

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,
HOLDEN AT APO, ABUJA.**

**ON THURSDAY THE 17TH DAY OF NOVEMBER 2021
BEFORE HIS LORDSHIP:**

**HON. JUSTICE FRANCES ERHUVWU MESSIRI.
(JUDGE.)**

SUIT.NO. FCT/ HC/CV/566/2021

BETWEEN

MUSA GAYA

(Suing through his lawful Attorney Engr. Julius Amaechi)...CLAIMANT

AND

PERSON UNKNOWN..... DEFENDANT

[JUDGMENT.]

By a writ of summons dated and filed on the 25th day of February 2021, Musa Gaya suing through his lawful attorney Engr. Julius Amaechi is praying this honourable for the following :

(a)A DECLARATION that the Claimant is the title holder/owner of the piece of land described as Plot No. CM134and CM135, Ringin Dakwa

Layout, Abuja, covering total area of about 11300m² and 11500m² respectively.

(b) A DECLARATION that conveyance of provisional approval dated 28th August, 1998 granted to the Claimant's predecessor in-title is valid and subsisting.

(c) AN ORDER of perpetual injunction restraining the Defendant and his/her privies, servants, agents, attorneys, assigns, tenants, and/or person or persons claiming through, by or for him/her from trespassing on the said land as described as plot No. CM134 and CM135, Ringin Dakwa Layout, Abuja, covering total area of about 11300m² and 11500m² respectively.

(d) GENERAL DAMAGES of ₦20,000,000.00 (Twenty Million Naira) only being aggravated damages.

These reliefs are also contained in paragraph 18(a)-(d) of the plaintiffs' statement of claim filed along with his writ of summons.

One witness, Julius Amaechi testified as PW1 in support of the claim. He testified on the 7/7/2021, adopting his witness statement on oath dated 25/02/2021, and tendered eight exhibits, marked as Exhibits 1-8 respectively.

His evidence is that He was appointed lawful Attorney in September 2004 by the Claimant vide power of attorney tendered as exhibit 7. That the Claimant predecessor - in title one Abdullahi S. Madalla by a Conveyance of provisional approval dated 28th of August 1998 (exhibit 1&2) conveyed the plots of land in dispute with Customary Right of occupancy of Plot no CM134 and CM135 Ringin Dakwa layout Abuja covering total area of about 11300m² and 11500m² respectively.

That the Claimant's predecessor-in-title commenced the processing of the certificate of occupancy and was issued a receipt tendered as exhibits 3, 4, 5 and 6.

That the predecessor-in-title enjoyed undisturbed possession of the said Plot No. CM134 and CM135 Ringin, Dakwa Layout, Abuja from 1998 to 2002.

That the Claimant purchased the said land in 2002 for ₦5,000,000 (Five Million Naira) only, and that all necessary documents were executed.

That the Claimant has enjoyed peaceful possession for over 17 years until sometime in July 2020, when he saw some people trespassing on the plots of land.

That after the purchase of the said plots of land the Claimant cultivated various crops namely Corn, Cassava etc. without any form of trespass.

That sometime in January, 2020, the security guards placed at the plot of land by the Claimant informed him that some people are coming to the land and were pointing from one point of the land to another. And then in July, 2020, he saw some unknown persons with a surveyor measuring the said land, whereupon he enquired to know who they were but that they refused to give an explanation as to who they were.

That as a result of this, the Claimant has suffered a lot of financial damages by constantly placing security guard on the said plot of land. That the Defendant has refused to retract his/her step and has continued in his act of trespass on the Claimant's land and that no notice of revocation was ever issued or served on Claimant with respect of the land in dispute.

Throughout the duration of this case, the Defendant who is sued as a person unknown never attended Court despite being served with all the court processes and several hearing notices, and also filed no defence to the suit. Mr. Ajike Ukonu, learned counsel for the Claimant, filed his final written address on the 20/9/2021, raising a lone issue for determination. thus:

“Whether the Claimants are entitled to the reliefs sought in the case”?

It is submitted for the Claimant that since the inception of this case the Defendant failed to put in any appearance to defend this suit. That the Claimant, through their sole witness, gave evidence to prove their ownership of the land in dispute.

That all the documents tendered and admitted as exhibits prove that title to the land belongs to the Claimant. Learned Counsel referred to the case **OF KABURU PADA V. WOYA GALADIMA & ORS (2018) 3 NWLR PT 1907 436 @ 455 A-G AND MADU V MADU (2008) LPELR - 1806 SC** and submitted that the recognised ways of proving title to land is any of the five ways list below which requires to be proved on the balance of probabilities. :

- i. Proof of traditional history or evidence
- ii. Proof by grant or the production of document of title
- iii. Proof of acts of ownership extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons exercising such act is the true owner of the land.
- iv. Proof of acts of long possession; and
- v. Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such land

would in addition be the owner of the land in dispute. Citing the case of **OTUNLA V. OGUNOWO (2004) 6 NWLR (PT. 868)**, Learned Counsel contends that any of the above five ways to prove title is sufficient without more.

