

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 26TH JANUARY, 2023

BETWEEN

FCT/HC/CV/386/2021

**1. ZANPA ZHIMABE
2. LAWRENCE O. ARINZE** }

CLAIMANTS

AND

EDWIN AKWUEH-----

DEFENDANTS

JUDGMENT

This suit was instituted by the Claimants by way of a writ of summons filed on 10th February, 2021. The following reliefs were sought:-

1. A declaration that the property known as plot CRD213 of about 600sqm situate at Lugbe 1 Layout, Abuja and evidenced by grant of Provisional Approval dated 27th June 1996 and Subsequent terms of Grant/Conveyance of Approval of Statutory Right of Occupancy issued to the 2nd Claimant, belongs to the 2nd Claimant, being the lawful, legal and beneficial owner of the property.

2. A Declaration that the act of trespass and forceful entry into the said property and demolition of Claimants' concrete fence and conversion and removal of the Claimants Iron Gate, Blocks, Iron Rods, Water tank and other building materials by the Defendant is unlawful, wrongful, oppressive and provocative.
3. An Order of Court directing the Defendant to remove or dismantle the hazardous building erected without approved building plan on the Claimants land during the pendency of an action in court, and in reckless disregard to a '**STOP WORK**' order from the Development Control Department of the Federal Capital Development Authority.
4. An Order of Perpetual Injunction restraining the defendant, either by himself, his servants, privies, agents or by whatever name called from trespassing or further trespassing, invading or further invading, occupying or trying to occupy, encroaching or further encroaching on the rights and interest of the Claimants over Plot CRD213, Lugbe 1 Layout, Abuja.
5. The sum of N500,000,000 (Five Hundred Million Naira Only against the defendant being special, aggravated and general damages for trespass, removal and massive destruction of the Claimants properties at Claimants Plot CRD213, Lugbe 1 Layout, Abuja.

The Defendant filed his statement of defence and a counter claim on 23rd June 2021. In his counterclaim, the Defendant/Counterclaimant counter claimed against the Claimants as follows:-

1. A Declaration that the Defendant/Counter Claimant is the beneficial owner of plot no. CRD213, Cadastral Zone, Lugbe 1 Extension, Abuja, having paid the purchase price and obtained a Power of Attorney as well as the offer letters for right of Occupancy and other relevant documents from Abiodun Oimage, who derived title from the original Allotee Col. Jubril Aejoh Iyodo.
2. An Order for perpetual injunction restraining the Plaintiff/Respondents, their agents, assigns and successors in title from further trespassing or exercising any rights over the said property known as Plot No. CRD 213, Cadastral Zone 1, Lugbe Abuja.
3. General Damages in the sum of Fifty Million Naira (N50, 000,000.00), for acts of trespass against the Plaintiffs/Respondents.
4. An Order directing the 2nd Plaintiff/Respondent to refund the sum of N3, 000,000 (Three Million Naira) being the part-payment for the property described above to the Defendant/ Counter-Claimant.

ALTERNATIVELY:

1. A Declaration that the Defendant/Counter Claimant is the Beneficial Owner of the property known as Plot CRD213 Cadastral Zone, Lugbe 1 Extension, having made a part payment of N3,000,000.00 (Three Million Naira) to the 2nd Plaintiff/Respondent thereof with an agreement to pay the balance on a future date.
2. An Order Estopping the 2nd Plaintiff/Respondent from conveying the said piece of land to a third party

other than the Defendant/Counter Claimant and An Order directing that the Defendant is entitled to be given the documents of the property upon payment of the agreed balance of N2,000,000.

3. Cost of this suit.

The Claimants filed their reply to the Defendant's Statement of defence and defence to counter claim on 08th October, 2021.

