IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/512/2014

DATE: : WEDNESDAY 13TH APRIL, 2022

BETWEEN:

LAWRENCE AGBO …..……. CLAIMANT

AND

SAMUEL MUSA ……... DEFENDANT

JUDGMENT

The Claimant by writ of summons and further amended statement of claim dated the 21st March, 2018 and filed the same date seeking the following reliefs:-

1. A Declaration by this Honourable Court that the Plaintiff is the genuine and true owner of plot No. 249 of about 680m2 situate at Gbazango Layout, Kubwa – Abuja, FCT.

2. A Declaration that Plaintiff is the person in possession of the property known as plot No. 249 of about 680m2 which is fenced round by the Plaintiff and situate at Gbazango Layout, Kubwa, Abuja – FCT and demarcated by the

following property beacon: PB 8776, PB8776, PB8773 and PB8774.

3. An Order of Perpetual injunction restraining the Defendant, his agents and privies from interfering/disturbing Plaintiff quiet possession of the property known as Plot No. 249 of about 680m2 which is fenced round by the Plaintiff and situate at Gbazango Layout, Kubwa, Abuja – FCT and demarcated by the following property beacon: PB8776, PB8776, PB8773 and PB8774.

4. Damages for sum of N1,000,000.00 (One Million Naira) only for Plaintiff's loss of time, unjustified harassments/intimidations, physical and emotional trauma caused the Plaintiff.

5. N200,000.00 as cost of litigation.

Upon service, the Defendant filed it amended statement of defence dated the 12th day of March, 2018 and filed 26th April, 2018.

At the close of pleadings, the suit was set down for hearing.

The case of the Plaintiff as distilled from the witness statement on oath of Agbo Lawrence as PW1 is that he bought the said plot No. 249 of about 680m2 situate at Gbazango Layout, Kubwa, Abuja for very reasonable consideration from the original allottee – one YahayaSarki and immediately upon payment of the agreed consideration, the seller issued him a payment receipt.

That thereafter the seller and him executed an irrevocable Power of Attorney dated 24th day of November, 2006.

That after the purchase, he processed and subsequently obtained the Right of Occupancy in respect of the plot from Bwari Area Council with Right of Occupancy No. **FCT/BZTP/LA/OS. 740**.

That he also paid the necessary fees for the certificate of occupancy of the said plot of land to the appropriate Government Agency, Bwari Area Council and he was issued the appropriate receipt.

That sometimes in 2012, the dispute between him and the Defendant started and became a police case at the Area Command, Phase 4 Police

Station, Kubwa – Abuja. The police during investigation collected his title documents and that of the Defendant and the police wrote to the Bwari Area Council to find out the true owner of plot No. 249 of about 680m2 situate at Gbazango Layout, Kubwa, Abuja, subject matter of this suit.

That at Phase 4 Police Station, the letter of allocation submitted by the Defendant as the original allottee has the name of YusufuUsman dated 2nd February, 1995.

That the Bwari Area Council replied the Area Commander's Office of the Nigerian Police at phase 4, Kubwa – Abuja via a letter dated 27th August, 2013 duly signed by the zonal land manager/coordinator, titled; Re: Investigation Activities.

The said letter further confirmed that the said plot No. 249 of about 680m2 situates at Gbazango Layout, Kubwa – Abuja belongs to him.

That when the police received this reply from Bwari Area Council, the police sent for both of them, the police read the letter to them as their verdict and thereafter advised the Defendant to stay off the plot in question and allow him as confirmed owner of the plot to build or do as he wishes with this plot.

That on one of his routine visits to the plot he discovered that someone had used a chain and padlock to lock the gate he erected. On inquiring, he was informed that it was the Defendant who came with some people to lock the gate. He immediately put a call across to the Defendant

who confirmed that yes he locked the gate and that the gate will remain locked until he settle him.

That before he could take any step on this issue, he was arrested and detained like a common criminal by men of zone 7 of the Nigerian Police at Wuse Zone 3, Abuja. It was days later when he was able to secure his release that he was informed that he was arrested on the basis of a petition written by the Defendant and submitted through his brother who works there. That since then, Defendant has arrested and detained him more than six (6) different occasion on baseless petition concerning this land.

That the Defendant has been incitingpeople against him, telling them that he is the owner of the plot and telling them to resist anyone trying to

enter the plot to develop. The Defendant has been circulating the false hood that he had won this case against him in respect of the plot and that he is now the owner of the plot. He states categorically that there is no earlier suit between the Defendant and him. He has been severally beaten up, clothes thorn, threatened, intimidated, monies extorted by both thugs and the police, severally picked up on the street like a common criminal, severally put in handcuffs in front of his wife, children and his workers at the instance of the Defendant.

That he has been physically, emotionally and financially traumatized and it seems to be without an end as the Defendant vowed that he will not let

go of this plot which he claimed he bought from anunknown 3rd party.

That on Sunday the 12th day of October, 2014 at about midnight while he was in bed with his wife at about 1:00am, his phone rang and when he picked, the person informed him that he is wanted first thing the next morning (Monday) at the Special Anti – Fraud Unit Department of the Nigerian Police at Force Head Quarters in respect of a petition submitted by the Defendant and that the only way out for him not to rot in police jail or end up in prison is to leave their brother's land for him.

