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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 5TH DAY OF JULY, 2024

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

SUIT NO.: FCT/HC/CV/1801/2020

BETWEEN:

SUNDAY PAM TOK ------ PLAINTIFF

AND

1. ZEBERCED LIMITED
2. ZEBERCED CONSTRUCTION LIMITED } DEFENDANTS
3. ZEBERCED PROPERTY LIMITED
4. ZEBERCED FURNITURE LIMITED

JUDGMENT

On the 11th of June, 2020 the Plaintiff instituted this action against the Defendants claiming the following Reliefs:

1. **A Declaration that the Plaintiff is the lawful owner of the Res – Plot 477 of about 1259sqm at Kubwa Extension II Relocation covered by Right of Occupancy date 12th March, 2005.**
2. **A Declaration that he is entitled to the grant of the Certificate of Occupancy over the said Plot 477 of about 1259sqm at Kubwa Extension II Relocation.**

3. **An Order declining any approval or mining license granted to the Defendants as it affects the Res.**
4. **An Order of Perpetual Injunction against the Defendants. Their labourers, workers, agents, privies, assigns or any person howsoever described from further trespass, encroachment or construction on the Res.**
5. **An Order directing the Commissioner of Police FCT to enforce/give effort to all Order of this Court granted in this Suit.**
6. **₦20, 000,000.00 (Twenty Million Naira) as damages for the trespass.**
7. **₦1.5 Million Naira as cost of the Suit.**

The Plaintiff called 2 Witnesses and tendered 4 Exhibits. The Defendants called one Witness and tendered 7 documents as Exhibits.

In the Final Written Address the Plaintiff raised 2 Issues for determination which are:

(1) Whether the Suit against the 3rd Defendants – Zeberced Property Limited is competent.

(2) Whether from the evidence before this Court, the Claimant has proved his claims against the Defendants to be entitled to the Reliefs sought.

The Plaintiff Counsel on behalf of the Claimant answered the questions in the affirmative, that the 3rd Defendant is a juristic person and can be sued and can sue. That they

served it with **EXH 4 –** Letter addressed to it and duly acknowledged by it. That there was a reply by the Defendant to the letter. That the 3rd Defendant is duly registered as a business name. That the omission of the word "Limited" is an oversight and should not vitiate the competence of the Suit. That as a registered business name it can be sued. He referred to **Order 13 R. 24 and R. 27 of the High Court Rules of Federal Capital Territory** and the case of:

Iyke Medical Merchandise V. Pfizer
(2001) 10 NWLR (PT. 722) 543 – 547

That the competency of the 3rd Defendant in this Suit has no nexus or fatal on the Suit. That the 1st Defendant is the parent company of the 3rd Defendant as clarified by the Defendants in this Suit. They urged Court to so hold.

On the second Issue, the Claimant answered in the affirmative also. That the Plaintiff has placed before the Court cogent facts and evidence on the ownership of the Res which is different from the land purportedly leased to the Defendants for operation of a quarry. That he has shown that his land is not a rock where quarrying activities can be carried out. That the Res is a flat land in a residential layout. That the Defendants failed to show that the property leased to it is same as the Plaintiff's property and that it was for quarry operation.

That he has established that he was in long possession of the Res and that the act of the Defendants constituted a trespass. Hence, the Plaintiff is entitled to the damages for

the trespass. He urged Court to so hold. That he is entitled to both Declaratory, Consequential and Ancillary claims in this Suit. He relied on the case of:

Olukotintin V. Sarumi
(2002) 13 NWLR (PT. 784) 314

And the provision of **S. 131 of the Evidence Act.**

Idundun V. Okuagba
(1976) 9 – 10 SC 277

Zahwa V. Atods & Ors
(2012) LPELR – 56437 (CA)

That the Plaintiff proved its case by tendering documents and proof of acts of ownership as to how he got to the land from Danladi Adamu who got through one Mathias Onoja who got from Abubakar Dakni. That his documents of title were duly executed with Right of Occupancy and Conveyance of Provisional Approval, Deed of Assignment and Power of Attorney duly executed too.