A summary of the Claimants case is that the 2nd Claimant acquired Plot CRD213, Lugbe 1 Layout, Abuja from the 1st Claimant who was the original allottee. After acquiring the said plot, the 2nd Claimant was issued with a changed offer of Statutory Right of Occupancy vide a letter titled "Offer of Terms of Gant/Conveyance of Approval" dated 16th August, 2006. According to the claimants, the 2nd Claimant is the bona fide owner of Plot CRD213, Lugbe 1 Layout, and has since the past 22 years been enjoying untrammelled possession of the land until the defendant unlawfully trespassed, defaced and carted away the Claimant's building materials and implements sometime in August 2016. As a result, the 2nd Claimant petitioned the Defendant to the Police for criminal trespass. The Defendant was arrested and after investigation, the defendant pleaded to make a deposit of N3, 000,000.00 (Three Million Naira) towards the cost of damaged and removed property of the 2nd Claimant on the land, which was valued at N10, 000,000.00 (Ten Million Naira), to which the 2nd Claimant accepted, leaving a balance of N7, 000,000. 00 (Seven Million Naira) which was to be paid within One (1) year from the date of the first payment.

The Defendant later reneged from the agreement and continued further acts of trespass by erecting structures on the said plot without building plan approval from the appropriate authority, which prompted the Claimant to institute a civil action in the FCT High Court against the defendant. The Claimants suit was however struck out by the court, warranting the Claimants to refile this suit.

The Defendant on the his part, denied the averments of the Claimant and counterclaimed that the said land was originally allocated to Col. Jibril Adejo Iyodo, who later changed the name to a subsequent purchaser Abiodun Oimage from whom the Defendant now bought through an agent named Muhammed Isah. The Defendant claimed that he took possession of the said plot after making payment for same and commenced construction of a designed and approved Bungalow thereon. The Defendant denied being arrested by the Police on the basis of the Claimant's petition, rather he claimed to have petitioned the Claimant through his solicitor when the claimant hired thugs that invaded the said plot and destroyed building materials valued at over N15,000,000.00 (Fifteen Million naira). According to the Defendant, the payment of N3, 000,000.00 to the Claimant by the Defendant was not in lieu of the claim to damage and removal of the Claimant's properties, but was in respect of the agreement they reached at the Police Command of the Federal Capital Territory, Abuja, that should the claimant be the rightful owner of the property in dispute, the defendant would pay him the

sum of N5, 000,000.00. That he made the payment of the N3, 000,000.00 in show of good faith.

On 17th January 2021, the 2nd Claimant Lawrence Okechukwu Arinze, who testified as PW1, adopted his witness statement on oath and tendered the following documents: Offer Letter dated 27/6/96-Exhibit 1, Changed Offer Letter dated 16th August,2006-Exhibit 2, Power of Attorney dated 31st December,2008 – Exhibit 3, Re-Certification and Acknowledge letter dated 31st December,2008- Exhibit 4, Petition to the Chief of Army Staff- Exhibit 5, Petition to the Chief of Defence Staff – Exhibit 5A, Writ of Summons dated 21st March,2018 – Exhibit 6, Letter of Acceptance of Offer dated 23rd August,2006- Exhibit 7, Petition to Commissioner of Police dated 19th September,2016 – Exhibit 8, Writ of Summons in Suit No: FCT/HC/CV/696/2017 – Exhibit 9, Motion on Notice filed by the Claimant – Exhibit 10, Picture of Broken Gate – Exhibit 11, Picture on wall tagged “Stop Work” – Exhibit 12.

Upon closure of the case of the Claimants, the Defendant called two (2) witnesses, DW1 and DW2 and tendered in evidence, the following documents: Fidelity Bank Statement of Account of the Defendant – Exhibit 12, Text messages & Pictures of Buildings – Exhibit 13, Regularization of Land Title dated 12th February,2016 – Exhibit 14, Conveyance of Provisional Approval dated 27th June,1996 – Exhibit 15, Right of Occupancy Rents & Fees Conveyance Notice dated 18th June,2006 – Exhibit 16, Offer of the Terms of Grant/Conveyance of Approval dated 18th June,2006 – Exhibit 17, Two Receipts – Exhibit

18, Power of Attorney dated 15th July,2016 – Exhibit 19, Technical Deed Plan (TDP) – Exhibit 20, Petitions to Commissioner of Police dated 30th March,2017 – Exhibit 21, Record of Proceedings – Exhibit 22, Subpoena – Exhibit 23, Search Report – Exhibit 24.

