

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 24TH DAY OF JUNE 2021.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CV/2258/2020

BETWEEN

JES PETROLEUM LIMITED -----CLAIMANT/APPLICANT

AND

1. HOUSES FOR AFRICA NIG. LTD =====DEFENDANTS
2. MR. PAUL OFUEGBU ODILI

JUDGMENT

By a Writ of Summons dated and filed on the 22nd day of July 2020, the Claimant is seeking for the following reliefs against the defendants as follows;

1. A DECLARATION that the Claimant is the rightful allottee of the plot of land known and described as Plot No. PFS 292 Cadastral Zone 07-07, within Lugbe 1 Extension, Abuja, having an area of approximately 7324.06Sqm.
2. A DECLARATION that the Defendants' act of digging foundation on a total of about 2149.34 Square meters, of the plot constituting subject matter of dispute in this suit, Plot No: PFS 292 Cadastral Zone 07-07, within Lugbe 1 Extension, Abuja, having an area of approximately 7324.06Sqm against the desire and permission of the Claimant thereby constituting disturbance to her possessory rights over the plot in issue, amounts to trespass.

3. An award of the sum of N500,000,000.00 (Five Hundred Million Naira) being general and aggravated damages for trespass upon the Claimant's plot of land described at reliefs 1 and 2 above and being subject matter of this suit.
4. An ORDER of perpetual injunction restraining the Defendants, whether by themselves or through their servants, agents, privies, workmen, howsoever called from committing further acts of trespass on the Claimant's land constituting subject matter of this suit.
5. AND for such further Order(s) this Honourable Court may deem fit to make in the circumstance.

The facts that gave rise to the Claimant's case is that Claimant was allocated plot No. PFS 292, Cadastral Zone 07-07, within Lugbe 1 Extension, Abuja, measuring approximately 7324.06Sqm (the property). That upon allocation of the said Plot of land and delivery of offer of terms of grant/conveyance of approval, Claimant was also issued with a site plan and coordinates of the said plot of land which said document shows the precise location of the Claimant plot. That Claimant had also proceeded with title regularization and issued with an acknowledgement from the Federal Capital Territory Administration (also known as Exhibit D). The Claimant proceeded to build an Administrative Block/Shops/Service Station for the Petroleum Filling Station intended to operate on the said plot and upon obtaining the necessary approval, Claimant buried massive Petroleum and Diesel storage Tanks underground the said plot. That Claimant also erected were four gigantic metallic stands, upon

which the Petroleum Filling Station umbrella was to be installed. That the Filling Station was not completed to the point to commence sale of Petroleum Products when A. A. Rano Nigeria Limited (a petroleum company) showed interest in acquiring the said Filling Station at the level it was and that while discussions on the sales were concluded, A.A Rano effected payment of the agreed purchase price and took possession of the said Filling Station's Administrative Building/Shops/Service Station and other appurtenances. That upon completion of payment of the purchase price in the sum of N220,000,000.00 (Two Hundred and Twenty Million Naira), by A. A. Rano Nig. Ltd., it caused the Administrative Building, Shops and Service Station, erected by Claimant to be pulled down as A.A. Rano Nigeria Limited planned to remodel the Filling Station to its own plan and style.

That seeing the plot/property in issue vacant as a result of removal of the Filling Station Administrative Building/Shops/Service Station, the 2nd Defendant took advantage of the vacancy and invaded same with thugs in a bid to forcefully take over the plot, sometime in the year 2018. That Claimant protested the wicked attempt at expropriating its landed property, by petitioning to the Inspector General of Police.

That as a result of the dispute, A.A. Rano Nigeria Limited requested to pull out of the transaction but Claimant reiterated its holding over the plot in question and rather sought to be allowed to prove its legal hold over and above the claims of the 2nd Defendant. That as a result of A.A Rano's insistence of being refunded, the sale was swapped with another property while the Claimant followed through with the

Petition against the 2nd Defendant with the IGP. That as a result of the Petition, the 2nd defendant disappeared around the end of 2018 and did not return to disturb her peaceful possession of the plot in question throughout the year 2019.

That in the process of redesigning the plot, the 2nd defendant, using the men and instrumentality of the 1st defendant, again trespassed upon the claimant's property, by digging foundation across some part of its land measuring 2149.34sqm as shown in Exhibit E. That upon discovering the Defendants' act of trespass to wit; the digging of the foundation upon its plot being complained of in this suit, the Claimant commissioned a surveyor to assess the extent of encroachment by the Defendants over its plot in question. The Claimant avers further that although it demanded that the 1st and 2nd Defendants desist from their acts of trespass upon the plot of land in question, both have remained adamant hence this claim.

