

- conveyance of provisional approval dated 1/793 under the hands of the first Zonal land manager for and on behalf of the FCT minister.*
4. *An order of this Honourable Court compelling the Defendant to stop further denial of the Plaintiff's title in Plot No. C5 in phase AA3 at Kuje Abuja FCT.*
 5. *An order of this Honourable Court permitting the Plaintiff to continue carrying on development at Plot No. C5 in phase AA3 Kuje Abuja FCT to encourage rapid Physical development in the FCT Abuja.*
 6. *An order of perpetual injunction restraining the Defendant, his agents privies legal representatives or any person claiming through him in any capacity however from committing any further act or further act of trespass on Plot No. C5 in Phase AA3 Kuje Abuja FCT.*

It is relevant to note that an order was on 16th November 2016 made by this Court to serve the Defendant with the processes in this suit via substituted means, to wit; by pasting on the fence of the property subject matter of this suit and by pasting on the notice board of the Kuje Lands Office. The records show that the processes in this suit as well as hearing notices were pasted on the property subject matter of this suit and also on the notice board of the Kuje Area Council Land Office in accordance with the aforementioned order of substituted service made by this Court. The Defendant however did not file anything in defence to the Plaintiff's claim.

At the trial of this matter, Chief Dominic Anigbo gave evidence as PW1 in support of the Plaintiff's case. The Defendant failed to cross-examine the witness despite adjournments for that purpose and was thus foreclosed. The following documents were admitted in evidence through PW1 and marked thus;

1. Exhibits A1, A2, A3 & A4: Four Kuje Area Council receipts with Nos. 1528, 0338, 0339 and 01524 respectively.
2. Exhibit B: Copy of Kuje Area Council Conveyance of Provisional Approval dated 1/7/93 with the endorsement 'To Whom it may Concern'.

3. Exhibit C: Acknowledgment from Federal Capital Territory Administration dated 1st January 2009.
4. Exhibits C1 & C2: Payment receipt with attached deposit slip No. 015145 respectively.
5. Exhibit D: AGIS Collections Report Details for AACTRIS.
6. Exhibits E: Zenith Bank Deposit slip No. 944839 with attached FCTA receipt No. 000289403.
7. Exhibit F: TDP-Plan.
8. Exhibit G: Certificate of Occupancy of Domchedus Nig. Limited dated 27th November, 2007.
9. Exhibit H: Original Kuje Area Council Conveyance of Provisional Approval dated 1/7/93.
10. Exhibit J: Sales Agreement between Odusalams Nig. Ent. and Domchedus Nig. Ltd.

At the close of the Plaintiff's case, its Counsel filed his Final Written Address on 10th of January 2022 and thereafter adopted same on 3rd February 2022 as his oral arguments in support of his case. Up until adoption the Defendant despite appearance by Counsel did not file any process or final written address. The matter was thus adjourned for the judgment of this Honourable Court.

In his final address, learned Counsel to the Plaintiff formulated a sole issue for the determination of this case to wit;

“Whether the Plaintiff on the preponderance of evidence adduced before this Court has proved his case to be entitled to the reliefs sought.

The foregoing issue is apt and I shall accordingly adopt same as the main issue for determination in the consideration of this matter.

The Plaintiff's case is presented to this Court via its Amended Statement of Claim and the evidence of its witness (PW1). Pursuant to order of this Court granted on 20th March 2019 deeming his 'Further and Better'

Witness Statement on Oath deposed to on 22nd October 2018 as properly filed, PW1 testified in this case. PW1 is averred to be a business man and a director of the Plaintiff-company.

It is the Plaintiff's case that Plot No. C5 at Phase AA3 at Kuje, Abuja FCT measuring 2400sqm (hereinafter simply referred to as the Subject Matter of the instant suit) was conveyed to the Plaintiff since August 2009 by Sale Transfer Agreement and Allocation Letter dated 1/7/93 signed by the Zonal Manager (Lands) for the Chairman of Kuje Area Council. Exhibits J, H and G were admitted in evidence at trial as the Plaintiff's certificate of incorporation, Sales Agreement and original letter of allocation respectively. That the Zonal Land Manager is the authorized representative of the Honourable Minister of the Federal Capital Territory Abuja in charge of allocation of lands in Kuje Area Council. That the said Zonal Manager (lands) gave a 'To whom it may Concerned' letter (admitted in evidence as Exhibit B).

