

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 21 WUSE ZONE 2 ABUJA  
BEFORE HIS LORDSHIP: HON JUSTICE A.S. ADEPOJU  
ON THE 1<sup>ST</sup> DAY OF JUNE 2020**

**SUIT NO: FCT/HC/CV/837/2017**

***BETWEEN***

- |                                |       |                   |
|--------------------------------|-------|-------------------|
| <b>1. CHINYERE CHRISTOPHER</b> | ----- | <b>PLAINTIFFS</b> |
| <b>2. OKPE AJII</b>            |       |                   |

***AND***

- |                              |       |                  |
|------------------------------|-------|------------------|
| <b>1. MR. ODOGWU DENNISS</b> | ----- | <b>DEFENDANT</b> |
|------------------------------|-------|------------------|

***Plaintiff not in court and not represented.  
Bartholomew Opara for the defendant***

**JUDGEMENT**

The plaintiff in a further amended statement of claim dated the 26<sup>th</sup> day of October 2017 claims against the defendant as follows:

- (1) A declaration that the property known as Plot 2273 Lugbe 1 Extension Layout, Lugbe, Abuja (also known as Plot 3253 Cadastral Zone E30, Lugbe West District) and evidenced by Right of Occupancy No. MFCT/ZA/AMAC/LUE 2273 granted to the 1<sup>st</sup> plaintiff by the Honourable Minister of Federal Capital Territory vide a letter captioned Offer of Terms of Grant/Conveyance of Approval dated 29/6/98; and duly accepted by the 1<sup>st</sup> plaintiff belongs to the 2<sup>nd</sup> plaintiff, being the lawful, legal and beneficial owner of the property.
- (2) A declaration that any subsequent purported allocation, re-allocation, sale or grant of any type of title in respect of the same Plot 2273 Lugbe 1 Extension Layout, Lugbe, Abuja to the defendant in any other name or to any other person or persons is unlawful, illegal, null and void and of no legal effect whatsoever.
- (3) A declaration that the act of trespass and forceful entry into the said property and demolition of the plaintiff's concrete fence and removal of

plaintiffs' building materials by the defendant is unlawful, criminal, oppressive and provocative.

- (4) An Order of perpetual injunction restraining the defendant, either by himself, his servants, privies, agents or by whatever name called from interfering or doing anything whatsoever including revocation, alienation, re-allocation or further encroaching on the rights and interest of the plaintiffs over said Plot 2273 Lugbe 1 Extension Layout, Lugbe, Abuja.
- (5) An Order of perpetual injunction restraining the defendant, either by himself, his servants, privies, agents or by whatever name called from trespassing or further trespassing, occupying or trying to occupy, encroaching or further encroaching on the rights and interest of the plaintiffs over Plot 2273 Lugbe 1 Extension Layout, Lugbe, Abuja (also known as Plot 3253 Cadastral Zone E30, Lugbe West District, Abuja).
- (6) ₦100,000,000 (One Hundred Million Naira only) damages for trespass and massive destruction and removal of plaintiffs' said properties.

In the statement claim which is akin to the witness statement on oath adopted by Okpe Ajii (the 2<sup>nd</sup> Plaintiff) on the 16<sup>th</sup> of April 2018, the 1<sup>st</sup> plaintiff is stated to be the original allottee of the disputed plot 2273 Lugbe 1 Extension Layout, Lugbe, Abuja measuring approximately 1,500sqm<sup>2</sup> as evidenced by the statutory Right of Occupancy No. MFCT/ZA/AMAC/LUE/2273 granted by the Honorable Minister of Federal Capital Territory vide offer of Term of Grant/conveyance of Approval dated 29/6/98. The 2<sup>nd</sup> plaintiff is said to have acquired interest in the disputed plot from the 1<sup>st</sup> Plaintiff through a deed of sale in 2006 and was consequently granted a change & offer of statutory Right of Occupancy by the Honourable Minister of the Federal Capital Territory.

A new file number BN 8973 was created for the 2<sup>nd</sup> plaintiff. He also paid upon demand the development and the Certificate of Occupancy processing fee.

