

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/CV/1106/2013
DELIVERED ON THE 23/01/2025**

BETWEEN:

LAWAN S. ABUBAKAR.....CLAIMANT

AND

1. PRINCE SUNDAY BAMIDLE

2. BWARI AREA COUNCIL

3. LYDIA SARKI

(Joined by Order of Court made 1st February, 2016)

}DEFENDANTS

JUDGMENT

The Claimant initiated this action vide a writ of summons dated and filed on 18th day of November, 2013. By the amended statement of claim dated and filed on 29th April, 2016, the Claimant claims against the Defendants as follows:

- i. A Declaration that the Plaintiff having shown documents of title is entitled to the exclusive possession and quiet enjoyment of Plot No.292A of about 650 Square Metres at Kubwa Extension II Layout, Abuja, covered by an allocation letter dated 02/02/1995, issued by the Abuja Municipal Area Council on behalf of the Minister of the Federal Capital Territory.*
- ii. A Declaration that the action of the 1st Defendant and his agents in encroaching upon and attempting to construct on*

Plot No. 292A of about 650 Square Metres at Kubwa Extension II Layout, Abuja belonging to the plaintiff amounts to trespass.

- iii. An order of perpetual injunction restraining the Defendants (particularly the 1st Defendant), whether by themselves, agents, servants or privies howsoever from further trespassing on Plot No.292A of about 650 Square Metres at Kubwa Extension II Layout, Abuja belonging to the plaintiff.*
- iv. An order for the Defendants (especially the 1st Defendant) to pay to the plaintiff, the sum of Ten Million Naira (₦10,000,000) only as general damages for the embarrassment and disruption suffered by the plaintiff as a result of the actions of the Defendants and their agents.*

The Claimant before the plenary hearing of the case effected service on all the Defendants with the originating processes of the court. Upon receipt of the processes, the 1st and 3rd Defendants filed a joint statement of defence on 22nd March, 2018, while the 2nd Defendant filed its statement of defence dated 24th September, 2014 and filed on 25th September, 2024.

At the trial, the Claimant called a sole witness (Claimant) who adopted his witness statement on oath dated 29th April, 2016 and tendered seven (7) Exhibits and a Subpoenaed Witness who testified and tendered four (4) Exhibits. The 1st and 3rd Defendants filed joint statement on oath dated 22nd March, 2018 and called a lone witness (1st Defendant) who adopted the joint statement on oath and tendered four (4) Exhibits. Also, the 2nd Defendant file a witness statement on oath dated 25th September, 2024 but failed to adopt same before the court despite the opportunity given to it to do so.

The case of the Claimant as testified by the Claimant himself as PWI, is that he applied for a plot of land sometime in 1995, and Plot No. 292A of about 650 Square Metres at Kubwa Extension II Layout, Abuja was allotted to him by the Abuja Municipal Area Council acting on behalf of the Minister of the Federal Capital Territory,

Abuja. A letter of allocation (Offer of terms of grant/conveyance of approval) dated 02/02/1995 was issued by the Abuja Municipal Area Council on behalf of the Minister of the Federal Capital Territory to him. Also a Plan (TDP) preparatory to the issuance of a Certificate of Occupancy was also issued in his name. That after the plot was allocated to him, one Musa Jibrin Suleja who was then a staff of the Department of Development Control of the Federal Capital Development Authority (FCDA) was directed by his boss to show him his plot, which the said Musa Jibrin Suleja actually showed him. He (Musa Jibrin Suleja) also showed him the plot and the beacons and he took possession of land before the encroachment of the 1st Defendant.

