IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 24TH DAY OF JUNE, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/0913/2018

BETWEEN:

MAIKUDI RAFIA
DR. MORRIS EROMOSELE
DR. (MRS.) JULIANA EROMOSELE ------- CLAIMANTS
Suing for themselves and for Maikudi Rafia

AND

NAVY CAPTAIN K.D. SHITTU ------- DEFENDANT

JUDGMENT

On the 19th day of June 2018 the Claimants, Maikudi Rafia & 2 Ors instituted this action against Navy Captain K.D. Shittu claiming the following:

a. ***A Declaration that the legal interest in Plot No. 79 Cadastral Zone 07 – 05 Kubwa Extension II (Relocation) Kubwa Abuja resides with the 1st Plaintiff.***

b. ***A Declaration that the equitable and beneficial interest in Plot No. 79 Cadastral Zone 07 – 05***

Kubwa Extension II (Relocation) Kubwa Abuja resides in the 2nd and 3rd Plaintiffs.

c. ***A Declaration that the Defendant cannot substitute Plot No. 79 Cadastral Zone 07 – 05 Kubwa Extension II (Relocation) Kubwa, Abuja with Plot No. 77 Cadastral Zone 07 – 05 Kubwa Extension II (Relocation) Kubwa, Abuja as belonging to him.***

d. ***An Order of Perpetual Injunction refraining the Defendant whether by himself or through his agents, privies, proxies, successors in title or any person howsoever described from trespassing or further trespassing into Plot No. 79 Cadastral Zone 07 – 05 Kubwa Extension II (Relocation) Kubwa, Abuja.***

e. ***Exemplary Damages in the sum of Five Hundred Million Naira (₦500, 000,000.00) only against the Defendant for the Defendant's unremitting, relentless and continued acts of trespass on Plot No. 79 Cadastral Zone 07 – 05 Kubwa Extension II (Relocation) Kubwa, Abuja notwithstanding the directive of Public Complaint Commission.***

f. ***Special Damages in the sum of Three Hundred and Fifty Thousand Naira (₦350, 000.00) only for the 2nd & 3rd Plaintiffs' demolished gate.***

g. ***An Order of this Honourable Court mandating the 2nd & 3rd Plaintiffs to take physical and legal possession of Plot No. 79 Cadastral Zone 07 – 05 Kubwa Extension II (Relocation) Kubwa, Abuja.***

h. ***The cost of this Suit.***

i. ***10% Post Judgment interest per annum.***

The Claimants called 3 Witnesses and tendered 7 documents which were admitted and marked as **EXH 1 – 7.** They closed their case on the 6th of October, 2021. The Defendant did not call any evidence but rested its case on that of the Claimants.

In their Written Address the Claimants raised an Issue for determination which is:

> **"Whether they have on balance of preponderance of evidence established their case to be entitled to the Judgment of as per the Reliefs sought?"**

They answered it in the affirmative. That by the decision in the case of:

Rabiu V. Adebayo
(2015) NWLR (PT. 25)

That in a claim of ownership of land the Claimant can only succeed by establishing the root of their title to the land. That they have done so in this case through the sufficient credible and compelling evidence of the Witnesses which has not been controverted or challenged by the Defendant. They urged Court to so hold. That the Claimants has discharged the onus placed on them to establish their claim which they have done in the present case by the evidence of their 3 Witnesses and documents tendered which were not challenged. They referred to the cases of:

Adesanya V. Adesanmi
(2000) 9 NWLR (PT. 672) 370

Kolo V. Lawan
(2018) FJSC (PT. 85) 2

Idundun V. Okumagba
(1976) 1 NWLR 200

That by the testimony of PW1 it was established that the 1st Claimant – Maikudi Rafia was the first Allottee of the Res, **Plot 79 Cadastral Zone 07 – 05 Kubwa Extension II Relocation Kubwa, Abuja of 585.82m² File No. 1M 48990** by Conveyance of Provisional Approval from Bwari Area Council dated 24th May, 2003 and by Regularization document Acknowledgement dated 24th October, 2013 tendered and was admitted as **EXH 1.**

That the 1st Claimant reassigned his legal and beneficial interest to one Onwuka Lambert who later allocated same to the PW2 who is the 2nd Plaintiff – Dr. Morrison Eromosele for a consideration of ₦4.3 Million only. That the document evidencing the Sale Agreement was tendered and marked as EXH 2. That they conducted Searches on the land and it was not encumbered. That all affirmation on the route of the title to the land was traced to 1st Claimant who they claimed is now deceased. That he was issued receipt of sale which he tendered. That after he mounted the gate which they alleged that the Defendant demolished and trespassed into the land. That he intimidated them and they made complaint to Public Complaints Commission and to the Naval Command. That the Defendant was advised to desist from his act of trespass. But he continued. That the PW2 and PW3 confirmed that fact in their own testimonies, further giving credence to the undisputed claims against the Defendant over the Res. That the Defendant did not contradict those

facts or challenge the documents. That admitted facts needs no further proof. They referred to the cases of:

Adebunmi & Anor V. Olademeji & Ors
(2012) LPELR – 15419 (CA)

Akinyede Olaiya V. State
LPELR SC/562/14

That the Claimants are therefore entitled to the Reliefs sought having established their case, having satisfied the conditions precedence in this regard. That Court should utilize the evidence – documents tendered and analyze same in order to come to conclusion of the case in the favour of the Claimants. They urged Court to hold that the Claimants have established their case on preponderance of evidence and therefore are entitled to their Reliefs as claimed and to enter Judgment in their favour.

