

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 14TH DAY OF FEBRUARY, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.
SUIT NO.:-FCT/HC/CV/2508/2018

BETWEEN:

MR. AMOLE OLADELE AJONRIN:.....CLAIMANT

AND

- 1. MAVIS ONYINYE NWOKIKE**
2. DEPARTMENT OF DEVELOPMENT CONTROL.
3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY, ABUJA. :.....**DEFENDANTS**

Praise Choko with Tafoekat Kenku for the Claimant.

Ramalan J. Abdullahi holding the brief of Yakubu Gana Haruna for the 1st Defendant.

Ramalan J. Abdullahi for the 2nd and 3rd Defendants.

JUDGMENT.

By an amended writ of summons dated the 15th day of March, 2021 and filed on the 16th of March, 2021, the Claimant brought this suit against the Defendants claiming as follows:

1. A declaration by this honourable Court that the Claimant is the rightful, lawful, legitimate and bonafide of (sic) the subject matter property: Plot No. K29, FHA Road, Phase 2, site 1, Kubwa, Abuja.
2. A declaration that any other purported donation, sale, mortgage or pledge in respect of Plot No. K29, FHA Road, Phase 2, site 1, Kubwa, Abuja, to any other person or group of persons is invalid, unlawful and of no effect whatsoever.

3. A declaration that the Defendants or any person(s) acting for and or on their behalf, should stop forthwith any further act(s) of trespass on Plot No. K29, FHA Road, Phase 2, site 1, Kubwa, Abuja.
4. A declaration that the Conveyance of Provisional Approval of the Claimant over Plot No. K29, FHA Road, Phase 2, site 1, Kubwa, Abuja, is valid and subsisting.
5. And Order that the Defendants pay to the Claimant the sum of N50,000,000.00 (Fifty Million Naira) only, jointly and severally, as damages for acts of trespass.
6. An order that the Defendants shall pay to the Claimants interest on the judgment sum at the rate of 25% from the date of judgment till liquidation.

Stating his case in his statement of claim, the Claimant averred that he lawfully and rightfully acquired title to the subject matter property from the Abuja Municipal Area Council vide a Conveyance of Provisional Approval dated 15/6/1995.

He averred that since securing the said plot of land, he has enjoyed a quiet and peaceful possession of same, and that “not until recently, the 1st Defendant has been visiting his subject matter property and allegedly claiming to have a legal title over the said property.”

The Claimant further averred that from information available to him, the 1st Defendant has connived with some staff of the 2nd and 3rd Defendants to intimidate and possibly deprive him of the safe possession and occupation of the property and that since he cannot take the laws into his hands, he has thus approached this Court to determine the legal and legitimate owner of the subject matter property.

In his evidence in chief as PW1, the Claimant adopted his witness statement on oath wherein he affirmed the averments

in his statement of claim. He also tendered the following documents in evidence in his bid of proving his case.

1. Conveyance of Provisional Approval – Exh. PW1A.
2. Departmental Receipt – Exhibit PW1B.
3. Development Levy Receipt – Exhibit PW1C.
4. TDP – Exhibit PW1D.

Under cross examination by the 1st Defendant's counsel, the PW1 who spoke through an interpreter, told the Court that he built some shops on the land and put a mechanic named Olusi on the land. He however, stated that he does not know who the tenants in the shops are, as it was the Olusi who put the tenants there.

The PW1 later stated that he gave Olusi permission to build the shops on the land.

When asked under what L.G.A. (Area Council) the land is claiming is located, the PW1 stated that the land is located in Bwari and AMAC.

When shown the documents he tendered in evidence, the PW1 maintained that the land is in AMAC.

The Defendants having failed to file defence to the suit, their right to defend the suit was foreclosed on the Claimant's application. Thereafter, the Claimant, 2nd and 3rd Defendants filed and exchanged their final written address which they adopted before the Court on the 16th day of November, 2022.

