

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU

SUIT NO: FCT/HC/CV/2892/2021

DELIVERED: ON THE 23/01/2024

BETWEEN:

OLAMIDE KOFO OLAGUNJU.....CLAIMANT/DEFENDANT TO COUNTER CLAIM

AND

UMAR BUKAR GANA.....DEFENDANT/COUNTER CLAIMANT

JUDGMENT

The Claimant by amended Writ of Summon and Statement of Claim dated the 10th March, 2022 approached this Honourable Court and sought for the following reliefs against the Defendant, to wit;

- (1) An order of this Honourable Court declaring that the claimant is the rightful owner of the house described as No. 7, Ameh Ogboni Street, Gwarimpa, Abuja, having bought same from the Federal Ministry of

Works and Housing through the Federal Mortgage Bank via a letter dated 5th January, 2001.

- (2) An order of perpetual injunction restraining the defendant from further trespassing on the said house described as No. 7 Ameh Ogboni Street, Gwarimpa, Abuja.
- (3) The sum of N100,000,00 (One Hundred Million Naira) only as general and exemplary damages for trespass.
- (4) The cost of this action.
- (5) And for such further or other orders this Honourable Court may deem fit to make in the circumstances.

The said Writ and Statement of claim were served on the defendant through substituted means and the defendant filed his statement of defence and counter claim, against the claimant.

It is pertinent to note that both parties amended their pleadings at various stages of the proceeding before the court.

At the close of pleadings the suit proceeded into hearing.

The Claimant opened his case on the 28th day of february 2023. The case of the Claimant as distilled from the witness statement of PW1 (Claimant himself) is that he bought the house, the subject matter of dispute from the Federal Ministry of Works and Housing through the Federal Mortgage Bank via a letter dated 5/1/2001 with reference No. FMB NLD/GWA/SCH/VOL.1. And has been in possession since then, and has been in communication with the tenant occupying the said property via letter dated 26/1/2011.

It is further the averment of the claimant that in July, 2021, he commenced renovation of the said premises and in the process, he received a police invitation from the Divisional Police officer Byazhin on the allegation of criminal trespass against him. And that he was not comfortable with the police investigation and he petition the commissioner of police.

That he continued with his renovation work on the premises without any hindrance until the defendants lawyer posted a notice to quit on the premises.

Pw1 was then cross examined by the learned counsel for the Defendant/Counter Claimant and was subsequently discharged.

The claimant through Pw1 tendered letter from Mortgage Bank and invitation from police as Exhibits P1 and P2 respectively.

The claimant then closed his case. On 19/4/2023 the defendant opened his case. Dw1 (Defendant himself) adopted his witness statement on oath. It is the evidence of the Defendant that the property, the subject matter of dispute was sold by the Adhoc Committee on the sale of Government house to the defendant free from all encumbrances and the Claimant trespassed into the said property without valid title and same was reported to the police office at Byazhin, Kubwa.

It is further the evidence of the defendant that a search was conducted at the Land Registry which report was in favour of the defendant.

As stated in the preceding part of this Judgment, The defendant filed counter claim against the claimant and sought for the following reliefs:-

1)A declaration that the Defendant/Counter Claimant is the owner of the said property and the rightful allottee of House No. 7, Ameh Ogboni Street, Gwarinpa, Abuja, FCT and its appurtenance known as “the property” by virtue of the documents of title and payment issued by the Ad-Hoc Committee on the sale of FGN Houses, department of Land Administration, under the Federal Capital Territory Administration Office of the Minister with it offices at FCDA Secretariat, Kapita Road 11, Garki, Abuja Nigeria and at AEPB Building Adjacent NSITF Building Plot 772 Cadastral Zone, A0 Zakari Maimalari Street, Central Business District, Abuja FCT.

2)A declaration that the defendant by counter-claim trespassed into the Defendant/Counter-Claimant Property, the one unit of 4 bedroom detached duplex

located at House No. 7, Ameh Ogboni Street, Gwarinpa, Abuja, FCT.

- 3) An order ejecting the defendant by counter claim privies and his assign from the said property, the one unit of 4 bedroom detached duplex located at House No. 7, Ameh Ogboni Street, Gwarinpa, Abuja, FCT.
- 4) An order of perpetual injunction restraining the defendant by counter claim, privies and his assigns and or agent however described from trespassing on the Defendant/Counter-Claimant's property known as one unit of 4 bedroom detached duplex located at House No. 7, Ameh Ogboni Street, Gwarinpa, Abuja, FCT.
- 5) An order for the defendant by counter-claim to take over possession of the unit of 4 bedroom detached duplex located at House No. 7, Ameh Ogboni Street, Gwarinpa Abuja, FCT.
- 6) A declaration that the doctrine of "quic quid plantator solo solo cedit" shall apply to any structures or building erected, renovations carried out on the

unit of 4 bedroom detached duplex located at House No. 7, Ameh Ogboni Street, Gwarinpa Abuja, FCT, by the defendant by counter-claim on the Defendant/Counter-Claimant's property which he validly purchased in defiance to defendant by counter-claim contineous trespass and parading fakes land documents to dispose the valid title and possession of the Defendant/Counter-Claimant's property.

