

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA  
DELIVERED THE ON THE 3<sup>RD</sup> MAY, 2023  
BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI - YUSUF  
FCT/HC/CV/2481/2021

BETWEEN:

MR. TIMOTHY GUDU ... .. CLAIMANT

AND

MR NNAMDI EZECHI ... .. DEFENDANT

JUDGMENT

The claimant on the 28/9/2021 instituted this suit via a writ of summons, statement of claim and other accompanying processes. The claimant claims against the defendant as follows: -

1. A Declaration of this Honourable Court that MR. MATTHEW PETER is the original allottee of plot 360 at KUBWA DISTRICT CENTRE LAYOUT KUBWA measuring about 1620 M<sup>2</sup>.
2. A Declaration of this Honourable Court that the sale agreement between MR. MATTHEW PETER and MR. TIMOTHY GUDU is valid.
3. A Declaration of this Honourable Court that MR. TIMOTHY GUDU is the lawful attorney of MATTHEW PETER and that the Authority/Consent given to MR TIMOTHY GUDU by MATTHEW PETER in respect of plot 360 at KUBWA DISTRICT CENTER LAYOUT KUBWA measuring about 1620 M<sup>2</sup> is valid.
4. A Declaration of this Hounarable Court that the action of the Defendant by entering upon and commenced construction works on the said plot of land constitutes trespass to the land; plot 360 at KUBWA DISTRICT CENTRE LAYOUT KUBWA measuring about 1620 M<sup>2</sup>.
5. AN ORDER of this Honourable Court directing the Defendant to vacate plot 360 at KUBWA DISTRICT CENTRE LAYOUT KUBWA measuring about 1620 M<sup>2</sup> and hand over same to the Claimant who is the beneficial owner.
6. AN ORDER of the Court mandating the Defendant to pay the Claimant the sum of ₦10,000.000,00(Ten Million Naira) only as damages for defacing the land.

7. AN ORDER of this Honourable Court declaring the activities of the Defendant on the said plot including the trespass as illegal and void.

AN ORDER of this Honourable Court directing the Defendant to pay the Claimant the sum of ₦2,000,000.00 (Two Million Naira) being the cost of this action.

On being served with the claimant's processes, the defendant on the 1/12/2021 filed his statement of defence and counter claim.

On the 9/02/2022, Mr. Timothy Gudu, the lawful attorney of the claimant testified as the Pw1. He swore by the Holy Bible and adopted his witness statement on oath filed on the 28/9/2021.

It is the evidence of the Pw1: -

1. That I am the Claimant on record in this matter and Businessman/Contractor.
2. That by virtue of my position I am familiar with the facts of this case.
3. That I am the beneficial owner of the property which is known and situate at plot 360 SITUATE AT KUBWA DISTRICT CENTRE LAYOUT, KUBWA ABUJA measuring about 1620 sqm. The letter of conveyance of provisional approval in favour of MATTHEW PETER is hereby pleaded and shall be relied upon during trial.
4. That I am seized of plot 360 SITUATE AT KUBWA DISTRICT CENTRE LAYOUT, KUBWA ABUJA measuring about 1620 sqm by virtue of land sale agreement executed in His favour by MATTHEW PETER. The sale agreement is hereby pleaded and shall be relied upon during trial.
5. That I am also the lawful attorney of MATTHEW PETER. The executed POWER OF ATTORNEY is hereby pleaded and shall be relied upon during the trial
6. That I have been in possession and has enjoyed uninterrupted and quite possession over of plot 360 SITUATE AT KUBWA DISTRICT CENTRE LAYOUT, KUBWA ABUJA measuring about 1620 sqm layout till sometimes around July, 2021 when the defendant trespassed into the property.
7. That I reside in (TUNGA MAJE) and that is where the property in dispute (PLOT 360 KUBWA DISTRICT CENTRE LAYOUT KUBWA) situate, is very far and out of the reach for me which explains why I did not know exactly when the Defendant started this act of trespass upon my plot of land.
8. That I did not know when the MAI GUARD who has being taking care of the plot and report to me left and abandoned the plot without his

- knowledge with his family without informing me so that I can get another person to be in physical possession of the said plot.
9. That it was during the period of time the said MAI GUARD left the plot that the Defendant took possession of the plot and started committing the present acts of trespass upon the plot.
  10. That it was when I was on a visit to the said plot around July, 2021 that I discovered the current and on-going acts of trespass. On that day, the Defendant was physically present on ground with other construction workers who were working for him.
  11. That all the efforts to cause the Defendant to stop the construction works yielded no positive results as the Defendant vehemently lays claims on the same plot which made me to rush to Kubwa Police Station at phase 4 to lodge formal complaints.
  12. That at the Police Station, the Police Officer on duty, upon hearing me mentioned of land told me that the police is tired of reports and counter reports about disputes on lands especially here in Kubwa and concluded that in as much as there is no violence or threats of violence on me, that I should take the matter to court immediately hence the instant suit.

