

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:- 18TH SEPTEMBER, 2023

FCT/HC/CV/2522/2019

BETWEEN:

Mr. JUDE EGBITA
(Doing business under the name and style of Ilaita Enterprises)
Suing through his lawful Attorney Conuel Global Resources Limited

CLAIMANT

AND

1. MR. ALI OCHOLI
2. MRS. HOPE OCHOLI
3. MRS. LAMI EUNICE ICHABA
4. MRS. ADAAJI EJURA HAJARA
5. ALEX JOHN EMMANUEL

DEFENDANTS

JUDGMENT

This suit was filed vide a writ of summons dated 25th of July 2019. The Claimant sought the reliefs as contained in the writ of summons and the statement of claim.

The 1st to 5th Defendants filed an Amended Joint Statement of Defence and Counterclaim on 1st February, 2023, while the Claimant filed a Reply to the Defendant's Statement of Defence and a Defence to the Counter-Claim on 11th August, 2020.

The claimant by his statement of claim maintained that he did through an outright purchase acquire a piece of land measuring about five hectares and which piece of land is situated within

Pyakasa, in Sabon-Lugbe East extension of the Federal Capital Territory, Abuja. That sequel to his acquisition of the said land, he appointed Conuel Global Resources Ltd as his attorney to on his behalf and in his stead administer, manage, and superintend the said five hectares of land.

The claimant also stated that he was aware that his attorney was developing a certain residential estate within Lugbe 1 Extension, FCT, Abuja in partnership with the Nigeria Security and Civil defence Corps and which residential estate was open to the general public as well as the staff of the Nigeria Security and Civil Defence corps for subscription for which reason the 1st to 4th Defendants herein subscribed to the said estate and were allotted residential plots for the building of duplexes and bungalows respectively.

It was also the position of the claimant that owing to the re-designing program of the Honourable Minister of the Federal Capital Territory, there arose the need to relocate the 1st to 4th Defendants from the estate being developed by the claimant's attorney in partnership with the Nigeria Security and Civil Defence Corps to another location hence, the agreement between the claimant's attorney and the 1st to 4th Defendants to relocate the 1st to the 4th Defendants to plot MF3112 Pyakasa, Sabon-Lugbe East extension, FCT-Abuja based on the 1st to 4th Defendant's application form and on the newly agreed terms and conditions as contained in the subsequent agreement between the claimant's attorney and the 1st to 4th Defendants.

Following the agreement, the claimant's attorney allocated plot number 9 to the 1st Defendant for the building of a residential duplex, plot 7 to the 2nd Defendant for the building of a residential duplex and plot 13 for the building of a residential bungalow, plot 12 to the 3rd Defendant for the building of a residential bungalow

and plot number to the 4th Defendant for the building of a residential duplex as well.

However, rather than developing the plots allotted to them within plot number MF3112, Pyakasa, Sabon-Lugbe East Extension by the claimant's attorney, the Defendants in defiance, abandoned plots numbers 7, 12 and 13 allotted to the 2nd, 3rd and 4th Defendants for the building of residential bungalows and duplexes and went on to build a commercial plaza on plot number one (1) and commenced the development of residential houses on plots 10 and 11 which were already allotted to other subscribers.

It was for the reasons stated above that the claimant approached this honourable Court seeking the reliefs as appeared on the writ of summons as well as the statement of claim.

On their part, the Defendants maintained the position that they were initially allocated both different plots of land by the claimant's attorney for both residential and commercial purposes. That the 2nd Defendant applied for two plots of land and specifically informed the claimant's attorney that she needed one of the plots of land for commercial purposes and the other for residential purpose. That the 1st Defendant was allotted plot 9 for residential purposes, 2nd Defendant was allotted plots 1 and 10 for both commercial and residential purposes, 3rd Defendant was allotted plot 11 for residential purpose while the 4th Defendant was allotted plot 8 for residential duplex.

That the Defendants applied for commercial plots of land both in the initial estate from where they were relocated to plot MF3112, Pyakasa, Sabon-Lugbe East extension, FCT-Abuja and that upon their relocation, they were as well allotted both residential and commercial plots of land.

The 1st to the 4th Defendants also maintain that the claimant's attorney's partner Mr. Chris Nwokolo who demanded that they pay infrastructural fees on plot number one (1) within plot MF3112 Pykasa collected a total of N2,000,000.00 from the 2nd Defendant after which the said Chris Nwokolo the managing director of Wealthomes Properties & Services Ltd. issued the 2nd Defendant an allocation letter dated 11th December, 2019 in respect of plot number one (1) within plot MF 3112 Pyakasa, Abuja.

