

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 30TH DAY OF MARCH, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/3518/2020

BETWEEN:

ADAGIRI ADAMU ITOPA

**(Trading under the name and
style of Marble Sticks Ent.)**

CLAIMANT

AND

PERSON(S) UNKNOWN

DEFENDANT(S)

JUDGMENT

By an Originating Summons brought pursuant to Order 60 Rule 2 of the FCT High Court Rules, 2018 dated the 15th day of December 2020 and filed on the 16th day of December 2020, the Claimant approached this Honourable Court for this relief:-

1). AN ORDER to recover possession of all that parcel of land described as Plot ED 1810 Sabon Lugbe South East Extension Layout, Lugbe, Abuja on the ground that he is entitled to possession and the person(s) in occupation is (are) in occupation without his license or consent.

The Originating Summons was supported with a 10-paragraph affidavit deposed to by the applicant, Adagiri Adamu Itopa. The pertinent paragraphs of the affidavit were as follows:

“1) That I am the Claimant herein. I reside at the Aviation Village in Abuja within the jurisdiction of this Honourable Court.

2) That the Defendant(s) is/are unknown to me.

3) That the Ministry of the Federal Capital Territory (through the Abuja Municipal Area Council) offered/allocated Plot ED 1810 Sabon Lugbe South East Extension Layout, Lugbe, Abuja to me through an Offer of Terms of Grant/Conveyance of Approval dated 14th March 2001. The Offer of Terms of Grant/Conveyance of Approval duly signed by W.A.M Shittu-Titilola (for Honorable Minister, FCT) is herein annexed and marked as ‘A’.

4) That I duly accepted the offer of grant and I have made several payments to the Abuja Municipal Area Council (AMAC) in respect of the said plot. Some of the receipts of payment are herein annexed and jointly marked as ‘B’.

5) That I am armed with a valid Title Deed Plan (TDP) and a Regularization of Land Titles and Documents of FCT Area Council acknowledgement.

6) *That sometime within the year 2020, I visited the said Plot ED 1810 Sabon Lugbe South East Extension Layout, Lugbe and noticed some unauthorized development on the plot.*

7) *That all efforts to identify the person(s) responsible for such unauthorized development have proved abortive.*

8) *That I do not know the person(s) responsible for the unauthorized development on the plot and I did not permit anyone to carry out any form of development on my plot.*

9) *That it will be in the utmost interest of justice for the unknown person(s) to be ordered to, forthwith, quit Plot ED 1810 Sabon Lugbe South East Extension Layout, Lugbe, Abuja.”*

In the written address in support of the Originating Summons for possession Learned Counsel formulated one issue for determination by this Honourable Court to wit:

“WHETHER THE CLAIMANT IS ENTITLED TO RECOVER POSSESSION OF THE PROPERTY DULY ALLOCATED TO HIM BY THE ADMINISTERING LAND AUTHORITY IN THE FCT?”

In his argument on the sole issue for determination, Learned Counsel contended that having fully been vested with all rights and privileges, for the property under reference, the Claimant is duly seised of all the proprietary

and beneficial interest in the property and should enjoy same without let or hindrance from any third party including but not limited to the unknown person(s) currently in unauthorized occupation of the property.

According to the Learned Counsel, the Claimant had met all the conditions clearly spelt out under Order 60 Rule 3 of the Rules of this Honourable Court, which are:-

- 1) That he has a vested interest in the property by virtue of the contract between him and the Federal Capital Territory Lands Department.
- 2) That the unknown person(s) currently in occupation of the property is/are not there with his consent or license.
- 3) That he does not know the name(s) of the person(s) in occupation of his property, and
- 4) That it is not the person(s) he derived title from who is (are) in occupation of the property.

Learned Counsel went ahead to urge the Court to grant the relief sought by the Claimant in the suit.

This matter first came up for mention on the 28th of January 2021, where the Learned Counsel for the Claimant moved a Motion *Ex-parte* for leave of the Court to serve the Defendants by substituted means. The prayer was granted and the matter was adjourned to the 10th of February 2021. On the 10th of

February, 2021, the matter came up and, being not ripe for hearing, was further adjourned to the 4th of March 2021. On the 4th of March, 2021, the Learned Counsel, as usual, appeared for the Claimant. Parties were absent and there was no representation for the Defendant(s). The Defendant(s), though they were served with the originating process and hearing notice, were never in Court on all the dates the matter came up. Learned Counsel therefore proceeded to present the case of the Claimant and thereafter urged the Court to grant the relief sought by the Claimant.

Upon conclusion of the case, the Court adjourned the matter for Judgment on the 30th of March 2021.

The Defendant(s) was/were not in Court and there was no legal representation on all the days the matter came up in Court and no processes were filed in opposition to the matter.

