

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI,ABUJA - FCT**

**CLERK: CHARITY ONUZULIKE
COURT NO. 10**

**SUIT NO: FCT/HC/CV/4196/2013
DATE: 02/03/2023**

BETWEEN:

1. ALHAJI ALIYU SULE
2. ED-DOM CONCEPTS LIMITED..... PLAINTIFFS

AND:

1. HON. MINISTER, FCT
2. FEDERAL CAPITAL DEVPT. AUTHORITY
3. DEPT. OF DEVPT. CONTROL, FCT
4. MRS. TURI AKERELE
5. ENGR. JAFARU.....DEFENDANTS

JUDGMENT

(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)

By an Amended Statement of claim containing 44 paragraphs dated 21/3/2014 but deemed as filed and served on the 26/3/2014, the Plaintiffs, Alhaji Aliyu Sule and Ed-dom Concepts Limited in the said amended statement of claim seek for the following reliefs against the defendants:

- (1) A Declaration that the 1st Plaintiff was duly and validly allocated Plot 333 Cadastral Zone A09 Guzape District, Abuja.

- (2) An Order of Perpetual Injunction restraining the Defendants jointly and severally either by themselves or through their agents or privies from further trespassing into or in any way or manner interfering with the Plaintiff's rights and interest, in and over and/or possession of Plot 333 Cadastral Zone A09 Guzape District, Abuja.
- (3) An Order awarding the sum of Thirty Million, Ninety-Two Thousand, One Hundred and Seventy-Eight Naira only **(N30,092,178.00)** as special damages against the defendants for their wilful and illegal destruction of the Plaintiff's construction work at Plot 333 Cadastral Zone A09 Guzape District, Abuja.
- (4) An Order awarding the sum of Fifty Million **(N50,000,000)** against the defendants for their act of trespass in and over Plot 333 Cadastral Zone A09 Guzape District Abuja.
- (5) The sum of Five Million Naira **(N5,000,000)** jointly and severally against the defendants being the professional fees paid by the Plaintiff to the firm of Ivory Chambers for the prosecution of this suit.
- (6) In the alternative to relief 3 and 4 the sum of Two Hundred Million Naira **(N200,000,000.00)** as damages against the 1st and 2nd defendants for breach of contract.

In denying the claims of the Plaintiffs, the 1st, 2nd, 3rd and 5th defendants filed a 44 paragraphs joint statement of defence dated and filed 11/11/2013.

On her own part, the 4th defendant Mrs. Turi Akerele, in denying the claims of the Plaintiffs, also filed an 18 paragraphs statement of defence dated and filed 28th February, 2014.

The Plaintiffs in response to these several pleadings of the defendants filed a reply dated 21/3/2014 to the 1st, 2nd, 3rd and 5th defendants statement of defence and another reply dated 2/4/2014 and filed on 4/4/2014 to the 4th defendant's statement of defence.

The case of the Plaintiffs as can be clearly deciphered from the pleadings and evidence before the Court is that 1st Plaintiff was allocated Plot 333 Guzape District Abuja by the 1st Defendant as replacement for Plot 3H 17 Durumi District Abuja. The 1st Plaintiff duly accepted the offer as earlier made to him prior to the replacement.

In 2008, the 1st Plaintiff applied for the regularization and recertification of his title over the property and was in December 2009 issued a Certificate of Occupancy over the property.

Between 2009 and 2010, the 1st Plaintiff in response to the several demands made on him by the 1st defendant paid ground rent and statutory right of occupancy bills in respect of plot 333 Guzape District Abuja.

In 2012, the 3rd Defendant issued the 1st Plaintiff a building plan approval authorising him to develop the property. 1st Plaintiff handed over the building approval to the 2nd Plaintiff who he had earlier in 2010 given a Power of Attorney to manage and develop the property on his behalf.

The Plaintiffs acting on the strength of the approval granted by the 3rd defendant commenced the development of a block of six units of four bedroom terrace duplex in January 2013.

Consequent upon the commencement of construction, the 3rd defendant served on 1st Plaintiff a stop work notice and later a quit notice on the purported ground that his title over Plot 333 Guzape District Abuja was fake.

Even though Plaintiffs complied with the stop work and quit notices, the 5th defendant on 13/6/2013 accompanied by Policemen and other officers of the 3rd defendant invaded plot 333 Guzape District Abuja with bulldozers and caterpillars and demolished the construction work carried out by Plaintiffs.

And two days later on 15/6/13, the 4th defendant who laid claim to ownership of Plot 333 Guzape District Abuja came to the property with thugs and Policemen and knocked down what was left of the construction work thereon and took away the remaining items in the property.