That ever since that night, he has been living the life of a criminal hiding from the long arms of the police always in perpetual fear of being jailed or

imprisoned by the police at the whims and caprices of the Defendant.

That as a result of the activities of the Defendant, he was forced to brief a lawyer to prosecute this case who charged him N800,000.00.

PW1 tendered the following documents in evidence;

a. Irrevocable Power of Attorney dated 24th day of November, 2006 Exhibit "A1" rejected.

b. The Conveyance of Provisional Approval Exhibit "A".

c. The Right of Occupancy Exhibit "B"

d. The Receipt dated 22nd February, 2007 Exhibit "C".

e. Acknowledgment letter dated 23rd December, 2008 Exhibit "D".

f. The letter titled Re: Application for search Exhibit "E".

g. The letter titled Re: Investigation Activities Exhibit "F".

PW1 was cross – examined and subsequently discharged.

PW2 Solomon F. Barde was called and adopted his witness statement on oath. He was cross examined and discharged.

PW3 patience John J. adopted her witness statement on oath was cross – examined and discharged.

Plaintiff closed its case to pave way for Defendant's defence.

Samuel Musa gave evidence as DW1. From available pleading and evidence, DW1 stated that he bought plot No. 249 being, lying and situate at Gbazango layout, Kubwa from one YusufuUsman who is at all time material to this suit, a staff of National Hospital, Abuja at the price of N1,100,000.00 (One Million and One Hundred Thousand Naira) only on or about the 7th day of January, 2008.

That upon payment of the said sum as price for the plot, he was issued a written acknowledgment of receipt of money dated the 7th January, 2008 by the said YusufuUsman as price for the plot.

Defendant avers that he was informed by the said YusufuUsman that the original conveyance of provisional approval was issued to one YahayaSarki by the Abuja Municipal Area Council dated the 2nd day of February, 1995.

The Defendant further stated that according to the said YusufuUsman, he YusufuUsman, acquired the plot from the original Allottee (YahayaSarki) for a valuable consideration consequent upon which the said YahayaSarki took him (YusufuUsman) to Abuja Municipal Area Council (AMAC)to confirm same and effect change of ownership in favour of the said YusufuUsman – whereupon the said original letter of allocation bearing YahayaSarki was cancelled by Abuja Municipal Area Council (AMAC) and changed to

a new one in the name of YusufuUsman, dated the same 2nd February, 1995.

That upon furnishing the said YusufuUsman with a valuable consideration, he (YusufuUsman) handed over all the relevant title documents in respect of the plot in question to the Defendant and the said documents are hereby pleaded and shall be relied upon at the trial of this suit.

The Defendant aver that the said YusufuUsman, upon receipt of a fresh Letter of Allocation issued in his own name by Abuja Municipal Area Council (AMAC), accepted the offer and went ahead and open a policy file upon payment of N550,00 (Five Hundred and Fifty Naira) as processing fee vide Abuja Municipal Area

Council (AMAC) Departmental receipt No. AMDR 047947 of 22nd July, 1997.

The Defendant further aver that both the Original Letters of Conveyance of Provisional Approval relied upon by YusufuUsmani.eAnnexture "B1" and "B2", from whom the Defendant derived his title to plot No. 249 the subject matter of this suit, dated 2nd February, 1995 far pre-dates that being relied upon by the Plaintiff and there is nothing to show that the said earlier allocation letter had been revoked for whatever reason by anybody (be it natural or artificial) before the purported letter of allocation to the same YahayaSarki in June, 1995.

The Defendant states that the said YusufuUsman after opening land policy file at Abuja Municipal Area Council (AMAC) land Registry with file **No.**

MZTP/LA/KN/363, applied for survey of the Plot the subject matter of this suit, and was issued with a survey report dated the 20th day of October, 1996.

The Defendant aver that when the Federal Capital Territory Administration directed that all lands allocated by Area Councils and other bodies and/or committees within the Federal Capital Territory be regularized and/or re – certificated, the said YusufuUsman on the 28th February, 2007, paid into the Account of Abuja Geographic Information Systems the sum of N5,000.00 non – refundable fee for recertification of the Plot in question vide Unity Bank Plc. deposit slip No. 2584.

The Defendant avers that after buying plot No. 249 (the subject matter of this suit) from the said YusufuUsman sometimes in January, 2008, the Defendant within the same month of January, 2008 went ahead and built a parameter block cement fence round the entire plot of land and mounted an iron gate on same which fence is in place to date as sign of Defendant's possession of same.

The Defendant states further that he has been farming on the said Plot of land since 2008 when he bought the plot from the saidYusufuUsman without any interference or trespass from any quarter until sometimes in the year 2012 when the Plaintiff trespassed unto the land in question by

removing the central gate mounted by the Defendant and replaced same with another gate.

The Defendant states that he had no option but to put another padlock on the new gate mounted since it was not possible to identify the trespasser then and the Defendant also promptly informed YusufuUsman from whom Defendant bought the plot, of the development.

