

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 9, AREA 11, GARKI, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

FCT/HC/GAR/M/1433/24

DATE: 27-11-2024

BETWEEN

SHUKURAH CLINICS LIMITED } CLAIMANT

AND

1. HON. MINISTER, FEDERAL CAPITAL TERRITORY
 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
 3. DIRECTOR, LAND ADMINISTRATION DEPARTMENT, FEDERAL CAPITAL TERRITORY ADMINISTRATION
 4. DIRECTOR, URBAN & REGIONAL PLANNING, FEDERAL CAPITAL TERRITORY ADMINISTRATION
 5. COORDINATOR ABUJA METROPOLITAN MANAGEMENT COUNCIL (AMMC)
 6. DIRECTOR, DEPARTMENT OF DEVELOPMENT CONTROL
- } DEFENDANTS

7. UNKNOWN PERSONS
8. INSPECTOR GENERAL OF POLICE
9. COMMISSIONER OF POLICE,
FEDERAL CAPITAL TERRITORY

J U D G M E N T

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

By a way of Originating Motion M/1433/2024, the Claimant/Applicant, Shukurah Clinics Limited, a Company Incorporated under company and allied Matters Act, applied for four (4) principal orders against the Defendants/Respondents.

The prayers are;

1. ***AN ORDER OF MANDAMUS commanding, compelling and directing the 1st to 6th Defendants/Respondents (jointly and severally) to deliver and hand over Plot No. 313 within Cadastral Zone A09 of Guzape to the Applicant being the allottee of the said plot and haven paid all necessary fees including settlement of Building Plan Fees and Conveyance of Building Plan Approval conveyed to the Applicant by virtue of the said allocation.***

2. **AN ORDER mandating, commanding, compelling and directing the 1st to 6th Respondents to deliver to the Applicant a peaceful possession of the parcel of land in its status, size, dimension and form without any encumbrances or adverse interest, whatsoever and in its status at the time of allocation to the Applicant.**

3. **AN ORDER of this Court voiding, or setting aside any adverse step, decision or action that may have been taken by the 1st to 6th Respondents by themselves or agents, privies, servants or any person acting on their authority regarding, concerning and pertaining to the land covered by the title document more appropriately described in relief 1 above to the extent of their being inconsistent with or contrary to or adverse to the interest of the Applicant.**

4. **AN ORDER directing and mandating the 7th and 8th Respondents by themselves and all other officers of the Nigeria Police Force to enforce/give effect to the Orders that may be granted by this Court and not to allow**

themselves or any officer of the Nigeria Police Force to be used by anyone to frustrate the enforcement of the Orders that may be granted by this Court.

5. AND for such further Order or other Orders as the Honourable Court may deem fit to make in the circumstance.

The grounds upon which this Originating Motion is premised are as follows:-

- 1. The Respondents are Public Institutions.**
- 2. The 1st to 6th Respondents are in charge of the management of the Federal Capital Territory Administratively and to allocate plot of lands in the Federal Capital Territory to both individuals and corporate bodies.**
- 3. The 1st to 6th Respondents allocated Plot 313, Cadastral Zone A09, Guzape to the Applicant and granted Development approval for public purpose but couldn't take possession of the plot.**
- 4. That unknown persons have encroached on the said plot and have refused to vacate the plot for development.**

- 5. The Respondents are under a duty to recover the plot to the Applicant having granted the Applicant the allocation and building plan approval.**
- 6. That the 8th and 9th Respondents are the heads of Police Command Abuja and the Nigerian Police Force in general.**
- 7. It is the interest of justice to grant this application.**

In support is a 28 paragraphs affidavit deposed to by one AbubakarKpelafialliyasu who is the Managing Director of the Applicant who lives at 5 Kojama Street, Area 2, Garki, Abuja. The affidavit is dated 10th July, 2024 and filed same day. Annexed to the affidavit are 7 (seven) Exhibits marked as A – F and H.

Exhibit A: Offer of Statutory Right of Occupancy dated 10th July, 2014.

Exhibit B: Settlement of Building Plan Fees dated 3rd May, 2023.

Exhibit C: Payment receipt of FCTA dated 10th May, 2023.

Exhibit D: Revenue Collector's receipt with receipt No. 000400242 dated 18th August, 2023.

Exhibit E: Revenue collector's receipt with receipt No. 000400241 dated 18th August, 2023.

