

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/2292/2017

DATE: : WEDNESDAY 15TH DECEMBER, 2021

BETWEEN:

**NICKMAN INVESTMENT LIMITED
PLAINTIFF**

AND

- 1. THE HON. MINISTER OF THE FCT**
- 2. FCDA THE DIRECTOR, PARKS AND RECREATION DEPARTMENT, AMMA DEFENDANTS**
- 3. THE DIRECTOR, PARKS AND RECREATION DEPARTMENT, AMMA**
- 4. PARKS AND RECREATION DEPARTMENT AMMA**
- 5. THE DIRECTOR OF DEVELOPMENT AUTHORITY, FCDA**
- 6. DEPARTMENT OF DEVELOPMENT CONTROL, FCDA**

JUDGMENT

The Plaintiff commenced this action vide amended Writ of Summons and Statement of Claim filed on 26th October, 2017. And dated same day wherein the Plaintiff claims the following:

1. A Declaration that the Plaintiff's allocation over **Park No: A06, 2012**, known as **IBB Boulevard Park**, with **Ref No: AMMA/P&R/S.500** measuring about 1.25 hectares, situate and lying at Maitama District, is valid and still subsisting.
2. A Declaration that the act of the 5th Defendant through his staff, servants, privies, agents, and or representatives in demolishing the Plaintiff's **Park No: A06, 2012**, known as **IBB Boulevard Park**, with **Ref No: AMMA/P&R/S.500** measuring about 1.25 hectares, situate and lying

at Maitama District and the destruction of all the operational properties therein without any legal basis is illegal, null and void.

3. A Declaration that the forceful entrance into the Plaintiff's Park No: A06, 2012, known as IBB Boulevard Park situate and lying at Maitama District, Abuja – FCT by the staff, agents, servants, privies, and or representatives of the 5th Defendant amounts to trespass.
4. An Order of this Honourable Court directing the Defendants especially the 6th Defendant to pay to the Plaintiff the total sum of N410,200,000.00 (Four Hundred and Ten Million, Two Hundred Thousand Naira) only, being the value of the buildings and landscape, paving and ornaments of the Plaintiff's **Park No: A06, 2012**, known as

IBB Boulevard Park situate and lying at **Maitama District, Abuja-FCT**, wickedly demolished and vandalized by the 5th Defendant himself and his agents, servants and privies.

5. An Order of this Honourable Court restraining the 5th Defendant, his privies, servants, agents or any other person whatsoever called from further pulling down, destroying, stopping work or in any other way tampering with the Plaintiff's Park/Garden No: **A06, 2012**, known as **IBB Boulevard Park**, with Ref No: **AMMA/P&R/S.500** measuring about 1.25 hectares, situate and lying at Maitama District, Abuja-FCT.
6. An Order of perpetual injunction restraining the Defendants and each of them by themselves,

their servants, agents, privies and or anyone claiming for, or through them from trespassing or further trespassing or further trespassing, tampering, leasing or transferring Plaintiff's interest in, and or in any other manner interfering with the Plaintiff's quiet and peaceful ownership, possession and or allocation to Park/Garden No:A06, 2012, known as IBB Boulevard Park, with Ref No: AMMA/P&R/S.500 measuring about 1.25 hectares, situate and lying at Maitama District, Abuja-FCT.

7. The sum of N20,000,000.00 (Twenty Million Naira) as general damages.
8. The sum of N27,774,970.00 (Twenty Seven Million, Seven Hundred and Seventy Four

Thousand, Nine Hundred and Seventy Naira only) as special and exemplary damages.

The Defendants filed their statements of defence after service of the writ on them.

After exchange of pleadings, the suit proceeded into hearing. The case of the Plaintiff as distilled from the statement of claim and the witness statement on oaths is as thus:

The Plaintiff averred that sometimes on the 27th of July, 2007, it applied to the 4th Defendant for a park/green area to develop, manage and operate a designated park and garden in the FCT. The Plaintiff's application was approved by the 4th Defendant, therefore the Plaintiff paid the sum of N500,000.00 (Five Hundred Thousand Naira) only, whereupon, a LETTER OF INTENT TO

DEVELOP, MANAGE AND OPERATE DESIGNATED PARK SITE IN THE FCT dated 31st of July, 2007 was issued to the Plaintiff by the 3rd Defendant conveying the approval of the FCT Administration for the leasing of Park No. A06, known as IBB Boulevard Park, Maitama District, Abuja; measuring about 1.25 Hectares recommended for outdoor depicting the Cadastral Zones, Green Areas and Plots within the FCT, especially the location of the Plaintiff's Park, prepared by Abuja Geographic Information Systems (AGIS) and accompanied with a Topographical Survey of the Plaintiff's Park No: 2012B/A06, were also issued to the Plaintiff by the 4th Defendant. Following the issuance of the letter of intent/Approval by the 3rd Defendant, the Plaintiff secured structural design for the said park which was duly submitted to Parks and

Recreation Department sometime in 2008 for approval.

