

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 26TH DAY OF JANUARY, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/1885/19

BETWEEN:

REGISTERED TRUSTEES OF NKST CHURCH:.....CLAIMANT

AND

1. MRS. RONKE AYILARA

2. UCHE EKELEME

3. FEDERAL CAPITAL DEV. AUTHORITY } :.....DEFENDANTS

Anthony Biose with Simeon Gbaa and Emmanuel Onuche for the Claimant.
Babayemi Olaniyan with Kabiru Yakubu, Ibrahim Anas Aza for the 1st and 2nd Defendants.
Ramalan Jibrin Abdullahi for the 3rd Defendant.

JUDGMENT.

By a Writ of Summons dated and filed the 13th day of May, 2019, the Claimant brought this action against the Defendants claiming as follows:

- A. A declaration of the honourable Court that the Claimant's title on Plot CP6, Jikwoyi Extension II, Abuja evidenced by letter of Offer of Terms of Grant/Conveyance of Approval dated 28/2/2000 and Right of Occupancies are still subsisting.
- B. An order of perpetual injunction restraining the Defendants, their privies, agents or servants however described, anybody else acting on their behalf, from trespassing or disturbing the Claimant's lawful use and occupation of Plot CP6, Jikwoyi Extension II, Jikwoyi, Abuja.

- C. The sum of 5,000,000.00 as damages for trespass and wilful destruction of property.
- D. An order of this honourable Court mandating the 3rd Defendant to lift the suspension placed on the Claimants building plan approval forthwith.
- E. The sum of the 700,000 being the cost of this suit.

The case of the Claimant, as per her statement of claim, is that she purchased Plot No. CP6, Jikwoyi Extension II, layout from one Favour Ekene after all necessary due diligence which confirmed that the original title documents presented to her by the said Favour Ekene, are genuine and that the said plot exists in the approved/authorised AMAC layout and the list of allottees.

The Claimant averred that to her utter dismay and bewilderment immediately after three months of purchase, the 1st and 2nd Defendants trespassed into the land and started erecting perimeter fences. She stated that following the 1st and 2nd Defendants' trespass into the property, she again wrote to AMAC which further confirmed the authenticity of the title document handed over to her.

The Claimant averred that she thereafter made report of criminal trespass against 1st and 2nd Defendants at Jikwoyi Police Station from where the matter was later taken to Zone 7 Police Station. That the 2nd Defendant at Zone 7 Police Station made a written statement wherein he claimed that he was the one that gave the original document of the land to Favour to sell on his behalf and that at the time he handed the document to Favour Ekene to sell for him, there was a written instruction to that effect.

The Claimant stated that at the time the criminal complaint was made at the Police station, the Defendants stayed further

construction on the land. That she then made application to the office of Development Control Unit/Department of the FCDA for Building Plan Approval and made payments to that effect.

She stated that to her utter surprise, the Defendants went back to the property in 2018 and started construction on same as a result of which she wrote to the Development Control Department, who demolished the fence as an illegal construction as they had no Building Plan Approval.

The Claimant averred that the Development Control Department issued her with a Building Plan Approval on 19th June, 2018, to continue her work. That with the approval, she mobilised workers to site and commenced construction, but the 1st and 2nd Defendants used Police and thugs to pull down works done by her. The Claimant further averred that the 1st Defendant in company of her husband, who claimed to be a commissioner of Police, came to the Development Control Unit to threaten its Deputy Director. That the 1st Defendant threatened to use her contact to frustrate the Claimant as well as remove the said Deputy Director from his office.

That on 22nd January, 2019, the 1st Defendant through her lawyers, wrote to the Department of Development Control demanding the immediate revocation of the Building Plan Approval issued to the Claimant and that a Building Plan application submitted by the 1st Defendant be officially approved and ratified without further delay.

She stated that cowed by this threat, the Development Control Department on 8th February, 2019 suspended the Building Plan Approval given to the Claimant without giving her a hearing as mandated by law. That the Defendants immediately with

impunity and total disregard for due process, went into the land and started full scale construction on the land without approval and document.