PW1 further testified that the Plaintiff took possession of the Subject Matter land by establishing beacons and erecting fences thereon. The Plaintiff also opened a file at the Kuje Area Council secretariat and prepared a TDP. Copies of receipts were admitted in evidence as Exhibits A1, A2, A3 and A4 while Exhibit F is the TDP. That application was made for revalidation under the Acceleration Area Council Title Reissuance Scheme (AACTRS) and Exhibits C1, C2 and D were admitted in evidence in support thereof. PW1 testified that the Plaintiff obtained a Judgment at the Upper Area Court confirming the plot (Subject Matter of this suit) to a director of the Plaintiff.

It is further PW1's testimony that the Plaintiff proceeded to regularize the title documents to the Subject Matter and was issued withan acknowledgment by the Abuja Geographical Information System (AGIS) dated 1st December 2009. Exhibit C was admitted in evidence as said Acknowledgment. That the Plaintiff also applied for building approval which application is still being processed. Exhibit E was admitted in evidence at trial as evidence of payment of processing fee. He testified that

the Plaintiff's right of occupancy No. RLAC/KAC/FCDA/P&S/20/1 in respect of the Subject Matter has never been revoked by any person or authority. PW1 testified further that the identity of the Defendant is not known except that he (Defendant) sometimes claims ownership of the land Subject Matter of this suit.

In his final address, learned Counsel to the Plaintiff submitted on the sole issue for determination that the Plaintiff has discharged the onus on it by leading evidence to prove its case and its entitlement to the declaration of title. He relied on the case of **USIKARO V. USEKIRI LAND TRUSTEE (1991) 2 NWLR PT. 172 P. 150**. Counsel argued that the Plaintiff, from its evidence, has been able to prove ownership of the Subject Matter unchallenged. He relied on the five ways of proving title to land and the case of **JOSUN V. BAMIGBOYE (2010) 18 NWLR PT. 1225 P. 285**. He urged this Court to therefore grant the Plaintiff's reliefs as contained in its claim.

In the resolution of the issue before this Court, it is relevant to note that the Plaintiff's case is essentially for declaration of title to land. Reliefs Nos. 1 and 2 of the Amended Statement of Claim are reliefs for declarations to this effect.

On the onus of proof on a party seeking declaration of title to land, it has been held that such a party must succeed on the strength of his own case rather than rely on the weakness of the defence. – see the cases of **HENSHAW V. EFFANGA (2009) 11 NWLR PT. 1151 P. 65** and **EDEBIRI V. DANIEL (2009) 8 NWLR PT. 1142 P. 15**. In the case of **DIM V. ENEMUO (2009) 10 NWLR PT. 1149 P. 353** the Supreme Court held that *until the onus is successfully discharged by the plaintiff, the court is not obliged to look at the defendant's case*.

Further to the above, the position is that a plaintiff seeking for a declaration of title to land bears the onerous duty in law to adduce credible and admissible evidence in establishment of such title. – see the case of

MADAM LANTOUN OJEBODE & ORS V. AKEEM AKANO & ORS (2012) LPELR-9585(CA).

Thus in this case, it is irrelevant to the Plaintiff's claim for declaration of title at this stage that the Defendant did not file any defence to his claim. The Plaintiff has a duty to prove its case to the satisfaction of this Court.

The position of the law is that a plaintiff seeking declaration of title to land must prove title to that land claimed in one of the following ways in order to succeed;

- (1) by traditional evidence;
- (2) by the production of documents of title duly authenticated;
- (3) by acts of persons claiming land such as leasing, entering etc. which acts must extend over a sufficient period of time;
- (4) by acts of long possession and enjoyment of land
- (5) by proof of possession of connected or adjacent land.

See the cases of **IDUNDUN V. OKUMAGBA (1976) 1 NWLR PT. 200 P. 210**, **EDEBIRI V. DANIEL (SUPRA)** and **NWOKOROBIA V. NWOGU (2009) 10 NWLR PT. 1150 P. 553**.