On their own, the Defendant rested its Defence on the case of the Claimants. The Defendant filed a Statement of Defence. It did not call any Witness. In his Final Address he raised/distilled 4 Issues for determination from Claimants' sole Issue. The 4 Issues are:

(1) Whether the Secretary to Rural Land Acquisition Committee Bwari Area Council has capacity to allocate land in the FCT and whether Customary Right of Occupancy is recognised in the FCT.

(2) Whether the Claimants have the competence to institute this claim before this Court in that the 1st Claimant is deceased and relinquished the title on the Res and the 2nd & 3rd

Claimants have nothing before the Court linking them to their vendor (Mr. Onwuka Lambert Okezue) to the Res.

(3) Whether the Witness Statement on Oath of PW2 & PW3 are not invalid same having not been deposed to before any Commissioner for Oath and if so, whether there is any evidence before this Court to sustain the Reliefs of the Claimants as sought.

(4) Whether the Claimants have discharged the evidential burden on them to warrant grant of Declaration of the title over the Res in this case.

On Issue No. 1, he submitted that the Secretary to Rural Land Acquisition Committee Bwari Area Council has no right to allocate land within FCT. Again that Customary Right of Occupancy is not recognised in the FCT.

That the 1st Claimant did not acquire any legally recognised interest over the Res and as such the Claimants are clearly without Locus Standi to commence the Suit. He urged Court to so hold. That their title emanated from a source that lack legal capacity to allocate land in the FCT. Since they lack the capacity to make allocation, there is nothing that was legally acquired by the 1st Plaintiff upon which the case can be sustained.

That by S. 1 (3) FCT Act and S. 297 (2) of the 1999 Constitution of the Federal Republic of Nigeria as amended all lands within FCT are vested in the Federal Government

of Nigeria. That it is only Federal Government that is empowered to grant Right of Occupancy over land within FCT. That Federal Government empowered FCT Minister to do so on its behalf. That any land founded on any other grant or other authority other than the FCT Minister is invalid. He urged Court to so hold. That the FCT Minister is the appointee of the President of Federal Republic of Nigeria and he is empowered to deal with lands in the FCT. They relied on the case of:

Madu V. Madu
(2008) 6 NWLR (PT. 1083) 296 @ 325

That any grant found on any other grant or authority other than that of FCT Minister is invalid.

That in this case, the land on which the Claimants' title is predicated is on Customary Right of Occupancy granted by the Secretary Bwari Area Council Rural Land Acquisition Committee as shown in **EXH 3.** That by virtue of **S. 6 (3) & (4) FCT Act** no customary title in the FCT. That by **SS. 5 (1) & 51 (2) Land Use Act,** FCT Minister is the only authority that can allocate land in the FCT in line with **S. 18 FCT Act.** That any land allocated following that law and procedure inures requisite interest to the Allottee.

That from the Conveyance of Provisional Approval from Bwari Area Council Land Planning and Survey Department it is stated in the document thus:

> **"I am pleased to convey the Hon. Minister's approval of a customary Right of Occupancy in respect of Plot 79 of about 600sqm in Kubwa Extension II Relocation."**

The said document was signed by one Ishaq Salihu – Secretary of the Rural Land Use Adjudication. That there is no legal interest that inures to the 1st Claimant and no requisite interest that inures to the 2nd & 3rd Claimants. That the source of the Claimants' title is Customary Right of Occupancy which is not recognised by law in the FCT. He relied on the case of:

Engr. Yakubu Ibrahim & Or V. Simon I. Obaje
(2005) All FWLR (PT. 282) 1965 @ 1976 – 1977

That 1st Claimant did not acquire any valid title over the Res and has no requisite capacity to institute this action. And as such has no recognised standing upon which its claim is based. That the grant in this case was not done by any recognised authority by law to make such grant as the instrument of grant is not valid. He referred to the cases of:

Ewo V. Ani
(2004) 3 NWLR (PT. 861) 611

Idundun V. Okumagba
(1976) 9 – 10 SC 227

That the Claimants have no legal right to protection and in instituting this Suit. He is therefore not entitled to the remedy. They have not shown any legal interest in the Res. They referred to the cases of:

Ojukwu V. Ojukwu
(2000) 11 NWLR (PT. 677) 65

UBA V. BTL Industry Limited
(2004) 18 NWLR (PT. 904) 180

Even tendering EXH 1 – Recertification Acknowledgment cannot validate the defect in Claimants' title to the Res. That makes the Claimants trespassers to the Res. They referred to the cases of:

Isiyaku V. Zwingiwa
(2003) 6 NWLR (PT. 817) 560

Dantosho V. Mohammed
(2003) 6 NWLR (PT. 817) 457

That the document confers no title to the Claimants because it was not granted by the FCT Minister. And as such the Claimants have no Locus Standi to commence this Suit. He urged the Court to so hold.

