

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF
DELIVERED ON THE 18TH APRIL, 2023
FCT/HC/CV/970/2020

BETWEEN
MR. MOSES AGADA PLAINTIFF
AND
AMINU SULEIMAN DEFENDANT

JUDGMENT

By a writ of summons filed the 28/01/2020, the Claimant herein Claims against the Defendant the following reliefs:

1. That he is the rightful owner of plot 169 of about 600sqm, at Kubwa Extension II (Relocation) Kubwa FCT.
2. A perpetual order restraining the Defendant, his agents, assign and privies from entering or encroaching into the above stated Plot of land, located within Abuja, Federal Capital Territory and harassing the Plaintiff.
3. Perpetual order restraining the Defendant from using the Nigeria police or any other law enforcement agent to arrest the Plaintiff as pertaining to this plot of land.
4. Payment to the Plaintiff by the Defendant of the sum of ₦1,000,000.00 (One Million Naira) only as special damages for the broken gate pulled down by the Defendant.
5. The cost of instituting this suit in the sum of ₦500,000.00 (Five Hundred Thousand Naira) only.

Pursuant to an Order of Hon. Court made the 8/2/2021, the amended statement of claim and other processes filed by the claimant on the 18/01/2021 were deemed as properly filed and served on the defendant. All the processes of the claimant were served on the defendant, he however failed to respond or appear before the Hon. Court. Thus, it is only the facts and evidence of the claimant that is before this court.

Hearing commenced on the 2/12/2021. The claimant, Moses Agada testified for himself. He identified his witness statement on oath and tendered the following documents. The documents are:

1. Bwari Departmental receipt Form No. LGT 19A in the name of Globe Survey BZTP/LA/KN/2003/975 together with the conveyance of provisional approval with plot No. 169600sqm Kubwa 04/071 dated 27/5/2003, Right of occupancy No. FCT/BZTP/LA/KN.975- Cadastral map 1 1000 dated 6/9/111, Reapplication for search dated 17/7/2013 with Ref No. BZTP/GEN/697/7160 all marked as Exhibit A1, A2, A3 and A4
2. Deed of Assignment made between Globe Survey and Rufai Madaki Kaina on the 18th April 2013 marked as Exhibit B
3. Deed of Assignment made between Rufai Madaki Kaina and Mr Musa Agada dated 15/2/2016 marked as Exhibit C
4. Irrevocable Power of Attorney made between Rufai Madaki Kaina and Mr Musa Agada dated 15/2/2016 marked as Exhibit D
5. A copy of the Upper Area Court Proceeding dated 23/7/19 marked as Exhibit E
6. The three pictured tendered, marked as Exhibit F1, F2 and F3

The matter was adjourned for the cross examination of the Pw1. On the adjourned date, despite the hearing notice served on the defendant, he failed to appear in court. Learned counsel for the claimant applied that the defendant be foreclosed from cross examining the Pw1. The application was granted and the matter was adjourned for defence. Again, on the day slated for defence, the defendant failed to show up. Therefore, the matter was adjourned for adoption of final written addresses. On the 26/1/2023, Unyime Umoiyak of counsel argued and adopted on behalf of the claimant a final written address. Musa – Sulaiman Khadijatu Meminewe settled the final written address on behalf of the claimant, wherein she formulated three issues for determination, to wit;

- (i) Whether in view of the evidence before the Court the Plaintiff has established ownership of the res to entitle him of a legal right.
- (ii) Whether the Plaintiff is entitled to a declarative relief as the rightful owner of the res, Plot 169 of about 600sqm, at Kubwa Extension II (Relocation), Kubwa, F.C.T.
- (iii) Whether taking into consideration of the circumstances of the case, the Court should grant the prayers sought by the Plaintiff.

I have gone through the issues as formulated by the claimant and I am of the view that all the issues are one and the same, thus, I choose to adopt the third issue as same will determine the claims of the claimant.

