IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 16TH DAY OF JUNE, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/CV/3041/2019

AFRITRADE INVESTMENT LIMITED …… PLAINTIFF

AND

THE MINISTER OF THE FEDERAL CAPITAL TERRITORY …..DEFENDANT

JUDGMENT

By Writ of Summons and Statement of Claim filed on 4th October 2017, the Plaintiff herein commenced the instant suit against the Defendant seeking the following reliefs;

(a) A Declaration that the allocation of the said plot 1129 measuring about 1.64 hectares in Cadastral Zone C16 of the Industrial Area 1 and extension is still subsisting not having been withdrawn or revoked by the Defendant as the Plaintiff has not breached any of the terms of the grant.
(b) An order of this Honourable Court directing the Defendant to release the certificate of Occupancy in respect of the said plot to the Plaintiff, the Defendant having received the sum of N8,734,591.00 for the said Certificate of Occupancy.
(c) The sum of N10,000,000.00 being general damages for the stress and trauma the Plaintiff and its staff have suffered as a result of the antics of the Defendant.
(d) The cost of this suit.

The processes in this suit as well as hearing notices were served on Defendant but it never filed a defence to the action against it. It is relevant to note that the Defendant was represented by Counsel at various times at the proceedings of this case where adjournments were mutually sought by parties for possible amicable settlement. Settlement

however was not possible and the matter proceeded for hearing on 22nd October 2019.

At the trial of this matter, the Plaintiff called Louis Ezeigwethe Managing Director of the Plaintiff-company who testified as PW1. In testifying in support of the Plaintiff's case, the said PW1 adopted his Witness Statement on Oath deposed to on the 22nd of October, 2019 as his oral testimony (having withdrawn with leave of Court his witness statement on oath of 4th October 2017). The Defendant failed to appear to cross-examine the witness despite notice of hearing dates. The following documents were admitted in evidence through PW1 and marked thus;

1. Exhibit A: Certified True Copy of 'Offer of Statutory Right of Occupancy' allocation letter dated 10th January, 2011.
2. Exhibit B: CTC of FCTA (AGID) receipt dated 23rd August 2011.
3. Exhibit C: CTC of Site Plan dated 21st January, 2011.
4. Exhibit D: CTC of Statutory Right of Occupancy Bill dated 10th of January, 2011.

At the close of the Plaintiff's case, its Counsel filed his Final Written Address on 16th of February, 2022 and thereafter adopted same on 29th March 2022 as his oral arguments in support of his case. The Defendant did not file any process or final written address. The matter was thus adjourned for the judgment of this Honourable Court.

A summary of the Plaintiff's case as presented to this Court via its Statement of Claim and the evidence of its witness (PW1) is that it applied for and was allocated Plot 1127 measuring 1.64 hectares in Cadastral Zone C16 of the Industrial 1 and extension on the 10th January 2011 via an Offer of Statutory Right of Occupancy by the Minister of the Federal Capital Territory. A CTC of the said Offer letter was tendered by the Plaintiff and was admitted in evidence at trial as Exhibit A. PW1 testified that the Plaintiff accepted the offer and on 23rd August 2011 it paid the Statutory Right of Occupancy Bill of N8,734,591. Exhibits B and D are Certified True Copies of payment receipt and Statutory Right of Occupancy Bill respectively. The Plaintiff averred that a site plan (a CTC of which was admitted in evidence as Exhibit C)

was produced by the Defendant's office but the Plaintiff's building plan was not approved because its Certificate of Occupancy which had not been issued could not be attached to its application for building plan approval. That after payment of the Statutory Occupancy Bill, the Plaintiff was requested to exercise patience by the Defendant's officers for the Certificate to be ready. That although the Plaintiff was informed in 2012 by officers of the Defendant that the Certificate of Occupancy was ready, the Plaintiff could not collect it at the time as its then Managing Director was out of the Country. It was not until 2013 that the said Managing Director returned that he was told that due to the redesigning of the layout, the Certificate of Occupancy could no longer be released and the Plaintiff's Managing Director conceded to leaving the Certificate till after the redesigning.

