

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

**BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU
SUIT NO: FCT/HC/CV/282/2023
DELIVERED ON THE 11/07/2024**

BETWEEN:

PROFESSOR ALKASSIM ABBA.....CLAIMANT

AND

- | | | |
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| 1. HON. MINISTER FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL AUTHORITY ADMINISTRATION
3. ESV, UMAR SAYYADI FNIVS | } |DEFENDANTS |
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JUDGMENT

By an Originating Summons dated and filed the 21/11/2023, the Claimant (Professor Alkassim Abba) approached the Hon. Court raising the following question for determination to wit:

- 1) Whether the Notice of Revocation of the Right of Occupancy with file number No. AD20012 over Plot No. 468 within Utako BO5 District, Abuja dated 20th of September 2023 purporting to revoke the Claimant’s right, interest and privileges but which did not state or specify the particular ground(s) or reason for the purported revocations as required by Section 28 Subsection 5(a) & (b) of the Land Use Act No. 6 of 1978 Cap. 15 Laws of the Federation of Nigeria 2004 is not altogether in flagrant violation of the spirit, intent and**

mandatory requirement of all relevant provision of the Land Use Act and particularly Section 28 therefore, pursuant to which the said Notice of Revocation was written and pasted on the fence of the property.

2) Whether the 3rd Defendant ESV, UMAR SAYYADI FNIVS can legally competently or lawfully exercise the power vested in the Governor of the Federal Capital Territory who is the President of the Federal Republic of Nigeria to issue and sign the Notice of Revocation on behalf of the Honourable Minister of the Federal Capital Territory having regards to the provision of the Constitution of the Federal Republic of Nigeria, the provisions of the Federal Capital Territory Act as well as the Land Use Act and therefore whether the said act of the 3rd Defendant is not altogether ultra vires, unconstitutional, unlawful, void and of no effect whatsoever.

3) Whether the pasting of the Notice of Revocation in file number No. AD20012 on the fence of Plot No. 468 Utako (BO5) District, Abuja without causing the said notice to be delivered to the Claimant in exact compliance with the provision of Section 44 of the Land Use Act No. 6 of 1978 Cap. 15 Law of the Federation of Nigeria 2004, does not render the said notice invalid, unlawful and of no legal effect or consequence whatsoever.

Having regards to the questions posed for determination, the Claimant claims against the defendant as follows:

- 1) ***AN ORDER OF THE HONOURABLE COURT DECLARING*** that the Notice of Revocation with File No. AD20012 over Plot No. 468 Utako (BO5) District, Abuja, dated 20th September, 2023 which did not state the specific grounds or reason for the purported revocation as required by the mandatory provision of Section 28 subsection 5 (a) & (b) of the Land Use Act No. 6 of 1978 Cap. 15 Law of the Federation of Nigeria 2004, and all extant Laws and Judicial Precedent amounts to a flagrant breach of the Land Use Act and to that extent the said notice of revocation in File No. AD20012, dated 20th September, 2023 is all together unlawful, unconstitutional, null and void and of no effect whatsoever or in howsoever manner.
- 2) ***AN ORDER OF THE HONOURABLE COURT DECLARING*** that the Notice of Revocation with File No. AD20012 over Plot No. 468 Utako (BO5) District, Abuja dated 20th September, 2023 issued by the 3rd Defendant on behalf of the Honourable Minister of the Federal Capital Territory is altogether unconstitutional, unlawful, null and void and of no effect whatsoever given that the 3rd Defendant has no lawful power to issue a notice of revocation in respect of any property within the Federal Capital Territory Abuja unless properly bestowed with the powers by an instrument of Delegation from the President of the Federal Republic of Nigeria who is the statutory Governor of the Federal Capital Territory.

- 3) **AN ORDER OF THE HONOURABLE COURT DECLARING** that the Notice of Revocation with File No. **AD20012** by pasting the same on Plot No. 468 Utako (BO5) District, Abuja does not amount to proper service of the said notice of revocation has enshrined under Section 44 of the Land Use Act No. 6 of 1978 Cap. 15 Law of the Federation of Nigeria 2004, making the said notice of revocation ineffective, unlawful, null and void and of no legal effect whatsoever.
- 4) **AN ORDER OF THE HONOURABLE COURT SETTING ASIDE** in whole and its entirety, the Notice of Revocation of the Right of Occupancy with File No. **AD20012** over Plot No. 468 Utako (**BO5**) District, Abuja dated 20th September, 2023, for reasons set out in the questions and reliefs sought in this Originating Summons and other reasons consistent with the provision of the law which makes the said Notice of Revocation unlawful and therefore null and void.
- 5) **AN ORDER OF PERPETUAL INJUNCTION** restraining the Defendant whether by themselves, officers, servants, agent, assignee and privy howsoever known or described from giving any effect to the said notice of revocation with File No. **AD20012**, dated 20th September, 2023 or any matter connected there with or touching on the Claimants' right, interest and privileges over Plot No. **468** Utako (**BO5**) District, Abuja.

