

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: 15th May, 2023

BETWEEN:

FCT/HC/CV/57/2021

CHIEF DOMINIC ANIGBO-----

PLAINTIFF

AND

INYAGA ABUTU SUNDAY-----

DEFENDANT

JUDGMENT

By an amended writ of summons filed on 11th January, 2021, the Claimant herein sought the following reliefs against the Defendant:-

1. A Declaration that the Claimant is the bonafide beneficial owner of plot no. 535 in phase AA1 Ext. Layout Kuje, FCT, measuring 1200m² and therefore entitled to statutory certificate of occupancy.
2. A declaration that the unauthorized entry, occupation and use of the Claimant's beneficial property at Plot No. 535 in phase AA1 Ext. Layout Kuje, FCT, by the defendant, his agent, assigns, privies, etc without the consent of the Claimant amounts to actionable trespass in law.
3. AN order of perpetual injunction restraining the Defendant, his agents, privies, servants or any other persons acting for him or on his behalf from committing

further trespass on Plot No. 535 in Phase AA1 Ext. Layout, Kuje, FCT, Abuja.

4. The sum of N5,000,000.00 (Five Million Naira) only, being general damages against the Defendant for trespass on the said plot no. 535 in Phase AA1 Ext. Layout, Kuje, FCT.

The case of the Claimant is that he bought plot No. 535 Phase AA1 Ext. Layout, Kuje, FCT measuring 1200m² from Mr. Saliwu Tanko of Angwangwari Kaduna, the original allottee at a price of ₦1, 300,000.00 (One Million Three Hundred Thousand Naira), in 2012, and that the vendor handed over all the original title documents to him. The claimant proceeded to submit all the title documents to the Lands Department of the FCT for recertification, and also erected a perimeter fence and a security house on the land.

However, sometime in April, the Claimant noticed a trespass on the land and upon inquiry, was told that the said trespass was caused by one Mr. Samson Omale, who has now been substituted with the Defendant. The Claimant further alleged that the land document which the Defendant claims to hold is irregular and could not have been issued by the Kuje Area Council at that time.

On the part of the Defendant, he claims that he bought the said plot through the agents of the 1st Allottee Mr. Tajudeen O. Raji, in 2021, for the sum of ₦6, 500,000.00, after carrying out verification both at the Kuje Area Council and the Federal Capital Development Authority, and that verification revealed that the original allottee was Tajudeen Olasunkami Raji, and that the certificate of occupancy given to him by the vendor corresponded

with the duplicate copies found at the Kuje Area Council. The Defendant further states that upon purchase of the said land, all the original title documents were handed over to him. The Defendant denied the Claimant's claim of having erected a fence and a security house, stating that there was no structure on the land other than a big mango tree at the center of the plot.

The Defendant also pleaded that the documents peddled by the Claimant were fraudulently manufactured to mislead the court.

On 24th January, 2022, the Claimant opened its case. On that day PW1, Chief Dominic Anigbo, adopted his witness statement on oath and tendered the following documents:

1. Sales agreement between Mr. Saliwu Tanko and Chief Dominic Anigbo- Exh. 1
2. Conveyance of Approval dated 17th November, 1992 with survey plan- Exh. 2
3. Receipts bearing Saliwu Tank – Exh. 3
4. Certificate of Regularization of land title and document dated 7th April, 2016 – Exh. 4
5. Five (5) receipts – Exh. 5

He was accordingly cross examined, and during cross examination, he stated the fact that apart from the hand written sales agreement, he had no power of attorney and deed of assignment over the land, and that he has not process the land to his name.

Another witness, PW2, who identified himself as Abdul Mustapha Aliyu, the traditional rulers of the igbo's in Kuje, Abuja, gave evidence that he knows the Claimant and that the Claimant made a report at the

Gomo's palace, Kuje, on the alleged trespass to his land, and that the representative of the Defendant Samson Omale was invited, but he did not show up to prove his title.

Under cross examination, PW2 admitted that Mr. Samson Omale had paid compensation to the palace in respect of economic trees on the land, and that there was a written acknowledgment to that effect. Under the heat of cross examination, PW2 also revealed that the witness statement on oath before the court was not signed by him.

On 11th May, 2022, the Defendant opened its defence and called DW1, Samson Omale, who adopted his witness statement on oath and tendered the follow documents:

1. CTC of the Conveyance of Approval dated 6th August,1998 –Ex. DW1
2. Right of Occupancy –Ex. DW1A
3. Acknowledgement of Receipt- Ex. DW2
4. Regularization of Land Title documents – DW3
5. Irrevocable Power of Attorney dated 29th March,2021 – Ex. DW4
6. Deed of Assignment dated 29th March,2021 – Ex. DW4

DW1 was accordingly cross examined.

