IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON MONDAY THE 12TH DAY OF SEPTEMBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/BW/CV/98/2021

BETWEEN:

MRS. ESTHER CHUKWUMERIJE ------- } CLAIMANT
(Suing through her Attorney Mr. Adewale A. Adejumo)

AND

1. DUKKAWA INTERNATIONAL NIGERIA LTD }
2. DAHAM GLOBAL RESOURCES LIMITED } DEFENDANTS

JUDGMENT

On the 19th of March, 2021 the Claimant – Mrs. Esther Chukwumerije instituted this action against the Defendants – Dukkawa International Nigeria Limited and Daham Global Resources Limited claiming the following Reliefs:

(1) A Declaration that she is the beneficial owner of a parcel of land - Plot 722 measuring about 1000sqm situate at Gbazango Layout Kubwa,

Abuja based on the Conveyance of Provisional Approval issued to her by Bwari Area Council.

(2) A Declaration that she is entitled to the possession and use of the said Plot 722 which is hereafter called the Res.

(3) A Declaration that the Defendants' invasion, forcible entry and fencing of the said Res is unlawful and illegal.

(4) An Order of Perpetual Injunction restraining the Defendants from interfering and disturbing Claimant's possession of the said Res.

(5) Ten Million Naira (₦10, 000,000.00) as General Damages for the interference by Defendants and for psychological trauma the Claimant suffered by action of the Defendants.

(6) One Million Naira (₦1, 000,000.00) as cost of the Suit.

The Defendants were served at both Lagos and Abuja. But they did not file any Statement of Defence. They did not enter appearance in paper or in person. They had no Counsel representative too.

The Claimant opened its case, called one Witness - PW1 who testified after adopting his Oath. He tendered 6 documents too which includes:

Power of Attorney.
Conveyance of Provisional Approval.
Receipt of Payment in the name of the Claimant.
Receipt evidencing Payment for Search Report.
Hand written Confirmation of Title by the Zonal Land.
Manager Bwari Area Council - Musa Audu.
Building Plan Approval.

Matter was adjourned for the Defendants to cross-examine PW1. But they never did. The Court foreclosed them from doing so. Court later adjourned for the Defence but the Defendants did not come. Since Court cannot wait in perpetuity, it adjourned for Final Written Address. The Claimant waited for more than 6 weeks before it filed its Final Written Address. The wait was to see if the Defendants can wake up from its slumber to defend the Suit or file a Counter-Claim. But they did not. On the 4th of July, 2022 the Claimant adopted its Final Written Address which it had served on the Defendants. Hence this Judgment.

The Claimant Counsel raised on behalf of the Claimant two Issues for determination which are:

(1) Whether the Claimant has proved the case on Preponderance of Evidence and by the strength of our case.

(2) Whether the Claimant is entitled to Damages.

On Issue No. 1, he submitted that the Claimant has established its case on Preponderance of Evidence placed before the Court in that she has through her evidence and documents tendered proved ownership of the land by production of documents of title duly authenticated. That the production of Deed of Conveyance and documents of title is one of the ways to prove ownership and possession. He referred to the following cases of:

Ewo V. Ani
(2004) 3 NWLR (PT. 861) 510

Odofin V. Ayoola
(1984) 11 SC 72

Idundun V. Okumagba
(1976) 9 - 10 SC 227

That by the virtue of the Customary Right of Occupancy the Claimant is the rightful owner of the land in issue. That the ownership claim and documents in support of the Claimant's claim was not rebutted and therefore is presumed to be correct as the Defendants did not challenge the said claim of ownership and possession.

That it is trite that facts uncontroverted or unchallenged are deemed admitted and need no further proof. He relied on the case of:

Al-Hassan V. Ishaku
(2015) 10 NWLR (PT. 1520) 230 @ 299 Paragraphs B - C Per Sanusi JSC

That in his testimony PW1 stated that the allocation of the Res was direct by AMAC now Bwari Area Council. That there is no evidence that this and location has been revoked or relocated to any person. He referred to **EXH 2, 3, 5 and 6** all of which confirms that the land in dispute belongs to the Claimant. That she testified and tendered those documents **EXH 1 - 6** according to her pleadings. He urged the Court to act on the said Exhibits which are not controverted. He relied on the case of:

Olorunde V. Adeyoju
(2000) 10 NWLR (PT. 676) 562 @ 589 Paragraphs B - D

That since her claim is not controverted, she has a better title than the Defendants who failed to put up any Defence or file any Counter-Claim. That the Defendants have no link to the Res and their action amounts to trespass on the Res.

