

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT MAITAMA, ABUJA**

ON WEDNESDAY, 18TH DAY OF JANUARY, 2023

BEFORE HON. JUSTICE SYLVANUS C. ORIJ

SUIT NO. FCT/HC/CV/1283/2018

BETWEEN

MR. EZEKIEL DARIYA

CLAIMANT

AND

MR. RAYMOND ONIMISI

DEFENDANT

JUDGMENT

The claimant [plaintiff] commenced this suit on 21/3/2018 by writ of summons. The claimant amended his reliefs in the writ of summons and statement of claim on 11/2/2019 with leave of the Court which was granted on 19/2/2019. In paragraph 14 of the amended statement of claim, the claimant seeks the following reliefs against the defendant:

- i. A declaration that plaintiff being in possession as a purchaser for value is entitled to the equitable right of Plot CRD 485 lying and situate at Lugbe 1 Layout of the Federal Capital Territory, Abuja.

- ii. A declaration that the defendant's destruction of the plaintiff's four corner fencing at the beacon points of Plot CRD 485 lying and situate at Lugbe 1 Layout of the Federal Capital Territory, Abuja, and the erection of a fence round the Plot as well as the installation of an iron gate with a padlock thereat is an unlawful invasion and trespass to the plaintiff's possessory right.
- iii. N5,000,000.00 damages against the defendant for trespass into the plaintiff's Plot No: CRD 485 lying and situate at Lugbe 1 Layout of the Federal Capital Territory, Abuja.
- iv. An order of perpetual injunction restraining the defendant, his privies, agents, or any person or persons purporting to act for and/or on his behalf from committing any further act of trespass, either by invasion, incursion or in whatsoever, or howsoever way or manner described on plaintiff's Plot 485 CRD Lugbe 1 Layout of the Federal Capital Territory, Abuja.
- v. N600,000.00 cost of the suit.

From the records in the case file, the originating processes were served on the defendant on 9/5/2018 by pasting as ordered by the Court on 26/4/2018. The claimant gave evidence in-chief as PW1 on 23/1/2019. On 26/2/2019, the defendant was not in Court to cross examine the claimant

in spite of the hearing notice served on him. On the application of the claimant's counsel, Emmanuel Ejiofor Esq., the Court foreclosed the right of the defendant to cross examine the claimant and the case was adjourned to 8/3/2019 for defence.

On 8/3/2019, the defendant was not in Court in spite of the hearing notice served on him. On the application of the claimant's counsel, the Court foreclosed the right of the defendant to defend the suit. The case was adjourned for adoption of final addresses.

On 15/3/2019, Emmanuel Ejiofor Esq. filed the claimant's final written address and same was served on the defendant on 21/3/2019.

However, on 28/3/2019, Alfa Abdulrazaq Esq. filed the defendant's memorandum of appearance and motion *No. M/4728/2019* for an order for extension of time to file his statement of defence/counter claim and leave to defend the case. The Court granted the motion on 6/6/2019 and directed the defendant to file his statement of defence/counter claim within 7 days from that date. The case was adjourned for defence.

Since 6/6/2019, neither the defendant nor his counsel attended Court and the statement of defence/counter claim was not filed. On the application of claimant's counsel on 8/12/2021, the Court foreclosed the defendant's

right to defend the suit. The case was adjourned to 17/1/20121 for adoption of final written addresses. On 17/1/2021, Emmanuel Ejiofor Esq. adopted the claimant's final written address filed on 15/3/2019.

Evidence of the Claimant - PW1:

The claimant adopted his statement on oath filed on 21/3/2018. His evidence is that the defendant trespassed into his Plot known as Plot CRD 485 at Lugbe 1 Layout of the Federal Capital Territory [FCT] Abuja. He bought the Plot at the cost of N2,500,000 on 17/3/2014 from Mr. & Mrs. Tony Aghamwengho Osazuwa and they signed a Deed of Assignment. From the information and documents given to him by Mr. & Mrs. Tony Aghamwengho Osazuwa, they bought the Plot from the original allottee, Buba Abdullahi.

The Plot had a four-corner edge fence at its beacon points at the time it was sold to him. Since then, he has been in quiet possession of the Plot. On 2/3/2018, he received a phone call from one of the persons he told to be watching over the Plot. The person informed him that someone [who turned out to be the defendant] had hipped trips of sand, chippings and blocks on the land. He was also informed by the person that they had destroyed the dwarf fence at the four edges of the Plot to commence his own fencing of the plot.

