

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

DELIVERED ON THE 28<sup>TH</sup> SEPTEMBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF

FCT/HC/CV/348/2022

BETWEEN

RUTHICAL NIG. LIMITED (suing through

Its Attorney Alhaji Abdulrahman Zubeiru) ..... CLAIMANT

AND

1. KING GOLDEN ESTATE

2. UNKNOWN PERSONS... ..

DEFENDANT

### JUDGMENT

By a writ of summons filed the 4/2/2022, the Claimant herein Claims against the Defendant the following reliefs:

- i. A DECLARATION that the Claimant is the lawful, legal and beneficial owner of the property known as Plot ED3135A situated within Sabon Lugbe East Extension Layout FCT-Abuja by virtue of the Offer of Terms of Grant/Conveyance of Approval of Statutory Right of Occupancy dated 11/3/98 and issued to the Claimant by the Honourable Minister of the Federal Capital Territory.
- ii. A DECLARATION that any subsequent purported allocation or re-allocation, sale or grant of any type of title in respect of the said Plot ED3135A situated within Sabon Lugbe East Extension Layout FCT- Abuja to the defendants or any other person or

persons is unlawful, illegal, null and void and of no legal effect whatsoever.

- iii. A DECLARATION that the forceful entry of the Defendants into the Claimant's property and the destruction of its fence is unlawful and amounts to trespass.
- iv. AN ORDER OF PERPETUAL INJUNCTION restraining the defendants, either by themselves, thugs, their servants, privies, agents or by whatever name so called from further trespassing, invading or encroaching on the rights and interest of the Claimant over Plot ED3135A situated within Sabon Lugbe East Extension layout FCT- Abuja.
- v. The sum of ₦500,000,000 being special, aggravated and general damages for trespass.

By the Order of Court, the defendants were served the court processes; they however failed to respond or appear before the Hon. Court. Thus, it is only the facts and evidence of the claimant that is before this court.

Hearing commenced on 31/5/2022. The lawful attorney of the claimant, Alh. Abdulrahman Zubeiru testified as CW1. He identified his witness statement on oath and tendered the following documents;

1. Certificate of Incorporation of Ruthical Nig. Ltd dated 28<sup>th</sup> September 2017 marked Exhibit A1.
2. A copy of the Special Resolution of the Claimant dated 29<sup>th</sup> November 2017 Exhibit A2.
3. Power of Attorney donated by Ruthical Nig Ltd to Alhaji Abdulrahman Zubeiru on the 29<sup>th</sup> November 2017 marked Exhibit A3.
4. Laminated application for allocation of a plot of land for the purpose of developing an estate with the FCT addressed to the HON. Minister FCT Abuja on the 15/12/97 and signed by Alh. Abdulrahman Zubeiru for Ruthical Nig Ltd marked Exhibit B1

5. Laminated acceptance of Offer of Grant of Right of Occupancy from the FCT with Reference No. MFCT/21/AMAC/SLE/ED3135A addressed to the Minister dated 15/12/97 and signed by Alh. Abdulrahaman Zubeiru marked Exhibit B2
6. The Offer of terms of Grant/Conveyance of approval issued by the Abuja Municipal Area Council on the 11/3/98 to Ruthical Nig. Ltd marked Exhibit B3.
7. The Right of Occupancy rent & fees with No MZTP/CA/05/MISC 96661 issued to Ruthical Nig. Ltd by AMAC Department of Land Administration and Resettlement, Abuja Nigeria. Plot No. Ed3135 marked as Exhibit B4.
8. The Right of Occupancy No. FCT/MZTP/LA/2005/MISC 96661 plot No. ED3135 granted to Ruthical Nig. Ltd. Cadastral Map marked Exhibit B5.
9. AMAC Departmental Receipt with AMAC No. 1011 dated 17/8/2006 marked Exhibit B7.
10. The undated AMAC Development Levy Receipt with No. AMAC 145860 marked Exhibit B8.
11. The AMAC Departmental Receipt with No. 250978 dated 02-06-05 marked Exhibit B8.

The matter was adjourned for the cross examination of the Pw1. On the adjourned date, despite the hearing notice served on the defendantsthey failed to appear in court. Learned counsel for the claimant applied that the defendant be foreclosed from cross examining the Pw1. The application was granted and the matter was adjourned for defence. Again, on the day slated for defence, the defendants failed to appear in court. Therefore, the matter was adjourned for adoption of final written addresses. Mattew Torsaa Esq on the 31<sup>st</sup> May, 2023 filed a written address on behalf of the claimant, same was served on the defendants, but they failed to respond to same.

Learned counsel argued and adopted the final written address filed on behalf of the claimant, wherein he formulated a sole issue for determination, to wit;

*Whether the claimant has proved its case to be entitled to the reliefs sought in this case*

As stated earlier, the defendants failed to defend this matter and it is trite law, that 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 states that 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(ScfC). 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).

