

**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/3991/2013
DELIVERED ON THE 24/02/2025**

BETWEEN:

YAKUBU IYAJI.....CLAIMANT

(Suing Through His Attorney Bernard Umaru)

AND

- 1. THE MINISTER OF THE FCT, ABUJA**
 - 2. DEPARTMENT OF DEVELOPMENT CONTROL**
 - 3. SAIDU MOHAMMED HUSSAIN**
 - 4. ABDULRAZAK SALAMI**
- }DEFENDANTS

JUDGMENT

The Claimant vide a Writ of Summons, filed this action before this Hon. Court dated the 03/07/2013 which was later amended on the 26/06/2020 seeking the following reliefs to wit;

- 1. A declaration that by virtue of a subsisting certificate of occupancy ontract, the Plaintiff is the lawful and beneficial holder over the Plot or parcel of land known and described as Plot No. 457 Cadastral Zone B6 of Mabushi District, within Abuja, FCT measuring about 768.27m2, within Abuja, FCT, same having been allotted or granted to the Plaintiff for a term of 99 years commencing from the 22nd Day of October, 1996 by the Ministry for the Federal Capital Territory, Abuja and covered by a Certificate of Occupancy dated 6th day of October, 1997.*

2. *A declaration that the purported reallocation of Plot No. 457 Cadastral Zone B6 by the 1st Defendant to the 3rd Defendant, while the title of the Plaintiff is subsisting is null and void ab initio.*
3. *An order of injunction restraining the Defendants, jointly and severally, whether by themselves or through their servants, officials, workmen, agents or privies, whatsoever and however otherwise from trespassing or further trespassing or entry or interfering with the Plaintiff's possession, rights and interest in the said plot or parcel of land known and described as Plot No. 457 Cadastral Zone B6 of Mabushi District, within Abuja, FCT measuring about 712.26m².*
4. *And such further or other orders or orders as the Honourable Court may deem fit and just to make in the circumstances.*

Upon service of the Writ on the Defendants, they filed their respective statements of defence and at the close of pleadings, the suit was set down for trial.

The case of the Claimant as made out by **PW1** is that the Claimant applied to the 1st Defendant for a land and having fulfilled all the requirements, the 1st Defendant granted a Right of Occupancy in and over Plot No. **547**, Cadastral Zone **B6** of Mabushi District within Abuja FCT measuring about **768.27m²** for a term of 99 years commencing from 22/10/1997 and same was demarcated with beacons No. **P13, 1510, PB 1462, PB 1463, PB 1511**.

That the Claimant appointed Bernard Umaru as his true and lawful attorney over the property in 1999 and in 2012 the Claimant applied to the Abuja Geographical Information Systems for late Re-certification and same was granted. It is further the case of the Claimant that he made

arrangement and paid the sum of **N150,000.00** being the fees for late recertification and submitted his original Certificate of Occupancy to the Defendant.

That he mobilized workmen and material to site only to discover that there was a trespasser on the property carrying on development on the property.

PW1 tendered the following documents in evidence.

- (1) The original Certificate of Occupancy**
- (2) Copy of Power of Attorney**
- (3) Copy of an application to AGIS**
- (4) Letter from the 1st Defendant**
- (5) Acknowledgment of Recertification**
- (6) Letter from the Claimant Solicitor and**
- (7) Allocation letter**

All were admitted in evidence and marked as Exhibits **P1** to **P7** respectively.

PW1 was cross-examined by the Defendant's Counsel and subsequently discharged.

The 1st and 2nd Defendants by a motion dated 24/10/2024 sought the leave of Court to substitute the witness statement on oath of Aliyu Suleiman for Azeez Ibrahim.

The case of the 1st and 2nd Defendant as distilled from the witness statement on oath of DW1 (Ibrahim Babangida) is that the Claimant is not the holder of title over Plot **547**, Cadastral Zone B6, Mabushi, Abuja as claimed as the said title belongs to Saidu Mohammed Hussain who is the valid allottee with subsisting right to the title derived from a letter of

offer of Statutory Right of Occupancy; and that the Claimant purported title over plot 547 Mabushi was granted in 1997 but extinguish by the Claimant for refusal to submit his documents for recertification in 2005.

That as at 2012 when the plaintiff submitted his documents for recertification, the exercise of submission of documents had already been concluded and any document submitted after 2007 is considered for reallocation of land out of magnanimity. And that the acknowledgment letter pleaded by the Claimant state that the receipt of document is made to capture information and quality applicant for alternative plot of land.

