

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT COURT 8 NYANYA ABUJA ON THE 2ND DAY
OF FEBRUARY 2021
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO: FCT/HC/CV/551/15**

COURT CLERK: JOSEPH BALAMI ISHAKU

**BETWEEN:
MR. GODDY AKHIREBHU.....CLAIMANT
AND**

**1. MR. ANDREW MORDI (ANDY)
2. MR. DANLAMI TOMA }DEFENDANTS**

JUDGMENT

The Claimant's Writ of Summons and Statement of Claim dated 21/02/15 is for the following:

- a. A declaration that the Claimant is entitled to and is the legitimate beneficial owner of the piece of land known and situated behind FCDA Quarters Extension, Opposite Federal Government Girls College FGGC, Bwari, Abuja FCT.
- b. An Order of Perpetual Injunction restraining the Defendants whether by themselves, their

agents, servants, privies howsoever called from trespassing or further trespassing on the piece of land known and described , situated behind FCDA Quarters Extension, Opposite Federal Government Girls College (FGGC) Bwari, Abuja FCT.

- c. N5 Million being general and exemplary damages.
- d. Cost of the action.

The 1st and 2nd Defendants Joint Statement of Defence is dated the 6th day of January 2017.

The Claimant filed a reply to Statement of Defence dated 24/02/2017.

On 2/3/17, the Claimant opened his case and called two witnesses in proof thereof.

The first Claimant's witness is the Claimant himself, Godwin Akhirebhu. He stated orally that he is a businessman. That he lives besides PHCN Opposite

FGGC, Bwari, Abuja. He knows the Defendant. He deposed to a Witness Statement on Oath on 21/12/15 and 24/02/17. He adopted same as his oral testimony.

In his testimony dated 21/12/15, he deposed that he is the Claimant in this matter.

That he acquired the said plot of land from one Mrs. Eucharia Agede Odey, a teacher at the Federal Government Girls College (now retired) Bwari, Abuja FCT.

He has been using the plot of land to cultivate beans and yam every year to feed his family and pay school fees of his children and equally pay tax to the Federal Inland Revenue Services (FIRS) till the first Defendant came to vandalize the land and destroy his crops worth N1.5 Million Naira.

That in 2013 when big men in the society put eyes on the existing villages to chase them away from their properties, they consulted FCT Minister (Bala Mohammed) and complained to him.

The Minister intervened and instructed them to form an Association to do a survey plan showing owners of

each plot opposite FGGC Bwari and forward same. Thereafter some people who claimed to be agent or assigns by FCDA, Department of Development Control came to the community and tried to chase them away but the land owners in the community appointed a representative and instituted action against FCDA, Department of Development Control and the Court ruled in their favour that they should follow due process. That after the ruling in 2014, one Adeleke Zubair called to say somebody was looking for a plot to buy.

He told him on phone to show the person his plot of land. The first Defendant showed interest to buy but without any consideration for payment, the first Defendant trespassed into the land and constructed a structure on the plot.

The first Defendant vowed that he is a Niger Delta man and that he does not have any business with him or Adeleke Zubairu that introduced him.

That if he sees him on the plot he would beat him to death.

The Claimant's Additional Statement dated 17/02/17 is as follows:

That the 2nd Defendant is still using the 1st Defendant to trespass on his plot of land and interfering with same in a manner outrageous to the course of justice.

That on the 16th day of January 2017, his Counsel Adewole Nathaniel withdrew the application for interlocutory injunction.

That after the matter was adjourned for definite hearing, the 2nd Defendant and others quickly went back to the disputed land to put beacon, sharing the land amongst themselves as to come to Court to bear false witness.

That neither 2nd Defendant or Etsu of Bwari is the owner of the said plots of land in issue.

In 2014 when Dr. Philip Omegah Salawu engaged the services of a man claiming to be an agent of the Federal Capital Development Authority to eject them from their plots without a reasonable ground, they instituted an action against the FCDA in court. That they contributed money for the case. Danjuma Thomas the elder brother of the 2nd Defendant was

the representative of the Etsu of Bwari who was attending Court on their behalf.

That after the ruling, the Etsu of Bwari and Danjuma Thomas conspired and turned against them to deprive them of their immovable properties using the younger brother of Danjuma 2nd Defendant and the ruling of the Court to sell the plots of the land to 1st Defendant.

That Etsu of Bwari (Yaro Ibrahim), Danjuma Thomas and 2nd Defendant neither have any interest nor plot of land opposite Federal Government Girls College Bwari Abuja before they involved them to represent them.