That somewhere along the line, all files in respect of allocations involving plots situated in Kubwa and its environs were transferred to the 2nd Defendant (Bwari Area Council) and the owners of such plots (including himself) started dealing with the 2nd Defendant (Bwari Area Council). He submitted his documents in respect of the plot for re-certification sometime in 2006 and made payment in 2006. That he has been in possession and had carried out certain acts of physical possession including the fencing of the plot up to the waist level and also laid the foundation for 3 units of 2 Bedroom flats. But sometime in 2008 one Sunday Bamidele (1st Defendant) started encroaching on his plot by destroying part of the fence he erected and started constructing a building which extends from an adjoining plot into his plot, whereupon he laid a complaint to the 2nd Defendant (Bwari Area Council) and also to the police. But 2nd Defendant has not been serious with the handling of the complaint and the 1st Defendant has continued to perpetrate his trespass on the land. He thereafter wrote to Bwari Area Council in September, 2013 notifying them of his intention to proceed to Court. The Claimant tendered the following Exhibits in evidence to support his case:

Exhibit P1- Allocation Letter dated 2-02-1995

Exhibit P2- Site Plan dated 25-4-2000

Exhibit P3 -Application Form dated 3-7-2006

Exhibit P4 -Receipt (deposit slip) for recertification dated 3-7-2006

Exhibit P5- General Form of Affidavit dated 28-4-2016

Exhibit P6- Police Extract dated 29-1-2016

Exhibit P7-Notice of intention to serve legal process dated 16-9-2013

The Claimant concluded by asking the court to grant all his reliefs sought in this case.

Also, testifying at the instance of the Claimant, one Kingsley Ihamenin Esekbor Ifawebo, a Subpoenaed Witness, testified that it was due to Survey errors that some part of extension III FCDA Scheme (1st and 3rd Defendants Plot) overlapped over the earlier Extension 3 Annex (Claimant's plot) which is a much similar layout. And, in 2009 a committee was set up to look at issues of overlapping layouts which he was the Secretary and the Committee resolved that since Extension 3 annex (Claimant's plot) was first in time it should stand while the plots overlapping (1st and 3rd Defendants' plots) will be relocated to another layout. And for that reason, Plot **292A** (Claimant's plot) stands. That the Committee report was approved by Hon. Minister in 2018. He tendered the following Exhibits in evidence:

1.Exhibit SW1 -Report of Harmonisation committee on conflicting layout.

2. Exhibit SW2-Land use and allocation committee (LUAC) Ministerial approval.

3. Exhibit SW3-Solution plan.

4. Exhibit SW4-Letter from Director Urban and Regional Planning.

On the other hand, the 1st and 3rd Defendant's case as stated by the 1st Defendant (DWI) is that the 3rd Defendant was the allottee of Plot No **M553** of about **1000m²** in Kubwa Extension III (FCDA SCHEME) layout as confirmed by a legal search conducted at the 2nd Defendant's land Registry. The said plot **M553** was surveyed in the name of the 3rd Defendant with Right of Occupancy NO **FCT/BZTP/LA/AN325** with beacon numbers. The 1st Defendant bought the said land, i.e. Plot **M553** from the 3rd Defendant who executed a Sale Agreement/Power of Attorney in favour of the 1st Defendant. The 3rd Defendant who sold the said plot was granted Right of Occupancy over the land with new number NS **40633** by the 2nd Defendants. Meanwhile the 1st Defendant immediately took physical possession of the land and constructed the foundation and built mini boys quarters and Paint factory on it, which exist till date. The Plot No **M553** allocated to the 1st and 3rd Defendant is different from the Plaintiff's which he said is Plot NO. **292A** of about **650° m²** at Kubwa Extension II Layout. The DWI under cross examination testified to the fact that LYDIA SARKI had never come to court since the case commenced and the said LYDIA SARKI was the original allottee as the land was granted in her name. They tendered these Exhibits in evidence:

Exhibit D1- Search report and receipt of payment dated-12-3-2013

Exhibit D2- Acknowledgment of regularisation of land title dated 4-17-07

Exhibit D3- Power of attorney and sale agreement dated 4-6-2007

Exhibit D4- Survey plan of the R of O

They prayed the court to dismiss the suit.

As earlier noted, the 2nd Defendant who filed witness statement on oath did not appear in court to adopt it but only chose to address the court after the hearing of the case. That is their choice and legal strategy and nobody can query them.

