

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
8TH DAY OF DECEMBER, 2022

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

SUIT NO. FCT/HC/CV/2191/2016

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

TORANDI INVESTMENT NIGERIA LTD

CLAIMANT

(Suing through her Attorney,
MR. AND MRS. VICTOR SAGBUWA)

AND

1. MINISTRY FOR THE FEDERAL

CAPITAL TERRITORY ADMINISTRATION } ... DEFENDANTS

2. THE HON. MINISTER, FEDERAL

CAPITAL TERRITORY ADMINISTRATION }

JUDGMENT

The Claimant's case against the 1st and 2nd Defendants is initiated vide a Writ of Summons and Statement of Claim dated and filed on the 16th day of July, 2016. It claims against the Defendants as follows:

- (1) A Declaration that in the absence of a valid revocation of Park No. 4484, Aoo by the Defendants, the Claimant remains the *bona fide* owner of the Park and is entitled to a right of exclusive possession.
- (2) A Declaration that the ongoing construction (of the Southern Inner City Expressway) by the Defendants which construction cuts across Park No. 4484, Aoo is wrongful and unlawful and amounts to trespass/continuing trespass upon private property.
- (3) The sum of ₦100 Million only as general damages for trespass/continuing trespass.
- (4) An Order directing the Defendants to execute a Lease Agreement in favour of the Claimant as provided in the letter dated 02/08/2007 to take effect from the date of the aforesaid letter.
- (5) An injunction restraining the Defendants, their servants and or agents from continuing further acts of trespass.

(6) 10% interest on the judgment sum until it is liquidated.

(7) ₦5 Million as cost of action.

The Defendants were served with the Writ of Summons and Statement of Claim on 21/10/2016. The Defendants' Statement of Defence is dated and filed on 3rd April 2017.

The Claimant opened its case and gave evidence vide Victor Sagbuwa, the Claimant's Attorney. He recalled deposing to a Witness Statement on Oath dated 18/07/2016. He adopted it as his oral testimony in this case.

In the said Statement, he said he knows the Claimant. That by a Power of Attorney dated 02/08/2008, the Claimant appointed Mrs. Sagbuwa and himself as her lawful Attorney to superintend over the management of Plot C369 Road, Gwarinpa, Abuja, the subject matter

herein. That he has the consent of Mrs. Sagbuwa to make these depositions.

That Claimant is a Company duly incorporated under the Companies and Allied Matters Act, 1990 to provide Parks and Recreational services amongst others at Lily Gardens, which is officially designated as Park No. 4484, Aoo, Area 10, Garki, Abuja.

The Abuja Metropolitan Management Agency issued Claimant a letter dated 02/08/2007 conveying approval of the 2nd Defendant for the Claimant to develop, manage and operate Park No. 4484, Aoo measuring approximately 1.7 hectares.

The letter of approval is letter of intent to develop, manage and operate designated park site in the FCT. It states:

"It is to enable you commence negotiation with your financiers and immediate site preparation.

- (b) You submit a detailed technical design proposal for approval within 21 days from the date of the letter.*
- (c) The Lease Agreement shall be given to you upon approval of your detailed technical design proposal and payment of all necessary fees.*
- (d) The Park be developed and completed according to the approved technical design within 1 year from the date of approval.*
- (e) On completion of development of the Park or Green Area, the general public should have unhindered access to its usage.*
- (f) Any contravention of the above conditions can result in the revocation of the allocation.”*

That Claimant accepted the approval and immediately embarked upon meeting all the conditions.

- (1) Paid ₦500,000 as cost of management, maintenance, operation and use of Park.
- (2) Submitted a detailed technical design proposal for approval and also paid ₦25,000 only of the approval of the design.
- (3) Approached her bankers for credit facilities running into Millions of Naira to develop the Park and has now developed an ultra-modern multipurpose hall and several other shops for use in accordance with the approval conveyed via letter dated 02/08/2007.

That Claimant has continued to pay ground rent on the Park. That despite meeting all the conditions, the Defendants have failed, refused and unwilling to execute the Lease Agreement as provided for in paragraph 11 (c) above despite repeated demands.

