

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI – YUSUF
DELIVERED THE 18TH SEPTEMBER, 2023

SUIT NO. CT/HC/CV/1286/2020

BETWEEN

ADEGBITE ISAAC ADENIYI

HADIZA MUSA CLAIMANTS

AND

ALIYU ISHAQ LOLO DEFENDANT

JUDGMENT

The claimants commenced this suit vide a writ of summons filed on 3rd March, 2020. They claim against the defendant as follows:

A) A declaration that the 2nd claimant is the first allottee/original holder of all interest in Plot CRD 808, Lugbe 1 Layout, Abuja, measuring approximately 750m²

b) A declaration that the 1st claimant is the 2nd claimant's lawful and sole successor in title as regards the unexpired interests over Plot CRD 808, Lugbe 1 Layout, Abuja, measuring approximately 750m²

c) A declaration that the 1st claimant is the current allottee/holder of all interest in and, or the person having

the right of possession over Plot No: CRD 808, Lugbe 1 Layout, Abuja, measuring approximately 750m²

d) A declaration that the defendant's claim of ownership over and, or purported allocation of Plot No: CRD 808, Lugbe 1 Layout, Abuja, to the defendant or his purported predecessor in title by the Abuja Municipal Area Council (AMAC) is wrongful, ultra vires, null and void.

e) A declaration that the entry into, excavation of land, erection of internal partition and other negative acts of the defendant on the is claimants' property, being Plot CRD 808, Lugbe 1 Layout, Abuja, without the 15 claimant's consent or lawful authority constitute trespass.

f) An order of continuous and exclusive possession of Plot No: CRD 808, Lugbe 1 Layout, Lugbe, Abuja, by the 1st claimant as against the defendant.

g) An order of perpetual injunction restraining the defendant, either by himself, his heirs, assigns, privies, agents and or anybody howsoever claiming through him from further trespassing by way of entering, building, alienating, selling, constructing anything upon, or in any manner whatsoever, interfering with the is claimant's right of possession over Plot CRD 808, Lugbe 1 Layout, Abuja.

h) An order directing the defendant to pay the sum of Three Million Naira (N3,000,000) only, to the 1st claimant as general damages for the unlawful trespass committed by the defendant on the 1st claimant's afore mentioned property.

1)Such further or other order(s) as the Honourable court may deem fit to make in the circumstances.

The defendant/counterclaimant (now referred to as the counterclaimant) filed separately, a statement of defence on 25/6/2020 and an amended counterclaim on 23/2/22. Pursuant to the Order of this Hon. Court, made on 11/5/2022, the amended counterclaim, defendant/counter claimant witness statement of oath, list of documents and witness were deemed properly filed and served on the claimant. Also, on the 13/5/2022, the claimants' filed an amended claimants' reply to statement of defence and defence to counter claim.

The 1st claimant testified for himself and subpoenaed a witness. The claimant opened his case on the 28/01/2021, he testified as Pw1. He adopted his witness statements on oath of 3rd March, 2020 and 10th November, 2020. The evidence of the pw1 as can be gleaned from the record is that he has the consent of the 2nd claimant to testify in court; that by virtue of exhibit B a parcel of land known as plot No: CRD 808 of about 750m² at Lugbe 1 layout, Abuja (now referred to as the subject matter) was allocated to Hadiza Musa, the 2nd claimant by Abuja Municipal Area Council (AMAC); that sometime in March, 2001 the 2nd claimant sold the subject matter to him vide exhibit C, wherein he took possession and constructed a fence round the subject matter; that he planted annual crops on the plot without let or hindrance; that in 2016, he dropped some loads of sands and chippings on the subject matter; that in 2005, he paid for and processed the change of ownership of the subject matter from the 2nd claimant's name to his own name. He tendered exhibits D1 & D2 to buttress his assertion. He continued that after he did the change of ownership, the original allocation letter, exhibit D was collected from him at the AMAC; that exhibit A was subsequently issued in his name; that exhibit F, the survey plan was charted in his name. The Pw1 stated that he paid for and recertified his title

document over the subject matter as required by the Federal Capital Territory Administration. He relied on exhibits G & G1 to support his assertions.

