

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA**

SUIT NO. FCT/HC/CV/1905/2018

BETWEEN:

DEACON BRIGHT ORUWOSU ---- PLAINTIFF

AND

MRS. HAJARA DEWUA ---- DEFENDANT

JUDGMENT

DELIVERED ON THE 5TH MARCH 2021

This is a claim filed by the claimant against the defendant via writ of summons filed on the 24th May, 2018 claiming as follows:

1. A DECLARATION of this Court confirming title to the claimant over that land known as Plot No. BSV/D/MF/58 measuring about 1200m located at Shagari layout Bwari, Bwari Area Council FCT-Abuja having entered valid transaction with piona International Limited for valid transfer of title.
2. A DECLARATION that the land in question as per its title documents, plan and location belongs to Bwari Area Council of FCT.
3. A DECLARATION that the act of unlawful entering and erection of a fence thereby destroying the old and existing one belonging to the Claimant on the land by the Defendant as trespass, occasioning damage on the permanent interest on the said land.

4. AN ORDER declaring the acts of the land, destroying the blocks and trespassing into the Claimant's land by the Defendant as illegal, malicious and unwarranted.
5. The sum of ~~₦~~2,000,000.00 (Two Million Naira) only as cost for the acts of de facing the land and demolition of the Claimant's land.
6. The sum of ~~₦~~10,000,000.00 (Ten Million Naira) only as general Damage.

The claim of the plaintiff as can be glean from the statement of claim is to the effect that by an irrevocable power of Attorney dated 9th July, 2013. One piona international limited who is the owner of the property situate at shagari layout Bwari which property measures 1200 meters and is known as plot No. BSV/D/MF/58 was donated to him.

The property is covered by right of occupancy No:FCT/B4TP/LA/MISC1113. That by the said power of Attorney it look full possession of the property, demarcated same and lay it out into plots. That later recently is attention was drawn to the defendant unlawful ingress and egress on the said property. When he visited the property he was shocked that the defendant had erected a fence on the land and had moved in building materials into the land to further develop the land.

All his effort to stop the defendant prove abortive as the defendant made herself unavailable. That the action and activities of the defendant is calculated to cunningly take over his land and he has suffered damages by this action. The defendant was served with the processes in this case but she never enter appearance nor file

any defence when the matter came up for hearing the claimant gave evidence for himself tendered three (3) Exhibits and close his case. The claimant also filed a written address which was adopted on the 16th July, 2020. In the said address the claimant raise two issues for determination namely:

“Whether on the strength of the uncontroverted and unchallenged testimony and the Exhibits tendered, the claimant has proved better title to the disputed land?”

In arguing this issue one counsel submitted that in proving title to land there are five (5) method which surfaces. He submitted that going by the evidence and the Exhibits before the court the claimant has successfully prove the requirement. He further submitted that for the claimant to succeed in this case for declaration of title to land, the claimant has to rely on the strength of this case and not the weakness of the defence.

He relied on the case of *Salisu Vs. Moboagi* (2016) EJSC Vol.46 pg 59 and submitted that the claimant has prove his case on the strength of the Exhibits. Counsel further cited the case of *Airlines Vs. Mike Otutuizv* (2005) 9 NWLR (Pt.929) 202 at 207; *Adebiyi Vs. Umar* (2012) 9 NWLR (Pt1305) 279 (C.A) on the position that uncontroverted and unchallenged evidence is good to be acted upon by the court and urge the court to agree that the evidence of the claimant remained uncontroverted and unchallenged and urged the court to resolve the issue in favour of the claimant.

On issue two (2) counsel submitted that the defendant was served with the writ of summons and statement of claim as well as hearing notices but failed to file a defence nor put in appearance.

He relied on the case of De Geophysique (NIG. LTD) CCG NIG LTDVs. Aminu (2015) LPELR 24463 S.C and submitted further that the court is entitle to proceed with the matter in the defendant absence and the proceeding will not be a nullity on that ground. He relied on the case of Kabau Vs. Rilwanu (2014) 4 NWLR (Pt.1397) 284 at 305. He urge the court to resolve this issue in favour of the claimant and enter Judgment in his favour.

I have carefully listened to the witness in this case and peruse the Exhibits tendered. The claim of the claimant relates to a declaration of title to land which land is situate at shagari layout Bwari measuring 1200 meters known as plot BSV/D/MF/58. The law is trite that there are five ways of proving title to land. There are:

- a. By traditional evidence.
- b. By production of document of title, which are authenticated.
- c. By act of selling, leasing.
- d. By act of possession of enjoyment of the land.
- e. By proof of possession of connected or adjacent land.

