

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 16TH JANUARY, 2023

FCT/HC/ CV/3126/2017

BETWEEN

**PAUL NATHANIEL DANGANA-----
(Suing through his Attorney Kayode Ojo)**

PLAINTIFF

AND

ALHAJI BUKAR BAMA REDOX-----

DEFENDANT

JUDGMENT

By an amended writ of summons dated 7th October, 2019 and filed same date at the Court's Registry and an amended Statement of Claim dated 7th October, 2019 and filed same date, the Plaintiff claims the following reliefs against the Defendants:-

1. A DECLARATION of this Honourable Court that the Plaintiff is in possession of plot No. MZTP/LA/NG.531 situated at Gbazango Layout Kubwa Abuja with beacons nos. PB 8735, PB 8736, PB 8737 and PB 8734.

2. A DECLARATION that the sinking of a borehole by the Defendant on the said plot No. 240 of about 1,150m² situate at Gbazango Layout Kubwa Abuja with Certificate of Occupancy No MZTP/LA/NG.531, beacons nos. PB 8735, PB 8736, PB 8737 and PB 8734 and interfering with the Plaintiff's act of possession over the said plot amounts to trespass.
3. An Order of Perpetual Injunction restraining the Defendant, his agent, assigns, attorney, persons or any other person deriving authority from the Defendant from claiming possession, further trespassing and/or continuing with the act of trespass on the said plot No. 240 of about 1,150m² situate at Gbazango Layout Kubwa Abuja with beacons nos. PB 8735, PB 8736, PB 8737 and PB 8734.
4. An Order to immediately remove the said borehole and any other acts of trespass on the said plot No. 240 of about 1,150m² situate at Gbazango Layout Kubwa Abuja with beacons nos. PB 8735, PB 8736, PB 8737 and PB 8734.
5. An Order of this Honourable Court directing the Defendant to pay the Plaintiff the sum of N10,000,000.00 (Ten Million Naira) being damages for trespass on the said plot No. 240 of about 1,150m² situate at Gbazango Layout Kubwa Abuja with beacons nos. PB 8735, PB 8736, PB 8737 and PB 8734.
6. 10% (Ten Percent) Post Judgment sum until the Judgment sum is liquidated.
7. And for such other Orders as this Honourable Court may deem fit make in the circumstance.

The Defendant in defence of this suit filed an amended Statement of Defence dated 7th June, 2022 together with a Counter-Claim dated and filed on the same date. The Defendant therein Counter-Claims as follows:-

1. A Declaration that the Defendant is in possession and the valid owner entitled to the Rights and Interest of title over Plot No. 240 Gbazango Layout Kubwa measuring about 1150m² and therefore entitled to the Right of Occupancy granted thereof.
2. A Declaration that the Rights, Title and Interests of the Defendant over Plot No. 240 Gbazango Layout Kubwa is still valid and subsisting to the exclusion of the Plaintiff and any other person claiming through him or for him.
3. An Order of perpetual Injunction restraining the Plaintiff, his agents, privies, Assigns, Attorneys, persons claiming for him, under him or with him or deriving authority from him from interfering, entering on or dealing with and claiming possession of Plot No. 240 Gbazango Layout Kubwa of about 1150m² or in any manner inconsistent with the Defendant's right thereto.
4. An Order directing the Plaintiff to pay to the Defendant the sum of **N15,000,000.00** as damages for inconveniences, disturbances occasioned by the suit against him.
5. And for such Order or Orders as the Honourable Court may deem fit to make it in the circumstances of this case.

The Plaintiff thereafter filed a Reply to Statement of Defence and Defence to the Counterclaim of the Defendant dated and filed on 9th June, 2022.

At the hearing of this Suit, the Plaintiff led four (4) witnesses: PW1, PW2, PW3, PW4 and tendered in all eleven (11) Exhibits through the PW1.

