

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONE 2, ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU.

ON THE 29TH DAY OF JUNE, 2021

SUIT NO: FCT/HC/CV/866/16

BETWEEN:

ISMAILA AMAO-----PLAINTIFF

AND

1. HONOURABLE MINISTER FEDERAL CAPITAL TERRITORY.
 2. FEDERAL CAPITAL TERRITORY ADMINISTRATION
 3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
 4. EOMIEH I. WALAS
- }...DEFENDANTS

IBRAHIM S. ARISEKOLA for the plaintiff.

1st-3rd defendant are not in court, and not represented by counsel.

JUDGMENT

The plaintiff claims against the defendants jointly and severally as follows:

1. A declaration that by virtue of a subsisting statutory Right of Occupancy dated 16th May, 2003 covered by File Number MFCT/LA/KD. 2726 (old) and KD 11519(new) within Cadastral Zone B08, Jahi District, Abuja in favour of the plaintiff, the plaintiff is the lawful and beneficial holder/owner of the plot or parcel of land known and described as plot No. 1690 Measuring about 1,500M² same having been validly

allocated/granted to the plaintiff by the 1st defendant for a term of 99 years commencing from 16/5/2003.

2. A declaration that the Grant/Allocation of plot No. 1690, measuring about 1,500m², within Cadastral Zone B08, Jahi District, Abuja to the plaintiff by the 1st defendant via Offer of Terms of Grant/Conveyance dated 16/05/03 amounts to a valid contract binding on the parties herein and cannot be breached without due recourse to the Land Use Act or any enabling Status on land use in the FCT.
3. A declaration that the plaintiff's statutory Right of Occupancy covered by the Offer of Grant/Conveyance of Approval dated 16/05/03 with the file no. MFCT/LA/KD. 2726 (old) and KD 11519(new) within Cadastral Zone B08, Jahi District, Abuja is still valid and subsisting same having not been revoked by the 1st defendant or anyone acting on his behalf.
4. A declaration that the plaintiff is entitled to a new/recertified Certificate of Occupancy over plot 1690, Cadastral Zone B08, Jahi District, Abuja.
5. A declaration that the purported subsequent allocation of the plaintiff's plot 1690, Jahi, Abuja to the 4th defendant while the plaintiff's title still subsists is unlawful, irregular, fraudulent, unconstitutional, null, void and of no legal effect whatsoever.

6. An Order setting aside the purported allocation of the plaintiff's plot 1690 to the 4th defendant for being null, void and of no legal effect.
7. An Order compelling the defendant to issue the plaintiff with a new/recertified Certificate of Occupancy in respect of plot 1690, Cadastral Zone B08, Jahi District, Abuja.
8. An Order of perpetual injunction restraining the defendants whether by themselves, their agent, privies or other representatives however otherwise from trespassing or further trespassing or entry or interfering with the plaintiff's possession, rights and interest in the said plot or parcel of land known and described as plot 1690, Cadastral Zone B08, Jahi, Abuja.
9. An Order of perpetual injunction restraining the 1st, 2nd and 3rd defendants and their agents, servants, privies, proxies and/or consultants from revoking or in any manner whatsoever rendering void, invalid or ineffective the plaintiff's Right of Occupancy over the aforementioned plot of land without complying with the laid down procedure of the Land Use Act.
10. An Order of perpetual injunction restraining the defendants and their agents, servants, privies, proxies and/or consultants from interfering in any manner whatsoever with the plaintiff's proprietary interest over plot 1690, Cadastral Zone B08, Jahi District, Abuja.
11. The cost of this suit.

12. And such other consequential Order(s) this Honourable Court may deem fit to make in the circumstances.

In the statement of claim, the plaintiff averred that he is the holder of the statutory Right of Occupancy covered by the Offer of Terms of Grant/Conveyance of Approval dated 16/05/2003 with file No. KD 2726(old) and KD 11519(New) over plot no. 1690, measuring approximately 1,500M² within Cadastral Zone Bo8, Jahi District, Abuja granted by the 1st defendant for a term of 99 years, commencing from 16/05/2003. He stated further that on the 21st of September 2011, he applied to the Abuja Geographic Information System for late recertification and reissuance of Certificate of Occupancy having not been able to do so when the exercise commenced. And that upon his submission of the application and approval of same, the 1st defendant through the Director Department of Lands Administration of the 3rd defendant wrote the plaintiff vide a letter dated 21st February, 2013 informing him that his application for late recertification has been approved and that he should come forward for the recertification.