The Defendant avers that after a thorough investigation by the office of the Assistant Inspector General of Police (AIGP) Zone 7 Headquarters, Abuja in consultation with the Bwari Area Council Zonal Planning Office of the FCTA, a letter dated the 13th January, 2014 was sent to the office of the AIGP Zone 7 Headquarters by the Zonal Coordinator of

BwariZonal Planning Office of the FCTA in person of Nasiru Suleiman, which in paragraph VI of the said letter confirmed the superiority of the said YusufuUsman's title on the plot over that of the Claimant.

The Defendant admits paragraph 16 of the further amended statement of claim only to the extent that when Defendant was not satisfied with the way and manner the office of the Police Area Command, Kubwa was handling his issue with the Claimant, the Defendant petitioned the office of the AIGP, Zone 7 Wuse, Abuja for proper and unbiased investigation into the matter and the Defendant never either directly or indirectly instigated any police officer or security officer by whatever name or designation to arrest, detain,

incarcerate, extort money from, or dehumanize the Claimant as is being alleged in this suit.

Whereof the Defendant denies the entire claim of the Claimant and urges the Honourable Court to dismiss the claim of the Claimant with substantial cost on the ground that same is frivolous and gold – digging.

Payment to the Defendant by the Claimant the sum of N1,000,000.00 (One Million Naira) as cost of defending this suit.

DW1 tendered the following documents;

1. Acknowledgment of Receipt of money
2. Abuja Municipal Area Council Conveyance of Provisional Approval

3. TDP

4. Unity Bank Deposit slip dated 28th February, 2007.

5. Letter from the office of coordinator, FCTA in charge of Bwari Area Council dated 13th January, 2014.

DW1 was cross – examined and discharged subsequently.

DW2 Yusuf Usman adopted his witness statement on oath, cross – examined and discharged. Parties closed their respective cases to pave way for filing and adoption of written addresses.

Learned counsel for the Defendant formulated 6(six) issues for determination to wit;

i. ***Assuming but not conceding that the Claimant is the Attorney of another, whether or not the Claimant in this suit as presently constituted, can validly and effectively maintain this action against the Defendant in Claimant's name instead of that of Claimant's purported Donor.***

ii. ***Whether or not the Claimant has from the totality of Claimant's evidence before the Court, been able to establish by credible evidence, that there is a nexus in law between the Res and the Claimant to vest in the Claimant the requisite Locus Standi to maintain this suit against the Defendant bearing in mind that the purported letter of allocation (Exhibit "B") does not bear the***

name of the Claimant coupled with the fact that the purported Power of Attorney executed in Claimant's favour by one YahaysSarki has been tendered before the Court and rejected on the ground that it is an unregistered registrable document.

iii. ***Assuming but not conceding that Exhibit "B" emanated from Abuja Municipal Area Council (AMCA) in view of the provisions of sections 297(2) of the 1999 Constitution (as Amended) and 18 of FCT Act, whether or not Abuja Municipal Area Council (AMCA) or any other Area Council in FCT can validly allocate any land in the Federal Capital Territory to any person or group of persons as is being claimed by the Claimant in this***

suit, without the proper approval and/or authorization of the Hon. Minister of FCT.

iv. ***If issue No. 3 above is answered in the negative, thereby making the title of the parties to the Res in this suit equitable, whether or not Exhibit "D2" (AMAC Letter of Allocation bearing YusufuUsman dated 2nd February, 1995 with which the plot was sold to the Defendant in 2008) being earlier in time, is stronger both in law and equity, that Exhibit "B" (Claimant's AMAC Letter of Allocation purportedly issued in the name of YahayaSarki dated 15th June, 1995) as to apply the maxim "qui est tempore potiorest jure" in favour of Exhibit "D2" to which the Defendant traces his title.***

v. ***Whether or not the Claimant has been able to establish by credible evidence, that he was in any way in possession of the Res earlier than the Defendant to succeed in Claimant's claim for trespass.***

vi. ***Whether or not the Claimant who lays legal claim to the Res has by credible evidence, been able to establish his legal title to the Res to entitle the Claimant to the reliefs sought in the circumstances of this case.***

On issue 1, ***Assuming but not conceding that the Claimant is the Attorney of another, whether or not the Claimant in this suit as presently constituted, can validly and effectively maintain this action against the Defendant in Claimant's***

name instead of that of Claimant's purported Donor.

Counsel submits that from the totality of Claimant's evidence before the court, the Claimant is the purported attorney of one YahayaSarki whose name is on Exhibit "B" which is the Abuja Municipal Area Council (AMCA) letter of allocation dated 15th June, 1995 in respect of the Res. The Claimant ought to have commenced this action in the name of Claimant's purported Donor and not otherwise. ***VULCAN GASES VS GESSEL SEAFT (2001) 5 SCNJ 55 at 59 Ratio 4 was cited.***

Counsel submits that the default committed in the title of the suit is not a mere technicality. It goes to the root of the suit and it is fundamental. **Dr. O.O**

Sofolahan (suing as parent and the next friend of OlabosipoSofolahan) &Anor VS. Chief Mrs. L.I Fouler (for herself and on behalf of the members/trustees of the Corona School Trust Council) was cited.