It is PW1's further testimony that the Plaintiff's Managing Director continued to visit the Defendant's office but was told that the redesigning was still in progress until May 2017 when he demanded to be given the Certificate of Occupancy which had already been prepared. That pursuant to being asked to come, the Managing Director went in August 2017 but was shocked (and did suffer a mild heart attack) when he was told that there was no such Certificate of Occupancy in the Plaintiff's name as the plot number in which the Plaintiff claims the same does not exist in the Defendant's records. That all monies paid by the Plaintiff to the Defendant has not been refunded till date by the Defendant who has yet to give the Certificate of Occupancy to the Plaintiff. That the Plaintiff's Managing Director spent over N15 Million flying to Abuja for the Certificate of Occupancy without success and was also hospitalized as a result of the shock of learning of the inexistence of the Certificate of Occupancy and the plot. It is the Plaintiff's averment that it has not breached any terms of the grant of the plot to it nor has it ever been issued with any notice of revocation of its title to the plot. That the plot has not been acquired by the Government for public purpose and it is the Plaintiff's belief that officers of the Defendant are scheming to take the Plot from the Plaintiff through their antics.

In his final address, learned Counsel to the Plaintiff, Tony Ogbulafor Esq, formulated two issues for determination of this suit, to wit;

(1) Whether the Defendant can lawfully withhold the Certificate of Occupancy of the Plaintiff after receiving money for the Certificate of Occupancy even when the allocation has not been revoked.

(2) *Whether the Plaintiff is entitled to the payment of general damages from the Defendant for unnecessarily delaying the development of the land by the Plaintiff.*

Counsel to the Plaintiff submitted in his final address that as the Defendant neither filed any statement of defence nor challenged the Plaintiff's evidence, judgment of this Court ought to be entered in favour of the Plaintiff. He relied on the case of OKPOKO COMMUNITY BANK LTD V. IGWE (2013) 15 NWLR PT. 1376 P. 167. He contended that the Plaintiff has shown through Exhibit A that he was allocated the subject plot and that he paid for the Certificate of Occupancy through Exhibits B and D while Exhibit C is the site plan of the plot. Counsel argued that the Plaintiff had proved the facts which are conditions precedent to the proof of title to land and the Court has a duty to declare title in favour of the Plaintiff. He relied on the case of RICK ROCK CONSTRUCTION (NIGERIA) LTD V. ALHASSAN (2020) 9 NWLR PT. 1779 P. 233.

Mr. Ogbulaforof Counsel further submitted that one of the recognized ways of proving title to land is by production of valid documents evidencing the grant. He posited that the Plaintiff has produced his letter of allocation to the land and the said documentary evidence proved all the elements which documents of title must possess for this Court to enter Judgment in the Plaintiff's favour. He relied on the provisions of Section 28(6) and (7) as well as Section 44 of the Land Use Act on the only way the Plaintiff can be dispossessed of his valid allocation to the subject plot. Counsel to the Plaintiff argued further that general damages are presumed by law and do not have to be proved and, on this footing, he urged this Court to grant the general damages claimed by the Plaintiff against the Defendant as well as cost of this suit. He concluded his

arguments by urging the Court to enter judgment in favour of the Plaintiff.

Now, after a careful consideration of the pleadings, entire evidence adduced and the argument of the Plaintiff in his Counsel's final address, I am of the view that the instant case can be adequately determined under one issue. It is;

> **Whether the Plaintiff on the preponderance of evidence adduced before this Court has proved his case to be entitled to the reliefs sought.**

In the resolution of the issue before this Court, it is relevant to note that the Plaintiff's case is essentially for declaration of title to land. The first relief of the Statement of Claim is for declaration to this effect.

On the onus of proof on a party seeking declaration of title to land, it has been held that such a party must succeed on the strength of his own case rather than rely on the weakness of the defence. – see the cases of **HENSHAW V. EFFANGA (2008) LPELR-4075(CA) AT PP. 34 – 35 PARAS. E-B** and **EDEBIRI V. DANIEL (2009) 8 NWLR PT. 1142 P. 15 AT P. 34 PARA. B**.

In the case of **DIM V. ENEMUO (2009) 10 NWLR PT. 1149 P. 353 AT P. 380 PARAS. A-C** the Supreme Court held that *until the onus is successfully discharged by the plaintiff, the court is not obliged to look at the defendant's case*.

