

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 9TH MARCH, 2022

FCT/HC/CV/1883/21

BETWEEN:-

IBRAHIM ABUBAKAR MOHAMMED ----- CLAIMANT

(SUIING VIA HIS LAWFUL ATTORNEY MR. PETER IDAHOSA)

AND

MINISTER FEDERAL CAPITAL TERRITORY ABUJA-----DEFENDANT

JUDGMENT

This suit was commenced by an originating summons brought pursuant to order 2 rule 3 (4) High Court of the Federal Capital Territory , Abuja (Civil Procedure Rules) 2017 dated the 2nd of August 2021 and filed on the 6th of August, 2021 wherein the claimant is seeking the following reliefs:-

1. An order nullifying and voiding the notice of revocation dated 19th August, 2015, issued by the Defendant over the Claimant's title to Plot No. 729 (old Plot No. 45) Cadastral Zone FO1, Kubwa District Abuja, File No FCT 1570 (New File No. FCT 20401); the Defendant having failed and neglected to compensate the Claimant in line with section 44 (1) of the

1999 Constitution (A3 amended) and section 28 (9) (1) and (49) of the land Use Act. Alternatively.

1. An order compelling the defendant to immediately and unconditionally allocate alternative land to the Claimant that is commensurate in location, size, infrastructure and value as the plot No.729 (old Plot No 45) Cadastral Zone FO1 Kubwa District Abuja with File No FCT 1570 (new file No. FCT 20401). Alternatively
 1. An order awarding special damages against the Defendant and in favour of the Claimant as follows:-
 - a. The sum of ~~₦~~459, 144 .77 (Four Hundred and Fifty Nine Thousand, one Hundred and Forty Four Naira, Seventy seven Kobo) only being the money paid by the Claimant to the Defendant as statutory right of occupancy initial bill.
 - b. The sum of ~~₦~~100,000.00 (one Hundred thousand Naira only) being the money paid by the Claimant to the Defendant as land Application fees.
 - c. The Sum of ~~₦~~10,000,000.00 (Ten Million Naira) only, being the money paid by the Claimant's attorney to the Claimant in 2008, as consideration for the irrevocable power of attorney donated to the attorney over plot No. 729 (Old Plot No.45) Cadastral Zone FO1, Kubwa District Abuja, with file No. FCT 1570 (new file No. FCT 20401) before its revocation by the Defendant.
 2. The sum of ~~₦~~50,000,000.00 (Fifty Million Naira) as general damages against the Defendant for the loss of the title to Plot No. 729 (old Plot No. 45) Cadastral Zone FO1, Kubwa District Abuja, with file no FCT 1570 (New file No. FCT 20401), that was revoked by the Defendant.

3. The sum of ₦5,000,000.00 (Five Million Naira) as the cost of this suit.
4. Any other order(s) that this Honourable Court will make in the circumstance of this case.

The grounds upon which this application was brought and facts averred in the affidavit in support of this application deposed to by the Claimant's attorney, Peter Idahosa, are as follows:-

1. That the Defendant is the delegate of the President of the Federal Republic of Nigeria, in whom the title to all lands that comprises of the Federal capital territory (FCT) Abuja is vested for its management and superintending .
2. That the Claimant had in the past paid the sum of ₦100,000.00 to the defendant and applied for the title to land in the FCT, Abuja.
3. That upon receipt of the Claimant's application the Defendant also issued to the claimant the land application acknowledgment form.
4. That after due consideration of the Claimant's application, the Defendant, on the 28th November, 2005 allocated to the claimant the title to plot 45.
5. That the claimant thereafter accepted the allocation by the acceptance letter issued to him by the Defendant's Land Registry.
6. That in 2006, as the attorney, the deponent visited the Defendant's Land Registry to collect the certificate of occupancy over the land, instead of the certificate of occupancy, the Defendant served a notice of revocation of the claimant's title to the land , reason of revocation being in

compliance with the judgment in suit No. FCT/HC/CV/1430/2013, which the Claimant or his attorney were not parties to.

7. That the said judgment and the compliance of which resulted in the revocation of the Claimant's title to the subject land, was about the earlier allocation of the same land to the Claimant in that case. Claimant and attorney thus, decided to concede to the judgment and pursue compensation or the replacement of the land in view of the payments earlier made to the Defendant by the claimant over the land.
8. That the Claimant/attorney had written a letter demanding for replacement of the land and compensation amongst other things, which the Defendant has received but has failed, neglected and refused to replace said land nor pay compensation to the Claimant.
9. That it is in the interest of justice for this court to compel the Defendant to immediately and unconditionally allocate alternative land to the Claimant or to pay appropriate compensation for the loss suffered by reason of the revocation.

