IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 7TH DAY OF JULY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 6
SUIT NO: CV/870/2020

BETWEEN:

DR. SULEIMAN ASABE HAUWA ------ CLAIMANT

AND

1. IKECHUKWU OMEYE
2. PERSON UNKNOWN ------ DEFENDANTS

JUDGMENT

The Claimant Dr. Hauwa Asebe Suleiman, a Medical Practitioner purchased a plot of land known as Plot No. 694 measuring about 600m^2 situate at Dawaki Extension (Re-location) layout Abuja from the original allottee, one Allahyayi Dogo sometime in February, 2007. Upon the purchase of the said plot, the claimant applied for change of ownership from Bwari Area Council Abuja and an

approval was granted, vide the offer of Grant/Conveyance of approval of Customary Right of Occupancy dated 26/02/2007.

The Claimant contends that she applied for regularization of her title documents at the FCTA in 2008 and she subsequently built a short fence on the plot and had been enjoying quiet and uninterrupted possession without any interference or disturbance until recently when the Defendants trespassed into the land claiming ownership of the said plot.

The plaintiff now claims the following before the Court.

"a) A declaration that the Claimant is the owner of the plot of land known as plot No.694 situate at Dawaki Extension (Re-location) layout Abuja measuring 600m^2.

b) A declaration that the Defendants are trespassers into the said plot No.694 belonging to the Claimant.

c) An order restraining the Defendants and any other persons claiming under them from further trespassing, laying claim or further laying claim on the Claimant's plot 694 situate at Dawaki Extension (Re-location) layout measuring 600m^2.

d) An order directing the Defendants to pay the sum of N1,000,000.00 (One Million Naira) only to the Claimant being the amount spent on building the cubicle destroyed by the Defendants.

e) An order directing the Defendants to pay the sum of N1,000,000.00 (One Million Naira) only to the Claimant being the amount paid as legal services to the law firm of Dickson & Co.

f) An order directing the Defendants to pay the sum of N10,000,000.00 (Ten Million Naira) only as general damages for the psychological trauma, shock, embarrassment, humiliation, mental torture and delay

suffered by the Claimant as a result of the Defendant act of trespass that resulted to this suit.

g) *And for such order or further orders as the Court may deem expedient to make in the circumstance of this suit."*

By the order of this Court made on the 4/02/2020, the Defendants were served with the originating processes together with hearing notice by substituted means.

On the 24th September, 2020 the matter came up for hearing and the Claimant testified for herself as PW1. She adopted her Witness Statement on Oath of 22nd June, 2019 and prayed the Court to grant all her reliefs.

The following documents were tendered in evidence and marked as Exhibits A, A1 – A6.

1. Offer letter of the terms of Grant/Conveyance of approval dated 22/02/2007 marked as exhibit A.

2. Sales agreement between Allahyayi Dogo and Asabe Hauwa Suleiman dated 24/02/2007 marked as exhibit A1.
3. Irrevocable Power of Attorney between Allahyayi Dogo and Asabe Hauwa Suleiman dated 24/02/2007 as exhibit A2.
4. Offer of Terms of Grant/Conveyance of Approval dated 26/02/2007, marked as exhibit A3.
5. Departmental Receipt issued by Bwari Area Counsel in favour of Asabe Hauwa Suleiman marked as exhibit A4.
6. FCTA Regularization of land title documents acknowledgement dated 21/08/2008 marked as exhibit A5.
7. Departmental receipt by Bwari Area Council as exhibit A6.

The Defendant's despite being served with hearing notices at every stage of the proceeding did not appear in Court or file any process thereof. Consequently, the Defendants were foreclosed from cross-examination. The defence was also closed and parties were directed to file their final Written Addresses.