In support of the Claimant Originating Summons is a 10-paragraph affidavit deposed to by one Adegbe Augustine Ameh, a staff in the law firm of the Claimant's Counsel.

It is the deposition of the Claimant that he is the owner of the parcel of land better described as plot No. **468 (BO5)** District, Abuja within the Federal Capital Territory.

That the Claimant attention was drawn to a Quit Notice and a letter of Notice of Revocation of the Right of Occupancy dated 20/9/2023 pasted on the fence of Plot No. **468** within Utako, (BO5) District, Abuja, subject matter of this suit by the Claimant and was never delivered to the Claimant's registered address.

It is further the contention of the Claimant that the facts of the Notice of Revocation did not disclose the reasons to which the Claimant's right and privileges over Plot No. **468** Utako (BO5) District, Abuja is being revoked.

In line with law and procedure, a written address was filed wherein, the following issues were formulated for determination to wit;

- (a) Whether the failure to clearly and precisely state the grounds or reason for the purported revocation of the Claimant's title, does not invalidate exhibit A, thereby making it null and void and of no effect whatsoever.**

- (b) **Whether the 3rd Defendant has the legal competence to sign and issue Exhibit ‘A’ on behalf of the Hon. Minister of the Federal Republic of Nigeria.**
- (c) **Whether the Law permits for a Notice of revocation to be pasted on the property being sought to be taken away from the Claimant, rather than services on the address of the Claimant.**

Learned Counsel argued the above issue succinctly in urging the Court to grant all the reliefs sought in this case.

Reacting to the Originating Summons, 1st to 3rd Defendants filed a counter affidavit of 10 paragraph duly deposed to by one M. A. Mayamba Esq, a staff of the 2nd Defendant.

It is the counter-affidavit evidence of the Defendants that on 26/1/2005 the Claimant was granted offer of Statutory Right of Occupancy over the subject matter of litigation being Plot No. **468**, within Utako (**BO5**) District, Abuja vide Exhibit ‘A’ and which was accepted by the Claimant vide **Exhibit ‘B’**.

That based on the conditions contained in the Certificate of Occupancy, the Claimant is to erect and complete buildings or other works within two (2) years. That the Claimant herein failed to within two years from the date of the commencement of the Right of Occupancy erect and complete on the said plot No. **468**, within Utako (**BO5**) District, Abuja, any buildings or other works specified in the detailed plans approved and also failed to pay ground rents in respect of the subject matter.

It is the contention of the Defendants that on the 20/9/2023, the 1st Defendant revoked the Claimant's right and interest over the property.

That the instant case was wrongly commenced by way of Originating Summons as affidavit of the parties are hostile, conflicting and irreconcilable.

A written address was filed wherein the following issues were formulated for determination to wit;

- (1) Whether from the facts and circumstances of this suit, same has not been improperly commenced by way of an Originating Summons.**
- (2) Whether the issued Notice of Revocation of the Right of Occupancy with file No. AD 20012 over Plot No. 468, within Utako (B05) District, Abuja complies substantially with the provisions of section 28(5) of the Land Use Act, Cap L5, laws of the Federation of Nigeria (LFN) 2004.**
- (3) Whether the Notice of Revocation of the Right of Occupancy with file No. AD20012 over plot No. 468, within Utako (BO5) District, Abuja duly signed by the 3rd Defendants Umar Sayyadi FNIVS, Deeds Registrar in the 2nd Defendant's Department of Land**

Administration on behalf of the 1st Defendant is lawful, proper and effective.

- (4) Whether the pasting of the Notice of Revocation of the Right of Occupancy with file No. Ad 20012 over plot No. 468, within Utako (BO5) District, Abuja by affixing a copy of it at a conspicuous part of the said plot No. 468, within Utako (BO5) District, Abuja, is not lawful, proper and effective.**

Counsel submits that the act done by the Defendants is proper and Court should dismiss the action. Especially, the suit was not in properly commenced. The Claimant upon service of the counter affidavit filed their reply on points of law wherein the Claimant responded to the issue of the mode of commencement of this suit and other issues.

