

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE GWGWALADA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 13 GWAGWAGLADA  
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU  
ON THIS 11<sup>TH</sup> DAY OF MARCH 2024

FCT/HC/CV/1337/2021

BETWEEN

ANONI SANI -----CLAIMANT

AND

1. MR. J. U. OKON -----DEFENDANTS

2. PETER EDET

*ADAMS O. IMUEKEMHE for the Claimant.*

*Defendants not in Court and not Represented.*

**JUDGEMENT**

The Claimant's claims are:

1. Declaratory relief that he is the beneficial owner of Plot 395, Lugbe 1, Layout, Abuja measuring about 1,000sqm with Customary Right of Occupancy dated 15/6/1996 and a Certificate of Occupancy dated 24<sup>th</sup> June 2003.
2. An Order of perpetual injunction restraining the defendants acting by themselves or through their agents, privies, sureties, assignees, representatives, servants and any person or entity claiming through them from any act of trespass on Plot 394, Lugbe 1, Abuja.
3. The sum of **N5,000,000 (Five Million Naira)** as general damages against the defendants.

4. The defendants to pay **N1,000,000 (One Million Naira)** being cost of this action.
5. Any other orders as this Honorable Court may deem fit to make in the circumstance.

The Claimant in his adopted witness statement on oath averred that he is suing through his lawful attorney, and is a beneficial owner and allottee of Plot R 395, Lugbe 1, Layout, Cadastral Zone 07 – 07 Abuja while the 1<sup>st</sup> defendant is the person from whom the 2<sup>nd</sup> defendant is purported to have acquired the Claimant's plot of land that the Plot R 395, Lugbe 1 was allocated to the Claimant vide a Customary Right of Occupancy dated 15/6/96 and a Certificate of Occupancy dated 24<sup>th</sup> June 2003. Relying on the TDP, the witness claimed that the land is bordered by Plot R394 by the left and Plot R 382 by the Right. The witness further stated that while the Claimant was taking steps to develop the property the 2<sup>nd</sup> defendant confronted the Claimant's lawful attorney alleging that he acquired the said plot of land from the 1<sup>st</sup> defendant. And when the 2<sup>nd</sup> defendant was requested to come forward with his title documents all he provided was a judgement delivered by Honorable Justice A. O. Ukachukwu of the FCT High Court in Suit No. FCT/HC/CV/390012 between Engr P. J. Sumu and Mr. J. U. Okoro (2<sup>nd</sup> Defendant). That the judgement did not in any way vest the title of the plot on the 1<sup>st</sup> defendant. That the claimant is in possession of the said plot of land and did not only fence it but also put Jacqleen Terser Tseyo in the land as she operates a restaurant on the said plot. The PW1 tendered six documents admitted as Exhibits A1 – A6 respectively. While the PW2 also adopted her witness statement on oath

and confirmed the testimony of the PW1 that the Claimant is in possession of the land while she operates a restaurant on the disputed plot of land.

From the record of the court, the defendants were served by substituted means vide pasting of the originating process and subsequent hearing notices at Plot No. R 395, Lugbe 1 Layout Cadastral Zone 07 – 07 Abuja, the subject matter of this suit, but were not present nor represented throughout the trial. The claim of the plaintiff stands undefended. However, since the Claimant's relief 1 is a declaratory in nature, the burden is on the Claimant to prove his entitlement to the declaratory relief sought. See **KURSHAMBA & ANOR V ISA (2018) LPELR 45983 CA** where the Court held:

***“Declaratory reliefs are not granted as a matter of course and on a platter of gold. They are only granted when credible evidence has been led by plaintiff or persons making the declaratory relief. It is the practice that a declaratory relief will be granted where the Plaintiff is entitled to the relief in the fullest meaning of the word. It is the law that the Plaintiff must plead and prove his claim for a declaratory relief without relying on the evidence called by the defendant. Such declaratory relief is not granted even on admission by the defendant.”*** - Abiriji JCA.

