IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU – ABUJA
DELIVERED ON TUESDAY THE 18TH DAYOF JANUARY, 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CV/1589/2019

BETWEEN

ABDULRAHIM ZUBAIR---------- CLAIMANT

AND

1. SHEIK IBRAHIM----------DEFENDANTS
2. PERSONS UNKNOWN

JUDGMENT

The Claimant on the 10th of April, 2019 filed a writ of summons praying for the following:-

1. A declaration that the Claimant is the lawful owner/allottee of Plot No. 195 within Sabon Lugbe East layout of about 2500M2 with reference No.MFCT/ZA/AMAC/SLE 195 having been allocated same vide an Offer of Terms of Grant /Conveyance of Approval dated 1 1/3/1998.
2. A declaration that the acts of the defendants in entering into the said Plot No. 195 within Sabon Lugbe East layout Abuja FCT, clearing and bulldozing all trees without the authority and consent of the claimant amount to trespass.
3. A declaration that the acts of the defendants in entering into the said Plot No. 195 within Sabon Lugbe East layout Abuja FCT, clearing and bulldozing all trees without the authority and consent of the claimant is illegal and constitute a violation of the rights of the claimant as guaranteed by the 1999 Constitution and the Land Use Act.
4. An order of perpetual injunction restraining the defendants, their agents, privies or whatever name so called from further interference or trespass over Claimant 's interest in Plot No.

195 within Sabon Lugbe East layout of about 2500M2 with reference No. MFCT/ZA/AMAC/SLE 195.

5. An order for the sum ofN20, 000, 000 (Twenty Million Naira Only) against the defendants for trespass.
6. An order for the sum of N10, 000, 000 (Ten Hundred Million Naira Only) for general damages against the Defendants.

In support of the Application is an affidavit of 22 paragraphs deposed to by Abdulrahim Zubair, the Claimant. From the records of court, the Defendantswere duly served with the originating court processes via substituted means on 13th of November, 2019.Ibekwe Martha (Miss) counsel with F. U. Okolo &Associates filed a Motion on Notice for extension of time to file a memorandum of appearance and a deeming order for the 1st Defendant. The said motion was moved and granted on the 30th of January, 2020. After that counsel never appeared again in spite of service of hearing notices and they filed no defence. The 2nddefendant however never appeared in court at any time all through the course of this proceedings in spite of service of hearing notices. They were equally never represented.

In proof of his case, Claimant adopted his witness statement on oath on the 15thday of September, 2021. Wherein he tendered four (4) exhibits as follows: -

1. Certificate of compliance dated 8/4/2019 marked Exhibit A
2. Copies of biodata page of the international passport of the PW1 marked Exhibit B.
3. Copy of picture of fallen trees marked Exhibit C.
4. Offer of terms of grant/conveyance of approval of Plot 195 measuring 2500ms within Sabon Lugbe East Layout marked Exhibit D.

From the facts deposed, it is the case of the Claimant thathe is the owner/allotee of Plot No. 195 within Sabon Lugbe East layout Abuja ECT of about 2500M^2 with reference No.MFCT/ZA/AMAC/SLE 195 having been allocated same vide an Offer of Terms of Grant /Conveyance of Approval dated 11/3/1998 by Ministry of Federal Capital Territory through Abuja Municipal Area Council which he took

possession of the plots and planted economic trees and continuously farmed on the plots awaiting the construction of infrastructures for proper developments. That he never sold the plot, transferred interests to another person nor alienated the plots in any way since the allocation of the plot. That when he visited the plot on the 7th March, 2019, he found out that the plots have been cleared in preparation for development and construction by persons who do not have his authority in that respect. That he took pictures of the act with his phone and same was printed using the computer. That upon inquiry, he found out that it was the 1st defendant in the company of the 2nd defendants that did the clearing.That he got the1stdefendant's phone number as 08032261565 and his name as Sheik Ibrahim from the workers at the adjoining plot.That true caller app from his phone also identified the 1st Defendant as Sheik Ibrahim when hedialledthe phone number.That the 1st Defendant informed him that he purchased the said plot from some persons. That he does not know the defendants and never transacted any business with them in relation to the said Plot the subject matter of this suit.That the defendants are at the verge of digging foundations and commencing construction in the plot against my interest.That the act of the defendants in entering into the land and clearing same without his authority or permission is illegal and amounts to trespass.

