

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANYA JUDICIAL DIVISION

HOLDEN AT COURT 7 NYANYA-ABUJA ON THE 10TH DAY OF JUNE 2021

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

SUIT NO:FCT/HC/CV/0737/18

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN:

MRS. SARAH EKOM OREBAJO

**(Suing through her Lawful Attorney,
Mrs. Osagie Magdalene**

}
.....CLAIMANT

AND

1. IDRIS ZARMA

2. IBRAHIM DANBAZAU

}
.....DEFENDANTS

JUDGMENT

The Claimant's Writ of Summons and Statement of claim is dated and filed on the 25/01/18. It is amended via an order of court made on 11/10/18.

The amended writ of summons and statement of claim was subsequently filed on the 15/10/18.

It prays the court for the following:

- a. A declaration that the Claimant is entitled to the possession of all the piece of land measuring 557

sq meters known and described as plot No. CRD 303, Cadastral Zone 07-07, Lugbe, Federal Capital Territory, Abuja and demarcated by beacon numbers PB 3295 –PB3294 – PB3324; PB3324- - PB3325, PB3395 covered by the Certificate of Occupancy No. C/AMAC 000555 and MZTP/LA/98/CR.219 dated 28th day of February, 2004 issued under the hand of the Honourable Chairman of Abuja Municipal Area Council and duly registered as No. 116 at Page 116 in Volume 14 of the Certificate of Occupancy Register in the Land Administration, Land Registry Office, pending the issuance of the Statutory Right of Occupancy by the Honourable Minister of the Federal Capital Territory, Abuja.

- (b) **AN ORDER OF INJUNCTION** restraining the Defendants by themselves, their agents, privies and assigns, howsoever known or described from encroaching on the Claimant's Plot of land measuring 557.59 Sq Metres or in anyway or

manner whatsoever, interfering with Claimant's possession and interest over the aforesaid property pending the final issuance of the Statutory Right of Occupancy by the Honourable Minister of the Federal Capital Territory, Abuja.

(c) General damages in the sum of N20,000,000.00 (Twenty Million Naira), jointly and severally against the Defendants (including aggravated damages) for trespass.

The Defendants were served with the writ of summons and statement of claim on the 5th day of November 2019. They were further served with Hearing Notice on the 12th day of February 2019 but they failed, refused and or neglected to enter appearance and or file a defence.

On the 20th day of February 2019, the Claimant opened her case. She called a sole witness in proof

thereof. She is Osagie Magdalene. She stated orally that she lives at Block 19, flat B, Cooperative Estate, Kyeyegy, Abuja. She said she deposed to a witness statement on oath on the 15/10/18.

She adopted same as her oral evidence.

She said she has the consent of the Claimant to depose to the Affidavit. She stated that the Claimant is the beneficial owner of the piece of land measuring 557.59 sq metres known as No. CRD 303 Cadastral Zone 07-07 located at Lugbe 1 Layout, Federal Capital Territory, Abuja and covered by the Certificate of Occupancy No. C/AMAC 000555 and MZTP/LA/98/CR.219 dated 28th day of February 2004. That the said Certificate is duly registered as No.116 page 116 on Volume 14 of the Certificate of Occupancy Register in the Land Administration Registry Office at Abuja Municipal Area Council Garki.

That the certificate bears the official acknowledgment stamp of Abuja Municipal Area Council. That the Claimant's land is demarcated by beacons.

That prior to the issuance of the aforesaid Certificate of Occupancy, the Claimant was issued with a Conveyance of Provisional Approval of the Customary Right of Occupancy on the same land dated 27/06/1996.

That the Claimant accepted the offer. The Claimant also paid community tax for the period 1996, 1997 and 1998. The Receipts are tagged 'Development Levy Receipts'

The Claimant paid for the Certificate of Occupancy and various levies imposed by AMAC.

That since the grant of the piece of land in 1996, the Claimant took possession of same by erecting a small perimeter beacons with the plot number inscribed for proper identification.

The environment was inaccessible and unoccupied as there were several huge economic cashew trees on the land planted by the indigenous Gwari people who were later identified as Tragyiba family.

She paid N150,000 to the said family as compensation for the economic cashew trees on the Claimant's plot of land.

That sometimes in 2005 and 2006, there was a directive by the then Minister of the FCT to submit the certificates issued by AMAC and other Area Councils for recertification.

That Claimant complied by submitting a photocopy of the certificate acknowledged by the committee along with the regularization application form.

That Claimant paid N5,000.00 as revalidation fees.

She was issued with a regularization of land titles acknowledgement dated 30/07/07.

On 10/10/07, Claimant donated Power to her (witness) to manage, control and superintend the affairs of the land in question and the documents thereto.

Sometime in July 2017, the Defendants encroached the land without the consent of the Claimant or witness by two steps of cement blocks and a burglary protector on top of the blocks. The Defendants chased away the man the Claimant allowed to farm on the land.

The Defendant damaged the wooden shelter of the farmer. The Defendant further destroyed part of the Claimant's fence and placed a burglary gate at the entrance.

The Claimant suffered untold hardship, trauma due to the unwarranted invasion of the land by the Defendant.

She urges the Court to grant the reliefs sought.

The witness tendered the following Exhibits A-A7 which are:

1. Certificate of Occupancy dated 28/02/04 in the name of Claimant.
2. Conveyance of provisional approval to Claimant dated 27/06/96.
3. Two official receipts from AMAC both dated 2/04/96.
4. Written compensation executed on 7/11/16.
5. Copy of deposit slip.
6. Application for Regularization of a title acknowledged dated 30/07/07
7. 14 photographs with Certificate of Compliance.
8. Power of Attorney dated 28/02/04.