Testifying further, he asserts that he continued to enjoy undisturbed possession of the subject matter, until sometimes in August, 2019 when the defendant suddenly trespassed on the subject matter and started constructing internal partitions on the subject matter; that in August, 2019 the defendant brought the staff of the Development Control to the subject matter to mark it, on the allegation that the subject belongs to him; that again, on 2nd September, 2019 the defendant brought the Development Control Staff led by one Orji- Victor Ann to the subject matter and left a Quit Notice on the fence for him. He states in evidence that he wrote an official letter to the Development Control Department on 4th September, 2019, wherein he attached his title documents for necessary verification; that on 17th September, 2019 the defendant brought a bull dozer to demolish the fence and iron gate that was installed by him; that as a result of the demolition, he wrote another letter to the Department of Development Control. He relied on exhibits E1 & E2 to buttress his facts; that in August, 2019 the defendant caused the Police to arrest him on the subject matter, whereupon both of them were interrogated and made to produce their title documents for verification at the land registry. He testified that he complied with the directive of the police, but the defendant failed to present his allocation paper. He testified that he has been made to suffer untold hardships by the defendant's act of trespass and demolition of his fence caused by the wrongful acts of the defendant.

While being cross examined, the Pw1 admits being a senior lawyer, who is conversant with all aspect of the law; that he bought the subject matter #20,000 over 20years

ago. He admits constructing a fence on the subject matter without obtaining approval. He reiterates that the subject matter was allocated by the Land Administration Department, AMAC. He states under cross examination, that he has no issue with the allocating authority; that the person he has issues with, is the defendant. He denied being aware of any reallocation of plots of land in CRD Lugbe. The Pw1 states that he doesn't have pictures of the evidence of iron gate, fence he constructed on the subject matter. he stated that he presented his documents at the police station, while the defendant failed to present his. He admits knowing Hadiza Musa, that she was the first allottee and the person who sold the subject matter to him. He is not aware if she is still alive or dead. He saw her last in 2011. He admits filing the instant suit on 3rd March, 2020 and that he signed the pre-action notice for himself and on behalf of the 2nd claimant. He testified that he has a right to represent the 2nd claimant by virtue of exhibit C.

By the Order of this Hon. Court, given on 29/6/2022, the claimants amended claimants' reply to statement of defence and defence to counterclaim was deemed properly filed and served the defendant. The claimants in their amended defence to counter claim reiterates their position that plot CRD 808, Lugbe 1 layout Abuja was originally allocated to the 2nd claimant and not Hurera Yakubu and further states that the subject matter was fenced by the 1st claimant and not by any other person as claimed by the counter claimant; that the counterclaimant has no title or interest in the subject matter. The claimants put the counterclaimant to the strictest proof. He alleged that the malicious report, the defendant made to the Development Control Department was done based on his connection with FCTA with a view to oppressing and pressurizing the 1st

claimant to abandon the subject matter. He averred that he had since 2016, lawfully deposited chippings and stone dust on the subject matter, and that was before one Timothy, the defendant's co trespasser and racketeer came with the police to claim ownership. He states that the Police advised both of them to ventilate their grievances in Court. He continued that the Development Control Department did not at any time conduct any investigation, as he was never invited and that there is no pronouncement from the Department or any person that he is a trespasser; that he filed this suit to protect his legal interest and possessory right over the subject matter

The Pw2, Engr. Fadare Johnson is an Engineer. He is a subpoenaed witness. He testified that the subject matter was bought around March/April 2021; that the subject matter was sold to the 1st claimant by the 2nd claimant. He said before payment was made, they confirmed the authenticity of the subject matter from one Baba Musa Audu, the then Zonal Land Manager for Abuja; that it was his signature that was appended on the document. He testified that he is the owner of the adjoining plot; that since himself and the 1st claimant are friends, they chose to construct a fence round their plots; that the 1st claimant called him to confirm if he was the one who demarcated the property; that plot 809 belongs to an Ibo man. He testified that they had granite, stone dust and some sharp sand on plot 808; that they did excavation and dug the foundation which the Federal Capital Development Administration, Development Control bulldozed. He testified that nobody has ever laid claim on plot 808; that his wife farms on the subject matter.

Under cross examination, the Pw2 admits that a window search was conducted at AMAC. He is not aware that the claimants have no Right of Occupancy over the subject matter. The Pw2 admits not having a document to support his assertion that he is the owner of plot 807.

As stated earlier, the counter claimant filed a statement of defence and a counterclaim separately. It is on record that the defendant failed to adopt his witness statement on oath attached to his statement of defence; he only identified and adopted his witness statement on oath attached to the counterclaim of 23/2/2022. It is trite, that a witness statement on oath not adopted is deemed abandoned. See MR MICHEAL ONWUFUJU v. CHIEF SHERRIF FRANCIS OROHWEDOR (2020) LPELR-50767(CA). In the case at hand, the implication of the defendant not adopting his witness statement on oath attached to the statement of defence is that he has abandoned his defence. The established fact here, is that the pleadings contained in the statement of defence are of no moment, as there is no evidence before the court to support same. And I so hold.

