

**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/6939/2023
DELIVERED ON THE 27/02/2025**

BETWEEN:

OKEKE CHIMAROKÉ NDUBUEZE.....CLAIMANT

AND

- | | | |
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| <p>1. MR. RAYMOND ONIMISI
2. ABUJA MUNICIPAL AREA COUNCIL
3. THE HONOURABLE MINISTER FEDERAL
CAPITAL TERRITORY
4. FEDERAL CAPITAL DEVELOPMENT AUTHORITY</p> | } | <p>DEFENDANTS</p> |
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JUDGMENT

The Claimant instituted this suit vide writ of summons filed on 21/07/2023. By order of the Court dated 07/08/2023, leave was granted to the Claimant to serve the writ of summons and all other processes in this suit on the 1st Defendant by substituted means. However, the suit was transferred to me by My Lord, the Hon. Chief Judge by a Transfer Order dated 23/10/2023.

The pleadings in this case are:

- i. The Claimant’s Statement of Claim filed on 21/07/2023; and
- ii. The 3rd and 4th Defendants’ Statement of Defence filed on 21/09/2023 [which was subsequently abandoned].

The claims of the Claimant against the Defendants are as follows:

1. *A declaration that the Claimant is entitled to peaceful possession and occupation of Plot No. 3154 of about 1000 sqm. with File number: AN 5680, new File number: AN 49524 within Lugbe 1 Extension, Abuja.*
2. *A declaration that the 1st Defendant's act of laying additional blocks on top of Claimant's existing fence and digging foundation inside the said Claimant's Plot No. 3154 of about 1000sqm. with File number No: AN 5680, new File number: AN 49524 within Lugbe 1 Extension, Abuja constitute trespass on the said plot.*
3. *A declaration that the 1st Defendant has no valid title over Plot No. 3154 of about 1000sqm. within Lugbe 1 Extension, Abuja.*
4. *An order of perpetual injunction restraining the 1st Defendant, his agents, allies, workmen, privies and all those deriving or claiming through him from further trespass, encroachment and all forms of interference with the Claimant's rights and privileges over Plot No. 3154 of about 1000sqm. within Lugbe 1 Extension, Abuja.*
5. *₦2,446,000.00 special damages against the 1st Defendant and in favour of the Claimant.*
6. *₦20,000,000.00 general damages against the 1st Defendant and in favour of the Claimant.*
7. *Cost of this Suit.*

In proof of the case of the Claimant, the Claimant called one witness. Okeke Chimaroke Ndubueze testified for himself as PW1. He adopted his statement on oath filed on

21/07/2023 and his further statement on oath filed on 18/01/2024. The PW1 tendered Exhibits **P1A, P1B, P1C; P2, P3, P4; P5, P6, & P7.**

The 1st Defendant and the 2nd Defendant did not file any pleadings or attend Court to defend this suit despite service of several hearing notices and processes on them. On 26/06/2024, the Court foreclosed the right of the 1st Defendant and the 2nd Defendant to cross examine the PW1 and adjourned the case for defence. Following their consistent absence from court, the right of the 1st Defendant and the 2nd Defendant to defend the suit was also foreclosed on 30/09/2024.

Evidence of Okeke Chimaroke Ndubueze - PW1:

The evidence of PW1 in his statement on oath filed on 21/07/2023 and his further statement on oath filed on 18/01/2024 is that the subject matter of this suit, i.e., Plot No. **3154** of about **1000 sqm.** with File number: **AN 5680**, new File number: **AN 49524** within Lugbe 1 Extension, Abuja, was originally allocated to Mrs. Yakubu, but upon acquiring title from the original allottee, the Claimant paid all the necessary fees to the relevant authorities and the ownership of the subject matter was officially changed from Mrs. Yakubu to Okeke Chimaroke Ndubueze. He tendered Exhibits **P1a, P1b** and **P1c** which are the changed Offer of Terms of Grant/Conveyance of Approval dated 20/06/2005, Irrevocable Power of Attorney dated 10/07/2009 and Offer of Terms granted to original allottee, Mrs. Yakubu dated 29/06/1998 respectively.

