



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON THURSDAY, 1ST DAY OF JUNE, 2023
BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

SUIT NO: FCT/HC/CV/2159/2022

BETWEEN

1. STEPHEN OMOIGBERALE

CLAIMANT

AND

1. SANI UMAR

2. UNKNOWN AND UNAUTHORIZED PERSONS DEFENDANTS

JUDGEMENT

This suit was instituted on 27/01/2023 vide a writ of summons. The pleadings in this matter are: [i] the claimant's statement of claim filed on 27/01/2023.

The claimant seeks the following reliefs against the defendants as set out in the writ of summons and the statement of claim filed on 27/01/2023:

1. **A DECLARATION** that all the property lying and situate at Plot No.H332 of about 1000sqm Kubwa Extension III (FCDA Scheme), Abuja is the claimant's property and that the Claimant is the bona fide owner.
2. **A DECLARATION** that by the virtue of the said Conveyance of Provisional Approval the claimant has all legal right, interest and benefits to the exclusion of any other persons in the said property.
3. **A DECLARATION** that the action, activities, and steps taken by the 1st and 2nd Defendant(s) in respect of Plot No. H332 of about 1000sqm Kubwa Extension III (FCDA Scheme), Abuja is illegal, void and of none effects.

4. **AN ORDER** of perpetual injunction restraining the defendant(s) either by themselves, their agents, servants and privies representing the defendants either legal or personal from further trespassing into Plot No H332 of about 1000sqm Kubwa Extension III (FCDA Scheme), Abuja.
5. The sum of Twenty Million Naira (₦20,000,000.00) only for the act of trespass committed in respect of Plot No. H332 of about 1000sqm Kubwa Extension III (FCDA Scheme), Abuja.
6. The sum of ₦500,000.000 (Five Hundred Thousand Naira) for cost of this suit.

Stephen Omoigberale, the claimant in this suit gave evidence as PW1. The PW1 adopted his statement on oath on 7/3/2023 filed on 27/01/2022. The defendants failed and/or neglected to file a defence and so they were foreclosed from cross-examination of PW1 and case of defence closed.

Evidence of Stephen Omoigberale (PW1)

The evidence of PW1 in his amended witness statement on oath deemed as properly filed on 7/3/2023 is that he is the original allottee of the property known and described as Plot No. H332 Kubwa Extension III (FCDA Scheme), Abuja (the plot). He has been in absolute possession and ownership of the plot without let or hindrance until sometime in 2010 he noticed that some persons were trespassing into his property and were trying to distort the design of the perimeter fence on the property. All efforts to get to the trespassers proved abortive as the person who was seen on the property planted by the trespassers reported that the persons distorting the work of the claimant are evasive. That the defendants are taking steps to wit reconstructing, developing the claimant properties with the intent of permanently depriving and denying the claimants right, interest and benefit from the properties. All efforts to reach the defendants have proved abortive as defendants are deliberately avoiding the claimant. He made inquiries in Bwari Area Council to uncover if there was any revocation or encumbrance on the property but there was none. He has not alienated his right of ownership and right of exclusive possession on the plot to anyone or corporation and he is not desirous of engaging in any discussion to alienate his right in respect of the plot.

PW1 tendered the following documents:

1. CTC Bwari Area Council Conveyance of Provisional approval dated 15/10/2001 Exhibit P1.
2. Photograph and certificate of compliance Exhibit P2.

Issue for Determination:

The final written address filed in this action, was adopted by learned counsel for the claimant on 9/05/2023.

Akogwu Paul Esq. formulated a sole issue for determination;

"Whether the claimant has credible evidence to prove his case on the balance of probabilities or preponderance of evidence"

From the case presented by the claimant and the submissions made on his behalf, the Court is of the considered view that issue as formulated by the claimant is apt for the resolution of this action.

