

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/3517/2020

BETWEEN:

ISMAILA YUSUF OVAYOZA
(Trading under the name and
style of Loady Big Ent.)

CLAIMANT

AND

PERSON(S) UNKNOWN

DEFENDANT(S)

JUDGMENT

This judgment is in respect of an action for possession of land brought pursuant to Order 60 Rule 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.

By an Originating Summons for possession dated the 15th of December, 2020 and filed on the 16th of December, 2020, the Claimant, Mr. Ismail Yusuf Ovayoza (trading under the name and style of Loady Big Ent.) instituted this action seeking the following sole relief:-

“An Order to recover possession of all that parcel of land described as Plot ED 1816 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 an affidavit which contained the facts upon which the Claimant relied to bring this application, two exhibits, and a written address.

In the affidavit, the Claimant who was also the deponent, averred that he was duly allocated Plot ED 1816 Sabon Lugbe South East Extension Layout, Lugbe, Abuja by the Federal Capital Territory through the Abuja Municipal Area Council through an Offer of Terms of Grant/Conveyance of Approval dated the 14th March, 2001 which was attached to the affidavit as **Exhibit A**. He claimed he accepted the offer and made several payments the receipts of which were annexed to the affidavit and collectively marked as **Exhibit B**. he further stated that he had a valid Title Deed Plan (TDP) and a Regularization of Land Titles and Documents of FCT Area Council acknowledgement. He, however, did not exhibit these two documents.

The Claimant as deponent averred that he was shocked, when he visited the said plot of land in 2020, and noticed that some unauthorized persons were developing the said plot. He asserted that he neither knew the person or persons responsible for the unauthorized development on his land nor did he permit any person or persons to develop his land.

In his written address in support of the Originating Summons, learned Counsel for the Claimant raised a sole issue for determination, which is: ***“Whether the Claimant is entitled to recover possession of a property duly allocated to him by the administering land authority in the FCT?”***

In his argument on this sole issue, learned Counsel answered the question subsumed in this sole issue in the affirmative and went on to contend that the Claimant was vested with all the proprietary and beneficial interests in the property and, as such, should enjoy all the rights and privileges flowing therefrom. He further contended that the Claimant had met all the conditions stipulated under Order 60 Rule 3 of the Rules of this Honourable Court. He therefore urged the Court to grant the relief sought by the Claimant in this suit.

This suit first came up for mention on the 28th of January, 2021. Counsel for the Claimant moved a Motion *Ex Parte* for leave of this Honourable Court to serve the Defendant(s) by substituted means. This Court granted the prayer and adjourned the matter to 10th of February, 2021. On the 10th of February, 2021, the matter could not go on because the Claimant was unable to serve the Defendant(s) with the processes in this suit. This Honourable Court, however, noted that the record of the Court showed that service of the originating processes and the Hearing Notice had been

effected on the Defendant(s) and, as such, the suit would be ripe for hearing on the next adjourned date. It accordingly adjourned the matter to the 4th of March, 2021. On the 4th of March, 2021, learned Counsel for the Claimant proceeded to present the case of the Claimant and urged the Court to grant the relief sought by the Claimant. The Court, upon the conclusion of the case of the Claimant, adjourned the suit to 30th March, 2021, for Judgment.

It must be pointed out that the Defendant(s) was or were not in Court and there was no legal representation for them on all the days that this suit came up in Court. No processes were filed on behalf of the Defendant(s) in opposition to the suit of the Claimant. It is trite law that it is the duty of the Court to ensure that all the processes required to bring the pendency of a suit to the knowledge of a party to a suit are deployed for that purpose; but it is not the responsibility of the Court to compel a party to respond to a suit or attend the hearing of the suit. See ***Mekwunye v. Imoukhuede (2019) 13 NWLR (Pt. 1690) 439 per Abba Aji, JSC; Mfa v. Inongha (2014) 4 NWLR (Pt. 1397) 343; Pam v. Mohammed (2008) 16 NWLR (Pt. 1112) 1; Ukwuyok v. Ogbula (2019) 15 NWLR (Pt. 1695) 308 per Okoro, JSC.***

This judgment is therefore based on the unchallenged affidavit evidence of the Claimant. In situations like this, it is the solemn responsibility of the

Court to ensure that the facts deposed to in the affidavit are cogent, credible, convincing and compelling enough to grant the reliefs sought by the Claimant. See ***Ogojeifo v. Ogojeifo (2006) LPELR-2308 (SC); Ramawa v. NACB Consultancy & Finance Co. Ltd. & Anor (2006) LPELR-7606(CA); COP v. Agholor (2014) LPELR-23212CA, Odiong v. Assistant Inspector-General of Police (2013) LPELR-20698(CA), Statmak v. COP & Anor (2018) LPELR-46324(CA) and JMG Ltd v. Israel & Ors (2020) LPELR-50585(CA).***