As stated earlier, the defendant failed to defend this matter. therefore, this instant suit is an undefended suit and it is trite law, that in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. Section 131(1) Evidence Act states that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Section 132 Evidence Act states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. 133(1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See ALHAJI ADEBAYO AKANDE v. JIMOH ADISA & ANOR (2012) LPELR-7807(SC)

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. See MTN

NIGERIA COMMUNICATIONS LTD v. OLAJIRE A. ESUOLA (2018)
LPELR-43952(CA)

Going further, the Claimant's claim in this suit is primarily one for a declaration of title to land and the law is that where a claimant seeks for a declaration of title to land, he shall succeed on the strength of his case rather than rely on the weakness of the defence. The claimant bears the onerous duty in law to adduce credible and admissible evidence in establishing title. See PRINCE FOLORUNSO SULAIMAN OYELEDUN v. MR. ALANI ADEWUYI (2017) LPELR-43256(CA) and the five (5) ways of proving or establishing title to land is as stated in the case of BABAH MAIKANTI & ORS v. 7UP BOTTLING COMPANY PLC (2013) LPELR-20297(CA) as follows:

"...Thus, in Nnadozie v. Omesu (1996) 5 NWLR (pt. 446) it was held that: "It is settled law that there are five different ways the proof of one of which suffice, of proving ownership of any land in Nigeria, viz: by (1) Traditional evidence (2) production of document of title duly authenticated unless they are documents twenty years old or more produced from proper custody. (3) Acts of possession in and over the land in dispute extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons in possession are the true owners. (4) Acts of long possession and enjoyment of other land so situated and connected with the land in dispute by locality or similarity that the presumption under s.46 of the Evidence Act applies and the inference can be drawn that what is true of one piece of land is likely to be true of the other piece of land. (5) Proof of possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner to the land in dispute."

It is settled law, that in an action for declaration of title to land, the burden is on the claimant to proffer credible evidence which must satisfy the Court that he is entitled to the declaration sought. Generally, the declaration will be granted or refused on the strength of the evidence adduced by the claimant. In other words, in discharging the burden cast on him in an action for declaration of title, the claimant must rely on the strength of his

own case. Thus, any weakness on the Defendant's case, even an admission by such Defendant will not relieve the claimant of that onerous burden, save where the weakness or admission operates in support of the claimant's case, in which case the claimant may rely on it. It therefore means that in an action for declaration of title to land, the burden of proof rests squarely on the claimant, and where he fails to discharge that burden to the satisfaction of the Court, the Court will dismiss his claim.

Before I delve into the evidence and pleadings as presented by the claimant, I need to state the law regarding to matters on declaration of right to title to land in the Federal Capital Territory, Abuja. It is not in doubt and as rightly argued by counsel for the counterclaimant that the ownership of all lands comprised in the Federal Capital Territory, Abuja is vested in the Government of the Federal Republic of Nigeria. See s. 297 (2). 299 (a), (b) (c) CFRN. Also, by virtue of s.302 of Constitution the President has the power to appoint for the Federal Capital Territory, Abuja a Minister who shall exercise such powers and perform such functions as may be delegated to him by the President from time to time. See also section 1 (1), (2) & (3) FCT

Also, a careful reading of the FCT Act will reveal that it is consistent with the referenced provisions of constitution and a combined reading of all the above cited provisions shows that it is only the Minister of the FCT that can allocate land to anybody or authority in Abuja. Thus, before a person can transfer title either by Deed of assignment or power of attorney, there must first be in existence a genuine foundation; the foundation is the basis of the correctness of sale of land to the other person. The donor of power of attorney must be clothed with the garment of genuine authority, anything short of that will go to no issue. What you don't have, you don't/can't give! The court is not an issuing authority in respect to land allocation; it is only the Minister of Federal Capital Territory who is given the power/authority to allocate land to a person or authority. The Area Councils have no right whatsoever to allocate land to any person or authority. A party, who presents in court instruments issued by Area Council in respect of ownership of land, is on his own, as his case would record a dismissal. The right of a

Donor must clearly exist before it can subsist. See also GRACE MADU v. DR. BETRAM MADU (2008) LPELR-1806(SC) "*Be it noted that it is well settled that the ownership of the land comprised in the Federal Capital Territory, Abuja is absolutely vested in the Federal Government of Nigeria vide Ona v. Atenda (2000) 5 NWLR (Part 656) page 244 at page 267 paragraphs C - D. See also Section 297(1) (2) of the Constitution of the Federal Republic of Nigeria, Section 236 of the Constitution of the Federal Republic of Nigeria, 1979 and Section 1(3) Federal Capital Territory, Act 1976. Section 18 of the Federal Capital Territory Act, Cap 503 Laws of the Federation of Nigeria, 1990 vests power in the Minister for the FCT to grant statutory rights of occupancy over lands situate in the Federal Capital Territory 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 individually upon application. Thus 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.*"

