

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 24
CASE NUMBER:	SUIT NO. FCT/HC/CV/0483/2017
DATE:	4/5/2023

BETWEEN:

NIPCO PLC.....PLAINTIFF

AND

- | | |
|--|------------------|
| 1. CLIFTONHURT INVESTMENT & SERVICES LTD | }.....DEFENDANTS |
| 2. PHIU NIGERIA LTD | |
| 3. THE DEPUTY SHERIFF F.C.T. HIGH COURT
ABUJA | |

APPEARANCES:

Chief Paul C. Obi Esq with Ifi I. K. Ikaite-Ebo Esq for the Plaintiff.
Henry Ebekwe Esq for the 1st and 2nd Defendants.

JUDGMENT

By an Amended Writ of Summons and an Amended Statement of Claim filed on the 17th day of February, 2023, the Plaintiff herein claims against the Defendants jointly and severally as follows:

“(a). A declaration that the Defendants’ Solicitor’s letter dated the 8th day of December, 2017 directing the Plaintiff to quit and deliver possession of the Plot of land known as Plot

No: 547 Cadastral Zone B00, Kukwaba Abuja F.C.T is null and void and of no effect whatsoever.

- (b). A declaration of this Honourable Court that the Plaintiff is the rightful and lawful owner of Plot of land known as No: 547 Cadastral Zone B00, Kukwaba Abuja F.C.T.**
- (c). A declaration that the Defendants' entry or threatened entry into the said Plot of land known as No: 547 Cadastral Zone B00, Kukwaba Abuja F.C.T. will constitute acts of trespass and entitles the Plaintiff to damages.**
- (d). An Order of Perpetual Injunction restraining the Defendants either by themselves or through their agents or privies from further trespassing and tempering with the Plaintiff's land aforesaid.**
- (e). An award of N100, 000, 000 (One Hundred Million Naira) against the Defendants as general aggravated damages for unlawful entry and trespass."**

This suit was initially instituted on the 19th day of December, 2017, commenced De Novo before this Court on the 3rd day of December, 2020.

The Plaintiff called three witnesses including two subpoenaed witnesses who testified as Pw1 and Pw2 and Plaintiff equally tendered documents in evidence as follows:-

- “(a). Subpoena Ducem Tecum – Exhibits A.**
- (b). CTC of Right of Occupancy over Plot 547 issued to Sassada Petroleum Nigeria Limited – Exhibit A1.**
- (c). CTC of Offer of Statutory Right of Occupancy to Pauliham Hotel and Resort Limited admitted as Exhibit B.**
- (d). CTC of certificate of Occupancy & Title Deed Plan issued to Sassada Petroleum Nigeria Limited dated 04/04/2012 admitted as Exhibit C.**

- (e). CTC of Certificate of Occupancy issued to to Pauliham Hotel and Resort Limited admitted as Exhibit D.**
- (f). Subpoena ad testificandum admitted as Exhibit E.**
- (g). Power of Attorney dated 18/03/2012 admitted as Exhibit F.**
- (h). Deed of Assignment dated 27/04/2016 admitted as Exhibit G.**
- (i). Application for Refund to Abuja Geographic Information System (AGIS) admitted as Exhibit H.**
- (j). Defendants Solicitor's letter dated 8/12/2017 admitted as Exhibit I**
- (k). Plaintiff's reply to Notice to Quit dated 18/12/17 admitted as Exhibit J.**
- (l). Certified true copy of 1st Defendant's Judgment-Exhibit K.**
- (m). CAC Search Report on the status of 1st Defendant admitted as Exhibit L.**
- (n). Plaintiff's letter dated 18/12/17 in response to the Quit Notice by the 1st Defendant admitted as Exhibit M."**

At the close of the Plaintiff's case, the 1st and 2nd Defendants opened their case by calling one witness Prince Ifeanyi Ukachukwu (Managing Director) of the 2nd Defendant who testified as Dw1. The witness equally tendered two exhibits namely:

- (1). Exhibit N Certified True Copy of Court Judgment.
- (2). Exhibit O, a Notice to Quit.

Subsequently, final Written Addresses were duly adopted and exchanged on both sides.

The Defendants' final Written Address undated, was filed on 21st November, 2022 while that of the Plaintiff dated 3rd day of January, 2023, was filed on same day.

The 1st and 2nd Defendants thereafter, responded by filing a reply on points of law on 20th January, 2023.

The 3rd Defendant did not participate in this proceedings at all. Therefore, in this Judgment reference to "Defendants" shall strictly apply to only the 1st and 2nd Defendants.

Now having taken my time to consider the pleadings as well as the testimonial and documentary evidence in this suit, the written submissions of counsel for the parties, I find the two issues formulated by the Plaintiff as being apt for determination and I shall adopt same in resolving this matter.

The two issues formulated are thus:-

- “(a). Whether having regard to the Judgment of the High Court of FCT in Suit No: FCT/HC/CV/671/2014, delivered on 28th June, 2017, the 1st and 2nd Defendants' Plot 127 (now Plot 546) extends to the Plaintiff's Plot 547 at Kukwaba District, Abuja F.C.T, which plot was not in issue in the said Judgment.***
- (b). Whether in the circumstances of this case, the Plaintiff has proved its claim to be entitled to the reliefs sought in its Writ of Summons and Statement of Claim?”***

I shall consider the two issues together in determining this suit.