The person helped him to get the defendant's phone number. He [PW1] called and informed the defendant that the Plot belongs to him. The defendant insisted that the Plot was his; that he had just won a case against someone in court over the land; and that he had come to develop it to avoid encroachment by any other person. The defendant said he [PW1] should come with his original documents of the Plot so they can go to the Police to investigate which of the documents are genuine.

Mr. Ezekiel Dariya further stated that he called his wife to search for the documents and go to Lugbe Police station to make a report against the defendant. His wife confirmed that she made the report on 4/3/2018. His wife informed him that she discovered that the defendant had hurriedly erected a high fence round the Plot. A Police officer was detailed to follow her to the Plot.

PW1 later knew from his wife on 5/3/2018 that the defendant showed up at the Police station. After listening to them and cross-checking their documents, the Police officer in charge said it was a complicated case to be investigated thoroughly, and that meanwhile, the defendant should stop whatever he was doing on the Plot. His wife discovered that the defendant disregarded the order of the Police.

PW1 tendered the following documents in evidence:

- i. Irrevocable Power of Attorney donated by Buba Abdullahi to Mr. & Mrs. Tony Aghamwengho Osazuwa dated 1/11/2009: Exhibit 1.
- ii. Deed of Assignment between Buba Abdullahi and Mr. & Mrs. Tony Aghamwengho Osazuwa dated 1/11/2009: Exhibit 2.
- iii. Conveyance of Provisional Approval dated 27/6/96 in the name of Buba Adbullahi: Exhibit 3.
- iv. The Survey Plan of Plot No. 485, Cadastral Zone 07: 07: Exhibit 4.
- v. Receipts for N1,500 and N1,100 both dated 2/6/2005: Exhibits 5A & 5B respectively.
- vi. Regularization of Land Titles and Documents of FCT Area Councils Acknowledgement: Exhibit 6.
- vii. Deed of Assignment between Mr. & Mrs. Tony Aghamwengho Osazuwa and PW1 dated 17/3/2014: Exhibit 7.

Submissions of Learned Counsel for the Claimant:

Emmanuel Ejiofor Esq. posed one issue for determination, which is whether the plaintiff [claimant] has sufficiently discharged the onus placed on him to prove his case to be entitled to the reliefs sought. He

posited that the law is that any person who has paid for land, obtained a receipt of such payment and is in possession has acquired a “*protectable equitable interest on such land.*” He referred to the cases of **Harding v. Admin. Gen. and Public Trustees, Lagos State [2017] All FWLR [Pt. 868] 696** and **Oyelakin v. Arowolo [2017] All FWLR [Pt. 899] 254.**

The claimant’s counsel submitted that by the unchallenged evidence of the claimant, he has proved that he purchased the said Plot, obtained a receipt and has been in possession. Therefore, the claimant acquired an equitable interest on the land which is protected by law. The equitable interest can only be defeated by the defendant’s proof of a better title in the sense of being ignorant of the claimant’s existing equitable interest. He stated that even though Exhibits 1, 2 and 7 are inadmissible to prove title to land, they are admissible as evidence of payment of purchase price or proof of equitable interest. The case of **Atanda v. C.I.H. Kwara State [2017] All FWLR [Pt. 902] 29** was cited in support of this principle.

Emmanuel Ejiofor Esq. further argued that the person in possession of land is entitled to maintain an action in trespass to land against anyone except the true owner or one who can show a superior or better title against that of the person in possession. The defendant has not shown a better title to the land. The action of the defendant is trespass on the land and the claimant is entitled to damages. The case of **Gbemisola v.**

Bolarinwa [2014] All FWLR [Pt. 731] 1477 was cited in support. The claimant's counsel concluded that the claimant has discharged the onus placed on him to prove his claims against the defendant.

When the case came up for judgment on 15/3/2022, the Court called the attention of the claimant's counsel to the fact that the *Conveyance of Provisional Approval* dated 27/6/96 [Exhibit 3] conveyed or granted to Buba Abdullahi "the Chairman, Caretaker Committee's approval of a Customary Right of Occupancy in respect of Plot No. CRD 485 of about 600m² at Lugbe 1 Layout". The grant to Buba Abdullahi is the basis or foundation of the claimant's claim of a declaration that he is entitled to the equitable right of the said Plot.