I have gone through the affidavit evidence of the Claimant in support of the Originating Summons cum the exhibits annexed therein on the one hand, and counter-affidavit filed by the Defendants and the exhibit therein on the other hand.

I shall first of all determine whether considering the contentious nature of this case whether it is right to use an Originating Summon instead of a Writ of Summons to commence this matter as argued by learned Counsel for the Defendant in its written address.

It is instructive to state here that Order 2 Rule 3(1) and (2) of the Rules of this Court is clear on commencement of this type of action. For avoidance of doubt, Order 2 Rule 3(1) provides:-

“Any person claiming under a Deed, will, enactment or other written instrument may apply by Originating Summons for the determination of any question of constructions arising under the instrument and for declaration of the rights of the persons interested”

“Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by Originating Summons for the determination of such question of construction and for a declaration as to the right claimed”

I must observe here that where the transaction between parties is reduced into writing oral evidence will not be admissible to vary or contradict the content of such document. Section 128 of the Evidence Act, 2011, lends support to this assertion.

In this case, the claims of the Claimant are basically predicated on the Revocation Notice issued and pasted on the subject matter of the Litigation (**Exhibit ‘A’**), whether same was valid having regard to the provisions of section 28 (5) of the Land Use Act.

To add to that, where proceedings in a Court are by affidavit evidence, it is important that conflicts in such affidavit are not glossed over. The Court is enjoined to look at the nature of the conflict ***ORHENA ADUGUGBIERE & ANOR V. MRS. NGUMAN ADDING & ANOR (2014) 16 NWLR PT. 1430 page 394 at 399.***

A cursory look at the case before me will reveal that it has do with the interpretation of section 28(5) of the Land Use Act simplicita.

From the above, it is my ruling that mode of commencing this action before me is proper. Therefore finds in favour of the Claimant on this ground.

I shall now consider the substantive action to ascertain whether same has merit worth judicial blessings.

It must be borne in mind that the Plaintiff reliefs 1, 2 and 3 are declaratory in Nature thereby predicating the success of other reliefs on their success.

A party who seeks Judgment in his favour is required by law to produce evidence to support his pleading. It is an established position of law that in the cases where declaratory reliefs are claimed as in this present case, the Claimant must satisfy the Court by cogent and reliable proof of evidence vide affidavit in support of his claims. ***AGBAJE V. FASHOLA & 7 ORS. (2008) 6 NWLR PT. 1082.***

The Claimant in an attempt to prove its case annexed two documents as captured in the preceding part of this Judgment. Indeed, a trial Court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment or act on it. Documents tendered before a trial Court are meant for scrutiny or examination and evaluation. ***MOHAMMED V. ABDULKADIR (2009) 4 NWLR (Pt. 1076) 11, at page 156 – 157.***

Having perused through the documents annexed to the affidavit in support of the Originating summons and that of the counter affidavit of the Defendants, in my opinion *the issues formulated by the Claimant are apt and hereby adopted for determination.* The gravamen of the Claimant's case is anchored on **Exhibit 'A'** which is the letter of Revocation issued and pasted on the subject matter of litigation by the 2nd Defendant.

For avoidance of doubt and clarity the content of Exhibit 'A' which is Notice of Revocation of Right of Occupancy with File No. **AD 20012** over plot No. **468** within Utako (**BO5**) District Abuja is hereunder reproduced and reads as thus;

"I have been directed to refer to the above Right of Occupancy and to inform you that the Minister of Federal Capital Territory has in exercise of power conferred on him under the Land Use Act No. 6 of 1978 Cap. 15 Laws of the Federation of Nigeria, 2004, revoked your rights

interest and privileges over Plot No. 468 within Utako (BO5) District for contravention of guiding terms of allocation. This is also in line with section 28 subsection 5(a) and (b).

While we regret any inconvenience this may cause you, please accept the Hon. Minister's highest regards."

The said letter was signed by the 3rd Defendant (ESV Umar Sayyadi FNIVS).

On the first issue, to wit; **"Whether the failure to clearly and precisely state the grounds or reason for the purported revocation of the Claimant's title, does not invalidate exhibit A, thereby making it null and void and of no effect whatsoever"**, I have considered the facts of the case and the argument canvassed by parties.

It is not in doubt that the Minister of the FCT, like Governors has the power to revoke rights of Occupancy earlier granted as provided by the Land Use Act, Cap. 15, Laws of the Federation of Nigeria (LFN) 2004.

