IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS MONDAY, THE 24TH DAY OF FEBRUARY, 2025

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: GWD/CV/146/2020

BETWEEN:

MRS. R.O. OTUKOYA …….. PLAINTIFF/CLAIMANT

AND

YERIMA KUTUNKU …… DEFENDANT

JUDGMENT

By a Writ of Summons and Statement of Claim dated 1st December, 2020, the plaintiff claims for the following Reliefs:

1. **A Declaration of this Honourable Court that the Plaintiff/Claimant is the beneficial owner both in law and equity and has paramount title over Plots Nos. 474 and 475, Old Kutunku Compensation Layout, Gwagwalada Abuja together with all the perimeter fence the defendant has erected on the said plots of land.**

2. **A Declaration that the defendant's entry, mutilation, encroachment, trespassing and/or fencing of the said two adjoining plots of land being Plots Nos. 474 and 475, Old Kutunku Compensation Layout, Gwagwalada Abuja constitutes an act of trespass which is an actionable wrong per se which entitles the plaintiff/claimant to an action in damages.**

3. **A Declaration that the defendant's wrongful entry, mutilation, fencing, encroachment and/or trespassing upon the said two adjoining Plots of**

land being Plots Nos. 474 and 475, Old Kutunku Compensation Layout, Gwagwalada Abuja is wrongful, unconstitutional and void ab initio in its entirety.

4. **A Declaration that the plaintiff/claimant is entitled to claim damages against the defendant for the act of trespass, unauthorized entry and/or encroachment upon the said plots of land being plots Nos. 474 and 475, Old Kutunku Compensation Layout, Gwagwalada Abuja which is the bonafide property of the plaintiff/claimant.**

5. **A Declaration that the plaintiff/claimant is the bonafide owner, holder and/or allottee of the said two adjoining Plots of land being Plots Nos. 474 and 475 which situate at Old Kutunku Compensation Layout, Gwagwalada, Abuja, FCT.**

6. **An Order of Perpetual Injunction restraining the Defendant, the agents, privies, servants and/or assigns or in whatever name being so called from further acts of trespass upon the Plaintiff/Claimant's land presently or in the future from continuing with his present act of trespass on the said two adjoining Plots of land being Plots Nos. 474 and 475 which situate at Old Kutunku Compensation Layout, Gwagwalada-Abuja, FCT.**

7. **The Award of the sum of N25, 000, 000.00 (Twenty Five Million Naira) to the plaintiff/claimant against the defendant as general, aggravated and/or exemplary damages for trespass, destruction of property beacons, mutilation of the land and the unauthorized construction/building of perimeter fence round the said two adjoining Plots of land being Plots Nos. 474 and 475 which situate at Old Kutunku Compensation Layout, Gwagwalada-Abuja, FCT which are the bonafide property of the plaintiff/claimant.**

8. **The award of the sum of N50, 000.00 (Fifty Thousand Naira) only as special damages against the defendant in favour of the plaintiff/claimant as cost of the removed, the destruction and/or damaged property beacons of the plaintiff/claimant.**

9. **Cost of this suit as may be assessed by the Honourable Court at the final determination of this suit.**

The defendant on the record was duly served with the originating court processes. He appeared in court once and even briefed a counsel who entered appearance but nothing was filed on his behalf in response, all through the course of this proceedings. Indeed on record both defendant and his counsel altogether stopped coming to court despite service of hearing notices.

In proof of her case, the claimant called two witnesses, **Mr. Abnam Danjuma Diko** testified as **PW1**. He deposed to a witness statement on oath dated 16th December, 2020 which he adopted at the hearing.

Mrs. R.O. Otukoya, the plaintiff testified as **PW2**. She deposed to a witness statement on oath which she adopted at the hearing and tendered in evidence the following documents:

1. Two (2) conveyance of provisional approvals issued by Gwagwalada Area Council to claimant in respect of Plots 474 and 475 in Old Kutunku Comp. Gwagwalada both dated 18th January, 1999 were admitted as **Exhibits P1 and P2.**

2. Two (2) certificates of occupancy (customary) issued by Gwagwalada Area Council to claimant in respect of Plots No. 474 and 475 both dated 24th April, 2000 were admitted as **Exhibits P3 and P4.**

3. Two (2) FCTA Regularization of land titles and documents of Area Council acknowledgment dated 9th March, 2007 and 31st August, 2007 were admitted as **Exhibits P5 and P6.**

4. Two (2) Power of Attorneys between (1) Abdul Abdul and Mrs. R.O. Otukoya and (2) Abnar Danjuma Diko and Mrs. R.O. Otukoya dated 17th September, 1999 in respect of Plots 474 and 475 were admitted as **Exhibits P7 and P8**.

