

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 13**  
**CASE NUMBER : SUIT NO: CV/1663/21**  
**DATE: : FRIDAY 4<sup>TH</sup> JULY, 2025**

**BETWEEN:**

**OBE OKPACHU JOSEPH ..... CLAIMANT**

**AND**

**1. UNKNOWN PERSON**  
**2. MR. EXCEL DAVID WEALTH** } **DEFENDANTS**

# **JUDGMENT**

The Claimant via a Writ of Summons dated and filed 20<sup>th</sup> of January, 2023 commenced this action against the Defendants seeking the following:-

1. A Declaration that the various acts of the Defendants amounts to Trespass.
2. An Order of Perpetual Injunction against the Defendants, their agents, assigns and privies restraining them from interfering with the Claimant's possession of the Land.
3. General Damages in the sum of Ten Million Naira (10,000,000.00) for trauma and emotional hardship caused by the Defendants.
4. The cost of the suit in the sum Seven Hundred Naira (700,000.00) only.
5. Such further Order(s) the Court may deem fit to make in the circumstances.

Upon service of the Writ on the Defendant, however, Defendants failed to enter their defence.

Thus, the case of the Claimant as distilled from the Statement of Claim and witness statement on oath deposed to by Obe Okpachu Joseph, the Claimant in this suit; is that sometime in 2017, he purchased a plot of land known as Plot 163h, Dawaki Extension (Relocation) Layout, Bwari Area Council, Abuja FCT measuring about 600 square metres from one Hananiya Tanko.

That the said Plot of land is covered by a Conveyance of Provisional Approval issued by the Bwari Area Council dated 24<sup>th</sup> July, 2003. The said Conveyance of Provisional Approval was herein pleaded and relied upon.

Claimant further avers that the said Hananiya Tanko executed a Power of Attorney and a Deed of Assignment in his favour. The said Power of Attorney and Deed of Assignment were herein pleaded and relied upon at trial.

That he took physical possession by beaconing and fencing the said plot.

That sometime in April, 2021, he visited the land and discovered that an unknown person has trespassed and commenced excavation on the said plot of land.

That he took photographs of the Plot and excavation carried out by the unknown person.

That during the pending of this suit, the 2<sup>nd</sup> Defendant called on his phone informing the Claimant of his interest of the case over the subject matter of this suit.

Claimant avers that he does not know the identity of the person and all efforts to meet with the person proved abortive.

That the various acts of the Defendants have thrown him into confusion and he has suffered psychological and emotional trauma.

In line with procedure, written address was filed wherein sole issue was formulated for determination to-wit;

***"Whether the Claimant has proved his case to be entitled to Judgment."***

It is the submission of learned counsel, that from the evidence of the Claimant and the documents tendered and admitted in evidence, counsel submits that the Claimant has discharged on all fours the evidential burden placed on him. This is because the PW1 was not cross-examined by the Defendant even after given the opportunity by several adjournments.

Learned counsel submits, that it is trite law that where evidence is unchallenged and uncontroverted; the Court is bound to act on it.

Learned counsel also submits, that it is trite law that facts admitted need not be proved. This position is succinctly captured in the case of ***N.I.I.A VS. AYANFALU (2011) 24 NLLR (Pt. 67) at Page 24, Paragraphs D – F.***

Learned counsel contends, that the Claimant tendered letter of Provisional Approval and Power of Attorney marked as Exhibits "A" and "B" respectively.

Learned counsel aver, that the testimony of the Claimant is to the effect that he has enjoyed possession of the land in dispute and has exercised various acts of ownership until the trespass by the Defendant. Counsel rely on Section 143 of the Evidence Act, 2011, CAP E4, LFN 2004. Counsel submits most respectfully that it is trite law, that where evidence of a party remains unchallenged and not contradicted, minimum evidence will suffice.

In conclusion, learned counsel submits, that having regards to the facts and of this case and in the absence and any denial or rebuttal of the evidence adduced by the Claimant, counsel urge

the Court in the interest of justice to enter Judgment in favour of the and grant all prayers of the Claimant as prayed with substantial cost against the Defendant.