On Issue No. 2, he submitted that the Claimant is entitled to payment of Damages by the Defendants. They urged Court to declare that the action of the Defendants is trespass in that the fencing of the Res without Claimant's consent amount to trespass by the Defendants. That Court should make an Order that the fence by the Defendants should be the property of the

Claimant on the principle of "**Quic quid plantateur solo solo cedit.**" He referred to the cases of:

Kupoluyi V. Phillips
(1996) 1 NWLR (PT. 427) 607

Kano V. Maikaji
(2011) 17 NWLR (PT. 1275) 139

That since the Claimant was in possession before the Defendants trespassed on the Res, that she is entitled to damages for the trespass. That Claimant has proved her case on preponderance of evidence and on the strength of her own case. He urged Court to grant all the claims and consequential Order in favour of the Claimant in respect of the building put up in the Res by the Defendants.

COURT

In this Suit predicated on allegation of trespass on the Res, the Claimant had in a bid to establish ownership tendered the documents starting from the Conveyance of Provisional Approval to the Deed of Allocation to her on the 2nd February, 1995 by the AMAC through Bwari Area Council. She has also tendered through her lawful Attorney as shown in his testimony the Power of Attorney she donated to her Attorney – Mr. Adewale Adejumo who is the PW1 in this case through who this action was instituted. She also attached a TDP – Customary Right of Occupancy showing the demarcation and precise size and boundaries of the Res. He had attached Receipt for

Payment of Search Report for the Res which was issued by Bwari Area Council. In the Receipt, the purpose for the payment was fully and detailedly specified. It showed that the payment was for Search.

> **"Search for Plot No. 722 of about 1000sqm at Gbazango Layout Kubwa, Abuja."**

It showed that the payment was made by the Claimant – Esther Chukwumerije. On the Receipt was specifically stated the File No/TDP No. BZTP/GEN/1694/14406. There is also the Receipt evidencinmg payment for Search Form paid by the Claimant. She also tendered through the same PW1 Department of Land Receipt for Land Fee for Processing of the Customary Right of Occupancy Certificate. In the Receipt the purpose of the payment was fully stated and it was specifically stated that the payment was for the Res – Plot No. 722 Gbazango Layout Kubwa, Abuja.

Also the Claimant tendered the Handwritten Report of the Confirmation by the Bwari Area Council that the signature in the Allocation Paper for the land is authentic. This was addressed to the Zonal Manager at Bwari Area Council. The Claimant had also tendered Affidavit showing that she is the owner and she got into the Res in issue. This is part of the documents she tendered or attached to the application for Building Plan Approval. She also exhibited her National Drivers License as well as Letter of Undertaking held to abide by the

Rules of Construction of the building as set out in the Building Approval Plan. There is also the Plan itself and evidence of payment of the various required statutory fees. All these documents were not challenged. There was no Defence or Counter-Claim. The facts were not challenged too.

It has been held in plethora of cases that unchallenged facts and uncontroverted facts are all deemed to be admitted. All the facts relied upon by the Claimant in this case were not challenged and as such are deemed admitted by the Defendants in this case since the Defendants were given all the judicial leverages to challenge the said facts but they failed, refused and neglected to do so. So this Court holds that, to that extent, the case of the Claimant is unchallenged and is admitted by the Defendants.

The Claimant had established the origin of her title which is based on direct allocation made to her by AMAC through Bwari Area Council. That claim was buttressed with the Conveyance of Provisional Approval, the Customary Right of Occupancy. She had shown the demarcation and the exact boundaries and the size of the Res – 1000sqm. By that evidence, she had complied with the requirement of proof of ownership of land as set in the cases of:

Idundun V. Okumagba
(1976) 9 – 10 SC 227

She had established ownership by the production of all these documents which is one of the ways to establish ownership of a parcel of land. Without doubt, the Claimant had established and proved her ownership of the Res and her case as well on the preponderance of evidence in form of the testimony of the PW1 and the documents tendered in this case on merit and not on the weakness of the Defence which never existed. So this Court holds.

