

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 8<sup>TH</sup> DAY OF DECEMBER, 2022.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**

**SUIT NO.:-FCT/HC/CV/1608/18**

**BETWEEN:**

**NDUBUISI NWOBODO:.....CLAIMANT**

**AND**

**1. DR. HAMISU A. GARBA**  
**2. IBRAHIM MOHAMMED (A.K.A. KAMBA)**  
**3. KAMBA INVESTMENT NIG. LTD** } **DEFENDANTS**

Moses Iyame for the Claimant.  
Defendants unrepresented.

**JUDGMENT.**

The Claimant brought this action against the Defendants vide a Writ of Summons dated and filed the 26<sup>th</sup> day of April, 2018.

The Claimant's claim pursuant to his amended statement of claim dated the 31<sup>st</sup> day of October, 2019 and filed the 1<sup>st</sup> day of November, 2019, are as follows:

- a) A declaration that the Claimant is the rightful owner and bonafide title holder to the land/property known as and situate at Plot No. AHE 829, Lugbe AMAC Housing Estate, Abuja.
- b) A declaration that the act of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in placing a caveat on the land is illegal, unlawful and an embarrassment to the Claimant.
- c) A perpetual injunction restraining the Defendants, their privies, agents or any third party from interfering with or

disturbing the Claimant's quiet enjoyment and possession of the land.

- d) An Order of this honourable Court mandating the Abuja Municipal Area Council to officially recognized (sic) the Claimant as the rightful owner of the property and lift the caveat on the land and allow the Claimant process his Title Deed Plan (TDP) and other necessary documentation on the land.
- e) The sum of N5,000,000.00 (Five Million Naira) only, being general and exemplary damages against the Defendants jointly and severally for their illegal and wrongful conducts against the Claimant.
- f) The sum of N500,000.00 (Five Hundred Thousand Naira) only, being cost of this action.

The case of the Claimant, as distilled from the averments in his statement of claim, is that he purchased the land in issue from the 1<sup>st</sup> Defendant through his agent, the 2<sup>nd</sup> Defendant on 24<sup>th</sup> June, 2011 after series of meetings during which the 1<sup>st</sup> Defendant told him that he secured the allocation of the property under a fictitious name, 'Yinusa Kaduna Adamu'.

Based on the outcome of meeting between 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the Claimant averred, that after payment of N4m to 2<sup>nd</sup> Defendant, a Deed of Assignment was executed in his favour. That he was equally given receipts of payment for documentation on the land, after which he immediately took possession of the land and his wife, started cultivating vegetables on the land.

The Claimant stated that he later went to the AMAC office to process the Title Deed Plan (TDP) on the land, but was shocked to hear that a caveat has been placed on the land on the 1<sup>st</sup> Defendant's application. That the 1<sup>st</sup> Defendant confirmed to him that he was instrumental to the caveat being

placed on the land, and that his reason was simply to incite the Claimant against the 2<sup>nd</sup> Defendant so as to compel the 2<sup>nd</sup> Defendant to remit the proceed from the sale of the land to him.

He stated that following his intervention, the 2<sup>nd</sup> Defendant remitted the money to the 1<sup>st</sup> Defendant, but despite receiving the proceed of the sale of the land from the 2<sup>nd</sup> Defendant, the 1<sup>st</sup> Defendant has refused to remove the caveat he placed on the land and instead, is making secret plans to sell the land to another buyer.

He stated further that his wife's vegetables were destroyed by thugs of the 1<sup>st</sup> Defendant who is now erecting structures on the land.

At the hearing of the case, the Claimant adopted his witness statement on oath wherein he affirmed all the averment in the statement of claim.

Testifying as PW1, he tendered the following documents in evidence:

1. Deed of Assignment – Exhibit PW1A.
2. Offer of the Terms of Grant – Exhibit PW1B.

Under cross examination by the 1<sup>st</sup> Defendant's counsel, the PW1 stated that the 1<sup>st</sup> Defendant told him to meet the 2<sup>nd</sup> Defendant and pay him cash in a Bureau De Change, and he paid N4m cash on 24/6/2011 to the 2<sup>nd</sup> Defendant. While maintaining that Exhibit PW1A is the agreement which shows that he paid N4m for the land, he admitted that the said agreement was executed between him and one YunusakadunaAdamu.