Mr. Okeke Chimaroke Ndubueze stated further that he engaged the services of a surveyor, identified the subject matter, beaconed it, compensated the indigenes who were farming on the plot for their economic trees that were on the plot, deforested the plot and took over physical possession of the subject matter plot. He leased the plot to Mr. Musa Garba, a farmer resident in Lugbe, Abuja who farmed on the plot from 2005 up to the year 2015/2016 when he [the Claimant] commenced and concluded fencing of the plot with 9 inches concrete blocks.

The PW1 stated that he participated in the regularization exercise of land titles as was directed by the Ministry of Federal Capital Territory and paid all requisite fees, and the subject matter was duly regularized. He also participated in the Accelerated Area Council Title Reissuance Scheme (AACTRIS), paid all the requisite fees and the subject matter was duly keyed into the scheme. He tendered the Regularisation of Land Title Acknowledgement dated 17/05/2007 as Exhibit **P4** The Survey Plan for Right of Occupancy No. **FCT/MZTP/LA/05/AN5680** as Exhibit **P5**

The PW1 further stated that, on one of his periodic inspection of the subject matter on 19/02/2021, he was surprised to discover that an unknown trespasser [later identified as the 1st Defendant] encroached into the plot and added additional blocks on the concrete fence the Claimant erected round the plot in 2016. On subsequent visit/inspection of the plot, the trespasser had gone further, dug foundation for a gate house and soakaway/septic tank on the plot.

The Claimant wrote a letter of Complaint of Encroachment dated 10/03/2021 to the Director, Development Control Department, Abuja Metropolitan Management Council [AMMC], Wuse Zone 6, Abuja [Exhibit **P6**].

On 16/03/2021, officers of the Development Control Department served notice on the trespasser directing him to stop his illegal activities on the Claimant's plot and to quit the plot. Photographs of Quit Notice & Notice of Quit Encroachment marked on the fence [Exhibit **P7**] were tendered. He stated that the trespasser refused to obey.

On 05/05/2021, the Claimant made a direct complaint to the Divisional Police Headquarter of the Nigerian Police Force, Idu Division, FCT Command, Abuja, which was responded to with Police letter attached to Exhibit **P6**.

Following a letter of reminder dated 10/02/2022 to the Director, Development Control Department, officers of the Department of Development Control mobilized to the subject matter and demolished all the structures on the plot and the fence of the Claimant was pulled down. He stated that the fence of the Claimant would not have been demolished if not for the encroachment, trespass and illegal activities of the 1st Defendant. He tendered as attachment to Exhibit **P6**.

Mr. Okeke Chimaroke Ndubueze also stated that on a recent visit to the subject matter on 15/07/2023, he was "amazed to discover that the 1st Defendant has commenced another digging and illegal construction on the subject matter. Most worrisome is the fact that the 1st Defendant has stationed thugs

on the plot, put up the subject matter for sale and will eventually sale the subject matter if not restrained or called to order”.

It was Mr.Okeke Chimaroke Ndubueze further evidence that the authority with which Lugard I. Edegbe [Zonal Manager] signed the Claimant’s allocation letter/tile [Exhibit **P1c**] on behalf of the Hon. Minister of FCT remains valid, as [Exhibit **P1c**] was neither withdrawn nor revoked by the Hon. Minister of FCT.

Furthermore, the Claimant tendered evidence of money he spent in construction of the concrete fence round the plot as Exhibits ...,which was “pulled down” as a result of the illegal activities of the 1st Defendant on the plot and tendered pictures of demolished structure as Exhibit **P2**.

When PW1 was cross examined by learned counsel for the 3rd & 4th Defendants and duly discharged. I shall refer to relevant parts of the evidence adduced under cross examination.

The 3rd & 4th Defendants did not call any evidence in defence of the Claimant’s case but nominated to rest their case on that of the Claimant.