The following documents were admitted in evidence: -

1. EXHIBITs A1 & A2: is an original document, Conveyance of Provisional Approval issued to MATTHEW PETER on 20<sup>th</sup>, OCT. 1997. Together with the Bwari Area Council Departmental Receipt, in respect of payment for certificate of occupancy, process fee issued to MATTHEW PETER on 18/09/2007.
2. EXHIBIT B is a document, DEED OF ASSIGNMENT created by MATTHEW in favor of TIMOTHY GUDU.
3. EXHIBIT C is a document of IRREVOCABLE POWER OF ATTORNEY GUDU created by MATTHEW PETER in favor of TIMOTHY GUDU.
4. EXHIBIT DW1 is a document of DEED OF ASSIGNMENT. Created by YAHAYA AUDU in favor of NNAMDI EZECHI.
5. EXHIBIT DW2 is a document, MEMORANDUM OF UNDERSTANDING, created by YAHAYA AUDU in favor of NNAMDI EZECHI
6. EXHIBIT E1 is a document, DEED OF ASSIGNMENT, created by OKPANACHI in favor of YAHAYA AUDU
7. EXHIBIT E2 is a document, POWER OF ATTORNEY, created by OKPANACHI JIMOH in favor of YAHAYA AUDU.
8. EXHIBIT F is a document, PROPOSED RESIDENTIAL DEVELOPMENT named MR. OKPANACHI JIMOH

9. EXHIBITS G1 & G2 is a document, CONVEYANCE OF APPROVAL FOR DEVELOPMENT issued to OPANACHI JIMOH on the 8<sup>th</sup> AUGUST,2003, together with the STATEMENT OF BUILDING PLAN APPROVAL FEES in respect of PLOT 360 KUBWA DISTRICT CENTRE LAYOUT issued to OPANACHI JIMOH on the 8<sup>th</sup> AUGUST,2003.
10. EXHIBITS H1 and H2 is an original document CONVEYANCE OF PROVISION APPROVAL issued to OPANACHI JIMOH on the 15/6/1996 and RIGHT OF OCCUPANCY/FCT/BZTP/LA/FCT.3210 issued to OPANACHI JIMOH on the 6/9/2011'
11. EXHIBITS I 1 & I 2 is a BWARI AREA COUNCIL DEPARTMENTAL RECEIPT, issued to OPANACHI JIMOH on the 7/3/2001 together with another BWARI AREA COUNCIL DEPARTMENTAL RECEIPT issued to OPANACHI JIMOH on 7/3/2001

On the 15/2/2022, upon conclusion of the claimant's evidence in chief, counsel for the Defendant cross examined the PW1. There was no reexamination.

The Defendant opened its case on the 2/3/2022. Nnamdi Ezechi testified as its sole witness. He adopted His witness statement on oath of 1/12/2021 and same is hereby reproduced:

1. That I am the Defendant/Counter Claimant on record and a businessman; by virtue of my position, I am conversant with the facts of this case.
2. That I am the beneficial owner of the land/property known and situate at PLOT 360 SITUATE AT KUBWA DISTRICT CENTRE EXT. ANNEX, KUBWA IN BWARI AREA COUNCIL within the jurisdiction of this Honourable Court which is in my possession/occupation as the current holder of title to same where there is an unhindered construction works of a one-story RESIDENTIAL DEVELOPMENT duly approved by the relevant authorities thereon.
3. That I am not in the position to admit or deny paragraph 1 adding that I do not and has never seen or known the claimant before now and still do not know where the claimant resides.
4. That I admit paragraph 2 of the statement of claim.
5. That I deny paragraphs 3,4,5 and 6 of the statement of claims and puts the claimant to the strictest proof of same.
6. In the further answers to paragraph 4 of the statement of Defence, I aver that while MATTHEW PETER was granted the PROVISIONAL APPROVAL for PLOT 360 OF KUBWA DISTRICT CENTRE LAYOUT, KUBWA ABUJA measuring about 1620 M<sup>2</sup>, OKPANACHI JIMOH was

