

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

DELIVERED ON THURSDAY THE 1ST DAY OF JULY, 2021.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPER. OSHO-ADEBIYI

SUIT NO. CV/2557/2020

BETWEEN

YASINA NIGERIA LIMITED----- CLAIMANT

AND

HON. MINISTER FEDERAL CAPITAL TERRITORY ----DEFENDANT

JUDGMENT

By a writ of summons dated and filed 7th of September, 2020 the Claimant claims against the Defendant as follows:

1. A DECLARATION that the Claimant is the holder of the Statutory Right of Occupancy dated 25th June, 2002, referenced [MFCT/LA/MISC. 18347] over Plot No. 730 within Central Business District, Abuja.
2. A DECLARATION that the Claimant's Statutory Right of Occupancy over Plot No. 730 within Central Business District, Abuja, is valid and subsisting.
3. A DECLARATION that the payment of the sum of Seventeen Million, SevenHundred and Forty Thousand, One Hundred and

Forty-Nine Naira, ThirtyEight kobo (N17,740,149.38), being the total assessed Rent, Fees, Premium, Survey Fees, Development Levy, etcetera for the issuance of Certificate of Occupancy is valid and subsisting and represents full and final payment by the Claimant for the issuance of Certificate of Occupancy over Plot No. 730 within Central Business District, Abuja.

4. AN ORDER directing the Defendant to issue the Claimant with the Certificate of Occupancy over Plot No. 730 within Central Business District, Abuja.
5. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendant whether by himself, agents or privies from unlawfully revoking and or expropriating or in any manner howsoever interfering with the rights, title of the Claimant or possession of the Claimant of Plot No. 730 within Central Business District, Abuja.
6. AN AWARD of the sum of Ten Million Naira (N10,000,000.00) as general damages against the Defendant.

Parties exchanged pleadings and the Court fixed a date for hearing. The claimant opened his case on the 28th of October, 2020 and called his sole witness, ALPHONSUS OSHIOLE, the Managing Director of the Claimant as PW1 where he adopted his witness statement on oath and his further witness statement on oath as his evidence in this case. The summary of the facts as stated in his evidence is that pursuant to the application of the Claimant, the Defendant on the 25th June, 2002 allocated to the Claimant Plot No.730 within Central Business District, Abuja covered by [File No. MFCT/LA/MISC.18347 and

communicated same to the Claimant vide a conveyance of a Statutory Right of Occupancy dated 25th June, 2002 reference [MFCT/LA/MISC.18347, the Revenue Collectors Receipt for Land application Form dated 15th May, 2001 and Land application Forms acknowledgement dated 15th May, 2001 was issued by the Defendant to the Claimant acknowledging the submission of all the documents described therein by the Claimant. That the Claimant accepted the offer vide its acceptance letter dated 28th June, 2002 and the Defendant issued the Claimant with the Bill for Right of Occupancy, Rents and fees including the Premium for Certificate of Occupancy, Survey Fees and Development Levy, etcetera which was dated 28th November, 2002. That on 10th December, 2002 the Claimant paid the sum of Seventeen Million, Seven Hundred & Forty Thousand, One Hundred & Forty Nine Naira, Thirty Eight Kobo (N17,740,149.38), being the requisite Rent and Fees including the Premium for Certificate of Occupancy and Survey Fees, Development Levy, etcetera for the preparation and issuance of Certificate and obtained a Revenue Collectors Receipt dated 10th December, 2002. That when the Defendant commenced Re-certification of titles of land within the Federal Capital Territory, the Claimant filled and submitted the Recertification Form and paid the requisite Ten thousand-naira (N10,000.00) processing fee to the Defendant. That at the request of the Defendant, the Claimant submitted to the Defendant the originals of the following documents: Revenue Collector's Receipt for application fees, Land application Form acknowledgement, Statutory Right of Occupancy, Acceptance of Letter, Re-certification Form and Bank

Teller for the payment of Re-certification fees. That the Defendant acknowledged receipt with its stamp on the copies of the submitted documents. That the Defendant has been holding out that he misplaced the file for all these many years and therefore could not recertify the title for the said Plot. That the officials of the Defendant have failed over the years on their promises and assurances to recertify the plot by digitizing the Claimant's Title and documents and issuing the Claimant the Certificate of Occupancy. That the acts of the Defendant constitute a scheme to illegally take over the Claimant's right and title over the said Plot No.730 within Central Business District, Abuja. That he verily believes that the Claimant is entitled to all the reliefs set out in its Writ of Summons and Statement of Claim.

