

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO. FCT/HC/BW/CV/162/2020

BETWEEN:

FERGUSON UGOCHUKWU

(Suing through his Lawful Attorney of PATIENCE ROLAND) PLAINTIFF

AND

1. OFFICER PAUL (08035921506)
(KUBWA AREA COMMAND OFFICE, FCT POLICE COMMAND-ABUJA)
2. COMMISSIONER OF POLICE (FCT)
3. MRS. PATIENCE
4. UNKNOWN PERSONS DEFENDANTS

JUDGMENT

DELIVERED ON 1ST MARCH, 2022

The Claimant in this suit brought this action by Originating Summons wherein his claiming against the Respondents as follows:-

A. An order for the recovery of Possession of Plot 900A of about 1000SQM, Chikakore, Byazhin Layout-Abuja on the ground that the Plaintiff is entitled to possession and that all the persons in occupation (are all) in occupation without his license or consent.

B. An order of the Honourable court for injunction restraining the Defendants in this suit, their privies, assigns, agents and or whosoever persons connected with the Defendants from trespassing and from further arresting the Plaintiff and or any interference on the land known as plot 900A of about 1000SQM, Chikakore, Byazhin Layout-Abuja.

C. An order of the Honourable Court that the Plaintiff is entitled to possessory right and is in rightful possession of all that plot of land known as plot 900A of about 1000SQM, Chikakore, Byazhin Layout-Abuja.

D. An order of injunction restraining the 1st and 2nd Defendants from arresting and further detaining the Plaintiff and his done and donor under any guise of any kind over their exercising their claims of possessory right and ownership over plot 900A of about 1000SQM, Chikakore, Byazhin Layout-Abuja.

The Originating Summons was supported by an affidavit of 8 paragraphs deposed to by one Shamsudeen Adeleke thus:-

a. That I am Plaintiff Bosom Friend in this suit and I willingly give the below facts hereby depose to and the above facts are facts within my personal knowledge and other facts known to me as given to me by the Plaintiff donor personally on 23rd June, 2020 at the Plaintiff's counsel

office in this regard, and all other facts relating to this suit which I know and experience, and which as otherwise stated and I have the Plaintiff counsel consent to depose as follows.

b. The Plaintiff is a businessman and also resident in Abuja around the jurisdiction of the Honourable court and has by power of attorney donated the said below mentioned plot of land to Patience Bello.

1. That the 2nd and 3rd Defendants is seen around Abuja, and that they are seasoned land racketeers, and without no known and or fixed house address and uses the officer of the 1st and 2nd Defendant/Respondent in taking possession and seizing peoples land in FCT without no land paper and or documentation in this regard, wherein he is also involved in all other acts of trespass on the Plaintiff land without him having any claim or possessory right to this land in this regard.
2. That the Plaintiff and Patience Bello has been arrested by the 1st Defendant severally over this plot of land for exercising his bonafide ownership and claim over this land by the officers of the 2nd Defendant under the leadership of 2nd Respondent/Defendant and under the illegal instruction of the 3rd Respondent, and most especially the Plaintiff was arrested in June 2020 and

11th to 15th April, 2020 by all the 1st Defendants over his bonafide exercise of his claim to this land.

3. That when the Plaintiff was arrested over his land ownership by the office of 2nd Defendant / Respondent and the 1st Defendant who is also a policeman, the Plaintiff was detained at the 1st Defendant Kubwa area Command FCT cell, and the 3rd Defendant quickly moved into the Plaintiff Plot of land and kept some unknown and Fulani herders (who are herein referred to as 4th Defendant s) there are on the land without him having and or any single paper documentation, and or any claim or possessory right over this land.
4. That the Plaintiff donor was allocated the above described plots of land by the Bwari Area Council, and a file was opened for this allocated plot of land in the Plaintiff donor name, and also the Plaintiff donor further strengthened his ownership of this land via an Offer of terms of grant and conveyance of provisional approval from the Bwari Area Council, and also the Plaintiff donor was issued a TDP of Right of Occupancy and then further issued receipts of statutory payments from the Bwari Area Council, and then also the Plaintiff donor has regularize his ownership of the aforementioned land in this regard and since the

outright sale of this land from the Plaintiff donor to the Plaintiff over 4 years ago, the Plaintiff has since been in occupation and possession of the plots of land known as Plot 900A of about 1000 SQM. Chikakore, by Byazhin Layout-Abuja.