The plaintiffs claimed to have been enjoying untrammelled possession of the land through planting of survey beacon, farming on the land, erection of concrete fence and depositing of building materials. The defendant is said to have presented himself as having interest on the disputed plot by producing fake offer letters purportedly given to him by one Violet Idoko. And that sometime in late December 2016, the defendant trespassed into the plots of land with heavily armed thugs, destroyed the plaintiff's concrete fence and carted away the properties on the land.

The plaintiffs claimed to have reported the conducts of the defendant to the police and to the Honourable Minister of Federal Capital Territory through a petition dated 14/1/2017, but in spite of the petition, the defendant have continued with the acts of trespass and have further been threatening to kill plaintiffs' workers or anybody they see on the site.

The following documents were tendered and admitted on behalf of the plaintiffs as exhibits:

- (1) Offer of Term of Grant/Conveyance of Approval dated 29/6/98 Exhibit DW1.
- (2) Letter of Acceptance/refusal of offer of grant of Right of Occupancy dated 5/8/1998 Exhibit DW2
- (3) Deed of sale dated 10/4/2006 Exhibit DW3
- (4) Offer of the Terms of Grant/ Conveyance of Approval dated 16/8/06 in the name of Okpe Ajii Exhibit DW4.
- (5) Development levy receipt dated 16/8/2006 Exhibit DW5.
- (6) AMAC Departmental Receipt in the received Okpe Ajii (2<sup>nd</sup> Plaintiff) Exhibit DW6.
- (7) Pictures Exhibit DW7 - DW9 with certificate of compliance.

Under cross examination by the defendant's counsel, the plaintiff replied to the following questions put to him: Question. In paragraph 4 of your amended statement of claim you have exhaustively told the court that the 1<sup>st</sup> plaintiff is the original allottee of Plot 2273 Lugbe 1 Extension Layout, Lugbe, Abuja (also known as Plot 3253 Cadastral Zone E30, Lugbe West District, Abuja). And in your Exhibit Pw1, is there any where written No. 3253 Cadastral Zone E30.

Answer: It is not there

Question: How did you come about plot 3253 in your statement on oath

Answer: The offer letter was given to me by AMAC.

Question: Plot No. 3253 is not in the original letter (Exhibit DW1)

Answer: It is the same what you talk about is not here in the Exhibit.

Question: In paragraph 2 of your statement on oath, you said the 2<sup>nd</sup> plaintiff is the bonafide owner. (Witness read out the paragraph) in your Exhibit Dw3, you tendered before the court (deed of sale) does it convey the title to you as the owner of the plot.

Answer: "Yes because it serves as a receipt".

The witness was further asked if he has an approved data plan for the commencement of the building, he answered that it is still in progress. The plaintiff maintained that he conducted a search in the data plan. He is not aware that the defendant has been issued a customary Certificate of Occupancy in respect of the plot. To another question, he claimed that he is not aware that all the documents in possession of the defendant are in the system of Abuja Geographical Information System, to another question, he stated that he has paid for the certificate of occupancy since 2006. He is not aware that the defendant has been issued the certificate of occupancy in respect of the disputed plot since 2003, before his own application. That application is in the process at the minister's office, that it is not true that Abuja Geographical Information have stopped documentation since 2010.

The plaintiff's testimony under cross examination ended, there was no re-examination. The plaintiff counsel closed his case accordingly.

In defence of the Plaintiff's claim the defendant averred that the 1<sup>st</sup> plaintiff's name was fraudulently used on the pretence that 1<sup>st</sup> plaintiff also sold the same plot with fake document that never existed in the record of the Abuja Municipal Area Council (AMAC). The defendant maintained that Chinyere Christopher was the original allottee of the disputed plot with Right of Occupancy and a Certificate of Occupancy. And that one Violet Idoko purchased the plot from the Chinyere Christopher the defendant further asserted that Violet Idoko appointed the defendant as her legal attorney vide an executed Power of Attorney. That he and Violet Idoko regularized his title documents both at the land Registry of the Abuja Municipal Area Council and Abuja Geographical Information system (AGIS). The defendant denied trespassing or destroying the plaintiff's property as alleged. That the only valid name in the system of Abuja Geographical Information System is that of the said Violet Idoko in respect of the disputed plot. The defendant's witness Dennis Odogwu adopted his witness statement on oath on the 16<sup>th</sup> day of October 2018 and was cross-examined by the plaintiff's counsel. The documents tendered and admitted as exhibits on behalf of the defendant are:

