

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE BWARI JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA**

SUIT NO: FCT/HC/CV/2021/19

BETWEEN

SIMAG CONSTRUCTION COMPANY LIMITED ---- PLAINTIFF

AND

1. HON. MINISTERE, FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY --- DEFENDANTS

JUDGMENT

DELIVERED ON THE 22ND JUNE, 2021

This suit was commenced by way of writ of summons by the claimant against the defendants wherein the claimant claim the following reliefs:

- (a) A DECLARATION that the Claimant is the legitimate and subsisting allottee of Plot No: 3333, Cadastral zone A06, measuring about 1,527.85m² in Maitama District, Abuja registered as No. 56677 pg. 1 vol.284 covered by the Certificate of Occupancy dated the 25th March, 2015.
- (b) A DECLARATION that the Stop Work Notice dated 22nd July, 2016 served on the Claimant without any form of complain or hearing whatsoever tantamount to denial of fair hearing contrary of section 36 of the Constitution of the Federal Republic of Nigeria (as amended).
- (c) AN ORDER setting aside and/or nullifying the Stop Work Notice dated 22nd July, 2016 served on the Claimant.

(d) AN ORDER OF PERPETUAL INJUNCTION restraining the defendants whether by themselves, their servants, agents, privies or any other person(s) howsoever described from alienating, interfering with, revoking, allocating to another person, encroaching or dealing in any other manner whatsoever with the claimant's parcel of land situate at plot 3333, Cadastral zone (A06) measuring about 1,527.85m², Maitama Abuja.

When the claimant served the defendants with the writ of summons the defendants filed a joint statement of defence with the leave of the court. And the claimant also filed a reply. Issue were appropriately joined and evidence was taken. The claimant in prove of his case called one witness and tendered five (5) Exhibits. The witness was cross examine by the defendants and the claimant close its case. The defendants called one witness but did not tendered any exhibit and the defendants also close their case.

I have carefully read the processes filed in this case, the exhibits tendered as well as listened to the evidence of the various witnesses. The kernel of this case is that the defendants allocated to the claimant a piece of land Plot No. 3333 in Cadastral Zone A06 measuring about 1,527.85 square meters at Maitama District in 2014 for Residential purposes.

That it took possession and was granted or issued a right of occupancy certificate and receipts from various payments. The claimant also paid for building plan to the defendants and the defendants approve the building plan. That the claimant mobilize to site and commence construction work preparatory to develop the property in accordance with the approve building plan. That on the 22nd July, 2016 she was

served with a stop work notice by the defendants and when she went to the defendants office to inquire for the reason why the stop work notice was issued, the defendants informed her that they just wanted to double check if all the requirement for the development of the property has been followed and in a couple of days the claimant will be allowed to go back to work.

That attempts by the claimant to make the defendants allow it to return to develop the property failed as the defendants remained taciturn, reticents and uncommunicative. The evidence of the PW1 which was contained in the witness statement on Oath is a reproduction of the statement of claim and the witness tendered the offer of statutory right of occupancy No: 007031 dated 28th December, 2014 as exhibit 'AA1'., he also tendered revenue collectors receipts as exhibit AA2, he tendered statutory right of occupancy bill dated 23rd December, 2014 in file No MISC 128792 as exhibit AA3. He also tendered the approve building plan as exhibit AA4.

Finally witness tendered the stop work notice No. 5401 dated 22nd July 2016 as exhibit AA5. The DW1 on his part gave evidence to the effect that base on the presidential directive on the compliance with the provision of the Abuja master plan, the defendants set up a technical advisory committee which as a result of its Preliminary report led the 1st defendant to direct that the Redesigned layout upon which the claimant got its allocation and building approval be reviewed.

Also that in view of the said directive of the 1st defendant there was a redesignation of the use of the claimant's plot to low density residential use. Because of this, they suspended all processing of building plan approval and, altered the implementation of building plan approval

already granted to the claimant. That the technical advisory committee recommendation is still awaiting the approval of the 1st defendant and for this, the claimant would not be allowed to develop the property base on the earlier granted building approval. That what is involve is public interest which comes first before the claimant interest and that the defendants acted within its power and duties. The evidence of the DW1 is in fact similar with the statement of defence of the defendants.

A community reading and a critical analyses of the evidence adduced by the witness shows that the following issues are not in dispute:

1. That the title to land is not in contention and that the land was allocated to the claimant.
2. That the claimant made all the necessary payment required of it by law relating to the land.
3. That the plaintiff submitted a building plan to the defendants which the defendants approved
4. That the plaintiff based on the approved building plan commence construction of the building on the land in issue.
5. That while construction was on the defendants served a stop work notice on the claimant and since then construction stop.

The above facts are not in dispute. The point in dispute in this case as I understand it is narrow and it is whether the stop work notice was properly issued by the defendants in accordance with law. The defendants counsel submitted that by law particularly Section 18 of the F.C.T Act, a minister of the federal capital territory is vested with the legal authority to validly revoke any right of occupancy given to any individual.

Counsel also cited the case of Madu Vs. Madu (2008) 6 NWLR (Pt.1083) 324 at 325. Counsel also referred the court to Section 28 of the land use Act and submitted that the 1st defendant is fully authorize in law to write warning notice as in the instant case or even to extinguish the title of the claimant over the property in issue. Counsel further cited Section 1 (3) of the F.C.T Act and submitted that the directive of the first defendant to redesign the use of the plot in issue, the suspension of the approve building plan and the halting of the implementation of the approved building plan of the claimant pending the approval of the recommendation of the technical advisory committee contained in its preliminary report is lawful and within the power to administer land within the F.C.T.