Now, the only evidence of the counterclaimant is the witness statement on oath attached to the amended counterclaim. It is dated 23/2/2022.

The counterclaimant claims against the claimants as follows:

a) A Declaration that Hurera Yakubu who transferred her interest on plot CRD 808 of about 600m at Lugbe 1 Layout to the Defendant/ Counter Claimant is the original Allottee/ holder of all the interest in the above-named plot CRD 808 Lugbe 1, Layout.

(b) A Declaration that the Defendant/ Counter Claimant is the sole successor-in-title as regards unexpired interests over Plot CRD 808, Luge 1, Layout measuring about 600m the said property having been lawfully transferred to him by the Original Alottee.

(c) A Declaration that the 1st Claimant/Defendant's claim of ownership over, and or purported allocation of plot No. CRD 808, Lugbe 1 Layout, FCT-Abuja to either belong to a party from whom he claims or the 1st Claimant/Defendant directly claiming ownership or derivation of title from a purported predecessor in-title said to have been allocated by Abuja Municipal Area council (AMAC) whose authority over such lands has now been take over by FCTA is illegal, malicious, wrongful, ultra vires, null and void.

(d) A Declaration authenticating the confirmation made by the Federal Capital Territory Administration (FCTA), through the Director of Lands over plot No. CRD 808, Lugbe 1 Layout, FCT-Abuja in the confirmation letter dated 15th March, 2019, as validly vested in Hurera Yakubu from whom the Defendant/ Counter Claimant purchased.

(e) A Declaration the entry into, dis-vegin and putting gate and fence, depositing of stone chippings, excavation/setting out and planning to build in the said plot No. CRD 808 Lugbe 1 Layout FCT-Abuja and other negative acts of the 1st Claimant/Defendant on the said property of the Defendant Counter/Claimant, without the consent of Defendant/Counter Claimant or any other statutory body charged with such powers to be unlawful, illegal, disrespect to constituted authorities, deliberate and calculated attempt to cause breach of the peace,

misguide to the Hon. Court and trespass against the valid title of the Defendant/ Counter Claimant.

(f) An Order of this Honorable court permitting the Defendant/ Counter Claimant a continuous and exclusive possession and enjoyment of plot No. CRD 808, Lugbe 1 Layout, FCT-Abuja against the Claimant/Defendants, their agents, representatives and members of the Nigeria Police Force he is using to further his acts of illegality being a trespasser on the Defendant/ Counter Claimant's plot of land.

(g) An Order of perpetual injunction restraining the Claimant/Defendants either by themselves, their heirs, assigns, privies, agents and or anybody however claiming or acting through them from further trespassing by way of entry, building, erecting, selling, constructing or placing anything upon, or in any way or manner whatsoever, interfering with the Defendant/Counter Claimant's peaceful possession and enjoyment of Plot No. CRD 808, Lugbe 1 Layout, FCT-abuja bearing Hurera Yakubu.

(h) An Order of this Honorable Court directing the Claimant/Defendants to pay to the Defendant/ Counter Claimant the sum of Ten Million Naira, only (#10,000,000:00) as General damages for the inconveniences caused to the Defendant/ Counter Claimant for trespass and or continuous trespass by the Claimant/Defendants on the disputed land.

(i) Cost of this suit to the tune of N2,000,000:00 (Two Million Naira) Only.

The counterclaimant testified for himself as Dw1. He adopted his witness statement on of oath of 23/2/2022. It

is his evidence that by virtue of exhibit Dw1, a parcel of land known as plot no CRD 808 of about 600m² at Lugbe 1 layout FCT- Abuja bearing file No. KT 40374 was allocated to one Hurera Yakubu, the original allottee, from whom he purchased the parcel of land. The Dw1 further testified that he also purchased plot no CRD 305 bearing file No. KT 40375 from the same Hurera Yakubu; that he believed the two allocations covered separate and independent plots of land; that the titles of the two plots were transferred to him vide exhibits Dw4a & Dw4b respectively. He asserts that when he noticed a wrongful encroachment into plot no CRD 808 Lugbe 1 layout Cadastral Zone, AMAC, Abuja – FCT, he applied to the Director, Department of Development Control, Federal Capital Territory Administration (FCTA) Wuse Zone 6, Abuja for permission to fence the said plot; that he further applied to the Director of Lands, Federal Capital Territory Administration (FCTA) for confirmation of title to the plots of land bearing file nos. KT 40375 and KT 40374 respectively which were transferred to him by the original allottee, Hurera Yakubu. See exhibit DW6. Testifying further, the Dw1 stated that he received exhibit Dw5 from the Director of Land Administration.

