

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA-ABUJA
ON MONDAY THE 8TH DAY OF JANUARY, 2024**

SUIT NO: FCT/HC/GWD/CV/39/2022

BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI

BETWEEN

DR. PETER EKPENDU.....CLAIMANT

AND

UNKNOWN PERSON.....DEFENDANT

JUDGMENT

The claimant caused a writ to be issued against the defendant on the 26/05/2022; whereof he claims as follows:

1. An order of Court declaring that the Claimant is the rightful and legal owner of Plot No: 348 Cadastral Zone B08 of Jahi Abuja FCT measuring approximately 2065.87m² by virtue of purchase from Abdulmumin B. Salihu of 208 Abacha Road Mararaba, Nasarawa State vide letter of allocation dated 08/03/2011 with old file No: NS910 and new file No: NS11213.
2. An Order of Court declaring the said allocation dated 08/03/2011 with old File No: NS910 and new file No: NS11213 over Plot No. 348 Cadastral Zone B08 of Jahi

Abuja FCT as valid and still subsisting same having not been revoked.

3. An order declaring the defendant as trespasser on the Plot No. 348 Cadastral Zone B08 of Jahi Abuja FCT.
4. An Order of court stopping the Defendant his assigns, privies, agents and representatives from denying the Claimant's titled over Plot No. 348 Cadastral Zone B08 of Jahi Abuja FCT.
5. An Order of Court granting the Claimant leave to continue carrying on development at Plot No. 348 Cadastral Zone B08 of Jahi Abuja FCT.
6. An Order of perpetual injunction restraining the defendant his assigns, representatives, agents, privies etc or any persons claiming through him from any acts of continuing trespass on Plot No. 348 Cadastral Zone B08 of Jahi Abuja FCT.
7. General damages at N5, 000, 000.00 (Five Million Naira) Only.
8. Cost of this action.

This judgment is a judgment in default of appearance of the defendant. On the 21/06/2022 the court heard a motion ex parte filed and moved by Dr. E. Chimaroke Esq and granted for service of the originating processes and all other subsequent processes in this suit on the defendant by substituted means. Thereafter, the matter was adjourned for hearing to the 22/11/2022. On the return date, the defendant was not in court despite service of the processes of the

court along with the hearing notice in line with the order of the Honourable Court. Dr. Peter Ekpendu, a retired Public Servant testified for himself as the sole witness in the matter (hereinafter referred to as PW1). He identified his witness statement on oath, adopt same and urged the court to use it as his evidence in this matter. During evidence in chief the witness tendered the following documents as exhibits:

- a. Sale Agreement between one Abdulmumin B. Salihu of 208 Abacha Road Mararaba, Nasarawa State **exhibit A**.
- b. An offer of Statutory Right of Occupancy issued in the name of Abdulmumin B. Salihu in respect of Plot No: 348 in Cadastral Zone B08, **Exhibit B**.
- c. Conveyance of Building Plan Approval dated 30/09/2016 in respect of Plot No: 348 in Cadastral Zone B08, attached with TDP of the same plot and revenue receipt, admitted in bundle as **Exhibit B**.
- d. A Power of Attorney donated by Abdulmumini B. Salihu to Dr. Peter E. Ekpendu in respect of the same plot in issue **exhibit D**, after which he prayed the court to grant his reliefs.

On the 16/02/2023, the court upon an application by Dr. E. Chimaroke foreclosed the defendant's right to cross examine PW1, having absented himself from court and not represented despite service of hearing notice for the proceedings of the day. Thereafter, the matter was adjourned to 04/04/23 for defence. As usual the defendant was not in court nor represented by a counsel in spite of

evidence of proof of service of hearing notice. The Claimant counsel once again applied and was granted for the foreclosure of the defendant's right to defend having failed to utilize the opportunity availed to him by service of hearing notice.

On the 13/07/23, the counsel to the claimant drew the court's attention to a motion on notice he filed and duly served on the defendant. There was no counter affidavit against the said motion. The motion is to amend the claimant's statement of claim particularly paragraph 5. The Counsel moved the motion and same granted. Finally, the claimant adopts on the 10/10/2023 his final written address filed on the 13/06/2023.

It is instructive to emphasis that the defendant did not file any process in this suit and never appeared in person or represented by a counsel throughout the hearing of this suit despite evidence of proof of service on him of the claimant's original processes and hearing notice for every hearing date.

