

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 1, GUDU - ABUJA
ON WEDNESDAY THE 27TH DAY OF NOV 2024.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CV/0240/2017

BETWEEN

PETER OKPALA =====CLAIMANT/DEFENDANT

AND

SAMUEL OMEDE =====DEFENDANT/COUNTER-CLAIMANT

JUDGMENT

By an amended Writ of Summons and accompanying documents, the Claimant filed this suit against the Defendant, claiming the following reliefs: -

1. A declaration that the Plaintiff is entitled to the Right of Occupancy over PlotNo. 90, measuring about 500 square meters situate at Kubwa Ext. II (Relocation)Bwari Area Council, Abuja.
2. A declaration that the encroachment on the said plot by the Defendant and the subsequent development thereon without the consent and/or approval of the Plaintiff amount to trespass.
3. A perpetual injunction restraining the Defendant, his agents, servants or privies or anyone acting through or for the Defendant from further trespassing or carrying on unauthorized and illegal development on the said plot of land.
4. A mandatory order compelling the Defendant, his agents, servants, or privies to vacate the plot of land forthwith.
5. N20,000,000.00 (Twenty Million Naira) as general damages for trespass.

6. N1,000,000.00 (One Million Naira) as damages for grievous bodily harm and psychological trauma resulting therefrom.
7. N500,000.00 as cost of this action.

Upon being served with the Writ, the Defendant filed his statement of defence and counter claim, claiming the following reliefs: -

1. A DECLARATION that the Defendant is rightfully entitled to the Right of Occupancy over Plot No. 90, Kubwa Ext. II, Relocation Layout, Bwari Area Council, Abuja-FCT (the subject matter of this suit).
2. A DECLARATION that the Claimant has neither legal right nor equitable right to Plot No. 90, Kubwa Ext. II, Relocation Layout, Bwari Area Council, Abuja-FCT (the subject matter of this suit).
3. A DECLARATION that the Claimant's claims are unfounded in law, equity or good conscience, and as such amounts to trespass on Plot No. 90, Kubwa Ext. II, Relocation Layout, Bwari Area Council, Abuja-FCT (the subject matter of this suit).
4. AN ORDER of perpetual injunction restraining the Claimant, his agents, servants, privies or anyone that is acting on his behalf from trespassing on Plot No. 90, Kubwa Ext. II, Relocation Layout, Bwari Area Council, Abuja-FCT (the subject matter of this suit).
5. AN ORDER directing the Claimant, MR. PETER OKPALA to pay over to the Defendant, "SAMUEL EMEDE", the sum of N30, 000, 000. 00 (Thirty Million, Naira) as exemplary damages.
6. AN ORDER directing the Claimant, MR. PETER OKPALA to pay over to the Defendant, "SAMUEL EMEDE", the sum of N1, 000, 000. 00 (One Million, Naira) as cost of this suit.
7. Any other relief as this Honourable Court may deem fit to make in the circumstances of this case.

The Claimant upon receipt of the Defendant's counterclaim, filed a reply and defence to the counter claim. At the close of pleadings, trial commenced with the Claimant opening his case, calling two witnesses. It is the case of the Claimant that the Defendant unlawfully trespassed on his land, specifically Plot 90, at Kubwa Ext. II (Relocation) Bwari Area Council, Abuja, without any lawful cause or justification by erecting a temporary tent on the property. That Claimant purchased the subject property in August 2012 from the late Mr. Samuel A. Odofin, a manager at Density Construction Nigeria Ltd, for the sum of ₦2,500,000.00 and an Irrevocable Power of Attorney was granted to him by Mr. Odofin, witnessed by the PW2. That following the acquisition, the Claimant erected a fence around Plot 90, which measures 500 square meters, to secure his property. That the said Plot was originally allocated to Shehu Yamusa, as evidenced by a conveyance of provisional approval letter dated May 27, 2003. That Plaintiff also received an offer letter from the Bwari Area Council, confirming his ownership of Plot 90. That he took steps to formalize his ownership by applying for regularization of his title with the Department of Land Administration in the Federal Capital Territory, which acknowledged his application and opened a file for the plot in December 2008. However, in January 2016, the Claimant discovered that the Defendant had encroached on the land and commenced unauthorized development, despite the visible presence of the fence. That he reported the matter to the police; while awaiting the police investigation, the Defendant erected a tent on the property for purported religious purposes and when Defendant was confronted, he was met with hostility and was physically assaulted by individuals hired by the Defendant, which led him to seek medical treatment as well as reported the incident to the police, hence this suit. In proof of his case, the Claimant tendered the following documents: -