That the DW1 told Court that he knows about the case and corroborated the testimony of the PW2 – the Plaintiff in this Suit. That their testimonies were never discredited or challenged by the Defendants. So also their evidence. He referred to the case of:

Okon Dan Osung V. The State
(2012) 15 NSCQLR Vol. 51 P. 36 @ 45 Ratio 9

That PW2 stated how he acquired the land and he tendered documents in support too. That the Defendants relying in non-registration of the registrable instrument cannot stand

because the issue in this case falls on exception to **S. 15 of the Land Registration Act** which provides that where registrable instrument as in this case is tendered in support of a claim for specific performance or prove of such equitable interest and t prove payment of purchase money or rent, ... That this case falls within the exception. He referred to the cases of:

Adeniran V. Olagunju
(2001) 17 NWLR (PT. 741) 169

Ankara & Anor V. Nzeoji & Anor
(2022) LPELR – 57998 (CA)

Where Court held that where an unregistered Deed is admitted as Purchase Receipt, there must also be sufficient prove of delivery of possession in order to create equitable interest in the land. That the Claimant has proved so in this case. He referred to the case of:

Ohaeri V. Yusuf & Ors
(2009) LPELR – 2361 (SC)

That the Claimant proved that there is evidence of payment of money and that there is continuous possession of the Res which defeats the title of a subsequent purchaser of legal estate. He referred to the case of:

Registered Trustee of Muslim Mission Ao. Committee V. Oluwole Adeagbo
(1992) 2 NWLR (PT. 226) 690 @ 706

That exception to **S. 15 of the Land Registration Act** stands in Claimant's favour in this case.

That the Right of Occupancy issued to Danladi Adam emanated from the appropriate authority as such Conveyance can be done by officer of the FCT delegated by the Minister for and on behalf of the Minister as such official in the office of the Minister can undertake the function as the decision of the official in the decision of the Minister. He referred to the case of:

Federal Housing Authority V. Ekpumobi & Ors
(2021) LPELR – 55741 (CA) PP 34 – 39

He submitted that the submission of the Defendant that the documents not being signed by the Minister is baseless and in bad faith.

That the land approved for quarry is totally different from the land in issue – Plot 477. That the Plot for quarry is Plot 1000 CAD Zone F12 of Jibi Abuja. While the Res is situate and lying at Kubwa Extension II (Relocation), FCT Abuja. That the Claimant clearly described and shown through the map, the exact location of the Res. But the Defendant failed to do so in this case. That the same land for quarry at Jibi is same with the Res. That with the Survey Plan the Claimant showed the identity of the Res and its ascertainable boundaries with definite certainty. He referred to the case of:

Aremu V. Adetono
(2007) LPELR – 546 (SC)

Akpan V. Otong & Ors
(1996) LPELR – 374 (SC)

Arabe V. Asanlu
(1980) 6 SC 78

That from all indication the Res located at Kubwa Extension II (Relocation) is not same as the land for quarry allocated to the Defendants.

That the Claimant has shown with the testimonies of PW1 and PW2 that the action of the Defendants amounted to trespass. That he has suffered damages too as a result of that. That he has established long possession of the Res before the trespass which is what is required in law to prove trespass. Hence, he is entitled to damages. That the evidence of DW1 corroborated that fact.

That even when the Defendant allegedly complained to the Development Control, there was no response to their complaint hence, confirming that their complaint is frivolous.

That the Defendants never went to Court to seek redress and challenge the Claimant. But they resorted to intimidation of the Claimant instead and they brought down the fence erected by the Claimant in the Res. He referred to the case of:

Ichita & Anor V. Ichita
(2017) LPELR – 42074 (CA)

That the Defendants are hell-bent to acquire the Res as it has done in the adjourning Plot where it had paid off some Allottees and fenced the area, hence, denying the Claimant

access to his Res by fencing the whole area. That he is entitled to Damages. He referred to the case of:

Ademola V. Dada
(2003) LPELR – 162 SC

He urged the Court to so hold and enter Judgment in Plaintiff's favour.

On the part, the Defendants called 2 Witnesses and tendered 7 documents. In their Final Written Address they raised 2 Issues for determination which are:

(1) Whether the Suit as against the 3rd Defendant is competent.
(2) Whether from the evidence adduced the Claimant has proved his claim and is entitled to the Reliefs sought.

