IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS TUESDAY, THE 15TH DAY OF FEBRUARY, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/614/2018

BETWEEN:

MOSES SUNDAY AJEHSON ……..…PLAINTIFF

AND

1. **ALH. HAMZA**
2. **DIRECTOR DEVELOPMENT CONTROL (AMAC)** } **DEFENDANTS**
3. **UNKNOWN AND UNAUTHORIZED PERSON**

JUDGMENT

By a writ of summons and statement of claim filed on 17th December, 2008, the plaintiff claims against the defendants jointly and severally as follows:

1. **A Declaration that the valid title to plot No. 293 cadastral zone 07-05 at Chikakore (Byazhin) Kubwa layout FCT-Abuja measuring 600 sqm is vested on the plaintiff and that the plaintiff is the legal and bona fide owner of plot No. 293 measuring 600 sqm, cadastral zone 07-05 at Chikakore (Byazhin) Kubwa layout FCT-Abuja.**

2. **A Declaration that the acts of the 1st, 2nd and 3rd Defendant(s) in entering and trespassing on the said plot No 293 measuring 600 sqm cadastral zone 07-05 at Chikakore (Byazhin) Kubwa layout FCT-Abuja without the consent of the plaintiff is illegal and amount to trespass.**

3. **A Declaration that the plaintiff has the right to exercise act of ownership over his plot of land without any manner of interference by the Defendants, their agents, servants or privies in any manner whatsoever.**

4. **An Order of perpetual injunction restraining the Defendant(s) either by themselves, their agents, servants and privies representing the Defendants either legal or personal from further trespassing into Plot No. 293 measuring 600 sqm cadastral zone 07-05 at Chikakore (Byazhin) Kubwa layout FCT-Abuja.**

5. **The sum of One Hundred Million Naira (N100, 000, 000.00) only for the act of trespass committed in respect of plot No 293 measuring 600 sqm cadastral zone 07-05 at Chikakore (Byazhin) Kubwa layout FCT-Abuja the cost of this suit.**

From the Record of Court, all the defendants were duly served with the originating court process and hearing notices all through the course of this proceedings but they never appeared or filed any process in opposition.

Hearing then commenced. In proof of his case, the plaintiff testified as PW1 and the only witness. He deposed to a witness statement dated 17th December, 2018 which he adopted at the hearing. He tendered in evidence, the following documents, as follows:

1. Power of Attorney between Abdullahi Gimba (Donor) and M.S. Ajeshon in respect of property known as plot No. 293 at about 600sqm Chikakore (Byazhin) Kubwa Layout (Donee) registered as No. BAC 524, page 524 Vol. I with the FCT Land Registry was admitted as **Exhibit P1**.

2. Deed of Assignment between Abdullahi Gimba (Donor) and M.S. Ajeshon in respect of property known as plot No. 293 at about 600sqm Chikakore (Byazhin) Kubwa Layout registered as No BAC 524, page 524, Vol. I with the FCT Land Registry Abuja was admitted as **Exhibit P2**.

3. Conveyance of provisional approval of Plot No 293, of about 600 sqm. by Bwari Area Council to Abdullahi Gimba was admitted as **Exhibit P3**.

4. Acceptance of Offer of Grant of Occupancy dated 22nd October, 2002 by Abdullahi Gimba was admitted as **Exhibit P4**.

5. Two (2) Bwari Area Council Departmental Receipt for payments for Land form, processing fees, tax 2000 – 2002 and Certificate of Occupancy were admitted as **Exhibits P5 a and b**.

6. F.C.T.A Regularization of Land Titles and documents of FCT Area Council acknowledgment dated 20th September, 2006 was admitted as **Exhibit P6.**

7. Certificate of Occupancy (customary) No. FCT/BZTP/LA/KW.571 to Abdullahi Gimba was admitted as **Exhibit P7**.

8. Bwari Area Council demand for ground rent payment dated 14th July, 2005 was admitted as **Exhibit P8**.

9. Letter by the law firm of Prin A.I. Obade & Co. dated 24th February, 2017 to the Director Development Control was admitted as **Exhibit P9**.

On the application of counsel to the plaintiff, the right of defendants to cross-examine plaintiff was foreclosed and he closed his case.

The Right of defendants to defend was similarly foreclosed since as already stated, they never appeared or filed any process despite service of the originating court process and hearing notices. Parties were then ordered to file final addresses.

