

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 5, MAITAMA ON THE
13TH DAY OF OCTOBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/231/2019

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

MR. BENSON ANDY CHUKUMA CLAIMANT

(Trading under the name and style
of B. A. CHUMACO ENTERPRISE NIG.)

AND

1. ENGINEER MICHAEL OGBOJI } **DEFENDANTS**
2. KOLEHI LANDMARK RESOURCES LTD }

JUDGMENT

By a Writ of Summons and Statement of Claim undated but filed on 25/10/2019, the Claimant claims against the Defendants as follows:

- 1) A Declaration that the Claimant is the *bona fide* owner of Plot 147, Karu Storage Depot Layout and the Defendant a trespasser.
- 2) A Declaration that the malicious arrest, detention and prosecution by the Police based on false allegation as made out by the Defendant against the Claimant is unlawful and unconstitutional.
- 3) That the Claimant by virtue of the provisions of the Administration of Criminal Justice Act and the 1999 Constitution (as amended) is entitled to compensation for false allegation and malicious prosecution.
- 4) An Order of perpetual injunction restraining the Defendant by itself or through its agents and privies howsoever called from further encroachment and trespass on the said Plot 147, Storage Depot Layout, Karu, Abuja.
- 5) An Order for ~~N~~50 million only being compensation for malicious prosecution.

- 6) ~~₦~~50 million as general damages for trespass over the Claimant's Plot 147, Storage Depot Layout, Karu, Abuja.

- 7) ~~₦~~1m as cost of the action.

The Claimant opened his case and gave evidence for himself. He adopted his current Witness Statement on Oath sworn to on 4/11/19. He is Benson Andy Chukwuma of Federal Housing Authority, Phase 1 Karu, Abuja, FCT. He is a businessman trading under the name and style of B. A. CHUMACO ENTERPRISE NIG. The 1st Defendant is an engineer resident at Plot 706, Air Force Senior Quarters, Durumi, Area 1, Abuja. The 2nd Defendant is a limited liability company that purportedly purchased the subject matter from SEMEC ENGINEERING COMPANY.

That he is the *bona fide* grantee and owner of Plot 147, Karu Storage Depot Layout, an area of about 5,500sq meters within the Storage Depot Layout, Abuja vide an Offer of Terms of

Grant/Conveyance of Approval. Consequent upon the grant, he paid ₦5,500 and ₦3,000 respectively as development levies to the Abuja Municipal Area Council and was issued with receipts. He also paid ₦85,000 for processing of Certificate of Occupancy.

In August, 2015 he instructed his Solicitors, Adamu Wilson & Co. to apply for legal search and a Zonal Manager's report concluded that B. A. CHUMACO ENTERPRISE NIG. is the true owner of Plot 147, Storage Depot Layout, Karu, Abuja. He submitted his title documents for regularization and was issued with an acknowledgment dated 17/11/14.

The Defendants not being true owners of the subject matter wrote a Petition against him at Karu, Jikwoyi Police Station on which Petition he was arrested, detained and subsequently released by the Police.

After a haphazard investigation, he was charged for criminal trespass and forgery. The Defendant purports to own the said plot of land known as No. 147 vide a Certificate of Ownership

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bearing SEME ENGINEERING bearing Plot No. 4153 which is different from Plot 147, Storage Depot Layout. That the trial Magistrate found the charge to be frivolous, vague and false. That the allegations for which he was prosecuted were malicious as he has valid and subsisting title. That the arrest, investigation and trial were engineered by the Defendant to damage his character. He is therefore entitled to damages. That he has an exclusive right over Plot 147, Storage Depot Layout, Karu, Abuja. That the encroachment of the Defendant on the said plot of land is an act of trespass. That he has suffered damages.

The Claimant did not call any other witness. The Claimant tendered Exhibits A – A6: Receipts of payment of development levy, another receipt for processing Certificate of Occupancy, Legal Search Report, Regularisation and Acknowledgement, First Information Report and Rulings of Court.

The Claimant formulated three (3) issues for determination. I have gone through same. The only issue for determination in

my view is **whether the Claimant has proved its case to warrant the grant of the reliefs sought.**

Learned Counsel argued in his final oral argument that by S. 35(6) of the 1999 Constitution, the Claimant is entitled to payment of damages and compensation for injury caused to him by false allegation. That his claim remains unchallenged and uncontroverted. He urges the Court to enter Judgment in his favour.