On Issue No. 1, they submitted that the 3rd Defendant is a non-juristic person and the Suit against it is incompetent. That Zeberced Property Limited does not exist as it is not incorporated entity. They urged Court to strike out the name of the 3rd Defendant from the Suit. They relied on the cases of:

Hyanus Trust V. Zainab
(2018) LPELR – 46969

Dikko & Sons V. CAC
(2014) LPELR – 23730 (CA)

On Issue No. 2, they submitted that the Claimant has not made out a case to be entitled to the Reliefs sought in this case. That he has not led any evidence to prove ownership

of the Res. That he has not proved that he is the owner of the Res. That he has not proved that he is in possession of the Res or that he is entitled to possession of the Res. That the Claimant did not prove that the Defendants encroached into the Res or trespassed therein.

That all land in the Federal Capital Territory (FCT) are vested on the Federal Government and the only person with the right to allocate land within the FCT is the Hon. Minister of the FCT through his delegates. That no Area Council – Bwari Area Council or any other can allocate land, hence, any land allocated by Area Council is invalid. Also, that unregistered Power of Attorney or Deed of Assignment cannot be tendered or admitted in evidence as proof of title. That the allocation of Plot 1000 CAD Zone F12, Jibi, as a Quarry site and the Mining Lease issued to the Defendants is and remains valid.

That the Claimant had not proved that he is entitled to the Reliefs sought. That the Claimant is not also entitled to any cost of the action. The Defendants relied on and referred to the following cases:

Ona V. Atanda
(2000) 5 NWLR (PT. 656) 244 @ 267

Bill Brothers Limited & Ors V. Dantata & Sawoe
(2015) LPELR – 24770 (CA)

Madu V. Madu
(2008) LPELR – 1806 (SC)

Also **Section 15 of the Land Registration Act.**

Uzoegwu V. Ifeakandu
(2001) 17 NWLR (PT. 741) P. 49

Ogbini V. Nig. Construction Limited
(2006) 9 NWLR (PT. 989) 474

Akuduno V. Akaya
(2007) LPELR – 344 (SC)

That the Defendants' allocation was granted by the Hon. Minister of the FCT. That the allocation was for Quarry not residential. That the entire documents of the Claimant should be expunged and that part of the evidence should be expunged too. That the Claimant was not in possession and has not established same. That it is for the Defendants to prove ownership of Plot 1000 not the Claimant.

The Defendants relied on the provisions of **S. 131, 133 and 134 of the Evidence Act** and the cases of:

Ladoja V. Ajumobi
(2016) 11 NWLR (PT. 1519) 88 @ 173

Daniel V. INEC
(2015) 9 NWLR (PT. 1463) 113 @ 157

That the Claimant has not proved ownership and he is not entitled to ownership or possession and not entitled to damages too. They referred to the cases of:

Olagbeni V. Oyewusi & Or
(2013) LPELR – 20363 Pg. 36

Interdrill V. UBA
(2017) 13 NWLR (PT. 1581) 52 @ 75

They urged Court to so hold and dismiss the Suit of the Claimant and hold that the Defendants are entitled to cost of this Suit – **₦3, 000,000.00 (Three Million Naira)** against the Claimant.

The Defendants also filed Reply on Points of Law to the Claimant's Final Written Address on issues raised by the Claimant.

On competency of the Suit against the 3rd Defendant, the Defendants submitted that the Claimant only relied on **Order 13 Rule 25 & 29** to give competence to the 3rd Defendant who is addressed as Zeberced Property Limited instead of Zeberced Property Company.

On Issue No. 2, the Defendants submitted that the Claimant has not proved his claims against the Defendants. That there is no instrument shown, transfer from Dakini to Danladi Adam and to the Claimant. That the testimony of PW1 and PW2 were challenged during Cross-examination. That the Defendants challenged the unstamped and unregistered instruments tendered by the Claimant. That if Court allows the document that the 1st Defendants is not subsequent a purchaser of Leal Estate. That the allocation of Plot 1000 in 2008 and subsequent renewal in 2014 as shown in **EXH 7 & 8** proceed the execution of unregistered Instruments in 2016. That there is no Conveyance of Provisional Approval issued to the Claimant by the Hon. Minister of the FCT before this Court but the one issued by Abubakar Dakini. That there is no rural land within the Federal Capital Territory.

That the purported Right of Occupancy granted over land within the Federal Capital Territory and any title derived from

that is null and void. That the Bwari Area Council and the Hon. Minister FCT are 2 different entities and separate offices as both are reenacted under the **1999 Constitution of the Federal Republic of Nigeria** (as amended). They urged Court to so hold.

