

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI –ABUJA**

**HIS LORDSHIP: HON.JUSTICE M.S. IDRIS**

**COURT NUMBER: 28**

**Date:- 4<sup>TH</sup> JULY, 2022**

**FCT/HC/CV/1141/2021**

**BETWEEN:**

**COTEA INTERNATIONAL NIGERIA LTD-----**

**CLAIMANT**

**AND**

**EGBITA JUDE-----**

**DEFENDANT**

**JUDGMENT**

This Judgment is in respect of the Suit commenced at the behest of the Claimant by way of a Writ of Summons filed alongside accompanying processes on the 17<sup>th</sup> of June, 2021 wherein the Claimant sought the following claims against the Defendant to wit:-

- a. A DECLARATION THAT THE CLAIMANT IS THE OWNER OF THE LAND KNOWN AS PLOT 3, CADASTRAL ZONE D12, KABA, ABUJA.**
- b. A DECLARATION THAT THE ENTRY AND DIGGING OF TRENCH ACROSS THE APPROVED ENTRANCE TO PLOT 3, CADASTRAL ZONE D12, KABA, ABUJA BY THE DEFENDANT, ITS SERVANTS, PRIVIES AMOUNT TO TRESPASS AND DENIAL OF RIGHT OF INGRESS AND EGRESS AGAINST THE CLAIMANT.**
- c. A SUM OF N25,000,000 (TWENTY-FIVE MILLION NAIRA ONLY) AS GENERAL DAMAGES FOR TRESPASS AGAINST THE DEFENDANT.**
- d. AN ORDER OF PERPETUAL INJUNCTION RESTRAINING THE DEFENDANT BY HIMSELF, HIS SERVANTS, AGENTS OR PRIVIES, WORKMEN OR OTHERWISE HOWSOEVER FROM FURTHER CUTTING THE CLAIMANTS ACCESS TO ITS PROPERTY PLOT 3, CADASTRAL ZONE D12, KABA, ABUJA BY DIGGING A**

**TRENCH OR PLACING ANY SUBSTANCE OR MATERIAL WHATSOEVER CALCULATED AT CUTTING OFF ACCESS TO THE CLAIMANTS LAND.**

The Defendant in response filed his Statement of Defence and Counter Claim and accompanying processes on the 9<sup>th</sup> of July, 2022 urging this honourable Court to dismiss the Claimants suit and further counter claiming against the Claimant as follows:-

- a. A DECLARATION THAT THE DEFENDANT IS THE OWNER, OR PERSON SUFFICIENTLY ENTITLED TO POSSESSION OF THE ENTIRE PIECE OF LAND KNOWN AS PLOT CP32 AT OUTER NORTHERN EXPRESS WAY, ABUJA, MEASURING APPROXIMATELY 8000M<sup>2</sup> AND MORE PARTICULARLY DESCRIBED IN THE RIGHT OF OCCUPANCY No: FMT/MZP/LA/2005/MISC 115, THE PLOT HAVING BEEN GRANTED TO THE DEFENDANT'S BUSINESS NAME, ILAITA ENTERPRISES ON 29<sup>TH</sup> JUNE, 1998, BY LUGGARD I EDEGBE, FOR AND ON BEHALF OF THE HONOURABLE MINISTER, MINISTRY FOR FEDERAL CAPITAL TERRITORY.**
- b. A DECLARATION THAT THE ENTRY INTO THE DEFENDANTS LAND BEING PLOT CP32 AT OUTER NORTHERN EXPRESS WAY ABUJA, MEASURING APPROXIMATELY 8000M<sup>2</sup> AND DEMARCATED BY THE SURVEY BEACONS No. PB 9220; PB 9231; 9438 AND 9439 IS UNLAWFUL AND SAME CONSTITUTES TRESPASS.**
- c. AN ORDER GRANTING THE DEFENDANT POSSESSION AND OR VALIDATING THE POSSESSORY RIGHT OF THE DEFENDANT OVER PLOT CP32, AT OUTER NORTHERN EXPRESS WAY, ABUJA, MEASURING APPROXIMATELY 8000M<sup>2</sup> AND DEMARCATED BY THE SURVEY BEACONS No. PB 9220; PB 9231; 9438 AND 9439.**
- d. AN ORDER OF PERPETUAL INJUNCTION RESTRAINING THE CLAIMANT EITHER BY ITSELF, ITS AGENTS, ASSIGNS, REPRESENTATIVES IN INTEREST AND OR ANY PERSON HOWSOEVER DESCRIBED CLAIMING THROUGH THE CLAIMANT FROM FURTHER ENTERING AND OR TRESPASSING ON THE DEFENDANTS PLOT No CP32 AT OUTER NORTHERN EXPRESS WAY, ABUJA, MEASURING APPROXIMATELY 8000M<sup>2</sup>**
- e. PAYMENT OF FIVE MILLION NAIRA (N5,000,000.00) ONLY AS GENERAL DAMAGES TO THE DEFENDANT FOR THE UNLAWFUL TRESPASS ON THE DEFENDANTS PLOT AND FINANCIAL LOSS CAUSED TO THE DEFENDANT**