In his final written address, learned Claimant's counsel, Promise Choko, Esq, raised a lone issue for determination, to wit;

“Whether the Claimant has proved his case against the 1st, 2nd and 3rd Defendants?”

Proffering arguments on the issue so raised, learned counsel contended that in view of the uncontroverted and uncontradicted pleading and oral testimonies of the Claimant against the 1st, 2nd and 3rd Defendants, that all the testimony and evidence of the Claimant against the Defendants must be deemed and accepted as true, correct and in proof of the case of the Claimant against the Defendants. He referred to **Nanna v. Nanna(2006)3 NWLR (Pt.966)P.1.**

He urged the Court, while referring inter alia to **Omoregbe v. Lawani (1980)34 SC 108,** to enter judgment against the Defendants because the Claimant's evidence against them, apart from being unchallenged and uncontroverted, is also very strong and weighty in support of his claims.

The learned 2nd and 3rd Defendants' counsel, Ramalan Jibrin Abdullahi, Esq, in his final written address, raised two issues for determination namely;

1. Whether the purported Conveyance of Provisional Approval of Customary Right of Occupancy by the Chairman, Caretaker Committee issued the Claimant by Abuja Municipal Area Council confers any legal title over the plot, subject matter of this suit on the Claimant.
2. Whether the Claimant is entitled to any of the relief sought?

Proffering arguments on issue one, learned counsel posited that the Conveyance of Provisional Approval of Customary Right of Occupancy, Exhibit PW1A, is not a valid document capable of conferring any legal rights and or interest over the subject matter of this suit on the Claimant.

He contended that in view of the provisions of Section 297(2) of the 1999 Constitution, Section 51(2) of the Land Use Act, 1978, and Sections 1(3) & 2(1) of the Federal Capital Territory Act,

Cap 503 LFN 2004, only the Federal Government through the Hon. Minister of the Federal Capital Territory, by virtue of Section 302 of the 1999 Constitution, Section 13(1) & (2) and Section 18 of the FCT Act, can allocate land in the FCT and not the Chairman Rural Land Adjudicatory Committee or the Chairman Abuja Municipal Area Council.

He further posited that Rural Land Adjudicatory Committee that purportedly issued Exhibit PW1A, is not recognized by law in respect of lands within the Federal Capital Territory as all the lands within the Federal Capital Territory are urban lands under the control of the Federal Government, and thus, there is no rural lands in the Federal Capital Territory. He referred to **Madu v. Madu (2008)6 NWLR (Pt.1083)SC 296 at 324-325.**

He submitted on the basis of the foregoing, that there is no evidence, either documentary or oral, before this Court, conferring title to the Claimant by the Hon. Minister of Federal Capital Territory in respect of the subject matter of this suit.

He urged the Court to hold that the Claimant is in illegal occupation of the said piece of land.

With respect to issue 2, learned counsel argued that same depends wholly and entirely on the affirmative resolution of issue one in favour of the Claimant. That if the Court resolves issue one in the negative, then the foundation of the Claimant's case must crumble and fall apart, in which case, issue 2 becomes otiose.

He contended that it is if, and only if, the Claimant hold a valid title to the land, the subject matter of this suit, that the question

of whether the Claimant is entitled to the reliefs sought, would be considered.

Arguing further, he posited that if the Court is minded to consider issue 2, then that the onus/burden of proof lies on the Claimant to prove to the Court that he is entitled to such declaration. He referred to Sections 135-137 of the Evidence Act, Cap E14 LFN 2004.

He adopted his arguments on issue 1 in respect of the first relief claimed by the Claimant and urged the Court to hold that the documents being paraded by the Claimant as conferring title on him over the subject matter of this suit, do not confer any title on him and therefore, that he is not entitled to a declaration in his favour.

Learned counsel posited that the other declarations which are ancillary in nature, are like a leach and that their grant is dependent on the success of the Claimant's substantive claim of entitlement to be declared the legal, equitable and beneficial owner of the disputed land.