At the end of trial, Kenneth Anakwe, Esq. filed the Claimant’s final written address on 30/10/2024. On 12/11/2024, Osita Nwaji, Esq. filed the 3rd & 4th Defendants’ final written address. Then Kenneth Anakwe, Esq. filed the Claimant’s reply to the 3rd & 4th Defendants’ final written address on

15/11/2024. Learned counsel for the parties adopted their respective final addresses on 03/12/2024.

Kenneth Anakwe, Esq. formulated one issue for determination:

Whether the Claimant has established his case on the preponderance of evidence and therefore entitle to the claims sought in this suit.

For his part, Osita Nwaji, Esq. also distilled one issue for resolution:

Whether the Claimant by evidence adduced and documents tendered have proven title to plot No. 3154 of about 1000sqm with File No. AN 49524 within Lugbe 1 Extension Abuja to be entitled to the declaration sought.

The Claimant's first relief is a declaration that he is entitled to peaceful possession and occupation of Plot No. **3154** of about **1000 sqm.** with File No. **AN 5680**, new File No. **AN 49524** within Lugbe 1 Extension, Abuja. No doubt, the success or otherwise of the other reliefs will largely depend on the decision of the Court on the first relief.

The position of the law is that a party seeking a declaratory relief must adduce credible and cogent evidence to prove his case. He must succeed on the strength of his case and not on the weakness of the case of the adverse party. See **AROWOLO V. OLOWOOKERE [2011] 18 NWLR [Pt. 1278] 280.** The principle of law above applies to the Claimant

in this case. It is also trite law that civil cases are determined on the balance of probabilities and preponderance of evidence.

In the light of the foregoing, the Court is of the opinion that one issue calls for resolution in this case, to wit: **Is the Claimant entitled to the reliefs sought?**

ISSUE: Is the Claimant entitled to the reliefs sought.

Learned counsel for the Claimant submitted that trespass is rooted in a right to exclusive possession of the land allegedly trespassed. He referred to **ORIORIO & ORS V. OSAIN & ORS [2012] LPELR-7809 (SC)**. It is trespass to land provided the entry into the land of another by a person is not authorized. Kenneth Anakwe, Esq. submitted that the Claimant during trial led evidence and tendered documents to prove that he took physical possession of the subject matter plot having acquired title to the plot before the illegal activities of the 1st Defendant on the subject plot. Learned counsel for the Claimant argued that the wrongful and unauthorized invasion of the Claimant's plot by the 1st Defendant constitutes trespass. He submitted that the Defendants having not called evidence to challenge, contradict or deny the Claimant's case, the court is enjoined to believe and act on the evidence adduced by the Claimant. He referred to **EYA V. OLOPADE [2011] 11 NWLR [PT. 1259] P. 533 PARAS. E-F AND BABALE V. EZE [2011] 11 NWLR [PT. 1257] 106.**

Kenneth Anakwe, Esq. further argued that the established right of the Claimant over the subject matter is entitled to legal protection from further invasion by way of perpetual injunction as well as damages for the embarrassment, pains and financial loss the Claimant has suffered on account of the actions of the 1st Defendant. He relied on **MUNIYAS (NIG.) LTD V. ASHAFA [2011] 6 NWLR [PT. 1242] 85 AT 108.**

On their part, learned counsel for the 3rd & 4th Defendants contended that the Claimant failed to establish the root of title of the alleged Mrs. Yakubu in respect of Plot **3154** of about **1000sqm.** with File No. **AN 49524** within Lugbe 1 Extension Abuja from where the Claimant allegedly derive his title and willfully failed to plead, frontload and tender the letter of acceptance, if any, and lead evidence as to how or whether Mrs. Yakubu accepted the offer. He referred to **NWADIOGBU & ORS V. NNADOZIE & ORS [2001] LPELR-2088 (SC).** Osita Nwaji, Esq. argued that for a Claimant to succeed in a land dispute where the Claimant pleaded and traced the root of his title to a particular person, the Claimant cannot ignore the validity of the grantor's title where this has been challenged.

Learned counsel submitted that the Offer of Terms of Grant/Conveyance of Approval dated 29/06/1998 [Exhibit **P1c**] is null and void as no legal relationship was created between the Claimant and the 3rd & 4th Defendants when Mrs. Yakubu from where the Claimant traced his root of title did not accept Exhibit **P1c** and failed to comply with the terms as stated in the offer of terms of the grant.