On Issue No. 2, he submitted that the Claimants have no competence to institute this action. That the 1st Claimant is deceased and had transferred the alleged interest to Mr. Onwuka Lambert Okezue. That the 2nd & 3rd Claimants have nothing to link them to their predecessor in title to the title of the 1st Claimant. No evidence before the Court on how Mr. Onwuka Lambert Okezue acquired interest in the Res. The 2nd & 3rd Claimants have no capacity to institute this action. He urged the Court to so hold.

That EXH 3 – Conveyance of Provisional Approval of 24th May, 2003 was made in the name of the 1st Claimant who was said to be deceased. And as such he has no capacity to maintain action in Court. That it can only be done by the Administrator of his Estate or representative of a sort who can sustain such claim. That the absence of that makes the Suit incompetent. They referred to the case of:

Union Bank V. Nkennia
(2019) LPELR – 47197

That the 2nd & 3rd Claimant claims they bought from a person who bought from Onwuka Lambert Okezue with whom they have Power of Attorney and Deed of Assignment. That there is nothing linking Onwuka Lambert Okezue to the land. That the Claimants failed to present documents in Court to assert their claim that the 1st Claimant sold the land to Onwuka Lambert Okezue. That failure to do so makes their case fatally incompetent. That the Claimants are not proper parties to this Suit and lacks the locus standi to sue. That the Court therefore has no jurisdiction to entertain the Suit. They referred to the cases of:

Christaben Group Limited & Anor V. A.I. Oni
(2008) 11 NWLR (PT. 1097) 84 @ 117

Georgewill V. Ekine
(1998) 8 NWLR (PT. 562) 454 @ 468

That since the Suit is incompetent the claim is not justiceable and any decision of Court will be null and void. They referred to the case of:

Ezeafulukwe V. John Holt Limited
(1996) 35 LRCN 213 @ 216

That this Court lacks jurisdiction to entertain the Suit.

On Issue No. 3, they submitted that since the Oaths of 2nd & 3rd Claimants were not deposed to before a Commissioner of Oath that they are invalid. They urged Court to strike same out as the Oaths were signed when the 2nd & 3rd Claimants were outside the country and not in compliance with the **S. 117 (4) of the Evidence Act 2011.** They referred to the cases of:

CCCT & CS Limited V. Ekpo
(2008) All FWLR (PT. 418) 222

Dapialong V. Dariye
(2008) 8 NWLR (PT. 1036) 412

That if the Court strikes out the said Oaths which is the evidence of the 2nd & 3rd Claimants, there will be no evidence to support the Claimants' pleadings. They referred to the case of:

Jolayemi V. Alaoye
(2004) 12NWLR (PT. 887) 322 @ 340

On Issue No. 4, they submitted that the Claimants have not discharged the onus on it to be entitled to its claim as they did not prove the root of their title to the Res. That documents tendered does not confer title to the Claimants as it was granted by Bwari Area Council not FCT. That they were not able to adduce enough evidence to sustain their case.

They urged the Court to so hold and therefore dismiss the Suit with heavy cost.

On Point of Law the Claimants filed a Reply adopting the Issues raised by the Defendant.

That Secretary to Rural Land Use Adjudication cannot be robbed of the capacity to allocate land within the FCT on behalf of the FCT Minister on strength of EXH 1 tendered by the Claimants which is Regularization issued to Rafia Maikudi. That if there is any defect it was cured by the Regularization of land titles. That since FCT Minister cannot be at every Area Council within the FCT that that is taken care of by the opening statement in the Customary

Right of Occupancy issued by the Bwari Area Council which reads thus:

> **"I am pleased to convey the Hon. Minister approval of Customary Right of Occupancy ..."**

That by the Regularization the Claimants complied with the FCT Act. Thus making any defect in the Customary Right of Occupancy curative and in compliance with the extant laws regulating issuance of Regular title in respect to land under FCT.

That the title documents before the Court were neither controverted nor challenged by any superior document tendered on part of the Defendant to establish a better title to the Res. That since that evidence was not challenged, it is therefore deemed admitted. They urged Court to discountenance the argument of the Defendant in support of the Issue No. 1 in his Final Address and resolve same in favour of the Claimants.