The Defendants were served with the Claimant's processes and hearing notices, but Defendants failed to file a defence. Trial in this suit commenced on the 15th of December 2020 with the Claimant calling two witness, the PW1 and PW2, who adopted their witness statement as his evidence in chief in this case, to the facts as stated above.

In proof, Claimant's witnesses tendered the following documents as exhibits which was admitted as follows;

1. 14 photographs of the subject matter admitted as Exhibit A¹ to A¹⁴

2. Certificate pursuant to Section 84(4) of the Evidence Act, 2011 as Exhibit A¹⁵
3. Offer of terms of grant/Conveyance of approval issued to Claimant with reference No. MFCT/ZC/AMAC/LUE/pfs292 as Exhibit B
4. Survey plan on right of occupancy no. FCT/MZTP/LA/2001/MISC 2744 measuring 7324.08 sq. meters as Exhibit C¹
5. Survey Data on 7931.913 square meters as Exhibit C²
6. Regularisation of Land titles and documents of FCT Area Council acknowledgment dated 7/7/2007 as Exhibit D.
7. Site Plan showing encroachment into Plot PFS 292 situate at Lugbe 1 admitted as Exhibit E.

The Court thereafter adjourned the case for cross-examination of the PW1 but on the next adjourned date, the Defendants were not in Court to cross examine the PW1 despite the service of hearing notices. The Claimant urged the Court to foreclose the Defendants from cross-examining the PW1, which the court granted. The Defendants also failed to cross-examine the PW2 and enter their defence and were again foreclosed. The Court thereafter adjourned the matter for adoption of Final Written Addresses.

The Claimant filed their written address and raised a sole issue for determination to wit; Whether the Claimant has proved its case on the preponderance of evidence to warrant the grant of the reliefs sought in this suit.

Counsel arguing the sole issue submitted that the Exhibits tendered by the Claimant's witnesses in proof of the Claimant's title over the said plot of land have not been controverted and the law is trite that where a piece of evidence has not been challenged or controverted, the court is bound to accept those facts as established as those facts were deemed to have been admitted.

Counsel submitted further that by the combined effect of Exhibits B, and D, the Claimant has successfully proved title over the said Plot No. PFS 292 Cadastral Zone 0707, within Lugbe 1 Extension, Abuja, and therefore entitled to the grant of relief 1 prayed for this suit.

Submitted that a combine effect of Exhibits A1-A14, A15 and E respectively, the Claimant has shown the Defendants acts of trespass on the Claimant's Plot of land more so, as the said pieces of evidence has not been controverted. Counsel urged the Court to so hold and grant reliefs 2 and 3 sought by the Claimant.

Counsel submitted finally that from the sum total of the credible oral and documentary evidence adduced in proof of its case, the Claimant has successfully proven her case on the preponderance of evidence and is therefore entitled to the grant of all the reliefs prayed for in this suit. Moreso as the Defendants in this suit who are aware of the pendency of the suit against them, by virtue of the service of the originating processes on, them and all subsequent hearing notices, yet, chose not to defend the case against them.

Counsel relied on the following authorities to buttress his argument:

1. Honda Place Ltd Vs. Globe Motors Holding Nig Ltd(2005) 7 S.C (Pt 111) 182 at 177 pages 189-190
2. Nwabuoku Vs Ottih (1961) 2 SCNLR 232

3. Madu V. Madu (2008) All FWLR (pt. 414) 1604 at p. 1627
4. . Orianzi V A.G Rivers State & 3 Ors (2017) 2 S.C (PT.I) 104 at 161
5. Smab Inter-Trade Ltd V. Bulangu Ali Bukar (2013) ALL FWLR (Pt. 693) 2019.
6. Efet V. INEC (2011) ALL FWLR (pt. 565) 203
7. Nzeribe V Dave Engr. co. Ltd (1994) 8 NWLR (Pt. 361) 124

I have examined the evidence of the Claimant as well as the written address filed as argument and the issue to be determined is;

“Whether the plaintiff has led cogent and sufficient evidence to warrant the grant of its claims?”

Before delving into the issue for determination, it is pertinent to state that the Defendants did not file a defence, field any witness in support of their case neither did Defendants cross-examine the Claimant’s witnesses despite the service of multiple hearing notices on the Defendants.