7)An order fpr general damages of Hundred Million Naira (N100,000,000.00) against the defendant by counter-claim.

8)The sum of Five Million Naira (N5,000,000.00) only for the cost of this action.

Dw1 tendered the following documents in evidence:

- (1) Offer letter**
- (2) Receipt of payment**
- (3) Search report solicitor letter**
- (4) Reply to the search report**
- (5) Hand over note**

(6) Solicitor's receipt.

The documents were admitted in evidence as **Exhibits D1** to **D6** respectively.

Dw1 was cross examined and discharged.

Parties closed their respective cases paving way for filing and adoption of final written addresses.

In the Final Written Address of the Defendant/Counter-Claimant, Counsel formulated the following issues for determination, to wit;

- (1) Whether the claimant's pleading and evidence can support his claim for declaration of title.**
- (2) Whether considering the facts and circumstances of this case, the Defendant/Counter-Claimant has established his claims before this court to be entitled to the reliefs sought?**
- (3) Whether the counter claimant is entitled to the cost for prosecuting this matter.**

Learned counsel for the Defendant/Counter-Claimant argued the above issue succinctly in urging the court to

dismiss the claimant's suit against the Defendant and grant the reliefs in the counter claim.

Learned Counsel for the claimant on his part formulated the following issues for determination, to wit;

- (1) Whether the claimant's pleading and evidence can support his claim for declaration of title.**
- (2) Whether considering the fact and circumstances of this case, the Defendant/Counter-Claimant has established his claims before this court to be entitled to the reliefs sought.**
- (3) Whether or not the claimant has established a case of trespass against the defendant to entitle the claimant to reliefs of perpetual injunction against the defendant and its privies from further trespass.**
- (4) Whether the defendant is entitled to the cost for prosecuting this matter.**

Learned counsel, argued the above issues citing relevance authorities in urging the court to grant the reliefs sought and dismiss the counter claim.

On the part of the court, I have gone through the case of the Plaintiff and the evidence both oral and documentary adduced/tendered in this case, I have equally gone through the case of the Defendant, particularly the documentary evidence tendered by him and his counter claim.

It is my considered view that the issues distilled by the Defendant are apt and hereby adopted in the resolution of this matter. I shall be brief but succinct in addressing the issues before me.

The law is very trite that he who alleges any fact in any matter must prove same and any person who desires any court to give judgment in his/her favour as to any matter must prove that such fact exists or must establish the evidence which entitles him/her to the grant of such claims or judgment in his favour. This is the purport of sections 131, 132 and 133 of Evidence Act, 2011 (as amended).

Indeed, the burden of proof in a suit lies upon the party who will fail if no evidence is given on either side.

CARDOSO VS DANIEL & ORS (1986) LPELR-830.

This brings me to the first issue i.e. whether the Plaintiff has discharged the burden of proof placed on him by the law in order to succeed in this suit?

It is instructive to note that Plaintiff's relief one is declaratory in nature thereby predicating the success of other reliefs on its success. It is however, trite that a declaratory relief is only granted in circumstances where the court is fully convinced and is of the opinion that the party seeking it, is, when all the facts are taken into account, fully entitled to the exercise of the courts discretion in his favour. Moreover, a court does not grant a declaratory relief even on an admission or default of either pleadings or evidence of the opposing party. Despite such default or admission, the court must be satisfied that the claimant on his evidence is entitled to the relief claimed. Therefore, He will only be so entitled

upon proof by cogent, credible, sufficient and reliable evidence showing his entitlement to the declaration sought. It is also his sole duty to do so and not that of the opposing party. **OKESION VS FED. AIRPORT AUTHORITY OF NIGERIA (2007) LPELR 8678 (CA).**

The Plaintiff in a bid to discharge the burden placed on him to succeed in this case, tendered the following documents;

- 1. Letter from Mortgage Bank Exhibit “P1”**
- 2. Invitation from police Exhibit “P2”**

I must state here that the evidential burden which the Plaintiff must discharge before he succeeds in this suit are those requirements provided in the **Public Notice No 1, Approved guidelines for the sale of Federal Government Houses in the FCT to career public servant**, which is contained in the official Gazette No. 82, Vol. 92 of 15th August, 2008.