On the strength of the above authorities, counsel submits that this suit was not properly constituted and therefore incompetent thereby denying the court the jurisdiction.

On issue 2, ***Whether or not the Claimant has from the totality of Claimant's evidence before the Court, been able to establish by credible evidence, that there is a nexus in law between the Res and the Claimant to vest in the Claimant the requisite Locus Standi to maintain this suit against the Defendant bearing in mind that the***

purported letter of allocation (Exhibit "B") does not bear the name of the Claimant coupled with the fact that the purported Power of Attorney executed in Claimant's favour by one YahaysSarki has been tendered before the Court and rejected on the ground that it is an unregistered registrable document.

Counsel argue that Exhibit "B" (the purported letter of offer from the Abuja Municipal Area Council (AMCA) does not bear the name of the Claimant and the purported power of Attorney allegedly executed by the person whose name is on Exhibit "B" was tendered by the Claimant on the 14th January, 2016 and rejected by this court upon opposition of the counsel to the admissibility

of the said document on the ground that same is an unregistered registrable document.

Counsel submits that there is no nexus in law between the Claimant and the Res to confer on the Claimant any locus standi to maintain this action against the Defendant.

On issue 3, *Assuming but not conceding that Exhibit "B" emanated from Abuja Municipal Area Council (AMCA) in view of the provisions of sections 297(2) of the 1999 Constitution (as Amended) and 18 of FCT Act, whether or not Abuja Municipal Area Council (AMCA) or any other Area Council in FCT can validly allocate any land in the Federal Capital Territory to any person or group of persons as is being claimed by the Claimant in this suit, without the proper*

approval and/or authorization of the Hon. Minister of FCT.

Counsel further submits that the document (Exhibit "B") to which the Claimant traces his legal title in the Res was purportedly issued by Abuja Municipal Area Council (AMCA). By virtue of section 297 (2) of the 1999 Constitution (As Amended) ownership of all lands in the FCT is vested in the Federal Government of Nigeria which administers same through the FCT Minister. Section 18 of FCT Act also supports the view that power is vested in the Hon. Minister of FCT to grant Statutory Right of Occupancy over land in the FCT to any person. The person who purportedly issued Exhibit "B" is neither the Hon. Minister of FCT or a person issuing same for and

or on behalf of the FCT Minister – thereby rendering the document incompetent as you cannot give what you don't have (Nemodat quod non habet). See the case of ***MADU VS MADU (2008) 6 NWLR (Pt. 1083) 296 and***

ONA VS ATENDA (2000) 5 NWLR (Pt. 656) 244.

Counsel humbly urge the court to hold that Exhibit "B" having not been issued by the Hon. Minister of FCT or anybody duly authorized by the Minister, is incapable of conferring any legal title on the Claimant or anybody at all and therefore cannot vest in the Claimant or anybody any legal title to the Res to justify a declaration of title by the Court as is being claimed by the Claimant in this suit.

On issue 4, ***If issue No. 3 above is answered in the negative, thereby making the title of the parties to the Res in this suit equitable, whether or not Exhibit "D2" (AMAC Letter of Allocation bearing YusufuUsman dated 2nd February, 1995 with which the plot was sold to the Defendant in 2008) being earlier in time, is stronger both in law and equity, that Exhibit "B" (Claimant's AMAC Letter of Allocation purportedly issued in the name of YahayaSarki dated 15th June, 1995) as to apply the maxim "qui est tempore potiorest jure" in favour of Exhibit "D2" to which the Defendant traces his title.***

Counsel submits that, although Exhibit "B" and "D2" emanated from Abuja Municipal Area Council (AMCA) that has no powers to allocate

any land in FCT to anybody, the interest of the parties in the Res becomes equitable.

It should be noted that Exhibit "B" to which the Claimant traces his title is dated 15th June, 1995 while Exhibit "D2" to which Defendant traces his title to the Res is dated 2nd February, 1995.

The Claimant's purported Letter of Allocation and that of the Defendant both emanated from Abuja Municipal Area Council (AMAC) with that of the Defendant being earlier in time.

The law (in a situation like the one at hand), was restated that where there are competing interest by two or more parties claiming title to the same piece of land from a common grantor, the position both at law and in equity is that such competing

interests will prima facie rank in order of their creation. This is based on the maxim qui prior est tempore potiorest jure, meaning he who is earlier in time is stronger in law. ***UGWUNZE VS ADELEKE (2008) 2 NWLR (Pt. 1070) 148;***

ILONA VS IDAKWO (2003) 11 NWLR (Pt. 830) 53 were cited.

In view of the facts and law stated above, we humbly urge the Honourable Court to apply the above stated principle of law in favour of Exhibit "D2" to which the Defendant traces his title to the Res being earlier in time.

On issue 5, *Whether or not the Claimant has been able to establish by credible evidence, that he was in any way in possession of the Res*

earlier than the Defendant to succeed in Claimant's claim for trespass.

Counsel submits that from the totality of the evidence of the Claimant before this Honourable Court, the Claimant has not been able to establish by credible evidence that he was at any time in possession of the Res.

