

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO.12 JABI ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
THIS 6th DAY OF NOVEMBER, 2024**

SUIT NO: FCT/HC/CV/927/2021

BETWEEN:

| | | | |
|------------------------------------|-------|-------|------------------|
| 1. ALHAJI YAHAYA IBRAHIM | } | ----- | CLAIMANTS |
| 2. ABDULLAHI Y. SHEKWONYEDO | | | |
| AND | | | |
| SHEIDU ISA OGIRIMA | | | DEFENDANT |

JUDGMENT

The Plaintiffs claim against the Defendant is contained in the Writ of Summons dated 19th March, 2021 as follows:

1. A Declaration that the Plaintiffs Right of Occupancy over MF 2076, Cadastral Zone 07-07 Sabon Lugbe East Extension, Abuja still subsists.
2. A Declaration that the acts of the Defendant on the said Plot of Land constitute trespass.
3. An Order of Perpetual Injunction restraining the Defendant, his Agent, Staff, Thugs, Servants and privies from further acts of trespass on the Plaintiffs piece and parcel of land lying and situate at Plot MF 2076, Cadastral Zone 07-07 Sabon Lugbe East Extension Abuja.
4. **N20,000,000 (Twenty Million Naira)** being damages for trespass.
5. **N3,000,000 (three Million Naira)** cast of this action.

The Plaintiffs case was that the 1st Plaintiff is the original allottee of Plot at Plot MF 2076, Cadastral Zone 07-07 Sabon Lugbe East Extension Abuja by virtue of an Offer of Term of Grant/Conveyance of

Approval of Statutory Right of Occupancy dated 11/3/98 issued to the 1st Plaintiff by the Minister of the Federal Capital Territory, which was conveyed through the Zonal Office of the Ministry for Federal Capital Territory. That the 1st Plaintiffs accepted the said offer through a letter dated 25/03/1998 and was subsequently issued a Technical Deed Plan under Statutory Right of Occupancy number FCT/MZTP/LA/2005/MISC.12654 showing the exact size of land and surrounding beacon numbers. Duplicate copy of the said acceptance letter and original copy of the Technical Deed Plan (TDP) were tendered and admitted in evidence as Exhibits A4 and A2 respectively.

That the 2nd Plaintiff acquired the Rights and interest of the 1st Plaintiff on the said Plot MF 2076, Cadastral Zone 07-07 Sabon Lugbe East Extension Abuja through a Deed of Sale in year 2007 and was put in possession of the said land by the 1st Plaintiff in presence of persons. That the 2nd Plaintiff is presently the bonafide owner of the said Plot which the Defendant unlawfully trespassed the Plaintiff had since the past 22 years been enjoying untrammelled possession of the land through planting of survey beacons, farming on the land, concrete fencing and depositing building materials on the land sufficient enough to erect a planned twin duplex on the Plot. That the notification letter of Rent and Fees for Certificate of Occupancy was issued to 1st Plaintiff on 16th August, 2006 in respect of the said Plot and the Plaintiff's right and title over the said Plot have not been revoked by the appropriate authority.

That the Defendant claims to have purchased the said Plot of land from the 1st Plaintiff in 2011 and produced a Power of Attorney purportedly donated to him by the 1st Plaintiff. The 1st Plaintiff's witness claimed that he knows as a fact that the 1st Plaintiff had never sold the said Plot to the Defendant or to anyone else except the 2nd Plaintiff. That the Defendant gave to the 2nd Plaintiff a

photocopy of the said Power of Attorney to justify his claim on the land in dispute.

That the Plaintiff reported the said trespass to the Police and when invited by the Police the Defendant went underground, but now resurfaced and intensified his trespass and invasion of the Plaintiff land, which led to another complaint to the Police and to the Minister of FCT through petitions dated 9th March, 2021. And that in spite of the aforesaid complaints, the Defendant have continued to trespass on the said Plot of land insisting that the said Plot of land belongs to him, which has adversely affected Plaintiff's proprietary right on the property. That the Plaintiffs spent the sum of **N3,000,000 (Three Million Naira)** in bringing this action against the Defendant

The Plaintiffs' sole witness one **Ismaila Eneji** adopted his Witness Statement on Oath with the Testimony as stated above and tendered as Exhibits the following document:

1. Original copy of offer letter dated 29/6/1998 Exhibit A1.
2. TDP for Right of Occupancy Exhibit A2
3. Bills for Right of Occupancy Rent and Fees Exhibit A3
4. Acceptance for Offer Exhibit A4
5. Deed of Sale Exhibit A5
6. Police investigation Report Exhibit A6

From the record of the Court, the Defendant was served with the originating process and the Hearing Notice on several adjourned date, but refused to file a Statement of Defence to controvert or challenge the claim of the Claimants. At the close of evidence of the witness for the Claimants, Counsel for the Claimants filed a Final Written address wherein one issue was formulated for determination as follows:

Whether having regard to the pleadings and evidence placed before the Court the Plaintiffs have proved their case by

preponderance of evidence as to the entitled to their claims in this suit.

