

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 12TH DAY OF JANUARY, 2024

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

SUIT NO.: FCT/HC/CV/1351/2016

BETWEEN:

MR. JOHN SYLVANUS TOM ----- CLAIMANT

AND

MAJOR GENERAL M. GARBA ----- DEFENDANT

JUDGMENT

On the 30th day of March, 2016 the Claimant who is also a Defendant to Counter-Claim filed the Writ. He later amended the Writ on 15th April, 2019. In it he claims as follows:

- (1) That he is the owner of Plot 188D of 1800sqm at Kubwa Extension III FCDA Scheme (hereinafter referred to as the Res).
- (2) That the Defendant trespassed by erecting a big Security House with big Iron Gate and a Perimeter Fence.

- (3) He wants Perpetual Injunction against the Defendant restraining him, his agents, officers, privies from further trespass into the Res.**
- (4) A Declaration that his right is still subsisting.**
- (5) ~~₦~~100, 000,000.00 (One Hundred Million Naira) only as General Damages for the trespass.**
- (6) ~~₦~~500, 000.00 (Five Hundred Thousand Naira) only as cost of the Suit.**
- (7) ~~₦~~619, 200.00 (Six Hundred and Nineteen Thousand, Two Hundred Naira) only as Special Damages.**

The Defendant/Counter-Claimant filed an Amended Statement of Defence in 2018 and another Amended Statement of Defence on 29th April, 2019.

In the Counter-Claim the Defendant claim ownership of the Res and that he is entitled to be issued Right of Occupancy in respect of the Res.

A Declaration that he is in actual possession and that the Claimant is the trespasser.

An Order directing that he, the Defendant, is the lawful owner of the Res.

An Order for the Claimant to pay him, the Defendant, the sum of ~~₦~~200, 000,000.00 (Two Hundred Million Naira) only as General Damage.

₦15, 000,000.00 (Fifteen Million Naira) only as cost of the Suit.

The Claimant testified in person on 11th November, 2020 as PW1 and tendered several documents which includes: Power of Attorney of 30th July, 2007, Survey Plan, TDP, Police Extract and Affidavit of Loss of Documents, CTC of Daily Trust Newspaper of 7th August, 2013; Letter of Complaint of 13th October, 2015; Regularization from AGIS, Acknowledgment from Council dated 14th April, 2014.

The Claimant testified and called a Subpoenaed Witness – Abdulhamid Wudil from Department of Land Administration FCTA on 17th February, 2020. He came to tender document – Ducess Team.

On the 27th day of April, 2022 the Defendant opened Defence by calling Engr. Aliyu Sule whom the Defendant authorized to purchase the land for the Defendant. He was DW1.

The Defendant team tendered several documents also which are: Conveyance of Provisional Approval of 15th April, 1999; Confirmation of Provisional Approval, Change of Ownership of 15th May, 2021; Power of Attorney of 10th May, 2008; Deed of Assignment, TDP, Site Plan, AGIS Regularization Acknowledgment, Provisional Approval of 15th May, 2001 for building plan.

The Defendant did not present the subpoenaed Witness and ended its case on 4th July, 2022.

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

- (1) Whether he has established his claim against the Defendant/Counter-Claimant to be entitled to his claims.
- (2) Whether in law and facts this Court can grant the Reliefs sought by the Defendant/Counter-Claimant.

On Issue No. 1, he submitted that he has adduced enough evidence, credible and convincing to support his claim that Court can make Declaration and Consequential Order in his favour. He relied on the cases of:

Arowolo V. Chief Sunday Olowokere
(2011) 18 NWLR (PT. 1278) 304 Para D – H

Yakubu V. Shuaibu
(2021) LPELR – 54946

That the Defendant has failed to discredit the testimony of the Claimant and the **EXH 1 – 6** tendered by the PW1. On issue of the PW1 not tendering the Conveyance of Provisional Approval of 15th April, 1999 he submitted that PW1 told Court that he lost the said document on transit and he made a publication to that effect on 7th August, 2013. That he tendered that Newspaper publication as **EXH 4**. That he also obtained Police Report and made Affidavit of Loss of Document tendered as **EXH 3**.

That he also took steps to collect the original Conveyance of Provisional Approval from Alhaji Dauda, the original

Allottee. He urged Court to discountenance the argument of the Defendant's Counsel on the loss of the document.

That the Power of Attorney is credible and uncontroverted by the Defendant's Counsel.

That on **EXH 1** the Pw1 told Court that he did not go to seller to indemnify him. So also the DW1 did not ask for the Assignor to indemnify him too. That the date on **EXH 2** speaks for itself. That PW1 said he contacted Zakari Phillip to survey the Res and he gave PW1 a copy of the Survey Plan – **EXH 2** which supports the Claimant's claim.

That minor contradiction in mentioning and not writing Lawal and not Emmanuel is a minor contradiction and not fatal to the case of the Claimant.

On the argument of the Defendant that failure of PW1 to approach Bwari Area Council for possible replacement of Title document should be discountenanced because of Regularization policy and Order for all Area Council within FCT to transfer all files used in allocating land to Persons and Corporate Bodies. That is also same for Order for recertification of titled document with the Department of Land Administration. He referred to **S. 124 of the Evidence Act** and **S. 122 of the Evidence Act** too. That the set Order affected the Res in this Suit. Hence, no replacement of land documents. He submitted that the PW1 could not have gone to Bwari Area Council for reissuance of Conveyance of Provisional Approval since the Allocation file was transferred to the FCT Land Administration Department. That **EXH 4** – CTC of

Newspaper publication supports the Claimant's case and was not challenged by the Defendant/Defendant Counsel.

