

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
24TH DAY OF MARCH, 2022**

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

SUIT NO. FCT/HC/CV/219/2015

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

**1. ANNAI LIMITED
CLAIMANTS**

}

.....

2. MR. OVUDICHE IROANWUSI

AND

**1. THRONE OF GRACE PROPERTIES LIMITED
2. MR. GREGORY N. OPUTA
DEFENDANTS
3. HON. MINISTER, MINISTRY OF
FEDERAL CAPITAL TERRITORY**

}

JUDGMENT

The Claimants' claim is dated 16/11/2015 and filed on the 19th of November. The Claimants amended their Statement of Claim viz an Amended Statement of Claim dated 7/2/2018.

They claim as follows:

- 1) A DECLARATION that the sales transaction between the 1st Claimant and the 1st Defendant as evidenced by the Deed of Assignment dated 11th day of March 2011 is a failed transaction the subject matter of the transaction not been in existence.

- 2) A DECLARATION that Department of Land Administration, an agency of the 3rd Defendant misled the Claimants in carrying out the transaction which failed.

- 3) AN ORDER that the 3rd Defendant compensates the Claimants with a parcel of land of same or similar size in addition to the payment of ₦2,000,000 (Two Million Naira) only as damages for inconveniences suffered as a result of the 3rd Defendant's misrepresentation.

- 4) AN ORDER that the Claimants be refunded ~~₦~~8,470,000.00 (Eight Million, Four Hundred and Seventy Thousand Naira) being money spent by the Claimants.

- 5) ~~₦~~5,000,000 (Five Million Naira) as general damages against the 1st and 2nd Defendants for inconveniences suffered.

The Writ of Summons and all other processes were served on the Defendants. The 1st and 2nd Defendants failed, refused and or neglected to react to the originating processes. The 3rd Defendant filed a Defence to the Statement of Claim.

The Claimants called a witness who gave evidence on their behalf. He is Ovudiche Iroanwusi of Plot 84, Durumi District, Abuja. He adopted his written Statement on Oath deposed to on the 7/02/2018. He is the 2nd Claimant. His evidence is that the 1st Claimant purchased the plot of land situate and

known as Plot 749 Cadastral Zone C14 of Pyakasa District, Abuja from the 1st Defendant. The said plot of land was originally allotted to BIBCO Petroleum & Gas Ltd. That BIBCO Petroleum allegedly donated a Power of Attorney to 1st Defendant who was authorised to sell or dispose off the said plot of land. The 1st Defendant sold to 1st Claimant.

That 2nd Defendant conducted a search on behalf of Claimants and brought a report. That 1st and 2nd Defendants also applied for search at Abuja Geographic Information System (AGIS). The Search Report is dated 17/03/2011.

That 1st Defendant donated a Power of Attorney to 1st Claimant for a consideration of ₦8,000,000. The 2nd Defendant handed over some documents to 2nd Claimant and promised to hand over some others which he never did.

The Defendants encouraged the 2nd Claimant to mobilize to site and commence work. That as soon as he mobilized to site, one Emmanuel A. Ikodo appeared at the plot and claimed that the property is owned by his company – Sky Bound Properties Ltd.

That he showed 2nd Claimant a replica of same documents given to 2nd Claimant by the 2nd Defendant.

That he went with Emmanuel Ikodo to AGIS to determine which of the documents is genuine. That AGIS said one of the documents is cloned without being specific.

The Claimants petitioned the Defendants to the Commissioner of Police. The outcome of investigation is that the Offer Letter sold to 2nd Defendant (Gregory Oputa) by one Bashir Bello did not emanate from AGIS.

The 1st and 2nd Defendants have no authority to sell Plot 749 Cadastral Zone C14, Pyasaka, Abuja to Claimants. That Defendants are under obligation to indemnify the Claimants.

That before Claimants paid the Defendants, 2nd Defendant commissioned one Shittu Abdulhamid to conduct a search on their behalf.

That Applicant produced and presented the original Offer of Statutory Right of Occupancy to officials of Abuja Geographic Information System for citing.