The Court then invited the claimant's counsel to address it on whether it can grant a declaratory order in favour of the claimant based on the "Customary Right of Occupancy" granted by the Chairman of Caretaker Committee of Abuja Municipal Area Council. On 7/4/2022, Emmanuel Ejiofor Esq. filed his written address on the issue raised by the Court, which he adopted on 24/10/2022.

Additional Submission of Learned Counsel for Claimant:

Emmanuel Ejiofor Esq. conceded that:

“only the President or the Minister of the Federal Capital Territory are, stricto sensu, vested with the powers of conferring title on any citizen on lands within the Federal Capital Territory ... and all lands comprising same, by necessary implication, are deemed to be urban land within the context of section 2[a] of the Land Use Act ... it may be rightfully argued that there are no rural lands ... and that the Area Council in the Federal Capital Territory possesses no control over any land within the FCT ... Thus, viewed from this perspective, it could my lord, be concluded, in relation to the case before my lord, that the grant made by the Municipal Area Council to the Plaintiff’s root of title does not exist in law.”

However, counsel argued that the Area Councils within the FCT, being products of the Constitution, *“cannot be said to have been created to exist in the FCT other than for the purposes of performance of the functions of its counter parts in the states of the Federation ... amongst which is the power of control and management of lands within their Areas of jurisdiction, termed as land in rural area, provided such lands had not been specifically marked out as belonging to the Federal Government, or for use of the Federal Government for whatever purpose ...”* He further reasoned:

“And if, my lord, it is to be assumed that there are no rural lands any longer in all the area that makes up the Federal Capital Territory, the implication, as it were, is that even the residents of some of the villages

and towns forming part of the mass land designated as the Federal Capital Territory, must seek allocation of land ... directly from the President, through the Minister of FCT, even for subsistence farming and building of shelters and other purposes for which land is desired by citizens. ..."

Learned counsel for the claimant urged me to hold that:

"much as the area where the Plot in dispute was not specifically marked out as belonging to the Federal Government or reserved for its use, that the grant as made to Buba Abdullahi by the Municipal Area Council was done within the confine of its powers of the Council [sic] as third tier of Government within the Federal Capital Territory, pursuant to the provisions of Section 2[5], 2[1][b], 6[1][a] & 3 of the Land Use Act, and enter judgment in favour of the Plaintiff in this case."

Decision of the Court:

The first relief sought by the claimant is a declaratory order that he is entitled to the equitable right of the Plot in issue. It is settled law that a party seeking a declaratory relief must adduce credible and sufficient evidence to prove his case. He must succeed on the strength of his case and not on the weakness of the case of the adverse party. See the case of **Arowolo v. Olowookere [2011] 18 NWLR [Pt. 1278] 280.**

In this case, the claimant has the burden to establish by credible and sufficient evidence that he is entitled to the declaration in relief1 and the other reliefs sought. Therefore, the issue for resolution is whether the claimant is entitled to his reliefs. The reliefs will be considered in turn.

Relief 1:

The claimant seeks a declaration that being in possession as a purchaser for value, he is entitled to the equitable right over the said Plot. As I did say, claimant's root of title is the Conveyance of Provisional Approval dated 27/6/96 granted to Buba Adbullahi [Exhibit 3], which conveyed the Chairman, Caretaker Committee's approval of a Customary Right of Occupancy.

The issues which call for resolution with respect to relief 1 are firstwhether anArea Council in the FCT like Abuja Municipal Area Councilcan validly allocate land;andsecondly, whether a customary right of occupancy granted by an Area Council in the FCT is valid.

Section 297[2] of the 1999 Constitution [as amended] provides: *"The ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria."* By section 18 of the FCT Act, as from 28th day of May, 1984, the powers exercisable by

the President of the Federal Republic of Nigeria in the FCT were delegated to the Minister of FCT. Thus, the power to allocate land in the FCT is vested in the Minister of FCT.