That upon the receipt of the said letter and not aware of any revocation for overriding public interests to warrant any reallocation, he submitted all his

title documents to the 2nd defendant for recertification. And was issued with an acknowledgment letter titled “Re Certification and Re issuance of C of O Acknowledgment dated 1/03/2012. And that subsequently he occasionally visited the Abuja Geographic Information System (AGIS) to follow up the recertification process. And it was during one of the visits that he discovered that the recertification of his title document has been stopped and when he inquired why the process was stopped, his attention was drawn to an offer of statutory Right of Occupancy purportedly granted the 4th defendant on the 18th day of February, 2010, while his own title granted 16th of May, 2003 by the 1st defendant still subsists. He has never been served with any notice of revocation his Right of Occupancy over the said plot for overriding public interest.

The plaintiff filed a witness statement on Oath which contents are akin to the statement of claim. He adopted the witness statement on the 18th of June, 2020 and was duly cross-examined by the counsel to the 1st - 3rd defendants. He also tendered three documents marked Exhibits A1-A3 respectively.

The 1st -3rd defendants in response to the claim of the plaintiff averred that the plaintiff is not the holder of title over the disputed plot. That the said plot belongs to **Eomieh I. Walas**, the 4th defendant, who is the valid allottee with a subsisting title and interest over the said plot. That the said plot was allocated to the 4th defendant vide a letter of offer of statutory Rights of Occupancy dated 16/02/2010. That the plaintiff's purported title over the disputed plot granted in 2003 has become extinguished by the plaintiff's refusal to submit his title document for recertification in 2005, when the 1st defendant called on all those who claim to have title to plot within the Federal Capital Territory to come forward with their title documents for recertification and regularization. That the plaintiff waited until the 1st defendant had gone beyond the stage of recertification before he showed up.

That as at 2012, when the plaintiff showed up, the exercise had been concluded and any applicant that submits his title documents after 2007 is considered for reallocation of alternative plot. That the undue delayed by the plaintiff in forwarding his title document amounts to forfeiture of title of over the said plot.

The 1st-3rd defendants opened their defence on the 16th July, 2020 with the evidence of one Akin Bamise a staff of Abuja Geographic Information System who adopted his witness statement on Oath after identifying same. Two documents were tendered through him and marked as Exhibit D1 and D2 respectively. Under cross examination, the witness testified that Exhibit D1 a was dated 16th May, 2003 while Exhibit D2 was dated 16th February, 2010. And that as a staff of 1st – 3rd defendants, he is very conversant with the procedure of allocation of land in the Federal Capital Territory, and as well as the procedure for termination of land allocation. That termination of a valid land allocation is by service of Notice of Revocation Notice. That he is not aware if the plaintiff was served with a Revocation Notice. He is not aware if Exhibit A1 has been revoked. It is on this note that the defence closed its case.

It is on record that the 4th defendant was served with the originating processes and further hearing notices but never filed any processes, nor represented by a counsel throughout the proceedings. At the close of the defence, the counsel to the parties filed their respective written addresses. The final written address of the defendants was filed out of time and

regularized vide an Order of Court granted on 6th October, 2020. Both parties adopted their already filed and **exchanged final written addresses on the same date. The counsel to the 1st - 3rd defendants formulated a sole issue for determination to wit;** whether having regard to the facts contained in the plaintiff's statement of claim and the 1st - 3rd defendant's statement of defence and also evidence before this Honourable Court, the plaintiff has sufficiently made-out a case to warrant this Honourable Court to grant the reliefs sought.