The Plaintiff's claim is that he is in possession of the piece and parcel of land known and described as Plot 240 Gbazango layout of Kubwa Abuja. The said plot of land is covered by a right of occupancy No. FCT/MZTP/TP/LA/97/531, letter of offer dated 2nd February, 1995 and

Certificate of Occupancy No MZTP/LA/NG-531 registered as No 4983 at page 4983 in volume 1 Customary Certificate of Occupancy in the land administration land registry office at Garki Municipal Area Council Abuja.

The Plaintiff's claim is that he has been in exclusive and undisturbed possession of the said land from 2nd February, 1995 when he took possession till 2016 when the Defendant forcefully gained entrance into the land, covered the well water pond that was dug on the land by the Plaintiff, removed the 20 (twenty) feet iron container on the land and started construction work on the land. That despite the service of the writ of summons and motion for interlocutory injunction on Defendant that the Defendant still continued with the acts of trespass.

The Plaintiff in his final address raised a sole issue for determination to wit:

"Whether the Plaintiff has led credible evidence to proof sufficient acts of possession to entitle him to the grant of the reliefs sought".

In arguing the above issue, it is the submission of the Plaintiff that his main claim is that the Defendant trespassed into the said Plot 240 Gbazango Layout of Kubwa Abuja, that other claims are ancillary to the main claim above. Counsel stressed that the Plaintiff's claim is not for a Declaration of title to the said plot of land but rather the Plaintiff's claim is a case of trespass and injunction against the Defendant. Counsel cited the cases of ***SAMUEL V ADEDEJI (1997) 8 NWLR (Pt. 517) and OLOWOLAGBA & ORS V BAKARE & ORS (1998) LPERL-8056 (SC) also reported in (1998) 3 NWLR Pt. 543. P.528*** all to the effect that the Plaintiff need not succeed in a claim for Declaration of title to land for his claim for trespass and injunction to be successful. That the Plaintiff only need to prove that he is in exclusive and undisturbed possession of the said plot 240 situate at Gbazango Layout of Kubwa Abuja before the Defendant trespassed into the land.

That Plaintiff through Counsel stated that in order to proof sufficient acts of exclusive possession, the Plaintiff called 4 witnesses. Pw1 tendered the following exhibits and without objection from the Defendant, the documents were admitted and marked accordingly as follows:-

1. Exhibit 1: Right of Occupancy and Certificate of Occupancy No. MZTP/LA/NG.531
2. Exhibit 2: Letter of Conveyance of Provisional Approval (Letter of Offer) dated 2nd Febraury,1995
3. Exhibit 3: Certificate of Incorporation of J.C. Imouh Nig. Ltd and the Particulars of Director.
4. Exhibit 4: Power of Attorney and Deed of Assignment from Paul Nathaniel Dangana to Kayode Ojo.
5. Exhibit 5: Power of Attorney and Deed of Assignment from Kayode Ojo to Mr. Juluis Chukwuemeka Imouh.
6. Exhibit 6: Regularization of Land Titles and Documents of FCT Area Councils.
7. Exhibit 7: Photographs of the fence wall erected by the PW1 and the inscription made by the Pw1 on the fence with the Certificate of Compliance.
8. Exhibit 8: Receipt of Payment 1995.
9. Exhibit 9: Letter from Sterling Bank dated July 2, 2019 titled "Letter of Non-Indebtedness to Sterling Bank Plc.
10. Exhibit 10: Letter from Sterling Bank addressed to J.C.Imouh Nigeria Limited dated July 22, 2019 titled "Release of Original Title Documents – J.C Imouh Nigeria Limited.

11. Exhibit 11: Letter by J.C Imouh Nigeria Limited addressed to Sterling Bank Plc dated June 17, 2019 and titled "Application for full and final payment to defray our indebtedness to Sterling Bank Plc on Account No. 0002068315.

The PW2 is Pastor David Adeuti who owns plot 543 Gbazango Layout of Kubwa Abuja which is adjoining land to this land in dispute. Pw2 confirmed that the Pw1 erected a 7 couch fence round the said plot and built a security house on the land where the Pw4 lived in and cultivated maize thereon. That the Pw1 gave him (PW2) part of the plot 240 with which the PW2 built part of the Cherubim and Seraphim church. PW2 further stated that the PW1 put a 20 feet Iron container on the land. That while the PW4 was living in the gate house, that the PW4 farmed on the land and was also carrying out laundry services therein.

