

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

**BEFORE HIS LORDSHIP: HON. JUSTICE M. S. IDRIS**

**COURT: 28**

**Date:- 1<sup>ST</sup> JUNE, 2022**

**SUIT NO: CV/649/2020**

**BETWEEN**

**ENGR. JUDE EZE ..... PLAINTIFF/APPLICANT**

**AND**

**MICHAEL ONYEYEBO IKWUJELAN DEFENDANT/RESPONDENT**

**JUDGMENT**

The claimant filed this suit against the Defendant vide a writ of summons dated and filed on 4<sup>th</sup> March, 2021, seeking for the following reliefs:-

- a. A DECLARATION OF EQUITABLE OR LEGAL TITLE to all that property being Block 17, Flat 22, Kuje Close, Abuja, FCT covered by a certificate of occupancy no. 208bw-b006z 5fbbr-13cc2-10 registered as no.27319 at page 27319 in volume 137 of the certificate of occupancy register in the Land Registry Office at Abuja;
- b. A DECLARATION that the Claimant is entitled to peaceable possession and quiet enjoyment of all that property being Block

17, Flat 22, Kuje Close, Abuja, FCT covered by a certificate of occupancy no. 208bw- b006z 5fbbr-13cc2-10 registered as no.27319 at page 27319 in volume 137 of the certificate of occupancy register in the Land Registry Office at Abuja;

- c. A DECLARATION that the action of the Defendant in entering into and continuing to occupy all that property being Block 17, Flat 22, Kuje Close, Abuja, FCT covered by a certificate of occupancy no. 208bw- b006z 5fbbr-13cc2-10 registered as no.27319 at page 27319 in volume 137 of the certificate of occupancy register in the Land Registry Office at Abuja, despite the transaction in the deed of assignment and the irrevocable power of attorney both dated 9<sup>th</sup> September, 2020 and despite warnings and demands from the Claimants against same; amounts to trespass and breach of contract.
- d. AN ORDER OF PERPETUAL INJUNCTION restraining Defendants whether by himself or through his agents, successors, relations, workmen, allies, representatives and/or others howsoever called from further acts of trespass into all that property being Block 17, Flat 22, Kuje Close, Abuja, FCT covered by a certificate of occupancy no. 208bw- b006z 5fbbr-13cc2-10 registered as no.27319 at page 27319 in volume 137 of the certificate of occupancy register in the Land Registry Office at Abuja.
- e. AN ORDER OF MANDATORY INJUNCTION directing the defendant to forthwith obtain the consent of the Minister of the Federal Capital Territory, Abuja; for the transaction contained in the deed of assignment and the irrevocable power of attorney both dated 9<sup>th</sup> September, 2020.

f. General damages in the sum of N25, 000,000.00 (Twenty Five Million Naira) only for trespass and breach of contract.

g. Cost of action in the sum of N500,000.00(Five Hundred Thousand Naira) only.

The summary of the Claimant's case is that he purchased a house Block 17, Flat 22, Kuje Close, Area 10 Garki, Abuja, property of the Defendant for a sum of **N12,000,000 (Twelve Million Naira)** only from the Defendant. Claimant claimed that payment was made in two installments of **N5, 500,000(Five Million Five Hundred Thousand Naira)** only paid through E-Payment to the account of the defendant Account No 0025555633 Access Bank PLC and the other sum of **N6, 500,000 (Six Million Five Hundred Thousand Naira)** only was paid in cash to the Defendant without any receipt to acknowledged the said sum. That the Defendant submitted and executed the following documents evidencing the sale of the said property Block 17, Flat 22, Kuje Close, Area 10, Garki, Abuja to the Claimant: deed of assignment, irrevocable power of attorney, affidavit, certificate of occupancy in the name of Michael Onyeyebo Ikwujelan Letter of Offer, Voter card.

The claimant allege that when he went to clean up the said property on 30<sup>th</sup> January 2021, he discovered that the defendant had entered and occupied same without his consent.

The Defendant through a motion on notice filed by his counsel Simon I. Ugbe on 18<sup>th</sup> October,2021 sought for and was granted leave by the court to file his statement on defence, witness statement on oath and other court processes, which were accordingly filed on the same 18<sup>th</sup> October,2021.