The defendants again did not file any address despite service of plaintiffs' final address.

Now I recognize that fair hearing is a fundamental element of any trial process and it has some key attributes; these include that the court shall hear both sides of the divide on all material issues and also give equal treatment, opportunity and consideration to parties. See **Usani V Duke (2004) 7 N.W.L.R (pt.871) 16; Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228.**

It must however be noted that notwithstanding the primacy of the right of fair hearing in any well conducted proceedings, it is however a right that must be circumscribed within proper limits and not allowed to run wild. No party has till eternity to present or defend any action. See **London Borough of Hounslow V Twickenham Garden Dev. Ltd (1970) 3 All ER 326 at 343.**

The Defendants here has been given every opportunity to respond to the case made out by Plaintiff against them but they have exercised their right by not responding. Nobody begrudges this election. It is only apposite to reiterate that nobody is under any obligation to respond to any court process once properly served if he so chooses. I leave it at that.

In the final address of claimant, two issues were raised as arising for determination:

1. **Whether the claimant has been able to prove ownership and possession of the land in dispute to justify his entitlement to the said land.**

2. **Whether the claimant has discharged his burden of proof to entitle him to the relief sought in this suit before the noble court.**

I have carefully considered the pleadings and evidence led, and it does appear to me that the issues raised can be conveniently accommodated under one issue as formulated by court hereunder. In the court's considered opinion, the sole issue which arises for determination is simply **whether the claimant has established his case against Defendants in the circumstances and therefore entitled to the reliefs sought.**

Now at the beginning of this judgment, I had stated the claims of claimant rooted fundamentally on declaration of title, trespass, injunction and damages for trespass. At the risk of prolixity, the defendants were duly served with the originating court process and hearing notices all through the course of this proceedings but they chose or elected not to defend the action. In law, it is now accepted principle of general application that in such circumstances, the defendants are assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the plaintiffs' unchallenged evidence. See **Tanarewa (Nig.) Ltd. vs. Arzai (2005) 4 NWLR (pt. 919) 593) at 636 C – F; Omoregbe vs. Lawani (1980) 3 – 7 SC 108 and Agagu vs. Dawodu (1990) 7 NWLR (pt. 160) 56.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case **of Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce evidence … the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial

court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24** stated thus:

"… **a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all."**

It is also apposite to state that the substance of the reliefs sought by plaintiff are **Declaratory Reliefs**. In law declarations are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. Indeed it would be futile when declaratory reliefs are sought to seek refuge on the proposition that there were admissions by the adversary on the pleadings and or that because the adversary did not respond to the claims, they are accordingly deemed as admitted. The authorities on this principle are legion. I will refer to a few.

In **Vincent Bello V. Magnus Eweka (1981)1 SC 101 at 182,** the Supreme Court stated aptly thus:

"It is true as was contended before us by the appellants counsel that the rules of court and evidence relieve a party of the need to prove what is admitted but where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence not by admission in the pleading of the defendant that he is entitled to the declaration."

The law is thus established that to obtain a declaratory relief as to a right, there has to be credible evidence which supports an argument as to the entitlement to such a right. The right will not be conferred simply upon the state of the pleadings or by admissions therein.

In **Helzgar V. Department of Health and Social Welfare (1977)3 AII ER 444 at 451; Megarry V.C** eloquently stated as follows:

"The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what, it has found to be the law after proper argument, not merely after admissions by the parties. There are no declarations without argument. That is quite plain."

I may also refer to the observations of Nnamani J.S.C of blessed memory in **Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262 (1988)5 N.W.L.R (pt.92)90** as follows:

"The court of Appeal relied on the decision of this court in Lewis & Peat (N.R.I.) Ltd V. Akhimien (1976)7 SC 157 to the effect that an averment which is not expressly traversed is deemed to be admitted. Admittedly, one does not need to prove that which is admitted by the other side, but in a case such as one for declaration of title where the onus is clearly on the plaintiff to lead such strong and positive evidence to establish his case for such a declaration, an evasive averment...does not remove the burden on Plaintiff. See also Eke V. Okwaranyia (2001)12 N.W.L.R (pt.726)181; Akaniwo V. Nsirim (2008)9 N.W.L.R (pt.1093)439; Maja V. Samouris (2002)7 N.W.L.R (pt.765)78 at 100-101."