Now, from the facts distilled in the Plaintiff's Amended Statement of Claim, the case of the Plaintiff is that it is the legal owner of all the parcel of land and development situate at Plot No. 547, Cadastral Zone B00, Kukwaba F.C.T. Abuja, covered by a Certificate of Occupancy No. 7e3uw-def5z-6129 r-102cu-6vi, same originally allocated to Sassada Petroleum Nigeria Limited by the Minister of FCT Abuja in the year 2012.

That Sassada Petroleum Nigeria Limited later transferred her interest vide a registered Power of Attorney dated 18th March, 2012, registered as FC 183 at page 183 in Volume 67P/A at the Land's Registry, FCT, Abuja to Bassan and Sons Limited.

That Plaintiff subsequently acquired the whole interest in the land from Sassada Nigeria Petroleum Limited through its lawful Attorney Bassan and Sons Limited vide a Deed of Assignment dated 27th of April 2016 and Registered as FC 156 at 156 in Volume 36 (MISC. register) at the Land's Registry, FCT, Abuja. That the Plaintiff mistakenly overpaid the required consent fee in the sum of N34, 842, 905.00 (Thirty Four Million, Eight Hundred and Forty Two Thousand, Nine Hundred and Five Naira only) to Abuja Geographic Information Systems (AGIS) for registration of same.

That upon acquisition of the said land, the Plaintiff completed the building of an ultra-modern petrol filling station valued at over N3Billion and has continued to enjoy free and quiet possession of the property until the Defendants started laying claims to the land and also unlawfully trespassed onto same by threats and issuing an eviction notice which the Defendants premised on a Judgment of the High Court of the F.C.T. delivered on 28th June, 2017 in respect of Plot 127 Kukwaba District F.C.T Abuja (with new Plot No. 546) Kukwaba District FCT) in favour of the 1st Defendant. That neither Plaintiff nor its predecessor in title (who fully developed the land) was ever made a party to the suit and that Plot 547 was not in issue at all in the matter, and neither did the Court in the said Judgment rest ownership of Plot. 547 Kukwaba District F.C.T Abuja on the 1st Defendant nor was the property deliberated upon at all in the said suit leading up to the F.C.T High Court Judgment referenced earlier.

Hence the 1st issue formulated by the Plaintiff in that respect.

Meanwhile, the 1st and 2nd Defendants in their pleadings denied all the averments of the Plaintiff and counter claimed that the Defendants have subsisting rights over Plot 127 (with new Plot No. 546 situate at Kukwaba District F.C.T, Abuja) which they allege includes Plot No. 547 Kukwaba District F.C.T. Abuja owned by the Plaintiff.

In the 1st and 2nd Defendants' final Written Address, it is submitted that the 1st and 2nd Defendants herein, instituted an action before the High Court of

the Federal Capital Territory (FCT) by a Writ of Summons dated 1st December 2014, culminating in the judgment of 28th, June 2022 where the 1st and 2nd Defendants challenged the purported allocation of their land being plot 127 (New Plot Number 546) to a 3rd party (Paulinham Hotels Limited). That in its judgment, this Court held that the purported re-allocation of the 1st and 2nd Defendants' land was invalid and illegal.

That the Court further held that the 1st and 2nd Defendants' land is 1.2 hectares, and the Defendants also discovered that the Plaintiff (NIPCO Plc) had taken up a substantial part of their land as they could barely lay their hands on about 4,000 square meters land. Hence the 1st and 2nd Defendants wrote a notice to quit to the Plaintiff and instead of the Plaintiff vacating the land of the 1st and 2nd Defendants' land, it has now instituted this matter, also claiming that it is the owner and is entitled to the possession of the property purported to be Plot No. 547 situate at Kukwaba District, Abuja FCT.

That Plaintiff further claims that the judgment of the High Court of the FCT (supra) in favour of the 1st and 2nd Defendants does not affect its title over Plot 547 since it contends that Plot 547 is separate and distinct from plot 547 and is therefore not covered by the said judgment.

Submitted in the Address that an analysis of the totality of the evidence led by the Plaintiff would reveal that the Plaintiff rested their case on a Certificate of Occupancy, Power of Attorney and Deed of Assignment executed in favour of the Plaintiff by Sassada Petroleum Nigeria Limited.

However, the 1st and 2nd Defendants relying on the judgment of the F.C.T. High Court delivered on 28th June 2017, affirming the 1st and 2nd Defendants' title over Plot 127, now Plot 546 Kukwaba District, Abuja, FCT, measuring 1.2 hectares are incapable of subtracting the right of the 1st and 2nd Defendants over the said plot, especially when it includes the part currently occupied by the Plaintiff as affirmed in the said Judgment referenced above.

That to hold otherwise is tantamount to depriving the 1st and 2nd Defendants the fruit of their Judgment/success before a Court of competent jurisdiction.

Moreso, Counsel submitted in that regard while relying on authorities cited on record including **AKIBU & ORS V ODUNTAN & ORS (supra)** that this Honourable Court has a duty to enforce the Judgment of this Honourable Court where same was not shown to have been given without jurisdiction and the Plaintiff did not contest the jurisdiction of this Court per Valentine B. Ashi (of Blessed memory) in the well considered judgment. And that same being a final Judgment/Order, this Court is enjoined to enforce same pursuant o Section 287(3) of the Constitution of the Federal Republic of Nigeria (1999) as amended.