Exhibit F: Conveyance of Building Plan Approval dated 15th June, 2023.

Exhibit H: Letter of Appeal for the Right of Possession of our granted land with File No. MISC 89742 and Plot Number 313, Cadastral Zone A09, Guzape Abuja dated 19th September, 2023.

There is also a written address filed along with the application. It was filed by Raphael Ashwe Esq. of Counsel to the Applicant and it is dated 10th July, 2024.

The Defendants/Respondents who were served with all the Court processes did not file any response in opposition to the grant of this application nor show up in Court.

On the 4th November, 2024, Learned Counsel to the Applicant, Mohammed Ndarani Mohammed, SAN, moved the application in Court *brevimanu*. The Learned Silk, referred to the content of 28 paragraphs affidavit in support, Exhibits A – F and H, his written

address and placed reliance on **Order 2 Rule 1, Order 44 Rule 1(a) of the Rules of this Court** and **Section 6(6) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended)**. He urged me to be persuaded by the proof of service, undisputable facts placed before the Court and grant all the reliefs sought in this application.

Briefly put, the facts leading to this application as can be gleaned from the affidavit evidence are as follows:

The 1st to 6th Respondents in discharging their public and official mandates, allocated Plot 313, Cadastral Zone A09, Guzape, Abuja to the Applicant. Consequent to the allocation, the Applicant had made millions of payment to the 1st to 6th Respondents account and was granted Building Plan Approval. Reference was made to the Exhibits herein attached to the application. While planning to mobilize to site, illegal squatters occupied the plot and hence, the Applicant could not access same.

This application is brought to compel the 1st to 6th Respondents to remove the illegal squatters and the shanties to put the

Applicant in possession to enable the commencement of the building of the hospital.

The Learned Counsel the Claimant/Applicant in his written address submitted a sole issue for determination, to wit;

“Whether the Applicant have placed sufficient material facts before this Court to entitle it to the orders sought?”

Mr. Raphael of Counsel to the Claimant/Applicant in paragraph 3.2 of his written address answered the question in the affirmative.

He argued further that for an Applicant to be entitled from Court to an Order of Mandamus, such an Applicant must show the following essential two ingredients.

1. That he has sufficient interest in the Subject Matter and;
2. He has made demand on the Public Officer which demand has been refused by the said Respondent. See **OJIE & ORS. VS. GOVERNOR OF CROSS RIVERS STATE & ANOR. (2016) L.P.E.L.R. – 41381 (CA), 7 paras. B – D; N.A.G.P.P.E. VS.**

PHARMACIST COUNCIL OF NIG. & ORS. (2013) L.P.E.L.R. – 21834 (CA), 87 paras. D – F; In FANYAN VS. GOVERNOR, BENUE STATE (2022) 11 N.W.L.R. (PART 1840) 33, 53 paras. G – H, the Supreme Court relying on the case of AYIDA & ANOR. VS. TAIWO PLANNING AUTHORITY & ANOR. (supra) held that:

“Before the writ of mandamus is granted by a Judge, the Judge must be satisfied that the Applicant has sufficient interest in the matter to which the application relates and that he demanded the performance of a public duty from the administrative body (or those responsible) and they refused to comply.”

The question now is, has this Applicant in this instant case shown these two ingredients? The answer in my view is in positive. Why did I say so? The affidavit in support bears me out, for instance, paragraphs 8, 9, 10, 11, 12, 13 and 14.

Paragraph 8 says:

“That Plot 313, Cadastral Zone A09, Guzape for building of Public Institution (Clinic) in 2014 was granted to the Applicant. The offer of statutory right of occupancy is hereby attached as Exhibit A.”

Paragraph 9 says:

“That after the allocation, the Applicant applied to the office of the 1st – 6th Respondents for approval to commenced development.”

Paragraph 10 says:

“That upon the application for building plan approval to the 6th Respondent, Settlement of Building Plan Fees was issued to the Applicant. The bill is hereby attached as Exhibit B.”

Paragraph 11 says:

“That upon receipt of the Building Plan Approval Fee Bill, the Applicant promptly paid the fees in

the sum of ₦12, 757,311.00 (Twelve Million, Seven Hundred and Fifty-Seven Thousand, Three Hundred and Eleven Naira) to the Account of the 1st to 6th Respondents Treasury Single Account (TSA). Payment receipt dated 10th May, 2023 is hereby attached as Exhibit C.”