The Dw1 stated that after he discovered the 1st claimant's continuous wrongful trespass on the subject matter, he approached the Department of Development Control of the Federal Capital Territory Administration (FCDA) to lay complain and in furtherance to that, he requested his caretaker, one Mr. Timothy to report the illegal acts of the 1st claimant to the Lugbe Divisional Police Headquarters; that the said caretaker was arrested on the claim that the 1st claimant had earlier lodged a complaint of trespass with the regards to the subject matter, he said he was invited to the Police station wherein both parties were asked to present their documents; that he immediately

produced his original title documents, while the 1st claimant requested for time to produce his own documents; that based on the strength of his explanations and genuineness of his title documents, the police unconditionally released his caretaker; that the 1st claimant was requested to produce his own title documents. The Dw1 asserts that he paid his lawyer large sums of money to prosecute this matter due to the encroachment of the 1st claimant on his land.

On being cross examined, the Dw1 admits that exhibit Dw1 was allocated by Abuja Municipal Area Council; that he deliberately didn't present the document which confirms one Hurera Yakubu as the owner of the subject matter. he admits that it was the same person who signed exhibits Dw4a & Dw4b. He admits that he was given a copy of the allocation paper for plot 305 as well as its acknowledgment and that the 1st time he visited plot 808 was in 2017. He admits that his caretaker partitioned the subject matter. He is not aware if the caretaker obtained approval from the Development Control to build. He states, under cross examination that when he wanted to partition the subject matter, he met an illegal fence which was confirmed by the Development Control. He cannot remember the date Plot 305 was allocated or when plot 305 changed to plot 808. He admits under cross examination that none of the documents he tendered has his name on it. He stated that exhibit Dw1 was issued by the Abuja Municipal Area Council.

At the close of the defendant's case, and pursuant to the rules of the Hon. Court, parties filed and exchanged their final written addresses.

The defendant's final written address was filed on the 16/06/2023, but same was deemed as properly filed on the 11/7/2023 pursuant to an Order of this Hon. Court for extension of time within which the defendant may file and

serve his final written address having been out of time in filing his address. It is settled by F. I Nwodo Esq. wherein he formulated two issues for determination, to wit:

Whether following the circumstances surrounding this case, the claimants who could neither obtain confirmation of title nor dare join any of the land authorities in the suit have a better title as against the defendant/counter claimant who has a title confirmation letter from the Land Administrators and who among the parties have proved his case on the balance of probabilities to be entitled to reliefs sought, based on the evidence adduced before this court;

Whether the 1st claimant has locus standi to institute and prosecute this suit in absence of express consent and authority of the 2nd claimant and without joining the Land Administrators who confirmed the defendant's title to be valid and subsisting.

On the part of the claimants, the 1st claimant Adegbite I. Adeniyi, Esq., settled the final written address for and on behalf of the 2nd claimant. It was filed on 1/06/2023. The 1st claimant raised two issues for determination, that is:

1. Whether from the totality of evidence adduced in this case, both oral and documentary the claimants have been able to establish a case against the defendant on the balance of probability to be entitled to the reliefs sought in this court.

2. Whether the defendant has been able to establish and or prove his counter claim against the claimants to be entitled to any relief against the claimants.

Equally, the claimants on the 11/07/2023 filed a reply to the defendant's final written address.

On 11/7/2023, both parties adopted their respective processes and Judgment was reserved.

I have considered the evidence put forward by parties as well as the written submissions filed on behalf of parties, it is

my view that an issue is sufficient to determine the case, that is;

Whether the Plaintiff on the one hand, and the Defendant/Counterclaimant on the other hand, have established the main claim and counterclaim respectively in these proceedings such that they are entitled to judgment.

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. Section 131(1) Evidence Act whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Section 132 Evidence Act states that 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. 133(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. See ALHAJI ADEBAYO AKANDE v. JIMOH ADISA & ANOR (2012) LPELR-7807(SC). 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. See MTN NIGERIA COMMUNICATIONS LTD v. OLAJIRE A. ESUOLA (2018) LPELR-43952(CA)

The claimant's claim in this suit is primarily one for declaration of title to land and the law is that where a claimant seeks for declaration of title to land, he shall succeed on the strength of his case rather than rely on the weakness of the defence. The claimant bears the onerous duty in law to adduce credible and admissible evidence in establishing title. See PRINCE FOLORUNSO SULAIMAN OYELEDUN v. MR. ALANI ADEWUYI (2017) LPELR-43256(CA) It therefore means, that in an action for declaration of title to land, the burden of proof rests squarely on the claimant, and where he fails to discharge that burden to the satisfaction of the Court, the Court will dismiss his claim. Thus, any weakness on the Defendant's case, even an admission by such Defendant will not relieve the claimant of that onerous burden, save where the weakness or admission operates in support the claimant's case, in which case the claimant may rely on it. Thus, the absence of a statement of defence as well as the evidence to support the defence, will not prevent the claimants from placing credible and cogent evidence to support their assertions.