Thereafter, the learned counsel on both sides addressed the court and referred me to several legal authorities. The learned counsel to the 1st and 3rd Defendants started by formulating three (3) issues for determination, to wit:

- 1. Whether the parties by their pleadings have made the identity of the land in dispute an issue before the court?**
- 2 Whether the Claimant has produced sufficient, cogent and consistent evidence (oral or documentary) to entitle him to judgment in a case of title to land?**
- 3. Whether a party to a suit must testify and tender documentary evidence in support of his case in person?**

The 2nd Defendant counsel-Kenechukwu Michael Nomeh, formulated a lone issue for determination, to wit:

"Whether from the state of pleadings and evidence led in support of same, the Claimant has successfully made a case for declaration of title to land?"

On the other hand, the Claimant's counsel, Omakoji Friday Abu Esq, submitted two issues for determination, to wit:

- 1. Whether, in view of the facts and evidence before this Honourable Court, the Claimant has proved his case to be entitled to the Reliefs sought in this Suit; and**
- 2. Whether the Defendants, in the entire gamut of their defence, have brought anything of value, in the light of pleading, evidence or even Address of Counsel, before this Honourable Court, to deny the Claimant of his Claim in this Suit.**

I have carefully gone through the evidence before the court in the light of the pleadings, the reliefs sought as well as the issues formulated by the parties for consideration. I am moved to adopt the issues raised by the 1st and 3rd Defendants' counsel for the determination of the case with slight modification with respect to

issue 2, to read "whether the Claimant has produced sufficient, cogent and consistent evidence (oral or documentary) to entitle him to judgment in this case ".

ISSUE I

1. Whether the parties by their pleadings have made the identity of the land in dispute an issue before the court?

The **1st** and **3rd** Defendants' counsel submitted that their plot of land is Plot number **M553**, of about **100m²** in Kubwa Extension (FCDA) Scheme which has the **3rd** Defendant as the original allottee while the Claimant contends that his own plot of land is Plot No **292A** of about **650m²** at Kubwa, Kubwa Extension II layout, Abuja. He argued that declaration of title to land can only be granted in respect of a piece of land with definite, precise and accurate boundaries. And the onus is on the Claimant who is claiming for title. He further submitted that the subpoenaed witness who tendered Exhibit **SW1**, **SW2** and **SW4**, testified that he has never been a staff of the **2nd** Defendant and claimed that **SW4** is from his Director, while **SW1-SW3**, are from the Federal Capital Territory Administration. Again, that he had no written authority to appear before the court in any official capacity. The counsel posits that the Claimant's land and that of the 1st and 3rd Defendants are not the same. Consequently, there is an issue as to the identity of the land the Claimant claims as plots 292A in Extension II, while the **1st** and **3rd** Defendants are claiming plots **M553** in Kubwa Extension III. He emphasised that from all indication the Claimant does not know the exact location of his land and it is trite that, if a Claimant in an action for declaration of title to land cannot produce sufficient, cogent and consistent evidence oral or documentary evidence then a court trying the case would be justified in dismissing the action. Counsel cited the case of **OWUDA V LAWAL (1984) 4 SC 145**. In urging the court to so hold.

The **2nd** Defendant's counsel submitted on this issue that both the Claimant and the **1st** and **3rd** Defendants failed to establish with certainty the real identity of the land in dispute. According to him, the

Claimant led evidence and tendered documents relating to a piece of land known as Plot **292A** of about 650 Square Meters at Kubwa Extension II Layout, Abuja as the land in dispute while the **1st** and **3rd** Defendants led evidence and tendered title documents relating to Plot No. **M553** of about **100m** in Kubwa Extension III (FCDA Scheme) layout as the land in dispute. He further submitted that both the Claimant and **1st** and **3rd** Defendants ought to have gone further to tender the layout of the area where the land in dispute is situated in order to establish whether the two allocations are in respect to the same plot of land. It is also his submission that the Claimant who is seeking for a declaration of title to land has the burden to give clearly, the identity of the land he is claiming relying on the cases of **OGEDENGBE V BALOGUN (2007) 9 NWLR (Pt.1039) 380; ADEBUSOLA V AKINDE (2004) 12 NWLR (Pt. 887) 295; and OKOCHI V ANIMKWOI (2003) 18 NWLR (pt. 851) 1**. He contended that the instant case is one of such cases where a visit to the locus in quo would have been ideal.

