

**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/1934/2021
DELIVERED ON THE 28/05/2024**

BETWEEN:

TON INVESTMENTS LTD.....CLAIMANT

AND

- 1. SADIQ MOMOH JIMOH**
- 2. FITNEN ENTERPRISES LTD**
- 3. IDRIS BUBA ZARMA**
- 4. ALH MORIKI IDRIS**
- 5. ALHAJI YUSUF UMAR**
- 6. ABDULLAHI YAHAYA ASHEKWONYADU**
- 7. UNKNOWN PERSONS**
- 8. ROYAL CEMICS LTD (Joined Vide Motion M/4936/2022,
granted on 14/06/2022)**

}DEFENDANTS

JUDGMENT

The Claimant herein, **Ton Investments Ltd**, took out a Writ of Summon and Statement of claim dated and filed the 21/10/2022 and sought for the following reliefs against the Defendants jointly and severally;

- (1) A declaration that the claimant is the bonafide owner of Plot No. MF1991 measuring 5560 square meter situate at Sabon Lugbe East Extension, Abuja*

having being seized of the plot vide letter of offer dated 16/8/2006.

- (2) A declaration that the act of the defendant in entering into the claimant plot, destroying the claimant's fence and developing same without the consent and authority of the claimant is an act of trespass.*
- (3) An order of perpetual injunction restraining the defendants, their agents privies, workmen or foreman from entering into, developing, improving or otherwise changing the topography of the claimant plot No. MF 1991 situate at Sabon Lugbe East Extension, Abuja.*
- (4) The sum of **Fifty Million Naira (₦50,000,000.00)** **only** as general damages for trespass by the defendant.*
- (5) Cost of this suit.*

The Defendants were duly served, in line the Order of this court, with the processes of this court by pasting same on the subject matter of litigation being plot No MF 1991 situate at

Sabon Lugbe East Extension, Abuja, but the defendants did not file any response to the case of the claimant.

The claimant opened its case on the 13/3/2023 and called its sole witness, **Uche Afoaku** as PW1, who adopted his witness statement on oath.

The case of the claimant as distilled from the witness statement that it purchased plot MF 1991, Sabon Lugbe, East Extension from the original allottee sometimes in 2006 and has been in possession of same.

It is the case of the claimant that upon purchase, it procured the change of the ownership on the letter of allocation dated 11/3/1998 from the name of **God's Favour Nig. Ltd** to its own name after paying the necessary levy.

After paying all the levies, the claimant took possession of the subject matter and erected a fence on it in the 2008. It is further the case of the Claimant that in 2020, the 1st and 2nd Defendants took the Director of the Claimant to FCT High Court in Lugbe claiming ownership of the subject matter, but

abandoned same which led to the striking out of the case by the court.

The Claimant was surprised when the Defendants brought a bulldozer to the plot and demolished the fence of the claimant.

The following documents were tendered, admitted in evidence and marked exhibits P1 to P6 respectively;

- 1) Power of Attorney**
- 2) Two allocation letters**
- 3) Development levy receipt**
- 4) Another receipt of certificate of occupancy**
- 5) TDP of the plot**
- 6) Survey plan**

The suit was then adjourned for cross examination, but the Defendants failed and/or neglected to enter an appearance or cause same to be entered on their behalf despite evidence of service of hearing notices.

On the strength of the application of learned counsel for the claimant, their right to cross examine Pw1 was foreclosed.

Similarly the Defendants' right to defend the action was foreclosed after matter was adjourned for that purpose and the Defendants chose to stay away. Matter was then adjourned for adoption of final written addresses.

Learned counsel for the Claimant formulated a sole issue for determination in the Claimant's final written address, to wit;

Whether the Claimant has proven its case on the preponderance of evidence as to be entitled to the reliefs sought against the Defendants.

Learned counsel argued the above issue succinctly in urging the court to grant all the reliefs sought by the claimant.

I have gone through the pleading of Claimant and the corresponding evidence both oral and documentary tendered by the Claimant. Indeed a party who seek Judgment in his favour is required by law to produce evidence to support his pleadings.

Reliefs 1 and 2 sought by Claimant are declaratory in nature thereby predicating the success of the other reliefs on their success.

It is an established position of law that in cases where declaratory reliefs are claimed as in the present case, the Plaintiff must satisfy the court by cogent and reliable proof of evidence in support of his claim. See **AGBAJE VS FASHOLA & ORS (2008)6 NWLR (Pt. 1082)**.

In other words, where the court is called upon to make declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleading. The imperativeness of this arises from the fact that the court has discretion to grant or refuse such declaration. See **SAMESI VS IGBE & ORS (2011) LPELR 4412**.

On whether the Claimant, in the case in view, is entitled to the reliefs claimed or not, it becomes most expedient to ascertain the root of title of Claimant first and foremost.

There are five ways of proving ownership to land that are recognized by judicial decisions. One or more of the modes are usually used in proof of title, they are:-

- (1) *Traditional evidence*
- (2) *Production of document title*
- (3) *By proving acts of ownership numerous and positive enough to warrant an inference that the person is the owner.*
- (4) *Act of long possession and*
- (5) *By proof of possession of connected or adjacent land.*

AKAOSE VS NWOSU (1997) 1 NWLR (pt. 482) 478 at 492 paragraph B – D.

Whereas the Claimant came about the subject matter of litigation vide Exhibits “P1 and P2” allocation from Abuja Municipal Area Council.

I need only state at this juncture that the Federal capital Territory came into being by decree No 6 of 1976, with 4th February, 1976 as the commencement date.