At conclusion of the Claimant's evidence, suit was adjourned for cross examination of the Claimant and defence. On the next adjourned date, Defendants were not in court and had no legal representation. Claimant counsel then applied that the Defendant's right to cross-examine the Claimant and for defence be foreclosed Defendants having failed to come to court. The said application was granted and the matter was adjourned to the 3rdday of November, 2021 for adoption of final address.

As stated earlier, despite the service of court processes including hearing notices on the Defendants, the 1st Defendant filed a memorandum of appearance but did not file any defenceand the 2nd Defendantnever appeared in court nor filed any process in opposition. Fair hearing is a fundamental element of every trial process and it has

some key attributes: these include that the court shall hear both sides of the divide on all material issues and also give equal treatment, opportunity and consideration to all the parties as held in**Usani V Duke (2004) 7 N.W.L.R (pt.871) 116 and Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228.** However,no party has till eternity to present or defend any action.The Defendants here have been given every opportunity to respond to the allegations of the Claimant and theyhave exercised their right not to respond.

In the final address of the Claimant settled by C. C. Agidi dated 18thOctober, 2021, one issue was formulated for determination thus:

"Whether the Claimant has proved his case to be entitled to the reliefs sought in his statement of claim".

Summarily, learned counsel submittedthat it is settled that in a civil suit, the burden of proof lies on the Claimant to prove his case and that burden is discharged on the balance of probability or on a preponderance of evidence. He cited**Sections 131 (l), 132 and 134 of the Evidence Act 2011 (As Amended)**and the cases of **OKOYE & ORS V. NWANKWO (2014) LPELR-23172 (SC); NDUUL V. WAYO & ORS (2018) LPELR-45151 (SC); YIWA V. TATA (2018) LPELR-44669 (CA)**and **MINISTRY OF LANDS & HOUSING, BAUCHI STATE & ANOR V. TIRWUN (2017) LPELR-43314 (CA)**. Counsel submitted that by the exhibits tendered before this court they have been able to establish ownership of the said piece of land. Counsel further submitted that the defendants never appeared before this court to cross examine the claimant as to the facts and documents tendered despite service of hearing notices on them. That failure by the defendant amounts to an admission and the necessary implication is that the testimony of the claimant remains uncontroverted and unchallenged and this court is to act on same. He cited**IJEBU-ODE LG v. BALOCUN & CO LTD (1991) LPELR-1 463(SC),**and urged the court to act on the evidence as it is uncontroverted and unchallenged. Counsel also submitted that it is the law that where there is a main claim and ancillary claims in a suit and

the main claim succeeds, the ancillary claims ought to succeed also, therefore having proved the main relief for declaration of title to land the other reliefs ought to be granted.He relied on **ATUNKA & ANOR v. ABOKI & ANOR(2016) LPELR-41 199(CA).** He then urged the court to grant the reliefs of the claimant in the interest of justice.

I had stated at the beginning of this Judgment that the Defendants were duly served with the originating court processes and hearing notices during the course of this proceedings. They elected or chose not to file anything or adduce evidence in challenge. In law, it is now accepted principle of general application that in such circumstances, the defendantsare assumed to have accepted the evidence of the plaintiff and the trial court is entitled or is at liberty to act on the plaintiff's unchallenged evidence as held in**Tanarewa (Nig) Ltd V Arzai (2005) 5 N.W.L.R (pt.919) 593 at 636 C-F; Omoregbe V Lawani (1980) 3 – 7 SC 108; Agagu V Dawodu (1990) N.W.L.R (pt.160) 169 at 170.**