The Claimant further filed a reply to the Defendants Statement of Defence and a Defence to the Defendants Counter Claim on the 22<sup>nd</sup> of September, 2021. The Defendant/ Counter-claimant further filed a Reply to the Claimants Defence to Counter Claim on the 12<sup>th</sup> of November, 2021 and on the basis of this, parties joined issues and trial commenced on the 5<sup>th</sup> of November, 2021. The Claimant called two (2) Witnesses, one of which was subpoenaed and after the close of the case of the Claimant, the Defendant proceeded to open its case, testifying for himself. At this stage of trial, the following documents were tendered on behalf of the Claimant in support of its case to wit:-

1. The development and Control Building Plan Approval relating to Plot 3, cadastral Zone D12, Kaba District, Abja- Exhibit 1
2. Offer of Statutory Right of Occupancy dated 11<sup>th</sup> April, 2011 relating to Plot 3, Cadastral Zone D12, Kaba District, Abuja- Exhibit 2
3. Search report from Corporate Affairs Commission relating to the incorporation status of Ilaita Enterprises- Exhibit 3
4. Ministerial Approval relating to Plot 3, Cadastral Zone D12, Kaba District, Abuja-Exhibit 4
5. Certified true copy of the Status report of the Claimant- Exhibit CC5

The Defendant also tendered Exhibits DW 1-8 in support of his case. At close of the case of the Defendant, the Defendant and Claimant proceeded to file their Final Addresses on the 14<sup>th</sup> of April, 2022 and 27<sup>th</sup> of April, 2022 respectively.

The Defendant/ Counter Claimant raised 2 issues in its Final Address for determination by this Honourable Court to wit:-

- a. WHETHER THE CLAIMANT HAS ESTABLISHED OWNERSHIP OF THE PORTION OF LAND IN DISPUTE TO BE ENTITLED TO THE RELIEFS SOUGHT IN THIS SUIT.
- b. WHETHER THE DEFENDANT/ COUNTER CLAIMANT HAS ESTABLISHED HIS POSSESSORY RIGHT OVER THE PORTION OF THE LAND IN DISPUTE TO BE ENTITLED TO THE RELIEFS CLAIMED.

On issue one above, the Defendant/ Counter Claimant submitted without much ado that the Claimant has failed to establish its ownership of the land

in issue and is not entitled to the reliefs sought. The Defendant/ Counter Claimant submitted that although the Claimant had produced a document "the Statutory Right of Occupancy (R of O) dated April 11, 2011, a mere production of a document of title does not automatically entitle a party to a claim of declaration of title to land. The Defendant/ Counter Claimant went on to state that before such document is accepted in proof of title, it must not only be valid but must be duly executed among other requirements, citing the case of **AYANWALE V. ODUSANMI (2011) 18 NWLR (PT 1278) PAGE 328 AT 348-349 paragraphs F-A**. Therefore, to the Defendant/ Counter Claimant, the document presented by the Claimant failed to meet the threshold of the law and should not be relied on by the Court.

