

**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/CY/4346/2013

BETWEEN:

1. SCHMA INTERNATIONAL AGENCY NIG. LTD
2. ERIC O. ETEFIA CLAIMANTS/RESPONDENTS

AND

1. MRS. CHRISTY ETEFIA
2. LUCKY ETEFIA ONOME
3. ESTHER OGHENEKPOBO ETEFIA DEFENDANTS/APPLICANTS

JUDGMENT

DELIVERED ON 31ST JANUARY, 2022

The 1st Claimant in this case had filed a writ of summons Against the Defendants claiming in the main the following reliefs:-

- a. An order of this Honourable Court declaring that the 1st Claimant is the rightful owner of the property known as Plot No. 28 Doma Station Layout 1, Phase 1 behind Doma Filling Station, Gwagwalada, Abuja and its appurtenances.
- b. An order of perpetual injunction restraining the Defendants, their agents, servants, privies or whoever is acting on their instruction or on behalf from further encroaching or in any way disturbing the possession of the 1st Claimant's property known as Plot No. 28 Doma Station Layout 1, Phase 1, behind Doma Filling Station, Gwagwalada, Abuja and its appurtenances.

- c. An order for recovery of possession of the premises known as Plot No. 28 Doma Station Layout 1, Phase 1, behind Doma Filling Station, Gwagwalada, Abuja and its appurtenances from the Defendants.
- d. An order of perpetual injunction restraining the Defendants from continuing use and occupation of the said premises.
- e. An order of perpetual injunction restraining the Defendants from further letting, renting or leasing any part of the said premises to sub-tenants or lasses.
- f. The sum of Ten Million Naira (N10, 000,000.00) only as general damages for use, occupation and holding over the said premises.
- g. The sum of Five Million Naira (N5, 000,000.00) only as special damages.
- h. The sum of One Million Naira (N1, 000,000.00) as cost of the suit.
- i. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

In the cause of trial and by the leave of the court, the Plaintiff joined the 2nd Plaintiff as parties to this case. The Defendants were served with the amended processes in this case and they duly filed and served on the Plaintiff their Defendants' joint statement of defence. The matter went into full trial. The Plaintiffs called three witnesses tendered exhibits and close its case. The Defendants on their part called one witness. They also tendered exhibits and closed their case. Thereafter, counsel to parties filed and adopted their written addresses.

The case of the Plaintiffs is that on the 18th June, 2012, the 2nd Plaintiff executed a deed of assignment as well as a power of attorney transferring possession, title and right of ownership over a four bedroom bungalow with five numbers five bedroom self contained and a Boys Quarters situate at Plot No. 28 Doma station layout 1 Phase 1 Behind Doma filling Station Gwagwalada Abuja to the 1st Plaintiff. The 2nd Plaintiff also signed a notice of sale and transfer the ownership of the property to the 1st Plaintiff. In a bid to take possession of the property the 1st Plaintiff Issued to the Defendants seven days notice to quit and a notice to tenant of owners intention to recover possession of the premises from the Defendants.

The Defendants did not vacate the premises and for that reason make the Plaintiff filed this suit.

The Defendants on their part admit that they are in possession of the property not as tenant but as owners jointly with the 2nd Plaintiff having invested over N180, 000.00 (One Hundred and Eighty Thousand Naira Only) to the purchase and development of the property.

They also aver that they have exercise right of ownership of the property by letting part of the property out to tenants and collected rent which was used as school fees for the 2nd and 3rd Defendants as well as upkeep for the family. The Defendants therefore counter claim against the Plaintiffs as follows:-

1. A declaration that the counter Claimant is a joint owner of the property in question.

2. A declaration that nobody including Mr. Eric O. Etefia can dispose of the property without the prior consent of the counter-Claimant.
3. An order of perpetual injunction restraining the Plaintiff/Defendant to counter – claim, his agent, privies or anybody acting in his behalf from entering the property in contention.
4. An order of this Honourable court to set aside the purported sale of the property as such sales is null and void.
5. An order directing the Plaintiff/Defendant to counter claim to pay to the counter – Claimant the sum of N2,000,000 as a general damages for the pain, inconveniences and the psychological trauma undergone by the counter –Claimant as a result of the action of the Plaintiff/Defendant to counter - claim.
6. N500, 000 cost of litigation.