1. Irrevocable Power of Attorney in favour of Claimant dated 7th of August 2012 as Exhibit A.
2. Two receipts from Bwari Area Council dated 2/8/2012 as Exhibit B1 and Receipt dated 10/1/2007 for N6500 as Exhibit B2.
3. Offer of Terms of Grant/Conveyance of Approval dated 12th of March 2005 in favour of the Claimant as Exhibit C.
4. Acknowledgement of document for regularization of land title dated 31st of December 2008 addressed to Plaintiff as Exhibit D.
5. Conveyance of Provisional Approval from Bwari Area Council addressed to Shehu Yanusa dated 27th of May 2003 as Exhibit E.
6. Survey Plan of subject matter as Exhibit F1.
7. Receipt of purchase of land issued by Density Construction Limited for the sum of 2.5 million Naira dated 7th of December 2012 as Exhibit G.
8. Medical report from Diamond Crest Hospital dated 18th of February 2006 as Exhibit, H

The PW1 and PW2 were duly cross examined by the Defence Counsel, whereupon the Claimant closed his case.

The Defence opened his case, with the Defendant testifying as the sole witness. Summarily, it is the Defendant's case that the subject plot was rightfully allocated to "DOKOBOLO LADI" and purchased by the Defendant whereupon Defendant built a structure on the said Plot No. 90, Kubwa Ext. II, since November 20, 2014, and has been in the process of regularizing the title. That the alleged payment made to Mr. Samuel A. Odojin, by the Claimant cannot confer title on the Claimant as the said Odojin had no legal rights to the plot. That Claimant is not entitled to any claims, as his claim is unfounded in law and equity.

In proof, DW1 Tendered the following documents: -

1. Bwari Area Council Receipt number 2236937 as Exhibit I
2. Survey data attached to SurveyPlan as Exhibit J1 and J2
3. Bwari Area Council Conveyance of Provisional Approval as Exhibit J3
4. Power of Attorney between Dokobolo Ladi and Samuel Emede as Exhibit J4
5. FCTA regularization of land titles addressed to Dokobolo Ladi acknowledgement of receipt of document from Defendant dated 25/11 2015 as Exhibit J5

The DW1 was duly cross-examined by the Claimant's Counsel and the Defence closed his case whereupon the Court ordered respective parties to file their written address.

The Defence Counsel from the written address filed, raised two issues for the Court's determination thus:

1. Whether the Claimant has the locus standi to bring this suit where there is a taint of illegality.
2. Whether where two equities are equal, the first in time should prevail.

Arguing the issues, Defence Counsel, Fidelis E. Akporeha, Esq., submitted that the documents relied upon by the Claimant is tainted with illegality and as such, he lacks the locus to bring this suit before this Court and urged the Court to so hold.

