

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE GWAGWALADA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 13 GWAGWALADA FCT  
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU  
ON THE ..... DAY OF ....., 2022**

**SUIT NO: FCT/HC/CV/1069/2020**

**BETWEEN:**

**BHODES INTERGRATED LIMITED \_\_\_\_\_ CLAIMANT**

**AND**

<p><b>1. THE NIGERIA POLICE FORCE</b></p> <p><b>2. THE POLICE PROPERTY DEV. &amp; CONSTRUCTION COMPANY</b></p> <p><b>3. HONOUYRABLE MINISTER OF THE FEDERAL. CAPITAL TERRITORY</b></p> <p><b>4. FEDERAL CAPITAL TERITORY ADMINISTRATION</b></p>	}	<p>_____ <b>DEFENDANTS</b></p>
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**JUDGMENT**

This is an alleged trespass on plot 237 measuring approximately 319757.18 m<sup>2</sup> bounded by bearings numbers P2, PB3, PB 6401, PB6402, PB6403 in Cadastral Zone B15 of Sector Centre of Abuja (hereinafter called the 'Property') belonging to the claimant by the 1<sup>st</sup> and 2<sup>nd</sup> defendants respectively. In the writ of summons dated and filed on the 11<sup>th</sup> of February 2020, the claimant claims against the defendants as follows;

1. A declaration that the construction of additional layer/blocks to the existing fence, roofing of the gateman house erected by the claimant, erection of a sing post and the mounting of a gate at plot no. 237 measuring approximately 5957.18m<sup>2</sup>

(bounded by bacon numbers PB2, PB3, PB 6401, PB6402, PB6403 in Cadastral Zone Sector Centre A, Abuja belonging to the claimant by the 1<sup>st</sup> and 2<sup>nd</sup> defendants is an act of trespass, unlawful and illegal.

2. An Order of perpetual injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants whether by themselves or by their servants, officers, agents or privies otherwise howsoever so described, from further trespassing, erecting, building, occupying, demolishing, disturbing or interfering with the claimant's possessory right of ownership in respect of plot 237 measuring approximately 319757.18 m<sup>2</sup> bounded by bearings numbers P2, PB3, PB 6401, PB6402, PB6403 in Cadastral Zone B15 of Sector Centre A, Abuja covered by an offer of statutory right of occupancy dated the 21<sup>st</sup> of November, 2019.
3. The sum of **₦10, 000,000.00(Ten Million Naira)** being general damages for the acts of trespass, unlawful erection of fence and a gate on the claimant's property.
4. Cost of this action assessed at **₦3,500,000.(Three Million Five Hundred Thousand Naira).**

The claimant averred that it was allocated the disputed no, 133 in Cadastral Zone B15 of Sector Centre A, measuring approximately 15,000,00M<sup>2</sup> for commercial purpose by the 3<sup>rd</sup> defendant under the accelerated Development Programme by virtue of an allocation dated the 24<sup>th</sup> of April, 2007. The 3<sup>rd</sup> and 4<sup>th</sup> defendants later redesigned the layout and as a result an offer of statutory

right of occupancy dated 6<sup>th</sup> of February, 2012 was issued to the claimant by the 3<sup>rd</sup> defendant changing the purpose of from commercial to public institutions. And by the virtues of the offer of statutory Right of Occupancy the dimension of the plot was reduced from 15,000M<sup>2</sup> to 9,955.83 M<sup>2</sup>. The plaintiff claimed it paid adequate compensation to the natives/indigenes on the property and also took steps to perfect its title. It further created access road on the plot and went further to erect a gateman house up to the lintel level. Sometime in 2016, on a routine visit to the project and to clear over growing grasses, the claimant discovered a sign post on the plot bearing "Nigeria Police Property Development And Construction Company (NPPDCC). Developer Dairy Destiny Nig. Ltd. It removed the signpost and placed caveat emptor sign post on it. Sometime in 2017, the General Manager of the claimant received a phone call from the Mabushi Police station, he honoured the invitation, where he was informed that it was the 1<sup>st</sup> defendant, removed the caveat emptor sign post on the instruction of the 2<sup>nd</sup> defendant. He was advised to visit the office of the 2<sup>nd</sup> defendant, where he interacted with the DCP Obe E. Rudolf concerning the dispute land furnished him with relevant documents. The General Manager of the claimant also wrote a letter to the 3<sup>rd</sup> defendant seeking for their intervention. And on the strength of the letter, the claimant was invited by the 4<sup>th</sup> defendant, where he also presented her title documents. The parties were advised to stay

action pending the decision of the 3<sup>rd</sup> & 4<sup>th</sup> defendants. The 3<sup>rd</sup> defendant referred the dispute to the Land use and Development Committee (L.U.A.C) to make findings and submit recommendation.

