

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT NYANYA- ABUJA

THURSDAY 28TH DAY OF NOVEMBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/GWD/CV/1435/2022

BETWEEN:

DR. RAYMOND IHEANACHOCLAIMANT

AND

- 1. ALHAJI DAHIRU YUSUF**
- 2. MINISTER, FEDERAL CAPITAL TERRITORY**
- 3. ABUJA MUNICIPAL AREA COUNCIL..... DEFENDANTS**

JUDGMENT

The claimant by a writ of summons dated the 4th May, 2022 filed on the same date with suit No. CV/14351/2022 claims against the defendant jointly and equally as follows:

- 1. A declaration that of Plot No. 3942 measuring about 1,200m³ situate at Lugbe 1, extension, Layout Abuja was validly allocated to the Claimant and that the said allocation is still substituting.**
- 2. An order of court mandating the 2nd & 3rd Defendants to refrain from tampering with the rights of the Claimant of Plot No. 39-42 measuring about 1,200 square meters situate at Lugbe 1, extension, Layout Abuja in favor of any other person.**
- 3. A declaration that Plot No. 3942 measuring about 1,200 square meters situate at Lugbe 1, extension, Layout Abuja was first allocated to the Plaintiff and if there is another allocation of the said plot to another person, the allocation to the Plaintiff takes precedence being the 1 in time.**

- 4. An order of court directing the 1^a Defendant to pay the sum of Fifty Million Naira (N50,000,000.00) only to the Claimant for trespass into the plot of the Claimant and destroying the sentimental value of the plot of land without lawful authorization of the Claimant.**
- 5. The cost t of this suit assessed at the sum of N2, 000,000.00.**

Accompanying the writ of summons are 1. Statement of claim of 16 paragraph.

2. witness statement on oath of Dr. Raymond Iheanacho Pensioner of House No 1 close 1011, FHA (RAW MATERIALS QUARTERS) Karu-Jikwoyi Road, Karu Abuja of 18 paragraphs accompanying the witness statement on oath are the following documents:

- a. Offer of the terms of grant/conveyance of Approval issued by the MFCT dated the 9-10-2002 of Raymond Iheanacho.
- b. Offer of terms of grant/conveyance of approval dated 29/6/98 by MFCT, AMAC to Saliliy N.
- c. FCTA Regularization of law titles and document of FCT, Area Councils. with file No. IM2809 DATED 9/08/06 being Iheancho Raymond
- d. Technical Drawing plan from the 2-3rd defendant in the name of Iheancho Raymond.
- e. Letter of petition for trespass addressed to the Director department of Development Control dated the 4/5/2021 by CEO (Isaiah Idah).
- f. pre-action Notice dated the 1/03/2022 address to the Chairman (AMAC)
- h.. Pre-action counseling certificated.

The 3rd defendant file its statement of defence dated the 2-02-2023 of 9 paragraph, the 3rd defendant witness statement on oath, deposed by Andrew Musa of AMAC Area 10, Abuja FCT.. (AN ADMIN officer) of 10 paragraphs.

Upon the filing of the 3rd defendant statement of defence, the claimant filed the claimant reply to the statement of defence and of the 3rd defendant dated the 17/02//2023 of 8 paragraphs and filed on the 24-02-2023, attached to the reply is the witness statement on oath of the Claimant response of the statement of defence of the 3rd defendant.

Upon the close of the suit for hearing the 3rd defendant file its final written address dated the claimant 22-02-2024 while the claimant response file its final written address dated the 6-03-2024.

Before I proceed I will review the facts of this case thus:

The claimant avers that Plot 3942 measuring about 1200 sqm situate at Lugbe 1 extension layout Abuja was originally allocated to Saliliy N. on 29th June, 1998 by the minister of FCT through the AMAC as a compensation Plot. That sometimes in 2002 Saliliy N. transferred ownership of the said Plot to the claimant and the claimant applicant for change of ownership of the Plot to the claimant name and on the 9th October, 2002 a new allocation paper was issued in the name of the claimant evidencing change of ownership. The claimant also applied for the titled regularization and was issued the FC-TA regularization of land title and document of FCT Area Council acknowledged dated og108/7006. Furtherance of exercising ownership over the said Plot procedure a technical drawing plan from the 2nd and 3rd defendant in the name of the claimant.

That sometimes in 2021 he went to his land Plot 3942, at Lugbe 1 extension layout discovered that the first defendant AlhajiDahiru Yusuf has trespassed into the Plot and hired Laborers to be constructing some houses on the land contrary to the type of house the claimant proposed to build on the land.

Seeking that the 1st defendant trespassed into his land instructed his lawyer to write to the Director Development Control department and the Director instructed that the Development be marked for demolition as the development was unauthorized by their office inspite of the markings the 1st Defendant continued to develop the plot.

