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/CV/777/2021

BETWEEN:

UKPONG D. UMOH --- CLAIMANT

AND

1. MINISTER, FEDERAL CAPITAL TERRITORY
2. SAUDATU ABDULLAHI --- DEFENDANTS

JUDGMENT

DELIVERED ON THE 16TH FEBRUARY, 2022

The claim of the Plaintiff against the defendants in this suit as can be glean from the plaintiff's amended statement of claim are as follows:

a. A declaration that the Plaintiff is the rightful owner of plot 445 Cadastral Zone A1 Garki Abuja.
b. A declaration that the acts of the 2nd defendant in entering the Plot of the Plaintiff and using the materials placed on the plot by the plaintiff is a trespass to the land of the plaintiff.
c. An Order of perpetual injection restraining the 2nd defendant by herself, her agents, servants, assigns or howsoever described from trespassing into the plaintiff's plot.
d. An Order directing the 2nd defendant to pay the sum of Two Hundred and Seventy-five Thousand Naira to the plaintiff being the cost of the 20 trips of chippings, 20 trips of sand, 50 pieces of

white wood and 50 pieces of 3 by 3 planks which the 2nd defendants has used.

e. A declaration that the title of the plaintiff over the said plot 455 Cadastral Zone A1 Garki – Abuja is till subsisting.
f. An Order of Court directing the 1st defendant to update its record to reflect the fact of the allocation of Plot 445 Cadastral Zone A1, Garki – Abuja to the Plaintiff.
g. The sum of Ten Million Naira as general damages against the defendants jointly and severally in favour of the Plaintiff.
h. Cost of this suit.

In the pleadings to support the claim the plaintiff avers that he applied for the allocation of land within the F.C.T. where upon a piece of land located at plot 445 cadastral zone A1 Garki Abuja was allocated to him vide a certificate of occupancy dated 3rd may 1989. The statutory Rights of occupancy over the said land commence from 11/8/1982.the plaintiff submitted a building plan for approval to the 1st defendant who acknowledge receipt dated 2/4/1988. According to the plaintiff, he dump building materials on the site awaiting the approval of the building plan by the 1st defendant to commence building on the land. According to the plaintiff, he lives outside Abuja and each time he visited the 1st defendant to find out if the building plan has been approved so that he can commence construction officers of the 1st defendant kept telling him his application was receiving attention. On 20/3/2008, he visited the land and saw workers using his building materials to do work on the land.

He chases them away but found from the workers that they were working on the land on the instruction of the 2nd defendant. That he

stayed back in Abuja for two weeks but could not meet the 2nd defendant. He further avers that during the re certification exercise, the 1st defendant did not allow him to participate. Based on advise , he engage his lawyer to carry out a search in the 1st defendants office to determine the current status of his land but the search report showed that nothing relating to him was found on the record of the 1st defendant. That it was after he returned to his state Akwa Ibom state that the 2nd defendant re mobilize workers to the land in dispute and continue her act of trespass. Finally, that no letter of revocation of his right of occupancy over his land was ever served on him by the 1st defendant. The defendants were served with the processes and they filed their various defences. The 1st defendant defence to the claim of the plaintiff is to the effect that the land in dispute was allocated to one Omonogun Olanrewaju on 28/11/1996 pursuant to an application dated 10/7/1993.

That the said Omonogun Olanrewaju accepted the offer of the grant vide a letter of acceptance dated 02/12/1996. They admitted that the plaintiff was allocated the plot of land in dispute on 08/11/1982 but the plaintiff failed to comply with clause four of the terms of the grant. That is to say, the plaintiff failed to develop the land within two years of the allocation and the 1st defendant in exercise of his power revoked the plaintiffs Right of occupancy. that in 2005, the 1st defendant carry out are certification exercise and it was the 2nd defendant that submitted a register power of attorney and the old C. of O. issued to Omonogun Olanrewaju by the 1st defendant and thereafter the 1st defendant issued the 2nd defendant a certificate of occupancy over the land in dispute on 18/7/2005.

That the plaintiff did not partake in the re certification exercise and being in breach of the terms and conditions of the grant has no claim over the land in dispute. That the 1st defendant is entitle in law to statutorily enter any plot of land in the FCT and deal with same in the interest of development in the course of its official duties. That the claim of the plaintiff should be dismissed as it is vexations, frivolous, lacking in merit and an absolute waste of time. In the amended statement of defence of the 2nd defendant, the 2nd defendant denied the claim of the plaintiff in its entirety and set up a defence.

In his defence the 2nd defendant avers, that on 28/11/1996 the ministry of the federal capital territory granted a right of occupancy over the land in dispute to Omonogun Olanrewaju. That on 31/12/1996 the F.C.D.A through its development control division gave its approval to omonogun Olanrewaju to set out and commence construction on the land in issue. On 05/2/1997 the minister of the F.C.T. gave a certificate of occupancy No: FCT/ABU/KG750 to Omonogun Olanrewaju and same was registered as NO:FC134 at page 134 volume 71 (certificate of occupancy) in the land register. On 13/12/1996 the said Omonogun Olanrewaju donated to the 2nd defendant an irrevocable power of attorney over the land in dispute and same was registered accordingly.