Section 297 (2) of the 1999 constitution of the federal Republic of Nigeria as amended vests absolute ownership of land within the federal capital Territory in the Federal Government of Nigeria. The said provision is in agreement with section 1 (3) of the Federal Capital Territory Act 2004. For ease of reference, I shall attempt to reproduce the said sections 297 (2) of the 1999 constitution of Federal Republic of Nigeria as amended and 1(3) of the FCT Act.

Section 1(3) of the FCT Act;

“The area contained in the capital Territory shall, as from the 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 Federation.”

Section 297(2) of the 1999 constitution.

“The Ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria.”

For all intents and purposes, the intention of the law makers on the status of Federal Capital Territory is deliberate.

What Government and the makers of the Federal Capital Territory Act intended was for a vast expanse of land devoid of any form of cultural or hereditary inclination to be set aside for the development of the capital city of Nigeria.

No little wonder, even the original inhabitants who had occupied their ancestral lands were merely paid compensation and asked to move-on, regardless of the fact that, generations of their ancestors were buried on such lands. See section 6 of the Federal Capital Territory Act.

There is no gainsaying that the issue of deemed grant which is a product of the Land Use Act 1978 was deliberately made inapplicable to lands within the Federal Capital Territory from the construction of the preamble to the Land Use Act and section 49 of the same Act.

Were the Land Use Act meant to apply to Federal Capital Territory, the original inhabitants would have been granted deemed grant and remained on their various lands within the Territory. The Land Use Act must not be read in isolation.

It is trite that, where the language, terms, intent or words to any part or section of a written contract, document or enactment are clear and unambiguous as in the instant case, they must be given their ordinary and actual meaning as such terms or words used best declare the intention of the law maker unless this would lead to absurdity or be in conflict with some other provision thereof. It therefore presupposes that where the language and intent of an enactment or contract is apparent, a trial court must not distort their

meaning. See **OLATUNDE VS OBAFEMI AWOLOWO UNIVERSITY (1998) 5 NWLR (pt. 549) 178.**

From the foregoing therefore, it is clear that no Area Council Chairman/Administrator within the Federal Capital Territory has the power to allot land to any person or group of persons as no land within the Federal Capital Territory exist as non-urban land where customary title could be conferred. I so hold.

I shall examine the documents tendered by the Claimant to ascertain whether actually the law tilts in his favour.

The Claimant in a bid to proof its case, as required by law, tendered the

Offer letters (both new letter and old, bearing names of **God's Favour Nig. Ltd. and Ton Investment Ltd** respectively), Power of Attorney, Survey Data, Receipt of payment of Certificate of Occupancy and others.

Trial court has the onerous duty of considering all documents placed before it in the interest of Justice. Documents

tendered before a trial court are meant for scrutiny or examination by the court. See **OMEGA BARIK (NIG) PLC VS O .B. C LTD (2002) 16 NWLR (Pt. 794) 483.**

From the documents, it is clear to me that the Claimant has not satisfied the court of his entitlement to the two declaratory reliefs sought from the Documents of title. Without deriving title from the Minister of the Federal capital territory, this court cannot confer same on the Claimant based on Offer/Allocation by an Area council Chairman.

However, it is the law that a person can sue for trespass even if he is neither the owner nor a privy of the owner. This is because exclusive possession of the land gives the person in such possession the right to retain it and to have undisturbed enjoyment of it against all wrong doers except a person who could establish a better title. Therefore, anyone other than the true owner, who disturbs his possession of the land, can be sued in trespass. See **PIUS AMAHOR VS BENEDICT OBIEFINA (1974) LPELR 452 (SC).**

From the available evidence oral and documentary before this court, the Claimant is in possession of the subject matter of litigation and has being for a considerably long time. It is instructive to state here that there is presumption where there is no evidence to the contrary, things are presumed to have been rightly and properly done. Section 168 (1) (2) and (3) of the Evidence Act, 2011 (as amended) which provides for presumption of regularity is apt here.

The fact that Exhibits “P1” and “P2” (offer of terms of grant/Conveyance of Approval) are in the Claimant’s name and there is no any contrary information, indeed Claimant is adjudged to be the owner of the subject property. I so hold.

Indeed, even a trespasser can sue another trespasser even if he is neither the owner nor a privy of the owner except against a person who could establish a better ownership/title. See **PIUS AMAHOR VS BENEDICT OBIEFINA (1974) LPELR 452 (SC)**.

Now that it has been established, on the preponderance of evidence, that the Claimant herein is the true owner, having

proved acts of ownership, numerous and positive enough to warrant an inference that it is the owner, I shall enter judgment for the Claimant without any further hesitation. Judgment is hereby entered in favour of Claimant and the following declarations are hereby made:-

- (1) **A declaration is hereby made** that the Claimant is the bonafide owner of Plot No. MF1991 measuring 5560 square meter situate at Sabon Lugbe East Extension, Abuja having being seized of the plot vide letter of offer dated 16/8/2006.
- (2) **It is further declared** that the act of the Defendant in entering into the Claimant plot, destroying the Claimant's fence and developing same without the consent and authority of the Claimant is an act of trespass.
- (3) An order of perpetual injunction restraining the Defendants, their agents privies, workmen or foreman from entering into, developing, improving or otherwise changing the topography of the Claimant's

plot No. MF 1991 situate at Sabon Lugbe, East Extension, Abuja, **Is hereby granted.**

On general damages, the term general damages cover all losses which are not capable of exact quantification. It includes all non-financial losses; it need not be specifically pleaded. See **CHUKWUBUZOR & SONS NIG. LTD VS AKAN DICKSON IDIONG Suit no CA/C/315/2011.**

I hereby award the sum of **₦5,000,000.00 (One Million Naira)** only in favour of the Claimant against the Defendants jointly and severally as general damages.

I make no further order(s) as to cost

This is the judgment of this court.

**SIGNED:
HON. JUDGE
28/05/2023.**

Appearance:

Parties absent and not represented.