As at the time Plaintiffs construction work in Plot 333 Guzape District Abuja was destroyed, they had spent a total of Thirty Million, Ninety-Two Thousand, One Hundred and Seventy-Eight Naira (**N30,092,178.00**) on purchase of building materials, payment of labourers and professional fees.

The 1st defendant never revoked the title of 1st Plaintiff over Plot 333 Guzape District Abuja and no demolition notice was ever issued to the Plaintiff before the demolition of construction work he carried out in the property. The above in brief is the case of the Plaintiffs before this Court.

Now, what is the case of the defendants? Their only contention is that the Plot had earlier been allocated to the 4th defendant and that the allocation of the Plot to the 1st Plaintiff was done in error. They also claim to have served the Plaintiff a letter of withdrawal of the

allocation of the property to him and also a letter withdrawing the building approval issued to him.

At the hearing of the case in Court, a representative of the 2nd Plaintiff testified in support of their case. His name is Mr. Onyedika Okafor who in the course of his oral evidence on 21/5/2014 adopted his earlier filed sworn statement dated 3/4/14. He tendered the following documents which were admitted as follows:

Exhibit A: Is a bundle of purchase/payment receipts

Exhibit B: Is a stop work notice

Exhibit C: Is a Quit Notice

On 5/11/2014, Mr. Sunday Edeh Managing Director of the 2nd Plaintiff also gave evidence for the Plaintiffs as PW2. He adopted his witness statement on oath dated 17/7/2013 and his further witness statement on oath dated 3/4/2014. Exhibits D – N were admitted through this witness.

Exhibit D: Is a copy of offer of Plot 333 Guzape District Abuja to 1st Plaintiff.

Exhibit E: Is a Certificate of Occupancy issued to the 1st Plaintiff for Plot 333 Guzape District Abuja.

Exhibit F and F1: Are copies of demand notice to 1st Plaintiff for payment of right of occupancy, survey and Certificate of Occupancy bills on Plot 333 Guzape District, Abuja.

Exhibit G and G1: Are copies of payment receipts issues to 1st Plaintiff for Right of Occupancy survey land, Certificate of Occupancy bills on Plot 333 Guzape District, Abuja.

Exhibits H and H1: Are copies of demand notice for ground rent.

Exhibits I and I1: Are copies of payment for ground rent

Exhibit J: Is a building plan approval issued to 1st Plaintiff for Plot 333 Guzape District Abuja.

Exhibit K: Is a receipt for legal fees

Exhibits L and M: Are applications for Certified True Copy; and

Exhibit N: Is a Power of Attorney between 1st and 2nd Plaintiffs.

On the 3rd November, 2016, Chimere Totti testified on behalf of the Plaintiffs as PW3. In the course of his oral evidence he tendered 8 photographs of demolished construction carried out by the Plaintiff in Plot 333 Guzape District Abuja which were admitted as Exhibits 01 – 08 respectively.

On the 13th December, 2016, the 4th Defendant gave evidence for herself as DW₁⁴. She adopted her witness statement on oath dated 28th February 2014 and on 7th February 2017 when she was testifying in court, the following documents were tendered and admitted.

Exhibit X1: Is a letter of offer Plot 333 Guzape District Abuja to the 4th Defendant.

Exhibit X2: Is a letter of complaint

Exhibit X3: Is a memo on Plot 333 Guzape District Abuja.

Exhibit X4: Is a letter of complaint.

On the 30/6/2020, one Hamidu Jafaru gave evidence on behalf of 1st, 2nd, 3rd and 5th defendants in this case. He is a town planner who work with the 3rd defendant. He adopted his witness statement on oath dated 11/11/2013. Five (5) Exhibits were admitted in evidence through this witness.

Exhibit XX1: Is a letter of offer of Plot 333 Guzape District Abuja to the 4th Defendant.

Exhibit XX2: Is a quit notice

Exhibit XX3: Is a stop work notice

Exhibit XX4: Is a letter of withdrawal of 1st Plaintiff Title

Exhibit XX5: Is a withdrawal of 1st Plaintiff's approved building plan.

At the close of the hearing of the parties' evidence, learned Counsel to the parties filed written addresses. The addresses were adopted on the 16/1/2023.

Upon calm consideration of all the issues formulated by all the learned Counsel, I adopt the two issues formulated by the Plaintiffs' Counsel as the issues for determination in this case. They are as follows:

- (1) "whether having regard to the facts and circumstances of this case, the offer of Plot 333 Guzape District, Abuja to the 4th defendant on 18th February 2002 crystallized into a valid

and conclusive allocation and/or grant of the property to the 4th defendant so as to invalidate the grant of the property to the 1st Plaintiff on 22nd October, 2002?