The Defendant/Counter Claimant further stated that even if PW2, the subpoenaed witness of the Claimant tried to explain away the defects on the R of O, such oral evidence cannot alter, add to, vary or contradict the content of the Document, citing **SECTION 128 (1) OF THE EVIDENCE ACT 2011 AND IKPEAZU V. OGAH (2017) 6 NWLR (PART 1562) PAGE 439 AT PAGE 491 PARAGRAPH E**. it is also the Defendant/ Counter Claimants contention that the purported allocation of the land in question to the Claimant occurred in 2011, several years after the allocation of the Offer of Terms Of Grant/Conveyance of Approval dated September 29, 1998 to Ilaita Enterprises, a business name which belongs to the Defendant and his brothers. Therefore, as no portion of the Plot earlier allocated to Ilaita Enterprises was revoked, same cannot be lawfully and validly allocated to the Claimant.

The Defendant/ Counter Claimant while urging the Court to resolve the issue raised against the Claimant, he also urged the court to expunge some exhibits which to his mind were wrongly admitted in evidence by this honourable Court.

On the Second issue raised by the Defendant/ Counter Claimant, it was submitted that the Defendant/ Counter Claimant has established his equitable right over the portion of the land in dispute and he is entitled to the reliefs claimed.

The Claimant equally raised two issues in its Final Address to wit:-

- a. WHETHER THE CLAIMANT HAS PROVEN ITS CASE TO BE ENTITLED TO THE RELIEFS SOUGHT IN THE STATEMENT OF CLAIM?
- b. WHETHER THE DEFENDANT HAS EQUALLY PROVEN ITS CASE TO BE ENTITLED TO THE RELIEFS CONTAINED IN ITS COUNTER CLAIM.

Before going ahead to dissect the issues raised by it, the Claimant attempted to distinguish some cases cited by the Defendant/ Counter Claimant from the extant case at bar, which cases the Defendant/ Counter Claimant had relied on in support of the fact that the document of title tendered by the Claimant in support of its case did not meet up with the threshold set by the law.

The Claimant went on to submit that in light of the evidence adduced before this Honourable Court, the Claimant in fact led evidence as to its title by production of documents of title to wit Exhibits 2 and 4. The Claimant went further to state that all lands within the Federal Capital Territory by virtue of the Federal Capital Territory Act 1976 are vested in the Federal government and same is administered by the Minister of the Federal Capital Territory, concluding that it is beyond contention that the appropriate authority to allocate land to persons within the Federal capital territory is the Minister of the Federal Capital Territory, CITING **LUGBE & ORS V. FCDA & ORS (2021) LPELR-53182(CA)**. The Claimant on the second issue raised by it concluded that the Defendant has in no way proved its case to be entitled to any reliefs sought, describing the Defendant as the trespasser and with regards to his Counter Claim, a meddlesome interloper, having no locus standi to maintain such counter claim.

After a thorough appraisal of all processes filed and evidence led during trial, I find it of utmost importance to streamline topical issues in this case to enable this Honourable Court do justice. From the totality of facts before this Honourable Court, two recurring legal and topical issues to wit-Trespass to land and proof of Ownership of Land and their ingredients must be clearly defined according to law to help this case progress. On

Trespass to land, the Supreme Court in the case of ***ORIORIO & ORS V. OSAIN & ORS (2012) LPELR-7809(Sc)*** succinctly held that:-

***"TRESPASS TO LAND IS THE WRONGFUL AND UNAUTHORIZED INVASION OF THE PRIVATE PROPERTY OF ANOTHER. IT IS TRESPASS TO LAND PROVIDED THE ENTRY INTO THE LAND OF ANOTHER BY A PERSON IS NOT AUTHORIZED. TRESPASS TO LAND IS ROOTED IN A RIGHT TO EXCLUSIVE POSSESSION OF THE LAND ALLEGEDLY TRESPASSED. TRESPASS TO LAND IS THEREFORE ACTIONABLE AT THE INSTANCE OF A PERSON IN POSSESSION OF THE LAND. OKOKO V. DAKOLO (2006) 14 NWLR, PT. 1000, PG. 401, ADEPOJU V. OKE (1999) 3 NWLR, PT. 594, PG. 154, OYADARE V. ILEYI (2005) 7 NWLR, PT. 925, PG. 571, BALOGUN V. AKANJI (2005) 10 NWLR, PT. 933, PG. 571, IMONA & RUSSEL V. NIGER CONSTRUCTION LTD. 1987, 3 NWLR, PT. 60, PG. 298." PER OLUFUNLOLA OYELOLA ADEKEYE, JSC (PP 27 - 27 PARAS A - C)"***

