

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 8<sup>TH</sup> DAY OF FEBRUARY, 2023.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**

**SUIT NO.: -FCT/HC/CV/0863/2018**

**BETWEEN:**

**CHIEF A.K. AMALIRI:.....CLAIMANT**

**AND**

**BABATUNDE ADEWALE SAMUEL:.....DEFENDANT**

Atenesuis Ugo for the Claimant.  
Etudaiye Momoh for the Defendant.

**JUDGMENT.**

The Claimant took out this action against the Defendant vide a Writ of Summons dated and filed the 8<sup>th</sup> day of February, 2018. The same was however subsequently amended by the order of this Court on the 11<sup>th</sup> day of November, 2020; the Claimant claiming against the Defendant as follows:

1. A declaration that the Claimant is the legal, lawful and bonafide allottee and owner of all that piece or parcel of land with every structure thereon, lying and situate at Plot No. CRD 1324, Lugbe 1 Layout, Abuja, measuring about 700m<sup>2</sup>.
2. A declaration that the Defendant is a complete stranger, intruder and trespasser into the Claimant's land.
3. A perpetual injunction restraining the Defendant, his tenants, servants, privies, agents, assigns and howsoever described, from continuing to trespass unto the Claimant's

land and from laying claim to any structure standing on the Claimant's land.

4. General damages for trespass.
5. The cost of this action.

The Claimant in his statement of claim averred that the Abuja Municipal Area Council allotted Plot No. CRD 1324, Lugbe 1 Layout, Abuja, to him on the 27<sup>th</sup> day of June, 1996, and that on the 9<sup>th</sup> day of July, 1996, he paid for the Customary Right of Occupancy for the said plot.

He stated that in the year 2007, when the Federal Capital Territory Administration commenced the process of regularisation of Area Council's Land titles in the Federal Capital Territory, he duly submitted all the title documents in respect of the land and was issued Acknowledgment dated 01/12/07.

The Claimant averred that he was in undisputed ownership, possession and occupation of the said plot from 1996 when same was allocated to him until sometime in 2016 when he visited the land with the aim of developing same, and discovered that someone had fenced the land round and put in artisans such as welders, hairdressers and bar merchants from whom the person collects rents.

The Claimant stated that he confronted the artisans on his land and they told him that their landlord is the Defendant who put them as his tenants. That when he met the Defendant, he admitted that he put the artisans there as tenants.

He averred that the Defendant, who with his agent, Itembolu A. Abiodun, till date has been collecting rent from his tenants who are still occupying the land.

In his reply to the statement of defence and defence to counter-claim, the Claimant maintained that he is the real A.K. Amaliri and the original and sole allottee of plot No. CRD 1324, Lugbe 1 layout, Abuja. He denied ever selling the said plot to Ikechukwu Osondu or to any other person howsoever described. He averred that he has never given any power of attorney in respect of the plot to any Ikechukwu Osondu or to any other person.

He further reiterated the averments in his statement of claim.

On the 30<sup>th</sup> day of June, 2021, the Claimant testifying as PW1 adopted his witness statement on oath wherein he affirmed all the averments in the statement of claim. He also tendered the following documents in proof of his case.

1. Conveyance of Provisional Approval – Exhibit PW1A.
2. Departmental Receipt – Exhibit PW1B.
3. TDP – Exhibit PW1C.
4. Regularization of Land Titles Acknowledgment – Exhibit PW1D.
5. Identification Certificate – Exhibit PW1E.

Under cross examination, the PW1 stated that the confirmation he got from AGIS in 2017 that the land still remains in his name, was oral confirmation; that there is no document to that effect.

In his defence to the suit, the Defendant filed an amended statement of defence and counter-claim dated and filed the 15<sup>th</sup> day of September, 2021 wherein he averred that the Claimant is not Chief A. Amaliri, but rather an impostor who wishes to reap where he did not sow.

The Defendant averred that indeed, the real A.K. Amaliri (who according to him, the Claimant impersonates), is the original

allottee of the said Plot No. CRD 1324, Lugbe 1 Layout, Abuja, but that the said A.K. Amaliri had sold the Plot to one Ikechukwu Osondu, vide a Power of Attorney dated 14<sup>th</sup> day of August, 1996.

He stated that the said Ikechukwu Osondu effected a change of ownership at the land registry of Abuja Municipal Area Council and was issued a Conveyance of Provisional Approval dated 28<sup>th</sup> November, 1996. That Ikechukwu Osondu remained in undisturbed ownership and possession of the plot since 1996 till 2015 when he sold the land to one Alhaji Kakuri Mohammed vide a Power of Attorney dated 27<sup>th</sup> day of January, 2015.