The plaintiff on the other hand distilled four (4) issues for determination by the court and they are:

1. Whether the allocation of plot No. 1690, Cadastral Zone B08, Jahi District Abuja measuring approximately 1,500M² by the defendant vide the offer of Terms of Grant/Conveyance of Approval dated 11th May, 2003(Exhibit A1) to the plaintiff, same having been revoked is valid and subsisting.
2. Whether the 1st defendant having not revoked the plaintiff's title over Exhibit A1 had any title to grant to the 4th defendant over the same plot

1690, Cadastral Zone B08 Jahi District Abuja on the 16th February 2010 while the plaintiff's title over same still subsists.

3. Whether by virtue of Exhibit A1, A2 and A3, the 1st -3rd defendants are not barred by the doctrine of estoppel from claiming that the plaintiff has no title to the plot in dispute.
4. Whether from the totality of the plaintiff's pleadings and evidences (both oral and documentary) laid in support of her case, the plaintiff has proved her case on the merit to entitle her to all the reliefs sought.

Having gone through all the issues distilled by the learned counsel for the parties and their written arguments, the main issue that is thrust for determination is whether a late submission of title documents for recertification amounts to a forfeiture or a revocation of the said title. With this hindsight, I will take the liberty to consider all other issues in their addresses.

The learned counsel for the 1st - 3rd defendants contended that the plaintiff failed to lend credible, valuable and quality evidence to prove or show that he has any title to the subject plot. He argued that the onus or burden of proof

rest on him as he is the party that will fail if no evidence is led at all. He relied on the provisions of Section 131 of the Evidence Act and the following cases; **FANNANI VS. BAKERS (2004) AFWLR PT. 619, 1210@ 1260-1261** and **DIBIAMAKER VS. OSAKWE (1989) 3 NWLR PT. 107, 101 @ 113 & 114**. The learned counsel further referred to Exhibit A2 titled *“An Application for Recertification”* dated 21st February, 2012 served on the plaintiff where it directing at the plaintiff thus: “You are required to complete recertification from and come forward to recertifying the title (Plot No. 1690, B08, Jahi District Abuja) to qualify you for alternative plot as replacement.” He argued that the plaintiff has accepted the replacement of an alternative plot and cannot approbate and reprobate.

The defendant’s counsel further contended that the DW1 categorically stated in paragraphs 5 - 12 of his witness statement on Oath that the plaintiff has forfeited his right by abandoning and neglecting to come for recertification whilst the process was on and that the plaintiff’s purported right over the said plot of land had long ceased to exist as a result of the plaintiff’s non-compliance with the call for a recertification which in itself is an implied term

in the Right of Occupancy to which the plaintiff anchors his title over the said plot.

The plaintiff he submitted further is not entitled to the declaratory reliefs sought because he has failed to adduce enough evidence to support his claim and right to the reliefs. That an Order for perpetual injunction can only be granted after full trial and where the applicant has established his right and an actual or threatening infringement of that right. That the plaintiff having failed to establish his entitlement to the declaration that he is the legitimate owner and holder of statutory Right of Occupancy over the disputed plot is not entitled to any Order of perpetual injunction. He urged the court to so hold and dismiss the plaintiff's claim in it's entirely.

In reaction, the plaintiff's counsel contended that the plaintiff traced his title in dispute to a subsisting Right of Occupancy that was issued by the 1st defendant to the plaintiff on the 16th of May, 2003. The Offer (Exhibit A1) he argued, clearly conveyed the 1st defendant's approval of a grant of Right of Occupancy to the plaintiff. This fact he argued was not challenged or controverted by the 1st - 3rd defendants in record. That they merely claimed

that the plaintiff was not the valid allottee of the plot without leading any evidence to discredit the validity of the said Exhibit A1, and also failed to establish that the said document did not emanate from them. He urged the court to hold that Exhibit A1 confers valid title on the plaintiff.

On the unchallenged or uncontroverted evidence of the plaintiff by the defendant the plaintiff relied on that case of **CAPPA DOUBORO LTD VS AKINLILO(2003) 9 NWLR (PT.824) 49 RATIO 6E, PG 71** where the court hold that Evidence which is not contradicted or denied is deemed to have been admitted. Apart from the evidence led the fact that the averment is not denied is enough to admit it in evidence. The learned counsel further submitted that oral evidence cannot be used to contradict content of a document. That the defendants having failed to lead documentary evidence to support their oral averments that Exhibit A1 did not meet up with time within which to recertify it and that it amounted to forfeiture, the said Exhibit A1 speaks for itself; it is valid, genuine and has conferred a valid and subsisting title on the plaintiff. He relied on the authority of **OGUNDELE VS. AGIRI (2009) 46 NSQR 427 @ 449-400 PER MUNTAKA COOMASIE JCA.**

He also contended that since it has been established that Exhibit A1 is genuine and has not been properly revoked, he urged the court to hold that mere delay for recertification of the plaintiff's title documents do not amount to revocation. He referred to Section 28(6)(7) and 44 of the Land Use Act Cap L5, LFN 2004.