Successful proof by way of only one of the 5 methods would be sufficient to discharge the burden on the claimant for declaration of title. – see the case of **OLAGUNJU V. ADESOYE (2009) 9 NWLR PT. 1146 P. 225**.

The Plaintiff in this case pleaded, relied on and tendered documents in proof of its contention of title to the land Subject Matter of this suit.

In **MADU V. MADU (2008) 6 NWLR PT. 1083 P. 296** the Supreme Court restated its position in **LAWSON V. AJIBULU (1997) 6 NWLR PT. 507 P. 14** that in a claim for declaration of title to land, the production *per se* of documents of title alone is not sufficient to discharge the onus on the plaintiff to prove the title he claims.

It is trite position of law that the mere production of title documents in a case such as this does not **ipso facto** entitle a party to declaration of title. The court has a duty to look at the title documents of parties in order to ascertain the validity and effect of same before granting declaration of title. This Honourable Court is therefore entitled, in fact has a duty, to consider the validity and effect of the documents of title which the Plaintiff has tendered and relied on for its contention of title in the Subject Matter. – See the case of **ROMAINE V. ROMAINE (1992) 4 NWLR PT. 238 P. 600** where the Supreme Court per Nnaemeka-Agu, J.S.C. (delivering the lead judgment) held thus;

*“I may pause here to observe that one of the recognised ways of proving title to land is by production of a valid instrument of grant: see **Idundun v. Okumagba (1976) 9-10 S.C.246; Piaro v. Tenalo (1976) 12 S.C. 31, P37; Nwadike v. Ibekwe (1987) 4 N.W.L.R. (part 67) 718.** But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance upon such an instrument inevitably carries with it the need for the court to inquire into some or all of a number of questions, including:*

- (i) whether the document is genuine and valid;*
- (ii) whether it has been duly executed, stamped and registered;*
- (iii) whether the grantor had the authority and capacity to make the grant;*
- (iv) whether the grantor had in fact what he purported to grant; and*
- (v) whether it has the effect claimed by the holder of the instrument.”*

See also the cases of **AKINDURO V. ALAYA (2007) 15 NWLR PT. 1057 P. 312** and **W.A.C. LTD. V. YANKARA (2008) 4 NWLR PT. 1077 P. 323.**

Now, the Plaintiff in this case averred that the Subject Matter land was conveyed to it via Sale Transfer Agreement (Exhibit J) and Allocation Letter dated 1/7/93 (Exhibit H).

I have carefully perused the purported title documents Exhibits H and J.

Exhibit H is a letter from the Kuje Area Council of the Federal Capital Territory, Abuja, Nigeria by which the said Kuje Area Council conveyed its approval of a Customary Right of Occupancy in the Subject Matter to one Odusalams Nig. Ent.

Exhibit J on the other hand appears to be a sale transfer agreement between Odusalams Nig. Ent. and the Plaintiff by which the former agreed to transfer its title, interest and ownership in the Subject Matter to the latter.

Now I have carefully examined Exhibit J which is titled 'Sale Transfer Agreement'. I have made certain observations therein which I would hereafter highlight if necessary.

Clearly there is nothing on the document showing that it has been registered. From the evidence of the PW1, it is clear that Exhibit J forms part of the Plaintiff's root of title by which title was transferred from Odusalams Nig. Ltd, the purported holder of the Customary Right of Occupancy to the Plaintiff.

Clearly also, signatories to the document on behalf of parties are unnamed. Being that Exhibit J however originates vide Exhibit H, the Court would proceed to first consider the validity of Exhibit H, for grant of right of occupancy. It is trite that you cannot put something on nothing and expect it to stand. It is only if Exhibit H stands that Exhibit J can also stand as a valid transfer of ownership as the Plaintiff seeks.

For whatever it is worth, Exhibit H (which appears to be the origin of the Plaintiff's alleged title) is a conveyance of a grant of Customary Right of Occupancy in the Subject Matter by the Kuje Area Council of the FCT.