The Plaintiff's Counsel urged the Court to return an affirmative answer to the question posed by this lone issue for determination by holding that the Plaintiffs have sufficiently proved their case by preponderance of Evidence as to be entitled to their claims in this suit.

Counsel relied on the provision of Sections 131 – 134 of the Evidence Act, 2011 (as amended) a Plaintiff has the legal burden of proof establishing his claim. He relied on the case of **ARASE V ARASE (1981) 5 SC 33 @ 37, ELEMOM V OMOLADE (1986) NMLR 259; OSAWARU V EZEIRUKA (1978) 6-7 SC**. He submitted that the Plaintiff of this case must lead evidence to prove the facts on which they premised their action even where there is no challenge by the Defendant. And that the Plaintiff is to succeed on the strength of his own case as opposed to relying on the weakness of Defendant's case. See **KODILINYE V. ODU (1935) 2 WACA 336 @ 337; FAGUNWA V. ADIBI (2004) 17 NWLR (PT. 903) 554 @ 568**. The Plaintiffs Counsel submitted that the Plaintiffs have led uncontroverted, undisputed and uncontradicted evidence to prove their claims against the Defendant and urged the Court to hold that the Plaintiffs have done what the law required of them to be entitled to Judgment.

On standard of proof in civil suits, Counsel argued that the evidence of the Plaintiffs in this suit is heavier and preponderates accordingly.

That a party who ought to file a Defence in Court has abandoned it if he failed or refused to do so in compliance with the rules of Court. That a Defendant, as in the instant case, who does not give evidence in support of his pleadings or in challenge of the evidence of the Plaintiffs is deemed to have accepted and rested his case on the facts adduced by the Plaintiff – Case of **INUA VS. FBN PLC (2016)**

2 NWLR (PT. 1495) 89 @ 110; IFETA V. SHELL PETROLEUM DEVELOPMENT CO. LIMITED (2006) 4 SC. (PT. 1) 136 was relied on by Counsel. He submitted that the situation in cited cases is on all fours with the instant case and urged the Court to conclude that the Defendant have accepted facts adduced by the Plaintiffs in this case.

With respect to the Defendant claim by the Plaintiffs, Learned Counsel argued that the sum of **N3,000,000 (Three Million Naira)** claimed in special damages paid in legal fees for this action was specifically pleaded and proved as required by law while the award of general damages is with the discretionary power of the Court. Counsel stated that the Plaintiffs specifically pleaded the monetary claims for general damages in their Statement of Claims and supported it with the Witness Statement of the PW1, in his evidence in chief and that the Pw1 was not cross examined to debunk those claims. Counsel relied on the case of **MTN (NIGERIA) COMM. LIMITED VS. CORPORATE COMM. INV. LIMITED (2019) 9 NWLR (PT. 1678) 427, PER KEKERE – EKUN JSC.**

On the proposition of the law that what is admitted need no further proof – Counsel relied on the case of **ALAO VS. UNIVERSITY OF ILORIN (2007) FWLR (PT. 363) PAGE 2027 RATIO 2, TOTAL NIGERIA PLC VS. CHIEF A. N. MORKAH (2005) 4 CLRN PG. 86 LINES 1-9.** He urged the Court to enter Judgment in favour on the Plaintiffs.

RESOLUTION OF ISSUE

It is trite that in an action for declaration of title to land the onus is on the Plaintiffs to proof that he is entitled to the claim of title irrespective of whether the Defendant filed a defence or not. The Claimant succeeds on the strength of his case and not on the weakness of the Defendant's case. The Court held in the case of **OFISO V. EZEIKE 2019 LPELR 46953 CA,** the Court held

“it is a long settled principle of land law that in an action for declaration of title to land, the onus is on the party claiming title to satisfy the Court that he is entitled on evidence adduced by how the declaration of the piece of land claimed. That is to say or it is the duty of the party who seeks a declaration of title to land to establish and proved his claim by credible evidence. The onus therefore lies on the Plaintiff to satisfy the Court that he is entitled on the evidence brought by him to a declaration of title. He must of necessity rely on the strength of his own case and not on the weakness of the Defendant’s case. See Elema & ANOR V. AKENZUA 2000 LPELR 1112 (SC), MAIGARI & ORS V. MAILAFIA (2010) LPELR 3704 CA. A Plaintiff who brings an action for declaration of title to land must prove his ownership of the land. He must prove how he came into possession of the land. EZEONWUKA & OR V. EZEONONUJU & ORS (2015) LPELR 25743 CA. this the Plaintiff must do by adducing cogent, credible and compelling evidence in proof of his claim to declaration to title before he can succeed in his claim”