The claimant stated that despite the letter of complaint dated 9<sup>th</sup> May, 2017 and the visit to the 4<sup>th</sup> defendant, it did not receive further correspondence, and this necessitated further correspondence dated 4<sup>th</sup> October, 2017 and 20<sup>th</sup> April, 2018. And after a year, it received a letter from 4<sup>th</sup> defendant, signed on behalf of the 3<sup>rd</sup> defendant dated 16<sup>th</sup> July, 2019 and titled RE: STATUTORY RIGHT OF OCCUPANCY WITH FILE NO. 133 SECTOR CENTRE A(B15) DISTRICT ABUJA FCT", which approved that the claimant retained a portion of plot no 133 with Sector Centre A measuring 5,955M<sup>2</sup>, and that a statutory Right of Occupancy reflecting the new size shall be conveyed to claimant. The claimant accepted the offer, and a new offer of statutory Right of Occupancy dated 21<sup>st</sup> November, 2019 was issued to the claimant by the 3<sup>rd</sup> and 4<sup>th</sup> defendants. The new said Right of Occupancy carved out a dimension of 5,957.18M<sup>2</sup> for commercial (Shopping Complex) purpose with a new plot no. 237 from the same plot earlier averred in paragraph 8 of the statement of claim. And accompanying the new statutory Right of Occupancy was the bill also dated 21<sup>st</sup> November, 2019 which offset the initial sum of N10 Million paid for the R. of O. Dated 12<sup>th</sup> February 2012(now invalid as a result of the new (R. of O.) leaving a

balance of N1, 792,021. The claimant also paid a sum of **N10,000.00 (Ten Thousand Naira)** to the 4<sup>th</sup> defendant for MAP production, for the purpose of delivering on the ground the new plot 237 measuring 5,957.18M<sup>2</sup>. The claimant having established the bacons showing the size of the new plot, sometime in December, 20198 proceeded to engage workmen to create a perimeter fence into the guide of the newly established bacons. And while the workmen were digging in anticipation of erecting a perimeter fence, they were arrested and subsequently detained by the 1<sup>st</sup> defendant. And thereafter, the 1<sup>st</sup> and 2<sup>nd</sup> defendants proceeded to erect additional layer/blocks to the existing fence covering the initial dimension of 9,953.85M<sup>2</sup> which now includes the claimants 5,957.18M<sup>2</sup> as stated in the new Right of Occupancy dated 21<sup>st</sup> November, 2019 and equally noted the uncompleted gate man house erected by the claimant, mounted a gate. And another sign-post. Following all the events, the claimant engage the services of Adebola & Onyenyu & Co. to initiate the instant law suit on its behalf.

The claimant pleaded Nineteen documents which were admitted as Exhibits A1-A10, B1-B9 respectively. Upon the service of the statement of claim, on the defendants, the 1<sup>st</sup> & 2<sup>nd</sup> defendants filed a conditional memorandum of appearance dated 1<sup>st</sup> day of June 2020 but did not file a statement of defence or any other processes throughout the suit. The 3<sup>rd</sup> & 4<sup>th</sup> defendants filed a motion for extension of time to appear out of time and equally

filed a defence dated the 17<sup>th</sup> December, 2020. The trial commenced on the 22<sup>nd</sup> March, 2021, all the parties were ably represented by their respective counsel. The claimant fielded his General Manager (PW1) as his sole witness be adopted his witness statement and documentary evidence. The witness was cross examined by Y.B. Abdulrahman learned counsel to the 3<sup>rd</sup> & 4<sup>th</sup> defendants. The witness under cross examination by Mr. Y.B. Abdulrahman confirmed that since the partitioning of the disputed plot, the 3<sup>rd</sup> & 4<sup>th</sup> defendants have not trespass into the property. There was no re-examination. The counsel to the 1<sup>st</sup> & 2<sup>nd</sup> defendants sought for a date to file their statement of defence and cross examined the witness.