The Claimant's counsel in arguing the issue submitted that in 1995, the Claimant was allocated Plot No. **292A** of about **650** Square Metres, situate at Kubwa Extension II Layout, Abuja, and he has been in exclusive possession of the said Plot until 2008, when the 1st Defendant encroached on a portion of said land, destroying his erected fence and extended construction of a building from an adjoining land into the Claimant's plot, on the adverse claim that he (the **1st** Defendant) purchased the adjoining land, known as Plot No. **M553**, from one Lydia Sarki (i.e. the **3rd** Defendant), hence the dispute as to who is in exclusive possession of the said portion of the land and who is encroaching/trespassing thereupon became the issues before this Honourable Court.

The counsel posited that the Claimant in the course of hearing this matter, personally testified as the PW1, particularly tendering, without any hitch, Exhibits **P1, P2, P3** and **P4** establishing the root of his exclusive possession of Plot **292A**, measuring about **650** Square Metres, situate at Kubwa Extension II Layout, Abuja, before the

unfortunate trespass by the 1st Defendant. According to the counsel, the above undisputed position clearly demonstrates that the Claimant in prove of root of his possession of the land in dispute relied on documents, which is one of the valid ways of proving title in land matters, as settled by the Supreme Court in the case of **IDUNDUN & ORS V. OKUMAGBA(1976) LPELR-1431(SC) Pp. 23-26 PARAS. D-D.**

Now, from the pleadings and evidence of the parties above as well as the submissions of the learned counsel, it clearly seems the parties are not on the same page as regards to the identity of the land subject of this case. While the Claimant states that he is in exclusive possession of Plot No. **292A** of about **650** Square Metres, situate at Kubwa Extension II Layout, Abuja, allocated to him in 1995, which he alleges to have been trespassed by the Defendants particularly 1st and 3rd Defendants, the Defendants on the other side maintain that they are in their own Plot No. **M553** of about **100m²** in Kubwa Extension III (FCDA Scheme) layout and did not trespass to the Claimant's land. This no doubt shows that parties are diametrically talking about two different Plots of land. And if so, the question is; how does the issue of trespass arise? If both of them possess different plots of land and maintain exclusive possession of them as claimed, it follows that no issue has been joined on any particular plot being trespassed.

In an action for trespass, the area of the disputed land must be stated with clarity in order to identify the land trespassed upon and this is mandatory because where an area of land is uncertain, it will be difficult and impossible to prove trespass to the land. Further, because for a claim for damages in trespass to succeed, the party claiming has a duty to satisfy the Court that at the time of the alleged trespass he was in possession of the particular portion of land in respect of which trespass was committed. See **OGUNDIPE Vs AWE (1988) 1 NWLR (Pt 68) 118 at 123, IMAH Vs OKOGBE (1993) 9 NWLR (Pt 316) 159 at 172, and ICHU Vs IBEZUE (1999) 2 NWLR (Pt 591) 437**

This duty to establish the identity of the land in dispute with certainty is referred to as the foremost and fundamental duty of a person claiming an interest in land because where a Claimant fails to plead and establish the precise area of the land to which his claim relates, whatever evidence, whether oral or documentary, he produces at the trial and however cogent and credible the evidence might appear, it cannot in law, ground a claim of an interest in land in his favour - **IORDYE Vs IHYAMBE (2000) 15 NNILR (Pt 692) 675, IBHAFIDON Vs IGBINOSUN (2001) 8 NWLR (Pt 716) 653.**