See also the case of **ILYA & ANOR V LAMU & ANOR (2019) LPELR 47048 CA, IKE & ANOR V ANUDIK & ORS (2018) LPELR 45085 CA.**

In the light of these authorities the Claim of the Plaintiff shall be examined viz-a-viz the evidence adduced in the witness statement on

oath. The Claimant's witness claims to be his attorney and have tendered Exhibit A1, the Power of Attorney as an instrument of his authority. A power of attorney is defined in the case of **UDEH V UWARA (1993) LPELR 3289 SC** as; *"a document usually but not always necessarily under seal, whereby a person seized of an estate in land authorizes another person (the donee) who is called his attorney to do in the stead of the donor anything of which the donor can do, lawfully usually clearly spelt out in the power of attorney. Such acts may extend from receiving and giving for rates and rents from to giving of same to third parties. It may be issued for value i. e consideration or may be coupled with interest, in either case it is usually made to be irrevocable either absolutely or for a limited period (see SS 8 and 9 of the Conveyance Act of 1881 which is still applicable in the Rivers State under Section 15 of the High Court Laws)." Per Nnaemeka Agu JSC.*

See the case of **OKERE V AKALUKA (2014) LPELR 24287 CA.**

Exhibit A1 is an irrevocable power of attorney donated by the Claimant to the witness and which amongst other things gave the donee the right to take immediate possession of the property and commence improvements and further improvements for the unexpired terms granted in the offer of the terms of the grant/conveyance of approval.

The witness claimed that while he was trying to develop the plot, the 2<sup>nd</sup> defendant confronted him, claiming that he acquired the said plot from the 1<sup>st</sup> defendant, and is thus asking for an order of perpetual injunction restraining the defendants either by themselves, agents, sureties or privies

from any act of trespass on the said plot, thus putting the title of the Claimant in issue. From paragraph 16 of the power of attorney (Exhibit A1) it is coupled with valuable consideration. In the case of **KEMBA ENGINEERING SERVICES CO LTD V FIRST CHOICE PROPERTIES LIMITED & ORS (2022) LPELR** the court held on the effect of an irrevocable power of attorney thus:

***“In the Supreme Court case of MALAMI V OHIKHUARE (2019) 7 NWLR (PT. 1670) PG 132 @ 157 PAR E, it was held Per Aka’ah JSC that; An Irrevocable Power of Attorney given for valuable consideration robs the donor of powers conferred on the donee” – Per Idris JCA.***

Furthermore in paragraph 2 of the Power of Attorney it states, *“Whereas Anoni Sani as Donor is desirous of donating all his powers, interests, rights and authority in and over the said property to Mr. Oyebanji Mosunmoy Adeyemo as Donee.”* And went further to state in the next paragraph that he has *“donated all his power, rights, privileges and authority over the said property with the offering of the terms of grant/conveyance and to do and execute in his name or in my name all or any of the act of the following...”* It is not in doubt that the Claimant by the powers conferred on the done in Exhibit A1 have alienated all his rights on the property to the done. The pertinent question to ask is; whether in the light of these powers, can the Claimant still be accorded the right of the beneficial owner of the property, having transferred vide the power of attorney the unexpired terms in the Right of Occupancy to the done? The answer is in the negative. The role of the court is to give and interpret a document executed by parties to reflect their intentions nothing more, nothing less.

The plaintiff therefore cannot succeed in his claim for a declaratory relief as beneficial owner of the property.

Going further in the prayer for a perpetual injunction restraining the defendants, servants, agents or privies or anybody claiming through them; this prayer cannot also stand. An order of perpetual injunction can only be sustained where an order for declaratory relief to title succeeds. See the case of **UDO V ANYAKANA (2016) LPELR 41192 CA**, where the Court of Appeal held:

***“The grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by the court.”***

What the Plaintiff establishes from the document tendered was merely equitable title to the property. The claimant is therefore not entitled to perpetual injunction. The relief fails and it is hereby dismissed.

Finally, I hold that all other claims by the plaintiff for general damages and cost cannot stand. The plaintiff entire action fail and is hereby dismissed accordingly.

**SIGN**

**HON. JUDGE  
11/3/2024**