After hearing, the matter was adjourned for adoption of final addresses of the parties.

The Defendant raised two issues in his final written address to wit:-

1. Whether the Claimant have proved their case to the satisfaction of the court to be entitled to judgment?
2. Whether the Defendant is entitled to the reliefs in his counter-claim.

Arguing on issue 1, learned counsel to the defendant maintained that the 2nd Claimant had failed to sufficiently prove his title to the plot in issue. He pointed to the fact that the power of Attorney relied on by the Claimant is unregistered and there is no evidence before the court as to the whereabouts of the 1st Claimant from whom the 2nd Claimant claimed to have originally derived his title. Counsel cited relevant sections of the Land Instrument Registration Act, 2001, and the Land Instrument Registration Law, 2004, in arguing that an unregistered power of attorney such as exhibit 3, cannot be pleaded or given in evidence.

Counsel further argued that there are inconsistencies in the testimony of PW1 as to how he purportedly acquired title to the property in contention, and therefore asked

the court to disregard his testimony, as he is not a witness of truth.

Counsel also made reference to the testimony of the subpoenaed witness, inspector Adejoh Emmanuel, and to the exhibit 24 tendered by the witness, which was a report from AGIS. From that report, counsel submitted, it is clear that Col. Adejoh Iyodo is the only recognized name as the owner of the original title holder in the list of allocation forwarded by AMAC Zonal Planning Department to Land Administration Department of FCTA.

Counsel urged the court not to accept the purported allocation list which is an attachment to exhibit 5 and Exhibit 5a, as same falls short of the provision of section 102 of the Evidence Act, as the said document was a public document but was not certified.

On issue 2, counsel to the Defendant argued that the Defendant have been able to trace the root of his title to the property in dispute, in that he has successfully traced it to the original allottee- Col. Iyodo. Counsel placed heavy reliance on exhibit 24, and urged the court to also rely on same.

The claimant advancing arguments in his final address raised two issues for determination, to wit:-

1. Whether the claimants have proved their case on the preponderance of evidence to be entitled to Judgment in this suit.
2. Whether the defendant's counterclaim is competent and if the Honourable Court answers in the affirmative,

whether the defendant has proved the said counterclaim.

Arguing on issue 1, Counsel to the Claimant stated that there is a basic principle of land law which will aid in appreciating the evidence adduced by parties in discharge of the onus placed on them on equal basis by law. On equal basis, the law is that where the defendant counterclaims as in the instant case, he is on the same echelon of proof with the claimant.

Counsel to the Claimant argued that if the Honourable Minister of the FCT has not made a grant, the grantee got nothing. Counsel cited Section 1(3) of the FCT Act and the Supreme Court decision in **MADU V MADU (2008) 6 NWLR (PT. 1083) 296**. Counsel further argued that where there is a subsisting grant, any other grant would be invalid. Counsel cited **ILONA V IDAKWO (2003) 11 NWLR (PT.830) 53**. Counsel stated also, that where a grant or right exists over a piece of land, it can only be extinguished by a lawful revocation and not by another grant to a different person or entity. Counsel cited the case of **DANTOSHO V MOHAMMED (2003) 6 NWLR (PT. 817) 457**.

Counsel to the Claimant argued that considering the various ways of establishing title to land in Nigeria, the Claimants have tendered evidence in proving title to the land through production of document of title duly authenticated. Counsel referred this Honourable Court to Exhibit 1,2& 7. Counsel further stated that in addition to

the above, the Claimants have categorically pleaded acts of possession and credible evidence to prove same.

Counsel to the Claimant argued that having produced authentic documents of title and led credible oral evidence in support of same, the onus of proof in rebuttal shifted to the defendant in view of Section 133(2) of the Evidence Act, 2011.

