IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 30TH DAY OF JANUARY, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/3135/17

BETWEEN:

JOHN CHINWUKO:……..…..CLAIMANT
AND

1. MR. AUGUSTINE GODWIN
2. KUJE AREA COUNCIL
3. THE MINISTER OF THE FEDERAL CAPITAL TERRITORY.
4. FEDERAL CAPITAL DEVELOPMENT AUTHORITY.
:…DEFENDANTS

Uche Emekuba for the Claimant.
Defendants unrepresented.

JUDGMENT.

The Claimant instituted this action against the Defendants vide a Writ of Summons filed on the 11th day of October, 2017 wherein he claimed for the following:

a. A declaration that the Claimant is entitled to peaceful possession and occupation of all that property known as Plot No. 51, phase AA2, Kuje, with file No. FCT 6238, situate at Kuje, Abuja of about 1500m^2.
b. A declaration that the Claimant's right, interests and privileges over Plot No. 51, phase AA2, of about 1500m^2, situate at Kuje, Abuja is valid and subsisting.
c. An order of injunction restraining the 1st Defendant, their agents, allies, workmen, associates, assigns, those

deriving from them or whoever, from further interference and disturbance of the Claimant's rights, interest and privileges over Plot No. 51, AA2, of about 1500m^2, situate at Kuje, Abuja.

d. N20,000,000.00 damages against the 1st Defendant.
e. N2,000,000.00 cost of this suit.

The case of the Claimant, as per his statement of claim, is that he got allocation to the plot in issue on 4th October, 1993, and that sometime in 2004, he found out through his care taker, that his plot had been cleared, but without anything else done on the plot.

The Claimant averred that he subsequently decided to fence the plot in order to make it more secure and therefore erected a gate on the plot. That the next day however, some unknown men came to his plot and pulled down the gate and wall he erected and then commenced work on the plot.

The Claimant further argued that he reported the matter to the Police, who arrested the workmen at the site, as a result of which the 1st Defendant, who is laying claim to the plot appeared. He stated that the Police investigation into the matter confirmed that the plot belonged to him, but despite the resolution of the conflict in his favour, the Defendant still continued to build on the land, and to harass and intimidate him with the intention to dispossess him of his bona fide title in the plot.

On the 6th of June, 2019, the Claimant opened his case. He adopted his witness statement on oath as he testified as PW1. He also tendered the following documents in evidence:

1. Conveyance of Provisional Approval – Exhibit PW1A.
2. Acceptance of Offer of Right of Occupancy – Exh. PW1B.
3. Departmental Receipts – Exhibit PW1C-C5.

4. Registration of Land Titles and Documents Acknowledgment – Exhibit PW1D.
5. Right of Occupancy Rent and Fees - Exhibit PW1E.
6. RE: Letter of Complaint - Exhibit PW1F.

Following the failure of the Defendants to avail themselves of the opportunity to cross examine the PW1 after several adjournments to enable them to so do, their rights to cross examine the PW1 were foreclosed on the Claimant's application.

The 3rd and 4th Defendants in their defence to the suit, filed a Joint Statement of Defence dated the 19th day of March, 2018 and filed on the 21st day of March, 2018 wherein they averred that the duties or functions of the Area Councils in FCT, particularly the 2nd Defendant include allocation of land or anything pertaining to land administration.

They averred that neither the Claimant nor the 1st Defendant has any legitimate interest in the subject matter of this suit in so far as such interest allegedly stems from the 2nd Defendant on record.

The 3rd and 4th Defendants further averred that there is no plot or parcel of land within the Federal Capital Territory, particularly in the 4th Defendant's Land Registry at AGIS validly known as Plot No. 51, Phase AA2, of about 1500m^2 allocated to the Claimant or to any other person(s) claiming therefrom.