In Claimant's written address, attached alongside exhibits A-E, Counsel formulated two issues for determination as follows:-

1. Whether the Defendant revoked the Claimant's titled to land in line with section 28 (1), (2b), (6) and (7) of the Land Use Act, so as to require him to also compensate the Claimant in line with section 28(9) (1) and (4a) of the same Act and section 44(9) (1) and (4a) of the 1999 Constitution (as amended)
2. Whether in view of section 44(1) of the 1999 constitution (as amended) and section 28 (9) (1) and (4a) of the Land Use Act

(LUA) the claimant is entitled to be compensated either by the allocation of alternative land or the payment of compensation and damages for the revocation of the subject land by the Defendant?

On issue 1, Counsel submits that since the Defendant revoked the claimant's title to the land in line with section 28(1), (2b) (6) and (7) of the Land Use Act (LUA), the Defendant ought to have concurrently complied with the provisions of section 28 (9) 91) and (4a) of the same Act as well as the provisions of section 44 91) of the 1999 Constitution (as amended).

See also ***AROWOJOLU V ODEYEMI & ANORS (2017) LPELR – 42605 (CA) (PP 21, paragraphs D-F).***

On the second issue, Counsel again cites section 28 of the Land Use Act (LUA) and section 44 of the Constitution and avers that the Defendant ought to have concurrently compensated the Claimant after the revocation in line with above provisions Counsel also relies on ***OSHODI V BALOGUN & ORS (2016) LPELR – 40580(CA) (PP 19-20 paragraphs F-C) UNIVERSAL MALTING CO. LTD & ANOR V MESSRS SINGOZ & CO. NIG. LTD & ORS 92015) LPELR – 25620 (CA) (PP 75-77 Paragraphs C-A)*** among others.

Counsel finally urged the Court to resolve all the issues raised in this suit for determination and to grant the reliefs sought by the Claimant.

In opposition to the originating summons defence Counsel filed a counter affidavit and a written address dated the 12th of January,

2022 and filed on the 25th of January, 2022. The 5 paragraphed affidavit was deposed to by one Saidu Wodi and Contains among others the following facts:-

1. That Plot 729 was allocated to the Claimant on 28th November, 2006.
2. That the defendant was sued in CV/1430/2013 where the Plaintiff in that suit asked the Court to reinstate her title which was unlawfully revoked.
3. That the implementation of the judgment in suit no. CV/1430/13 led to the revocation of the Claimant's titled amongst other titles so affected as the defendant had nothing to give the Claimant at the time of allocation.
4. That the Defendant is presently making effort to ensure that those affected are given a replacement as those affected are over seventy in numbers.
5. That every money paid to the Defendant will be transferred to the new allocation when it is given.
6. That the claimant is not entitled to any of the reliefs sought except for a replacement when available.

In Defendant's written address, a sole issue for determination was formulated, which is:-

" Whether the Claimant is entitled to the reliefs sought considering the circumstances of the case"

Defendant argued that as at 2005 when the Claimant was allocated plot 729, the defendant had nothing to give and relied on the latin maxim 'nemo dat quod non habet' which means you

cannot give what you do not have. Thus the Defendant allocated nothing to the Claimant.

Defendant further averred that the claimant is only entitled to compensation of his unexhausted improvements and relied on section 29 of the Land Use Act (LUA). However, according to the Defendant, the Claimant has not shown any improvement on the land to be entitled to compensation.

Defendant also argued that Claimant cannot be entitled to damage given the circumstances and urged the Court to dismiss the suit of the claimant in its entirety.

Section 28 of the Land Use Act is the cynosure of the present case and it provides as follows:-

1. It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.
2. Overriding public interest in the case of a statutory right of occupancy means
3. The requirement of the land by the Government of the state or by a local Government in the state, in either case for public purposes within the state or the requirement of the land by the Government of the Federation for public purposes of the Federation.

Furthermore, section 28 (9) 91) provides thus:-

“If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) or section 28 or (c) of subsection (3) of the same section, the holder and the occupier shall be

entitled to compensation for the value at the date of revocation of their un- exhausted improvements.

4. Compensation under subsection (1) of this section shall be, as respects:-

(a) The land, for an amount equal to the rent, if any paid by the occupier during the period in which the right of occupancy was revoked.

Section 51 then goes to define " Unexhausted improvements' as anything of any quality presently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf..

In addition, section 44 (1) (a) of the constitution provides that:-

"No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that among other things:-

- (a) Requires the prompt payment of compensation therefore and
- (b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a Court of law...."

In ***AROWOJOLU V ODEYEMI & ANOR (2017) LPELR 42605 (CA) (PP21, paragraphs D-F)*** it was held that :-

*"Revocation at any time before acceptance;
after acceptance, it is irrevocable"*

Claimant's Counsel had submitted that the Claimants has been issued a notice of Revocation as stated in the above case and in line with the Land Use Act. Consequently, the Defendant ought to compensate the Claimant in line with section 28 of the Land Use Act and section 44 of the Constitution fully spelt out above.

Furthermore, as relied upon by Claimant's Counsel in ***OSHODI VS BALOGUN & ORS (2016) LPELR 40580 (CA) (PP 19-20) paragraphs F-C)***, it was held that:-

"Compensation is a necessary incident of valid acquisition by government and where there is no evidence for such, the land in dispute was never acquired."