It is the contention of learned counsel for Defendant that it is the evidence of the Claimant that he started fencing the Res after 27th August, 2013 when the police at Kubwa received a report from the Land Zonal Manager attached to Bwari Area Council, his PW3 under Cross – Examination, told the Court on the 20th August, 2020 that the PW1 told him in late 2006 that he had fenced the Res and mounted a gate, it is the

unchallenged evidence of the DW1 and DW2 that the Defendant fenced the Res and mounted a central iron gate in January, 2008 long before the Claimant purportedly fenced the Res in 2013.

Learned counsel contends that from evidence available on record, Claimant was never at any time in possession of the Res to claim for trespass. Counsel equally humbly submits that the evidence of PW2 and PW3 as contained in their witness statement on oath as regard Claimant's possession of the Res are not covered by pleadings and therefore goes to no issue and should of course, be expunged and/or discountenanced by this Honourable Court. ***LASISI KODE VS ALH. SUARA YUSUF (2001) 2 SCNJ 49 was cited.***

On issue 6, *Whether or not the Claimant who lays legal claim to the Res has by credible evidence, been able to establish his legal title to the Res to entitle the Claimant to the reliefs sought in the circumstances of this case.*

Counsel submits that, the Claimant has woefully failed to establish his title to the Res through any credible evidence to entitle him to a declaration of title to the Res. It is trite law, it is the submission of counsel that "***The onus on the Plaintiff in action for declaration of title is to satisfy the Court that he is entitled on the evidence brought by him for a declaration of title".*** For the purpose he must rely on the strength of his own case and not on the weakness of the case of the Defendant.

If this onus is not discharged, the weakness of the Defendant's case will not support the case of the Plaintiff***AHWEDJO EFETIROROJE & 2ORS VS. HIS HIGHNESS, ONOME OKPALEFE II & 2ORSS (1991) 7 SCNJ 85 Ratio 1;***

OKHUAROBO VS AIGBE (2002) 3 SCNJ 109 at 111 Ratio 3 were cited.

Counsel further submit that ***"In all cases where a Plaintiff is seeking for declaration of title to land, the burden lies on such a Plaintiff to prove his case on his evidence and he will fail if he fails to discharge that burden"***. ***OKORIE ECHI & ORS VS JOSEPH NNAMANI & ORS (2000) 5 SCNJ 155 Ratio 5.***

ADETUTU ADESANYA VS ALH. S.D ADERONMU & ORS. (2000) 6 SCNJ 242 at 245 Ratio 6 were cited.

It is the conclusion of counsel that, Claimant has failed both in Law and facts to prove his title to the Res to justify the Court's declaration of title to the Res in favour of the Claimant and urges the Honourable Court to answer all the issues formulated herein in the affirmative and dismiss Claimant's suit with substantial cost bearing in mind that the Defendant was dragged to this court over the Res since 2014 and most of the setbacks the case suffered were as a result of lack of diligent prosecution on the part of the Claimant.

On its part, Claimant formulated two (2) issues for determination to wit:-

1. ***Whether upon a thorough appraisal of the pleadings and evidence of the parties, the Plaintiff has proved exclusive possession of the said parcel of land.?***

2. ***Whether if the answer to issue one above is in the affirmative, Plaintiff is entitled to reliefs (iii), (iv) and (v)?***

On issue 1, *Whether upon a thorough appraisal of the pleadings and evidence of the parties, the Plaintiff has proved exclusive possession of the said parcel of land.?*

Learned counsel submit that upon a thorough appraisal of the pleadings and evidence of the parties before the court, the Plaintiff has proved, on the balance of probability, exclusive possession

of the said parcel of land known as Plot No. 249, of about 680m2 situate at Gbazango Layout, Kubwa – Abuja, FCT. Possession was defined in the case of ***ETALUKU VS N.B.C PLC. (2005) ALL FWLR (Pt. 261) 353 at Page 374 – 375, paragraphs. G – A.***

It is trite law that a person in exclusive possession can sue for trespass even if he is neither the owner nor a privy of the owner. This is because exclusive possession of the land gives the person in possession the right to retain it and to undisturbed enjoyment of it against all wrong doers except a person who could establish a better title. Therefore anyone other than the owner, who disturbs the possession of the land, can be sued in trespass.

PIUS AMAHOR VS. BENEDICT OBIEFINA (1974) LPELR 452 S.C was cited.

Counsel further submits that Plaintiff has proved by preponderance of evidence to be in exclusive possession for which he deserves protection of the law. The facts upon which exclusive possession by the Plaintiff is proved are;

i. Upon purchase of the land through Exhibit "G", he took physical possession by putting PW2 to be farming on the land.

ii. He fenced the land and installed a gate.

iii. The evidence of PW1 i.e the Plaintiff on the above was corroborated by evidence of PW2 and PW3.

iv. DW1 i.e the Defendant also corroborated this fact when he agreed under cross – examination that the gate on the land was installed by the Plaintiff but he (Defendant) used a key to lock the gate which is a confirmation of what Plaintiff pleaded in paragraph 15 of his further amended statement of claim.

Counsel therefore humbly urgethe court to resolve this issue in favour of the Claimant.