Counsel submitted that the Defence has successfully proved his case for the Court to come to the conclusion that the Defendant has priority over the Claimant, and that being in possession, the presumption that the Defendant has rightfully acquired interest in the said Plot 90, has not been rebutted by the Claimant. Counsel therefore urged the Court to dismiss the Claimant's case. Counsel relied on the following case laws:

1. Adimora Vs. Ajufo (1988) 3 NWLR (Pt. 80) 1 at 13-14 Paras. E-C

2. Olanudu Vs. Temiye (2002) 2 NWLR (Pt. 750) 21 at 36-37 Paras.E-B
3. Ilona Vs. Idakwo (2003) 11 NWLR PT. 830) 53 at 91
4. Adelaja Vs. Fanoiki (1990) 2 NWLR (PT. 131) 137 at 151 Paras. E-G
5. Okhwarobo Vs. Aigbe (2002) 9 NWLR (Pt. 771) 29 at 83 Paras.B-C
6. Jinadu Vs. Esurombi-Aro (2005) 14 NWLR (PT. 944) 142 at 200 para-G-H

The Claimant on his part from the written address filed, also raised two issues for the Court's determination.

1. Whether the Claimant is entitled to his claims/prayers before this Honourable Court
2. Whether there are any irregularities in the case of the Claimant?

Arguing the issues, Claimant's Counsel C. C. Obi Anyanwu, Esq., submitted that the Claimant's interest in the subject property was first in time having been in possession by erecting dwarf fence since 2012 and urged the Court to hold that Claimant has sufficiently proved his ownership in the subject property by uncontroverted evidence and grant the reliefs sought.

Counsel on issue two submitted that the disparity in dates is a mistake of the issuing authority and cannot amount to an illegality as the sin of the issuing institution being a government agency should not be visited in the Claimant and urged the Court to so hold.

This Court has considered the totality of the pleadings and evidence of the Claimant as well as the statement of defence/counter claim and evidence adduced by the Defendant. Also, having considered the issues raised by respective Counsel, the issues to be determined in this suit are:

- 1. Whether the Claimant has proved his case to be entitled to the reliefs as claimed."**
- 2. Whether the Defendant has proved his case to be entitled to the reliefs claimed in the counter claim.**

Before I delve into the above issues, this Court will first deal with the issue of locus standi raised by the Defence Counsel in his written address. I have considered the argument of the Defendant and to lay it on the line, the law is now settled in a plethora of legal principles that, *locus standi* denotes the legal capacity to institute a case in a Court of law. A Claimant will have *locus standi* if he/she/it has special right, sufficient or special interest from the statement of claim or interest, right, advantage, duty, liability, loss or the like are connected with it in future or potential is adversely affected. See *IMADE VS MILITARY ADMINISTRATOR, EDO STATE & ORS* (2001) FWLR (PT. 69) P.1385 AT PP. 1398 TO 1399. Therefore, the Claimant must show sufficient interest that can be determined in the light of the facts and circumstances of each case. See *LAWAL VS SALAMI & ORS.* (2002) FWLR (pt. 87) p.638 at p. 657. In this instant case, on a perusal of the statement of claim and the reliefs sought, the cause of action of the Claimant is founded on title to land whereon both parties are claiming to have vested interest. It is desirable and essential that a party should be given as much latitude as possible and the opportunity to canvass his case, where the Court would then sieve the wheat from the chaff. Merely contending that the Claimant's case is tainted with illegality is not enough for this Court to hold that the Claimant lacks the requisite locus to institute this suit moreso as the issue of illegality was not specifically pleaded in the Defendant's pleadings. See *OYEDIRAN & ORS V. ADEGBITE & ORS* (2013) LPELR-22205(CA). Also, by Order 15 Rule 7(2) of the FCT High Court (Civil Procedure) Rules, 2018, a party shall plead specifically any fact showing illegality which if not specifically pleaded might take the opposite party by surprise.

The disposition of Courts is not to hastily dismiss suits on the grounds of lack of locus standi, but to hear and determine the case on the merits, and that is what accords with the trend of doing substantial justice.

Now with respect to the first issue, **Whether the Claimant has proved his case to be entitled to the reliefs as claimed**, the law is well settled that in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

If such party adduces evidence which ought reasonably to satisfy the judge that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced and so or successively, until all the issues in the pleadings have been dealt with. The burden of first proving a fact is usually on the plaintiff who brought the action, though not invariably so. See **EGHAREUBA V. OSAGIE (2009)** 18 NWLR (Pt. 1173) 299 S.C and also **Section 137 (1) of the Evidence Act**.