It was also held in ***UNIVERSAL MALTING CO. LTD & ANOR VS MESSRS SIINGOZ & CO NIG LTD & ORS (2015)LPELR – 25620 (CA) (pp 75-77 paragraphs C-A)*** that

"The position is where a right of occupancy is revoked by the Governor under section 28 (2) (a) or (c) of subsection 3(3) of the land Use Act. The holder and occupier of the parcel of land shall be entitled to the payment of compensation, otherwise the revocation and subsequent allocation which

has defied the law regarding the payment of compensation shall render the revocation and subsequent acquisition completely null and void.. Both the Nigeria Constitution of 1999 (as amended) and the land use Act make payment of compensation upon compulsory, acquisition mandatory and as of right”

Also the law is trite that in such cases of compulsory acquisition of land, the integral part of the process is not complete without prompt payment of compensation. Thus, the Claimant’s title shall remain valid and subsisting until the Defendant compensates him by either allocating alternative land or payment of the appropriate compensation. See ***EBERE & ORS V IMAU & ORS (2016) LPELR -40619 (CA) (PP 100- 100 paragraph A-E*** thus, the Defendant would have to show evidence that compensation had been paid to the Claimant, before the Defendant can claim to have revoked the Claimant title see also ***ADAMAWA STATE MINISTRY OF LAND & SURVEY & ORS V SALISU & ORS (2020)LPELR – 50036 (CA) PP 33-35 paragraphs C-E.***

It is evident from case law and statutes that the Claimant is entitled to compensation, be it monetary or an alternative land, which the Defendant is not disputing. However, justice delayed is justice denied. The Defendant ought to have compensated the Claimant promptly as seen in ***EBERE V IMSU (supra)***

However, on the issue of the Claimant’s claim for damages it would seem that some of the monies paid are non refundable while others are transferrable. Hence, the Defendant may be

made to transfer such to a new allocation if when given. It is pertinent to note that the right of a man to own property , whether moveable or immovable and to use that property for whatever lawful purpose he desires is one of the fundament laws of nature that led to the civil rights crusades and the consequential legislation in the 1st place. This right is at the very foundation of a capitalist and democratic society. Under our arrangement the right to own land and other movable properties is protected strictly by law and recognized as a fundamental right by the constitution see section 44 of the Constitution. The key element of section 44, shorn of the exemptions and qualification contained in section 44 (2), is that it protects individual from arbitrary acquisition of his property.

Thus before any property can be acquired by the Government it must be pursuant to a clear existing law and must be subject to payment of compensation. A verbatim section of the Constitution was interpreted by the Supreme Court in *A.G BENDEL STATE VS AIDEYAN (1989) 4 NWLR (pt118) 646* per Nwaemeka Agu JSC held thus:-

“In Nigeria one’s right to one’s property was an entrenched Constitutional right under section 31 of the 1963 Constitution as indeed it is under section40 of the 1979 Constitution. That right is inviolate.

In the ipsissimus verbis of the constitution itself such a property or any right attendant thereto can only be taken possession of or compulsorily acquired by under the provision of a law.

Furthermore, such a law must provide for the payment of adequate compensation therefore to him and must give the owner access to a High Court for the determination of his interest in the property and the amount of compensation due to him it follows therefore that any purported acquisition which is not according to the law contradict the above provisions is no acquisition at all in the eyes of the constitution.

It follows therefore that the constitutional provision against compulsory acquisition of properties, save upon strictly considered prerequisites is a very serious part of the fundamental right of citizen on issue of compensation see ***KANO VS GOVT OF ADMAWA STATE(2014) LPELR 55189 CA.***

I have carefully perused the reliefs sought by the Claimant/Applicant set out earlier.

In this judgment. It is clear to me that the crux and crucible of the Claimants claims is anchored on section 44 of the 1999 Constitution of the Federal Republic of Nigeria as amended. Aimed at the protection of the Claimant's fundamental right to own property. I have no doubt in my mind from the authorities cited in this judgment and more particularly the provision of section 44 of the 1999 Constitution. The Claimant is entitle to relief (1) ie compelling the Defendant to immediately and unconditionally allocate alternative land to the Claimant that is commensurate to location, size, infrastructure and value as te plot No 729 (old Plot No. 45) Cadastral Zone FO1 Kubwa District Abuja, with File No FCT 1570 (new file No. FCT 20401 or

alternatively award a special damages against the Defendant and in favour of the Claimant as follows:-

1. The sum of ~~N~~459,144.77 being the money paid by the Claimant to the Defendant as statutory right of occupancy initial bill
2. The sum of N5,000,000.00 as special damages against the Defendant for the loss of title to plot 729 (old plot no. 45)

In the event the defendant choose the 1st part of this judgment that is providing alternative plot to the Claimant all the previous payment made by the Claimant which are requirement shall be transferred to the alternative and allocate to the claimant as statutory fees where applicable. All other reliefs apart from the one mentioned above are hereby refused.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

APPEARANCE

Ayuba Abang:- For the Claimant

U.C Okechukwu:- For the Defendant