

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

ON THURSDAY THE 16TH DAY OF DECEMBER 2021

BEFORE HIS LORDSHIP:

HON. JUSTICE FRANCES ERHUVWU MESSIRI.

(JUDGE.)

CHARGE.NO. FCT/ HC/CV/565/2021

BETWEEN

1. OBY O. ODIFE -----CLAIMANTS
2. MA'AZU N. KUDU
(SUING THROUGH THEIR LAWFUL ATTORNEY, ENGR. JULIUS AMAECHI).

AND

PERSON UNKNOWN..... DEFENDANT

[JUDGMENT].

By a writ of summons dated and filed on the 25/2/2021, the 1st and 2nd Claimants suing through their Lawful attorney Engr. Julius Amaechi are praying this Honourable Court for the following :

(a) A DECLARATION that the Claimants are the title holders/owners of the piece of land described as Plot No. 2009 and 2010 Kubwa Extension 111B Layout, Kubwa, Abuja, covering total area of about 1000m² and 1000m² respectively.

(b) A DECLARATION that conveyance of provisional approvals dated 15th May, 2001 granted to the Claimants respectively are 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. 2009 and 2010, Kubwa Extension 111B Layout, Kubwa, Abuja, covering total area of about 1000m² and 1000m² respectively.

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

These reliefs are also contained in paragraph 19(a)-(d) of the Claimants statement of claim filed along with his writ of summons.

One witness, Julius Amaechi the Lawful Attorney testified as PW1 in support of the Claim. He testified on the 21/10/2021. At the hearing, he adopted his witness statement on oath dated and filed on the 25/02/2021, and tendered 8 exhibits, marked as Exhibits 1-8 respectively.

His evidence is that he was appointed Lawful Attorney by the 1ST Claimant vide irrevocable power of attorney on the 14/7/2010, and by the 2nd Claimant vide irrevocable power of attorney on 20/4/2011 as evidenced by Exhibits 7 and 8.

That the Claimants herein by Conveyance of provisional approvals dated 15/5/2001 (exhibit 1 & 2) were conveyed with Provisional Right of Occupancy (Customary) over plot NO. 2009 and 2010 Kubwa Extension 111B layout, Kubwa, Abuja covering total area of about 1000² each, with files number EN 1184 and EN 1632, Respectively.

It is the evidence of the PW1, that the Claimants commenced the processing of the Certificate of Occupancy for the said plots of Land and was issued a receipt tendered as exhibit 5 & 6. And further that the 1st and 2nd Claimants applied for the Regularisation of the title documents of the said Plots of land and were both issued with the Regularisation of land titles and documents of FCT Area Councils Acknowledgements dated 25th June, 2015 respectively (Exhibits 3 & 4). That they have enjoyed undisturbed possession of the said Plot No 2009 and 2010 Kubwa Extension 111B Layout, Kubwa, Abuja from 2001 to 2020.

That the Claimants enjoyed peaceful possession for over 18 years until sometime in July 2020, when they saw some people trespassing on the plots of land.

PW1 testified that the Claimants cultivated various crops namely Corn, Cassava etc. without any form of trespass thus far.

That sometime in February, 2020, the security guards placed at the plots of land by the Claimants informed them that some people are coming to the said plots of land and were pointing hands from one point of the land to another and even heard them discuss the size and price

It is his evidence that in August, 2020, the Claimants visited the land and saw some unknown persons with a surveyor measuring the said land, whereupon he enquired to know who they were but that they gave deaf ears to Claimants thus nearly turning into a combat.

That all efforts to identify the persons failed thus as a result of this, the Claimants has suffered a lot of financial damages by constantly placing security guard on the said plots of land.

With leave of Court, the Defendant was served the Originating process by substituted means to wit- pasting. Throughout the duration of this case, the Defendant who is sued as person unknown never attended Court despite being served with all the Court processes and several hearing notices. The Defendant filed no defence to the suit. It is apparent from the records of this Honourable Court that the defendant was duly served.

Mr. Uzoma Eneh , Learned Counsel for the Claimants, filed his final written address on the 8/12/2021, raising a lone issue for determination. thus:

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

It is submitted for the Claimants that since the inception of this case the Defendant failed to put in any appearance to defend this suit. That the claimants, 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 plots of land belongs to the Claimants. 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 listed 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 this Honourable Court.

He contends that the Claimants became vested with the rights of occupancy via the conveyance of Provisional Approvals dated 15/4/2001 respectively.