- (1) Offer of Terms of grant/Conveyance of Approval dated 20/2/2000 in the name of Violet Idoko. Issued by Abuja Municipal Area Council Exhibit DW1.
- (2) Abuja Municipal Area Council Departmental Receipts for processing.
- (3) Irrevocable power of Attorney in favour of Dennis Odogwu exhibit DW2 ... forms Development levy for three (3) years, payment for certificate of Occupancy bill, Exhibits or Dw3, DW 4, and Dw5.
- (4) Certificate of Occupancy (customary) issued to Violet Idoko dated 12<sup>th</sup> February 1999 Exhibit DW6.

(5) Title Deed plan Exhibit DW7.

Under cross-examination, the witness stated that he is a secondary school Certificate holder. To another question, he said his lawyer prepared his statement on oath for him to sign. That what qualifies him as the owner of the plot is the Certificate of occupancy (customary), the offer letter and the title Deed plan. He agreed that his name is not on the Certificate of Occupancy & the offer letter has changed to Violet Idoko's name, but his name is on the agreement. Apart from the power of Attorney, there is no other document that bears his name. With this answer, the cross-examination of the witness was brought to an end, there was no re-examination the defendant closed his case on this note.

Sequel to an order for extension of time dated 23<sup>rd</sup> October 2019 the defendant's already filed and served written address, was allowed with a further order deeming the process as properly filed & served. The plaintiff's final written address was also allowed by the court. The counsel to the parties adopted their respective written address as their oral arguments. I have taken a calm and insightful consideration at the arguments canvassed by the learned counsel for the parties in their final written address and wish to state that I found the argument of counsel to the defendant very confusing, and incoherent. The learned counsel appeared to me to have dubbed an address in respect of an application for interlocutory injunction, otherwise how would counsel have been referring to a suit filed and fought on pleadings as an application, by urging the court to refuse the plaintiff's application. He kept on referring to pleadings as affidavit in the address. Furthermore, the facts pleaded by the defendant were inelegantly drafted, very unwieldy and bereft of clarity. The law of pleading is that only material facts are pleaded, with precision in a very terse and clear language. This is to enable the court and the other sides identify issues joined by the parties and for resolution by the court. See the case of *Okonkwo & Anor V Okolo* (1988) LPELR 2481 SC where the supreme court per Oputa JSC held pleadings ought to be precise in order to enable the parties and the court identify easily the issues calling for a decision in the case" ***see Folaranmi & Anor & Akinyemi or (2018) LPELR 44985 CA.***

I have been able to painstakingly wade through all the sea of submission and argument of learned counsel to the defendant, the only issue that I am able to garner and make out of his argument is whether or not the plaintiff was able to establish his title to the disputed plot. And it is also similar to the issue formulated by the learned counsel to the plaintiff to wit whether the plaintiff have proved their case by preponderance of evidence to be entitled to their claim in this suit.

As rightly submitted by learned counsel to the defendant, in an action for declaration of title to land, the onus is on the plaintiff to establish by credible and cogent evidence his entitlement to the reliefs sought. The plaintiff must rely on the strength of his evidence and not on the weakness of the defendant's case. This is trite and there are plethora of cases in support this contention: ***See the cases of Edosonwan V Ogbeyfun 1996 LPELR 1019SC, Adeleke & Ors V Iyanda & Ors 2001 LPELR 114SC, Maiwada V Danladi 2015 LPELR. 25923CA Elias V Omo Bare (1982) LPELR 1116 (SC)***

It is also trite that a party seeking declaration of title to land must rely & prove any of the five ways stated in the locus classicus case of *Idundun V Okumagba SC (1976)9 -10 SC 227*, to wit:

- (1) Traditional evidence
- (2) By production of document of title
- (3) By proving acts of ownership
- (4) By proving acts of long possession
- (5) By proof of possession of connected or adjacent land.