Furthermore that the said Plot 3942 was allocated to him for Residential Development and as Compensation plot with file No. IM 2809 and the allocation was submitted for regularization and acknowledged. With file No IM 40770 dated 09/08/2006 and since then he has been in possession of the Plot until the 1st defendant trespassed into the Plot of land. That he did not at any time sell Plot 3942 to anybody and did not sign any document for change of ownership of title to Plot 3942 was not revoked at anytime by AMAC or the Minister of the FCT. And that if there is any later allocation of Plot No. 3942 measuring about 1200M2 situate at Lugbe 1 extension layout Abuja at AlhDahiru Yusuf for any purpose vide

change of ownership by AMAC or the Minister of the FCT that the same is irregular and unlawful as there was an existing title in the claimant favour since 1998.

The claimant also stated that Plot 3942 is first in time and therefore takes priority over any other later allocation created to given title of the same plot No 3942 to the 1st Defendant or any other person the 1st defendant is claiming through or under. These are the facts that lead to the instant suits.

In the course of hearing the claimant testified as the only witness also the defendant.

This court in summarizing the testimony of the claimant witness PW1 thus:

One Raymond IheanachoEneji a pensioner lives at Maitama House 2 Aso Garden, hat he made a statement on oath dated 4-05-2022 the said statement which he recognized it through his name, picture affixed to the statement.

That in paragraph 7 and 8 of his statement on oath he states that a new allocation paper was issued in his name which contains his name and on a letter head paper of the minister of CT. also in paragraph 9 and 10 he referred to technical drawing Plan was issued by the FCT Minister containing his name. In paragraph 11 & 12 of the same statement on oath, he made reference to a letter write while the original of the letter is with the department of Development Control, the said document were pleaded before the court for the Respondent to provide the said original. That in paragraphs 8 & 9 he equally made mention of a document title regularization of land title where the AMAC acknowledgement dated 9-08-2006 the said documents contain his name and the number of the Plot.

Furthermore stated that he was not given a letter of instruction to stop work. That the correspondence is between his solicitor and the office of department of development Control of the 2nd Defendant.

The said document having been identified were admitted in evidence and marked as follows:

- i. Certificate of Occupancy No. M2TP/LA/2002/IM/2809 bearing Iheanacho Raymond dated 24-03-2003 admitted as exhibit A.**
- ii. Offer of terms of grant/conveyance of approval from MFCT dated 9-10-2002 bearing the nameRaymodIheanacho admitted as exhibit B.**

- iii. **FCTA Regularization of land title document dated 09/08/2006 No. IM2809 admitted as exhibit C**
- iv. **Drawing of Plot No. 3942 Cadastral Zone 0707 at Lugbe 1 as exhibit d**
- v. **Letter of petition for trespassed or Plot No. 3942 measuring 1,200sqm in Lugbe 1Extension Layout allocated to Dr. Raymond Iheanacho dated 4-05-2021 as exhibit C.**

Under cross-examination question and answers were asked thus:

Q what year were you allocated with the property in question?

A in the year 2002.

Q what year did you pest the notice that they were encroachment on the property?

A in the early 2012 when he went to inspect the land

Q from 2003 to 2023 you did not do anything

A I did not do anything when he noticed that there was an encroachment.

Q How long have you been leaving in FCT?

A 1995 from Lagos

Q I presumed you are familiar with the laws governing FCT?

A yes

Q which office is responsible for the allocation of land in Abuja?

A that the allocation was given to me by the FCTA using AMAC.

Q by this which office has the power to allocate land in Abuja?

A it is the Hon. Minister using any of his officials

Q from 2002 till today have you built on the land

A I have not done anything on the land

Q reference to exhibit D paragraph 2:1 the signature part, the person who signed, signed on behalf of who?

A on behalf of the Hon. Minister

Q what made you to be convinced that the 3rd defendant have re-allocated the said land to the 1st defendant?

A that when he went to check he said that the said land has been re-allocated to someone else.

No re-examination

The claimant counsel then informed the court that all the parties were served hearing notice for today's to cross-examine the PW1 and there are not here in court or on the 29/3/2023 when the claimant witness testified, and this matter was adjourned to 5-7-2023. On this date the court did not sit and the matter further adjourned till today being 13-0-2023. That the 1st and 2nd defendants are not in court.

That the 1st defendant appears in this court any once and on this stage presumed that they not interested in defending this case, applied that there right to cross-examine PW1 be foreclosed.

The application was granted, the claimant then closed its case and the matter adjourned to 10-10-2023 for defence.

On the 16-10-2023 the claimant and its counsel were in court. The claimant counsel told this court that he spoke to the defendant counsel who told him that his witness was partially indisposed. Hence this matter was adjourned to 29-11-2023.

On the 29-11-2023 both counsel were in court the defendant witness was taken

This court in summarizing the evidence/testimonies of the defendant

DW1 thus:

One Musa Ojigbeme Andrew with AMAC as a town planning officer in works department. In his evidence stated that he deposed to a witness statement on oath, same he identified by his name and his signature on it. That he pray the court to adopt his witness statement on oath as his oral evidence before this court.