At the hearing of the case, one Washima Yaaya, testified for the Claimant. In his evidence in chief as PW1, he adopted his witness statement on oath wherein he affirmed the averments in the Claimant's statement of claim. He also tendered the following documents in evidence, namely;

1. AMAC – issued certificate of occupancy – Exh PW1A-A3.
2. Power of Attorney – Exh PW1B.
3. Search Report – Exh. PW1C.
4. Deed of Assignment – Exh PW1D.
5. Power of Attorney – Exh. PW1E.
6. FCTA Official Receipt – Exh. PW1F.
7. Search Report – Exh. PW1G.
8. Statement of Uche Ekeleme – Exh. PW1H.
9. Settlement of Building Plan Fees – Exh. PW1J-J2.
10. Petition Against Unlawful Destruction – Exh. PW1K.
11. Suspension of Building Plan Approval – Exh. PW1L.

Under cross examination, the PW1 stated that the Claimant transacted with Favour around July/August, 2013 and that throughout the transaction, the Claimant did not have any dealing with the 2nd Defendant in person.

On 30th November, 2021, one Favour Ekene Onyejiaka also gave evidence for the Claimant. He adopted his witness statement on oath as he testified as PW2, wherein he averred that in June, 2009, the 2nd Defendant who has been his friend for over 25 years, came to his house with original title documents to Plot CP6, Jikwoyi Extension II, Jikwoyi, Abuja and gave him authority to sell the plot through a Power of Attorney, while handing the original title documents to him.

He stated that he later sold the land to the Claimant to the knowledge of the 2nd Defendant and gave N4m proceed of the sale to the 2nd Defendant, being the amount agreed between them for the sale of the land.

The PW2 stated further, that after the transaction, the Claimant informed him that some persons had encroached on the land, and that while they were busy looking for the trespasser, the 2nd Defendant never told him that he sold the land to a third party until the matter was reported to the Police.

He stated that he never returned the original title document back to the 2nd Defendant and that he did not give same to any other person save the Claimant who paid him and collected the documents.

Under cross examination by the 1st and 2nd Defendants, the PW2 stated that he had had previous transactions with the 2nd Defendant, and that in this particular transaction, he knew the 2nd Defendant as the owner of the plot which he sold to the Claimant.

Exhibit PW2A, statement made by the witness to the Police was tendered by the 1st and 2nd Defendants' counsel through the PW2 under cross examination.

The PW2 stated however, that he made the statement under duress. He stated that the person he referred to as family member in Exhibit PW2A is the 2nd Defendant.

In their defence to the suit, the 1st and 2nd Defendants filed a Joint Statement of Defence dated the 26th day of September, 2019. They averred that the 2nd Defendant sometime in 2013, was introduced to the 1st Defendant and informed her that he had a land for sale at Jikwoyi. That after conducting the necessary searches, the 1st Defendant contacted the 2nd

Defendant and indicated her interest in purchasing the property.

The 1st and 2nd Defendants averred that they subsequently proceeded to meet the Allottee of the property, one Mrs. Nkemjika Nzoiwu (trading under the name and style of NKC Ventures Nigeria Enterprises) where terms of sale were agreed upon by both parties. That the 2nd Defendant and Mrs. Nkemjika Nzoiwu, jointly executed a Power of Attorney and a Deed of Assignment in respect of the property, pursuant to which the 1st Defendant moved into possession immediately and has been in possession of same since the execution of the agreement between the parties.

The 1st and 2nd Defendants further averred that sometime in 2015, they received an invitation from the Police, that they were trespassing on Plot CP6, Jikwoyi Extension II, Abuja, and that at the Police station, Favour Ekene who allegedly sold the property to the Claimant, stated that he came into contact with the 2nd Defendant some time ago when the land was being offered for sale and he seized the opportunity to get the document and cloned same before he gave it to the Claimant and returned the original document back to the 2nd Defendant.