Furthermore it is established principle of land law that a Claimant for declaration to title in order to succeed must pigeonholed his claim within one or more of the five ways of establishing title as established in the case of **IDUNDUN VS. OKEMAGBA (19261) 9110 SC 227**, that ownership of land may be proved in any of the following five ways:

1. *By traditional*
2. *By production of document of title which are duly authenticated*
3. *By acts of selling, leasing, renting out all or part of the land, or farming on it or a portion of it*
4. *By acts of possession and enjoyment of the land and*
5. *By proof of possession of connected or adjacent land would in addition be the owner of the land in dispute.*

UGWUENZE V. ADELEKE (2007) LPELR 8101 CA, IBRAHIM V OBAJE 2005 LPELR 11370 CA.

In the instant case, the Claimant tendered titled documents in proof of their claim to the property in dispute. The mere tendering of title document does not automatically confer title or ownership on a Claimant, the Court has the duty to eventuate the documents in order to determine the genuineness and whether it confess the title seeks by the Claimant. See **KORLE V. IFENKWE (2018) LPELR 44987 CA. USMAN V. BALA (2013) LPELR 25853 CA.**

The Court held in the above case that the mere production of a document of title does not automatically entitle a Claimant to a declaration of title. The Court must be satisfied that the document is indeed sufficient proof of ownership. The production of a document and reliance thereon as an instrument of grant of title compels the need for the Court to inquire into some or all of the following question:

1. Whether the document is genuine?
2. Whether it has been duly executed, stamped and registered?
3. Whether the grantor had the authority and capacity to make the grant?
4. Whether in fact the grantor had what he purported to grant?
and
5. Whether it has the effect claimed by the holder of instrument?

The sole witness for the Claimants informed the Court in his adopted Witness Statement on Oath that he is the property manager of the 2nd Plaintiff and know all the parties and the subject matter in this case too well. This witness have not informed the Court how he came to know the parties and the subject matter. According to him he only know the 2nd Plaintiff and he has failed to establish any link between the 1st Plaintiff and the 2nd Plaintiff apart from his viva-voce

evidence and Exhibit A6, titled acknowledgement receipt as alleged signed by the 1st Plaintiff on the sum of **N3,000,000 (Three Million Naira)** received from the 2nd Plaintiff as payment for the disputed Plot.

It is interesting to note that the PW1's name did not feature on the document as a witness to the alleged transaction of sale. Furthermore the testimony of the Pw1 in paragraph 10 of his Witness Statement on Oath that the Defendant claim to have purchased the said Plot of land from the 1st Plaintiff in 2011 and paraded a Power of Attorney purportedly donated to him by the 1st Plaintiff and I know as a fact that the 1st Plaintiff had never sold the said Plot MF 2076 Sabon Lugbe East Extension Abuja to the Defendant or to anyone else except the 2nd Plaintiff. The Defendant gave to the 2nd Plaintiff a photocopy of the said Power of Attorney to testify in claim of the land in dispute is hearsay evidence. It does not have any probative value.

He also claimed that the Plaintiff reported the said trespass to the Police... .. The police report tendered showed that it was one **Adagiri Adamu Itope** that reported a case of criminal trespass on the Plot 276 Sabon Lugbe East Extension Layout and not **Yahaya Ibrahim** the 1st Plaintiff.

Furthermore Exhibit A4, the acceptance of offer by **Alhaji Yahaya Ibrahim**, showed that the date on it was altered or doctored, the initial date was written in black – biro, but a blue biro was super imposed on it to read 25/3/1998. This said exhibit on the absence of any explanation on the alteration is a mere piece of paper

This Court cannot ascribe any probative value to it. In the same vein, exhibit A3, titled Right of Occupancy. Rent and Fees has no reference number and it is not dated. An undated document is also valueless. There is also no nexus between the name Franklin Delivery

Services on the Offer of Terms of Grant/Conveyance of Approval dated 11/3/98 and the 1st Plaintiff in this case. To cap it all none of the Plaintiffs who sought for the declaratory reliefs deemed it necessary to testify on support of that claim.

The fact that the Defendant did not file a defence does not preclude the Claimants from establishing their case in accordance with the law of evidence. An Unchallenged or uncontroverted evidence will only be accepted by Court, if they are found to be credible after evaluation by the Court. Having carefully evaluated the oral and documentary evidence adduced by the Plaintiffs witness, I found them not to be strong and credible to sustain the claim of the Plaintiffs for declaration to title in respect of the disputed Plot. Consequently, I hold that the Plaintiff's claim failed and is hereby dismissed.

Signed.

Hon. Judge.

6/11/24.