

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
27TH DAY OF OCTOBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/533/2016

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

ALL TRUST LTD
CLAIMANT

AND

KANMA PROPERTIES DEVELOPMENT LTD ... DEFENDANT

JUDGMENT

The Claimant's action against the Defendant dated 15th day of December, 2016 is for the following:

- (1) A Declaration that the Claimant is the holder of the Statutory Right of Occupancy and Allottee of Plot 129 and Plot 130 Sabo-Lugbe East Extension Layout, Abuja and entitled to Certificate of Occupancy thereof.

- (2) A Declaration that the Claimant is in exclusive possession of the said Plot 129 and Plot 130 Sabo-Lugbe East Extension Layout, Abuja and entitled to Certificate of Occupancy thereof.
- (3) A Declaration that the Defendant trespassed and unlawfully entered into the Claimant's Plot 129 and Plot 130 Sabo-Lugbe East Extension Layout, Abuja.
- (4) An Order of perpetual injunction restraining the Defendant, their agents, privies, workers and representatives howsoever called from further entering, encroaching or otherwise trespassing on the Claimant's Plot 129 and Plot 130 Sabo-Lugbe East Extension Layout, Abuja.
- (5) An Order compelling the Defendant to pay to the Claimant the sum of ₦10 Million only as general damages for trespass.
- (6) ₦1 Million as cost of this suit.

The Defendant was served with the Writ of Summons, Statement of Claim and all other Originating Processes on 17/01/2017.

The Defendant entered appearance vide Ayo Ogundele of Counsel and filed a Statement of Defence which was amended by an Amended Statement of Defence dated 8/03/2018 but filed on the 9th of March 2018. The Claimant filed a Reply to Statement of Defence dated 25/05/2017 but filed on 9/06/2017.

The case opened and the Claimant called two (2) witnesses in proof of its case. The first Claimant's witness is Suleiman Omuya of Suite 302B, DBM Plaza, Wuse Zone 1, Abuja.

He stated orally that he is into property and Estate management. He deposed to a Witness Statement on Oath on 20/12/2016. He adopts same as his oral evidence.

He is a Manager at Omusul Nig. Ltd and Lawful Attorney/Agent of the All Trust Ltd, the Claimant over Plot 129 and Plot 130 Sabo-Lugbe East Extension Layout, Abuja.

The Defendant is a trespasser. The Claimant is the holder of Statutory Right of Occupancy over and Allottee of the above mentioned plots.

The Claimant applied and paid the necessary fees. The Claimant became the holder of the aforesaid Right of Occupancy by virtue of an allocation of the said plots to it by the Honourable Minister of the Federal Capital Territory and it accepted the offer.

The Claimant paid the necessary fees and took possession. It caused Beacons to be placed on the land. The Claimant obtained Technical Design Plan and has been in exclusive possession from 1998 till date.

The Claimant donated Power of Attorney to Omusul Nig. Ltd over the plots of land and placed it as caretaker. That he has

been using the land for farming pending when the area will develop.

That sometime in 2016, he noticed an excavation on part of the land. Within a month, an overhead tank was installed on some part of the Claimant's Plot 129. He made an enquiry which revealed no person in particular.

That on 2nd December 2016, he took some architects to the site to commence development only to discover that excavation had been done on the entire plot showing the intention to fence it round.

The men on sight mentioned the Defendant as the trespasser. That the incident was reported to Claimant and its agent. The Claimant wrote a Petition to the Police.

The Claimant tendered:

- 1) Copy of Abuja Municipal Area Council Application Form for Customary Right of Occupancy.
- 2) Offer of Statutory Right of Occupancy dated 11/03/98.
- 3) Acceptance of Offer of Grant of Right of Occupancy,

for each of the Plots 129 and 130 are Exhibits A1 – A2 & A3 and Exhibits B1, B2 & B3 respectively.

Exhibit C is the Claimant's Power of Attorney.

Under cross-examination, the witness answered as follows:

I made an application to the Honourable Minister through the Area Council.

The authorities I referred to in paragraph 11 are Revenue Section, Planning Department of the Area Council.

The second Claimant's witness is Yallo Shehu Usman. He works with the Federal Capital Development Authority (FCDA) in the Urban and Regional Planning Department. He is currently the Resident Town Planning Officer with AMAC Zonal Office.

He said he was in Court to testify whether Plot MF 129 and MF 130 exist on the Sabon-Lugbe East Extension Layout. He stated that from available records at this disposal, those plots aforementioned do not exist on the Sabon-Lugbe East Extension Layout.

The above is the case of the Claimant.

The Defendant gave evidence and called one (1) witness. She is Efosa Kate Omorowa. She said she is an Assistant Director, Lands in the Department of Land Administration.

That on 7/06/2017, she was served with a subpoena to tender documents relating to Plots MF 129 and MF 130. She tendered Exhibit D which is the Certified True Copy of letter from Federal Capital Territory Administration (FCTA) dated 07/06/2017 addressed to Claimant.

The above is the case of the Defendant.

Parties were ordered to file Written Addresses. The Claimant failed, refused and or neglected to file Written Address. He does not have anything to urge the Court upon.