On the same 13/12/1996 a deed of assignment was executed between the 2nd defendant and Omonogun Olanrewaju over land in dispute and the 2nd defendant was put into absolute possession accordingly and commence and build up the land based on approve building plan. That from that time till date the 2nd defendant has been exercising various Right of occupancy and has been paying necessary fees on demand to the 1st defendant. That's a result of re certification exercise the 2nd

defendant was issued a certificate of occupancy in her name, that is to say Saudat Abdullahi by the 1st defendant based on the power of attorney donated to her. That she changed her name from Hajiya Asabe to Saudatu Abdullahi because of her marriage in 2002. That at no time did Olanrewaju informed her that the land was allocated to the plaintiff and the plaintiff has never contested title with her for over twelve years since 1996 when she took possession of the land in dispute. That the plaintiff stood by since 1982 and allowed the 2nd defendant to occupy the land for about twelve years without protest and as such is guilty of lachess and Acquiescence. That the 2nd defendant took effective possession of the land on December 13th 1996 and built since and that from 1982 to 2008 when the suit was brought is over twenty seven years and therefore the plaintiff suit is statute barred. The 2nd defendant therefore raise a counter claim, relying on all the averments in the pleading in her statement of defence. Wherefore she claims the following reliefs;

a. On 28th November, 1996 and by virtue of a letter with reference number MFCT/LA/93/KG 750 the Ministry for Federal Capital Territory gave an offer of terms of Grant/Conveyance of Approval to Omonogun Olanrewaju as a result of his application for statutory Right of Occupancy on the 10th of July, 1993 and the 1st defendant gave approval of Grant of Right of Occupancy in respect of plot of about 750m2 (plot No. 445) within Garki, A1 District, Abuja to the said Omonogun Olanrewaju and the said letter of offer of Grant shall be founded upon or relied upon at the trial; Omonogun Olanrewaju accepted the offer and the letter of acceptance dated 22nd of December, 1996 and this shall be relied upon at the trial.

b. Development Control Department of Federal Capital Development Authority, Abuja by a letter with reference number FCDA/DCD/BP/RSD/4439 dated 31st December, 1996 gave Omonogun Olanrewaju a conveyance of approval for Development plan and this shall be relied upon at the trial.

The plaintiff upon being served with the counter claim filed a defence denying all the allegation therein and urge the court to dismissed the counter claim,

In prove of their case, the plaintiff gave evidence in person as sole witness and closed his case. He also tendered four exhibits The 1 defendant on its part called one witness who gave evidence as DW1 and tendered seven exhibits and closed its case. The 2 defendant gave evidence in person tendered twenty three exhibits and closed her case All the witnesses were duly cross-examine there after parties filed written addresses which were adopted in court on 3\12\2020.

I have carefully read all the processes filed by the parties in this suit. I have Similarly read the evidence proffered by the witnesses in this case via there adopted written statement on oath.

I have in similar vein carefully peruse all the exhibits tendered in this case the 1st defendant raise one issue for determination. while the 2nd defendants Also raise five issues for determination. The plaintiff on his part raise five issue for determination. The 2 defendant raise some fundamental issues which the court cannot close its eyes on and these issues if resolved will put this case to bed completely. I shall proceed to determine this suit in line with the issue raised by the 2 defendant as the issue covers those of the 2 defendant and the plaintiff.

The 2nd defendant raise the issue of the competence of the plaintiff suit.

In the first instant counsel argue that the plaintiff consequential amended Statement of claim and defense to counter claim dated 29\4\2013 and file on 6\5\2013 are incompetent and should be struck out. The reason been that the said process is not accompany by a certificate of pre-action counseling and that this was against ingrain of order 4 Rule 15 and 17 of the rules of court 2004 .counsel cited several authorities bordering on this and urge the court to hold that in disobeying the rules of court the suit of the plaintiff is incompetent as the Registry ought not to have accepted the Processes for filing. Counsel also argued that the plaintiff consequential amended statement of claim was filed out of time. He argued that the court by its ruling of 20\11\2012 had directed the plaintiff to file the amended statement of claim within seven days from 21\11\2012 but the plaintiff file the process on 6\5\2013 more than six months after the order was made Counsel relied on order 24 Rule 4 and order 23 Rule 2 and 4 as well as plethora of authorities in urging the court to hold that the process was file out of time without the leave of court and as such is incompetent and urge the court to strike out same. He further argued that the said process was not marked in accordance with order 24 Rule 6 of the Rule of the court 2004. He relied on several authorities and urge the court to hold that the defect in not marking the process accordingly is fundamental and there is no consequential amended statement of claim before the court.