Notwithstanding the above general principle, the court is however yet still under a duty to examine the established facts of the case and then see whether it entitles claimant to the relief(s) he seeks. In**Nnamdi Azikiwe University V.Nwafor (1999) 1 N.W.L.R (pt.585) 116 at 240-242,** the court of Appeal per Salami J.C.A (as he then was) held:

> *"The plaintiff in a case is to succeed on the strength of his own case and not on the weakness of the case of the 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 overlook the need to ascertain whether the facts adduced before it establishes or proves 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..."*

It is also the trite position of law in case such as this where the Claimant seeks for declaratory and injunctive reliefs that the Claimant

must establish his entitlement to such reliefs with credible evidence; and in so doing, he succeeds only on the strength of his own case and not on the weakness of that of the defenceas held in **ADDAH & ORS v. UBANDAWAKI (2015) LPELR-24266(SC), per Fabiyi, JSC at pages 19 – 20, paras. E – F;**

The burden of proof lies on the Claimant to establish his case on a balance of probability by providing credible evidence to sustain his claims irrespective of the presence and/or absence of the defendant.The sole issue for determination here is:

> **"Whether the Claimant has proved that he is entitled to the prayers sought".**

On whether the Claimant in the case in view is entitled to the reliefs claimed or not, it becomes most expedient to ascertain the root of title of Claimant first and foremost.The Supreme Court held in **MATANMI & ORS v DADA & ANOR (2013) LPELR-19929 (SC)**, per Fabiyi, JSC that there are five ways of proving title to land. These are: (1) Proof by traditional history or evidence of tradition; (2) Proof by grant or the production of documents of title; (3) Proof by acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the person exercising such acts is the owner of the land; (4) Proof by acts of long possession; and (5) Proof by possession of connected and adjacent lands in circumstances rendering it probable that the owner of such lands would in addition be the owner of the land in dispute.

In the FCT, it is trite law that the only means of acquiring a valid title to land is by grant of a statutory right of occupancy by the Honourable Minister of the FCT. This means that within this territory the only means of proving title to a plot of land in the FCT is by tendering valid documents of title attributed to the Honourable Minister. In this case, as aptly stated by learned counsel for the Claimant in his final written address and the ensuing evidence and title documents, Claimant came

about the subject matter of litigation by virtue of allocation and issuance of offer of terms of grant/conveyance of approval with reference **No.MFCT/ZA/AMAC/SLE 195** dated 11/3/1998 by Abuja Municipal Area Council. It therefore follows that Claimant's title is derived from the title documents in offer of terms of grant/conveyance of approval aforementioned (Exhibit D) granted by Abuja Municipal Area Council (AMAC).

S. 297 (2) of the 1999 constitution of the Federal Republic of Nigeria vests absolute ownership of all land in the Federal Capital Territory in the Federal Government of Nigeria. Also **S. 1 (3) of the Federal capital Territory Act, 2004** is also in conformity with **S. 297 (2) of the 1999 constitution of Federal republic of Nigeria. Section 297 (2) of 1999 Constitution provides thus**: -

> "The ownership of all lands comprised in the Federal capital territory, Abuja shall vest in the government of the Federal Republic of Nigeria".

Section 1 (3) of the Federal Capital Territory Act also provides as follows:

> "The area contained in the Capital Territory shall, as from commencement of this Act, cease to be a portion of the states concerned and shall henceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Federal capital Territory shall likewise vest absolutely in the Government of the Federal Republic of Nigeria".

From the above provisions, it simply states that all lands within the Federal Capital Territory belong to the Federal Government of Nigeria and it is only the Federal government of Nigeria that can allocate to any individual. The question of urban or non-urban land does not apply and cannot apply to land within the Federal Capital Territory and I must state on the authority of ***ONA VS ATENDA (2000) 1 NWLR (pt. 656) 244*** that no area council within the FCT has the authority to do anything with the lands within the Federal Capital Territory, unless

and until the Act of the National Assembly is passed to truly define the administrative and political structure of the Area Councils within Federal Capital Territory.