On issue two, the learned Counsel submitted that as at 16th February, 2010 when the 1st defendant purportedly allocated the plaintiff's plot no. 1690 Cadastral Zone B08, Jahi District, Abuja15 to the 4th defendant vide Exhibit D1 without first determining the plaintiff's title over same, the 1st defendant had nothing to purport to grant to the 4th defendant as he has since 2003 become divested of powers over the plot in dispute upon the creation of the plaintiff's subsisting interest. That unless and until same is validly and properly extinguished by way of service of revocation notice on the plaintiff; the 1st defendant cannot allocate the said land to the 4th defendant or anyone else. He relied on the authorities of **OLOHUNDE VS. ADEYOJU (2000) AWLR (pt.24)1355. KYARI VS. ALKALI(2001) 11 NWLR(pt.724) 724**. He further argued that between Exhibit A1 and Exhibit D1 allocated to the 4th defendant the

Exhibit A1 is first in time and as such Exhibit D1 must give way based on the trite principle of law that where there are two competing party to a land and they trace their grantor to one person, the latter in time will have to give way to the first in time and urged the court to so hold. He relied in the case of **ASHEIK VS BORNO STATE GOVERNMENT(2012) 9NWLR(PT.1304) A @ 35 PER. A-C, ABDULLAHI VS.BARI(2014)17 NWLR(PT1435) @ 16 PER B-D** where it was held:

“Where there is a subsisting Right of Occupancy, it is good against any other right. The grant of another right of Occupancy over the same piece of land will therefore be merely illusory and invalid. The grant of an earlier Right of Occupancy subsists as far as it has not been revoked, and the wrongful grant of a subsequent right therein has no effect whatsoever on its authenticity.”

Before I delve into the arguments of learned counsel in respect of issue 3,

Let me state straightaway that I endorse the submissions of learned counsel for the plaintiff in respect of issue one and two distilled for determination. It is correct that the validity of the statutory Rights of Occupancy (Exhibit A1) from

which the plaintiff derived his title was not challenged by the 1st-3rd defendants. It is also apparent that the said statutory right of occupancy was not revoked by the 1st-3rd defendants before the purported allocation in Exhibit D2 to the 4th defendant. Under cross examination by counsel for the plaintiff, the plaintiff's witness Mr. Akin Banise admitted that it was only by revocation that a land validly granted in Federal Capital Territory is terminated and that a revocation notice is served on the allottee. When asked if he was aware whether or not Exhibit A1 or the holder was served with a revocation notice, he stated that he was not aware. He did not know whether exhibit A1 was revoked or not. This of course imports that there was no revocation notice served on the plaintiff, the holder of exhibit A1.

The provision of Section 28(1) (4) (5) (6) (7) of the Land Use Act stipulates the grounds for revocation of a statutory Right of Occupancy and the mode of revocation which shall be signed under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder. The 1st-3rd defendants have failed to discharge the burden of proof that there was a revocation of the grant to the plaintiff.

On the contention of the 1st-3rd defendants that the plaintiff has failed to proof or lead credible evidence to show that he has any title to the subject plot, the law is clear that there are Five ways to establish title or ownership of land.

- a. By traditional evidence (b) by production of documents of title.

- c. Acts of person claiming the land such as selling, leasing or renting out all or part of the land or farming in it or a portion of it.
- d. Acts of long possession and enjoyment of the land may be a prima facie evidence by ownership.
- e. Proof of possession of connected or adjacent land.

A party which seeks a declaration of title to land only needs to prove any of these roots of title to succeed in his claim.