Also, that it is only the 3rd Defendant that is statutorily empowered to allocate land to persons in the entire FCT upon application duly received from interested applicants, and that all genuine land allocations are conveyed through the Department of Land Administration of the Federal Capital Territory under the strict approval of the 3rd Defendant.

The 3rd and 4th Defendants stated that the right of occupancy being granted by the Hon. Minister, Federal Capital Territory, is "Statutory Right of Occupancy" signed by the Director Land Administration Department on behalf of the 3rd Defendant, and not Conveyance of Provisional Approval of Customary Right of Occupancy signed by Secretary Rural Land Adjudication Committee or a purported Honourable Deputy Mayor.

Furthermore, that they have never established any land office in any of the Area Councils in the Federal Capital Territory (including Kuje Area Council), let alone deploy any of its staff to act on behalf of the 3rd Defendant in the Area Councils.

They averred that the Claimant's purported Offer/Conveyance of Provisional Approval with pursuant payments made to the Kuje Area Council, being a different entity; are completely unknown to the 3rd and 4th Defendants' Land Registry and are not tenable in the Federal Capital Territory.

One Mrs. Martha Ude, an Assistant Director and a Town Planning Officer with the 3rd and 4th Defendants gave evidence for the 3rd and 4th Defendants. Testifying as DW1, she adopted her witness statement on oath wherein she affirmed the averments in the 3rd and 4th Defendants' statement of defence.

Under cross examination, the DW1 admitted that as at 1993, the Lands Registry had not been centralized in AGIS. She further admitted that the Lands Registry became centralized in AGIS during the time of El-Rufai between 2003 and 2007.

At the close of evidence, the Claimant and 3rd and 4th Defendants filed and exchanged their respective final written address which they adopted on the 3rd day of November, 2022.

The 3rd and 4th Defendants' counsel, Emeka Ugwuowo, Esq, in his final written address, raised two issues for determination namely;

1. Whether the 2nd Defendant has the statutory power to allocate Plot 51, AA2, Kuje to either Claimant or 1st Defendant?
2. Did the Claimant prove his claim against the Defendants on the preponderance of evidence and balance of probabilities from the pleadings and evidence led?

Proffering arguments on issue one, learned counsel relied on Section 7 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Fourth Schedule thereof, to posit that 2nd Defendant lacks the constitutional or statutory power to allocate land within the Federal Capital Territory, to the Claimant and the 1st Defendant.

He referred to **AFDIN Ventures Ltd & Ors v. Chairman Abuja Municipal Area Council (2014)LPELR-23509(CA)** on the functions of a local government council, and submitted that same does not include allocation of land as it applies to the 2nd Defendant.

Learned counsel further referred to **Adelaja v. Fanoiki & Anor (1990)LPELR-110(SC)** on the principle that one cannot give what one does not have, and urged the Court to hold that the 2nd Defendant lacks the power to allocate Plot 51, AA2, Abuja to the Claimant or the 1st Defendant, as she cannot give what she does not have.

On issue two, learned counsel placed reliance on Section 134 of the Evidence Act, Cap E14 LFN 2011 to posit that the burden of proof in civil cases are discharged on the balance of probabilities.

He further referred to **Interdrill (Nig) Ltd & Anor v. UBA PLC (2017) LPELR-41907(SC)** and **Sule & Ors v. Odisajimi (2019)LPELR-47039(SC)** and contended that the Claimant failed to discharge the burden to warrant the grant of his claims before this Court.

He argued that a perusal of the evidence led by the Claimant will show that the documents tendered are alien and unknown to the 3rd and 4th Defendants.

He referred to **Bullet Int'l (Nig) Ltd & Anor v. Olaniyi & ANor (2017)LPELR-42475(SC)** on the effect of failure to discharge the burden of proof, and urged the Court to hold that the entire Claimant's claim has failed.

In his own final written address, learned Claimant's counsel, Silvia Igbo, Esq, also raised two issues for determination, namely;

1. Whether the allocation of the subject matter by the 2nd Defendant made in 1993 was validly done?
2. Whether the Claimant has proved his case and therefore entitled to judgment?