PW1 tendered the following documents as exhibits in proof of his case as follows:

1. Certified True Copy of FCDA receipt for the sum of N52,500.00 admitted as Exhibit A.
2. Certified True Copy of Land allocation form issued by Ministry of Federal Capital Territory dated 15/5/2001 admitted as Exhibit B.
3. Certified True Copy of Offer of grant of conveyance of approval dated 26/6/2002 admitted as Exhibit C.
4. Certified True Copy of Acceptance of offer of grant of Right of Occupancy dated 28/06/2002 admitted as Exhibit D.
5. Certified True Copy of Right of Occupancy dated 20/11/2002 admitted as Exhibit E.

6. Certified True Copy of FCDA receipt No. 417117 for the sum of N17,740,149.38 admitted as Exhibit F.
7. Certified True Copy of Application for recertification and reissuance of Certificate of Occupancy dated 21/02/2001 admitted as Exhibit G.
8. Certified True Copy of AGIS deposit slip for the sum of N10,000.00 admitted as Exhibit H.

The Claimant filed a reply to the defendant's statement of defence dated 30/10/2020 wherein the claimant denies paragraphs 4,5,6,7,8,9,10,11,12,13 and 14 of the Defendant's Statement of Defence and put the Defendant to the strictest proof of the averments contained therein. In reply to the denied paragraphs, the Claimant reproduced the averments in his witness statement on oath as the true position and that the averments in the Statement of Defence are false and misleading and it is a ploy by the defendant to illegally take over the Claimant's rights and interest over the said plot of land. The Claimant states that the Defendant have no defence to this action. Claimant was cross examined and claimant closed its case.

The Defendant filed its Statement of Defence and opened its defence on the 9th day of February, 2021, called a sole witness Olufadi Olabisi Simbiat, an Assistant Chief Town Planning Officer in the Department of Lands Administration who testified as DW1 and adopted her written statement on oath.

The summary of facts as stated in the witness statement on oath is that the Claimant did not at any point in time apply for allocation of land in

the Federal Capital Territory. That the Defendant did not at anytime allocate Plot no. 730 Central Business District, Abuja to the Claimant on 25/06/2002 or on any other date. That neither the Defendant nor its agents did not at any point convey the purported Offer of Conveyance of Statutory Right of Occupancy dated 25/06/2002 to the Claimant. That none of its agencies issued any file number known as File no. MFCT/LA/MISC 18347 and as such the Defendant never granted title over Plot no. 730 Central Business District, Abuja or any plot whatsoever to the Claimant. That they did not issue the purported revenue collectors receipt for land application form dated 15/05/2001 and Land application form acknowledgment purportedly issued by the Defendant or its agents. That the Claimant had no title/Offer to purport to accept on 28/06/2002 as it has nothing before the court to show that it was validly granted a Statutory Right of Occupancy over the said Plot no. 730 Central Business District, Abuja by the Defendant. That the agents of the Defendant did not at any point in time issue any Bill for Right of Occupancy Rent and Fees including Premium for Certificate of Occupancy, Survey Fees and Development Levy fees dated 20/11/2002 to the Claimant, whether in respect of the Plot no. 730 Central Business District, Abuja or any plot whatsoever. That the Claimant did not at any point in time pay the sum of Seventeen Million, Seven Hundred & Forty Thousand, One Hundred & Forty Nine Naira, Thirty Eight Kobo (N17,740,149.38) only to the Defendant or its agents as requisite Rent and Fees, Development Levy, etc for the Preparation and issuance of Certificate of Occupancy in respect of the subject plot or any plot whatsoever and that the Defendant never issued any revenue collectors