In Ona v. Atenda [2000] 5 NWLR [Pt. 656] 244, the Court of Appeal held that there is no customary right of occupancy in the FCT. It was further restated that by virtue of section 18 of the FCT Act, only the Minister of FCT can grant statutory rights of occupancy over lands in the FCT. Also, in Divage Health and Sanitary Service Ltd. & Anor. v. Kenuj Investment Ltd. [2018] LPELR-4597 [CA], the Court of Appeal considered whether a letter from the Abuja Municipal Area Council conveying approval for the grant of certificate of occupancy is a document of title and held:

"In resolving this issue, the law is settled that all land in the Federal Capital Territory vests absolutely in the Government of the Federation, and only statutory right of occupancy can be issued in the Federal Capital Territory, being an urban area. The implication of this is that it is only the Minister of the FCT acting pursuant to Section 302 of the Constitution and Section 13 and 18 of the FCT Act that can validly allocate land in the Federal Capital Territory. ...

I have carefully perused ... the plaintiff's/Respondent's title documents, it is my view that the plaintiff/Respondent ... could not be said to have derived its title from the Minister of FCT Abuja..."

In the light of the foregoing, the Court rejects the submission of learned counsel for the claimant that in so far as the area where the said Plot is located was not specifically marked out as belonging to the Federal Government or reserved for its use, the grant to Buba Abdullahi by Abuja Municipal Area Council was done within the confine of its powers. The position of the law remains that the ownership of all lands in the FCT, Abuja is vested in the Federal Government of Nigeria. There is no rural land in the FCT, Abuja, which the Area Councils can allocate.

The claimant seeks a declaration that he is entitled to equitable title over the said Plot. An equitable right or interest in land is as good as a legal estate and can stand against even a legal title if acquired with notice of such an equitable title. See **Akinbisehin v. Olajide [2018] LPELR-51172 [CA]**. I hold that the declaration of equitable title cannot be granted in favour of the claimant since the person he purportedly derived title from [or his purported predecessor-in-title] has no legal title or right to the Plot. Therefore, relief 1 fails.

Relief 2, 3 & 4:

In relief 2, the claimant seeks a declaration that the destruction of his four-corner fencing at the beacon points of the said Plot and the erection of a fence round the Plot and the installation of an iron gate constitute

unlawful invasion and trespass to his possessory right. Relief 3 is the sum of N5,000,000.00 damages for trespass while relief 4 is an order of perpetual injunction. It is trite law that a claim for trespass is based on exclusive possession of the land by the claimant.

In the case of Auta v. Liman & Ors. [2014] LPELR-22570 [CA], it was restated that trespass is a violation of possessory rights. Trespass to land is unlawful interference with exclusive possession of land. However, the law is settled that where a claimant claims damages for trespass and injunction, and there is a competing claim to possession of the land by the defendant, title is put in issue and to succeed, it becomes necessary for the claimant to prove title to the land. In Walda v. Maizare [2000] LPELR-9916 [CA] @ pages 9-10, para. C [per Umoren, JCA], it was held:

"It is pertinent here to avert to the fact that the claim before the Court was for trespass and injunction. This claim invariably raises the issue of proof of title to the land by the appellant. In Udo v. Obot [1989] 1 NWLR [Pt.95] 59, it was held that in a claim for trespass, one need not necessarily be an owner of land, what is required is that the claimant proves exclusive possession not title, but where the claimant claims damages for trespass and an injunction against further trespass, it follows that he puts his title in issue ..."

The decision in Kuburi Int'l Trading Co. Ltd. & Anor. v. Musti & Anor. [2018] LPELR-44004 [CA] restated this principle. In the instant case, the claimant claims both damages for trespass and injunction. Also, there is a competing claim to possession of the land by the defendant as stated by the claimant; the evidence of the claimant is that the defendant "*had hurriedly erected a high fence round the Plot*".

From the claimant's claims for damages for trespass and injunction, title to the Plot has been put in issue and to succeed, it becomes necessary for the claimant to prove his title to the Plot.

Also, from the way the reliefs for damages for trespass and injunction are couched, the claimant put his title in issue because the reliefs are predicated on his title to the Plot; not on possession. In relief 3, the claim is the sum of N5,000,000 damages against the defendant "*for trespass into the Plaintiff's Plot No: CRD 485...*" In relief 4, claimant seeks an order of "*perpetual injunction restraining the Defendant, ... from committing any further act of trespass, ... on Plaintiff's Plot 485 ...*"

Since the claimant was unable to establish that he has legal or equitable title to the Plot, there is no basis to grant reliefs 3 & 4 and the declaratory order in relief 2.

Conclusion:

The claimant's suit is dismissed. Parties shall bear their costs.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Learned Counsel:

No counsel.