5. Four (4) land allocation receipts issued by Gwagwalada Area Council in the name of claimant were admitted as **Exhibits P9 (1-4).**

6. Two (2) FCDA official cash receipt for change of ownership for plots 474 and 475 were admitted as **Exhibits P10 (1 and 2).**

7. Letter written by the law firm of Ojo Olugbenga & Co. dated 12th March, 2020 to the Director Abuja Metropolitan Management Agency, Department of Development Control was admitted as **Exhibit P11.**

The plaintiff then prayed the court to grant her claims.

As stated at the onset both defendant and his counsel stopped appearing in court and nothing was filed in response despite service of the originating court processes and hearing notices. The Right of defendant to cross-examine PW1 and claimant and to defend the action was on application accordingly foreclosed.

Now I recognise that fair hearing is a fundamental element of any trial process and it has some key attributes; these include that the court shall hear both sides of the divide on all material issues and also give equal treatment, opportunity and consideration to parties. See **Usani V Duke (2004) 7 N.W.L.R (pt.871) 16; Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228.**

It must however be noted that notwithstanding the primacy of the right of fair hearing in any well conducted proceedings, it is however a right that must be circumscribed within proper limits and not allowed to run wild. No party has till eternity to present or defend any action. See **London Borough of Hounslow V Twickenham Garden Dev. Ltd (1970) 3 All ER 326 at 343.**

The Defendant here has been given every opportunity to respond to the case made out by Plaintiff against him but he exercised his right by not responding. Nobody begrudges this election. It is only apposite to reiterate that nobody is under any obligation to respond to any court process once properly served, if he so chooses. I leave it at that.

In the final address of claimant, one issue was raised as arising for determination, to wit:

"What (sic) the claimant has adduced enough evidence to be entitled to all the Reliefs she is seeking before this Honourable Court."

I must state that counsel to the defendant was also served with the final address of claimant on 17th July, 2024 which he acknowledged receipt of along with hearing notice but he chose or elected not to respond or to appear in court.

On the state of the pleadings and evidence, the issue distilled by Claimant above as arising for determination which the court will slightly modify hereunder has succinctly captured the pith and or crux of the contest that remains to be resolved and it is therefore on the basis of this issue as formulated by court that I will now proceed to consider the evidence and submissions of counsel.

ISSUE 1

Whether the Claimant has established her case against Defendant in the circumstances and therefore entitled to all or any of the reliefs sought?

Now at the commencement of this judgment, I had stated the claims of claimant. The claimant puts the title of two contiguous plots to wit: **Plots 474 and 475** both of about 750 square meters situate at Old Kutunku Comp. Gwagwalada at the crux of the extant inquiry as she lays claims to both plots. The narrow issue is whether she has established ownership within accepted legal threshold.

It is to the pleadings and evidence that one must now beam a critical judicial search light as we resolve this question. Let me quickly make the point, again, that the Defendant did not adduce evidence in opposition. In law, it is now accepted principle of general application that in such circumstances, the defendants are assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the plaintiffs' unchallenged evidence. See **Tanarewa (Nig.) Ltd. vs. Arzai (2005) 4 NWLR (pt. 919) 593) at 636 C – F; Omoregbe vs. Lawani (1980) 3 – 7 SC 108 and Agagu vs. Dawodu (1990) 7 NWLR (pt. 160) 56.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case **of Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce evidence … the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence

adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24** stated thus:

"… a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all."

Before going into the merits, let me state some relevant principles that will guide our evaluation of the evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.**

Being a matter involving disputation as to title to land, it is also important to situate the **five independent** ways of proving title to land as expounded by the Supreme Court in **Idundun V Okumagba (1976) 9 – 10 SC 221** as follows:

1. Title may be established by traditional evidence. This usually involves tracing the claimant's title to the original settler on the land in dispute.

2. A claimant may prove ownership of the land in dispute by production of documents of title. A right of occupancy evidenced by a certificate of occupancy affords a good example.

3. Title may be proved by acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant an inference that the claimant is the true owner of the disputed land. Such acts include farming on the whole or part of the land in dispute or selling, leasing and renting out a portion or all of the land in dispute.

4. A claimant may rely on acts of long possession and enjoyment of land as raising a presumption of ownership (in his or her favour) under **Section 146 of the Evidence Act**. This presumption is rebuttable by contrary evidence, such as evidence of a more traditional history or title documents that clearly fix ownership in the defendant.

5. A claimant may prove title to a disputed land by showing that he or she is in undisturbed or undisputed possession of an adjacent or connected land and the circumstances render it probable that as owner of such contiguous land he or she is also the owner of the land in dispute. This fifth method, like the fourth, is also premised on **Section 146 of the Evidence Act**.