It is on record that the 1<sup>st</sup> and 2<sup>nd</sup> defendants did not call evidence, and were constantly absent from court despite service of hearing notices on them. On the 17<sup>th</sup> January, 2022, the learned counsel to the claimant applied for a foreclosure of the 1<sup>st</sup> & 2<sup>nd</sup> defendants from defending this suit and sought for a discharge of their witness. The court after a careful perusal of the record discovered that several hearing notices were served on the 1<sup>st</sup> & 2<sup>nd</sup> defendants; copies, references were made to the affidavit of service sworn by the bailiff of the court. Consequently, the 1<sup>st</sup> & 2<sup>nd</sup> defendants were foreclosed paving way for the 3<sup>rd</sup> & 4<sup>th</sup> defendants to call their witness.

The witness is Bukar Muhammed, Manager, (DW1) & principal Estate officer with the Federal Capital Territory Development who adopted his sworn witness statement on Oath on 17<sup>th</sup> January, 2022. He confirmed that plot no. 133. Cadastral Zone B15 within Sector Centre A District was granted to the claimant under the accelerated Development Programme via a letter for grant dated 24/04/2007 and measuring 15,000:00 sq. That after redesigning of the District, the claimant's grant was replaced with statutory Right of Occupancy covering plot 133, Cadastral Zone B15 Sector Centre A measuring about 9,955.855m.

That the due to the dispute that arose between the claimant and 1<sup>st</sup> & 2<sup>nd</sup> defendants, the 3<sup>rd</sup> defendant through it agency in charge of land allocation in Federal Capital Territory took over the matter, and after a thorough and painstaking deliberation, the **Land Use and Allocation Committee** recommended to the 3<sup>rd</sup> defendant that the said plot be granted to them under the statutory Right of Occupancy dated 16/02/2012 should be divided into two part. The part measuring about 4000 square shall be for 1<sup>st</sup> & 2<sup>nd</sup> defendants while the remaining part measuring about 5,957.18sq shall be returned to the claimant. That this decision was conveyed to the 1<sup>st</sup> defendant who approved same and thus necessitated the issuance of a new statutory Right of Occupancy dated 21/11/2019 to the claimant with new plot number known as plot 237 which they accepted. That the claimant has been in position of the said plot, and that

the 1<sup>st</sup> & 2<sup>nd</sup> defendants cannot lay claim of the entire plot on area based on the resolution of the Land Use Allocation Committee and as approved by the Honourable Minister of the Federal Capital Territory. That the 3<sup>rd</sup> & 4<sup>th</sup> defendants maintained that as far as they are concerned it is only the claimant that has legal right on plot 237 Cadastral Zone B15 Sector A within the measurement as stated above. The witness for the 3<sup>rd</sup> & 4<sup>th</sup> defendants was not cross-examined; the case for the defence was subsequently closed.

The parties were ordered to file and exchange their written addresses. It is only the claimant that complied by filing a succinct written address. The learned counsel to the claimant on the adopted final written address particularly at paragraph 3.0 frontloaded a sole issue for determination to wit: ***whether upon the preponderance of evidence adduced by the document, the claimant is entitled to the reliefs sought in their writ.*** In his arguments, the learned counsel submitted that this matter is essentially hinge on the trespass by the defendant particularly 1<sup>st</sup> & 2<sup>nd</sup> defendants on the lawful, peaceful adequate enjoyment of the claimant's property known and described as plot 237, approximately 5,937.18m<sup>2</sup> in Cadastral Zone B13 of Sector A. Abuja. He referred to the active illegal acts of the defendants as the construction of additional layer/blocks to the existing fence, roofing of the gateman house erected by the claimant, erection of a sign post and the roofing of the gate on the property of the



claimant. It is pertinent at this juncture to pose that what is trespass? Trespass has been define in plethora of case as unlawful interference with exclusive possession. See **OMORHIRHU VS. ENATERIWERE (1988) LPELR 2659 SC.** where the Supreme Court states thus:

***“In words and phrase legally defined (2<sup>nd</sup> Edition) Vol 5.@ page 222, the word trespass” is given the following definition” Trespass is a wrongful act, done in disturbing the possession of a property of another, or against the person of another, against usual. To constitute trespass the act must be in general be unlawful at the time when it is committed. Whoever is in possession may maintain an action of trespass against a wrongdoer to his possession.” Every unlawful entry by the person on the land in the possession of another is a trespass for which an action he(and) a person trespassing upon land if he wrongfully set foot on, or rides or drives over it, or pulls down or destroy anything permanently fixed to it or wrongfully take minerals from it.” - Per Wali JSC. See Onyam & Ors Vs. Exchigaks & Ors(2017)LPELR 43283(CA). Adetoro & Anor Vs. Zenith Int’l Bank Plc. 2011 LPELR 8237 SC. Oibileke & Anor V. Nnamechi & Ors(2012)LPELR 7810 SC. DANTSOHO V. MOHAMMED (2013) LPELR.***

The learned counsel argued that the claimant was in possession of the property as at the time of the illegal acts of the 3<sup>rd</sup> & 4<sup>th</sup> defendants and are therefore the right person in law to maintain

this suit. He commended to the court the cases of **OPOTO V. ANAWN(2016) 16 NWLRpt.1539, 437,.** **OKOLO V. UZOKA** I agree that the claimant was in exclusive possession of the property and that the act of the 1<sup>st</sup> and 2<sup>nd</sup> defendants constitutes unlawful disturbance of possession of the claimant to the property. The defendants did not controvert the testimony of the claimant that there were already structures on the property before the 1<sup>st</sup> and 2<sup>nd</sup> defendants constructed their own additional layer of blocks to the existing and roof further structures erected on the property. The allegation that the workmen of the claimant were working on the property when the 1<sup>st</sup> defendant arrested and took them away was not controverted by the 1<sup>st</sup> & 2<sup>nd</sup> defendants. It is on record that the 1<sup>st</sup> & 2<sup>nd</sup> defendants did not cross examine the claimant's witness and did not file pleadings nor adduce any evidence. It is apparent that the claims and reliefs sought by the claimant remain unchallenged. I further endorse the claimant's position that the evidence of the witness for the 3<sup>rd</sup> & 4<sup>th</sup> defendants is in sync with that of the claimant and therefore support the claim of the plaintiff.

On unchallenged evidence of the plaintiffs, learned counsel relied on the case of **CBN & ORS V.OKOJIE (20150 LPELR 24740 SC.** See also the case of **OBI NECHE & ORS V. AKUSOBI & ORS 2010 LPELR 2178 SC** where the court held:

“Where evidence by a party to any proceeding was not challenged or controverted by the opposite party who had the opportunity to do so, it is aloof open to the court seized of the case to act on such unchallenged or uncontroverted evidence before it as the court below did in respect of the said evidence of the plot in the instant case. There are too many decided authorities in this regard. See the *Nwabuoku V. Okelic*(1961) 1 ANLR 478 @490, *Odulaga V. Haddad*(1973) 11 SC 357, *Nigerian Maritime Services Ltd. V. Alhaji Belio Afolabi*(1978) SC 72.

In the circumstance, it is safe to hold that the oral and documentary evidence adduced by the plaintiff witness were not challenged in any form by the 1<sup>st</sup> & 2<sup>nd</sup> defendants. The plaintiff have his evidence proved its entitlement to the declaratory relief sought in paragraph 1 of the statement of claim, and the Order for perpetual against succeeds. The action of the 1<sup>st</sup> and 2<sup>nd</sup> defendants is a show of force and an abuse of power.

Consequently, the 1<sup>st</sup> and 2<sup>nd</sup> defendants, neither by their agents, servants or privies are hereby restrained from further trespassing, erecting, building, occupying, demolishing, distorting or interfering with the claimant's possession right of ownership in respect of the property covered by an offer of statutory right of occupancy dated 21<sup>st</sup> November, 2019.

On the award of damages, the evidence of the plaintiff witnesses, evinces recklessness and an abuse of power which ought to

attract punitive or exemplary damages. See the case of First Bank of Nig. Plc.& Ors V. Boniface Chukwu(2018) LPELR 45148 CA. CA per Oredola JCA, where he stated “So what is exemplary damages and when in law should it be granted by the court. In law, exemplary or punitive damages as the name implies are damages on an increased scale over and above special or actual or ordinarily damages. It is only awarded in aggravated circumstances and are thus, punitive in nature to address power acts of high handedness or recklessness.

The act of the 1<sup>st</sup> & 2<sup>nd</sup> defendants by unlawfully taken possession of the claimant's plot is highly condemnable and an award of the N5,000,000.00(Five Million Naira) should assuage the position of the claimant. And I so Order.

Signed

Hon. Judge

.../..../2022