The point from the above **authorities** is simply that declarations are not made because of the stance or position of parties in their pleadings but on proof by credible and convincing evidence at the hearing.

Again from the above, the point appears sufficiently made that the burden of proof lies on the plaintiff to establish his case on a balance of probability by providing credible evidence to sustain his claim irrespective of the presence and/or absence of the defendants. See the case of **Agu v. Nnadi (1990) 2 NWLR (pt. 589)131 at 142; Oyewole V. Oyekola (1999)7 N.W.L.R (pt.612) 560 at 564.**

Now in law, it is now fairly settled principle that there are five (5) independent ways of proving title to land as expounded by the Supreme Court in **Idundun v. Okumagba (1976) 9/10 SC 221** as follows:

(a) Proof by traditional evidence;

(b) Proof by production of documents of title duly authenticated, unless they are documents 20 or more years old, produced from proper custody;

(c) Proof of acts of ownership, in and over the land in dispute such as selling, leasing, making grants, renting out of any part of the land or farming on it or a portion thereof extending over a sufficient length of time numerous and positive enough as to warrant the inference that the persons exercising such proprietary acts are the true owners;

(d) Proof by acts of having possession and enjoyment of the land which prima facie may be regarded as evidence of ownership; and

(e) Proof of possession of connected or adjacent land in circumstance rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

See also **Oyedoke V The Registered Trustees of C.A.C (Supra)632 A-D.** In law, proof of title to land could be founded on any of the above way(s).

In the case at hand and from the uncontroverted confluence of oral and documentary evidence before me which I find neither improbable or falling below the accepted standard expected in a particular case, I find the following facts as firmly established in this case namely:

1. The plot subject of dispute: Plot 293 measuring 600 sqm. At Chikakore (Byazhin) Kubwa (hereinafter referred to as the plot) was originally allocated to one **Abdullahi Gimba** by virtue of Conveyance of approval by Bwari Area Council dated 18th October, 2002 which was admitted in evidence as **Exhibit P3** and which he duly acceptance vide **Exhibit P4** dated 22nd October, 2002.

2. The said Abdullahi Gimba made all necessary payments for land form, processing fees tax for the year 2001 – 2002 and a Certificate of Occupancy vide **Exhibits P5 a and b.**

3. The said Abdullahi Gimba was also issued a Certificate of Occupancy No. FCT/BZTP/LA/KW571 over the plot by the Chairman Bwari Area Council dated 7th April, 2003 vide **Exhibit P7.**

4. The plaintiff sometimes in 2004, purchased Plot no. 293 measuring 600 sqm at Chikakore (Byazhin) Kubwa from the said **Abdullahi Gimba** for consideration Parties duly executed a power of attorney and a Deed of Assignment over the parcel of land vide **Exhibits P1 and P2** which were all duly registered with the FCT Land Registry Office Abuja.

5. The original owner on the evidence also handed over all the documents of title itemized **under 1-4** above to the plaintiff.

6. The plaintiff was served with a demand for ground rent by Bwari Area Council vide **Exhibit P8** and he also participated in the regularization of land titles and documents of FCT Area Council and was issued an acknowledgment vide **Exhibit P6**.

7. The plaintiff then immediately took possession of the plot and has been peacefully exercising acts of ownership until the encroachment of the defendants and their agents onto the land.

Since the above pieces of evidence and facts have not been challenged by the opposite party who has the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it; See **Agagu V Dawodu (supra) 169 at 170.** This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale the weight of evidence tilts. Consequently where a defendant chooses not to adduce evidence the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G. Oyo State V. Fair Lakes Hotels Ltd (No.2) (1989) 5 N.W.L.R (pt 121)255; A.B.U V Molokwu (2003) 9 N.W.L.R (pt 825) 265.**

Now in law, it is recognized that production of title document is one way of proving ownership of land. See **Idundun V. Okumagba (1976)9-10 SC 227; Raphael V. Ezi (2015)12 N.W.L.R (pt.1472)39 and Ilona V. Idakwo (2003)12 MJSC 35 at 54.**

On the evidence I am abundantly satisfied that by virtue of the conveyance of provisional approval to Abdullahi Gimba vide **Exhibit P3** which he accepted vide **Exhibit P4** and the issuance of a certification of occupancy vide **Exhibit P7**, over plot 293 after making all necessary payments vide **Exhibits P5 a** and

b, the said **Abdullahi Gimba** became the lawful allotee/owner of the said plot and by **Exhibits P1** and **P2** he lawfully sold the said plot for consideration to the plaintiff. The said Abdullahi Gimba duely executed a power of attorney (Exhibit P1) and a Deed of Assignment (Exhibit P2) and handed over possession together with all title documents to plaintiff.