The Plaintiff further averred that, the 4th Defendant via a letter of implementation of FCT Revenue Policy for Parks and Recreation Department dated 8th of December, 2009, forwarded a Billing Demand Notice to the Plaintiff which the Plaintiff complied with and paid the total sum of N324,000.00 (Three Hundred and Twenty-Four Thousand Naira) only, to the 4th Defendant. Following the re-certification exercise introduced by the Federal Capital Territory Administration, the Plaintiff applied for re-certification of the Park/Green Area and submitted its title documents to the 1st Defendant for re-certification. Plaintiff also paid the sum of N50,000.00 (Fifty Thousand Naira) only, for the re-certification exercise and upon the 1st Defendant's

satisfaction with the authenticity and genuineness of the Plaintiff's title documents, Plaintiff was issued a site plan prepared by Abuja Geographical Information System (AGIS) on the 15th of August, 2011 showing plot: MAITA MA/A06/2012. The 4th Defendant advised the Plaintiff to commence the development, landscaping, planting of trees and flowers, grass, designing and construction of waterways, garden, offices, and drainages as indicated in the structural design since it was a Green Area pending the approval of the structural design by the 6th Defendant of which the Plaintiff accordingly issued with a settlement of Building Plan with a Settlement of Building Plan Fees dated 23rd of July, 2014 by the 5th Defendant in respect of Park No:2012, Cadastral Zone A06, Maitama District, Abuja, for the sum of N723,149.40 (Seven Hundred

and Twenty-Three Thousand, One Hundred and Forty-Nine Naira, Forty Kobo). Plaintiff eventually on the 8th of December, 2016 had a fatal accident which nearly took his life and was hospitalized for about a year, based on that, the Plaintiff could not pay for the settlement of building plan fees issued to it by the 5th Defendant dated 23rd of July, 2014. Sometime in February, 2017, the Plaintiff intimated One NnamdiOkoyedike of C.E Nwogbo& Associates of express that the Managing Director of Plaintiff needed valuation of the Plaintiff's Park/Garden to enable the Plaintiff secure loan facility to settle outstanding medical bills and debt incurred by the Plaintiff in the development of the Park/Garden. In February, 2017, NnamdiOkoyedike of C.E Nwogbo& Associates and his team moved into the Plaintiff's Park lying and situate at Plot

A06/2012 IBB Way, Maitama, Abuja, to value the property and make their report. The buildings, the landscape, paving and ornaments on the Plaintiff's Park were valued at N410,200,000.00. (Four Hundred and Ten Million, Two Hundred Thousand Naira) only.

Plaintiff also averred that in April, 2017 at 4:00pm to 5:00pm, two men came to the Plaintiff's garden and approached him; and one of them who introduced himself as a Barrister informed the Plaintiff that they were agents of a woman who was interested in buying the Plaintiff's garden and converting it to a Children's Amusement Park/Recreation Centre, that the owner of Northwest Garden which is adjacent to the Plaintiff's garden had agreed to sell to the woman but the space was not sufficient for the intended usage which was why

she wanted to buy the Plaintiff's garden; and had offered to pay the sum of N200,000,000.00 (Two Hundred Million Naira) for the Plaintiff's Park/Garden which the Plaintiff declined, insisting that the garden was not for sale. Sometimes in April, 2017, while the Plaintiff was at the Park/Garden, a man named Mr. Chinedu approached the Plaintiff and passed the information that a Yoruba Man asked him to find out from the Plaintiff whether the Park/Garden would be sold to them, that there is a woman who was coming in from London to buy it and that the unknown woman's Family owns 50% of the properties in Maitama. Plaintiff since that time has been in quiet, undisturbed and peaceful possession over all that expanse of land measuring 1.25 Hectares, known as IBB Boulevard Park, located at Plot 2012B, Cadastral Zone A06, Maitama

District, Abuja, until sometimes on the 21st of April, 2017, the Managing Director of the Plaintiff went to the Wuse Zone 4, Office of the 6th Defendant and met one Dr. Sheriff to whom the Managing Director protested the markings made by the officers of the 6th Defendant on the wall of the Plaintiff's garden, Dr. Sheriff a staff of the 6th Defendant informed the Managing Director of the Plaintiff that he was the one that made the markings on the wall on the instructions of the Permanent Secretary.

Furthermore, the Plaintiff averred that the Managing Director of the Plaintiff and one Musa, a staff of the 6th Defendant went straight to Wuse Zone 6 branch of the 6th Defendant to see the Director, and to also confirm the status of the Plaintiff's file; the Plaintiff's Managing Director was informed that the Director of the 6th Defendant was unavailable, the