In all counsel argued that the rules of court must be obeyed and failure to obey the rules of court as in this case should draw a consequential sanction, in similar vein, counsel argued that the plaintiff consequential amended witness statement on oath was signed in Akwa-Ibom. Even

though the plaintiff witness statement on oath is said to have been sworn before the High court Registry Abuja. He said the witness pw1 admitted that he sign his statement in Akwa-Ibom and therefore the oath is not truthful. He relied on section 1, 2, 6, 13 of the oath Act and argued that the signing by the witness ought to be before the commissioner of oath who accordingly is to administer the oath on the witness. He further submitted that the witness statement on oath is said to be to a propose consequential amended statement of claim. A propose amended process is not a process of court. He urge the court to hold that the witness statement on oath is incompetent, Relying on the case of Okobiemen Vs. U.B.N plc [2019] 4 NWLR [Pt 1662] 265 at 276,

As I said earlier, I have had a critical study of the argument propounded by counsel in this case. The attack of the counsel to the 2nd defendant in the first prong is to the effect that the consequential amended statement and defence to counter claim is not accompany with a pre-action counseling certificate and as such it is incompetent.

Counsel in his argument invited this court to look at its record and make use of the facts in the record, I quite agree with counsel that this court is a court of record and it is at liberty to look at any document that is before it weather tendered and admitted as an exhibit or not the court is poise at all time to do substantial justice between parties. See the case of Uzodinma V. Izunaso (No. 2) (2011) 17 NWLR (pt. 1275) 30 at 75. Order 4 Rule 15 of the Rules of court 2004 specifically provides that a Writ should be accompanied by among others a certificate of pre-action counseling.

I have look at the originating process initiating this suit and I note that the Writ of Summons filed by the Plaintiff is accompany by among

others a document titled Pre-action counseling certificate signed by the Plaintiff and the counsel, the said process was served on the defendants in this case. The said Order 4 Rules 15 or any other rules of this court did not specifically provide that an amended statement of claim is to be accompany by a pre-action counseling certificate. Infact Order 4 Rule 17 clearly makes it mandatory for counsel to sign the said certificate in initiating a proceeding by way of Writ. To my mind having already filed this certificate in initiating this suit, the Plaintiff need not file another pre-action counseling certificate upon filing any further amended statement of claim or such ancillary process.

The letter of the law as evince in Order 4 rules 15 and 17 of the rules of this court 2004 is clear and Unambiguous. It will amount to a journey or a Voyage of discovery to input into this rules what it did not provide for. This counsel to the 2nd defendant is trying to do and this court is loathe and litagic to accompany him in this catastrophic Voyage. I hold that the consequential amended statement of claim did not infringe on the rules of court, as it is not the Writ of Summons that initiated this suit.

The 2nd pronge of attack on the this issue as argued by 2nd defendant counsel is that the consequential amended statement of claim of the Plaintiff was filed out of time and not in compliance with the order of court made on 20th November, 2012 and that the Plaintiff, instead of filing the process within seven days, filed same six months after obtaining the leave of the court. The law is trite, that parties cannot by consent enlarge time within which to do any act except with that leave of court.

Similarly, any process filed outside the time allowed by the rules of the court is incompetent and must be discountenance by the court. In the

instant case, I have been referred to the proceeding of court by counsel to the second defendant. He has invited me to look at the proceeding of 20th November, 2011, I have carefully look at the said proceeding and it is true that this court made an order directing the plaintiff counsel to file the amended statement of claim within seven days from the 21st November, 2011 however, I have also notice that by a ruling delivered by this court on 29th April, 2013, the court granted leave to the same Plaintiff to effect a consequential amendment of its statement of claim and defence to counter claim. This ruling was pursuant to the motion filed by the Plaintiff which motion is dated 3rd October, 2012.

Pursuant to the aforesaid ruling, the Plaintiff filed its consequential amended statement of claim and defence to counter claim on 6th May, 2013, by the ruling of court extant at the time, the Plaintiff has seven days within which to file the said amended process. Having file same on 6th May, 2013 the question is was the filing within the time allowed? Like I said, leave was sought and obtained to file the said processes on 29th April, 2013. The processes were on 6th May, 2013 from my calculation the 6th May, 2013 was the seventh days within which the Plaintiff was to file the processes and having so filed, is within time. I hold that the processes was filed as allowed by order 24 rule 4 of the rules of court 2004 the earlier leave granted on 21st November, 2012 having expired.

Another sub-issue raise by 2nd defence counsel in this issue is that the consequential amended statement of claim and defence to counter claim are merged together and as such the process is incompetent. He cited several authorities to support this assertion, my reaction to this is that the defence to counter claim is clearly separate from the amended statement of claim. I do not want to waste any further Judicial Ink on

this as I consider this argument pedestrian. In similar vein, the counsel has argued that the plaintiff failed to endorse the process as required by order 24 rule 6 of the rules of court 2004, the said order provides that whenever a pleadings is amended it shall be endorse as follows:
"Amended _____ day of _____ pursuant to order of name of Judge) dated the _____ day of _____" Indeed the said rule provide as such.

However, it must be noted that the rules of court is a hand maid of Justice; a road sign pointing to the route to attaining substantial Justice between the parties. It should not be use to defeat the end of Justice, rather it should be an aid to enhance Justice. little wonder that the draftman of the rules at order 2 rule 1 provide that failure to comply with the rules may be treated as an irregularity which, shall not nullify the proceeding. I am incline to treat the lack of endorsement aforesaid as a mere irregularity as it does not affect the substance in litigation between parties.