- (2) Whether in the light of the Plaintiff's claim, the state of the parties' pleadings and evidence led thereof, the plaintiff is not entitled to a grant of declaration, injunction, damages and the order of specific performance sought?

To succeed in a Civil suit, a Plaintiff has to prove his case on the preponderance of evidence. The Plaintiff must prove all those positive allegations necessary to rebut a defence. He must equally prove all facts which constitute essential elements of his cause of action. See **BALOGUN VS. LABIRAN (1988) 3 NWLR (PT. 80) 66.**

Although the term used is "preponderance of evidence", yet evidence may be scanty or minimal and yet very effective. This point was emphasised in the case of **MAGAJI VS. ODOFIN (1978) 491**, where the point was succinctly made that by preponderance of evidence is meant admissible, relevant and credible evidence, evidence that is conclusive and that commands such probability that is keeping with the surrounding circumstances of the case at hand. See **DIBIAMAKA VS. OSAKWE (1989) 3 NWLR (PT. 107) 101 SC.**

When evidence is improbable, it can easily be dismissed as untrue as probability has always been the surest road to the shrine of truth and justice. The balance of probability will thus reflect also the balance of truth. When this happens, it then becomes the balance of justice. **PER OPUTA JSC (as he then was) in DIBIAMAKA (Supra).**

In this case, one fact is so clear and undiluted. All the parties agree that the plot in contention was first allotted to the 4th Defendant vide Exhibit X1 and XX1 dated 18/02/2002 while the 1st Plaintiff's allocation was done on the 22/10/2002 which is exhibit D and subsequently the issuance of exhibit E which is Certificate of Occupancy dated the same date with exhibit D.

The law is well settled in the case of **IDUNDUN VS. OKUMAGBA (1976) 10 SC** and a host of other Supreme Court decisions that there are five ways of proving title to land to wit:

- (a) By traditional evidence
- (b) By production of documents of title duly authenticated and executed;
- (c) By act of ownership extending a sufficient length of time numerous and positive enough as to warrant the inference of true ownership;
- (d) By acts of long possession and enjoyment, and
- (e) By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute.

In the instant case, the Plaintiffs have produced documents of title duly authenticated and executed. The second plaintiff became the bonafide donee for valuable consideration of irrevocable Power of Attorney dated 11th June, 2010 which was donated by the 1st Plaintiff. The said Power of Attorney is exhibit 'N'.

In law what is the nature of Certificate of Occupancy? Is it conclusive evidence of title?

In a plethora of unbroken claim of authorities, it is trite law that Certificate of Occupancy is not conclusive evidence of title of land to which it is issued or related. The Apex Court, **PER GALINJE, JSC** in the case of **ORIANZI VS. A. G. RIVERS STATE & ORS (2017) LPELR – 41737 (SC)** held as follows:

“A Certificate of Statutory or Customary right of occupancy issued under the Land Use Act of 1978, cannot be said to be conclusive evidence of any right, interest or valid title to land in favour of the grantee. It is at best, only a prima facie evidence of such right, interest or title without more and may in appropriate cases be effectively challenged and rendered invalid, null and void. See KYARI VS. ALKALI & 3 ORS (2001) 5 SCNJ 421.”

The 4th Defendant (Turi Akerele) was allocated Plot 333, Cadastral Zone A09, Guzape District, Abuja on 18th February, 2002 by 1st and 2nd Defendants. This allocation is what is in contention in this suit. The letter of allocation conferring title on 4th Defendant is in evidence before this Honourable Court.

2nd Plaintiff alleged that, 1st Plaintiff was allocated the same plot of land which had earlier been allocated to 4th Defendant. The letter of offer of allocation to 1st Plaintiff was dated 20th October, 2002. This purported allocation was done 8 clear months after 4th Defendant’s allocation.

1st, 2nd and 3rd Defendants in this suit also pleaded and testified that the allocation made to 1st Plaintiff was in error and that at the time the said allocation was made there was nothing to allot to 1st Plaintiff.

1st and 2nd Defendants also promised to give an alternative plot to 1st Plaintiff.

The 4th Defendant with the leave of this Honourable Court filed a Statement of Defence denying all the claims of the Plaintiffs as they relate to her and urged the Court among other reliefs, to dismiss the Plaintiffs' case with substantial cost on the ground that the suit is vexatious, frivolous, without, without merit and constitutes an abuse of Court process calculated to insult her and also to waste the time of this Honourable Court.

