

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON FRIDAY THE 15<sup>TH</sup> DAY OF MARCH, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO: FCT/HC/CV/238/2021**

**BETWEEN:**

**ALHAJI HARUNA GWARZO        -----        CLAIMANT**

**AND**

**PERSON UNKNOWN        -----        DEFENDANT**

## **JUDGMENT**

On the 30<sup>th</sup> day of April, 2021 the Claimant, Alhaji Haruna Gwarzo, trading in the name and style of Tabarakallah Enterprise, filed this Suit against the Defendant who is Person Unknown. Because the Defendant is person unknown the Court granted an Order for substituted service on the 2<sup>nd</sup> day of November, 2021. That Order was duly effected.

On the 25<sup>th</sup> February, 2022 the Claimant filed an Amended Statement of Claim. In the Writ he claims the following Reliefs:

- (A) A Declaration that the Conveyance of Provisional Approval dated 19<sup>th</sup> August, 1998 covering Plot No. BRD/CM/142 of about 3890m<sup>2</sup> situate at Rigin Dakwa Extension Layout, FCT-Abuja issued to the Claimant is still valid and subsisting.
- (B) A Declaration that the Claimant is entitled to the possession and use of Plot No. BRD/CM/142 of about 3890m<sup>2</sup> situate at Rigin Dakwa Extension Layout, FCT-Abuja.
- (C) A Declaration that the act of the Defendant by entering into the Plot of land in possession of the Claimant to cause damage amount to trespass.
- (D) An Order of Injunction restraining the Defendant, their heirs, privies and whosoever deriving authority from him from further trespassing into the land.
- (E) Payment of N20, 000,000.00 (Twenty Million Naira) for general damages against the Defendant.
- (F) And for such further Orders as the Honourable Court may deem fit to make in the circumstances of the case.

He attached several documents in support of his claims.

The Defendant was served at the Res which is its only known address. It was served Hearing Notices for all the days that the matter was adjourned for Hearing. It did not file any document or enter appearance in paper. He did not have any Counsel representation too.

On the 9<sup>th</sup> of February, 2022 the Claimant opened its case and called the Claimant to testify in person as PW1. It is imperative to state that the Claimant applied for amendment of its Statement of Claim after it has called the PW1 to testify. The Defendant was served the amended Statement of Claim. But it did not respond or file any Statement of Defence and/or Counter-Claim.

There were several adjournments and finally the Claimant applied for foreclosure of the Defendant from Cross-examining the PW1. The Court obliged that. The Claimant Counsel also subsequently applied for foreclosure of the Defendant from opening and closing its Defence since it never filed any. The Court granted the application since it cannot wait in perpetuity for the Defendant who up till now is person unknown. The Court adjourned for Adoption of Final Written Addresses.

The Claimant filed its Final Written Address and served on the Defendant but the Defendant did not respond. As it is still unknown, the Court allowed the Claimant Counsel to adopt their Final Written Address and reserved the matter for Judgment. Hence, this Judgment that is been delivered. It is imperative to state that the Judgment is based what the Claimant presented before this Court. That is the testimony of PW1 and the documents he tendered in support of his claim.

According to the Claimant, he submitted that he is the Proprietor of Tabarakallah Enterprise also known as Tabarakallah Iconique Enterprise. That Tabarakallah

Enterprise is the original Allottee of Plot No. BRD/CM/142 of about 3890m<sup>2</sup> situate at Rigin Dakwa Extension Layout, FCT-Abuja. That as the Proprietor/Director of the Enterprise he is the one in possession of the said Plot No. BRD/CM/142 of about 3890m<sup>2</sup> situate at Rigin Dakwa Extension Layout, FCT-Abuja hereinafter called the Res in this case.

That the Defendant who is person unknown entered into the Res and forcefully took possession of the same. That the allocation of the Res to Tabarakallah Enterprise was through a Conveyance of Provisional Approval dated 9<sup>th</sup> August, 1998. That there was Right of Occupancy – **FCT/BZTP/LA/MISC 6040**. That it was issued Dept. Receipt by Bwari Area Council. He tendered the TDP and the Dept. Receipt. That there has not been any revocation of the Res.

That upon allocation the Claimant has been in quiet possession of the Res from 1998 and was cultivating the land and enjoying the economic trees. That it fenced the said Res and there was no interference.

But sometime in 2019 the Defendant surfaced and forcefully entered into the Res. Hence, trespassing thereto. That the Defendant wrote Petition to the Police alleging trespass to the Res. The Claimant was invited and was asked to present his documents of title to the land; but did not know who the Defendant was. That the Defendant has continued the act of trespass in the Res.