Finally, on this issue, the 2nd defence counsel has invited this court to hold that the witness statement on oath in this case is incompetent, in that it was sign in Akwa-Ibom as admitted by the witness and it is pursuant to a proposed consequential amended statement of claim. I have look at the process in issue and I am satisfied that it relates to a consequential amended statement of claim and not a proposed amended statement of claim. The evidence Act is very clear that there is a presumption of regularity in the swearing of the process that is, that the said affidavit was regularly sworn to before a duly authorise commissioner for oath in the High court of FCT Abuja. See 128(1) E.A document speak for themselves and the law does not admit of any oral

evidence to checkmate the content of a document. See the case of Ashaka Cement Plc V. Asharatul Mubashurun Investment Ltd (2019) LPELR 46541 S.C.

In the instant case, I hold that the witness statement on oath was regularly sworn to before a commissioner for oath of the High Court of the FCT Abuja and is competently before the court. In all, I resolve issue one (1) against the defendants.

On issue two, the argument of the 2nd defendant is that the case of the Plaintiff is cut up by the limitation Act particularly sections 2, 15 (2) and 20 thereof. He argued that a course of action by the Plaintiff arose more than twelve years before he filed the case and that same should be dismissed as it was not file within the time stipulated by law.

The claim of the Plaintiff is in the main for ownership of plot No: 445 Cadastral Zone A1 Garki – Abuja, according to the Plaintiff, the said plot was allocated to him in 1982 and a Certificate of Occupancy issued to him on 3rd May, 1989. The case of the 1st defendant is that the Certificate of Occupancy encapsulating the Right of Occupancy over the land in dispute was revoked in 2nd February, 1994 and on 28th November, 1996 it granted the Statutory Right of Occupancy to one Omonogun Olanrewaju. The case of the 2nd defendant was that on 13th December, 1996 she was granted a power of Attorney over the land by the said Omonogun Olanrewaju and based on the said power of Attorney which she registered with the 1st defendant, she was issued a Certificate of Occupancy over the land in dispute by the 1st defendant. This is in sum the case of the party, it is not in dispute that the land in dispute was granted to the Plaintiff in 1982 vide Exhibit DW4. It is also

not in dispute that a Certificate of Occupancy was issued in favour of the Plaintiff on 3rd May, 1989.

However, the point of divergent and conflict between the parties is that the said Right of Occupancy over the land by the Plaintiff was revoked by the 1st defendant on 2nd February, 1994 vide Exhibit DW6. The question is was the right of the Plaintiff ever extinguish by the 1st defendant in any way? If the answer to this question is in affirmative, then the grant made by the 1st defendant to the said Omonogun Olanrewaju who donated his power over the land to the 2nd defendant will have a sound footing, otherwise it will be difficult to locate the right of the 2nd defendant as it were over the land. Where there is a claim to title to land, the law recognizes five various ways to prove such title. In that case a claimant title to land will succeed in proving his title if he can prove one or more of the following:

a. Traditional Evidence
b. Production of documents of title, which are duly authenticated.
c. Act of selling, leasing, renting out all or part of the land, or farming on it or on a portion of it.
d. Act of long possession and enjoyment of the land and
e. Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute. See the cases Idun V. Okumagba (1976) 9 – 10 S.C 227; Nkado V. Obiano (1997) 5 NWLR (Pt. 503) 31 and Ajiboye V. Ishola (2006) 13 NWLR (Pt. 998) 628.

A claimant need not prove all the said conditions to succeed in his claim. it will be enough if he prove just one or more of the said conditions, in

the instant case the Plaintiff is relying on a grant to prove his title to the land in dispute. It is his case that the 1st defendant is his predecessor in title and that the 1st defendant granted him the title to the land in 1982 which evidence in exhibit DW4. The 1st defendant is not disputing this fact rather the 1st defendant set up a defence that it revoke the Plaintiff's title to the land in 1994 vide exhibit DW6 in exercise of its power under section 28 (5) of the land use Act 1978.

We shall turn to the said section 28 of the land use Act and examine same with a view to locating the power so exercised by the 1st defendant in revoking the right of the Plaintiff over the land in dispute. Under section 28 of the land use Act, the governor shall have the lawful right to revoke a Right of Occupancy for overriding public interest. And under section 28 (5) the governor may revoke a Right of Occupancy on the several grounds listed thereunder. Section 28 (5) (b) clearly provide that the governor may revoke a Right of Occupancy if there is a breach of any terms contained in the certificate of Occupancy among others. The 1st defendant gave evidence that it revoke the Plaintiff's Right of Occupancy over the land in dispute. In prove of this fact, the DW1 tendered exhibit DW6, Exhibit DW6 is dated 2nd February, 1994 addressed to the Plaintiff and signed by one C. K. Uganden a Deputy Director. I shall reproduce the heading and the first paragraph of the said exhibit DW6 for ease of reference.