That instead of the Etsu of Bwari to tender apology for the breach of trust committed by him, he rather used violence, intimidation and threat against him that he should withdraw the case from the High Court of Justice to his palace or he will banish him from Abuja FCT.

That the Etsu of Bwari is not the owner of the land. He does not have right to issue land ownership letters to the 1st Defendant over his immovable properties

neither does he have right to sell his properties because he is a Royal Father.

That it will be in the interest of justice to grant all the reliefs.

The Witness tendered the following documents as Exhibits.

Exhibits A and A1 – The sales agreement and Power of Attorney.

Exhibit B – The CTC of the ruling of this Court delivered by Hon. Justice Venda.

Exhibit C, C1 – C9 – Photos of Defendant and others sharing land.

Exhibit D – The complimentary card of Dr. Philip Salawu .

Exhibit E, E1 – E9 are Certificate of Compliance and 9 photographs.

Exhibit F – Tax clearance Certificate of the Claimant.

Under Cross-Examination, the witness answered that Eucharia Agede has retired.

To another question, he answered that he does not know her whereabouts or where she is from. That she is not an indigene of Bwari. That she showed him the document she used in buying the land.

To a further question, he answered that she told him that the Federal Government owned the land and advised him to pay tax. He answered that he is not a party to the land agreement. That the said Eucharika bought the land from somebody and he bought it from her on 19/07/07.

That one Mr. Adeleke witnessed the transaction.

The person who witnessed her signature was brought by her. He must have retired. That people are living around the subject matter. That he has neighbours.

That Adeleke, Ayu Christopher are his neighbours. That he saw 1st Defendant destroying his beans. He reported to the Police and they said they don't have jurisdiction over land. He also went to the Etsu's palace. He was sympathetic and asked him to go back to the Police.

To a question, he answered that he is a builder and that he does not have office. That Exhibit F is the evidence of tax that he paid.

That he is farming on the land. That some houses were demolished and they went to Court. The government said they were to take over the land not knowing that it is Dr. Philip Salawu that wants to take over the land.

The PW2 is Zubair Adeleke Olalekan.

He stated orally that he is a block molder. He lives opposite Federal Government Girls College, Bwari. He knows the Claimant and the Defendant.

On 21/12/15, he deposed to a Witness Statement on Oath.

It has his name, passport and signature. He adopted same as his oral testimony.

In the said Statement, he deposed that he is one of the victims of the Defendants. That he purchased a plot of land measuring 200 by 200 ft opposite Federal Government Girls Bwari FCT from one Mr. Sunday

Paul Indakawu who is an indigene of Bwari Area Council on 16/04/96 since then he has been paying tax up till date.

In 2013, one Phillip Salawu approached and persuaded him to sell his landed property for him to build a plaza but he refused. That since then he has been sending hired killers to kill him. He set up men claiming to be agents of FCDA to forcefully chase them away.

That this Court had earlier given ruling in their favour in another case.

That 1st Defendant approached him disguising as a land agent pleading that he should assist his brother to procure a land for his brother Imoni Samuel Ayegbeni. He took him to the Claimant's landed property. That he later sold part of his landed property to the owner of the car (Imoni Samuel Ayegbeni), he delivered the car documents to him but later collected the car in the presence of Bwari Police Officers.

He did not know that 1st Defendant and Mr. Imoni Samuel Ayegbeni are working hand in hand with Phillip Salawu to fraudulently collect his landed property from him until they came with a hired killer who attempted to kill him. They were arrested by the Police. That he was sent to prison on false allegation. That the 1st Defendant also lay claim to the land of the Claimant without any payment.

The Witness tendered the following documents.

Exhibit G and G1 - 5 Revenue Receipts in the name of the witness and tax clearance certificate .

Exhibit H - Vehicle particulars.

Under Cross-examination, the witness answered that his land measuring 200 by 200 is not the issue in this case. His business is located directly opposite FGGC, Bwari.

To a question, he answered that he is in Court for criminal trespass and false allegation. That he is not a perpetual land grabber.

CTC of FIR against witness is Exhibit I.

To another question, he answered that he paid his ground rent till 2015. That the ground rent receipts are with the Court.

Under re--examination, he said the charge in the FIR Exhibit I has not been proved.

The above is the case of the Claimant.

The Defence opened and called three witnesses.

The first Defence Witness is Mordi Andrew. He stated orally that he is in the travel agency. He lives at No. 16 Eyi Crescent, Opposite Government Girls College, Bwari, Abuja.