That Defendants never complained of any breach that could attract threat of or revocation. That on or about 19/04/2016, there was a sudden invasion and encroachment of a portion of Park 4484, Aoo otherwise called Lily Gardens by some unknown men in bulldozers and caterpillars who claimed to be acting on the instructions of the Defendants to build a road, i.e. the Southern Inner City Expressway, stretching from the Goodluck Jonathan Junction in the Central Business District section of the city across Park No. 4484, Aoo and towards Lokogoma axis of the metropolis.

There was no notice of the impending road construction nor notice of revocation as to justify the invasion.

The Claimant's Company instructed its Solicitors to write the Defendants to stop construction dated 25/04/2016 and 18/05/2016. The Defendants failed and or refused to stop or respond to the said letters.

The Claimant obtained photographs, survey and valuation report of the land encroached.

The action of the Defendants are wrongful and unlawful and has occasioned huge financial loss to the Claimant. That Claimant has not been compensated.

That the ongoing road construction by the Defendants have materially destroyed the utility value of Park No. 4484, Aoo, i.e. Lily Gardens. The debris accumulated on the land is a continuing nuisance and obstruction to customers.

That the Claimant's earnings have plummeted drastically and is unable to meet her numerous corporate and social obligations.

The Claimant's witness tendered Exhibits A – A8.

(1) Power of Attorney between Claimant and witness.

- (2) Abuja Metropolitan Agency letter to MD of Claimant.
- (3) Park and Recreation Department Receipt for ₦500,000.
- (4) Claimant's letter to Director, Park and Recreation.
- (5) Technical Drawing of Proposed development of Muhammed Buhari Recreation Park.
- (6) Park and Recreation Department Receipt for ₦25,000.
- (7) FCTA Receipt in the name of Claimant.
- (8) Letters from Claimant's Solicitors to Defendants.

Witness wants the Court to grant all the reliefs sought.

Under Cross-Examination, the Claimant's witness answered as follows:

- (1) That Claimant did not submit detailed technical drawing within 21 days as contained in Exhibits A1 & A2.
- (2) There was no reply or letter approving the Claimant's technical drawing but it was not rejected.
- (3) That Exhibit A4 is not marked approved on the face of it.
- (4) That Defendants did not give Claimant a Deed of Lease.
- (5) Power of Attorney was given before letter of intent, i.e. Exhibit A.

To a further question, witness answered that there was a time Claimant put beacons but does not know beacon

numbers. That the garden is in the Master Plan and there is no road passing through the garden.

To a further question, he answered that the printout of the Park is not tendered before the Court.

The above is the case of the Claimant.

The Defendants also entered their defence and called a witness. He is Dihis Joseph, a civil servant attached to Parks and Recreation. He deposed to a Witness Statement on Oath on 24/11/2018. In the said Witness Statement on Oath, he deposed thus:

That no time did Defendants deem Claimant qualified to develop, manage and operate a designated Park within the Federal Capital Territory.

That the letter dated 2/08/2007 did not convey the approval of 1st and 2nd Defendants to develop, manage and operate Park 4484, Aoo measuring 1.7 hectares but a mere expression of intent made subject to the fulfillment

of certain conditions by the Claimant before approval and execution of a Deed of Lease.

That no Lease Agreement was signed between Claimant and Defendants. The Claimant's detailed technical design was not approved. That Claimant failed to comply with item (1) of the conditions requiring it to submit a detailed technical design for approval within 21 days.

That Claimant submitted a technical design after a period of one year and one month of the Receipt of the Letter of Intent. That payment of ₦500,000 and ₦25,000 did not preclude the Claimant from fulfilling the conditions precedent stipulated by the Defendants.

That Defendants are not privy to any credit facility between Claimant and any bank. There is no valid allocation of land or Park made to the Claimant as the condition precedent was not fulfilled.

That Park No. 4484, Aoo was not allocated to the Claimant. That Claimant had not carried out any development whatsoever on Park No. 4484, Aoo as no approval has been given to the Claimant's detailed technical design of the Park.