While further arguing that the Plaintiff is illegally occupying part of the Defendants' land being a trespasser, the learned Counsel further contends that this suit as presently constituted, is an attempt to invite this Court to set aside a valid Judgment of the same High Court of the F.C.T, a Court of Co-ordinate jurisdiction. That the proper Order for this Court to make is to re-affirm the Judgment. On this premise, Counsel relied on the cases of **ECONOMIC AND FINANCIAL CRIMES COMMISSION VS MR. AYODELE FAYOSE & ANOR (2018) LPELR-44131; NIGERIA INTERNATIONAL MERCHANT BANK LTD V UNION BANK OF NIG. LTD (2004) 12 NWLR (Pt.888) 599 at 618 – 619.**

The Defendants therefore urged the Court to dismiss the reliefs sought by the Plaintiff and grant the 1st and 2nd Defendants' reliefs sought in their counter claims.

On the other hand it is submitted for the Plaintiffs in their address that Defendant's sole issue formulated is entirely misleading and a misconception of the facts of this case.

Submitted that the Defendants claim to be entitled to the Plaintiff's Plot 547, relying on the Judgment in Exhibit N which gave them ownership over Plot 127 measuring 1.2 hectares. Thus, the Defendants are now erroneously interpreting that Judgment to confer ownership of all lands around Plot 546 up to 1.2 hectares on them, and that same is totally misinterpretation of the Judgment in Exhibit N.

Submitted moreso, that the Judgment in Exhibit N did not talk about Plot 547 and did not by any stretch of the imagination, extend Plot 127 to Plot 547.

But, that the Court in Exhibit N, set aside the conversion of Plot 127 Kukwaba District F.C.T, Abuja to a new Plot 546 Kukwaba District FCT Abuja and its reissuance to Pauliham Hotels and Resort Limited (3rd Defendant in that suit) and held that Plot 127 measures 1.2 hectares. Therefore, Counsel submits, that pronouncement has no bearing whatsoever on Plot 547, which was not in issue in the matter that led to Exhibit N. Reliance was placed on the evidence of Pw2, a surveyor from F.C.D.A.

The Court is invited therefore to look at Exhibit N to support the foregoing arguments that the Defendants misinterpreted Exhibit N.

Moreso, learned Counsel argued that in the suit leading up to Exhibit N, the Defendant rested their claim in the suit on Power of Attorney and Deed of Assignment (i.e legal instruments that allegedly conveyed interest from the 1st Defendant to the 2nd Defendant) were completely expunged by the trial Court and that the trial Court referred to the 2nd Defendant as “a nuisance and a busy body” in the suit, and for this Court to hold that 2nd Defendant has no interest at all in Plot 127 (now 546) talk less of having any interest whatsoever in plot 547.

Further submitted that if the 1st Defendant had any iota of claim against the Plaintiff in its purported belief that Plot 127 (now 546) extended to Plot 547, occupied by the Plaintiff since 2012, why was the Plaintiff not made a party to the suit in 2014?

That the FCT High Court did not and could not have made any Order or Judgment against the Plaintiff who was not made a party to the suit before it. Reliance was placed on some authorities in this regard cited in record, including the case of **OYEMYI & ORS V OWOEYE & ANOR (2012) LPELR-41903 (SC) PP. 48 – 49, Paras B – A.**

On the Defendants Counsel’s submission particularly in Paragraph 4.10 of their address that the Plaintiff’s case herein is tantamount to asking this Honourable Court to set aside the Judgment in Exhibit N, learned Counsel submits that same is misplaced and unfounded in that this suit is neither challenging the Judgment nor asking this Court to set aside same but to pronounce that the said Judgment did not in any way extend the size to Plot 127 (now 546) to include Plaintiff’s Plot 547.

Consequently submitted that the Defendants have woefully failed to prove title to Plot 547 (belonging to the Plaintiff) as per their Counter Claim.

Submitted mores, that Dw1 under cross examination admitted that Plot 127 has no coordinates, no survey plan and no beacon numbers. But, that Dw1 curiously stated that Plot 127 had a site plan but did not know whether they tendered it in evidence in this case or not.

Counsel submitted in that regard that Plot 127 had no site plan as stated by Pw2, therefore Plot 127 having no site plan, no co-ordinates and no survey and beacon numbers, how can Plot 127 be delineated, ascertained and located arguing that it is impracticable and impossible.

Counsel relied on the case of ***AREMU & ANOR V THE STATE (1991) N.S.C.C. VOL. 22 (Pt.2) 331***, on presumption of withholding evidence. As well as Section 167(D) of the Evidence Act, 2011.

Submitted by making reference to the evidence of Pw2 and Dw1, that if Plot 127 (now 546) had a site plan, it would have aided in seeing the location of the Plot and its size to enable the Court determine whether the same extended to any other plot at all. But, that the Defendants who claim to have same, failed to produce it and urged the Court to find that it does not exist, and that if it does, it'll be against their interest.

Submitted further that the Defendants have failed to adduce evidence that the Judgment in Exhibit N extends to, Plot 127 to the Plaintiff's Plot 547 and so they must adduce evidence to prove their Counter Claim.

Counsel relied on the case of ***IDUDUN V OKUMAGBA (1976) 9-10 SC, 221***.

Submitted moreso that if the Defendants have any grievance over the existence, size or location of their Plot 127 (now 546) the appropriate authority to channel their grievances to, is the Minister of the F.C.T. and not lay claim to any and every land within sight without title and survey plan clearly delineating their land. Counsel submitted in that regard that, their purported Plot 127 was allocated by the Minister of F.C.T, the revocation of the Plot was done by the Minister of FCT.