In this case, the Claimant in relief 1 is praying the Court for a declaration that the plaintiff is entitled to the Right of Occupancy over plotNo. 90, measuring about 500 square meters situate at Kubwa Ext. II (Relocation)Bwari Area Council, Abuja. The law is firmly established that there are five ways of proving ownership of land in Nigeriawhich is by the following: - a) By traditional evidence. b) By production of documents. c) By various acts of ownership, numerous and positive and extending over a length time as to warrant the inference of ownership. d) By acts of long enjoyment and possession of neighbouring land. e) By proof of possession of adjacent land on circumstances which render it probable that the owner of such land, would, in addition be the owner of the disputed land. See the case of **IDUNDUN v. OKUMAGBA (1976)** 9 - 10 SC 237 at 246 - 250. It is the duty of a Claimant claiming title to land to show how he or his predecessor-

in-title acquired title in one of the five ways or methods recognised in proving title to land. In this case, the Claimant is relying on documents to prove his title.

In proof of his case, the Claimants gave evidence of how he came to own the land which he purchased in August 2012 from one late Mr. Samuel A. Odofin, a manager at Density Construction Nigeria Ltd, for the sum of N2,500,000.00. The Claimant tendered Exhibit G, the purchase receipt, and Power of Attorney as Exhibit A. The Claimant also gave evidence that hereceived an offer letter from the Bwari Area Council, confirming his ownership of plot 90, which is Exhibit C. I have considered the totality of the Claimants case as well as the documents tendered in proof of his case, and it is evident that there exists a significant material inconsistency regarding a pivotal fact: the date the Claimant came to own the subject plot. The Claimant has presented two conflicting dates, which raises serious concerns about the credibility of the evidence provided. From the evidence before this Court particularly paragraphs 4 of the PW1's witness statement on oath it states thus: -

“That on the 7th day of August 2012, I purchased Plot 90 together with the adjacent plot known as plot 98, both in Kubwa Extension II (Relocation) from one Mr. Samuel A. Odofin (now late) manager of Density Construction Nigeria Ltd at the price of N2,500,000.00.”

In paragraphs 7-11 of PW1's Statement on oath, it states thus: -

“7. That I know that Plot 90 was initially allocated to Shehu Yamusa via a Conveyance of Provisional Approval letter dated the 27th day of May 2003 and the documents to that effect were given to me upon the purchase of the said land by Mr. Odofin.

8. *That thereafter I was issued an offer letter by the Bwari Area Council in my name -Peter O. Okpala dated 12/3/2005 over plot 90 measuring 500sqm”*

9. *That the said letter of Offer of the Terms of Grant/Conveyance of Approval dated 12/3/2005 was also accompanied with a survey plan.*

10. *That following the purchase of Plot 90, I applied to the Department of land Title over the said plot of land. Administration, Federal Capital Territory Administration for the regularization of my Title over the said plot of land.*

11. *That my application for recertification of plot 90 was acknowledged by the Department of land Administration, F.C.T.A, and File No. EN46605 dated 31/12/2008 was accordingly opened for the land.*

I have taken the time to reproduce the above evidence of the Claimant, and I must say that I am utterly astonished at the audacity of the Claimant in bringing this claim with the above stated facts and documents as his evidence before this Court. In one breath the Claimant stated he purchased the said Plot 90 in 2012 and in another breath stated that after he purchased the land, he had applied for re-certification in 2008. That he was issued with an offer of terms of grant from AMAC in 2005 for the same subject plot. The law is trite that where a party gives evidence that are inconsistent and contradictory on material facts; the Court should not attach any probative value to such evidence. The Court is not allowed to pick and choose which Evidence to believe or disbelieve. Per GEORGEWILL, J.C.A in UBA PLC v. WADOF SOFTWARE CONSULTING LTD (2017) LPELR-50251(CA) (Pp. 33 paras. C)

"In law, in determining the quality of evidence and not just the quantity, it must be borne in mind, particularly by trial Courts that no witness who gives materially inconsistent evidence on oath is entitled to the honour of being accorded with any credibility and as such does not deserve to be treated as a truthful witness."