The law is trite that once a trial Court has given a party ample opportunity to defend himself and the party does not avail himself of that opportunity, then the party cannot complain that he was denied fair hearing. See **Ogunsanya v. State (2011) 12 NWLR (Pt. 1261) page 40; Ordi Orugbo v. Una (2002) 16 NWLR (Pt. 792) 175.**

In this case, the Defendants were given sufficient opportunity to cross examine the Claimant’s witnesses and present their defence and going by the records of this Court, they failed to utilize the

opportunity despite being served with the originating processes as well as hearing notices. Where opportunities, as in this case, have been given to a party to present his case and he fails to make use of such opportunities then he cannot complain of a denial of fair hearing. The Court cannot force a party to present his case, where such party refuses; the Court is entitled to make appropriate order in order to ensure that justice is done.

Be that as it may, although the defendants did not defend this action the nature of the reliefs claimed by the Claimant, makes the burden on the Claimant unwavering. This is particularly so because the Claimant who is claiming declaration of being the rightful allottee to the land in issue must succeed on the strength of its case and not on the weakness of the defence or failure to defend as in this case.

Now dealing with the issue for determination, the law is well settled that the Claimant has an inescapable legal burden to establish with credible evidence its entitlement to the claims presented for adjudication. This is as stated in Section 131 of the Evidence Act, 2011, which provides that he who asserts must prove. Hence the Claimant in this instant suit has a burden to prove its case to be entitled to the reliefs as sought. The Claimant's relief 1 is for a declaration that the Claimant is the rightful allottee of the plot of land known and described as Plot No. PFS 292 Cadastral Zone 07-07, within Lugbe 1 Extension, Abuja, having an area of approximately 7324.06Sqm. It is trite that a party bringing an action in court must show that he has a right to protect hence his coming to court to seek

a legal remedy to avoid violation of his rights. See **OGUNMOKUN VS MIL. ADMIN OSUN STATE (1993) 3 NWLR (Pt. 594) 261 @ 286.**

Section 297 (2) of the 1999 constitution (as amended) provides that:

“The ownership of all lands comprised in the Federal Capital Territory shall vest in the government of the Federal Republic of Nigeria.”

Section 1 (3) of the Federal Capital Territory Act provides that all lands in the Federal capital Territory shall be governed and controlled by the Government of the Federation to the exclusion of any other person or authority whatsoever.

The pertinent question that arises at this junction is whether from evidence of Plaintiff & Exhibits before this court, Plaintiff has been able to prove that the documents presented have actually created an interest in the said land as the rightful allottee of the subject matter Plot.

From the evidence of the Claimant through the PWI, the Claimant is grounding its claim on Exhibit B which is a letter of offer of terms of grant/conveyance of approval issued to Claimant by Abuja Municipal Area Council (AMAC) dated 21/9/1999 which covers 7324.06M² (Plot Pfs292) within Lugbe Extension. Also supporting his claim is Exhibit D which is an acknowledgment of receipt of documents submitted by Claimant for regularization of the said land, the letter of acknowledgment is dated 7/7/2007. **S. 297 (2) of the 1999 constitution of the Federal Republic of Nigeria** vests absolute ownership of all

land in the Federal Capital Territory in the Federal Government of Nigeria. Also **S. 1 (3) of the Federal capital Territory Act, 2004** is also in conformity with **S. 297 (2) of the 1999 constitution of Federal republic of Nigeria.****Section 297 (2) of 1999 Constitution:** -

“The ownership of all lands comprised in the Federal capital territory, Abuja shall vest in the government of the Federal Republic of Nigeria”.

Section 1 (3) Federal Capital Territory Act: -

“The area contained in the Capital Territory shall, as from commencement of this Act, cease to be a portion of the states concerned and shall henceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Federal capital Territory shall likewise vest absolutely in the Government of the Federal Republic of Nigeria”.

From the above provisions, it simply states that all lands within the Federal Capital Territory belong to the Federal Government of Nigeria and it is only the Federal government of Nigeria that can allocate to any individual. Claimant in this suit was allocated the subject matter by the Abuja Municipal Area Council.

In the year 2007, the Claimant had submitted to the Federal Capital Administration an application for regularization of the subject matter land allocated to it by Abuja Municipal Area Council (AMAC). Federal Capital Territory Administration had issued an acknowledgment dated 7th July, 2007 as in Exhibit D. In Exhibit D, Federal Capital Territory Administration had acknowledged that

Claimant had submitted its application for regularization alongside all necessary documents and necessary fees paid by the Claimant to Federal Capital Territory Administration since the year 2007. There is no evidence before me that the said land had been revoked, nor is there evidence before me that the land had been allocated to another party.