On Issue No. 2 – on competence of the 2nd & 3rd Claimants to sue, they submitted that they have legal capacity to institute the Suit as they have common interest in the Res. That the submission of the Defendant in his Final Address is misconceived in law. That they have passed the locus standi test. Having proved sufficient interest in the Res. They urged Court to so hold and discountenance the Issue in Defendant's Final Address and hold that the Claimants have locus standi in this case.

That the 2nd & 3rd Claimants' depositions are competent and did not offend **S. 117 of the Evidence Act 2011.** That the 2nd & 3rd Claimants swore the Oaths before the

Court and such cured any defect in the said Oaths. They referred to the case of:

Uduma V. Arunsi
(2012) NWLR (PT. 1258)55

They urged Court to so hold.

On Issue No. 4 – on whether the Claimants discharged the onus placed on them to warrant declaration of title in their favour; they submitted that they have discharged same and deserves to be declared the rightful owners/allottees in line with **S. 131 – 133 of the Evidence Act.** That through their Exhibits which were not controverted and not challenged they have done so. That the Court is bound to analyze every Exhibit tendered and admitted before it. They referred to the case of:

Edilicom Limited V. UBA
(2018) 82 EJSC 136

That the Defendant put no appearance in this case therefore he abandoned the Suit. That there is therefore no Defence to the Claimants' case. They urged Court to discountenance the argument of the Defendant in his Final Address and enter Judgment in Claimants' favour.

COURT

In any case that is predicated on tussle on the ownership – legal and equitable interest in land, Document is king. To succeed, the person claiming ownership must be able to trace the genealogy of the land to himself or put differently, the person must be able to present evidence on how he got involved or his ownership of the land. Without any prove as to the route of his title, the person's claim cannot

succeed. It will be a herculean task to establish ownership as such proof cannot be claimed on oral testimony. The oral testimony must be backed up with documents showing dates and stages it went before the person claiming the interest legal or equitable come to be in the said Res in issue. Anything short of that means that the person has failed to prove title to the land and as such his claims will fail and he will not be entitled to it.

Again, in any claim based on allegation of trespasser, the Claimant must prove that he was in the Res or was in effective occupation as at the time the trespass occurred. This is in addition to presenting documents of title to back up such claims. That is why it is said that a trespasser who was first in occupation before the alleged trespasser can come against anyone else who was not in occupation. It is the law that possession is effective occupation. The man in occupation is said to have and to be in possession as long as the occupation is effective. The only person who can claim against any trespasser is the person who is in occupation before the trespasser. That is why it is commonly said and had been held severally in plethora of case that a person first in time holds way and carries the day in land matters.

For a party to succeed in the ownership of land, the document evidence and grant title document must be such that must not be controverted. The evidence must be very credible, compelling and unchallenged. Such evidence must be to establish the root of the title to the land in issue. The Claimant or Counter–Claimant must succeed in the strength of his case. See the case of:

Rabiu V. Adebayo

(2015) NWLR (PT. 25)

The Claimant in a Suit predicated on land can establish evidence by traditional production of document of title duly authenticated and executed too or by act of ownership which has extended over a sufficient length of time numerous and positive as to warrant inference of true ownership. He can also establish ownership by long possession and enjoyment of the Res. He can also do so by proof of possession of adjacent land in circumstances rendering it probable that the owner of such connected and adjacent land would in addition be the owner of the land in dispute. On all the above, see the following cases of:

Oriodo V. Akinlolu
(2012)9 NWLR (PT. 1305) 370

Idundun V. Okumagba
(1976) 9 – 10 SC 227

Ashiek V. Borno State Government
(2012) 9 NWLR Page 1

Owoeye V. Oyinlola
(2012) 15 NWLR Page 84

Any failure by a Claimant to establish title through any or combination of these methods will make the Court to hold that the Claimant's claim to title is not established and his claim will fail. Where a Surveyor can from the record produce accurate plan of a land in dispute with such description as to its ascertainability, such land is said to be properly identified. That is what the Court decided in the case of:

Afuchukwu V. Adindu
(2012) 6 NWLR (PT. 1297) 534

A Survey Plan is necessary to prove identity of a land when the identity of the land is in dispute. So where the identity is not in dispute, proof of identity by Survey Plan is not necessary. See the decision of the Court in the case of:

Adedeji V. Oloso
(2007) 5 NWLR (PT. 1026) 133

So in claim of ownership or interest in land, the Claimant can only succeed on the strength of his evidence before the Court for him to succeed. It is not on the weakness of the case of the Defendant. See the decision of Court in the case of:

Akoledowo V. Ojibutu
(2012) 16 NWLR (PT. 1297) 1

It is incumbent on the Claimant to prove the vendors title where the title to the land is challenged. In that case the Claimant must plead and prove the origin of his title. See the following cases of:

Famuroti V. Agbeke
(1991) 5 NWLR (PT. 189) 1

Nwadiogbu V. Nnadozie
(2001) 12 NWLR (PT. 727) 315

To succeed on issue of trespass, the Claimant must show that he is the owner or has a legal title to the Res or that he is in exclusive possession before the trespass occurred. That is the decision in the case of:

Akoledowo V. Ojibutu Supra at Page 7

Where in a matter predicated on tussle of ownership where 2 persons are claiming ownership, the first in time carries the day.