- granted PROVISIONAL APPROVAL for PLOT 360, KUBWA DISTRICT CENTRE EXT. ANNEX KUBWA ABUJA measuring about 500 M<sup>2</sup> upon whose title is traceable to me and upon whose title documents are hereby verified, pleaded and marked EXHIBIT A and B while the processing fees receipts for the said land is marked as EXHIBIT C.
7. Further to the above paragraph 5 and contrary to the Claimant's spurious assertion of being in possession, I am the one who have been in both construction and physical possession of the said PLOT where I am currently erecting an approved one storey building of block of flats in accordance with the approved building plans from the relevant regulatory authorities. The approved PROPOSED RESIDENTIAL DEVELOPMENT building plans for same is hereby verified, pleaded and marked as EXHIBIT D.
  8. That I deny paragraph 7 of the statement of claims, averred that I am not in any position to ascertain the accuracy of the distance and vehemently state my building activities were duly approved and do not constitute trespass into the Claimant's land (if he has any) in whatever manner.
  9. That I deny paragraphs 8 and 9 of the statement of Claims, puts the Claimant to strictest proof at the trial and aver that at no time did the claimant's alleged MAI GUARD ever was in the said PLOT let alone abandoning it for whatever reasons.
  10. That I deny paragraph 10 of the statement of claims and aver that I commenced the approved building works thereon since February, 2021 and still execute lawful construction thereon though mindful of when the claimant trespassed into the PLOT at some point this year, disappeared immediately I presented my title documents only to resurface, boastfully with the WRIT OF SUMMONS that I have been sued by him in the suit.
  11. That I vehemently deny paragraphs 11 and 12 of the statement of claim and aver that to avoid break down of law and order despite provocations from the Claimant that when the parties went to the police station for settlement, we were asked to present our respective title documents for further scrutiny and possible settlement.
  12. Further to paragraph 11 above, on the agreed date as ordered by the police, the Claimant failed to report. No violence has/was ever meted out to the claimant in whatever form by me or on anyone else with regards to the subject matter of this suits.

WHEREAS:

13. That I urge this Honourable court to discountenance all the reliefs sought by the Claimant, same being fraudulent vexatious, mischievous, frivolous and unsubstantiated. I humbly urge this Honourable court to dismiss the Claimant's reliefs with the substantial cost.
14. That I briefed UCHENNA C UCHE, Esq. and his law firm to represent me in this action against the Claimant for which I was charged and paid the sum of ₦1,000,000: 00 (One Million Naira) only as the legal fees and cost of defending him in this suit. The receipt is herein verified, pleaded and marked as EXHIBIT E.

The Defendant tendered EXHIBITS DW1 & DW2 DEED OF ASSIGNMENT and MEMORANDUM OF UNDERSTANDING, EXHIBITS E1 & E2 DEED OF ASSIGNMENT and POWER OF ATTORNEY, EXHIBIT F PROPOSED RESIDENTIAL DEVELOPMENT, EXHIBITS G1 & G2 CONVEYANCE OF APPROVAL FOR DEVELOPMENT and STATEMENT OF BUILDING PLAN APPROVAL FEES in respect of PLOT 360 KUBWA DISTRICT CENTRE, EXHIBITS H1 & H2, CONVEYANCE OF PROVISION APPROVAL and RIGHT OF OCCUPANCY NFCT/BZTP/LA/FCT.3210, EXHIBITS I 1 & I 2 BWARI AREA COUNCIL DEPARTMENTAL RECEIPT

The Dw1 was also cross examined 2/3/2022. The matter was thereafter, adjourned for adoption of final written addresses.

On the 10<sup>th</sup> May, 2022, parties were present in court. Uchenna Uche esq., appeared for the defendant, whilst the claimant was unrepresented. The matter was further adjourned to the 16<sup>th</sup> of July, 2022 for adoption of final written addresses. On the adjourned date, Kenneth Oke appeared for the claimant, while Uchenna Uche appeared for the defendant. The Claimant's Counsel made an oral application to withdraw the matter and he was directed to make it formal. Consequently upon that, the matter was further adjourned for adoption of final written addresses.

Going further, the claimant failed to comply with the Order and also chose to abandon the proceedings. The defendant filed and served on the claimant his final written address. The claimant didn't respond to same and no reason was presented to the court, for the non-filing of the claimant's final written address.

On the 9/2/2023, the defendant adopted his final written address dated 15/4/2022, but filed on the 19/4/2022.

The Defendant raised two issues for determination, that is;

1. Whether the Defendant /Counter Claimant is not entitled to both constructive and physical possession of the land granted in favor of OKPANACHI JIMOH (ORIGINAL ALLOTTEE) through whom the Defendant/Counter Claimant claims peaceable possession of PLOT NO. 360 of about 500M<sup>2</sup> at KUBWA DISTRICT CENTRE EXT, ANNEX.
2. Whether the Defendant/Counter Claimant did not prove a better title over PLOT NO.360 of about 500M<sup>2</sup> at KUBWA DISTRICT CENTRE EXT, ANNEX against the Claimant to move this Honorable Court for consequential declaration of title in favor of Defendant/Counter Claimant.