Another witness, DW2, Ahmed Mohammed Dabban, a subpoenaed witness, testified on 10th November, 2022. He stated that the two documents, that is, the allocation of Tajudeen Raji and the allocation of Salawu Tanko, were presented to the Area Council Kuje, FCT, and that the results of the verification was that Tajudeen Raji's document were properly

documented and could be verified from the database in the Area Council which was forwarded to AGIS, while that of Salawu Tanko could not be verified.

The subpoenaed witness was examined by the Claimant's counsel.

Counsel to the Defendant, in his final written address, raised two issues, to wit:-

1. Whether in the light of evidence before the court, the Claimant has successfully established his case as to warrant a declaration of title.
2. Whether the evidence adduced so far by the Defendant, could lead to a dismissal of the suit before the court.

On issue 1, counsel submitted on behalf of the Defendant that the Plaintiff in an action for declaration of title to land is required to satisfy the court by credible evidence, of his right to the declaration he claims. ***KOLO V. LAWAN 74 April-June 2018, (Pt. 1) NSCQR p.121-130***

Counsel maintained that the Claimant has failed completely to prove or satisfy the court with any credible evidence as to convince same granting a declaration of title in his favour. Counsel further attacked the documents tendered by the Claimant. Counsel noted that the Survey Data/Plan tendered by the Claimant was not charted at the Area Council neither was it signed by a registered or a licensed surveyor. Exhibit 1 was not certified, and the sales agreement purportedly transferring ownership to the Claimant was not dated and is equally altered on the face of it, and falls below the requirements under section 15 of the Land Instruments Registration Law.

Counsel argued that the Claimant's writ was defective and non-compliant with form 1 of the High Court's Civil Procedure Rules 2018.

On issue 2, Counsel argued that the Defendant through DW1 and DW2 has tendered sufficient evidence in proof of their title, however, the Claimant has not brought any witness to convince the court that Salawu Tanko exists or even sold the purported plot to him.

Learned counsel to the Claimant, raised and addressed four issues in his written address to wit:-

1. Whether the Claimant has proved or established his Right to title over the property in dispute.
2. Whether the Claimant has established the root of his title
3. Whether the Claimant on preponderance of evidence had established standard of proof.
4. Whether the Claimant is entitled to the reliefs and prayers sort before the court.

The summary of the Claimant's submissions on these issues is that having produced all the documents over the land, the Claimant has established his right to title over the land and the root of his title.

The Claimant argued that he has clearly pleaded the groundwork of how the land came into his possession, by not just tendering the land documents of the original allottee, but also tendered the handwritten document which established the transaction, and thus had proved his title.

Having carefully analyzed the pleadings, evidence and arguments of parties in this suit, I am of the opinion that a

single issue will sufficiently address the dispute between parties in this suit. I will borrow the first issue raised by the Defendant in determining this suit:

Whether in the light of evidence before the court, the Claimant has successfully established his case as to warrant a declaration of title.

In an action for declaration of title to land, it is the plaintiff's first duty to prove the area over which he claims with certainty and precision. See *Baruwa v. Ogunsola* (1938) 4 WACA 159 and *Udeze v. Chidebe* (1990) 1 NWLR (Pt.125) 141.

In the case of *Regd. Trustees of the APOSTOLIC FAITH MISSION V JAMES (1987) LPELR-2946(SC) 35-36, E-A*, the Supreme Court per Oputa, JSC held as follows –

**"Since the only issue in this case is - as between the Plaintiffs and the Defendants, who has a better title? - it is necessary to investigate the parties respective roots of title. In any event, since the Plaintiffs claimed damages for trespass and perpetual injunction, they have put their title in issue for their claim to postulate that they are either the owners of the land in dispute or that before the trespass complained of, they were in exclusive possession of the land. The onus of proof was also definitely on the Plaintiffs."
(Emphasis supplied)**

Similarly, in the instant case, the Claimant by seeking for a declaration of title, he is obliged to prove his title to the land. Indeed, one of the recognized ways of proof of title is by the production of documents of title or a valid instrument of grant.

It is however instructive to note that the production and reliance upon such a document of title or instrument of grant inevitably carries with it the need for the Court to inquire into some or all of a number of questions, including: i. Whether the document is genuine and valid; ii. Whether it has been duly executed, stamped and registered; iii. Whether the grantor had the authority and capacity to make the grant; and iv. Whether it has the effect claimed by the holder of the document or instrument. See **Romaine V Romaine (1992) LPELR-2953(SC) 15-16, E-B, per Nnaemeka-Agu, JSC; Nwadike V Ibekwe (1987) 4 NWLR (Pt. 67) 718.**

So, 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. The court must be still inquire as to its validity.