In the instant case the plaintiff had relied solely on (Exhibit A1), the offer of terms of grant/conveyance of approval of a statutory Rights of Occupancy in respect of the disputed plot in the size and the location contained in Exhibit A1 dated 16/05/2003 and granted in the hand of the Hon. Minister of the Federal Capital Territory. See the case of IHONA VS. IDAKWO& ANOTHER 2003 LPELR 1496 SC where the Supreme Court held” It is trite law that one of the methods of proving ownership of land is by production of documents of title vide IDUNDUM VS. OKUMNGBA(1976) 9110 SC 227.

A document of title such as a certificate of Occupancy is prima facie evidence of title but it will give way to a better title. OGUNLEYE VS. ONI(1990) 2 NWLR(pt 135)745, REGISTERED TRUSTEES, APOSTOLIC CHURCH VS. OLOWORENI(1990) 6 NWLR (pt158)514 and ABJIBOYE VS. ISHOLA(2006) LPELR 3011 SC. OGBENNA & ORS VS. KANU & ORS(2018) LPELR 45072 CA. FATIMEHIN VS. LAWANI(2014) LEPLR 2347 CA. OSAGIEDE VS. UWABOR (2014) LPERL 22664 C.A. the 1st -3rd defendants have failed to dispute the plaintiff's

root of title and its validity. That the documents emanated from them was not challenged or controverted by the 1st -3rd defendants. The purported Exhibit D1 granted the 4th defendant has no pillar or root upon which the validity could stand. I hold therefore that Exhibit A1 is valid and subsisting as the root of title of the plaintiff. I further endorse the submission of the plaintiff's counsel that Exhibit A1 was first in time. The said title documents was issued on 16th March 2003, while Exhibits D1 issued to the 4th defendant, has on the face of it "R of O" dated 16/02/2010. The law is trite that where there are two equal equities, the first in time prevails. The purported grant to the 4th defendant vide Exhibit D1 has to give way to that of the plaintiff in Exhibit A1 as far as the right of the plaintiff has not been revoked according to the law.

With respect to issue 3, I further agree with the submission of the plaintiff's counsel that the 1st-3rd defendants are barred or estopped from claiming that the plaintiff's late submission of title documents amounted to forfeiture. This is because Exhibit A2, dated February 2012 under the Hand of the Director of Lands, on behalf of the 1st defendant stated therein in reply to the plaintiff's application "that the application for receipt for recertification dated 21st September, 2011 has been approved".

The second paragraph of the letter (Exhibit A2) showed the inconsistency and incompetence on the part of the writer of the letter when he instructed the plaintiff thus "accordingly you are required to complete recertification Form

and come forward to recertify the title (plot no. 1690 Jahi B08 District) to qualify you for alternative plot as replacement”.

The content of the letter speaks against itself, when it talked about approval of the recertification application on one hand and qualification for alternative plot on the other hand. There is nothing in the letter to suggest that the earlier grant to the plaintiff had been revoked. Furthermore, nowhere was it stated nor can it be implied from Exhibits A1 or A3 that failure to submit the title document on time is tantamount to revocation or forfeiture of same.

The procedure for revocation of grant as contained in the Land Use Act cannot be bypassed nor can it be short circuited by whims and caprices of the officer or agents of the 1st-3rd defendants. I agree with the observation and submission of the plaintiff’s counsel that with the issuance of Exhibit A3, acknowledging the recertification and reissuance of C. of. O in respect of the disputed plot, the 1st-3rd defendants are estopped from claiming that the plaintiff’s title is extinguished and I so hold.

I also hold further that the late submission of the title document for recertification does not amount to revocation or forfeiture of the grant to the plaintiff. I therefore resolve issues 1, 2, and 3 in favour of the plaintiff.

I hold further that the plaintiff has established his entitlement and right to the said plot with his unchallenged and uncontroverted evidence. He has discharged the burden of proof placed on him in accordance with the provisions of Section 131(1) of the Evidence Act which stipulates that whoever

desire any court to give judgment as to any legal right or liability dependant on the existence of fact which he asserts shall prove that those facts exists.” Section 132 further states “The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given in either side”.