He remembers making a Witness Statement on Oath. He adopted same as his oral evidence. He stated that nobody is using him and he is not trespassing into the Claimant's land. That he purchased the customary land in dispute measuring 782.0 sq metres. 105 ft by 76 ft situate behind unique Nursery and primary School and FCDA Quarters, Opposite Federal Government Girls College, Bwari- Abuja from the 2nd Defendant on the 23/10/15. That a Deed of

Assignment was executed on same date and the possession of the unexpired rent and interest on the land in dispute was assigned to him. That he paid N1,100,000.00 only to the 2nd Defendant as a purchase price for the land. He filled a land agreement Form between him, the 2nd Defendant and Mr. Alowo Lodu Oyeyemi, Mr. Elisha Zaga and Rev. Yosi M. Mijah signed as witnesses to the transaction. He further went to the Etsu of Bwari's palace and obtained a land ownership letter in accordance with the customs and tradition.

That one Patricia Adwak was farming on the land in dispute. She cultivated beans on the land in dispute as at the time he bought the land.

That the 2nd Defendant and his siblings permitted her to farm on the land in dispute.

That he met Patricia Adwak paid her N10,000 only for the beans he destroyed before he started building his house on the land in dispute.

That the land in dispute is a vacant farm land and there was no building of any kind on it. It was used

for farming. The land in dispute and the houses marked for demolition are two different properties.

That the ruling the Claimant is referring to has nothing to do with the subject matter.

The subject matter in this suit has not been litigated before now. The Claimant is not a Party in that case. That the land in dispute is located within the area delineated as Existing Village/Settlement in the Bwari Master Plan Layout. That he never discussed anything relating to the land with Adeleke Zubair. That Adeleke Zubair came to the land in dispute sometimes in November 2015 with a Military man in uniform and harassed the engineer and some workmen on the site. He was not on site but was informed on phone. That he called the 2nd Defendant and his Counsel to intervene on his behalf. That Claimant has not suffered any loss or damages.

The DW1 tendered the following documents:

Exhibit J – Deed of assignment dated 23/10/15.

Exhibit K – Land Agreement also dated 23/10/15.

Exhibit L & L1 - Land ownership letter titled 'TO WHOM IT MAY CONCERN' with Survey Plan.

Exhibit M – Letter titled Acknowledgement of receipt of N10,000 only dated 25/10/15.

Exhibit N – Ruling of Justice Venda delivered in 23/09/14.

Under Cross Examination he answered that he bought the land on 23/10/15. That Danlami Toma and Danjuma Toma are from the same parents. He is not aware of documents filed by the Landlord Association at Bwari Area Council. He is not aware that the piece of land was allocated by FGN to the FGGC. He is not aware that Mr. Oyakhire is the owner of the said land. He is not aware of Exhibit A, F. He is not part of the criminal charge in Exhibit I. He does not know anything about it. He has no business with Dr Philip Salawu. He has not met him. That Mr. Adeleke owns a block industry close to his house. He did not approach Adeleke for land. He does not know anything about Exhibit H. He did not give Adeleke any vehicle particulars. That Samuel Aiyegbeni is his Church member. That Claimants 2nd Witness did not show him any land. He does not

have anything to do with him. He finished his school in 2011 at Dorben Polytechnic. He is saying the truth.

The 2nd Defendant's witness is Danlami Toma. He is a Civil Servant. He works in the Law School, Bwari. He deposed to a Witness Statement on Oath on 10/01/17. He adopts same as his oral testimony.

In the said Witness Statement on Oath he deposed that he and his siblings are the people who owns the land. He is the eldest son of his father. That he inherited the Customary Land in dispute from his late father, Mr. Toma Zakoyi. That he, along with his siblings sold part of the land to the 1st Defendant. His late father Mr. Toma Zakoyi inherited the Customary land in dispute from his own father MrZakoyiZadabyi. That his Late Grand Father Mr. Zakoyi Zadabyi and his late father Mr. Toma Zakoyi were indigenes of Bwari, Abuja FCT. That he did not purchase the land from anybody. That he inherited the land. That he and siblings permitted Mrs. Patricia Adwak to farm on the land in dispute. That

she cultivated the beans the 1st Defendant destroyed. That the witness and siblings are Gbagyi by tribe. The land in dispute is located within the area ceded to the indigenes of Bwari who have been occupying the place before the advent of the Federal Capital Territory, Bwari Area Council and Bwari Master Plan.