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131.** These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title to succeed but he is eminently entitled to rely on more than one root of title. See **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252.**

It is also important to note at the onset that some of the critical reliefs sought by plaintiff are **Declaratory Reliefs**. This being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.** The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

The above principles indentified in some detail provides broad legal and factual template as I now resolve the extant dispute.

The case of the claimant on the pleadings and evidence is fairly straightforward and unchallenged. I will situate the essence of the case she made out.

The claimant stated that the original allotee of the Plot 474, one **Abdul Abdul** by virtue of an irrevocable power of attorney tendered as **Exhibit P7** and for valuable consideration appointed her as his attorney in respect of the said plot. Similarly, the original allottee of Plot 475, **Abnar Danjuma Diko** equally appointed her as his attorney over the said Plot vide an Irrevocable Power of Attorney tendered as **Exhibit P8** and for valuable consideration.

The claimant stated that upon execution of these instruments, she took possession of the land, established beacons and received the assistance of her counsel's office to visit the land regularly and also appointed one Mr. Ola to visit the two plots over the years. She then proceeded to Gwagwalda Area Council Land, Planning and Survey Department to obtain a change of ownership of the two plots into her name after having made all necessary payments as required vide **Exhibits P9 (1-4) and P10 (1 and 2).**

With the payments, the claimant was then issued a new/fresh letter of allocation in respect of the two plots 474 and 475 at Old Kutunku Comp. Layout, the subject matter of this suit which was tendered as **Exhibits P1 and P2.**

It is equally the case of claimant that she equally paid the processing fees and obtained two (2) certificate of occupancy in respect of the two plots which she tendered as **Exhibits P3 and P4** and when the FCTA commenced the recertification exercise, she equally participated in the exercise by submitting all her title documents and was issued with two (2) acknowledgments which were admitted as **Exhibits P5 and P6.**

The claimant also stated that sometime in March 2020, she was alerted of the entry into her land without her consent by defendant who damaged the beacons she put on the land and constructed or built a perimeter fence around the two plots without her consent and all attempts to make him leave the land peacefully failed which compelled her to instruct her lawyers to write to Development Control Department of the FCDA to interfere vide **Exhibit P11.**

The above facts or evidence by plaintiff was not in anyway controverted or challenged. **PW1** the initial allottee of Plot 475 who granted the irrevocable power of attorney with respect to Plot 475 to claimant and who equally witnessed the execution of the Irrevocable Power of Attorney in respect of Plot 474 by the original allottee of the plot, Abdul Abdul to claimant corroborated or confirmed all the material particulars relating to the transactions in respect of

the plots; the handing over of possession and the steps claimant took to make all necessary payments for change of ownership which resulted in the issuance of the title documents in her name in respect of the two plots.

The law has always been that were evidence given by a party to any proceedings is not challenged by the opposite party who has the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it; See **Agagu V Dawodu (supra) 169 at 170.**This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale, the weight of evidence tilts. Consequently where a defendant chooses not to adduce evidence the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G. Oyo State V. Fair Lakes Hotels Ltd (No.2) (1989) 5 N.W.L.R (pt 121)255; A.B.U V Molokwu (2003) 9 N.W.L.R (pt 825) 265.**

It follows clearly that the claimant has situated and established her claim of title to the two plots 474 and 475 on **production of title documents**. The acquisition of the plot and ultimately the change of ownership and production of title documents vide **Exhibits P1 and P2** (Letters of Offer) and **P3 and P4** (Certificates of Occupancy) has not been factually or legally impugned. In the absence of any counter-evidence and having not found the evidence of claimant as unreliable or tenous, I am satisfied that **Relief 1** has considerable merit and is availing. **Relief (5)** is simply a repetition of **Relief (1)** and is struck out.

Reliefs (2), (3), (4), (7) and (8) are all dealing with the question of trespass and damages for trespass which I will take together.

Now trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of that owner is an act of trespass actionable without any proof of damages. See **Ajibulu V. Ajayi (2004) 11 N.W.C. R (pt 885) 458 at 48)**

The claim for trespass is therefore rooted in exclusive possession. All a plaintiff suing in trespass needs to prove or show in order to succeed is to show that he is the owner of the land or that he has exclusive possession.