***See Duru & Anor V Nwosu (1989) LPELR 968 SC Osua nuhu & ors V Chiegboka (2013) LPELR 19980 SC. Romaine V Romaine (1992) LPELR 2953.***

The learned counsel to the defendant contended in his written address that in both the land registry of Abuja Municipal Area Council and Abuja Geographical Information System (AGIS) there is no name like the name of the plaintiff in respect of the disputed plot except the name of Violet Idoko who after the purchase of the disputed plot in 2005 from the original allottee of the said plot (Chinyere Christopher) went ahead and regularized the land title and other document of the said plot. The learned counsel relied on Exhibit DW1, DW6, DW7 and DW8 respectively.

I am unable to agree with the submissions of learned counsel to the defendant because there is no nexus between the alleged offer of Terms of Grant/Conveyance of approval granted to Chinyere Christopher and the offer of terms of Grant to Violet Idoko. Was it through sale, or was it through change of ownership. How did the disputed plot devolve on Violet Idoko from Christopher Chinyere. The defendant has not been able to provide a credible answer to this question. The defendant ought to have called the said Violet Idoko as a witness. She is a vital witness to the defendant. Where there is a claim to ownership of a property, the party must adduce credible & convincing evidence on the root of his title. The defendant has failed to trace the root of his title which he claimed was from one Chinyere Christopher. The document which the defendant sought to

rely on was a photocopy and not certified by the Abuja Municipal Area Council; and consequently marked tendered but rejected, and therefore not admissible to prove the allocation of the plot to the said Chinyere Christopher. **See *Okafor V Effiong (2017) LPELR 42699 CA. Nigerian ports PLC V Beecham Pharmaceutical Pte Ltd & Anor (2012) LPELR 15538 (SC) ADDISON United (Nig) Ltd V Lion of Africa Insurance Ltd (2010) LPELR 3596 CA.*** Furthermore defendant pleaded that the document submitted to the court by the plaintiff were fake, fraudulent and that the name Chinyere Christopher was used in order to deceive the court. Where there is an allegation of crime in a civil suit, the burden of proof is beyond reasonable doubt. **See *Umezuegbu V Akwuzu Micro Finance Bank Ltd 2018 LPELR 4395 CA. Sec 135 (1) of the Evidence Act Cap E14 LFN 2011***

The issue of allegation of fraud or presentation of fake documents to the court by the plaintiff as alleged by the defendant is without basis, it is unfounded and therefore cannot be countenanced in any way. The documents tendered by the plaintiff were not impugned in any form by the defendant.

The defendant further anchored his claim to valid title on the offer of term of grant/conveyance of approved Exhibit DW3 in name of Violet Idoko and Exhibit DW6, the customary certificate of occupancy. The said customary certificate of occupancy was dated 12<sup>th</sup> February 1999 while the offer of Terms of grant/conveyance was dated 20<sup>th</sup> February 2000; which presupposes that the Customary Right of Occupancy was issued before the offer of Terms of Grant/Conveyance of Approval on the 20<sup>th</sup> of February 2000; furthermore, I endorse the submission of learned counsel to the plaintiff that the Certificate of Occupancy (Customary) allegedly by granted to the Violet Idoko be disregarded because the Chairman of Abuja Municipal Area Council has no power under any law to grant Right of Occupancy or Certificate of Occupancy to the said Violet Idoko or anyone at all. In respect of land within the Federal Capital Territory, it is also on record that the defendant admitted under cross-examination that the only document with which he claims title to the disputed property is the power of Attorney **Exhibit DW2.**

The Power of Attorney as it affects title to the disputed property is a registrable instrument as defined in the land instrument Registration law of Northern Nigeria.