Counsel to the Claimant referred this Court to what determines the weight to be attached to a document, that what determines same is the purpose for which the document was tendered. Counsel stated that if Exhibit 24 was tendered by the DW2 to prove that it exists without more, then such purpose may avail the defendant, but if the purpose of tendering the document was to prove its contents which include the fact that an allocation list which includes the name of the defendant's predecessor-in-title exists, then it is inadmissible and of no probative value. Counsel stated that it is the law that only the maker of a document can tender it in evidence and be cross-examined on it as he is the only person that can answer questions under cross-examination regarding the document. Counsel cited the case of ***BUHARI V INEC (2008) 12 SC (PT.1) 1 AT 123-124.***

Counsel to the Claimant urged this Honourable Court to discountenance Exhibit 24 as a document intended to be used to discredit or contradict Exhibit 1. Counsel urged this Court to countenance Exhibit 1 and accord it the probative value it deserves.

On parties root of title, Counsel to the Claimant argued that the root of title of the claimants is traceable to the statutory right of occupancy granted to the 1st Claimant via Exhibit 1. This allocation was made by the Honourable Minister of the FCT on the 29th June, 1998. Counsel argued that on the other hand, the defendant's root of title is traceable to a customary right of occupancy granted by the Chairman, Caretaker committee on Rural Land Allocation Committee of Abuja Municipal Area Council on 27th June, 1996. Counsel to the Claimant concluding on ownership asserted that the Defendant as a holder of customary right of occupancy which has no place in the FCT has no right whatsoever to claim ownership of the res in this suit duly allocated to the claimant by the Minister of the FCT vide Exhibit 1. Counsel stated that the Defendant also has no right/power to deprive the Claimants of a plot duly allocated to them by a constituted authority. Counsel commended this Court to Section 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Counsel to the Claimant arguing on issue 2 stated that it is settled that if the Plaintiff succeeds in his claim, the Defendant's counterclaim will not see the light of the day. Counsel cited the case of **AKPAJI V UDEMBA (2009) 6 NWLR (PT. 1138) 545 at 565, paragraphs C-D.**

Counsel stated that it is important to stress that a counterclaim is a separate claim, In order to succeed, the counterclaimant must adduce cogent evidence to entitle him to the relief sought. That the Counter-claim must succeed on the strength of his own case. Counsel cited

the case of **ANAMBRA STATE GOVERNMENT V GEMEX INTERNATIONAL LTD. (2012) 1 NWLR (PT.1281) 333 at 363 Paragraph. D.**

In conclusion, Counsel contended that litigation is not a contest of wit. It is an exercise in fact finding aimed at unraveling the truth of a matter. Counsel in its submission stated that the Claimants have led sufficient evidence in this case to prove the existence of a right and interest which ought to be protected by this Honourable Court. Counsel cited the case of **OYEYEMI V COMMISSIONER FOR LOCAL GOVERNMENT, KWARA STATE (1992) 2 NWLR (PT. 226) 661 ration 10.**

Counsel to the Claimant further cited Section 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 urging this Court to enter judgment for the Claimants and dismiss the defendant's counterclaim.

I have carefully considered the evidences and arguments of parties in this suit, and in the final determination of the suit, I will raise a sole question:-

"Between the Claimant and the Defendant/Counter-Claimant, who has proved his case to the satisfaction of the court to be entitled to judgment?"

It is trite law that a party claiming declaration of title to land must plead and prove his entitlement to the land so claimed. He must plead and prove how he became the owner of the land, the identity, the size as well as the boundaries of the land claimed. He must also establish that he is entitled to the reliefs claimed through his

pleadings and credible evidence adduced thereon otherwise his case would be liable to be dismissed.

It has also been established in a long line of authorities that the burden is always on the Claimant to establish his case without relying on the weakness of the case for the defence of the Defendant. In other words, the law requires that the Claimant must rely on the strength of his own case and not on the weakness of the case of the Defendant.

The 2nd Claimant in this case has tendered title documents in an attempt to establish his root of title to the plot in dispute, particularly exhibits 1 to 3. A critical consideration of the said pieces of evidences reveals that the 2nd Claimant's title was derived from the 1st Claimant and the 1st Claimant is said to have purportedly acquired his own title from the Ministerial Committee on Roadside Development (CRD). The purported list of Ministerial Committee on Roadside Development, from which the 1st Claimant is said to have acquired his title, is attached to exhibit 5. It is a public document, and by virtue of the provision of section 102 of the Evidence Act, it ought to have been certified. For failure to certify same, it is inadmissible and cannot be relied on by this court.