That Letter of Complaint – **EXH 5**, Defendant used Abass Dan Zafia and Sanni to harass the Claimant and when they were arrested it was revealed that the duo were sent by the Defendant. Hence, the instruction of the Solicitor of the Claimant to write to Commissioner of Police. That the submission of the Defendant's Counsel that the Defendant was not mentioned in it is not true.

On the Regularization document, he submitted that the argument of the Defendant's Counsel is a non-issue as he was not able to counter same. That the Claimant followed due process to get the Regularization done and that he paid the statutory fees also before the document was issued to him. That Court is bound to look at the document from the subpoenaed Witness – Abdulhamid Jibir Wudil who is the Chief Planning Officer of the Department of Land Administration FCT. He referred to the cases of:

Oyewole V. Akande
(2009) 15 NWLR (PT. 1163) 119

Dangazau V. BAKir International Co. Limited
(2011) 14 NWLR (PT. 1267) 261

He referred to the document tendered by the Subpoenaed Witness on 6th March, 2020. That the document was in total compliance with **S. 84 of the Evidence Act**. He referred to the case of:

Blaise V. Federal Republic of Nigeria

(2017) 6 NWLR (PT. 1560) 90

He urged Court to discountenance the submission of the Defendant's Counsel on the issue of compliance.

That there was no Change of Ownership and the Claimant is shown to be the owner of the Res. That the Defendant did not controvert that fact. He urged Court to admit **EXH 7** as it has not been discredited by the Defendant's Counsel/Defendant. He referred to the case of:

Buhari V. Obasanjo
(2005) 13 NWLR (PT. 911) 1

He urged Court to resolve Issue No. 1 in his favour.

On Issue No. 2, he submitted that the Defendant/Counter-Claimant failed to establish his Counter-Claim and failed to challenge the case of the Claimant. That the Defendant failed to testify in person and did not tell Court why he did not testify in person. That DW1 stated in his testimony that he is not the Defendant. He admitted that he is not the maker of the documents he tendered in Court. That the Defendant did not comply with condition for admitting documents tendered by someone else who is not the maker as provided in **S. 83(1) of the Evidence Act 2011**. He urged Court not to attach any probative weight to the documents tendered by DW1 – **EXH 8 to 16** and to expunge them from Court record. He relied on the cases of:

B. Manfag Nigeria Limited V. Mils Oil Limited
(2007) 14 NWLR (PT. 1053) 109

Nwadinobi V. M.C.C Nigeria Limited

(2016) 1 NWLR (PT. 1494) 433 – 434

Zenith Bank V. Ekereuwen

(2012) 4 NWLR (PT. 1290) 213

That **EXH 8 – 16** are not admissible because they were not tendered by the maker of the documents and the Defendant did not show why he could not come to Court to tender them.

That **EXH 8** should be deemed cancelled and therefore be expunged from Court record. He referred to the cases of:

Aminu V. Hassan

(2014) 5 NWLr (PT. 1400) 287 @ 324

Dakolo V. Rewane-Dakolo

(2011) 16 NWLR (PT. 1272) 22 @ 48

That **EXH 9** is a documentary hearsay as the DW1 was not the person who applied for Change of Ownership. That though he negotiated for the purchase of the Res, that the Power of Attorney – **EXH 10 & 11** did not give DW1 power to defend the Suit for the Defendant. He urged Court to expunge the said **EXH 10 & 11** as documentary hearsay. So also the testimony of DW1. He referred to the case of:

Utteh V. State

(1992) 2 NWLR (PT. 223) 263

That there is no receipt of payment for the Res presented before the Court.

That it was what M. Shehu told DW1 and the Defendant told him also about the TDP that he told the Court. That

DW1 is not the maker of the document – TDP, **EXH 12**. He urged Court to expunge it from Court record. So also **EXH 13** – Regularization document which the DW1 told Court was processed by the Defendant through his Solicitor. That DW1 told Court that he is not the person that applied for Regularization.

He urged Court to expunge the Power of Attorney as the DW1 was not authorized to defend the Suit as well as CTC of Conveyance of Approval, Regularization of title, Settlement of Plan fees, FCTA Receipt of ₦271, 273.00 (*Two Hundred and Seventy One Thousand, Two Hundred and Seventy Three Naira*) of 6th February, 2018; Building Plan Approval. Also official Receipt of Application for Processing fee of ₦10, 000.00 (*Ten Thousand Naira*) dated 8th January, 2017. Bill of Settlement of Building Plan of 7th February, 2018; Cash Receipt of ₦15, 000,000.00 (*Fifteen Million Naira*) Professional Fee and ₦5, 000,000.00 (*Five Million Naira*) cost of action, Zenith Bank Teller of 16th February, 2018. That same should be expunged as DW1 was not the maker. That they were produced during the pendency of the Suit. He cited the cases of:

**AC (O.A.O) Nig. Ltd V. Umanah
(2013) 4 NWLR (PT. 1398) 323**

S. 83 (3), (4) & (5) of the Evidence Act

**N.B.C V. Ubani
(2014) 4 NWLR (PT. 1398) 421**

That the Defendant is an interested person in the Suit. He urged Court to discountenance the argument of DW1 that

the application for the documents were made long before they were issued to the Defendant and not during the pendency of the Suit. He cited the cases of:

Al-Hassan V. Ishaku
(2016) 10 NWLR (PT. 1520) 230

Naura V. Achikwu
(2015) 9 NWLR (PT. 1463) 47

That failure of the Defendant to call the Director for Lands to testify on his behalf is bad for the Defendant's case. He referred to the cases of:

Egwu V. Egwu
(2007) 1 NWLR (PT. 104) 92

Universal Trust Bank V. Adams Ajegbule
(2006) 2 NWLR (PT. 965) 447

He urged Court to hold that the Defendant did not prove that the owner of the property has been divested of his ownership of the Res as there is nothing before the Court to show who applied for a change of ownership and the procedure followed to divest Alhaji Dauda A. of the ownership of the Res before it was changed to M. Shehu as DW1 alleged. That evidence of DW1 is a Hearsay and should not be admitted. Hence the right claimed by the Defendant cannot stand. That Court should reject the documents tendered by the Defendant/DW1 and attach no evidential weight to it. He referred to the cases of:

Oredola Okoeya Trading Company V. A-G Kwara State
(1992) 7 NWLR (PT. 254) 421

**Clean Credentials Ltd V. I.T.F Governing Council
(2019) 17 NWLR (PT. 1701) 318**

He urged Court to expunge the **EXH 8 – 16** and dismiss Reliefs 1 – 3 in the Counter-Claim.

On award of **₦200, 000,000.00 (Two Hundred Million Naira)** General Damages, the Claimant Counsel submitted that the Defendant has not proved the alleged Counter-Claim to deserve General Damages. That he is not entitled to grant of General Damages.

On the claim on Defendant's Solicitors Fee, he submitted that the Court should not grant Defendant the claim of payment of his Solicitors' Fee. He referred to:

Shell Petro Development Co. V. Okeh

That besides, the DW1 said that he was not the person that paid the fee of **₦5, 000,000.00 (Five Million Naira)** which he exhibited in **EXH 16**.

He urged Court to reject **EXH 8 – 16** and admit **EXH 1 – 6** and **EXH 7** tendered by subpoenaed Witness called by the Claimant and hold that the Claimant proved its case and the Defendant failed to prove its Defence.

On their part, the Defendant Counsel filed their Final Written Address on 14th March, 2022. He submitted that the Defendant testified through his nephew who the Defendant appointed as a Donee. He testified as DW1 – via the Power of Attorney – **EXH 14**.

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

- (1) Whether the Claimant has proved his case and is entitled to the Judgment.**
- (2) Whether the Defendant/Counter-Claimant by his evidence adduced during trial has proved his Counter-Claim to be entitled to the Judgment of this Court.**

On Issue No. 1, he submitted that it is incumbent on the Defendant to prove his Counter-Claim which is distinct from the claim of the Claimant. That for the Defendant to succeed it must be on the strength of his case decided on preponderance of his evidence before the Court. He referred to **S. 13 (1) of the Evidence Act** and the cases of:

Ogboru V. Okowa

(2016) 11 NWLR (PT. 1522) 84 @ 122 – 123

Registered Trustees of Brotherhood of Cross & Staff V. Edet

(2016) 5 NWLR (PT. 1505) 387

He submitted that the testimony of Abdullahi Jubril – Chief Town Planning Officer, who the Claimant Counsel subpoenaed to tender document, should be discountenanced as he only tendered document and presented undated Certificate of Compliance. That the Claimant failed to prove that the Res belong to him. That the Claimant failed to tender and produce the Conveyance of Provisional Approval in proof that the land belongs to him. That PW1 did not do a legal search of the Res before buying it. That the Defendant said that he bought the land on 10th May, 2005 while the Claimant said that it bought it

30th July, 2007. That by evidence before the Court the Defendant is first in time in the purchase of the Plot – **EXH 10**. He relied on the cases of:

Ekwenu V. Li-Baqi

(2017) LPELR – 43456 (CA) @ 30 – 33

Yar’Adua V. Bindawa

(2016) LPELR – 45492 (CA) 21 – 22 Para D – A

That PW1 evidence was contradictory. That he said that he contracted a Surveyor – Zakari Philip to survey the land after 30th July, 2007. But he tendered **EXH 2** dated 12th August, 2002 which is the Survey Plan made by the said Zakari Philip. But in his oral testimony he said that the plan was made/dated on 13th July, 2012 instead of 12th August, 2002. He urged Court to hold that the testimony and documentary evidence of PW1 goes to no issue and should be discredited. That PW1 Statement on Oath of 15th March, 2018 contradicted paragraphs 11, 20, 25 & 31 of his Statement on Oath of 15th April, 2019. That in paragraphs 10, 17, 22 & 28 of the Statement on Oath of 15th March, 2018 the PW1 referred to Lawal as the Security man. But that he referred to Emmanuel subsequently as his Security man.

That paragraph 1 of the Power of Attorney – **EXH 1** tendered by the PW1 contains indemnity clauses. So also the Deed of Assignment. That PW1 testified that he has not gone to the seller to indemnify himself of the money used in purchase of the land.

That the Claimant failed to approach the appropriate authority for re-issuance of the documents of title which he claimed were lost. See **EXH 3 – Police Extract.**

That PW1 confirmed that the Defendant brought his title documents to the Police Station and that a petition was written against him on 13th October, 2015 to the Commissioner of Police. He failed to present Investigation Report from Police to show that the Defendant or any other person was indicted. That the name of the Defendant is not mentioned in the said **EXH 5.**

That the **EXH 6** – Regularization document tendered by PW1 has no Cadastral Zone, it was dated 14th April, 2014. But the Regularization tendered by the DW1 has Cadastral Zone **07 – 05** and is dated 27th January, 2015. He urged Court to expunge **EXH 6** from the Court record.