Finally, Osita Nwaji, Esq. argued that the Claimant illegally erected a perimeter fence around Plot No. **3154** of about **1000 sqm.** with File No. **AN 5680**, new File No. **AN 49524** within Lugbe 1 Extension, Abuja having neglected to apply and obtained a building permit from the requisite department of the 3rd Defendant which is a mandatory requirement to do so. He referred to **Section 30(1) of the Nigerian Urban and Regional Planning Act Cap. N138 LFN 2004.** Learned counsel for the 3rd & 4th Defendants urged the court to refuse the reliefs sought by the Claimant and dismiss the Claimant's claim.

COURT:

I have perused the writ of summons and the Statement of Claim of the Claimant and it is clear to me that the suit of the Claimant borders on some declarations with respect to the Claimant's possessory right on Plot No. **3154** of about **1000 sqm.** with File No. **AN 5680**, new File No. **AN 49524** within Lugbe 1 Extension, Abuja. Furthermore, that the act of the 1st Defendant in laying additional blocks on top of Claimant's existing fence and digging foundation inside the said Claimant's Plot, constitute trespass on the said plot, and that the 1st Defendant has no valid title over the subject matter of this suit. The Claimant also aver that after he took over physical possession of the subject matter plot, he leased the plot to Mr. Musa Garba who continued farming on the land from 2005 up to the year 2015/2016 when the Claimant commenced and concluded fencing of the subject matter with 9-inches concrete blocks. Hence, the Claimant claim a perpetual injunctive relief against the 1st Defendant from

further trespass to the aforesaid plot; **₦2,446,000.00** special damages; and **₦20,000,000.00** general damages against the 1st Defendant; and cost of this suit.

By virtue of the crossed copy of the Offer of Terms of Grant/Conveyance of Approval dated 29/06/98 in the name of Mrs. Yakubu tendered by **PW1** as Exhibit **P1c** Irrevocable Power of Attorney dated 10/07/04 as Exhibit P1b with Departmental Receipts from 2nd Defendant and the Offer of Terms of Grant/Conveyance of Approval dated 20/6/05 [Exhibit **P1a**] was granted in the name of the Claimant.

In Exhibit **P5** [survey plan] the Claimant identified the subject matter plot and took physical possession of the plot, beacon it and in 2015/2016 commenced and concluded fencing the subject matter with 9-inches blocks.

As I said earlier, the 1st Defendant and the 2nd Defendant did not file any process in this case and despite service of hearing notices on them, the 1st Defendant and 2nd Defendant failed to appear in court. On 30/9/2024, the right of defence of the 1st Defendant and 2nd Defendant was foreclosed. The 3rd & 4th Defendants waived their right to call evidence by resting their case on the case of the Claimant.

In a case of trespass, injunction and damages, the Claimant must establish the identity of the land in dispute and also prove that he is in exclusive possession.

The evidence adduced and exhibits tendered by the Claimant before the court was not challenged or contradicted. The position of the law is that where a party not only pleads the relief sought but also give unchallenged, uncontradicted and uncontroverted evidence, then a court can legally rely and act on it. See **JOS METROPOLITAN DEV. BOARD & ORS V. MOULD NIG. LTD [2020] 5 NWLR [PT. 1717] 243.** Where a Defendant takes no part in a proceeding or offered no evidence in his defence, there would be nothing to put on the other side of the imaginary scale or balance as against the evidence for the plaintiff.

In such a case the onus of proof is thereby discharged.

In view of the above, the Court accepts the evidenced adduced and exhibits tendered by the Claimant. The Court holds the humble opinion that the Claimant has satisfied the Court that he has exclusive possession over Plot No. **3154** of about **1000 sqm.** with File No. **AN 5680**, new File No. **AN 49524** within Lugbe 1 Extension, Abuja.