For avoidance of doubt, section 28(5) of the Land Use Act provides as thus;

"28(5) the Governor may revoke a Statutory right of Occupancy on the ground of:-

(a) A breach of any of the provisions which a Certificate of Occupancy is by section 10 of this Act deemed to contained.

- (b) A breach of any term contained in the Certificate of Occupancy or in any special contract made under section 8 of the Act.*
- (c) A refusal or neglect to accept and pay for a Certificate which was issued in evidence of a right of Occupancy but has been cancelled by the Governor under subsection (3) of section 9 of the Act.”*

It is the contention of Learned Counsel for the Claimant that the reasons for the revocation were not given to warrant the validity of the revocation. In the instant case, the reason given in Exhibit A is that the title is being revoked for "contravention of guiding terms **of** allocation". The author of the notice did not stipulate what terms of the allocation was contravened in any way or in any manner.

in the case of ***C.S.S. BOOKSHOPS LTD v. REGISTERED TRUSTEES OF MUSLIM COMMUNITY IN RIVERS STATE & ORS (2006) LPELR-824(SC) (Pp 52-52 Paras A-D)*** cited by the Claimant's counsel, the position of the law was firmly and emphatically restated in the following words:

"Where right of occupancy is stated to be revoked for public purpose, there is the need to spell out the public purpose in the notice of revocation..... The reason for revoking a person's right of occupancy must be stated in the notice of revocation notwithstanding that

the Act did not expressly state that the specific ground of the revocation must be stated in the notice.

Also, in the case of ***GOVT OF KWARA STATE & ORS v. IREPODUN BLOCK MANUFACTURING LTD & ORS (2014) LPELR-22553(CA) (Pp 10 - 11 Paras -B)*** it was held that:

"The purpose of stating the reason or reasons for revocation of a Certificate of Occupancy is to furnish the grantee with the reason or reasons why his right to the land shall be extinguished. While the combined effect of the requirements that the grantee shall be given an advance notice and that the notice shall state the reason or reasons for the revocation is to allow the holder of the right of occupancy to challenge, petition, protest or make any form of representation about the intended revocation. Its effect on the grantor is that, in a subsequent suit following a revocation of Certificate of Occupancy, the grantor cannot rely on reason or reasons not stated in the Notice of revocation to establish the validity or otherwise of the revocation. If this is permitted, the purpose of giving an advance notice and stating reasons for the intended revocation will be defeated as the grantee would have been shut out from making any representation on the reasons that were not brought to his knowledge."

There is no mention of the specific ground for the revocation of the Claimant's title to the subject property in **Exhibit A. having been guided by the decisions in the above cases, I resolve this issue in favour of the Claimant.**

On the second issue, to wit: "Whether the 3rd Defendant has the legal competence to sign and issue Exhibit 'A' on behalf of the Hon. Minister of the Federal Republic of Nigeria."

Claimant's Counsel submitted that, the 3rd Defendant who is not the Minister of Federal Capital Territory cannot exercise the powers of the President to revoke title to land without instrument of authority being shown or demonstrated. And by the same token, the 3rd Defendant cannot act on behalf of the Honourable Minister to whom the power has been delegated by statute. As well captured in the latin maxim *delegatus non potest delegare*.

On their part, counsel for the Defendants submitted that the Notice of Revocation of the Right of Occupancy with File No. **AD20012** over Plot No. **468**, within Utako (**B05**) District, Abuja, duly signed by the 3rd Defendant, **UMAR SAYYADI FNIVS**, Deeds Registrar in the 2nd Defendant's Department of Land Administration on behalf of the 1st Defendant is lawful, proper and effective.

Counsel relied on Section 28(6) of the Land Use Act which provides thus:

"(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder."

Counsel submitted that the said Notice of Revocation of Right of Occupancy in this case meets squarely the provisions of Section 28(6) of the Land Use Act as the said instrument is duly signed by the 3rd Defendant who is a Public Officer in the 1st and 2nd Defendants' Department of Land Administration and who is duly authorized by the 1st Defendant in this case.

