

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 11TH DAY OF MARCH, 2022

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

JUDGE

SUIT NO.: FCT/HC/CV/1145/18

BETWEEN:

MR. OGWEJE JONATHAN

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CLAIMANT

AND

1. PEOPLE'S PARADISE LIMITED
2. ENGINEER MUSTAPHA SHEIDU
3. OLISA C. NZEKWE
4. THE COMMISSIONER OF POLICE, FCT
POLICE COMMAND, NIGERIA POLICE

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DEFENDANTS

JUDGMENT

On the 7th day of March, 2018 the Plaintiff – Mr. Ogweje Jonathan filed the Suit against the Defendants claiming the following:

- (1) A Declaration that the Claimant is the bonafide, beneficial, legal and lawful owner to the exclusion of any other person(s) whatsoever and howsoever described of the three (3) bedroom fully detached house known as Plot 25 measuring approximately 400 square meters at People's Paradise Limited Estate at Sabon Lugbe, Abuja, F.C.T.**

- (2) A Declaration that the Defendants either acting by themselves or through their agents, servants and/or privies, have no legal or equitable right to further allocate, sell, revoke or deal in any manner that may or will adversely affect the Claimant's interest in the three (3) bedroom fully detached house known as Plot 25 measuring approximately 400 square meters at People's Paradise Limited Estate at Sabon Lugbe, Abuja, F.C.T.**
- (3) An Order of Perpetual Injunction restraining the Defendants, their agents, servants and/or privies or howsoever described from unlawfully interfering with the Claimant's right to ownership and quiet enjoyment of the three (3) bedroom fully detached house known as Plot 25 measuring approximately 400 square meters at People's Paradise Limited Estate at Sabon Lugbe, Abuja, F.C.T.**
- (4) A Declaration that the Defendants' unlawful entry and forcefully stopping and restraining the Claimant from continuing with construction work on the three (3) bedroom fully detached house known as Plot 25 measuring approximately 400 square meters at People's Paradise Limited Estate at Sabon Lugbe, Abuja, F.C.T. through the activities of**

their agents, privies, servants and workmen amounts to trespass.

(5) Five Hundred Thousand Naira (₦500, 000.00) being the cost of professional fees for filing and prosecuting this Suit.

(6) The Cost of this Suit as assessed.

OR IN THE ALTERNATIVE:

(1) An Order compelling the 1st – 3rd Defendants to pay to the Claimant the sum of ₦2.2 Million paid by him to them for the purchase of the three (3) bedroom fully detached house known as Plot 25 measuring approximately 400 square meters at People’s Paradise Limited Estate at Sabon Lugbe, Abuja, F.C.T.

(2) An Order compelling the 3rd Defendant to pay the Claimant the sum of Fifty Thousand Naira (₦50, 000.00) lent to him in furtherance of the Land Sale Agreement between the Claimant and the 1st – 3rd Defendants.

(3) An Order compelling the Defendants jointly and severally to pay the Claimant all the monies expended by him in erecting a fence and DPC as assessed by the Honourable Court on the three (3) bedroom fully detached house known as Plot 25 measuring approximately 400 square meters

at People's Paradise Limited Estate at Sabon Lugbe, Abuja, F.C.T.

- (4) General Damages for breach of contract jointly and severally against the 1st – 3rd Defendants.**
- (5) A Declaration that the Defendants' unlawful entry and forcefully stopping and restraining the Claimant from continuing with construction work on the three (3) bedroom fully detached house known as Plot 25 measuring approximately 400 square meters at People's Paradise Limited Estate at Sabon Lugbe, Abuja, F.C.T. through the activities of their agents, privies, servants and workmen amounts to trespass.**
- (6) Five Hundred Thousand Naira (₦500, 000.00) being the cost of professional fees for filing and prosecuting this Suit.**
- (7) The Cost of this Suit as assessed.**

The Defendants were served but did not file any Statement of Defence. The service of the Originating Processes on the 1st – 3rd Defendants was by substituted means.

The 4th Defendant was served personally. While the others were served by pasting based on Order of this Court made on the 26th day of March, 2019. Over one year after the Order was made and perfected, the

Claimant opened its case on the 25th February, 2020. He called one (1) Witness – PW1 who testified in chief and the Court reserved for Cross-examination on the 29th April, 2020. But the Defendants never entered appearance in paper or in person. They did not file any Statement of Defence; never had Counsel representation and never Cross-examined the PW1.

The Court, after waiting for them in futility, foreclosed them on the 22nd February, 2021 – one (1) whole year after the Claimant had opened its case. The Court closed the case of the Claimant. Since The Defendants did not file any Statement of Defence, the Court adjourned the matter for Final Address. Again, the Claimant filed and served the Defendants. But the Defendants did not file any or respond to Claimant’s Final Address.