The PW3 is a representative from Sterling Bank who testified as to how the Bank in the year 2002 accepted Exhibit 1, 2, 3, 4 and 5 from the Pw1 as collateral security to secure the loan that the Bank gave to the Pw1's company. She stated that the said land documents was released to the Company after the loan was fully liquidated and also issued exhibit 9 and 10 as evidence of release of the said documents and non-indebtedness of the company. Under cross-examination, Pw3 stated that the Bank conducted search on the property before it accepted the land as collateral for the loan and that the search report shows that the Plaintiff was in possession of the land. But that during the process of merger between Legacy Magnum Trust Bank Plc and Sterling Bank, that the Bank couldn't place where the search report and other documents were kept; but that the title documents being very important documents were kept in the Bank's fire proof-safe for safety.

Pw4 stated that Pw1 fenced the land, dug a water pond, put a 20 feet Iron Container on the land and constructed a gate house on the land. He said

that he lived in the gate house and while living there that he was doing laundry services and he also cultivated maize on the land from 2001 till 2008 before he went and rented another apartment at No 24 Dutse Sokale along Bwari road, Abuja.

Counsel submitted thereafter that the Plaintiff has by the evidence of Pw1, Pw2, Pw3 & Pw4 been able to show that he was in exclusive and undisturbed possession of the said land for 21years i.e from 1995 to 2016 before the Defendant unlawfully and forcefully trespassed.

Counsel urged this Court to grant the Plaintiff's relief 3 & 5 which is an Order of perpetual injunction restraining the Defendant, his agent, assign, attorney, persons or any person deriving authority from the Defendant from claiming possession, further trespassing or continuing with the act of trespass on the land in dispute and damages because injunctive order and damages are remedies for trespass.

Counsel further prayed this Court to grant relief 4, that once a party has become aware of a pending relief challenging his act of trespass and he hurriedly completes the building the law has empowered Court to direct that the wall or building be pulled down. Counsel cited the case of ***DANIEL V FERGUSON (1891) 2 CH 27.***

Counsel conclusively prayed this Honourable Court to grant all the reliefs in the amended statement of claim.

On the 28th of September 2022, the Defendant led evidence through 2 witnesses, DW1 and DW2 before then the PW1 was recalled to testify on the evidence attached to his reply to the Defence as he was cross-examined.

The case of the Defendant is that the land subject of this suit belongs to him as the owner and he has been in possession. He denied trespassing on the land of the Plaintiff stating and denying that the Plaintiff is the owner

and in possession. The Defendant stated that he bought the land from his immediate predecessor Mua Umar and evidenced the purchase of the land with an Irrevocable Power of Attorney and Deed of Assignment executed between both of them dated 10th October, 2014, by which interest of his predecessor was transferred to him.

The Defendant stated that he began development of the plot of land in 2014 unchallenged and put some Tenants and relatives therein including the DW2. He said he has been on the land since 2014 and had erected high walls, main living house, stores, gate point, mosque, etc.

The Defendant denied the allegations of trespass heaped on him by the Plaintiff as well as the assertion of ownership and occupation of the land by the Plaintiff. He denied removal of container, water well and damaging of wall (fence) as alluded by the Plaintiff. He stated that he conducted search on the land before he bought same. The Defendant in order to establish its case before this Court tendered 13 exhibits. Exhibits DW1, DW2, DW3, DW4, DW5, DW6, DW7, DW8, DW9, DW10, DW11, DW12, DW13.

Counsel to the Defendant in its final address before this Court raised 4 issues for determination to wit:-

1. Whether there is any cause of action between the Plaintiff and the Defendant to warrant the suit of the Plaintiff against the Defendant?
2. Whether by the pleadings of the Plaintiff and or claims 1,2,3,4,5, the title to the land subject of this suit is not in issue.
3. Whether the evidence led by Pw2 is admissible and to be countenanced.
4. Whether the Defendant upon the evidence led by him is entitled to Judgment in his favour.