Here it is my finding that the provision of section 28(6) of the LUA is instructive and applies as argued by the Defendants' counsel. It is also my finding that by the provisions **Section 13 (3) (b) of the Federal Capital Territory Act, 2004** and Section 28 (6) of the Land Use Act, when read together, it does not make the 1st Defendant a delegate per'se nor does it in any way restrict the 1st Defendant from delegating the said Powers bestowed upon him. See ***SIMEON V. COLLEGE OF EDUCATION EKIADOLOR BENIN (2014) LPELR-23320(CA) (Pp. 35-38 paras. B)*** Where the court of Appeal held;

“However, it has been held that a government functionary may normally act through departmental officials without

infringing the maxim. Thus, where functions entrusted or delegated to a functionary are performed by an official employed in the department headed by that government. There is in law no functionary delegation or sub-delegation because constitutionally, the act or decision of the official is that of the functionary.”

Accordingly, I resolve the second issue against the Claimant

On the last issue, to wit; “Whether the Law permits for a Notice of revocation to be pasted on the property being sought to be taken away from the Claimant, rather than services on the address of the Claimant.”

Here it settled law that a notice of revocation can only be served in one of three ways in strict compliance with the provision of Section 44 of the Land Used Act which stipulate as follows:

"any notice required by this act A to be served on any person, shall be effectively served on him... a) by delivering it to the person on whom it is to be served; or b) by leaving it at the usual or last known place of abode of that person; or c) by sending it in a prepaid registered letter addressed to that person, at his usual or last known place of abode; or d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its

registered or principal office or sending it in a prepaid registered letter addressed to the secretary or Clerk of the company or body at that office; or e) if it is not practicable, after reasonable inquiry to ascertain the time or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering to some persons on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises"

I do not find that pasting a notice of revocation on the fence of the property sought to be taken away from the Claimant meets the requirement of the law. Indeed, the law requires strict compliance with all provisions governing revocation of title. In the case of *NIGERIAN ENGINEERING WORKS LTD V. DENAP LTD*, (2001) 18 NWLR (PT.746) P. 741 the law on this point was sufficiently explained in the following words:

"... the requisite notice of revocation shall be effectively and validly served as provided under Section 44 (a) - (e) of the Act, and that failure to serve same renders any purported revocation null and void..... in *Inakoju V. Adeleke* (2007) 4 NWLR (Pt.1025) P.423, this Court held as follows:- "The Courts are bound to enforce the mandatory provisions of a substantive law including the

constitution. It is the duty of all Courts to give effect to legislation. Therefore, parties cannot by consent or acquiescence or failure to object, nullify the effect of a statute or constitution. In other words, it is the duty of a Court to enforce mandatory provision of an enactment."

I resolve the 3rd issue in favour of the Claimant.

On the whole in view of my findings in issues 1 and 3, it is my ruling that the Claimants suit succeeds and I accordingly enter judgment for the claimant in these terms.

Reliefs 1, 3, & 4 are granted as prayed.

1) AN ORDER OF THE HONOURABLE COURT DECLARING that the Notice of Revocation with File No. AD20012 over Plot No. 468 Utako (BO5) District, Abuja, dated 20th September, 2023 which did not state the specific grounds or reason for the purported revocation as required by the mandatory provision of Section 28 subsection 5 (a) & (b) of the Land Use Act No. 6 of 1978 Cap. 15 Law of the Federation of Nigeria 2004, and all extant Laws and Judicial Precedent amounts to a flagrant breach of the Land Use Act and to that extent the said notice of revocation in File No. AD20012, dated 20th September, 2023 is all together unlawful, unconstitutional, null and void and of no effect whatsoever or in howsoever manner is hereby granted.

3) AN ORDER OF THE HONOURABLE COURT DECLARING *that the Notice of Revocation with File No. AD20012 by pasting the same on Plot No. 468 Utako (BO5) District, Abuja does not amount to proper service of the said notice of revocation has enshrined under Section 44 of the Land Use Act No. 6 of 1978 Cap. 15 Law of the Federation of Nigeria 2004, making the said notice of revocation ineffective, unlawful, null and void and of no legal effect whatsoever is hereby granted.*

4) AN ORDER OF THE HONOURABLE COURT SETTING ASIDE *in whole and its entirety, the Notice of Revocation of the Right of Occupancy with File No. AD20012 over Plot No. 468 Utako (BO5) District, Abuja dated 20th September, 2023, for reasons set out in the questions and reliefs sought in this Originating Summons and other reasons consistent with the provision of the law which makes the said Notice of Revocation unlawful and therefore null and void is hereby granted.*

SIGNED:

HON. JUDGE

11/07/2023.

Appearance:

O. J. Kekemeke, Esq, for the Claimant

J. Akubo, Esq, with Stephone Abdulsalam, Esq, for the Defendants