

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 4 MAITAMA ABUJA ON THE 16TH DAY OF
DECEMBER, 2021
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/2145/14

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

1. AGAMBA MOSES
2. JACOB EMMANUEL
3. VICTOR AMA AZENDE
4. DESHIKAT JAMES JOEL
5. OLASUNKANMI KAZEED
6. KINGSLEY MODEBE
7. COMRADE BUTSWAT
8. YUNANA GADA
9. RAHAB SAMUEL
10. OKECHUKWU ASIKA
11. FRANK Y. HUNDU
12. ANANABA OGUMIDIRE
13. PAUL DADA.
14. CHIEF MRS. CHARITY OJO
15. RUTH GAD
16. AHMED ABDULLAHI
17. BRO. INUSA JOHN
18. EMMANUEL J. ISONGWYO
19. ROSE PHILEMON
20. GIDEON YAKUBU
21. USMAN BULUS
22. ELIZABETH UMARI
23. DANLABI JACOB
24. JUSTINA JOHN
25. MARTHA MATHEW
26. KEFAS IBRAHIM

.....PLAINTIFFS

AND

1. HON. MINISTER, FEDERAL CAPTIAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY

}.....DEFENDANTS

JUDGMENT

The Claimants' suit against the Defendants dated 16/07/14 and filed the same date is for the following:

1. A declaration that the demolition of the Claimants' properties at Nualege Abuja, Abuja Municipal Area Council, Abuja FCT by the Defendants without notice is malicious, illegal and constitutes an unlawful trespass on the Claimant's properties.
2. (N200,000.000) Two Hundred Million Naira) only as general damages for wrongful demolition and dispossession of the Claimants of their properties situate at Nualege in Abuja Municipal Area council Abuja FCT
3. Two Hundred Million Naira only general damages for losses, destruction and damages caused to the Claimants' properties in the course of the wrongful demolition.
4. One Hundred Million Naira only as general damages for the humiliation, physical, mental, psychological torture and embarrassment suffered by the Claimants and their families following the wrongful demolition of their properties at Nualege, Abuja.
5. One Million Naira as cost of the action.

In proof of their claim, the Claimants, called two witnesses. The first Claimants' Witness is Mr. Ananaba Ogumdire of Nualege Village Abuja FCT. He adopted his Written Statement on Oath sworn to on the 16/07/14. He deposes that the Claimants are men and women who live at Nualege, Abuja Municipal Area Council.

That Nualege community is a Bassa community and the indigenous Bassa people whose ancestral fathers founded the community and still lives in Nualege pending their resettlement and relocation by the relevant organs of the Defendants.

That the Bassa people have possessory right in and over the land which said rights were assigned to the Claimants in accordance with native law and custom.

That the said right is terminable when the Defendants resettle and or relocate them.

That consequent upon the said reassignment, the Claimants took possession and built houses therein.

That on Saturday 24/05/14 at about 9.30 a,m or thereabout, agents and workmen of the Defendants Army, Police and bulldozers bearing the Defendants plate numbers demolished the Claimants' houses, shops and restaurants. They were not served with any form of notices.

The Claimants were chased away from their houses, shops and restaurants.

The Claimants were not allowed to remove any of their properties.

That vital documents, vehicle particulars, purchase receipts, household items were all destroyed.

The Claimants suffered humiliation, physical, mental, psychological and social trauma. That Claimants' children were also rendered homeless.

They lost jewellery, shoes, handbags, money etc and other personal effects.

A Complaint letter was written to the 1st defendant and the Director of Development control. That Claimants are not aware of a Court order authorising a demolition.

That they were ejected without due process.

That they have not been settled. That they therefore engaged their Counsel to institute the action in the sum of N1 Million.

That they claim as per the Writ of Summons and Statement of Claim.

The 2nd Claimants' witness is Paul Dada. His evidence is in tandem with the evidence of PW1. It is the same word for word and sentence for sentence. His Witness Statement is also sworn to on 16/07/14.

I shall therefore need not reproduce same. The Defendants were not in Court to cross-examine the PW1 and PW2.

The above is the case of the Claimants.

The defence opened and called a witness. He is Adamu Garba. He states orally that he works in the Department of Development Control FCDA. He is a District Officer in charge of Lugbe. He adopts his Written Statement on Oath. He deposes that all lands within the Federal Capital Territory are Urban lands.

That only allottees of land by the Honourable Minister with duly approved Building Plan can erect and build in the FCT.

That Claimants were not allocated the piece of land they erected thereon.

That the Claimants went into the said parcel of lands on their own volition and erected illegal structures. That the said illegal structures were removed by the Defendants. That Claimants were served several notices to remove their illegal structures and including markings on the walls of the structures.

That they were given ample opportunity to remove their belongings.

That no vital documents or gadgets were destroyed.

The defence tendered the Quit Notice as Exhibit A while the Demolition Notice is Exhibit B.

The Defendants' Witness DW1 failed to make himself available for cross-examination despite the opportunity afforded him.

Counsel to the Claimants and the defence adopted their Final Written Addresses.

The Defendant's Counsel formulated a lone issue for determination which is whether the Claimants are entitled to the reliefs sought. Learned Counsel submits that the Claimant has no legal right or interest in the said plots on which they erected their illegal structures.

That the Defendants acted within the limit of its duties when they removed the illegal structures.

That Claimant having failed to get a Statutory Right of Occupancy and a Building Plan Approval before putting up

their structures cannot be heard claiming damages for demolition. He urges the Court to dismiss the suit.