They stated that no written instruction was given to Favour Ekene but was rather given to the 1st Defendant.

The 1st and 2nd Defendants stated that they never at any point stayed construction on the plot. That on the contrary, the Claimant was fond of writing petitions to the Police and abandoning them, and that the fence of the 1st Defendant was wrongly brought down by the Department of Development Control who were misled by incorrect information provided to the Department by the Claimant and her agents. They averred that the incorrect information further prompted the Department

of Development Control to issue a Building Plan Approval to the Claimant which was subsequently withdrawn.

The 1st Defendant proceeded to counter claim against the Claimant as follows:

- a. A declaration that she is the person entitled to statutory right of occupancy over that property known and situate at Plot CP6, Jikwoyi Extension II, Abuja which is presently covered by an offer of the Terms of Grant/Conveyance of Approval dated 28/2/2002 issued by the Ministry for Federal Capital Territory.
- b. A perpetual injunction restraining the Claimant, its agents, servants, assigns, any one claiming through the Plaintiff from trespassing on or from interfering with or disturbing the 1st Defendant's peaceful possession or enjoyment of Plot CP6, Jikwoyi Extension II, Abuja.
- c. A sum of N10,000,000 (Ten Million Naira) as general damages for trespass .

One Mrs. Nkemjika Nzoiwu testified for the Defendants as DW1. She adopted her witness statement on oath wherein she averred that sometime in 2002, she applied for allocation of land using her business name, NKC Ventures Nigeria Enterprises, and was lawfully granted the property known as Plot CP6, Jikwoyi Extension II, Jikwoyi, Abuja, vide an Offer of Terms of Grant/Conveyance of Approval dated 28/2/2002 issued by the Ministry of the Federal Capital Territory.

She stated that in 2013, she decided to sell the property and contacted her agent, the 2nd Defendant to help her sell the property. That she gave the original documents to the 2nd Defendant as well as a letter of authority for case of sale.

That some months later, the 2nd Defendant informed her that he had gotten a buyer and then introduced the 1st Defendant to her as the person who was interested in purchasing the property.

The DW1 stated that she and the 1st Defendant agreed on terms and consequently signed a Power of Attorney and Deed of Assignment after she had paid the purchase sum in full, following which the original copies of the land documents were handed over to the 1st Defendant.

She stated that she does not know the Claimant nor any Favour Ekene, and that she never transacted or carried on any business with them before.

The DW1 tendered the following documents in evidence:

1. Certificate of Registration of Business Name – Exh DW1A.

Under cross examination, the DW1 confirmed that her company to which the land was allocated, is not a limited liability company.

One Uchechi Ekeleme (2nd Defendant) Also gave evidence for the Defendants. Testifying as DW2, he adopted his witness statement on oath wherein he affirmed the averments in the 1st and 2nd Defendants' statement of defence. He also tendered in evidence, a letter of Authority which was admitted as Exhibit DW2A.

Under cross examination, the DW2 admitted handing the original title documents to PW2, (Favour Ekene Onyejiaka) but denied giving him authority to sell the property.

He further admitted executing a written agreement with the PW2 when he handed the original documents to PW2. He stated that the agreement was to establish that the PW2 has the original documents.

On 26th May, 2022, the 1st Defendant gave evidence as DW3, she adopted her witness statement on oath wherein she further affirmed the averments in the 1st and 2nd Defendants' statement of defence, and also tendered the following documents in evidence:

1. Certificate of Occupancy – Exhibit DW3A.
2. Offer of the Terms of Grant/Conveyance of Approval – Exh DW3B.
3. Irrevocable Power of Attorney – Exhibit DW3C.
4. Deed of Assignment - Exhibit DW3D.

The DW3 was duly cross examined by the Claimant during which she stated that she paid cash to DW1 for the purchase of disputed property.

The 3rd Defendant failed to file defence or lead evidence in the suit. They also failed to cross examine the various witnesses. Consequently their rights to so do was foreclosed.