The Defendant further averred that the said Alhaji Kakuri Mohammed later sold the plot of land to him vide a Power of Attorney dated 18<sup>th</sup> day of June, 2015, and that he has been in undisturbed ownership and possession of the Plot since 2015 till date. That when he purchased the plot, he inherited the tenants on the land, who have since been paying rent to him.

The Defendant stated that all the documents that the Claimant is brandishing in relation to the land in dispute, are not genuine! That this position had in 2017 been confirmed by the Zonal Land Manager of Abuja Municipal Area Council when he was making statement at the Lugbe Division, FCT Command of the Nigeria Police.

The Defendant thus counter-claimed against the Claimant as follows:

1. A declaration that the Defendant/Counter-Claimant is the lawful and beneficial owner of all that plot of land lying and situate at Plot No. CRD 1324, Lugbe 1 Layout, Abuja, measuring about 700m<sup>2</sup>.

2. An order of perpetual injunction restraining the Claimant, his assigns, privies, successors in title, howsoever called from entering/trespassing into or in any manner whatsoever interfering with Defendant's possession of and proprietary right over Plot No. CRD 1324, Lugbe 1 Layout, Abuja.
3. General damages.

The Defendant on 29<sup>th</sup> September, 2021 opened his defence as he testified as DW1. He adopted his witness statement on oath wherein he affirmed the averments in the statement of defence and counter-claim. He also tendered the following documents in proof of his case.

1. Conveyance of Provisional Approval (A.K. Amaliri) – Exh. DW1A.
2. Power of Attorney between Alex K. Amaliri and Ikechukwu Osondu – Exhibit DW1B.
3. Conveyance of Provisional Approval (Ikechukwu Osondu) – Exhibit DW1C.
4. Right of Occupancy Rent and Fees – Exhibit DW1D.
5. Departmental Receipts – Exhibits DW1E-E1.
6. Development Levy Receipt – Exhibit DW1E2.
7. TDP – Exhibit DW1F.
8. Power of Attorney between Ikechukwu Osondu and Alhaji Kakuri Mohammed – Exhibit DW1G.
9. Regularisation of Land Titles Acknowledgement – Exh. DW1H.
10. Power of Attorney between Alhaji Kakuri Mohammed and Babatunde Adewale Samuel – Exhibit DW1J.

Under cross examination, the DW1 stated that he has never met the Claimant before.

When asked if he had any evidence or proof that there is any other A.K. Amaliri other than the Claimant, the DW1 stated that he does not know the Claimant; that he did not buy the land from the Claimant but from Alhaji Mohammed Kakuri.

When it was put to him that he did not sign witness statement on oath before this Court, the DW1 maintained that he signed the witness statement on oath and that the signature on Exhibit DW1J is his signature.

The DW1 was then made to sign his specimen signatures on a plain sheet which was tendered in evidence as Exhibit DW1K.

One Suleiman kabiru Obaro also gave evidence for the Defendant on 16<sup>th</sup> March, 2022. Testifying as DW2, he adopted his witness statement on oath wherein he averred that the Defendant gave him a portion of the land in dispute to erect his business and to also watch over the property for him.

He stated that he approached the Defendant sometime in August, 2015 when he wanted to start his own barbing business and the Defendant graciously asked him to set up his Barber shop on his property at Plot No. CRD 1324, Lugbe 1 Layout, Abuja. Also, that the Defendant introduced him to Engr. Abiodun Hambolu as the caretaker of the property.

The DW2 was duly cross examined by the Claimant's counsel, during which he stated that he is not paying any rent to the Defendant.

One Yakubu Attahir, a Police Inspector at Lugbe Divisional Police headquarters, who was subpoenaed by the Defendant testified as CW1.

He tendered the CTCs of the following:

1. Statement of one Lekan Aye Lotiti – Exh. CW1A.

2. Statement of Babatunde Samuel Adewale – Exh. CW1B.
3. Statement Musa A. Audu – Exh. CW1C.
4. Statement of Hambolu Babatunde Austin – Exh. CW1D.
5. Subpoena Ad Testificandum/Duces tecum – Exh. CW1E.

The CW1 told the Court in his evidence in chief, that on 15<sup>th</sup> July, 2017, a case of criminal trespass was reported against the Defendant, following which the statement of the parties were recorded and they submitted their title documents.

He told the Court that they took their investigation to AGIS to ascertain the rightful owner and that the Zonal Manager from AMAC was invited and he identified the document signed by him.