Arguing on issue 1 Counsel stated that the Plaintiff pleaded that he is the original allottee to the Plot of land, subject of this suit in paragraphs 1-6 of

his Statement of Claim. That however, at paragraph 7-8, 10, the Plaintiff pleaded that his title interest and rights to the plot have been extinguished by way of sales to Kayode Ojo per Exhibit 4 and the said Kayode Ojo further divested his own title over the land to the Pw1 at present vide Exhibit 5.

Counsel argued that it is clear that the Plaintiff having divested his title over the land becomes a total stranger and non-privy to the said property and the nexus between him and the land has been destroyed and eroded. Counsel stated that PW1, PW2, PW3, PW4 all testified that the land has been sold by Plaintiff to Kayode Ojo who further sold to PW1. That in cross examination answers, Pw1 said Exhibit 5 confirms sales of land to him and he took possession when he bought the land. Counsel stated that from the foregoing, the Plaintiff has no business with the land to warrant maintaining action in respect thereof against the Defendant and it is therefore the Plaintiff's argument that the Plaintiff has no cause of action against the Defendant.

Counsel arguing on issue 2 stated that that evidence before the Court is that the Plaintiff was an original allottee but he sold the land per Exhibit 4 to Kayode Ojo and therefore divested himself of title. Counsel stated that the Plaintiff does not have any right or interest over the land anymore.

Counsel argued that from the evidence before this Court going by Exhibits 4 and 5, title over the land is not resident in the Plaintiff but Pw1, a third party and who was not made a party to this suit. The claim of the Plaintiff who could not prove title cannot stand. Counsel in support cited the cases of ***DADA V OGUN REMI (1967) NWLR 181. DADA V BANKOLE (2008) VOL 3 MJSC 1. ADELAKUN V IGOEGBEKUN (2003)7 NWLR (PT 819) 295, ANUKANTI V EKWE ONYEASO (1978)1 SC 37.***

Counsel further stated that the issue of title brought in by the Plaintiff upon reliefs 1 on possession and 2, 3, 4, 5 on trespass have not been

established with evidence adduced before the Court, the consequence is the failure of the claim and refusal by Court to declare or find in favour of the Plaintiff. Counsel cited the case of ***UKAEGBU V NWOLOLO (2009) VOL. 1-2 MJSC 98.***

Counsel argued that the Plaintiff did not plead ownership of the land as required from the claim of trespass and injunction neither did he give evidence in respect thereto but hinged all his issues on possession. Counsel stated that the Plaintiff and the Defendant claim to be on same land contesting possession but that the law can only support trespass on the side of the party who can show that title of the land is in him. Counsel stated that by the evidence before this Court, the Plaintiff has not shown such title or better title than goofing around possession. Counsel urged this Court to resolve this issue in favour of the Defendant as the Plaintiff has not been able to prove the acts of trespass to warrant the grant of relief on trespass to him. Counsel cited ***ALIYU V DIKKO (2012) ALL FWLR (PT 632) 1714; KAREEM V BALOGUN (1972) 1 SC 182.***

On issue 3 Counsel argued that it is trite that when amendment of pleadings is done, there will be need to also amend the evidence to be in line with the pleadings. This according to Counsel, the Plaintiff failed to do and even if the Plaintiff feels the evidence is satisfactory, the use of Pw1's witness statement on oath filed in 2017 along an amended writ of summons is novel and void act because upon the amendment, every process that came with the Writ or Claim is no more before the Court. Counsel cited the cases of ***VULCAN GASES LTD V G. F. IND. A. G. (2001) 9 NWLR (PT 719) 610 (S.C) OGBORU V OKOWA (2016)11 NWLR (PT 1522) 84 (S.C).***

Counsel argued that it is the law that once amendment is done to pleadings, what stood before the Court originally no longer defines or determines life issues to be tried before the Court. It is immaterial in the

determination of the issues to be tried and cannot be the basis of the case or action of a party, including the processes that came with the amended pleadings which becomes irrelevant. Counsel stated that in the instant case the PW2'S witness statement on oath and the other witnesses except Pw1 were borne by an amended writ and statement of claim. The said writ was filed in 2017 and amended in 2019 but the witness statement on oath attached to the amended or old writ and statement of claim not before the Court again were the ones used for Plaintiff's witnesses.