The parties subsequently filed and exchanged their respective final written address which they adopted on the 1st day of November, 2022.

The 1st and 2nd Defendants in their final written address, raised two issues for determination, namely;

1. Whether from the state of pleadings and materials placed before the Court, the Plaintiff has successfully proved its title to the property?
2. Whether the 1st Defendant/Counter-Claimant has been able to prove her title to the land and is entitled to the reliefs sought?

Proffering arguments on issue 1, learned counsel for the 1st and 2nd Defendants, Rotimi O. Oguneso (SAN), referred to **Idundun**

v. Okumagba (1976) 9-10 SC, on the five ways of proving or establishing title to or ownership of land.

He argued that the PW2 who sold the property to the Claimant had no power to transfer title as he never met with nor had authority to act on behalf of the DW1 whose name is on the title documents.

He further argued that the DW2 who did not receive Power of Attorney from the Allottee, could not have given a Power of Attorney to the PW2.

He posited that the PW2 had no title to transfer in the first place, and urged the Court to so hold.

Arguing further, the learned SAN posited that the declaratory reliefs which the Claimant is seeking in this suit, are not granted as a matter of course. That declaratory reliefs are only granted when credible evidence has been led by the person seeking the declaratory reliefs. He referred to **Dumez Nigeria Limited v. Nwakhoba (2008)18 NWLR (Pt.1119)361 at 374.**

He contended that having regard to the evidence placed before this Court, the declaratory reliefs sought by the Claimant ought to, and should fail as the Claimant has not placed sufficient and cogent facts before this Court that will warrant the exercise of discretion of this Court in her favour.

On the Claimant's claim for damages; the learned SAN contended that the 1st Defendant has been in possession since 2013 and so could not have trespassed on the property. He argued that the Claimant has not placed anything before the Court to show that they took possession of the property to warrant the claim for damages.

On issue two the learned SAN posited that from the evidence before this Court, that it is clear that the 1st Defendant is entitled to the reliefs sought.

He argued that the Claimant and the 1st Defendant both traced their title to DW1 and that the DW1 in her evidence, testified to the effect that she sold the property to the 1st Defendant and handed the original documents to her.

He submitted that the 1st Defendant presented cogent and better evidence, than the Claimant.

Relying on **Idundun v. Okumagba (supra)**, the learned SAN posited that the 1st Defendant/Counter-Claimant has shown clear unchallenged evidence that she is the lawful and beneficial owner of the property as she has shown an unbroken chain of transfer of possession from the original allottee to herself.

He referred to **Ogolo v. Fubara (2003)5 SC 141** and posited that the burden of proof put on the Counter-Claimant has been sufficiently discharged.

On the failure of the Claimant to file defence to the counter-claim, the learned SAN referred to **Usman v. Garke (2003)14 NWLR (Pt.840)261 at 284**, inter alia, and posited that the Claimant is deemed by the failure, to have admitted the claims of the Counter-Claimant.

He urged the Court to enter judgment for the Counter-Claimant as per her reliefs.

The 1st and 2nd Defendants also filed Reply on points of law to the Claimant's final written address. The learned SAN posited for the 1st and 2nd Defendants, that the issue of agency canvassed by the Claimant in her final written address is unnecessary as same did not arise from the pleadings filed by

the Claimants. He contended that the Claimant in her statement of claim, did not even recognise or allude to DW1, and therefore, that it was of no moment for the Claimant's counsel to argue in his final written address, that the DW2 acted in a representative capacity for DW1.