So where a Claimant is able to trace the route of his title and it is first in time, the Court will hold that he is the rightful owner. The production of document of title, Certificate of Occupancy or Right of Occupancy as the case may be that is successfully challenged will not prove title to ownership because of the said challenge. So it is incumbent on the Claimant to present document of title which cannot be challenged by the adverse party before he can succeed. See the following cases of:

Registered Trustees of Apostolic Church V. Olowoseni
(1990) 6 NWLR (PT. 158) 514

Otukpo V. John
(2012) 7 NWLR (PT. 1299) 357

The Claimant must also establish the nature of his title, whether it is traditionally acquired or statutorily allocated. Failure to do with credible evidence oral or documental will nullify his claim. That is the decision in the case of:

Adesanya V. Aderomumi
(2000) 9 NWLR (PT. 672) 370

Every agreement of land must be in writing. The land must be clearly identified and specified, described and delineated in the agreement. That is what every Claimant must ensure before he can say that the land belongs to him. See the decision in the case of:

Dantata Junior V. Mohammed
(2012) 4 NWLR (PT. 1319) 122

In any case on land where the Claimant presents document of evidence of sale and exchange of money for the land, when tendered, gives proof to the claim of equitable interest on the land in dispute. See the following cases of:

Ogunjumo V. Ademolu
(1995) 4 NWLR (PT. 389) 254

Adesanya V. Aderomumi Supra at Page 368 – 369

Once there is evidence of receipt of payment for the land and evidence that possession was delivered to the Claimant by the vendor, the Claimant is said to have equitable interest on the land. See the following cases of:

Mohammed V. Mohammed
(2012) 11 NWLR (PT. 1310) 1

Nsiegbe V. Mgbemena
(2007) 10 NWLR (PT. 1042) 364

Thompson V. Arowolo
(2003) 7 NWLR (PT. 818) 163

Court does not grant title to anyone who cannot properly identify a land in dispute or on unidentified land. See the following cases of:

Ogedemgbe V. Balogun
(2007) 9 NWLR (PT. 1031) 380

Adelusola V. Akinde
(2004) 12 NWLR (PT. 887) 295

Okochi V. Animkwoi
(2003) 18 NWLR (PT. 851) P. 1

The existence of Right of Occupancy cannot destroy an already existing right over a land in dispute. For a grant of Right of Occupancy to be valid there must not have been in existence any Right of Occupancy in which the customary owner has not been diverted of such title. This means that there must not have been any encumbrances at all before the grant. See the case of:

Ezeamah V. Atta
(2004) 7 NWLR (PT. 873) 468

In a dispute predicated on Declaration of title to land or equitable interest, the Plaintiff must satisfy the Court that the document is genuine and valid, duly executed, stamped as the case may be and registered. That grantor has capacity to grant and authority to do so too and has what he proposed to grant or has granted. Because nemo dat quo non habet. The grant must be effective and judicially efficacious and has effect claimed by the holder of the instrument. See the following cases:

Dabo V. Abdullahi
(2015) 7 NWLR (PT. 928) 181

Kyari V. Alkali
(2001) 11 NWLR (PT. 714) 412

Romaine V. Romaine
(1992) 4 NWLR (PT. 238) 651

For Claimant to succeed in action of trespass he must show that he is in possession of the Res. That he is the owner. If he is not in possession, there is nothing in law or fact that the adverse party disturbed him by way of trespass. See the following cases:

Dim V. A-G Federation
(2004) 12 NWLR (PT. 888) 459

Kareem V. Ogunde
(1972) 1 SC 182

Oluwole V. Abubakar
(2004) 10 NWLR (PT. 882) 549

The Court has a right to look at all Processes filed and served on it, whether adopted or abandoned.

The Court had extensively touched on all issues that has in one way or the other arose in this particular case as shown above.

The question is, going by the above as stated coupled with the submission of the parties for and against in this Suit as extensively summarized by this Court in this Judgment, can it be said that the Claimants have, on a balance of preponderance of evidence, established its case by the testimonies of their three (3) Witnesses and the documents tendered which were not controverted or challenged and as such they are entitled to their claims?

Again, can it be said that the allocation made by the Secretary Rural Land Adjudication Committee of Bwari Area Council is invalid and that Customary Right of Occupancy which is recognised and provided for in the Land Use Act is not recognised within the FCT bearing in mind that there has been legally and lawfully established the issue of Regularization of Land Titles and Document of Title within the FCT for quite some time now and bearing in mind that the Right of Occupancy issued was with the approval of the Minister of FCT?

Again, can it be said that the Claimants have the competency to institute this action since the person through whom its title after relinquishing is deceased and that the 2nd & 3rd Claimants have nothing before the Court linking them to the vendor – Mr. Onwuka Lambert Okezue?

