

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT COURT 45 SITTING IN WUSE ZONE2, ABUJA**

**BEFORE HIS LORDSHIP: THE HON. JUSTICE ELEOJO ENENCHE**

**THIS 24<sup>th</sup> DAY OF JANUARY 2023**

**FCT/HC/CV/2412/22**

**ALHAJI SHEHU RUMA**

**(Suing through his lawful Attorney Urban Villas**

**Ltd).....APPLICANT**

**AND**

**1. HON. MIN OF F.C.T**

**2. FED. CAP. DEV. AUTHORITY ..... RESPONDENTS**

**JUDGEMENT**

By an Originating summons dated 20<sup>th</sup> August 2022, brought pursuant to Order 44 Rule 3, (1) AND (2) of the High Court of the Federal Capital Territory, Civil Procedure Rules 2018, the Applicant sought the following relief;

1. A Declaration that the refusal of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to approve and honour the Applicant's application dated 7<sup>th</sup> November 2019 for Certified True Copy of its Right of Occupancy with file number: MISC78964, Plot No. 497 situate at Cadastral Zone AO4, Asokoro District, Abuja is wrongful and gross violation of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' official public duty.
2. AN ORDER of mandamus mandating and/or compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents forthwith to approve and issue a Certified True Copy of Right of Occupancy with file No: MISC78964, Plot No. 497 situate at Cadastral Zone AO4 Asokoro District, Abuja to the Applicant upon payment of the requisite fees.
3. The OMNIBUS PRAYER

The grounds upon which this application is being sought, as contained on the face of the application are:

1. The Applicant on the 1st of December 1982 was allocated Plot 479 with file NO;MISC78964 measuring about 1692.075sqm at Cadastral Zone A04, Asokoro District, Abuja vide offer of grant/conveyance of approval by the 1<sup>st</sup> Respondent in this suit.
2. That the Applicant accepted the offer and fully developed the property and was in actual and physical occupation of the property.
3. That the Applicant subsequently transferred his unexpired residue of years to Urban Villas Ltd, the Attorney in the instant suit, vide the Power of Attorney dated 1<sup>st</sup> March, 1996.

4. That the Applicant upon receipt of the consideration which he acknowledged handed over all the original title documents to the attorney.
5. The Attorney has been exercising possessory rights over the property ever since.
6. The Attorney lost all his original documents alongside other valuable documents on 15<sup>th</sup> October 2019 and all efforts made to trace the missing documents proved abortive.
7. That the Attorney made publication for certified true copy to the department of the 2<sup>nd</sup> Respondent, Abuja Geographical Information system (AGIS) on the 7<sup>th</sup> of November 2019 and same was acknowledged.
8. The Attorney has made several visits and follow up on her application for CTC but all to no avail.
9. That the Respondent will not be prejudiced by the grant of this Application.

Supporting the application as well is a 27 paragraphed affidavit deposed to by Ebere Rufus Dike to which the following exhibits were attached;

1. Certificate of Incorporation of Urban Villas Limited – Exhibit “A”.
2. Letter of Offer and Power of Attorney – Exhibits “A1” and “A2” respectively.
3. Extract from Police Station diary dated 16<sup>th</sup> November 2019- Exhibit “B”.
4. Affidavit of loss of land documents -Exhibit “C”.

5. Publication of the loss in 3 national dailies, Exhibits “D1”, “D2” and “D3” respectively.
6. Letter applying for CTC of the lost title documents- Exhibit “E”

The Applicant relies on the statement which contains the name and description of the Applicant, the reliefs sought and the grounds.

I have considered the written address of Learned Counsel in which a sole issue was argued i.e. *“whether considering the facts and circumstances of this case is the proper case for the grant of this application?” (Sic)*

The position of the law is that the Court has discretion to grant or refuse an application for mandamus. This discretion however must be exercised judiciously and judicially in which case the Applicant must however satisfy the following conditions:

1. There must be an imperative public duty and not a discretionary power to act.
2. The Applicant must have requested for the performance of the duty.
3. That the duty must have been refused.
4. The Applicant must have a substantial personal interest in the performance of the duty concerned.
5. The Court to which the application for mandamus is made must itself have jurisdiction to grant it.

See *ATTA Vs COP (2003) 17 NWLR (PT.849) 250 C.A* and *WEMABOD ESTATES LTD Vs JOYLAND LTD (2001) 18 NWLR (PT 744)* .