For the purpose of clarity I shall reproduce relevant paragraphs of the official Gazette mention above..

Clause 6 ***“The house will be sold on “as is” where is” basis at the evaluated price with the current occupant having the first right of refusal to purchase within thirty days of offer. The said right to purchase is neither transferable, assignable nor alienable in any way....”***

Clause 8 ***“Sale of houses will be advertised and application fees of N10,000.00 (Ten Thousand Naira) only must accompany each free application form payable at designated banks. The banks will remit all proceeds to a dedicated account in the name of the Federal Government of Nigeria with the Central Bank of Nigeria”***

Clause 9 provide that ***“All houses whose rights to purchase are not exercised will be sold in an open auction whereby all Nigerian citizens shall be given equal opportunity.”***

It is imperative to state here that under payment terms and conditions under clause 12, it is provided thus, ***All purchasers must complete application forms with receipt of payment of N10,000 in favour of the Federal Capital territory Administration.***

These requirements are the common thread that runs, not only all through the above reproduced provisions but, even throughout the said approved guidelines for the sale of Federal Government Houses in the FCT to career public servants.

The first of the requirements is that any public/civil servant in occupation of a government apartment and who desires to acquire same must fill and file an application form where all the information of the said Civil Servant will be stated.

This form will also serve as a medium via which the civil servant in question expresses the interest to acquire the Government apartment which he/she is occupying.

It is the Claimant's contention that he has been in the subject matter of dispute since he bought it in 2001. To proof this assertion, the Claimant tendered **Exhibit P1** which is titled "**Re-Application for Purchase of a one unit of 4 Bedroom Detached Duplex Gwarinpa FHA, Abuja.**" The said letter is dated 5/1/2001 and addressed to the Claimant from the Federal Mortgage Bank of Nigeria.

For avoidance of doubt, the said letter is reads thus;

I wish to inform you that following your full payment of the purchase price of N7.5M (Seven Million Five Hundred Thousand Naira Only) for a unit of 4 bedroom detached duplex, you have been allocated house No. 7, Ameh Obani Street, Gwarinpa II, Prototype Housing Scheme (FMW&H).

The said letter was signed by Mr. Chris N. Onyeuka, Chairman, Gwarinpa Housing Scheme Disposal Committee.

It is worthy to note here that aside the above document, the plaintiff did not tendered any document, especially,

one emanating from the Ad-Hoc Committee on the Sale of the Federal Government Houses.

From the Gazette as reproduced in the preceding part of this judgment, it is clear that the only valid authority to allocate a Federal Housing building is the Federal Housing Authority.

The Federal Housing Authority is created by the Federal Housing Authority Act, Vol. 6 LFN F14, 2004 which established it to be a body corporate with perpetual succession and common seal.

The authority has been empowered in Section 4(1) of the Act to Sell, Let, Lease or otherwise dispose of any property vested in the authority. **OLASEINDE & ORS VS. FHA & OR (2015) LPELR 24532 (CA).**

The claimant from his pleadings and evidence before the court, relied on the title documents, that is a letter from the Federal Ministry of Works and Housing.

I have seen the said letter, it is standing alone, without any history as to how it came about, by way of any

correspondences between the Grantor and the Claimant. How did the Claimant come about the Exhibit P1? Was it upon an Application? Under what instrument, if any, did the Committee domiciled or of the Federal mortgage Bank allocate and grant title to the Claimant? All these are questions the Claimant left for speculation. Speculation is not one of the duties of the court in the determination of a dispute. Accordingly, I cannot ascribe any evidential value to Exhibit 1. See **EZEUGO VS. THE STATE (2013) LPELR 19984 (CA)**. I shall therefore, place no reliance on the said document. I so hold.

It is instructive to mention here that the claimant throughout his pleadings before this Honourable Court has not tendered any offer letter from the issuing authority in his favour.