He further argued that the DW1 was never shown or cross examined on Exhibit PW1B which he was alleged to have executed. He submitted that the law is settled that where a witness is not cross examined on a vital point, his evidence on the issue is deemed accepted by the opponent and the Court is bound to accept it as the truth of the matter. He referred to **Agbonifo v. Aiwereoba (1998)1 NWLR (Pt.70)325 at 341.**

On the Claimant's contention that the evidence of the DW2 under cross examination contradicted his evidence in chief as it relates to the issue of his visit to the Church, the learned SAN contended that there is nothing contradictory in the evidence of DW2. That in any event, the law is settled that the contradiction that will affect the credibility of a witness, must be one that touches on the material facts of a case. He referred to **Okoye v. Mbaya (2020) 8 NWLR (Pt.1726)383 at 401**, **Ohiwerei v. Okosun (2003)11 NWLR (Pt.832)463 at 491** and **Galadima v. State (2017)12 NWLR (Pt.1580) 339 at 359.**

He posited that in the instant case, the alleged contradiction does not touch on the most material fact, which is whether DW2 executed Exhibit PW1B purported to be a Power of Attorney.

The learned SAN further posited that the Claimant in paragraphs 5.24, 5.25, 5.32 and 5.34 of her final written address, indulged in giving of evidence on facts not before the Court. He submitted relying on **James Chiokwe v. The State (2012) LPELR-1976 (SC)**, that the position of the law is settled

that it is not the place of counsel to supply facts in address, that it is the duty of witnesses, and address, however beautifully written, which is not supported by facts before the Court, goes to no issue.

He urged the Court to dismiss all the submissions not supported by pleadings and facts before the Court.

On the Claimant's contention that the Power of Attorney, Exhibit PW1B was never challenged by the Defendants, as same was admitted in evidence, the learned SAN posited that right from the pleadings and witness depositions filed before the Court, the 1st and 2nd Defendants had put the validity of the said Exhibit PW1B in issue. He submitted that the fact that the document was admitted into evidence during trial is not an indication that same was not challenged.

Relying on **Abubakar & Ors v. Yar'adua & Ors (2008)19 NWLR (Pt.1120)1 at 155,** he submitted that where the document in question is challenged as in this case, and evidence given in that regard, that the presumption provided for in Section 150 of the Evidence Act, is displaced and the burden lies on the party who is asserting the execution to lead evidence of its execution. He contended that the Claimant failed to do this in this case when she failed even to challenge the evidence of DW2.

He urged the Court in conclusion, to dismiss the Claimant's claims and allow the Defendants' counter claim as same is still unchallenged.

The 3rd Defendant filed final written address wherein its learned counsel Ramalan Jibrin Abdullahi, Esq, raised two issues for determination namely;

1. Whether NKC Ventures Nigeria Enterprises as a business name, is in the entire circumstances devoid or bereft of capacity to hold land in its name *eo nomine*, having regard to the position of the law?
2. Whether from the pleadings and abundant evidence before the Court, the Claimant and/or 1st Defendant/Counter-Claimant are/is entitled to the reliefs sought?

On issue one, learned counsel relied on **F.C.D.A v. Unique Future Leaders Int'l Ltd (2014) 17 NWLR (Pt.1436)244** to submit that it is settled law that a business name does not have the requisite capacity to hold land in its name.

He urged the Court to hold that a business name (in this case NKC Ventures Nigeria Enterprises) purportedly allocated the subject matter of this suit as at the time of the said allocation being a business name is/was incapable of holding title to land.

In arguing issue 2, learned counsel submitted that the law is settled that in an action for declaration of title, the Claimant is enjoined to rely on the strength of his case and not on the weakness of the defence. That even if the defendant(s) did not put up a defence, the Claimant is saddled with the burden of proving to the Court that it is entitled to the declaration sought.

He contended that both the Claimant and the 1st Defendant/Counter-Claimant are not entitled to any of the reliefs sought as the subject matter of this suit was allocated to NKC Ventures Nigeria Enterprises, a business name which in law, is incapable of holding title to land.

He posited that being incapable in law of holding title to land the subject matter of this suit, NKC Ventures Nigeria Enterprises, is also incapable of passing any interest to the Claimant and/or 1st Defendant/Counter-Claimant in this suit.

