

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

**SUIT NO: FCT/HC/CV/2022/17**

**DATE: 04-02-2021**

**BETWEEN:**

**DAR-AL-THAQALAYN ORGANIZATION.....PLAINTIFF**

**AND**

- |  |   |                          |
|--|---|--------------------------|
| <p><b>1. HONOURABLE MINISTER OF THE<br/>FEDERAL CAPITAL TERRITORY</b></p> <p><b>2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY</b></p> | } | <p><b>DEFENDANTS</b></p> |
|--|---|--------------------------|

**JUDGMENT**

**(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)**

The Plaintiff by a statement of claim prayed against the Defendants for the following reliefs:

- (a) **AN ORDER** of the Honourable Court directing the Defendants to forthwith grant and/or allocate to the Plaintiff an alternative plot in Utako District or any other location or Area of equal value and size as Plot No. 91, Cadastral Zone B05, Utako District, Abuja.

**ALTERNATIVELY**

- (b) **AN ORDER** of THIS Honourable Court directing the Defendants to pay to the Plaintiff forthwith a compensation in the sum of N750,000,000.00 (Seven Hundred and Fifty Million Naira) only.

(c)The cost of this action

The Defendants upon being served with the originating processes refused and/or failed to file any defence to the Plaintiff's suit and consequently the matter proceeded to trial. In the course of the trial, the Plaintiff testified through PW1 and tendered three (3) documents which are as follows:

- (a) Acknowledgement letter dated 15<sup>th</sup> December, 2004 (Exhibit A).
- (b) Statutory Right of Occupancy initial Bill dated the 4<sup>th</sup> day of September, 2006 (Exhibit B).
- (c)Certificate of Occupancy dated the 6<sup>th</sup> day of October, 2006 (Exhibit C).
- (d) Copy of the Judgment delivered by Hon. Justice U. I. Inyang dated 25<sup>th</sup> day of July, 2011 (Exhibit D).

PW1 is one Dr. Ali FallahZaroom. An Iranian by Nationality. He testified under affirmation. He came from Kano and is the Director General of the Plaintiff.

The Plaintiff's Counsel submits the lone issue for the determination of this Honourable Court:

- 1. Whether having regard to the totality of evidence before this Honourable Court, both oral and documentary, the Plaintiff has proved its case and thus discharged the burden of proof imposed by law.**

## ARGUMENT ON ISSUE

*Whether having regard to the totality of evidence before this Honourable Court, both oral and documentary, the Plaintiff has proved its case and thus discharged the burden of proof imposed by law.*

Learned counsel argued that it is a settled principle of our adjectival law that the burden of proof lies with the party who asserts in the affirmative as denoted in the maxim, *affirmanti non neganti incumit probatio*.

In other words, he who asserts must prove. See the provisions of **Section 135(1) of the Evidence Act, 2011**. See also the cases of:

- 1. NGERE VS. CHIEF JOB WILLIAM OKURUKET (2015) ALL FWLR (PT. 800) 1360 @1375, PARAGRAPH E.**
- 2. RUFAI ADEYEMI VS. AKANDE (2016) ALL FWLR (PT. 858) 652 @ 699, PARAGRAPH C-D.**
- 3. S. M. COY. LTD VS. STERLING BANK PLC 2015 (ALL FWLR) (PT. 796) 472 @ 495, PARAGRAPHS H-A.**
- 4. PURIFICATION TECHNIQUE (NIG.) LTD VS. JUBRIL (2012) ALL FWLR (PART 642) 1657**

In the case of **MAIHAJA V. GAIDAM (2017) ALL FWLR (PT. 917) @ 1681 PARAS. F-G**, the Apex Court of the land held thus:

*Section 131(1) 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 shall prove that those facts exist. Put streetwise, he who asserts must prove his assertion. It therefore logically follows that what is alleged without proof can be denied without proof. When a fact is asserted without proof then the existence of the alleged fact is not established. That is why Section 132 of the Evidence Act provides further that 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. "*