It was also the position of the Defendants, especially the 1st and the 2nd Defendants, that the claimant's attorney retained an architect who drew the design for the plaza and handed it to them for the development of the plaza. Further still, the 1st to the 4th Defendants also posited that it was the same claimant's attorney that sold the blocks with which the plaza was built to the 1st and 2nd Defendants even as it was the same architect retained by the claimant's attorney that supervised the building of the plaza.

Hearing commenced on 23rd day of February, 2022 with Mr. Emmanuel Nwodo being affirmed as the PW1. Following his affirmation, he adopted his statement on oath deposed to on the 25th day of July, 2019. Upon the adoption of the aforesaid statement on oath, the PW1 tendered some documents which were admitted in evidence in the order viz;

- i. Two letters of offer of terms of grant/conveyance of approval with ref no. MFCT/ZA/AMAC/SLE/MF3112 differently dated 11th March, 1999 and 20th February, 2000 DENIAT exhibits 1 and 1a.
- ii. Regularisation of land title documents of FCT Area Council acknowledgment dated 31st December, 2009 Exhibit 2.
- iii. A copy of power of attorney Exhibit 3.

iv. Five copies of the personal data forms of the 1st to 4th Defendants Exhibit 4.

v. A letter of allocation dated 6th March, 2011 = Exhibit 5.

vi. An MOU b/w claimant's attorney and Ali Ocholi & 3 others Exhibit 6.

vii. A receipt of payment dated 11th July, 2019 Exhibit 7

The PW1 evidence-in-chief continued on the 1st day of March 2022 on which day, the PW1 adopted his additional statement on oath deposed to on the 11 day of August 2022 following which the PW1 Concluded his evidence-in-chief.

The cross-examination of the PW1 commenced on March 1st, 2022, and ran through to 29th and 30 days of March 2022 respectively. Upon the conclusion of the PW's cross-examination by the defence counsel, the PW2 (Mr. Austine Rueben) was on the same 30th day of March, 2022 affirmed, sequel to which, his statement on oath deposed to on the 25th day of July, 2019 was adopted in evidence.

Following the adoption of his statement on oath, the PW2 tendered some documents (photographs) which were admitted alongside the certificate of compliance as exhibit 8. Consequently, the PW2 was cross-examined on the same day and discharged and that brought to a close the case of the claimant.

The Defendants opened their defence in this suit on the 5th day of July, 2022 with the 2nd Defendant (Mrs. Hope Ocholi) being led in evidence as DW1. Following the DW1's affirmation, she adopted in evidence her statement on oath deposed to on the 18^m day of June, 2020. Consequently, the DW1 during her examination-in-chief tendered some documents which were admitted in evidence and marked as follows:-

- i. Police investigation report dated 6th March, 2020 Exhibit DW1
- ii. Demand letter from Wealthhomes addressed to Mrs Hope Ocholi and dated 28th September, 2018-Exhibit DW2
- iii. A letter titled balance of the amount to be paid on five plots of land at Sabon Lube dated 10th February 2020 and addressed to Emmanuel Nwodo Exhibit DW3
- iv. 3 pictures with certificate of compliance Exhibit DW4
- v. Receipts dated 13th April, 2018 and 11th April, 2018 Exhibit DW5
- vi. Award of plot allocation dated 13th November, 2019 Exhibit DW6.

The DW1 was cross-examined and discharged. However, after the evidence of the DW3, the Defendants by an application which was granted, re-called the DW1 following which the DW1 tendered another document in evidence which document was admitted in evidence as exhibit DW6.

After the evidence of the DW1, the defence led in evidence the 1st Defendant who testified as DW2 and did on the 30th day of November 2022 adopted his statement on oath deposed to on the 18th day of June 2018.

Following the adoption of the DW2's statement on oath and upon his conclusion of his examination-in-chief, he was cross-examined during which cross-examination, a document was tendered through the DW2 and admitted in evidence as exhibit Cross-Examination 1.

Again, the defence also led in evidence one Inspector Awara from the FCT Police Command as DW3 and a subpoenaed witness whose sole purpose in evidence is to identify exhibit DW1. The said Subpoenaed witness did on the 30th day of January, 2023 identify exhibit DW1, cross-examined on the same date and was subsequently discharged.