On issue 2, *Whether if the answer to issue one above is in the affirmative, Plaintiff is entitled to reliefs (iii), (iv) and (v)?*

Learned counsel submits that if this Honourable Court finds Plaintiff to be in possession of the

land, relief (iii) which is claim for damages for trespass will be granted against Defendant who does not have a better title. This is because, the law protects the person in possession against the whole world except a person with a better title. ***OLUBODUN VS LAWAL (2008) ALL FWLR (Pt. 434) 1468 at Page 1526, Paragraphs A – C. was cited.***

On his issue one, Defendant submitted that Plaintiff ought to file this action as an Attorney of YahayaSarki because Plaintiff bought the plot from YahayaSarki and failure to file the case as an attorney, the suit is incompetent.

On this, we reply that the Defendant cannot approbate and reprobate at the same time.

Defendant's counsel was the one that objected to the admissibility of the Power of Attorney donated to the Plaintiff based on which the Court rejected it. A rejected document is valueless in regard to the proceedings it was tendered. ***ADDISON UNITED NIG. LTD. VS LION OF AFRICA INSURANCE LTD. (2011) ALL FWLR (Pt. 594) 130 at Page. 139;***

AMADI VS AMADI (2012) ALL FWLR (Pt. 626) 599 at Page 580, Paragraphs B – D was cited.

Counsel submit further that Plaintiff pleaded in paragraph 14 of the Amended Statement of Claim that Plaintiff fenced the said plot. Issues are joined in pleadings, but facts are proved by evidence led in respect of those facts. ***BAMGBOSI VS UNILORIN (1996) 6 SCNJ 295 at 324 was cited.***

There was no conflict in the evidence of the witnesses as PW2 and PW3 only gave evidence to corroborate the facts pleaded by the Plaintiff that he was the one who fenced the said plot.

Counsel therefore urge the court to also resolve this issue against the Defendant.

Claimant fenced the said plot and mounted a gate on it after purchase from the original allottee. Defendant said he locked the said gate.

Defendant also got police to arrest and detain the Plaintiff. Counsel submits that, the law's greatest responsibility is to protect the weakest members of our society of which the Plaintiff is one. counsel urge the court to give judgment to the Plaintiff because he has by his pleadings and

evidence establish on balance of probability that he is in exclusive possession of Plot No. 249 situate at Gbazango Layout, Kubwa – Abuja, FCT before Defendant trespassed on same by locking up the gate Claimant has mounted on the said plot.

COURT:-

I have gone through the pleadings, evidence final written addresses of both counsel in support of their respective cases of Claimant and Defendant.

The reliefs claimed by Claimant largelyare declaratory in nature.. I shall pause on this juncture to establish the position of the law on declaratory reliefs.

The law is settled that in an action for declaration of title to land, the onus is on the Plaintiff to prove his case through cogent and credible evidence.

In ***OLOKOTINTIN VS SARUMI (2002) 13 NWLR (Pt. 784) at 314*** the Supreme Court per Kutigi JSC (as he then was) held as follows;-

> "***It is trite law that a Plaintiff seeking a declaration of title to land must lead cogent and credible evidence to show that he is entitled to the land."***

Indeed judicial pronouncements are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence. ***MOTUNWASE VS SORUNGBE (1988) NWLR (Pt. 92) 90.***

Where the court is called upon to make declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleadings that he is entitled.

The imperativeness of this arises from the fact that the court has discretion to grant or refuse to grant such declaration. ***SAMESI VS.IGBE & ORS (2011) LPELR 4412.***

It is instructive to state here that, the contention between the parties from the evidence before the court dwelled on ownership of the land known as Plot 249, 680m^2 situate at Gbazango Layout – Kubwa, Abuja.

From the totality of whole evidence before the court, it seems to me that one basic fact that must be accepted is that both parties claimed title to the land by purchase and the only issue before me therefore, is to determine the rights of the parties based on available evidence to the subject matter.

It is now settled that a party may prove a title to a piece of land in any of the following ways:-

i. Traditional evidence

ii. By document of title

iii. By various acts of ownership numerous and positive and over a length of time to warrant the inference of ownership.

iv. By act of long enjoyment and possession of the land.

v. By proof of possession of adjacent in the circumstance which render it probable that the owner of the such adjacent land would, in addition be the owner of the disputed land. ***IDUNDUN VS OKUMAGBA (1976) 9 – 10 SC 277.***

As aptly stated by both counsel for the Plaintiff and Defendant and the ensuing evidence and title documents, both Plaintiff and Defendant came about the subject matter of litigation by virtue of purchase from the alleged original allottees.

I need only state at this juncture that the Federal Capital Territory came into being by decree No. 6 of 1976, with 4th February, 1976 as the commencement date.

Section 297 (2) of the 1999 constitution of the federal Republic of Nigeria as amended vests absolute ownership of land within the federal capital Territory in the Federal Government of Nigeria.

The said provision is in agreement with section 1 (3) of the Federal Capital Territory Act 2004.

For ease of reference, I shall attempt to reproduce the said sections 297 (2) of the 1999 constitution of Federal Republic of Nigeria as amended and 1(3) of the FCT Act.

Section 1(3) FCT Act.

> ***"The area contained in the capital Territory shall, as from the 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 Federation."

Section 297(2) of the 1999 Constitution.