Under cross-examination he answered, that Danjuma Toma is his younger brother from same parent. He does not have relationship with the Etsu of Bwari. He works in the Students Affairs Department as a porter. He does not know if his brother has a case in Justice Venda's Court. That his father inherited the land the subject matter of this suit through his grandfather. He grew up in that land. That it is a native land. They have people who know that the land belongs to them. He said he has not lied. That he and his brother did not attack Claimant. That he is not a criminal. It is a farm land opposite FGGC. He was not hired by Etsu of Bwari to represent other landlords. That the land was undeveloped as at the time they sold it. That their

name is not supposed to be on the list of residents. That he sold to two people, Andy Mordi and his brother. He does not know the name of the brother. He resides abroad. He does not know anything about Exhibit B.

Under reexamination, he said some of the elders who know that the land is their family land is Danladi Chebia and Fenu Kelembu.

The 3rd Defendant's witness is Patricia Adwak. She is a farmer and house wife. She lives opposite FGGC, Bwari behind NEPA Transformer. She knows the Defendant in this case. She also remembers making a Witness Statement on Oath dated 10/01/17. She adopts same as her oral testimony. She stated that she was the woman farming on the land in dispute. That before her, the family of Toma Zakoyi permitted a woman popularity known as Mrs. Bush to farm on the land in dispute. Thereafter Zankwa was permitted by the family of Toma Zakoyi to continue to farm on the land. That Mr John was living in her house located at No. 7 Ehis Crescent Zango Road,

behind FCDA Quarters Bwari-Abuja. That after John left, she was permitted by the family of Mr. Toma Zakoyi to farm on the land in dispute. That she started farming on the land in dispute sometimes in 2010 up to 2015.

That in 2015, she cultivated maize and beans on the land in dispute. About November 2015, the 1st Defendant came to tell her that he had purchased the land in dispute from the owner Danlami Toma, the 2nd Defendant and that he wants to build a house on the land immediately. Mr. Andrew Mordi, the 1st Defendant came to her to say we cannot wait for the beans to be harvested as she had already harvested the maize. She asked for N10,000 for the beans. He paid the 10,000 for the beans which he destroyed before commencing his building. She gave him a letter of acknowledgement for the said sum.

Under Cross-examination, she answered that she was just farming there. That the land in dispute/farm was behind the transformer behind her house. She

knows the Claimant as her neighbour. There are two houses in-between them. That she farmed there for over three years from 2009 to 2012. She is a witness of truth. To a further question, she said she wants the Court to believe what is in her Witness Statement on Oath. She insisted 1st Defendant gave her N10,000.

Under reexamination, she answered that she did not give any receipt for the N10,000.

The above is the Defendant's evidence in defence of the Claim. The Defendant's Counsel adopted his Final Written Argument dated 24/09/20 but filed on 25/09/20. He posited two issues for determination:

- i. Whether from the totality of the evidence before the Court, the Claimant has not failed woefully in proving his title to the property situate and known as FCDA Quarters Extension Opposite FGGC Bwari, Abuja FCT.
- ii. Whether it will be just and proper for this Court to deprive the Defendant the benefit of the property he has held and enjoyed for over 5 years

having acquired same from the rightful indigenes owners in the suit of the Claimant.

He argues that the Claimant's case shows that there is no nexus connecting the Claimant with the subject matter save Exhibit A & B which are Irrevocable Power of Attorney purportedly transferring the said property from Mr. Smart Oyakire Isoenimen to Mrs. Eucharia Ajede Odey and sale agreement.

There is nothing to suggest that the land in question was acquired by Claimant from the relevant government authority or from the indigenes of the Bwari Area Council. That Power of Attorney does not transfer title. That where a party relies on same as the basis or root of his title or authority to transfer title, same must fail. The subsequent action of Mrs. Eucharia transferring title to the Claimant through a sales agreement cannot stand in law as no title was transferred to her vide the Power of Attorney executed between her and Smart Oyakhire. That the case of the Claimant is unsubstantiated.

The Claimant's Counsel also adopted his Final Written Address dated 10/11/20 but filed on 11/11/20. He posited four issues for determination. Learned Counsel canvassed that from the totality of evidence before this Court, the Court should grant all the reliefs sought and discountenance the Defendants evidence which is based on falsehood.

I have read the evidence issues raised and argument of both Counsel as contained in their Final Written Addresses. The issue for determination in my humble view is, whether from the totality of evidence before the Court, the Claimant has proved his case on the preponderance of evidence and balance of probability to entitle him to Judgment.

By Section 131 of the Evidence Act:

1. Whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Section 132: 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.

Section 133: In Civil cases the burden of first proving existence or non-existence of a fact lies on the party against whom Judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

The Claimant's Claim has earlier been reproduced in this Judgment.