Under cross-examination by the claimant counsel question and answer were asked thus:

Q that the first name on exhibit A is the name of his employer?

A it is true

Q the implication is that it is your employer that issued the CFO?

A yes on behalf of the minister of FCT.

Q on exhibit A who signature the designation of the person

A the Hon. Chairman of AMAC

Q that office lead by boss gave that as the evidence that the Plot of land allocated to the person whose name is there on exhibit A.

A yes

Q is there any other person other than the name on exhibit A that was allocated the Plot of land.

A None.

No re-examination.

The claimant counsel then applied that the 1st & 2nd defendant be foreclosed as despite hearing notice served on them has failed to appear in the court none file here statement of defence in respect of this suit.

The oral application made by the claimant counsel for the forecloser of the right of the 1st and 2nd defendants to defence this suit was granted and the defendant then close the case for the defendant.

This matter was then adjourned to 26-02-2024 for the adoption of final written address by the parties.

On the date set for the adoption of the claimant counsel one Samuel N. Unogwu was in court while no representation from the 1st and 2nd defendant, AbiolaGiwa appeared for the 3rd defendant.

The 3rd defendant counsel before adopting its final written address filed a motion for extension of time within which the 3rd defendant file its final written out of time. The motion was moved and the order sought therein was granted.

The final written address dated 22-07-2024 was adopted and 3rd defence counsel pray the court to discontinuance the claimant claims against the 3rd defendant as there was no evidence lead by the claimant against the 3rd defendant and the 3rd defendant I a normal part.

On behalf of the claimant counsel filed its written final address dated the 16-03-2024 adopted same as their oral argument insupport of the case of the claimant urge the court to grant all the reliefs sought by the claimant in this suit.

The 3rd defendant in its final written address formulated a lone issue for the court determination to wit:

“Whether or not the claimant has proved a successful claim against the 3rd defendant and is entitled to reliefs sought in his statement of claim against it.

While the claimant counsel in its final written address formulated three issues to wit:

- i. Whether the claimant is not entitled to judgment against the 1st and 2nd defendant who did not offer any defence to the suit.**
- ii. Whether the 3rd defendant can deny allocating the said plot to the claimant when they issued the certificate of Occupancy in respect of the Plot in issue.**
- iii. Whether the claimant has proved his entitlement to his claim in this suit.**

From the issue so formulated, I shall adopt all the issues as mine as the issue for determination of the 3rd defendant will be disclosed in the claimant’s issue 3.

But before I will proceed to answer the said issues, I will first of all highlight the history of this case for proper understanding of the absence of the 1st and 2nd defendant.

This matter was mentioned on the 27-06-2022 one Tony Ogbulafor appeared for the claimant while one A. B. Daramola announced appearance for the defendant. The matter was mentioned and adjourned to 4-07-2022.

On the 4-07-2022 Tony Ogbulafor appeared for the claimant while no appearance for the defendant and the matter was again adjourned to 30-09-2022 for ruling on a motion filed by the claimant counsel for an order of interlocutory injunction to restrain the defendant from trespassing into Plot 3942. This relief sought on the motion No. M/5114/2022 was granted and this matter was adjourned to 13-09-2022 for hearing.

On the 13-09-2022 Tony Ogbulafor appeared for the claimant and A. B. Daramola caused appearance for the 2nd defendant.

By this appearance of A. B. Daramola for the 2nd defendant the claimant submitted that on the 27-06-2022 A. B. Daramola caused appearance for all the defendants and today for the 2nd defendant only.

That this Development has not been explained by A. B. Daramola.

In response by A. B. Daramola he submitted that, the two defendants were not forthcoming but he has tried to reach the other defendants and they were not forthcoming. Therefore for this date he is in court for the 2nd defendant even though the first defendant has not been served.

In response, the claimant counsel submits that the 2nd & 3rd defendant have been served while the 1st defendant is yet to be served.

This matter was again adjourned to 19-10-2022 for hearing. On the 19/10/2022 one C. E. Soronade appeared for the claimant while E. E. Izibola appeared for the 1st defendant. The 1st defendant counsel in his words said he has just been briefed of this matter and all processes were ordered to be served on the 1st defendant counsel in court. Having acknowledged same, the matter was again adjourned to 21-11-2022 for hearing.

On the 21-11-2022 Tony Ogbulafor was in court and E. E. Izibitefor the 1st defendant. The claimant counsel informed the court that hearing notices were served on the 2nd & 3rd defendants dated on the 18/11/2022 and the 2nd and 3rd defendants are still not in court and are yet to file anything including the 1st defendant who is in court and they are all unwilling to file defence in this suit. That

the 2nd and 3rd defence counsel called him that he was far away in Lagos and confirmed to him that he has not filed anything that the 1st defendant counsel also called him on Saturday and also conceded that did not file anything. The matter was then adjourned to 18-01-2023 for hearing.

On the 18-01-2023 claimant counsel was in court, while one AbiolaGiwa appeared for the 3rd defendant.

The claimant counsel who informed this court that all parties have been served with hearing notice and they are ready to proceed with hearing.

