

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS TUESDAY, THE 22ND DAY OF FEBRUARY, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/2943/2020

BETWEEN:

SUNMART PROGRESS NIG. LTD CLAIMANT

AND

UNKNOWN PERSON DEFENDANT

JUDGMENT

The Plaintiff's claims against an unknown person are as follows:

- 1. An Order of this Honourable Court that the Defendant should vacate from the plot of land known as Plot 50 Area Council Gwagwalada with file No. EB 40308 and old file No. 4523 in Gwagwalada Area Council of the FCT belonging to the Claimant.**
- 2. An Order of perpetual injunction stopping the defendant or any other person other than the claimant from having access and possession of the land known as Plot 50, Area Council Gwagwalada Area Council with file No. 40308 and old File No. 4523 in Gwagwalada Area Council of the FCT belonging to the claimant which the defendant trespassed on and is still trespassing on.**
- 3. An Order of court awarding Five Million Naira damages against the defendant for trespassing on the claimant's land and in favour of the claimant.**

4. For such further other orders which this Honourable Court may deem fit.

From the records, the defendant was duly served the originating court process by substituted means but nobody appeared or filed any process all through the course of this proceeding despite service of hearing notices at different times.

Hearing then commenced. In proof of its case, the plaintiff called two witnesses. Mrs. Precious Igwe, a Director in plaintiff's company who testified as PW1. She initially deposed to a witness deposition dated 16th October, 2020 which she adopted at the hearing.

She tendered in evidence the following documents:

1. Certificate of Occupancy (customary) No. FCT/GAC/RLA/FCT/4423 in the name of Musa Ali dated 30th November, 2003 was admitted **Exhibit P1**.
2. FCTA Regularization of land titles and documents of FCT Area Councils Acknowledgment dated 13th November, 2007 was admitted as **Exhibit P2**.
3. Copy of Blue Print Newspaper (page 36) and Nigerian Pilot Newspaper (page 26) containing notices of loss of document were admitted as **Exhibits P3a and P3b**.
4. Document titled Affidavit of Loss of Original Title Document deposed to at the High Court of Suleja, Niger State and an Extract from Crime Diary of Nigeria Police, 'B' Division Suleja were admitted as **Exhibits P4a and P4b**.

Since the defendant has not filed any process joining issues with plaintiff or appeared in court, the right to cross-examine PW1 was then foreclosed and PW1 was discharged.

Mr. Landren Ifitezue, a property consultant and an external consultant to plaintiff company testified as PW2. He deposed to a witness statement on oath dated 16th October, 2020 which he adopted at the hearing. The right of defendant to cross-examine PW2 was similarly foreclosed and PW2 was discharged.

On application of plaintiff counsel, the right of defendant to put in a defence was similarly foreclosed and the matter was adjourned for address.

The plaintiff then filed an application to re-open their case and to recall PW1. It was also served on defendant together with hearing notice but nobody appeared or filed any process on opposition. The application was granted and PW1, Precious Igwe gave further evidence and adopted her further witness statement dated 15th October, 2021 which essentially is a rehash of her first deposition. She then urged the court to grant the claims of the plaintiff.

The matter thereafter proceeded to address. The defendant again never filed an address.

Now I recognize that 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 3rd Defendant 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, one issue was said to arise for determination but there is no real clarity as to the precise issue framed as arising for determination. Let me perhaps quote the issue as framed by learned counsel under paragraph 3.1 thus: **“One issue was formulated by the claimant which is whether from the circumstances of this case, the claimant have proved that the defendant has trespassed on its land known as plot 50 Gwagwalada Area Council, if the claimant has been able to establish title to the said land stating why an order of perpetual injunction should be made against the defendant and also if the claimant have been able to establish the fact that damage of five million should be awarded to him by this Honourable Court in its favour.”**

In the submissions under paragraph 4.1, counsel now situated a mere concise issue as follows:

“Whether from the circumstances of this suit, the claimant has established their case against the defendant to be entitled to the three reliefs sought before this Honourable Court.”