- (a) The 1st, 2nd and 3rd Defendants pleaded and testified that they issued the letter to the land in issue to the 4th Defendant in February, 2002 and that allocation has not been withdrawn. In paragraph 12 of the witness Statement on Oath of 1st 2nd 3rd and 5th Defendants their sole witness testified thus:

“that contrary to paragraph 1 of the Statement of Claim, I know as a fact that the 1st Plaintiff was never a lawful allottee of Plot 333, Cadastral Zone A09, Guzape District Abuja as the said plot of land was on the 18th day of February, 2002, allocated to the 4th Defendant and the Statutory Right of Occupancy over and in respect of the said plot being duly and completely granted to the 4th Defendant by the 1st and 2nd Defendant”.

It is on the basis of the above evidence that I hold that the 4th Defendant's title over and in respect of **Plot 333, Cadastral Zone A09, Guzape Abuja** was still valid and subsisting when the same plot was purportedly allocated to the 1st Plaintiff. The Courts have held in a plethora of cases that grant of a statutory right of occupancy when there is a subsisting one is invalid.

In the case of **NNADIKE VS. NWACHUKWU (2019) 16 NWLR (1698) 239@ 243**, the Supreme Court held amongst others that where there is a subsisting title over land in favour of one party, that title cannot be extinguished by the mere issuance of a Certificate of Occupancy to another party without a valid revocation of the earlier title. Ratio 2, and P. 267, Paras E-F.

There is no way therefore the statutory right of occupancy granted to the 1st Plaintiff can stand in the face of the 4th Defendant's existing title over plot 333, Cadastral Zone A09, Guzape Abuja. **OGUNLEYE VS. ONI (1990) 2 NWLR (PT. 135) 745@784. NIGERIAN ENGINEERING WORKS LTD V. DENAP & OTHERS 8 NSCOR 611. KYARI VS. ALKALI (2011) 11 NWLR (PT. 724) 412, 440-442.**

I therefore without hesitation resolve this issue in favour of the 4th defendant and hold that as at the time Plot 333, Cadastral Zone A09, Guzape Abuja was allocated to the 1st Plaintiff, the title of the 4th Defendant is still valid and subsisting and as such, there is nothing that could have been given to the 1st Plaintiff.

Another quick question that readily comes to mind is whose title between the Plaintiffs and the 4th defendant is valid in law?

Equally, the Apex Court cited with approval the legal maxim "*Qui prior est tempore potio est jure*" meaning he who is earlier in time is stronger in law, held as follows in the case of **ZACCALA VS. EDOSA & ANOR (2017) LPELR-48034 (SC)**:

“The dispute between the appellant and the 1st Respondent raises the equity of priority as well as the principle of ‘nemo dat quod non habet’. Both the appellant and 1st respondent claim title to the

disputed land through the transactions each of them had with the 2nd respondent. In other words, they both claim that the 2nd respondent is their common grantor.....At the time the 2nd respondent was purporting to have sold the same piece of land to the appellant, vide Exhibit A, he had no further title to pass to the appellant, having in exhibit P earlier passed his title and interest in the disputed land to the 1st respondent. Equity follows the law.....the fact remains that the 2nd respondent, from the transactions, had created equitable interest in the two buyers, namely the appellant and the 1st respondent. Where equities are equal, the first in time prevails. On the basis of this equitable principle of priority, the 1st respondent has a better title.”

Flowing from the above authorities with the established fact in this case that the 4th defendant’s allocation was first in time, the first issue is resolved against the Plaintiffs and in favour of the 4th defendant. Where there are equal equities, the first in time prevails.

ISSUE 2

In the instant case, the 1st, 2nd and 3rd and 5th defendants witness did not deny allocating the plot of land in dispute to the 1st plaintiff, but that the letter of offer of terms of Grant/Conveyance of Approval and subsequent issuance of Certificate of Occupancy was done erroneously and by mistake while the earlier allocation of the same plot to the 4th defendant is subsisting and valid.

Based on my holding on the first issue, I think the justice of this case demands that the Plaintiffs be allocated another land and putting into consideration all the monies he had paid and spent on this disputed land.

I hereby ordered the 1st defendant to allocate another unencumbered Plot of land of the same size and the same district to the 1st Plaintiff in this case. That is the Judgment of this court.

SIGNED
S. B. Belgore
(Judge) 02/03/2023

Appearances:

Chris Ezugwu, Esq for the Plaintiffs

Ajibola Abioye, Esq. for the 1st, 2nd, 3rd and 5th Defendants

Elijah Igoh, Esq for the 4th Defendant