Under cross examination, the CW1 stated that he does not know the Claimant. That he only knows the complainant and that he never investigated the Claimant as the Claimant did not present any complaint before him.

At the close of evidence the parties filed and exchanged final written addresses which they adopted on the 15<sup>th</sup> day of November, 2022.

In his final written address, learned Claimant's counsel, Chief C.F. Nwokocho, who filed ahead of the Defendant, raised the following two issues for determination:

1. Whether the Claimant has proved his case to warrant the granting of the reliefs sought?
2. Whether the Claimant sold Plot No. CRD 1324, Lugbe 1 Layout, to one Ikechukwu Osondu or gave Power of Attorney over the land to one Ikechukwu Osondu or to any other person?

Proffering arguments on issue one, learned counsel contended that the Claimant, by his particulars of claims, exhibits tendered, oral testimony, as well as answers to cross examination questions before the Court, has clearly and unambiguously shown that he has proved his case against the Defendant.

He referred to **Arabambi v. A.B. Industries Ltd (2006) 8 WRN at P.1** and posited that the Claimant has led credible and uncontroverted evidence to prove his case, and that the Defendant on the other hand, failed woefully to dislodge, controvert and contradict the evidence led by the Claimant.

Making reference to Exhibits PW1A, PW1B, PW1C and PW1D, learned counsel submitted that the Claimant has shown concrete and better title to prove that he is the owner of the land in dispute and had never sold same to any person or given any Power of Attorney over the land to any Ikechukwu Osondu or to any other person till date.

He contended that the said exhibits are original documents from credible source. That they are credible in themselves, natural, reasonable and probable in view of the entire circumstances.

He referred to **Eze v. State (1985)3 NWLR (Pt.13)429 at 431** on the point that a piece of evidence not challenged or contradicted will be admitted in proof of a fact in issue.

On issue two, learned counsel contended that in proof of the fact that he did not sell the land to any Ikechukwu Osondu, or to any other person, the Claimant tendered in evidence, Exhibits PW1A, PW1B, PW1C and PW1D, which are all original title documents for the allocation of the land in dispute to him.



He argued that the said title documents were never challenged, discredited and/or controverted by the Defendant.

Learned counsel argued that the clear evidence of dissimilarity in Exhibit DW1A from Exhibits PW1A, shows that Exhibits DW1A is neither a counter-part nor Certified True Copy of Exhibits PW1A which is the only Conveyance of Approval for the land in dispute given to the Claimant.

Relying on **Ogundipe v. A-G Kwara State (1993) 2 NWLR (Pt.313)558**, he urged the Court to evaluate the credibility of Exhibits DW1A, DW1B, DW1G and DW1J and contended that they cannot sustain the Defendant's claim.

It was further contended by learned counsel that the failure and refusal of the Defendant to call Ikechukwu Osondu and Kakuri Mohammed as witnesses, leads to a presumption that their evidence would be unfavourable to the Defendant. He referred to Section 167(d) of the Evidence Act, 2011; **Zenith Bank PLC v. BusGold Ltd (2017)17 NWLR (Pt.1593)236 at 237.**

Learned counsel argued to the effect that the title documents tendered by the Defendant are forged documents which should not be accorded any evidential value.

He contended that the Defendant's signature on Exhibit DW1K contradicts his signatures in Exhibit DW1J as well as his witness statement on oath. He argued that this clear evidence of discrepancies, irregularities and contradictions in the Defendant's evidence make his testimony unreliable. He referred to **Ekang v. State (2001)Vol.20 WRN 1 at 193.**

Learned counsel further contended that the evidence of DW2 and CW1 go to no issue as their evidence can only stand where the title of the Defendant is valid.

He urged the Court to disregard the evidence of CW1 on the ground that the Nigerian Police are not in law authorised to adjudicate over land disputes, and that as such, whatsoever be their findings, go to no issue.

On the claim of both parties to be in possession, learned counsel referred to **Ekpan v. Uyo (1986)3 NWLR (Pt.26)63** on the point that “where two persons claim possession at the same time, possession resides in the party who has better title.”

He argued, relying on **Are v. Umaru (1986)3 NWLR (Pt.29)416**, that fencing round the land in dispute and putting in artisans by the Defendant, cannot confer title in the land to him, except the Claimant who has better and undiscredited title over the land in dispute.

He contended that the Claimant has discharged the onus of proof on him, having established his case by way of credible, natural, reasonable and probable evidence, and that he is thus entitled to judgment in his favour as per his claims. He urged the Court to so hold.