Learned counsel for the claimant argued in his final written address that where two contesting parties trace their title in respect of the same piece of land to the same Grantor, the applicable principle of law has always been that the latter in time of the two parties to obtain

the grant cannot maintain an action against the party who first obtained the title in respect of the subject matter. However, that cannot apply to this case as the Grantors are not the same. See **TEWOGBADE VS. OBADINA (1994) 4 NWLR (PT338) 320 AT PP. 347-348.**

It must be noted here, that in evidence of the proof of title to land, where a claimant fails to discharge the burden of proving his root of title to the property in dispute, the subject matter of litigation, he cannot be entitled to the declaration sought. Indeed, in the Federal Capital Territory, the title of the party in respect of land, must be traced to the minister of FCT, acting as delegate to the Federal Government of Nigeria by Virtue of Section 18 of the Federal Capital Territory Act, CAP 128 LFN 2004. **ONHONDA VS. EKPECHI (2013) LPELR 2833 (SC).**

It is trite that equity is the body or principle constituting what is fair and right and he who wants or seeks equity, must do equity. **ABOSELDELDU LAB. PLC VS. U.M.B. LTD (2013) NWLR (PT1370) 91 AT 132.**

Indeed, evidence on record is unambiguous that the claimant has not satisfied the court with cogent and reliable documents to grant the reliefs sought in his favour.

The plaintiff has not shown through evidence that he was allocated the subject matter by an issuing authority recognised by law, neither was there any evidence of payment of any fees in relation to the property by the plaintiff. At best, the claimant can be described as a trespasser. I so hold.

It is the law that a trespasser in possession of land can maintain an action in trespass against all persons except the true owner. **BELLO SALANUI & ANOR VS. ALHAJI ADETORO LAWAL (2008) LPELR 2980 (SC).**

From the above, therefore, it is my judgment that the claimant has woefully failed to prove his case before the Honourable Court, consequently same is hereby accordingly dismissed.

I shall now beam my searchlight on the counter claim of the Defendant/counter claimant. In proving his case, the counter claimant tendered **Exhibit D1**, which is the offer letter issued to him by the Ad-Hoc Committee on the sale of FGN Houses. Equally in evidence, is a receipt of payment of the purchase price tendered as **Exhibit D2**.

Similarly, **Exhibit D4** which is a search report issued by the issuing authority in favour of the counter claimant.

It is instructive to state here that even though the counter-claimant belatedly applied to purchase the property in issue, but he was granted a letter of offer in respect of same. (**Exhibit D1**), thus a contract between the counter-claimant and the Federal Government is deemed in law to have been sealed and same being binding.

The fact that a valid and binding contract exist between the counter claimant and the Federal Government of Nigeria, I shall proceed to give blessing to the said

counter-claim without having to explain myself any further.

Counter claim succeed on the prepondence of evidence.

It is hereby ordered as follows:-

- 1) **A declaration is hereby made that** the Defendant/Counter Claimant is the owner of the said property and the rightful allottee of House No. 7, Ameh Ogboni Street, Gwarinpa, Abuja, FCT and its appurtenance known as “the property” by virtue of the documents of title and payment issued by the Ad-Hoc Committee on the sale of FGN Houses, department of Land Administration, under the Federal Capital Territory Administration Office of the Minister with it offices at FCDA Secretariat, Kapita Road 11, Garki, Abuja Nigeria and at AEPB Building Adjacent NSITF Building Plot 772 Cadastral Zone, A0 Zakari Maimalari Street, Central Business District, Abuja FCT.

- 2) A declaration that the defendant by counter-claim trespassed into the Defendant/Counter-Claimant Property, the one unit of 4 bedroom detached duplex located at House No. 7, Ameh Ogboni Street, Gwarinpa, Abuja, FCT. **Is hereby granted.**
- 3) An order ejecting the defendant by counter claim privies and his assign from the said property, the one unit of 4 bedroom detached duplex located at House No. 7, Ameh Ogboni Street, Gwarinpa, Abuja, FCT **is hereby granted**
- 4) An order of perpetual injunction restraining the defendant by counter claim, privies and his assigns and or agent however described from trespassing on the Defendant/Counter-Claimant's property known as one unit of it bedroom detached duplex located at House No. 7, Ameh Ogboni Street, Gwarinpa, Abuja, FCT. **Is hereby granted.**
- 5) **Defendant/Counter-Claimant is hereby** to take over possession of the unit of 4 bedroom detached duplex

located at House No. 7, Ameh Ogboni Street, Gwarinpa Abuja, FCT.

6) A declaration that the doctrine of **quic quid plantator solo solo cedit** shall apply to any structures or building erected, renovations carried out on the unit of 4 bedroom detached duplex located at House No. 7, Ameh Ogboni Street, Gwarinpa Abuja, FCT, by the defendant by counter-claim on the Defendant/Counter-Claimant's property **is hereby granted.**

I make no order as to cost and damages.

**SIGNED:
HON. JUDGE
23/01/2024.**

APPEARANCE:

*C. C. Owowo, Esq, for the Claimant/Defendant to Counter Claim
E. I. Ikpebe, Esq, with G. E. Elechi, Esq, for the Defendant/Counter Claimant*