

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/1795/2021

BETWEEN:

VERTICAL ZERO LIMITED.....CLAIMANT

AND

KOKASO NIGERIA LIMITED.....DEFENANT

JUDGMENT

By the endorsement on the amended writ of summons and the statement of claim, dated the 30th day of March, 2022, the claimant seeks for the following reliefs:

- a. A declaration that the claimant is the rightful owner of the property known as plot MF 1835 measuring about 2.55 hectare situate at Saburi Lugbe, South East Extension Layout, Lugbe, Abuja granted to the claimant vide an offer of terms of grant/conveyance of approval dated 14th March, 2001.
- b. A declaration that the actions of the defendant complained against in this suit by the claimant were unlawful and pursuant to trespass.
- c. An order of perpetual injunction restraining the defendant, either by itself, its agents, servants, officers, privies, or whosoever from trespassing or further trespassing on the claimant's property known as plot No. MF 1835 measuring about 2.55 hectares situate at Sabon Lugbe South-East Extension Layout, Lugbe, Abuja granted to the claimant vide an offer of terms/conveyance of Approval dated 14th March, 2001.

d. Damages in the sum of N1,000,000.00 (One Hundred Million Naira).

In the amended statement of claim, the claimant stated that by an offer of terms of grant/conveyance of approval dated 14th March, 2001, the claimant was granted a Right of Occupancy over all that property known as plot MF. 1835 measuring about 2.55 hectares situate at Sabon Lugbe, South-East Extension Layout, Lugbe Abuja granted to the claimant vide an offer of terms of grant/conveyance of approval.

The claimant averred that he took possession of the property and developed same by putting up a fence and a gate house on the land, that the claimant made payment of various fees and levies to the government in respect of the property such as Certificate of Occupancy bill, Form and processing fee for multifunctional plot, development levy for three years (2004, 2005, 2006) etc and the claimant was issued receipts evidencing the payments.

The claimant averred that he has a regularisation of its title, and has started connecting two numbers of 5 bedroom duplexes, and has been in quiet possession of the land until sometimes 15th July, 2021 when the officers of the claimant discovered that the officers and agents of the defendant have trespassed on the land, destroyed the claimant's gate house and started digging the soil in an attempt to lay a foundation for buildings, and the defendant has refused to abate its trespass on the claimant's property despite several efforts made by the officers of the claimant to make the defendant's officers and agents peacefully vacate the claimant's property.

The writ of summons and statements of claim of the claimant is accompanied by a witness statement on oath.

The defendant did file a statement of defence.

In the course of the trial, the claimant put in one witness (PW1), and he adopted his witness statement on oath and was cross examined by the counsel to the defendant.

The defendant filed his statement of defence, and stated that by an offer of grant/conveyance of approval dated the 16th August, 2006 the defendant was granted a Right of Occupancy over the property by the Abuja Municipal Area Council, and further denied paragraphs 4, 5, 6, 7, 8, 9 and 10 of the statement of claim and stated that since 2006 when the defendant was allocated the property, the defendant has been in possession of the property and has enjoyed peaceful possession of the property without any disturbance of any sort, and that recently, particularly in July, 2021 while the defendant was carrying development of the property, the defendant's workers were confronted by the officers of the claimant who claimed that the land belongs to the claimant.

The defendant averred that the claimant's action act of trespass and harassment of the defendant's workers has gravely interfered with the defendant's development of the property, and that while the defendant was strategizing on how to stop the claimant from further acts of trespass, it was served with the instant suit, and the defendant further denied paragraph 11 of the claimant's statement of claim.

The statement of defence was accompanied by the witness statement on oath, and the DW1 adopted the witness statement on oath and was cross examined.

In the course of the cross examination, the PW1 told the court he paid the yearly fee for 2003, 2004 and 2005.

The PW1 was asked as why he stopped paying in 2005, and he told the court that that the year he was issued with the receipt, and he was asked whether the defendant

approached him for settlement and the PW1 answered in the negative.

The evidence of the PW1 is not challenged and discredited, and therefore the court has no option that the accept it and act upon it. See the case of **Timothy V. People of Lagos State (2021) All FWLR (pt 1087) p. 1113 (SC)**. In the instant case the evidence of the PW1 is hereby accepted.

The DW1 during cross examination was not asked anything in relation to the claim, and therefore is not challenged and contradicted.

The evidence of the DW1 is accepted.

At the end of the trial, the counsel to the defendant waived his right to file his final written address, and the claimant filed his final written address. See the case of **Uzowulu V. Akpor (2015) All FWLR (pt 763) p. 1954 (CA)** on the right of the defendant to waive filing of final written address.

The counsel to the claimant formulated two issues for determination, thus:

1. **Whether by the evidence before this Honourable Court, the claimant's title is not first in time?**
2. **Whether the claimant has proved its case to be entitled to the grant of the reliefs sought?**

The counsel submitted that the evidence of the claimant remains uncontroverted by the defendant, and the claimant ahs tendered in evidence the original of its Right of Occupancy dated the 11th March, 1998 with the TDP and tendered other documents.