Deputy Director who was contracted stated that the Plaintiff's file had no problem and also confirmed that there was no record of such demolition in the office or in the Plaintiff's file. On the 1st of June, 2017, some officers, servants, privies, agents and/or representatives of the 6th Defendant in the company of armed policeman and soldiers, forcefully entered into the Plaintiff's Park/Garden with caterpillars (heavy duty vehicles), Toyota Hilux (white) and buses, chased out all the staff and customers of the Plaintiff and commenced the demolition of the Plaintiff's Park/Garden. One Dr. Sheriff who is a staff of the 6th Defendant carried out the demolition, informed the Plaintiff's staff upon being asked the reason for the demolition that they were acting on instructions from the 6th Defendant. The 1st and 4th Defendants have never informed the Plaintiff of any

breach of any term of the letter of allocation issued to it in respect of Park No: 2012, Cadastral Zone A06, Maitama District, Abuja; and no notice was served on the Plaintiff before the demolition was carried out by the agents of the 6th Defendant. Plaintiff instructed its Management Team to inspect and assess the damage caused as a result of the demolition in Order to ascertain the cost of repairs if possible and the team made an inventory of the quantifiable items that were destroyed during the demolition. Plaintiff has suffered loss and damages as a result of the unlawful act of the 6th Defendant in demolishing the Plaintiff's Park/Garden which has caused undue and untold hardship on the Plaintiff as the Plaintiff has invested heavily in the development, maintenance, management and operation of the Garden/Park which was demolished by officers of

the 6th Defendant, without any legal reasons or justification. The degree of damage to the Plaintiff's properties demolished by the 6th Defendant's staff amounts to 9,369,970.00 (Nine Million, Three Hundred and Sixty Nine Thousand, Nine Hundred and Seventy Naira) only.

PW1 tendered the following document:-

- Valuation report.

PW1 was cross-examined, re-examined and subsequently discharged.

PW2 adopted his witness statement on oath, was cross-examined and accordingly discharged.

PW3 in his witness statement on oath stated that on 1st of June, 2017 between 2:00pm to 3:00pm, he was inside the park at the location of the stores when

suddenly he heard noise of caterpillars and people shouting. Hence, he came out of the store (make shift tent) and saw over 20 policeman, soldiers, vehicles and buses. That the caterpillar went straight with all the men destroyed everything in the Plaintiff's Park/Garden without minding whether people were around. PW3 tried to go to the people who were destroyed the Plaintiff's structures, chairs and everything, the soldiers and the police threatened to shoot him if he dares to go close. The staff and customers were chased outside the park. That the soldiers and police did not allow PW3 and other around to remove anything, even cutlery, etc were destroyed and mashed by the caterpillars.

PW3 was cross examined, and was discharged.

PW4 adopted his statement on oath, and was cross-examined and was discharged...

Plaintiff closed its case to give way for defence.

The case of the Defendants as distilled from the statement of defence and evidence of DW1 (Jerry Ahmadu Edward) is that, Plaintiff was let into possession of the Plot 2012, Cadastral Zone A06, IBB way Maitama via a letter of intent and Deed of Sub-lease dated 31st of July, 2007 for the development of a recreational park. That based on the terms regulating beneficiaries of letters of Intent, a lessee of sub-lessee (as in this case) in the Federal Capital Territory is expected to commence the development of land only after obtaining the requisite approval from the Department of Development Control in line with extant statutory

provisions as contained in the Nigeria Urban and Regional Planning Act and the Federal Capital Territory Act.

It is the averment of the Defendants that no evidence exists in the records of the Department of Parks and Recreation to show that Plaintiff submitted Development plans for approval. That the Department of Development Control has not issued any approval to the Plaintiff to erect the structures on the said plot of land. It was consequent upon the existence of illegal and unapproved structures on the said plot of land, that the 2nd Defendant served contravention notices and a demolition notice on the Plaintiff. The Defendants are functionaries contrary to the averments of the Plaintiff and never harboured the intention or carried out any action to appropriate the said plot of land for their personal or selfish

interests. That the allegations against the Defendants in respect of the subject matter of this suit are untrue and premised on malice. Defendants at all times material to this suit have always insisted that due process of law and extant regulations in respect of development in the Federal Capital Territory are fully complied with by the Plaintiff and other developers.

That in utter disregard and violation of the terms of the sub-lease agreement, Plaintiff neglected to register the Deed of sub-lease in the Lands Registry of the Department of Lands Administration. Plaintiff built structures that were not approved by the Department of the Development Control.

Defendants further averred that Plaintiff disregarded the fact that the duration of the lease agreement is

over 30 years commencing from 2007 by erecting permanent structures on the said land without approval of relevant Government departments and agencies. Due to the breaches of the terms of the sub-lease and the contravention notices served thereof, Defendants effected the removal of illegal structures on the said Plot of land in line with extant provisions of the FCT Act and the Nigerian Urban and Regional Planning Act.

DW1 who adopted his statement on oath, was cross-examined, and subsequently discharged.

At the close of Defendants' defence, respective parties filed their final written addresses.

Defendants filed final written address and formulated three (3) issues for determination to wit;

- 1. Whether not obtaining building plan approval made the Plaintiff's building illegal to warrant their demolition.*
- 2. Whether demolishing of the Plaintiff's property by the Defendants was wrongful and an abuse of due process.*
- 3. Whether on the preponderance of legally admissible evidence, the Plaintiff has made out sufficient case to entitle him to all or any of the reliefs sought in this suit.*

On issue one, Defendants submit, with reference to the Plaintiff's averments in paragraph 8 of the statement of claim, that the parks and recreation is not the authority vested with the power of approving Development Plans for structures in the Federal Capital Territory. The Development Control

Department is the only office that can approve development plan. Once a law makes a provision for an act to be done in a particular manner, it must be done in that manner and any act contrary, is an illegal act, contrary to that law. *Sections 28 and 30 Nigeria Urban and Regional Planning Act* were cited.