Now, the five (5) ways of proving or establishing title to land is as stated in the cases cited by both counsel IDUNDUN v OKUMAGBE (1979) 9 -10 SC 227 at 246... see also BABAH MAIKANTI & ORS v. 7UP BOTTLING COMPANY PLC (2013) LPELR-20297(CA) as follows:

"...Thus, in Nnadozie v. Omesu (1996) 5 NWLR (pt. 446) it was held that: "It is settled law that there are five different ways the proof of one of which suffice, of proving ownership of any land in Nigeria, viz: by (1) Traditional

evidence (2) production of document of title duly authenticated unless they are documents twenty years old or more produced from proper custody. (3) Acts of possession in and over the land in dispute extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons in possession are the true owners. (4) Acts of long possession and enjoyment of other land so situated and connected with the land in dispute by locality or similarity that the presumption under s.46 of the Evidence Act applies and the inference can be drawn that what is true of one piece of land is likely to be true of the other piece of land. (5) Proof of possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner to the land in dispute."

I have had a careful consideration of the evidence of the claimant vis-a-vis the statement of claim, and as rightly argued by counsel for the claimant, it is clear that the claimant's title over the subject matter is predicated on the production of documents. However, before I delve into the documents and pleadings of parties, I need to state the law with regards to matters bothering on declaration of right to land in the Federal Capital Territory Abuja. By virtue of the provisions of the Constitution, ownership of all lands comprised in the Federal Capital Territory, Abuja is vested in the Government of the Federal Republic of Nigeria. See s. 297 (2). 299 (a), (b) (c) CFRN. Also, pursuant to s.302 of Constitution, the President has the power to appoint for the Federal Capital Territory,

Abuja a Minister who shall exercise such powers and perform such functions as may be delegated to him by the President from time to time. See also section 1 (1), (2) & (3) Federal Capital Territory ACT [FCT ACT]. Furthermore, a careful reading of the relevant provisions of the FCT Act, it is clearly shown that same is in consonance with the referenced provisions of the Constitution and a combined reading of all the above cited provisions clearly attest to the fact that it is only the Minister of the FCT that has the power to allocate land to anybody or authority in Abuja. Thus, before a person can transfer title vide a Deed of assignment or any instrument of transfer, there must first be in existence a genuine foundation, which will then, be the basis for the sale of land to any other person. The assignor must be clothed with the garment of genuine authority, anything short of that will go to no issue. What you do not have, you cannot give! The court is not an issuing authority in respect to land allocation; it is only the Minister of the Federal Capital Territory who is given the power/authority to allocate land to a person or authority. Therefore, the Area Councils have no right whatsoever to allocate land to any person or authority. A party, who present in court, instruments issued by an Area Council in respect of ownership to land, is on his own, as his case would record a dismissal. The right of a Donor must clearly exist before it can subsist. See also GRACE MADU v. DR. BETRAM MADU (2008) LPELR-1806(SC)"*Be it noted that it is well settled that the ownership of the land comprised in the Federal Capital Territory, Abuja is absolutely vested in the Federal Government of Nigeria vide Ona v. Atenda (2000) 5 NWLR (Part 656) page 244 at page 267*

paragraphs C - D. See also Section 297(1) (2) of the Constitution of the Federal Republic of Nigeria, Section 236 of the Constitution of the Federal Republic of Nigeria, 1979 and Section 1(3) Federal Capital Territory, Act 1976. Section 18 of the Federal Capital Territory Act, Cap 503 Laws of the Federation of Nigeria, 1990 vests power in the Minister for the FCT to grant statutory rights of occupancy over lands situate in the Federal Capital Territory to any person. By this law, ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vests same to every citizen individually upon application. Thus, without an allocation or grant by the Hon. Minister of the FCT, there is no way any person including the respondent could acquire land in the FCT." [emphasis mine]