5. That a copy of the Plaintiff executed power of attorneys and deed of assignments with his donor and later the Plaintiff done documentation/power of Attorney and all the above described abovementioned documents are hereby pleaded as annexure A and shall be relied upon at the trial of this case and notice is hereby given to any of the Defendants to produce any of this document in their custody.
6. That in respect of the above, the Plaintiff even after being in possession of aforementioned plot of land for over 4 years and even after taking ownership/possession of this lands in this regard for a long period of time, took further steps to develop and protect the land via fencing of same in this regard.
7. That most especially the unknown persons and Fulani Herders put into possession in the Plaintiff plot of land by the 3rd Defendant, under the control of the 3rd Defendant, acts of trespass on this land is in continuance and if not restrained and evicted out of

the plot of land of the Plaintiff by the Honourable court, they will further take steps that are inimical and or cause harm to the neighbours as present around the plot of land of the Plaintiff, who are monitoring and keeping watch over the said plot of land.

8. That I make this oath in good faith believing the contents to be true and correct and in accordance with the oaths law for the time being in force.

Annexed to the said affidavit is one Exhibit marked Exhibit 'A' that is the Power of Attorney Between the parties. Beside these processes, the Claimant also filed a written address in accordance with the rules of court. The Defendants were served with the processes including hearing notices but they never neither put on any appearance nor file a counter to the Claimant affidavit. When the matter came up for hearing on 20th October, 2021, counsel to the Claimant adopted his written address and urged the court to enter judgment in favour of the Claimant.

I have read through all the processes filed and I notice that the claim of the Claimant is for a title for a piece of land known as Plot 900A measuring about 1000 SQM. Situate at Chikakore, Byazhin Layout–Abuja.

The commencement of this action by the Claimant is by Originating summons. Order 1 Rule 3 set out clearly claims that can be determine by Originating Summons for case of reference, I shall reproduce here under order 1 rule 3 (1) & (2) of the rules of this court.

3(1) Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by Originating Summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by Originating Summons for the determination of such question of construction and for a declaration as to the right claimed.

As I earlier said in this judgement elsewhere the claim of the Claimant is for title to land. There are no questions presented to this court or raised by the Claimant in the Originating Summons. Neither is the court called upon to determined the construction of any instrument.

In similar vein, there is no claim by the Claimant urging the court to make a declaration as to any right claimed under any instrument or deed or enactment or will.

An Originating Summons can only be used to commence an action wherein the court is called to interpret a document, an instrument, or an enactment. In other words, an Originating Summons is used to determine non-contentious matter or matter that may not require the calling of evidence to determine any question or claim. Where the court receives that the claims in the Originating Summons are controversial, contentious and require the calling of evidence to prove facts in issue, then the court must decline to determine the case on the Originating Summons. In the instant case, I hold that there is a need to call evidence to prove the case of the Claimant as the claim therein contained is contentious.

In the light of this, I shall decline to enter judgment for the Claimant based on the Originating Summons. Order 5 Rule 1 of the rules of this court empowers the court to treat the non-commencement or non-compliance of the Claimant in commencing this action with the rules of this court as an irregularity and as such, I will not set aside or strike out the Claimant's Originating Summons for non-compliance. I shall rather invoke the provisions of Order 2 Rule 3 (3) of the

rules of this court and order that the Claimant file a writ of summons and a statement of claim. He shall serve the Defendants the said processes as required by the rules of court. That is the judgment of the court.

APPEARANCE:

Ihensekhien Samuel, Esq. for the Applicant

The Defendants are not in court.

Sign
Hon. Judge
01/03/2022