That the Defendants have neither tendered any title to Plot 547, shown possession or shown how they became owners of same. The Court is urged to resolve issue one against the Defendants and also to dismiss the Counter Claim.

Now, it is a settled principle of law that he who asserts must prove.

See: Sections 131 – 133 of the Evidence Act, 2011.

NBC PLC & ANOR V OGOR (2020) LPELR-53355 (CA) pg.15 Paras C - F.

Plaintiff in proof of its case has called three witnesses two of which are subpoenaed witnesses. Several Exhibits were equally tendered in evidence as highlighted earlier.

Pw1 Yusuf Bolaji Abdulrahman, a legal service officer with F.C.T.A (subpoenaed witness) was not cross-examined by the Defence.

Pw2 – Abiodun Iskifose, a Surveyor, staff with F.C.D.A, (subpoenaed witness) testified that Plot 546 and Plot 547 are separate and distinct plots of land. In his evidence he testified that Plot 127 (now Plot 546) was never designed for allocation, and that Plot 127 existed before the area was designed and it does not have a size because there was no site plan and no coordinates and no one can get the exact size or location of Plot 127 as there's no site plan. Pw2 also testified that Plot 127 no longer exists.

Indeed, under cross examination, the witness re-iterated that Plot 127 is an old plot number, but admitted that Plot 127 was designated by the authority of the F.C.T, but that it was later cancelled for further design.

When asked if there was an earlier design, Pw2 said no, there was no earlier design and that the area was not designed for allocation.

When asked if he was aware that Plot 127 was Allocated, the witness said no.

When re-examined the witness testified that Plot 127 was a planning design and it did not get to allocation level.

Pw3, Chide Anene, senior legal Adviser of the Plaintiff on 27th June, 2022 adopted his Witness Statement on Oath deposed to on 19th December, 2017 and his Additional Witness Statement on Oath deposed to on 17th April, 2018 and tendered several exhibits.

He testified that Plot 547 belongs to the Plaintiff and that the Plaintiff enjoyed it without let or hindrance until the Defendants trespassed into it.

Pw2 was not cross examined by the Defence.

The documentary evidence tendered by the Plaintiff particularly Exhibits A1, B, C, D, E, F, G and H shows that it is the owner of Plot 547 Cadastral Zone B00, Kukwaba Abuja.

Meanwhile the Defendants' contention is that Plot 127 (now Plot No: 546) extends to Plaintiff's Plot 547. The Defendants placed reliance on Exhibit N Judgment of this Court delivered on 28th June, 2017 by my learned brother Hon. Justice Valentine B. Ashi (of Blessed memory).

The question to ask here is whether Plot 546 and 547 are one and the same or distinct and separate?

The Plaintiff has tendered Exhibit D, an Offer of Statutory Right of Occupancy issued to the Pauliham Hotels and Resort Limited in respect of Plot 546. While it equally tendered several exhibits namely Exhibits A1, B, C, D, E, F, G and H in respect of Plot 547, in addition to the evidence of Pw2 that Plots 546 and 547 are separate plots of land. The evidence adduced by the Plaintiff shows that Plots 546 and Plot 547 are distinct and separate plots.

The Court was invited by both sides to look at Exhibit N, Judgment of this Court in suit No. **FCT/HC/CV/671/2014 BETWEEN (1). CLIFTONHURST INVESTMENT & SERVICES LTD (2). PHIU NIGERIA LTD VS (1). HON. MINISTER OF FCT (2). FEDERAL CAPITAL DEVELOPMENT AUTHORITY (3). PAULIHAM HOTELS AND RESORT LIMITED** delivered on 28th day of June 2017 by my learned brother Valentine B. Ashi Esq (of blessed memory).

Indeed, I have painstakingly done so, not in any way to attempt the impossible task of reviewing or setting aside the said Judgment which this Courts lacks the power to do, but rather to decipher as to whether the Judgment in Exhibit N extends to Plot 547, Cadastral Zone B00, Kukwaba District, Abuja F.C.T.

I have gone through the length and breath of Exhibit N, and in my humble view there's no single mention whatsoever of Plot 547.

The claims of the Plaintiffs was premised entirely on Plot 127 with new plot No. 546 measuring 1.2 hectares situate at Kukwaba District, Abuja FCT.

In fact his Lordship held at page 20 of the Judgment 2nd paragraph thus:

“Consequently taking into account all I have said so far I should think that since the Hon. Minister neglected to first formally and lawfully revoke the Right of Occupancy granted to the 1st Plaintiff in respect of Plot 127 Cadastral Zone B00, Kukwaba before proceeding to re-allocate same Plot to the 3rd Defendant and renaming it as Plot 546. It is not inappropriate to hold that Exhibit F the purported letter of re-allocation to the 3rd Defendant of Plot 127, re-numbered as Plot 546 Cadastral Zone B00, Kukwaba, FCT is ineffectual and is hereby declared null and void. With this said, I find comfort in resolving the sole issue question for determination as formulated by the Plaintiff in this proceeding in the affirmative. Therefore, this action has merit. Judgment is hereby entered for the Plaintiff as prayed for in its Statement of Claim Registrar of Court to enrol a Judgment Order and issue a Certificate of Judgment in tandem with the reliefs claimed.”

Indeed, at this stage one might ask what were the reliefs claimed?

The reliefs are clearly stated in Exhibit N i.e Reliefs a – i, which clearly supports Plaintiff's position that Exhibit N does not extend to Plot 547 at all.