I have considered the final written address filed on behalf of defendant as well as the evidence put forward by the parties; it is my view that an issue is sufficient to determine the case, that is;

*Whether the Plaintiff on the one hand, and the Defendant/Counterclaimant on the other hand, have established the main claim and counterclaim respectively in these proceedings such that they are entitled to judgment.*

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 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)

The claimant's claim in this suit is primarily one for declaration of title to land and the law is that where a claimant seeks for 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)

The five (5) ways of proving or establishing title to land is as stated in the cases cited by both counsel IDUNDUN v OKUMAGBE (1979) 9 -10 SC 227 at 246... see also 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 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 documents and pleadings of parties, 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 trite law, 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 ACT

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 present in court instruments issued by Area Council in respect of ownership to 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, B & C for the court to declare his right to title with respect to plot 360 at KUBWA DISTRICT CENTER LAYOUT KUBWA measuring about 1620 M<sup>2</sup> extension layout, Abuja; that he has been in possession and has enjoyed uninterrupted and quite possession of the subject matter until sometime around July, 2021 when the defendant trespassed into the subject matter. I stated earlier in the course of this judgment, 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 exhibits A1 & A2 relied on by the claimant emanates from Bwari Area Council, one of the Area Councils in Abuja; also, the undated Deed of Assignment and Irrevocable Power of Attorney, I must say are not documents that can confer ownership or possession on the claimant as none of the document was registered at the Land Registry office, in Abuja. See PASTOR J. AKINLOLU AKINDURO v. ALHAJI IDRIS ALAYA (2007) LPELR-344(SC)

What the claimant has asked this court to do is to give him ownership through the backdoor; unfortunately, this court lack the power to give to him what is not in existence. The right of the donor or as the case maybe must first exist before it can subsist. The evidence of the PW1 is that he is the beneficial owner of the subject matter in issue via exhibits A2 & B. It therefore means that the claimant relies on the aforesaid exhibits to establish his right to the subject matter. 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)

It is crystal clear from the evidence before the court as well as the contents of exhibits A1 & B that the documents were tendered to establish the fact that the subject matter in question has been transferred to the claimant and the effect of them not being registered is that they cannot be pleaded or tendered in evidence.

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. As stated earlier in the course of this judgment, a party who present documents from an Area council as evidence of ownership or possession of a land in the Federal Capital Territory, his case is bound to fail and that is what has happened to the claimant in this case.

I hold that the claimant has no right whatsoever in the property situate and known as Plot 360 Kubwa District Centre Layout Kubwa and as such all other reliefs fails. Accordingly, the case of the claimant is dismissed.

Now, to the counterclaim; the counterclaimant relies on exhibits Dw1, Dw2, E1, E2, F, G1 & G2, H1 & H2, I1 & I2 to proof his claims in this matter. Exhibits Dw1 & Dw2 is the pedestal the defendant in this case stands on to lay claim on the subject matter. I do not hesitate to say that the exhibits are not recognized in law to confer title on the defendant. There are no other documents which the counterclaimant can hang on to lay claim to the subject matter. In fact, the case of the defendant/counterclaimant is worse as he presented documents from different area councils. Exhibit H1, the Conveyance of provisional approval dated the 15/6/96 was issued to Okpanachi Jimoh by the Abuja Municipal Area Council, while exhibits G1 & G2, the Conveyance of Approval for development plan dated the 8<sup>th</sup> August, 2003 and the statement of building plan approval fees in respect of plot 360 dated the 8<sup>th</sup> August, 2003 were issued to Opanachi Jimoh by the Bwari Area Council. It is common knowledge and equally the law that there exist six area councils in the Federal Capital Territory, wherein each is independent of the other. See s. 297 (1) CFRN 1999 as amended which provides thus; there shall be a Federal Capital Territory, Abuja the boundaries of which are as defined in part II of the First Schedule to this Constitution. See also Part II of the First Schedule. Accordingly, H1, G1 & G2 having emanated from two different area councils in respect of the same land, the established fact is that the subject matter cannot be located in two different area councils at the same time. Thus, I hold that no weight can be attached to exhibits H1, G1 & G2 documents. Accordingly, the case of the counterclaimant is also dismissed in its entirety.

ASMAU AKANBI – YUSUF

(HON. JUDGE)

APPEARANCES;

Parties absent and not represented