The claimant failed to formulate any issue for the determination of the court in his final written address. However, he submitted based on the already established principle of law that in a claim for declaration of title, the onus is on the claimant to discharge the burden of proof as required under the law by establishing his right over the said property. He cited the case of **Shittu v. Fashawe (2005)7 SC (PT. II) 107 at 117**, where he reproduced the Supreme Court decision per Musdapher JSC thus: "Now there is no doubt that in an action for declaration of title over land such as in this case, a plaintiff can only ordinarily succeed on the strength of his case and

may not rely on the weakness of the case of the opposing part to obtain judgment..." Relying on **Balogun v. Akanji (2005)3 – 4 SC, 95 and Oyadare v. Keji (2003)1 SC (PT.1) 19**, the claimant listed out the five ways to prove ownership of land thus:

- a. Presentation of Certificate of Occupancy or ownership.
- b. Acts of Ownership.
- c. Traditional History.
- d. Audience of adjacent ownership of land.
- e. Proofs pursuant to section 45 of Evidence Act.

They contended that the claimant has discharged the burden placed on him by both his testimony and documents pertaining to the subject matter of this suit which were neither challenged nor controverted. They added that the genuineness of the documentary evidence submitted before this court is not challenge nor controverted and that by section 86 of the Evidence Act, being primary evidence; they required no further proof. Sections 126, 128 and 124(1)(a) & (b) of the Evidence were also cited in support of their submission. Based on the above facts and evidence, the court is urged to hold that the claimant had proved his ownership over the title to the land and have therefore discharged the required burden to be entitled to a declaration and the reliefs sought.

He further submitted that in a claim for title and trespass, the burden is still on the claimant to show clearly the areas claimed or trespassed on and acts of ownership over the said land or property. Cited **Ansa v. Ishie (2005)6 SC (PII) 42**. It is therefore their contention that the claimant had without contradiction shown through

testimony and documentary evidence tendered before the court the areas trespassed upon by the defendant; the land he took possession of by constructing a fence around it. He also submitted that he need not call surveyor having tendered the TDP. Cited inter alia: **Atuchukwu v. Adindu (2012)6 NWLR (PT.1297) 534 CA; Akoledowo v. Ojubutu (2012) 16 NWLR (PT.1325) 1**. The court is finally urged to grant the reliefs.

I had earlier on pointed out that the claimant did not formulate any issue for the determination of the court; however, considering the evidence before me, the only issue I think is necessary to resolved is: **Whether the Claimant has satisfied the Court that he is entitled based on the evidence brought by him to a declaration of title.** The claimant has been able without contrary evidence established the original allottee to the subject matter in person of one Abdulmumini B. Salihu. It is noted that the entire title documents to the land carry the name of Abdulmumini B. Salihu. See exhibits B and C; which presupposes that Abdulmumini B. Salihu has title to plot No: 348 Cadastral Zone B08 Jahi District Abuja. That is to say, he is the owner of the said plot. "Title to land presupposes exclusive right to the land. Per Tobi, JSC pointed out in **FAGUNWA V. ADIBI (2004) 17 NWLR (PT 903) 544 AT 568** that the property begins with the owner and also ends with him. Unless he transfers his ownership of the property to a third party he remains the allodial owner. Ownership generally connotes the totality of or the bundle of the rights of the owner over and above every other person on a thing. It connotes a complete and total right over property. Applying the above decision of the

Supreme Court to the case at hand, it means Abdulmumini B. Salihu who has title to the land in issue has exclusive right over the it, except he decides to transfer same to a third party, in this case the claimants. If there is such transfer, the burden is on the claimant to show that the original allottee transfer his title to the claimant. To discharge the burden of proof, the claimant must not rely on the weakness of the defendant's case but on the strength of his own case. It will not lie in the mouth of the claimant in this case to ask that judgment be given in his favour simply because the defendant failed to file response to his pleadings.

It is the duty of the claimant seeking ownership and/or declaration of title to the property in issue to lead credible, cogent and compelling evidence; and the way to do that is to prove just one of five methods/conditions laid down in the case **Idudun Vs. Okumagba (1976) NWLR 200**, already listed above. In order to discharge the burden of proof, the claimant pleaded in several paragraphs of his amended statement of claim how plot No.348 Cadastral Zone B08 (subject matter) was conveyed to him in the year 2016 by Sales Agreement between him and the original allottee. In view of the purchase and the sales agreement, that Abdulmumini B. Salihu the original allottee handed over to him documents relating to the land to wit: (a) Right of Occupancy (b) Conveyance of Building Approval Letter (c) Site Plan showing Plot No.348 Cadastral Zone B08 of Jahi. (d) Statutory Right of Occupancy bill. To proof title to plot No.348, the claimant tendered Right of Occupancy handed over to him by Abdulmumini B. Salihu on purchase of the said plot from him

followed by Sales Agreement and Power of Attorney all tendered as exhibits before this court.