That if Court holds that allocation of Customary Right of Occupancy is valid that Court should note that there is no evidence of transferred instrument to that effect. Again, that there is no evidence of revocation of the title by the relevant authority between the 2. That the Defendants claim that the land claimed by the Claimant belongs to the Defendants and falls within the boundary of the property allocated to them. That the Survey Plan must be tendered or admitted in evidence as proof or root of title.

That land in FCT is designated as urban land. So, Customary Right of Occupancy issued in FCT is invalid, null and void. That the allocation of Plot 1000 CAD Zone, F12 Jibi is quarry site and the mining lease to the 1st Defendant is and remains valid. That the Power of Attorney and Deed of Assignment not registered are invalid and cannot be admitted in proof of title. They urged Court to dismiss the Suit of the Claimant and award cost against the Claimant too.

COURT

Having summarized the stances of the parties above, can it be said that the Claimant in this case has proved and established his case against the Defendants by the testimony and documents tendered in evidence and as such he is entitled to the Reliefs sought? OR From the evidence of the Defendants and documents tendered in challenge of the case

of the Claimant, have they discredited the case of the Claimant and as such the Court should dismiss the Suit and award cost against the Claimant? Also, is this Suit, as it pertains to the 3rd Defendant – Zeberced Property Limited, incompetent based on the fact that the Claimant added the word "Limited" to the name of the 3rd Defendant?

Not answering the questions seriatim, it is the humble considered view of this Court that the Claimant has established his case and deserve the Judgment of this Court been entered in his favour. He is also entitled to the Reliefs sought in this case. So this Court holds.

On the issue – whether the Suit is competent against the 3rd Defendant, it is the view of this Court that it is competent. To start with, going by the provision of Order 13 especially Rule 25 & 29, a registered business can sue and be sued as if it is a registered firm. See **Order 13 Rule 24.** See also the case of:

Iyke Medical Merchandize V. Pfizer
(2001) 10 NWLR (PT. 722) 543 @ 547

Aside from the provision of the Order 13 Rule 25 & 29, the DW1 also confirmed that the 1st Defendant is the parent company of the Defendants. Besides, the document – **EXH 4(b)** titled: **"Letter of Trespass to Land occasioning Damages"** dated 26th February, 2020 written by the Claimant's Solicitor – A.D. Ringsun & Co. was addressed to the 3rd Defendant. The document was sent by DHL – courier services. It was received by the 3rd Defendant and they acknowledged receipt. Again, the Defendant signed responses sent to the Claimant. That alone is enough evidence to show that the issue in dispute is not strange to the 3rd Defendant.

Besides, the Defendants' Witness had informed Court on record that the 1st Defendant is the alter-ego of the Defendants. Hence, the Suit is competent.

Again, the omission to do a thing in the cause of filing a Suit is treated as mere irregularity moreso when such omission will not in any way over-reach the other party. Again, when the said omission or addition has no adverse effect on the Suit as a whole. The 3rd Defendant is a juristic person by all standard as it is a duly registered Business name. Again, there is no other company and the Defendants did not show that there is another company with that name. The Suit is therefore competent against the 3rd Defendant.

As already stated, the Claimant has established its case against the Defendants through the cogent, credible and water-tight evidence – documentary and oral evidence tendered before this Court. He was able to discharge the burden of proof. He alleged and proved with credible evidence the existences of the fact before this Court. He was able to show how he came into the Plot by the documents he tendered from Abubakar Dakani to Danladi Adam – Offer letter dated 27th May, 2003 and later to 12th of March, 2005 after it was cancelled. That document was not challenged or controverted. He also tendered a Power of Attorney Danladi donated to him on the 14th of October, 2016 that document was tendered as **EXH 2.** So also he tendered the Deed of Assignment duly executed by the parties – Danladi and the Claimant on the same date. That document was tendered as **EXH 3.**

The Claimant also showed that he took possession and effectively occupied the said Plot 477 of about 1259sqm at