> "Notice of revocation of Right of Occupancy No: FCT/ABU/CR/52 Held by Mr. Ukpong D. Umoh."

I am directed to inform you that the Honourable Minister of the Federal Capital Territory has using his powers under section 28 (5) of land use Act No. 6 of 1978 revoked your right and interest over the above Plot for

failure to develop the said Plot within the stipulated period of two years and even after a grace period of four years.

From the above reproduce paragraphs, the reason adduce by the 1st defendant in revoking the Plaintiff Right of Occupancy is that the plaintiff failed to develop the land within the stipulated period of two years. It will seems that this condition is contained in the certificate of Occupancy issued to the Plaintiff by the 1st defendant. This said condition is contained in paragraphs 2 (i) of the offer of terms of grant and can also be found in paragraph 4 of the certificate of occupancy. I shall also reproduce the condition as contained in the said certificate for ease of reference:

"[4] within two years from the date of the commencement of this Right of Occupancy to erect and complete on the said land the building or other works specified in detailed plans approved or to be approved by the Federal Capital Development Authority or other officer appointed by the president, such building or other works to be of the value of not less that N100,000.00. (One Hundred Thousand Naira) and to be erected and completed in accordance with such plans and to the satisfaction of the said Federal Capital Development Authority or other officer appointed by the president."

From the provision of the said condition the Plaintiff was to erect and complete a building on the land within two years. The building must be in accordance with the specified details of the approved plan which approval must be by the F.C.D.A or an authorize officer appointed by the president and such building must be valued not less than One Hundred Thousand Naira. From the evidence before the court, it is obvious the Plaintiff did not build any building on the land within two years.

However, it is also obvious that the Plaintiff was eager to develop the land in accordance with the condition contained in the document of title, this can be gleaned from content exhibit DD2. The said exhibit is an acknowledgement from the 1st defendant showing the receipt of Plaintiff's building plan.

There is no evidence that, there was an approval of the building plan by the 1st defendant. A community reading of the condition set out in paragraph 4 of the certificate of Occupancy will reveal that the building development on the land shall only be undertaking in accordance with an approved building plan. In otherwords there must be evidence that the 1st defendant had approved the building plan submitted to it by the plaintiff. There must be evidence that the plaintiff refused or failed to complete the building on the land as approved by the 1st defendant in accordance with the building plan within two years of such approval. I must make haste to say the onus is on the plaintiff to show that it has submitted a building plan to the 1st defendant for approval. This onus has clearly been fulfilled by the Plaintiff by exhibit DD2 which the 1st defendant is not disputing. The onus then shifted to the 1st defendant to show that it approved the building plan submitted by the plaintiff. Also it behooves the 1st defendant to show that the Plaintiff failed to build and develop the land in issue in accordance with the approved building plan within two years. This onus was never discharge by the 1st defendant. Having failed to discharge this onus I cannot see how the plaintiff will then be in breach of the condition which the 1st defendant is alleging and upon which it relied to exercise its right under section 28 (5) (b) of the land use Act. I hold that the 1st defendant was in haste to issue exhibit DW6 revoking the plaintiff's Right of Occupancy over the land in

dispute without first determining while the land has not been developed by the Plaintiff.

In similar vein, the DW1 in her evidence had said the 1st defendant revoked the plaintiff's Right of Occupancy because the plaintiff refused to comply with the condition of the grant namely: failure to develop the land within two years. The DW1 tendered exhibit DW6, in proof of the fact that the plaintiff's Right of Occupancy over the land in issue has been revoked. Under cross examination, the DW1 was asked to show the court where the plaintiff acknowledge receipt of the letter of revocation and her answer was "it is not written there". There is no further evidence from the defendants showing that the Plaintiff was ever severed with a letter of revocation from that 1st defendant before the re-allocation of the land to Omonogun Olanrewaju in 1996. The law is well settle that for a revocation of a Right of Occupancy over land to be complete and effective the said letter of revocation shall be given to the holder and upon such receipt, the Right of Occupancy shall be extinguished see section 28 (6) and (7) of the land use Act.

In Ononuju V. A.G. Anambra State (2009) 10 NWLR (pt. 1148) 182 at 221 the Supreme Court held thus: "It is settled law that revocation of a Right of Occupancy can only be valid if notice of same has been issued and served on the owner or occupier of the property concerned." Per Onnoghen, J.S.C as he then was, infact it has been held that the service of the notice must be personal. Where there is no evidence of service of the notice of the revocation on the owner/or Occupier the revocation notice is void and subject to be set aside by a court of competent Jurisdiction. In the instant case I hold that the notice of revocation dated 2nd February, 1994 purported to have revoke the plaintiff Right of

Occupancy over the Plot No. 445 Cadastral Zone A1, Garki Abuja was never served by the 1st defendant on the plaintiff and by that token, the said notice of revocation is hereby declared null and void. The revocation is hereby set aside.