The PW1 admitted that Yunusa KadunaAdamu is not the same person as the 2<sup>nd</sup> Defendant, but stated that the 1<sup>st</sup> Defendant authorised 2<sup>nd</sup> Defendant to execute the PW1A between

Claimant and 'Yunusa Kaduna Adamu'. He stated that he does not know Yunusa Kaduna Adamu, but that the 1<sup>st</sup> Defendant told him that he used the name 'Yunusa Kaduna Adamu' to purchase the land.

The PW1 told the Court that this particular transaction was the first time he was purchasing land in Abuja.

One Evaristus Onwu also gave evidence for the Claimant. Testifying as PW2, he adopted his witness statement on oath wherein he averred that he was the agent who linked up the Claimant with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and that he knows as a fact that the 1<sup>st</sup> Defendant authorised the 2<sup>nd</sup> Defendant to represent him in the transaction leading up to the sale of the land in issue.

He stated that in the course of their networking as land agents, the 2<sup>nd</sup> Defendant in the month of June, 2011, informed him of a property at the AMAC Housing Estate that was for sale and that the said land belonged to a Doctor at the National Hospital, Abuja. That he notified the Claimant who had previously intimated him of his intention to acquire land in the said Estate.

The PW2 stated that he took the Claimant to the office of the 2<sup>nd</sup> Defendant at Wuse Zone 4, and upon the request of the Claimant to see the owner of the land before paying for same, they drove in company of the 2<sup>nd</sup> Defendant and one Alhaji Kaka Tofa, to the National Hospital where they met with the 1<sup>st</sup> Defendant.

That the 1<sup>st</sup> Defendant confirmed to them that the land belonged to him even though the title document bears a different name 'Yunusa Kaduna Adamu' and directed the Claimant to make payment to the 2<sup>nd</sup> Defendant if he was interested in buying the land. Also, that the 1<sup>st</sup> Defendant gave him and the Claimant,

his complimentary card. The said complimentary card was admitted in evidence as Exhibit PW2A.

The PW2 further stated that he was present with Alhaji Kaka Tofa at the office of the 2<sup>nd</sup> Defendant in Wuse Zone 4, Abuja, when the Claimant paid the sum of N4m in cash to the 2<sup>nd</sup> Defendant, who immediately handed over the offer letter and other documents of title to the Claimant. That it was therefore, a shock to him, when he heard that the 1<sup>st</sup> Defendant is denying the sale of the land to the Claimant.

Under cross examination by the 1<sup>st</sup> Defendant's counsel, the PW2 affirmed that he is an experienced agent and property manager, having been in the business for up to 10 years.

He stated that in this particular transaction, that it was the 2<sup>nd</sup> Defendant who engaged him orally as an agent.

At the close of Claimant's case, the 1<sup>st</sup> Defendant who filed a Statement of Defence and participated in the proceedings in the course of leading evidence by the Claimant, however, abandoned the said Statement of Defence as he failed to lead evidence in support of same.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on their parts, failed to enter appearance or file any defence to the Claimants suit. Proof from the Court's file showed that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were properly put on notice for each trial day.

Consequently, the rights of the Defendants to defend the suit were on the Claimant's application, foreclosed. The Claimant subsequently filed and adopted his final written address wherein the learned counsel, Inyama Moses, Esq, raised two issues for determination, namely;

1. Whether considering the totality of the evidence before this honourable Court; is the Claimant the rightful owner and bonafide title holder of the property in issue?
2. Whether considering the totality of the evidence before this honourable Court, is the Claimant entitled to the reliefs claimed in this suit?

Proffering arguments on issue one, learned counsel posited, with reliance on **Jodi v. Salami (2009) All FWLR (Pt.458)**, that civilcases of this nature, are resolved upon the preponderance of evidence presented by the parties in the suit. He argued that by the pieces of evidence put forward by the Claimant's witnesses, there are sufficient, compelling and credible evidence that support the claims that the 1<sup>st</sup> Defendant duly sanctioned the sale of the property to the Claimant and later tried to renege on the valid contract between himself and the Claimant.

Learned counsel submitted, relying on **Jodi v. Salami (supra)** and **Opadola v. Akanmu & 2 Ors (2015) All FWLR (Pt.773) 1906 CA**, that one of the recognised modes of acquisition of title to land, is by sale. He posited that the case of the Claimant is simple, straight forward and unambiguous, as the evidence adduced before the Court point unequivocally to the fact that the land in issue was sold to him by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

He urged the Court to hold, that the Claimant is the bona fide title holder of the land on the ground that all indices point to the fact that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants duly sold the property to him and handed him the original title documents to the land.