The 3rd defendant counsel informed the court that he was informed by the claimant counsel that they were employing the means to settle this matter out of court with the 1st defendant. That he came to the court this morning to see how possible they can employ terms of settlement or to regularize his case, the claimant counsel denied this assertion and stated that he never spoke to Madam AbiolaGiwa, but the person who spoke to him is one MrDaramola since November and have not seen him on this date the matter was again adjourned to 9/2/2023 for hearing.

On the 9-9-2023 one C. E. Soronadi appeared for the claimant while AbiolaGiwa appeared for the 3rd defendant. On this date the 3rd defence counsel moved his motion for extension of time to file the 3rd defendant statement of defence and a written statement on oath of the witness. The motion was moved and the order therein was granted and the matter adjourned to 29-3-2023 one S. O. Unogwu appeared for the defendant. The claimant who filed a motion for extension of time to respond to the 3rd defendant's statement of defence. The said motion was moved and granted and on the same date PW1 gave evidence and after the conclusion of PW1 evidence one I. E. Okeke came in and was holding the brief of one Betty Umegbolen for the 2nd defendant and this case was adjourned to 5-6-2023 for cross-examination.

On the 13-7-2023 Tony Ogbulafor was in court and AbiolaGiwa for the 3rd defendant was also in court while the 1st and 2nd defence counsel were absent. The 3rd defence counsel then cross-examined the claimant's witness.

The claimant counsel then applied to the court to foreclose the 1st -2nd defendant from cross-examining the PW1, this application was granted and the claimant counsel then closed the case for the claimant and the matter was adjourned for defence to the 16/10/2023.

On the 16-10-2023 same appeared for the claimant Tony Ogbulafor and no appearance from the defendant. This matter was again adjourned to 29-11-2023 for defence.

On the 29-11-2023 Tony Ogbulafor appeared for the 3rd Claimant and AbiolaGiwa appeared for the 3rd defendant. No. appearance for the 1st & 2nd defendant despite hearing notice served on them. On this date the 3rd defendant presented his witness as PW1, cross-examined.

The claimant counsel then applied for foreclosure of the right of the 1st & 2nd defendants to cross-examine PW1.

This application was granted in view of the fact that the 1st & 2nd defendant were all served with hearing notice of date for defence and the matter adjourned for the parties to file their final written address. I stop here.

Now to the issues formulated by the claimant and 3rd defendant counsel.

1st on issue one, As to whether or not the claimant has proved a successful claim against the 3rd defendant and is entitled to relief sought for his statement of claim against it.

On this it is the submission of the 3rd defendant counsel that it has no authority to allocate or even-re-allocate any land within the fct as alleged by the claimant?. On this submit that since 2004 all lands in the FCT were **designated** as urban and all allocation were harmonized and brought under the mandate of Abuja Geographic information system (AGIS) and department Control department of the FCT, and that the Director lands allocates lands in FCT while Development Control approves Design for Construction. That all the information as regards the veracity of any title document is primarily within the purview of AGIS and accelerated Area council and sectional Titles Re-issuance Scheme (AACTRIS).

That by section 18 of the FCT Act, and under the land use Act (LUA) CAP 202 LFN 1990 vests the entire land comprised in the territory of every state in the Governor of the state, sections 55 of the land use Act empowers the minister in turn in acting or delegated powers of the president.

That the minister can allocate and administer land within the FCT in line with the provisions the law, and that apart from the minister no one has the authority to

allocate land in the FCT. Reference to the case of Ahmed V Adedokun (2023) LPELR-60450 (CA)

On this it is the submission of the claimant counsel that by the authority of Ekwekwuo V Abdulahi (2020) LCN/14674 (CA) Abuja Municipal Area Council has the authority to allocate Plots within its Territorial Sphere. Section 279, 303 of the 1999 constitution. Also section 18 of the FCTA part II of the first Schedule also support this assertion.

FCTA “Subsidiary legislation Cap 503 states that: executive authority in the Territory conferred by the constitution of the FRN 1999, is hereby allocated to the Minister who shall be the Chief Executive officer of the Territory, accountable to the president”

Subsection (5) provides that, the minister shall delegate as much as his powers as he deems fit to the said chief executives of the secretariat and agencies to do all such things as necessary to ensure the due and prompt execution of their assigned functions, power and responsibilities. AMAC is one of the designated agencies of the FCT under section 18 of the sixth schedule of FCTA subsidiary legislation.

Furthermore that under section 299(a) of the 1999 constitution, the FCT Minister by virtue of section 147 and 302 of the 1999 CFN shall exercise the powers donated to the president in respect of the FCT. Such powers include those which have been clearly described and shared under section 2 of the land use Act. Subsection 1(b), thereof states, that as in every state of the Federation in the FCT, all other lands shall be under the control and Management of the local Government one of which by law is the AMAC being one of the six (6) Area councils in the FCT.

By the provisions stated above, it is the submission of the learned claimant counsel, that the 3rd defendant validly allocated the plot in issue to the claimant.