DW1 was cross-examined and subsequently discharged. On their part, the 3rd Defendant though filed and served a statement of defence but opted to call no witness but leaned on the case of the 1st and 2nd Defendant.

Parties closed their respective case to pave way for filing and adoption of final written addresses.

Learned Counsel for the 3rd Defendant formulated two issues for determination to wit;

- (1) Whether considering the totality of the evidence placed before this Hon. Court and the plaintiff's failure to participate in the recertification exercise, the plaintiff has made out a valid case to entitle him to the reliefs sought before this Hon. Court.**
- (2) Whether the plea of laches and acquiescence is applicable as a Defence for the 3rd Defendant in this matter, considering the evidence led by the plaintiff and that of the 1st and 2nd Defendants as presented before this Hon. Court.**

Learned Counsel submitted that, the Claimant has failed woefully in proofing his case to be entitle to Judgment and therefore same should be dismiss.

On their part, 1st and 2nd Defendants formulated two issues for determination to wit:

- (1) Whether the 1st and 2nd Defendants re-allocation to the 3rd Defendants is valid.*
- (2) Whether the Plaintiff is entitled to the reliefs sought before the Hon. Court.*

Learned Counsel submit on the above issues that the Claimant is not entitle to the relief sought and therefore same should be dismissed.

On their part, learned Counsel for the Claimant formulated the following issues for determination to wit;

- (1) Whether the Plaintiff having applied for and was granted plot No. 457 Cadastral Zone B6 Mabushi District, measuring about 768.27m², within Abuja FCT covered by a Right of Occupancy No. FCT/ABU/KG/1058 dated 6/10/1997, which was recertified by the 1st and 2nd Defendants on the 25/3/2013 having paid the necessary fee, is not the lawful and beneficial owner of plot No. 457 Cadastral Zone B6, Mabushi District, measuring about 768.27m² within Abuja FCT.**
- (2) Whether the 1st and 2nd Defendants have such power to re-allocate plot 457 Cadastral Zone B6 located at Mabushi to the 3rd Defendant when the Right of Occupancy on the same land still subsist.**
- (3) Whether the purported re-allocation of the res to the 3rd Defendant is valid and legally sustainable without the prior**

revocation of the plaintiff's interest in the manner provided in section 28, 44 and 51 of the Land Use Act.

- (4) Whether the Right of Occupancy issued to the 3rd Defendant on plot No. 457 is valid, when the right of the plaintiff is still valid and subsisting.**

Learned Counsel submit while arguing on the above issue that, the right of the Claimant over plot No. 457 Cadastral Zone B6, Mabushi is still valid and subsisting and therefore Court should grant all the reliefs sought.

It is settled law that the burden of proof rest with the party who asserts the positive and not on one who affirms the negative. The maxim, *he who assert must prove*. operate thus; A man cannot be expected to prove a negative assertion. Section 134 of the Evidence Act 2011 provides 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.

Similarly, when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. **NSEFIK & ORS VS. MUNA & ORS. (2007) LPELR 3934 (CA).**

It must be, first and foremost, noted that the reliefs sought by the Claimant are declaratory in the main. Declaratory Judgment and reliefs therefore proclaim or seek the existence of a legal relationship and do not contain any other which may be enforced against the Defendants. **OKAYA VS. SANTILLI (1990) 2 NWLR PT. 131 at 192 at 196.**

Suffice to say that declaratory reliefs, by their nature in order to succeed, all the Claimants card must be placed on the table, he must establish his case by facts cogent and credible enough. When litigant claims

declaratory reliefs, he does no more than to invite the Court to declare what the law is on the issue. **FAFUNWA VS. BELLVIEW TRAVELS LTD (2013) LPELR 20800 (CA)**.

On whether the Claimant in this case vides his statement of claim, evidence in chief, Exhibits tendered and evidence elicited during cross-examination has proved or averred facts that are cogent and credible in proof or covered facts that are cogent and credible in proof of his claim before the Court that indeed, he is the rightful and lawful owner of plot No. 457 Cadastral Zone **B6**, Mabushi District measuring about **768.27m²**, within Abuja, FCT covered by a right of occupancy No. **FCT/ABU/KG/1088** dated 06/10/1997 I shall resolve same shortly.

