

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA ON THE 31ST DAY OF MARCH, 2022

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

SUIT NO. FCT/HC/CV/3164/2019

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

ROBERT ACH. UGBEDE.....CLAIMANT

AND

DR. EMEKE ONYEJEBOSE.....DEFENDANT

JUDGMENT

The Claimant's action via the Writ of Summons and Statement of Claim dated and filed on the 9th day of October 2019 is for the following:

- (i) A declaration that the Claimant is the *bona fide* and valid owner of Plot 210, Kugbo Village Extension Layout covered by an Original Offer of Terms of Grant/Conveyance of approval No. MFCT/ZA/AMAC/KUG210 dated 29/06/98 in the name of Umeka E. which was changed to an Offer of Terms of Grant/Conveyance of approval dated 16/08/06 in the name of Lilian Ere Banigo.
- (ii) An Order of Perpetual Injunction restraining the Defendant whether by himself or agents or privies howsoever

described from trespassing or further trespassing into Plot 210 Kugbo Village Extension Layout covered by an Original Offer of Terms of Grant/Conveyance of approval No. MFCT/ZA/AMAC/KUG 210 dated 29/06/98 in the name of Umeka E. which was changed to an Offer of Terms of Grant/Conveyance of Approval dated 16/08/06 in the name of Lilian Ere Banigo.

- (iii) The sum of (N5,000,000.00) Five Million Naira Only as damages against the Defendant for Trespass.
- (iv) Cost of the suit.

The Defendant was served with the Originating Processes on 25/11/19. He entered appearance through his Counsel Ojeifo V. A. Esq. vide a Memorandum of Appearance dated 2nd December 2019. He however failed, refused or neglected to file a Defence.

The Claimant gave evidence for himself and called no other witness. He is Robert Achugbede. He resides at MF/25 Supreme Court Quarters, Karu FHA, Abuja. He is an Industrial Automation Engineer. He swore to a Witness Statement on Oath on 09/10/19. He adopts same as his oral evidence before this Court. He stated thereon that he is the beneficial owner of Plot 210, Kugbo Village Extension Layout Abuja measuring about 1166.94 sq. metres marked by beacons PB 6318, 6319, 6316 and 6317. That it was originally offered to a

certain Umeka E. by virtue of an offer of Terms of Grant/Conveyance No. MFCT/ZA/AMAC/KUG 210 dated 29/06/98. That the said offer was changed on the 16/08/06 and offered to Lilian Ere Banigo by virtue of Offer of Terms of Grant/Conveyance of Approval signed by the Honourable Minister of FCT through M. B. Ishaq, Zonal Manager.

That sometimes in 2011, he paid for the said Plot of Land and acquired an interest in the said plot from Lillian Ere Banigo. That Lillian Banigo executed an Irrevocable Power of Attorney in his favour. That the original of the offer dated 29/06/98 as well as the one dated 16/08/06 and Survey Plan were handed over to him by Lillian Banigo. The size of the land and boundaries were clearly shown in the survey. He thereafter erected a dwarf fence and constructed a concrete culvert to enable access. That he has ever been in uninterrupted and peaceful possession of the said plot. That following the directives of FCT Administration to all allottees of land from Area Councils to submit their allocation and title documents to AGIS for regularisation of titles, he duly complied and submitted his title and they were duly acknowledged on 27/07/16. That he earlier conducted a search which showed the land in the name of Umeka E.

In 2017, he went to the land and noticed that there were crops on the land. He made enquiries and discovered it was the Defendant who

trespassed into his land and planted crops. He claimed it is a farm land allocated to him. The Claimant tendered Exhibits A – A5. They are:

- (1) Offer of Terms of Grant/Conveyance in the name of Emeka E. dated 29/06/98.
- (2) Offer of Terms of Grant/Approval dated 16/08/06 in the name of Banigo Ere Lilian.
- (3) Irrevocable Power of Attorney by Lilian Ere Banigo.
- (4) Two Survey Plan of Right of Occupancy.
- (5) Acknowledgment of document for regularization.
- (6) Search report dated 31/05/16.

Under cross-examination, the Claimant answered as follows. That it is Exhibit A2 the Irrevocable Power of Attorney that gives him title to the land. To a question, he answered that in 2017 his neighbour called him to say the farmer he kept to harvest his crops was chased away by one Emeke. When he got there he discovered that it was not just chasing away the farmer but Defendant was actually digging and building a fence. He reported to the Police about the trespass. He answered that the Police invited the Defendant but he refused to honour the invitation.

To another question, he answered that he paid about N1.7 Million but cannot remember the real figure. He confirmed that there is no record of his name in AMAC. The above is the case of the Claimant.

Parties filed, adopted and argued their respective Final Written Addresses. I have read and considered the Final Written Addresses of Counsel including the Claimant's reply on point of law. In the circumstance of this case, has the Claimant proved his case as to be entitled to the reliefs sought.

The Defendant raised a preliminary point which is whether the Claimant has the requisite locus standi to institute this action in his personal name. Locus standi or capacity to institute proceedings in a Court of law connotes the right of a person to appear and be heard on the question before the Court without any inhibition, obstruction or hindrance from any person or body whatsoever.

And for a person to possess the necessary capacity... such a person must show that he is affected or likely to be affected or aggrieved by the proceedings.