Kubwa Extension II. He applied for and obtained Building Plan approved by the appropriate authority. The document was tendered and marked as Exhibit. He further proved effective occupation which is evidence of possession by construction of a dwarf perimeter fence round the Res. He had shown that he enjoyed and continued to enjoy quiet and effective possession of the Res until the Defendants trespassed therein by constructing a re-enforced concrete fence enclosing the Claimant's Plot of land illegally, unlawfully and in total disregard of the Development Plan of the Layout thereby denying the Claimant access to the Res which was legally and duly in his possession. This the Claimant showed/established by tendering the letter of 26th of February, 2020 which he instructed his Counsel to write to the Defendants complaining about the act of trespass by the Defendants over the Res. That document was tendered as **EXH 4** in proof of the allegation of trespass. In the said **EXH 4** the Claimant gave the Defendants pre-notice of the present litigation should they fail to stop the act of trespass. But notwithstanding all that, the Defendants refused to stop the trespass and the Claimant instituted this action as he had warned. The document of TDP tendered by the Claimant shows as required the exact size and location of the Res, showing the co-ordinates. Hence, fulfilling the requirements of the law as it pertains and in prove of title to the land in issue. That TDP was tendered as **EXH 6.** It was duly signed by the appropriate authority in that regard. It was based on the continued act of trespass that the Claimant instituted this action against the Defendants. He engaged the service of a lawyer – A.D. Ringsun & Co. He tendered the Bill of Charges

charged and sent by the said lawyer. That document as attached as **EXH 5.**

To further buttress that the Suit of the Claimant is competent against the Defendant as held by this Court, it is imperative to take deeper look at **EXH 11** which the Defendants replied to the letter from the Claimant's Counsel sated 26th of February, 2020. That letter – **EXH 11** was written by the Counsel to the 1st – 3rd Defendants and addressed to the Counsel to the Claimant. It was dated 11th of March, 2020 and received on 19th of March, 2020. In it the Solicitor acting on behalf and under the instruction of the 1st – 3rd Defendants stated in paragraph 1 thus:

> **"We are Solicitors to Zeberced Construction, Zeberced Furniture and Zeberced Property Company jointly and severally ... and it is on their instruction that we reply to the 3 letters all dated 26th of February, 2020."**

The above letter was copied to the Defendants. Hence, the Court holds that the 3rd Defendant, as a sister company of the 1st & 2nd Defendants, is same and have no doubt that the Suit is competent against the 3rd Defendant. So this Court holds.

For the issue of proof of the case, the Claimant was able to prove the title to the land in issue as required by law. He proved the genealogy of the Res by tendering the documents. He proved the various acts of ownership, quiet enjoyment before the trespass and act of possession of the Res. See the case of:

Akoledowo V. Ojibutu
(2012) 16 NWLR (PT. 1297) 1

The Claimant had also established that the action of the Defendants was a trespass. He had shown that he is the owner of the Res and that he was in quiet and exclusive possession long before the Defendants came into the Res to erect the re-enforced fence. The document he tendered showed that it predates the document of the Defendants as per the issuance of Mining License. He established the nature of his title. This Court is satisfied with the nature of the title the Claimant claimed in this Suit which is by Conveyance of Provisional Approval. He also showed evidence establishing the said title as required by law and held in the cases of:

Adesanya V. Aderonmu
(2000) 9 NWLR (PT. 672) 285

Oriodo V. Akinlolu
(2012) 9 NWLR (PT. 1305) 370

The Claimant has satisfied this Court that he was in possession of the land in dispute before the trespass as required by law and as decided in the cases of:

Dim V. Attorney-General of the Federation
(2004) 12 NWLR (PT. 888) 459

Kareem V. Ogunde
(1972) 1 SC 182

Oluwole V. Abubakar
(2004) 10 NWLR (PT. 882) 549

It is the law and as held in plethora of cases that the right of easement is the entitlement of every land owner. It is a constitutional right as guaranteed under **CAP 4** particularly **SS. 40 & 44 of the 1999 Constitution of the Federal**

Republic of Nigeria (as amended). It is a right in civil tort. It affords the land owner the full and plenitude enjoyment of one's property. Therefore, any obstruction or interference with a person's right of easement is a violation of the person's Fundamental Right under the Constitution.

