

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 17TH DAY OF MAY, 2024

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

SUIT NO.: FCT/HC/CV/306/2015

BETWEEN:

JUBRIL IBRAHIM (also known as ESENYIE P.) ----- CLAIMANT
(Suing through his lawful Attorney
Mr. Innocent Tochukwu Nwolisa)

AND

1. MR. PETER NWOSU
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY } **DEFENDANTS**
3. THE HON. MINISTER, FEDERAL CAPITAL TERRITORY ABUJA }
4. MR. EMMANUEL NWEKE

JUDGMENT

In this Suit filed on the 27th November, 2015 the Claimant, Jubril Ibrahim (aka Esenyie P.) suing through his lawful Attorney Mr. Innocent Tochukwu Nwolisa sued Peter Nwosu, Federal Capital Development Authority, the Hon. Minister Federal Capital Territory Abuja and Emmanuel Nweke. But in a Notice of Discountenance filed on 2nd

March, 2018 the Claimant withdrew the action against the Federal Capital Development Authority and the Hon. Minister Federal Capital Territory Abuja. Hence, the names of the 2 Defendants in the Suit were struck out. There are only 2 Defendants on record.

In the Suit the Claimant claims the following Reliefs:

- 1.A Declaration that the Claimant is the original Allottee of Plot No. A95 Kubwa Annex (Gbazango West) layout A95 measuring about 700sqm.**
- 2.A Declaration that the Claimant's title has not been revoked by the 2nd & 3rd Defendants at any time whatsoever and that being the case, same cannot be granted to the 1st Defendant.**
- 3.A Declaration that the Claimant's Plot at No. A95 Kubwa Annex (Gbazango West) layout A95 measuring about 700sqm and that claimed by purportedly claimed of the 1st Defendant as Plot No. A95 11Annex (Gbazango West) layout A95 measuring about 600sqm is not the same land.**
- 4.A Declaration by this Honourable Court that the title papers being paraded by the 1st Defendant for which he claims title over the Claimant's land is null and void and of no effect.**
- 5.An Order of Court mandating the 4th Defendant to stop trespassing on the Claimant's land at Plot A95**

situated at Kubwa Annex (Gbazango West) layout, Bwari Area Council and remove the structure he built on the Claimant's land.

6. An Order of Perpetual Injunction restraining the Defendants, their agents, privies and servants from encroaching on Plot No. A95 situated at Kubwa Annex (Gbazango West) layout, Bwari Area Council, Abuja and measuring about 700sqm.

7. The sum of ₦10, 000,000.00 (Ten Million Naira) as General Damages in favour of the Claimant against the Defendants jointly and severally for the unlawful harassment of the Claimant and mischievous disturbance of the Claimant's quiet enjoyment of Plot A95 Kubwa Annex (Gbazango West) Layout, Bwari – Abuja.

The Claimant's Witness – Innocent Tochukwu Nwolisa testified as PW1 and tendered 9 documents marked **EXH 1 – 9**. The documents include Provisional Approval to Esenyie P over the Plot No. A95 Kubwa Annex (Gbazango West) Layout measuring about 700sqm, Power of Attorney of 24th December, 2012; Receipt of Payment for Certificate of Occupancy dated 27th February, 2007; Receipt of Payment for Search dated 27th August, 2012; Search Report of 28th November, 2012; Claimant Solicitor's letter to Zonal Coordinator Bwari Area Council dated 9th January, 2014; Response of Zonal Coordinator Bwari Area Council dated 18th March, 2014; Claimant's letter to the

Police Area Command Kubwa dated 5th December, 2013; Claimant's letter to Development Control dated 2nd December, 2013.

The Court ensured that all Processes filed by the Claimant were served on the Defendants. But the Defendants did not file any response – Statement of Defence or Counter-Claim. They were equally served Hearing Notices every day the matter is scheduled to be heard. The Court gave the Defendants time to Cross-examine the PW1 but they never showed up. Because the Court cannot wait for them in perpetuity it foreclosed them and the Claimant filed its Final Written Address and served the Defendants but no response from the Defendants as usual.

In the Final Written Address the Claimant raised 2 Issues for determination which are:

- (1) Whether he has sufficiently proved his case to be entitled to the Reliefs sought.
- (2) Whether from the facts and evidence before the Court the Claimant is entitled to all the declaratory and ancillary Reliefs sought in his claim.