Also, the Court in UBA PLC v. ENUGO PETROLEUM LTD & ORS (2022) LPELR-58148(CA) (Pp. 28 paras. C) held thus.

"In law, a piece of evidence is said or taken to be contradictory to another when it asserts or affirms the opposite of what the other asserts. Put in another way one piece of evidence contradicts another piece of evidence when it says the opposite of what the other evidence says not just on any and any point but on a material point. Thus, where there are material contradictions in the evidence adduced by a party, the Court is enjoined to reject the entire evidence as it cannot pick or choose which of the conflicting versions to follow. See Taiwo V. Ogundale (2012) LPELR - 7803 (SC). See also Zakirai V. Muhammed (2017) LPELR - 42349 (SC), Kayilli V. Yilbuk & Ors (2015) LPELR - 24323 (SC), Makaan V. Hangem & Ors (2018) LPELR - 44401 (CA)."

In this case, the Claimant to prove his title is relying on the sales receipt/Power of Attorney both dated 7th of August 2012 as well as grant of conveyance in Claimant from Bwari Area Council and his application for recertification to FCT administration dated 31st Defember, 2018. Having taken a cursory look at the documents, I find as a fact that there exist a material inconsistency in the dates upon which the Claimant is said to have

bought the subject Plot 90. The disparity is manifestly inconsistent and improbable and thus, cannot be accepted by this Court. The contention of the Claimant's Counsel that the disparity in the date is a mistake from the issuing agency cannot avail the Claimant as the evidence before this Court, the dates both in Exhibits C and D clearly predate the date the Claimant allegedly purchased the subject plot. I do not see how it's possible for the Claimant to apply for regularisation for a property he had not yet purchased. Not only has the Claimant failed to consistently prove the ownership of the subject plot, but the Claimant has also failed to prove his root of title as he also failed to connect or show how the said Mr. Odofin from whom he allegedly purchased the land from, obtained his title from the original allottee (Shehu Yanusa). Consequently, the failure of the Claimant to sufficiently prove his case with reliable evidence, the case of the Claimant stands dismissed.

With respect to the second issue which is **whether the Defendant has proved his case to be entitled to the reliefs claimed in the counter claim.**

The Defendant in relief one of the counterclaim, is claiming for a Declaration that the Defendant is rightfully entitled to the Right of Occupancy over Plot No. 90, Kubwa Ext. II, Relocation Layout, Bwari Area Council, Abuja-FCT (the subject matter of this suit). The law is trite that a counter claim is an independent, separate and distinct claim which a trial Court must always consider. *OROJA & ORS V. ADENIYI & ORS* (2017) LPELR-41985(SC) (PP. 25-26 PARAS. F).

In this instant case, the Claimant filed a reply and defence to the Defendant's counterclaim basically denying the claim in the Counterclaim and I must at this point state that filing a defence or making a denial does

not constitute a valid defence, as cases are determined by the weight of facts and evidence. A defence that fails to address the key issues is effectively no defence at all. A Defendant must respond to substantive points to counter and undermine the core issues of the case; if the defence does not achieve this, it is essentially ineffective. See the case of A.B.C (TRANSPORT CO.) LTD V. OMOTOYE (2019) LPELR-47829(SC)(Pp. 11 paras. B) and TAURA V. CHUKWU (2018) LPELR-45990(CA).

Nevertheless, the Defendant who is claiming for declaratory reliefs in his counterclaim must succeed on the strength of his case and not rely on the weakness of the defence. See the case of TUKURU & ORS V SABI & ORS (2013) LPELR-20176(SC) the Supreme Court held thus:

"...it must be borne in mind that the claim is for declaration of title to land as the principal relief. It is not granted on the admission or implied admission of the defendant. It is an equitable relief granted or denied subject to the discretion of the Court. It is granted only in the circumstances in which the Court is of the opinion that the party seeking it is fully entitled to an exercise of the Court's discretion in his favour."