Further to the above, the position is that a plaintiff seeking for a declaration of title to land bears the onerous duty in law to adduce credible and admissible evidence in establishment of such title. – see the case of **MADAM LANTOUN OJEBODE & ORS V. AKEEM AKANO & ORS (2012) LPELR-9585(CA) AT PP. 16 – 17 PARAS. G-A**.

Thus, in this case, it is irrelevant to the Plaintiff's claim for declaration of title at this stage that the Defendant did not file any defence to his

claim. The Plaintiff has a duty to prove its case to the satisfaction of this Court.

The position of the law is that a plaintiff seeking declaration of title to land must prove title to that land claimed in one of the following ways in order to succeed;

(1) by traditional evidence;
(2) by the production of documents of title duly authenticated;
(3) by acts of persons claiming land such as leasing, entering etc. which acts must extend over a sufficient period of time;
(4) by acts of long possession and enjoyment of land
(5) by proof of possession of connected or adjacent land.

See the cases of **IDUNDUN V. OKUMAGBA (1976) 1 NWLR PT. 200 P. 210**, **EDEBIRI V. DANIEL (SUPRA) AT P. 27 PARAS. D-G**and **NWOKOROBIA V. NWOGU (2009) LPELR-2127(SC) AT P. 31, PARAS. C-E** per Onnoghen JSC.

Successful proof by way of only one of the 5 methods would be sufficient to discharge the burden on the claimant for declaration of title. – see the case of **OLAGUNJU V. ADESOYE (2009) 9 NWLR PT. 1146 P. 225**.

The Plaintiff in this case pleaded, relied on and tendered documents in proof of its contention of allocation/title to Plot 1127 measuring 1.64 hectares in Cadastral Zone C16 of the Industrial 1 (hereinafter simply referred to as 'Plot 1127').

In **MADU V. MADU (2008) LPELR-1806(SC) AT PP. 36 – 37 PARAS. E-A**the Supreme Court restated its position in **LAWSON V. AJIBULU (1997) 6 NWLR PT. 507 P. 14** that in a claim for declaration of title to land, the production *per se* of documents of title alone is not sufficient to discharge the onus on the plaintiff to prove the title he claims.

It is trite position of law that the mere production of title documents in a case such as this does not **ipso facto** entitle a party to declaration of title.

The court has a duty to look at the title documents of parties in order to ascertain the validity and effect of same before granting declaration of title. This Court is therefore entitled, in fact has a duty, to consider the validity and effect of the documents of title which the Plaintiff has tendered and relied on for its contention of allocation/title toPlot 1127. – See the case of **ROMAINE V. ROMAINE (1992) 4 NWLR PT. 238 P. 600** where the Supreme Court per Nnaemeka-Agu, J.S.C. (delivering the lead judgment) held thus;

> *"I may pause here to observe that one of the recognised ways of proving title to land is by production of a valid instrument of grant: see* ***Idundun v. Okumagba*** *(1976) 9-10 S.C.246;* ***Piaro v. Tenalo*** *(1976) 12 S.C. 31, P37;* ***Nwadike v. Ibekwe*** *(1987) 4 N.W.L.R. (part 67) 718. But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance upon such an instrument inevitably carries with it the need for the court to inquire into some or all of a number of questions, including:*
>
> *(i) whether the document is genuine and valid;*
> *(ii) whether it has been duly executed, stamped and registered;*
> *(iii) whether the grantor had the authority and capacity to make the grant;*
> *(iv) whether the grantor had in fact what he purported to grant; and*
> *(v) whether it has the effect claimed by the holder of the instrument."*

See also the cases of

AKINDURO V. ALAYA (2007) LPELR-344(SC) AT P. 15 PARAS. A-F,

W.A.C. LTD. V. YANKARA (2008) 4 NWLR PT. 1077 P. 323

and

FHA V. EKPUNOBI & ORS (2021) LPELR-55741(CA) AT PP. 31 - 33 PARAS. D-A.

Now, the Plaintiff in this case averred that Plot 1127 was allocated to it by the Minister of the Federal Capital Territory (the Defendant herein) via a letter of Offer of Statutory Right of Occupancy i.e. Exhibit A which PW1 testified that the Plaintiff duly accepted.