So this Judgment is based on the Statement of Claim of the Claimant, testimony of his Witness – PW1 and documents which were tendered all of which were not challenged or controverted.

The Claimant had called PW1 who testified and tendered 10 documents marked as EXH 1 – 10.

In the Written Address, he raised two (2) Issues for determination which are:

- (1) “Whether he is the bonafide, legal and lawful owner of the Res.**
- (2) Whether he is entitled to the Reliefs sought in this case.”**

He submitted that he is the legal and lawful owner of the Res. That he has tendered documents in this case to establish his ownership and title to the Res in this case. That he has also established all the grounds which the Court had set for proof of title in the case of:

**Idundun V. Okemagba
(1979) 9 – 9 SC 246**

That through the documents tendered by him especially Letter of Allocation, **EXH 1, 2 & 3** he has established the origin of his title. That PW1 had led evidence on how he paid the 1st – 3rd Defendants the cumulative sum of ₦2.2 Million as evidenced by **EXH 6** which is the Receipt of Payment issued to the Claimant by the 1st Defendant.

That all the above evidence have not been challenged or the Exhibits controverted by the Defendants. He referred to the cases of:

**Gov. Zamfara V. Gyalange
(2013) All FWLR (PT. 658)**

**Ezeanya V. Okeke
(1995) 4 NWLR (PT. 388) 168**

**NSIFMB V. Kofo Limited
(2010) 13 NWLR (PT. 211) 332**

He urged Court that he had established title and had paid the said property and he is therefore the rightful, legal and lawful owner of the Res.

That by **EXH 5 - Memorandum/Sale Agreement** between Claimant and 3rd Defendant who is the seller/landlord of 1st Defendant, that the parties - Claimant and 3rd Defendant agreed that the price is **₦2.5 Million**. But that 3rd Defendant gave him a discount of Three Hundred Thousand Naira (**₦300, 000.00**). That fact was not controverted or transverse. He relied on the case of:

Afolabi Alaremu

(2013) All FWLR (PT. 1636 @ 1639

Again, that PW1 testified on the price for the property which is **₦2.2 Million** paid by the Claimant to the Defendants in full as agreed by parties as shown in **EXH 6** and as averred in paragraph 6 of her Oath. That evidence was equally not transverse. She relied on the decision in the case of:

Best Nigeria Limited V. ZH (Nigeria) Limited

(2011) 5 NWLR (PT. 1239) @ 136

That Claimant also frontloaded the Unity Bank PLC Receipt dated 21st January, 2016 evidencing the payment of One Million Naira (**₦1, 000,000.00**) by the Claimant to the Defendants though it was not tendered but the law enjoins the Court to consider same when writing the Judgment of the Court. He relied on the case of:

Uzodinma V. Izumaso (No. 2)

(2011) 17 NWLR (PT. 1275) @ 40

That there is no evidence to contradict that the fact that Claimant paid fully for the Res. He urged Court to hold that the Claimant paid fully the price of the property and as such he is the bonafide, legal and lawful owner of the Res to the exclusion of every other person(s). He urged Court to declare so accordingly. He referred to the case of:

Moses V. Onu
(2013) All FWLR (PT. 674) 157

That the Defendants offered no evidence in defence of his Suit and therefore the burden of proof placed on the Claimant is menial. That they did not file any Statement of Defence. That is the position in this case. That he had paid and taken possession and had started to effectively occupy the Res before the Defendants trespassed and stopped him from continuing his construction work at the Res. That this fact was testified and not challenged by the Defendants. He referred to the case of:

Cameroon Airlines V. Otutuizu
(2011) 4 NWLR (PT. 1237) 525

That he testified all his obligations in the contract and has the legal right to enforce the contract as he did. He urged the Court to so hold and declare him the bonafide owner of the Res.

That where there are competing rights over a piece of land, that the first in time takes sway. That in this case, he is first in time.

That the Defendants had come on several occasions to harass him at the Res but they never came to Court to challenge him or defend the action. He urged Court to so hold.

On whether he is entitled to the Reliefs contained in the Writ, he submitted that he is entitled to all the Reliefs. Taking the Reliefs one by one, he submitted as follows:

That the Defendants acting for selves have no equitable legal right to allocate or sell the Res. He urged Court to so hold. That the Court should therefore grant the Reliefs.