He submitted that if the Court finds that the Claimant is not entitled to the principal relief, then the other reliefs which are hinged on the principal relief will equally fail. He referred to **Adegoke Motors v. Adesanya (1989)3 NWLR (Pt.109)250 at 269.**

He argued that the Claimant has failed to prove his case as the evidence adduced is unsatisfactory and does not preponderate on the balance of probability, and that having failed to discharge the burden of proving his case, the Claimant is not entitled to the grant of any of the reliefs claimed. – **Ukagbu v. Mwololo (2009)3 NWLR (Pt.1127)194 at 230.**

He urged the Court in conclusion, to dismiss the Claimant's case with cost for lacking merit and for being an absolute waste of judicial time.

From the state of pleadings and evidence in this case before this Court, the issue that calls for consideration in the determination of this case, is: **whether the Claimant is entitled to the reliefs sought in this case?**

The principal relief sought by the Claimant, on which the other ancillary reliefs hang, is for a declaration of title to a piece of land known as Plot No. K29, FHA Road, Phase 2, site 1, Kubwa, Abuja.

It is a settled position of law that in a claim for declaration of title to land, the onus is on the Claimant to prove his entitlement to the relief sought by cogent and credible evidence. The Claimant must succeed on the strength of his own case, the weakness or even absence of defence notwithstanding. See **Anukam v. Anukam (2008)LPELR-500(SC); Sale v. Ajani (1980)LPELR-3123(SC).**

It follows therefore, that the absence of defence to the Claimant's suit herein, does not absolve the Claimant of the duty to establish his claims by cogent and credible evidence.

The Supreme Court, in the case of **Idundun v. Okumagba (1976)LPELR-1431(SC).** laid down five ways or methods of proving title to land, 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.

To prove his claim in this case, the Claimant relied on the production of document of title, to wit; Exhibit PW1A.

It is however a settled position of the law, that mere production of document of title, does not automatically entitle a Claimant to the declaration sought. Thus, in **Romaine v. Romaine (1992)4 NWLR (Pt.238)650 at 662**, the Supreme Court held 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. The Court further held that a 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.

In this case, Exhibit PW1A which the Claimant relies on as his instrument of grant, is a Conveyance of Provisional Approval of a Customary Right of Occupancy granted by the Chairman, Caretaker Committee of Abuja Municipal Area Council in respect of Plot No. K29, FHA Road, Phase 2, Site 1, Kubwa.

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 Federal Capital Territory, is a Statutory Right of Occupancy and not a Customary Right of Occupancy as is being claimed by the Claimant herein. See **Madu v. Madu (2008) All FWLR (Pt.414)1604 at 1627.**

It is thus, evident from the foregoing, that the Chairman, Caretaker Committee of Abuja Municipal Area Council who granted Exhibit PW1A, does not have the authority and capacity to make the grant. Also, he does not in fact, have what he purported to grant, as Customary Right of Occupancy is not grantable in respect of lands comprised in the Federal Capital Territory.

Exhibit PW1A is the fulcrum on which the Claimant's case rests. Exhibit PW1A does not confer any title whatsoever, whether legal or equitable on the Claimant in respect of the plot claimed or any plot of land at all in Federal Capital Territory. Having claimed to be in possession of the land on the basis of Exhibit PW1A, such possession by the Claimant is nothing, but illegal.

The same having been found to have no legal status in relation to lands in the Federal Capital Territory, the entire case of the Claimant is found to have no basis or support, the consequence of which is that the entire case of the Claimant falls like a pack of cards since it is trite that one cannot place

something on nothing and expect it to stand. See **Mamman & Anor v. Hajo (2016)LPELR-40653(SC)**.

From the totality of the foregoing therefore, it is my finding, and I so hold, that the Claimant is not entitled to any of the reliefs claimed in this suit.

Accordingly, the Claimant's case fails in its entirety and same is hereby dismissed for want of proof and for lacking in merit.

HON. JUSTICE A.O. OTALUKA
14/2/2023