It is most crystal clear from both the preamble to the **Federal Capital Territory Act**and **Section 1(3) of the Federal Capital Territory Act** that all land comprised in the Federal Capital Territory vest absolutely in the Federal Government of Nigeria. For the purpose of clarity, I shall re-produce the preamble to the **Federal Capital Territory Act.**

Preamble to Federal Capital Territory Act

> "*An Act to establish for Nigeria, a Federal Capital territory and to provide for the constitution of a Federal Capital Development Authority for the purpose of exercising the various powers set out in this Act, to execute other projects connected therewith, to provide for the laws applicable to that Territory and for appeals from the Upper Area Court and the law applicable thereto; and to provide for the delegation to the Minister of Federal Capital Territory of the executive powers vested in the President and those vested in him and the Government of a State under the applicable laws."*

Preamble to Land Use Act *1978*

> *"An Act to vest all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Government of the State, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non – urban areas are conferred on Local Government."*

It follows naturally and legally speaking therefore that, ownership of land within the Federal Capital Territory vests in the Federal

Government of Nigeria who through the Minister of Federal Capital Territory grant statutory rights of occupancy to any person. The issue of urban or non-urban land is the creation of **Land Use Act 1978**and to the extent of the creation is inapplicable to the Federal Capital Territory. If therefore there is no non-urban land in the Federal Capital Territory, it presupposes that the only title validly and legally acceptable within the Federal Capital Territory is the statutory allocation by the Federal Capital Territory Minister and no other.

The crucial poser is to first determine whether Exhibit Dproves that the Claimant is the lawful/allottee of the plot of land?This Court has examined in depth Exhibit D and has come to the inescapable conclusion that it has not established the Claimant as the lawful/allotteethat entitles the Claimant to the reliefs sought in this action. Putting it another way Exhibit D is merely an indication of an offer of a grant of an interest in Plot No. 195 within Sabon Lugbe East layout of about 2500M2 by the Ministry of Federal Capital Territory.Exhibit D states as follows:

MINISTRY FOR FEDERAL CAPITAL TERRITORY
ABUJA MUNICIPAL AREA COUNCIL
ZONAL PLANNING OFFICE

Our Ref. MFCT/ZA/AMAC/SLE 195 P.M.B. 24
Your Ref. Abuja
ABDULRAHIM ZUBAIR 11/3/98
……
……

OFFER OF THE TERMS OF GRANT/CONVEYANCE OF APPROVAL

I am directed to refer to your application for statutory Right of occupancy with the Federal Capital Territory dated Dec., 1997 and to convey the Honourable Minister's approval of a grant of right of occupancy in respect of a plot of about 2500m2 (Plot 195) within Sabon Lugbe East Layout

On the following terms/conditions.

(i) Rent per hectare per annum N2,000.00 per ha
(ii) Improvements N2,500,000.00

(iii) Term	99 years
(iv) Rent Revision	5 years
(v) Purpose	RESIDENTIAL
(vi) Premium	N100,000.00 per ha

2. I am to add that the following conditions will also be inserted in the certificate of occupancy evidencing the grant of this rights of occupancy

(i) Within two years from the date of commencement of the right of occupancy to erect and complete the said land the buildings or other works specified in detailed plans approved by AMAC ZONAL PLANNING OFFICE or other appointed by the Hon. Minister, such buildings or other works to be of such value of not less than (1,000,000) and to the erected and satisfaction of the said or other appointed by the Hon. Minister F.C.T.

(ii) Not to erect or build, or permit to be erected or build on the said land any building then those permitted to be erected by virtue of this certificate of occupancy, not to make or permit to be made any addition or alternation to the said buildings to be erected or buildings already erected on the land except in accordance with plans and specification approved by or other officer appointed by the Minister in his behalf.