The evidence of **PW1** is that on his inspection of 19/02/2021, he was surprised to discover that an unknown trespasser [who was later identified as the 1st Defendant] encroached into the subject matter. On 10/03/2021, the Claimant wrote a complaint of encroachment on Plot **3154** within Lugbe 1 Extension, Abuja [Exhibit **P6**] to the Director, Development Control Department, Abuja Metropolitan Management Council [AMMC]. By letter dated 10/02/2022, the Claimant wrote another letter [Part of Exhibit **P6**] to the Director, Development Control Department, Abuja Metropolitan

Management Council [AMMC] appealing for accelerated action toward restoration of his plot. The 2nd letter in Exhibit P6 reads:

“RE: COMPLAINT OF ENCROACHMENT ON PLOT 3154 WITHIN LUGBE 1 EXTENSION, ABUJA

I wish to refer to my earlier letter addressed to your office dated 10th March, 2021 and which was received/acknowledged on 12th March, 2021, which copy is hereby attached for ease of reference.

I want to state that a notice to “QUIT” was marked on the fence on 16/03/2021 and subsequently for “DEMOLITION” on 21/06/2021 after which no further action has been taken on the said encroachment (attached photograph)

I seek your kind assistance to use your good office to accelerate action towards the restoration of my plot.

Thank you in anticipation as I look forward to a quick resolution.”

Furthermore, PW1 tendered photographs as Exhibit P7 showing Fence with line demarcation of an upper part with newer looking blocks erected on older blocks of the fence and a “Quit Notice” showing markings with paint on the fence wall with the inscriptions:

“X

DC QUIT ENCROACHMENT 16.3.2021.”

Kenneth Anakwe, Esq. submitted that where the Claimant had taken physical possession of the subject matter plot before the illegal activities of the 1st Defendant on the subject matter plot, it is trespass to land provided the entry into the land of another by a person is not authorized. Trespass to land is the wrongful invasion of the property of another. He referred to **EWULO V. PORCELAINWARE INDUSTRIES LTD. [2014] LPELR-23396 [CA]**.

On his part, Osita Nwaji, Esq. for the 3rd & 4th Defendant contended that the Claimant failed to establish and trace the root of title of the alleged Mrs. Yakubu in respect of Plot No. **3154** of about **1000sqm.** with File No. **AN 49524** within Lugbe 1 Extension, Abuja. He relied on **NWADIOGBU & ORS V. NNADOZIE & ORS [2001] LPELR-2088 (SC)**. It was further contended by Osita Nwaji, Esq. that Mrs. Yakubu did not accept the offer of Grant and that the non-acceptance of the Offer of Terms of Grant/Conveyance of Approval dated 29/06/1998 in the name of Mrs. Yakubu by the alleged original allottee from where the Claimant traces his root of title has rendered it null and void as no legal relations were created between Mrs. Yakubu and the 3rd & 4th Defendants.

The law is well settled that parties and the court are bound by the parties' pleadings. Therefore, while the parties must keep within their pleadings, the court must not stray away from them to commit itself upon issues not properly before it. See

AFRICAN CONTINENTAL SEAWAYS LTD V. NIGERIAN DREDGING ROADS & GENERAL WORKS LTD [1977] 5 S.C. 235 AT 250.

It is important to note that, in a claim predicated on trespass, injunction and damages, as in the instant case, in order to succeed, the plaintiff is required to establish the identity of the land in dispute and also prove that he is in exclusive possession. See **ENEH V. OZOR [2016] 16 NWLR [PT. 1538] 219.**

Therefore, the conclusion I feel bound to reach is that although the principles of decided cases cited by learned counsel for the 3rd & 4th Defendant are clear and, in my view, correct on title to land, offer and acceptance, they are inapplicable on the facts of this case. The validity or otherwise of the allocation of Plot No. **3154** to Mrs. Yakubu is not an issue before the Court.

I agree with the submission of learned counsel for the Claimant that it is trespass to land provided the entry into the land of another by a person is not authorized.

Without belabouring the point, trespass to land is a wrongful entry into the land in actual or constructive possession of another. The law is well established that any unlawful interference with possession, however slight, amounts to trespass. Being rooted in exclusive possession, all a plaintiff needs to prove is that he has exclusive possession or that he has the right to such possession of the land in dispute.