Going further, the Claimant's claim in this suit is primarily one for a declaration of title to land and the law is that where a claimant seeks for a 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) and as

rightly stated by counsel for the claimant in the final written address see para 4.05, there are five (5) ways of proving or establishing title to land. I further rely on the case of *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."*

It is settled law, that in an action for declaration of title to land, the burden is on the claimant to proffer credible evidence which must satisfy the Court that he is entitled to the declaration sought. Generally, the declaration will be granted or refused on the strength of the evidence adduced by the claimant. In other words, in discharging the burden cast on him in an action for declaration of title, the claimant must rely on the strength of his own case. 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 of the

claimant's case, in which case the claimant may rely on it. 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.

Before I delve into the evidence and pleadings as presented by the claimant, I need to state the law regarding matters on declaration of right to title to land in the Federal Capital Territory, Abuja. It is not in doubt and as rightly argued by counsel for the counterclaimant that the 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, by virtue of 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) FCT

Also, a careful reading of the FCT Act will reveal that it is consistent with the referenced provisions of constitution and a combined reading of all the above cited provisions shows that it is only the Minister of the FCT that can allocate land to anybody or authority in Abuja. Thus, before a person can transfer title either by Deed of assignment or power of attorney, there must first be in existence a genuine foundation; the foundation is the basis of the correctness of sale of land to the other person. The donor of power of attorney must be clothed with the garment of genuine authority, anything short of that will go to no issue. What you don't have, you don't/can't give! The court is not an issuing authority in respect to land allocation; it is only the Minister of Federal Capital Territory who is given the power/authority to allocate land to a person or authority. The Area Councils have no right whatsoever to allocate land to any person or authority. A party, who presents in court instruments issued by 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."

The claimant in this case, placed reliance on the exhibits A1, A2, A3, B1, B2, B3, B4, B5, B6, B7, B8 & B9 for the court to declare him as the lawful, legal and beneficial owner of plot ED3135A situate within Sabon Lugbe East Extension Layout of the Federal Capital Territory, Abuja. The Cw1, Alhaji Abdulrahman Zubeir testified that the defendants are land racketeers who want to deprive the claimant of its plot ED3135A situate within Sabon Lugbe East Extension Layout of the Federal Capital Territory, Abuja. He stated that prior to the incorporation of the claimant as a company, the claimant engaged the services of the Pw1 as its promoter; that he was mandated among other things to incorporate the claimant with the Corporate Affairs Commission and to also acquire land for the claimant; that the promoter subsequently registered the claimant as a corporate entity with the Corporate Affairs Commission; he continued that the claimant resolved by way of a special resolution dated the

29/11/2017; that the claimant applied to the Minister of FCT for allocation of the subject matter through to the promoter for the purpose of developing an estate within FCT and the said application of 15/12/97 was approved; that the Claimant was allotted the subject matter within Sabon Lugbe East Extension Layout Abuja by the Minister of Federal Capital Territory, Abuja vide a letter captioned "OFFER OF TERMS OF GRANT/CONVEYANCE OF APPROVAL" dated 11/3/98; that the Claimant accepted the said offer through a letter dated 26/3/98 and was immediately put in possession of the subject matter by the appropriate authority and was issued a Technical Data Plan also known as Title Data Plan (TDP) under the Right of Occupancy No: FCT/MZTP/LA/2005/MISC 96661 by the allocating authority showing the plot number, size of the land and surrounding beacon numbers; that the Claimant has been exercising absolute ownership over the said property for the past 23 years and enjoying quiet possession of the said plot of land through various acts of ownership, which includes planting of survey beacons, farming on the land, enclosing the land with concrete fence, depositing sharp sand, stone chippings and blocks and one 20 feet container and stock it with building materials and implements worth ₦15,000,000 before the recent invasion of the defendants; that the Minister of FCT established land offices through the FCDA within the premises of the various Area Councils of FCT, including the premises of Abuja Municipal Area Council and managed such offices with employees of the Federal Capital Development Authority who acted at all times on behalf of and under the direction of the Honourable Minister of FCT; that at various times, the Honourable Minister of FCT, through the FCDA created departments, agencies, offices, and officers and delegated his powers to these said bodies and persons, which powers included the powers to plan land use; approve building plans; convey grant of allocated plots of land; and sundry issues pertaining to land administration within the Federal Capital Territory. He stated that the Honourable Minister of FCT created Sabon Lugbe East Extension Layout and allocated plots of land to individuals and companies, including the Claimant, within the said layout and conveyed such allocations through his officers at FCDA offices located at the various Area Councils; that the Department of



Land Administration and Resettlement of the Abuja Municipal Area Council issued it with Right of Occupancy Rent and Fees in respect of Plot ED3135A and the Claimant complied by paying all the fees and levies to the appropriate authority and was issued receipts to that effect

He further stated that sometime in August, 2021, the defendants led the evasion of Plot ED3135A with some unknown armed men and demolished its fence and other building materials deposited on the land under a wrong assertion that the said property belongs to him and the Claimant reported the criminal conduct of the defendants to the police and also wrote a petition to the Minister of FCT over the defendants' act on its land but that in spite of the aforesaid petition, the defendants have continued to trespass on the said plot of land, with armed men threatening and chasing the Claimant's workers on site.