Also in the recent case of ***SPIESS V. ONI (2016) LPELR-40502(Sc)*** on what constitutes trespass to land, it was held that:

***"POSSESSION IN LAND MATTERS, EVEN ORDINARILY IS THE BACKBONE AGAINST ALL OTHER CLAIMS TO LAND IF NOT ACCENTUATED BY THE OWNER OF THE LAND WHO HAS A BETTER TITLE. IN ORDINARY CIVIL TRESPASS, THIS COURT IN THE CASE OF OGUNBIYI V. ADEWUNMI (1988) 3 NSCC 268, HAD CAUSE TO RE-ITERATE THAT: "CONCEPTUALLY, TRESPASS TO LAND CONSISTS IN ANY UNJUSTIFIABLE INTRUSION BY ONE PERSON UPON THE LAND IN POSSESSION OF ANOTHER. ALSO TRESPASS IS ACTIONABLE AT THE SUIT OF THE PERSON IN POSSESSION OF THE LAND WHO CAN CLAIM DAMAGES OR INJUNCTION OR BOTH." PER IBRAHIM TANKO MUHAMMAD, JSC (PP 12 - 13 PARAGRAPHS E - B)"***

Furthermore, on what a Plaintiff must prove to succeed in a claim for trespass to land, the Supreme Court in the case of ***ANSA & ORS V. ISHIE & ORS (2005) LPELR-497(Sc)*** held thus:

***"A TRESPASSER WHO SUCCEEDS IN SEIZING POSSESSION OF LAND FROM THE TRUE OWNER CANNOT RESIST AN ACTION IN TRESPASS BY CONTENDING THAT HE IS THE ONE NOW IN POSSESSION AND NOT THE ONE FROM WHOM HE SEIZED OR OBTAINED THE LAND. IT FOLLOWS THEREFORE THAT TO SUCCEED IN AN ACTION FOR TRESPASS, THE PLAINTIFF MUST PROVE THAT HE WAS IN POSSESSION AND THAT THE DEFENDANT TRESPASSED ON THE LAND IN WHICH HE WAS IN POSSESSION. HE MUST ALSO PROVE THE EXACT AREA OF THE LAND IN HIS POSSESSION TRESPASSED UPON. SEE ADEPOJU V. OKE (1999) 3 NWLR (PT. 594) 154; OJUMO V. LBRAHIM (1999) 12 NWLR (PT. 631) 415." PER SUNDAY AKINOLA AKINTAN, JSC (PP 19 - 19 PARAS B - D)***

Having settled the issue of Trespass to land, it is now pertinent to dive deeper into what constitutes valid proof of Ownership of land and ingredients which must be present for declaration of title to land. In the case of ***SORONNADI & ANOR V. DURUGO & ANOR (2018) LPELR-46319(Sc)*** the Supreme Court on ways of proving title/ownership of land held thus:

***"THERE ARE FIVE WAYS TO PROVE OWNERSHIP OF LAND. FATAI-WILLIAM, JSC (AS HE THEN WAS) SPELT THEM OUT IN IDUNDUN V. OKUMAGBA (1976) NSCC 445, AS FOLLOWS: FIRSTLY, OWNERSHIP OF LAND MAY BE PROVED BY TRADITIONAL EVIDENCE - - SECONDLY, OWNERSHIP OF LAND MAY BE PROVED BY PRODUCTION OF DOCUMENTS OF TITLE WHICH MUST, OF COURSE BE DULY AUTHENTICATED - - THIRDLY, 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 A PORTION OF IT, ARE ALSO EVIDENCE OF OWNERSHIP, PROVIDED THE ACTS EXTEND OVER A SUFFICIENT LENGTH OF TIME AND ARE NUMEROUS AND***