It is the case of the Plaintiff before this Honourable Court that it sought and applied for the grant of statutory right of occupancy in the Federal Capital Territory Abuja from the 1<sup>st</sup> Defendant for religious purpose. The Plaintiff's application having been approved was granted Right of Occupancy over Plot No. 91, cadastral Zone B05, Utako District, with File No. MISC 80076, Measuring about 3,797.90 square meters. Consequently, the Plaintiff proceeded and paid all the necessary bills in order to perfect its title and was subsequently issued with Certificate of Occupancy with No: 17a2w-173e-3ffr-d336u-10. The Plaintiff immediately took possession of said plot and commenced development thereupon. But the development was stalled and/or frustrated by a suit initiated at the High Court of the Federal Capital Territory Abuja wherein the Plaintiff was joined as co-defendant. The Honourable Court delivered judgment in the said suit wherein it granted all the reliefs sought by the plaintiffs in the said suit and divested the Plaintiff herein the legal interest and possession over Plot No. 91, cadastral Zone B05, Utako District, with File No. MISC 80076, Measuring about 3,797.90 square meters. See paragraphs 6,7,8,9,10,11,12,13 and 14 of the Plaintiff's witness statement on

oath; however, for ease of reference, they are hereunder reproduced:

6. *“On the 19<sup>th</sup> November, 2004 the Plaintiff applied to the Defendants for the grant of statutory right of occupancy in the FCT to be used for religious purpose. I have the acknowledgment of the said application by the Defendant dated 15<sup>th</sup> December, 2004.*

7. *“The Defendants subsequently granted to the Plaintiff a Right of Occupancy over Plot No. 91, cadastral Zone B05, Utako District, with File No. MISC 80076, Measuring about 3,797.90 square meters. The Defendants thereafter issued Statutory Right of Occupancy initial bill to the Plaintiff for payment. I have a copy of the said bill dated the 4<sup>th</sup> day of September, 2006.*

8. *“Upon settlement of all the necessary bills, the Plaintiff was issued with Certificate of Occupancy No: 17a2w-173e-3ffr-d336u-10 dated the 6<sup>th</sup> day of October, 2006 over plot No. 91, cadastral Zone B05, Utako District, Abuja. The said Certificate was registered as No. 18o88 at page 18o88 in volume 90 of the Certificate of Occupancy Register in the Land Registry at Abuja on the 6<sup>th</sup> day of October, 2006. I have the Certificate of Occupancy dated the 6<sup>th</sup> day of October, 2006.*

9. *“The Plaintiff upon the issuance of the Certificate of Occupancy to it by the Defendants over Plot No. 91, cadastral Zone*

*B05, Utako District, Abuja took possession of the same and was in the process of taking appropriate steps to commence development when it was served with a Writ of Summons in Suit No: FCT/HC/CV/214/06 in which the Plaintiff was sued as the 2<sup>nd</sup> Defendant and the 2<sup>nd</sup> Defendant in the instant suit, Federal Capital Development Authority (FCDA) as 1<sup>st</sup> Defendant”.*

10. *“The Plaintiffs in Suit No. FCT/HC/CV/214/06 referred to paragraph 9 supra, sought among other reliefs, a declaration that the revocation of Plot No. 91, cadastral Zone B05, Utako District, Abuja was illegal, null and void and of no effect whatsoever and that the Plaintiffs in the said Suit No. FCT/HC/CV/214/06 remain the title holders of Plot No. 91, cadastral Zone B05, Utako District, Abuja”.*

11. *“The Court in Suit No. FCT/HC/CV/214/06 presided over by Honourable Justice U. A. Inyang on the 25<sup>th</sup> day of July, 2011 delivered judgment and granted all the reliefs sought by the Plaintiffs. I have a certified true copy of the said judgment dated 25<sup>th</sup> July, 2011”.*

12. *“The judgment of the Court in Suit No. FCT/HC/CV/214/06 was on the ground that revocation of Plot No. 91, cadastral Zone B05, Utako District, Abuja from the Plaintiffs in that suit by the 2<sup>nd</sup> Defendant was not in accordance with due process and subsequent re-*

*allocation of the same in favour of the present Plaintiff is therefore null and void”.*

*13. “The Defendants have neither appealed the judgment of the Honourable Court in the judgment of Honourable Justice U. A. Inyang in Suit No. FCT/HC/CV/214/06 nor taken steps to re-grant or re-allocate an alternative plot to the Plaintiff in consequence thereof”.*

*14. “The Plaintiff has suffered loss and damages on account of the subsisting judgment of the Court stripping it of its title over Plot No. 91, cadastral Zone B05, Utako District, Abuja for fault of it”.*

I agree that this case is not defended. The Defendant did not enter an appearance nor did they file any statement of defence.