### **COURT:-**

It is instructive to state from the onset that the principal reliefs sought by the Plaintiff against the Defendants are declaratory in nature. The law is founded in this area of jurisprudence. A party such as in this case, who seek declaration of right, must win on the strength of his case and not on the weakness or absence of the defence.

Indeed, declaratory reliefs is one that seeks the pronouncement of the court as to the status of a named matter, things or situation, ***NWAGU VS. FADIPE (2012) LPELR 7966 (CA).***

By the endorsement and claim of Claimant, he seeks declaration that the purported notice of demolition of the Plaintiff's plot is unlawful, null and void, and of no effect whatsoever...and other reliefs as clearly captured in the preceding part of this Judgment.

Judicial pronouncements are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence ***MOTUNWASE VS. SORUNGBE (1998) NWLR (Pt. 92) 90.***

Where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleadings that he is entitled.

The imperativeness of this arises from the facts that the court has discretion to grant or refuse to grant such declaration.

***SAMESI VS IGBE & ORS (2011) LPELR 4412.***

The forgone authority remains good law and binds this court as well.

The Plaintiff in an effort to satisfy this Honourable court to enter judgment in his favour called one witness and tendered some documents to establish that indeed, he is the beneficial owner of Plot 163H, Dawaki Extension (Relocation) Layout, Bwari Area Council, Abuja... And to convince the court to enter judgment in his favour.

Whereas, Defendants failed to enter defense by filing any process...even after hearing notices were served on them.

From the totality of what has played out, i.e both oral and documentary before the Honourable court, the issue ***whether***

***the Plaintiff has proved his case on balance of probability***  
has been formulated for determination.

On whether the Plaintiff in the case in view is entitled to the reliefs claimed or not, it has become most expedient to ascertain the root of title of the Plaintiff first and foremost.

There are five ways of proving ownership to land that are recognized by judicial decision. One or more of the mode are usually used in proof. They are:-

- a. Traditional evidence
- b. Production of documents of title
- c. By proving acts of ownership numerous and positive enough to warrant an inference that the person is the owner.
- d. Act of long possession and
- e. By proof of possession of connected or adjacent land.  
***AKAOSE VS. NWOSU (1997) 1 NWLR (Pt. 482) 478 at 492 paragraphs B – D.***

It is trite position of the law that where a claim for trespass coupled with a claim for perpetual injunction is in issue, it

automatically puts title of the parties in issue. ***MORENIKEJI VS ADEGBOSIN (2003) 25 WRN Vol. 25.***

I need only state at this juncture that the Federal Capital Territory came into being by decree No. 6 of 1976, with 4<sup>th</sup> February, 1976 as the commencement date.

Section 297 (2) of the 1999 Constitution of the Federal Republic of Nigeria as amended vests absolute ownership of land within the Federal Capital Territory in the Federal Government of Nigeria.

The said provision is in agreement with Section 1(3) of the Federal Capital Territory Act, 2004.

For ease of reference, I shall attempt to reproduce the said section 297 (2) of the 1999 constitution of Federal Republic of Nigeria as amended and 1(3) of the FCT Act.

**Section 1(3) FCT Act.**

***"The Area contained in the Capital Territory shall, as from the commencement of this Act, cease to be a portion of the states concerned and shall henceforth be governed and administered by or under the control of the Government of the Federation to the***

***exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Federal Capital Territory shall likewise vest absolutely in the Government of the Federation."***

**Section 297(2) of the 1999 Constitution.**

***"The ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria."***

For all intents and purposes, the intention of the law makers on the status of Federal Capital Territory is deliberate.

What government and the makers of the Federal Capital Territory Act intended was for a vast expanse of land devoid of any form of cultural or hereditary inclination to be set aside for the development of the capital city of Nigeria.

More elucidating is the fact that even the original inhabitants who had occupied their ancestral lands were merely paid compensation and asked to move-on, regardless of the fact that generations of their ancestors were buried on such lands. Section 6 of the Federal Capital Territory Act is instructive in this regard.

