IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON THURSDAY THE 17TH DAY OF JUNE, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/2515/2017

BETWEEN:

ONASANYA FOLASADE ---------} PLAINTIFF

AND

ALL OCCUPANTS
(PLOT OF LAND
BESIDE MADAM GUILDER JOINT, --------} DEFENDANTS
BEHIND FOOTBALL FIELD,
BWAZIN ACROSS, KUBWA, ABUJA)

JUDGMENT

On the 27th July, 2017 Onasany Folasade instituted this Suit against All Occupants, Plot of Land beside Madam Guilder Joint behind Football Field, Bwazin Across, Kubwa, Abuja claiming the following:

(1) An Immediate vacation of the plot of land located at Bwazin beside Madam Guilder Joint behind football field, Bwazin Across, Kubwa,

Abuja FCT presently occupied by the Defendants.

(2) An Order for the payment of ₦1.5 million only for illegal use and occupation of the Plaintiff's land.

(3) One Hundred Million Naira (₦100, 000,000.00) as the cost of this Suit.

The initial efforts to serve the Defendant personally proved abortive so the Court granted an Order for the Defendant to be served by pasting the document in a conspicuous corner of the Res. Initially the Plaintiff gave the Court the impression that the Res was an open space with no building. But when the Court Bailiff went to the Res she discovered that the Res has some fully constructed building in it. The Defendants were served by substituted means. They did not come to Court. They were not named. They were as already described, known as *All Occupants, Plot of Land beside Madam Guilder Joint behind Football Field, Bwazin Across, Kubwa, Abuja.*

The Defendants were served; they did not enter appearance in flesh or blood or in paper. The Plaintiff opened its case, closed same after the Court foreclosed the Defendants from opening and closing its case. In other words, this Judgment is based only on the testimony of the PW1 – Isaac Dennis Folarunso who claimed to be the Attorney of the Plaintiff. He never was a party and they never told the Court that the Plaintiff was an Attorney. Ordinarily, it should have been clearly written in the face of the Writ that someone is the Attorney of the Plaintiff since she has issued a Power of Attorney to Isaac Dennis Folarunso.

It is the claim of the PW1 that the Plaintiff gave him a Power of Attorney which was made irrevocable. According to the PW1, he was authorized by the Plaintiff to oversee the land which she bought from the Chief of Bwazin as she claimed. That Plaintiff initially planted vegetables before the development caught off with the environment. That upon the Plaintiff's retirement from Civil Service and decided to leave Abuja in 2011, she put the PW1 in charge to take care of the Res. The PW1 claimed that he visits the Res from time to time until one day he discovered that some individuals demarcated and put up structure in the land. Upon inquiry he was informed that the Res have been sold in part to those individuals. He told them that the land belonged to the Plaintiff and that she had not instructed anyone to sell the land. He was later informed that the land was sold by one Simon who had disappeared into thin air.

He claimed that the occupants promised to settle with the Plaintiff and to pay her the value of the land, but later reneged. He claimed that he later issued them letter to vacate the premises. That they threatened to deal with him. He tendered some documents in proof of his claims which are the Irrevocable Power of Attorney, Sale Agreement between Plaintiff and the alleged Seller – Barnabas Jezhi of Chikakore Bwazin village on the 14th August, 2002 and letter written by Attorney to the Plaintiff on the 18th July, 2017. All the documents were admitted in evidence and marked as EXH 1 – 3. The Defendants did not file any Written Address.

In the Plaintiff's Final Written Address, she raised an Issue for determination which is:

"Whether the Plaintiff has proved his case on the Preponderance of Evidence laid before the Court as to be entitled to the Reliefs sought against the Defendants."

They submitted that the Plaintiff has established its case and is entitled to the Reliefs claimed. They referred to the provision of **S. 135 EA 2011 as amended.** They also referred to the case of:

Nwokobia V. Nwogu
(2009) 10 NWLR (PT. 1150) 553

That the testimony of the PW1 and the three (3) documents tendered has proved and established her claims. That the Plaintiff had served the Defendants Notice to vacate the premises before coming to Court. She had served them with the Writ and all other Processes. That PW1 claimed that he had a meeting with them to resolve the issue amicably but all were to no avail. That despite all the service of the Writ and Hearing Notices, the Defendants were adamant and they refused to come before this Court to challenge or defend the case. That it means that the Defendants had admitted all the facts put forward by the PW1 in proof of the case.