In this case, the Counter claimant to prove his case, testified to the fact that in September 2014, he acquired interest in Plot No. 90, Kubwa Ext. II, Bwari Area Council, Abuja-FCT, from title holder DOKOBOLO LADI. That he hired a surveyor from Abuja Geographical Information System (AGIS) to survey the plot and began building a perimeter wall, That the subject plot was rightfully allocated to DOKOBOLO LADI, who granted him an Irrevocable Power of Attorney in his favour, and he has occupied the plot since November 20, 2014, having put a structure on it. That he sought title regularization through AGIS using the Power of Attorney, resulting in a new

file number DT 48010 issued on November 25, 2015, that due to a registration embargo since 2005/2006, he could not proceed beyond this regularization and is awaiting the new administration to allow public registration of interests.

The Claimant tendered documents, Exhibits J3-Offer of Conveyance of the original allottee and a Power of Attorney in J4, which vest title in the Defendant from the original allottee to show he has beneficial interest in the subject property.

In the case of MADU V. MADU (2008) 6 NWLR (PT.1083) P. 296, the Supreme Court restated its position in LAWSON V. AJIBULU (1997) 6 NWLR (PT.507) P. 14 that in a claim for declaration of title to land, the production of documents of title alone is not sufficient to discharge the onus on the plaintiff to prove the title he claims. It is trite position of law that the mere production of titled documents in a case such as this does not ipso facto entitle a party to declaration of title. The Court is obligated to look at the title documents of parties in order to ascertain the validity and effect of same before granting declaration of title. This Court is therefore entitled and has a duty to consider the validity and effect of the documents of title which the Defendant tendered and relied on for his allegation of title in the subject matter.

See also ROMAINÉ V. ROMAINÉ (1992) 4 NWLR (PT 238) P. 600 where the Supreme Court per Nnaemeka-Agu, J.S. Cheld thus: -

"I may pause here to observe that one of the recognised ways of proving title to land is by production of a valid instrument of grant: see IDUNDUN v. OKUMAGBA (1976) 9-10 S.C. 246; PIARO V. TENALO (1976) 12 S.C. 31, P37; NWADIKE V. IBEKWE (1987) 4 N.W.L.R. (part

67)718. *But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance upon such an instrument inevitably carries with it the need for the Court to inquire into some or all of a number of questions, including: -*

- (i) whether the document is genuine and valid.*
- (ii) whether it has been duly executed, stamped and registered.*
- (iii) whether the grantor had the authority and capacity to make the grant.*
- (iv) whether the grantor had in fact what he purported to grant; and*
- (v) whether it has the effect claimed by the holder of the instrument.”*

Exhibit J3 is a copy of Bwari Area Council Conveyance of Provisional Approval dated 27/5/2003, issued in favour of Dokobolo Ladi with respect to Plot no. 90 (of about 500 Sqm) in Kubwa Extension II, Relocation (Subject Matter of this suit) upon which the Defendant is relying as his root of title. I have looked carefully at Exhibit J3 before me. It emanated from the Bwari Area Council and the law is fairly settled that it is the Minister of the FCT that can validly grant statutory right of occupancy in respect of land in the FCT, and no Area Council Administrator can grant same. See the case of *ERIBENNE V. UG & ANOR (2007) LPELR-4172(CA)*. By Section 297(2) of the 1999 Constitution, it vests all ownership of all land in the FCT in the Federal Government and by Section 302 of the 1999

Constitution and the provisions of Section 18 and 13 of the FCT Act, Cap 128 LFN (1999) authority over all land in the FCT is conferred on the FCT Minister who acts on behalf of the President.