In this case the Claimant has shown strength in the documentary evidence he tendered before this Court. He had not relied on the weakness of the Defence. Hence, he deserves the Judgment in his favour and is entitled to all his Reliefs in that he had constructed perimeter fence around the Res long before the Defendants erected a re-enforced concrete fence around the Res hence blocking the Claimant from entrance to his land. All the above established by the Claimant are all that are required to prove title to land. He had also shown full demarcation, size of the Res – 1250sqm with the co-ordinates in the TDP – **EXH 6** which confirms that the Res is Plot 477. It shows that its location as the Claimant had stated is at Kubwa not Jibi, the same information as contained in the in **EXH 1,** in the Offer of Grant and Conveyance of Approval. It is the law and had been held in plethora of cases that in any issue concerning land where a party is been able to prove title by the means raised above that the Court shall not hesitate to hold that such a party is entitled to his claim as far as the issue of title to such land is concerned. Where such is the case the Court will not delay in granting such Relief as sought. Such proof is also applicable to the prove of title to land within FCT which has the same statute in law and the Constitution as any State in the Federation. That is the decision of the Court in the following cases:

Oriodo V. Akinlolu

(2012) 9 NWLR (PT. 1305) 370

Ashiek V. Bornu State Government
(2012) 9 NWLR (PT. 1305) 301

Owoeye V. Oyinlola
(2012) 15 NWLR (PT.84)

In this case the Claimant has discharged the onus placed on him and he proved his title to the land. See the cases of:

Atuchukwu V. Adindu
(2012) 6 NWLR (PT. 1297) 534

Aremu V. Adetoro
(2007) 16 NWLR (PT. 1060) 244

Olufosoye V. Olorufemi
(1989) 1 NWLR (PT. 95) 26

Elias V. Omo-Bare
(1982) 5 SC 25

Before I conclude this Judgment, it is imperative to take a look at the Defence and the submission and the documents tendered in challenge of this case.

The Defendants had challenged the Deed of Assignment and the Power of Attorney in that they were not registered as registrable instruments. They had cited **S. 3 & 15 of the Land Registration Act** and as such cannot be pleaded and that the documents should be rejected. However, there is exception to the provision of **S. 15 of the Land Registration Act.** That exception is to the effect that once such unregistered registrable instrument is brought before the Court as Exhibit in support of a claim to prove equitable

interest in land and payment of purchase price or money, such document, though not registered, cannot be faulted as it will sail. That means that where the document is for claim of specific performance or equitable interest or proof of payment of purchase money, there is no need that the document should be registered. In that case, non-registration of the registrable instrument is not a problem and its registration is not required.

In this case the Claimant had used the presentation of the Deed of Assignment and Power of Attorney to show how he got into the land; that he has the equitable interest in the land and evidence of payment of purchase price of the land. So in that wise the non-registration of the 2 documents – Deed of Assignment and Power of Attorney is not affected by the provision of **S. 3 & 15 of the Land Registration Act** on registration of registrable instrument. Hence, in this case the documents fall within the exception to the said **S. 15 of the Land Registration Act.** So this Court holds. The Defendants' submission in that regard and their challenge of the 2 documents cannot hold. That submission is therefore dismissed. The Court attaches full weight to the 2 documents as they established the genuineness of the title of the Claimant in this case. So this Court holds. See the cases of:

Adeniran V. Olagunju
(2001) 17 NWLR (PT. 741) 169

Ankama & Anor V. Nzeoji & Anor
(2022) LPELR – 57998 (CA)

In this case the unregistered documents – **EXH 2 & 3** had shown that there is evidence of purchase price, they are also

proof of delivery of possession. Hence, there is creation of equitable interest on the land. See the decision of Court in the cases of:

Ohaeri V. Yussuf & Ors
(2009) LPELR – 2361 (SC)

Registered Trustees of Moslem Mission Hospital Committee V. Oluwole Adeagbo
(1992) 2 NWLR (PT. 226) 690 @ 706

The Claimant showed that there is evidence of money paid and transfer of possession to him and effective occupation as shown by the Building Plan and construction of the dwarf parameter fence. The Defendants never disputed those facts.