In all, the documents admitted in evidence in this suit are as follows;

- i. Two letters of offer of terms of grant/conveyance of approval with ref no. MFCT/ZA/AMAC/SLE/MF3112 differently dated 11th March, 1999 and 20th February, 2000 5: exhibits 1 and 1a.
- ii. Regularisation of land title documents of FCT Area Council acknowledgment dated Exhibit 2. 31st December, 2009 Exhibit
- iii. A copy of power of attorney 3
- iv. Five copies of the personal data forms of the 1st to 4th Defendants Exhibit 4.
- v. A letter of allocation dated 6th March, 2011 Exhibit 5.
- vi. An MOU b/w claimant's attorney and Ali Ocholi & 3 others Exhibit 6.
- vii. A receipt of payment dated 11th July, 2019 Exhibit 7
- viii. 3 photographs alongside the certificate of compliance as - Exhibit 8.
- ix. Police investigation report dated 6th March, 2020 Exhibit DW1
- x. Demand letter from Wealth homes addressed to Mrs Hope Ocholi and dated 28th September, 2018 Exhibit DW2
- xi. A letter titled balance of the amount to be paid on five plots of land at Sabon Lugbe dated 10th February, 2020 and addressed to Emmanuel Nwodo Exhibit DW3
- xii. 3 pictures with certificate of compliance Exhibit DW4
- xiii. Receipts dated 13th April, 2018 and 11th April, 2018 Exhibit DW5
- xiv. Award of plot allocation dated 13th November, 2019 DW6
- XV. Demolition notice dated 13th November, 2019 Exhibit Cross-Examination 1

In their final written address filed on 20th March, 23, counsel on behalf of the Defendant raised two issues for determination to wit:-

- i. Whether the Claimant has proved his case on the preponderance of evidence adduced by the Claimant to be entitled to his reliefs sought?
- ii. Whether the Defendants have proved their Counter Claim to be entitled to the reliefs sought in their Counter Claim?

On issue 1, counsel maintained that it is a trite principle of law that he who asserts must prove. That the Claimant has the responsibility of ensuring that he proves his claims to be entitled to the Court's judgment in his favour. **DASUKI (RTD) VS. FEDERAL REPUBLIC OF NIGERIA & ORS (2018) LELR-43897 (SC) PEREKO, J.S.C (P. 13, PARAS. D-F)**

Counsel noted that the said Mrs. Adaora Ann Okafor and Mr. Sunday Udeh who the PW1 claimed he allocated and are the owners of plots 10 and 11, never testified before the Court, neither were they parties to this suit.

Counsel submitted that the PW1 all through his testimony before the Court never produced or established with concrete and convincing evidence to show that the 1st to 4th Defendants were never allocated plots 1, 10 and 11. All that the PW1 tendered before the Court are application forms of the 1st to 4th Defendants were they applied for their initial various plots of land in 2011 at favour estate, which the PW1 was in collaboration with the NSCDC FCT as at then. The 1st and 4th Defendants despite their various applications were never allocated any plot of land by the PW1.

He maintained that the evidence of PW1 and Pw2 during examination in chief and cross examination are not credible evidence, worthy of belief, natural reasonable and probable in view of the entire circumstances of the case.

According to the Defendants, PW1 has not produced any credible legal admissible evidence before this Honourable Court to show that he did not allocate plots 1, 10, and 11 to the 1st to 4th Defendants.

Counsel further argued that the Claimant's relief 6 is not tenable, as the 1st Defendant has already written PW1 to come and collect his balance of N2, 350,000.00 (Two Million Three hundred and Fifty Thousand Naira)

Counsel argued that the Claimant has not been able to establish that the 1st to 4th Defendants trespassed into Plots 1, 10 and 11, and that same was not allocated to them. Furthermore, the Claimant has not established any breach of contract to be entitled to general damages.

On issue 2, counsel on behalf of the Defendants/Counter-Claimant maintained that the Defendants have proved their counter-claim and are entitled to the reliefs sought. Counsel made references to exhibits D1 to D6 showing that the 1st and 4th Defendants were allocated their various plots of land by PW1.

Counsel to the Claimant in his final written address filed on 11th May, 2023, raised two issues for consideration: -

1. Whether from the totality of the evidence adduced in this instant suit, the action of the Defendants in developing any plot within plot MF3112 Pyakassa, FCT-Abuja without completely paying the Claimant the purchase price is proper in law.
2. Whether the claimant has placed sufficient evidence before this honourable Court as to be entitled to the reliefs sought.

On issue one, counsel maintained that the claimant in a concerted effort to persuade this honourable Court to grant his claims has presented before this honourable Court both documentary and oral evidence in proof of his case.

He further argued that the Defendants especially the 1st and 2nd Defendants who testified as DW 1 and DW2 made some very weighty admissions which also go to establish the impropriety or illegality of the actions of the 2nd, 3rd, and 4th Defendants in developing plots 1, 10 and 11 within plot number MF3112 Pyakassa, Abuja in sharp contrast or default to the agreement reached between the claim's attorney and the Defendants.