Therefore, if the Judgment in Exhibit N extends to Plot 547 as alleged by the Defendants, then I would have to agree with the submissions of learned Plaintiff's Counsel that the burden clearly shifted on them to prove same.

This is on the settled principle of law that he who asserts must prove.

Moreso, in civil cases the burden of proof is not static, it is like a pendulum that shifts from side to side.

See Section 136(1) of the Evidence Act 2011 which provide:

“The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case shift from one side to the other.”

Now, while I agree with the arguments of the Defendants that this Plaintiff was unknown at the time it instituted suit No. FCT/HC/CV/671/2014
BETWEEN:

1. CLIFTONHURST INVESTMENT & SERVICES LTD }
2. PHIU NIGERIA LTD }PLAINTIFFS

AND

1. HON. MINISTER OF THE FCT }
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY } ..DEFENDANTS
3. PAULIHAM HOTEL AND RESORT LIMITED }

And for it to have been joined as a party and to be consequently bound by the orders/judgment of the Court, in this suit, where it alleges that Plot 127 with new Plot No. 546 measuring 1.2 hectares extends to Plaintiff's Plot 547, it has the burden of proving same.

The Plaintiff has argued that the Defendants have not tendered in evidence a site plan of Plot 127, that it has no co-ordinates and no beacon numbers.

Indeed, Dw1 during cross-examination on the exact location of Plot 127 (now Plot 546) stated thus:-

“The Minister of FCT showed us the land over Plot 127. I don’t know the coordinates of Plot 127. I don’t have any survey plan on Plot 127. The Plaintiff did not sell the land to me. I did not sue Sassada Petroleum Nigeria Limited in the suit over Plot 127 (now Plot 546). The Judgment tendered by (Exhibit N) did not make any mention of Plot 547.”

Now, although Dw1 under cross examination admitted there that Plot 127 has no Certificate of Occupancy, or the site plan, Dw1 stated that the site plan exists. But that he didn’t know whether the site plan is before the Court.

The Defendants in support of their Defence and Counter Claim have equally tendered in evidence the Quit Notice i.e Exhibit O.

Therefore if the Quit Notice was issued on the basis of Exhibit N which was on Plot 546, if same extends to Plot 547, the Defendants have not provided any credible evidence in that regard in proof of their defence and by extension their Counter Claim.

In fact in the Plaintiff’s reply to the Defendant’s Counter Claim, particularly paragraph 18, Plaintiff/1st Defendant to the Counter Claim states as follows:

“The 1st Defendant in further denial to paragraph 2 of the Statement of Claim avers that the 2nd Counter Claimant does not have any interest whatsoever in Plot No: 127 Kukwaba District, F. C. T. Abuja with Plot No. 546 Kukawaba District F. C. T. Abuja as the purported Power of Attorney and Deed of Assignment in favour of the 2nd Counter Claimant were discountenanced by the Court and the Court in its Judgment described the 2nd Counter Claimant as a nuisance who had no business in the suit.”

From the record, the Defendants did not respond to the above by filing a reply to the Defence to the Counter Claim. It is therefore deemed admitted.

Facts admitted need no further proof.

See: ***U.D F.U SOKOTO VS BALOGUN (2006) 9 NWLR (Pt.984) PP.142,***

Paras D – E, 151 Paras B –C (CA); REPTICO S.A. GENEVA VS AFRIBANK (NIG) PLC (2013) 14 NWLR (Pt.1373) P. 208 Paras B – C per ARIWOOLA JSC (SC) where the Court held thus:-

“A fact admitted needs no further proof. It is deemed established.”

Moreso, Dw1 in his evidence during cross examination admitted that the Power of Attorney and Deed of Assignment in respect of Plot 127, new No. Plot 546, were thrown out or expunged by the Court in the judgment in Exhibit N.

The site plan of Plot 546 was not tendered before the Court by Dw1.

It must also be borne in mind that during cross examination, Dw1 further admitted that he couldn't remember making any complaint to the Minister of the F.C.T that his plot has no Certificate of Occupancy.

Therefore, I would have to agree with the position of the Plaintiff that in the absence of a site plan of Plot 127, the said Plot cannot be delineated, ascertained and located.

Moreso, in my humble view, the 1st and 2nd Defendants were at liberty to have applied for a subpoena to call relevant witnesses to testify in that regard but failed to do so.

Perhaps this lends credence to learned Plaintiff's Counsel's submission that the 1st and 2nd Defendants are withholding evidence which could be produced and if produced would be unfavourable to them if produced before the Court. Thereby, giving the Court the discretion to presume so in line with the provision of Section 167(d) of the Evidence Act, 2011.

However, it is the contention of the 1st and 2nd Defendants on this issue in paragraph 2.04 of their reply on points of law filed on 20th January, 2023, that Dw1 testified that they could not process the documents because a caveat was placed on the land, therefore the principle of withholding evidence will not apply here.

Now, assuming that it is so, the 1st and 2nd Defendants ought to have at least subpoenaed, a witness from the Minister's office or AGIS to prove this fact since the burden was on them to prove same, being a fact which is within their knowledge. I so hold.

See: Section 136(1) of the Evidence Act, 2011.

On the issue of trespass, the 1st and 2nd Defendants contend in paragraph 2.12 of their reply on points of law that the 1st and 2nd Defendants have never trespassed, but rather, it is the Plaintiff itself that has trespassed on the 1st and 2nd Defendants' land. Equally relying on submissions of the Plaintiff in paragraph 5.14 of their address where Plaintiff admittedly defines trespass to mean "any infraction of a right of possession of land by another person without the consent of the owner."