On Order of Perpetual, he submitted that from the detailed argument canvassed in issue not in order to protect his right which has not been controverted. That action of the Defendants in trespassing into the land is an actionable wrong as trespass is rooted in title to land in issue and is at the instance of the person in possession. He referred to the case of:

Ukpanah V. Ayaga
(2001) FWLR (PT. 589) 1177

That from the totality of evidence before this Court that the Court will arrive at the conclusion that the Defendants trespassed into the land in dispute. He urged Court to so hold. That he was in possession of the Res before the trespass. That the law on damages in trespass is restitution in Integrim. He referred to the case of:

Yakubu V. Impresit Bakolori PLC
(2011) All FWLR (PT. 598) 841 – 842

He urged Court to award Damages to the Plaintiff against Defendants for the trespass by the Defendants.

On the alternative claim to damages, he urged Court to Order the Defendant to pay him the ₦2.2 Million he paid as the purchase price of the Res which claim falls under the damages for breach of contract. He referred to the case of:

Cameroon Airlines V. Otutuizu @ page 523 paragraphs 11 – 13.

That in this case, they seek for restitution of the amount paid to the Defendants by Plaintiff. He urged Court to Order the Defendants to pay back the said N2.2 Million being the amount paid for the Res.

That by evidence laid – EXH 7 on the amount lent to the Res – Fifty Thousand Naira (₦50, 000.00) Cachez Nigeria Limited Receipt dated 17th October, 2017. That the evidence was not contradicted by the Defendants. He urged Court to grant that alternative claim.

On the Claim for the refund of the money expended on the Res for fencing and DPC to be paid jointly and severally by the Defendants, the Plaintiff submitted that that fact was not controverted.

That the detailed argument of the Plaintiff as canvassed on the forceful entry by privies, workmen, agents and servants of the Defendants into the Res, he submitted that the argument as canvassed in paragraphs 65 – 79 of his Final Written Address suffices and was not

controverted. He urged Court to grant all his Claims in this Suit.

COURT:

Any fact which is not controverted by any party who was given all the judicial leverages to do so but fails, neglected, forgets or refused to do so are deemed admitted by such parties. Such party is said to have slept on his right and has his self to blame. The Court of law is not a Judicial Nurse and its function does not entail waking a party who decides to slumber over his right. This is more so when all attempts were made to ensure that such party leverage on the chance given to it by the Court. Again, fair-hearing is not Open Cheque which a party can cash out at any bank in any currency of the world and fix any amount it likes. To enjoy fair-hearing, the person must act reasonably, timeously and responsibly too. It is surely not a free lunch or cocktail.

In this case, the Court ensured that the Defendants – People’s Paradise Limited, Engr. Mustapha Sheidu, Olisa Nzekwe and Commissioner of Police FCT Command were all duly served with the Originating Processes filed by the Plaintiff – Mr. Ogweje Jonathan. The Court equally ensured that all the 12 times that this matter were adjourned, that they were served Hearing Notices in good time. But for the reason best known to the Defendants, they failed, refused, neglected and probably forget and ignored to be in Court. They did not enter appearance in person or paper and never had Counsel representation too. The Court waited for a whole year to see if they will

wake from their slumber but they never did. That is why this Court boldly holds that the facts and evidence put forward by the Plaintiff in this case are and remains uncontroverted till date. They are deemed with all sense of humility admitted by all the Defendants who failed to challenge, debunk, deny and controvert those facts.

A closer and indebth look at the evidence before the Court shows that there was provisional Letter of Allocation dated 20/1/16 written by the 1st Defendant – People’s Paradise Estate Limited addressed to the Plaintiff – Mr. Ogweje Jonathan. That document was admitted in the course of testimony by PW1 and it was marked as EXH 1. Also, in support of the Plaintiff’s claim to the Res, is the Letter of Offer, also written by the 1st Defendant to the Plaintiff. That document was dated 20th January, 2016. In the letter which was addressed to the Plaintiff was written in the opening paragraph thus:

“Upon your application dated 20th January, 2016 to acquire a space of three (3) bedroom fully detached and to make payment.”

The document stated the purpose for the offer. It also shows what the offer was – 3 Bedroom fully detached. The letter stated that the price of the space and also the purpose of payment, size and amount and allocation.

“It is our pleasure to offer you a unit/space measuring 400sqm situate at Sabon Lugbe at selling price of ₦2.5 Million.”

In the said letter it was specified that the Offer has Terms and Condition which was attached to the Offer. The said Terms and Condition was tendered and admitted as EXH 3. The Letter of Offer for Allocation was attached as EXH 2. The Plaintiff also attached evidence of initial payment for the said allocation attached as EXH 6 as evidenced in the initial payment. That Receipt was issued to the Plaintiff by the 1st Defendant Receipt No. 0087 dated 21st January, 2016 for the sum of **One Million Naira (₦1, 000,000.00)**. In the Receipt, it was marked in the column for the purpose of the payment thus:

“Deposit for 400sqm (NO. 25) of Land at People’s Paradise Estate Lugbe.”