"***The Ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria."***

For all intents and purposes, the intention of the law makers on the status of Federal Capital Territory is deliberate.

What Government and the makers of the Federal Capital Territory Act intended was for a verse espance of land devoid of any form of cultural or hereditary inclination to be set aside for the development of the capital city.

No little wonder, even the original inhabitants who had occupied their ancestral lands were merely paid compensation and asked to move-on, regardless of the fact that generations of their ancestors were buried on such lands. See section 6 of the Federal Capital Territory Act.

There is no gain saying that the issue of deemed grant which is a product of the Land Use Act 1978 was deliberately made inapplicable to lands within the Federal Capital Territory from the construction of the preamble to the Land Use Act and section 49 of the same Act.

Were the Land Use Act meant to apply to Federal Capital Territory, the original inhabitants would have been granted deemed grant and remained on their various lands within the Territory. The Land Use Act must not be read in isolation.

It is trite that, where the language, terms, intent or words to any part or section of a written contract, document or enactment are clear and unambiguous as in the instant case, they must be given their ordinary and actual meaning as such

terms or words used best declare the intention of law maker unless this would lead to absurdity or be in conflict with some other provision thereof. It therefore presupposes that where the language and intent of an enactment or contract is apparent, a trial court must not distort their meaning.

See ***OLATUNDE VS OBAFEMI AWOLOWO UNIVERSITY (1998) 5 NWLR (Pt. 549) 178.***

A certificate of occupancy properly issued and where there is no dispute that the document was properly issued by a competent authority raises the presumption that the holder of the documents is the owner in exclusive possession of the land.

The certificate also raises the presumption that at the time it was issued, there was not in existence a

customary owner whose title has not been revoked. It should however be noted that the presumption is rebuttable because if it is proved by evidence that another person had a better title to the land before the issuance of the certificate of occupancy the said certificate of occupancy stands revoked. See ***MADU VS MADU (2008) 2-3 SC. (Pt. 11), 109;***

ALLI VS IKUSEBIALA (1985) NWLR (Pt. 4) 630..

A declaratory relief is a discretionary remedy which is not granted as a matter of course and the court must be satisfied before granting it that the Plaintiff or claimant has a very strong and cogent case both from his statement of claim and from the evidence he adduces in support of his case.

The Plaintiff or claimant must satisfy the court that under all the circumstances of the case, he is fully entitled to the discretionary reliefs in his favour, when all facts are taken into consideration.

See ***MAKANJOULA VS AJILORE (2001)12 NWLR (Pt. 727) 416.***

The question of urban or non-urban land does not apply and cannot apply to land within the Federal Capital Territory and I must sincerely wish to 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.

The issue of urban or non-urban land is the creation of Land Use Act (LUA) and to the extent of the creation inapplicable to the Federal Capital Territory.

The question therefore on the powers conferred on and exercised by the Governor of a State under the Land Use Act (LUA) being applicable in the Federal Capital Territory, does not arise in view of the fact that the essence of Land Use Act (LUA) as set out in the preamble and section 49(1) of the same act, the provisions of the Act are not applicable to title to land held by the Federal Government or any of its agencies.

It then logically follows that the provision of section 3 of Land Use Act (LUA) which empowers the Governor of a state to designate parts of the area of the territory of the state land as urban area is also most inapplicable to the land in 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 not other.

From the foregoing therefore, it is clear that no Area Council Chairman/Administrator within the Federal Capital Territory has the power to allotte land to any person or group of persons as no land

within the Federal Capital Territory exist as non-urban land where customary title could be conferred.

Consequently, to the extent of non – compliance with the statutory provisions, of law, any of such allocation so made, is null, void and unconstitutional.

Let it be known to all and sundry that the mere brandishing of acknowledgment letter from Abuja Geographic Information Systems (AGIS) as evidence of submission of Area Council title documents for regularization does not amount to validation of such a title.

For any such area council allocation, so called, to be in conformity with the statutory provisions of

law, the Federal Capital Territory Minister ought to withdraw the said so called Area Council allocation and issue a statutory title.

Once that is not done, the said customary title is ineffective null and void, the title held by Plaintiff and Defendant in this case, if any, is inclusive.

Poser .. What is the meaning of regularization in English language?

The new lexicon Webster's dictionary of the English language defines it to mean – "***to make regular or cause to conform to a rule, principle."***

Poser.. Why are all Area Council allocations being regularized?

Certainly it is to bring them in conformity with the provisions of law on the issue of allocation which

is the exclusive preserve of the Federal Capital Territory Minister who enjoys the delegated powers of the President Federal Republic of Nigeria, under section 18 of Federal Capital Territory Act.

I am not a law maker, but an interpreter of law made by a law maker.

The objective of any interpretation is to unravel the intention of the law maker which often, can be deduced from the usage of language.

The duty of court is to interprete and give adequate and as close as possible accurate and ordinary meaning to the words used. At best, both Plaintiff and the Defendant are trespasser to the land in question.

Having held that both parties are not entitled to the land in issue and could not have been the beneficial owner in that respect, I shall examine the case of the parties to ascertain who actually the law tilt in his favour in term of first trespasser.