Indeed, Plaintiff's claims (c) and (d) in the Amended Writ of Summons provide thus:

"(c). A declaration that the Defendants entry or threatened entry into the said plot constitutes acts of trespass and entitles Plaintiff to damages.

(d). An Order of perpetual Injunction restraining the Defendants from further trespassing and tampering with the Plaintiff's land aforesaid."

It is equally in the Amended Statement of Claim, particularly in paragraphs 14 – 19 thereof as follows:-

"(14). The Plaintiff avers that the Defendants are mischievously trying to annex the Plaintiff's land or part thereof to their disputed Plot No. 127 with new Plot No. 546 Kukwaba District, Abuja FCT by encroaching into No. 547 Cadastral Zone B00, Kukwaba Abuja F.C.T.

(15). The Plaintiff avers that it has been in physical possession of its No. 547 Cadastral Zone B00, Kukwaba Abuja F.C.T and has since built upon it, its ultra-modern petrol filling

station valued at over N3 Billion and operating its business of filling station etc thereon.

- (16). The Plaintiff avers that the Defendants suddenly on the 8th day of December 2017 issued a purported eviction notice on the Plaintiff over Plot 547 on the basis of an alleged judgment given by F.C.T High Court on 28th day of June, 2017 over Plot No: 546 (which plot is different from the Plaintiff's land and threatening to invoke full force to achieve same without any further recourse. The letter served on the Plaintiff (Nipco Plc) and the judgment are hereby pleaded.**
- (17). The Plaintiff avers that it wrote a letter through its solicitor against the illegal actions of the 1st and 2nd Defendants/Respondents to their Counsel Chijioke Kanu Esq and copied the Commissioner of Police to avoid a breakdown of law and Order and further copied the said letter to Deputy Sheriff FCT High Court Abuja. The said letter to the Counsel 1st and 2nd Defendants/Respondents, the copies to Commissioner of Police, FCT Command and the Deputy Sheriff are hereby pleaded.**
- (18). The Plaintiff avers that the act of Defendants' encroachment and disturbance of the Plaintiff's possession of its land is unlawful, null and void and constitutes a trespass into Plaintiff's land.**
- (19). The Plaintiff avers that the Defendants' disturbance of the Plaintiff's peaceful possession and enjoyment of land known as Plot No: 547 Cadastral Zone B00, Kukwaba Abuja F.C.T has occasioned financial loses and inconveniences to the Plaintiff."**

Same depositions were equally made in the Witness Statement on Oath of Chidi Anene Pw1, as well as in the Further Witness Statement on Oath of the same witness.

In the Further Statement on Oath of Chidi Anene, it is deposed in paragraphs 4, 5, 6, 7, 8, 10, 11, 12, 13, 17, 19, 20, 21, 23, 24 and 25.

- “(4). That the Plot which the Plaintiff occupies is the actual Plot 547 Kukwaba District F.C.T Abuja as evidenced by the Certificate of Occupancy dated 2012 and the title deed plan which are already pleaded in the Plaintiff’s Statement of Claim. The Plot No: 547 Kukwaba District F.C.T Abuja owned by the Plaintiff is separate and distinct from, and is not part of Plot No: 546 Kukwaba District F.C.T Abuja. Plot 547 (the Plaintiff’s land) was not in issue in the judgment given in favour of the 1st Defendant.**
- (5). That Sassada Petroleum Nigeria Limited’s allocation and Certificate of Occupancy over Plot No: 547 Kukwaba District F.C.T Abuja is over the plot which the Plaintiff occupies and the said Plot No: 547 Kukwaba District F.C.T Abuja exist where the Plaintiff occupies via the title deed plan.**
- (6). That the transaction between the Plaintiff and Sassada Petroleum Nigeria Limited over Plot No: 547 Kukwaba District F.C.T Abuja is genuine, valid and over the plot which the Plaintiff occupies. The Plaintiff duly secured the consent of the Minister of FCT to the transaction as shown in the registered Deed of Assignment between Sassada Petroleum Nigeria Limited and the Plaintiff.**
- (7). That the registration over Plot No: 547 Kukwaba District F.C.T Abuja followed the due procedure at the Abuja Geographic Information System Office and the said Plot No: 547 Kukwaba District F.C.T Abuja exist in the area occupied by the Plaintiff.**
- (8). That the 1st and 2nd Defendants trespassed into an existing Plot No: 547 Kukwaba District F.C.T Abuja belonging to the Plaintiff and are laying claim thereto.**