Evidence before me points to the fact that Claimant had been in peaceful possession of the land since 1999 and the Federal government had requested through the office of the Hon. Minister that Claimant and all citizens that are holders of land that fall in the same category as Claimant's land should regularize same by submitting an application for regularization so that the Federal government through the office of the Hon. Minister of FCT can rectify same. Claimant had accepted this offer and submitted his application for regularization, paid all necessary fees and submitted all required documents for regularization & is awaiting re-certification from the office of the Hon. Minister.

It is trite that once there is an offer and same is accepted, a contractual relationship has been established by both parties as in this case the office of the Hon. Minister and the Claimant hence the contract is binding and remains binding on both parties until the contrary is proved. So far there is no contrary position to the contractual relationship between the Hon. Minister through the office of the Federal Capital Territory Administration and the Claimant. It is trite that where a contract is subject to the fulfillment of a condition precedent, the contract becomes binding upon the fulfillment of such conditions as set out in Exhibit D. It is necessary

at this junction for me to define the act of regularization as offered by the Federal Capital Territory Minister to all land owners who got their allocation from AMAC as in this case. The act of regularization simply means the act of changing a system or situation in order to comply with laid down laws & rules (see Cambridge dictionary). The Oxford dictionary states that if one regularizes a situation or system, they make it officially acceptable or put it under a system of rules. In essence Federal government through the office of FCT Minister by offering all land owners who were allocated land by the Abuja Municipal Area Council to come forward to regularize same had rather than revoke the allocation had simply offered to regularize that which is not regular by formalizing same in order to make the erstwhile allocation conform with the laid down procedure and thereafter issue a certificate of occupancy once all conditions are fulfilled. It is in the light the above that I hold that Claimant is the rightful allottee of the subject matter plot having fulfilled all condition precedent as offered by Hon. Minister.

The Claimant in relief 2 is urging on the Court to declare that the Defendants' act of digging foundation on a total of about 2149.34sq.m of the Claimant's land amounts to trespass. The law is trite that trespass to land is actionable at the instance of the person in possession of the land. See the case of **Akan V. Okunade (1978) 3 SC 129**. In this instant case, it is the Claimant's evidence that the Claimant was allocated the plot of land in issue in 1999, and proceeded to build administrative blocks, shops, service stations for the petroleum filling station when Defendant encroached upon its land by digging foundation from a portion of the Claimant's land

measuring 2149.34sq.m. In proof, Claimant tendered Exhibit A1 to A14, which are photographs showing the land as well as Exhibit E which is the site plan showing the encroachment into the Claimant's land by the Defendants. This evidence of the claimant was neither challenged nor controverted as the Defendants failed to cross examine the Claimant's witnesses on this issue neither did Defendants file a defence to the Claimants case. In **OLUBODUN VS. LAWAL (2008) VOL 9 MJSC PG. 1 @ 54 E-G PARA A-B** where Ogbuagbu JSC held "Trespass is an injury to the right of possession and the proper Plaintiff in an action for trespass is generally the person who is in actual or constructive possession at the time of the trespass. He can maintain an action for trespass against anyone but the true owner or anyone who can trace his title to the latter. See also **ADENIJI VS. OGUNBIYI (1965) NWLR 395; AMALOR VS. OBIEFUNA (1974) 3 SC 67.** Applying the above decision to the claim for trespass, Claimant having successfully proved to this court that he is the rightful allottee of the subject matter plot. Defendant on his part has not shown any interest in this case hence this Court is therefore satisfied with the evidence of the Claimant and has no option than to accept the uncontroverted evidence put forward by the Claimant. The court in **MABAMIJE V. OTTO (2016) LPELR-26058 (SC)** held

"Where evidence given by a party to any proceedings or by his witness is not challenged by the opposite party who has the opportunity to do so, it is always open to the Court seised of the proceedings to act on the unchallenged evidence before it... This is

because in such circumstance the evidence before the trial Court obviously goes one way with the other set of facts or evidence weighing against it. There is nothing in such a situation to put on the other side of that proverbial or imaginary scale or balance, as against the evidence given by or on behalf of the plaintiff. The onus of proof in such a case is naturally discharged on a minimal of proof."

Consequently, it is my view and I so hold that the Claimant has successfully proved its entitlement to relief 2 and it is hereby granted.