The Plaintiff in a bid to proof his case as required by law tendered the following documents in evidence.

i. Exhibit “A” Power of Attorney.

ii. Exhibit “B” AMAC Allocation.

iii. Exhibit “C” TDP.

iv. Exhibit“D” Bwari Area Council Departmental Receipt.

v. Exhibit “E” Acknowledgment dated 23rd December, 2008.

vi. Exhibit “F” Application for search materials.

vii. Exhibit “G” Payment receipt of N800,000.00.

Defendant on his part tendered.

1. Exhibit “D1” - Acknowledgment of receipt of money.
2. Exhibit “D2” - AMAC allocation paper.
3. Exhibit “D3” – TDP.
4. Exhibit “D4” – Deposit slip and
5. Exhibit “D5” – Bwari Area Council letter dated 13th January, 2014.

Trial court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment and or act on it. Document tendered before a trial court are meant for scrutiny or examination by the court, documents are not tendered merely for the sake of tendering but for the purpose of examination and evaluation ***OMEGA BANK (NIG) PLC VS O.BC LTD (2002) 16 NWLR (Pt. 794) 483.***

It is settled law that where there are oral as well as documentary evidence, documentary evidence should be used as hanger from which to assess oral testimony. ***PASHAMNU VS AKEKOYA (1974) 6 S C 83.***

The trial court is enjoined to give more weight to the documentary evidence rather than oral testimony. This is because oral evidence may tell lie but documentary evidence which is shown to be genuine does not tell lie..See ***UDERAH VS NWAKONOBI (2003) 4 NWLR (Pt. 811) 643 at 678 Paragraphs A-C.***

On record, both Claimant and Defendant have made heavy weather to their respective title documents which they both alleged to have purchased from the respective allottees.

Indeed having found both parties as not competent to be referred to as beneficial owners of the land in issue and also held that both are trespassers, I shall examine further, the evidence on record to determine who was the first trespasser on the said

land in view of the position of the law on the status of a trespasser.. for the records, a trespasser in law, can maintain an action against the whole, except against that person who presents a better title.

It is the evidence of Claimant that he had erected a gate on the said land.

It is his evidence further that Defendant came with people to padlock the gate with chain and that Defendant upon being contacted, admitted padlocking the gate with chain and insisted that status – quo shall remain until he was settled. It is also the evidence of Claimant that he was the person who gave the subject matter to PW2 to be farming on.

DW1 under cross – examination admitted the fact that the gate on the land was installed by Claimant before same was locked by Defendant.

This is clearly as admission against interest pursuant to section 24 Evidence Act 2011 as amended.

See the case of ***NU METRO RETAIL (NIG) LTD VS. TRADEX S. R. L & ANOR (2017) LPELR – 4239 (CA).***

Claimant clearly, has sufficiently placed before the court evidence suggestive of the fact that he has been in possession of the subject matter as the first trespasser.

Though as trespasser, the court is under an obligation to give himprotection in view of the

fact that both contending parties have been adjudged as trespassers.

The claims of Claimant succeeds in part; I hereby make the following orders:-

a. Relief 1, i.eA Declaration by this Honourable Court that the Plaintiff is the genuine and true owner of plot No. 249 of about 680m2 situate at Gbazango Layout, Kubwa – Abuja, FCT**is refused and dismissed.**

b. Reliefs 2 and 3 are granted, as follows:-

    2. A Declaration that Plaintiff is the person in possession of the property known as plot No. 249 of about 680m^2 which is fenced round by the Plaintiff and situate at Gbazango Layout, Kubwa, Abuja – FCT

and demarcated by the following property beacon: PB 8776, PB8776, PB8773 and PB8774 is **hereby granted.**

3. An Order of Perpetual injunction restraining the Defendant, his agents and privies from interfering/disturbing Plaintiff quiet possession of the property known as Plot No. 249 of about 680m^2 which is fenced round by the Plaintiff and situate at Gbazango Layout, Kubwa, Abuja – FCT and demarcated by the following property beacon: PB8776, PB8776, PB8773 and PB8774 is **hereby granted.**

c. Relief 4 is on damages.

General damages are those damages which the law implies in every breach and in every violation of a legal right.

It is the loss which flows naturally from the Defendant's act and its quantum need not be pleaded or proved as it is generally presumed by law. General damages can be assessed from the opinion and judgment of a reasonable person from the circumstances of the case.

See ***ACME BUILDERS LTD. VS.KADUNA STATE WATER BOARD & ANOR (1999) LPELR – 65 (SC.)***

Claimant led evidence to show how Defendant used the instrumentality of the Nigerian Police Force to harass, intimidate and lock – him up.

Defendant has equally admitted padlocking the said subject matter (land).

Now that Defendant has been found not to be the trespasser – earlier in time, he shall pay damages for all the wrong committed against the Claimant by assuaginghim in damages.

I hereby award the sum of N1,000,000.00 (One Million Naira).

Cost of this suit is assessed at N200,000.00 (Two Hundred Thousand Naira).

Above is my judgment.

Justice Y. Halilu
Hon. Judge
13th April, 2022

APPEARANCE

B. O Nafagha, Esq. – for the Plaintiff.

Defendant and or counsel not in court.