I must at this point, express my observation of a seeming irregularity in the Defendant's Statement of Defence filed by his counsel Simon I. Ugbe, Esq. Learned counsel to the defendant failed to affix his legal practitioners seal on the Statement of Defence filed on 18<sup>th</sup> October, 2021. This is quite a strange practice and a disregard to the rules of professional conduct for legal practitioners in Nigeria and the Rules of this Honourable Court. It is also surprising to note that this process was accepted for filing by the court registry without paying attention to this irregularity. Nevertheless, considering the fact that the Claimant did not raise any objection as to the non-affixing of the defendant's counsel stamp and seal, I shall leave it at that.

On 20<sup>th</sup> October, 2021, the claimant opened his case and was led in evidence by his counsel, J.O. Apeh Esq. Claimant testified and tendered some documents which were admitted in evidence and marked as follows:-

- i. Certificate of Occupancy in the name of Michael Onyeyebo Ikwujelan –  
Exhibit 1
- ii. Irrevocable Power of Attorney – Exhibit 2
- iii. Deed of Assignment – Exhibit 3
- iv. Affidavit in the name of Michael Onyeyebo Ikwujelan –  
Exhibit 4
- v. Letter of Authority to register deed of assignment – Exhibit  
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- vi. Letter of Offer to Michael Onyeyebo – Exhibit 6
- vii. Voter's Card in the name of Michael Onyeyebo Ikwujelan -  
Exhibit 7

- vii. Official receipt of payment from Apeh Okwor & Company dated 22<sup>nd</sup> February, 2021 in the sum of N500, 000 (Five Hundred Thousand Naira) only – Exhibit 8

Claimant was cross examined on 28<sup>th</sup> October 2021, and he closed his case that same day.

On the part of the Defendant, one Isah Abdullahi was subpoenaed. He testified as DW1 On 9<sup>th</sup> December. 2021 and tendered a transaction slip which was admitted in evidence as Exhibit D1. The subpoenaed witness was cross examined on 8<sup>th</sup> February, 2022, and the Defendant himself testified as DW2 on the same day. He tendered his Access Bank statement of account which was admitted in evidence as Exhibit D2. Defendant was also cross examined on the same day.

The summary of the Defence story is that the Claimant granted and disbursed a loan in the sum of N5, 500,000 only to the defendant at the rate of 13% for a period of 4 months to commence in October 2020. That the defendant pledged exhibits 1,2,3, 4,5,6 and 7, as security or collateral to secure the loan facility, and that he did not intend to alienate his title in the said property to the Claimant. The Defendant allege that he paid the sum of N300,000 only as processing fee to one Mr. Eze Ifeanacho, a lawyer to the claimant who prepared the Irrevocable Power of Attorney and Deed of Assignment tendered in this proceedings. The said payment slip was tendered and admitted in evidence as D1.

Learned Counsel to the Defendant filed the Defendant Final Written Address on 28<sup>th</sup> February, 2022, and the Claimant's counsel filed his final written address on 21<sup>st</sup> March, 2022.

Counsel to the Defendant raised three issues in his written address to wit;

1. Whether in view of the Pleadings, oral, documentary and circumstantial evidence before this honourable court, the claimant is entitled to the reliefs sought.
2. Whether or not the claimant is entitled to the claims for damages in trespass when claimant is neither in possession or occupation of the said property.
3. Whether in view of the pleadings, oral, documentary and circumstantial evidence before this honourable court, the claimant is entitled to the reliefs sought.

Counsel to the Defendant argued that exhibits 2 and 3 are registrable instruments, and that their non-registrations renders them inadmissible in evidence. He further argued that since the consent of the FCT Minister as required under section 22 of the Land Use Act, was not obtained in respect of exhibit 3, and that the Claimant did not make any effort to obtain the said consent, it cannot be said that title in the said property was passed to the claimant. Counsel to the defendant cited several authorities including ***AWOJUGBAGBE LIGHT INDUSTRIES LTD V. CHINUKWE (1995) 5 NWLR (PT 390) 409, ABUBAKAR V. JUNAID (2020) LPELR-49959 (CA).***

Counsel further argued that the claimant is not entitled to claim damages for trespass against the defendant because he was not in exclusive possession of the said property. In conclusion,

counsel argued that the defendant has better title than the claimant, and that what transpired between the defendant and the Claimant was a mere loan transaction, and nothing more.

On his part, counsel to the claimant raised three issues for determination namely:-

1. Whether Claimant has proved his case as required by law.
2. Whether Defendant can rely on his failure to obtain consent of the Minister of the Federal Capital Territory and his own failure to register; to nullify the transaction in the deed of assignment and the irrevocable power of attorney between him and the claimant both dated 9<sup>th</sup> September, 2020.
3. Whether in the light of answer to issues 1(one) and 2 (two) above, claimant is entitled to relieves sought.

