

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: 7TH JUNE, 2023

BETWEEN

FCT/HC/CV/1505/2021

LEISURE COURT LIMITED-----

CLAIMANT

AND

UNKNOWN PERSONS-----

DEFENDANT

JUDGMENT

By virtue of an amended statement of claim filed on 28th July, 2022, the Claimant sought the reliefs as contained therein.

The Claimant's case is that they acquired the legal and equitable interests and rights over the several plots of lands as listed in the will and statement of claim from one company known as Fran Es Ventures Ltd. The beneficial owner sometime in October 2017 and the above-referred company acquired theirs from the original allottees of the said plots of land. The claimant averred that since they were vested with title to the said plots of land they have enjoyed peaceful possession of the said plots of land and have never at any point alienated, leased, or rented the said plots of land to anyone else. However, sometime in June 2021, the Claimant visited the said plots of land to inspect it and was met by agents of the Defendants and some unknown persons on the said Plot who were working/trespassing on the above-mentioned Plots.

In the course of proceedings, the Claimant called two (2) witnesses (PW1 and PW2) who testified to witnessing the trespass done by the defendants on the above-mentioned plots of land belonging to the Claimant. The Claimant tendered various documents in evidence which include:-

- a. Deed of Assignment and Power of Attorney between Frank EB Ventures and the Claimant [Exhibit 1)
- b. Letter of Instruction (Exhibit 2)
- c. Letter of Acceptance (Exhibit 3)
- d. Offer of the Terms of Grant/Conveyance of Approval on the respective plots of land (Exhibit 4 (1-37))

The Defendants failed to appear or file any processes in this suit before this Honourable Court Since the inception of this case, the Defendants never appeared before this Honourable Court nor did they defend this suit. On the 2nd of March 2023, the Defendants were foreclosed from cross examining PW1 and on the 9th of March 2023, they were foreclosed from examining PW2 and on the 27th of March, 2023, they were also foreclosed from defending this suit and the court ordered parties to file their final written address.

In the Claimants final written address filed on 30th March, 2023, the Claimant raised two issues for determination to wit:-

1. Whether the Claimant has established his claim based on the preponderance of evidence in order to be entitled to the reliefs sought in the statement of claim.
2. Whether the court can rely on the sole evidence and tacts placed before the court by the
Claimant in granting the Claimant's reliefs

On issuel, Counsel argued on behalf of the Claimant that the Claimant though her witnesses had testified to how the said plots of land were acquired which was properly sold and transferred to the Claimant Citing the case of Ministry of Land and Survey **NASARAWA**

STATE NWAFOR & ORS (20211 LPER 56254 (CA)), Counsel submitted that a person in possession of title documents has a rebuttable title and the burden lies on any person who alleges otherwise to rebut same.

Counsel also reasoned that trespass being actionable per se, damages should be awarded against the Defendant in favour of the Claimant.

On issue 2, Counsel submitted that the Claimant has placed substantial and cogent evidence before the court to entitle them to all their claims, more so as the Defendant has no defence to the Claimant's claims. He therefore urged the Court to grant all the Claimant's claims.

The law is well settled that it is for the plaintiff to succeed on the strength of his case by adducing evidence and not to rely on the weakness of the defence. though at times the weakness of the Defendants case tends to strengthen the Plaintiffs. The authorities of **S. KODILINYE V. ODU (1935) 2 WACA 336 AND PIERO V TENALA (1976) 12 SC 31** are both in point, as well as that of **AKUNWALA NWAGBOGU V. CHIEF M.D. (BEZIAKO [1972] Vol. 2 (Pt 1) ECLSR 335 at 336a** Supreme Court decision. Also, the provisions of the Evidence Act per Sections **136** and **137** are relevant in stating on whom the burden of proof lies as well as the party who has the burden of proof in civil cases.

The sections reproduced state:

"**136** The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. **137(1)** In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. "

(2) If such party adduces evidence which ought reasonably to satisfy a jury that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively until all the issues in the pleadings have been dealt with."