The Claimant Counsel argued the 2 Issues together submitting that the Claimant has placed sufficient proof before this Court by his testimony and 9 documents tendered and as such he is entitled to both the declaratory and ancillary Reliefs sought in this Suit. That all documents tendered were admitted without any contention. She referred to **SS. 133 – 135 of the Evidence Act 2011.**

That the Claimant testified and tendered the documents but the Defendants did not challenge same. That the Defendants failed, neglected and refused to enter appearance or file any Defence. Hence, the Defendants have admitted all the facts as raised by the Claimant in this case. She referred to the case of:

Al Hassan V. Abu Zakari
(2010) FWLR (PT. 538) 962 @ 1004

That by the strength of the evidence the Claimant placed before this Court by the testimony of PW1, he has proved the ownership of the Res. She urged the Court to enter Judgment in Claimant's favour. That the Claimant has proved his case on the balance of probability. That he has adduced credible evidence in support of his case and discharged the burden of proof too. That he asserted and proved his assertion in this case. That his evidence is unchallenged. She urged the Court to accept same as unchallenged and act on it. She relied on the cases of:

Kashadadi V. Noma
(2000) 15 NWLR (PT. 692) 807 CA

Nwabuoku V. Ottih
(1961) ANCR 187

That the only evidence before this Court is that of the Claimant which is unchallenged. That the evidence is credible in proof of this case. She urged the Court to so hold and act on it accordingly as the Defendants did not file any Statement of Defence in rebuttal to the case of the Claimant. They did not lead evidence too. Hence, they have

admitted the evidence of the Claimant. She referred to the case of:

**Idesoh & Anor V. Chief Paul Ordia & Ors
(1997) LPELR – 1421 (SC)**

That there is no adverse claim in this case. That the Claimant has revealed cause of action and proved its case too against the Defendants. That the case stands unchallenged. She relied on the case of:

**Afolayan V. Ogunrinde & Or
(1990) NWLR (PT. 127) 369**

That the averments of the Claimant in his pleadings **paragraphs 10, 14 & 29** are explicit on his Possessory Right over the Res. He tender **EXH 1** and other documents in proof of ownership of the Res. She referred to the:

**Idundun V. Okumagba
(1976) 9 – 10 SC 31 @ 37**

That the Claimant produced document of title. That his Possessory Right over the Res was never challenged at any time until he discovered that someone – Defendants had constructed a house in the Res. That the sources of allocation are from the authorized source – Bwari Area Council as delegated by Minister of Federal Capital Territory. She referred to the case of:

**Madu V. Madu
(2008) LPELR – 1806 SC Pg. 15**

That equitable interest which is as good as legal estate can be acquired in the absence of registered title document and its abetter. She urged Court to so hold.

That the Claimant succeeded in establishing an equitable interest in the Plot by his unchallenged evidence of payment of money in respect of the land and issuance of documents and subsequent possession. She urged the Court to grant the Reliefs as sought.

On the second Issue – on grant of Declaratory and Ancillary Relief, she submitted that the proof of trespass and damages for trespass and injunction the Claimant has established that he was in possession at the time of the infraction by the Defendants. She relied on the case of:

Engr. Bayo Akinterinwa V. Cornelius Oladunjoye
6 NWLR (PT. 659) 92

That by the testimony of the PW1 and the documents evidencing trespass the Claimant has established ownership, possession and act of trespass by the Defendants over the Res. That he proved the identity of the land with clarity and certainty. Hence is entitled to payment of Damages and grant of Declaratory and Injunctive Reliefs. She referred to the cases of:

Oyedoke V. Registered Trustee of CAC
(2001) 3 NWLR (PT. 701) 621

Babatola V. Oba Aladejana
(2001) 6 NSCQR (PT. 1017) 1028

That going by the evidence of PW1 before this Court he has shown that he is in exclusive possession and occupation of the Res before the Defendants' act of trespass. That the Claimant is entitled to damages for the act of trespass by the Defendants having proved same, as compensation for the loss and injury suffered because of the trespass. That he led evidence on the act of trespass and all effort he made to resolve the issue but all failed. Hence he filed the present Suit. She urged Court to grant all the Reliefs sought by the Claimant.

COURT

This Court has summarized the case of the Claimant which as it were is unchallenged since the Defendants did not file any Defence or Cross-examined the sole Witness of the Claimant or filed any response to the Final Written Address notwithstanding that they had all the time. The question is has the Claimant proved his case notwithstanding that it is not challenged? Is the Claimant entitled to the Reliefs Declaratory and Ancillary? Has the Claimant proved act of ownership and trespass?