Notwithstanding the above imprecise formulations of the issue(s) as arising for determination, I have however carefully considered the pleadings and evidence led and it does appear to me that the narrow 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.**

This issue fully captures and or incorporates the issue raised by claimant and has succinctly captured the pith or crux of the contest that remains to be resolved shortly by court and it is therefore on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel.

ISSUE 1

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. It is doubtless that they incorporate reliefs for title, trespass, injunction and damages for trespass. The implication of these set of reliefs as presented is to put the title of the subject of dispute at the fulcrum of the court's inquiry. See **Odunze V. Nwosu (2007)13 N.W.L.R (pt. 1050)1 at 53; Mafindi V. Gendo (2006) All F.W.L.R (pt.292)157 at 165F-G.**

The claimant who essentially by these reliefs sought claims entitlement to the reliefs sought has the burden of establishing its claim within the threshold as allowed by law.

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 resolving the issues raised by the present inquiry, there is no better template to situate the case of plaintiff than the pleadings and evidence on record.

Before evaluating these processes, it may be apt to state the general principle that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act**. By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

It is also relevant to situate the point, this case was undefended. The evidence led by plaintiff was unchallenged. In law, it is now accepted principle of general application that in such circumstances, the 3rd defendant is assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the plaintiff's 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.”

The point therefore sufficiently made is that the burden of proof lies on 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 3rd defendant. 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 back to the pleadings and evidence. The case made by plaintiff is fairly straightforward. I shall deliberately and in extenso refer to the pleadings of plaintiff as it has clearly streamlined precisely the issues subject of the extant inquiry. The importance of the pleadings cannot be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve. The case of

plaintiff in the present situation can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

The case presented by plaintiff can be situated within the following paragraphs of the statement of claim thus:

- “3. The subject matter of this suit is over a plot of land known as plot 50 Area Council Gwagwalada with File No. EB 40308 and Old File No. 4523 in Gwagwalada Area Council of the FCT.**
- 4. The claimant bought the said land from the original allottee who has also perfected the certificate of occupancy by name Musa Ali.**
- 5. The claimant also signed a deed of assignment and power of attorney with the said Musa Ali, filed and perfected same with the Gwagwalada Area Council.**
- 6. The claimant also fenced the said land before the Chief Executive Officer/Managing Director of the claimant died in 2014.**
- 7. The claimant had to do a lot of restructuring in the company after the death of the Chief Executive Officer/Managing Director (Sunday Igwe) and a new Chief Executive Officer/Managing Director appointed.**
- 8. After the said restructuring, in 2015 the new Chief Executive Officer had to visit the landed properties of the company all over Nigeria to confirm that the properties, including this very plot was intact.**
- 9. Sometime before the lock down in March 2020 that the claimant, upon another visit to the property, it was discovered that another gate has been put in place on the said land.**
- 10. Alarmed by the development, the claimant made enquiries from owners and/or occupants of neighbouring lands as to the identity of the person who mounted the new gate on the property and got no concrete response as they all could not provide it with a name or identity of the person who mounted the new gate.**

11. The claimant also conducted search at the Gwagwalada Area Council to know the identity of the defendant but got nothing in that regard. The claimant has exhausted all efforts at uncovering the identity of the defendant to no avail.

12. The claimant, faced with the situation, went to its officer where the title documents to the property in issue is kept only to discover that the deed of assignment and power of attorney in respect to the said property is missing but could only find the certificate of occupancy and regularization of land titles and documents of FCT Area Council Acknowledgment both attached to this statement of claim.

13. The Claimant then had to depose to an affidavit, did police extract and Newspaper advert to that effect and now have to file this suit.

14. The claimant hereby pleads the certificate of occupancy, certificate of regularization, Newspaper adverts on the Blue Print and Nigerian Pilot of Wednesday the 5th of August 2020, Affidavit of Loss of Original Title Documents deposed to by Mrs. Precious Igwe and Police Extract.”