(iii) Not to alienate the right of occupancy hereby granted or any part thereof by sale, assignment, mortgage, transport of possession, sublease or bequest or otherwise without the consent of the Minister first had and obtained.

3. The date of commencement of this right of occupancy will be the date of acceptance as signified by you, and should be within two months from the date of this letter.

4. I attach herewith two copies of letter of acceptance for your completion, and thereafter return a copy of same to this office for record purpose, please.

Yours faithfully,

LUGARD I. EDEGBE
ZONAL MANAGER
For: HONOURABLE MINISTER
(Emphases are mine)

The foregoing letter has been deliberately reproduced in this Judgment to underscore the ineligibility of Exhibit D as a document of title or a grant of a right of occupancy irrespective of the affidavit evidence of the Claimant. This Court will take cognizance of what the document itself

contains or conveys, in other words the document speaks for itself, regardless of the assertions. Going by paragraphs 3 and 4 of Exhibit D this Court is not left in doubt that Exhibit D is simply a letter of offer to grant a right of occupancy to the Claimant in respect of Plot 195within Sabon Lugbe East layout of about 2500M2. The Claimant is under the obligation to indicate his acceptance within 2 months from the 11/3/98when the offer of the plot was made to him.The Claimant who is by this action praying this Court to grant protective reliefs in respect of Plot 195 within Sabon Lugbe East layout of about 2500M2 has the primary legal burden of presenting this Court with credible and recognizable legal interest in the land which is the subject matter of this suit. A document which falls within the realms of a letter of offer cannot sustain the claims of the Claimant as in the instant case. The onus lies on him to establish at least a legal binding contract to convey Plot 195 within Sabon Lugbe East layout of about 2500M2 in his favour. Putting it another way, the Claimant ought to have presented this Court with persuasive evidence in proof of a formal acceptance of the offer to allocate the plot.

It is further noted that paragraph 4 indicates the inclusion of two letters of acceptance for completion by the Claimant, whilst he is to complete both, a copy of his letter of acceptance is to be forwarded to the Defendants whilst one is retained by him.The Claimant failed in presenting this Court with proof of his acceptance of the offer of a right of occupancy. Having failed to present this letter this Court is thus left to conjecture whether indeed he accepted the offer and complied with the terms and conditions for the grant. Most importantly, going by the terms of offer the date reflected in his letter of acceptance marks the commencement of his right of occupancy in respect of Plot 195within Sabon Lugbe East layout of about 2500M2.Claimant in effect failed to establish an enforceable contract to convey a right of occupancy in his favour. It is trite that it is not within the province of the Court to conjecture facts for litigations.

In the absence of a clear evidence of an acceptance of the offer there can be no legally binding or an enforceable contract. Applying this elementary principle of the law of contract to the instant case there can be no valid agreement to convey or indeed enforce a right of occupancy in favour of the Claimant in respect of Plot No. 195 within Sabon Lugbe East layout of about 2500M2.It is trite that once there is an offer and same is accepted, a contractual relationship has been established by both parties. And in **BFI GROUP CORP. VS. B.P.E. (2012) 18 NWLR Pt. 1332 Pg. 209 at 247 PARAS. E-F,** the Supreme Court per Adekeye JSC held as follows:

> "*It is trite that a person seeking to enforce his right under a contractual agreement must show that he has fulfilled all the conditions precedent and that he performed all those terms which ought to have been performed by him.*"

In evidence, the Claimant only tendered offer of terms of grant/conveyance of approval as evidence of the allocation to him and no more. Apart from the letter of offer, the letter of acceptance of the offer was equally not produced in court. There is similarly no evidence of any payments relating to the allocation like, filing and processing fees or development levy receipts. There is equally nothing showing what steps, if any, that Claimant took towards getting a certificate of occupancy over the land. The Claimant had not shown any evidence that he submitted to the Federal Capital Administration an application for regularization of the subject matter to bring it in conformity with the provisions of law on the issue of allocation which is the exclusive power of the Federal Capital Territory Minister who enjoys the delegated powers of the President of the Federal Republic of Nigeria, under **Section 18 of Federal Capital Territory Act.**

A claim such as this must be predicated on a valid and enforceable right of occupancy worthy of this Court's protection, Claimant failed to establish a credible legal interest in Plot 195within Sabon Lugbe East layout of about 2500M2.In the light of the fore-going, it is my finding

that the Claimant does not have valid legal title to the plot of land being claimed and I so hold. I will now consider the other reliefs sought.