Ordinarily, and in general terms where a Plaintiff has filed a statement of claim, making certain averments against a defendant, it behoves such a defendant wishing to defend to file a statement of defence. If that is not done, such a defendant risk judgment being given against him. See LAGOS STATE WATER CORPORATION VS. SAKAMORI CONSTRUCTION NIG. LTD (2012) ALL FWLR (PT. 632) 1745.

However, it is not always that judgment is entered in favour of the Plaintiff when the evidence he adduced is unchallenged. In such a case, the evidence in support of the Plaintiff’s claim must not only be unchallenged, it must also be credible, uncontrovertibly so, and must support the claim of the Plaintiff. See GREEN FINGER AGRO-INDUSTRIES LTD VS. YUSUF (2003) 12 NWLR (PT. 835) 488.

The above principle leads me undoubtedly to the question; is the evidence led by the Plaintiff credible? Does it support their claim? On what basis must we order that the Plaintiff must be given alternative plot/land? If it is on the basis of Exhibit A-C, then the Court had ruled that the Exhibits are not valid because the same plot had earlier been allocated the revocation of it is invalid, null and void and of no effect whatsoever. See Exhibit D.

The orders of Inyang J. are reproduced below:

1. *“Declaration that the purported revocation of Plot No. 91 Utako District Abuja covered by the Certificate of Occupancy No. FCT/ABU/ZA.155 by the 1<sup>st</sup> Defendant is only a rumour, illegal, null and void and of no effect whatsoever”.*
2. *“Declaration that the Plaintiffs are and still remain the Title Holders of Plot No. 91 covered by the Certificate of Occupancy No. FCT/ABU/ZA.155, having perfected their titled documents with the 1<sup>st</sup> Defendant/its Agents”.*
3. *“Declaration that the demolition of the structures of the Plaintiffs is a serious mischief, done in bad faith, illegal, null and void and of no effect whatsoever and that the 1<sup>st</sup> Defendant should restore the 2<sup>nd</sup> Plaintiff to its former position in both cash and kind”.*
4. *“Declaration that the 2<sup>nd</sup> Defendant is a trespasser over Plot No. 91, Utako District, Abuja covered by the Certificate of Occupancy No. FCT/ABU/ZA.155”.*



5. *“A Perpetual injunction restraining the Defendants from further acts of trespass on the Plot No. 91, Utako District, Abuja or in any way reallocating the said Plot to the 2<sup>nd</sup> Defendant or any other person/authority”.*
  
6. *“The sum of **N13,926,622.45** (Thirteen Million, Nine Hundred and Twenty-Six Thousand, Six Hundred and Twenty-Two Naira, Forty-Five Kobo) is awarded to the Plaintiffs against the Defendants as special damages for the destruction of their structures on the disputed property as shown by Exhibits 7, 13, 14, 15, 16 and 17”.*
  
7. *“The sum of **N65,000,000.00** (Sixty-Five Million Naira only) as general damages for mischief, inconveniences, embarrassment and psychological trauma caused to the Plaintiffs by the Defendants through their acts of trespass committed by the latter to the property of the former.*
  
8. *I award the sum of **N200,000.00** as cost of litigation against the two Defendants in favour of two Plaintiffs, with each Plaintiff entitled to the sum of **N100,000.00** each.*

So, Inyang J. did not say, the Defendant must reallocate or must grant the Plaintiff another plot of land. In fact, he awarded damages against the Plaintiff then Defendants for trespass.

Now, the claimant/plaintiff wants this Court to direct the Defendants to allocate another plot to them and in the same Area or District of Abuja. But is this feasible in law? No law has been cited to me to say the Court can order or direct allocation of land in the Federal Capital Territory to an individual or Corporate entities. I hold the view that it is not the

responsibility of the Court to so order. If the claimant/plaintiff apply and satisfy all the laid down criteria, the application I believe would be considered.

The claimant who has been adjudged a trespasser want me to direct that he be allocated a plot. That I believe is *ultra-vires* my power, it is a baseless application and therefore untenable.

.....  
S. B. Belgore  
(Judge) 4-2-21.