In the matter under consideration, the plaintiff is claiming the ownership of the over and above the Defendants. In the absence of any counter/defence by the Defendants, the Plaintiff had the burden to produce evidence in order to succeed. It is mandatory for the Plaintiff in the spirit of section 136 supra to produce some sort of evidence or else the total absence of which would lead to failure especially where they are the initiators. By the interpretation of section 137 (2) supra, it is not enough that the Plaintiffs adduce evidence, but that " which ought reasonably to satisfy a jury that the fact sought to be proved is established." Thus, there is a need for credible, cogent, reliable, and convincing evidence.

For purpose of emphasis, it is settled law that in an action for declaration of title to land, just like in all declaratory actions, the burden lies throughout on the Plaintiff to adduced sufficient and credible evidence that will satisfy the Court that he is entitled to the relief sought. Therefore, declaratory reliefs are not granted in the absence of credible evidence from Plaintiff, or because Defendant had made admissions or failed to lead evidence. It also means that a Plaintiff in an action for declaration of title to land is required, in proving his title to the land in dispute, to rely on the strength of the evidence he adduced. Such a Plaintiff in an action for declaration of title to land is required, in proving his title to the land in dispute, to rely on the strength of the evidence he adduced. Such a Plaintiff may, however, benefit from that aspect of the Defendant's case that supports his claim. See **ANTHONY OSUJI V. OGBONNA OSUJI LOMP ANOR (2014) LPELR 23769 (CA): CHIEF LK AJIBARE BAMP: ANOR V.**

JAMES AKOMOLATE KAMP: ANOR (2011) LPELR 3945 (CA): JOHNSON OFIGO V. GILBERT EZEIKE (2019) LPELR-46953 (CA): OWHONDA V. EKPECHI (2003) 17 NWLR (P1.847) 326 AND LOS V. OMO-BARE (1982) All N.L.R.75 Thus in the case of AKINDURO V. ALAYA (2007) 15 NWLR (pt.1057) 312. AderemiJSC hold as follows:

It is trite law that a Plaintiff who claims declaration of title to land has a compelling duty to establish his case by credible evidence to the satisfaction of the Court: the weakness of the case for the defendant will not avail him unless it is seen that there are averments in the statement of defence or even the testimonies of the defendant and/or his witnesses which support the case of the plaintiff...."

It therefore follows that, in determining the claim, the trial Court must start by considering the evidence led by the plaintiff to see whether the plaintiff has led evidence that is satisfactory. If the evidence adduced by the plaintiff is unsatisfactory, then he has not made out a prima facie case, in which case, the trial Court does not have to consider the case of the defendant at all. See **SANUSI V. AMEYOGUN (1992) 4 NWLR (PT.237) 527 at 547: DURU V. NWOSU (1989) NWLR (PT.113) 24. OYEFESO V. COKER (1999) 1 NWLR (PT.588) 654 at 660 AND AGU V. NNADI (1999) 2 NWLR (PT.589) 131 at 142.**

In an action for declaration of title to land, where the defendant has not Counter-claimed, the only duty of the trial Judge is to ascertain from the evidence adduced by the plaintiff, whether the claimant has discharged the onus of proof on him so as to entitle him to the declaration sought. Thus, where the Court finds from the totality of the evidence adduced by the Plaintiff, that the Claimant has prima facie proved his title and in the absence of rebuttal evidence from the defendant title will be declared for the Plaintiff. In the instant case, the claimant has led evidence to establish a prima facie ownership of the several plots of land in issue,

There is also evidence of alleged encroachment on the land by unknown persons.

In the absence of any defence/counter-claim, I am convinced that the Claimant has sufficiently established her title to the said plots. Consequently, reliefs A to D, as contained in the Statement of Claim are hereby granted in favour of the Claimant.

Reliefs E and F are refused, as the identity of the trespassers is unknown. Such an order would be in vain and Courts of law neither act in vain nor make orders or grant reliefs which cannot be enforced, in vain, See **C.C.8. PLC V. OKPALA (1997) 8 NWLR (518) 673; NWORA V. NWABUEZE (2011) 17 NWLR (1277) 699; NACB V. ACHOGYVA (2010) 11 NWLR (1205) 339. P.P.A. V. L.N.E.C. (2012) 13 NWLR (1317) 215.**

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

Appearance

Gbenga A. Ashaolu:-

For the Claimant appearing with
Fatima A. Shehu for the Claimant