See the case of Alh. Nurudeen Ganiyu & ors Vs. Mobolaji Otegbola & ors (2020) LPELR 49752 (C.A). a claimant need not prove the existence of all the above means. It is enough if he can prove just one of them see the case of Alh. Hassan Modu Goba Vs. Musa Algoni (2020) LPELR. 49489 (C.A).

Where the claim of the claimant is for a declaration of title to land as in the instant case, the claimant will succeed base on the strength of his case and not the weakness of the defence. It will not matter that the defendant did not file any defence to

the claimant case see the case of Ayeni Vs. Adesina (2007) 7 NWLR (Pt.1033) 233 C.A; Borishade Vs. N.B.N LTD (2007) 1 NWLR (Pt. 1015) 217 and consolidated Res LTD Vs. Abofar Ven (Nig) LTD (2007) 6 NWLR (Pt.1030) 221 at 225.

In the instant case, the claimant has averred that the land in issue was acquired by him from one piona international Ltd vide an irrevocable power of Attorney dated 9th July, 2013. He tendered the said irrevocable power of Attorney as exhibit CC3. He also tendered a conveyance of provisional approval No. BSV/D/MF/58 dated 28th August relating to the land in favour of the said piona international Ltd. The CW1 gave evidence that he has been in possession of the land since 2013 and has exercise various act of ownership on the land.

It must be noted that the claimant tendered a site plan showing the size of the land in dispute as Exhibits CC2. This pieces of evidence have remained uncontroverted and unchallenged. The law is trite that where a piece of evidence is uncontroverted and unchallenged and nothing makes it in admissible, the court is duty bound to take it as the truth and act on same in reaching its Judgment see the case of ACB PLC Vs. NTS (Nig) Ltd (2007) NWLR (Pt.1016) 596 at 605.

In the instance case, I am satisfy that the claimant has proved it claim relating to his title to the land in issue. He has by evidence and Exhibits produced in court, that is the production of document of title shown that he is entitle to the land in issue. He has also by Exhibits CC2 shown the precise area of the land in dispute. Since there is no evidence contradict the

evidence of the claimant, I hold that the case of the claimant succeeds. The claimant is entitle to Judgment declaring him the owner of the land.

The claimant had claim the sum of N2,000.000.00k as damages for the defendant's act of defacing the land and demolition/destroying his blocks on the land. This head of claims amount to a claim in special damages. A claim in special damages must be pleaded and prove by credible evidence otherwise it will fail. In the instant case, the claimant had averred that the defendant destroyed his existing fence on the land. He gave evidence along that line. However, he did not disclose the quantity of blocks destroyed, the unit price per block and how he arrive at the sum of N2,000,000.00 which he claim. Special damages must be precise in calculation and must not leave room for speculation.

I am not ready to speculate as to the calculation used by the claimant in arriving at the N2,000,000.00k claim as the court is not allow to speculate. It is for this reason that I decline to award this head of claim to the claimant. The claimant had also claim another sum of N2,000,000.00k as cost of litigating this suit. This is also a claim in special damages. No piece of evidence is before this court in prove of this and the condition giving by the law in prove of special damages as I said above applies.

I shall also decline to award this relief to the claimant. The claimant also claim the sum of N10,000,000.00k as special damages for trespass. Special damages claim result from acts

which causes same form of loss to a party. It is incapable of a precise calculation. Left at the discretion of the court. As I have held earlier, the evidence of the claimant has not been challenge. It stands as prove the claim of the claimant relating to trespass of the defendant on the claimant land.

The consequences of these is that the claimant is entitled to damages. I award the sum of N2,000,000.00k as general damages to the claimant against defendant. In all Judgment is entered for the claimant against the defendant as follows:

- a. The court declare that the land situate at Shagari Layout Bwari Measuring 1200 meters which land is known as plot No. BSV/D/MF/58 belonging to piona international limited is vested to the claimant vide the irrevocable power of Attorney donated to him by piona international limited.
- b. The court declares that the unlawful entry into the land by the defendant amount to act of trespass in favour of the claimant.
- c. The sum of ~~N~~2,000,000.00k is hereby awarded against the defendant as damages in trespass in favour of the claimant.

APPEARANCE

G. T. Thomson Esq. for the plaintiff.

Defendants not in court.

Sign

Hon. Judge

05/03/2021