There is no gain saying that the issue of deemed grant which is a product of the Land Use Act, 1978 was deliberately made inapplicable to lands within the Federal Capital Territory from the construction of the preamble to the Land Use Act and Section 49 of the same Act.

The Land Use Act must not be read in isolation. Were the Land Use Act meant to apply to Federal Capital Territory, the original inhabitants would have been granted deemed grant and remained on their various lands within the Territory.

It therefore presupposes that where the language and intent of an enactment or contract is apparent, a trial court must not distort their meaning.

See ***OLATUNDE VS. OBAFEMI AWOLowo UNIVERSITY (1998) 5 NWLR (Pt. 549) 178.***

Poser... was it the Federal Capital Territory Minister?

It is clear from the preamble to the Land Use Act (LUA) and the provision of section 1 of the Land Use Act (LUA) that the provision of the Act are meant to vest all land in the territory of each state, excluding land vested in Federal Government or its

agencies, in state governors who would hold same in trust for the people of the said state.

It follows therefore, that in line with position expressed in the preamble and section 1 of Land Use Act (LUA), section 49 (1) of Land Use Act (LUA) specifically excludes the application of the said Act to title to land held by the Federal Government or any agency of the Federal Government at the commencement of the Act.

In the same analysis, it is most crystal clear from both the preamble to the FCT Act and section 1(3) of the Act that all land comprised in the Federal Capital Territory vest absolutely in the Federal Government of Nigeria.

For the purpose of clarity, I shall re – produce the preamble to the Land Use Act (LUA) 1978 and FCT Act respectively.

### **Preamble to FCT Act**

***"An Act to establish for Nigeria, a Federal Capital territory and to provide for the constitution of a Federal Capital Development Authority for the purpose of exercising the various powers set out in this Act, to execute other projects connected***

***therewith, to provide for the laws applicable to that Territory and for appeals from the Upper Area Court and the law applicable thereto; and to provide for the delegation to the Minister of Federal Capital Territory of the executive powers vested in the President and those vested in him and the Government of a State under the applicable laws."***

### **Preamble to Land Use Act**

***"An Act to vest all land comprised in the Territory of each State (except land vested in the Federal Government or its agencies) solely in the Government of the State, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non – urban areas are conferred on Local Government."***

It is instructive to note the settled fact that ownership of land in the Federal Capital Territory, Abuja vests absolutely in the Federal Government of Nigeria, who through the Federal Capital Territory

Minister grant statutory rights of occupancy to any person/persons.

It follows, naturally and legally speaking, therefore, that ownership of land within the Federal Capital Territory vests in the Federal Government of Nigeria who through the Minister of Federal Capital Territory vest same to every citizen individually upon application.

If therefore, there is no non – urban land in the Federal Capital Territory, it presupposes that the only title validly and legally acceptable within the Federal Capital Territory is the statutory allocation by the Federal Capital Territory Minister.

From the foregoing therefore, it is clear that no Area Council Chairman/Administrator within the Federal Capital Territory has the power to vest any title on land to any person or group of persons as no such land within the Federal Capital Territory exist as non – Urban Land where customary title could be conferred.

Consequently, to the extent of non – compliance with the statutory provision, of law, any of such allocation so made, is null, void and unconstitutional.

The duty of court is to interpret and give adequate and as close as possible accurate and ordinary meaning of the words used. At best, both Plaintiff is a Trespasser on the land in question.

I however would like to note the position of law that a Trespasser has the support of law to maintain an action against the whole except that person who has a better title to the land.

See ***PIUS AMAKOR VS. BENEDICT OBIEFUNA LC Vol. 4 (2012) Page 431 (6552).***

Having held that Plaintiff is a Trespasser and therefore not entitled to the land in issue and could not have been the beneficial owners in that respect, I shall now gravitate to the evidence on record showing how he has occupied the land in question.

Plaintiff tendered the following:

- a. Conveyance of Provisional Approval vide Exhibit "A".
- b. Power of Attorney vide Exhibit "B".

