JOSEPH ISHAKU BALAMI & ORS.

AND

JUDGMENT

The Claimant's Writ of Summons and Statement of Claim against the Defendants is dated and filed on the 23rd day of September 2019. Wherein the Claimant prays for the following:

(1) A declaration that by virtue of the conveyance of approval of the grant of Right of Occupancy dated 10th August 2009, the Claimant is entitled to right of occupation over Plot 4118 measuring about 1423 metre lying and situate in Cadastral Zone A04 Asokoro, Abuja.

(2) A declaration that the Notice of Revocation dated 29/09/09 issued by the 1st Defendant purporting to revoke

the right interest and privileges conferred on the Claimant by the grant of Right of Occupancy referred to in Relief 1 above was issued in violation of the provisions of the Land Use Act, therefore illegal, null and void and of no consequence.

(3) An Order setting aside the Notice of Revocation issued by the 1st Defendant dated 29th day of September 2009 purporting to revoke the rights, interests and privileges granted to the Claimant over Plot 4118 Cadastral Zone A04, Asokoro, Abuja, and restoring to the Claimant all rights, interest and privileges following the aforesaid grant of Right of Occupancy over the aforementioned plot.

(4) A mandatory Order directing the Defendants or officers so authorised to remove the Caveat placed on File NG21857 and immediately set in motion the processes for the issuance of a Certificate of Occupancy as evidence of the grant of the right of occupancy.

The Defendants were served on the 10th day of October 2019. The Defendants' Statement of Defence is dated the 3rdof December 2019. The Claimant opened his case and gave evidence for himself. He is Albert Bello Adeyi. He stated in evidence orally that

he is a practising Engineer. He is also into Real Estate. That on 24/09/19, he made a Deposition on Oath. He adopt same as his oral evidence.

Succinctly, the Claimant's evidence is that in accordance with the conditions and requirements of the Defendants, he paid N100,000 and obtained an application form for grant of Statutory Right of Occupancy from the Defendants. He completed and returned he form whereupon the Defendants issued an acknowledgment of receipt of the application.That the application was made in the Business name of Manhelp Enterprises being the owner and trustee. That he accepted the offer and met all conditions contained in the offer. That based on the offer and acceptance, he was vested with a Statutory Right of Occupancy over Plot No. 4118 measuring 1423m^2 situate and lying in Cadastral Zone A04, Asokoro Abuja.

That while in possession of the said plot, the Defendants without prior notice of violation of the terms and conditions of the offer of grant and without fair hearing proceeded to issue a Notice of Revocation of the Right of Occupancy. That the said Notice of Revocation was arbitrary. That he was surprised and embarrassed. That he has suffered injury and damages as a result of the

wrongful revocation of the Right of Occupancy granted him. He urges the Court to grant the reliefs sought.

Claimant's Counsel tendered through PW1 the following Exhibits:

(1) Land application form and receipt.
(2) CTC of Statutory Right of Occupancy and payment receipts.
(3) Letter of acceptance dated 23/08/19.
(4) Notice of renovation dated 29/09/19 which are Exhibits A-A3.

Under Cross Examination, (the Claimant) PW1 said, in Exhibit A1, the offer was given to him. That paragraph 6 of his Oath is a mix-up. That the Right of Occupancy was not made in the name of Manhelp Enterprises. The above is the case of the Claimant. Omoruwa Kate Efosa is the DW1. She is an Estate Surveyor, an Assistant Director, Department of Land Administration. She deposed to a Witness Statement on Oath dated 8/06/2020. She adopted same as her testimony. She deposed that the Claimant paid the sum of ₦21,000 and obtained an application form for the grant of a statutory right of occupancy. The 1st Defendant issued and acknowledged receipt. The application was processed,

approved and conveyed Plot No. 4118 measuring 1423 metres situate and lying in Cadastral Zone A04 Asokoro to the Claimant. The Claimant accepted the offer. That shortly after the grant, a Notice of Revocation was served on the Claimant in accordance with the provisions of the Land Use Act. The Defendant discovered irregularities in the grant. That the Right of Occupancy was not validly granted to the Claimant. That Claimant has not suffered any damages. That Claimant is not entitled to the reliefs sought.

Under cross examination, the Defendants' Witness said Claimant duly applied for the Certificate of Occupancy. That he was granted a Right of Occupancy over Plot 4118. That the said Right of Occupancy was revoked. The above is the case of the Defendants.

