

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA- ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU.
DATED THIS _____ DAY OF NOVEMBER, 2023**

FCT/HC/CV/2015/2021

BETWEEN:

MR. STEPHEN OLUYOMI ADEDAYO-----PLAINTIFF

(SUING THROUGH HIS ATTORNEY MR. PAUL OLUWAWANIBE)

AND

MRS. LOVE ADEDAYO-----DEFENDANT

JUDGMENT

The plaintiff claims to be the beneficial owner and the original allottee of that three (3) bedroom flat known as Block 2, Flat 6, Mano Street, off Lukulu Street, Wuse 1 Zone 3, Abuja while the defendant is his estranged wife of ten (10) years, and both have been living apart for quite some time. The plaintiff filed the instant action due to alleged threat by the defendant to evict his tenants and dispose of the property. Consequently by a writ of summons dated and filed on 17th august, 2021, the plaintiff seeks for the following reliefs:

- a. A declaration that the plaintiff is still the original allottee and beneficial owner of that three (3) bedroom Flat/apartment property known as Block 2, Flat 6, Mano Street, off Lukulu Street, Wuse 1 Zone 3, of the Federal Capital Territory Abuja by virtue of the Letter of Offer dated 16th August 2005, bearing the name of the Plaintiff and issued by the Federal Capital Territory Administration and signed by the Honorable Minister.
- b. A declaration that the Defendant's action directing her agents, privies, solicitors and/or whosoever is acting on her instruction, to carry out any inspection on the above mentioned property with the aim of evicting the plaintiff's tenants and/or occupiers of the said property as well as taking over and disposing off same without the consent, prior knowledge or approval of the plaintiff or his authorized attorney(s) constitutes a trespass to the plaintiff's property situate at the above mentioned address.
- c. A perpetual injunction restraining the defendant, agents, servants, privies and/or whosoever is claiming through her or acting under her instruction from carrying out any further inspection, harassing and/or evicting of occupiers, pulling down, disposing off or re-allocating the rights, interests and privileges of the plaintiff over Block 2, Flat 6, Mano Street, off Lukulu Street, Wuse 1 Zone 3, of the Federal Capital Territory Abuja the subject matter of this suit.

- d. The sum of **N50,000,000 (Fifty Million Naira)** as general damages for illegal encroachment and trespass to the plaintiff's property known and/or referred to Block 2, Flat 6, Mano Street, off Lukulu Street, Wuse 1 Zone 3, of the Federal Capital Territory Abuja.
- e. Post judgement interest at the rate of 21% per annum until same is liquidated by the defendant.
- f. The sum of **N2,000,000 (Two Million Naira)** as cost of filing and prosecuting this suit.
- g. And for such further order or orders as the honorable court may deem fit to make in the circumstances.

The defendant was served with the originating process and hearing notice vide an order of substituted service granted on 25/4/2022 and on 21/04/2022 the plaintiff filed an application to substitute witness, the said application was taken and granted on 25/04/2022 and adjourned to 12/05/2022 for trial. However trial could not proceed on the said date and the case was further adjourned to 24/05/2022 for trial. And on the 24/05/2022 the plaintiff opened his case by testifying for himself as PW1 and tendered six (6) exhibits in proof of his case. The case was adjourned to enable the defendant cross-examine the plaintiff and open her defence but despite service of hearing notice, the defendant failed/refused and or neglected to appear to cross-examine the PW1 nor appear to defend herself. Consequent upon which the plaintiff's counsel applied to the

court for her to be foreclosed and same was granted. The case was further adjourned for adoption of final address.

The plaintiff's Counsel adopted his final written address on the 25/10/2023. He distilled a sole issue for determination by the court to wit:

Whether the plaintiff has discharged the burden placed upon him by law to be entitled to the grant of all his claims before the court.

The Learned Counsel in the written submission stated that by virtue of Section 131 (1) of the Evidence Act which provides that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. That the plaintiff has been able to establish by cogent, compelling and verifiable evidence his claim and thus entitled to judgement. That for a party to succeed in a claim of declaration to title, he must establish or prove how the property devolve on him.

That the plaintiff in proving his claim to title has tendered Exhibit SO2, the original letter of offer dated 16th August 2005 which has the acceptance column clearly signed by the plaintiff and his witness on 21/02/2007 making it a complete contract. That the plaintiff also exhibited SO1, the letter of authority given to one Oluwawanibe Paul to manage the property on his behalf; Exhibits SO3(1)-SO3(4) which are Water Board bills, certified true copy of Ruling delivered in another proceeding between the parties herein, the whatsapp chat history print out of the

conservation between the PW1 and his property manager and the certification thereof, as well as the email correspondences from the Defendant to PW1. The Counsel submitted that all those piece of evidence were neither contradicted nor controverted by the defendant and therefore urged the court to admit and act on same.