Let us now evaluate the value of the evidence led at trial the evidence of PW1, a Director of plaintiff was largely within the structure of the body of claim as reproduced above.

On the evidence, there is no contrary evidence that the original allottee of the disputed plot No. 50 is one Musa Ali vide **Exhibit P1**, the Certificate of Occupancy (customary) dated 30th November, 2003.

Now it is the case of the claimant vide paragraphs 4 and 5 above that the claimant bought the plot from Musa Ali who executed a **Deed of Assignment** and **Power of Attorney** to evidence the sale of transaction. The claimant also pleaded that these instruments were perfected at Gwagwalada Area Council and that they fenced the land.

Now on the evidence, the instruments or documents to prove these transactions between the said **Musa Ali** and claimant were not tendered.

The claimant both in the pleadings and evidence averred that the deed of assignment and power of attorney and that to that effect they deposed to an affidavit of loss of these documents vide **Exhibit P4a** and also reported the loss

to the Nigerian Police vide **Exhibit P4b**. The loss of the documents were equally advertised in two daily Newspapers vide **Exhibit P3a** and **P3b**.

The question here is simply whether these documents individually or collectively aggregate as instruments of sale or transfer of title of the disputed property from Musa Ali to the plaintiff?

Now these documents **Exhibits P3a, b** and **4a** and **b** made have referenced loss of certain documents but these documents without more do not by any stretch of the imagination situate or support **conclusively** a transfer of title between the said Musa Ali and plaintiff as contended by claimant.

Now what is interesting in this case is that the claimant in paragraph 5 of the statement of claim stated that apart from the signing of the Deed of Assignment and Power of Attorney, they also filed and perfected same with Gwagwalada Area Council. Let me perhaps repeat paragraph 5 thus:

“5. The claimant also signed a deed of assignment and power of attorney with the said Musa Ali, filed and perfected same with the Gwagwalada Area Council.”

Now it is obvious that the Certificate of Occupancy **Exhibit P1** was **issued** by **Gwagwalada Area Council**. They are therefore the allocating authority with respect to the land in question and but have records relating to the land. If plaintiff averred that they perfected the Deed of Assignment and Power of Attorney with the said Area Council, what it meant is that there will be evidence of these perfection with the Area Council. It is therefore strange that the plaintiff did not make any efforts to get evidence of the documents perfected at the Area Council through applying for **Certified True Copies** of the documents perfected with the council. If there were difficulties in getting the Certified True Copies, then the claimant could have applied for a subpoena to summon the relevant land officers at the Area Council to produce the Deed of Assignment, Power of Attorney and infact the original file covering the said plot.

The plaintiff for reasons that are not clear chose or elected not to take any of these identified process which would have strengthen the value and credibility of the narrative of sale between the said Original allotte, Musa Ali and the claimant.

It is therefore clear, there is absolutely no credible and conclusive evidence to support any “**perfection of the documents with the Gwagwalada Area Council**” and as a logical corollary a sale between Musa Ali and claimant.

As stated earlier, it is one thing to aver a material fact in a pleading but it is another thing to proffer credible evidence in support where no such evidence is proffered, the said pleading will be deemed as abandoned. The failure to get Certified True Copies of the perfected document from Gwagwalada Area Council as pleaded or for the plaintiff to summons land officials from Gwagwalada Area Council to come and give evidence and tender the original file which will have situated relevant facts and given an insight into whatever transactions that may have occurred on the land is fatal.

The implication of the failure to show perfection of the Deed of Assignment and Power of Attorney said to be with Gwagwalada Area Council or to summons production of the original file from the Area Council creates the rather unacceptable scenario. The court may, if the case were to succeed, be granting orders in respect of a land over which the extant claimant has not done all that is reasonable required to put the court on a firm and commanding position to grant the Reliefs sought. In such unclear scenario, even if it can be argued that it is farfetched, you cannot even discount the possibility of third party interest in these circumstances.