Having resolve this issue is to determine whether the plaintiff suit is statute barred, having been cut up by the limitation Act has alleged by the defendants. The 2nd defendant had argued that the action of the plaintiff is statute barred has the self same action is challenging the act of a public officer. He relied on section 2 (2) of the Public Officers Protection Act and a plethora of authorities in pressing this point and urge the court to hold that the action of the plaintiff was brought outside the statutorily required period within which it can act. The Public Officers Protection Act at section 2 (2) provides that any action of a Public Officer can only be challenge in court within three months from the date the cause of action arose by any party who is affected by the action of the Public Officer. However, there are exception to this provision some of which are: the contract of service; action in flagrant abuse of office e.t.c in essence the public officer protection Act does not apply where the public officer has acted in flagrant abuse or violation of his office or law or where the action complained of has no trace of legal justification or where the legality of the action of the public officer is challenge, or was not carried out in accordance with the provision of the law see the cases of Nwafor V N.C.S & ors (2018) LPELR 45034 (C.A); Ahmed V Ahmed (2018) LPELR 44710 (C.A) Okolie V I.N.E.C (2017) LPELR 43405 (C.A) in any of the situation enumerated above, the Public officer does not enjoy the protection of law, in the instant case, the action complained about by the plaintiff is that the 1st defendant

unlawfully allocated his land to the 2nd defendant and the 2nd defendant has attempted to justify his action by relying on section 28 of the land use Act by saying that it actually revoked the plaintiff's title to the land and allocated it to the 2nd defendant.

As I have held elsewhere, the notice of revocation was not serve by the 1st defendant on the plaintiff as required by law. This is against the ingrain of section 28 (6) of the land use Act and several authorities to that effect. The action of the 1st defendant in issuing the notice is not in accordance with the provision of the law and is in violation of the section 28 (6) of land use Act. Having not carried out its action in strict compliance of the law, I am of the firm view that the action of the 1st defendant is not protected by the public officers protection Act. I hold therefore, that the action of the plaintiff is not cut up by the public officer's protection Act.

Now, I shall turn to the second arm of the issue of the limitation. The defendant had argued that the action brought by the plaintiff to court is cut up by the limitation law. According to the defendants the cause of action arose on 2nd February, 1994 when the plaintiff's Right of Occupancy was revoked. From that time, the plaintiff had twelve years according to the limitation Act within which to act or challenge the defendants. The defendants further argued that the action of the plaintiff was only brought on the 27th October, 2008 well over fourteen years since the revocation of the plaintiff's Right of Occupancy by the 1st defendant. There is no doubt that the limitation Act expressly provide that any action touching on claim on title to land must be brought within twelve years from the time the cause of action accrued to the plaintiff. In the instant case, the question is when did the plaintiff cause of action

accrued? It will seems that the cause of action of the plaintiff accrued on 2nd February, 1994 a date on which the notice of revocation was issued. However, this may not be so inview of the facts that the said notice of revocation was issued against the ingrain of section 28 (6) of the land use Act. Being so and as I have held earlier, the said notice of revocation is void and has been set aside.

Having so set aside the notice of revocation, I hold that the cause of action of the plaintiff did not commence on 2nd February, 1994. The question is then when did the plaintiff cause of action arise? From the pleading of the plaintiff, he got to know of the presence of the 2nd defendant on the land on 20th March, 2008. However, he filed this suit on the 27th October, 2008 to determine the date upon which a party cause of action arose, the court will have regard to the plaintiff statement of claim. however, the court is bound to consider all the processes filed by parties, the evidence adduce and every other documents in the court file to determine when the cause of action or the date on which the cause of action arose see the case of Saki V A. P. C (2020) 1 NWLR (Pt 1706) 515 at 543. The cause of action in this case at this point as I understand it, is not when the plaintiff notice the presence of the 2nd defendant in his land but when the 2nd defendant or his predecessor in title enter the plaintiff land.

From the pleadings in this case the predecessor in title of the 2nd defendant in this case that is Omonogun Olanrewaju took the possession of the land in dispute on the 22nd December, 1996 when he accepted the offer of grant of the Right of Occupancy over the land from the 1st defendant. Through the plaintiff only notice the presence of the 2nd defendant in 20th March, 2008 and filed this suit on 27th October,

2008. From 22nd December, 1996 the twelve years limitation period in accordance with the limitation Act will be the 21st December, 2008 but the plaintiff action was commence on 27th October, 2008 this is about one month three weeks and three days since the predecessor in title took possession of the land in issue. Assuming I am not correct, I shall still turn on the date of the grant made by the 1st defendant to the 2nd defendant's predecessor in title to determine when the cause of action of the plaintiff arose. From exhibit A2, the 1st defendant made the grant on 28th November, 1996 to the 2nd defendant's predecessor in title while the plaintiff's suit was filed on 27th October, 2008.

Again from the date of grant, the twelve years limitation period according to the limitation Act was 27th November, 2008 while this suit was filed on the 27th October, 2008; one month before the expiration period. I hold that base on the evidence before the court and the pleadings of parties, the case of the plaintiff is not cut up by the limitation Act and as such the plaintiff's case is not statute barred.