Submissions of Learned Counsel for the Claimant:

Akogwu Esq. submits that the burden of proving the existence of any facts lies on him who asserts relying on Section 131 of the Evidence Act, 2011 as amended and **CALABAR CENTRAL CO-OPERATIVE THRIFT & CREDIT SOCIETY LTD. & 2 OTHERS VS. BASSEY EBONG EKPO (2008) 6 NWLR PART 1083 PAGE 362 AT PAGE 371.** Counsel further submits that the law is trite that he who asserts must prove his assertion by credible evidence. Referring to **UNIVERSITY OF JOS DR. M.C. IKEGWUOHA (2013) 9 NWLR PART 1360 PAGE 478 PARTICULARLY AT PAGE 497 - 498. PARA, F-B.**

Counsel submitted that from the totality of the claimant's evidence the claimant has discharged the burden of proof based on the preponderance of evidence as required by law in proof of his case. Court was referred to the evidence and all exhibits tendered by the claimant in proof of this case reason being that the defendants never appeared to controvert the evidence adduced by the claimant to establish his case before this Honourable Court and evidence not challenged is deemed admitted and therefore the Court can rely on it to enter judgment in

favour of the party that adduced the evidence. Referring to **EBENWE v STATE (2011) LPELRC-SC. 39/2009; (2011) 7 NWLR, 402**. Court was urged to enter judgment in favour of the claimant.

Decision of the Court:

Now, the claimant's reliefs 1-3 are declaratory and relief 1 is that he is entitled to the equitable, rightful and beneficial ownership of the plot. It is trite law that a party seeking a declaratory relief must adduce credible and sufficient evidence to prove his case. The party seeking a declaratory relief must succeed on the strength of his [or its] case and not on the weakness of the case of the adverse party. See ***AROWOLO V. OLOWOOKERE [2011] 18 NWLR [PT. 1278] 280.***

In the instant case, the claimant has the burden to prove by credible and sufficient evidence that it is entitled to the declaratory order in relief 1 and the other reliefs sought. I pause to remark albeit in passing that the defendant has filed no defence or counter claim; thus, it has no burden of proof. It is important to point out that the evidence of the PW1 was unimpeached during cross-examination and same shall be taken to be uncontroverted.

In **NNPC PENSION LTD VS. VITA CONSTRUCTION LTD (2016) LPELR-41259 (CA)** it was held; it is beyond speculation that the courts are fully entitled to take as admitted all facts in an affidavit which have remained uncontradicted and unchallenged. The implication of this is that the court will deem the evidence of claimant as true and correct and act on it. See the case of **CBN VS IGWILO (2007) 14 NWLR (PT. 1054) 393 @ 406.**

In the appellate decision of **JACOB V. COMMISSIONER, MINISTRY OF ENVIRONMENT AND MINERAL RESOURCES, AKWA IBOM STATE & ANOR (2018) LPELR-45182(CA) (PP. 3-4 PARAS. E)** it was held;

"The respondents despite being served with processes of the Court did not appear nor file processes to contest the application. The repercussion of this type of attitude of the respondents is very clear. An unchallenged and/or uncontroverted fact in Affidavit is deemed admitted. Although this deemed admitted fact must be of such that has the strength or viscosity to establish or sustain the claim of the Plaintiff or Claimant".

In the case of **INEGBEDION VS. SELO-OJEMEN & ANOR (2013) 8 NWLR (PT. 1356) 211**, The Supreme Court held **per ARIWOOLA, JSC** that, **"It is trite law that any unchallenged and uncontradicted fact in an affidavit remains undisputed and is deemed admitted by the adversary and the Court will so hold. However, it is also law that any such unchallenged and uncontradicted facts which are deemed admitted in the affidavit must be capable of proving and supporting the applicant relying on such facts. In other words, it has been held that the affidavit evidence which is said to be unchallenged must necessarily be cogent and strong enough to sustain the case of the applicant...."**

In **EDEM & ORS V. NSEMO (PP. 18 PARAS. A) (2022) LPELR-56989(CA)** the appellate court held;

"It is well established law that in an action for declaration of title, the plaintiff must succeed on the strength of his case and not on the weakness of the defendant. Thus, the onus in a claim for declaration of title is on the party who seeks the declaration. This he can do by satisfying any of the five ways of proof of title to land prescribed by the apex Court in IDUNDUN V. OKUMAGBA (1976) 9-10 SC 227. The law is also settled that declaratory relief will not be granted even on admission and that there is no burden on the defendant to prove his own title to a disputed land where he does not file a counter-claim. In other words, it is only when the claimant has made out a case that the defendant would be required to proffer evidence in rebuttal. See EDOSA V. OGIEMWANRE (2019) 8 NWLR (PRT. 1673) 1 AT 15."

Therefore, the claimant still has a duty to prove title to the land regardless of the absence of a defence on the part of the defendant.