This power of Attorney was not registered. It is therefore an in admissible document in law. The law is trite that an unregistered power of attorney does not confer title but only admissible to prove payment of money where it is coupled with letting into possession by the seller. **See *Okon V Okon 2014 LPER 22648 (CA) Ben V Zarma & ors (2015) LPELR 25924 CA.***

The defendant have failed to prove that he is in possession of the disputed property and has equally failed to dispute the claims of the plaintiff that he has being in possession of the disputed plot for the past 18 years as pleaded and attested to by the plaintiff in his evidence in chief. The defendant has failed to discharge the onus placed on him. The plaintiff claim to possession therefore remains unchallenged. With respect to the title documents submitted to the court by the plaintiff, Exhibit DW1- Dw4, I found them to be consistent with the evidence of the plaintiff witness in proving his claim to title of the disputed property. The position of the law with respect to title document submitted by parties is that such documents should be carefully scrutinized by the court to enquire

- (i) Whether the documents is genuine and valid
- (ii) Whether it has been duly executed, stamped and registered
- (iii) Whether the grantor had the authority and capacity to make the grant
- (iv) Whether the grantor had in fact what he purported to grant; and
- (v) Whether it has the effect claimed by the holder of the document. ***See Romaine V Romaine (1992) LPEIR 2953 SC. Surakatu V Adekunle (2019) LPEIP 4641 2(CA). Accelerated Educational Services Ltd & anor V Ekpo & Anor (2012) LPELR 19693 (CA).***

(1) I am satisfied with the documents of title produced by the plaintiff having passed the test stated in the above cited authorities. The plaintiff's interest in the property even though equitable in law is coupled with possession and can only be challenged by a person with a valid and better title. The defendant has failed to establish that it has a valid and better title. The plaintiff is therefore entitled to the order for declarations as sought. I hereby order and declare that the property known as plot 2273 Lugbe 1 Extension Layout, Lugbe Abuja (also known as Plot 3253 Cadastral Zone E30, Lugbe West District) as evidenced by Right of Occupancy No. MFCT/ZA/AMAC/LUE 2273 granted and conveyed to the 1<sup>st</sup> plaintiff by the Minister of Federal Capital Territory vide a letter captioned offer of Terms of grant/conveyance of Approval dated 29/6/98 and duly accepted by the 1<sup>st</sup> plaintiff belongs to the 2<sup>nd</sup> plaintiff being the lawful and beneficial owner of the property.

(2) That any subsequent purported allocation, reallocation, sale or grant of any type of title in respect of the same plot 2273 Lugbe 1 Extension Layout Lugbe Abuja to the defendant as any other name or to any other person or persons is unlawful, illegal, null and void and of no effect whatsoever. With respect to the allegation of trespass and forceful entry by the defendant, the plaintiff in paragraph 8 of the amended statement of claim averred that

sometime in late December 2016, the defendant on different dates trespassed into the plaintiff's said plot of land with heavily armed thugs and destroyed plaintiff's concrete fence carted away the plaintiff's properties on the land claiming ownership of the plot. The scene of the destruction was captured by camera. Photographic evidence shall be relied upon trial.

- (3) In denial, the defendant in paragraph 10 of his statement of defence averred ***“further to paragraph 8, 9, 10, 11 and 12 of the plaintiff's statements of claim, while the 3<sup>rd</sup> defendant will put the plaintiff's to the strictest proof during the trial of this suit, the 3<sup>rd</sup> defendant will also during the hearing of the suit contend that the plaintiff's have no valid title and document of the said plot of land at both land registry of the Abuja Municipal Area Council Abuja FCT and Abuja Geographical Information System (AGIS) respectively.”***
- (4) In traversing allegations of facts contained in a statement of claim, a defendant is to specifically deny such facts in a clear and categorical manner and not lumping up the issues as was done by the defendant in this case. ***See the case of Fairline Pharmaceutical Industry & another Vs Trust Adjusters Nig Ltd (2012) LPELR 20860 CA.***

The court of Appeal held “Now it is the law that a traverse is a categorical denial in a statement of defence of any fact specifically pleaded or alleged in a statement of defence. Though the law permits a general traverse which may come either at the beginning or the end of the statements of defence. It is the accepted principle of law in our jurisdiction that every essential and material allegation in a statement of claim must be clearly and categorically answered by a defendant. In that respect, a general traverse is not a good way of answering of such essential and material allegation in a statement of claim.