In discharge of this duty, the Claimant in the course of hearing this matter, tendered Exhibits **P1, P2, P3** and **P4** establishing the root of his exclusive possession of Plot **292A**, measuring about **650** Square Metres, situate at Kubwa Extension II Layout, Abuja. Exhibit **P1**; is the offer of the Plot to the Claimant by the Abuja Municipal Area Council while Exhibit **P4**; is the Technical Deeds Plan (TDP) which is the actual representation of the Plot of Land, identifying the plot by coordinate properties; indicating the size and actual position. Exhibit **P2**; is Application for Regularisation of Title while Exhibit **P3**; is the proof of payment for the Regularisation of the allocation. A subpoenaed witness was also called at the instance of the Claimant by the name Kingsley Ihamenin Esekbor Ifawebo, who tendered Exhibits **SW1-SW4**, to clarify the identity of the plots. Exhibit **SW1** is report of Harmonisation committee on conflicting layout, Exhibit **SW2**-Land use and allocation committee (LUAC) Ministerial approval, Exhibit **SW3**-Solution plan, and **SW4**-letter from Director Urban and Regional Planning. These Exhibits were admitted without any objection but counsel to the Defendant in his address alluded to the fact that Exhibits **SW1-SW4** tendered by the subpoenaed witness, were not certified by the appropriate authority. It is not clear if the learned counsel is still raising eyebrows against the admissibility of these Exhibits but assuming that is the case, it ought not to attract any attention having been admitted in evidence without objection. But since these Exhibits are public documents which fall under the realm or category of evidence which is inadmissible in law if not proper

before the court, whether objected to or not, I will pause here to deal with the issue of certification of the Exhibits as raised by the counsel.

I have clearly gone through these Exhibits SW1-SW4, and they are public documents in original forms. And being in original forms, the issue of certification does not arise. It is only when the original public document is not available that the issue of the certified true copy which is the secondary evidence thereof is required. I am fortified on this position by the Supreme Court case of **ANAGBADO V ALH. IDI FERUK (2018) LPELR- 44909**. See also **ARAKA V EGBUE [2003] 33 WRN 1; MINISTER OF LANDS, WESTERN NIGERIA V AZIKIWE[1969] 1 ALL NLR 49**. Therefore, the exhibits aforementioned being original public documents, they were properly admitted in evidence and I so hold.

Turning to the evidence of the Subpoenaed witness, he gave an illuminating evidence that helped to resolve the identity of the plot under consideration. This is his evidence:

"Subpoenaed Witness: - I Kingsley Ihamenin Esekbor Ifawebo, male adult affirmed. I live at No. 5 Aquwa Gata Street Kubwa. I am a Civil Servant with FCDA. The subpoena was address to my Director U & R Planning FCDA. He asked that I represent the Department. There was no title attached to the subpoena, however I was able to deduce from the subpoena, it is an over Lapp of layout. The plot 292A fall on Kubwa Extension IIIAnnex layout which is a different layout from Extension III FCDA Scheme. Both layouts done 1 year after the other.Extension III Annex was done in 1995 while Extension III FCDA Scheme was done in 1996. Plot 292A is on Extension III Annex. While due to Survey errors some part of extension III FCDA Scheme overlapped over the earlier extension 3 Annex which is a much similar layout. In 2009 a committee was set up to look at issues of overlapping layouts I happen to be a member of that committee since 2010 and became Secretary in 2012.The Committee resolved that since Extension 3 annex was first in time it should stand while the

plots overlapping will be relocated to another layout. For that reason plot 292A stands. The Committee report was approved by Hon. Minister in 2018. However, the process of relocating plots affected has not taken place because of lack of funds to Survey the main site."

The above evidence is very apt and also awiper to this fog surrounding the identity of the land in question. The evidence did not only show the identity of the plots involved but also the party that has a better interest in the subject land. It clearly shows that the confusion created was as a result of survey error which led to the overlapping of the two layouts. According to the evidence which was unchallenged, the Claimant's plot **292A** fall on Kubwa Extension III Annex layout which is a different layout from the **1st** Defendant's Plot No. **M553** Extension III FCDA Scheme. That while the Claimant's Extension III Annex was done in 1995, the **1st** Defendant's Extension III FCDA Scheme was done in 1996. But due to survey error some part of extension III FCDA Scheme (**1st** Defendant's plot) overlapped over the earlier Extension III Annex (Claimant's plot). And the report of the committee which was approved by the Minister resolved that since Extension III Annex (Claimant's plot) was first in time, it should stand while the plot overlapping (**1st** Defendant's plot) will be relocated to another layout.