Assuming but not conceding, that it is within the powers of the minister of FCT to allocate land in FCT, can the AMAC deny the facts that it was the one that allocated the said plots of land to the claimant? When it is clear from exhibit A & B certificate of occupancy No. MZTP/LA/2002/IM/2809/ dated the 24-03-2003 and the offers of terms of grant/conveyance of approval from MFTCT dated 9-10-202 all from MFCT land Planning & Survey department, AMAC Zonal Planning office being the office that allocated the said Plot of land Plot 3942 measuring of

about 1,200sqm2 Lugbe I extension to the claimant signed by the Zonal Manager one Lugard I. Edegbe for the Honourable Minister of FCT. Whereby exhibit A & B, the FCTA Regularization of land titles and documents of FCT Area Council acknowledgement, file No 1 m 2809 dated 09/08/2006 was issued to IheanachoRaymond. The answer is certainly No. upon the issuance of the allocation drawing Plan in respect of the said Plot 3942 was also issued.

This under cross-examination, the 3rd defendant confirmed that the name on exhibit A is the name of his employer I.e AMAC and that it was his employer that issued the C of O on behalf of the Minister of FCT and same signed by the Hon. Chairman of AMAC. This evidence suffices that it is the Hon. Chairman of AMAC that signed the allocation of Plot 3942 measuring about 1,200 sqm2 Lugbe I extension to the claimant on behalf of the Minister of FCT.

The 3rd defendant went further to submit that not conceding that the claimant's land had indeed been allocated by the Minister of the FCT, it would simply be because the conditions stipulated under the claimant's offer/grant of conveyance has not been fulfilled. On this it is the evidence of PW1 that where he stated that he was allocated with the property in the year 2002 and that from the year 2003 to 2023 you didn't do anything, and he said he did not do anything when he noticed that there was an encroachment. That whether since in the year 2002 till today he has built on the land and he answered I have not done anything on the land? On this by exhibit A offer of the terms of grant/conveyance of approval dated 9-10-2002, it is clear on clause (1)-thus:

“within two years from the date of commencement of the right of occupancy to erect and complete on the said land the building or other works specific in the detailed plans approved for to be approved by the AMAC or other officer appointed by the Minister”

On this from the questions and answers, it suffices that there was a breach of clause (1) of the offer of the terms of grant/conveyance of Approval by the claimant. This learned counsel to the 3rd defendant submitted that it is a gross violation of the conditions upon which the land was allocated to the claimant in the letter of offer/grant of conveyance.

Here, the onus is on the claimant to prove to the satisfaction of the court that he has complied with clause II of the offer/grant of the conveyance of approval. This the claimant has not done. Throughout his evidence and cross-examination he maintained that he has not done anything on the said land since it was allocated to him and not until he saw someone encroach on the said land that he woke up and decided to approach this court on the issue of trespass to the said land.

The implication as stated already is that there is nothing from the other side of the divide to serve as a counter-balance to the case of the claimant. A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the claimant which the burden lies. The Supreme court in *Duru V Nwosu* (1989) 4 NWLR (pt.113)24 stated thus

“....a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. Evidence led by him is so patently unsatisfactorily than he had not made out what is usually referred to as a prima-facie case, in which case the trial judge does not have to consider the case of the defendant at all”

From the above, the point appears sufficiently made that the burden of proof lies on the claimant to establish his case on a balance of probability by providing credible evidence to sustain his claim irrespective of the presence and/or absence of other defendant i.e 1st& 2nd defendant. See the case of *Agu V Nnadi* (1990) 2 NWLR(pt 589) 131 at 142.

It is the law that the claimant who has here claimed an entitlement to be declared the owner and to be in possession of the disputed Plot has the evidential burden of establishing his claims and succeeding on the strength of the case as opposed to the weakness of the case of the defendant. See *Kodishinye V Odu* 91935) 2 WACA 336 at 337, *Nsirim V Nsirim* (2002) 12 WRN 1 at 14 and *Fagunwa V Adibi* (2004) 17 NWLR (pt. 903) 544 and 5 68.

In law, there are five Independent ways of proving title to land on expounded by the Supreme Court in *IdundunvsOkumagba* (1976) 9/10/SC221as follows.

- a. Proof by traditional evidence.

- b. Proof by production of document of title duly authenticated, unless they are document 20 or more years produced from proper custody.
- c. Proof of action of ownership in and over the land in dispute such as selling, leasing, making grants, ranting out of any part of the land or learning on it or a portion thereof extending over a sufficient length of time numerous and positive enough as to warrant the inference that the person exercising such preparatory acts are the true ones.
- d. Proof by acts of having possession and enjoyment of the land which prima facie may be regarded as evidence of ownership and
- e. Proof of possession of connected or adjacent land in circumstance, rendering it probable that the owner of such connected or adjacent land would in addition by the owner of the land in dispute.

In law proof of title could be any one of the above listed ways.