Counsel submitted that the witness statement of the Plaintiff's witnesses except that of Pw1 are liable to be struck out as they are no more basis upon which the Court can determine this case, the pleading that brought them in, having been amended, they became irrelevant in law.

On issue 4, Counsel submitted that the Defendant upon the evidence led by him is entitled to Judgment in his favour. The Defendant as expected of him in a suit on declaration of title, counter-claimed as he seeks his title to be validated as against the Plaintiff. Counsel stated that the title of the Defendant even if not registered as per the documents pleaded, confer on him Equitable Estate or interest which is as good as Legal Estate or interest even if he paraded unregistered but registrable instruments, which were placed as evidence of payment of purchase money coupled with possession. Counsel cited the cases of ***MOJEKWU V MOJEKWU (1997) 7 NWLR (PT 512) 283; FAKOYA V ST PAUL'S CHURCH SHAGAMU (1966) 1 ALL NLR 74.***

Counsel urged this Court to dismiss the suit of the Plaintiff with heavy cost and grant the Counter claims of the Defendant.

In view of the settled position of the law as it relates to the facts and substance of this case, the submissions of Counsel on both ends, the issues formulated by the parties can be accommodated under the sole issue formulated by the Court thus:-

“Whether the Plaintiff has proved its claims on a balance of probabilities to entitle it to any or all of the Reliefs sought and whether the Defendant has proved its claims on a balance of probabilities to entitle it to any or all of the Reliefs sought in its Counter Claim”.

The above issue is not raised as an alternative to the issues raised by parties, but the issues canvassed by parties can and shall be cumulatively considered under the above issue. See **SANUSI V AMOYEGUN (1992) 4 NWLR (Pt. 237) 527.**

The issue thus raised has in the Court’s considered opinion brought out with sufficient clarity and focus, the pith of the contest which has been brought to Court for adjudication by parties on both sides of the aisle.

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their case. At the conclusion of trial proper, the real issue(s) which the Court would ultimately resolve must be manifestly clear. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of the critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **OVERSEAS CONSTRUCTION LTD V CREEK ENTERPRISE LTD & ANOR (1985)3 NWLR (PT13) 407 at 418**, the Supreme Court instructively stated as follows:-

“By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the Plaintiff will itself give him the right to the reliefs he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of

the Defendant, then the Plaintiff's case collapses and the Defendant wins".

It is therefore guided by the above wise exhortation that I would proceed to determine this case based on the issue I have raised and also consider the evidence and submissions of Counsel.

The Law is trite that civil cases are decided on the balance of probabilities, that is, preponderance of evidence. The Court arrives at this by placing the totality of evidence by both parties on an imaginary scale to determine which side's evidence is heavier and accordingly preponderates. The party whose evidence is heavier succeeds in the case. See ***DR. USENI UWAH & ANOR V DR. EDMUNDSON T. AKPABIO & ANOR (2014) 2MJSC (Pt.11) 108 @ 113.*** Moreso, the success or failure of the case of the Claimant is predicated first on the nature of his pleadings and secondly the evidence led in support of his averments. In the same vein, the success or failure of the defence of the Defendant is based on the averment in his statement of defence and the evidence led in support thereof. See ***RAMONU RUFAl APENA & ANOR V OBA FATAI AILERU & ANOR. (2014)6-7 MJSC (Pt.11) 184 @ 188.***

On the propriety or otherwise of the Defendant filing his Final Address out of time in this Suit, the parties herein canvassed arguments for and against this action. It is important that this Court considers this before going ahead to analyzing the issues in contention before this Court.

The natural principle of **audi alteram partem** is so weighty a principle that a Court cannot close its eyes to it, especially in this case where the Defendants have put forward a final written address for consideration before this Court which they seek the Court to consider in its decision.