In determining whether the Claimant has furnished this Honourable Court with the relevant material particulars in the affidavit in support of the Originating Summons as to be entitled to the Judgment of this Honourable Court, I shall adopt the sole issue which Counsel for the Claimant formulated in his written address in support of the Originating Summons, which is: ***“Whether the Claimant is entitled to recover possession of a property duly allocated to him by the administering land authority in the Federal Capital Territory, Abuja?”***

I must of necessity point out that proceedings under Order 60 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 are *sui generis* in nature. They are unique because they are not, strictly speaking, tortious actions in trespass; otherwise, Rule 1 of Order 60 would

not have enumerated the classes of persons to whom Order 60 do not apply. They are also not actions for declarations of title to land *per se*; otherwise, conditions stricter than those enumerated in Rule 3 of Order 60 would have been demanded of the Claimant.

Proceedings under Order 60 are *sui generis* because proof of exclusive possession, being an incident of ownership and one of the means of proving ownership of land, the relief that is granted presupposes that the Claimant holds a valid legal title to the land that is being occupied unlawfully by the squatters or person or persons known that is superior to that of the occupier of the land in question. This *sui generis* nature of the proceedings finds expression in the designation of the proceedings under the Rules of this Court. The Rules specifically describe the proceedings under Order 60 as “**Summary Proceedings for Possession of Landed Property Occupied by Squatters or Without the Owner’s Consent**”. Note that the Order uses the word “owner” in describing the Claimant. One unique feature of proceedings under Order 60 is that, against the conventional practice of using Originating Summons to commence actions that border on the construction of written instruments, the Order specifically recommends that proceedings under Order 60 shall be commenced via Originating Summons. See Order 60 Rule 2 of the Rules of this Court.

For a Claimant to be entitled to Judgment under this proceeding, they must satisfy the conditions enumerated under Order 60 Rule 3. The Rule provides as follow:-

The claimant shall file in support of the originating summons an affidavit stating;

(a) His interest in the land;

(b) The circumstances in which the land has been occupied without licence 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.

These conditions, it must be pointed out, are conjunctive and not disjunctive. The three conditions must exist or be shown to be in existence before a Claimant can be entitled to Judgment under this Order. It is therefore the duty of this Honourable Court, as laid down in ***Odulaja v. Haddad (1973) 1 ANLR 191*** and followed in a host of judicial authorities, to ensure that the facts deposed to in the unchallenged affidavit of the Claimant are enough to sustain the relief sought herein.

The first condition the Claimant is required to satisfy is that he must disclose his interest in the land. In law, an interest is a legal right recognizable and enforceable at law or in equity. In paragraphs 3, 4 and 5

of the affidavit in support of the Originating Summons, the Claimant deposed as follows:-

“(3) The Ministry of the Federal Capital Territory (through the Abuja Municipal Area Council) offered/allocated Plot ED 1816 Sabon Lugbe South East Extension Layout, Lugbe, Abuja to me through an Offer of Terms of Grant/Conveyance of Approval dated 14th March, 2001...

(4) 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...

(5) I am armed with a valid Title Deed Plan (TDP) and a Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement.”

To reinforce the claims in the above paragraphs, the Claimant attached the Offer of Grant/Conveyance of Approval as **Exhibit A**. He also exhibited the receipts of payment which he marked collectively as **Exhibit B**. To me, the Claimant has satisfied the first condition required of him under Rule 3 and I so hold.

The second condition to be satisfied is that the Claimant must disclose the circumstances under which the land came to be occupied by unauthorized

persons and without his consent. In paragraph 6 of the affidavit in support of the Originating Summons, the Claimant deposed as follows:-

“Sometime within the year 2020, I visited the said Plot ED 1816 Sabon Lugbe South East Extension Layout, Lugbe and noticed some unauthorized development on the plot.”

Thus, the fact that some person or persons embarked on the development of the property without his knowledge presupposes that the Claimant never gave his consent to the development of the said plot of land. This fact, together with the fact that he found out about the unauthorized development only when he visited the land some time in 2020, disclose the circumstances under which the land was occupied without his license or his consent and, therefore, constituted a challenge to his possessory right over same. It is my finding from an analysis of this paragraph in this regard that the Claimant has met the second condition and I so hold.

To be entitled to Judgment under Order 60, the Claimant must convince the Court that he does not know the name or names of the person or persons occupying the land. How has the Claimant in this suit being able to discharge this obligation? In paragraphs 7 and 8 of the supporting affidavit, he disclosed as follows:-

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

(8) 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.”

The above paragraphs are self-explanatory. The Claimant cannot know the name or names of the person or persons occupying Plot ED 1816 Sabon Lugbe South East Extension Layout, Lugbe, Abuja because the fact of the unauthorized development of the land only came to his knowledge when he visited the land in 2020. Though he made efforts to unravel the identity of the person or persons behind the development, he could not key out the spectral phantom. I hold, therefore, that the third condition has been satisfied in this regard.