Furthermore the learned Counsel submitted that one of the ways of establishing title over a plot or parcel of land is by documentary evidence. He relied on the case of **USUNG V NYONG (2010) NWLR (PT. 1177) PG 83 @ 90 (RT.4) Per Omokri JCA** where the Court stated thus:

“There are five ways of establishing title to land. They are:

- a. By traditional evidence.***
- b. By production of documents of title which are duly authenticated;***
- c. By act of selling, leasing, renting out all or part of the land, or farming on it or on a portion of it;***
- d. By acts of long possession and enjoyment of the land; and***
- e. By proof of possession of connected or adjacent land and prove a better title to the land.”***

Counsel argued that flowing from the above authority, title to land or property can be proved by any of the following ways or combination of two or more of the above ways. He further relied on the case of **OYENEYIN & ANOR V AKINKUNGBE & ANOR (2010) 1-2 SC PG 1 @ PG**

19-20 PARA 20-5 Per O. O. Adekeye JSC (as he then was) where the Court held thus:

“Mere production of a valid instrument of grant does not necessarily carry with it an automatic grant of relief of declaration. The production of an instrument of grant of title carries with it the need for the court to inquire into a number of questions including:

- a. Whether the document is genuine and valid?***
- b. Whether it has been duly executed... ..***
- c. Whether the grantor had the authority and capacity to make the grant?***
- d. Whether the grantor had in fact what he purported to grant?***
- e. Whether it had the effect claimed by the holder of the instrument?”***

The Counsel referred the court to Paragraphs 4, 7, 8, 9, 10, 11 and 12 of the PW1’s written statement on oath to the effect that the plaintiff vide a provisional letter of offer dated 16th August 2005 by the Federal capital Territory Administration and the said offer was duly accepted by the plaintiff and since then, he has been in occupation of the said subject matter in dispute, albeit with the defendant residing with him as his spouse until she left the country for Canada. He also referred to Paragraphs 8, 9, 11, 12, 13, 15 and 16 of the adopted witness statement of oath by the plaintiff to the effect that the defendant has been sending

unknown persons to the plaintiff's property for inspection with a view to dispose of same without the plaintiff's prior knowledge or consent, and that the defendant has no legal or equitable interest in the subject matter in dispute, but have concluded plans to go and dispose of the plaintiff's property to unsuspecting buyers or innocent purchasers.

Counsel submitted rightly that the plaintiff have proved all the ingredients necessary to sustain his claim against the defendant. He relied on the cases of **CHAMI V UBA PLC (2010) 2-3 SC (PT. II) PG 92 @ PG95, TANKO V ECHENDU (2010) 12 SC PT. I PG 33 @ PG 69**. That the plaintiff's evidence remains unchallenged. That the defendant does not have any interest whatsoever on the subject matter and therefore confer upon herself the authority to dispose of a property she has no legal title over or a valid instruction from the original allottee to dispose of same.

I agree with the plaintiff's counsel that the claim of the plaintiff is undefended, unchallenged and uncontroverted by the defendant. It is trite that an unchallenged and uncontroverted evidence if credible are to be believed by the court and used as the true state of affairs. In a situation where the plaintiff's evidence is not rebutted by his adversary, the burden of proof on the plaintiff is discharged on minimal proof because there is nothing on the other side of the scale for the court to consider. See the case of **ALHAJI USMAN BUA V BASHIRU DADA (2003) 13 NWLR (PT. 838) 657, APROFIM ENG CONST. LTD V SIDOV LTD (2006) 13 NWLR (PT. 996) 73 CA.**

I therefore endorse the submission of Learned Counsel to the plaintiff that the plaintiff has discharged the burden of proof placed upon him by law as his evidence is highly probable and remain unchallenged by the defendant. Consequently judgement is hereby entered for the plaintiff based on the reliefs contained in paragraphs a-c, while the sum of **N10,000,000 (Ten Million Naira)** is awarded as general damages for illegal encroachment and trespass to the plaintiff's property known and referred to as Block 2, Flat 6, Mano Street, off Lukulu Street, Wuse 1 Zone 3, Abuja. Post judgement interest at the rate of 21% per annum is awarded against the defendant until judgement is liquidated and the sum of **N2,000,000 (Two Million Naira)** is awarded as cost.

SIGN

HON. JUDGE
___/11/2023