The Minister, having the same functions as Governors as provided for in the FCT Act in Section 13 in relation to land, list functions of the FCT Minister as provided for by Section 5 of the Land Use Act to include but not limited to **“Grant of statutory rights of occupancy in urban and rural areas; Grant easements, appurtenances to Statutory Rights of occupancy; Demand rental for any such land; Revise the said rental, impose penalty, waive conditions etc”**

Going by the above, can it be said that the Customary Right of Occupancy issued by Bwari Area Council is valid from which the Defendant derived his title? A certificate of occupancy whether statutory or customary creates priority of estate unless validly revoked by the appropriate authority. From the evidence before this Court, the Defendant is grounding his claim on Exhibit J3 to J4, particularly Exhibit J3 which is the Customary Right of Occupancy. Also supporting Defendant’s claim for ownership is Exhibit J5 which is an acknowledgment of receipt of documents for regularization of the said land, dated 25/11/2015.

As stated earlier, Section 297 (2) of the 1999 Constitution of the Federal Republic of Nigeria vests absolute ownership of all land in the Federal Capital Territory in the Federal Government of Nigeria. Also, Section 1 (3) of the Federal capital Territory Act, 2004 is also in conformity with Section 297 (2) of the 1999 constitution of Federal Republic of Nigeria

Section 1 (3) Federal Capital Territory Act: -

“The area contained in the Capital Territory shall, as from commencement of this Act, cease to be a portion of the states concerned and shall henceforth be governed and administered by or

under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Federal capital Territory shall likewise vest absolutely in the Government of the Federal Republic of Nigeria”.

From the above provisions, it simply states that all lands within the Federal Capital Territory belong to the Federal Government of Nigeria, and it is only the Federal government of Nigeria that can allocate to any individual. Be that as it may, the Federal Government had requested through the office of the Hon. Minister of the FCT that all citizens that are holders of land purchased prior to 2006, that fall in the same category as the land in dispute should regularize same by applying for regularization so that the Federal government through the office of the Hon. Minister of FCT can rectify same. The Defendant armed with the title of the original allottee obtained in 2003 via Exhibit J3, submitted his application for regularization, paid all necessary fees and submitted all required documents for regularization as seen in Exhibit J5, and is awaiting re-certification from the office of the FCT Hon. Minister.

It is necessary at this point for me to define the act of regularization as offered by the Federal Capital Territory Minister to all landowners who got their allocation from Area Councils as in this case. The act of regularization simply means the act of changing a system or situation in order to comply with laid down laws & rules (see Cambridge dictionary). The Oxford dictionary states that if one regularizes a situation or system, they make it officially acceptable or put it under a system of rules. In essence, Federal Government through the office of FCT Minister by offering all landowners who were allocated land by the Area Councils prior to 2006 to come forward to regularize same had rather than revoke the allocation, simply

offered to regularize that which is not regular by formalizing same in order to make the erstwhile allocation conform with the laid down procedure and thereafter issue a certificate of occupancy once all conditions are fulfilled. The Original owner of the subject land in this suit was allocated the subject matter by the Bwari Area Council. The Right of Occupancy issued to Dokobolo Ladi being relied as the root of Defendant's title, having been issued in 2003 falls into this category and Defendant accordingly applied for the regularization of same. The Defendant in the year 2015, had submitted to the Federal Capital Administration an application for regularization of the subject matter land purchased from Dakolo Ladi (the original owner) upon purchase of the land from the original allottee. The Federal Capital Territory Administration had issued an acknowledgment in Exhibit J5. From the said Exhibit J5, Federal Capital Territory Administration had acknowledged that Defendant had submitted his application for regularization alongside documents and necessary fees paid by the Defendant to Federal Capital Territory Administration since the year 2015.

There is no evidence before me that the said land had been revoked, nor is there evidence before me that the land had been allocated to another party. Evidence before me points to the fact that Defendant had been in peaceful possession of the land and even built a structure thereon.

From the evidence before this Court, the Defendant has been able to prove that the documents presented have actually created an interest in the said land as the rightful allottee of the subject matter Plot same having not been revoked and I so hold.