The claimant in this case, placed reliance on the exhibits A1, A2, A3, A4, B, C, D, E, F1, F2 & F3 for the court to declare him as the rightful owner of plot 169 of about 600sqm at Kubwa Extension II (Relocation) Kubwa, FCT. The Pw1 testified that Globe Survey entered into a Deed and Power of Attorney with one Mallam Rufia Magaji Kaina in respect of the subject matter. The Pw1 tendered the Deed of Assignment which was marked exhibit B; that the claimant derived his own title from the Mallam. Rufia Magaji Kaina who sold the subject matter to him via a deed of assignment and power of attorney both dated the 15th February, 2016. See exhibits C & D respectively. He testified that all the documents relating to the subject matter were given to him by the 2nd allottee. He tendered exhibits A1, A2, A3 & A4 to support his assertions. He continued that he has been in actual and real possession of the subject matter; that he fixed an iron gate and locked same up. Pw1 said sometimes in 2018, the 2nd allottee was brutally murdered along Abuja/ Kaduna Express way by unknown persons. Testifying further, the pw1 stated that sometime in 2018, the defendant forcefully entered the subject matter; that he broke the fence and

the padlock key on the gate and gained entry into the said plot. Exhibits F1, F2 were tendered by the Pw1; he continued that the defendant upon gaining entry into the subject matter, he constructed a block fence on the already existing fence built by the claimant; that the defendant also built a gate house on the subject matter. He tendered exhibit F3 to support his assertion. The pw1 continued that the defendant reported him to the Nigeria Police Station, Kubwa Division and upon inviting him to the Station for questioning and further interrogation on frivolous criminal charges, the Police asked the parties to submit their title documents, which he complied with; that during the Police investigation, he was opportune to catch a glimpse of the defendant's title paper which were not bearing Globe Survey, therefore he was shocked when the Police called him to tell him that the defendant's title document bears Globe Survey; he was however not shown the documents. He states that not until sometime in 2018 after the gruesome murder of Mallam Rufia Magaji Kaina, he has been in peaceful possession of the subject matter without the interference of the defendant. He testified that the defendant is not the rightful owner of the subject matter; that on the 21/12/2018, the Police charged him for criminal trespass and forgery and same was struck out on 3/6/2019. The Pw1 tendered exhibit E to support his assertion.

Above is the case of the claimant. As stated earlier, the defendants failed to appear before the Hon. Court. Thus, the Pw1 was not cross examined and also did not put up a defence.

I have had a careful consideration of the facts and evidence placed before this Hon. Court as well as the argument of counsel for the claimant, first off, the assertions of the Pw1 in paragraphs 11, 12, 13 & 14 of his statement of claim were not substantiated with credible and cogent evidence. The evidence that Mallam Rufia Magaji Kaina was gruesomely murdered along Abuja express way by unknown persons cannot be accepted by the court. It is the duty of the claimant to present or support that assertion with credible evidence. Also, the Pw1 stated that he cited the documents of the defendant at the Police Station; that the Police further told him that the defendant also derived his title

from Globe survey. These are mere assertions which this court is not expected to believe hook, line and sinker. The claimant has a duty to prove those assertions.

Now, to the title documents presented by the claimant in the instant case, it is glaring that the documents originates from the Bwari Area Council and I do not hesitate to state again, that no area council has the authority to grant an offer of terms/conveyance of approval as same is not a valid document recognized in law to confer title on a person. The main relief of the claimant is for this Hon. Court to declare him the rightful owner of the subject matter. In other words, the claimant has asked this court to clothe him with the garment of ownership; unfortunately, this court lacks the power to give to him what is not in existence. The right of the donor or the 1st allottee must first exist before it can subsist. In *DIVAGE HEALTH AND SANITARY SERVICE LIMITED & ANOR v. KENUJ INVESTMENT LIMITED* (2018) LPELR-45975(CA) the Court of Appeal held that all land in the Federal Capital Territory vests absolutely in the Government of the Federation, and only statutory right of occupancy can be issued in the Federal Capital Territory, being an urban area; that it is only the Minister of the FCT acting pursuant to Section 302 of the Constitution and Section 13 and 18 of the FCT Act that can validly allocate land in the Federal Capital Territory.