It is trite law, that where two parties have competing legal titles to a piece or parcel of land, the first in time prevails, and the subsequent one would be of no legal effect in confirming title in the same land. See the cases of **THE REGISTERED TRUSTEES OF THE ASSEMBLIES OF GOD MISSION V. ADAMU (2013) LPELR - 20778**, **KACHALLA VS. BANKI (2006) 8 NWLR (Pt. 982) (Pt. 982) 364 @ 384**

In **ELERAN VS. ADERONPE (2008) 11 NWLR (Pt. 1097) 50**, It was held that:

"Where two or more competing documents of title upon which parties to a land in dispute rely for their claims of title

to such land, the doctrine of priorities pursuant to the maxim qui prior esttempore, portierest jure (meaning he who is first has the strongest right) dictates that the first in time takes priority"

It is now crystal clear from the above evidence that the plot of the Claimant is the first in time and prevails over that of the 1st Defendant's as sanctioned by the minister and supported by the above judicial authorities. In essence, the Claimant has proved that with this earlier allocation to him coupled with all his activities on the land, he has exclusive possession of the said plot 292AExtension III plot of land alleged to have been trespassed is now clear and that is Plot **292A** Kubwa Extension III Annex, in exclusive possession of the Claimant. Therefore, the Defendants, probably, without knowing have been standing on the Claimant's plot of land arguing and joining issue with him on the said land. But I do not think the Defendants are unaware, because they should have been aware of SW1 (Report of the Harmonisation Committee approved by the Minister) and Exhibit **SW4** (letter from the Director of Urban and Regional Planning). By Exhibits **SW1** and **SW4**, the **1st** and **3rd** Defendants Plot is to be relocated to another layout. I think that is where the effort of the Defendants should be channelled instead of dissipating their energy on an issue that has been settled. Thus, if the plot is not yet reallocated, it is better the Defendants channel their energy in pursuit of same because the earlier the better. Once again, it is settled that the land in issue is Plot **292A** Kubwa Extension III Annex, under the exclusive possession of the Claimant. It is on this plot that parties have joined issues in this case and I so hold.

ISSUE II AND III

II Whether the Claimant has produced sufficient, cogent and consistent evidence (oral or documentary) to entitle him to judgment in this case?

III. Whether a party to a suit must testify and tender documentary evidence in support of his case in person

I will take the above issues II and III together. The learned counsel on both sides addressed the court on these issues. The 1st and 2nd Defendants' counsel submitted that in land cases, the burden of proof is on the party who is claiming interest in land or that a parcel of land belongs to him to satisfy the court that he is entitled on the evidence brought by him to a declaration that the land actually belongs to him. He has to rely on the strength of his own case and not on the weakness of the case of the Defendant relying on the cases of **ETIM Vs OYE (1978) 6-7 S.C. 91 at 97 - 98; and EZEUDU Vs ODIAGWU (1986) 3 SCI.**

He also submitted that the 3rd Defendant filed a joint statement of defence and testified through the 1st Defendant. And that there is no rule of law which mandates that a party to a suit in court, as in the case herein, the Defendant must personally be present in court to testify and tender documentary evidence in support of her case, in as much as the party's case can be proved or disapproved by other persons other than the litigant as done in the instant case through documentary evidence. That it is not a requirement of the law that the 3rd Defendant must come to court or testify in person, citing the case of **ONYEME Vs ONUMAEGBU (2016) LPELR 41092.**

On the other hand, the Claimant's counsel posited that the Claimant in proof of root of his possession of the land in dispute relied on documents, which is one of the valid ways of proving title in land matters, as settled by the Supreme Court in the case of **IDUNDUN & ORS V. OKUMAGBA (1976) LPELR-1431(SC) Pp. 23-26 PARAS. D-D.** According to him, the Claimant personally testified as the PW1, particularly tendering, without any hitch, Exhibits **P1, P2, P3** and **P4** establishing the root of his exclusive possession of Plot **292A**, measuring about **650** Square Metres, situate at Kubwa Extension II Layout, Abuja, before the unfortunate trespass by the 1st Defendant. The learned counsel further submitted that even though the 1st Defendant insisted that the 3rd Defendant should be joined in this Suit, the 3rd Defendant never came to Court or add her voice/word/fact or testimony whatsoever, to the case of the

Defendant. And all the documents purportedly came from the 3rd Defendant were all tendered by the 1st Defendant.

