

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 7 APO, ABUJA.  
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

**SUIT NO. FCT/HC/CV/376/2021**

**BETWEEN:**

ALHAJI YUSUF MAGAJI SA'IDU ..... PLAINTIFF

**AND**

MR. ALBERT ETETE ..... DEFENDANT

**JUDGMENT**

**DELIVERED ON THE 9<sup>TH</sup> DECEMBER, 2021**

The Claimant in this case took out a writ of summon on 28<sup>th</sup> June, 2016 against the Defendant wherein he is claiming as follows:-

- a. A declaration that the Plaintiff is the owner of the land described as Plot No. BD/88, of about 850m<sup>2</sup>, situate at Dutse Alhaji Layout, Abuja.
- b. An order declaring that the Plaintiff has good title to the land the subject matter of this suit.
- c. An order of perpetual injunction restraining the Defendant, his agents and privies from entering into, building on or carrying out anything on the said land.

d. An order of perpetual injunction restraining the Defendant by himself, his servants, agents and or privies from interfering with or doing any act or taking any step which is inconsistent with the rights, and interest of the Plaintiff or his authorized and lawful agents or servants in respect of Plot No. BD/88, of about 850m<sup>2</sup>, situate at Dutse Alhaji Layout, Abuja belonging to the Plaintiff and/or from peddling, offering for sale, selling and/or developing the said property.

e. An order declaring null and void all or any other document of title to the same land that may be produced by the Defendant.

f. An order awarding the Plaintiff the sum of N10,000,000.00 (Ten Million Naira) as general damages for trespass and unlawful entry into the Plaintiff's land by the Defendant.

g. Cost of this action.

In line with the rules of court, the Claimant filed and front loaded the statement of claim, the documents sought to be relied on as exhibits and his statement were served with the Claimant processes. The Defendant filed a memorandum of appearance and other processes through counsel but never put up appearance in the matter.

This case was formerly before Balami J. Now retired and was transferred to this court to try denovo. The Defendant was

served with hearing notices to notify him of the hearing of this suit before this court but neither him nor counsel on his behalf put upon appearance or file a defence and as such the matter proceeded to be heard on the strength of the Claimant case. The Claimant called one witness in this matter and tendered several exhibits and thereafter closed his case.

The case was subsequently adjourned for cross examination but the Defendant did not cross examine the witness of the Claimant. He was therefore foreclosed. in similar vein, the Claimant served the Defendant his written address but he never responded and the matter proceeded to be fixed for Judgment after the Claimant had adopted his written address.

In the written address, the Claimant raised two issues for determination:-

1. Whether the Claimant has proved his case based on the Claimant's uncontroverted evidence before this court and entitled to Judgment?
2. Whether the Claimant is entitled to all his reliefs sought?

Arguing issue one, counsel relied on several decided cases as well as section 131 and 132 of Evidence Act and posited that the burden of prove lies on he who asserts as in the instant case of the Claimant.

He submitted that the Claimant has asserted his ownership of the land situate as Plot No. 3D 88 Measuring 850 Square meters with land is at Dutse Alhaji layout Abuja FCT and that the Claimant bought the land from one Engr. Kolawole Jimoh. He tendered exhibit PP2 in prove thereof. Counsel further submitted that the Claimant discovered the Defendant trespass on the land in 2016. It is counsel submission that the evidence and exhibit tendered were never challenge by the Defendant and should be accepted as unchallenged evidence.

Counsel relied on several authorities in support of his submission. He posited that the evidence of the PW1 is credible and worthy of believe and as such, the court should rely on it and give Judgment in favour of the Plaintiff counsel relied on several decided cases also in support of this submission.

On the non filing of the statement of defence counsel submitted that by the very act of the Defendant in not filing a statement of defence is deemed to have admitted the claims of the Claimant.

Arguing the second issue, counsel submitted that the Claimant is entitle to the reliefs sought against the Defendant as Claimant has prove his case with credible and concrete evidence. He referred the court to exhibit PP1 to PP14 tendered before the court which were never challenge. Counsel also cited

the case of Federal Mortgage Finance Ltd V. Hope Offiong Ekpo (2004) 2 NWLR (Pt. 856) pg. 100 at 108. He concluded by urging the court to give Judgment in favour of the Claimant.

I have carefully read all the processes filed in this case and the exhibits tendered by the PW1. I have equally listened carefully to the evidence of PW1 as well as the submission of counsel in urging the court in his final address to grant the Claimant Judgment. The claim of the Claimant is for title to land which said land is known as Plot No. BD/88 Measuring 850 Meters Square and situate at Dutse Alhaji Layout Abuja. It is this land that the Claimant is laying claim to. Over time, the superior courts have laid down various method of proving title to land. In the case of Madu v. Madu (2008) ALL FWLR (Pt. 414) pg. 1604 at 1606. the true ways of establishing title to land were listed as follows:-

1. Traditional Evidence;
2. By document of title;
3. By various act of ownership and possession numerous and positive to warrant inference of ownership;
4. By acts of long possession and enjoyment of the land; and
5. By proof of possession of adjacent land to the land in dispute in such circumstances which rendered it probable

that the owner of the adjacent land is the owner of the land in dispute.