I have carefully considered all the processes filed in this application, together with the argument of the Learned Counsel for the Claimant. In this suit, the Claimant has come under a unique procedure of instituting this action against unknown Defendant(s). The procedure is *sui generis* and it is an exception to the rule against filing a suit against an unknown defendant. It is enshrined in Order 60 Rule 1, Rule 2 and Rule 3 of the FCT High Court Rules, 2018. For avoidance of doubt, the said Order 60 Rules 1, 2 and 3 provide as follows:

(1) This order shall not apply where the person in occupation of land is:

(a) A Tenant or

(b) A Tenant holding over after termination of his tenancy or

(c) A licensee of the owner or person entitled to possession or

(d) A person who had the consent of the predecessor in title of the person who is entitled to possession.

(2) Where a person claims possession of land which he alleges is occupied solely by a person not listed in sub-rule 1 above, proceedings may be brought by Originating Summons in accordance with the provisions of this Order.

2. The originating summons shall be as in Form 47 and no acknowledgment of service shall be required.

3. The Claimant shall file in support of the originating summons an affidavit stating:

(a) His interest in the land;

(b) The circumstance in which the land has been occupied without license or consent and in which his claim to possession arises and

(c) That he does not know the name of any person occupying the land who is not named in the summons.

See the case of ***Emeka Okoli and Anor Vs Alhaji Ibrahim Gadan (2014) LPELR- 23067 (CA) per Abiru JCA at pages 28-30 paras E-A*** where the court of appeal explained this special procedure.

Essentially, the Rules enables a landowner whose land is in the occupation of squatter(s) or person(s) occupying the land without consent to commence summary proceeding against the squatter for recovery of possession of the land. This procedure offers a Claimant the opportunity to recover possession of land wrongfully occupied by unknown persons.

This is contrary to the ordinary procedure where the person in illegal possession would be identified and named as a Defendant so that he can be bound by the Order of the Court in the Suit.

This special procedure was introduced to avoid the injustice and hardship on the part of the Claimants who are unable to proceed against unknown person because of their inability to identify and serve them as defendants in the suit.

The Order applies specifically to where the occupier has entered into occupation without license or consent of the person in legal possession or any of his predecessor in title. In other words, actions under Order 60 are not maintainable against the categories of persons mentioned in Order 60 Rule 1.

This is why it is *sui generis* and different from, for instance, trespass where an action is maintainable against a person who came into a property legally but

remained on the property illegally after the licence or permission of the owner had been withdrawn.

In the case of ***Persons, Names Unknown v. Sahris Int'l Ltd (2009) LPELR-49006 (SC)***, the apex Court, per Aka'ahs, JSC at pages 9 – 12 para D – D quoted extensively the dictum of Lord Denning in ***McPhail v. Persons Unknown (1973) 3 All ER 383*** where the learned Law Lord explained in detail the reason for this special proceeding in recovery of possession and held as follows:-

"The Court below stated the correct position of the law regarding the competence of the appellants in filling the notice of appeal. The appellants were squatters and they could be turned off the land by the respondent who could use the remedy of self-help to regain possession or file an action in Court. In McPhail v. Persons Unknown (1973) 3 All ER 383 Lord Denning M.R. gave an exhaustive explanation of the options available to the owner of the land against squatters at pages 395- 399 as follows: "What is a squatter? He is one who, without any color of right, enters on an unoccupied house or land, intending to stay there as long as he considers... Now I would say this at once about squatters. The owner is not

obliged to go to the Courts to obtain possession. He is entitled, if he so desires to take the remedy into his own hands. He can go in himself and turn them out without the aid of the Courts of law. This is not a course to be recommended because of the disturbance which might follow. But the legality of it is beyond question.... In a civilized society, the Courts should themselves provide a remedy which is speedy and effective and thus make self-help unnecessary.... The owner is entitled, to go to the Court and obtain an order that the owner do recover the land, and to issue a writ of possession immediately.... The matter rested until some difficulties were discovered. When some squatters entered a vacant land belonging to the Manchester Corporation, this Court granted an injunction against them, but held that it could not make an order for recovery of possession except in a final judgment. See: Manchester Corpn. v. Connolly (1970) 1 All ER 961, (1970) Ch.420. And when some squatters occupied houses in Brighton, Stamp J held that no proceedings could be taken on recovery of possession unless they were named as defendants: See: Re Wykeman Terrace, Brighton, Sussex ex parte Territorial Auxiliary and Volunteer Reserve Association for the South East (1971) Ch. 204. The

result was that if the squatters did not give their names or if one squatter, followed another in quick succession, no order for possession could be made.... The position was soon put right by new Rules of Court. RSC Ord. 113 and CCR Ord. 26 are quite clear. A summons can be issued for possession against squatters even though they cannot be identified by name and summarily. It is an order that the plaintiffs 'do recover' possession. That order can be enforced by a writ of possession immediately. It is on authority under which anyone who is squatting on the premises can be turned out at once."