The learned defence counsel, Nanpon Wuyep, Esq, in his own final written address, adopted the first issue for determination formulated by the Claimant and further formulated an additional lone issue, to wit;

***“Whether the Defendant has proved his case as to be entitled to the granting of the reliefs contained in the counter-claim?”***

In respect of issue 1, on whether the Claimant has proved his case to warrant the granting of the reliefs sought; learned counsel contended that the Claimant has failed woefully to establish that he has superior title to the land in dispute over and above that of the Defendant who is in possession.

Relying on **Abimbola v. Abatan (2001)4 SC (Pt.1)64**, he posited that the trite position of the law is that in civil cases, the onus lies on the Claimant to satisfy the Court that he is entitled, on the evidence tendered by him, to the remedy claimed, and that the Claimant must rely on the strength of his case and not on the weakness of the case of the defendant.

Learned counsel contended that the two major documents of title relied upon by the Claimant, namely Exhibits PW1A and PW1C, are at variance with the each other, in relation to the size of the land, thus making the two documents unreliable.

He urged the Court to discountenance same for being of questionable origin, more so as there is no explanation whatsoever for such material discrepancy by the Claimant.

He further argued that the Defendant by tendering the statement of Musa A. Audu Exhibit (DW3A) whose responsibility it was to sign allocation papers at the material time, demonstrated with credible evidence that the documents of title relied upon by the Claimant bearing “Mr. A.K. AMALIRI,” are not genuine.

Arguing further, learned counsel contended to the effect that the relevant pleading of the Defendant, the Amended Statement of Defence dated 21<sup>st</sup> December, 2020, remains unchallenged and that all the averments therein, including but not limited to the averments that the Claimant is not the real A.K. Amaliri, are admitted by the Claimant. He argued that even if this contention is rejected by the Court, to the effect that the Reply to the Statement of Defence and Defence to counter claim filed by the Claimant is relevant for being filed in response to the Defendant’s original statement of defence, that the said Reply still goes to no issue as there is no Witness

Statement on Oath or any evidence in proof of the averments contained therein.

He submitted, with reliance on **UBA v. Astra Building (WA) Ltd (2010)41 NSCQR(Pt.2)1016.** that the law is trite that pleadings, however strong and convincing the averments may be without evidence in proof, goes to no issue.

He urged the Court to hold that the Claimant has failed to prove his case as to be entitled to the grant of the reliefs sought.

On “whether the Defendant has proved his case as to be entitled to the grant of the reliefs contained in the counter-claim” (issue 2); learned counsel contended that the Defendant has been able to prove his counter-claim against the Claimant by tendering documents of title tracing his title right from the genuine original allottee himself.

He argued that the evidence, both oral and documentary adduced by the Defendant, remains unchallenged and not contradicted.

He adopted his submissions on issue one in urging the Court to resolve issue 2 in favour of the Defendant.

He urged the Court on the whole, to dismiss the case of the Claimant and to grant the counter-claim of the Defendant.

The claim in this suit is for a declaration of title over a piece of land situate at Plot No. CRD 1324, Lugbe 1 Layout, Abuja.

In an action for a declaration of title in land, such as the instant case, it is a settled position of the law, that the onus is on the Claimant to establish his claim by cogent and credible evidence as to be entitled the reliefs claimed. This burden is not obviated by the weakness or even a complete absence of defence. See

**Anukam v. Anukam (2008)LPELR-500(SC); Sule v. Ajani (1980)LPELR-3123(SC).**

In the determination of this case therefore, the pertinent question that calls for consideration, is: **whether the Claimant has established by cogent and credible evidence, his entitlement to the reliefs claimed in this case?**

In **Dongari & Ors v. Sa'ahun (2013)LPELR-22084(CA)**, the Court of Appeal held, per Onyemenam, J.C.A, that:

***“This position of the law has been concretized that; in an action for a declaratory relief, the Claimant must by his own admissible, concrete and convincing evidence prove his case.”***

In the celebrated case of **Idundun v. Okumagba (1976)LPELR-1413(SC)**, the Supreme Court laid down five ways or methods by which title to land may be proved, namely;

1. By traditional evidence.
2. By production of document of title.
3. By acts of ownership, such as selling, leasing or renting out all or part of the land, or farming on it or on a portion of it.
4. By acts of long possession and enjoyment of the land.
5. 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.

The Claimant in this case, has relied on the production of document of title to wit; Exhibit PW1A, as the basis of his claim of title to the land in dispute.

The law is however, settled that mere production of document of title does not automatically entitle the party to the declaration sought.