That the **EXH 7** – File Report of 6th March, 2020 is computer-generated but it has undated purported Certificate of Compliance contrary to **S. 84 of the Evidence Act 2011.** That it is incompetent. He urged Court to expunge same. He relied on the cases of:

Bus Edge Consulting V. Bauchi State Government & Ors (2019) LPELR – 50339 Pg. 22 – 23

Agboola & Anor V. INEC & Ors (2019) LPELR – 48743 (CA)

That Claimant failed to prove that he is the owner of the Res. That he is not entitled to the Judgment of this Court

as he failed to discharge the onus on him. He referred to the case of:

Yakubu V. Shuaibu

(2021) LPELR – 54946 (CA) 6 – 8 Para B – A

That by the testimony of DW1 and all documents tendered the Defendant has established and proved his ownership of the Res in the Counter-Claim on the preponderance of evidence and balance of probability. He referred to the following cases:

Access Bank PLC V. Ogboja

(2022) 1 NWLR (PT. 1812) 547 @ 581 Para C – D & E – G

Registered Trustees of A.C.C V. Registered Trustees of G.C.C

(2021) 16 NWLR (PT. 1801) 105 @ 130

That the Claimant did not tender the Conveyance of Provisional Approval he referred to in his Further Amended Statement of Claim in evidence to prove his title to the Res. That the Defendant produced his own documents of title and he is therefore entitled to the Judgment. That in Counter Affidavit the Defendant showed that he has a better title to the Res. That he tendered documents to prove same. That he was able to trace the history of his title unlike the Claimant. He referred to **EXH 8 & 9**. That the Irrevocable Power of Attorney by the Defendant and the Deed of Assignment tendered as **EXH 10 & 11** is evidence of purchase of the Res between M. Shehu and the Defendant – Garba Hong. It shows that the Defendant has been in possession since 2005 before the Claimant

purportedly bought the Res in 2007. That in the said **EXH 10 & 11** the DW1 witnessed the transactions. That the Defendant also tendered Site Plan – **EXH 12** confirming the size, area and identity of the Res.

That Regularization of title **EXH 12** dated 27th January, 2015 issued in favour of the M. Shehu was carried out by AGIS. That it was tendered by DW1 as **EXH 13**. That the DW1 was issued a Power of Attorney to negotiate and purchase the Res. That document was tendered as **EXH 14**. That DW1 duly executed the job as per the Power of Attorney – **EXH 14**. He tendered Building Plan too after Development Control carried out a physical inspection of the Res after which the Defendant conducted the perimeter fence and security gate at the Res. That he was awaiting Building Approval to enable him build in the Res. That it was later issued on 13th February, 2018. That the Claimant's Letter/Petition to Police dated 13th October, 2015 shows that the Defendant was in possession before the Suit was filed in 2016.

That the Defendant tendered original documents and CTC of other documents where the original is not available. That the 6 documents were certified by Department of Development Control FCTA. That all documents tendered as part of **EXH 15** does not violate **S. 83(3) of the Evidence Act** and are in purview of the law. He referred to the case of:

UTC Nigeria PLC V. Lawal
(2013) LPELR – 23002 (SC) Pg. 32 – 34 Para D – A

That the Defendant has proved better title to the Res, hence he is entitled to Damages as he has proved trespass against the Claimant. He referred to the case of:

Oriori & Ors V. Osain & Ors
(2012) LPELR – 7809 (SC) Pg. 27 – 28

He further submitted that the Court awards cost of Suit of Solicitors' fees/cost of litigation to a successful party in the action. He referred to the cases of:

Hadejia Jama'are River Basin Development Authority
V. Chimande (Nig) Ltd
(2016) LPELR – 40202 (CA) 20 – 21 Para G – B

That the Defendant/Counter-Claimant has successfully proved his Counter-Claim with cogent and verifiable evidence and as such he is entitled to his claims. That the Claimant is the real trespasser. He urged Court to resolve Issues 1 & 2 in his favour and enter Judgment in his favour too and grant all the Reliefs sought in the Counter-Claim.

In the Reply on Points of Law the Defendant Counsel submitted that the Claimant's submission in his lone Issue raised in his Final Written Address as contained in paragraph 4.01 – 4.31 are all admission to the Counter-Claim. That the Claimant struggled to defend the Counter-Claim. That the Claimant failed to prove how he acquired the title to the land. He failed to prove ownership. He referred to the case of:

Maigadaje V. Sulei & Ors

(2018) LPELR – 46504 (CA)

He also failed to tender documents of title to the Res. He urged Court to so hold.

On Reply to paragraph 5.00 – 5.54, the Defendant Counsel submitted that the Defendant, as a party, need not testify in person in a civil Suit where evidence is produced on his behalf. That the DW1 duly testified and established and laid solid foundation on his legal capacity to testify in this case on behalf of the Defendant. That he purchased the Res for the Defendant and he tendered the Power of Attorney. He referred to **EXH 14**. That DW1 has full knowledge of the facts in this case. That he signed the Irrevocable Power of Attorney – **EXH 10 & 11** dated 10th May, 2005 which is evidence of proof of the land transaction and authorization. That the DW1 complied with **S. 83 of the Evidence Act**.