The Plaintiffs filed a reply to the joint statement of defence as well as the counter claim wherein the Plaintiffs simply denied all the averment in the Defendant statement of defence and counter claim.

I have carefully read all the processes filed in this case and listened to the witnesses give evidence in this case.

Having equally diligently read the exhibits tendered by the parties in this case. This is one of the unfortunate cases with a checkered history.

It is unfortunate because the property in issue is being disputed between members of a family who ought to be united to forester a better society. The matter was filed in 2013 and had suffered a

Myraid of adjournment and indifference thus keeping the parties in court for inordinate period.

The claims of the Plaintiffs in the main is for the recovery of the premises situate at and known as Plot No. 28 Doma Station Layout 1 at Phase 1, Behind Doma filling Station Gwagwalada – Abuja. While the Plaintiff, particularly the 1st Plaintiff assert that title to the property has passed to it by the execution of exhibits AA1 and AA2 in its favour by the 2nd Plaintiff, the Defendants asserts that the 2nd Plaintiff cannot validly passed title to the 1st Plaintiff without their consent as the Property in issue is Jointly owned by the 2nd Plaintiff and the Defendants. They also asserts that they are also owners, are in possession and have been exercising right of ownership and not tenant over the property in issue. To my mind, I think in order to determine this matter, the court must first establish in whose hand the title to the property in issue resides. It is only after titles have been determined that this court will be in a position to determine the recovery of possession. As I said earlier, the case before this court relates to title to all that piece of land known as Plot No. 28, Doma Station Layout 1, at phase 1 behind Doma Filling Station Gwagwalada Abuja. The 1st Plaintiff asserts that the property was acquired by it by a deed of assignment between it and the 2nd Plaintiff and the property is said to be covered by the customary certificate of occupancy. In addition, the 1st Plaintiff further avers that the 2nd Plaintiff executed in its favour by way of donation a power of attorney over the same property. A by forkered situation arises in this case.

In one breath the 2nd Plaintiff divested itself of any interest or power of ownership over the property. In the second breath the 2nd Plaintiff after divesting itself of ownership of the property proceeded to donate the said property vide a power of attorney to the self new owner of the property.

To prove its title the 1st Plaintiff tendered a deed of assignment which was tendered in evidence and marked as exhibit AA1, he also tendered a power of attorney which was marked and admitted in evidence as exhibit AA2. These two exhibits form the fulcrum upon which the title of the 1st Plaintiff over the land rotate. In Law a party may prove title to land in one or more of the five ways set down by the superior court.

In *Nwokorobia V. Nwogu* (2009) 10 NWLR (Pt. 1150) 553 at 556 the Supreme Court set out the five ways as follows:-

- a. By traditional history (evidence); or
- b. By production of documents of title; or
- c. By acts of long possession and enjoyment of the land; or
- d. By acts of a person claiming the land e.g. by selling, leasing or renting; or
- e. By proof of possession of connected or adjacent land.

As I said earlier in this case, a party in order to succeed need not prove all the ingredients or conditions. It will be enough if he proves one or more of the ingredients. In the instant case, the 1st Plaintiff is relying on the deed of assignment and power of attorney to prove its title. As PW1, the 1st Plaintiff showed that the said exhibits AA1 and AA2 which are the deed of assignment and power of attorney

respectively where issued to him by PW2 who is the original owner. The PW2 affirm or corroborated the evidence of the PW1 by showing in his evidence that he was the owner of the property in issue and he actually assign his interest in the property and divested itself of same by executing exhibits AA1 and AA2. The original ownership of the land on the point view of the Plaintiffs resides with the 2nd Plaintiff.

The onus remains with the 1st Plaintiff to prove that he acquires the 2nd Plaintiff interest in the property and show how it acquired it. I have carefully examined exhibit s AA1 and AA2.

Exhibit AA1 is the deed of assignment executed by the 2nd Plaintiff in favour of the 1st Plaintiff. The question is whether the said exhibit as it stands is a document which the court can rely on to determining the ownership of the property in favour of the 1st Plaintiff. Where a document is sought to be relied upon by the court in evidence it must pass the test of admissibility. To pass this test, a document must be pleaded by the party who is seeking to rely on it, it must be relevant to the determination of the question in issue and it must be in a state of being admissible in law see the case of P. D. P & Anor V. Kawuwa & Ors (2015) LPELR 26044 (C. A)

The document must pass all these three test before the court can consider it in the cause of its Judgment. See the case of Oluyemi & Anor V. Asaolu & Ors (2008) LPELR 4772 (C.A).