On issue two, whether demolishing of the Plaintiff's property by the Defendants was wrongful and an abuse of due process.

The Defendants contends that the demolishing of the Plaintiff's property was not wrongful and that due process was carried out before the demolition occurred.

See *ADEOGUN VS. FASSHOGBON (2008) 11 SCN at 14 and ALH. YAHAYA A. YUSUF VS.*

SAVANNAH SCAPE REALTORS LTD. (2015) 8 C.A.R 361 were cited; highlighting the issues of building approval, demolition of building without approval, whether illegal, wrongful or not.

On issue three, whether on the preponderance of legally admissible evidence, the Plaintiff has made out sufficient case to entitle him to all or any of the reliefs sought in this suit.

Making reference to the case of ***ALH. YAHAYA A. YUSUF VS. SAVANNAH SCAPE REALTORS LTD. (Supra)***, it is clear that the authority required to grant approval for building, can (when approval is not granted and building/structures are erected) demolish the said building. The authority can also recover costs for demolition of the said building/structures, landscape, paving and

ornaments. The reliefs therefore sought by the Plaintiff is overreaching and are therefore contended by the Defendants. Not only did the Plaintiff fail to prove special or general damages, they in fact are not entitled in law.

Learned counsel urged the Honourable Court to discountenance the reliefs sought by the Plaintiff for lack of substance and merit, and to hold this case in favour of the Defendants.

On its part, the Plaintiff/Claimant formulated the following issues for determination to wit;

- 1. Whether the Claimant has proved his case to entitle him to a declaration that the act of the 5th Defendant through his staff, servant, privies, agents and representatives in demolishing the Plaintiff Park No:A06, 2012***

known as IBB Boulevard Park, with Ref No:AMMA/P & R/5.500 measuring about 1.25 hectares, situate and lying at Maitama district is unlawful.”

- 2. Whether the Claimant is entitled to an Order of perpetual injunction restraining the 5th Defendant and each of them by themselves, their servants, agents, privies and or anyone claiming for, or through them from trespassing, tampering, leasing for transferring Claimant interest in any other manner interfering with the Claimant quiet and peaceful ownership, possession and or allocation to Park No. A06, 2012 known as IBB Boulevard Park, with No. AMMA/P&E/S.500 Measuring About 1.25 Hectares, Situate and Lying at Maitama District Abuja, FCT.*

3. *Whether the Claimant is entitled to the sum of N20,000,000.00 as general damages.*
4. *Whether the Claimant is entitled to the sum of N27,774,970.00 as special and exemplary damages, and the cost of this action.*

Learned counsel submits that the Claimant has proved his case to entitle him to an Order of Declaration that the act of the 5th Defendant, and the destruction of all the operational properties therein is without legal basis.

Learned counsel further submits that the Defendant, in the course of trial failed to tender the contravention notices and the demolition notice pleaded in their statement of defence. It is trite, that facts which are not supported by evidence are deemed abandoned, and pleadings alone cannot

constitute evidence. *DESEMY OF (NIG) LTD. VS. KWARA STATE GOVERNMENT (2019)6 NWLR (Pt. 1667) 97 at Ratio 3, 109, Paras D – E, ELEWA VS. GUFFANTI (NIG) PLC. (2017)2 NWLR (Pt. 1549) 233 at P. 248, Paras E. and UDEORAH VS. NWAKONOB I (2003)4 NWLR (Pt. 811) 643 at Pp. 674 – 675, Paras H – B* were cited.

While the crux of the Claimant's case is documentary, that of the Defendants' is merely oral evidence and as such, more credence and weight should be attached to the evidence of the Plaintiff. Learned counsel urged the Honourable Court to so hold.

On issue two, whether the Claimant is entitled to an order of perpetual injunction restraining the 5th Defendant and each of them by themselves, their

servants, agents, privies and or anyone claiming for, or through them for trespassing, tampering, leasing or transferring Claimant interest in any other manner interfering with the Claimant's quiet and peaceful ownership, possession and or allocation to Park No: A06, 2012 known as IBB Boulevard Park, with No: AMMA/P & E/S.500 measuring about 1.25 hectares, situate and lying at Maitama District, Abuja FCT.

Learned counsel submits that it is trite that an Order of perpetual injunction is an equitable remedy which this Honourable Court has the discretionary power to grant.

Learned counsel further submits that the essence of an injunction is for the court to prohibit the Defendants from further demolishing the Claimant's garden. Since injunction is an equitable remedy, it is

usually granted at the discretion of the court which must be exercised judicially and judiciously. ***ADELEKE VS. LAWAL (2014) 3 NWLR (Pt. 1393) SC. 1 Page 17 Paras D – F and AZUH VS. U.B.N PLC. (2014)11 NWLR (Pt. 1419) 580. S.C (P. 606 Para C)*** were cited.