Trespass to land is actionable at the suit of the person in possession of the land. It is a violation of a possessory right and does not generally involve title to land. A person in possession can sue for trespass even if he is neither the owner of the land nor a privy to the owner. See **ENEH V. OZOR [SUPRA]** and **MOKELU V. NWOYE [2017] 9 NWLR [PT.1569] 1.**

The Court having found as above, that the Claimant is in possession of the subject matter of this suit, it is the decision of the Court that the Claimant is entitled to peaceful possession and occupation over Plot No. **3154** of about **1000 sqm.** with File No. **AN 5680**, new File No. **AN 49524** within Lugbe 1 Extension, Abuja. Relief 1 is resolved in favour of the Claimant.

In view of the evidence adduced by the Claimant and relief 1 having been resolved in favour of the Claimant, the Court is of the considered view that, the construction of additional blocks on the existing concrete block fence the Claimant erected round the subject matter in 2016, the foundation dug for gate house and soak away/septic tank on Plot No. **3154** of about **1000 sqm.** with File No. **AN 5680**, new File No. **AN 49524** within Lugbe 1 Extension, Abuja by the 1st Defendant constitute trespass. I so hold. Accordingly, Relief 2 is resolved against the 1st Defendant in favour of the Claimant.

In line with the decision of the Court above, the Court holds that the Claimant is entitled to protection of his established right over Plot No. **3154** of about 1000 sqm. with File No. **AN**

5680, new File No. **AN 49524** within Lugbe 1 Extension, Abuja. Accordingly, I grant Relief 4 in favour of the Claimant against the 1st Defendant.

The Claimant seeks in relief 5 award of special damages and tendered Exhibit P2 being invoices dated 17/07/2015 and 24/07/2015 respectively, for the monetary value of materials and cost of labour used in the construction of the concrete fence round the plot. I have carefully considered the evidence and the Exhibit.

The rule that special damages must be strictly proved requires that the person claiming should establish his entitlement to that type of damages by credible evidence of such a character as would suggest that he indeed is entitled to an award under that head. Strict proof in the above context can mean no more than such proof as would readily lend itself to quantification. See **NWAUBANI V. A-G, ABIA STATE [2020] 11NWLR [PT.1735] 267**. The fact that it appears to be admitted does not relieve the party claiming it of the requirement of proof with compelling evidence. Special damages are exceptional in character and so there is no room for inference by the Court. It is my considered view that the Claimant failed to satisfy the Court by credible evidence that he did suffer such special damages as to entitle him to the award of special damages claimed. Relief 5 is hereby refused.

In conclusion, reliefs 3, 5 and 7 are refused. The Court grants reliefs 1, 2, 4 and 6 as follows:

1. A Declaration that the Claimant is entitled to peaceful possession and occupation of Plot No. **3154** of about **1000 sqm.** with File No. **AN 5680**, new File No. **AN 49524** within Lugbe 1 Extension, Abuja.
2. A Declaration that the 1st Defendant's act of laying additional blocks on top of Claimant's fence and digging foundation inside the said Claimant's Plot No. **3154** of about **1000 sqm.** with File No. **AN 5680**, new File No. **AN 49524** within Lugbe 1 Extension, Abuja constitute trespass on the said plot.
4. An Order of perpetual injunction restraining the 1st Defendant, his agents, allies, workmen, privies and all those deriving or claiming through him from further trespass, encroachment and all forms of interference with the Claimant's rights and privileges over Plot No. **3154** of about **1000 sqm.** with File No. **AN 5680**, new File No. **AN 49524** within Lugbe 1 Extension, Abuja.
6. **₦5,000,000.00** (Five Million Naira) only is awarded as general damages against the 1st Defendant and in favour of the Claimant.

The parties shall bear their costs.

SIGNED:
HON. JUDGE
27/02/2025.

Appearance:

Kenneth Anakwe, Esq, for the Claimant

Kosy Akpudiogwu, Esq, for the 3rd and 4th Defendants