Now it is true, that a certificate of occupancy raises prima facie evidence of title and raises a presumption that the holder is in exclusive possession and has a right of occupancy over the land in dispute. However, the presumption is rebuttable and the onus of disproving it is in the person who asserts the contrary. See **Agbaosi V Imevbare (2014) 1 NWLR (pt.1389) 556, Sango V Akure (2013) 1 NWLR (pt.1441) 535 and Adole V Gwor (2008) 11 NWLR (pt.1099) 562**.

In this case on the evidence, there has been no challenge at all to the case presented by plaintiff and so the allocations to the original allottee and the purchase from the original allotee by him stands unchallenged and must be accorded probative value since the narrative has not been impugned in any manner by defendants.

In the circumstances, the presumption that he is in exclusive possession and has a right of occupancy over the land in dispute stands un-rebutted and accordingly affirmed. The plaintiff has on the unchallenged evidence established he has title over the disputed plot. The allocation or title documents plaintiff purchased from the original allotee has not been factually or legally impugned. I have no difficulty in holding that the plaintiff has creditably proven his entitlement to the disputed plot. Also having found plaintiff has a better title to the disputed plot, there is a legal presumption in his favour, that he is the party in exclusive possession. This bestows on him, the locus to sue Defendants for trespass on the Plot. In the case of **Carrena V. Akinlase (2008)14 NWLR (pt.1107)262 at 281, paras F-H, Tabai,** JSC, re-echoed the law thus:

"…A person, who has title over a piece of land, though not in *de facto* physical possession, is deemed, in the eyes of the law, to be the person in possession. This is because the law attaches possession to title and ascribed it to the person who has title. Such a possession is the legal possession which is sometimes also called constructive possession. Conversely a trespasser, though in actual physical possession to the land, is regarded in law not to be in any possession since he cannot, by his own wrongful act of

trespass acquire any possession recognised at law. This gives credence to the principle that where there are rival claimants to possession of a piece of land, the law ascribes possession to the party who has title or better title."

See also, **Okoko V. Dakolo (2006)14 N.W.L.R (pt.1000)401.**

A party is in law entitled to succeed at trial where evidence of title is satisfactory and conclusive. See **Nnabuife V. Nwigwu (2001)9 N.W.L.R (pt.719)710 at 727.**

The above findings on ownership of the disputed plot now provides clear factual and legal template to determine whether the reliefs sought by plaintiff are availing.

Reliefs (1), (3) and **(4)** succeed on the basis of the finding that the plaintiff is the owner and in possession of the disputed plot**.**

Reliefs (2) and **(5)** is for trespass and damages for trespass.

Now trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of that owner is an act of trespass actionable without any proof of damages. See **Ajibulu V. Ajayi (2004) 11 N.W.C. R (pt 885) 458 at 48)**

The claim for trespass is therefore rooted in exclusive possession. All a plaintiff suing in trespass needs to prove or show in order to succeed is to show that he is the owner of the land or that he has exclusive possession.

Now the question here is whether the plaintiff have creditably proven any infraction of his possessory right. In paragraphs 9 – 16, the plaintiff pleaded as follows:

"9. The plaintiff avers that he did submit his building plan to Bwari Area Council Abuja and was issued with a building plan approval. The building plan approval is hereby pleaded and shall be relied upon in this suit.

10. The plaintiff avers that he immediately took possession of the plot and caused same to be beaconed. After which he commissioned FRANCIS LAWAL to erected (sic) a perimeter fence and mounted metal gate and built a structure (house) to ward off trespassers.

11. The plaintiff continued to exercise various act of ownership over the plot without let or hindrance until sometimes in 2016 when the 1st and 3rd Defendants appeared out of the blues to lay claims to the Plaintiff's property.

12. The plaintiff avers that on the 24th of May, 2016 he instructed T.K. Yau of YAU and CO to institute a case against Alh. Hamza and unknown persons and to do a letter to the Director Development Control AMMC which he did and I was unable to pursue the case because of ill health. The letter is hereby pleaded and shall be relied upon in this trial.