Again, since the 2nd & 3rd Claimants did not depose to their Statement on Oath before a Commissioner for Oath at the Court Registry, can it be said that their Oaths are invalid and should be discarded by Court and their evidence struck out by Court?

Has the Claimants discharged its onus and evidential burden by the testimonies of its Witnesses and documents tendered so much so that they are entitled to their claim and the declaration sought bearing in mind that the Defendant did not present any Witness in Court though they filed Witness Statement on Oath which was never adopted and that they did not tender any document before the Court and did not deny the fact that the Defendant is alleged to have seized the Power of Attorney issued by Maikudi Rafia to Mr. Onwuka Lambert Okezue, an allegation the Defendants did not deny?

It is the humble view of this Court that the Claimants have in the balance of preponderance of evidence before this Court and through the documents tendered and testimonies of their three (3) Witnesses which were not controverted or challenged, established their case and as such are entitled to the claim. So this Court holds.

By the advent of regularization of title documents within FCT, the allocation made by the Secretary of Rural Land Adjudication Committee of Bwari Area Council is usually

done on the approval of the FCT Minister as contained in the preamble or opening statement in the Right of Occupancy or allocation document. In that regard, it is valid, authentic and recognised and so is the Right of Occupancy issued by the Area Council provided and as long as those allocation and Right of Occupancy were done with the approval of the Hon, Minister of FCT and Regularised at AGIS. All those are done with the Minister's approval. That is why every opening remark in the Right of Occupancy states that:

> **"I am pleased to convey the Minister's approval of a Customary Right of Occupancy..."**

The above needs no further elucidation as it speaks for itself and settles the issue of who gives what. Regularization is done on Land Titles and documents of FCT Area Councils. By the Regularization, any defect in it is cured permanently. So this Court holds.

Going by the fact that the 2nd & 3rd Claimants were able to trace the root of its title to the 1st Claimant through Mr. Onwuka Lambert Okezue particularly on the issue of the Defendant seizing the Power of Attorney from him when the said Mr. Onwuka Lambert Okezue had presented same to the Defendant to prove his title and root of his title, a fact which the Defendant did not deny in his Statement of Defence and even in his Final Written Address, the Claimants are very competent to institute this action. They had through their Witnesses tendered other documents of title and the Witnesses had testified. Even during Cross-examination they still stated the fact that and confirmed the fact in their respective Statement on Oath, establishing severally that the Defendant actually seized and refused to

relinquish the said Power of Attorney given to Mr. Onwuka Lambert Okezue by the now deceased Maikudi Rafia. It is not in doubt that before his death that the 1st Claimant relinquished the title by the said Power of Attorney donated to the said Mr. Onwuka Lambert Okezue. Since the Defendant did not deny that fact this Court deems it that the Defendant admitted same. After all, facts admitted needs no further prove. That is why this Court holds the 2nd & 3rd Claimants have the competency to sue as they did notwithstanding that they have no link so to say from Maikudi Rafia but Mr. Onwuka Lambert Okezue has a link as the root of his title is based and founded on the said Power of Attorney which the Defendant seized.

It is the law that once a Power of Attorney is donated and it is irrevocable that the Donee has the right to do all act with the land as if it is his own since by the Power of Attorney the Donor has relinquished his power over the land.

Since there is in existence the said Power of Attorney duly donated by the 1st Claimant to the said Mr. Onwuka Lambert Okezue who in turn donated to the 2nd & 3rd Claimants, they have something linking them to the said Res which is the seized Power of Attorney so donated. Besides, the said Mr. Onwuka Lambert Okezue donated his own power over the land to the said 2nd & 3rd Claimants. Those documents were all tendered and admitted without controversy before this Court.

It is the humble view of this Court that the 2nd & 3rd Claimants have the competency to institute this Suit. They have the legal capacity to do so too as they have common equitable interest in the land.

Aside from the statement of the Claimants on the issue of the Power of Attorney, the letter from the Public Complaint Commission also shows that actually the Defendant held tight to the said documents of title of the Claimants including the said Power of Attorney as seen in the said letter from Public Complaint Commission. The Defendant knows ab initio that his claim to the Res is defective and without any concrete reason because he was confronted as early as possible about the fact that the land in issue which he is laying claim to, was encumbered. The series of meetings he had with the people even before the complaint was laid to the Public Complaint Commission ab initio and the subsequent complaint by 2nd Claimant. So also the visit to the Chief of Naval Staff and all the report made proves that there was "wahala" in the land. From all indication, the original documents which actually linked the 1st Claimant and Mr. Onwuka Lambert Okezue are in the possession of the Defendant who forcefully seized same and still retained same till date as shown in **EXH 6.**

The 2nd & 3rd Claimants have proved that they have the locus standi to institute this Suit and invariably, they have the competency too. They have more than sufficient interest in the land/Res and they have the capacity to institute the action.