The Claimants' Counsel also argued the same issue as issue one. He canvasses that the Claimants have discharge the onus of proof placed upon them by law and therefore entitled to judgment.

He relies on Section 131 and 132 of the Evidence Act.

That Claimants have a right to acquire and own both movable and immovable property anywhere in Nigeria.

I have read the evidence and considered the Written Addresses of Counsel.

The issue for determination is whether the Claimants have proved their case against the Defendants on the preponderance of evidence and balance of probability. The onus of proving an allegation is on the Claimant and the onus does not shift until he has proved his claim on the preponderance of evidence and balance of probabilities.

A party must prove its case on credible evidence of eye witnesses and is not at liberty in law to make a case or rely on the weakness of its opposite party in order to succeed.

See ***AGBI VS. OGBEH (2006) 11 NWLR (PT.990) 65 SC.***

In proof of their case, the Claimants called two witnesses, PW1 and PW2.

The Claimants traced their root of title to the Bassa native law and custom. That the said Bassa indigenes have possessory right in and over the Nualege Community. That the said possessory right was assigned to the Claimants who took possession and built houses thereon.

The Claimants claim is a declaration that the demolition of Claimants properties at Nualege AMAC, Abuja FCT by the Defendants without notice is malicious, illegal and constitutes unlawful trespass.

3. Damages.

Possession of land means the occupation or physical control of land either personally or through an agent or servant.

ADELAKIN VS. ISEOGBEKIM (2003) 7 NWLR (PT.819) 295.

Possession in law means exclusive possession. The law does not protect possession which is not exclusive.

See ***IGWEGBE VS. EZUMA (1997) 6 NWLR (PT.606) 228 at 230.***

OLISA VS. ADEJO (2002) 1 NWLR (PT. 747) 13.

Trespass to land is the wrongful invasion of the private property of another. It is trespass to land provided the entry into the land of another by a person is not authorised.

Trespass to land is rooted in a right to exclusive possession of the land allegedly trespassed.

See *NDUKUBA VS. IRUWU (2007) 1 NWLR (PT.1016) 432.*

Two parties are in a land claiming possession, trespass can only be at the suit of that party who can show that title of the land is in him

See *UMEObi VS. OTUKOYA.*

It is well settled that ownership of land comprised in the FCT Abuja is absolutely vested in the Federal Government of Nigeria.

Section 1(3) of the Federal Capital Territory Act 1979 and Section 18 of the Federal Capital Territory Act Cap 503 Laws of the Federation 1990 vests power on the Minister for FCT to grant Statutory Right of Occupancy over lands situate in the Federal Capital Territory to any person.

By the above laws, ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vests same to every citizen individually upon Application.

In the circumstance of this case the Claimant have failed to prove that they were in exclusive possession of the land from which they were evicted.

In the instant case, the Claimants are the trespassers. Relief 1 therefore fails.

However, where a trespasser builds on land belonging to another as in this case being the land of the Federal Government, the remedy or answer for the aggrieved party is

not in self help but in commencing a legal action to abate the trespass.

The Defendant gave evidence in defence of this action vide one Adamu Garba. He tendered a Quit Notice and a Demolition Notice which are Exhibits A and B. The Defendants' Witness failed to present himself for cross-examination despite all the opportunities afforded him.

The Defendants' Counsel also failed to cross-examine the Claimants' witnesses making the assertions contained herein as true and believable.

The Claimants Counsel cited the case of *ADIBUAH VS. ENG. D.C. DIM* wherein it was held per Pat Acholonu.

'Where a witness who after testifying in chief refused to make himself available for cross-examination, no reasonable tribunal of justice would accord the evidence given by the recalcitrant witness as gospel truth. Indeed the inference could be, were he to make himself available, that he ought not be telling the truth hence he made himself unavailable'

I shall not therefore put much weight on the said evidence of DW1.

The Claimants' case is that they were not served with a Quit Notice or a Demolition Notice.

The Defendants said the Claimants were served. They tendered Exhibits A and B. The Defendants did not call the person who served the said Notice. There is nothing in Exhibits A and B to show that the said Notices have bearing with the Nualege community or the Claimants.

The Plot numbers and District upon which the notices were served are not readable.

I hold the view that the Claimants were not served with the requisite Notices.

There is also nothing to suggest that due process was initiated for the recovery of the said land by the Defendants.

I find as a fact that the Claimants' properties were damaged and destroyed and the Claimants forcefully evicted.

The Recovery of Premises Act Cap 544 Laws of the FCT stipulates the procedure in evicting squatters and or trespassers. Premises under the said law includes house, building or any part thereof together with its grounds or other appurtenances or land without any building.

Having not complied with the law, the Claimants are entitled to damages.

General damages are those damages which the law implies in every breach and every violation of a legal

right. It is the loss which flows naturally from the Defendants' act and its quantum need not be pleaded or proved as it is generally presumed by law. The manner in which general damages is quantified is by relying on what could be the opinion and judgment of a reasonable person in the circumstance of the case.

I shall make my assessment in the light of the evidence before me. The Claimants failed to prove claims 3 and 5 as it is in the nature of special damages. The losses and destruction allegedly suffered are not specially pleaded. They are also not specifically proved.

In the circumstance of this case, Reliefs 2 and 3 succeed. Judgment is therefore entered in favour of Claimants against the Defendants as follows:

The Defendants are hereby ordered to pay the sum of N50 Million to the Claimants as general damages for unlawful demolition and the psychological/physical trauma thereof.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
16/12/21.