That document was signed.

Again, there was also the Memorandum of Understanding/Sale of Land Agreement signed by the Plaintiff and 3rd Defendant – Olisa Nzekwe. It was tendered and admitted as EXH 5. In the document (EXH 5) the parties agreed that it is for Sale of Plot No. 25 for 400sqm in real property known as People’s Paradise Estate. It was made on 20th January, 2016. The Plaintiff agreed to pay the sum of **One Million Naira (₦1, 000,000.00)** on 21st January, 2016 and to pay another **One Million Naira (₦1, 000,000.00)** on 30th March, 2016.

Most importantly, the parties agreed that **Three Hundred Thousand Naira (₦300, 000.00)** shall be deducted from the payment due on the land.

According to the Memorandum of Understanding/Sale of Land Agreement (under the conveyance) the cost of the land is **Two Million Five Hundred Thousand Naira (₦2, 500,000.00)**. Discounted amount on the land is **Three Hundred Thousand Naira (₦300, 000.00)** making the total to be **₦2.2 Million**. The parties signed all these in the Memorandum of Understanding/Sale of Land Agreement – EXH 5. This document was not challenged. The Defendants did not deny receiving this money.

The Plaintiff also attached the Letter of Infrastructure written to the Plaintiff by the 1st Defendant dated 20th January, 2016. Also attached is evidence of payment of the other **One Million Naira (₦1, 000,000.00)** to the benefit of the 2nd Defendant – Mustapha Sheidu. That payment was made by the Plaintiff to the 2nd Defendant on the 2nd June, 20__ through a cash bank transfer from the First City Monument Bank (FCMB) Account No.: 2869092025. It was to FCMB Account of the Defendant at the Unity Bank. That document was attached and tendered as EXH 6. The Defendants did not deny receipt of the said money paid by Plaintiff and evidence of receipt Cochez Construction. It was evidenced in the Receipt No. 0054 dated 17th October, 2017. The Defendants did not deny the issue raised in respect of the said document which the Plaintiff claims was money he lent to the Defendants. The Defendants did not deny that the money was lent to them.

It is imperative to state that all these documents were frontloaded and served on the Defendants but they never

challenged its admission in evidence. They did not deny receipt of the money or signing the documents or deny writing the letter or signing Memorandum of Understanding/ Sale of Land Agreement.

From all indication, there was privity of contract between the parties as there is a clear existence of a very valid contract as can be seen from the documents tendered. There was Offer. There was Acceptance. There was also consideration which is the money paid for the land which is the subject of the Agreement. The Defendants not challenging these facts and evidence tendered puts no one in doubt that they have admitted the facts as stated by the Plaintiff as the true situation. They have also by their action shown that they have no Defence to the case of the Plaintiff else they should have challenged the Suit. That is why this Court holds that the case of the Plaintiff is uncontroverted, unchallenged and admitted.

It is the law and had been held in plethora of case that onus to establish a case is on the party who had alleged. Because whoever alleges must prove such allegation.

The Plaintiff had alleged that he is the owner of the Res and that he has equitable and legal possessory right over the Res. He had proved that there is an existing contract and of course privity of contract between him and the Defendants. This he did through the testimony of PW1 and the documents he tendered. This Court believed him. He had also proved that he fulfilled his side of the obligation in the contract of sale of land space. He had proved that he was in effective occupation and possession

as at the time the Defendants trespassed into the land. He had shown that he fenced the place before the trespass.

It is the law that trespass is a thing of effective occupation and possession and that person who alleges trespass must establish that he was in possession before the trespass even if he is not the owner.

In this case, the Plaintiff had not only shown that he is in occupation as at the time of trespass but that he has legal, equitable and possessory right given his averment in the Oath, testimony of the PW1 and in the documents tendered before this Court through PW1. That assertion was proved but was never challenged. This Court believes the Plaintiff and holds that Plaintiff has both possessory, equitable and legal interest and ownership of the Res.

In this case, the Plaintiff proved purchase of the land through the Receipt, the transfer documents and the Memorandum of Understanding as decided in the case of:

**Akinyene V. Etim
(2013) FWL**

Where a purchaser has paid the price for the land to vendor such purchaser is said to have equitable interest in the land and that is as good as Legal Estate in the land.