That **EXH 8** – Conveyance of Provisional Approval established the root of the Defendant's title. He urged Court to discountenance the submission of the Claimant. That **EXH 8** be expunged. That **EXH 10, 11 & 14** are not Hearsay evidence as the Claimant's Counsel erroneously stated. That they are credible, cogent and reliable evidence. That the Power of Attorney it stated was given for valuable consideration. So also **EXH 11**. That it was based on that that the land documents were signed.

That the Defendant is the person in possession of the Res and that he had Building Approval. That as Attorney to the Defendant, DW1 has a right to act in the stead of the

Defendant. That the Defendant was handed over all the title documents through DW1.

That **EXH 9** was original Conveyance of Provisional Approval and **EXH 15 & 16** a CTC of document from the issuing authority confirming that the Res belongs to the Defendant. So also TDP and Regularization Acknowledgement – **EXH 12, 13 & 15**. That Development Control that certified the document does fall within exception to **S. 83(3) of the Evidence Act**. That it acted on official capacity and therefore not person of interest in this case. That they acted in official capacity I the normal course of their duty. That the documents were equally public documents. They referred to the case of:

**I.A.D. Nigeria Ltd & Anor V. Salisu & Ors
(2022) LPELR – 57056 (CA)**

That by **EXH 14** the DW1 has power to perform in connection with the Ress.

On the subpoenaed documents, he referred to paragraph 3 of the subpoena. That the PW2 applied for Subpoena to produce documents but he did not testify. That **EXH 7** which is a public document was not certified by virtue of **S. 104 of the Evidence Act**. That the said **EXH 7** was not signed too. He referred to the case of:

**Davidson V. INEC
(2021) LPELR – 52805 (CA)**

That the Defendant is entitled to cost of this Suit and Solicitors' Fees having pleaded same. He referred to the case of:

**Bonum (Nig) Ltd V. Ibe & Anor
(2019) LPELR – 46442 (CA)**

He urged Court to so hold. He urged Court to dismiss the Suit of the Claimant and accept the Counter-Claim.

COURT

In any case premised on ownership of land, document is king. Documentary evidence is key. The person must prove how he came to the land. That is, he must trace the journey of the land until it got to him. Any inability of a person to do so, the Court will hold that such a person is not the owner. This means that the history of the land must be known and traceable even if it started the journey from traditional/cultural, family sitting to the stage of documentary land tenure and ownership.

It must be known and accounted for. Failure of anyone to do so means that the person's claim of ownership has a "k-leg" as it is said in local parlance. In that case the person must plead and prove how and method of which he acquired the Res and title thereto. No person can claim ownership without establishing same. That is what the Court decided in the following cases:

**Oyenehin V. Akinkugbe
(2010) 4 NWLR (PT. 1184) 265**

**Maigadaje V. Sulei & Ors
(2018) LPELR – 46504 (CA)**

A Claimant must be able to state the exact value of his title to the land by virtue of the original ownership customary

grant, Conveyance of Sale under Customary Law or long possession. That is Court's decision in the case of:

Adesanya V. Aderonmu
(2000) 9 NWLR (PT. 673) 370 @ 382

For a person to claim trespass he must plead and prove exclusive possession before the act of trespass. This is moreso where the Defendant claims ownership of the same land. So also a Counter-Claimant has to prove exclusive possession in the Counter-Claim to succeed in such a case. The Claimant or Counter-Claimant must show better title than the Defendant or Claimant/Defendant to Counter-Claim as the case may be. That is Court's decision in the cases of:

Magaji & Ors V. Cadbury Ltd & Or
(1985) 2 NWLR (PT. 7) 393 @ 429

Ude V. Chimbo & Ors
(1998) LPELR – 3288 (SC) 17

To be entitled to a claim in trespass the Claimant must show that he has a better title to the land than a Trespasser and that he was in effective possession and occupation than the Trespasser. See the case of:

Ude V. Chimbo & Ors Supra

This the Claimant will do by presenting before the Court evidence of such possession and occupation and trespass.

It is not a must that a party must be physically present and must testify in person in a civil matter. Where a party has given authorization to another to testify on his behalf,

it suffices provided the person so authorized has the consent of such party and is very conversant with the issue in dispute. That is what the Court decided in the case of:

Nwankwo V. Oforkasi & Anor
(2016) LPELR – 40170 (CA) 13 – 14

So a party can call other persons as Witnesses to testify in his case and prove his case. See the case of:

Zubairu & Anor V. Mohammed & Ors
(2009) LPELR – 5124 (CA)

Once evidence is produced on behalf of a party in a Suit such party need not testify in person. See the case of:

Union Bank V. Udeileh
(2019) LPELR – 51285

So the absence of a Litigant to prove his case cannot stall his claim as far as he has Witness(es) who has testified and established his claims. See the case of:

Opadola V. Akanmu & Ors
(2014) LPELR – 22714 (CA)

There is therefore no Rule of Law or decision of Court that a party must testify in his own Suit. Once a Witness has the consent and authorization of such party and is fully abreast with the facts of the case, it suffices. That is moreso where there is a Power of Attorney to that effect.

Also, once an Irrevocable Power of Attorney authorizes a person to fully act in the stead of a party in a transaction or Suit, the action of such Donee is the action of the Donor.