It is trite that production of documents of title is one of the ways of proving title to land, however, it has conditions attached to it and a claimant must prove those conditions before the documents of title can inure the claimant a declaration of title. The position was settled in the case of **ROMAINE V ROMAINE (1992) LPELR-**

2953(SC) wherein the apex Court held as follows: "...One of the recognized ways of proving title to land is by production of a valid instrument of grant'. See **IDUNDUN V. OKUMAGBA (1976) 9-10 S.C. 227; PIARO V. TENALO (1976) 12 S.C. 31, P.37; NWADIKE V. IBEKWE (1987) 4 NWLR (pt.67) 718.**

But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance upon such an instrument inevitably carries with it the need for the Court to inquire into whether: (i) some or all of the document has been duly executed, stamped and registered; (ii) whether the grantor had the authority and capacity to make the grant; (iii) whether the grantor had in fact what he purported to grant; and (iv) whether it has the effect claimed by the holder of the instrument. See **ALHASSAN V. THE MINISTER, FCT & ORS (2020) LPELR-51050(CA).**

While attempting to trace the title of the parties in this suit with aim of arriving at a just determination, I noticed that the title documents exhibit 1, tendered by the Claimant as proof of the title of the 1st Claimant from whom he derived his title, and exhibit 15 tendered by the Defendant as proof of title of Col. Jubril Adejohare quite similar. Both documents were purportedly issued by AMAC and on the same date, but to different names. While one was issued to Zanpa Zhimabe, the other was issued to Col. Jibril AdejohIyodo. In my opinion, one of

the two title documents must be genuine, as it will be practically impossible to issue title documents to two persons over a single plot.

It is instructive at this point in time to note that prior to setting up of Abuja Geographic Information System (AGIS) by the Federal Capital Territory Administration, the Area Councils in the FCT acting through their Zonal Managers were saddled with the responsibility of allocating lands in their various council. It was in 2004, that AGIS commenced regularization exercise to enable all holders of customary rights of occupancy to regularize their titles. Though it is the Minister of FCT that has right to issue a right of occupancy over any land in the Federal Capital Territory, it is not out of place to take into consideration, a Customary Right of Occupancy when tracing the history and root of title to land in the Federal Capital Territory.

Now, going back to the puzzle created by exhibits 1 and 15, I find the search report- exhibit 24, quite instructive in laying to rest the question of who was the genuine and original allottee of the plot in dispute. Exhibit 24 confirmed that the said plot in the name of Col. Jibril Adejoh Iyodo is available in the list of allocation forwarded by AMAC Zonal Planning Department to the Land Administration Department. This, in my opinion, is a confirmation of the fact that Col. Jibril Adejoh Iyodo was the original allottee of Plot No. CRD 213.

Contrary to the argument of the Claimant, exhibit 24 is admissible, and was properly tendered by the

subpoenaed witness, who was the Investigating Police Officer in the unit to which the said letter was addressed to. It is not in all cases, that a maker of the document must tender same, and this one of such instances.

Exhibit 24 also reveals that both the 1st Claimant and the Defendant's alleged predecessor in title, Abiodun Oimage, applied for regularization of their titles at AGIS. Evidences tendered by both parties (exhibits 2 and 17) also reveals that both the 1st Claimant and AbiodunOimage obtained Offers of Terms of Grant/Conveyance Approval from the same Abuja Municipal Area Council on the same date, that is 16th August,2006.

Anyways, the law is settled that all land in the Federal Capital Territory vests absolutely in the Government of the Federation, and only statutory right of occupancy can be issued in the Federal Capital Territory, being an urban area. The implication of this is that it is only the Minister of the FCT acting pursuant to Section 302 of the Constitution and Section 13 and 18 of the FCT Act that can validly allocate land in the Federal Capital Territory. See **MADU VS MADU (2008) 6 NWLR (PT.1083) PG 296. LAWSON VS AFANI CONSTR. CO. LTD (2002) 2 NWLR PT.752 PG 585 at 592.**

Exhibits 2 and 17 are on the letter head of the Abuja Municipal Area Council. The two documents shows on their face they conveyed the Hon. Minister's approval, but there is no evidence to show that they were issued by the Minister or the person who signed them was a

staff of the Federal Capital Territory and he has signed the said Exhibits on behalf of the Minister. It is my view that the Exhibits 2 and 17 do not qualify as documents conferring title. See **YUGUDA VS NYIMNYA (2017) LPELR-43008 CA**. In view of all the above, I do not agree that either parties were the rightful allottee, notwithstanding the issue of allocations from Abuja Municipal Area Council.