Accordingly every material allegation of fact in a statement of claim must be specifically answered or traversed. It means therefore that a general traverse is not enough to controvert material and essential averments in a statement of claim, and which averment may be a crucial issue in the plaintiff's claim. In that respect, the law requires that every essential and material allegation in a plaintiff's claim or pleading should not be answered in a statement of defence by a general denial or traverse but must be specifically traversed, because that is the only way such denial can be meaningfully traversed to an issue in a claim by the plaintiff. The denial or traverse in a defendant's pleading must therefore be frontal and direct and must answer to the specific allegation in the plaintiff's claim. Where an allegation in the statement of claim is not specifically denied or the denial is ambiguous and evasive, it would be deemed that the defendant has

admitted the specific averment in the plaintiff's pleading. ***See Amuzie Vs Asonye (2011) 6 NWLR (Pt 1242) Pg 19, Eze V Okoloagu (2010)3 NWLR Pt 1180 Pg, 83, Ali Vs Salihu (2011)1 NWLR 1228 Pg 227, CBN V Dinneh (2010)7 NWLR (Pt 1221) Pg 125, and Banugbegbu Vs Oviare (2009)13 NWLR (pt 1158) Pg 370, see also Adebuyi Vs Okebionu (2009)15 NWLR (Pt 1165) Pg 576" per Isammani JCA***".

The summary of what I am saying is that the defendant have not by the averment in paragraph 10 of his pleading denied the allegation of trespass & forcibly entry into the disputed plot as alleged by the plaintiff. Also not denied as earlier stated is the fact that the plaintiff has been in possession of the property as claimed. The plaintiff has tendered the photograph of the alleged destroyed fence by the defendant, some materials dumped on the plot and the fencing of the disputed plot could be seen from **Exhibit DW7-DW9**.

On the probative value of the photograph, I could observe from Exhibit DW7 some pieces of broken block on the floor and some on top of the fence. I find it difficult to link the broken blocks with the allegation of forcibly entry and destruction of concrete fence by the defendant. It is not evident from the exhibits tendered, there is no proof of damages to the property. Trespass is a wrong against possession or the right to possession. ***See the case of Ayoola Vs Adebayo & or (1969) LPELR 25472 SC. Ekwere & Ors Vs Ujiegbu & Ors (1972) LPELR 1102 SC. PIARO Vs TENALO & ANOR (1976) LPELR 2919 SC.***

The claim of the plaintiff that the defendant invaded the property with armed thugs was not denied or challenged by the defendant. Trespass is actionable per se. It is an action by a person in possession it is an unauthorized interference or invasion of the property in possession of a party. A trespasser in occupation can maintain an action against another trespasser except a true owner of the property. ***See the case of Bassey & Anor Vs James 2012 LPELR 14418 (CA)*** where Garba JCA held "Another settled principle of law is that trespass is actionable per se without the need for proof of damages suffered or incurred as a result of the trespass. Since trespass is the unauthorized and unlawful interference into or invasion of exclusive possession, the slightest of such disturbance even if no injury or damages was caused thereby, would entitle a plaintiff to the award of some damages against the trespasser, to serve as deterrent to others or against further trespass. ***See Ajayi V Jolaoso (2004)2 NWLR 85689, UBA PLC V Sanja Pet. Co. Ltd Supra Okpeji V Minister of Agric (1997) 9 NWLR 522. 593. See the case of Echere & ors V Ezirike & ors (2006) LPELR 1000 SC. Akinterinwa & Anor V Odadunjiya(2000) LPELR 358 SC. MTN Nig. Communication Ltd V Aluko & Anor (2013) LPELR 20473 CA.***

Consequently based on the unchallenged evidence of the plaintiff, it is hereby declared that the act of the defendant by evading the property in exclusive possession by the plaintiff is unlawful, wrongful and provocative and in furtherance the order for perpetual injunction succeeds, the defendant, either by himself, servants agents or privies are hereby restrained from trespassing, or further trespassing, occupying or trying to occupy/encroach or further encroaching on the rights and interest of the plaintiff over the plot 2273 Lugbe 1 Extension Layout, Lugbe Abuja, also ( known as plot 3253 Cadastral Zone E30, Lugbe West District Abuja).

Finally the sum One Million Naira (N1,000,000) is awarded as damages for trespass.

**Signed**

**Hon. Judge  
1/5/2020**