receipt dated 23/01/2002 to the Claimant in the above stated sum. That the Claimant did not fill any Recertification form in respect of the subject plot or any plot at all and did not at any point in time pay the sum of N10,000.00 (Ten Thousand Naira) only or any sum whatsoever to the Defendant or its agents as recertification processing fee. That the Claimant did not at any point in time submit originals of Revenue Collectors Receipt for application fees, Land application form acknowledgment, Statutory Right of Occupancy, Acceptance letter, Recertification Form and Bank Teller for the payment of Recertification fees in respect of the subject plot or any other plot to the Defendant or its agents. That in any event, it is not the practice of the agents of the Defendant to collect originals of title documents or other land documents from allottees during recertification. That none of the agents of the Defendant has ever informed nor held out in any way to the Claimant that it could not recertify the Claimants title over the subject plot because it has misplaced its file. That the Defendant has never promised the Claimant that it was going to recertify its purported title over the subject plot and issue a Certificate of Occupancy to it, as the subject plot was never allocated to the Claimant in the first place. That there is no scheme by it to illegally take over the subject plot or any plot whatsoever from the Claimant. That the Claimant does not have any valid title over the subject plot, so there is actually nothing to take over from the Claimant. That the Defendant will at the trial of this suit urge the Honourable court to dismiss this suit as being frivolous, vexatious and lacking merit. DW1 was cross examined and defendant closed its case.

At the close of the case, the Court adjourned for parties to file their final written addresses.

The Claimant in his final written address, raised a sole issue for determination, which is;

“Whether the Claimant has proved its case on the preponderance of evidence so as to be entitled to the reliefs sought in its Writ of Summons and Statement of Claim, having regard to the allegation that the documents relied on by the Claimant were not issued by the Defendant?”

Learned counsel submitted that the standard of proof in land matters is the same as that for other civil cases which is by preponderance of evidence. See **Owuana v. Oparaji [2002] 5 NWLR (Pt. 760) 353; also reported in (2002) LPELR – 3702 (SC) at pp. 13-14.** Counsel submitted that in **Idundu v. Okumagba (1976) 9-10 SC 227** the Supreme Court laid down five ways of proving title to land namely;

1. By traditional evidence;
2. By documents of title;
3. By various acts of ownership and possession numerous and positive to warrant inference of ownership;
4. By acts of long possession and enjoyment; and
5. By proof of possession of adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the of the land in dispute.

That the law is that proof by one method suffices as held in **Uka v. Irole**[2002] 7 SCNJ 137 at 163 and by virtue of the fact that lands within the Federal Capital Territory (FCT), Abuja, are vested in the Federal Government of Nigeria. It is only the second method laid down in **Idundu v. Okumagba (supra)** that would apply to proof of entitlement to a statutory right of occupancy over land in Federal Capital Territory, Abuja. Counsel submitted that the Claimant has traced its root of title to a grant from the Honourable Minister of the FCT. Counsel submitted that when a document is duly pleaded and admitted in evidence the document become the best evidence of its contents and therefore speaks for itself. He relied on **Adun v. Obayuwana [2016] All FWLR (Part 819) 1135 at 1157**. Hence their exhibits A – Has tendered by Claimant speaks for itself. Counsel further submitted that the Defendant’s allegation that the Claimant’s title documents did not emanate from the Defendant is preposterous given that an official under the Defendant issued certified true copies of the document which are in the Deeds Registry of the Defendant and the certified true copies of the documents were tendered without objection and duly admitted in evidence at the trial. Counsel urged the court to apply **section 146 of the Evidence Act** and to hold that the certified true copies tendered by the Claimant in proof of its case are genuine and also accept the contents of the said documents as representing the extant legal relationship between the Claimant and the Defendant with respect to the plot of land in issue, he cited **AICE Investment co. Ltd v. Fidelity Bank (2015) LPELR – 25753 (CA), p. 25**. Counsel submitted that Exhibits A — H have the effect ascribed to them by their contents and cannot be contradicted by the

Defendant's bare denials. Counsel relied on the contents of Exhibit C as well as **Sections 5 (1) (a) and 52 of the Land Use Act**. Counsel also submitted that another legal effect of Exhibits C and D is that by virtue of the offer and acceptance of the grant there has come into existence a binding contractual relationship between the Claimant and the Defendant with respect to allocation and use of the plot of land in issue. Counsel relied on **section 8 of the Land Use Act as well as the decisions in Green Finger Agro Industry Ltd v. Yusufu [2003] 12 NWLR (Pt. 983) 488 at 508 – 511**. Counsel submitted that the Claimant has proved on the preponderance of evidence that it is the holder of the statutory right of occupancy over Plot No. 733 within Central Business District, Abuja. On the claim for a declaration that the statutory right of occupancy granted the Claimant by the Defendant is still subsisting, counsel submitted that the same is predicated on the fact that there is no evidence of revocation of the same pursuant to **sections 28 and 44 of the Land Use Act**. Counsel also submitted that as soon as the fees for processing and issuance of the said certificate of occupancy are duly paid, the Defendant comes under a legal obligation to process and issue the certificate of occupancy to the Claimant. He referred this Honourable Court to **Taiwo v. Laguda (1959) SCNLR 545**. On the claim for injunction and damages sought by the Claimant, counsel submitted that the Claimant is entitled to Peaceable enjoyment and quiet possession which are at the heart of the constitutional right to private property. He relied on **Attorney General of Bendel State v. Aideyan [1989] 4 NWLR (Part 118) 646 at 667**. Counsel urged the court to grant all the injunctive reliefs sought by the Claimant and to award general