Arguing the 1st issue, learned counsel posited that it is a well-known fact which the Court should take judicial notice of that at the time of the allocation of the subject matter, which is 1993, the 2nd Defendant was vested with the power of land allocation and administration within its jurisdiction.

He argued that it was during the time of El-Rufai as the FCT Minister between 2003 and 2007 that land allocation and administration were centralized in the Land Registry at AGIS; that as such, the laws cited by the 3rd and 4th Defendants were not applicable at the time of the allocation of the subject matter. He contended that Section 7(1) of the 1999 Constitution, which

is an amendment of a previous law, guarantees the system of local government and enjoins every state to ensure their existence under a law which provide for their establishment, structure, composition, finance and functions and that it was based on such statutory powers of the 2nd Defendant in 1993 that the allocation of the subject matter was validly done.

Learned counsel contended that the Claimant has a legitimate interest in the subject matter because, the allocation of same was validly done. He argued that though the record may not be directly in the 3rd and 4th Defendants' record, that it is in the 2nd Defendant's record maintained under the 3rd and 4th Defendants; because as at the time the land was allocated, the Land Registry had not been centralized.

Proffering arguments on issue two, learned counsel referred to **Okonkwo v. Kpajie (1992 2 NWLR (PT.226)633,** and **Ajemale v. Yadiat (No.2) (1991)5 NWLR (Pt.191) 265,** and submitted that it is trite that an uncontroverted evidence are deemed admitted and that the Court should act on those undisputed facts as being true.

He argued to the effect that the Claimant has by his pleadings and evidence led before the Court, discharged the burden of proof placed on him. That the 1st and 2nd Defendants neither entered defence nor made any appearance and that by the defective appearance of the 3rd and 4th Defendants, they have nothing before the Court.

He contended that the Defendants had ample opportunity to defend their case and tender documents in evidence to rebut the Claimant's claim and assertions but failed to do so, which therefore, made the Claimant's case uncontroverted, unchallenged, worthful, probable and strong enough for the Claimant to succeed. He referred to **INEC v. Action Congress**

(2009)2 NWLR (Pt.126) 524 and **SPDCN v. Edamkue (2009)14 NWLR(pt.1160)1 at 15.**

Placing reliance on Section 125 of the Evidence Act, 2011 learned counsel submitted to the effect that the absence of any documentary evidence from the Defendants makes the documentary evidence of the Claimant stronger and more reliable in comparison to the oral evidence of the 3rd and 4th Defendants.

He argued that it is evident that the Defendants have no defence to the case of the Claimant and that the Claimant having proved his case, is entitled to judgment.

He urged the Court to so hold and grant all the claims of the Claimant.

The claim in this suit is for a declaration of title over Plot No. 51, Phase AA2, Kuje, FCT, Abuja.

It is a settled position of the law, that in claim for declaration of title to land, the onus is on the Claimant to establish his claim by credible evidence and he only succeeds on the strength of his own case and not on the weakness or absence of defence. See **Anukam v. Anukam (2008) LPELR-500(SC).**

The question that calls for consideration in the determination of this case therefore, **is whether the Claimant has established his claims by credible evidence as to be entitled to the reliefs sought?**

The Apex Court in the case of **Idundun v. Okumagba (1976)LPELR-1431(SC),** established 5 ways 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.

In his attempt to prove his entitlement to the land in this case, the Claimant has relied on production of document of title, Exhibit PW1A.

The law is however settled, that mere production of document of title does not ipso facto entitle the Claimant to the reliefs of declaration sought. Thus, in **Romaine v. Romaine (1992)4 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 and instrument, inevitably comes with the need for the Court to inquire into some or all of the following questions, namely;

i. Whether the document is genuine and valid;
ii. Whether it has been duly executed, stamped and registered;
iii. Whether the grantor had the authority and capacity to make the grant;
iv. Whether the grantor had in fact, what he purported to grant, and
v. Whether it has the effect claimed by the holder of the instrument.