Even when it is admitted in evidence, the court can still expunged it from it record in the cause of writing its Judgment when it find the

document not to have fulfilled the condition set above. See the case of INEC V. Ray (2004) 14 NWLR (Pt. 892) 92 @ 105.

Exhibits AA1 and AA2 are documents transferring and or touching on title to land. The 1st Plaintiff has chosen this documentary to anchor its claim to the title to the land. The onus is on it to show that the document actually can be relied on by the court to determine the case. Section 16 Land Instrument Registration Law of Northern Nigeria applicable to the Abuja Federal Capital Territory provides that all instruments relating to transfer of title to land must be registered for it to be admissible in court. In *Maigwandu V. Maradun & Anor* (2018) LPELR – 43982 (C. A) The court in dealing with such evidence held as follows:-

A registrable instrument is a document affecting land, whereby one party confers, transfers, limits, charges or extinguishes in favour of another party any right of title to or interest in land and includes a certificate of purchase and a power of attorney under which any instrument may be executed but does not include a will.

Therefore, once a document purports to transfer and or confer interest in land or howsoever described, it becomes an instrument that must be registered. But where the document does not confer title to land it need not be registered. See *Orianzi V. A. G. Rivers State* (2017) 6 NWLR (pt. 1561) 224 at 283.

In *Obienu V. Okeke* (2006) 16 NWLR (Pt. 1003) 225 at 239 – 240, it was held that *“the admissibility or otherwise of an unregistered registrable instrument depends on the*

purpose for which it is being sought to be admitted. If it is being sought for the purpose of proving or establishing title, to land or interest in land. It will not be admissible under the land registration Act. However, if it is tendered to show that there was a transaction between the parties, it will be admissible”.

In the instant case, the two instruments namely the power of attorney and the deeds of assignment are not registered as required by law. They were not tendered to show that money was paid by the 1st Plaintiff to the 2nd Plaintiff, rather they were tendered to prove that title has passed from 2nd Plaintiff to the 1st Plaintiff. Per force of law, they must comply with the provision of the land instrument Registration law before they can be admissible in law and before the court can look at it and used same to determine title.

To my mind, the 1st Plaintiff has not put before the court any document to prove its title as I expunge exhibits AA1 and AA2 from the records and I cannot rely on same to determine the title of the property in favour of the 1st Plaintiff.

In essence until the said documents are properly registered, there is nothing before this court to consider in respect of the transfer of title of the land in issue from the 2nd Plaintiff to the 1st Plaintiff. I hold that the title to the Property in issue is and remain with the 2nd Plaintiff.

Now the claims of the Plaintiffs are for the recovery of possession of the property in issue from the Defendants. To require possession from a part, there must exist a contract of landlord and tenant between the parties. It is only when such a relationship exist that a landlord can issue notices to extinguishes the relationship and then approach the court appropriately to recover possession from the said tenant. In the instant case, the 1st Plaintiff has been held not to have acquired any valid title over the property in issue. It follows therefore that their exist no relationship of landlord and tenant between it and the Defendants. I hold further that the notice to quit i.e. exhibits AA4 and the notice to tenant of owners intention to apply to recover possession issued by the 1st Plaintiff were Improperly issued and I have no moment. Even if, the power to issue such notices were issued pursuant to exhibit AA2, it will make no different as the said power of attorney did not transfer any interest to the 1st Plaintiff. Turning to the 2nd Plaintiff i had earlier held elsewhere in this judgement title to the property in issue had not passed validly from the 2nd Plaintiff to the 1st Plaintiff. Has the 2nd Plaintiff a Landlord and Tenancy relationship with the Defendants. I do not think so. From the evidence before the court, the Defendants are wife and children of the 2nd Plaintiff. The Defendants came into possession of the property in issue in that capacity.

I hold that there is no evidence before the court to establish that landlord and tenant relationship between the 2nd Plaintiff and the Defendants.

Assuming there is any such relationship, there is no such valid notice before this court terminating the tenancy of the Defendants from the 2nd Plaintiff.

In view of this, I am unable to grant the reliefs of the Plaintiffs and the case of the Plaintiffs fails.