damages to the Claimant. On the allegation that the documents relied on by the Claimant did not emanate from the Defendant and that the name of the Claimant is not in the Defendant's records, counsel submitted that by making this allegation the Defendant is saying that the Claimant's documents tendered by Claimant in proof of its case are forgeries. Counsel submitted that it is trite law that forgery is a very serious crime under our criminal laws. Therefore, where it is alleged by a party to a civil action, either as a foundation of a claim or defence, it must be proved beyond reasonable doubt. See **Babatola v. Adewumi (2011) LPELR – 3945 (CA), pp. 50-51**. see also **Sections 135 & 140 of the Evidence Act 2011**. Counsel further submitted that the Defendant bears the burden of proving its implicit allegation of forgery beyond reasonable doubt, using documents in his records showing allocation or noallocation to the Claimant, he relied on **Jules v. Ajani (1980) 5-7 SC 96; (1980) LPELR – 3123 (SC), pp. 19-20**. Learned counsel submitted that under cross-examination the Defendant's witness stated that she came to the conclusion that the documents tendered by the Plaintiff did not emanate from the Defendant and are forgeries based on their official records. However, no form of record was tendered to enable this Honourable Court make an independent finding that the name of the Claimant is not in the records examined by the Defendant's witness. No lists of allottees of land in the FCT were produced nor tendered in evidence before the Honourable Court by the Defendant. Accordingly, counsel urged this Honourable Court to disregard the oral account of the Defendant's witness on the contents of its official records, because it is legally inadmissible as secondary evidence of the content of the said

records. He cited **sections 85, 86 & 87 of the Evidence Act 2011**. Counsel urged the court to disregard the oral testimony that the name of the Claimant is not in the Defendant's records as the allottee of the plot of land in issue. That this Honourable Court was denied the opportunity of examining the said records to ascertain the veracity of the conclusion reached by DWI that the documents tendered by the Claimant are forgeries based on the Defendant's records. Counsel submitted that the Defendant did not proffer any reliable evidence to substantiate the allegations of forgery. See **Famuroti v. Agbeke (1991) 6 SC 1 at 11**. Counsel urged the court to apply **section 146 of the Evidence Act** and to hold the documents tendered and relied on by the Claimant in this case are genuine. Finally, counsel submitted that the upshot of the foregoing is that based on the totality of the evidence adduced before this Honourable Court, the Defendant was unable to prove that the documents the Claimant relied upon in proving its case are forged. Counsel submitted that based on the preponderance of evidence the Claimant has proved that it has a right of occupancy over the plot of land in issue; and that the said right of occupancy is still valid and subsisting and urged this Honourable Court to hold that the Claimant has proved that it is entitled to all the injunctive and compensatory reliefs sought in its Writ of Summons and Statement of Claim.

The Defendant in its written address filed, raised two issues for determination thus;

1. Whether land can be allocated to any person in the Federal Capital Territory without the due approval and authorization of the Defendant.
2. Whether the Claimant has proved her case to entitle it to the reliefs claimed.