The bottom line is that the court cannot on the basis of bare and empty reports of missing documents made vide **Exhibits P3 (a and b)** and **P4 (a and b)** grant the reliefs sought.

Now in addition to the failure to produce the documents said to have been perfected at Gwagwalada Area Council, it is really strange that absolutely no witnesses who may have witnessed the transaction was produced by claimant to give credibility to the alleged sale transaction between Musa Ali and the claimant. The question here is there are no witnesses? If they exist, why were they not produced.

PW2 who said stated that he is a property consultant and external consultant to claimant and said he was “conversant with the facts of this case” did not say he was a witness to the transaction. Let me perhaps produce relevant portions of his deposition thus:

- “2. I am the one who did the diligence for the claimant in that I did the search at the land registry at Gwagwalada Area Council Land Registry.**
- 3. That after the search I conducted for the claimant it was clear that the Assignor transferred a good title to claimant in 2005.**
- 4. The search never showed that Musa Ali sold the said property to any other person.**
- 5. The search also never showed that the claimant sold the said property to another person till date after I did another search in June 2020 at the Land Registry.**
- 6. That I have gone to the said property site on more than five different times since after the lock down but I have not been able to meet anyone in the site and one of the neighbours in the area took my number and promised to give the unknown man to call me and till date no one called.**
- 7. That I know as of fact that a director in the company Mrs. Precious Igwe deposed affidavit for loss of document, Police Extract and Newspaper advert and also deposed to a witness statement on oath in this very suit.”**

The above depositions or evidence are clear. Even if the court accepts aspects of his evidence since they cannot be supported or situated within the purview of the pleadings to avoid accusation of been unduly technical, it is obvious that he is here making reference to search he conducted at Gwagwalada Area Council before and after the sale which according to him confirms that the said original allottee sold to claimant only and not to any other person.

Now the question which claimant has not answered is where is the **search report** which is usually prepared by the would have validated his narrative? No search report was tendered by PW2 and it is difficult to give probative value to his story.

What the evidence of PW2 highlights again is the importance of the Gwagwalada Area Council in providing answers to the questions posed by the extant case with respect to whether title was indeed transferred to claimant. Indeed I venture to say that if the claimant’s documents are missing as

contended in the present situation, they then cannot under value the importance of the Area Council in resolving the contested assertions.

Two more points. One, on the pleadings and evidence, plaintiff claimed that after they bought from Musa Ali, they fenced the land and that sometime in 2020, a new gate was mounted in place of the one they put on the said plot by an unknown person. Furthermore, PW1 said trips of sand and stone have been dumped inside the plot.

Again what is strange here is that apart from oral assertion of PW1, nothing was put forward by claimant showing any proof of any discernable acts of possession by them. If the place was fenced with a gate, where is the evidence to situate these actions? Someone or some people will certainly have carried out these actions of erecting the fence and gate? Is it that all of these people have somehow disappeared?

Secondly, the plaintiff in paragraph 10 averred that it may enquire from owners or occupants of neighbouring lands as to who trespassed on their property but they got no concrete answers. The implication here is neighbours to the disputed land perhaps know something about their interest or ownership of the land. The plaintiff should then have gotten at least one of them to say something on their ownership and the acts of trespass to add strength and value to his narrative. There is again really nothing credible on the evidence presented by plaintiff to situate any acts of trespass by the unknown person(s) as alleged and the court cannot speculate.

It should be noted that I have not placed any premium on the regularization of land titles and document of FCT Area Council tendered as Exhibit P2. The acknowledgment is not a document of title or put another way, it is not evidence that Musa Ali transferred or sold his interest over the disputed plot to claimant. The Exhibit in any event contains a clear and unambiguous disclaimer that the acknowledgment does not in any way validate the authenticity of documents presented by parties. That all documents submitted are subject to further verification for authenticity. This Exhibit therefore adds no value to the case of claimant.

On the whole, as I have hope demonstrated, the plaintiff has not furnished court with credible and cogent evidence to provide basis to grant the Reliefs sought.

The Supreme Court has made it clear that