Learned counsel argued that if this Court finds that the Claimant and the 1st Defendant/Counter-Claimant are not entitled to the principal relief, which is declaration, then that the other reliefs claimed which are hinged on the principal relief, will fall. He referred to **Adegoke Motors v. Adesanya (1989)3 NWLR (Pt. 109) 250 at 269.**

He urged the Court to dismiss the Claimant's case for lacking merit and for being vexatious and an absolute waste of precious judicial time.

In his final written address on behalf of the Claimant, learned Claimant's counsel, Anthony Biose, Esq, raised a lone issue for determination, to wit;

“Whether the 2nd Defendant being an agent of NKC Ventures with a Written Letter of Authority to sale (sic) Couple (sic) with the original title document to Plot CP6, Jikwoyi Extension 11, Jikwoyi, Abuja handed over to him can sell the said land vide the PW2?”

Proffering arguments on the issue so raised, learned counsel posited that from the exhibit on record before this Court, it is beyond peradventure that the DW2, Mr. Uche Ekeleme is the authorised agent of NKC Ventures, a business name, who in turn executed a Power of Attorney in a representative capacity for NKC Ventures in favour of the Claimant.

He referred to **Akanwa v. Alraine (Nig) Ltd (2002)12 NWLR (Pt.781)253.** and posited that the authority given to DW2 as the agent of NKC Ventures to act on her behalf for the purpose of the sale of the said plot, coupled with the handing over of the original title documents of the said property, authorizes him to sell the said property through the irrevocable power of attorney he created in favour of PW2 permitting him to deal with the property in any manner he deemed fit.

He argued that the Power of Attorney created in a representative capacity by DW2 is in law, the act of DW1, and that DW2, though agent of DW1, has rightfully acted in concert with PW2 in disposing of the plot to the Claimant with the instruction his principal, NKC Ventures.

He further argued that by handing over of the original title document to DW2, it goes without saying and is a natural presumption of fact and law, that DW2 had the right to sell the property without having further recourse to DW1. He referred to **Chieke v. Olusola (1997)3 NWLR (Pt.494).**

It was contended by learned Claimant's counsel that DW2 attempted to conceal the fact that he knew about the sale of the property to the Church until he was confronted with Exhibit PW1H, being the statement he made to the Police wherein he agreed that he visited the Church for confirmation of the transaction. He argued that the attempt by DW2 to hide the fact that he was aware, or in the know of the transaction with the Claimant regarding the land, is a clear demonstration that the DW2 is not a witness of truth and has something to hide.

The learned counsel further contended that the purported sale to DW3 by DW1 is void as the property was already sold by DW2 in concert with PW2 pursuant to the irrevocable power of attorney issued to PW2 by DW2 authorising him to transfer the property to any person in any manner he deemed fit.

He argued that the power of attorney was never challenged by the Defendants even as same was admitted in evidence, and that the DW2 having admitted handing over the original title documents to PW2, the mere denial of power of attorney without more, shall amount to improper challenge to the said document. He referred to Section 150 of the Evidence Act.

He contended that the Claimant has placed unchallenged evidence before the Court to prove that indeed, the land was purchased by her and that the original title documents were handed over to her.

On the Claimant's failure to file defence to the counter-claim, learned Claimant's counsel posited that same is not fatal to the Claimant's claim as the said counter claim is a mere replication of the 1st Defendant's defence to the Claimant's claim and has no new fact that should warrant Claimant's dissipation of energy.

He submitted that the Claimant has proved her case and urged the Court to enter judgment in her favour.

The Claimant also filed a reply to the 3rd Defendant's final written address wherein learned Claimant's counsel submitted the following issue for the Court's determination, to wit;

“Whether a party can by point of law challenge the authenticity/genuineness of title document tendered through a witness but not challenged at trial?”

He posited that the argument of the 3rd Defendant that a business name cannot own land in Nigeria is misconceived.

He argued to the effect that in FCT, the Minister of FCT who has powers to grant allocations, delegates such powers to the Area Council Chairman in respect of lands in the Area Councils, and that the Area Council Chairmen, through the Zonal Land Managers make allocations to individuals on behalf of the Minister of FCT.