Counsel argued that the execution of a deed of assignment and delivery of title documents to the assignee signifies the intention of the assignor to be bound. He laid great emphasis on the recent decision of the Supreme Court in ***ILORI V. ISHOLA (2018) 15 NWLR 77 AT 80.***

In reaction to the argument of the Defendant that exhibits 2 and 3 ought not to be admissible due to its non-registration, counsel argued that the position of the law is that an unregistered registrable instrument is admissible in evidence in proof of equitable title or as evidence of a transaction. He relied on the case of ***TELLA V. USMAN (1997) 12 NWLR PT. 531 PG 168, ET AL.***

Counsel further argued, and rightly too, that the person who was under obligation to register exhibits 2 and 3 was the defendant. So the Defendant cannot rely on his failure to register to object to

the admissibility of Exhibits 2 and 3. He cited the locus classicus case of **SAVANNAH BANK PLC V. ALHAJI TATI IBRAHIM (2000) 6 NWLR 585 AT 588.**

Counsel urged the court to hold that the continued occupation of the defendants in the property in dispute despite the transaction in the deed of assignment and irrevocable power of attorney dated 9<sup>th</sup> September, 2020, and despite warnings and demands from the claimant against same, amount to trespass.

In determining this case, I shall generate one issue to address all the issues raised by the parties:-

*"Whether from the totality of the Pleadings, oral, documentary and circumstantial evidence before this Honourable court, the claimant is entitled to the reliefs sought"*

It is an elementary principle of law that in civil proceedings, the burden of proof shall be discharged on the balance of probabilities. See s. 134 of the Evidence Act.

Moreover, in an action for declaration of title to land such as the one under consideration, it has been settled by judicial authorities that where a party seeks declaratory reliefs, he must succeed on the strength of his case and not on the weakness of the defence, if any. In other words, a declaratory relief must be proved to the satisfaction of the court notwithstanding default of defence or any admission in defendants pleading. See **OKOYE & ORS V NWANKWO (2014) 15 NWLR (PT.1429); DUMEZ NIG. LTD V. NWAKHOBA (2008) 18 NWLR (PT.1119)361.**



It must also be noted that a declaratory relief can only be granted where the plaintiff establishes that he has an interest or right which forms the foundation for the relief sought.

Now, the question is, has the claimant in this case discharged the burden of proof placed upon him by law?

The claimant has placed before this court six documents which prima facie evidenced equitable title to the property in dispute. These documents are; Certificate of Occupancy in the name of Michael Onyeyebo Ikwujelan – Exhibit 1, Irrevocable Power of Attorney – Exhibit 2, Deed of Assignment – Exhibit 3, Affidavit deposed by the Claimant Michael Onyeyebo Ikwujelan – Exhibit 4, Letter of Authority from the Defendant authorizing the Claimant to register his title in deed of assignment – Exhibit 5 and Letter of Offer to Michael Onyeyebo – Exhibit 6.

The Defendant testified under cross examination that in view of his academic qualification and experience in life, before he signs any document, he must have read and understood its content. Defendant signed the deed of assignment and the power of attorney both dated 9<sup>th</sup> September, 2020, freely, without any form of duress. Exhibit 4 is an affidavit. Defendant has never denied authorship of exhibit 4. When a person subscribes to an oath or swears to an affidavit, which must of course be done before a person having authority to administer such oath or affidavit, he is taken to be telling the whole world the truth and nothing but the truth. If what he said under oath later turned out to be false, he can be subjected to a punishment under the crime of perjury. See **AC & ANOR v. INEC (2007) LPELR-66(SC)**.

Facts deposed to by the Defendant in the affidavit sworn before the Commissioner for Oath in this Honourable Court on 9<sup>th</sup> September, 2020, speaks for itself, and cannot be controverted. The defendant decried the non-attestation, non-registration and lack of Governors consent to the transfer of ownership documents, and sought to rely on that to nullify the transaction between him and the Claimant.

The Supreme Court made a clear pronouncement in ***ILORI V. ISHOLA (2018) 15 NWLR 77 AT 80***, which was cited by the Claimant's counsel thus:-

*"A deed of assignment does not require attestation for its validity. Unlike a contract which is not binding on the parties until they have exchanged their parts, a deed is binding on its maker, even though the parts have not been exchanged, so long as it has been signed, sealed and delivered..."*

Non attestation and/or registration of the power of attorney and deed of assignment does not render them a nullity. It does not relieve the parties of their obligations under the transaction.