Learned counsel also submits that perpetual injunction is based on final determination of the rights of parties, and it is intended to protect the Res as in this case, and humbly urge this Honourable Court to so hold in this case.

Learned counsel argues that it is evident that the Defendant unreasonably withheld the Claimant's approval despite collecting ground rent in respect of the said place. That it is premised on and as a result of reasons unknown but may suggest malice, to have

issued approval of the garden only after 6 years of application. The question that comes to mind is whether the Claimant having submitted its drawing for approval to the Defendant in 2008 only received the settlement of building plan fees for approval in 2014 should have just been watching the garden which he paid Millionson without any form of development.

In another breath, Defendants have claimed that they are not in receipt of any application from the Claimant for approval of Building Plans. How then did Defendants generate the settlement of building plan for approval? Was it permanent structures they accessed to generate the settlement of building plan fees? Was the penalty for not paying for the settlement of building plan fees demolition?

Learned counsel submits that the Defendant pleaded the fact that notices for demolition were issued to the Claimant and would rely on the said notices at the hearing of this suit, however, failed to tender same in evidence. The Defendant did not produce the notices for demolition during the hearing of this case because there was no notice issued to the Claimant before his investment on the garden was demolished. It is trite, that he who alleges must prove his assertions.

On issue three, whether the Claimant is entitled to the sum of N20,000,000.00 (Twenty Million Naira) as general damages.

Learned counsel further submits that it is common knowledge that the award of damages by this Honourable Court is discretionary, however urge

this Honourable Court to exercise its discretion in favour of the Claimant in this case.

Learned counsel submits also that by assessing the proceedings in testimonies of PW1 to PW4, it is evident that Defendants' act of demolishing the Claimant's park without notice is unjustifiable. That Defendants have not denied the fact that they demolished the Claimant's park, and it is trite that fact admitted need no further proof.

RE:ABIOLA (2019) 12 NWLR (Pt. 1685) 27 S.C, Ratio 10, P. 49 Para D and MOHAMMED VS. FARMERS SUPPLY CO. (KDS) LTD. (2019) 17 NWLR (Pt. 1701) 187 at 206 Para H.

Counsel also argued that Defendants did not tender any notice, documents and the contravention notices served on the Claimant at trial and also failed to lead

evidence on same, which clearly infer that Defendants have abandoned their pleadings regarding the issue.

SOCIO-POLITICAL RESEARCH DEV. VS. MINISTER OF FCT (2019)1 NWLR (Pt. 1653) 313 at 342 Paras F. was cited.

Learned counsel also submits that general damages are those losses that flow naturally from the adversary and it is generally presumed by law, as it need not be pleaded or proved.

Counsel urged the court to grant the relief.

UBN PLC. VS. ALHAJI AJABULE & ANOR (2011) 18 NWLR (Pt. 1278) 152 at 181 Para, C was cited.

On issue four, whether the Claimant is entitled to the sum of N27,774,970.00 (Twenty Seven Million, Seven Hundred and Seventy Four Thousand, Nine Hundred and Seventy Naira) as special and exemplary damages, and the cost of this action.

Learned counsel also argued that the Claimant has proved his case to entitle him to special and exemplary damages in the sum of N27,774,970.00 (Twenty Seven Million, Seven Hundred and Seventy Four Thousand, Nine Hundred and Seventy Naira). The general damages will not be adequate compensation to the Claimant by the surrounding circumstances of this suit because of the nature of injury suffered by the Claimant, it is on this basis that learned counsel urge this Honourable Court to also award special damages against the Defendants.

MEKWUNYE VS. EMIRATES AIRLINES (2019)
9 NWLR (Pt. 1677) 191, SC at 232 Paras F – H
was cited.

Learned counsel further submits that a successful party is generally entitled to be compensated by way of costs, and the amount of which the court has discretion to determine regardless of whether it was pleaded and/or proved.

In view of the foregoing submission, learned counsel urge this Honourable Court to give Judgment in favour of the Claimant as per its writ of summons and statement of claim.

COURT:-

I have read through the pleadings of Claimant and the Defendants on the one hand and have equally

juxtaposed the evidence led by both parties in prove of their respective pleadings.

I have also read the legal argument for and against the claims before the Court.

Reliefs A, B and C as indorsed on the Writ of Summons and Statement of Claim are declaratory in nature, predicating the survival of reliefs “D”, “E”, “F”, “G” and “H” on their success.

I have read the issues formulated for determination by both counsel for the Claimant and Defendants.

Issue 1 afore-raised by Defendants’ counsel *i.e. whether not obtaining building plan approval made the Plaintiff’s building illegal to warrant their demolition.*

Seen apt... I therefore, hereby, adopt same as my issue for determination.

The law is settled on declaratory reliefs... a party who seeks declaratory reliefs shall succeed only where cogent and reliable proof or evidence is led in proof of such claim.

