

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 8 Apo, ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA  
SUIT NO: FCT/HC/BW/CV/194/2021**

**BETWEEN:**

JUBUT VENTURES LIMITED --- CLAIMANT

**AND**

THE MINISTER FEDERAL CAPITAL TERRITORY --- DEFENDANT

**JUDGMENT**

**DELIVERED ON THE 13<sup>TH</sup> OCTOBER 2021**

The Claimant commenced this suit by way Originating Summons dated the 7<sup>th</sup> day of July 2021 and filed on the 7<sup>th</sup> day of July 2021. The reliefs sought by the Claimant are as follows:

1. A Declaration that the Land Use and purpose of Plot 465 Cadastral Zone A0, Central Business District, Abuja stated as Filling Station in Statutory Right of Occupancy dated 16/12/1997 with Ref No: MFCT/LA/94/MISC.12391 is valid and subsisting.
2. A Declaration that the Land Use and purpose stated as Commercial (not Specified) in the Certificate of Occupancy No: 1932w-106d3-3affr-bf67u-20 dated 16<sup>th</sup> day of December 1997 covering the said Plot 465 Cadastral Zone A0, Central Business District, Abuja, includes the business of filling station.

3. An Order of Injunction restraining the Defendant from interfering with Rights of the Plaintiff over Plot 465 Cadastral Zone A0, Central Business District, Abuja.
4. And Such Further of other Consequential Order(s) as the Honourable Court may deem fit to make in the circumstances.

In the said Originating Summons, the issues formulated for determination by the Claimant are:

- i. Whether having regard to the Statutory Right of Occupancy dated 16/12/1997 with Ref No: MFCT/LA/94/MISC.12391, which expressly states that the Land Use and purpose of the said Plot is Filling station, the Plaintiff is not entitled to use the said Plot as a Filling Station?
- ii. Whether the Land Use and purpose Commercial (not Specified) stated in the Certificate of Occupancy No: 1932w-106d3-3affr-bf67u-20 dated 16<sup>th</sup> day of December 1997 covering the said Plot 465 Cadastral Zone A0, Central Business District, Abuja, is not inclusive of commercial business of Filling Station?

The Originating Summons is supported by an affidavit filed on the 7<sup>th</sup> day of July 2021 and deposed to be Alphonsus Oshiole, the Claimant's General Manager. Attached to the affidavit are Exhibits J1, J2, J3, J4 and J5. The Originating Summons is also accompanied by the Claimant's Written Address filed on the 7<sup>th</sup> Day of July 2021.

The Defendant responded to the Originating Summons by filing a Counter-Affidavit deposed to by Saidu Badamasi Abdulkadir, a Legal Assistant in the Litigation Registry of the Legal Services Secretariat of the Federal Capital Territory Administration.

The summary of the facts relied on by the Claimant as distilled from the affidavit in support of the originating summons is that the Defendant granted to the Claimant a statutory right of occupancy over the parcel of land known as Plot 465 Cadastral Zone A00, Central Business District, Abuja, the plot of land in issue, on the 16<sup>th</sup> day of December 1997, for the purpose of Filling Station (Exhibit J1). The Claimant also states that the Defendant subsequently issued the Claimant with the certificate of occupancy for the said plot of land as evidence of the grant, and the land use indicated on the certificate of occupancy is Commercial (Not Specified) (Exhibit J5).

The Claimant also states that it went to court to assert its right of occupancy over the said plot of land when the same was threatened by the Defendant. The Judgment of the High Court of the Federal Capital Territory in Suit No. FCT/HC/CV/143/2006, as well as the certificate of judgment are attached to the supporting affidavit as Exhibits J2 and J3.

The reason for the present suit, according to the Claimant, is that the Defendant is saying that use for a Filling Station does not fall within Commercial Use stated in the certificate of occupancy issued to the Claimant by the Defendant. In addition, the Claimant stated that the

Defendant is threatening to revoke the Claimant's right of occupancy over the said plot of land.

The Defendant filed a counter-affidavit and a written address in opposition to the originating summons. The Defendant confirms that the Claimant is actually the holder of the statutory right of occupancy over the plot of land in issue, and that the purpose for which the land was allocated to the Claimant as stated in the grant of right of occupancy document is Filling Station. The Defendant also confirms that the Claimant was issued a certificate of occupancy over the said plot of land wherein the land use for the said plot of land is stated to be Commercial.