Now, on the position of the Claimant's counsel that the 3rd Defendant did not physically appear in court to testify and tender document in evidence, I must state that the position of the law is that a plaintiff or Defendant may prove his case without physically appearing to testify in court so long as they are ably represented by Counsel. In **NEWSPAPER CORPORATION v. ONI (1995) 1 S.C.N.J. 218 at 239-240**, the Supreme Court held thus:

"There is no rule of practice that requires a plaintiff in a Civil Suit to appear in person to prove his case if he can otherwise do so and that there is no rule which compels a Defendant to appear personally in court and testify before he may successfully defend an action against him"

Therefore, being guided by this authority, I hold that it is not mandatory that the 3rd Defendant in this case must attend to court physically to defend her case if she could otherwise do so. Hence the Claimant counsel's submission in this regard is discountenanced.

On the issue of proof of trespass by the Claimant, I will pause here first to state that trespass involves a wrongful entry into a land in possession of another who did not consent to the entry and is the slightest disturbance to possession by a person who cannot show a better title to land in question, See **ATUNRASE V SUNMOLA (1985) 1 SC 349**, and **ADEGBITE v. OGUNFAOLU (1990) 4 NWLR(146) 578**

Meanwhile, for a claim of trespass to succeed, a plaintiff must either show that he, in law, has exclusive possession of the land or that he is the owner of the land. The degree of control that amounts to exclusive possession sufficient to ground a claim on trespass, would vary from case to case and depends largely on the peculiarities of each case. Trespass is actionable at the suit of the person in possession of the land. He can sue for trespass even if he is neither the owner nor a privy of the owner. See **UDE v. CHIMBO (1998) 12 NWLR (Pt577)**

169 at 194;and ADELAJA V. FANOIKI (1990) 2 NWLR (Pt131) 137;

Meanwhile, in this case, the Claimant has shown as I earlier noted above that he has the possessory right and also in exclusive possession of the land in question. In doing so, he gave evidence and tendered Exhibit **P1** (Allocation Letter dated 02/02/1995), Exhibit **P2** (Site Plan), Exhibit **P3** (Application Form), Exhibit **P4** (receipt for recertification) and others. He further gave evidence of his activities and physical possession of the land including fencing of the plot and laying foundation for three (3) units of two (2) bedroom flats. All these had been in place according to the Claimant before the encroachment of the Defendants on the said plot. That being the case, the later activities of the 1st and 3rd Defendants on the plot of land by building mini boys quarters and paint factory thereon amount to trespass. Such action is an unauthorized and direct breach of the boundaries of Claimant's land. The much claim of the Defendants that they were allocated Plot No. **M553** Kubwa Extension III (FCDA Scheme) layout, which was later discovered to have overlapped the land in question is of no moment. In **HAJIYA SADIYA ADAMU V LEEDO PRESIDENTIAL MOTEL & ANOR (2015) LPELR-25918**, the court made it clear as follows:

"No intent to commit trespass is required so long as the act resulting in the trespass is violation and the resulting trespass is direct and immediate. It does not depend on the intention of trespasser, nor can he plead ignorance as to the true owner or that he thought the land belonged to him. It is enough that the right of the owner or person in exclusive possession was invaded. No man can set his foot on the ground of another without being liable to an action in trespass."

See also **DANTSOHO v. MOHAMMED (2003) 6 NWLR (Pt 817) 457, FAGUNWA v. ADIBI (2004) 17 NWLR (Pt 903) 544, YUSUFF v. KEINSI (2005) 13 NWLR (Pt 943) 554.**

Flowing from the above principle of law, the 1st and 3rd Defendants' encroachment on the land in question by building mini boys quarters and paint factory amount to clear trespass whether they are aware they were trespassing or not. In the light of the above, I am satisfied to hold that the Claimant has proved on preponderance of evidence that the 1st and 3rd Defendants trespassed on his land of which he has possessory right and also in exclusive possession. Thus, this claim of trespass hereby succeeds and the Claimant is entitled to relief sought in this regard.