On the first issue, Defendant's Counsel submitted that in view of the provisions of the FCT Act, the 1999 Constitution (as Amended) and the Land Use Act, all lands in the FCT are vested in the Federal Government of Nigeria. Counsel further urged the court to be persuaded by the erudite views expressed by the court of Appeal Abuja in the case of **ONA Vs ATANDA (2000) 5 NWLR Pt 656 Pg 244, particularly per Akintan J.C.A at page 268 para H, per Mustapha J.C.A at page 270 para G, per Bulkachuwa J.C.A at pages 271-272 para D**, all to the effect that: a. All lands in the Federal Capital Territory are vested absolutely in the Government of the Federation. B. Any occupier of land in the Federal Capital Territory, who is not in occupation of the land by virtue of a grant issued by the Federal Government through the Minister of FCT, is in illegal occupation of same. Counsel therefore submitted that going by the above statutory provisions and judicial authorities, it is the Defendant that has Statutory authority to issue Offer of Statutory Right of Occupancy and Certificate of Occupancy in respect of any land within the FCT. Counsel urged the Court to hold that there was no due approval and authorization by the Defendant for Plot no. 730 Central Business District, Abuja to be allocated to the Claimant. Learned counsel further submitted that the DWI also stated that the Claimant never accepted the subject plot, and also that the

Claimant never made any payments to the Defendant's agents whether for land application, Right of Occupancy fees or recertification fees as claimed in its Statement of Claim and urged the court to so hold. Counsel submitted that the Defendant also stated categorically that the Claimant did not at any point submit originals of the documents it claimed to have submitted to the Defendant's agents as it is not the practice of the agents of the Defendant to collect originals of title documents or other land documents from allottees during recertification. See **Okike vs, L.P.D.C (2005) 15 NWLR (pt. 949)7471 S.C.**The Defendant also stated that its agents did not issue any acknowledgement letter to the Claimant as proof or evidence of the submissions it claims to have done. Counsel submitted that all the documents relied upon by the Claimant in proof of its case were not issued by the Defendant, including the purported file number and urged the court to hold that Exhibits A– H are of no moment and discountenancesame and dismissrelief 4 of the Claimant. On the second issue, learned counsel submitted that it is a settled principle of law that he who asserts must prove. See **sections 131- 133 OF THE EVIDENCE ACT, 2011**and urged the court to hold that the Claimant has not proved her case to entitle her to the reliefs claimed. See **ARASE VS. ARASE (1981) 5 SC 33 @ 37**. Also, counsel submitted that it is trite law that cases in land matters are won on their merit.i.e. strength of the Claimant's case and not weakness or absence of Defence and the claimant has refused to prove her case. He cited**AKANNI vs ODEJIDE (2004) 9 NWLR PT 879, 579 @ 605 (F-H)**. On the Claimant's claim for declaratory relief, counsel submitted that the court cannot grant such a

relief without the party seeking for same adducing substantial evidence. Thus, it cannot be granted merely on default of defence or even on admission and urged the court to so hold and dismiss reliefs 1, 2 and 3 of the Claimant. Counsel further submitted that the Claimant having failed to establish that there is an actual threat to infringe on its legal right is not entitled to the perpetual injunction being sought and urged the court to so hold and dismiss reliefs 5 of the Claimant.

On the Claimant's claim for N10, 000, 000.00 (Ten Million Naira only) as general damages, counsel submitted that in a claim for damages, the burden of proof is on the Claimant and never shifts. Therefore, in the instance case, the Claimant having not adduced any evidence to substantiate her claim for financial/monetary damages is not entitled to any damages. Counsel therefore urged the court to so hold and dismiss relief 6 of the Claimant. See **ADEKUNLE vs ROCKVIEW HOTEL LTD (2004) 1 NWLR pt 853, 161 @ 174 – 176(B – H)**. In conclusion, learned counsel submitted that the Claimant has failed to prove her case against the Defendant and therefore it is not entitled to any of the reliefs sought and urged the court to dismiss the Claimant's claims in entirety as same lacks any iota of merit.

Having listened to parties and gone through processes filed, I will adopt the issue for determination as espoused by the learned counsel for the Defendant:

- (1) Whether Claimant has proved its case to entitle it to the reliefs claimed??

Claimant in this suit is claiming declaratory reliefs as stated on the face of this judgment in respect of land which it claimed it has been issued statutory right of occupancy by the Defendant, paid rent, premium, survey fees, development levy etc for the issuance of a Certificate of Occupancy in respect of the subject matter land in this suit whilst Defendant is claiming that all transactions as spelt out by the Claimant in its claim never took place. That Defendant does not have anything in its custody to substantiate the claim of the Claimant and as far as Defendant is concerned none of the agencies of the Defendant ever received from the claimant any fees or levy nor issue any receipt to that effect nor acknowledgment to that effect. Defendant further contends that Claimant never at any point submitted originals of Revenue Collection receipt for application fees, acceptance of offer letter, recertification form and bank teller for payment of recertification fees in respect of the subject plot to the Defendant or any of its agencies.