***POSITIVE ENOUGH TO WARRANT THE INFERENCE THAT THE PERSON IS THE TRUE OWNER. FOURTHLY, ACTS OF LONG POSSESSION AND ENJOYMENT OF THE LAND MAY ALSO BE PRIMA FACIE EVIDENCE OF OWNERSHIP OF THE PARTICULAR PIECE OR QUANTITY OF LAND WITH REFERENCE TO WHICH SUCH ACTS ARE DONE. SUCH ACTS OF LONG POSSESSION, IN A CLAIM FOR DECLARATION OF TITLE (AS DISTINCT FROM A CLAIM FOR TRESPASS) ARE REALLY A WEAPON MORE OF DEFENCE THAN OF OFFENCE; MORE-OVER UNDER SECTION 145 OF THE EVIDENCE ACT, WHILE POSSESSION MAY RAISE A PRESUMPTION OF OWNERSHIP, IT DOES NOT DO MORE AND CANNOT STAND WHEN ANOTHER PROVES A GOOD TITLE - - FINALLY, 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 OF THE LAND IN DISPUTE... PER AMINA ADAMU AUGIE, JSC (PP 51 - 54 PARAS F - B)"***

Therefore, standing firmly on the authorities cited above, to succeed in a claim for Trespass to land, in addition to proving exclusive possession, the party praying the Court to declare some other individual a Trespasser must prove the exact portion of land in his possession which was trespassed upon. Also, as recognized by extant law, five (5) ways exist for a party to prove his title to a land to wit-

- a. BY TRADITIONAL EVIDENCE***
- b. BY PRODUCTION OF DOCUMENTS OF TITLE WHICH MUST, OF COURSE BE DULY AUTHENTICATED***
- c. 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 A PORTION OF IT, ARE ALSO EVIDENCE OF OWNERSHIP, PROVIDED THE ACTS EXTEND OVER A SUFFICIENT LENGTH OF TIME AND ARE NUMEROUS AND POSITIVE ENOUGH TO WARRANT THE INFERENCE THAT THE PERSON IS THE TRUE OWNER***
- d. ACTS OF LONG POSSESSION AND ENJOYMENT OF THE LAND MAY ALSO BE PRIMA FACIE EVIDENCE OF OWNERSHIP OF THE***

**PARTICULAR PIECE OR QUANTITY OF LAND WITH REFERENCE TO WHICH SUCH ACTS ARE DONE**

**e. 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 OF THE LAND IN DISPUTE**

Having now set a yardstick and scale for which the cases of both parties in the extant suit can be weighed, I will now proceed to weigh same in order to ensure that the ends of justice are met.

The Claimant in proof of its case *inter alia* tendered in evidence an Offer of Right of Occupancy purportedly issued to it by the Honourable Minister of the Federal Capital Territory on April 11, 2011. On the face of it, it is immediately noticed that the document is signed and executed "for: Minister Federal Capital Territory" but the name of the officer who signed "for" the Minister Federal Capital Territory is not stated or provided therein. The case of ***OJIBAH V. OJIBAH (1991) LPELR-2374(Sc)*** is immediately instructive. The Supreme Court on the nature of documents of title and position of the law as to production of same as a means of proving title to land held thus:

**"NEEDLESS TO STATE THAT ALTHOUGH PRODUCTION OF A DOCUMENT OF TITLE IS ONE OF THE FIVE WAYS OF PROVING TITLE; SEE *IDUNDUN & ORS. V. OKUMAGBA (1976) 9-10 S.C. 227, P.246; PIARO V. TENALO (1976) 12 S.C. 31, P.37*; YET, A PLAINTIFF WHO BASES HIS CLAIM TO TITLE UPON SUCH A DOCUMENT HAS THE NECESSARY DUTY OF UPHOLDING ITS VALIDITY BY PROVING ITS DUE EXECUTION AND ATTESTATION UNLESS IN A SITUATION WHERE A PRESUMPTION OF DUE EXECUTION ENURES TO HIS ADVANTAGE. THAT DUTY IS STRONGER IN A CASE LIKE THIS WHERE ITS VALIDITY AND DUE EXECUTION HAD BEEN SERIOUSLY PUT IN ISSUE ON THE STATE OF THE PLEADINGS AND THERE WAS EVIDENCE TO CONTRARY EFFECT." PER PHILIP NNAEMEKA-AGU, JSC (PP 15 - 15 PARAS A - D)**