13. The servants of the 2nd defendant continued to harass and intimidate the plaintiff to vacate his property plot No 293 cadastral zone 07-05 at Chikakore (Byazhin) Kubwa measuring 600 sqm layout FCT-Abuja as they are coming to demolish the said property.

14. The plaintiff states that during his visit to the said property in the early part of 2018 till ending of November, 2018 there was no development construction or building on the said property except for the perimeter fence, the house he built on the plot.

15. The plaintiff states that he got a call from Steve Omoigberale on the 5th of December, 2018 to tell him that his property has been demolished by the 2nd Defendant.

16. The plaintiff immediately visited the said property only to discover to his greatest surprise and shock that the information given by Steve Omoigberale was indeed correct and discovered that the 2nd Defendant did demolished his property. The photographs of the demolition is hereby pleaded and shall be relied upon in this trial."

Now it is one thing to aver a material fact in evidence but it is another thing to lead evidence in support of the averments. Where evidence is not led in support of pleaded facts, the averments on the pleadings are deemed as abandoned, because averments in pleadings do not constitute evidence. This is trite principle.

Now in this case on the evidence, the plaintiff did not lead any iota of evidence to support the facts pleaded in the paragraphs streamlined above. Nothing was put forward by plaintiff situating that he put any beacons, mounted a perimeter fence, metal gate and built a structure on the land which were allegedly destroyed by 2nd defendant. No scintilla of evidence was put forward situating such undertakings.

There is equally nothing beyond bare assertions to show who unjustifiably infracted on plaintiff possessory right over the disputed plot and the person or persons allegedly harassing and intimidating plaintiff to vacate the plot in dispute. These are not matters that can be left to speculations or guess work.

Most importantly in **paragraphs 9, 11 and 16** above, plaintiff pleaded the approved building plan for the plot, the case allegedly filed against 1st and 3rd defendants and photographs of the alleged demolition; unfortunately these pleaded materials were not tendered in evidence and are accordingly deemed as abandoned. Even if the photographs were tendered, there has to be a nexus established between the pictorial representation and the defendants showing or proving that they are responsible for the alleged demolition. These are missing.

The bottom line here is that there is really no credible and admissible evidence to situate (1) the acts of trespass (2) the structures allegedly built on the plot by plaintiff and the demolition of same and (3) the person(s) and or institution responsible.

Therefore, even if there is an unjustified intrusion by defendants and this has not been established as demonstrated above, I am even unable to see in the pleadings or evidence the basis or premise for the sum of N100, 000, 000 claimed as damages for trespass. While it is true that general damages are awarded for proved acts of trespass, it would be inappropriate for a court to award damages without giving any reason as to how it arrived at what in its opinion amounted to reasonable damages. It is to be noted that damages are not awarded as a matter of course but on sound and solid legal principles and not an speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out of extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

Finally I only need to add that on the authorities, damages in a case of trespass should be nominal to show the courts recognition of the plaintiff's proprietary

right over land in dispute. If the plaintiff as in this case wanted more damages, they should claim it under special damages which they should properly plead and prove. See **Madubuonwu V. Nnalue (1992)8 N.W.L.R (pt.260)440 at 455 B-C; Armstrong V. Shippard & Short Ltd (1959)2 AII ER 651.**

On the whole, the claims on trespass and damages for trespass are not availing

In the final analysis, the sole issue distilled as arising for determination is substantially resolved in favour of plaintiff. For the avoidance of doubt, the plaintiff's claims partially succeed and judgment is entered as follows:

1. **It is hereby declared that the Plaintiff has valid title and is the legal owner of Plot 293 Cadastral Zone 07-05 measuring 600sqm at Chikakore (Byazhin) Kubwa Layout FCT – Abuja.**

2. **It is hereby declared that the plaintiff has the right to exercise acts of ownership over the said plot 293 without any manner of interference by Defendants, their agents, servants or privies.**

3. **The Defendants, their agents, servants or privies are restrained from acts capable of affecting the lawful and subsisting interest of the Plaintiff over Plot 293 as guaranteed under the Land Use Act and the 1999 Constitution of the Federal Republic of Nigeria.**

4. **Reliefs 2 and 5 fail and are dismissed.**

5. **I award cost assessed in the sum of N50, 000 payable by Defendants to Plaintiff.**

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Hon. Justice A. I. Kutigi

<u>Appearances</u>:

1. **J.O. Elias for the Plaintiff.**