Paragraph 12 says:

“That the Applicant paid the sum of ₦30,125,615.00 (Thirty Million, One Hundred and Twenty-Five Thousand, Six Hundred and Fifteen Naira) for Certificate of Occupancy. The said payment receipt is hereby attached as Exhibit D.”

Paragraph 13 says:

“That the Applicant paid its ground rent till date. The payment receipt is hereby attached as Exhibit E.”

Paragraph 14 says:

“That after the confirmation of the payment by the 6th Respondent, Building Plan Approval was

conveyed to the Applicant to build hospital and other infrastructures needed within the hospital. The said conveyance of Building Plan Approval is hereby attached as Exhibit F.”

As for the second leg of this ingredient the same un-denied and uncontroverted supporting affidavit at paragraph 18 thereof says thus;

Paragraph 18 says:

“That another letter to the Honourable Minister, FCT appealing for his intervention to ensure the plot is delivered to the Applicant dated the 19th September, 2023 is hereby attached and marked as Exhibit H.”

It is the position of law that order of mandamus can be issued to compel the performance of the duty or exercise of the discretion provided a request to do so preceded it.

In ANTHONY VS.THE GOVERNOR OF LAGOS STATE & ANOR. (2002) L.P.E.L.R. -5824 (CA), the Court of Appeal per Chukwuma –

Enneh, JCA (as he then was) stated the principle of law on the grant of mandamus as follows;

“It is settled that, where a person or body has a duty of public nature to perform or discretion of a public nature to exercise, order of mandamus can be issued to compel the performance of the duty or exercise of the discretion provided a request to so do preceded it. See CHIEF EMMANUEL UTAVBEGHO & ORS. VS. MINISTER OF LOCAL GOVERNMENT (1957 – 58) W.N.L.R. 179 AND CHIEF GANI FAWEHINMI VS.INSPECTOR GENERAL OF POLICE & ORS. (2002) 7 N.W.L.R. (PART 797) 606 (SC)”

The Applicant having demonstrated its interest in the plot subject of this suit as demanded by law and made repeated demands from the Respondents which were met with refusal, is entitled to the reliefs sought.

It is for the above reasons and in line with the clear and unambiguous position of law on this, that I find myself in the same page with the Claimant/Applicant, that it is deserving in the circumstances of this case for this Court to grant all the reliefs of the Claimant/Applicant and they are hereby granted.

For avoidance of doubt, it is hereby ordered as follows:

- 1. AN ORDER OF MANDAMUS commanding, compelling and directing the 1st to 6th Defendants/Respondents (jointly and severally) to deliver and hand over Plot No. 313 within Cadastral Zone A09 of Guzape to the Applicant being the allottee of the said plot and haven paid all necessary fees including settlement of Building Plan Fees and Conveyance of Building Plan Approval conveyed to the Applicant by virtue of the said allocation is hereby granted.**
- 2. AN ORDER mandating, commanding, compelling and directing the 1st to 6th Respondents to deliver to the Applicant a peaceful possession of the parcel of land in its status, size, dimension and form without any encumbrances or adverse interest, whatsoever and in its**

status at the time of allocation to the Applicant is hereby granted.

3. AN ORDER of this Court voiding, or setting aside any adverse step, decision or action that may have been taken by the 1st to 6th Respondents by themselves or agents, privies, servants or any person acting on their authority regarding, concerning and pertaining to the land covered by the title document more appropriately described in relief 1 above to the extent of their being inconsistent with or contrary to or adverse to the interest of the Applicant is hereby granted.

4. AN ORDER directing and mandating the 7th and 8th Respondents by themselves and all other officers of the Nigeria Police Force to enforce/give effect to the Orders that may be granted by this Court and not to allow themselves or any officer of the Nigeria Police Force to be used by anyone to frustrate the enforcement of the Orders that may be granted by this Court is hereby granted.

All the authorities concerned are hereby Ordered to eject all the squatters, trespassers as well as encroachers hindering the Applicant from developing the said Plot 313 Cadastral Zone A09 Guzape District, Abuja and vacant possession given to the Claimant/Applicant forthwith for development of the Hospital.

This is the Judgment of this Court.

Signed

S. B. Belgore

(Judge) 27-11-2024