Learned Counsel submits 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 Claimants or lead any evidence, must be seen to have accepted the truth of the evidence of the witness for the Claimants with respect to this case. Learned Counsel referred this court to the case of **NJIOKWUEMENI V. OCHE (2004) 15 NWLR (PT. 859) 196 AT 226-227**. He argued that the Defendant is therefore foreclosed from denying the testimony of the Claimants' evidence and thus concluded that the Claimants have shown that the Right of occupancy over the said piece of land known as Plot No. 2009 and 2010, at Kubwa Extension 111 B Layout, Kubwa, Abuja, measuring 1000m² and 1000m² respectively were granted to the Claimants, and that the conveyance of provisional approval dated 15th May, 2001 granted to the Claimants are still subsisting.

Uzoma Eneh Esq. 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 on way, the onus of proof is discharged on a minimally.

He further pointed out the fact that the Claimants in their statement of claim and testimony gave evidence that they were issued with conveyance of provisional approval dated 15/5/2001, by the Bwari Area Council and which same conveyed provisional Approval, He Submitted 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 145. REFERRING TO THE CASE OF ADELAJA V. ALADE (1999) 6 NWLR PT. 608 PG. 544**, he pointed out that the Claimants having sought to rely on the title document granted to them with regards to the subject matter of this suit and tendered same have satisfied the burden of proof on them. Learned Counsel for the 1ST and 2nd Claimants therefore urged this Honourable Court to grant their prayers.

I have given submissions of Learned Counsel due consideration. The Law 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 part, adduce cogent and credible evidence establishing his/their 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 Claimants herein.

The evidence of the sole witness called by the Claimants has shown how the Claimants came into possession of the plots of land in issue, Documents have been tendered, including a Certificate of Provisional Right of Occupancy, affirming title to the land in issue which the Claimants relies upon in seeking for declaration as title holders and owners of the plots of land in issue.

By authority of the principle stated by the Supreme Court in the case of **MADU V MADU (2012) . LPELR-7867, SC** which was stated thus;

"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."

With the position of land ownership in the F.C.T stated above, I note, and agree with Learned Counsel Uzoma Eneh Esq. that one of the five ways of proving title to land is by the production of title documents

Indeed, 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 Claimants did produce a C-of-O issued in their favour over the plots of land in dispute, the Claimants rather produced a conveyance of Provisional Approval issued to them,

Let me quickly chip in here that in the case of **KARI V. GANARAM (1997) 2 NWLR (PT. 488) 380 AT PP. 401, 402** the Apex 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 Claimants claim for declaration as title holder or as owner of the plots of land in dispute has been credibly made out through the title documents tendered to the extent that the 1st and 2nd Claimants are only entitled to an approval of a Provisional Customary Right of Occupancy which is clearly captioned in Exhibits 1 and 2. Same is clearly with conditions to be fulfilled by the Claimants which are clearly listed in the said conveyance of provisional Approval respectively.

There is also nothing before this Honourable Court to show that the conditions listed on the face of the conveyance of provisional Approval that is Exhibits 1 and 2 were fulfilled by the Claimants who only tendered a Regularization Of Land Titles and Documents of the FCT Area Councils acknowledgment with respect of the Provisional Customary Right of Occupancy, the Claimants did not mention the acceptance form referred to therein as duly completed as contained in paragraph 4 of the conveyance of provisional approval placed before this Honourable Court neither is there anything placed before this Honourable to show that the other conditions listed in the Exhibits 1 and 2 have been complied with. This Honourable Court can therefore not validly on the strength of the Provisional Right of Occupancy declare the 1st and 2nd Claimants herein as the title holders/owners of the piece of land described as *Plot No. 2009 and NO. 2010 Kubwa Extension 111B Layout, Kubwa, Abuja, covering total area of about 1000M² and 1000M² respectively.*

Neither can this Honourable Court pronounce that the said provisional approval dated 15/5/2001 granted to the 1st and 2nd Claimants are valid and subsisting.

Accordingly, from all said in this Judgment the prayer (a) and (b) hereby 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 1st and 2nd Claimants for a period of over 18 years. I hereby hold that from the pleadings and evidence before this Honourable Court, the Claimants, have shown equitable interest entitling them to this remedy. Relief c, accordingly succeeds.

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)** 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 Claimants by way of general damages against the Defendant who are unknown person as the

Courts 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. d) relief d therefore fails, same is hereby dismissed .

In conclusion this suit succeeds 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 plots of land described as plot No *2009 and 2010 Kubwa Extension 111B Layout, Kubwa, Abuja, covering total area of about 1000M² and 1000M² respectively* , is hereby granted.

HON. JUSTICE F.E. MESSIRI

16/12/2021

Legal Representation:

Uzoma Eneh Esq, holds the brief of Ajike Ukonu Esq. for Claimants.