See ***TABIOWO VS. DISU (2008) 7NWLR (PT. 1087) P. 533 P. 537.***

I have gone through the Statement of Claim and the evidence given. The Claimant claims the piece/plot of land in issue. He alleges the Defendant trespassed on the said piece of land. It is unquestionable that he is affected by the trespass.

I have read Exhibit A2 which is the Power of Attorney. It appoints the Claimant a lawful attorney in respect of the said property in issue amongst which are that he should enter upon and take possession of the said property and to use, manage and superintend the management of same.

To develop, drains and to repair, alter, pull down any part of the building, fence and other structure on the said property. To let, sublet, mortgage or assign to himself or any other person or persons. To lease, let or grant occupation.

It is the law that a Power of Attorney warrants and authorises the Donee to do certain acts instead of the Donor and so it is not an instrument which confers, transfers, limits, charges or alienates any title to the Donee, rather it could be done by the Donee for and in the name of the Donor to a third party. So even if it authorises the Donee to do any of these acts to any person including himself, the mere issuance of such a power is not per se an alienation or parting of possession so far as it is categorised as a document of Delegation. It is only after he leases or conveys to a 3rd party that there is an alienation.

See **AYATU ABU VS. ABDULLAHI E. KUYABANA & ORS (2002) 4 NWLR (PT. 758) 599.**

UDE VS. NWARA (1993) 2NWLR (PT. 278) 638.

However a representative Claimant such as in this case enjoys an unfettered powers as *dominus litis* until judgment. The Court cannot strikes out or dismiss an action just because the Claimant did not obtain leave of Court to sue in a representative capacity. Paragraph 12 of Exhibit A2 state that *delegatus non potest delegare* does not apply in this case.

See **OGUNYOMBO VS. OKOYA (2002) 16NWLR (PT. 193) 223.**

In my humble view, the Claimant has Locus standi to institute this suit and I so hold.

On the propriety of the Defendant resting his case on that of the Defendant is entirely at the Defendant's pleasure. It is not an issue borne out of the pleadings or evidence. It is academic and I am not interested in a wild goose chase. I shall therefore discountenance same.

The main issue for determination is whether or not the Claimant has proved his case so as to be entitled to judgment.

A party must prove its case on credible evidence. It is not at liberty to make a case or rely on the weakness of its opposite party or in the

instance case where there is no evidence from the Defence but the truth is that the Defendant elicited evidence from the Claimants during Cross Examination.

The Claimant seeks for a declaration of title as owner of Plot 210 Kugbo Village Extension Layout covered by an Original Offer of Terms/Conveyance of Approval No. MFCT/ZA/AMAC/KUG 210 dated 29/06/98.

From the pleadings and evidence, the Claimant's root of title is the Exhibits A & A1 i.e. the original Offer of Grant/Conveyance dated 29/06/98 in the name of Emeka E. which was subsequently changed on 16/08/06 and offered to Lilian Ere Banigo. The said Ere Banigo after the payment of valuable consideration donated a Power of Attorney Exhibit A2 to the Claimant.

Under Cross Examination, the Claimant said that it is the Exhibit A2 the Power of Attorney that gives him title to the land. The law is that a Power of Attorney which confers power on a donee to execute any instrument in respect of the Donor's land is a registrable instrument, where it does not confer such a power, it is not registrable.

See ***ABU VS. KUYABANA & ORS (2002) 4 NWLR (PT. 758) 599 at 614.***

I will again have recourse to Exhibit A2. In paragraphs 3 and 8 of the Exhibit A2, the Donee has power to execute any instrument in respect of the Donor's land.

Exhibit A2 was tendered for the purpose of proving title to the land as admitted by the Claimant himself in evidence. It is therefore for all intents and purposes inadmissible as it is not registered. Exhibit A2 was wrongly admitted. It is hereby discountenanced and expunged from the record.

I shall succinctly refer to the case of **MADU VS. MADU (2008) 2-3 SC (PT. 2) 109 at 138 paragraph 15 – 30** to settle the issue of ownership of the subject matter in issue.

The supreme Court held:

“Be it noted that it is well settled that the ownership of land comprised in the Federal Capital Territory Abuja is absolutely vested in the Federal Government of Nigeria vide **ONA VS. ATANDA (2000) 5 NWLR (PT. 656) Page 244 at 267**. The Minister of the FCT is empowered by Statutes to grant Statutory Right of Occupancy over land situate in the FCT to any person...”

Ownership of land within the FCT vests on the Federal Government of Nigeria. The Claimant has failed to produce any instrument of grant conferring title on him.

Although in proper cases, unchallenged oral evidence of a party as in this case establishing his claim has been held to be sufficient proof, where, however the evidence is self-defeating and unacceptable as in this case, the Court is not obliged to act on it.

There is no proof whatsoever that the Plot in question was allocated to Claimant or his predecessor in title by the Hon. Minister of the FCT.

See **ANTNA INDUSTRIES NIG. LTD VS. N B C I (1998) 4 NWLR (PT. 546) 357 SC.**

The Claimant has failed in my view to prove his case so as to be entitled to the relief sought. The Claim fails and it is dismissed.

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HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
31/03/2022

Appearances:

Parties absent.

Kayode Konalafe, Esq. for the Defendant.

Abu Muazu, Esq. now appears for the Claimant after Judgment has been delivered.