That all effort to know the Defendant failed till date. He tendered Power of Attorney, Conveyance of Provisional Approval, TDP and Sales Agreement.

In the Final Written Address the Claimant raised 3 Issues for determination which are:

- (1) Whether a person in possession even without valid title or defective title can sue in trespass if the answer is yes.
- (2) Whether the Claimant is not entitled to remain in possession till a person with a better title dislodges him.
- (3) Whether the Claimant is not entitled to the Reliefs sought before this Court.

The Claimant canvassed the 3 Issues together and submitted thus:

He answered the first question in the affirmative. The Claimant referred to the case of:

**Owhoda V. Ekpechi**  
**(2003) 15 NSCQR 283 Ration 3**

where it was held that the person in possession without valid title can sue in trespass. The person only needs to prove exclusive possession.

He submitted that the evidence tendered before this Court in this case is uncontroverted, unchallenged and undisputed by the Defendant. Hence, the Court can grant the claim. He also referred to the case of:

**Ikono LGA V. De Beacon Fin & Sec. Ltd**  
**(2002) 4 NWLR (PT. 756) 133 R. 5**

He also referred to the case of:

**Salami V. Lawal**  
**(2008) 161 LRCM Pg. 1 – 5 R. 7**

He urged Court to grant the Relief by standard of minimal proof.

That it is trite that as in the circumstance of this case that a person in possession can only be dislodged by a person who has a better title. He referred to the case of:

**Salami V. Lawal Supra**

**On Issue No. 2**, the Claimant submitted, referring to the case of:

**Adeleke V. Iyanda**  
**(2001) 13 NWLR (PT. 729) R. 9**

where the Supreme Court held that where the Claimant adduces satisfactory evidence and the Defendant did not challenge, the case should be decided upon minimal proof. That the burden is lighter.

That since the Defendant did not adduce any evidence to compete with the evidence of the Claimant, that the Claimant is entitled to the Judgment in his favour. He urged Court to grant all his claims.

## **COURT**

It is the law that uncontroverted evidence are deemed admitted and unchallenged claim need little or almost nothing to prove.

In this case the Defendant, Unknown Person, did not file any document notwithstanding that it was served by substituted means all the Originating Processes in this case and Hearing Notices. It was given ample time to file its Defence and Counter-Claim if any and to Cross-examine the PW1 who is also the Claimant. But it refused, ignored and never bothered to make itself known and to defend the Suit of the Claimant.

This Court, as already stated, has the power to hold that in such situation there should be minimal proof by the Claimant whose claims are not challenged. In this case there is no controverted fact. Hence, the Claimant urged Court to enter Judgment in its favour. On this the Court refers to the case of:

**Adeleke V. Iyanda Supra**

It is also a known fact that a person in possession has a best chance over the parcel of land. Such a person can only be dislodged by a person who has a better title to the Res. In that case such a person has to prove that it has such title. See the case of:

**Salami V. Lawal Supra**

So in that case for as long as there is no one with a better title to the Res, the trespasser is the king in that Res until revoked by a person with a better title. So a trespasser in possession has the support and strength of the law to protect that thing. Such right is only subject to a person with a better proof of title. See the case of:

### **Salami V. Lawal Supra**

It has been held in plethora of cases that a person in possession even without valid title or defective title can sue a trespasser. See the case of:

### **Owhoda V. Ekpechi Supra**

Again, in a case premised on trespass, the trespasser need not necessarily be the owner or allottee of the land. The burden on his is to prove exclusive possession to the Res and not the title.

The Court answers the 3 questions in this case thus: A person in possession without valid title or with defective, such person can sue in trespass.

The Claimant in this case having proved his title is entitled to recover possession, his case having been uncontroverted, unchallenged and facts thereon are undisputed by the Defendant. There is no restriction as the person can sue in trespass.

In this case since the Claimant has proved his title by the documents it tendered which are not challenged at all, he is entitled to his claims. This Court without further ado holds that the Claimant is entitled to the Reliefs/Claims sought in this Suit. The Claimant is entitled to remain in possession until a person with better title surfaces.

All in all, this Court holds that the Claimant has proved his case and he is entitled to his Reliefs. The Court therefore

grants the Reliefs as the case of the Claimant is meritorious to wit:

**Reliefs A, B and C granted as prayed.**

**Relief D also granted as prayed.**

**As to prayer E, on ~~N~~20, 000,000.00 (Twenty Million Naira) as sought by the Claimant, the Court SHALL NOT Order payment of Damage as the Defendant is Unknown Person. Relief E NOT granted.**

**This is the Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2024 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE

**APPEARANCE:**

**CLAIMANT COUNSEL: CHIEF U.U. UMOANWAN.**

**DEFENDANT COUNSEL: NOT REPRESENTED.**