It is well settled in our legal system that proof of title to land must be established through one of the five ways as laid down in the case of **IDUNDUN VS. OKUMAGBA (1976) 9 – 10 SC 229** as follows:

- (a) By traditional history or evidence**
- (b) By document of title**
- (c) By various act of ownership, numerous and positive and extending over a length of time as to warrant the inference of ownership.**
- (d) By acts of long enjoyment and possession of the land and**
- (e) By proof of possession of adjacent land in circumstances which renders it probable that the owner of such adjacent land would in addition be the owner of the land in dispute.**

Indeed, the entire graveness of the Claimant's case before the Court is title document issued by the 1st Defendant, Certificate of Occupancy and re-certification of the said documents.

The law is that where a party relies and pleads a grant as his root of title, he is under the duty to prove such a grant to the satisfaction of the Court. **AJIBULU VS. AJAYI (2013) LPELR 21860 (SC).**

As stated in the preceding part of this Judgment, the Claimants in a bid to establish his case tendered and admitted in evidence the following documents;

- (i) **Certificate of Occupancy**
- (ii) **A Power of Attorney**
- (iii) **Letter requesting for late recertification**
- (iv) **A letter of Approval by the Defendant**
- (v) **Evidence of payment for late re-certification**
- (vi) **Acknowledgment for recertification**

From the above, therefore, it is obvious that what gave the Claimant the locus is the Certificate of Occupancy.

The law is that a holder of Certificate of Occupancy holds the title to the property and subject only to the condition stipulated in the Land Use Act. A certificate of Occupancy creates a term of years absolute or a lease for a number of years stated therein. A Certificate of Occupancy properly issued by a competent authority raises the presumption that the holder is the owner in exclusive possession of the land in respect thereof. Such a Certificate also raises the presumption that at the time it was issued, there was not in existence a customary owner whose title has not been revoked. The presumption is however rebuttable because if it is proved by evidence that another person had better title to the land before the issuance of the Certificate of Occupancy, then the Court can revoke it. **EZEANAH VS. ATTA (2004) LPELR 1198 (SC).**

The 1st and 2nd Defendants who are the issuing authorities argued that the subject matter was validly allocated originally to Yakubu Iyaji as

1997. And that by Power of Attorney dated October, 1999, the Claimant became the owner of the plot, the subject matter with all terms and conditions in the Certificate of Occupancy.

Before I delve into the terms and conditions of the Certificate of Occupancy, suffice to say here that the 3rd Defendant who is in possession of the subject matter eventhough filed their statement of defence, did not call any witness.

It is trite law that pleadings simpliciter not supported by evidence cannot be accepted as evidence and is deemed abandoned. **EZEANAH VS. ATTA (Supra).**

The effect of the 3rd Defendant not calling witness to activate its case is that same is deemed abandoned and this Court shall not rely on it. Having said so, I shall turn back to the terms and conditions of Exhibit P1 in evidence.

Number 4 in the terms and conditions stated in Exhibit P1 provides that, within two years from the date of the commencement of the right of occupancy to erect and complete on the said land the buildings or the other works specifically detailed plans approved or to be approved by the Federal Capital Development Authority or other officer appointed by President, such building or other works to be valued not less than **₦2,000,000.00.**

I must observe that Exhibit P1 is a valid contract between the Defendants and the Claimant. The law is that if parties enter into an agreement, they are bound by its terms and that the Court cannot legally or properly read into the agreement, the terms on which the parties have not agreed and did not agree. **EVBUOMWAN & ORS. VS. ELEME & ORS. (1994) 7-8 SC.**

The question to ask here is: has the Claimant been in breach of the condition above? The answer to this poser shall be provided shortly.

It is further the Claimant's case that in 2012, he applied to the Abuja Geographic Information system for late Recertification and reissuance of Certificate of Occupancy having not been able to do so when the exercise was commenced. That his request for late recertification was granted and payment was done accordingly.

The application for late recertification was tendered in evidence as Exhibit P4 the said application was written in the letterhead paper of Emmanuel Toro & Co. SAN.

The response of the Defendants was equally tendered as **Exhibit P5**. Paragraph 1 and 2 of **Exhibit P5** is hereby reproduce;

Paragraph 1 "I am directed to refer to your letter on the above subject matter dated 22/02/2012 and inform you that your application has been approved."

Paragraph 2 "Accordingly, you are required to complete recertification form and come forward to recertify the title (Plot No. 457) Mabushi B06 District) to qualify you for alternative allocation in view of the existing title on the plot."

The above response is dated 08/01/2013. The Claimant after receiving the above letter went ahead to make payment on the 10/05/2013 as can be seen in **Exhibit P6** for the late recertification.