In this case, the claimant from the pleadings and his evidence appear to have found his claim for title on production of title documents.

It is trite law, that a claimant can establish his title to land in dispute by production of documents. See *Ilona V Idakwo* (2003) 12 MJSC 25 at 54, *Idundun V Okumagba* (supra). It may also be to restate the general principles that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of fact which he asserts must prove that those facts exist. See section 131(1) of the evidence Act. Similarly by virtue of section 133(1) of the evidence Act, the burden of first proving the existence or non-existence of a fact lies on the party against when the judgment of the court would be given if no evidence were provided on either side regard being had to any presumption that may arise on the pleadings.

As a logical corollary to the above, it also must be emphasized that in law it is one thing to aver a material fact in issue in one's pleading and quite a different thing to establish such a fact as pleaded and either denied or disputed by the other party, the onus of proof clearly restson he who asserts such a fact to establish same by evidence. This is because it is an elementary principle of law that averments in pleadings do not constitute evidence unless same is expressly admitted. See *Tsokwa Oil Marching Co. Ltd V ROM Ltd* (2002) 1 NWLR (prt777) 9 NWLR(prt.316)182.

The burden of proof therefore lies on the claimant to establish such a fact by evidence thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rest onhe who asserts such a fact to establish same by evidence unless same is expressly admitted. See *Tsokwa Oil Marketing Co Ltd V R. O. M Ltd* (2002) 1 NWLR (Part. 77) 9 NWLR (Part 316)182.

The burden of proof therefore lies on the claimant to establish the affirmative contents of his pleading by credible evidence which will provide both the factual and legal example to sustain the reliefs he seeks.

In proof of his case, the claimant as earlier stated place reliance on the relevant documents of title to wit:

1. The offer of terms of grant/conveyance of approval dated 9-10-2002.
2. Certificate of Occupancy No. MZTP/LA/2002/IM/2809/ bearingIheanacho Raymond dated 24/03/2003.
3. FCTA Regularization of land title document dated 09/08/2006.
4. Drawing, of Plot No. 3942 Cadastral Zone 0707 at Lugbe 1 extension.

The claimant clearly situates his root of title to the disputed land on these title documents which as stated earlier is one of the acknowledged five ways of proving title to land in the Nigerian legal system. The defendant may have not led evidence in support of their pleadings but this does not however obviate the imperative of the claimant leading evidence, even if minimal and credible to put the court in a commanding height to grant the reliefs sought. It is equally to be noted that the substantive relief sought by claimant is a declaratory relief.

In law declarations are special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. Indeed it would be futile when declaratory reliefs are sought to seek refuge on the preposition that there were admissions by the adversary on the pleadings legion. I will refer to the CJN

In *Vincent Bello V Magnus Eweke* (1981) SC 101 AT 182, THE Supreme Court stated aptly thus:

“It is true as was contended before us by the appellant counsel that the rules of court and evidence relievea party of the need to prove what is admitted but where the court is called upon to make a declaration of

a right. It is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence not by admission in the pleading of the defendant that he is entitled to the declaration.

The law is thus established that to obtain a declaratory relief as to a right there has to be credible evidence which supports an argument as to the entitlement to such a right. The right will not be conferred simply upon the state of the pleadings or by admission therein.

In *Helzger V Department of Health and social welfare* (1977) ALL ER444 at 451 Megarry V.C eloquently stated as follows:

“The court does not make declaratory just because the parties to litigation have chosen to admit something. The court declares what, it has found to be the law after proper argument, not merely after admission by the parties. These are no declaration without argument. That is quite plain argument. That is quite plain.

I may also refer to the observation of Nnamani, JSC of blessed memory in *Sorongbe V Omotunwase* (1988) 3 N. S. C.C (VOL210)252 at 762, (1988) 5 NWLR (PRT 92) 90

As follows:

“The court of Appeal relied on the decision of this court in *Lewis & Peat (N.R.L) Ltd V Akhimien* (1976) 7 SC 157 to the effect that an averment which is not expressly traversed is deemed to be admitted. Admittedly, one does not need to prove that which is admitted by the other side, but in case such as one for declarations of title where the onus is clearly on the plaintiff to lead such strong and punitive evidence to established his case for such a declarations, an evasive averment, or does not remove the burden on plaintiff”

The point from the above authorities is simply that declaratory orders are not made because of the stance or position of parties in their pleadings but on proof by credible and convenient evidence at the hearing.

In the circumstance, the duty of the court is to determine whether these documents of title legally situates the root of title of the claimant to the disputed property. In law, the root of title simply connotes means or process through which a party came

to be the owner of the land in dispute. See *Ofume V Ngbeko* (1994) 4 NWLR (pt. 341)546.