From the foregoing, therefore, there is no vestige of doubt in my mind that the Claimant has disclosed the existence of sufficient interest in Plot ED 1816 Sabon Lugbe South East Extension Layout, Lugbe, Abuja. I also believe that he has also explained to the satisfaction of this Honourable Court how this plot of land came to be occupied by unauthorized person or persons without his licence or consent. He has shown also that he does not

know the name or names of these unauthorized persons, notwithstanding the fact that he made strenuous efforts to unravel their identity or identities.

It is trite law that a person in possession is presumed to be entitled to the land he occupies against the whole world except the true owner thereof.

See ***Owoade v. Omitola (1988) 2 NWLR (Pt. 77) 413; Otunla v. Ogunowo (2004) 6 NWLR (Pt. 868) 184 at 200; Bankole & Anor v. Denapo & Anor (2019) LPELR-46444 (CA)***. It is for this reason that the Courts have always distinguished between mere occupation of a landed property and legal possession of the same landed property. While the former gives rise to de facto possession, the latter is known as de jure possession. In the *locus classicus* on this subject, ***Raphael Udeze & Ors v. Paul Chidebe & Ors (1990) 1 SCNJ 104 at 120 – 121; (1990) 1 NWLR (Pt. 125) 141; (1990) LPELR-3295 (SC)*** the Supreme Court per Nnaemeka-Agu, JSC effulgently held as follows:-

“It is true that, as a general proposition, where a party is admitted to be in possession of land in litigation between the parties, the onus is on the other side which is asserting the contrary to prove that he is not the owner of the land. See Section 145 of the Evidence Act; also Onobruchere v. Esegine & Anor (1986) 2 S.C. 385 (1986) 1 N.W.L.R. (Pt. 19) 799. But the real problem of such cases is that quite often, as

in this case, there is tendency to confuse possession with mere occupation. "Occupation" as used in relation to land entails mere physical control of the land in the time being. It is a matter of fact. Such a control may have originated from permission from the true owner; it may have been by stealth; or it may be a tortious trespass. Possession of land, on the other hand, may, sometimes entail or even coincide with, occupation of it but is not necessarily always synonymous or conterminous with it. A man, such as a landlord who collects rents from his tenants, may be in legal possession of the land even though he does not set his foot on it. This is why distinction is often made between de facto possession, which is mere occupation, and de jure possession which entails possession animo possidendi with that amount of occupation, control or even, sometimes, the right to occupy at will sufficient to exclude other persons from interfering. See Lasisi Akanni Buraimoh v. Rebecca Ayinke Bamgbose (1989) 1 N.W.L.R. (Pt. 109) 352. at p. 366. Within the meaning of this concept of possession a man ordinarily living in Maiduguri may be in possession of a vacant house in Lagos if he is in possession of the keys. But, in my opinion, that possession the admission of which is capable of raising a presumption of ownership of land under Section 145 of the Evidence Act must be that which amounts to de jure exclusive possession, not mere occupation."

This dictum has been cited with approval in a plethora of judicial authorities such as *Okoye v. Dumebi (2014) LPELR-24155 (CA)*; *Akinyede v. Akinyede (2017) LPELR-43619 (CA)*; *Anyabunsi v. Ugwunze (1995) LPELR-503 (SC)*; *Oshafunmi & Anor v. Adepoju & Anor (2014) LPELR-23073 (CA)*; *Nnadi v. Nnadi (2012) LPELR-15363(CA)* among others.

There is no doubt in my mind that the occupation of Plot ED 1816 Sabon Lugbe South East Extension Layout, Lugbe, Abuja by the Defendant(s) was done by stealth, same having been done without the license, consent and knowledge of the Claimant. The Claimant having disclosed his interest in the land by exhibiting his documents of title to the said land has demonstrated de jure possession as against the de facto possession of the Defendant(s). This action, therefore, is properly within the purview of Order 60 of the Rules of this Honourable Court.

Having satisfied this Honourable Court as to the existence of these three conditions, it is my considered view, and I so hold, that the Claimant is entitled to an order of possession of the plot of land specifically known and described as Plot ED 1816 Sabon Lugbe South East Extension Layout, Lugbe, Abuja. This Honourable Court therefore finds the present suit meritorious, the Claimant having satisfied the requirements of Order 60 Rules 1, 2 and 3 of the High Court of the Federal Capital Territory, Abuja

(Civil Procedure) Rules 2018. Accordingly, the sole relief sought by the Claimant is hereby granted as follows:-

That the Claimant is hereby ordered to recover possession of all that parcel of land known and described as Plot ED 1816 Sabon Lugbe South East Extension Layout, Lugbe, Abuja from the person or persons in occupation of same without his license or consent, having shown that he is entitled to possession of the said land.

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.