To my mind, in line with the case afore stated, the Title document relied on by the Claimant does not meet the threshold of the Law as regards execution, as the identity of the person who signed same for the Minister Federal Capital territory is questionable and remains unknown. **SECTION 94 OF THE EVIDENCE ACT 2011** on identification of persons signing a document clearly provides thus:

***"(1) EVIDENCE THAT A PERSON EXISTS HAVING THE SAME NAME, ADDRESS, BUSINESS OR OCCUPATION AS THE MAKER OF A DOCUMENT PURPORTS TO HAVE IS ADMISSIBLE TO SHOW THAT SUCH DOCUMENT WAS WRITTEN OR SIGNED BY THAT PERSON"***

Even though the Claimant attempted to lead evidence to show who signed the document, a document remains the best proof of its contents thereof and as held in ***IKPEAZU V. OGAH & ORS (SUPRA)*** in the adversarial system of jurisprudence, proof of a content of a document must be by the document itself." Per HELEN MORONKEJI OGUNWUMIJU, JCA (Pp 49 - 49 Paras E - E).

The Defendant on the other hand while praying for the suit of the Claimant to be dismissed has in his Counter claim alleged that he is the owner and had been in possession of the plot of land known as Plot CP32 at outer Northern Express way, Abuja since June 29, 1998 when Ilaita Enterprises was issued a document titled "Offer of Terms of Grant/Conveyance of Approval" signed by Lugard I. Edegbe, Zonal Manager for Honourable Minister". The Defendant has also stated that it is the Claimant and not the Defendant who has trespassed as the Claimant installed its gate on the Defendants plot. However, when other documents tendered in evidence by the Defendant/ Counter Claimant are looked at, a number of questions to my mind arise. The Defendant/ Counter Claimant tendered the Registration documents of Ilaita Enterprises the purported owner of the plot known as Plot CP 32 at outer Northern Express way and a cursory look at same reveals that Ilaita Enterprises was presented for registration in March 15, 2016 while the Certificate of Registration of the same Ilaita Enterprise is dated January 15, 1995. To my mind, the evidence led by the Defendant/

Counter Claimant during trial did not lay straight these irreconcilable differences, needless to say that it is not the duty of this Honourable court to speculate. More so, it is judicially noticed under our laws that a Business name is not one granted the status of a juristic persona to enable it own land in its name. It has been held on numerous occasions and rightly so that Corporate personality under our laws is only granted to an incorporated Company and not a Business name. This principle was succinctly put in the recent case of **BUREAU OF PUBLIC ENTERPRISES & ANOR V. BFI GROUP CORPORATION (2022) LPELR-56791(CA)** where it was held that:-

***"THE CONCEPT OF CORPORATE PERSONALITY ESTABLISHED SINCE THE DECISION IN THE CELEBRATED CASE OF SALOMON VS. SALOMON AND COMPANY LTD (1897) AC 22, HAS ITS FOUNDATION WRITTEN IN STONE, ON THE BELIEF THAT ONCE A COMPANY IS INCORPORATED IT BECOMES A SEPARATE PERSON FROM THE INDIVIDUALS WHO ARE ITS MEMBERS, WITH CAPACITY TO ENJOY LEGAL RIGHTS AND DUTIES DISTINCT FROM ITS MEMBERS. IT MAY OWN PROPERTY IN ITS OWN RIGHT AND ITS ASSETS, LIABILITIES, RIGHTS AND OBLIGATIONS ARE DISTINCT FROM THAT OF ITS MEMBERS. SEE NIGERIAN DEPOSIT INSURANCE CORPORATION VS FINANCIAL MERCHANT BANK LTD (1997) 4 NWLR (PT 501) 519; COMPANHIA BRASILEIRA DE INFRASTRUTUTIRA VS COBEC (NIG) LTD (2004) 13 NWLR (PT 890) 376 AT 394 - 395 AND VILBEKO (NIG) LTD VS NIGERIAN DEPOSIT INSURANCE CORPORATION (2006) 12 NWLR (PT 994) 280 AT 295 F-H." PER MOHAMMED MUSTAPHA, JCA (PP 8 - 8 PARAS A - D)***