Sunday Dickson Esq. filed the Claimant's final written address on the 11th January, 2021 which was duly adopted by Dauda Chakpo Esq. Learned Counsel raised a sole issue for determination as follows:

> *"Whether from the totality of evidence before Your Lordship, the Claimant has proved her case on a balance of probability to be entitled to the reliefs sought?"*

Learned Counsel submitted that their answer to the above formulated issue is in the affirmative. Counsel submitted to the effect that the standard of proof in civil

cases is based on the balance of preponderance of evidence which suggest that where a Plaintiff is able to discharge the burden placed upon him or her by leading credible evidence on the balance of probability, the burden now shift's to the Defendant to either controvert or adduce more credible evidence. Counsel submitted that, the Claimant has discharged the burden required under the law as far as civil proceeding is concerned.

Counsel further submitted that the law is settled in plethora of cases that where evidence is led but not controverted, such evidence is deemed admitted.

Counsel finally submitted that since the Defendants have refused and neglected to challenge the Claimants claim of ownership of the subject matter of this suit, it is clear that they have accepted and succumbed to all the claims of the Claimant. Counsel then urged this Court to

grant all the reliefs prayed by the Claimant in this suit. Counsel referred this Court to the following cases:

1. Sakiti vs. Bako (2015) All FWLR (Part 800) 1182.
2. Okorocha vs. P.D.P. (2015) All FWLR (Part 786) 530 SC.
3. Amadi vs. A.G. Imo State (2017) All FWLR (Part 907) 1652 SC.
4. NBA vs. Fobur (2006) All FWLR (Part 333) page 1736
5. Ikamaka vs. Derekoma (2008) All FWLR (Part 433) page 1376 at 1380.

From the evidence adduced before this Court and also considering the fact that the Defendants have not addressed the Court, the only issue is to determine whether the plaintiff from the totality of the evidence has proved her case to be entitled to the reliefs sought.

It has long been settled in plethora of cases that in a declaration of title to land, the onus is on the Plaintiff to

satisfy the Court that he is entitled on the evidence brought by him to a declaration of title. In order to discharge this onus, the Plaintiff must rely on the strength of his own case and not on the weakness of the Defendants case. See: **Madubuonwu & Ors. vs. Nnawe & Ors. (1999) LPELR – 1809 (SC), Chukwueke vs. Nwankwo & Ors. (1985) LPELR – 858(SC).**

The Apex Court in the case of **Fabunmi vs. Agbe (1985) LPELR – 1221 (SC),** held as follows:

> *"A claim for declaration of tittle is not established by admission as the Plaintiff must satisfy the Court by credible evidence that he is entitled to the declaration.*
>
> *The Court does not grant declaration on admission of parties. It has to be satisfied that the Plaintiff owns the title claimed."*

Flowing from the above therefore, the Court will not readily without good and sufficient evidence exercise its discretion to grant a declaratory order. This is because a declaratory relief cannot be granted without oral evidence even where the Defendant expressly admit liability in the pleadings. See: Nzurike vs. Obioha (2011) LPELR – 107 (CA), Vincent Bello vs. Magnus Eweka (1981)1 SC, 101 at 182.

It is also well settled that a party claiming declaration of title to a Statutory or Customary Right of Occupancy to land does not need to plead more than one of the prescribed methods of proof of title to land to succeed. The five methods which have received judicial blessings over time are:

1. By traditional evidence,
2. By production of documents,

3. By acts of ownership extended over a sufficient length of time numerous and positive enough as to warrant the inference of true ownership,
4. By acts of long possession and enjoyments, and
5. Proof of possession of connected or adjacent land in instances rendering it probable that the owner of such connected or adjacent land would, in addition be the owner of the land in dispute.

See: Idundun vs. Okumagba (1976) 9-10 (SC) page 227, Yusuf vs. Adegoke & Anor. (2007)4 SC (Part 1) page 126 at 137, Oyadare vs. Keji & Anor. (2005) LPELR - 2861 (SC).