The argument of the Defendants that the Right of Occupancy was not granted by the appropriate authority cannot stand because the Offer of Terms – **EXH 1** states thus:

> **"I am pleased to convey the Hon. Minister approval of Statutory Right of Occupancy in respect to Plot 477 of about 1250sqm."**

The above need no further explanation. The person who wrote the letter has the backing of the Minister of FCT who has the authority to allocate and approve the Statutory Right of Occupancy. He signed for the Hon. Minister of FCT. He would not have done so on his own volition. The person had shown and stated that he acted on the instruction of and for the Minister. The Defendants' argument and submission on that is dismissed as it has no monument. See the cases of:

Federal Housing Authority V. Ekpumobi & Ors
(2021) LPELR – 55741 (CA) P. 34 – 39

Leventis V.PetroJessica Ent. Limited
(1999) LPEKR – 1781 (SC) 14 Para A – B

A closer look at the **EXH 7 –** Allocation of Land to the 1st Defendant, it was written on 18th of March, 2018. It shows that approval was given to the Defendant for the allocation of temporary Quarry Site to them at "Kubwa" pending permanent site. It covers an area of 130 Hectares. It did not specify the actual place where the site was located in Kubwa. The Defendant was to inform the FCT Administrative of their acceptance of the grant. The Agreement Lease was later granted as shown in a letter dated 7th of February, 2014 almost 6 years after as seen in the Agreement attached to the said **EXH 7.**

It is strange that the Defendant who supposed to accept the temporary land for quarry as shown in **EXH 7** did not do so until 7th February, 2014 – 6 years after, going by the Letter of Acceptance of the Lease Agreement. Meanwhile, as seen in Lease Agreement, the Quarry Lease was granted on 23rd of June, 2014. Meanwhile, the 1st Defendant was to inform the FCT Administrative of the acceptance of the Lease Agreement for the Quarry site within 2 months from the date of the letter, for them to conclude on Allocation.

In the Letter of Acceptance the Quarry (land) is located at CAD Zone F12 at Jibi, an area of 316,8344.24m^2. By the Agreement it is on Plot 1000 CAD F12. The Res in this case is Plot 477 CAD Zone 07 – 05.

From the above it is clear that the Res is totally different in size (1250sqm), different in CAD Zone (07 – 05), different in

location (Kubwa Extension II Relocation) which is totally different from CAD Zone F12, Jibi. Besides, the topography of the Res shows that it is a flat land with no rock where quarry activities can be carried on. It is also in Residential Area/Layout.

The Defendants were not able to establish before this Court that the Res is same as the land allocated to them for mining/quarry business operation. The Defendants were not able to discharge that burden when the Claimant shifted it to them.

Even in the document, **EXH 9 –** letter by the 1st Defendant to Development Control reporting incidence of encroachment on their property, the Defendants were economic with truth and details. They did not describe vividly as required by law the land which they alleged was been encroached into and by who.

By the second paragraph of the letter it is clear that people were already in possession and occupation of the land as they had built houses/structures. In the same document they did not describe their land ad location and title documents to the land. The document was dated 8th November, 2016 but the stamp on it evidencing receipts and acknowledgment shows that it was received 8 months after it was written. See **EXH 9.**

EXH 10 is another letter from the Defendant written on the 17th of May, 2017. The letter was received on the 22nd of May, 2017.

The Claimant wrote a letter to the Defendants on 26th February, 2020 which was couried to the 1st – 3rd Defendants on 26th February, 2020 complaining bitterly about the trespass by the Defendants into Plot 477 – **EXH 4** refers. The Claimant gave vivid description of the land as to size, location etc. He described how he got to the land and that he had developed sub-structure for the building of the twin Duplex and had developed perimeter fence around the Res.

That the Defendants' company had trespassed into the Res by re-erecting a re-enforced fence, destroying part of the Claimant's fence, an action which is against the development plan of the layout. Most importantly, that the action of the 1st Defendant on the land of the Claimant had denied the Claimant access to his land as the Defendants blocked all the access road to the Res with their fencing constructed therein. The said letter was written on 26th February, 2020 almost 3 years and 6 months after the letter of Defendants to Development Control written on 8th November, 2016 which was received on 21st July, 2017 and another letter of Defendants to Development Control written on 17th May, 2017 received by Development Control on 22nd May, 2017 – **EXH 10.** The disparity in the date of receipt of the letters should be noted.