The Claimant in relief 3 is seeking for general and aggravated damages in the sum of N500,000,000.00 (five hundred million Naira) for trespass against the Defendants. The law is trite that general damages are losses which flows naturally from the acts of the Defendant and the quantum needs not be pleaded nor proved as they are generally presumed by law. This is the position of the court in the case of **ROCKONOH PROPERTY CO LTD v. NITEL PLC(2001) LPELR-2951(SC)** where Per Samson Odemwingie Uwaifo, JSC in Pp 11 - 12 Paras E – A held

"General damages are always made as a claim at large. The quantum need not be pleaded and proved. The award is quantified by what, in the opinion of a reasonable person, is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the

act of the defendant. It does not depend upon calculation made and figure arrived at from specific items: see Odulaja v. Haddad (1973) 11 SC 357; Lar v. Stirling Astaldi Ltd. (1977) 11-12 SC 53; Osuji v. Isiocha (1989) 3 NWLR (Pt.111) 623. When general damages are sought on the basis of trespass to land, they would represent payment for the tort of trespass, not the value of the land; and the land remains at least under the possessory ownership or right of the plaintiff claimant."

It is trite that Claimant who has successfully established his claim for trespass to land ought to be entitled to damages whether the Claimant proved his entitlement to damages or loss. General damages is such as the law will presume to be the natural or probable consequences of the defendants act and as it arises by inference of law. It need not be proved by evidence and may be averred generally. See **INCAR (NIG) LTD VS. BENSON TRANSPORT LTD (1975) LPELR-152 (SC)**. In awarding general damages this court will take into consideration evidence of Claimant that a certain company A. A. Rano" had offered and paid Claimant the sum of N220,000,000.00 (Two Hundred and Twenty Million Naira) for the sale of the subject matter but after discovering Defendants trespass on the land declined to pursue the transaction and requested for refund of the money it had paid Claimant. Also, from evidence of Claimant, the Defendants had encroached upon Claimant's land on two (2) different occasions causing Claimant the stress of reporting to the police on both occasions. Aggravated

damages on the other hand are damages for mental distress/injury for feelings caused by defendants' act of trespassing upon Claimant's land. It is pertinent to state that the grant or otherwise on what amount of damage that could be awarded, lies at the discretion of the Court. I am therefore convinced that Claimant is entitled to damages and this Court hereby awards the sum of N20,000, 000.00 (Twenty Million Naira) only, as general and aggravated damages in favour of the Claimant for the trespass committed by the Defendants on the Claimants land.

The Claimant in relief No. 4 is urging the court to grant perpetual injunction against the Defendants from acts of further trespass on the subject matter. The grant or refusal of an injunction is a discretionary power of the court and enough facts must be available to the court to grant same, in other words Claimant must provide satisfactory evidence in prove of same. Claimant in this suit has shown to the satisfaction of this court that he is in possession of the subject matter while defendants did not lead evidence to show title nor possession. Having held that the claim for trespass upon the Claimant's land succeeds. The 4th relief as claimed by the Claimant equally succeeds.

In the final analysis, I therefore hold that the Claimant has successfully proved its case and is entitled to all the reliefs as claimed. Consequently, I hereby order as follows;

1. I hereby declare that the Claimant is the rightful allottee of the plot of land known and described as Plot No. PFS 292 Cadastral Zone 07-07, within Lugbe 1 Extension, Abuja, having an area of approximately 7324.06Sqm.
2. I hereby declare that the Defendants' act of digging foundation on a total of about 2149.34 Square meters, of the plot constituting subject matter of dispute in this suit, Plot No: PFS 292 Cadastral Zone 07-07, within Lugbe 1 Extension, Abuja, having an area of approximately 7324.06Sqm against the desire and permission of the Claimant thereby constituting disturbance to her possessory rights over the plot in issue, amounts to trespass.
3. I hereby award the sum of N20,000,000.00 (Twenty Million Naira) being general and aggravated damages for trespass upon the Claimant's plot of land described at reliefs 1 and 2 above and being subject matter of this suit.
4. I hereby grant an order of perpetual injunction restraining the Defendants, whether by them-selves or through their servants, agents, privies, workmen, howsoever called from committing further acts of trespass on the Claimant's land constituting subject matter of this suit.

Parties: Claimant's representative present.

Appearances: Idris Abubakar for Claimant appearing with Obed Wadzani.

HON. JUSTICE MODUPE OSHO-ADEBIYI
JUDGE

24TH JUNE, 2021