Claimant had tendered a CTC of the following documents which were admitted as exhibits.

- (1) Land application form acknowledging the receipt of all requisite documents as stated in the form including the sum of ₦52, 500 bank draft.
- (2) The Revenue collection receipt from the FCDA dated 15/5/2001 for the sum of ₦52, 500 as required in the land application form.
- (3) Offer of terms of grant/conveyance of approval issued by the Ministry for Federal Capital Territory dated 25/06/2002.

- (4) Acceptance by the Claimant of the offer as stated in No. 3 above addressed to the Hon. Minister and signed by the Claimant on the 28/6/2002.
- (5) A Right of Occupancy issued to the Claimant dated 20/11/2002 from the office of the Federal Capital Development Authority Department of Land planning and Survey Abuja with a commencement date of 25/06/2002 and an expiry date of 24/06/2101 requesting the Claimant to pay the total sum of ₦17, 740, 149.38 for the preparation of a C of O for the Claimant and other relevant fees and signed by U.M Baffa on behalf of the Hon. Minister FCT
- (6) A Revenue Collectors receipt issued to the Claimant from the office of the FCDA receipt No. 417112 dated 10/02/2002 for the sum of ₦17, 740, 145.38 in fulfilment of the requested sum in the Right of Occupancy.
- (7) Application for recertification and re-issuance of Certificate of Occupancy duly filled and signed by the Claimant.
- (8) Abuja Geographical Information System deposit slip evidencing payment of the sum of ₦10,000 representing fees for recertification and issuance of C of O.

Although DWI had stated categorically that it did not issue any document to Plaintiff nor receive any fees from Plaintiff it becomes pertinent that documents tendered being Certified True Copy ought to have been specifically rebutted not by DWI but by the registrar of Deeds from the department of Land administration FCT Land registry who

was not called as a witness by the Defendant. The above mentioned exhibits were certified true copies issued by the Department of Land administration FCT Land Registry signed by the registrar of Deeds and signed by a certain Yakubu Ahmed as the registrar of Deed on the 22/12/2004. When a certified true copy of a document is an exhibit before the court issued by relevant authority in this case a public office it simply connotes that the said documents are in the custody of the office of the Defendant and the Defendant by duly certifying them as true copies has simply verified its authenticity/genuineness. In other words, before the registrar of deeds can issue, stamp and sign the exhibits in this case as a certified true copy it translates that the documents are genuine and that Defendant is in custody of the documents.

Section 104 (1) Evidence Act, 2011 states: -

“Every Public officer having custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees prescribed in that respect, together with a certificate written at the foot of such copy that it is a true copy of such document or part of it as the case maybe”.

Section 104 (2) Evidence Act: -

“The Certificate mentioned in subsection (1) shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal and such copies so certified shall be called certified copies”.

Section 104 (3) Evidence Act: -

“An officer who by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section”.

Section 105 Evidence Act: -

“Copies of documents certified in accordance with Section 104 may be produced in proof of the contents of the public documents or part of the public documents of which they are purport to be copies”.

The culminative effect of **Sections 104(1), 104(2), 104(3) and 105 of the Evidence Act** as stated above is that when a certified true copy of a public document issued by a public officer on behalf of a public office, the documents of which such certified true copy was purportedly issued will be deemed to be in custody of the public office and the said certified true copy issued will be deemed to be a true copy of the documents in the custody of the public office.

It is trite that any document or record, evidencing or connected with public business or the administration of public affairs, preserved in and issued by any department of government or its agencies is classified as a public document. It is also not in contention that all exhibits tendered by Plaintiff are public documents.

Evidence before me shows that plaintiff had paid the necessary fees payable for a certified true copy prior to the issuance of the exhibits

before same was issued to Claimant and signed, stamped and dated by the registrar of Deeds of the Department of Land Administration of FCT Land registry. It therefore presupposes that exhibits before the court emanated from the custody of the Defendant who has custody of the documents of which certified true copy was issued.

Section 145 Evidence Act states that where the court is to presume a fact it should regard such fact as proved unless and until it is disproved.