First of all, there is the need to settle the documents admitted during the testimony of the claimants. In the case at hand, the claimants, placed reliance on exhibits A, B, C, D1, D2, E1, E2, F, G & G1 to prove his title to plot CRD 808 Lugbe 1 Layout, Abuja. It is on record that exhibits B, F& G1 are photocopies of public documents. Exhibit B is a copy of the Conveyance of Provisional Approval issued by Abuja Municipal Planning Office (AMAC) to the 2nd claimant. Learned counsel to the defendant argued, that the documents ought to be tendered is either the original or a Certified True Copy as provided for in S.90 (1)(C) Evidence Act. On the other hand, the 1st claimant urged the court to discountenance the submission of counsel to the defendant; that the said document was pleaded and it is in evidence that, he was

given a photocopy by the 2nd claimant. I have considered the exhibit B as well as the provision of the Evidence Act, I do not hesitate to hold that exhibit B is inadmissible. The Pw1, who under cross examination admits that, *“he is a lawyer, called to bar 23 years ago...”* ordinarily should be seised with the position of the law with regards to the admissibility of public document. It is too elementary, not to have knowledge of the law, that where a public document is to be tendered in court, it can only be admissible if only, it is in its primary or secondary form; See section 85, 87(a), 89 (e) & (f), 102, 104 & 105 Evidence Act. See *MANARAT GLOBAL RESOURCES LIMITED v. POLARIS BANK LIMITED & ORS (2019) LPELR-50392(CA)*. The Court or parties have no discretion, whatsoever in admitting a document that is outrightly inadmissible. Same argument goes for exhibits F & G1 having failed the test of admissibility as required by law. Accordingly, I find that exhibits B, F & G1 were improperly admitted. They are hereby expunged from the record of the court.

Now, it is the evidence of the 1st claimant that by virtue of exhibit C, the 2nd claimant sold the subject matter to him; that he paid for and processed the change of ownership in respect of the subject matter from the name of the 2nd claimant to the 1st claimant's name. The 1st claimant states that he was issued with a new offer of the terms of Grant/conveyance of approval in his own name and therefore, the current holder/allottee of the subject matter. As stated earlier, the defendant failed to lead evidence to either admit or controvert the evidence put forward by the claimants; however, the onus is on the claimant to prove his claims, more so having earlier expunged exhibits B, F & G1. Now, the evidence which

remains before the Hon. Court for the claimants to prove title are exhibits A, C, D1, D2, E1, E2&G; the claimants averred that exhibit A was issued by Abuja Municipal Area Council (AMAC). This was further admitted under cross examination. I stated earlier in the Judgment, no Area Council has the power to allocate land in the Federal Capital Territory. In *INDIVAGE HEALTH AND SANITARY SERVICE LIMITED & ANOR v. KENUJ INVESTMENT LIMITED* (2018) LPELR-45975(CA) the Court of Appeal held 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; 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.*

Also, it is trite law, that the production of instrument or document of title is not conclusive proof of title to land. It carries with it the need for a court to inquire into the following:

- (a) Whether the document is genuine and valid;
- (b) Whether the document has been duly executed, stamped and registered;
- (c) Whether the grantor had the authority and capacity to make the grant;
- (d) Whether the grantor had in fact, what it purported to grant; and whether it had the effect claimed by the holder of the document. See *Oveneyiti v Akinkugbe* (12010) 4 NWLR (pt. 1184) 265

In the instant case, there is no evidence that exhibit A was issued by the Hon. Minister of the Federal Capital Territory or a staff of the Federal Capital Territory Administration. The person who signed Exhibit A is the Zonal Manager of the AMAC, and it is not stated therein that he is a staff of

the Federal Capital Territory Administration. After, a careful perusal of exhibit A, the established fact is that exhibit A cannot confer title on the 1st claimant. Equally, the exhibit G, that is, the Regularization of Land Titles and Documents of FCT Area Councils [Acknowledgement] clearly states that exhibit G cannot be sold or transferred; that all the documents described in exhibit G are subject to further verification. By the caveat stated in exhibit G, the documents submitted by the 1st claimant to the Federal Capital Territory Administration, Department of Land Administration are subject to verification by the Federal Capital Territory Administration. This further reaffirms the position of law, which empowers only the Minister of the Federal Capital Territory, to allocate lands in Abuja. The AMAC, therefore lacked the power and capacity to have issued exhibit A. And I so hold.

Going further, the claimant presented exhibit C i.e the Power of Attorney between Hadiza Musa. For an instrument to be pleaded in evidence with respect to the ownership of land, such instrument as affecting land must be registered. However, an unregistered registrable instrument, though not admissible to prove title, it is admissible to prove agreement of parties. See DR JOSEPH C. OKOYE v. DUMEZ NIGERIA LIMITED & ANOR (1985) LPELR-

In the instant case, exhibit C was adduced by the 1st claimant as an evidence of sale transaction between the 1st claimant and 2nd claimant. It is the law that a party can only give what it rightly owns and since the 2nd claimant lacked the power to transfer title to the claimant, it therefore cannot sell or transfer what she does not own or possess to the claimant. The established fact here is that exhibit C cannot be recognized by the Court as an evidence of transfer of title to the 1st claimant and I so hold.