The Defendants were served with hearing notices to enable them cross-examine the witness but they failed to avail themselves the opportunity. They were foreclosed.

The case was further adjourned to enable them enter a defence despite the fact that they did not file a defence but the Defendants failed to take advantage of same despite the service of another hearing notice.

The Claimant's Counsel adopted his Final Written Address and posited one issue for determination which is whether in the circumstance of this case, the Claimant has established her case on the preponderance of evidence so as to be entitled to the reliefs sought.

Learned Counsel canvasses that the Claimant has established her claims before the court.

The law is now trite that the burden of proof is on the party who asserts a fact to prove same, for he who asserts must prove. The standard of proof required is on a preponderance of evidence and balance of probabilities.

See ***LONGE VS. FBN PLC (2006) 3 NWLR (967) 228.***

KALA VS. POTISKUM (1998) 3 NWLR (PT.540) 1 SC.

BRAIMAH VS. ABASI (1998) 13 NWLR (PT.581) 167 SC.

The onus of proving an allegation is on the Claimant and it does not shift until he has proved the claim on the preponderance of evidence and balance of probabilities. It is after the burden of proving the case has been discharged in accordance with the above principle of law that the burden shifts and continues to shift. But where a party fails to discharge this burden then the opponent

needs not prove any fact and the party alleging cannot rely on the opponent's case.

A party must prove its case on credible evidence of its witnesses is not at liberty in law to make a case on the weakness of its opposite party in order to succeed.

See ***IMAN VS SHERIFF (2005) 4 NWLR (PT.914) 80.***

AGBI VS. OGBEH (2006) 11 NWLR (PT.990) 65 SC.

In the instant case, the Claimant seeks for a declaration that she is entitled to the possession of the piece of land measuring 557.59 sq metres known and described as No. CRD 303 Cadastral Zone 07-07 located at Lugbe 1, Abuja.

In ***CHUKWUDOZIE ANYABUNSI VS. EMMANUEL UGWUNZE (1995) LPELR – 503 (SC)***, the Court distinguished occupation with possession.

Occupation in relation to land entails mere physical control of the land on time being while possession of land although it may sometimes connote occupation of such land, is not always synonymous with occupation.

The Claimant stated in evidence that she is the beneficial owner of and is entitled to the possession of the piece of land in issue.

That since the grant of the piece of land in 1996, Claimant took possession of same by erecting a small perimeter beacons.

That she paid for the economic trees and fully took control. The Defendants failed to avail the Court their own side of the story.

The Claimants also seek trespass to land. The principle is elementary that a person in possession of land can maintain an action in trespass against anyone but the persons who can establish a better title.

See **LAWRENCE ONYEAKAONWU & ORS. VS. EKWUBIRI & ORS. (1966) ANLR 32 AT 35.**

“A claim for trespass to land being generally rooted in exclusive possession, all a Claimant needs prove is that he has exclusive possession of the land in dispute...”

The Claimant's evidence is that sometimes in July 2017, the Defendants encroached into the land without the license or permission or consent of the Claimant by extending upward the fence previously built by the Claimant with a burglary protector installed on top of same despite the 'NOT FOR SALE SIGN'.

That Defendants destroyed part of the fence and installed a burglary gate to prevent her from gaining access to the land.

That the wooden shelter was also damaged.

The Claimant further prays for injunction and damages.

Trespass being an action against possession, the Claimant who claims damages and injunction for trespass must inter alia aver and prove that he is in physical and constructive possession and that the Defendant infringed that possessory right.

In the instant case, the Claimant has proved by evidence that she is in physical and constructive possession.

See **LAWSON VS. AYIBULU (1997) 6 NWLR (PT.507) 14 SC.**

General damages is presumed to be the direct natural and probable consequences of the act or breach complained of..."

It is within the discretionary power of a court to assess and grant. It is trite that general damages need not be pleaded or proved. It is the loss which flows naturally from the Defendants' act. It is generally presumed by law. General damages is therefore quantified by relying on what would

be the opinion and judgment of a reasonable person. It is not awarded as a largesse or out of sympathy borne from extraneous issues other than legal evidence.

Where a Claimant has established that he is in possession as in this case, it is necessary for an order of injunction to be obtained to protect the possession in him.

See ***AJERO VS. UGORJI (1999) 10 NWLR (PT.621)1 SC.***

The evidence of the Claimant is uncontroverted. It is deemed admitted.

For the foregoing reasons, the claim succeeds.

Judgment is hereby entered in favour of the Claimant against the Defendants as follows:

(1) It is hereby declared that the Claimant is entitled to the possession of the piece of land measuring 557.59 sq metres known and described as Plot No. CRD 303 Cadastral Zone 07-07 Lugbe I Federal Capital Territory covered by Certificate of Occupancy No. C/AMAC 000555 and MZTP/LA/98/CR 219 dated 28th day of February 2004 and registered as No. 116 at Page 116 in Vol. 14 in the Certificate of Occupancy Registry Office, Abuja Municipal Area Council Garki, Abuja.

- (2) N500,000 as general damages.
- (3) The Defendants are hereby restrained by themselves, servants, agents, privies and assigns whosoever known or described from encroaching on the said Plot CRD 303, Cadastral Zone 07-07 covered by Certificate of Occupancy C/AMAC 000555 and M2TP/LA/98/CR 219 dated 28/02/04.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
10/06/21

Parties absent.

G.P. Olagunjoye for the Claimant.

Defendant not represented.

Signed.

Hon. Judge.

10/06/21.