I therefore, hold that the plaintiff filed his case within the time allowed by law and is case is valid. The counsel to the 2nd defendant has urge this court to hold that the plaintiff's case is bad and cannot be sustained based on the equitable doctrine of lachess and acquiescence. According to counsel, the 2nd defendant has built up the land and has been in occupation of same since 13th December, 1996 when the power of Attorney was granted to her by her predecessor in title and that the plaintiff stood by all this year and did nothing to assert his right over the land only for him to file this suit on 27th October, 2008. That by this very act, the Plaintiff is guilty of standing by and therefore estop from laying

claim from the land in issue. In the case of Canal Inv. Ltd V T.C.R Ltd (2017) 3 NWLR (Pt. 1553) 441 at 466 the court per Hassan J.C.A held:
"The general rule as to estoppels by silence or standing by was laid down in Ramsden V Dyson (1886) I. R.I.H.L 129 where it was held that "if a stranger begins to build on land supposing it to be his own and the real owner perceiving his mistake abstains from setting him right and lives him to preserve in his error a court of equity will not afterwards allow the real owner to assert his title to the land." This case as cited with authority by the supreme court in Yusuf V Dada (supra). Ikeni V Efamo (2000) 10 NWLR (Pt. 720) 1.

A party who stood by, to allow a stranger to develop his land without lifting a finger to intimate him, he cannot in equity now turn round to claim the land with the development on it" see also the dictums enunciated by the court in the case of Ogunka V Shelk (2004) 6 NWLR (pt. 868) 17 at 37 – 40. In the case of Olaleye V Trustees of ECWA (2011) All FWLR (pt 565) 297 at 325 – 326 where the court held:

> "Acquiescence occurs when a person abstains from interfering when his legal right are violated, he will therefore, given a normal situation, be forbidden from asserting that legal right. The law aids those who are vigilant not those who sleep upon their right vigilantibus et non dormientibus, Jura subenivnt: Ikuomola V Oniwaya (1990) 4 NWLR (Pt. 146) 617j Yusuf V Dada (1990) 4 NWLR (Pt. 146) 657j Okpata V Ibeme (1989) 2 NWLR (Pt. 102) 208; Akanni & ors V makanju & ors (1978) 11 – 12 SC 13"

In Kayode V Odutola (2001) 11 NWLR (pt 725) 659 at 676 the supreme court spelt out the four ingredients which must be present for a plea of acquiescence or laches to be sustained. They are:

1. The person seeking to set up the plea must have made a mistake as to his legal rights.
2. He must have expended some money or must have done some act on the faith of his mistaken belief.
3. The person whose right has been infringed must know of the existence of his own right which is inconsistent with the right mistakenly claimed by the person seeking to set up the plea of acquiescence.
4. The person whose right has been infringed must have encouraged the person seeking to set up the plea of acquiescence in the latter's expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal rights."

From the above cited authority the coast is clear for this court, to determine whether the doctrine of laches or acquiescence otherwise known as estoppel of standing by is available to the 2nd defendant to defeat the legal interest of the plaintiff over the land in dispute. The first two conditions has enunciated in the case of Kayode V Odutola (supra) known doubt have came to play in favour of the 2nd defendant. From the plea and evidence adduce the 2nd defendant, believing she has acquired a legal right over the land in issue expended money in developing the land and has been in possession of the land up until 2008 when the plaintiff challenge her right.

However whether this will defeat the legal right of the plaintiff over the land in issue can only be arrived at upon a careful review of the pleadings and evidence of the plaintiff. In the consequential amendment

statement of claim at paragraphs 11, 12 and 13 the plaintiff avered as follows:

11:- The plaintiff avers that during one of such visits to the office of the 1st defendant on 20th March, 2008 and upon receiving their usual answer, he decided to visit the plot and check the state of the materials that he dropped on the plot that he saw some workers using his materials in construction work on the plot.

12:- The plaintiff further avers that he chased the workers away and stopped them from further construction; in their flight the workers said they were commissioned by the 2nd defendant to do what they were doing.

13:- The plaintiff avers that he waited all week in Abuja paying daily visit to the plot with a view to meeting with the 2nd defendant to no avail. Yet at paragraph 20 of the plaintiff amended statement of claim, the plaintiff avered as follows:

20:- The plaintiff avers that anytime he travels back to AKwa-Ibom state the 2nd defendant will remobilize to site to continue her acts of trespass.

The Plaintiff's evidence in proof of this fact were in accordance with his pleading as reproduce above. These pieces of evidence were never tested nor shaking by way of cross-examination. In essence the plaintiff only came to know of the presence of the 2nd defendant on the land in dispute in March, 2008. According to the 2nd defendant she started building the house in 1996 and at no time did she see the plaintiff while she was building until 2008 when he surface and lay claim to the land. This evidence clearly shows that the plaintiff did not know of the development of the land by the 2nd defendant until 2008 and did not encourage in anyway the 2nd defendant to expend money in developing

his land while he stood by. I do not subscribe to the view that the view that the trespass on the land by the defendants commence longer that this period.