I have taken a careful consideration of the evidence put forward by the claimants, there is no disputing the fact that the claimants' case has fallen like a pack of cards and as stated earlier in the course of this judgment, in an action for declaration of title to land, the burden is on the claimants to proffer credible evidence which must be satisfactory that the 1st claimant is entitled to the declaration sought.

Consequently, I find and hold that the evidence placed before this court by the claimant lacks evidential value which the court cannot act upon. Accordingly, I hold that none of the claimants has any right whatsoever in respect to the plot in issue situate at Plot CRD 808, Lugbe 1 Layout, Abuja.

Also, in a claim for title to land, where all the reliefs claimed by the claimant are predicated on ownership or exclusive possession of the land in dispute, failure to prove ownership or exclusive possession of the land will automatically also affect the other reliefs which must necessarily fail. See *ONOVO V MBA* (2014) 14 NWLR 319 PG 433, PARAS F-G. The claimants have the duty to establish their root of title before any consequential acts flowing therefrom can properly qualify as acts of ownership or possession. See *FASORO V BEYIOKU* (1988) 2 NWLR (PT.76) 263.

On the whole, all the claims of the claimants are dismissed.

Now, to the claims of the counterclaimant; the counterclaimant is claiming the following: -

a) A Declaration that Hurera Yakubu who transferred her interest on plot CRD 808 of about 600m at Lugbe 1 Layout to the Defendant/ Counter Claimant is the original Allottee/ holder of all the interest in the above-named plot CRD 808 Lugbe 1, Layout.

(b) A Declaration that the Defendant/ Counter Claimant is the sole successor-in-title as regards unexpired interests over Plot CRD 808, Lugbe 1, Layout measuring about 600m the said property having been lawfully transferred to him by the Original Allottee.

(c) A Declaration that the 1st Claimant/Defendant's claim of ownership over, and or purported allocation of plot No. CRD 808, Lugbe 1 Layout, FCT-Abuja to either belong to a party from whom he claims or the 1st Claimant/Defendant directly claiming ownership or derivation of title from a purported predecessor in-title said to have been allocated by Abuja Municipal Area council (AMAC) whose authority over such lands has now been take over by FCTA is illegal, malicious, wrongful, ultra vires, null and void.

(d) A Declaration authenticating the confirmation made by the Federal Capital Territory Administration (FCTA), through the Director of Lands over plot No. CRD 808, Lugbe 1 Layout, FCT-Abuja in the confirmation letter dated 15th March, 2019, as validly vested in Hurera Yakubu from whom the Defendant/ Counter Claimant purchased.

(e) A Declaration the entry into, dis-vegin and putting gate and fence, depositing of stone chippings, excavation/setting out and planning to build in the said plot No. CRD 808 Lugbe 1 Layout FCT-Abuja and other

negative acts of the 1st Claimant/Defendant on the said property of the Defendant Counter/Claimant, without the consent of Defendant/Counter Claimant or any other statutory body charged with such powers to be unlawful, illegal, disrespect to constituted authorities, deliberate and calculated attempt to cause breach of the peace, misguide to the Hon. Court and trespass against the valid title of the Defendant/ Counter Claimant.

(f) An Order of this Honorable court permitting the Defendant/ Counter Claimant a continuous and exclusive possession and enjoyment of plot No. CRD 808, Lugbe 1 Layout, FCT-Abuja against the Claimant/Defendants, their agents, representatives and members of the Nigeria Police Force he is using to further his acts of illegality being a trespasser on the Defendant/ Counter Claimant's plot of land.

(g) An Order of perpetual injunction restraining the Claimant/Defendants either by themselves, their heirs, assigns, privies, agents and or anybody however claiming or acting through them from further trespassing by way of entry, building, erecting, selling, constructing or placing anything upon, or in any way or manner whatsoever, interfering with the Defendant/Counter Claimant's peaceful possession and enjoyment of Plot No. CRD 808, Lugbe 1 Layout, FCT-Abuja bearing Hurera Yakubu.

(h) An Order of this Honorable Court directing the Claimant/Defendants to pay to the Defendant/ Counter Claimant the sum of Ten Million Naira, only (N10,000,000:00) as General damages for the inconveniences caused to the Defendant/ Counter Claimant for trespass and or continuous trespass by the Claimant/Defendants on the disputed land.