Now in evidence, the claimant has undoubtedly proved that she is the owner of the two **plots 474 and 475** and in possession and which defendant has not denied he is making or laying claims to. However beyond the allegation that

the defendant is on the land and has built a perimeter fence, nothing was presented in evidence to properly situate the nature of the interference with claimants 2 plots. On the pleadings in paragraph 17, claimant said she was "alerted" that defendant has gone into her land, damaged the beacons and built a fence. If defendant built a fence, no evidence of this built up perimeter fence was presented in evidence. No pictorial evidence and the nexus with defendant was tendered. If anybody saw him building the fence, no such person was presented. The "**Mr. Ola**" who claimant said she appointed to oversee the two plots, and who informed her in **paragraph 31 of her deposition**, of the acts of defendant was not presented in evidence to provide details of the interference by defendant. Similarly nobody was also brought from the chambers of claimant's counsel who equally kept watch of the two plots to give evidence on what they saw on the plot with respect to the actions of defendant. It must be noted that in the same paragraph 31 of the deposition of claimant, she mentioned her "**counsel**" in addition to "**Mr. Ola**" as the source of the information with respect to the trespasser. In the absence of these important sources, all the evidence of claimant on who interfered, built the perimeter fence and destroyed her property beacons is **hearsay evidence and inadmissible**.

The bottom line is there is no hard evidence of any building of a perimeter fence or building of any kind on the disputed plots and there is equally no evidence of any destruction of the property beacons on the two plots by defendant.

On the unchallenged evidence, I am prepared to hold that there is an unjustified interference by defendant, however minute with the possessory right of Plaintiff over the disputed plots. The court however has not either on the pleadings or evidence been put in any commanding position to sustain or support the **huge amount**s claimed for damages for trespass as streamlined under **Reliefs 7** and **8.**

As much as I have sought to be persuaded, I have not been persuaded that there is a valid factual or legal premise to sustain the **N25M** claim for "general, aggravated and or exemplary damages for trespass, destruction of property beacons, mutilation of land and the unauthorized construction, building of perimeter fence round the said two adjoining plots." There is equally for the same reasons demonstrated above no legal or factual basis for the claim of **N50, 000** as special damages as cost for the damaged property beacons.

Let me just add while it is true that general damages are awarded for proved acts of trespass, it would be inappropriate for a court to award damages without

giving any reason as to how it arrived at what in its opinion amounted to reasonable damages. It is to be noted that damages are not awarded as a matter of course but on sound and solid legal principles and not on speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

I should equally underscore the point that also on the authorities, damages in case of trespass should be nominal to show the courts recognition of the plaintiff's proprietory right over land in dispute. If the plaintiff as in this case wanted more damages, she should claim it under special damages which she should properly plead and prove. See **Madubuonwu V. Nnalue (1992)8 N.W.L.R (pt.260)440 at 455 B-C; Armstrong V. Shippard& Short Ltd (1959)2 AII ER 651.**

In this case the claim for different damages may have been situated but they were not established by any iota of evidence.

On the whole, I award the sum of **N20, 000** as nominal damages only in recognition of the propriety rights/interest of claimant in respect of the 2 plots. No more.

Relief (6) for an order of injunction against defendant is an ancillary Relief predicated on the success of **Relief 1**. With the grant of Relief 1, Relief 6 has merit and succeeds. See **Gbadamosi V Taiwo (2004) 43 WRN 51.**

The final claim is for cost of the action. By the provision of **Order 56 Rule 3 of the Rules of Court,** the court has the discretion to award cost of action on fair and reasonable terms and within the remit of the principles streamlined in the above order. Having regard to the facts of this case, I incline to the view that the claimant is entitled to the cost of this action.

On the whole, the lone issue raised is substantially answered in favour of **claimant**. In the final analysis and for the avoidance of doubt, I enter judgment for the plaintiff against the defendant as follows:

1. **IT IS HEREBY DECLARED that the claimant is the beneficial owner both in Law and Equity and has title over Plots Nos. 474 and 475 Old Kutunku Compensation Layout- Gwagwalada, Abuja.**

2. **IT IS HEREBY DECLARED that the Defendant's entry into the said Plots 474 and 475, Old Kutunku Compensation Layout, Gwagwalada Abuja constitutes an act of trespass.**

3. **The Defendant is ORDERED to pay the sum of N20, 000 as General Damages for trespass in favour of Claimant.**

4. **The defendant, his agents, privies, servants and or assigns are restrained from acts capable of affecting the lawful and subsisting interest of the Claimant over the two plots 474 and 475 situate at Old Kutunku Compensation Layout, Gwagwalada, Abuja FCT as guaranteed under the Land Use Act and the 1999 Constitution of the Federal Republic of Nigeria.**

5. **I award cost of this action assessed in the sum of N50, 000 payable by Defendant to Claimant.**

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***S.O. Ojo, Esq., for the Claimant.***

2. ***I.A. Adejembi, Esq., for the Defendant.***