Parties were ordered to file Final Written Addresses. The Defendants' Counsel refused and or failed to file any Written Address. The Court takes it to mean that he does not have anything to urge upon the Court. The Claimant's Written Address is dated 5/09/22 but filed on the 16th.Learned Counsel adopted same as his final oral argument. He posited two issues for determination which is essentially one.

It is:

(1) Whether the 1st Defendant complied with the mandatory provision of Section 28 of the Land Use Act of 1978 in revoking Claimant's Right in Plot 4118 Cadastral Zone A04 Asokoro, Abuja.

Learned Counsel canvasses that 1st Defendant did not comply with the mandatory provision of Section 28 of the Land Use Act before he issued the letter of revocation dated 20/09/2009. That the letter of revocation was not served on Claimant. That the Claimant did not give evidence of service. That service of letter of revocation is a condition precedent for a valid revocation. That the reason given by the Defendant for the revocation of the Claimant's interest is unfounded. That discretion "by authority" stated as reasons for revocation is unknown to law. That Claimant was not given fair hearing in accordance with Section 36 of the 1999 Constitution. Learned Counsel finally urges the Court to grant the reliefs sought by the Claimant.

I have read the evidence summarised above and considered Claimant's Final Written Address, the Defendants' Counsel having failed to file any Final Written Address. The issue for determination is simple. It is as raised by the Claimant's Counsel:

(1) Whether the 1st Defendant complied with Section 28 of the Land Use Act 1978 before revoking Plot 4118, Cadastral Zone A04, Asokoro, Abuja.

Section 28 of the Land Use Act 1978 states:

(1) It shall be lawful for the Governor to revoke a Right of Occupancy for overriding public interest.

(2) Overriding interest in the case of a Statutory Right of Occupancy means:

(a) The alienation by the occupier by assignment, mortgage, transfer of possession, sublease or otherwise of any Right of Occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder.

(b) The requirement of the land by the government of the state or by a local government of the state or by a local government in the State, in either case for public purposes within the State or the requirement of the land by the government of the Federation for public purposes of the Federation.

(c) The requirement of the land for mining purposes or oil pipelines of for any purpose connected therewith.

I have earlier summarized the evidence of the Claimant. He was granted a Statutory Right of Occupancy which was not denied by the Defence. Exhibit A1 is the CTC of the Claimant's offer of Statutory Right of Occupancy. He said while in possession of the said land and without any prior notice of violation of the terms and conditions, the Defendants without any fair hearing proceeded to issue a Notice of Revocation of his Right of Occupancy. That he has suffered injury and damages.

The Defendants evidence on the other hand is that shortly after the grant of the Statutory Right of Occupancy, a Notice of Revocation was served on the Claimant in accordance with the provision of the Land Use Act. That the revocation of the Right of Occupancy was done after the Defendants discovered irregularities in the grant. That the Right of Occupancy was not validly granted.

Exhibit A3 is the Notice of Revocation of Right of Occupancy. The law is that the reason for revoking a person's Right of Occupancy must be stated in the Notice of Revocation notwithstanding that the Act does not expressly state that the specific ground of revocation must be stated in the Notice.

It is also the law that the power to revoke a Right of Occupancy must be for overriding public interest and its requirement by government for public purpose. Therefore, any revocation for purposes outside the ones prescribed by Section 28 of the Land Use Act is against the policy and intention of the Act and is invalid, null and void. The reason for revocation as contained in Exhibit A3 is "due to discretion by authority" whatever that means.

See DANTSHOHO VS. MOHAMMED (2003) 6 NWLR (PT. 817) 457 SC.

However, in the Defendants' evidence the DW1 said the revocation was done after the Defendants discovered irregularities in the grant. Whichever way, the Defendants have no discretion in revoking a statutory right of occupancy except in accordance with the law. The irregularities alluded to by the Defendants in their evidence are not placed before the Court. Irregularity is also not one of the overriding public interests listed in Section 28 a-c of the land use act.

In the circumstance of this case. It is my view and I so hold that the Defendants failed to comply with Section 28 of the Land Use Act.

(1) Consequently, the revocation of the rights and interest of the Claimant in Plot 4118 Cadastral Zone A04, Asokoro is illegal, null and void.

(2) The Notice of Revocation issued by the 1st Defendant dated 29th September 2009 purporting to revoke the Claimant's rights and interest in Plot 4118 Cadastral Zone A04, Asokoro is hereby set aside.

(3) The Defendants are hereby ordered to set in motion the process of issuing the Claimant a Certificate of Occupancy.

(4) ₦200,000 (Two Hundred Thousand Naira) as cost of the action.

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