In the instant case, the Plaintiff had relied on the second method in proving her title by production of documents evidencing her interest in the subject matter. The Plaintiff through PW1 tendered exhibit A, Offer of Terms of Grant/Conveyance of Approval of Customary

Right of Occupancy in favour of the original allottee, one Allah yayi Dogo, with respect to Plot No 694 situate at Dawaki Extension (Re-Location) layout, Exhibit A1 is the sales Agreement, while Exhibit A2 is the Irrevocable Power of Attorney evidencing the transaction between her and the original allottee.

The Plaintiff then applied for change of ownership upon which Exhibit A3 Offer of Terms of Grant dated 26/02/2007 was issued in her favour.

Furthermore, it is the evidence of the Plaintiff before this Court, that she participated in the recertification exercise and an acknowledgement was issued to her vide Exhibit A5.

As stated earlier, despite service of the Writ on the defendants and service of hearing notice, the defendants neither appeared nor defend the action. It is trite that failure of a defendant to file a statement of defence as

provided by the rules is tantamount to an admission by the defendant of the plaintiffs claim, and it is settled law that facts admitted need no proof. See Akahall & Sons Ltd vs. N.D.I.C. (20170 LPELR. In Okeobor vs. Police & ors (2003) 12 NWLR (part 834) 444, the apex Court held:

> *"The basic principle of law is that where a defendant fails to file a defence, he will be deemed to have admitted the claim or relief in the statement of claim..."*

In this case, the plaintiff pleaded facts and led credible evidence which show that she is the owner of Plot No. 694 Dawaki Extension (Re-location) layout, Abuja measuring 600m2, the land in dispute; the averments was not challenged by the defendants. The Supreme Court was more direct in the case of Osayande Erinwingbovo (2006) 11 NWLR (part 992) 699, where it was held:

"The position of the law as regards unchallenged evidence is as stated above, for any such evidence that is neither attacked nor discredited and is relevant to the issues joined ought to be relied upon by a Judge."

It is therefore clear that where evidence given by a party to any proceedings was not challenged by the opposite party who had opportunity to do so, it is always open to the Court seized of the case to act on such unchallenged evidence before it. See Odulaja vs. Haddad (1973) 11 SC 375, Olohunde vs. Adeyoju (2000) 10 NWLR (part 679) 562. In view of the above, I hereby declare that the plaintiff is the owner of the plot of land known as Plot No. 694 Dawaki Extension (Re-location) layout, Abuja measuring 600m2

Plaintiff's reliefs (b) and (c) seeks for a declaration that the defendants are trespassers on the land in dispute and

should thereby be restrained from further trespass. Trespass in relation to landed property means an unjustified intrusion or interference with possession of land. It is a wrongful entry into land in actual or constructive possession of another. See Abdurrahman vs. Abdulhamid (2014) LPELR – 23592 (CA), Solomon vs. Mogaji (1982) 11 SC 1, Dantsoho vs. Mohammed (2003) 6 NWLR (part 817) 457. Furthermore in Osuji vs. Isiocha (1989) 3 NWLR (part 111) 623, the Court held:

> *"It is an act of trespass to place anything on or in the land in possession of another person. If a defendant placed a part of his foot on the claimant's land unlawfully, it is in law as a trespass as if he had walked half a mile on it."*

Thus, the defendant's entry into the plaintiff's plot amounted to trespass. The law is that where a party succeeds in establishing a case of trespass, his claims for

damages and injunction automatically succeed. See Adamu vs. Esonanjor (2014) LPELR – 41137 (CA), Wachukwu vs. Owonwanre (2011) 14 NLR (part 1266) page 27. Reliefs (b) and (c) as claimed are thus granted as prayed.