That the staff of the Defendants did not commit any act of trespass. The Claimant is to entitled to any form of compensation. That no Statutory Right of Occupancy was granted to the Claimant over park 4484, Aoo.

Under Cross-Examination, witness says he is conversant with the procedure and operation of Parks. The ₦500,000 was for annual maintenance of Parks. He has not developed the Park because the technical drawing has not been issued to him.

He does not know how the place looks like. He has not been there for a long time. He went there last in 2014. The Defendants did not sent bulldozers there. Goodluck Ebele Jonathan Expressway passed through the Park.

To another question, he answered that Defendant have not revoked the approval. It has not been reallocated to another person. That the Claimant is not in possession because he has not fulfilled the conditions.

The Defendants' Final Written Address is dated 4th July 2022. The Defendants posited one issue for determination:

Whether having regard to the state of pleadings of the parties and evidence adduced, the Claimant has sufficiently proved their claim to be entitled to Judgment.

Learned Counsel to the Defendants contends that the Claimant failed to substantiate their claim before the Court, therefore is not entitled to Judgment.

The Claimant did not support its claim with credible and cogent evidence particularly that he fulfilled all conditions contained in Exhibit A1.

The Claimant has not discharged the burden of proof to be entitled to a declaratory relief as claimed in reliefs 1 and 2.

That Exhibit A1 is just a Letter of Intent, which did not confer any legal right on the Claimant. It is not a Letter of Allocation. It is subject to fulfillment of the conditions contained therein.

Learned Counsel relies on the case of **BPS CONSTRUCTION & ENGINEERING CO. LTD vs. FCDA (2017) 10 NWLR (PT. 1572) 28**. The Letter of Intent is inchoate and does not confer any legal right on the Claimant. The Claimant did not discharge the evidential burden placed on it.

Learned Counsel also refers to the Judgment of this Court delivered on 24/05/2017 in an unreported case, Suit No. FCT/HC/CV/2401/13: ANIDONG SILVER FARMS LTD vs. THE HON. MINISTER OF THE FCT & 3 ORS.

He finally urges the Court to dismiss the suit.

The Claimant's Counsel was absent on the date the case was set down for adoption of Final Written Addresses. He had already filed his Final Written Address dated 22/02/2022. The Court deemed same as having been adopted in accordance with the Rules of Court.

The Learned Counsel for the Claimant raised a lone issue for determination, which is:

Whether having regard to the state of pleadings and evidence adduced, the Claimant would not be entitled to an equitable principle of specific performance.

The above issue for determination in my view is not borne out from the Writ of Summons and Statement of Claim, the evidence led and the reliefs sought.

However, Learned Counsel submits that the inability of the Claimant to submit the building plan approval within 3 weeks cannot be raised because Defendants accepted the sum of ₦25,000 fees.

That it is just and equitable for the Court to order the Defendants to complete the contract so that Claimant will not lose all its resources expended on the Park.

I have read the evidence as summarized and considered the written arguments of Counsel. From the onset, it thus appear to me that the Claimant in his Written Address is already accepting defeat and is merely appealing to the equitable conscience of the Court for mercy.

The issue for determination as rightly posited for determination by the Defence is simple. It is **whether having regard to the state of pleadings of parties and the evidence adduced, the Claimant has sufficiently proved its claim to be entitled to Judgment.**

I have earlier summarized the evidence of parties. The Claimant's pleading is that in 2007, she formally expressed interest to develop, manage and operate a designated Park/Green Area. That by a letter dated 02/08/2007, the 2nd Defendant conveyed an approval for Claimant to

develop, manage and operate Park No. 4484, Aoo, measuring approximately 1.7 hectares.

That the 2nd Defendant's approval letter is titled "Letter of Intent to Develop, Manage and Operate Designated Park."

The Claimant paid fees and submitted technical design for approval on 12/11/2018. That she has complied with all the conditions for the grant of the aforesaid Park.

That despite the compliance with the conditions, the Defendants failed to execute a Lease Agreement.

That on 19/04/2016, the Defendants invaded and or encroached upon the said Park. The Claimant's evidence is also as above.