A Claimant to a title to land to succeed must prove at least one or more of this ways. See the case of Alh. Hassan Modu Goba VS. Musa Algoni (2020) LPELR 49489 (C. A). He need not prove all of these to be entitle to Judgment.

In a long line of decided cases, the superior court have held that where a party approaches the court for a declaration of title to land such a party will rely on the strength of his case to be entitle to Judgment and not on the weakness of the defence. See the case of Ayeni vs. Adesina (2007) 7 NWLR (Pt. 1033) Pg 233 C. A.

In essence in a claim for the declaration of title to land even when the Defendant did not file a defence, the Plaintiff must prove his case before the court with credible evidence relying on any of the five ways of prove of title to land in order to succeed. in the instant case, the claim of the Claimant is that the land in dispute be declared to be his.

According to his evidence the land was originally owned by one Mallam Adamu Awoni. The, said Mallam Adamu Awoni According to PW1, by a letter of provisional approval of land No: BAC/F.C.D.A/LP&S/62 issued by the secretary Rural Land use adjudication committee Bwari Area Council dated 28<sup>th</sup>

June, 1999. Upon this said letter the said Mallam Adamu Awoni granted to on Engr. Wahab Kolawole Jimoh a power of Attorney Exhibit PP1 over the land.

Consequently, Engr. Wahab Kolawole Jimoh by a Deed of Assignment dated 9<sup>th</sup> April, 2002 as well as a power of Attorney Exhibit PP2 of even date transferred the ownership of the land to the Plaintiff. Sometime in 2014 Minister of the Federal Capital Territory Conveyed to him an approval for regularization of the land title over the said plot in issue. The PW1 tendered exhibit PP5 as the approval to his title to the land. The said approval is dated 4<sup>th</sup> February, 2014. From the nature of the evidence proffered in this case by the PW1, the Claimant is relying on title document to prove his entitlement to the land in issue. The question that has been raised on the Claimant written address by counsel is whether the Claimant has proved his case based on the Claimant's uncontroverted evidence before this Honourable Court and entitled to Judgment.

This question is apt in the determination of this suit. Title to land based on documentary evidence does not admit of any other consideration from the court except the consideration of the document proving title before court. The Claimant has relied on a power of Attorney and a deed of Assignment

in prove of his case. The power of Attorney Exhibit PP2 is between one Engr. Wahab Kolawole Jimoh and the Claimant. It was made on the 9<sup>th</sup> April, 2006. Exhibit PP3 is the Acknowledgement of the receipt of the Original R of O in respect of Plot BD/88. It is dated 13<sup>th</sup> June, 2007.

To prove title to land through the production of document in court to a large extent makes the job of the court a little easy as the life of a document exudes from the document itself. the court is not allow to speculate on the content of the document as the document speak for itself especially where the content therein is unambiguous and clear.

Prove in a civil case is on the preponderance of evidence see the case of consolidated Res Ltd V. Abofar Ventures (Nig.) Ltd (2007) 6 NWLR (PT. 1030) 221. It is not beyond reasonable doubt. the Defendant who is property served but failed to put in a defence in a suit, he is deemed to have no defence to a Plaintiff's case as such has admitted the case of the Plaintiff see the case of A. C. B. Plc V. N. T. S. (Nig.) Ltd (2007) 1 NWLR (Pt. 1016) 596 @ 605. Even where he files a defence but failed to give evidence in prove of the facts contained in the said defence, the defence will be assume to have been abandoned see the case of Kayode Ventures Ltd V. Minister of FCT (2010) 7



NWLR (Pt. 1192) 171 @ 183. In that case the quantum of evidence required from the Claimant to prove its case is minimal. See the case of Okpoko Community Bank Ltd V. Igwe (2013) 15 NWLR (Pt. 1376) 167, @ 183 – 184 paras G – C.

In the instant case, the Defendant did not give any evidence in defence of the Claimant's case. The Defendant is assumed to have admitted the case of the Claimant.

Beyond this, the Claimant has tendered before this court documents proving his title.

I am of the firm view that the Claimant has prove its case on the preponderance of evidence before the court.

It is in this light that I entered Judgment in favour of the Claimant in accordance with the reliefs claimed by it in its statement of claim. This is the Judgment of the court.

On issue of cost, having access same, the sum of N200, 000.00 is awarded as cost against the Defendant. I so ordered.

### **APPEARANCE**

I. I. Damisa, Esq. for the Claimant

The Respondent not in court

Sign  
Hon. Judge  
09/12/2021