He contends further that the Claimants' evidence in this case is credible and reliable, and supported by all the documents tendered, and as such it should be accepted and acted upon by the Court. Learned counsel argued that the Defendant having failed consistently to put in an appearance or file a defence in this suit, having failed also to file anything, cross-examine the Claimant nor lead any evidence, must be seen to have accepted the truth of the evidence of the witness for the Claimant in respect of that case. Learned counsel referred this court to the case of **NJIOKWUEMENI V. OCHEI (2004) 15 NWLR (PT. 859) 196 AT 226-227 & NANNAV. NANNA (2006) 3 NWLR PT 966 1@ 49**. He argued that the Defendant is therefore foreclosed from denying the testimony of the Claimant in evidence and thus concluded that the Claimant has shown that the right of occupancy over the said piece of land known as Plot No. CM134 and CM135, Ringin Dakwa Layout, Abuja, covering total area of about 11300m² and 11500m² respectively was granted to his predecessor-in-title via the conveyance of provisional approval dated 28th August, 1998 which are still subsisting.

He drew attention to the fact that the entire evidence in this case has come from one side and is unchallenged and uncontradicted. He submitted that when evidence goes one way, the onus of proof is discharged on a minimal proof.

He further pointed out the fact that the Claimant in his statement of claim and testimony gave evidence that his predecessor in title

was issued with conveyance of provisional approval dated 28th of August, 1998 by the Bwari Area Council and which same conveyed provisional approval, which in turn is the subject matter of this suit, was transferred to him.

He then posited that the holder of a right of occupancy, whether evidenced by a certificate of occupancy or not, holds that right as long as it has not been revoked, and he will not lose the said right of occupancy by revocation without his being notified first in writing and the subsequent revocation must also be notified him in writing. He referred this court to the case OF **NIGERIA ENGINEERING WORKS LTD V. DENAP (2002) 2 MJSC 123 AT 45. REFERRING TO THE CASE OF ADELAJA V. ALADE (1999) 6 NWLR PT. 608 PG. 544**, he pointed out that the Claimant having sought to rely on the title document granted to his Predecessor- in title in proof of his title to the subject matter of this suit and tendered same has satisfied the burden of proof on him. He therefore urges this honourable court to grant his prayers .

It is settled that a party claiming declaration of title to land must succeed on the strength of his own case. What this means is that he must, on his own part, adduce cogent and credible evidence establishing his title to the land claimed. The weakness or absence of a defence, on the part of the Defendant, will not avail the Claimant where his own evidence proves inadequate or unsatisfactory in showing his ownership of the land. See **OTUNLA V. OGUNOWO (SUPRA) , EFETIROROJE & ORS. V. OKPALEFE II & ORS. (1991) 7 SC (PT.1)**

it is also the law that where the only evidence in a case is that of the Claimant, and it is unchallenged and undisputed, the onus of proof on him would be discharged on the minimal credible evidence adduced: see **BURAIMOH V. BAMGBOSE (1989) 2 NWLR (Pt.109) 352 at 363-364.**

Noteworthy is that the Defendant was served by substituted means and was fully aware of the institution and progress of this case all through the duration of the trial. He or she neither filed a defence nor otherwise contested, challenged or in any way contradicted the case made by the Claimant.

The evidence of the sole witness called by the Claimant has shown how the Claimant came into possession, and became entitled to ownership, of the land in dispute. Documents have been tendered, including a certificate of provisional right of occupancy, affirming title to the land in issue which the Claimant relies upon in seeking for declaration as title holder and owner of the land in issue.

By the authority of the principle stated by the Supreme Court in the case of **MADU V MADU (2012) . LPELR-7867, SC** On Who has the power to issue statutory right of occupancy in the Federal Capital Territory "Be it noted that it is well settled that the ownership of the land comprised in the Federal Capital Territory, Abuja is absolutely vested in the Federal Government of Nigeria vide **ONA V. ATENDA (2000) 5 NWLR (PART 656) PAGE 244 AT PAGE 267 PARAGRAPHS C - D.** See also Section 297(1) (2) of the Constitution of the Federal Republic of Nigeria, Section 236 of the Constitution of the Federal Republic of Nigeria, 1979 and Section 1(3) Federal Capital Territory, Act 1976. Section 18 of the Federal Capital Territory Act, Cap. 503 Laws of the Federation of Nigeria, 1990 vests power in the Minister for the FCT to grant statutory rights of occupancy over lands situate in the Federal Capital Territory to any person. By this law, ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vest same to every citizen individually upon application. Thus, without an allocation or grant by the Hon. Minister of the FCT, there is no way any person including the respondent could acquire land in the FCT."

one of the five ways of proving title to land is by the production of title documents. And it has been held that by the mere production of a C-of-O is prima facie evidence of title, until the adverse party can establish a better title. See **LATEJU V. FABAYO(2012) 9 NWLR (Pt.1304) 159 at 179.** In this case, the Claimant has not produced a C-

of-O issued in his favour over the land in dispute, the Claimanthasrather produced a conveyance of provisional Approval issued to his predecessor in-title, he hasalso led evidence to show that they had acquired a right to ownership of the land by purchase of the plots in dispute for a fee (though the said receipt of purchase is not exhibited nor tendered.) from the said predecessor in-title.