The Donor need not be present. In fact, the Donor has not right again to act as far as such Power of Attorney is not revoked. To act, the Donor must revoke the Power of Attorney. See the case of:

**Akeredolu V. Registered Trustees of Gofamint & Ors
(2022) LPELR – 57840 (CA)**

Once the testimony of a person other than the party in a Suit proves the pleading successfully, it suffices and the party need not be present to testify in person. Once such party can prove the claims through that Witness, it suffices as far as the Witness has knowledge of the case in question. See the case of:

**Metropolitan Shuttle Express & Anor V. FCT Min. & Ors
(2022) LPELR – 57440 (CA)**

For a person to be an interested person he must have applied right or a claim in or against property. See **Black's Law Dictionary 9th Edition Pg. 1257**. By **S. 83 (3)** the evidence of an interested person is not admissible especially if made in anticipation of a dispute as to any fact which the statement/evidence may tend to establish. See the case of:

**UTC V. Lawal
(2013) LPELR – 23002 (SC)**

Unless a person has personal interest, material, financial interest or otherwise in the outcome of a Suit, such a person cannot be said to be an interested person. Such a person is detached from such interest and has no need or

temptation to depart from the truth of the matter. See the case of:

**Gbadamosi V. Kabo Travels
(2010) 8 NWLR (PT. 668) 243**

There must not be evidence of bias. Any person acting in official capacity is not an interested person. See the cases of:

**ND PHC PLC V. Shimave Antiv
(2022) LPELR – 57538**

**Peterside V. Wabara & Ors
(2010) LPELR /188M 2003**

Where a document is certified by a public official in his official capacity, such certified document has the same efficacy as the original document for as long as it was procured from such office/official acting in the normal course of its duty. Application for Production of a public document by a party is made to an official of government acting in normal course of their duty during the pendency of a Suit. What is prohibited is creation of such document during the pendency of a Suit. Application for Production of such public document is not caught up by the limitation on manufacturing of a document during the pendency of a Suit. See the case of:

**I.A.D V. Salisu
(2022) LPELR – 57056 (CA) Pg. 12 – 13 Para D – D**

So where a person who certified a document is not the maker but has acted in his official capacity to certify

document based on delegated power, such documents are still admissible in evidence as far as he acted in his normal course of his duty. See the cases of

Olomo V. Ape

(2015) 14 NWLR (PT. 1478) 46 @ 60

Lumatron Nig. Ltd & Anor V. FCMB PLC

(2016) LPELR – 41409 (CA)

It has been held in plethora of cases that unsigned document has no probative value and no legal strength. Moreso, where such document relates to land ownership or claim thereto. Also, where a party fail to comply with the provision of certification of computer-generated document, the Court will ask such a person to do the needful before it is tendered. But be it known to all and sundry that Certificate of Compliance to **S. 84 of the Evidence Act** is not an Exhibit which should be tendered in compliance to **S. 4 – 7 of the Evidence Act**. It only heralds a document generated using or via a computer.

Legal Fee and Cost of the Suit are not the same. The Legal Fee is money paid by a party to his Solicitors for handling or delivering legal services to the person. But cost of litigation/Suit is the money paid for filing of the Processes in the Suit. The 2 are often mixed up by lawyers. It is not the duty of a Court to Order that a party be refunded the money he paid to procure the service of a lawyer/Solicitor. Common sense reveals that a person who hires a laborer should be responsible for the payment for the services rendered by the laborer; be it the legal/judicial laborer or the laborer hired by a farmer or the vineyard worker in a

church or the man hired by a driver to help call passengers in a motor park. A laborer is worth his wages. Such wages should be paid by the person who hired the laborer and who utilized the services of the laborer.

The cost of litigation is different as it is the amount paid for filing and prosecuting of the case. The cost of service of Processes on the other party and the cost of filing the Processes, such fee can be borne by either the person who filed the Suit/Processes or the other party who caused the filing or prosecution of the Suit. Moreso where such Suit is an abuse of Court Process. In that case, claiming such cost and award of same can be reasonable. But it must be properly pleaded and established. It should not just be a blanket kind of cost. It should be reasonable and not just any amount which a Counsel decides to claim. Where the cost of litigation is far and above the cost of the Res, it is ridiculous and abuse of Process as far as cost is concerned. Counsel should desist from such practice, attaching evidence of payment of Solicitors Fee by a party in proof of payment of such fee but oftentimes such Solicitor is not called upon to testify if he actually was paid the amount and he issued the Receipt.

To start with, the party tendering a Solicitor's Receipt is wrong and should be inadmissible because such party is not the maker of the Receipt though it is issued to him by a Solicitor. To be so entitled, such party should present evidence of payment of such fee from either his Bank Account or by POS transfer.

The Court has stated the law and decisions of the Court on key issues raised in this dispute.

This Court has also summarized in great details the stance of the parties in the Suit and Counter-Claim and the Defence to Counter-Claim. The question is, has the Claimant been able to establish the ownership and possession of the Res with the testimony of his Witness and the documents tendered so much so that he is entitled to his claim? Has he also established that the Defendant is a Trespasser to the Res? Has he also defended the Counter-Claim filed by the Defendant that Court should dismiss same and grant the Claimant's claim? OR

Has the Defendant been able to defend the Suit of the Claimant and also established and proved his Counter-Claim so much so that the Court should dismiss the Suit of the Claimant and uphold the Counter-Claim and enter Judgment for the Defendant and grant his Reliefs in the Counter Claim?

It is the very humble view of this Court that the Claimant has NOT proved his claim – ownership of the Res. He has not also proved that the Defendant is a Trespasser. He was not able to defend the Counter-Claim. He is not entitled to the Judgment of this Court or the grant of the Reliefs sought in this case. So this Court holds.

The Defendant was able to prove his Counter-Claim with the cogent credible and concrete testimony of the DW1 and the documents tendered in proof of same. The Defendant ably defended the allegation raised by the Claimant and

also proved that he is not a trespasser. That it was actually the Claimant that is the trespasser. He deserves the grant of the Reliefs sought in the Counter-Claim. So this Court holds.