While the Claimant as part of his claims in its Statement of Claim has prayed this Honourable Court to declare him owner of the land known as Plot 3, Cadastral Zone D12, Kaba, Abuja, the Defendant/ Counter Claimant has equally prayed *inter alia* that this Honourable Court declare him the owner of the piece of land known as Plot CP32 at outer Northern Express Way, Abuja, two different and distinct plots. To my mind, both the

Claimant and the Defendant/ Counter Claimants claims in this regard must fail as they have not led credible evidence establishing their ownership of the lands in question.

On the issue of Trespass alleged by the Claimant and the Defendant/ Counter Claimant against each other, as afore stated, to found a Claim for Trespass, simply alleging that a party has Trespassed on land which is in one's possession is not enough. Such individual praying the Court to declare another party a Trespasser must also show the exact part of the land in question being trespassed on. See ***ANSA & ORS V. ISHIE & ORS (SUPRA)***.

Again, both Claimant and Defendant/ Counter Claimant have failed to show exactly what part of their purported lands were trespassed upon. In the absence of this essential ingredient the Court is constrained not to declare either the Claimant or Defendant/ Counter Claimant a Trespasser. Although the Claimant tendered the Site Plan and a topographical Survey of Plot 3 Cadastral Zone D12, Kaba District, Abuja it is my humble view that at best these documents only go to show the possessory rights of the Claimant over the said land due to the defective title document it relied on at trial. The Defendant/ Counter claimant equally tendered the Survey plan of plot CP 32, outer Northern Express Way, Abuja and at best, this establishes the Defendants/ Counter Claimants possessory rights over the said land in the absence of a better title.

Therefore, on the whole, the reliefs sought by the Claimant in its Statement of Claim are not tenable as some fundamental dictates of the law as stated in the body of this judgment have not been established and complied with. The Claims of the Claimant are dismissed accordingly. On the Claims of the Defendant/ Counter Claimant, reliefs **(c)**, **(d)** and **(e)** in its Counter claim also fails in its entirety and are dismissed accordingly for want of fulfilment of the dictates of the law as afore stated in the body of this judgment. Claims **(a)** and **(b)** of the Defendant/ Counter Claimants claims succeed only to the extent that the Defendant/ Counter Claimant is sufficiently entitled to possession of the land known as Plot CP32 at outer Northern Express Way, Abuja.

This issues on possessory right is the only issue granted by this Court as pleaded and as contained on the counter claim. I have also in this judgment relied heavily on the processes filed by the two learned gentlemen on the issue. It is trite that Court of law is not allowed to speculate, Court02s usually act on the evidence adduce before it. It should be noted that I have checked and relied on the evidence and the exhibit tendered in the cause of this trial I am of the view that both the Plaintiff and the Defendant have not done the needful so as for the Court to declare who actually between the two that should be declare to have a title in the subject matter in question that can be seen from the entire proceeding particularly the judgment of this Court. I could have applied order 38 which deals with issue of non suit. Where satisfactory evidence is not given entitling the Claimant or Defendant to the judgment of the Court, the Judge may suo moto or on an application , non- suit the suit, but the parties legal practitioner shall have the right to make submission about the propriety or otherwise of making such order. However having contained in the Defendants counter claim reliefs A and B made this Court to grant the Defendant possessory right only. I so hold.

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**HON. JUSTICE M.S IDRIS**  
**(PRESIDING JUDGE)**