For a party to allege trespass the party must be in possession. The court of Appeal in **ARTHUR ORUPOU & ORS v. MARK IGONIDERIGHA & ORS (2018) LPELR-44181(CA)** held that;

> *"The most important ingredient to prove trespass where there is dispute as to title is possession…"*

The apex Court reiterated this stand in **MADAM RIANATU SHITTU V. ALHAJA Y. O. EGBEYEMI & ORS (1996) LPELR 3060 (SC)** when it held:

> *".....It is therefore, the duty of a plaintiff suing for damages for trespass to prove that he was in exclusive possession of the land in dispute at the time of the alleged trespass.*

The Claimant's evidence as stated in paragraphs 5, 8 and 15 of his statement of claim and witness statement on oath is that after the allocation he took possession of the plots and planted economic trees and continuously farmed in the plots awaiting the construction of infrastructure for proper development. That on the 7th of March, 2019,he visited the Plot and saw that the entire plot along with other adjoining plots have been cleared in preparation for development and construction by persons who do not have his authority in that respect and who were later identified to be the defendants. That the Defendants are at the verge of digging foundations and commencing construction in the plot against his interest.The Claimant in support of his pleadings tendered exhibits C, a picture of a fallow land with a felled tree chopped into three logs in prove of the alleged trespass. This act of trespass though not contended ought to be proved on the preponderance of evidence. The Claimant has the duty to adduce credible evidence to prove that he was in actual possession of the plots before the defendant encroached thereon.Apart from Exhibit C, there is no other evidence to prove this assertion. Exhibit C did not show the beacons, adjourning plot or survey plan to ascertain possession neither did the Claimant discharge this burden of proof.More so, the Court of Appeal in **Alikor V.**

Ogwo (2010) 5 NWLR Part 1187 pg. 281 at 299Para B-C per Abdullahi JCA held that;

> *"Where a pleaded root of title has not been proved, it will be unnecessary to consider acts of ownership and possession, which acts are no longer acts of possession but acts of trespass".*

I therefore hold that Claimant has not proved possession hence cannot succeed in claim of trespass.

In **OLUWASEUN O. OLUWOLE v. OLAYIWOLA ABUBAKARE (2011) LPELR-7284(CA),** the Court of Appeal held that;

> *"On issue of injunction, it is trite law that the remedy of an injunction will not be available to the plaintiff whose claim for declaration of title and/or trespass failed".*

Since Claimant has failed to prove trespass, the remedy of injunction cannot avail him.The Supreme Court in **CHIEF ADEOYE ADIO FAGUNWA & ANOR v. CHIEF NATHANIEL ADIBI & ORS (2004) LPELR-1229(SC)** held that;

> *"… The injunctive relief is parasitic on the other reliefs, particularly relief (c) on trespass. As the plaintiffs/appellants failed to prove trespass to the land, their claim for injunction automatically fails, particularly in the light of the decision of the Court of Appeal that the boundaries of the land in dispute were not clearly demarcated and therefore identified".*

It is trite that one cannot place something on nothing and expect same to stand. Having found that the Claimant does not have valid legal title to the plot of land being claimed and did not prove possession to succeed in claim of trespassit follows that reliefs 5 and 6 must fail as there is nothing on which to sustain them.

Accordingly, the Claimant's claim fails in its entirety and is hereby dismissed.

PARTIES: Absent

APPEARANCES: No legal representation for either party.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
18TH JANUARY, 2022