I shall proceed to consider the counter claim of the Defendants. The law is very sacrosanct that a counter claim is distinct from the main claim of the Plaintiff. The counter Claimant had averred in their counter claim that they are joint owner of the property in issue with the 2nd Plaintiff and that the 2nd Plaintiff cannot dispose off the property in issue without the consent of the counter Claimant. This assertion is contained at paragraph IV of the counter claim as well as paragraph 17 of the statement of defence. How did the Plaintiffs respond to this? The answer is contained in paragraphs 13 of the Claimants reply to the Defendants joint statement of defence and counter claim as well as paragraph 1 of the Plaintiffs defence against the Defendants/counter - Claimants claim. For emphasis I shall reproduce the two paragraphs anons :-

13 "The 1st Claimant is not in the position to admit or deny paragraph 17 of the joints statement of defence of the 1st Defendant/Counter Claimant and hereby put her to the strictest proof of same.

1. "The 1st Claimant is not in the position to admit or deny paragraphs ii, iii, iv, and v of the counter - claims of the Defendants/counter - Claimants and hereby put them to the strictest proof of same.

A party who intends to deny an averment in the pleading of an adverse party must clearly deny averment in very clear terms. He must not prevaricate or be evasive. Where he fails to clearly deny an averment, he is deemed in law to have admitted the averment. In Erebor & Anor V. Eremeh & Anor (2020) LPELR 49671 C. A. Biobele Abraham Georgewill J. C. A at 46 – paragraph c. Held as follows: *“The law is that a party who intends to deny an averment of fact in the pleading of the adverse party must clearly do so since mere evasive denial or not being in position to admit or deny does not amount to any effective denial of the averments. In law facts not expressly denied are deemed admitted and there is no further obligation on the party whose averments are either not denied and are deemed admitted or whose averments are outrightly admitted to prove those admitted facts”*

In the instant case, flowing from the pleading or averment of the 1st Plaintiff at paragraphs 13 of reply and at paragraph 1 of defence to counter claim. It is obvious that the 1st Plaintiff did not deny the assertion of the 1st Defendant that she contributed one hundred and eighty thousand naira towards the purchase and development of the property in issue. On the part of the 2nd Plaintiff who ordinarily should have the facts at his disposal he was silent. He never denied in anyway material particular the clear averment of the 1st Defendant relating to her contribution towards

the purchase and development of the property in issue. He was not only silent in his pleading on this but he was taciturn on it. All he did was feebly said in his evidence at paragraph 6 of the adopted witness statement on oath.

6 “That the 1st Defendant/counter Claimant did not contribute any money towards the purchase or the improvement of the said property”

This piece of evidence is not borne out of pleadings. Evidence before the court that is not supported by pleadings goes to no issue. See the case of Borishade V. N. B. N. Ltd (2007) 1 NWLR (Pt. 1015) 217.

In view of this, I hold that the averment of the 1st Defendant /Counter Claimant that she contributed One Hundred and Eighty Thousand Naira towards the purchase and development of the property in issue, having not been contradicted by the Plaintiff need no further prove. It is admitted as the truth and I say no more. In view of this, I hold that the 1st Defendant has a vested primary interest in the property in issue; which interest she has not waived nor abandoned. In the light of this, I find that the 2nd Plaintiff cannot dispose off the property in issue without the consent and approval of the 1st Defendant. I also hold that the 1st Defendant has not and never granted her consent to the 2nd Plaintiff to dispose off the property in issue and transfer same to the 1st Plaintiff. Any transfer by the 2nd Plaintiff of the property in issue to the 1st Plaintiff without the consent and authority of the 1st Defendant is void and I so hold.

In the light of this, I made the following orders:

1. I declare that the 2nd Plaintiff and 1st Defendant hold the property in issue jointly as co-owners.
2. I declare that the 2nd Plaintiff cannot dispose the property in issue without the consent of the 1st Defendant.
3. I set aside in its entirety the purported transfer and assignment/donation of power of attorney over the property in issue by the 2nd Plaintiff to the 1st Plaintiff.
4. I hereby restrained the 1st Plaintiff, its agents, privies or anybody claiming from or through it from meddling with the property in issue.
5. I hereby award the sum of N1, 500,000.00 as general damages to the counter Claimant
6. I award the cost of N100, 000.00 as they said cost follows event.

APPEARANCE:

E. O. Abadaki, Esq. with me E. F. Osinachi, Esq. for the Claimant

T. N. Nwosu, Esq. for the Defendant

Signed

Hon. Judge

31/01/2022