Furthermore, where questions of title to land arise in litigation, the Court is concerned only with the relative strength, of the title proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land- **Oceana Estates Ltd. v. Norman Pinder (1969) 2 AC 19 at 24-25.**

Both parties in this suit have tendered different documents of title in a bid to establish their adverse claim over the land in dispute.

In this case, the contending parties rest their claim on a grant from different persons and different customary rights

of occupancy issued to their predecessors in title at different times.

Well, there is no situation in law without a solution. The law goes further to proffer a solution in the face of a conflicting claim as in this case at hand. Thus, title will repose with that party who establishes a better title. See **IDOWU & ORS V. THE REGISTERED TRUSTEE OF ONA IWA MIMOCHERUBIM & SERAPHIM CHURCH OF NIGERIA (2012) LPELR 7863 (CA)** where it was stated: "When the issue as to which of two claimants has better right to a piece of land in dispute, the law will ascribe such possession and/or occupation to the person who proves a better title" see **FASORO V. BEYIOKU (1988) 2 NWLR (PT. 76) 263; ONYENEYIN V. AKINKUGBE (2010) 4 NWLR (PT. 1184) 265; AFROMIRE V. AWOYEMIN (1972) 1 ALL NLR 1 @ 10**

I have perused the documents tendered by both parties in line with what is expected of the court when a document is being tendered in proof of title to a land.

Now, the claimant in this case tendered several documents ranging from a written sales agreement to a conveyance of Customary Right of occupancy dated 17th November, 1992, as well as some receipts of payment made to the FCDA as ground rents.

These documents, though they may appear convincing on the face of it, are however questionable, especially as regards its validity and registration.

Apart from tendering these documents in court, the Claimant could not establish their validity and registration at the relevant land registry at that time.

The testimony of the subpoenaed witness, DW2, a staff of Kuje Area Council, further weakened the Claimant's case, as only the documents tendered by the Defendant could be verified as registered title documents by the Kuje Area Council.

The Claimant cannot in the eyes of the law be deemed to be purchaser for value against the registered and subsisting interest of the Defendant. **See ATTORNEY GENERAL OF THE FEDERATION VS. C. O. SODE (1990) 1 NWLR (Pt 128) 500; OLORI MOTORS CO. LTD & ORS VS. UNION BANK OF NIGERIA (PLC) (2006) 10 NWLR (Pt.989) 586; ENKWE VS. IMB (NIG) LTD (2006) 19 NWLR (PT. 1013) 146.**

The fact of registration of the Defendant progenitor's title through whom he claim, confers protection to the Defendant. In **ONAGURUWA VS. AKINREMI (2001) 13 NWLR (Pt 724) page 38** it was held that once title is registered under the registration of titles law, no version of history will be used to upset the registered title as its past history has become irrelevant as the register is at all times the final authority and the state accepts responsibility for the validity of transactions which are effected by making an entry in the register.

The Exhibit DW1, so long as it is a registered conveyance of an identifiable portion of land to the progenitor of the Defendant, I hold that the right of the Defendant to plot no. 535 in phase AA1 Ext. Layout Kuje, FCT, is protected as a title in law, superior to all other claims against same.

I am afraid learned counsel to the Claimant is with due respect wrong in his contention that production of title documents without more suffices in every circumstance

including this one. The contention of learned counsel will be correct only where the title of such grantors or vendors is not made an issue in the case. Once a claimant's vendor's title is put in issue, he must, to succeed, first prove his said vendor's title as he cannot get a better title than that of his vendor. That is an application, so to speak, of the trite position that one cannot give what one does not have, otherwise expressed as *nemo dat quod non habet* in Latin. See **DOSUNMU V. JOTO (1987) 2 NSCC 1182 @ 1193, (1987) 4 NWLR (PT 65) 197, (1987) LPELR-961 (SC) P.27 – 28; FASORO V. BEYIOKU (1988) 2 NWLR (PT 76) 263 @ 271, (1988) LPELR-1259 (S.C) P.16-17**

The title of the defendant in this case is highly probable, as he has, through registered title documents and through the oral testimony of DW2, proven a better title than that of the Claimant. As a result, the Claimant's claim for title and compensation for trespass must fail.

The Claimant's suit is hereby dismissed. Parties shall bear their individual costs.

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

Appearance

Linus Bassey :- For the Defendant.