On the claim for an injunction, the Claimant is seeking for an order of perpetual injunction restraining the Defendants (particularly the 1st Defendant), whether by themselves, agents, servants or privies howsoever from further trespassing on Plot No.292A of about 650 Square Metres at Kubwa Extension II Layout, Abuja, belonging to the Claimant. The law is settled that a person can only sue for injunction for trespass only if he is in possession. So once a plaintiff has established that he is in possession of the land in dispute, an order of injunction would naturally flow to protect his possession unless the Defendant proves a better title. See **COBHAM v. DUKE (2004)2 NWLR(Part856)p.150.**

The Claimant in this case has already proved that he is in exclusive possession of the land in question with a better interest thereto than the 1st and 3rd Defendants as shown above. To that effect, an injunction shall follow to protect the Claimant's possession against the 1st and 3rd Defendants who have not shown a better title to the land. This claim is proved by the Claimant and he is also entitled to it and I so hold.

On the claim for general damages, the Claimant is asking for an order for the Defendants (especially the 1st Defendant) to pay to the plaintiff, the sum of Ten Million Naira (**₦10,000,000**) only as general damages for the embarrassment and disruption suffered by the plaintiff as a result of the actions of the Defendants and their agents.

General damages are such as the law will presume to be the direct, natural or probable consequences of the act complained of. It was held in **YAU V. DIMKA (2001) FWLR (PT. 62) 1987 AT 2005** that general damages are such damages that can be given when a Judge cannot pin point any measure by which they may be assessed, except the opinion and judgment of a reasonable man. Again, a person may be granted damages for trespass and an injunctive relief even though there was no proof of ownership of the land; mere exclusive possession is enough. See **EZEOKONKWO V. OKEKE (2002) 5 S.C. (Pt. I)44, (2002) 11 NWLR (Pt. 777) 1 at 26; OLAGBEMIRO V. AJAGUNGBADE III (1990) 3 NWLR (PT. 136) 37; ADEBANJO V. BROWN (1990) 3 NWLR (PT.141) 66**. In this case, the Defendant stated how the Defendants' encroachment and building activities on the land led him to report the matter to the Bwari Area Council and the Police which caused him a lot of disruption and embarrassment. And also forestalls his peaceful enjoyment of the plot for many years. On this note, the Claimant is entitled to the claim of general damaged asked for. The claim also succeeds and I so hold.

On the whole, the Claimant has proved all his reliefs on preponderance of evidence as required by law. Thus, I enter judgment in favour of the Claimant on the following terms:

- I. It is hereby declared that the Plaintiff is entitled to the exclusive possession and quiet enjoyment of Plot No.292A of about 650 Square Metres at Kubwa Extension II Layout, Abuja, covered by an allocation letter dated 2/2/95 issued by the Abuja Municipal Area Council on behalf of the Minister of the Federal Capital Territory.**
- II. It is also hereby declared that the action of the 1st Defendant and his agents in encroaching upon and attempting to construct on Plot No. 292A of about 650 Square Metres at Kubwa Extension II Layout, Abuja belonging to the plaintiff amounts to trespass.**

III. The 1st Defendant and 3rd Defendant, whether by themselves, agents, servants or privies howsoever are hereby restrained from further trespassing on Plot No.292A of about 650 Square Metres at Kubwa Extension II Layout, Abuja belonging to the Claimant.

IV. The 1st Defendant shall pay to the Claimant, the sum of ₦1,000,000 (One million naira) only as general damages for the embarrassment and disruption suffered by the plaintiff as a result of the actions of the Defendants and their agents.

Parties shall bear their respective cost.

This is the judgment of the court.

**SIGNED:
HON. JUDGE
23/01/2025.**

APPEARANCE:

Isah Dokto Haruna, Esq, for the Claimant

Gbenga Adesina, Esq, for the 1st and 3rd Defendants

K. M. Nomeh, Esq, for the 2nd Defendant