To start with and as already stated, the proof of ownership of land is base on the strength of the documents tendered in evidence especially where the ownership was not based strictly on customary “allocation.” In land dispute Document is king and document is key factor in establishing or proving of title to land or ownership. Where there is allegation of trespass the party alleging trespass must show with concrete evidence documentary and otherwise that he was in possession and effective occupation.

In this case the Claimant did not tender any document worth of judicial notice and weight that shows how he got into possession. He could not prove the genealogy of how he got into the Res. All attempt by the PW1 and testimony – documents of PW2 could not salvage that situation. Proof of ownership of land and title thereto is not based on mere assertion without proof or evidence documentary mainly and oral testimony.

A closer look at the testimony of the PW1 who is the Claimant shows that it is full of contradictions. During Cross-examination he said that he did a Window Search before he bought the Res on 30th July, 2007. He confirmed that the TDP was 13th July, 2012 while the document was dated 12th August, 2002. There was contradiction on the name of his security guard. He said it is Emmanuel. But in

his Statement on Oath in paragraphs 10, 17 & 22 he stated that his security guard is Lawal. He never went to the seller to indemnify him for the money he paid in the purchase of the land in both **EXH 1** – Power of Attorney and **EXH 2** – Deed of Assignment. He never presented evidence of payment for the Res.

A look at the Police Extract on loss of document, he was asked to go to the appropriate authority for replacement. Again he went to the Police Station with the same document which he said were missing. The Police asked or demanded him to stay away from the Res. He confirmed being at the Police and that there is no where the name of the Defendant was mentioned in the Petition. He confirmed that the person he referred to in the Petition – **EXH 5** is Alhaji Abass and not the Defendant. He confirmed that there was no Investigation Report from the Police indicting the Defendant. And that no one has been charged to Court based on the said **EXH 5**, the Claimant confirmed that.

Again, the Regularization document – acknowledgment the Claimant tendered – **EXH 6** has no CAD Zone on it. Even the Receipt evidencing the payment for Newspaper publication and Extract has a mistake of Daily Trust Newspaper – **EXH 4**. He confirmed that the case has deprived Defendant from the development of the Res. In the length and breadth of the **EXH 1 – 7** tendered by the Claimant there is no enough evidence to convince this Court that the Claimant was in effective occupation or even mere possession before the alleged trespass as he claimed. The documents and his testimony were not in sync. Even

the document presented by his subpoenaed Witness could not aid or help the Claimant's case as they were only file report. It did not show the other documents which were to be presented by the subpoenaed Witness. Besides, there is no compliance with the computer printed – generated document. The Court can overlook the issue of Non-compliance with the **S. 84 of the Evidence Act** but the document has no evidential weight as it regards the proof of ownership. If actually the report is comprehensive, why did it not indicate the history of the land and how it got to the Claimant and even the evidence of approvals given to the Claimant and even that someone has trespassed into the land as alleged by the Claimant. It did not state the CAD Zone of the purported allocation and issue of Regularization and the like.

The Court has gone through and summarized the Response of the Defendant Counsel on the evidence of the Claimant. This Court aligns itself totally with that submission. That is why the Court has held and has reiterated that based on provisions of the law and decision of Court cited and the analysis of the contradictory testimony and evidence of the Claimant above, there is no merit in the case of the Claimant. He was not able to prove the ownership of the Res as required by law. He has no strong documents to support his case. His evidence is highly contradictory with his oral testimony. His case therefore fails. Judgment is NOT entered in his favour. He does not deserve the grant of his Reliefs. The case of the Claimant therefore fails. So this Court holds. He was not able to defend the Counter-Claim. So this Court also hold.

As already stated, the Defendant was able to prove the ownership of the Res from the testimony of his Witness who has full knowledge of the issue in dispute. Again, the Witness was authorized by the Defendant to act as his Attorney via the Power of Attorney irrevocably donated by the Defendant. The Court attaches full weight to that evidence. Again, the Defendant need not testify in person since the DW1 has his consent to testify for and on his behalf. Most importantly, the DW1 has detailed knowledge of the transaction that birthed the Res. He is well aware of everything concerning the Res from inception. So contrary to the argument/submission of the Claimant, he is in the best position to testify as Witness. So this Court holds that his testimony in this case is proper and in order. It is legal, legitimate and has probative value. The DW1 testimony was consistent, credible and threw some significant light into the issue concerning the Res. All the documents he tendered, **EXH 8 - 14** were cogent and credible too. The Court attach full evidential judicial weight to all the said documents.

By the 2 Power of Attorneys, the Defendant gave consent and authorization to DW1 to act. By that all action of DW1 – testimony and documents tendered are the action and testimony of the Defendant himself. So this Court holds.

The DW1 acted as the Witness in the land transaction. He tendered credible evidence on how the land came to be in the possession of the Defendant from M. Shehu. He purchased the Res. He exhibited the Receipt of payment. He tendered documents to show that ac at 2007 when the

Claimant claimed he purchased the Res, that the Res was already changed and reallocated to M. Shehu on 15th May, 2001 by the Bwari Area Council. He attached the Conveyance of Provisional Approval evidencing the change of the title document of Allocation dated 15th April, 1999 and changed on 15th May, 2001. By doctrine of first in time, the Defendant was first in time having purchased the Res several years, almost 6 years before the Claimant purported purchase from A. Dauda. As at that time A. Dauda has nothing to give. **Nemo Dat Quod non habet** – nobody gives what he does not have.