That by **Order 32 Rule 3 FCT High Court Rules 2018** the Plaintiff is entitled to the Judgment of this Court having proved his claims and tendered the documents so far as the burden lies on them. They referred to the case of:

Abiola V. Alawoye
(2007) 3 WRN 177 @ 197 – 198

That both the testimony of PW1 and the 3 documents tendered to establish the title to the land are all uncontroverted and unchallenged and are therefore deemed admitted. They urged the Court to hold that the Plaintiff has established her case with credible evidence and Exhibits and as such hold that she is entitled to her Claim. They urged Court to resolve the sole Issue in her favour and grant all her Reliefs. That the Plaintiff has adduced credible evidence in support and proof of the facts in his Oath. That he led evidence to prove the fact relied upon. They referred to the case of:

UBA V. Astra Building (WA) Limited
(2010) 41 NSCQR (PT. 2) 1016

Buhari V. Obasanjo
(2005) 2 NWLR (PT. 910) 241

That the Plaintiff has proved her title to the Res. That the land in dispute is customary land which she purchased from the Chief of Byazhin. That she paid monetary value at the time. That the Deed of Same Agreement was executed between the Plaintiff and the Chief – EXH B. That the Plaintiff has established that her title to the land is traditional and had produced the documents made by the Chief of the community in respect of the Sale of the land.

That the said land had been entered upon and occupied by the Defendants illegally. That by the action, the Defendants have trespassed and as such they are liable to pay the Plaintiff for the illegal use and occupation of the land. That trespass on land is actionable at the side

of the person who owns the land. They referred to the case of:

Mogaji V. Cadbury
(1972) 2 SC 97

Ayinla V. Sijiwola
(1984) 5 SC 44

They concluded that Plaintiff had laid evidence and is therefore entitle to her Reliefs having laid evidence on the root of her title. They urged Court to grant same.

COURT:

Unchallenged and uncontroverted evidence are deemed admitted. But the Court is not precluded from analyzing the evidence of a party which was not controverted. The Court does not swallow hook-line and sinker the evidence tendered by a party whose evidence was not challenged. The Court is still duty bound to analyze same to determine if it is credible enough and has successfully proved and established the claim of the Plaintiff.

In this case, the Defendant did not challenge the Claim of the Plaintiff. The Court has summarized the testimony of the Plaintiff. Can it then be said that the Plaintiff has established its case so much so that this Court should grant same? Again, has the Exhibits tendered by the Plaintiff and the testimony of PW1 actually established and proved the case of the Plaintiff that this Court should hold that the Claims are

established and therefore enter Judgment in the Plaintiff's favour?

It is the humble view of this Court that the Plaintiff has not established its case though the case has not been challenged.

To start with, the PW1 had claimed that the Plaintiff gave him a Power of Attorney – EXH 1. That Power of Attorney is Irrevocable which means that by it, the PW1 has the full control and is in charge of the Res from the date the Power of Attorney was donated. He is to act on behalf of the Plaintiff as if he is the owner. By donation of a Power of Attorney, the Donee stands in the stead of the Donor as if he is the Donor. Where a Power of Attorney was donated and there was a problem in the property over which the Power of Attorney was predicated, the Suit, though in the name of the owner, will reflect that the Donee is "suing through her lawful Attorney."

The above phrase legitimizes the action on presence of the Donee. In that case, it will make all and sundry and obviously the Court to know that a Power of Attorney was actually legally and lawfully donated. Where that is the case, the Donee has legitimacy to come to Court. The content of the Power of Attorney shows that the Donor allow the Donee who is the PW1 to take all legal action for and on her behalf as if the Donee is the "owner" or to do whatever the Donor would have done in the circumstance if the Power of Attorney was not donated.

In this case, the name of the PW1 who claimed to be the Donee of the Power of Attorney did not appear as suing on behalf of the Plaintiff's lawful Attorney in this Suit.