Besides, given the vivid description of the land in which the Claimant complained of the trespass by the Defendants and 26th February, 2020 the date in which the letter was written and the response of the Defendants to the letter dated 11th March, 2020; it is very clear that the trespass complained of

the Defendants is totally different from the trespass complained of by the Claimant. By the **EXH 4** the difference is clear. In the letter of 26th February, 2020 the Defendants responded on 11th March, 2020. The land in issue in the said letter is the Res. The Defendants know that. The Defendants in the response denied encroaching. But agreed that their sister company constructed fence around the land. See **EXH 11.** But the Defendants did not tender any document to show the number of the Plot allocated to them, where the allocation is, to show and prove that they did not encroach into the Res. The documents they tendered showed that they were allocated land at Jibi NOT in Kubwa. They equally refused to accede to what the Claimant demanded in **EXH 4.**

That brings me to the other document which the Defendants presented before the Court – Area View Plan – google picture. The said document – **Google Map** tendered as **EXH 12** was not certified by the Allocator of the Plot 1000 situate at Jibi Abuja which the Defendants claimed was allocated to it by the Federal Capital Territory Administration. On the back page of one of the pictures from Google Map particularly the one that has on its face 2018, it shows that the document is about a German School when they were asked to provide information on how to deal with their child's disabilities and impairments and particulars regarding the child's mode of transportation and payments in US Dollars. Also worrisome is the fact that the map attached as **EXH 12** shows different dates – 2006, 2009, 2013, 2014, 2015, 2016, 2017, 2018 and 2019.

There is no detain or CAD Zone specified therein. Again, it has on the face of each picture thus:

Legend
Cadastral
Quarry
Untitled.

The first mad had none of the marks specified above. It had at all centre written 1000 and at the peripheral 357, 367, 368, 555 and 322.

Given all the fundamental anomalies in the document, this Court shall not attach any evidential weight to the document as it does not meet the set standard of admissibility and judicial weight notwithstanding that there is a Certificate as per **S. 84 of the Evidence Act.**

The Defendants also attached a document – **EXH 13** which is titled Note of Fees. I do not know where to classify that document. I know of Bill of Charges which is captured in the Rules of Legal Practitioners. But I cannot recall that there is such thing as Note of Fees as presented by the Defendants' Counsel. Well, going through the content of the documents, it has resemblance of what can be contained in the Bill of Charges especially by the title "TO DISBURSEMENT" which is the second subtitle. The first subtitle is "To Professional Fees." The document was dated 5th October, 2020 from R.M. Partners & Co.

Well, from the whole evaluation of the testimony and documentary evidence by all the parties it is evidently clear that the Claimant was able to establish his claim and he

was able to prove the act of trespass committed by the Defendants in the Res – Plot 477. He was able to prove that his Res was dully allocated and the chronology of the Res till he became the owner. He proved ownership as set by the law and decision of the Courts. He had also proved that the Suit is competent against the 3rd Defendant. He had shown that he had suffered damages. He proved that non-registration of the Deed of Assignment and Power of Attorney falls within the exception to **S. 3 & 15 of Land Registration Act.** He had proved that he was in possession and effective occupation of the Res. Again, he had demonstrated that the Res – Plot 477 is totally different in size, location and purpose from the land which the Defendants claims to be the land allocated to them for the mining/quarry. He proved that he was first in time.

The Defendants did not deny the fact that the Claimant was in occupation. They did not deny that the land was allocated to the Claimant. They did not challenge, deny or controvert the fact that the Claimant was in possession and effective occupation and had enjoyed quiet occupation too before the trespass. The Defendants did not deny the alleged trespass too.

As can be seen from the above, the case of the Claimant was not controverted, the facts therein not challenged, controverted or rebutted.

It is the law that once a person has proved act of trespass such person is entitled to payment of damages. The Claimant has proven the act of damages against the Defendants. He is entitled to payment of Damages.

Again, the Claimant in this case haven proved his case is entitled to the Reliefs sought. He deserves the Judgment being entered in his favour. The Claimant's case is meritorious.

This Court therefore enters Judgment in favour of the Claimant to wit:

Reliefs 1, 2, 3, 4 and 5 granted as prayed.

As to Relief 6, this Court hereby Order the Defendants to pay to the Claimant jointly the sum of ₦5, 000,000.00 (Five Million Naira) as Damages for the trespass.

The Defendants are to pay ₦100, 000.00 to the Claimant as the cost of this Suit.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2024 by me.

_____

K.N. OGBONNAYA

HON. JUDGE

APPEARANCE:

CLAIMANT COUNSEL: ALFRED DAN BABA ESQ. WITH M.A. AKOR ESQ.

DEFENDANTS' COUNSEL: MOSES IDAH ESQ.