The Claimant did not conduct a search before he got into the Res. He is duty-bound to do so. He confirmed that he did a mere window search which is not recognized in law and cannot be used to claim due diligence in purchase of land. Having lost ownership of the Res, A. Dauda cannot transfer any right to the Claimant. The claim to such transfer is a sham.

As known to all, Recertification cannot validate the authenticity of a land document, moreso where the evidence of recertification does not even show the specific Cadastral Zone where the Res is located. But the Defendant attached the recertification which specifically shows the Cadastral Zone as **CAD Zone 07 – 05**. That information tallies with the other documents tendered in support of the Counter-Claim.

A closer look at the Regularization of **EXH 7** tendered by the Claimant and **EXH 13** by the Defendant it shows that the New Fine Number is **RV 42848** and Old File Number

KG 115 in Kubwa Extension III FCDA Scheme. But the AGIS Regularization document presented by the Defendant is totally different but in the old file and new file. The New File Number is **LA 44366 Cadastral Zone 07 – 05 Kubwa Extension III Layout**, Old File Number: **KW 1256** which is totally different from the document tendered by the Claimant, the Regularization document has no Cadastral Zone.

EXH 1 – Irrevocable Power of Attorney of 10th May, 2001 M. Shehu donated same to the Defendant. Aliyu Sule – DW1 was the Witness for the Defendant. So also the Deed of Assignment – **EXH 2**. A look at the signature of the said DW1 in both the Deed of Assignment and Power of Attorney shows it is the same.

In both documents the Res was well described, identified with the Beacon Numbers showing the co-ordinates stating both old and new numbers. In the Power of Attorney it stated in paragraphs 2 & 3 thus:

“The Donor sells, transfers and assigns completely all its right, interest and privileges ... over the same property.

Paragraph 3

“The Donor is desirous of granting the Donee and Donee has agreed to accept same To take over completely the said Plot, Plot 1880D in whatever manner he deems fit.”

In the same Power of Attorney the Donor ratified and confirmed whatever the Donee shall lawfully do in respect of the Res. That include representing the Donor and acting as Witness in the Suit in a Counter-Claim. To also deal with the property as he deems fit.

The paragraph 3(v) also gives right to DW1 to proceed against trespassers like the Claimant in this case. To wade off, prohibit and prosecute and proceed in due form of law and take appropriate steps whether by law – Suit or otherwise to abate all nuisances. The Defendant was to do all these as if they were done by M. Shehu himself.

The document dated 15th April, 1999 showed that there was a change from Dauda A going by the 2 parallel lines in the document with the word “changed” written in ink.

The document of 15th May, 2001 with mark of LA44366 showed that there was a change of ownership of the Provisional Approval. That document was certified by the issuing authority.

The TDP showed the co-ordinates of the boundary of the Res. It showed the Cadastral Zone Number. It showed it was granted to M. Shehu, the Donor. It was duly signed and properly checked and endorsed.

To confirm that he was already in possession and occupation, the Defendant attached settlement of Building Plan Fee by Director, Development Control as required by law. He attached Receipt evidencing payment of the Fee for the Building Plan – **₦271, 273.00** of 16th February, 2018. He attached the Bank Teller too. He attached the

Conveyance of Building Plan Approval issued by Development Control Department. He attached Receipt evidencing payment for Application for Processing Fee – **₦10, 000.00 (Ten Thousand Naira)**. The payment was made on 8th January, 2017. He attached Receipt evidencing part payment of **₦5, 000,000.00 (Five Million Naira)** out of legal fee of **₦20, 000,000.00 (Twenty Million Naira)**. By the description the payment is for both the legal fee and cost of litigation. Most of the documents tendered by the Defendant are in their raw original form, others were CTC of the documents, duly certified by the appropriate government office/officer. Some of the documents showed that they were gotten after the instigation of the Suit.

It is imperative to state that they all fall within the exception of **S. 83(3) of the Evidence Act**. Hence they are proper and the Court attaches full judicial evidential weight to all of them, holding that they are properly brought before this Court and that Court was right in admitting them in evidence and attaching full judicial weight to them. So this Court holds.

By those credible, cogent evidence – material and oral, it is clear that the Defendant had established his case and has proved his Counter-Claim. He had succinctly and successfully defended the case of the Claimant. He has established his ownership of the Res and has shown that actually the Claimant is the trespasser. He has shown that he was in occupation and possession before the trespass by the Claimant. He has shown that he is first in time too. That A. Dauda has nothing more to give to the Claimant

because he had through the Power of Attorney and Deed of Assignment transferred all rights and privileges to the Defendant. So based on the evidence, the Defendant deserves his Counter-Claim and this Court grants same to wit:

- (A) Prayers/Reliefs 1, 2 and 3 granted as prayed.
- (B) The Claimant is to pay the sum of ₦100, 000.00 (One Hundred Thousand Naira) as General Damages to the Defendant/Counter-Claimant.
- (C) The Claimant is to pay to the Defendant/Counter-Claimant the sum of ₦100, 000.00 (One Hundred Thousand Naira) as cost of the Suit, the Claimant having amended the Statement of Claim for over 4 times causing the Defendant to do a consequential amendment.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2024 by me.

K.N. OGBONNAYA
HON. JUDGE

APPEARANCE:

CLAIMANT COUNSEL: ATTAH U.S. ESQ.

DEFENDANT COUNSEL: GABRIEL UROM OKPATA ESQ.