(i) Cost of this suit to the tune of N2,000,000:00 (Two Million Naira) Only

The following documents were admitted in evidence; exhibits Dw1, Dw2, Dw3, Dw4a, Dw4b, Dw5 & Dw6 and as the saying goes; what is good for the goose is also good for the gander! Therefore, the counterclaimant in the instant case, must support his facts and oral testimonies with credible and cogent evidence, failure to do so, this Hon. Court will not hesitate to refuse his reliefs. The counterclaimant, testifying as Dw1, averred that the subject matter was allocated to one Hurera Yakubu, the 1st original allottee vide exhibit D1, that is, the Conveyance of Provisional Approval issued by the Abuja Municipal Area Council; that he purchased the subject matter vide exhibits Dw4a & Dw4b, from the 1st allottee. At the risk of sounding repetitive, a party claiming title must present documents/instrument issued by an authority/person clothed with the garment of authority to issue same. See *DIVAGE HEALTH AND SANITARY SERVICE LIMITED & ANOR v. KENUJ INVESTMENT LIMITED* (supra).

Furthermore, the subject matter in dispute was not directly allocated to the counterclaimant as admitted by him under cross examination, therefore exhibits Dw3 & Dw6 cannot avail the Dw1; there is no trace(s) of the name of the Dw1 on any of the public document presented by him. The only document which links the Dw1 to the subject matter are exhibits Dw4a & Dw4b, the Power of Attorney between the him and the Hurera Abdul and having taken a careful perusal of the aforementioned exhibits, it is not shown that the instruments were registered with the appropriate authority. It is simply an evidence of proof of transaction between the Hurera Yakubu and the

Dw1. The exhibits Dw4a & Dw4b are instruments which purports to confer title on the Dw1. The evidence of the Dw1 is that he purchased the plot in issue; see exhibits Dw4a & 4b. [See paragraph 6 of the counterclaim]. It therefore means that he relies on the aforesaid exhibits to establish his right of ownership on the plot in issue. On the proprietary of these documents, the Court of Appeal in FEDERAL MINISTRY OF JUSTICE POST SERVICE HOUSING SCHEME LIMITED/GTE v. AVEO GLOBAL RESOURCES LIMITED & ANOR (2020) LPELR-49921(CA) "In Ezeigwe v. Awudu (supra) the Supreme Court held that- *"An Irrevocable Power of Attorney is not a document of title conferring title to the property in issue on the donee. It would still be necessary for the donee to prove title to the property whose title is in issue. Indeed, the existence of the Irrevocable Power of Attorney is a clear evidence or confirmation of the fact that the title to the land in dispute resides in the donor of the Power. The only document that can prove any passing of the title to the donee would be a conveyance or an assignment."*

Also, in PASTOR J. AKINLOLU AKINDURO v. ALHAJI IDRIS ALAYA (2007) LPELR-344 (SC) Land Instruments Registration Law has substantially universal contents in all the States in Nigeria. Under Section 2 of the Law the word "INSTRUMENT" is defined to mean a document affecting land in the state whereby one party usually called the grantor confers, transfers, limits, charges or extinguishes in favour of another party called the grantee any right or title to or interest in the state. Going by Section 15 aforesaid, an unregistered document affecting land must not be pleaded and neither is it admissible in evidence. See

Ogunbambi v. Abowaba 13 WACA 222; Olowoake v. Salawu (2000) 11 NWLR (Pt.677) 127 and Adesanya v. Aderonmu (2000) 6 SC. (Pt.11) 18; (2000) 9 NWLR (Pt. 672) 370. And if such a document is pleaded a trial Judge upon an application made to it, must strike out paragraphs of pleadings where such unregistered document is pleaded. See Ossai v. Nwajide & Anor (1975) 4 Sc. 207. Even where the unregistered document was mistakenly admitted in evidence; part of the evidence relating to that unregistered document should be expunged for reason of lacking evidential value."

Thus, the effect of not registering the documents, in the instant case, is that they cannot be pleaded or tendered in evidence as proof of ownership, except with the execution of a deed of conveyance or assignment. Therefore, exhibits Dw4a & Dw4b cannot confer valid title on the counterclaimant and are hereby expunged from the court's record.

I have placed the evidence of the counterclaimant on a scale of evidence, I find and hold that the counterclaimant, failed to substantiate the facts stated in the counterclaim with cogent or credible evidence. Consequently, I hold that he is not entitled to any of the reliefs sought whatsoever.

Accordingly, the reliefs stated in the counterclaim are hereby dismissed.

Parties should bear their cost.

ASMAU AKANBI- YUSUF
[HON. JUDGE]

APPEARANCES:

Lebo Albert Ekito Esq, holding the brief of Mr. F. I Nwodo for
the defendant;

1st claimant present.