The claimant submitted that the defendant has also tendered a purported Right of Occupancy that is marked "Change" dated 16th August, 2006, and the title was in first in time granted to the claimant on the 11th March, 1998 and

the document EXH. 'D1' is unreliable and not authentic as there is no explanation by the defendant as to how the title changed from who to who, and therefore the document is unreliable and should be discountenanced.

The counsel submitted that the claimant's Right of Occupancy is first in time, and so it prevails, and the claimant is entitled to the reliefs.

The counsel submitted that where the evidence of a party to a suit is not controverted by the adversary, they are deemed admitted, and he cited the case of **Dingyadi V. Wamako (2008) 17 NWLR (pt 116) at 432, paras. E-F** and **P.T.F. V. Integrated Facility MGT Services Ltd (2002) 6 NWLR (pt 794) p. 586 at 597, paras. F-G.**

The counsel submitted that when documentary evidence supports oral evidence, oral evidence becomes more reliable, and he cited the case of **Odutola & Ors V. Mabogunje & 4 Ors (2013) 1 SC 141.**

The counsel urged the court to hold that the claimant is entitled to the reliefs sought.

Thus, the documents tendered by the claimant are:

1. Offer of terms of Grant/Conveyance of Approval, marked as EXH. 'A1'.
2. Receipt of payment of Processing Form dated the 16th August, 2006, marked as EXH. 'A2'
3. Receipt of payment of C of O in the sum of N403,000.00, marked as EXH. 'A3'
4. Receipt of payment of Development levy dated 16th August, 2006, marked as EXH. 'A4'

The defendant tendered one document, that is Offer of Terms of Grant/Conveyance of Approval dated 16th August, 2006, marked as EXH. 'D1'.

Let me adopt the issues for determination as formulated by the counsel to the claimant as I found them so apt, thus:

- 1. Whether by the evidence before this court, the claimant's title is not first in time?**
- 2. Whether the claimant has proved its case to be entitled to the grant of the reliefs sought?**

On the No. 1 issue, the claimant tendered a Right of Occupancy or rather Offer of Terms of Grant/Conveyance of Approval dated the 14th day of March, 2001, while the defendant tendered Offer of Grant/Conveyance of Approval dated the 16th day of August, 2006. It is interesting to note that both offers were granted by the same grantor, only that the one granted to the claimant is first in time when compared the two dates on the offers, that is 14th March, 2001, and 16th August, 2006. I hold that the one with the date 14th March, 2001 is earlier in time.

At common law and equity, when there are two competing claims in respect of grant, the first in time prevails. See the cases of **Owei V. Ighiwi (2005) All FWLR (pt 248) p. 1769 at 1780, paras. G-H** where the Supreme Court held that where the issue of privity of interest arises and the grant relates to same parcel of land, then the first in time takes priority. See **Kachalla V. Banki (2006) All FWLR (pt 309) 1422 at pp. 1434 – 1435. Paras. G-B**. See also the case of **Gbadamosi V. Akinloye (2015) All FWLR (pt 783) p. 1921 at 1943, paras. B-C** where the Supreme Court held that where there is a subsisting right of occupancy, it is good against, any other rights, the grant of right of occupancy over the same piece of land will therefore be invalid. See the case of **Onuoha V. Ubah (2020) All FWLR (pt 1036) p. 231 at 245, paras. E-F** where the Supreme Court held that where there are competing interests by two or more parties claiming title

from a common grantor, the position both at law and in equity, is that such competing interests will prima facie rank in order of their creation based on the maxim qui prior est tempore potior est jure, which means that he who is earlier in time is stronger in law. see the cases of **Ikeli V. Agber (2015) All FWLR (pt 785) p. 304 at 325 paras. F-G; Edosa V. Zaccala (2006) All FWLR (pt 306) p. 887 at 908, paras. A-C.**

This principle of equity applies to both claimant and the defendant. See the case of **Tonimas Nig. Ltd V. Chigbu (2020) All FWLR (pt 1041) p. 7 at 18, paras. G-H.**

In the circumstances of this case, the offer of terms/Conveyance of approval of the claimant is the first in time, and I therefore so hold.

On the issue No. 2, the evidence of the PW1 was accepted because it was not challenged during cross-examination and I have to act upon it, to hold that the claimant has proved the case on the balance of probability that he is the first in time to be granted the piece of land known as MF 1835, measuring 2.55 hectares situate at Sabon Lugbe South-East Extension Layout Lugbe, Abuja and he is entitled to the reliefs.

It is declared that the claimant has a better title of the plot MF 1835, measuring 2.55 hectares situate at Sabon Lugbe South-East Extension Layout Lugbe, Abuja, and the action of the defendant complained of in this suit unlawful and amount to trespass.

The sum of N2,000,000.00 is awarded to the claimant as general damages, payable by the defendant without further delay.

Hon. Judge
Signed
19/9/2024

Appearances:

Dorcas D.A. Nwabuka Esq appeared for the claimant.

CT-REG: Have you invited the defendant in this case for judgment?

REG-CT: Yes, I did.