Again, the Plaintiff did not attach any of the documents which were eventually tendered in evidence before this Court from inception when the Suit was filed. It is the law, going by the Rules of this Court, that a Plaintiff should frontload all the documents with which she intends to support, prove and establish his case. That is the essence of the frontload system which has become part of our jurisprudence. Failure to do so cast a doubt in the case of the Plaintiff.

On the letter allegedly written to the Defendants, it is very clear that there was no evidence that all the or some of the occupiers of the land acknowledged the receipt of the document – letter. If actually the said occupier eventually wanted to settle amicably with the Plaintiff, there should have been evidence of acknowledgement of the said letter or notice. No such acknowledgment was seen in the letter. That also casts very big doubt in the legality and legitimacy of the said letter. There was no evidence to back up the claim that Plaintiff took the people to Police.

It is very strange that the Plaintiff who had meeting with the occupiers of the Res never knew even the name of any of the occupiers. It is commons sense that in such meeting there must have been an introduction when the PW1 would have introduced himself to the Defendants and the Defendants would have naturally

have also introduced themselves to the PW1. This Court does not believe that there was any attempt to settle with the Defendants. This Court does not also believe that the PW1 wrote the said letter to the Defendants. Again, up on till the time the Court Bailiff went to serve the Defendants at the Res, the Plaintiff and her Counsel had given the Court the erroneous impression that the land was an empty plot and expanse of land. That inconsistency further watered down the credibility of the Plaintiffs claims to the ownership of the Res.

This Court does not believe there was any plan to settle or any letter to vacate. The said letter, having not been attached when this matter was filed and having no evidence of its acknowledgment, makes it not have any judicial evidential value. Beside, the PW1 had claimed that several of the Defendants were served with the said letter but he tendered only one (1) copy of the letter. PW1 had claimed that except two (2) occupants, all the other occupants received the said letter. This Court does not believe him.

Most importantly, a Suit predicated on Claim of Ownership over a land is based on documentary evidence, aside from the oral testimony of the Claimant or her lawful Attorney. Root of title to land can be established by traditional evidence, production of document of grant or title and by act of long possession and occupation of the land with established fact to that effect.

The validity of sale of land under customary law is that there must be evidence of the amount paid as purchasing price. Such payment must be in the presence of Witnesses. It must show the date of the sale. There must also be delivery of the land to the buyer/purchaser or her agent in the presence of Witnesses. See the case of:

Oriodo V. Akinlolu
(2012) 9 NWLR (PT. 370)

Bassil V. Fajebe
(2001) 11 NWLR (PT. 752) 592

It is imperative to further state the meaning of proof of ownership.

Over time the Supreme Court has expanded the way to prove ownership which include production of document of title authenticated unless they are twenty (20) years or more old produced from proper custody, proof by act of ownership over the land such as selling, leasing or making grants or farming extending over sufficient length of time to warrant inference that such person exercised such proprietary right or acts over the land. Another is long possession on other land surrounding the land in issue within the same locality by virtue of **S. 146 EAC 2011.** Proof by possession connected to the adjacent land. It is incumbent on the Plaintiff to credibly establish any one of the five (5) ways or a combination of them. See the case of:

Njoku V. Jonathan
(2012) 8 NWLR (PT. 13)

Yusuf V. Adejoke
(2007) 11 NWLR (PT. 1045) 332

Irolo V. Akanji
(2002) 14 NWLR (PT. 286) 195

Balogun V. Akanji
(2005) 10 NWLR (PT. 933) 394

Akunyili V. Ejidike
(1996) 5 NWLR (PT. 449) 381

In a Suit on claim of ownership, the Plaintiff must succeed on the strength of her case not on the weakness of the Defence. See the case of:

Akoledow V. Ojibutu
(2012) 16 NWLR (PT. 1297) 1

To prove trespass the Plaintiff has to show that he was in possession exclusively before the trespass. See the case of:

Akoledowo V. Ojibutu Supra

For a Plaintiff to succeed in claim of ownership of title to land, she must satisfy the Court through the testimony of her Witness and document tendered that state the precise nature of her title to the land either by proof of original ownership, customary grant, Conveyance, sale under customary law, long possession or otherwise. That is the decision of the Court in the case of:

Adesanya V. Aderonmu
(2000) 9 NWLR (PT. 672) 370

Over time, since Statute of Fraud Generally Agreement on Land is usually in writing, the specification of the land is a sine qua non to the validity of the sale of the land or contract of sale. That means that the land must be properly described and/or delineated in the Agreement. That is what the Court decided in the case of:

Dantata V. Mohammed
(2012) 14 NWLR (PT. 1319) 122

It is most imperative to state that it is incumbent on a Claimant seeking Declaration of title to land or ownership thereto to show clearly the areas of the land to which she claims, stating the size, the exact boundaries, its extent because no Court is obliged to grant a declaration to an unidentified land. See the following cases:

Shiek V. Borno State Government
(2012) 9 NWLR (PT. 1304) 1

Ogedengbe V. Balogun
(2007) 9 NWLR (PT. 1039) 380

Adelusola V. Akinde
(2004) 12 NWLR (PT. 887) 295

Okochi V. Animkwoi
(2003) 18 NWLR (PT. 851) 1

Where a Claimant fails to state the exact boundaries and particularly the size of the land in issue, her claim must fail. That is the decision of the Court in the case of:

Faguwa V. Adibi
(2004) 17 NWLR (PT. 903) 544

The onus is on the Claimant who relied on traditional title or evidence in proof of ownership to establish in clear term to sustain his claim. The proof is on preponderance of evidence or on balance of probability, succeeding on the strength of his case and not on weakness of the Defence. See the following cases:

Onwugbufor V. Okoye
(1996) 1NWLR (PT. 424) 252

Owoeye V. Oyinlola
(2012) 15 NWLR (PT. 1322) 84

Eze V. Atasie
(2000) 10 NWLR (PT. 676) 470

Shittu V. Fashawe
(2005) 14 NWLR (PT. 946) 671

In this case, it is evidently clear that by the content the of the documents tendered, the oral testimony of the PW1 or in her Claim, the Oath of the alleged Attorney to the Plaintiff who is the PW1, there is no vivid description of the size, location and description of the Res. In the Claim, the Plaintiff described the Res as:

> **"Plot of land located at Bwazin, Beside Madam Guilder Joint, Behind Football Field Bwazin Across Kubwa, Abuja."**

She described the Defendant as:

"All Occupants (Plot of land Beside Madam Guilder Joint, Behind Football Field Bwazin Across Kubwa, Abuja)."

It is very clear that there is no vivid description of both the land, its size and location. Going by the description, it is across Kubwa. It is alleged to be in Bwazin. Even the description of the Defendant is unknown to law. It is clear that where the Defendants are not "known" and the identity is not also known, they are described in law as the **"Unknown Persons"** not as **"All Occupants"** as the Plaintiff described them in this case. They are the same Occupants which the PW1 claimed he took to Police before and who he said previously agreed to settle with the Plaintiff. The inability of the Plaintiff to state even the size of the land and the precise description of the location casts a very big doubt in the Claim of the Plaintiff. She failed to establish her traditional title. She never called anyone from the whole village or from the Chief's Palace as a Witness. The document she tendered did not show or convince this Court that actually the said amount was paid either by cash or through the bank.

So notwithstanding that the Defendants did not challenge her Claim to the land, the Plaintiff was not able to establish ownership, possession and occupation before the so alleged trespass by the Defendant. The onus to do that is incumbent on the Plaintiff and she failed to discharge that onus. That is why this Court holds that she has not established and proved her ownership of the Res.

Again, her so called Attorney should have ordinarily based on the Power of Attorney donated, filed this Suit for and on behalf of the Plaintiff by suing as the Plaintiff's lawful Attorney. So failure to do so makes the alleged donated Power of Attorney to be a worthless paper and it has no judicial evidential value. So this Court holds.

All in all, the Suit of the Plaintiff lacks merit, Plaintiff having failed to establish ownership. The Claims are not proven. The documents tendered have no judicial evidential weight.

Therefore since the Plaintiff failed to establish its ownership and title to the Res, she is not entitled to grant of her Claims.

This Suit failed. The Claims are therefore **NOT GRANTED.**

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2021 by me.

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K.N. OGBONNAYA

HON. JUDGE