It is trite that he who asserts must prove. Sections 131-133 of the Evidence Act. The standard of proof is on the preponderance of evidence and balance of probability – Section 134 of the Evidence Act.

The general burden of proof is on the Claimant to prove his claim or relief. A party who makes a positive assertion bears the burden of proving that assertion. See **OGBORU vs. UDUAGHAN (2011) 2 NWLR (PT. 1232) 538.**

In a declaratory action, the onus of proof lies on the Claimant and he must succeed on the strength of his own case and not

on the weakness of the Defence except where the case of the Defence supports the Claimant's case. See **UCHE vs. EKE (1998) 9 NWLR (PT. 564) 24 SC.**

From the reliefs sought, the Claimant's case is principally about malicious prosecution and trespass. The Defendants were served with the Originating Processes. They were further served with Hearing Notices. Therefore evidence is one way. However, it is still the duty of the Claimant to prove his case.

For a Claimant to succeed in an action for malicious prosecution, he must plead and successfully establish in evidence:

- (a) That he was prosecuted by the Defendant, that is to say that the Defendant set the law in motion against the Claimant, leading to a criminal charge.
- (b) That as a result of the prosecution, the Claimant was discharged and acquitted.
- (c) That the prosecution of the Defendant was without reasonable and probable cause.

(d) That the prosecution was as a result of malice by the Defendant against the Claimant.

All the above ingredients must be proved concurrently in order to establish liability for malicious prosecution.

Exhibit E is the First Information Report dated 8/10/15 alleging that the Defendant criminally trespassed into Plot 147 situate at Karu, Abuja belonging to one Michael Ogboji M. and that during investigation he presented forged title documents in respect of the land as if they are genuine.

Exhibit F contains the Ruling of the Court. The Defendant was discharged because the prosecution witness did not successfully prove the element of the offence.

In order to award damages in a case such as this, the Claimant must prove that he or she has suffered loss of reputation, loss of life, limb or liberty or financial loss.

Once damage under one of the headings is established, other damage which flows from it such as distress may also be compensated.

The Claimant in his evidence stated that he has suffered financial and emotional damages. That his character was also damaged.

On the other hand, trespass to land is any unjustifiable interference with land in possession of a party. It constitutes the slightest disturbance to possession of land by a person who cannot show a better title to possession.

The Claimant's evidence is that he is the *bona fide* grantee and owner of Plot 147, Karu Storage Depot Layout. Exhibit A is the Offer of Terms of Grant/Conveyance of Approval by the Honourable Minister of the Federal Capital Territory.

The tort of trespass to land consists of directly entering upon land or remaining upon land or placing or projecting any object upon land in the possession of the Claimant in each case without justification.

From Exhibit F – the records of proceedings, the Defendant was on the land with workmen. In the circumstance, the Defendant trespassed into the Claimant's land.

General damages are those damages which the law imputes in every breach and every violation of a legal right. It is the loss which flows naturally from the Defendant's action and its quantum need not be pleaded and proved as it is generally presumed by law. It is incapable of exact calculation. It is based on what would be the opinion of a reasonable person. I shall make assessment of the quantum of damages.

In the absence of any other evidence, it is my view and I so hold that the Claimant has proved his case on the preponderance of evidence and balance of probability so as to entitle him to Judgment.

Judgment is therefore entered in favour of the Claimant against the Defendant as follows:

- 1) It is declared that the Claimant is the *bona fide* owner of Plot 147, Karu Storage Depot Layout.

- 2) The arrest, detention and prosecution of the Claimant on false allegations by the Defendant is unlawful and unconstitutional.
- 3) The Defendants are hereby ordered to pay to the Claimant the sum of ~~₦~~500,000.00 (Five Hundred Thousand Naira).
- 4) An order of perpetual injunction is granted restraining the Defendants from further encroachment on the said Plot 147 Storage Depot Layout Karu, Abuja.
- 5) ~~₦~~50,000.00 (Fifty Thousand Naira) as cost of the action.

HON. JUSTICE U. P. KEKEMEKE

(HON. JUDGE)

13/10/2021

Parties absent.

No legal representation

(Signed)

Hon. Judge

13/10/2021