The Defendant's Final Written Address is dated and filed on 18/03/2022. He submitted a sole issue for determination which is: *Whether or not the Claimant is entitled to the grant of the declaratory reliefs being sought.*

Learned Counsel to the Claimant canvasses that the burden of proof is on the Claimant to adduce credible satisfactory and unequivocal evidence to support its claim.

That the Claimant did not make any application to the Honourable Minister of the FCT for Plots MF 129 and MF 130.

That the evidence led by Claimant on its root of title or about how it became the purported allottee and owner of the plots in issue is inconsistent, contradictory, doubtful and unreliable.

The application was not made through the Chairman of AMAC to the Honourable Minister but directly to the latter. The Claimant's title is not from a valid source.

That evidence of PW2 supports the Exhibit D tendered by the Defendant's witness. The document sought to be tendered are not proved to be valid and genuine.

That the Claimant has failed to prove his claims and its case is liable to be dismissed.

The sole issue for determination in my view is: **Whether the Claimant has proved its case so as to entitle him to judgment.** It is a case of declaration of title, trespass, injunction and damages.

The principal relief is the declaration of title as contained in Prayers 1 & 2 while other reliefs, i.e. 3, 4, 5 & 6 are contingent on them.

A Claimant seeking a declaration of title to land such as in this case has a burden of proving his case upon his own evidence and cannot rely on the weakness of the Defendant's case.

See **TUKURU vs. SABI (2005) 3 NWLR (PT. 913) 544.**
OTANMA vs. YODUBAGHA (2006) 2 NWLR (PT. 964) 337 (SC).

It is now trite that there are five (5) ways of proving or establishing title to or ownership of land amongst which is production of documents of title duly authenticated in the sense that their due execution must be proved.

See **AYOOLA vs. ODOFIN (1984) 11 SC 120.**

EWO vs. ANI 17 NSCQR 36.

In proof of the Claimant's case, he called a witness who gave evidence that the Claimant is the holder of a Statutory Right of Occupancy and Allottee of the land in question.

That the plots of land were allocated to him by the Honourable Minister of the Federal Capital Territory. He accepted the offer and paid all necessary fees and took possession.

He tendered Exhibit A – which is an application for land. It is titled "Application for Customary Right of Occupancy Urban/Rural Land within the Abuja Municipal Area." It is addressed to the Chairman, Abuja Municipal Area Council, Abuja dated 3/12/1997.

Exhibit A1 is an Offer of Terms of Grant/Conveyance of Approval to the Claimant. This time, it is from the Ministry of Federal Capital Territory, Abuja Municipal Area Council Zonal Planning Office. It purportedly granted a plot of about 1.2 hectares of land described as Plot MF 130 within Sabon-Lugbe East Extension Layout. The said Exhibit A1 is dated 11/03/1998.

It states, "I am directed to refer to your application for Statutory Right of Occupancy within the Federal Capital Territory dated December 1997 ..."

The application, Exhibit A did not request for a Statutory Right of Occupancy but a Customary Right of Occupancy.

Exhibit A1 is signed by the Zonal Manager for the Honourable Minister. The Honourable Minister is delegated with the power to issue and allocate land to interested Nigerians upon application.

The application is not to the Honourable Minister. The Statutory Right of Occupancy is not signed by the Honourable Minister.

A delegate cannot further delegate his powers to another.
Delegatus non potest delegare.

The Minister of the Federal Capital Territory performs his statutory functions as a *delegatae* of the President. Such specific powers cannot be further delegated. Therefore Exhibits A and A1 fall short of the law.

A similar fate befalls Exhibits B and B1. They are not registered and or duly executed.

The law is that production of a Deed of Conveyance or document of title does not automatically entitle a party to a claim in declaration.

Thus, before the production of document of title is admitted as sufficient proof of ownership, the Court must satisfy itself of the following:

- (1) The document is genuine or valid.
- (2) It has been duly executed, stamped and registered.
- (3) The grantor has the authority and capacity to make the grant.
- (4) The grantor has what he proposes to grant.
- (5) The grant has the effect claimed by the holder of the instrument.

See **KYARI vs. ALKALI (2001) FWLR (PT. 600) 1481 SC.**

The documents of title, Exhibits A & A1 and B & B1 are contradictory. What Exhibits A & B applied for is not what was granted in Exhibits A1 & B1.

The Exhibits A1 & B1 are not stamped and duly registered. The officer who purportedly signed the Right of Occupancy does not have the capacity and authority to grant a Statutory Right of Occupancy in the Federal Capital Territory neither can he be delegated to do so. He does not have what he proposes to grant.

Aside all the above which has completely destroyed the Claimant's case, PW2 subpoenaed by the Claimant said in evidence that the Plots MF 129 and MF 130 Sabon-Lugbe East Extension Layout, Abuja do not exist in the Sabon-Lugbe East Extension Layout, Abuja.

The Claimant's Counsel upon whose application the witness was subpoenaed was in Court. He did not cross-examine the witness.

In the circumstance of this case, the Claimant's case completely crumbles. A declaration of title cannot be granted in respect of a non-existent land. A Defendant cannot also be liable to trespass unto a non-existent tenement.

In totality, Claimant has failed to prove his case so as to entitle him to Judgment. The case fails for lack of merit and it is accordingly dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
27/10/2022

Parties absent.

Ayo Ogundele, Esq. for the Defendant.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

27/10/2022