I have carefully perused the purported title document Exhibit A.

Exhibit A is a Certified True Copy of a letter of 'Offer of Statutory Right of Occupancy' dated 10th January, 2011 addressed to the Plaintiff and signed 'for' the Minister of the Federal Capital Territory.

It is a fairly settled and notorious fact that it is the Minister of the FCT that can validly grant statutory right of occupancy in respect of land in the FCT. – see the cases of **ERIBENNE V. UG & ANOR (2007) LPELR-4172(CA) AT PP. 23 – 30 PARAS. C-B**,

MADU V. MADU (SUPRA) AT PP. 34 – 35 PARAS. B-A

and

FHA V. EKPUNOBI & ORS (SUPRA) AT PP. 28 - 30 PARAS. F-F.

On the face of it, Exhibit A thus appears to support the Plaintiff's averment of allocation of Plot 1127 to it by the Minister of the FCT. Is that however sufficient to entitle the Plaintiff to the declaration of title sought in its Statement of Claim?

From his averments, oral testimony and documentary evidence, the Plaintiff appears to be showing allocation and therefore reflecting title to '*Plot 1127*' measuring 1.64 hectares in Cadastral Zone C16 of the Industrial 1.However, the Plaintiff in this case is not seeking a declaration of title to (and order issuing it with Certificate of Occupancy in respect of)'*Plot 1127*' measuring 1.64 hectares in Cadastral Zone C16 of the Industrial 1.

Rather, the Plaintiff by the reliefs it seeks before this Court seeks declaration of title to a different plot of land i.e. '***Plot 1129*** measuring 1.64 hectares in Cadastral Zone C16 of the Industrial 1'.

There can be no gainsaying that '***Plot 1127'*** is NOT '***Plot 1129***'. The Plaintiff has not shown or explained to this Court why it should be granted declaration of title to *Plot 1129* as per its relief, having sought to prove title to a different *Plot 1127*.

It is trite law that a Court of law is not a charitable institution and its duty in civil cases is to render unto everyone according to his proven claim. A Courtcannottherefore grant reliefs not asked for by a party, and where the relief is asked for, it cannot grant a claim not proved or supported by evidence. See the following cases;

DIBAL V. EGUMA (2016) LPELR-41236(CA) AT P. 19 PARAS. B-D,

MTN (NIG) COMMUNICATIONS LTD V. ESUOLA (2018) LPELR-43952(CA) AT P. 21 PARAS. C-D

and

ADEBAYO V. V.C, FUTA & ANOR (2019) LPELR-48208(CA) PP. 42 – 43 PARAS. E-A.

On the importance of reliefs to a case, the Court of Appeal held in the case of **DIBAL V. EGUMA (SUPRA) PP. 10 – 11 PARAS. B-C** as follows;

> *"This is a mere assertion of fact and not a relief sought in the matter. The reliefs sought in a matter are the prayers asked for by a litigant at the conclusion of the averments of facts. They are the requests that a party demands of the Court on the bases of the averments of facts contained in the body of the pleadings. Where the reliefs that are relevant and appropriate in the light of the facts contained in the pleading of a party are not asked for, so that even if the case is tried and the claimant's case proved, no remedy will enure to the benefit of the claimant, leaving his position unchanged. What goes to trial is the entitlement to the reliefs claimed based on the pleadings. The facts pleaded highlight the cause of action which determines the relief claimed for. The relief*

demands that the cause of action be remedied. If the relief is not claimed for, the case is aborted. In Uzoukwu v. Ezeonu II (1991) 6 NWLR (Pt. 200) 708, Niki Tobi, JCA (as he then was) put this point in perspective when he stated at page 784 that

> *"Relief is the live wire of an action. Relief puts in specific demanding language, the cause of action. Where there is no relief sought in an action, there is nothing for the Court to grant. It is really the bedrock of an entire action. The action can either stand or fall by the relief sought."*