Learned counsel to the claimant urged the court to place heavy reliance on the documents in determining that the claimant is entitled to the declaratory reliefs sought by the claimant; that the claimant in this case has established by concrete and convincing through the tendering of the exhibits. He states that the claimant has convincingly established its title to the subject matter by the tendering of the exhibits as well as having exercised ownership for the past 23 years. He cited *OMOTUNDE V OBA (2005) VOL. 52 WRN.* He continued that the claimant has enjoyed undisturbed possession of the property for the past 23 years before the act which led to this suit arose; that the claimant placed survey beacons, farmed on the subject matter, has an enclosed fence, deposited sharp sand, stone chippings and blocks, 20ft container stocked with building materials worth #15,000,000.00. Thus, the court should draw inference from the acts of ownership and long possession exhibited by the claimant, to declare the claimant the lawful owner of the property in dispute. Again, the claimant questioned the whereabouts of the defendant all these years, having being on the subject matter for the past 23

years; that the defendants have no legal recognizable title in the subject matter. By the argument of counsel to the claimant, it thus, appear that he, on one hand appears to argue that the claimant by traditional history came into possession and ownership of the subject matter, while on another hand, he argues that the claimant derived title vide documentary evidence. I have combed the entire pleadings as well as the evidence led by the claimant, there is nowhere it is stated that the claimant came into possession of the subject matter through traditional history. I must state that the submissions of counsel cannot replace cogent and credible evidence placed before the court by parties. In the case at hand, the whole evidence of the claimant borders more on documentary evidence. It is the law that the production of documents of title alone is not sufficient to discharge the onus on a claimant to prove the title he claims; he must go further to trace his root of title to one whose ownership of the land has been established. See CHIEF ADEYEMI LAWSON v. CHIEF AYO AJIBULU (1997) LPELR-1766(SC). It is glaring from the pleading and evidence that the claimant tends to rely on the documents for the court to declare him the lawful, legal and beneficial owner of the subject matter emanates from the Abuja Municipal Area Council. See exhibits B3 & B4. The claimant vides exhibit B1(15-12-97) applied to the Hon. Minister of the Federal Capital Territory to be allocated land. On the face of exhibit B1, there is no evidence that same was acknowledged by the office of the Minister of FCT. Going further, on the 11/3/98, offer of terms of Grant/Conveyance of Approval as well as Right of Occupancy Rent and Fees were issued by the Abuja Municipal Area, Council to the claimant. See exhibits B3 & B4. I have had a careful consideration of the exhibits particularly exhibit B3, it is shown that the document emanates from the Area Council and as earlier stated, no area council in the Federal Capital Territory has the authority to grant an offer of terms/conveyance of approval as

same is not a valid document recognized in law to confer title on a person. The main relief of the claimant is for this Hon. Court to declare him the rightful owner of the subject matter. In other words, the claimant has asked this court to clothe him with the garment of ownership; unfortunately, this court lacks the power to give to him what is not in existence. In *DIVAGE 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, the claimant states in para 9 that he has been enjoying quiet possession of the subject matter through various acts ownership which includes placing beacons, farming on the land, enclosing the land with concrete fence, depositing sharp sand, stone chippings etc. I have considered the evidence, and I do not hesitate to hold that the claimant failed to buttress his assertion with credible and cogent evidence. Nothing whatsoever was placed before the court to substantiate the fact.

Also, the claimant in this case sued the defendants through his attorney, one Alhaji Abdulrahman Zubeiru. Exhibit A3, the Power of Attorney contains the name of the donor and the donee; it is shown that it was witnessed by one Thaddeaus Felix, who is into Business. By section 150 Evid Act 2011, a court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public or any court, judge, magistrate, consul or representative of Nigeria or, as the case may be, of the President, was so executed and authenticated. See *MR CHRISTOPHER UGWUS v. INSPECTOR ERNEST EKE* (2015) LPELR-40921 (CA)

The question I ask here- Was exhibit A3 executed and or authenticated before the persons mentioned in s. 150 Evidence Act? I do not hesitate to say No, as I find as a fact that the exhibit A3 was made in the presence of one Thadeus Felix, a businessman, who is not one of the persons listed in the Evidence Act. Therefore, it is glaring that the person said to have witnessed the power of attorney falls short of the persons prescribed in the Evidence Act. Therefore, I find the power of attorney inadmissible having failed to execute or authenticate same before any of the persons listed in section 150 Evid Act and I so hold. Exhibit A3 is hereby expunged from the record of the court.

There is no disputing the fact that the case of the claimant has fallen like a pack of cards and as stated earlier in the course of this judgment, a party who present documents from an Area council as evidence of ownership, his case is bound to fail and that is what has happened to the claimant in this case; 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 claimant has the duty to establish his root of title before any consequential acts flowing therefrom can properly qualify as acts of ownership. See *FASORO V BEYIOKU* (1988) 2 NWLR (PT.76) 263.

Consequently, I find and hold that the evidence placed before this court by the claimant lacks evidential value which the court is not expected to act upon. Suit No: FCT/HC/CV/348/2022 is hereby dismissed.

ASMAU AKANBI – YUSUF  
[HON. JUDGE]

APPEARANCE;

Mathew Torsan Esq. for the Claimant

Defendant absent and not represented