Notwithstanding that the Oaths of 2nd & 3rd Claimants were not signed before the Commissioner for Oath, the fact that both Oaths were sworn before the Court and that the Oaths sworn were admitted and adopted in Court before the Judge in the open Court, suffices. It is more than sufficient for the Court to accept the said Oaths. It would have been a different thing if the 2nd & 3rd Claimants did not swear or affirm as they did before the Oath was

adopted. The "Hullabaloo" about Oath not sworn before a Commissioner for Oath who may or may not even be a lawyer does not render useless the said Oaths which were sworn before a Judge before it was adopted in Court as the evidence of the Deponents – 2nd & 3rd Claimants. The said deposition, having been sworn before the Court, it supersedes any one sworn before a Notary Public and Commissioner for Oath. Besides, any omission to do so before it was corrected and before their evidence were taken, they had sworn to tell the truth and nothing but the truth to the Court. Most importantly, there is no swearing to any Oath per se before the Commissioner for Oath stricto senso. This is because what actually happens is that the Commissioner for Oath usually only cites the Deponent to enquire that the person named as the Deponent whose passport picture is attached is the same person who had appeared before the often time "unlearned" Commissioner for Oath. There is no swearing done before the Commissioner for Oath. What they do is only citing. The Oath is actually taken in the Court before the Judge before the Witness testifies.

This Court holds that since the Deponents who were sworn witnesses for the Claimants and are even the 2nd & 3rd Claimants were sworn before the Judge. Not to have been sworn before a Commissioner for Oath has been taken care of by the swearing done before the Court. That is a mere irregularity which was taken care of by the Swearing/Affirmation done by the Claimant's Witness in the open Court. The Witness deposition of the 2nd & 3rd Claimants – PW1 & PW2 are proper before this Court. The depositions also constitute evidence enough to sustain the Reliefs sought by them in this case. So this Court holds.

This Court also holds that the Claimants have ably discharged the onus and evidential burden placed on them in this case through the testimonies of the PW1, PW2 and PW3 as well as through their responses to questions thrown to them under Cross-examination and through the documents tendered in this Suit, all of which were not challenged, controverted or questioned. They are entitled to their claims. So this Court holds.

To start with, they were able to state clearly the root of their title in this case. They traced it from the 1st Claimant who was able to relinquish his authority and ownership over the Res through the Power of Attorney he donated to Mr. Onwuka Lambert Okezue before he died. The said Power of Attorney was not tendered in this Court but the said Mr. Onwuka Lambert Okezue had in his Oath which is before this Court stated that they showed the original copy of the said Power of Attorney to the Defendant when he had a meeting with him at Agufa Hotel when the Claimants realised that the Defendant had trespassed into the land and the Defendant seized the said original Power of Attorney and other documents of the land and refused to release same to the Claimants since then till date. The Defendant did not deny that fact and had not released the documents. Even the 2nd Claimant stated that she saw the said Power of Attorney in the hand of the Chief of Naval Staff when the parties went to the Chief of Naval Staff to settle the issue between them before they - Claimants instituted this action against the Defendant. Again, in the **EXH 6** – the letter from the Public Complaint Commission, it was also clearly stated that the Defendant had refused to release the Power of Attorney and the other documents of

title which he seized and had refused to amicably settle the issue in dispute with the Plaintiff.

Also, the Claimants had tendered the original Conveyance of Provisional Approval of the land in issue which was issued or allocated to the Claimant on the 27th May, 2003 as issued by Bwari Area Council. The said Allocation, though signed by the Secretary Rural Land Adjudication Committee, was done by and with the approval of the Hon. Minister of FCT who has the power as delegated to him by the President of the Federal Republic of Nigeria going by the extant provision of the FCT Act and FCT Land Registration Act. Besides, the approval of the allocation was done by the said Hon. Minister though signed by the Secretary. That is why the said Conveyance was heralded by the opening paragraph thus:

> **"I am pleased to convey the Hon. Minister's Approval of the Customary Right of Occupancy in respect of Plot No. 79 of about 600sqm at Kubwa Extension II Relocation."**

The above settles it. It also shows that the Plot in issue is known and identified. It also shows that the size of the Plot is known and also the location. It further shows that the allocation is in line with the procedure permitted by law. It was regularized since it was allocated in the hand of the Bwari Area Council Rural Land Adjudication Committee. That registration was done on the **24th October, 2013,** years after the allocation. It is imperative to state that as at 2003 when the Allocation was done, that issue of Regularization was not in place. The Regularization was created in order to further legitimize the allocation done at the Area Council before then. So by the said Regularization

the Claimants had shown that their title document was in compliance with the law in that regard.

Also, by the Right of Occupancy, Technical Deed Plan (TDP), it shows clearly the location of the land, its size and the demarcation and boundaries which is one of the ways to lay claim over a parcel of land. That TDP was duly signed as required by law. The Defendant did not challenge same and he did not present any better document superior to that.

