superior title over the land. In this case, the Defendant had a Certificate of Occupancy. The said Certificate of Occupancy was not encumbered and the same was what was given as security for the loan of **One Hundred and Forty Seven Million Naira (₦147, 000,000.00)** given to the Defendant by the Applicant. The Defendant had transferred the ownership or the documents of title to the Applicant via the Power of Attorney and Deed of Sale. By that the Applicant has taken over the ownership and had proved so in this case.

See the provision of **S. 15 (1) of the Land Use Act 1978**.
See also the decision of the Court in the case of:

Olaleye V. Trustees of ECWA
(2011) 2 NWLR (PT. 1230) 1 @ 39

It is therefore only a person who has a Certificate of Occupancy that can transfer same to another. The Defendant had the Certificate of Occupancy and had lawfully, legally and legitimately transferred same to the Applicant in this case going by the Affidavit, the Power of Attorney and the Deed of Sale in this case. The evidence of the Applicant in this regard has not been challenged or controverted. See the cases of:

CBN V. Okogie
(2015) 14 NWLR (PT. 1479) 231

Ogunyade V. Osunkeye
(2007) 15 NWLR (PT. 1057) 218 @ 242

Okoebor V. Police Council
(2003) 12 NWLR (PT. 834) 444

Matthew V. The State
(2018) 6 NWLR (PT. 1616) 561 @ 566

Ifeta V. SPDC (Nig) Limited
(2006) 8 NWLR (PT. 983) 585 @ 600

Our Line V. SCC Nigeria Limited
(2019) 17 NWLR (PT. 1170) 382 @ 414

Bilante International Limited V. NDIC

(2011) 15 NWLR (PT. 1240) 407 @ 430

Akindele Olaiya V. State

(2015) 11 NWLR (PT. 1470) 360

It is the law and had been held in plethora of cases that where a party has established its case especially as regards ownership to land, the Court is bound to give its decision in favour of such party. That is the decision of the Court in the case of:

Afribank Nigeria Limited V. Moslad Enterprise Limited

(2008) All FWLR (PT. 421) 877 @ 894 – 895

Since the Applicant has proved ownership this Court Orders and hereby confers title to the Applicant.

On whether the Applicant is bound to treat the Res as directed by the Defendant if this application is granted, this Court holds that the Applicant is bound to deal with the Res as directed since the Defendant had relinquished her Right and title over the Res to the Applicant.

Agreement is agreement says the wise one. Since it is very obvious that the Defendant had legally, lawfully and legitimately relinquished her right over the Res as had been severally and repeatedly stated above, this Court has to power to compel the Defendant to fulfill her own side of the bargain/contract as agreed. *This Court has that power and hereby Order the Defendant to execute all other title documents as regards the property if she had not done so,*

having failed to liquidate her indebtedness to the Plaintiff/Applicant in this case.

This Court having answered all the questions in the Affirmative hereby grants all the consequential Reliefs as sought.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2023 by me.

K.N. OGBONNAYA
HON. JUDGE