The Defendant is also claiming for injunction and damages. Per RHODES-VIVOUR, J.S.C in AYANWALE v. ODUSAMI (2011) LPELR-8143(SC) (Pp. 21 paras. E) held thus

"Proof of ownership is prima facie proof of possession. The presumption being that the person with title to the land is in possession. Once the court finds that a party has a better title to the land, a claim for trespass and injunction are easily sustained, did the injunction pronounced is of the perpetual type that is for all time."

See also OYELEKE V. OYEDIRAN(2011) LPELR-8143(SC) (Pp. 51 paras. A). This Court having declared the Defendant the owner of the subject property, the Defendant is therefore entitled to an order of injunction to protect his right on the subject matter, and it is so granted.

With respect to claim for exemplary damages, the law is settled that exemplary damages, otherwise known as punitive damages, is usually awarded to meet the end of punishment. For a party to be entitled to exemplary damages it is his duty to prove that the action of Claimant/Defendant is outrageously reprehensible. Per TOBI, J.C.A in DOGGO V. ASHDENE ASSOCIATES (NIG) LTD & ORS (Pp. 37-38 paras. B) held thus.

"The Appellant is claiming for exemplary damages. To succeed in this relief the Appellant must prove that the action of the Respondents is outrageously reprehensible. The Appellant must show that what he suffered was as a result of the malicious act of the Respondents. This kind of damage is punitive in nature. See Odogu vs A.G. Federation & Ors (1996) 6 NWLR (pt 456) 508. The point must be made that the mere fact that the Respondents action is wrong does not entitle the Appellant to exemplary damage but rather in such a situation, the Appellant will be entitled to general damages which is

such that natural flows from the wrong suffered. To be entitled to exemplary damage, the Appellant must prove that the Respondents action which is willful was malicious, violent, oppressive, fraudulent, wanton, arbitrary and grossly reckless. See First Bank of Nigeria Plc & Ors vs Attorney General of Federation & Ors (2018) 1 S.C. (pt 1) 94; Nursing & Midwifery Council of (Nig) vs Ogu & Anor (2019) LPELR-53899 (SC)."

In this instant case, the Defendant from the evidence proffered in the witness statement on oath failed to state the action that the Claimant has done that he found reprehensible. Simply stating *"I have suffered psychologically as a result of the Claimant's act"* without stating the said act of the Claimant that caused the psychological suffering the Defendant finds reprehensible, is not enough for this Court to award exemplary damages. This relief therefore fails.

The Defendant is also seeking for cost in the sum of N1,000,000.00. The Court in MEKWUNYE VS EMIRATES AIRLINES (2019) LPELR 46553(SC), the Supreme Court stated that

"In a civil suit, a successful party is generally entitled to be compensated by way of cost, the amount of which the Court has discretion to determine regardless of whether it was pleaded and/or proved."

Consequently, cost as claimed is awarded in favour of the Defendant against the Claimant.

Consequently, it is hereby ordered as follows.

1. The case of the Claimant is dismissed in its entirety.

2. The Defendant is rightfully entitled to the Right of Occupancy over Plot No. 90, Kubwa Ext. II, Relocation Layout, Bwari Area Council, Abuja-FCT.
3. The Claimant has neither legal right nor equitable right to Plot No. 90, Kubwa Ext. II, Relocation Layout, Bwari Area Council, Abuja-FCT (the subject matter of this suit).
4. AN ORDER of perpetual injunction is hereby granted restraining the Claimant, his agents, servants, privies or anyone that is acting on his behalf from trespassing on Plot No. 90, Kubwa Ext. II, Relocation Layout, Bwari Area Council, Abuja-FCT (the subject matter of this suit).
5. The Claimant, MR. PETER OKPALA is hereby ordered to pay forthwith to the Defendant, "SAMUEL EMEDE", the sum of N1, 000, 000. 00 (One Million, Naira) as cost of this suit.

Parties: Absent

Appearances: Fidelis Akporeha appearing for the Defendant. Claimant is not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
27/11/2024