The 3rd defendant in it's written address made extensive submission on the validity of these documents of title where in paragraph 3 of the statement of defence, the defence states that all lands in the FCT are administered by the 2nd defendant and 3rd defendant is not vested with the power to administer land in the FCT and also denied paragraph 9 of the claimant's statement of claim and that, the 3rd defendant cannot usurp the power of Development control department of the FCT and issue the claimant or anyone a technical drawing plan. Also in paragraph 5, 6, & 7 of the statement of defence, also stated that, all title regularization is mainly the mandate of accelerated Area Council and sectionals title- Re-issuance Scheme (AACTRIS) and not the place of the 3rd defendants.

Furthermore paragraph 6 of the statement of defence, he averred that the statutory right of Occupancy attached to the claimant's statement of claim has some conditions stipulated therein unmet by the claimant which validates the purported allocation. That the date on the said offer stated above is 29/6/98 and the instant suit was instituted in 2022 that it is clear indication that till the present day, the claimant never bothered to fulfill the conditions in paragraph 2 of the offer of terms of grant exhibit B. and those never created any building or work within two years of the commencement of the right of Occupancy as stipulated in the said document i.e. exhibit A & B.

A careful perusal of the written address of the 3rd defendant and that of the final written of the claimant's counsel, this court is bound by and confined to the issues precisely raised and streamlined in the pleading. The address of counsel however well written or articulated is no conduit to expand the remit of the dispute or issues as joined on the pleadings.

As a logical corollary and flowing from the evidence given and the written addresses particularly in the light of the declaratory reliefs sought and the ancillary reliefs all predicated on the production of title document. It is then relevant to underscore the fundamental principles that the mere production of title document does not automatically tantamount to ownership. Where party pleads and relies on a document of title as the proof of his title to land as in this case, certain questions must be enquired into and explained as postulated in the case of *Romaine V Romain* (1992) 4 NWLR (prt 238) 650 at 662 D-G- where the Supreme court Per

Nnaemeka Agu JSC (of Blessed) Memory) and I will quote him in estenso slated as follows

Or one of the recognized ways of proving title to land is by production of a valid instrument of grant-but it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the which such an instrument purported to grant is his owner Rather production and reliance upon which an instrument inculpably carries with it need for the court to inquire into some or all of a number of questions including

- A. Whether the documents are genuine and valid.**
- B. Whether it has been duly executed, stamped and registered?**
- C. Whether the grantor had the capacity and authority to make the grant.**
- D. Whether the grantor had in fact what he purported to grant , and**
- E. Whether it had the effect claimed by the holder of the document?**

The fundamental question therefore addressed in the address of parties relating to the legal statute of the document submitted by PW1 in the bottom right side of the grant/conveyance of approval will reveal “for Honourable Minister, written boldly in capital letters. That under cross-examination the PW1 stated that the minister of FCT, thereby effectively affirming the 3rd defendant is under authority of the 2nd defendant. On this he referred the court to the case of Madam Madu V Dr Bentram Madu (2008) 2-3 SC (pt. 11) 109, the Supreme Court was clear that “without an allocation or grant by the Honourable Minister of the FCT, there is no way any person –could acquire land in the FCT. “

The claimant in paragraph 5 of it’s statement of claim avers that, Plot 3942 measuring about 1,200 sqm² situate at Lugbe 1 extension layout Abuja was originally to Saliliy N, transferred ownership of the said Plot to the claimant and claimant applied for change of ownership of the Plot to the claimant’s Name Paragraph 7 of the same statement of claim avers that on 9th October, 2002, a new allocation paper was issued in the name of the claimant evidencing the change of

ownership. On the strength of this applied for title regulation of land titles and document-3 of FCT Area Council acknowledged dated 09/08/06.

Again as already highlighted, parties are bounded by the averment on the pleadings. The allocation here vide paragraph was made to Raymond Iheanacho by AMAC.

The offer of terms to grant/conveyance of the land of one Lugard 1.Edegbe, Zonal Manager for Honourable Minister and then based on it, the claimant applied for the regularization of land title and document of FCT, Area councils acknowledgment file No. IM 2809 dated 09/08/2006. Signed by one Nana Buhari (coordinator/representative) it is true that on the face of exhibit A & B it was indicated as issued for the Honorable Minister.

From the pleadings and the written address the 3rd defendant has never denied the differ, as it was issued on behalf of the minister of FCT same signed by the Zonal Manager one LugardEdegbe, what is in contention is the encroachment of the said Plot by the 1st defendant. The said 1st defendant though served with all the processes in this case, never –once appeared norfiled any statement of defence denying the claim of the claimant.

The only defence by the 3rd defendant in it's statement of defence and witness statement on oath is in paragraph 2, 3, & 4 reproduced below.

Paragraph 2: that the 3rd defendant is not authorized by the 2nd defendant to re-allocate the land in contention.

Paragraph 3: that I know for a fact all lands in the FCT, are administered by the 2nd defendant, and the 3rd defendant is not vested with the power to administer land in the FCT.

Paragraph 4: that the 3rd defendant cannot usurp the power of Development Control Department of the FCT, and issue the claimant or any one Technical Drawing plan.