In **Romaine v. Romaine (1992)3 NWLR (Pt.238)650 at 662**, the Supreme Court noted that mere production of what a Claimant claims to be an instrument of grant, does not automatically entitle him to a declaration that the property which such instrument purports to grant, is his own. That the production and reliance on such an instrument, inevitably comes with the need for the Court to inquire into some or all of the following questions, namely;

1. Whether the document is genuine and valid;
2. Whether it has been duly executed, stamped and registered;
3. Whether the grantor had the authority and capacity to make the grant;
4. Whether the grantor had in fact, what he purported to grant; and
5. Whether it has the effect claimed by the holder of the instrument.

Exhibit PW1A, on the basis of which the Claimant claims title to the piece of land in dispute, is Conveyance of Provisional Approval of a Customary Right of Occupancy in respect of Plot No. CRD 1324, Lugbe 1 Layout, granted by the Chairman, Caretaker Committee of the Abuja Municipal Area Council (AMAC).

However, by a combined reading of Sections 297(2) & 302 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 18 of the Federal Capital Territory Act, it is beyond doubt that only the Minister of the Federal Capital

Territory, acting by a delegated authority of the President, can allocate land in the Federal Capital Territory.

Also, the nature of title that is capable of being granted in the FCT, is a Statutory Right of Occupancy and not a Customary Right of Occupancy as being claimed by the Claimant herein.

See **Madu v. Madu (2008)All FWLR (Pt.414)1604 at 1627.**

As observed above, the title conveyed by Exhibit PW1A is a Customary Right of Occupancy granted by the Chairman, Caretaker Committee of AMAC, which title is not grantable in respect of lands in the FCT.

It is evident from the foregoing, that the said Chairman, Caretaker Committee of AMAC, does not have the authority to allocate land in FCT. Also, Customary Right of Occupancy as earlier stated, is not grantable in respect of lands in the FCT.

From the decision of the Apex Court in **Romaine v. Romaine (supra)**; it is clear that the grantor of Exhibit PW1A herein, had not the authority and capacity to make the grant; and in fact, the said grantor, had not what he purported to grant.

Exhibit PW1A, therefore, does not have the effect claimed by the Claimant herein, which is, legal, lawful and bona fide ownership of Plot No. CRD 1324, Lugbe 1 Layout, Abuja. This is because, the said Exhibit PW1A, for all intents and purposes, is not a valid instrument of grant capable of conferring interest in lands in the Federal Capital Territory Abuja.

From the totality of the foregoing therefore, it is my finding, and I so hold, that the Claimant has failed to establish by cogent and credible evidence, his claims before this Court as to be entitled to the reliefs sought.

Accordingly, the Claimant's case fails in its entirety, and the same is accordingly dismissed.

.....  
**HON. JUSTICE A. O. OTALUKA**

In respect of the counter-claim, the Defendant has counter-claimed against the Claimant for a declaration of title to the said land in dispute, to wit; Plot No. CRD 1324, Lugbe 1 Layout.

The Defendant/Counter-Claimant has also relied on production of documents of title to establish his claim.

The principal documents of title/instruments of grant which the Defendant/Counter-Claimant has relied upon are Exhibits DW1A and DW1C. Exhibit DW1A was the original grant which was later changed to the name of another allottee vide Exhibit DW1C.

Incidentally, Exhibits DW1A/DW1C, also a purported grant of a Customary Right of Occupancy by the Chairman, Caretaker Committee of Abuja Municipal Area Council. Irrespective of who, between the Claimant and the Defendant/Counter-Claimant, has the original or fake document of title, the said document of title is invalid having emanated from a grantor who did not have the authority and capacity to make the grant, neither did he in fact, have what he purported to grant.

The reasoning of this Court in the main case regarding the instrument of grant relied upon by the Claimant, thus applies *verbatim et literatim* to this counter-claim in respect of the Counter-Claimant's instrument of grant/ document of title.

In summary, it is my finding that the Defendant/Counter-Claimant's document of title did not issue from the appropriate



officer authorised by law to allocate land in the Federal Capital Territory.

The purported Customary Right of Occupancy is also not capable of being granted in respect of lands in the Federal Capital Territory. See **Madu v. Madu (supra)**.

It is thus my finding, and I so hold, that Exhibits DW1A and DW1C are invalid and do not have the effect claimed by the Defendant/Counter-Claimant. See **Romaine v. Romaine (supra)**.

Accordingly, the counter-claim fails in its entirety, and the same is hereby dismissed.

**HON. JUSTICE A.O. OTALUKA**  
**8/2/2023**