I believe it is fairly well settled that the law does not recognize a grant of ‘Customary Rights of Occupancy’ in the FCT particularly by Area Councils as it is only the Honourable Minister of the FCT that has the power to grant interests in land in the FCT. – see collectively the provisions of **Section 49 of the Land Use Act, Sections 297 and 302 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** and **Sections 1 and 18 of the Federal Capital Territory Act**. See also the authorities of **ONA V. ATENDA (2000) 1 NWLR PT. 656 P. 244, MADU V. MADU (SUPRA)** and **ERIBENNE V. UG & ANOR (2007) LPELR-4172(CA)** which are to the effect that customary right of occupancy does not exist in the FCT as ownership of the land comprised in the Federal Capital Territory, Abuja is vested in the government of Nigeria and only the Minister of FCT has the authority to grant interests or rights of occupancy in land comprised in the FCT. It has therefore become a notorious position of the law that it is the Minister of the FCT (and not the FCT Area Councils) that can validly grant statutory right of occupancy in respect of land in the FCT. – see **ERIBENNE V. UG & ANOR (SUPRA)**.

See also **DIVAGE HEALTH AND SANITARY SERVICE LTD & ANOR V. KENUJ INVESTMENT LTD (2018) LPELR-45975(CA) AT PP. 18 – 23 PARAS. A-D**.

The effect of this is that any interest purportedly granted by the Area Councils of the FCT in land located in the FCT is invalid or at best inchoate.

Now it is a notorious fact of which this Court can take judicial notice that the Minister of the FCT rolled out a program to regularise titles to lands in the FCT purportedly granted by FCT Area Councils. Being the custodian of lands in the FCT, the Honourable Minister of the FCT has this liberty.

The Plaintiff in this case has tendered Exhibit C as acknowledgment of documents submitted in an attempt to regularise title to the Subject Matter.

The disclaimer contained in Exhibit C however is to the effect that Exhibit C itself is not to be treated as a confirmation of title in the Subject Matter.

The Plaintiff has attempted to convince this Court that interest in the Subject Matter was conveyed to it by the Minister of the FCT by saying that the Zonal Land Manager who signed Exhibit H is the authorized representative of the Honourable Minister of the FCT in charge of lands in Kuje Area Council.

I must at this stage refer to the case of **DIVAGE HEALTH AND SANITARY SERVICE LTD & ANOR V. KENUJ INVESTMENT LTD (SUPRA)** where the letter of grant of interest in land in the FCT was issued by the Abuja Municipal Area Council purportedly *on behalf* of the Honourable Minister of the FCT. In its Judgment, the Court of Appeal held per Aboki JCA as follows;

“I have carefully perused the record of appeal, and particularly the plaintiff's/Respondent's title documents, it is my view that the plaintiff/Respondent in the instant case could not be said to have derived its title from the Minister of FCT Abuja. The record clearly shows that after the change of ownership, the plaintiff/Respondent was reissued the two plots and consequently obtained offer of right of occupancy over the two plots dated 16/8/2006 from the Abuja Municipal Area Council. The Respondent's documents of title i.e. offer of terms of grant/conveyance of approval (Exhibits PWIC & PWID) are on the letter head of the Abuja Municipal Area Council. Also, exhibits PWIC & PWID shows on their face they conveyed the Hon. Minister's approval, but there is no evidence to show that they were issued by the Minister or the person who signed them was a staff of the Federal Capital Territory and he has signed the said Exhibits on behalf of the Minister. It is my view that the Respondent's documents of title Exhibits PW A, B, C D, E; E G & H do not qualify as documents conferring title. See YUGUDA VS NYIMNYA (2017) LPELR-43008 CA. In view of all the above, I do not agree with the Respondent's counsel contention that the Respondent was the rightful

allottee, notwithstanding the issue of allocation from Abuja Municipal Area Council.”

The situation in the instant case is even far worse. Exhibit H speaks for itself. Exhibit H is not on the letterhead of the Ministry of the Federal Capital Territory nor is there anything before this Court showing that the person who signed same is actually a staff of that Ministry. Exhibit H was issued by the Kuje Area Council and there is absolutely nothing in Exhibit H to suggest that the party who signed same did so on behalf of the Honourable Minister of the FCT. In sum, Exhibit H is solely the act of the Kuje Area Council and cannot be attributed to the Honourable Minister of the FCT.