On this it is in the evidence of the claimant on how he became the owner of the land and tendered five (5) exhibits in proof of his claim. Exhibit A is the certificate of DW1, under cross-examination that he is not aware of allocation of the plot of land to another person other than the claimant. That being the case what is admitted needs no further proof. It is also in the evidence of DW1 that exhibit A bears the name of the 3rd defendant as the issuer of the certificate of Occupancy on

this he confirmed that the person who signed the certificate of Occupancy is the chairman of the 3rd defendant. That the argument of the 3rd defendant that they do not allocate land fails in the face of exhibit A.

It is to be noted that there is no evidence before this court that the said Plot 3942 measuring about 1,200 SQM2 situate at Lugbe 1 extension Layout Abuja has ever been revoked by the Minister of the FCT Nor any notice to the effect by the Office of department of Development Control. I therefore hold that the encroachment by the 1st defendant who has no title to the said land cannot by any imagination claim title to the said land in question. Unless, until there is a letter of reallocation, the 1st defendant cannot claim ownership of the said Plot from the claimant.

It is not in doubt that by the decision in the case of Madu V Madu (2008) 6 NWLR (Part 1083) PAGE 244 at page 207 paragraph C-D see also section 297 (1) and (2) of the CFN, section 236 of the CFN 1979 and section 1(3) FCTAct 1976, section 18 of the FCT Act Cap 503 LFN 1990 vests power in the minister to grant statutory right of occupancy over lands situate in the FCT TO ANY PERSON. BY THIS LAW, OWNERSHIP OF LAND within the FCT vests in the Federal Government of Nigeria who through the minister of FCT VESTS SAME TO EVERY CITIZEN INDIVIDUAL upon application. This without an allocation or grant by the Hon. Minister of the FCT, there is no way any person including the Respondent could acquire land in the FCT as in the instant case, the 1st defendant in this case has not shown that the land in question was allocated to him as there is nothing before this court indicating same.

I am therefore not too sure there is liberty to dance around the clear provisions of the FCT Act and other relevant applicable enactments. The duty of court is constrained when it comes to the application of the relevant legislations and the constitution we have severally referred to in this Judgment.

The argument of the 3rd defendant was based on sentiment there is rather attractive sentiment appeal to ignore clear provisions of the law and protect and or side with their claims been made by the claimant. The bottom line and as I have sought to demonstrate is that no one can acquire title to any land situate within the FCT without an allocation or grant by the appropriate authority i.e. the Hon. Minister of FCT . On this basis since the 1st defendant in this instant case has not provided evidence before this court of being allocated with the said piece of land, I hold that it will be unfair for this court to refuse granting the reliefs of the claimant.

The argument by the 3rd defendant that the claimant is in breach of the clear provisions of the grant/conveyance of approval, even if it is clear that he was in breach there must be evidence to that effect that neither the 2nd and 3rd defendants ever served the claimant a revocation notice. In this instant suit there is nothing before this court of such by either the 2nd nor 3rd defendant. I Hold therefore that the 1st defendant cannot claim title to the land under contention.

I so hold.

Relief No. (d) Is essentially on trespass being a claim of N5 million. The law is settled that a claim for trespass that is predicated on the success of the claim for declaration of title. The Supreme Court held in *Runsewe V Odutola* (1996) 4 NWLR (part 44) court 153 C-E made it clear that

“a claim for trespass does not necessarily postulate title”

Again in *Adewole V Dada* (2003) 4 NWLR (part 810)369 at 378 F-H the Apex Court reiterated that:

“A claim for trespass is not dependent on a claim for declaration of title as issues to be determined in trespass is whether the claimant has established his possession of land and the defendant trespassed on it.

The question here is did the claimant establish that he was in possession of the disputed Plot 3942 on this I say yes by the statement of claim and the claimant’s statement on oath before this court. On this it is the true written address of the claimant, where he avers that, when he saw the encroachment into his plot of land, he approached this court for redress. Based on the above it can be seen that the claimant is in constructive possession and not in actual possession of the said Plot of land in question.

Let me quickly add that once a party is shown to be the owner of a piece of land, he is in exclusive possession or has a right to such possession and anyone on the land without his permission is a trespasser *alibinitio*. See *Onogoruwa V Akinremi* (2001) 13 NWLR (prt 792) 38 at 59 E-F. in the instant case, the claimant has shown that he is first in time to be allocated with the said Plot of land No 3942 from the Minster of FCT the 1st defendant be adjudged a trespasser. I hold that the claimant has established this relief and is entitled to the claim of trespasser against

the 1st defendant. On the whole, the issues arising for determination is answered in favour of the claimant against the 1st defendant. As a whole Judgment is hereby given to the claimant on all the reliefs while in reliefs No. (d) I award N2,000,000.00 only against the 1st defendant for trespass into the Plot of the claimant.

On the cost of this suit. There is nothing before this court either by way of evidence for the court relied on to award cost against the defendant. Hence parties are to bear their respective cost.

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Hon Justice A.Y. Shafa

Appearance:

1. Tony Ogbolafor for the claimant.
2. O.O. Okilika for the 3rd defendant.