It has been held that once a person has produced titled documents of a land, it is a way to acquire ownership of the land. But before the Court admits that, the Court must ascertain and be satisfied that the documents are genuine and valid. That it is registered. In this case, the Power of Attorney was registered.

Again, the Claimant has the right and capacity to donate the Power of Attorney to the PW1 as the land was not encumbered as at the time the Power was donated. There was no act of trespass then. The alleged trespass happened long after the Power was donated. Also, the grant of the allocation by the AMAC through Bwari Area Council is legal as the said Council has the power and authority to grant the Conveyance of Provisional Approval.

It is the law that once a Right of Occupancy from a competent authority raises presumption, that the holder is the owner and in exclusive possession. In this case, the Claimant has, by the Right of Occupancy tendered, shown that she is in exclusive possession even before the alleged trespass. Besides, that claim was not challenged by anyone including the Defendants who are alleged to be in trespass having constructed the gate and perimeter fence. Since the Defendants did not challenge that, this Court holds that the Claimant is the owner of the Res and in exclusive possession too and that the Defendants are mere trespassers within the Res. See the case of:

Al-hassan V. Ishaku Supra

In this case, the grant of the Res is by the statute. Again, a look at the words in the grant as contained in the Conveyance of Provisional Approval where it was stated thus:

> **"I am pleased to convey the Chairman, Caretaker Committee approval of a Customary Right of Occupancy of Plot No. 722 of about 1000sqm at Gbazango Layout, Kubwa, Abuja."**

The above puts no one in doubt about the authenticity of the grantor of his capacity to grant is not in doubt. What was granted is equally specifically stated and it is identifiable easily. It was granted directly to the Claimant and not through any 3rd party. This is in line with the decision in the case of:

Din V. Attorney-General of the Federation Supra

All the other documents attached – **EXH 2, 3, 4, 5 & 6** all supports her claim to the Res and shows that the land is not in dispute or encumbered in any way.

The action of the Defendants by erecting the perimeter fence on the Res is an act of trespass. The Claimant has shown that she was in effective occupation/possession before the act of trespass took place which is the erection of the perimeter fence around the Res. The Defendants had their worker in the Res who refused to disclose their full identity.

It is the law that anyone first in time in tussle concerning land carries the day. In this case, there is no adverse claim except that the Defendants trespassed by erecting the perimeter fence without the Claimant's knowledge and authorization. Hence the Defendants committed act of trespass.

It is the law that where a party – Claimant has proved act of trespass that he is entitled to compensation by way of payment of Damage for what the said Claimant suffered because of the trespass. The Claimant in this case has established that the Defendants trespassed by erecting the perimeter fence and as such she is entitled to damages as claimed.

Since the Claimant has established her case and her title to the Res, she is entitled to Injunctive Order of this

Court in her favour. The Injunction is to protect the Res and the Claimant's title. In that case, everything that accedes to that Res belongs to the Claimant based on the principle of **Quic quid plantateur solo solo cedit.** This principle is consequent on the fact that the Claimant has established her title to the Res and is entitled to this Court declaring her as the owner and title holder of the Res. See the decision of the Court in the cases of:

Dantsoho V. Mohammed Supra

Oyeneyin V. Akinkugbe Supra

From all the above, it is not in doubt that the case of the Claimant is meritorious and unchallenged by the Defendants. She is entitled to her claim. So this Court holds.

The Court therefore resolves the two (2) questions/Issues for determination in favour of the Claimant and grants the claim to wit:

Prayers No. 1 – 4 granted as prayed.

The Defendants are to pay the Claimant the sum of One Hundred Thousand Naira (₦100, 000.00) only as Damages for the trespass.

Since the title to the Res is in the Claimant name, based on the testimony and documents tendered, everything that accedes to the Res in issue belongs to the Claimant based on the principle of **Quic quid plantateur solo solo cedit.**

The Claimant shall bear the cost of the Suit.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2022 by me.

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K.N. OGBONNAYA

HON. JUDGE