He posited that the original allocation of the Abuja Municipal Area Council through the Zonal Manager was in this case tendered in evidence and was admitted without challenge as to its authenticity. He contended that it is too late in the day for the

3rd Defendant to purport to challenge the genuineness of a title document through point of law. He referred to **Egbesimba v. Onusuruike (2002)FWLR (Pt.128)1227 at 1408** where it was held that “where the only pleading filed is the statement of claim, absence of a statement of defence means that no issue is joined.”

He further contended that the 3rd Defendant having not canvassed that the documents were fake or that the Minister did not authorise the grant, that it is too late in the day to rely on a Court decision reached in 2014 and which is not on all fours with the instant case to challenge the allocation.

Learned counsel further submitted that the law is settled beyond peradventure, that a party cannot approbate and reprobate or speak from both sides of the mouth at the same time.

He contended that the 3rd Defendant having diligently issued building plan fees which was duly paid by the Claimant, and a building plan approval issued to the Claimant on 19th June, 2018, cannot turn around to reprobate and contend that the allocation never existed. He referred to **University of Ilorin & Ors v. Oduleye (2006)LPELR-11908(CA)**.

Arguing further, learned counsel contended that the Minister, who is the alter ego of the 3rd Defendant, cannot purport to deny the authority given to the Zonal Manager, who acted as his agent in granting allocation to NKC Ventures Nigeria Enterprise. He relied on **Nduka & Ors v. Sule (2013) LPELR 23629(CA)** to submit that it is the law that every official act is presumed to be regular.

He urged the Court in conclusion, to discountenance the written submission of the 3rd Defendant’s counsel as same is

misconceived in law and not supported by hard evidence before the Court.

The claim before this Court is one for declaration of title to land situate and known as Plot No. CP6, Jikwoyi Extension 11 layout, Jikwoyi, in FCT, Abuja.

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

In the determination of this case therefore, the question to consider, is whether the Claimant has established by credible evidence, her entitlement to the reliefs sought?

The Supreme Court, in **D.O. Idundun & Ors v. Daniel Okumagba (1976) LPELR-1431(SC)**, established the following five (5) ways or methods of proving title to land:

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 the instant case, the Claimant has relied on the 2nd method, which is the production of document of title, to wit; Exhibit PW1A-A3 comprising of Certificate of Occupancy from the Chairman Abuja Municipal Area Council, Right of Occupancy

(Offer of the Terms of Grant/Conveyance of Approval) from the Hon. Minister of FCT, Regularization of land Titles and Documents of Acknowledgement, and TDP.

These title documents, were however, not issued in the name of the Claimant. Rather, they were issued in the name of NKC Ventures Nig. Enterprises.

The Claimant thus traces her root of title to the said NKC Ventures Nig. Enterprises from whom she claimed to have purchased the plot of land.

Beyond the production of the aforesaid title documents, the Claimant in the circumstances, still has more to do as to be entitled to the reliefs claimed.

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 an instrument purports to grant, is his own. The Court held 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;

- (a) Whether the document is genuine and valid;
- (b) Whether it has been duly executed, stamped and registered;
- (c) Whether the grantor had the authority and capacity to make the grant;
- (d) Whether the grantor had in fact, what he purported to grant; and
- (e) Whether it has the effect claimed by the holder of the instrument:

Of very germane to the determination of the instant case before this Court, is the question, **whether the document is genuine and valid?**

In particular, the validity of the instrument of grant is called into question in considering the Claimant's root of title.

In **Orunengimo v. Egebe (2008)All FWLR (Pt.400) 655 at 676**, it was held that:

“Where a party’s root of title is pleaded as say a grant, or sale or conquest, etc, that root has to be established first and any consequential acts following therefrom can then properly qualify as acts of ownership.”

Also, in **Lawson & Anor v. Ajibulu & Ors (1997) 6 NWLR (Pt.507)14**, the Supreme Court, per Ogundare, JSC, held that:

“Production of document of title alone is not sufficient to discharge the onus on a Plaintiff to prove the title he claims; he must go further to trace the root of his title to one whose ownership of the land has been established.”