That the payment of ~~₦~~8,000,000 consideration was as a result of Legal Search Report which confirmed the genuineness of the Right of Occupancy.

The Claimants therefore demand for a refund of the money paid to 1st and 2nd Defendants as well as damages in the sum of ~~₦~~8,470,000.00,

~~₱~~5,000,000.00 damages against the 1st and 2nd Defendants.

The 3rd Defendant should compensate Claimants with a similar size of land and pay ~~₱~~2,000,000.00 as general damages.

The Claimants tendered Exhibits A – A4, which includes the Search Report from AGIS, the Offer of Statutory Right of Occupancy in the name of BIBCO and the Petition addressed to the Commissioner of Police.

He also tendered Exhibits A5, A6 and A7. He urges the Court to grant the reliefs sought.

Under cross-examination, the witness answered that Exhibit A does not show 1st Defendant as owner of the property.

To a further question, he answered that 1st and 2nd Defendants are not the people that conducted the

search for him. That he also commissioned Shittu to do it. That he was there when the original Right of Occupancy was cited. That 3rd Defendant confirmed the genuineness of the Statutory Right of Occupancy.

The 1st and 2nd Defendants failed, refused and or neglected to give evidence despite the service of hearing notices.

The 3rd Defendant opened its defence and called a witness. She is Omoruwa Kate Efosa from the Department of Land Administration. She adopts her Written Statement on Oath sworn to on 15/03/2018.

She deposes that the 3rd Defendant did not know and never allocated any plot of land to the Claimants. That Claimants never applied to the 3rd Defendant for any Statutory Right of Occupancy in respect of Plot No. 749 Cadastral Zone C14, Pyakasa, Abuja. That 3rd Defendant's Land Registry

never had any contact or dealings with Claimants or their agents in respect of the land in dispute.

That it has in its custody the original allottee's allocation paper/particulars with the name BIBCO Petroleum & Gas Ltd. That the Claimants' purported Power of Attorney in respect of the transaction was not registered in the 3rd Defendant. That parties to this transaction did not seek the consent of the 3rd Defendant. That 3rd Defendant was not privy/party nor agent during the purported land transaction. That the Claimants have no case.

I have read the Final Written Addresses of Counsel. The issue for determination as could be deduced from the Final Written Addresses of Counsel is:

Whether the Claimants have proved their case against the Defendants on the preponderance of evidence and balance of probability.

By virtue of Sections 131, 132 and 133 of the Evidence Act, in civil cases such as this, the burden of proof is on the party who asserts a fact to prove same. He who asserts must prove. The standard of proof required is on a preponderance of evidence and balance of probability.

See **BRAIMAH vs. ABASI (1998) 13 NWLR (PT. 581) 167 SC.**

In the instant case, the Claimants gave evidence vide PW1. The 1st and 2nd Defendants failed to enter appearance or file a defence. They even failed and or neglected to give evidence.

The summary of the Claimants' evidence is that they bought/purchase Plot 749 Cadastral Zone C14, Pyakasa District, Abuja from the 1st and 2nd Defendants. That they paid the sum of ~~N~~8,000,000 as consideration. They also paid ~~N~~20,000 for

search. They were given documents of title, i.e. Exhibits A2.

The Search Report and payment receipt are Exhibits A and A1. The 1st Defendant through 2nd Defendant also gave their Exhibit A6 which is the Deed of Assignment between BIBCO Petroleum & Gas Ltd and 1st Defendant.

Exhibit A7 is the Deed of Assignment between 1st Defendant and 1st Claimant evidencing payment of ₦8,000,000 to the 1st Defendant.

The evidence is that the 2nd Defendant is a Director in the 1st Defendant. That 1st Defendant was authorised to sell or dispose the plot of land in issue.

The Claimants later discovered that the purported documents are fake particularly the Statutory Right of Occupancy – Exhibit A2. That the Defendants have no title to the plot of land.

He claims a refund of the consideration and all incidental expenses as pleaded and given in evidence in paragraphs 36 and 33 of the Statement of Claim and Witness Statement on Oath respectively.