Thus, as it is, the Plaintiff has not established that it possesses a grant of interest in the Subject Matter from the appropriate authority vested with power to grant it interest in the Subject Matter i.e. the Honourable Minister of the FCT.

As mentioned earlier by this Court, the grant of interest in the Subject Matter by the Kuje Area Council is either invalid or at best inchoate. Exhibits H and J do not therefore establish legal title in the Subject Matter in favour of the Plaintiff. The documents tendered by the Plaintiff as proof of title in the Subject Matter do not actually confer such legal title on the Plaintiff. They do not entitle the Plaintiff to declaration of title to the Subject Matter. The Plaintiff's claim for declaration of title thus fails and its reliefs Nos. 1, 2, 4 and 5 which are based on this claim are liable to be refused.

Relief No. 3 of the Amended Statement of Claim is for an order declaring the Defendant a trespasser on the Subject Matter while Relief No. 6 is an order of perpetual injunction restraining the Defendant from committing any act or further act of trespass on the Subject Matter.

It is now trite law that a claim for trespass and injunction is independent of the claim for declaration of title. A claim for trespass is not bound to fail

just because a claim for declaration of title fails. It is settled law that a plaintiff can succeed on a claim for damages for trespass and injunction even where his claim for a declaration of title fails because a claim for trespass primarily goes to possession. – see the Supreme Court’s decision in the cases of **OSAFI V. ODI (1994) 2 NWLR PT. 325 P. 125** and **SALAMI & ANOR V. LAWAL (2008) LPELR-2980(SC)**. See also **IZUOGU V. IBE & ANOR (2018) LPELR-44347(CA)**.

Now, trespass to land is an unjustified interference or intrusion with exclusive possession of another person over land/property. A person in possession of land or the owner can maintain an action in trespass against anyone who cannot show a better title. See the cases of **TUKURU V. SABI (2013) 10 NWLR PT. 1363 P. 442** and **EGWA V. EGWA (2007) 1 NWLR PT. 1014 P.71**.

I have carefully perused the Plaintiff’s Amended Statement of Claim as well as PW1’s statement on oath. The Plaintiff pleaded at paragraph 11 of the Amended Statement of Claim that it demanded for the name and telephone number of the Defendant from the workers working close to his plot but they did not have it. PW1 on the other hand merely testified that the identity of the Defendant is not known except that he sometimes claims ownership of the land Subject Matter of this suit. Aside of these, nothing has been placed before this Court as to how exactly the Defendant has interfered with the Plaintiff’s purported possession of the Subject Matter. It is trite law that the Court does not rely on speculation and conjecture but on facts and evidence. – see **R.E.A.N. PLC V. ANUMNU (2003) 6 NWLR PT. 815 P. 52**.

In his final address, Counsel to the Plaintiff has submitted that the Plaintiff has been in possession of the Subject Matter until the Defendant came trespassing *by destroying the fence that the Plaintiff built*. There is however no averment in the Plaintiff’s Amended Statement of Claim that the Defendant destroyed anything at all nor is there any evidence before this Court to that effect. Plaintiff’s Counsel’s submission that the Defendant came trespassing *by destroying the fence that the Plaintiff built*

must be discountenanced as it is trite law that address of Counsel, no matter how brilliant, cannot take the place of evidence or make up for lack of it. – see the case of **OKWEJIMINOR V. GBAKEJI (2008) 5 NWLR PT. 1079 P. 172.**

Now the mere fact that the Defendant also lays claim to the Subject Matter does not amount to an act of trespass particularly as the Plaintiff has failed in this case to establish title to the Subject Matter. Thus, no actual act of trespass has been established in this case against the Defendant by the Plaintiff. It follows therefore that the Plaintiff’s claim for trespass and injunction must fail. Reliefs Nos. 3 and 6 are also liable to be refused.

Pursuant to all the foregoing, the sole issue for determination is resolved against the Plaintiff.

The Plaintiff’s instant claim thus fails in its entirety and it is accordingly dismissed.

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Honourable Justice M. E. Anenih

APPEARANCES:

Sunday Adewale Esq appears for the Plaintiff.

F. U. Mathew (Ms) appears for the Defendant.