Here, the Claimant traced her root of title to a purchase from one NKC Ventures Nig. Enterprises, a business name or business enterprise which is a non-juristic person.

The question then is: **whether a purported grant of title to land to a non-juristic person is a valid grant?**

In answering this question, the Court of Appeal made it crystal clear in **FCDA & Ors v. Unique Future Leaders International Limited (2014) LPELR-23170(CA)**, that a business name or enterprise, being a non-juristic person, cannot be granted title to land. A business name does not have such juristic

personality that is capable of holding interest in or title to and in its name.

See also **Bakole & Ors v. Emir Industries Ltd (2012)LPELR-19719(CA).**

It follows therefore, that the purported grant of Plot No. CP6, Jikwoyi Extension II layout, Jikwoyi, Abuja to a business name NKC Ventures Nig. Enterprises, a non-juristic person, is an invalid grant. It is null, void and of none effect.

The Claimant has thus not traced her root of title to one whose ownership of the land has been established as stipulated by the Apex Court in **Lawson & Anor v. Ajibulu & Ors (supra).**

NKC Ventures Nig. Enterprises, being incapable of holding interest in land, does not have any title it could transfer to the Claimant. – Nemo dat quod non habet.

What the Claimant purchased from NKC Ventures Nig. Enterprises through its agent, the PW2, is simply NOTHING! No one can give what he does not have.

It is therefore, my finding and I so hold, that the Claimant has failed to establish by credible evidence her entitlement to the reliefs claimed.

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

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HON. JUSTICE A. O. OTALUKA.

The 1st Defendant has also counter-claimed against the Claimant in this case, also seeking a declaration of title to Plot No. CP6, Jikwoyi Extension II layout, Jikwoyi, Abuja.

A counter claim, for all intents and purposes, is a separate and distinct action from the original suit. A defendant however joins a counter-claim to his defence to the original suit for purposes of convenience and speed. – See **Usman v. Garke (2003)LPELR-3431(SC)**.

The Counter-Claimant thus, like all other Claimants in an action, must prove his claim against the person counter-claimed against before he can obtain judgment on the counter-claim. See **Jeric(Nigeria) Ltd v. UBN PLC (2000)LPELR-1607(SC)**.

It is therefore incumbent on the 1st Defendant/Counter-Claimant who has claimed for a declaration of title in land to prove her entitlement to the reliefs claimed by credible evidence.

In this connection, the 1st Defendant/Counter-Claimant tendered Exhibits DW3A and DW3B, being Certificate of Occupancy and Offer of the Terms of Grant/Conveyance of Approval purportedly granted to the same NKC Ventures Nig. Enterprises, thus tracing her root of title to a purchase from the said NKC Ventures Nig. Enterprises.

I have made a finding in the main judgment herein, that the purported grant of title to land made to NKC Ventures Nig. Enterprises, a non-juristic person, is invalid null, void and of no effect.

Since the Claimant and the 1st Defendant/Counter-Claimant have relied on the same root of title in the claims before this Court, the findings and holden of this Court in the main suit,

therefore equally applies to this counter-claim, *mutatis mutandis*.

By virtue of the findings already made in the main suit as it relates to the parties' common root of title, it is my further finding, and I so hold, that the 1st Defendant/Counter-Claimant has failed to establish by credible evidence her entitlement to the reliefs claimed in this counter-claim.

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

As, the inference is that the land in dispute reverts to the original owner Minister, FCT. Situations like this should not arise if the 3rd Defendant and the Minister, FCT had done their duties during the allocation of this piece of land. Thus it is trite law that a business name does not have any juristic personality capable of holding interest in or title in its name. Therefore such applications to the Ministry of FCT for allocation of land should not be entertained ab initio because a grant to a non-juristic person is an invalid grant and of no effect ab initio.

HON. JUSTICE A. O. OTALUKA
26/1/2023.