- (10). ***That the land which the Plaintiff owns and occupies is Plot No: 547 Kukwaba District F.C.T Abuja and is not part of 1.2 Ha size of the 1st Defendant's purported Plot No: 127 Kukwaba District F.C.T Abuja and the said Plot No: 547 Kukwaba District F.C.T Abuja exists in the area occupied by the Plaintiff.***
- (11). ***That the Plaintiff has been in lawful possession of, and in occupation of the Plot No: 547 Kukwaba District F.C.T Abuja and the 1st and 2nd Defendants have never questioned their ownership and possession. The Plaintiff was not a party to the suit in the Judgment they parade and the Plaintiff's plot 547 was not in dispute or contention in the suit. The suit was on Plot 127 (new Plot 546) and not Plaintiff's Plot 547. That the 1st and 2nd Defendants only sued the Honourable Minister, F.C.D.A and Pauliham Hotel and Resort Limited whom they claim trespassed into their Plot No: 127 Kukwaba District F.C.T Abuja with new Plot No: 546 Kukwaba District F.C.T Abuja purportedly owned by the 1st Defendant.***
- (12). ***That the Plaintiff's title to Plot No: 547 Kukwaba District F.C.T Abuja is not traceable to Pauliham Hotel and Resort Limited and that the said Pauliham Hotel and Resort Limited was never at anytime whatsoever in possession of the Plaintiff's Plot No: 547 Kukwaba District F.C.T Abuja as wrongly alleged by the 1st and 2nd Defendants.***
- (13). ***That the existing Plot No: 547 Kukwaba District F.C.T Abuja which is owned and occupied by the Plaintiff is not within the purported 1.2 Ha area of 1st Defendant's Plot No: 127 Kukwaba District F.C.T Abuja with new Plot No: 546 Kukwaba District F.C.T Abuja, but is a different and distinct land.***
- (17). ***That the Plaintiff neither entered into, nor remained in the property known as Plot No: 127 Kukwaba District F.C.T Abuja with new Plot No: 546 Kukwaba District F.C.T Abuja or any part thereof. The Plaintiff has at all material times***

been in possession of its own property known as Plot No: 547 Kukwaba District F.C.T Abuja.

- (19). That the property the Plaintiff occupies is Plot No: 547 Kukwaba District F.C.T Abuja covered by a Certificate of Occupancy No. 7e3uw-def5z-6129r-102cu-6u1 and that it has no business with Plot No: 127 Kukwaba District F.C.T Abuja with new Plot No: 546 Kukwaba District F.C.T Abuja or any part thereof and has not trespassed onto the same. The size of the 1st Defendant/Counter Claimant's land and its location is a matter between the 1st Defendant/Counter Claimant and the FCDA which gave it the grant. The 1st Defendant/Counter Claimant's land does not extend to Plot 547 owned by the Plaintiff.**
- (20). That the 1st Defendant/Counter Claimant's Plot 127 (new 546) by the Certificate of Occupancy issued on the same by the FCT to Pauliham Hotels & Resort Ltd, which Certificate of Occupancy was set aside by the Court has a land area of 5010.80 square meters only and not 1.2 Ha. The said Certificate of Occupancy shall be relied upon, and I can recognise same if shown to me.**
- (21). That the Plaintiff's Plot 547 has no relationship or bearing whatsoever with 1st Defendant/Counter Claimant's Plot 127 or new 546. No pronouncement was made by the Court conferring ownership of the Plaintiff's plot 547 on the 1st Defendant/Counter Claimant. The 1st Defendant/Counter Claimant's plot as per the judgment is Plot 127 (new 546) and not Plot 547.**
- (23). That the Plaintiff responded to the Defendant/Counter Claimant's Quit Notice and copies same to the Commissioner of Police.**
- (24). That the property the Plaintiff occupies is Plot No: 547 Kukwaba District F.C.T Abuja evidenced by a Certificate of Occupancy No. 7e3uw-def5z-6129r-102cu-6u1 and a Deed of Assignment to which transaction the consent of the**

Honourable Minister of FCT was duly given following due process at the Abuja Geographical Information System Office.

(25). That I pray the Honourable Court to award the claims of the Plaintiff as contained in the Statement of Claim and dismiss the Counter Claim as being frivolous, vexatious and gold digging with substantial cost.”

Now, one may ask what is the meaning of trespass?

The Black Law Dictionary, Abridged Ninth Edition defines trespass on page 1294 thus:-

“Wrongful entry on another’s real property; and/or An unlawful act committed against the person or property.”

The meaning of trespass was given judicial interpretation by the Court of Appeal in the case of **MOHAMMED & ANOR V ABUBAKAR (2017) LPELR-43429 (CA) per ABIRU, J.C.A at PP. 32 -33, Paras D – C**, as follows:-

“Trespass is a violation of possessory rights; trespass to land is unlawful interference with exclusive possession. The slightest disturbance to the possession constitutes trespass in law, ECHERE V EZIREIKE (2006) 12 NWLR (Pt.994) 386; OGBEIDE V OSIFO (2007) 3 NWLR (Pt.1022) 423.

It is defined as an unauthorized and direct breach of the boundaries of another’s land. No intent to commit trespass is required so long as the act resulting in the trespass is violation and the resulting trespass is direct and immediate. It does not depend on the intention of the trespasser, nor can be plead ignorance as to the true owner or that he thought the land belonged to him. It is enough that the right of the owner or person in exclusive possession was invaded....”

Furthermore, in the case of **OSHIBANJO V ODUNLAMI & ANOR (2015) LPELR-25863 (CA)** the Court held:-

“A party on a parcel of land who claims ownership of the land is a trespasser if he lacks title to the land” per Ndukwe-Anyanwu, JCA, at P. 28, Paras C – D.”

Also, in the case of ***DAIRO & ORS V THE REGISTERED TRUSTEES OF THE ANGLICAN CHURCH (2002) LPELR-11634 (CA)*** the Court held at ***page 11 -12, paras D – C*** thus:

“Trespass to land is actionable at the instance of a person in possession of the land. The purpose of the action is to seek a redress for the violation of a possessory right. Though title may be in issue in a claim for trespass, title is not a necessary issue to be determined in every claim in trespass. This is so because a person in possession can sue for trespass even if he is neither the owner of the land nor a privy to the owner. Exclusive possession of the land gives the person in such possession the right to retain it and to an undisturbed possession of it against all wrong doers except a person who can establish a better title.”