See ***AGBAJE VS. FASHOLA (2008)6 NWLR (Pt. 1082)***.

Admission of Plaintiff's claims, weak or absence of defence would not be a reason for such declaratory reliefs to be granted as same cannot be granted as a matter of course.

See ***IKUMA VS. CIVIL SERVICE COMMISSION BENUE STATE & ORS (2012) LPELR- 8621 (CA)***.

***SALAU VS. PARA-KOYI (2001) 1 NWLR (Pt. 695)
446.***

From the state of pleadings filed by the respective parties, issues would have been properly joined and narrowed on the development of structures on that park, known as **IBB Boulevard Park No. A06, 2012** with reference number **AMMA/P&R/S.500.**

The gamut of the claim of Claimant, **Nickman Investment Limited**, as stated in its Statement of Claim is that it was leased the aforementioned Park measuring 1.25 hectares after it applied to the Defendants.

Claimant stated that it was meant to develop, manage and operate the designated park and garden in the FCT.

I have seen all payment receipts which were tendered and admitted in evidence as Exhibits “D”, “I” and “J”.

Claimant averred in paragraph 14 of its Statement of Claim and also evidence of PW4 (Managing Director) that it was advised by Parks and Recreation Department to commence development, landscaping, planting of trees and flowers, grass, designing and construction of water-ways, garden, offices and drainages as indicated in the structural design pending the approval of the structural design by the 6th Defendant i.e Department of Development Control.

Defendant averred further that it was issued settlement of building plan fees for the sum of N723,149.40 (Seven Hundred and Twenty-Three

Thousand, One Hundred and Forty Nine Naira, Forty Kobo) which could not be settled because the Managing Director of the Claimant took ill in 2006 and was involved in a fatal accident which nearly took his life and was hospitalized for about one (1) year.

Claimant also averred in its statement of claim that when the structures erected on the said parks were marked with inscription “**DEV/CONTROL**”, the Claimant’s Managing Director and One Musa, a staff of Development Control went to see the Director on the status of the Claimant’s file, but eventually met the Deputy Director of the 6th Defendant who informed him that his file had no problem and further confirmed that there was no such record of demolition in the office or Plaintiff’s file.

It is Plaintiff's further argument that on the 1st June, 2017, the agents of the 6th Defendant in company of Police and Soldiers drove into its park, chased away staff and customers and demolished Plaintiff's park/garden.

Plaintiff averred that it has not been notified of any breach of terms of the allocation issued to them in respect of the fact and that no notice of the said demolition was issued to them.

It is Plaintiff's claim that sometime in April, 2017, PW4 (The Managing Director) of the Plaintiff was at the park when two men approached him as agents of a said woman who wanted to buy his park to which he turned-down. He said similar offer was made by another Chinedu who also approached him in April, 2017 but he turned-down same.

Defendants on their part filed joint Statement of Defence where they denied existence of Development Plans for approval and that Development Control has not issued Plaintiff any approval to erect structures on the said Plot of land.

DW1, Jerry Ahmadu Edward, who was led in evidence by Defence Counsel, stated that Plaintiff was not issued any approval by Development Control to erect any such structures on the said park and that it was consequent upon the existence of illegal and unapproved structures on the said Plot of land that the 2nd Defendant served demolition notices on the Plaintiff and that Defendant removed the illegal structures on the said plot of land in line with the extant provisions of the FCT Act and the Nigerian Urban and Regional Planning Act.

Defendants maintained further that Plaintiff failed to register the Deed of sub-lease entered into dated the 31st July, 2007 which formed the basis of the relationship.

It is the argument of learned counsel for the Claimant that Defendants unreasonably withheld approval sought despite collecting ground rent in respect of the said place.

Claimant's counsel similarly infer malice in its legal argument when the fact that settlement of building plan fees was received six (6) years after submission of drawing for approval and wondered whether Claimant should just be watching the garden it had paid Millions without any form of Development.

Plaintiff further averred in its reply to Defendants' Joint Statement of Defence that Defendants never made any Deed of sub-lease available to Plaintiff.

Plaintiff also maintained that Defendants did not respond to the letters of 15th January, 2008 and 7th January, 2011 written to the 6th Defendant i.e Department of Development Control and duly acknowledged by 6th Defendant on the issue of submission of detailed Drawing for park **No A06 2012 IBB Boulevard, Maitama.**

I am minded to observe that the defence by the Defendants that Plaintiff did not submit any Development Plan has been compromised by Exhibit "L" i.e Settlement of Building Plan Fees.

The said document states in part, as follows:-

“I am directed to inform you that your building plan submission has been vetted and recommended for implementation..

You are expected to pay the following bill at Zenith Bank Account No. 1013054837, Abuja..

Failure to settle this bill within one month (30 days) from the date of receipt, will result to payment of additional 20% of the fees as penalty for default”.

From afore-reproduced excerpt of the said Exhibit “L”, Plaintiff clearly has submitted its drawing plan to the 6th Defendant for approval and 6th Defendant cannot run away from that fact.