To my mind the plaintiff was timeous and wasted no time in taking appropriate legal steps to ascertain his right of ownership over the land immediately he notice the activities of the 2nd defendant. I hold therefore that the plaintiff is not guilty of standing by or encouraging the 2nd defendant to develop his land. Therefore he is within the province of his right when he filed this suit as he was not estopped in any way in bringing this action. It remains now to be examine the claims of the plaintiff for special damages the plaintiff had claim in his paragraphs 24 (d) as follows:

D:- An order directing the 2nd defendant to pay the sum of Two Hundred and Seventy-Five Thousand Naira to the plaintiff being the cost of the 20 trips of chippings, 20 trips of sand, 50 pieces of white wood and 50 pieces of 3 by 3 planks which the 2nd defendant has used. This head of claim of the plaintiff is in the realm of special damages, where a party's claim is in special damages as in the instant case, he must not only plead it specifically but must prove it strictly see the case of Union Bank of Nig. Plc V Alh. Adams Ajabule Adama co Nigeria Ltd (2013) 1 CLRN. In the instant case, the plaintiff at paragraphs 18 and 19 of the amended statement of claim specifically pleaded that he dump on the piece of land building materials namely; 20 trips of chippings, 20 trips of sand, 50 pieces of white wood and 50 pieces of 3 by 3 planks. At paragraphs 20 specifically, the plaintiff gave the unit cost of the items which cumulative totaling N275,000.00k in prove of this in the course of evidence as PW1, the plaintiff tendered exhibit DD4. The said exhibit

DD4 is an invoice purportedly issue to the plaintiff on 15th October, 1988. Under cross-examination by counsel to the 2nd defendant, the witness said exhibit DD4 is true and not fake and when he was asked whether the M.T.N in Nigeria in 1988 when the document was made, the witness said he did not know.

The witness also said he did not know that the G.S.M started operation in Nigeria in 2001 during the presidency of Olushegun Obasanjo. I have taken Judicial notice of the fact that the mobile network service otherwise known as G.S.M came into operation in Nigeria in 2001 during the presidency of Olushegun Obasanjo. The court is entitle to take Judicial notice of the date of the commencement or happening of certain important event in Nigeria. This event is of common knowledge in Nigeria and need no proof nor is it open to question. See Section 124 (1) of the evidence Act. The commencement of mobile telephone service in Nigeria is an important land mark event in Nigeria as prior to this there was no mobile telephony operation in Nigeria.

I am bound to take Judicial notice of this ground breaking event in the annals of telecommunication operation in Nigeria. Having said this, I shall proceed to examine exhibit DD4 in the light of the fact that itself same existence is vehemently being challenge by the defendants. Exhibit DD4 is dated 15th October, 1988. It is issued by one Sharonite properties and Investment Limited, the said company has its office address at plot 3230 Euphrates Street, Maitama Abuja. The telephone numbers as shown on the said Exhibit are: 08033209257 and 08044108912. These numbers are not numbers given out by the defunct NITEL, they are G.S.M numbers. The first number was issued by M.T.N while the second was issued by NTEL. These numbers post dated the date that is 15th

October, 1988 when the plaintiff claim it brought the building materials and dumped on the land in dispute, in essence the date on which exhibit DD4 is purportedly made predate the introduction of the G.S.M numbers contained therein. To my mind I am of the firm believe that the said exhibit DD4 is of doubtful source.

I hold that the said exhibit was made for the purpose of this case and ought not to be believe by this court, it ought not to be admitted in evidence or used in this case in determining the rights of parties in this matter. I therefore expunge this exhibit DD4 from the record of this case and I shall not rely on it in the cause of this Judgment. Now has the Plaintiff prove is claim for special damages? I doubt as the mere Ipxe dexit of the PW1 is not enough to prove the claim. I hold that the plaintiff claim for special damages in the sum of N275,000.00k fails and is hereby refused.

The plaintiff did claim general damages in the sum of N10,000,000.00k Ostensibly for trespass. The award of general damages is at the discretion of the court, it is awarded to assuage the suffering of a successful litigant. In otherwords general damages are awarded to compensate for the loss suffered by a successful litigant. In this case, I shall award general damages to the plaintiff which I access at N2,000,000.00k.

Having held that the plaintiff's case succeed in part, I hold that the counter claim of the 2nd defendant fails as her title to the land in dispute is derive from a party who had no valid title granted to him by the 1st defendant. In otherwords, the second grant made by the 1st defendant to the predecessor in title is void as the title of the plaintiff was

subsisting at the time. Therefore, the counter claim of the 2nd defendant fails and is hereby dismissed.

In all the plaintiff succeed in part as I award to the plaintiff his claim in paragraph 24 (a) (b) (c) (e) and (f) of the reliefs. Paragraph 24 (g) succeeds in part as I award N2,000,000.00k to the plaintiff in general damages. The plaintiff relief in paragraph 24(d) is hereby refused and dismissed. This is the Judgment of the court.

APPEARANCE

Chibuike E. Soronnabi Esq. for the Claimant.

A. H. Falaki Esq. for the 1st defendant.

Idumodin Ogumu Esq. with

Usman Yuzoma Esq. for the 2nd defendant/Counter Claimant.

Sign

Hon. Judge

16/02/2022