Let me quickly chip in here that in the case of **KARI V. GANARAM (1997) 2 NWLR (PT. 488) 380 AT PP. 401, 402** theApex Court per Iguh, JSC has this to say with regards to a temporary right of occupancy, A provisional approval cannot in my opinion, amount to the same thing, in law, as a statutory right of occupancy. A temporary right of occupancy, as its title implies, is essentially, limited or transient in nature.

It amounts to no more than a bare licence to occupy land on a temporary, and sometimes short-term basis and generally confers no legal estate in the grantee of such a right.

This is unlike a statutory right of occupancy which is clearly not temporary in nature, and confers more extensive rights on the holder, it is far superior to a temporary right of occupancy and usually confers on the holder, a legal estate in and over the property in question. Besides, unlike a statutory right of occupancy which shall be for a definite term, the duration of a temporary right of occupancy need not be for any fixed duration.

I am therefore not satisfied that based on the evidence before this Honourable Court, and in view of the decision in **MADU V. MADU (SUPRA** , the Claimant's claim for declaration of title or holder of ownership of the land in dispute has been credibly made out through the title documents tendered to the extent that his predecessor in – title was only entitled to an approval of a customary right of occupancy which is clearly so captioned in exhibit 1 and 2 and with the conditions to be fulfilled clearly listed in the said conveyance of provisional Approval respectively.

There is also nothing before this honorable court to show that the conditions listed on the face of the conveyance of provisional Approval were fulfilled by the Claimant's successor-title, neither is

the acceptance form referred to therein ,duly completed as contained in paragraph 4 of the conveyance of provisional approval placed before this honorable court. This court can therefore not validly declare the Claimant herein as the title holder/owner of the piece of land described as Plot No. CM134 and CM135, Ringin Dakwa Layout, Abuja, covering total area of about 11300m² and 11500m² respectively, neither can this honourable court declare that exhibit 1 and exhibit 2; that is the conveyance of provisional approval dated 28th August, 1998 granted to the Claimant's predecessor in-title as valid and subsisting.

Accordingly, from all said in this judgment the prayer (a) and (b) accordingly fail and are hereby dismissed. On the relief C which is an Order for perpetual injunction, there is unchallenged evidence of long possession of the land in dispute by the Claimant for over 17 years with the Claimant planting cash crop like cassava and maize. It is clear from the pleadings and evidence that the Claimant is entitled to this remedy.

It is trite law that damages can be awarded in favour of the owner of the land or a person lawfully in possession of land against a person who is shown to have trespassed therein. Since the trespass is continuing and further acts of trespass are still being threatened this is or an appropriate case for an order of perpetual injunction to ensure to restrain permanently further trespass by the Defendant **See FABUNMI v. AGBE (1985) 3 S.C. 28. See also OBANOR v. OBANOR (1976) 2 S.C." Per AGIM ,J.C.A (Pp. 70-71 paras. E)** relief 3 accordingly succeeds and is hereby granted. The general damages of ₦20m sought in relief the was unsupported by either the pleading or the evidence adduced. General damages are injury which the law presumes to flow naturally from the wrong complained of. They need not be pleaded or proved, and are generally incapable of exact calculation. The Court awards it based on the ordinary expectations

of a reasonable man, to assuage the loss caused by the action of the Defendant. **See YALAJU-AMAYE V. ASSOCIATED REGISTERED ENGINEERING CONTRACTORS LTD (1990) LPELR-3511(SC)**; Relief (d) seeks the sum of ₦20,000,000.00 (Twenty million naira) only as general damages. I think it is unreasonable in the circumstances of this case. I therefore make no award in favour of the Claimant by way of general damages against the Defendant who are unknown person as the court have been cautioned not to make orders that cannot be enforced. "There is certainly no point in making an order that the Court making it knows cannot be implemented". See the case of **PAM V MOHAMMED (2008) 5-6 SC (PT 1) 83 AT 144** where courts were enjoined in these words "do not make orders in vain." Per IYIZOBA, J.C.A (Pp. 20 paras. E) relief d therefore fails, same is hereby dismissed.

In conclusion this suit succeed in part to the extent that AN ORDER of perpetual injunction restraining the Defendant and his/her privies, servants, agents, attorneys, assigns, tenants, and/or person or persons claiming through, by or for him/her from trespassing on the said land as described as plot No. CM134 and CM135, Ringin Dakwa Layout, Abuja, covering total area of about 11300m² and 11500m² respectively is hereby granted.

(SGD)

HON. JUSTICE F.E. MESSIRI

17/11/2021

Legal Representation:

Uzoma Eneh holds the brief of Ajike Ukonu Esq. for Claimant