On issue two, learned counsel argued that there is nothing before this Court disputing the Claimant's claims or stating otherwise; even as the Claimant has clearly shown vide the testimonies of PW1 & PW2, as well as the documents

tendered, and admitted in evidence, that he bought the property from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

Regarding the defence filed by the 1<sup>st</sup> Defendant, learned Claimant's counsel referred to **Opadola v. Akanmu & 2 Ors (supra)**, on the point that such pleading is deemed abandoned, having not been supported by evidence.

He further referred to **UBA PLC & Anor v. Ayodare & Sons Nig Ltd (2007) 4-5 SC Pg 93; Ajibola v. Ansere & Anor (2019) LPELR-48204(CA)**.

Placing reliance on **Cappa & Dalberto Ltd v. Akintilotilo (2009) 9 NWLR (Pt. 824) 49 at 71**, he submitted that when evidence is unchallenged, the Court ought to accept such as proof of the issue incontest.

He urged the Court to enter judgment for the Claimant and grant his claims given his uncontroverted and unchallenged evidence adduced before the Court.

In considering the evidence before this Court, the question is **in the absence of the evidence of the Defendants whether the Claimant has based on evidence, establish a case against the Defendant to earn him the reliefs sought.**

The claim of the Claimant before this Court is principally, a declaration of title to land. The said land in issue, is situate in the Federal Capital Territory, Abuja, to wit; Plot No. AHE, 829, Lugbe, AMAC, Housing Estate, Abuja.

In proof of title to land, the conditions are established in **Idundun & Ors v. Okumagba & Or (1976) 9-10 SC 277 at 246-250**, the Supreme Court established five ways of proving title to land, namely;

1. By traditional evidence.

2. By production of a document of grant or title.
3. By proving acts of possession and ownership extending over a sufficient length of time and are numerous and positive enough to warrant the inference that the Claimant is an exclusive owner.
4. By proving acts of possession and enjoyment of land.
5. By proof of possession of connected or adjacent land in circumstances which makes it probable that the owner of such adjacent or connected land is probably the owner of the land in dispute.

The Claimant in the instant case, has relied on the production of a document of title. In this regard he tendered Exhibit PW1B. It is not in doubt by the several authorities that production of title documents relating to the land in issue and proof of one of the ways is sufficient to establish title. The **Idundun case (supra) of 1976** has stood the test of time in proving title to land. Exhibit PW1B, is an Offer of Terms of Grant/Conveyance of Approval issued by the Honourable Minister of the Federal Capital Territory in respect of the Plot of land in issue in the name of one 'Yunusa Kaduna Adamu'.

The said Exhibit PW1B however, not in the name of the Claimant. Rather, it is in the name of one Yunusa Kaduna Adamu. To establish a link between him and exhibit PW1B, the Claimant tendered Exhibit PW1A, which is a Deed of Assignment by which Exhibit PW1B was assigned to him by the said 'Yunusa Kaduna Adamu'.

After the evidence of the Claimant PW1, Mr. Evaristus testified as PW2 and said that he witnessed the transaction, between Claimant, 1<sup>st</sup> and 2<sup>nd</sup> Defendants, that 1<sup>st</sup> Defendant is one and the same person as 'Yunusa Kaduna Adamu'.

The Claimant claimed that the evidence of PW2 corroborated his testimony. Let's have a critical evaluation of the witness statement on oath of the PW1 and PW2.

In support of paragraph 8 of the amended statement of claim, the evidence of PW1 in summary was that 1<sup>st</sup> Defendant secured the land in issue with a fictitious name of 'Yunusa Kaduna Adamu' reference to paragraph 9 of his witness statement on oath while PW2 in his paragraph 16 witness statement on oath said that the land belonged to 1<sup>st</sup> Defendant, Dr. Hamisu Garba "even though it bears a different name". Evidence of the PW2 in all the paragraph did not mention the different name the land papers bear. To still establish the credibility of his evidence, the PW1 tendered PW1A an unregistered Deed of Assignment between one "YUNUSA KADUNA ADAMU (not 'YINUSA' as averred in paragraph 8 of amended statement of claim)" and NDUBUISI NWOBODO the Claimant. The Claimant still in support of his case tendered Exh PW1B the Offer of Terms of Grant/Conveyance dated 20/5/03 having the beneficiary as "YUNUSA KADUNA ADAMU".