Exhibit PW1A which the Claimant herein has relied on in proof of his claim, is a Conveyance of Provisional Approval from Kuje Area Council which conveyed the "Honourable Deputy Mayor's approval of a Customary Right of Occupancy in the said Plot to the Claimant.

In examining the said instrument of grant in the light of the guideline set by the Apex Court in **Romaine v. Romaine (supra)** the following become very obvious:

The purported grantor had not in fact, what he purported to grant, namely Customary Right of Occupancy, neither does he have the authority and capacity to make the grant.

By Exhibit PW1A, the title being claimed by the Claimant herein, is a Customary Right of Occupancy, granted by the Honourable Deputy Mayor of Kuje Area Council.

However, by a combined reading of Sections 297(2); of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and Sections 18 of the Federal Capital Territory Act, no one is left in 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 and the nature of title that is capable of being granted in the Federal Capital Territory, is a Statutory Right of Occupancy and not a Customary Right of Occupancy. See **Madu v. Madu (2008)All FWLR (Pt. 414) 1604 at 1621.**

For all intents and purposes, what this clearly means is that Exhibit PW1A is not a valid instrument of title that is capable of conferring interest in land in the Federal Capital Territory. The instrument therefore, does not have the effect claimed by the holder – the Claimant.

Thus, Exhibit PW1A failed all the applicable tests as enunciated in **Romaine v. Romaine (supra)**.

The learned Claimant's counsel has however, argued that the grant was made when the Mayor had the authority to make the grant and before the centralisation of the FCT land Registry in AGIS.

This argument is untenable because by reason of the Federal Capital Territory Act, 1976, the President of the Federal Republic of Nigeria delegated powers to the Minister of the Federal Capital Territory to allocate land and other functions in the administration of the Federal Capital Territory.

Section 1(3) of the FCT Act, in paraphrase, states that the Federal Capital Territory is governed and administered under the Federal Government; that is, under the President of the Federal Republic of Nigeria to the exclusion of any other authority, and the ownership of land in particular, rests in the President of Nigeria, who delegated power of allocation to the Minister of the Federal Capital Territory.

This Act was established and set in force in 1976. The argument of the learned Claimant's Counsel that the allocation of the subject matter was done in 1993 and that by that time, the 2nd Defendant, Kuje Area Council was vested with power to allocate land is unsubstantiated. No evidence of the law or authority vesting power of allocation on Kuje Area Council was exhibited. Again, by 1993 when the purported allocation of a Customary Right of Occupancy was granted to the Claimant, the Act establishing the Federal Capital Territory and empowering the Minister of the FCT to allocate land was already in place.

Also, the Federal Capital Territory Act had not authorised any Area Council to allocate land under the customary law to grant a Customary Right of Occupancy.

By the decision in Romaine v. Romaine (supra), the Customary Right of Occupancy granted is not genuine and valid; the grantor had no authority and capacity to make the grant; the grantor had not what he purported to grant; and it is not duly executed. Therefore, the grant has not the effect claimed by the Claimant, the holder of the instrument.

Be that as it may, there is no evidence before this Court to show that the appropriate grantor, the Minister of FCT validated and regularised the said grant. This is where the evidence of the appropriate authority becomes very relevant.

In their pleadings and evidence before the Court, the 3rd and 4th Defendants, being the appropriate authorities saddled with the responsibilities of allocation and administration of land matters in FCT, were unequivocal as to the fact that the purported allocation is not in their records. The Claimants failed to prove otherwise.

On the whole therefore, it is my finding that the Claimant has failed to establish his claims before this Court by cogent and credible evidence, as to be entitled to the reliefs sought.

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

HON. JUSTICE A. O. OTALUKA
30/1/2023.