As aptly stated by learned counsel for the Plaintiff in his final written address and the ensuing evidence and title documents i.e that one Hananiya Tanko executed a Power of Attorney and a

Deed of Assignment in his favour, Plaintiff then took physical possession by beaconing and fencing the said plot.

I pause here to state the law as regards the importance of a documentary evidence. It has been held by a number of court decision that documentary evidence is the yardstick or a hanger by which to assess the veracity of oral testimony or its credibility.

***OGBEIDE & ANOR VS. OSIFO (2006) LPELR 627 (CA).***

I must state here, that the court is under obligation to interpret every document accurately not to add or subtract from the content of the document.

The implication of tendering Exhibit, including documentary evidence before a court of law was captured by MUKHTAR JCA (as he then was) in ***JOHN M. BUBA VS. THE STATE (1992) NWLR (Pt. 215) 1 at 168*** as thus;

***"Exhibits are not tendered and admitted in court for the fun of it. They are for the purpose albeit to assist in determining the relevance of the Exhibits to the case. Secondly, once this form part of the record they must be examined, scrutinised and assess for the just determination of the case, if they are not scrutinised***

***as they apply to the facts of the case, then of what use are they admitted admittance in evidence."***

Similarly in FAGUNWA VS ADIBI (2004) 17 NWLR (Pt. 903) 544 at 567 paragraph D-E the Supreme Court per Tobi JSC held as follows:-

***"A Trial Judge must consider relevant exhibits tendered along with oral evidence, he cannot take oral evidence and throw away documentary evidence which the primary evidence under Section 94(1) of the Act."***

Trial Court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment and or act on it. Document tendered before a trial court are meant for scrutiny or examination by the court, documents are not tendered merely for the sake of tendering but for the purpose of examination and evaluation ***OMEGA BANK (NIG) PLC VS. O.BC LTD (2002) 16 NWLR (Pt. 794) 483.***

It is settled law that where there are oral as well as documentary evidence, documentary evidence should be used as hanger from which to assess oral testimony.

***PASHAMNU VS ADEKOYA (1974) 6 (SC) 83.***

The trial court is enjoined to give more weight to the documentary evidence rather than oral testimony. This is because oral evidence may tell lie but documentary evidence which is shown to be genuine does not tell lies.

***UDERAH VS. NWAKONOB I (2003) 4 NWLR (Pt. 811) 643 at 678 paragraph A-C.***

Indeed, 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.

As stated in the preceding part of this Judgment, a party who claims for declaratory relief must adduce evidence that he is entitled to that relief, thus, the court has a discretion to grant or refuse the declaration and the success of Claimant in such an action depends entirely on the strength of his case and not on the weakness of the defence.

***ADEMOLA VS. SEVEN UP BOTTLING CO. PLC. (2004) 8 NWLR (Pt. 874) 134 at 140 – 149 (a-d).***

From the evidence before this court, it is obvious that the Plaintiff has clearly proved its case as required by law. Moreover, none of the Plaintiff's allegations were controverted at any point by the Defendants. The claims of Plaintiff shall succeed.

Accordingly, judgment is hereby entered in favour of the Plaintiff as follows:

1. A Declaration that the various acts of the Defendants amounts to Trespass **is hereby granted.**
2. An Order of Perpetual Injunction against the Defendants, their agents, assigns and privies restraining them from interfering with the Claimant's possession of the Land **is hereby granted.**
3. The cost of the suit in the sum Seven Hundred Naira (200,000.00) only.

On general damages, the term general damages cover all loses which are not capable of exact quantification. It includes all non-financial loses, it need not be specifically pleaded.

***CHUKWUBUZOR & SONS NIG. LTD VS. AKAN DICKSON  
IDIONG Suit No. CA/C/315/2011.***

I hereby award damages in the sum of **Five Hundred Thousand Naira (500,000.00)** only... for trauma and emotional hardship caused by the Defendants.

***Justice Y. Halilu  
Hon. Judge  
4<sup>th</sup> July, 2025***

**APPEARANCES**

**Kayode O., Esq.** – for the Claimant.

Defendants not in Court and not represented.