Either way, both PW1 and his witness PW2 claimed the non-existence of "Yunusa Kaduna Adamu" and that the owner of the land was 1<sup>st</sup> Defendant. Again the said "Yunusa Kaduna Adamu" was not joined as a party to the suit being a fictitious person. The question that arises is **whocan be allocated land in FCT.**

The Section 18 of FCT Act that I know empowers the FCT Minister to allocate land on behalf of the president of Nigeria to persons, human and corporate and not non-existent or fictitious names as Claimant averred. The Claimant and his witness admitted that the allocation was given to a non-existent personality and in proof of title, they relied on production of documents.

However there are guiding principles the Court requires to establish titles. In the case of **Romaine v. Romaine (1992) 5 SCNJ 25 @ 36**, the guiding principles on proof of title further requires the Court to inquire into many questions. I rely on the Supreme Court case of **Dabo v. Abdullahi (2005) LPELR 903 (SC)**, whereby the Supreme Court reeled out these principles that production and reliance on title documents inevitably carries with it the need for the Court to inquire into some or all of a number of questions which includes:

- a) Whether the document is genuine?
- b) Whether the granter had authority and capacity to make the grant?
- c) Whether it has been duly executed, stamped and registered?
- d) Whether the granter had in fact what he purported to grant.
- e) Whether it has effect claimed by the holder of the instrument.

In answering question one, as to the instant case, I hold that a title document that was issued on a fictitious name that is of a non-existent person cannot be a genuine title document.

It supports fraud to argue that the 1<sup>st</sup> Defendant supplied the said name to Abuja Municipal Area Council in order to get an allocation. It is fraud and must be treated as such. Thus making the document and the whole process of obtaining the title document from Abuja Municipal Area Council not being genuine.

On the second principle as I said earlier, the whole process of obtaining the offer of terms as a title document was based on fraud and therefore not duly executed. Therefore any subsequent steps taken to transfer the title document to

another person, by Deed of Assignment still makes the second document not genuine.

It is my opinion that the grantor had the authority and capacity to grant but if granted to a fictitious person meaning non-existent person, it means nothing was granted and something can never stand on nothing.

The allocation abinitio contravenes the Section 18 Federal Capital Territory Act.

It is pertinent to recall from plethora of authorities that in any action for declaration of title, the onus has always been on the Claimant to establish his title and that onus never shifts until it is discharged.

It is my finding that the onus on the Claimant to establish his title has not been discharged through his inability to establish that he purchased the property through the 1<sup>st</sup> Defendant who traced his title to a non-existent person.

The Exh PW1B throughwhom Claimant is claiming title is not genuine by my analysis and conclusion that it is a fictitious document.

Again assuming but without conceding that Exh PW1B passed the test of genuine grant, the Exh PW1A the purported Deed of Assignment is an unregisteredregistrable instrument and should not have been admitted in evidence. Therefore, being admitted in error Exh PW1A is hereby expunged in evidence.

Having expunged Exh PW1A and Exh PW1B conveyed nothing to the Claimant. It therefore means that the grantor granted nothing to the Claimant.

Whether the Claimant relied on the weakness of the defence or not, the onus on the Claimant strongly demands the proof of title by the Claimant.

Such onus must be shown to satisfy the Court that Claimant is entitled to the declaratory title claimed. By the evidence laid by the Claimant. Claimant has failed to discharge the onus on him and I am not satisfied with the evidence so far led to strengthen his case. I place reliance on **Nathan Tekpat v. Wajekoaya (2015) LPELR 25925 (CA)** and **Kuwakanu&Ors v. DadaOgabi&Ors (2017)LPEL 42375 (CA)** to hold that the Claimant has failed to establish his title.

I must not fail to comment on relief (d) which is a mandatory relief sought by the Claimant against Abuja Municipal Area Council of whom the Claimant had withdrawn his claim in this suit. The same relief (d) is dismissed. Courts cannot make orders to affect non-parties to suits.

It is my finding that the Claimant has failed woefully to prove all the declaratory reliefs sought and they are hereby refused and dismissed. Atbest the Claimant can sue the 2<sup>nd</sup> Defendant for money had and received and not for title.

**HON. JUSTICE A. O. OTALUKA**  
**8/12/2022.**