In this case, the Plaintiff paid Two Million Naira (₦2,000,000.00) for the land in issue. See the case of:

Gbadamosi V. Akintoye

(2014) All FWLR (PT. 717)

Once the Defence offers no defence that the Plaintiff has minimal burden placed on her. But in this case the Plaintiff had succinctly as shown in the testimony of PW1, her Oath and documents tendered proved the case. See the cases of:

Chami V. UBA PLC

(2010) All FWLR (PT. 520 @ 1287

Adeleke V. Iyanda

(2001) 9 MJSC 188

The burden of proof is minimal to the Plaintiff. Again, the Plaintiff has fulfilled the condition precedent to the contract as decided in the case of:

BFI Group Corporation V. Bureau of Public Ent.

(2013) FWLR (PT. 676) 444 @ 460

The Plaintiff laid evidence as already shown that he has performed his own obligation to the Defendants by paying the full purchase price as agreed. He also took possession and effectively occupied the Res by constructing a perimeter fence around the Res and having DPC constructed in the Res too.

He established that he was already doing some construction works on the Res when the Defendants and their Agents committed the act of trespass into the Res. This is as shown in paragraph 8 – 18 of his Oath and Statement of Claim as well as in the testimony of the PW1.

The PW1 testified on the material points and the Defendants failed to Cross-examine PW1 to show and disprove those facts. Hence this Court holds that the facts by PW1 are not disputed and therefore are true. On the above, see the case of:

Cameroon Airline V. Otutuizu Supra

It has been decided that when the arguments and submission of a party is not challenged especially as regard the prove and establishment of ownership of land, the Court has no reason not to hold that such party is the bonafide, legal and lawful owner of the property to the exclusion of all other persons. That is what this Court holds in this case because the Plaintiff had established ownership with evidence of PW1 and documents tendered in evidence. On the above, see the case of:

**Nnanyelugo V. Nnanyelugo
(2008) All FWLR (PT. 401) 897 @ 908**

The ownership of the Res was transferred to the Plaintiff by way of devolution of purchase.

The Plaintiff, having paid the price, has acquired equitable interest which is as good as legal title and which can only be defeated by a purchaser of land for value without notice of prior equity. There is no evidence that there is such purchaser of value without prior notice in this case. Hence, the Court holds that the Plaintiff has both equitable and legal interest in the Res. The Plaintiff has proved that through EXH 6. Again, the Plaintiff is the

first in time in this case and therefore has a better title as elucidated by the Court of Appeal in the case of:

Inter Beer & Beverages Industry Limited V. Mutunci Co. Limited @ Page 1261

See also the case of:

**Adebiyi V. Adesola
(2014) All FWLR (PT. 722) 1803**

The Defendants has not contradicted the claim of the Plaintiff and as such the Plaintiff is entitled to his Claim in this case. Having proved trespass, he is entitled to damages and restitution in tegrum because trespass is rooted in exclusive possession of the land in issue which was trespassed on. See the cases of:

**Yakubu V. Impresit Bakoloniv PLC
(2011) FWLR (PT. 598) 841 – 842**

**Osuji V. Isiocha
(1989) 3 NWLR (PT. 111) 631**

It is evidently clear that the Defendants trespassed on the Res by chasing out the Plaintiff out of the Res. See also the case of:

**Omotayo V. Co-operative Supply Association
(2010) All FWLR (PT. 537) 626 @ 627**

Every party that has proved act of trespass is entitled to payment of Damages which is at the discretion of the Court to grant as the case may be. This is so whether the party has suffered physical damages in the Res or has

suffered for the denial of enjoyment of the Res by the Defendant's act of trespass.

In this case, the Plaintiff has suffered physical damages and enjoyment damages too. He is entitled to Damages which is commensurate with the damages suffered by the act of the trespass. See the case of:

**NBC PLC V. Ubani
(2014) All FWLR (PT. 718) 827**

Since the Plaintiff has evidence to show that Defendants trespassed into the Res, he is entitled to the grant of General Damages for Trespass. He is also as it were, entitled to the alternative prayers having also established with credible evidence that he paid the purchase price as shown in the Exhibit. See the case of:

**NNPC V. Clifco
(2011) 4 MJSC 169**

The Defendants are liable to refund the said purchase money for the land, if the first claim does not stand.

The action of the Plaintiff is a pure breach of contract entered into by the parties as shown in EXH 1 – 6.

Forcefully stopping construction at the Res by the Defendants and their cronies is pure act of trespass which attracts payment of Damages.

All in all, the Plaintiff has established his claim and he is entitled to same to wit:

Claims 1 – 4 is granted.

There is no evidence to show about the cost of the Professional Fee.

The Defendants are to pay to Plaintiff Fifty Thousand Naira (₦50, 000.00) 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**