Succinctly he claims for:

- (1) A declaration that he is entitled to and is the legitimate beneficial owner of the piece of land known and situate behind FCDA Quarters Extension, Opposite Federal Government Girls College Bwari Abuja FCT.

- (2) Perpetual injunction.
- (3) N5 Million as damages.
- (4) Cost of the action.

The law is that a party claiming declaration of title to land needs not prove all the five recognized ways of establishing title to land, for him to succeed. Each of the five ways is independent of the others to prove title in a land case. Therefore, the establishment of one out of the five ways is sufficient to grant ownership.

See ***NWOSU VS. UDEAJA (1990) 1 NWLR (PT. 125) 188 SC.***

ONWUGBUFOR VS. OKOYE (1996) 1 NWLR (PT. 424) 252 SC.

The five ways of proving title to land are:

- (1) Traditional evidence.
- (2) By documents of title.
- (3) By various acts of ownership numerous and positive and extending over a length of time as to warrant the inference of ownership.

- (4) By acts of long enjoyment and possession of land.
- (5) By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in additions be the owner of the land in dispute.

IDUNDUN VS. OKUMAGBA (1976) 9 – 10 SC 227

***ATANDA VS. AJANI (1989) 8 NWLR (PT 111) 511
SC***

In a declaratory action such as this, the onus of proof lies on the Claimant and must succeed on the strength of his own case and not on the weakness of the Defence except where the case of the Defence support the Claimant's case.

See ***NKWO VS. IBOE (1998) 7 NWLR (PT. 558) 354
SC.***

UCHE VS. EKE (1998) 9 NWLR (PT. 564) 24 SC.

In proof of his claim, Claimant gave evidence for himself and called one other witness. He tendered Exhibit A & A1. They are Power of Attorney and Sales agreement. The Power of Attorney was donated to the Claimant's predecessor in title. The Donor of the said Power of Attorney is one Smart Oyakhire Isoenimen. While the said Donee Mrs. Eucharika Agedo Odey allegedly assigned the land to Claimant by a sales agreement.

It is now trite that a Claimant who seeks declaration of title to land must prove his root of title to the land. Where he traces his title to a particular person, he must further prove how that person got his own title or come to have the title vested in him, including, where necessary, the family that originally owned the land. The burden of proof on the Claimant is not discharged even where the scales are evenly weighed between the parties.

See ***DIKE VS. OKOLOEDO (1999) 10 NWLR (PT. 623) 359.***

OTANWA VS. YODUBAGHA (2006) 2 NWLR (PT. 964) 337 SC.

In the Claimant evidence, he stated that he acquired the said plot from Mrs. Eucharia Agede Odey a teacher at the Federal Government Girls College Bwari, Abuja FCT. He has also been paying his tax. The payment of tax is not one of the ways of proving title to land. From Exhibit A, the Power of Attorney, the said Eucharia also acquired the land from one Smart Oyakhire. There is no evidence of how Smart Oyakhire acquired title or the family or person or institution which originally owned the land in dispute.

The case of **MADU VS. MADU (2008) 2-3 SC (PT. 2) PAGE 109 particularly at P. 138 paragraphs 15 – 30** settles this matter.

The Supreme Court held:

“Be it noted that it is well settled that the ownership of land comprised in the Federal Capital Territory Abuja is absolutely vested in the Federal

Government of Nigeria vide ONA VS. ATANDA (2000) 5 NWLR (PT. 656) P. 244 at 267 Paragraphs C – D. See also Section 297 (1) and (2) of the Constitution of the Federal Republic of Nigeria and Section (1)(3) of the Federal Capital Territory Act 1979. Section 18 of the Federal Capital Territory Act Cap 503 Laws of the Federation 1990 vests power on the Minister for FCT to grant Statutory Right of Occupancy over lands situate in the Federal Capital Territory to any person

By this law, ownership of land within the Federal Capital Territory vests in the Federal Government of Nigeria who through the Minister of FCT vests same on every citizen individually upon application”.

In the Federal Capital Territory Customary Right of Occupancy has been abolished. There is no

demarcation between rural land or indigenous land and urban land in the Federal Capital Territory. Ownership of land in the FCT is absolutely vested in the Federal Government of Nigeria. The contention of Claimant's Counsel that the Claimant's predecessor in title was working in the FGGC, a Government worker hence has title to the land is superfluous.

The Claimant failed to show by concrete and cogent evidence that his root of title is traceable to the Minister of FCT. In the circumstance, the case lacks merit and it is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

02/02/21