The 1st and 2nd Defendants failed to put anything on their own side of the imaginary scale. Whenever on an issue evidence comes from one side and it is unchallenged and uncontradicted, it ought normally to be accepted on the principle that there is nothing to be put on the other side of the balance unless it is of such quality that no reasonable tribunal should have believed it. The onus of proof is discharged on a minimal of proof.

See **ABDULLAHI BABA vs. NIGERIAN CIVIL AVIATION CENTRE ZARIA (1991) 7 SCNJ 1.**

In the circumstance of this case, it is my view and I so hold that the Claimants have proved relief 36(d) against the 1st and 2nd Defendants on the preponderance of evidence and balance of probability.

The Claimants further claimed ₦5,000,000 for general damages for inconveniences suffered. General damages are those damages, which the law implies in every breach and every violation of a legal right. It is the loss, which flows naturally from the defendant's act and its quantum need not pleaded and proved as it is generally presumed by law.

In the light of the evidence before me, I shall grant the relief for damages as sought against the 1st and 2nd Defendants in paragraph 36(e).

The Claimants also gave evidence in respect of the 3rd Defendant. The witness stated that 1st Defendant through the 2nd Defendant applied for a

search in AGIS. That the Search Report is dated 17/03/2011 which he claimed was issued to the 1st Defendant by AGIS. See paragraph 6 (b) of the Statement of Claim.

In paragraph 6 (d)(ii), the witness somersaulted and said the Legal Search Report is dated 07/12/2011. Exhibit A is the said report. It is issued to Shittu Abdulhamid.

Exhibit A1 which is alleged to be Legal Search Fees in the name of BIBCO Petroleum & Gas Ltd.

The Claimants went further in paragraph 24 that they agreed to pay 1st and 2nd Defendants because 2nd Defendant commissioned one Shittu Abdulhamid to conduct a search on their behalf in respect of the property in issue. That a Legal Search Report was issued.

It must be noted that only one Legal Search Report was tendered, i.e. Exhibit A1.

That the said Shittu Abdulhamid presented a copy of the Offer of Statutory Right of Occupancy to Abuja Geographic Information System on behalf of the 1st and 2nd Defendants before the Legal Search Report was issued and signed.

Under cross-examination, the Claimants' witness said 1st and 2nd Defendants are not the people that conducted the search for him. He went further that he commissioned Shittu to do it. There are a lot of contradictions and inconsistencies in the evidence of PW1 as it relates to the 3rd Defendant.

Neither was the 1st and 2nd Defendants nor Mr. Abdulhamid Shittu who was alleged to have conducted the search were called to give evidence.

I find as a fact that the PW1 did not participate in the search at AGIS. He was not in AGIS either with 1st and 2nd Defendants or Abdulhamid Shittu. He alluded to them as professionals who are versed in

conducting searches and documentation of land titles. The evidence of PW1 is therefore hearsay.

The Claimants failed to prove that the fake Offer of Right of Occupancy was shown to the officials of the 3rd Defendant. The Claimants left that crucial aspect of authenticating the genuineness of the title documents to the Defendants who owned the documents. In my view, the Claimants did not exercise due diligence in that regard.

Consequently, it is my view and I so hold that the Claimants failed to prove that the 3rd Defendant misled the Claimants in carrying out the transaction or were negligent in that regard. The 3rd Defendant has not been proven to breach any duty of care to the Claimants. Relief 36 (b) and (c) also fail.

In totality, Judgment is entered in favour of the Claimants against the Defendants as follows:

1. The 1st and 2nd Defendants shall refund to the Claimants the sum of ~~₦~~8,470,000.00 (Eight Million, Four Hundred and Seventy Naira) only being a refund of the purchase price paid and all other incidental expenses.
2. The 1st and 2nd Defendants shall further pay ~~₦~~5,000,000.00 (Five Million Naira) only to the Claimants as general damages.

HON. JUSTICE U. P. KEKEMEKE

(HON. JUDGE)

24/03/2022

Parties absent.

H. N. Anete, Esq. holding the brief of Sunny Worenwu, Esq. for the Claimants.

F. I. Abdullan, Esq. for the 3rd Defendant.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

24/03/2022