I also wish to observe that from the available evidence before me, Plaintiff also has not also paid the said sum i.e N723,149.40 (Seven Hundred and

Twenty-Three Thousand, One Hundred and Forty-Nine Naira, Forty Kobo) even though PW4 attributed the non-payment to his ill health and accident.

I am also to note that Defendants who made heavy weather on the issue of an alleged Deed of sub-lease dated the 31st July, 2007 and pleaded same, failed to tender the said Deed of sub-lease, nor did they tender the said Notice of Demolition pleaded and relied-upon in their Statement of Defence.

Plaintiff in its Statement of Claim denied being notified by service of such notice of demolition.

Defendants seem clearly to be speaking from both sides of their mouths.

This is most unfortunate. Defendants who have by their document i.e Exhibit “L” admitted the fact that

Plaintiff submitted its drawing plan, had denied in their pleadings ever receiving any such Development Plan from Plaintiff. Their document has betrayed them..above underscores the importance of documentary evidence.

See *OGBEIDE VS. GOWIN (2007) 3 NWLR (Pt. 1022) Page 423.*

Now that we are all on the same page that Plaintiff did submit her Development Plan to the 6th Defendant for approval, which is still being awaited until the time of reading this Judgment, could that be a basis for the Plaintiff to commence development of structures on the said Plot without first obtaining the written approval of the 6th Defendant!

If the 6th Defendant being an agency of Government failed to deliver on its statutory duty upon fulfilment of all conditions by the Plaintiff, Plaintiff could have resort to the same Court for an Order of Mandamus to be issued on the said Defendants compelling them to so act in obedience to the Act establishing them. It is already settled, that two wrongs cannot make a right.

Plaintiff pleaded the fact and gave evidence that the Director of Parks and Recreation gave it the go ahead to commence development on the land pending when approval by the Department of Development Control is obtained.

I pause to ask...is that the law!

Plaintiff has to answer... why did Plaintiff not call the said Parks and Recreation Director who asked

him to commence development to come to this Court! Why!

The fact that Plaintiff said he submitted building plan to Development Control for approval meant that Plaintiff knew he could not erect any structures on the said land without the said approval.

This in law is admission against interest.

The law on the issue of admission against interest is settled.

In law, admission of facts against self-interest is not only admissible but is also perhaps the strongest form of evidence available to the adverse party in any suit between the parties and the adverse party is perfectly entitled to rely upon and make use of same.

See *EZEMBA VS. IBENEME (2004) 14 NWLR (Pt. 894) 617 AT Page 661 – 662.*

FCE VS. AYANWU (1997) 4 NWLR (Pt. 501) 533.

Supreme Court has similarly lends its voice on same..for an admission against interest to be valid in favour of the adverse party, same must not only vindicate or reflect the material evidence before the Court, it must also vindicate and reflect the legal position.

See *ODUDOLA VS. PAPERSACK (NIG) LTD. (2007) 1 NJSC 129 at 142.*

In this case, the Plaintiff stated as follows, in their pleadings that:-

“The Plaintiff avers that the 4th Defendant advised the Plaintiff to commence the

development, landscaping, planting of trees and flowers, grass, designing and construction of water – ways, garden, offices and drainages as indicated in the structural design since it was green area pending the approval of the structural design by the 6th Defendant of which the Plaintiff did.”

Similarly, the Managing Director of the Plaintiff, Chief Nicholas Ezukosi who gave evidence as PW4 in this case, stated the following in paragraph 9 of his witness statement on oath:-

“That the 6th Defendant is a Department that supervises land development in the FCT Metropolis and function under the supervision and instruction of 1st and 5th Defendants.”

It is instructive to note at this juncture that the 6th Defendant mentioned here is Development Control.

Poser... Is building or development plan approval needed by any person or group in the FCT!

I shall consider the relevant provision of the FCT Act and that of Urban and Regional Town Planning to arrive at a fair conclusion. Sections 28(1) and (2) and 30 (1) of the Nigeria Urban and Regional Planning Act provides as follows:-

Section 28 (1)

“Approval of the relevant Development Control Department shall be required for any land development.”

Section 28 (2)

“A developer shall submit a development plan for the approval of the Development Control Department.”

Section 30 (1)

“A developer whether private or government shall apply for a development permit in such manner using such forms and providing such information as may be prescribed by regulation made pursuant to this section.”

Section 7 of the FCT Act provides as follows:-

1. As from the commencement of this Act, no person or body shall within the Federal Capital Territory carry out any development within the meaning of this Act unless the written approval of the authority has been obtained by such person or body.

2. The authority shall have power to require every person who otherwise than in pursuance of an approval granted or order made under subsection (1) of this section, proceeds with or does any work within the Federal Capital Territory to remove any work performed and reinstate the land or, where applicable, the building, in the condition which it was before the commencement of such work, and in the event of any failure on the part of such a person to comply with any such requirement, the authority shall cause the necessary work to be carried out, and may recover the expenses thereof from such person as debt.

Plaintiff who though submitted its development plan to 6th Defendant for approval, admitted the fact that it was advised by the 4th Defendant to commence

development on the land pending approval by the 6th Defendant.