The Court of Appeal further held**AT PP. 11 – 12 PARAS. C-E** that

"There is, thus, a world of difference between the facts asserted in the body of the pleadings and the relief sought in a matter. It is trite law that a Court is bound by the reliefs sought, and no matter how inelegantly drafted, it cannot give more or differently from that claimed by the parties. A Court cannot grant a relief outside that sought by a party, except in limited instances as a consequential order. A Court cannot recast, re-arrange or reconstruct the reliefs sought with a view to granting a relief at all cost - Ekpenyong v. Nyong (1975) 2 SC 71, Ezeonwu v. Onyechi (1996) 9 NWLR (Pt. 438) 499, Edebiri v. Edebiri (1997) 4 NWLR (Pt. 498) 165, Adelaja v. Alade (1999) 6 NWLR (Pt. 608) 544, Awoniyi v. The Registered Trustees of the Rosicrucian Order of AMORC (Nigeria) (2000) 10 NWLR (Pt. 676) 522. In its adjudicatory role and in our adversarial system of justice, Courts have one main role and that is to decide the cases formulated, presented and established by the parties themselves and Courts have no business going outside the claims or reliefs of the parties in granting reliefs to them - AdetounOladeji (Nig.) Ltd v. Nigeria Breweries Plc (2007) 5 NWLR (Pt. 1027) 415, Veepee Industry Ltd v. Cocoa Industries Ltd (2008) All FWLR (Pt. 425) 1667, The duty of the lower Court in the instant case therefore, was to take the assertions of facts contained in paragraph 6 of the statement of claim and in paragraph 6 of the deposition of oath of the Appellant, along with the other facts in the matter, into consideration in reaching a decision whether or not to grant the

two reliefs sought by the Appellant. It was not the duty of the lower Court to grant the assertion of facts as the reliefs sought."– (Underlining supplied for emphasis).

The Court of Appeal finally held **AT PP. 12-14 PARAS. F-D** that the onus is on a claimant who seeks reliefs from the Court to prove his entitlement to the reliefs sought in order to succeed.

In the instant case, the Plaintiff has not proved its title to'***Plot 1129***' measuring 1.64 hectares in Cadastral Zone C16 of the Industrial 1, in respect of which it has sought a declaration of title under the first relief of the Statement of Claim before this Court. Having failed to prove its title to the said Plot 1129, it has failed to prove its entitlement to the first relief which is for a declaration that its allocation in respect of *Plot 1129*is valid and subsisting. No such allocation to *Plot 1129*has been proved before this Court in this case. Incidentally, the Plaintiff's Counsel in his final address made submissions in respect of Plot 1129. This however does not change the fact that the entire pleadings and evidence of the Plaintiff before the Court is in respect of Plot 1127. It is trite that address of Counsel no matter how beautifully crafted or articulate cannot take the place of evidence before the Court. See

HAMIDU & ANOR V. KADUNA ELECTRICITY DISTRIBUTION PLC & ANOR (2019) LPELR-48281(CA) AT P. 16 PARAS. A-E.

The Plaintiff has thus also failed to prove its entitlement to the second relief which is an ancillary relief seeking an order directing the Defendant to issue it with a Certificate of Occupancy in respect of the same '*Plot 1129*' measuring 1.64 hectares in Cadastral Zone C16 of the Industrial 1.

It would appear that no matter how strong and uncontested the evidence which the Plaintiff has adduced in this case might seem, it all amounts to a purely academic exercise and made in vain because such evidence has not established the Plaintiff's entitlement to the particular and specific reliefs sought in this case. Quite unfortunately, this Court cannot purport to 'assist' the Plaintiff by granting it declaration of title to Plot

1129when it did not prove such title. Neither can this Court purport to grant declaration of title over Plot 1127to the Plaintiff when it has sought no such relief from this Court. This Court (as well as the Plaintiff) is bound by the reliefs sought from it by the Plaintiff in its Statement of Claim and cannot purport to grant reliefs outside those claimed or different from those claimed in the Statement of Claim. – see **DIBAL V. EGUMA (SUPRA)**.

In the circumstances, the Plaintiff has failed to prove his entitlement to the reliefs claimed in the instant case. The issue for determination is hereby resolved against the Plaintiff.

Having so failed to prove same, the Plaintiff's claim for the reliefs sought before this Court fails in its entirety and it is hereby accordingly dismissed.

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Honourable Justice M. E. Anenih

APPEARANCES:

Tony OgbulaforEsq appears for the Plaintiff.

Defendant unrepresented.