The implication of the above is that, the Claimant has accepted the content of **Exhibit P5** above before the payment. It is equally in

evidence through **Exhibit P2** dated 20/05/2013 written by learned Counsel for the Claimant to the Defendant that the offer of alternative plot is rejected. For avoidance of doubt paragraph 3 of the letter read thus;

“while thanking you for your kind consideration in respect of the above, we wish to notify you that our client is not interested in any alternative plot of land in the absence of any overriding public interest, it is his desire to immediately mobilize to site and commence development of same, if there is any existing title on the plot that is not to the knowledge of our client as he has neither assigned nor relinquish his interest in the said plot.”

As I stated earlier, the above letter was written after accepting the Defendants letter offering alternative land and also after making payment for recertification.

It must be noted that under the Land Use Act, any plot of land allocated to a citizen by the Defendants is for the said citizen as long as he does not violate the issues of the said grant even where he does not comply with the terms, it is not automatic that he loses the plot of land to the Defendants. The Defendants must strictly follow the law in revoking the land before they can have the audacity or duty to re-issue the land to another person.

The question now is whether the Claimant’s right of occupancy over the property in dispute was automatically extinguished under section 5(2) of the Land Use Act by issuance of Certificate of Occupancy to the 3rd Defendant?

Now the power of the Governor, in this case the Minister of the Federal Capital Territory, Abuja to revoke any statutory Right of Occupancy is not in doubt. However, before he can exercise such power of revocation, the holder of such statutory Right of Occupancy must have been in breach of the conditions stipulated under Section 23 of the Land Use Act. The evidence on record shows that the Claimant's title was not revoked as stated by DW1 under cross examination.

However, the Defendant must comply with the provision of Section 28(6) and (7) of the Land Use Act which are mandatory provision to effect that the holder of the Right of Occupancy must be served personally before his Statutory Right or interest is extinguished in accordance with Section 44(a) (b) and (c) of the Land Use Act. See **DONLI VS. ABDULLAHI & ORS (2022) LPELR 58570 (CA)**.

It is however in evidence as stated earlier that the Claimant has failed to submit his document for recertification by the Defendants as directed by the Defendants to all land owners in Abuja to do so between 2005 to 2007.

The Claimant however in 2012 applied to do so and his application was duly accepted and acknowledged as seen in exhibit P7 dated 25th March, 2013. And even though the 1st and 2nd Defendants indicated in their exhibit P5 that only alternative plot will be given to him. without protest, initially, the Claimants went ahead to submit his documents and paid the necessary fees on the 10/5/2013 before rejecting the offer on the 20/5/2013.

In my view, the Claimant having failed to participate in the recertification exercise to regularize the title to the property allocated to him, His title ought to have been revoked, but was not. The requirement for Revocation of title as enunciated in the preceding part of this Judgment cannot be wished away.

I shall for this reason and other reasons advance in the body of this Judgment, do justice by finding that the Claimant has proved his case on the preponderance of evidence and therefore entitled to the Judgment of this court. Judgment is accordingly entered for the Claimant and I make the following Orders:

- 1. A declaration that by virtue of a subsisting certificate of occupancy contract, the Plaintiff is the lawful and beneficial holder over the Plot or parcel of land known and described as Plot No. 457 Cadastral Zone B6 of Mabushi District, within Abuja, FCT measuring about 768.27m², within Abuja, FCT, same having been allotted or granted to the Plaintiff for a term of 99 years commencing from the 22nd Day of October, 1996 by the Ministry for the Federal Capital Territory, Abuja and covered by a Certificate of Occupancy dated 6th day of October, 1997.**

- 2. A declaration that the purported reallocation of Plot No. 457 Cadastral Zone B6 by the 1st Defendant to the 3rd Defendant, while the title of the Plaintiff is subsisting is null and void ab initio.**

- 3. An order of injunction restraining the Defendants, jointly and severally, whether by themselves or through their servants, officials, workmen, agents or privies, whatsoever and however otherwise from trespassing or further trespassing or entry or interfering with the Plaintiff's possession, rights and interest in the said plot or parcel of land known and described as Plot No. 457 Cadastral Zone B6 of Mabushi District, within Abuja, FCT measuring about 712.26m².**

4. 1st and 2nd Defendants are hereby ordered to recertify the Claimants Title to Plot No. 457 Cadastral Zone B6 of Mabushi District, within Abuja, FCT measuring about 712.26m².

**SIGNED:
HON. JUDGE
24/02/2025.**

APPEARANCE:

*Y. A. Muhammed, Esq, holding the brief of Chris Umar, SAN for the Claimant
Janet Omidire, Esq, for the 1st and 2nd Defendants
Benita. O. Odigie, Esq, for the 3rd Defendant*