For Relief (d), the plaintiff from the evidence stated that she built a cubicle on the plot of land to be putting her building materials. She was then informed by the Police who visited the plot that the defendants and three other boys destroyed the cubicle. It appears that the plaintiff herself did not witness any of the defendants destroying the cubicle. Her evidence on this issue can only be hearsay which is inadmissible. This is moreso as none of the people who witnessed the destruction was called to give evidence. Even the photograph of the destroyed cubicle which she pleaded was not tendered in evidence. Furthermore, the plaintiff did not lead credible evidence as to how the sum of N1,000,000.00 (One Million Naira) was arrived at. The claim

seems to me for special damages which has to be specifically claimed and proved strictly. See Union Bank Plc vs. Nwankwo (2019) LPELR – 46418 (SC)

I am not convinced that there was a cubicle on the plot let alone that the cubicle was destroyed by the defendant. This relief is lacking in merit and same is refused.

Relief (e) is for N1,000,000.00 (One Million Naira) being the amount paid for legal services to the law firm of Dickson & Co. This is clearly a claim for solicitor's fees for prosecuting the action. The question is whether the claimant is entitled to the award of his solicitor's fees or cost of prosecuting the action? The law is that a claim for solicitors cost would need proof by documentary evidence and/or oral evidence in proof. See Mrs. Ene Umo vs. Mrs. Cecilia Udonwa (2012) LPELR – 7857 (CA). The claimant did not tender any document in proof of the above claim neither did she lead oral evidence in proof.

In the case of **Michael vs. Access Bank (2017) LPELR – 41981 1 at 48 – 49, Ugochukwu Anthony Ogakwu, JCA** stated thus:

> *"It seems to me that a claim for solicitors fees which does not form part of the cause of action is not one that can be granted….In Guinness Nigeria Plc vs. Nwoke (part 689) 135 at 159, this Court held that a claim for solicitors fees is outlandish and should not be allowed as it did not arise as a result of damage suffered in course of any transaction between the parties. Similarly, in Nwanji vs. Coastal Services Ltd (2004) 36 WRN 1 at 14 – 15, it was held that it was improper, unethical and an affront to public policy to have a litigant pass the burden of costs of an action including his solicitors fees to his opponent in the suit."*

Similarly, in the case of **Ihekwoba vs. ACB Nig Ltd (1998) 10 NWLR (part 571) 590,** the Court per **Akpabio JCA,** had on this issue succinctly pronounced inter alia thus:

> *"The issue of damages as an aspect of solicitors fees is not one that lends itself to support in this country."*

See also **Ibe & anor vs. Bonum (Nig) Ltd (2019) LPELR – 46452 (CA), In RE: Glaxosmithkline Consumer Nig. Plc (2019) LPELR – 47498 (CA).** Relief (e) is therefore refused.

By Relief (f) the claimant is praying this Court for N10,000,000.00 (Ten Million Naira) against the defendants as damages for trespass. The claimant in this case has proved her exclusive possession of the land before the unlawful interference by the defendants. The law is that every unlawful or unauthorized entry into land in the possession of another is trespass for which an action in damages lies even if no actual damage is done to the land

or any fixture thereon. Thus where a person alleges possession simpliciter, and proves interference therewith, an actionable trespass exist. See Hunsonnu vs. Denapo (2007) LPELR – 8701(CA). It is trite that proven tort of trespass attracts only general damages for which there is no strict proof. See Oyeneyin & anor vs. Akinkugbe & anor (2000) LPELR – 5498 (CA).

In the circumstance, relief (f) will be granted.

On the whole, judgment is entered for the plaintiff in the following terms:

- It is hereby declared that the claimant is the owner of the plot of land known as Plot 694 situate at Dawaki Extension (Re – location) layout Abuja measuring 600m2.
- It is also declared that the defendants are trespassers on the plot.

- The defendants or any other persons claiming under them are hereby restrained from further trespassing, or laying claim on the claimants plot No. 694 situate at Dawaki Extension (re-location) layout measuring 600m2.
- I order the defendant's to pay the plaintiff the sum of N500,000.00 (Five Hundred Thousand Naira) only as general damages.
- Reliefs (d) and (e) of the plaintiff are hereby refused.

Hon. Justice M.A. Nasir

Appearances:

Sunday Dickson Esq with him Chakpo Dauda Esq – for the claimant

Defendants absent and not represented