On careful evaluation of the evidence placed before me by the claimant including exhibits particularly exhibits A, B and D, I am convinced and I so hold that the claimant has proved by evidence in the absence of a better title that he is the owner of plot No:348 Cadastral Zone B08 Jahi District Abuja.

Apart from seeking for declaration of title, the claimant urged the court to declare the defendant as trespasser on plot No: 348 Cadastral Zone B08 Jahi District Abuja.

Trespass is a violation of possessory rights; that is, unlawful interference with exclusive possession. The slightest disturbance to the possession of land by a person who cannot show a better right to possession constitutes trespass in law - **Echere Vs Ezirike (2006) 12 NWLR (Pt 994) 386, Ogbeide Vs Osifo (2007) 3 NWLR (Pt 1022) 423**. In other words, Trespass is a civil wrong against possession in that it is an unlawful and unauthorized invasion of the right of the party in possession, who can maintain an action in trespass against the whole world except the owner, See **UBA Plc vs. Samba Petroleum Co. Ltd. (2002) 16 NWLR pt.793 pg.361**. In the instant case, the claimant had alleged without contradiction that he is in possession of the subject matter having put a perimeter fence around the plot, though, there is no documentary evidence in form of pictures or otherwise to show the fence erected on the said plot. However, even if the claimant could not prove possessory right to bring action for trespass, he still has the right to sue for trespass as the owner of

the plot. The principle of law that he who asserts must prove also apply here. It is not enough to alleged trespass; the party who alleged must prove same. See section 131 of the Evidence Act 2011 and **Audu v. Guta & Anor (2003) LPELR-7296(CA)**.

For a claim for trespass to succeed therefore, it must not only be shown that the claimant had exclusive possession of the land but also that there was an entrance into the land, no matter how slight, by the defendant without any legal justification. The court in this case has observed that even though the claimant could not satisfactorily prove possession, he can still maintain action for trespass against the defendant because he possesses title to the land. The question that needs an answer is whether the claimant has proved that the defendant has trespass into plot No: 348 Cadastral Zone B08 Jahi District Abuja. To answer this question I took a critical examination of the claimant's pleadings which I reproduced the relevant paragraphs as follows:

Para 2: The defendant is a person unknown to the Plaintiff and whose identities, places of abode and business, the plaintiff has not been able to establish except that he trespassed upon the same land with unsuspecting persons which was brought to the knowledge of the Claimant by vigilant adjoining neighbours and land office FCDA.

Para 8: The Plaintiff avers that sometime in late 2021, he received information that certain persons were seen upon the land trying to sell same to unsuspecting buyers which warranted a buyer beware sign to be placed upon the premises.

Para 9: That Plaintiff avers that when he went to update his documents with the Lands Department FCDA, he was alerted by the officials that a certain person was trying to sell the said plot with fake or cloned documents which warranted an alert to be placed by the Lands department over the plot.

Para 10: The Plaintiff avers that till now he had not seen or heard from the original trespassers.

The pleaded facts reproduced above are supported by evidence in paragraphs 2 and 3 of the witness statement on oath.

Based on the information the claimant received from a neighbour and FCDA land officials, who were not called as witnesses the claimant came to this court to seek for an order against the defendant and his agents and/or his privies. The order being sought is to declare the defendant a trespasser to the subject matter and to restrain him and his agents from denying the claimant's title over plot NO. 348 Cadastral Zone B08 of Jahi Abuja FCT. I do not understand why the claimant did not call his informant to give evidence as to what they saw. In my view the information the claimant relied on which he gather from either neighbour or staff of FCDA without more is a hear say evidence. My view is premised on the principle of law supported by plethora of judicial authorities which is that for a statement to be hearsays evidence, its source, origin or author must be a person other than the witness saying or repeating it in Court with the purpose of proving that facts asserted are true. The Supreme Court in the case of **Arogundade v. State (2009)6 NWLR (PT.**

1136) 165 at 181-182, following the decision in the case of **SUBRAMANIAM v. PUBLIC PROSECUTOR_(1956) 1**

WLR 965 which still remains the law to date, the Privy Council stated thus:-

"Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made."