The Defendant stated that it was in the course of processing the certificate of occupancy that it was discovered that the land use specified in the right of occupancy did not conform with the land in the Abuja Master Plan which is Commercial (Not Specified). The Defendant further stated that the land use in the right of occupancy did not expand the scope of land use in the certificate of occupancy.

The Defendant maintains that he did not issue any threats to the Claimant; that he is only insisting that the right thing should be done.

As I indicated in the beginning of this judgment, the Claimant formulated two issues for determination, to wit:

- i. Whether having regard to the Statutory Right of Occupancy dated 16/12/1997 with Ref No: MFCT/LA/94/MISC.12391, which expressly states that the Land Use and purpose of the

said Plot is Filling station, the Plaintiff is not entitled to use the said Plot as a Filling Station?

- ii. Whether the Land Use and purpose Commercial (not Specified) stated in the Certificate of Occupancy No: 1932w-106d3-3affr-bf67u-20 dated 16<sup>th</sup> day of December 1997 covering the said Plot 465 Cadastral Zone A0, Central Business District, Abuja, is not inclusive of commercial business of Filling Station?

In the written address in support of the originating summons, the Claimant's counsel argued that the words used in Exhibits J1 and J5 should be given their ordinary grammatical meaning. Reliance was placed, *inter alia*, on *Ogbunyinya v. Okudo* (1979) 6-9 SC 32 at 48; and *B.P.E. v. Assurance Bank* (2009) LPELR- 3896 (CA) at pp 17- 18. It was contended that if the words are given their ordinary meaning the court will come to the conclusion that commercial use includes use for a filling station.

The Claimant's counsel also submitted that the Defendant has the power to grant rights of occupancy for all purposes; and that the previous judgment settled the issue of validity of its right of occupancy over the plot of land in issue, including the use to which the land could be put as stated in the letter of grant (Exhibit J1). Some of the cases cited in support of these propositions are *Ona v. Atenda* (2000) 5 NWLR (Part 656) 244; *Madu v. Madu* [2008] 6 NWLR (Part 1083) 296

at 325; Mamman v. Mallam (2018) LPELR – 46398 (CA), pp. 14 – 15; and Akinyemi v Soyawo (2006) 13 NWLR (Pt.998) 496 at 514.

The Claimant's counsel concluded his submissions by stating that the certificate of occupancy and right of occupancy are mutually reinforcing; and that the grant of a right of occupancy made to the Claimant over the plot of land in issue created a contractual relationship between the Claimant and the Defendant which cannot be unilaterally altered by any of the parties.

The Defendant's counsel filed a written address in opposition to the originating summons. In the said written address learned counsel formulated a sole issue, to wit: whether the claimant has proved its case to be entitled to the reliefs sought from the court?

In arguing the sole issue, learned counsel referred the court to the averments in the Defendant's counter-affidavit and contended that the Defendant has the statutory powers to change the land use to conform with the Abuja Master Plan and in furtherance of the terms and conditions contained in the certificate of occupancy issued to the Claimant by the Defendant. It was contended that the Claimant undertook to abide by the terms and conditions in the certificate of occupancy. The equitable maxim: he who come to equity must come with clean hands was invoked. The Defendant's counsel also submitted that the judgment in Suit No. FCT/HC/CV/143/2006 does not avail the Claimant as the issue of land use was not determined in that suit.

I have painstakingly considered the affidavit, counter-affidavit and the written addresses filed by the parties. Going by the processes filed by the Claimant and the Defendant, it is not in doubt that both sides are ad idem that the Claimant was granted a statutory right of occupancy over the plot of land in issue by the Defendant. There is no dispute over the fact that the Defendant issued the Claimant with the certificate of occupancy over the said plot of land as evidence of the said grant. It is also not in dispute that the purpose for which the said plot of land was allocated to the Claimant is Filling Station; and that the land use for the plot of land as stated in the certificate of occupancy is Commercial (Not Specified).

The only point of divergence between the parties is whether the Filling Station stated in the grant document (exhibit J1) is inconsistent with the Commercial (Not Specified) in the certificate of occupancy, and I am of the considered view that this issue encompasses the two issues set out in the originating summons and the sole issue formulated by the Defendant's counsel.