In the instant case, not only did the Plaintiff establish exclusive possessory right to Plot No. 547, it has also established a better title to the subject matter going by the documentary Exhibits tendered particularly Exhibits A1, B, C, D, E,F, G and H.

However, the question to ask here is whether the Plaintiff relying on the Quit Notice, i.e Exhibit O, has successfully established the claim of trespass against the Defendants?

I am afraid I would have to answer in the negative. Having a close look at the Quit Notice and also having considered the submissions made by respective Counsel on both sides regarding this issue, it is safe to say that Exhibit O, the Quit Notice merely threatened the Plaintiff to vacate the said property failure of which recourse will be had to the law.

There’s no evidence before the Court to show that there was any form of invasion or encroachment upon the subject mater i.e plot 547 by the Defendants whatsoever.

Therefore, it is my humble opinion that the claim of trespass has not been proved by the Plaintiff. I so hold. At best the Quit Notice merely amounts to a threat to trespass and nothing more.

In the same vein, the Defendants whom have not shown a better title to the subject matter whatsoever i.e Plot 547, and who have failed to prove that Plot 546 extends to Plot 547, have equally failed to prove trespass. I so hold.

On issue one, I hold that the Plaintiff has successfully proved that the Judgment in Exhibit N, was on Plot 546 and does not extend to Plot 547. I so hold.

Issue 1 is resolved in favour of the Plaintiff.

On issue two, the Plaintiff through the oral and documentary evidence adduced has proved that it is the legal and rightful owner of Plot No. 547 Cadastral Zone B00, Kukwaba Abuja F.C.T. This was particularly backed up by the evidence of Pw3 who testified as to how the Plaintiff acquired interest in the land and title to the land. Several documents were tendered through the witness. Pw3 was not cross-examined by the Defendants. This means that his evidence remains unchallenged and uncontroverted.

It was submitted for the Plaintiff in paragraph 5:9 of their address, that it is not enough to merely aver or traverse in pleadings, because once the Plaintiff gives credible evidence and tenders documents, the evidential burden shifts to the Defendants. But, that in this case the Defendants have failed woefully to discharge the burden.

Counsel relied on several authorities cited on record including the case of **AYORINDE V SOCWNRO (2012) 11 NWLR (Pt.1312) P. 460; PURIFICATION TECHNIQUES (NIG) LTD V JUBRIL (2012) 18 NWLR (Pt.1331) P. 109; ADELEKE V IYANDA (2001) 13 NWLR (Pt.729) 1 at 22-23 AC.**

Submitted moreso, in paragraph 5:10 thereof, that Dw1 under cross-examination admitted that the land in dispute (Plot 547) belongs to the Plaintiff. But, that curiously, the Defendants' Counter Claim alleges that

Plot 127 ought to extend to the location of Plot 547 without credible evidence to support same.

The Court is urged to dismiss the Defendants' Counter Claim.

Counsel relied in the case of **AKINBODE & ANOR V BABATUNDE & ORS (2017) LPELR-43463 (SC)**.

Indeed, in his evidence under cross-examination, Dw1 did admit that the Plaintiff in this case is the owner of Plot 547.

Again aside from all the documentary evidence adduced by the Plaintiff, Pw2, the subpoenaed witness had this to say as part of his evidence before the Court thus:-

“Plot 127 is an old Plot number in that District. It existed before the area was designed. Plot 127 does not have size because there was no site plan and no coordinates. Plot 547 is exactly where the Plaintiff is occupying now. That the site plan of Plot 127 was never done until the area was resigned and Plot 127 does not extend to Plot 547....”

The above piece of evidence has not been controverted in any way by the Defendants in their cross-examination of Pw2, and their defence, nor was it disproved in proof of their Counter Claim.

The effect that this unchallenged and uncontroverted evidence is deemed admitted and the Court can act on it. I so hold.

See: **OJO V GHARORO (1999) 8 NWLR (Pt.615) P.392, Paras E – F (CA); S.P.D.C.N LTD VS ESOWE (2008) 4 NWLR (Pt. 1076) P.88, Paras D – E (CA) per GUMEL J.C.A** where the Court held thus:

“An uncontroverted or unchallenged evidence must be used against the party who ought to have contradicted or challenged the evidence but failed to do so.”

On this premise, I would have to agree with the submissions of learned Plaintiff's Counsel in paragraph 4:15 – 4:16 of their address that the

Defendants having failed to adduce evidence that Judgment in Exhibit N extends to Plot 127 (new Plot N. 546) to the Plaintiff's Plot 547, if they have any grievance over the existence, size or location of their Plot 127 (now Plot 546), the appropriate authority to channel their grievances to, is the Minister of the F.C.T and not to lay claim to any and every land within sight without title and survey plan clearly delineating their land.

In the circumstances therefore, it is my considered opinion that the Plaintiff has proved its case as required by law on preponderance of evidence and/or balance of probability.

Issue two is equally resolved in favour of the Claimant.

In conclusion therefore, Judgment is hereby entered in favour of the Plaintiff. The Court hereby grants Reliefs a and b.

On Relief (d), the Court hereby grants an Order of Perpetual Injunction restraining the Defendants either by themselves or through their agents or privies from trespassing, threatening to trespass, or tampering with Plaintiff's land known as Plot 547, Cadastral Zone B00, Kukwaba District, Abuja, FCT.

Reliefs c and e fail and are hereby dismissed.

Signed:

***Hon. Justice S. U. Bature
4/5/2023.***