Section 146(1) Evidence Act States that where the court is faced with any document purported to be a CTC duly certified by an officer authorized to so do, the court is to presume the document to be genuine provided that such document is substantially in the form and executed in the manner directed by law.

From the above provisions of **Section 145 and 146(1) of the evidence Act**, it enjoins the court to presume the genuineness of the certified true copies of exhibits before this court so far as it substantially complies with the form and executed in the manner required by law (i.e. the form and manner as prescribed under **Section 104 Evidence Act**).

Hence the court is to presume the genuineness of these exhibits emanating from custody of the Defendant. Having discharged the general burden of proof placed on the plaintiff, Defendant has raised a defence that the said documents did not emanate from their custody, defendant has the onus of strict proof of same. Defendant in this regard has the onus of proving to the court that the stamp did not emanate from their office, the officer who signed as the registrar of deeds is

unknown to defendant and not an employee of defendant, defendant further has the onus of proving that the signature is not that of the issuing officer and this can only be done by oral and direct evidence from the registrar of deeds himself. As earlier stated, plaintiff has discharged its general burden of proof which is static and never shifts. Once this has been fully discharged by the plaintiff, it is left for the Defendant to satisfy the court that their defence from evidence of DWI is enough to crumble the evidence of claimant. Defendant's lone witness DWI is a town planning officer who works with the defendant and who was employed in the year 2006 while all exhibits tendered predates defendant's year of employment; A casual denial by the Defendant through its witness that document did not emanated from the office of the Defendant will not suffice. The Defendant bears no burden to adduce evidence in a case for declaration of title hence claimant in a case of this nature must succeed on the strength of his case and not on the weakness of the Defendants case. See **ADEWUYI VS ODUKWU (2005) 14 NWLR (Pt. 945) Pg. 473 @ Pg 491 PARAGRAPHS C-F (Per Katsina-Alu JSC** (as he then was) where learned jurist held that in a claim for declaration of title, the claimant is to establish his claim by preponderance of evidence. It is often enough that he has produced sufficient and satisfactory evidence in support of his claim. The burden on the claimant in a claim for title never shifts to the defendant as the defence lies not in the standard of proof but on the burden of proof.

In the light of the above, having proved that plaintiff paid all necessary fees and fulfilled all condition precedent to the issuance of a certificate

of occupancy to the Defendant and having proved that all exhibits are in custody of Defendant with Defendant not able to proffer tangible defence to the contrary I am of the view that defendant is under an obligation to issue claimant with the Certificate of Occupancy over the subject matter plot.

I therefore hold that plaintiff has been able to prove its case successfully discharging the burden of proof placed on it on a preponderance of credible evidence and I therefore resolve claims as stated in the claimant's writ in favour of the claimant.

CONSEQUENTLY, IT IS HEREBY DECLARED AS FOLLOWS: -

1. That the Claimant is the holder of the Statutory Right of Occupancy dated 25th June, 2002, referenced [MFCT/LA/MISC. 18347] over Plot No. 730 within Central Business District, Abuja, measuring 1.73HA.
2. That the Claimant's Statutory Right of Occupancy over Plot No. 730 within Central Business District, Abuja, is valid and subsisting.
3. That the payment of the sum of Seventeen Million, Seven Hundred and Forty Thousand, One Hundred and Forty-Nine Naira, Thirty Eight kobo (N17,740,149.38), being the total assessed Rent, Fees, Premium, Survey Fees, Development Levy, etcetera for the issuance of Certificate of Occupancy is valid and subsisting and represents full and final payment by the

Claimant for the issuance of Certificate of Occupancy over Plot No. 730 within Central Business District, Abuja.

IT IS HEREBY ORDERED AS FOLLOWS: -

4. The Defendant is hereby ordered to issue the Claimant with the Certificate of Occupancy over Plot No. 730 within Central Business District, Abuja, measuring 1.73HA.
5. The Defendant whether by himself, agents or privies are hereby restrained from unlawfully revoking and/or expropriating or in any manner howsoever interfering with the rights, title of the Claimant or possession of the Claimant of Plot No. 730 within Central Business District, Abuja.
6. The sum of Five Million Naira (N5,000,000.00) only is awarded as general damages against the Defendant.

Parties:Absent

Appearances:IfunanyaOranuba for the Claimant. L. A. Asuola for the Defendant

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

1ST JULY, 2021