A mandamus lies to secure the performance of a public duty in the performance of which the Applicant has sufficient legal interest. It gives a command that a duty or function of a public nature, which normally though not necessarily, is imposed by statute but is neglected or refused to be done after due command be done. See **FAWEHINMI Vs IGP (2002) 5SC 63 AT 74.**

For a proper case to be shown, essential ingredients forming the background to the facts and circumstance imposing the public duty upon a person alleged to have failed to perform that duty must be supported by evidence. It is only after there has been a demand to perform a public duty and a refusal to perform the duty that the right to seek an order of mandamus arises. See **BISIMILLAHI Vs YAGBA EAST LOCAL GOVERNMENT (2002) 8 WRN 167 AT 199 – 200.**

The core of the Applicant's complaint is contained in paragraph 16, 17, 18,19, 20,21 and 22 of the Affidavit in Support and I quote verbatim;

***“(16) that the attorney made an application for certified true copy of its title documents to the department of the 2<sup>nd</sup> Respondent. The said application letter dated 7<sup>th</sup> November, 2019 is attached hereto and marked as Exhibit “E”.*”**

***“(17) That the Attorney has made several visits and follow up on his application for the said CTC but to no avail. The last follow up was on the 15<sup>th</sup> day of July 2022.”***

*(18) That the attorney is ever ready and willing to pay the requisite fee for the CTC to the 2<sup>nd</sup> Respondent upon the approval of its application.*

*“(19) that the attorney’s application to the 2<sup>nd</sup> Respondent is made as the 2<sup>nd</sup> Respondent has the official responsibility to issue CTC of title documents.”*

*(20) That the 2<sup>nd</sup> Respondent has no discretion to refuse to honour the Applicant’s application when made in good faith.*

*(21) That the 2<sup>nd</sup> Respondent has not adduced any reason for the refusal to grant its application.”*

It is trite to note at this point that this application is undefended as Respondents did not file any process or counter/reply to Applicant’s processes even though both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were served with the processes of this Court which was evidenced by the proof of service in my records. The law is clear that where averments in an Applicant’s affidavit reinforced by the supporting exhibits thereto remain unchallenged, undenied or uncontroverted, the averments are deemed admitted. See *LAQEICOM COM LTD Vs UNION BANK LTD&5ORS (1996)4NWLR (PT.441)185.* My interpretation to the act of the Respondents not filing a counter affidavit is that they have no objection to the grant of the Order herein sought. Consequently, I am left to extract evidence from Applicant’s affidavit in my determination of whether this application meets the blessings of this court.

I find from the affidavit that the Applicant did make an application for certified true copy of its title documents to the department of the 2<sup>nd</sup> Respondent in which he noted that he is also ready to pay the requisite fee for the Certified True Copy to the 2<sup>nd</sup> Respondent upon the approval of his application.

I am also inclined to agree that the Applicant has duly satisfied the requirements expected of him by law in order to be entitled to a copy of the Certified True Copy of his title documents, having lodged a “lost document” complaint at the Nigerian Police Command Zone 7, Wuse Zone 3 where he was issued a police extract herein annexed and marked *Exh B*, deposed to an Affidavit of loss of title document at the High Court of the Federal Capital Territory Abuja, herein annexed and marked *Exh C*, made publications in three National dailies in respect to the loss of the title documents, same annexed and marked *Exh D1, D2 and D3* respectively.

In the circumstance of this case, I resolve the sole issue raised in favour of the Applicant as he has evidenced sufficiently to enable the Court grant the Order of mandamus. Hence, the Applicant is entitled to the issuance of the said Certified True Copy of the lost title documents and I SO HOLD.

In totality, the application accordingly succeeds and **AN ORDER** of mandamus is hereby made mandating the 1<sup>st</sup> and 2<sup>nd</sup> Respondents forthwith to approve and issue a Certified True Copy of Right of Occupancy with file number: **MISC78964, Plot No. 497 situate at Cadastral Zone A04, Asokoro District, Abuja** to the Applicant upon payment of the requisite fees.

I also hold that the refusal of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to approve and honour the Applicant's application dated 7<sup>th</sup> November 2019 for Certified True Copy of its Right of Occupancy with file number: MISC78964, Plot No. 497 situate at Cadastral Zone AO4, Asokoro District, Abuja is wrongful and a gross violation of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' official public duty.

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EleojoEnenche  
24/01/2023  
Judge

**COUNSEL**

**FOR APPLICANT: Ettah Effiom**