Speaking on the natural justice principle of **audi alteram partem**, His Lordship Rhodes Vivour, JSC held in ***MILITARY GOV OF LAGOS STATE & ORS V ADEYIGA & ORS (2012) LPELR-7836 (SC) that:-***

“Audi Alteram Partem means please hear the other side. A Judge should allow both parties to be heard and should listen to the point of view or case of each side before giving a decision. This is what fair hearing entails..”

Underscoring this imperative of hearing both sides to a dispute, the Supreme Court, per Belgore, JSC (as he then was) stated thus in **The COUNCIL OF FEDERAL POLYTECHNIC, MUBI V YUSUF & ANOR (1998) LPELR-3168(SC):**

“In all the trials whether judicial or administrative, the person against whom a complaint is laid must be heard in compliance with the principle of audi alteram partem. This is the crux of S.33 of the Constitution of Federal Republic of Nigeria, 1979 and always reflected in statutes where persons could be put on trial or investigated with possible consequence of reprimand and or punishment. For every accusation, there must be a right to be heard.”

Indeed, it is trite law that Courts of today are concerned with deciding matters on the merit, allowing each party ample opportunity to ventilate his/her case provided that there will not prejudice the other party. See **AMAKO V THE STATE (1995) LPELR-451(SC) PER ADIO, JSC AT PAGE 13, PARAS, C-D AND AJUWA & ANOR V SPDC NIG. LTD (2011) LPELR-8243(SC) PER FABIYI, JSC AT page 40, PARAS, D-G.**

It is therefore based on the above wise exhortation of the Supreme Court that I resolve in the affirmative the contention on the propriety or otherwise of the Defendant filing his Final Written Address out of time. The Court in deciding this case on its merit will as always consider the interest of justice and what will ensure the just determination of this case. Therefore the Defendant’s final address is deemed properly filed and admitted before this Court.

Moving on, in consideration of the facts in issue, it can be gleaned from the submissions of Counsel on both ends, that this matter is predicated upon an alleged trespass and declaration of title to Land identified as plot No. 240 of about 1,150m² situate at Gbazango Layout Kubwa Abuja with beacons nos. PB 8735, PB 8736, PB 8737 and PB 8734. The Claimant and Defendant have led before this Honourable Court evidence in support of their respective contentions and the Court will in determination of this matter have a recourse to the testimonies of witnesses and documents pleaded before this Honourable Court.

On the contention of parties as to possession and trespass to land, it is somewhat worrisome that the Plaintiff has through his processes made concrete efforts towards establishing possession to the land in question and thereafter claiming for trespass, overriding the all but important issue of title to the said land. The Defendant in its counter-claim has pleaded for a declaration of title to land, seeking the Court to convey ownership rights on the Defendant amongst other ancillary orders.

The testimonies adduced by the Plaintiff resonates an all but important fact that the Plaintiff in this suit does not have title to the said land being subject matter of this suit but that the title to the said land allegedly is with the PW1 who was never joined as a party to this Suit at any stage whatsoever nor did he institute this action. The Plaintiff has reiterated that the substance of his action is predicated on trespass to land and not on the title to the said land in question.

While it is common place to assert possession of land over a period of time therefore grounding an action in trespass, it is not so to my mind when there is an adverse contention on ownership of the said land as is the facts and substance of this case. The Court made it succinctly clear on the position of the law where a party who alleges possession in support of a

claim fails to prove the ownership of the said land. The Court in ***INYAM & ORS V EXCHIGAK & ORS (2017) LPELR-43283 (CA)*** stated thus:

"The law is that where a party alleges acts of possession carried out on a piece of land in dispute in support of a claim of title to the land and he fails to prove the title pleaded and claimed, the acts of the party on the land ceases to be acts of possession and they automatically become acts of trespass....."

The above goes to construe the fact that the claims of possession asserted by the Plaintiff having devolved his title to the said land to a third party in January 2016 before the filing of this suit cannot be properly grounded and given life to by this Court, considering the fact that his alleged title to the land now devolves on a third party not being a party to this Suit.