The Claimant tendered Exhibit A1, which is the Letter of Intent dated 02/07/2007. The Claimant claims the ownership of the said Park and that the ongoing

construction is wrongful and a trespass upon a private property.

It is clear that the basis of the claim of ownership of the said Park is predicated on the Letter of Intent dated 02/08/2007. The letter reads:

"Following your expression of interest to develop, manage and operate a designated Park and Green Area in the FCT and your subsequent qualification to do same, I wish to convey the approval of the FCT Administration for the leasing of

Park No. 4484, Aoo

Park Name Muhammed Buhari Recreation Park

Location Central Business District

Plot Size 1.7 Hectares

Recommended Use: Park, Barbecue and Snacks Spot.

On the following conditions:

- i. That this Letter of Intent is to enable you commence negotiation with your financiers and immediate site preparation.*

- ii. That you submit a detailed technical design proposal for approval within 21 days from this date.*

- iii. That the Lease Agreement shall be given to you upon approval of your detailed technical design proposal and payment of all necessary fees.*
- iv. That the Park be developed and completed according to the approved technical design proposal within one year from the date of approval.*
- (v) On completion of the development of the Park or Green Area, the general public should have unlimited access to its usage.*
- (vi) Any contravention of the above stated conditions can result in the revocation of the allocation.*

(Signed)

TPL Lukas Bulus Achi

Director, Parks & Recreation, AMMA”

The gist of the above is that the Claimant expressed interest to develop, manage and operate a Park. The Defendants upon the said letter approved the said intent vide the letter, Exhibit A1 reproduced above.

The approval is to lease the said Park or Green Area to the Claimant upon some conditions, which include:

- (1) A detailed technical design proposal for approval within 21 days.
- (2) A Lease Agreement shall be given to you upon approval of your detailed technical design proposal and payment of all necessary fees.
- (3) The Park be developed and completed within 1 year.

The Claimant's evidence is that he complied with all the above conditions.

Upon Cross-Examination, the Claimant's witness somersaulted when he said, *"I did not submit detailed technical drawing within 21 days as contained in Exhibits A1 & A2. We submitted a technical drawing which was not approved. Exhibit A4, the technical drawing we submitted is not marked approved."*

The PW1 further answered under Cross-Examination that *"the Defendants did not give us a Deed of Lease."*

Aside the above, I also noticed that the Power of Attorney is dated/sworn to on 26/06/2018, eleven years after the Letter of Intent was granted on 2/08/2007.

In the circumstance of this case, it is apparent that the conditions upon which the Claimant would have secured the Park were not met.

Even though the approval of intent to develop and or manage was not revoked, it remained an intent which did not crystallise into a binding agreement.

The interest of the Claimant is inchoate. An intent in my view is akin to a wish which has not materialized. A mere wish or intention to operate and manage a Park does not confer interest in land on the person making the intent or wish.

It is dangerous to build a castle in the air. It is without foundation and its crash can therefore be horrible. The Claimant built its castle, i.e. the Park in the air by not fulfilling the conditions necessary for the execution of a Lease Agreement, which would have conferred on it rights and interest in the said land.

Exhibits A5 & A6 are Receipts of some payments made. Exhibit A5 is Receipt for ₦25,000 being payment for bidding of Parks while Exhibit A6 is Receipt for the payment of ₦500,000 for ground rent. Payment of the above fees *per se* do not confer interest of land on the payee.

The Claimant has not been able to prove by preponderance of evidence that he is entitled to the reliefs sought. The Claimant has not proved his entitlement to a leasehold or any other interest in the said land, so there is nothing to revoke.

In the circumstance of this case, the claim lacks merit. It crumbles and it is accordingly dismissed.

Cost of ₦200,000.00 (Two Hundred Thousand Naira) is awarded against the Claimant in favour of the Defendants.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
08/12/2022

Solomon Joshua, Manager of the Claimant present.

Defendants absent.

C. O. Madubuko, Esq. holding brief of C. J. Nwafor, Esq.
for the Claimant.

E. C. Ikeji, Esq. with Kelechi Animba, Esq. for the
Defendants.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

08/12/2022