Before proceeding, it must be mentioned that the facts of this case makes it suitable for the originating summons procedure. See Order 2 Rule 3 (1) and (2) of the High Court of the Federal Capital Territory, Abuja, (Civil Procedure) Rules 2018. See also *Keyamo v. House of Assembly, Lagos State* (2002) 18 NWLR (Pt. 799) 605; *Duke v. Ephraim* (2009) LPELR – 8064 (CA); *Ezeigwe v. Nwawulu* (2010)

LPELR – 1201(SC); and *Zakirai v. Muhammad* (2017) 17 NWLR (Pt. 1594) 81.

It seems to me that the issue in controversy could conveniently be resolved by closely examining the provisions of Exhibits J1 and J5 dealing with the use of the plot of land in issue.

In exhibit J1 which is the letter of grant of statutory right of occupancy over the said plot of land is stated to be Filling Station in paragraph 1 (v) of the document. On the other hand, by virtue of exhibit J5 the Claimant is to use the land for Commercial purpose. I am of the firm view that the use for “Commercial (Not Specified)” in exhibit J5 is consistent with use for the purpose of “Filling Station” in exhibit J1. I agree with the Claimant’s counsel that in interpreting a document, care must be taken to ascribe ordinary and plain meanings to the words used by the maker, except where the plain ordinary meaning will lead to absurdity. See *A.G. Nasarawa State v. A.G. Plateau State* (2012) LPELR – 9730 (SC); and *UBN v. Nwaokolo* [1995] 6 NWLR (Part 400) 127.

In *Northern Assurance Ltd v. Wuraola* (1969) ANLR 14, (1969) LPELR – 25562 (SC), Pp. 10-11, paras. F-A, the Supreme Court held as follows:

"It is trite law that in the construction of documents the primary rule is that effect should be given to the literal contents in their ordinary way as they appear on the documents and that anything which does not appear ex facie on such documents should NOT be imported into them."



I am further fortified by the decision of the Court of Appeal in Nigerian Breweries Plc v. Ikyarkyase (2015) LPELR – 40409 (CA), p. 32, paras. B-E, where it was held:

"It is a settled principle of interpretation of documents that where the language used by parties in couching the terms or provisions of a document are clear and unambiguous, the Court must give the operative words in the document their simple, ordinary and actual grammatical meaning... Additionally, common sense must be used in the interpretation of words in a document and a meaning more in accord with reason must be adopted."

In the case at hand, I find that the Defendant sought to introduce extraneous materials into the wordings of exhibits J1 and J2. The issues of Abuja Master Plan and its contravention do not appear ex-facie on the said documents. Under exhibit J1 the purpose of the land is clearly stated in paragraph 1(v) to be "Filling Station". There is no ambiguity about what filling station means. Again, under exhibit J5 the word stated in paragraph 10 is Commercial (Not Specified). The meaning of commercial is not in doubt. There is nothing obscure or ambiguous about the words used by the Defendant to state the use to which the plot of land in issue could be put by the Claimant.

I agree with the Claimant's counsel that a Filling Station is a commercial venture, and that the term "Commercial (Not Specified)" rather than restricting, widened the range of commercial purposes for

which the Claimant can use the land. This interpretation accords with common sense. I hold the view that the Defendant's position that a filling station is not a commercial venture flies in the face of common sense. I also hold the view that it cannot reasonably be argued that use of a parcel of a parcel of land for a filling station is not the same as use of land for commercial purposes as this is a fact that judicially noticeable. See sections 124 (1) of the Evidence Act, 2011.

No document was produced before this court showing the resolution or decision reached by the Federal Capital Territory Administration (FCTA) that filling station is no longer a commercial venture. Further, there is nothing before the court which shows that use of the plot of land in issue as a filling station will contravene the Abuja Master plan. The Defendant's counsel argued that the Defendant is endowed with the power to change the land use of plot of land in the FCT to make them conform with the Abuja Master Plan and that the land use for the plot of land in issue was changed by the Defendant to make the use conform with the Abuja Master Plan. But the Abuja Master Plan or the relevant portion of it was not tendered in evidence to enable this court determine whether the use of the plot of land in issue as a filling station would contravene the Master Plan.