The claimant's evidence in this circumstances that the defendant trespassed on the land in issue based on the information he received from persons not called as a witness; was not meant to notify the court of the fact that the statement was made but was meant to prove the truth of the fact that the defendant was seen trespassing into the subject matter for the court to act on it. Such evidence is inadmissible in law and it is immaterial that the evidence of the claimant in this regard was not attacked or contradicted. I therefore hold that the claim that the defendant trespassed into plot no. 348 Cadastral Zone B08 of Jahi Abuja FCT is not proved.

On relief two: Is for the court to declare that allocation of Plot No: 348 Cadastral Zone B08, the subject matter of this suit is valid and still sustaining same having not been revoked.

The law is trite that the parties are bound by their pleadings and that any evidence which is at variance with the averments in the

pleadings goes to no issue and should be disregarded by the court. In other words, evidence in respect of matters not pleaded goes to no issue at the trial and the court should not allow such evidence to be given (see Chief Sule Limbo & Ors v. Aminu Asani & Ors. SC. 373/67 dated the 13th March, 1970). Even when such evidence had been wrongly allowed, the trial court should disregard it as irrelevant to the issues properly raised by the pleadings. See **Emegokwue v. Okadibe (1973) LPELR-1124 (CA); Lemomu & Ors v. Alli-Balogun (1975) LPELR-1779 (SC)**. In the instant case, I have carefully reviewed the amended statement of claim and the written witness statement on oath of the claimant particularly paragraph 6 wherein the claimant states as follows: "That I know that my Plot No. 348 Cadastral Zone B08 of Jahi Abuja FCT is a subsisting Plot and has not been revoked". This piece of evidence is given in vacuum as it is not supported by pleadings. The fact that the subject matter of this suit is subsisting and not revoked was never pleaded; hence, going by the principle of law that evidence in respect of matters not pleaded goes to no issue will apply notwithstanding that there is no contradiction to the evidence of the claimant. I hereby disregard the evidence of the claimant in paragraph 6 of the witness statement on oath reproduced above in this judgment; hence the claim for trespass against the defendants is not proved.

For relief 6: An Order of perpetual injunction restraining the defendant, his assigns, representatives, agents, privies, etc or any persons claiming through him from any acts of continuing trespass on Plot No. 348 Cadastral Zone B08 of Jahi Abuja FCT. : Perpetual

injunction is usually given as a necessary consequential relief to safeguard the land from being broken into; where declaration of title has been made in favour of the plaintiff. It is a consequential relief which naturally flows from the declaratory order sought and granted. It is meant to prevent permanently, the infringement by the losing party of the rights of the successful party, and to curtail the necessity of bringing multiplicity of actions in respect of the land in dispute. See **Goldmark (Nig.) Ltd & Ors v. Ibafor Co. Ltd (2012) 10 NWLR (pt.1308) 29.**

The claimant has also sought for General damages: General damages are damages which the law implies or presumes to have accrued from the wrong complained of. General damages are not granted where the party claiming has not established any wrong. See **CAMEROON AIRLINES VS OTUTUIZU (2011) LPELR-827(SC)**. On the prayer for the sum of five Million as damages; the relief for trespass having failed, the damages predicated on the trespass cannot stand.

In the light of the aforementioned, I hold that the claims of the claimant succeed in part and judgment is delivered thus:

- i. I hereby make declaration that the Claimant is the rightful and legal owner of Plot No: 348 Cadastral Zone B08 of Jahi Abuja FCT transferred to him by virtue of purchase agreement and other landed instrument from

Abdulumumin B. Salihu of 208 Abacha Road Mararaba, Nasarawa State.

- ii. I hereby make an Order granting the Claimant leave to continue to carry on development at Plot No: 348 Cadastral Zone B08 of Jahi Abuja FCT.
- iii. An Order of Perpetual injunction restraining the defendant his assigns, representatives, agents, privies or any person claiming through him from any acts of trespass on Plot No: 348 Cadastral Zone B08 of Jahi Abuja FCT.
- iv. Reliefs 2, 3, 4, 7 and 8 are refused.

.....
HON. JUSTICE A. I. AKOBI
08/01/2024

APPEARANCE:

Dr. E. Chimaroke for the Claimant
No appearance from the binging to the end of the case