The decision in McPhail knocks out the argument proffered by learned counsel for the appellant that since the respondent was comfortable to institute the action against the appellant as persons, names unknown and obtained judgment against the appellant, it is estopped from denying the identity of the appellant. It is because the appellant was a squatter that enabled the respondent to have access to Court in order to reclaim possession of the land illegally occupied by the appellant. The appellant had opportunity to disclose its identity when the memorandum of conditional appearance was filed on its behalf but chose to remain anonymous throughout. The fact

that the plaintiff's Solicitor addressed the quit notice to the Manager, Kesthern Hill Top Restaurant did not clothe Kesthern Hill Top Restaurant with legal personality. Consequently the onus was on the appellant to disclose its legal personality. Without making such a disclosure, it has no capacity to maintain the appeal”

Under this procedure as provided in the Rules, the Claimant commences the action by Originating Summons without any requirement of acknowledgment of service of the summons by the person unlawfully occupying the land. See Order 60 Rule 2 of the FCT High Court Rules 2018.

A point that must be noted at this stage is that the procedure under Order 60 is only restricted to the recovery of possession of land. It cannot apply, for instance, where the claimant is seeking declaration of title of land. See the case of ***Emeka Okoli & Ors V Alhaji Ibrahim Gadan***, where the Court of Appeal explained the application of the procedure, thus:

“In proceedings under this order, the only claim that can be made in the originating process is for recovery of possession of land, no other cause of action can be joined with such a claim in such proceedings, whether for the payment of money, such as rent, mesne profit, damages for use and occupation or

other claim for damages or for injunction or declaration or otherwise. The Order is narrowly confined to the particular remedy described in Rule 1. No order for cost can be made except there is a named defendant...”

To succeed in a claim brought under Order 60, the Claimant’s supporting affidavit must establish the following facts:

- (a) His interest in the land
- (b) The circumstance in which the land has been occupied without license or consent and in which his claim to possession arises and
- (c) That he does not know the name of any person(s) occupying the land who is not named in the summons.

Going through the Claimant’s supporting affidavit, it is evident that the Claimant complied with the requirement of Order 60 of the Rules of this Honourable Court.

The Claimant narrated how he acquired the land from the Ministry of Federal Capital Territory through the Abuja Municipal Area Council which offered/allocated Plot ED 1810 Sabon Lugbe South East Extension Layout, Lugbe, Abuja, through an Offer of Terms of Grant/Conveyance of Approval dated 14th March 2001, which the Claimant duly accepted and made several payments of the Abuja Municipal Area Council in respect of the said plot. All

these are marked as Exhibits A and B. Claimant stated that he is armed with a valid Title Deed Plan (TDP) and a Regularization of Land Titles and Documents of FCT Area Council Acknowledgment.

He also stated that sometime in 2020 He visited the said plot and noticed some unauthorized development on the plot. All efforts to identify the person(s) responsible for such unauthorized development have proved abortive by the Claimant.

The Claimant stated that he does not know the names or identities of the Defendant(s) and he has made efforts to ascertain the names and identities of the unknown person(s); hence, they are described as unknown defendants in the Originating Summons.

Notwithstanding the provisions of Order 60, where the suit is uncontested, the Claimant still has the onus to prove the claim. However, in the unreported case of ***Olumuyiwa Odejayi & Anor Vs Person(s) Unknown with Suit No ID/97m/2005 (unreported)***, The High Court of Lagos State held that the burden on the Claimant(s) is such a minimum proof as is sufficient to establish their entitled judgment.

With the affidavit evidence before this Honourable Court, I am of the view that the evidence is credible and substantial enough to sustain the claim for

recovery of possession in favor of the Claimant. Besides, the Claimant has satisfied the conditions stipulated under Order 60 Rule 3 of the Rules of this Honourable Court.

The provisions of Order 60 Rule 4 require service of the Originating Summons on the unnamed Defendant(s). In order to avoid any complaints by the Defendant (s) of non-service of the Court processes on them, the Claimant dutifully obtained the leave of this Court to effect service on the Defendant(s) by substituted service. This is in line with the provisions of Order 60 Rule 4(1)(c) of the FCT High Court Rules 2018.

On the whole, I am satisfied that the Claimant has discharged the onus of proof required of him under the provisions of Order 60 Rule 3 of the FCT High Court Rules, 2018 by virtue of the affidavit evidence which has disclosed in sufficient details his interest in the land, the circumstances under which his claim for possession has arisen in relation to the Defendant's occupation of the land without the Claimant's consent and the fact that the Defendant(s) or their names are not known to him.

Upon reading the affidavits of the Claimant, which was filed on the 16th day of December 2020, and upon hearing the Learned Counsel for the Claimant, it is hereby ordered as follows:-

“That the Claimant do recover possession of the Land described in the Originating Summons, which is Plot ED 1810 Sabon Lugbe South East Extension Layout Lugbe, Abuja; and that the defendant(s) do deliver up forthwith possession of the said parcel of land illegally occupied by them without the consent of the Claimant and give possession of the said land to the Claimant.”

This is the Judgment of this Honourable Court, delivered today, the 30th of March, 2021.

HON. JUSTICE A. H. MUSA
JUDGE
30/03/2021

APPEARANCES:
FOR THE CLAIMANT:
Max Ogor Esq.
Iyaji Bisong (Mrs.)

FOR THE DEFENDANT(S)
No legal representation.