Also, it is trite law, that the production of instrument or document of title is not conclusive proof of title to land.

It carries with it the need for a court to inquire into the following:

- (a) Whether the document is genuine and valid;
- (b) Whether the document has been duly executed, stamped and registered;
- (c) Whether the grantor had the authority and capacity to make the grant;
- (d) Whether the grantor had in fact what purported to grant; and whether it had the effect claimed by the holder of the document. See *Oveneyiti v Akinkugbe* (2010) 4 NWLR (pt. 1184) 265

Going further, the law is that the non-registration of a registrable instrument renders such instrument inadmissible as evidence in a litigation where such instrument is relied upon as evidence of title. See DR JOSEPH C. OKOYE v. DUMEZ NIGERIA LIMITED & ANOR (1985) LPELR-

Thus, by virtue of the Land Registration law, no instrument shall be pleaded or given in evidence in any court as affecting any land unless same has been registered. In effect, once a document purports to transfer and/or confer any interest in land, it becomes an instrument which must be registered. See COMMISSIONER OF LAND & HOUSING, KWARA STATE V ATANDA (2007) 2 NWLR (PT. 1018) 360.

Section 6 and 15 of the Land Registration Act Cap 515 LFN provide thus:

(6) Subject to the provisions of this Act, every instrument executed after the commencement of this Act shall be registered.

(15) No instrument shall be pleaded or given in evidence in a court as affecting a land unless the same has been registered in the proper office as specified in Section 3 of this Act.

The PW1 in evidence states that he is the owner of the subject matter in issue; that he purchased the subject matter from one Mallam Rufia Magaj iKaina in 2016; that exhibits A1, A2, A3, A4 & B were given to him by one Mallam. Rufia Magaji Kaina. It therefore means that the claimant relies on the aforesaid exhibits to establish his own right to the subject matter. Also, the Pw1 states that exhibit D was donated to him by Rufai Madaki Kaina on the 15th February, 2016. These instruments were not registered in the land registry. The law is that a registrable instrument which has not been registered cannot be pleaded for the purpose of establishing title. See DAUDA V BAMIDELE (2000) 9 NWLR (PT. 671)

A careful perusal of the contents of the exhibits vis a vis the evidence of the claimant, it is crystal clear from the evidence before the court as well as the contents that the documents were tendered to establish the fact that the subject matter in question has been transferred to the plaintiff and the effect of them not

being registered is that they cannot be pleaded or tendered in evidence to claim ownership of the subject matter. Having disqualified the title documents, there is no disputing the fact that the case of the claimant has fallen like a pack of cards and as stated earlier in the course of this judgment, a party who present documents from an Area council as evidence of ownership, his case is bound to fail and that is what has happened to the claimant in this case. I do not agree with the claimant's counsel that the claimant has a valid claim over the subject matter. Therefore, the issue of trespass will not arise; where all the reliefs claimed by the claimant are predicated on ownership or exclusive possession of the land in dispute, failure to prove ownership or exclusive possession of the land will automatically also affect the other reliefs which must necessarily fail. See *ONOVO V MBA* (2014) 14 NWLR 319 PG 433, PARAS F-G. the claimant has the duty to establish his root of title before any consequential acts flowing therefrom can properly qualify as acts of ownership. See *FASORO V BEYIOKU* (1988) 2 NWLR (PT.76) 263.

Consequently, I find and hold that the evidence placed before this court by the claimant lacks evidential value which the court is not expected to act upon. I hold that the claimant has no right whatsoever in the property situate and known as Plot 169 of about 600sqm at Kubwa Extension II (Relocation), Kubwa, FCT and as such all other reliefs fails. Suit No: CV/970/2020 is hereby dismissed.

ASMAU AKANBI – YUSUF

[HON. JUDGE]

Appearance;

Unyime Umoiyak Esq, for the Claimant

Defendant absent and not represented