Tried as I have to factor this, the argument of counsel into the defence raise by the defendants, I still cannot find my way through to agree with him. Section 28(1) of the land use Act empower the minister of the F.C.T to revoke a statutory right of occupancy for overriding public interest. Section 28(2) of the same Act spelt out clearly what overriding public interest means. Also Section 28(5) of the Act makes provision for grounds upon which the governor qua the F.C.T Minister may revoke a statutory right of occupancy. Section 28(6) state clearly that the revocation of a right of occupancy should be signify in writing and signed by public officer duely authorize. I have taken pains to set out the provision of the land use Act as relating to a revocation of a right of occupancy.

In the instant case, the question is did exhibit AA5 serve as a notice of a revocation of the claimant? the answer to this question can only be glean from the evidence of DW1. According to the DW1 there was a directive

from the technical advisory committees' preliminary report which made/led the defendants to redesign the use of the land in issue as low density residential use. To implement this redesignation, the technical advisory committees' report recommended the halting of the claimant implementation of the building plan approved by the defendants. Hence the stop work notice exhibit "AA5". The exhibit AA5 was not issued to revoke the statutory right of occupancy of the claimant over plot No 3333 cadastral Zone A06 in Maitama district. The wordings of exhibit AA5 are clear and unambiguous. Where the word used in a document are plain, clear and unambiguous the court will not bother given it a different interpretation. See the case of A.G.F Vs. Abubakar (2007) ALL FWLR (pt 375) 405. Parties are not allowed to input into a document what it does not say. Exhibit AA5 speak for itself.

The defendants did not deny approving the building plan exhibit AA4 for the claimant. It also did not give evidence that the building been constructed by the claimant on the land in issued does not conform with the approve building plan. All they say is that they issued exhibit AA5 pursuant to a said technical advisory committees' report and / or recommendation which is still unapproved. Alas! The defendants did not tender the much talk about report or recommendation in evidence. The law is that , where a party plead a document and failed to produce the document in evidence it is presumed that if that document were to be produce in evidence, it will weigh against the party see section 167d E.A. (Evidence Act).

In other words, the failure or the deliberate refusal of the defendants to produce the said report is presume that it contents will not favour their case. Similarly, the mere ipse dixit of a witness as in the instant case of

the existence of a document pursuant to which it acted but without producing the document in evidence will not be a prove of the alleged facts. Consequently, I hold that there is no report or recommendation from any technical advisory committees upon which the defendants acted in issuing exhibit AA5, the stop work notice to the claimant and if such report were produce in court as an exhibit, its contents will contradict the defendants case.

Now the claimant in his evidence, has shown that it carried out its construction work in accordance with the approved building plan exhibit AA4. Furthermore, the claimant has shown by its evidence that it obtained the approval of the building plan from the defendants section 70 of the F.C.T Act provide; "No person shall carryout the development of any property within the F.C.T unless the person had first obtained a written authority or approval from the appropriate authority."

Under the Abuja development control manual, the defendants are empower to issue a stop work notice where there are certain contravention. In other words a notice of contravention will be issued where a party is in contravention of the building code, the urban and regional planning law and any other law applicable to structural development in the F.C.T Section 1 of the development control manual spelt out conditions under which contravention notice can be issued by the defendants. The condition supplied by the defendants for issuing the stop work notice Exhibit AA5 is all work notice related to the retaining wall. And for the claimant to submit to the defendants "your approved building plan permit/setting out the checking" there is nothing on the face of Exhibit AA5 suggesting that the claimant activities in carrying out

the construction of the building on the land in issue falls under any of the condition that amounts to a contravention.

Section 53 of the Nigerian urban and regional planning Act provide further condition that may warrant development control department to issue a stop work Order. For clarity I shall reproduce the Section Anon:

“where it appears to the control department there:

- a. An unauthorized development is been carried out, or
- b. Where a development does not comply with a development permit issued by the control department. The control department shall issue a stop work Order pending the service of an enforcement notice on this owner, occupier, or holder as specify in section 50 of this Act.

The defendants has not contradicted the evidence of the claimant, that it was carrying out its building on the land in accordance with Exhibit AA4 approved by the defendants. In other words, I hold that the claimant was not in contravention of section 53 of the Nigerian urban and regional planning Act. I hold also that defendants did not issue the stop work notice in accordance with any extant law. The said notice was issued ultra vires the power of the defendants. In consequence I make the following Orders:

- a. I hereby declare that the claimant is the legitimate and subsisting allottee of plot No. 3333 Cadastral Zone A06 measuring about 1,527.85 square meters in Maitama District Abuja registered as No. 5677 pg. vol. 284 covered by the certificate of occupancy dated 25th March, 2015.
- b. I hereby declare that the stop work notice dated 22nd July, 2016 served on the claimant without any form of complain or hearing

what so ever tantamount to denial of fair hearing contrary of section 36 of the Constitution of the Federal Republic of Nigeria (As Amended).

- c. I hereby set aside the stop work notice dated 22nd July. 2016 served on the claimant.
- d. The defendants by themselves, their servant, agent, privies or employ are hereby restrained perpetually from the interfering with, revoking, encroaching, reallocating and/or in any manner deal with the claimant right to the parcel of the land situate at plot 3333, Cadastral Zone (A06) measuring about 1,527.85 square meters Maitama Abuja.

That's the Judgment of the Court.

APPEARANCE:

E. Jatto Esq. for the claimant.

Awal Nasir Esq. for the defendants.

Sign

Hon. Judge

22/06/2021