In **IDUNDUN & ORS V. OKUMAGBA (1976) LPELR-1431(SC) (PP. 23-26 PARAS. D-D)** the apex court provided the 5 ways ownership of land may be proved by traditional evidence, production of documents of title, acts of the person (or persons) claiming the land such as selling, leasing or renting out all or part of the land, or farming on it or on a portion of it, acts of long possession and enjoyment of the land and proof of possession of connected or adjacent land.

In the case at hand, Exhibit P1 is the document of title claimant is relying on to prove title.

In **PASTOR J. AKINLOLU AKINDURO v. ALHAJI IDRIS ALAYA (2007) LPELR-344(SC) PAGE 15 PARAS A-F;**

"Production of document of title is indeed one of the five ways of establishing title to land. The document so tendered in evidence must, of course, be duly authenticated in the sense that its due execution must be proved unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract. See Johnson & Ors v. Lawanson&Ors (1971) 1 ALL NLR 56 and Section 130 of the Evidence Act. The guiding principles on proof of title by document of title are well adumbrated by this Court in Romaine v. Romaine (1992) 4 NWLR (Pt.238) 650 at 662 to the effect that production and reliance as an instrument of grant of title inevitably carries with it the need for the court to inquire into some or all of a number of questions including:-"

- (1) Whether the document is genuine and valid.**
- (2) Whether it has been duly executed, stamped and registered.**
- (3) Whether the grantor had the authority and capacity to make the grant.**
- (4) Whether in fact the grantor had in fact what he purported to grant and**
- (5) Whether it has the effect claimed by the holder of the instrument."**

The claimant by tendering Exhibit P1 has fulfilled the requirement for proof of title of land documents and there being no competing superior title to the Exhibit P1, I am satisfied that the claimant has proven his right to ownership of the plot subject matter of this suit.

On the Relief 4 which is the trespass on the plot by the defendants, In the decision of **INYAM & ORS V. EXCHIGAK & ORS (2017) LPELR-43283(CA) (PP. 33 PARAS. A)**The appellate court defined trespass as;

"... a violation of possessory rights; trespass to land is unlawful interference with exclusive possession. The slightest disturbance to the possession of land by a person who cannot show a better right to

possession constitutes trespass in law. See Echere V Ezirike (2006) 12 NWLR (Pt 994) 386, OgbuideVsOsifo (2007) 3 NWLR (Pt 1022) 423.

Trespass is defined as an unauthorized and direct breach of the boundaries of another's land. No intent to commit trespass is required so long as the act resulting in the trespass is violational and the resulting trespass is direct and immediate. It does not depend on the intention of trespasser, nor can he plead ignorance as to the true owner or that he thought the land belonged to him. It is enough that the right of the owner or person in exclusive possession was invaded.

The claimant by Exhibit P2 has furnished court with the photograph of the vandalized property to show the interference of the defendants distorting the work the work on the plot and I am satisfied with the evidence adduced.

In totality I resolve the whole issue in favour of the claimant against the defendants and hereby grant the prayers of the claimant as follows;

1. **I hereby DECLARE that** the property lying and situate at Plot No.H332 of about 1000sqm Kubwa Extension III (FCDA Scheme), Abuja is the claimant property and that the claimant is the bona fide owner.
2. **I hereby DECLARE** that by virtue of the said Conveyance of Provisional Approval the claimant has all legal right, interest and benefits to the exclusion of any other persons in the said property.
3. **I hereby DECLARE** that the action, activities, and steps taken by the 1st and 2nd Defendant(s) in respect of at H332 of about 1000sqm Kubwa Extension III (FCDA Scheme), Abuja is illegal, void and of no effects.
4. **I ORDER** perpetual injunction restraining the Defendant(s) either by themselves, their agents, servants and privies representing the defendants either legal or personal from further trespassing into at H332 of about 1000sqm Kubwa Extension III (FCDA Scheme), Abuja.
5. The sum of Five Hundred Naira (N500,000.00) only for the act of trespass committed in respect of at Plot No. H332 of about 1000sqm Kubwa Extension III (FCDA Scheme), Abuja.

6. The sum of ₦500,000.000 (Five Hundred Thousand Naira) for cost of this suit is refused.

HON.JUSTICENJIDEKAK.NWOSU-IHEME
[JUDGE]

AppearanceofCounsel:

1. Stephen Omoigberale for Claimant
2. Defendants absent and unrepresented