Not answering the question seriatim, it is the humble view of this Court that the Claimant has proved ownership to the Res. He has proved that the Defendants trespassed into the land. He has established his case with the documents and evidence he placed before this Court. He is entitled to both Declaratory and Ancillary claims/Reliefs.

To start with, the Defendants did not file any Statement of Defence. They did not file any Preliminary Objection. They

did not come before this Court to Cross-examine the PW1. There is no evidence that they intended to do so. There is no adverse claim over the ownership of the Res even as I deliver this Judgment. It is the law that facts unchallenged and unrebutted are deemed and are actually admitted.

Also, where in issue claim of ownership over a parcel of land and the Claimant is able to prove ownership by production of documents of title which are authenticated, prove of ownership by traditional evidence, by positive act of ownership over a period of time and long possession and peaceful enjoyment of the land among others, such a person is held to have established ownership and is declared the owner. On all the above see the following cases where the Court held so:

Kyari V. Akali & Ors
(2001) 11 NWLR (PT. 724) 412

Idundun V. Okumagba
(1976) 9 – 10 SC 31 @ 37

In this case the Claimant has tendered several documents in proof of the ownership. He has proved how he got into possession by the documents he tendered – Conveyance of Provisional Approval issued to him by Bwari Area Council on 15th June, 2001. He equally tendered the evidence of part payment for the Res which is the Cheque issued to him by his Attorney – Innocent Tochukwu Nwolisa on 24th December, 2012 for **₦3, 000,000.00 (Three Million Naira)** – Ecobank Cheque. He personally acknowledged receipt of same. The Claimant also attached the Power of Attorney he

donated to the same Tochukwu Nwolisa on 24th December, 2012 too. He tendered the Department Receipt for land and for Development Form. The Department Receipt is for Certificate of Occupancy payment of **₦16, 500.00 (Sixteen Thousand Five Hundred Naira)** issued for land fee by Bwari Area Council on 27th February, 2007. He tendered Receipt evidencing payment for Legal Search made on 27th August, 2012 where he paid **₦5, 000.00 (Five Thousand Naira)**. The payment was for search for Plot A95 which is the Res in this case. He tendered the Search Report written by Bwari Area Council on 28th November, 2012 referring to his application on 27th August, 2012 the same day he paid for the Search. In the Search Report the Bwari Area Council confirmed that the land, Plot A95 was NOT ENCUMBERED. That it belongs to Esenyei as contained in the Letter of Offer submitted and traced to the Allottee. The letter went further to state that the cartography unit confirmed that the Plot A95 was yet to be chanted as at 28th November, 2012 when the Search Report was written/made.

As law abiding citizen the Claimant promptly made a report – a very comprehensive report to the Bwari Area Council detailing how he came to the land and complaining the act of trespass by the Defendants. He pointed out all the discrepancies in the documents purportedly presented to the Bwari Area Council by the Defendants. From those documents it is clear that the Claimant was first in time and was in effective occupation long before the Defendants came with their act of trespass.

It is the law that in a land tussle, if a party is able to show he is first in time he carries the day. In that case a trespasser who is first will be kicked out by a person with a genuine land title, who has proved that he is first in time.

In this case the Claimant has tendered documents showing that he was first into the Res and had enjoyed several years of peaceful occupation and quiet enjoyment of the Res before the Defendants came with their act of trespass by developing a building at the back of the Plot of the Claimant. The Claimant proved this by exhibiting pictures of the actual construction at the Res. He had also tendered documents showing that he was first in time. He was already in occupation before the trespass.

It is the law that once a party has established ownership and has proved he was first in time before the act of trespass that such party is entitled to payment of damages for the injury he has suffered as a result of the trespass. In this case the Claimant has proved act of trespass by the Defendants. He has proved that he has suffered some injuries too. He is entitled to damage to be paid by the Defendants who trespassed and caused the said injuries/trespass.

It is imperative to state that the Defendants did not deny that fact and they never challenged the case of the Claimant.

Notwithstanding that the Defendants did not challenge the case of the Claimant, the Claimant, with the documents tendered before this Court, proved his title to the Res. He

proved the genealogy of the Res, how it went from Esenyei P. to him. He tendered Power of Attorney donated by Esenyei P. to the Innocent Tochukwu Nwolisa. He tendered evidence of payment of **₦3, 000,000.00 (Three Million Naira)** to him by his Attorney showing that he personally acknowledged that payment.