On the issue of lack of the Minister's consent on the deed of assignment, I agree with the argument canvassed by the Claimant that the person who was under obligation to register and obtain the Governors or Minister's consent in this case, is the defendant. It is unconscionable for the defendant to contend that consent was not lawfully obtained. It is morally despicable for a person who has benefitted from an agreement to then turn

around to allege that the agreement is null and void. See ***ADETUYI V. AGBOJO (1997) 1 NWLR (PT.484) 705.***

The defendant's claim of having entered into a purported loan transaction with the Claimant is not sustainable. There is nothing before this court suggesting even remotely, that the transaction was for a loan. Exhibit D1 is a mere transaction slip which states nothing suggesting that the payment was made to Mr. Eze for the purpose of processing a loan. DW1 and DW2 in their testimony could not provide any concrete evidence pointing to the fact that there was a loan transaction between both parties. As an educated adult capable of reading and writing, it is unreasonable for DW1 to aver that he did not read and understand the content of exhibits 2, 3 and 5 before appending his signature on those documents. Can he also say that he did not freely depose to exhibit 4?

I am of the firm view that the claimant has an equitable title to the said Block 17, Flat 22, Kuje Close, Abuja, FCT covered by a certificate of occupancy no. 208bw-5fbbr-13cc2-10 registered as no.27319 at page 27319 in volume 137 of the certificate of occupancy register in the Land Registry Office at Abuja.

On the issue of whether the claimant can claim against the defendant for trespass, having not been in exclusive possession of the property, I feel such argument canvassed by the defendant was uncalled for. Possession need not be actual and physical. It may also be constructive. A person who has proper and better title to land need not be in actual physical possession to enable him claim for trespass against unlawful occupant. In **OGBEIDE**

**V. OSIFO (2007) 37 WRN 61 AT 68**, the Court of Appeal, per Aderemi JCA explained what constituted trespass as follows:-

*"It has been held that trespass to land constitutes the slightest disturbance to the possession of the land by a person who cannot show a better right to possession"*

In this case, who has shown a better title? The answer of course is that the Claimant has shown a better right to possession of the property in dispute. The defendant relinquished his right in the said property to the Claimant on 9<sup>th</sup> September, 2020, when he executed exhibits 2, 3, 4 and 5. I would also add in this judgment that parties are bound by their term of agreement this is trite. The defendants claim who relied heavily on the fact that what exist between the Plaintiff and the Defendant was a loan transaction that have not been proved by way of preponderance of evidence by the Defendant. This has not been and it is not the duty of the Court to speculate but to only rely on the evidence and the documents presented before it for quick determination of the case. I have carefully in this judgment made reference to all the exhibits tendered in this trial. I am fully convinced that the Plaintiff have proved its case based on balance of probability which entitle same to be granted all the reliefs sought by the Plaintiff with some amendment. The principle of pacta sunt seranda means the agreement of a party to a contract which is not fraudulent is to be observed. The agreement should be honoured by gentlemen. Like in this case the whole transaction initially was not loan agreements from the evidence in this case if mutual agreements entered into by parties to them are treated

lavishly and any party is allowed to unilaterally resile from commitment both parties have signed to bind themselves then the essence of any agreement or mutual contract is woefully defeated see ***A.G NASSARAWA STATE VS A.G PLEATEAU STATE SUIT NO. SC/214/2007. Also cited in (2012) 10 NWLR (pt419)*** it can be construed from evidence wholly obtained it clearly revealed that parties are bound by their terms of agreement they freely entered like in this case see ***LAGOS STATE GOVERNMENT VS TOLUWASE suit No. CA/C/514/09. Also cited in (2013) I NWLR (PT 555).*** Finally in totality based on the entire evidence in the cause of this trial I deem it just to enter judgment as per the Claimants claim against the Defendant under the following arrangement the reliefs sought granted are reliefs A, B,C,D,E and F. However the reliefs is to the effect that general damages in the sum of ₦200,000.00 for trespass and breach of contract claimed by the Claimant is hereby awarded. I so hold while I refused to grant relief G.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**

### **APPEARANCE**

J.O Apeh :- For the Claimant

S.I Ugbe:- For the Defendant