The law is trite that a court of law is not to speculate on the contents of a document not before it. See *Amatonjie v Chisco Trans. (Nig.) Ltd* (2021) 9 NWLR (Pt. 1780) 62 at 88; *A.C.B. Ltd v. Emostrate Ltd* (2002) 8 NWLR (Pt. 770) 501; *Ikenta Best (Nig.) Ltd v. A.G. Rivers*

State (2008) 6 NWLR (Pt. 1084) 612, Ogunye v. The State (1999) 5 NWLR (Pt. 604) 548, (1999) 68 LRCN 699; Okonji v. Njokanma (1999) 14 NWLR (Pt. 638) 250 (1999) 73 LRCN 3632; Nwachukwu v. The State (2002) 17 NWLR (Pt. 795) 58. (2002) 2 NWLR (Pt. 751) 366; Onyirimba v. The State (2002) 11 NWLR (Pt. 777) 83; ACB Plc. v. Emostrade Ltd. (2002) 8 NWLR (Pt. 770) 501.

This court cannot speculate on the contents of the Abuja Master Plan. It is the Defendant that is relying on the Abuja Master Plan to prove its assertions, therefore he had the duty of presenting the same before the court. See sections 129, 131 (1) and 136 of the Evidence Act. In Archibong v. Ita (2004) 2 NWLR (Pt. 858) 590, (2004) LPELR – 535 (SC), p. 27, paras. B-E, Tobi, JSC, warned that it dangerous for a court of law to so speculate in the absence of evidence.

On the Claimant's reliance on the previous judgment in Suit No. FCT/HC/CV/143/2006, I agree with the Defendant's counsel that the question of land use was not directly in issue in that suit; notwithstanding, I hold the view that the said judgment constitutes a relevant fact under section 174 (1) of the Evidence Act. It is clear that the said Judgment affirmed the validity of the grant made to the Claimant by the Defendant (exhibit J1), and also affirmed the validity of the terms and contents of the said exhibit J1, including the purpose for which the said plot of land was allocated to the Claimant. In Ajanaku v. Osuma (2014) All FWLR (Part 727) 695, it was held that a plaintiff may plead a previous judgment in his favour not necessarily

as res judicata, but as a fact relevant to the facts in issue in the new action. See also *Igwego Vs Ezeugo* (1992) 6 NWLR (249) 561 at 587 G - H; *Ukaegbu v. Ugoji* (1991) 6 NWLR (196) 127 @ 158 D-F; *Esan v. Olowa* (1974) 3 SC 125.

Finally, I hold that, contrary to the contention the Defendant's counsel, the certificate of occupancy issued to the Claimant (exhibit J5) cannot be used to whittle down the grant contained in a right of occupancy document (exhibit J1). This is because the certificate of occupancy is expected to mirror an existing right of occupancy, not contradict it. The certificate of occupancy evidences a right of occupancy. See section 9 (1) of the Land Use Act. See also *Ogunleye v. Oni* (1990) 2 NWLR (Pt. 135) 745 at 774 and 784; *Olohunde v. Adeypju* (2000) 10 NWLR (Pt. 676) 562; *Teniola v. Olohunkun* (1990) 5 NWLR (Pt. 602) 280 at 300.

In the light of the foregoing I find merit in the Claimant's case and hereby resolve the two issues for determination set out in the originating summons in favour of the Claimant.

Accordingly, all the reliefs sought by the Claimant are hereby granted. For the avoidance of doubt, this Honourable Court hereby grants the following reliefs sought by the Claimant in its originating summons:

1. That the Land Use and purpose of Plot 465 Cadastral Zone A0, Central Business District, Abuja stated as Filling Station in Statutory Right of Occupancy dated 16/12/1997 with Ref No: MFCT/LA/94/MISC.12391 is valid and subsisting.

2. That the Land Use and purpose stated as Commercial (not Specified) in the Certificate of Occupancy No: 1932w-106d3-3affr-bf67u-20 dated 16<sup>th</sup> day of December 1997 covering the said Plot 465 Cadastral Zone A0, Central Business District, Abuja, includes the business of filling station.
3. That the Defendant is restrained from interfering with Rights of the Plaintiff over Plot 465 Cadastral Zone A0, Central Business District, Abuja.

I make no order as to costs.

This shall be the Judgment of this court.

**APPEARANCE**

Ifunanya O. Esq. for the Plaintiff.

The Defendants not in court.

Sign

Hon. Jude

13/10/2021