It is imperative to state that in proof of land dispute document is king and key except where proof of ownership is based on traditional evidence. The Claimant has tendered documents before this Court which shows how he got to the land in issue, from Conveyance of Provisional Approval to Search Report to Receipt of Payment for Certificate of Occupancy. He equally tendered the document purported submitted by the trespasser – Peter Nwosu at the Bwari Area Council when they were asked to present their documents of title. The Claimant also tendered the Petition he wrote against the Defendants and attached all the fake documents which Claimant alleged that the Defendant presented before the Bwari Area Council and also Receipts of Payment of ramous fee. Without doubt those documents are all in their original forms. They were not challenged or rebutted by the Defendants.

It is strange to this Court that the Defendants could not file a single paragraph of Statement of Defence and never defended this Suit even after they were served the Originating Processes and all other documents in this case.

It is not in doubt that this land was granted by the Bwari Area Council on the authorization of the Minister of Federal Capital Territory who has the right to so authorize and who is vested with the power by law, acting for and on behalf of the President on who all land in the Federal Capital Territory is vested. It is on the Minister who is vested with the power to grant Statutory Right of Occupancy and the action of the Bwari Area Council is the action of the Minister of the Federal Capital Territory as far as land matters are concerned. That is the decision in the following cases:

Madu V. Madu Supra

**Bill & Brothers Ltd & Ors V. Dantata & Sawoe Construction Co. (Nig) Ltd
(2015) LPELR – 24770 CA**

**Ona V. Atenda
(2000) 5 NWLR (PT. 656) 244 @ 267**

In this case the Claimant as a purchaser is able to prove possession and payment of money on the Res by tendering the Cheque – (Ecobank) for **₦3, 000,000.00 (Three Million Naira)** as payment for the Res. Though he has not registered the registrable instrument (which is the Res document) but has shown evidence of payment for the land. By that he has acquired an equitable interest in the land which is as good as legal estate. See the cases of:

**Etajata & Or V. Ologbo & Anor
(2007) LPELR – 117 SC P. 55 – 56**

Folarin V. Dunogaiye
(1988) LPELR – 1286 SC P. 17

Mgbemena & Anor V. Mgbemena
(2007) LPELR – 2065 SC

In this case the Claimant has paid for the land and is in possession of the Res. Though he did not register his title instrument. He has acquired equitable interest and such interest has not been challenged by anyone. Hence, the Claimant has acquired equitable interest which is as good as legal estate and can be acquired in the absence of registered title documents. So this Court holds.

By the averment of the Claimant in his pleadings and evidence in his Statement on Oath he has shown explicitly his possessory right over the land. So this Court holds. He has proved his case on the strength of his evidence and testimony. He has proved his case on the balance of probability and he adduced credible evidence in support of his case. He asserted and proved his assertion. He has ably discharged the onus placed on him by law. His case and assertions are not in the least challenged at all by the Defendants. Where a case is not challenged the Court is duty-bound to accept and act on such unchallenged facts and act on it as being sufficient proof of the claim in the Suit before the Court. In this case the Claimant has proved his assertion and discharged the onus and its case is not challenged. This Court holds that the Claimant has proved his case. Moreso, the said assertions are not challenged. There is no better proof of title to the Res in this case. Even

the document purportedly brought by the Defendant to the Police which was never before this Court shows that the Claimant is first in time and that the Plot in issue is 700sqm while the unproved document of the Defendant at the Police Station is for a land that is 600sqm. There is a fundamental disparity between the 2. On all the above see the following cases:

**Edet Akpanuwah V. Clement Okoh & 1 Or
(2014) FWLR (PT. 760) 1219**

**Inscutto V. Adecentre Nig. Ltd
(1997) 12 SCN 11**

Kashadadi V. Noma Supra

From all the above the Claimant has proved ownership and has proved trespass. The case of the Claimant is not challenged. The Claimant is first in time and unchallenged facts are deemed admitted. The Claimant discharged the onus as required by law. The Claimant's title was never revoked.

This Court therefore enters Judgment in his favor haven proved his case and ownership to the Res in this case. This Court grants the Reliefs to wit:

- (1) Prayer 1 – 4 granted as prayed.
- (2) This Court hereby Order the 2nd Defendant – Emmanuel Nweke to stop all acts of trespass on the Res and remove any structure erected on the land (Res).

(3) Prayer 6 granted.

(4) The Defendants are to pay to the Claimant the sum of ₦200, 000.00 (Two Hundred Thousand Naira) for the act of trespass on the land.

This is the Judgment of this Court.

**Delivered today the ___ day of _____ 2024 by
me.**

K.N. OGBONNAYA
HON. JUDGE