It is the law as enunciated in ***REGISTERED TRUSTEES OF ONITSHA PRINTING PAPER DEALERS ASSOCIATION V EDEMANYA & ANOR (2017) LPELR – 42200(CA)*** that Trespass is a wrong to possession and the rule of law is that a trespasser can maintain an action in trespass against anyone else but the true owner. This therefore in effect means that a party claiming possessory rights and seeking for action in trespass without a claim for declaration of title to land cannot maintain same against a party asserting ownership of the land. The right or claim to trespass can be maintained against all but the owner of the said land.

In action for trespass as asserted by the Plaintiff, it is the law that a claim for trespass is rooted in exclusive possession, once the Defendant asserts ownership of the land in dispute, title thereto is automatically put in issue and for the Plaintiff to succeed, he must establish a better title than that of the Defendant. See ***JOSEPH & ORS V ASELE & ANOR. (2021) LPELR-56387 (CA)***. The claim of the Plaintiff on trespass cannot be readily

asserted owing to the fact that there is absence of exclusive possession, which is fundamental to a claim or action in trespass.

The Supreme Court stated emphatically in ***OYENEYIN V AKINKUGBE (2010) 20 WRN 41 (SC)*** That;

“Where a claim for trespass is coupled with a claim for an injunction, the title of the parties to the land in dispute is automatically put in issue...”

It is therefore based on the consideration above and the facts and substance of this matter that it is worthy to note that ownership is now a focal point to the just determination of the above subject matter.

The Plaintiff through his witnesses in evidence admitted that title to the said land in question had passed on from him since January 2016 and now vests on the Pw1 who was and remains a third party to this cause of action. I do not consider to my mind, that a Party who is alleging an act of trespass not first contending title to the land in dispute can push for a relief solely on grounds of possession which is and remains in contention by virtue of the fact that same was not exclusive.

In ***EGBULEFU ONYERO & ANOR V AUGUSTINE NWADIKE (2011) LPELR-8147 (SC)***, the Supreme Court stated emphatically thus:-

“When a claim for trespass is combined with a claim for injunction as in this case, title to the land is in issue and the issue of title has to be resolved before the claims for damages for trespass and injunction could be determined”.

On the issue of title which is fundamental to the determination of the subject matter in question, the Plaintiff admitting to having devolved title to a third party robs him of all and every right to a claim of ownership of the land. The alleged owner or possessor of title to the Land was not joined as party to this suit neither did he maintain an independent action for a declaration of title to land. It is pertinent to reiterate that it is only

ownership that confers a right on any party to take steps to develop, build, deal with or carry out possessory rights over a land. Therefore, having passed on the title to the said land to a third party, the subject matter of ownership devolves on the third party and nothing more.

The Defendant has asserted and led evidence towards establishing sufficiently that a declaration of title to the said land be conveyed on him amongst other ancillary claims, this is quite holistic and worthy of note as it gives life to the only but fundamental question of ownership of title to the land as against possession and alleged trespass to land thereof.

As a logical corollary, I therefore hold that this case is resolved in favour of the Defendant per his counter-claim against the Plaintiff as follows:-

1. A Declaration that the Defendant is in possession and the valid owner entitled to the Rights and Interest of title over Plot No. 240 Gbazango Layout Kubwa measuring about 1150m² and therefore entitled to the Right of Occupancy granted thereof.
2. A Declaration that the Rights, Title and Interests of the Defendant over Plot No. 240 Gbazango Layout Kubwa is still valid and subsisting to the exclusion of the Plaintiff and any other person claiming through him or for him.
3. An Order of perpetual Injunction restraining the Plaintiff, his agents, privies, Assigns, Attorneys, persons claiming for him, under him or with him or deriving authority from him from interfering, entering on or dealing with and claiming possession of Plot No. 240 Gbazango Layout Kubwa of about 1150m² or in any manner inconsistent with the Defendant's right thereto.

4. No award is given as Damages.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

S.N Mbaezue:- Appearing with N.U Nwoke for the Defendant

Lawrence Erewele:- For the Plaintiff.