Having resolved that exhibits 2 and 17 did not confer any valid title on the holders thereof, the court is now left with the option of looking at other modes of proving title to enable it arrive at a just determination of who is better qualified for the court's declaration of title to land.

In this case, both parties are claiming title or ownership to the same plot of land.

The law is clear that where parties make conflicting claims to possession of the same land, the law ascribes possession to the party who can prove better title to the land in dispute. This was aptly stated by the Supreme Court, per IGUH, J.S.C in **PROVOST, LACOED V. EDUN (2004) 6 NWLR (PT 870) 476**

The law is that in the event of conflicting claims to title or ownership to a piece of land and where each of the opposing parties is able to establish proof of ownership by any of the acceptable methods of proof of title to or ownership of the said piece of land, then the party that establishes better title will be entitled to the judgment of the Court. See the case of **OGAH & ANOR V**

GIDADO & ORS (2013) LPELR -20298 (CA)
where this Court held that:

"The law is equally well settled that, in a situation of conflicting claims, where each of the opposing parties can establish proof of ownership by any of the acceptable methods of proof of title to or ownership of the same piece or parcel of land, then the party that establishes better title will be entitled to the judgment of the Court."

SEE ALSO FASORO V BEYIOKU (1988) 2 NWLR (PT.76) 263; OYENEYIN VS.AKINKUGBE (2010) 4 NWLR (PT. 1184) 265; AROMIRE VS.AWOYEMI (1972) 7 ALL NLR at 10

Exhibit 3 which was tendered by the Claimant, and exhibit 19 which was tendered by the Defendant, are both instruments of transfer of interest in land, which ought to have been registered, but were not. They are therefore inadmissible.

However from evidences tendered by the Defendant, especially evidence of transfer of the sum of N3,000,000.00 from the Defendant to the 2nd Claimant, the text message from the 2nd Claimant (exhibit 13) confirming that the sum paid was part payment for the plot, et al, I am persuaded to hold on the basis of preponderance of evidence that the Defendant based on money I had and recived and the principles of prima facie ----- property.

Moreover, the Defendant has exercised sufficient acts of possession over time, by building and living on the plot.

As a logical consequence, the Claimants claim hereby fails, and the Defendant's counter claim succeeds.

Judgment is hereby entered in favour of Defendant as follows:-

1. A Declaration is hereby made recognizing the Defendant/Counter Claimant as the Beneficial Owner of the property known as Plot CRD213 Cadastral Zone, Lugbe 1 Extension, having made a part payment of N3,000,000.00 (Three Million Naira) to the 2nd Plaintiff/Respondent thereof with an agreement to pay the balance on a future date.
2. An Order is hereby made Estopping the 2nd Plaintiff/Respondent from conveying the said piece of land to a third party other than the Defendant/Counter Claimant
3. The Defendant is hereby ordered to pay the balance of N2, 000,000. 00 to the 2nd Claimant within 14 days from the date of this judgment, and upon receipt of the said sum, both parties must execute a valid instrument of transfer in favour of the Defendant which must be registered and recognized by the Federal Capital Territory Administration.

I must also add in this judgment that the heydays of technicality are over. The Courts have shifted from undue reliance on technicality to doing sustainable justice even handedly to the parties see the case ***ABUBAKAR VS YAR ADUA(2008) 4 NWLR P.276***

**HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE**

Chuka Egbo :- Holding the brief of Dr. Chidi Nwankwo
for the Claimant

Ezenwa Okoli :- A.D Aliyu and chi--- nb--- for the
Defendant counter claimant