On this point, the plaintiff’s counsel commended to the court the case of UNION BANK OF NIGERIA PLC VS. PROF. O.A. OZIGI(1994) 3 NWLR pt. 33.3385 ratio 2 where the court held that “The burden of proving a particular fact is on the party who asserts it. This onus however does not remain static in civil cases it shifts from side to side where necessary and the onus of adducing further evidence is on the person who will fail If such evidence was not adduced and if he fails to proof the assertion the proper order which the court should make is one discharging his claim” see also BANKU VS. SERMATECH NIG. LTD.(2015) LPELR 258 39 CA. ODUOLA & ORS VS. COKER & ORS(1981) LPELR 2254 SC.

In an action for declaration of title to land, the plaintiff must adduce credible, sufficient and satisfactory evidence to establish his entitlement to the land in dispute. The evidence must be strong. The plaintiff cannot also rely on the weakness of the defendant’s case. In the case of ODEWANDE & ORS VS. OWOAJE & ORS(2014) LPSLR 2442 CA.” the court held.

In an action such as this, where the plaintiff seeks for a declaration of title to a parcel of land what is required of such plaintiff is to establish his claim by preponderance of evidence or balance of probabilities. The plaintiff is

therefore expected to adduce sufficient, satisfactory and credible evidence in support of his claim. The true test is whether the plaintiff has been able to adduce sufficient evidence which satisfies the court hearing the case that he has a better title than the defendant. The burden of proof to be discharged in a claim for declaration to title is however not different from that which is required in civil cases generally. But in an action for declaration of title to land, like in all declaratory action, the burden of rests throughout on the plaintiff and never shifts to the defendant, even where the defendant has made an admission. In other words, the burden or onus lies throughout on the plaintiff to satisfy the court that he is entitled to the declaration sought. See UKAEGBU VS. NWOWHO(2009)3 NWLR (pt.11127) pg.194 @ 231-232, EYO VS. NWOHA(2011) 11 NWLR (pt. 1257) PW1. AYANWALE VS. ODUSAMI(2011) 18 NWLR(pt.1278) pg 328 @ 341. EYA VS. OLAPADE(2011) 11 NWLR (t.1259) pg.305 @ 525. It is the law that in an action for declaratory title to land, the plaintiff will succeed or fail on it strength of his own case also, he can only succeed by adducing credible evidence and cannot rely on the weakness of the case of the defendant even on admission by such a defendant where such weakness just to support the plaintiff's case. Per Tsammani: JCA.

See ORIANZI VS. ATTORNEY GENERAL CROSS RIVER STATE & ORS(2017)LPELR 41732 SC. ABOADE & ANOR VS. ATOWESIN & ANOR(1997) LPELR 989 SC. UMAR VS. BARLEY & ORS(2018) LPELR 44285 CA.

I am satisfied with the quality of documentary and oral evidence adduced by the plaintiff to prove his claim to the declaratory reliefs sought.

The arguments of the learned counsel are sound and represents the true position of the law. The claim of the plaintiff is hereby sustained.

The purported grant to the 4th defendant vide Exhibit D1 is hereby declared null and void. The plaintiff's grant vide Exhibit A1 is valid and still subsisting. The action of the 1st-3rd defendants by divesting the plot no 1690, Jahi District, Abuja to the 4th defendant while plaintiff's grant is valid and subsisting is irregular, and unlawful and fraudulent.

It is worthy of note that the 4th defendant never put any appearance throughout the proceedings. The address for service is fictitious. I could smell some fraudulent and irregular act on the part of the agents and staff of the 1st-3rd defendants. The said 4th defendant is unknown and ghostly. The acts of the 1st-3rd defendants is hereby declared null and void. The 1st-3rd defendants are hereby directed to recertify the title documents of the plaintiff and to issue him with a Certificate of Occupancy upon fulfillment of condition that may be prescribed by the 1st-3rd defendants. The 1st-3rd defendants, their agents, servants or privies are further restrained from revoking, or in any manner whatsoever render void, or invalid, the plaintiff Right of Occupancy over the said plot and are personally restrained from interfering in any manner whatsoever with the plaintiff's right or interest over the said plot 1690, Cadastral Zone BO8, Jahi District Abuja.

SIGNED

HON. JUDGE