Even the Search Report tendered by the Claimants shows that the root of their title was traced to the said Maikudi Rafia – the 1st Claimant. It shows and confirms that the land was not encumbered as at the time the title was donated to the Claimants. By it the Claimants established further the root of their title to the Res.

The Agreement of sale, the Power of Attorney donated by Mr. Onwuka Lambert Okezue to the 2nd & 3rd Claimants as well as the Deed of Assignment all further concretized the claims of the genuineness of the Claimants' equitable interest over the Res.

The Letter of Complaint to the Public Complaint Commission and the meetings held between the Claimants and the Defendants at the Agufa Hotel, at Public Complaint Commission and before the Chief Naval Staff all show by the narratives thereon that there is consistency in the claims of the Claimants over the land and that the Defendant actually trespassed into the land.

The Claimants showed that they were first in time. They were in possession before the Defendant. That they fixed a

gate at the land and were in effective occupation of the Res too before the trespass.

Most importantly, the letter from Public Complaint Commission had shown that the Defendant could not present any document of title when he was asked to do so at Public Complaint Commission. Again, the letter from Public Complaint Commission revealed that the land rightly belongs to the Claimants and not to the Defendant. Also, it was revealed that the Claimants bought the land from a known source and the Plot No. is Plot 79. But it was also revealed that the seller of land to the Defendant – Odofin sold Plot 77 and not Plot 79. The Defendant did not deny that fact. The report of the inspection carried out on the Res revealed that Odofin sold Plot 77 but showed Plot 79 to the Defendant. The Defendant did not do any Search and if he did which I very much doubt, there is no document to show that he searched before he paid for the Plot he is erroneously claiming.

It was even shown that when the Defendant realised the mistake, he agreed to settle with the Claimants, to pay the Claimants the cost of the Plot.

Paragraph 6 of the letter by Public Complaint Commission advised the Defendant thus:

> **"... you vacate the said Plot and return the Complainant's – (Lambert Okezue)'s paper to them with immediate effect."**

The Public Complaint Commission also warned the Defendant thus:

> **"You are by this letter required to stay away from the land and hand over all the land documents in**

your possession to the owners (including the Power of Attorney) as the owners wants to develop without delay."

(All emphasis mine).

Also, the letter to the Public Complaint Commission by the 2nd Claimant is also clear and unambiguous. It showed that the Defendant actually trespassed. So also the Report – Petition written by the Attorney of the 2nd & 3rd Claimants to Chief of Naval Staff. That letter necessitated the meeting between the Claimants and the Defendant at the Naval Headquarters. In the letter, the Claimants' Counsel narrated the origin and all the story of how the Claimants came into the Plot and the act of trespass by the Defendant. It also referred to the meeting and investigation by Public Complaint Commission.

All in all, the Claimants were able to meet all the standard set for prove of ownership and interest in land in this case. They were able to prove act of trespass by the Defendant, an act which the Defendant did not deny. The Defendant on two (2) occasions demolished the gate erected by the Claimants in the Res.

As already stated severally, the Defendant filed an Amended Statement of Defence and Statement of Oath but they never adopted the said Oath and never opened or closed his case. He rested his case on that of the Claimants which is his right and choice. He was not able to show that he did not trespass. He was not able to discharge the onus placed on him or prove that he was first in time. He did not deny seizing and confiscating the documents of title of the Claimants especially the original Power of Attorney. He did not deny demolishing the gate

erected by the Claimants or give any justification for doing so. He could not trace the root of his title to the land and did not deny the report from the Public Complaint Commission and the meetings at the Chief of Naval Staff office.

That is why this Court holds that he is a trespasser. He has no traceable title to the Res. He did not do any Search before he bought the Res which he claimed he bought. He knows that in land matter, "document is king" and "Buyer beware" is also known to all in land transaction. Most probably, that was why he abandoned his Defence in this Suit because he has no Defence to the Suit of the Claimants.

This Court holds that the Claimants' case was proved on preponderance of evidence they placed before this Court through the testimonies of the PW1 – PW3 and the documents they tendered.

The case of the Claimants was proved and they established their interest on the Res based on merit and not on the weakness of the Defendant/Defence.

The Claimants are entitled to their claims to wit:

Claims A – D granted as prayed.

The Defendant is to pay the Claimants the sum of One Hundred Thousand Naira (₦100, 000.00) as Exemplary Damages for the act of trespass in the Res.

The Court will not grant the Order for Special Damages because the Claimants did not state the particulars of the said damages for Court to ascertain the amount actually spent for the construction of the damaged gate.

The Court hereby Order that the 2nd & 3rd Claimants take the physical and legal possession of the said Res having proven and established their claim in this case.

The Court hereby award 3% Post-Judgment Interest on the Judgment sum from the date of Judgment until its final liquidation.

The Defendant to pay to the Claimants the sum of Fifty Thousand Naira (₦50, 000.00) only as cost of the Suit.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2022 by me.

_____

K.N. OGBONNAYA

HON. JUDGE