I say with every sense of modesty that Plaintiff's decision to commence development without approval was most suicidal as the said 4th Defendant is nowhere to give Plaintiff any respite.

Plaintiff is all left alone in this battle.

Plaintiff who particularized its claim in damages amounting to the sum of **N27,774,970.00**(Twenty Seven Million, Seven Hundred and Seventy-Four Thousand, Nine Hundred and Seventy Naira) with the valuation report tendered, cannot be helped by this court as the said structures remain illegal structures.

What more... even though no notice of the said demolition were served on the Plaintiff as claimed

by Defendants, I make bold to say that as it relates to the illegal structures, the Defendants are not under any legal obligation to give such notices.

Clearly, the pictures shown in Exhibit “M” i.e pictures of the garden before and after demolition are illegal structures.

What Plaintiff has done by not waiting to receive approval or compelling Defendants to grant approval before commencing development on the land amounts to self-help, an act that is not permissible.

The Court, in *ALH. YAHAYA A. YUSUF VS SAVANNAH SCAPE REALTORS LTD (2015) 8 C.A Ratio 361. as follows:-*

“When a statute prescribes a condition precedent before an act can be done, and there is a failure by a party to satisfy the condition

precedent, no subsequent act thereto, can be regarded as valid or legal. The development of the structures by the Respondent cannot be regarded as valid since the condition precedent have not been complied with. It was an illegal act and nothing can save it. It is void and no action can be forwarded on an illegal and void act, since the court as a hallowed chamber will never be a conduct or refuge for the perpetrator of injustice.”

In *ALH. YAHAYA A. YUSUF (Supra)*, the court similarly held, thus:-

“The demolishing or removal can be carried out by the authority (which incidentally is responsible for the control development) without the necessity of a formal demolishing

notice, and can recover costs of the demolishing.”

Defendants, can, through the office of the Director Development Control, without any notice enter any such land where illegal structures are erected or being erected for the purpose of removing such illegal structures and without any notice.

On the claim for declaration by Plaintiff that their allocation of the said plot of land measuring 1.25 hectares mentioned in the body of this Judgment being valid and subsisting, I also wish to state that the operation of the business of parks and recreation is under the department of parks and recreation. Allocation of such plots of land is not made by the FCT Minister but by the Director of parks and recreation which makes the tenor short. In view of

the fact that Plaintiff had paid N25,000.00 (Twenty Five Thousand Naira) being application fee for Park/Garden, N500,000.00 (Five Hundred Thousand Naira) for letter of interest to develop, manage and operate park/garden, N324,000.00 (Three Hundred and Twenty Four Thousand Naira) as FCT revenue policy for parks and recreations Department, N50,000.00 (Fifty Thousand Naira) recertification fee, unless the said allocation is withdrawn by the Defendants, even though Plaintiff has not paid for the settlement of building plan, Plaintiff is deemed in possession of the said aforementioned park.

Plaintiff relief “A” succeeds for the reasons given.

I however refuse to grant reliefs “B” and “C” which tend to illegalize the entry of Defendants’ staff into

the said park to remove/demolish the illegal structures.

The other reliefs bothering on general and special damages cannot stand on one leg for the reason that the action of the Defendant is not illegal.

While I am in sympathy with the position of the Claimant who has shown pictures of demolished structures, my sentiments will not go far to give judgment in favour of Claimant. After all, it is good law that sentiments have no place in the judicial process, particularly when the sentiments are against the law..theJudge that I am, I must bow to the law, and I so bow.

Indeed, the law cannot command an impossibility.

The essence of justice is to do what is true and correct.

It is clear from the available evidence before this court that Claimant did not obtain the desired approval before erecting the said structure on the allocated piece of land in accordance with extant law which has been dealt with extensively in the preceding part of this judgment. This is a wrong that cannot be remedied by Claimant in court.

The court will not allow any person or party or body to benefit from his wrong.

See ***B.M.N.L. VS OLA ILEMOBOLA LTD (2007) 5 SC 84.***

SOLANKE VS ABED (1962) 1 ALL NLR 230.

The act of Claimant erecting structures on the said park when they knew full well that approval ought to be first obtained from the body responsible i.e Department of Development Control, was illegal and

therefore, Claimant cannot benefit from their acts of illegality.

I find solace for above position in the case of ***SALEH VS MONGUNO (2006) 7 S.C (Pt. 11) 97.***

The plight of Claimant has been left in limbo to wither away as a judicial gate – crasher that has by settled case laws and statutes been consigned to a forlorn heap of legal fossil.

On the whole, therefore, I shall make an Order dismissing the claim of the Claimant for the reason adduced in the body of this judgment.

Consequently, Suit No. **FCT/HC/CV/2292/2017** is hereby dismissed.

Justice Y. Halilu

Hon. Judge
15th December, 2021

APPEARANCES

Temitope Ayodele – Ogunjide, Esq. with Aniefiok E., Esq. – for the Claimant.

N.A Hassana, Esq. – for the Defendants.