Counsel maintained that to establish the illegality and the impropriety of the actions of the Defendants especially the 2nd, 3rd, and 4th Defendants in developing plots 1, 10, and 11 within plot MF3112 Pyakassa, the claimant tendered in evidence exhibit 4 which is made up of about five documents being the 1st to the 4th Defendants' application forms for allocation of buildable plots of land within the claimant's attorney's estate. From the various forms forming exhibit 4, counsel opined that what the Defendants applied for were plots for residential purpose and not plots for commercial purpose such as the plaza built by the 2nd Defendant on plot number 1 within plot MF31 12 Pyakassa, Abuja.

Counsel also maintained that by clause 8 of exhibit 6, the 1st to 4th Defendants were under an obligation to complete the payment of the agreed additional sum of N10, 850,000.00 which is part of the purchase prices for the various plots of land to be sold to the 1st to the 4th Defendants and which money is due to be paid to the claimant's attorney upon the identification of the individual plots to be sold to the Defendants further to which payment, the claimant's attorney would issue the relevant or requisite title documents to the 1st to the 4th Defendants.

Counsel urges the Court to uphold and honour the entire terms voluntarily agreed to as contained in Exhibit 6. **UNITY BANK PLC VS. COL. BELLO MOHAMMED AHMED (RTD) (2019) LPELR-47395, Pp. 19 - 20, para. B**

Relying on the decision in the case of *Abdu Manya vs. Alhaji Ilyasu Idris* (2000) LPELR-10172 (CA), pp. 9-14, counsel maintained that where a purchaser of land made part-payment of the purchase price but defaulted in paying the balance, there can be no valid sale even when the purchaser is in possession. Such possession is incapable of defeating the vendor's title. **ODUFE VS. FATOKE (1977)4 SC 11**

On issue two, Counsel submitted on behalf of the Claimant that the Claimant has presented very concrete, credible, cogent, and sufficient evidence before the Court to be entitled to all the reliefs sought by it.

In the final determination of this suit, I shall adopt the two issues raised by the Defendant's:-

- i. Whether the Claimant has proved his case on the preponderance of evidence adduced by the Claimant to be entitled to the reliefs sought by him?
- ii. Whether the Defendants have proved their Counter Claim to be entitled to the reliefs sought in their Counter Claim?

From the totality of the evidence led in the instant suit, it is apparent that the parties are in agreement on some issues such as: -

- a. That the Defendants applied to the claimant's attorney for allocation of buildable space of land for the building of residential bungalows and duplexes in the claimant's attorney's defenders' assurance homes Scheme.
- b. That owing to the redesigning of the entire Lugbe by the FDA, the Defendants could not take possession of the lands as were allotted to them by the claimant's attorney.

- c. That for the frustration, the claimant's attorney pursuant to the Memorandum of Understanding entered into between the parties relocated the Defendants to plot MF3112 Pyakassa, Lugbe, Abuja.
- d. That the Defendants are yet to complete the payment of the plots to the claimant's attorney as envisaged in the memorandum of understanding.

The major issue of contention is that the claimant's attorney did not allocate plots 1, 10, and 11 in Plot number MF3112 Pyakassa, Abuja to the 1st to 4th Defendants.

From the pleadings of the parties, issues were duly joined. While it may be technically right to say that the Claimant did not expressly claim title to the plots in question in the reliefs set out in his statement of claim, title was decidedly put in issue by the pleadings of the parties. Therefore, in order for the Claimant to prove his entitlement to a declaration of possession and occupation of the plots in dispute on the strength of his possession and occupation of the land as claimed, as opposed to the adverse claim of the Defendants who also contended that they owned the said plots having been allocated same and were also in possession, the Claimant was obliged to prove his title which entitled him to such possession and occupation of the land. This is settled law.

In the case of **Registered 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."

The Claimant in an effort to persuade this Court to grant his claims, relied heavily on two pieces of evidence. Exhibit 4 is made up of about 5 documents being the 1st to 4th Defendant's application forms for allocation of buildable plots. These application forms are believed to have been given to the Defendants in connection with the old estate in Sabon Lugbe 1 Extension, FCT.

Exhibit 6 is the agreement between the Claimant's attorney and the Defendants wherein the Defendants agreed to be relocated to Plot MF3112 Pyakassa upon some conditions.

By virtue of clause 7 of Exhibit 6, the Claimant's attorney was to identify the individual plots to be allocated to the Defendants within a period of 15 days after the signing of the MOU. The Claimant claims to have done so, and that he allocated Plots 9, 7, 13, and 12 to the 1st to 4th Defendants respectively for purely residential buildings.

The Defendants on the other hand are saying that the Claimants did not allocate the said plots to them, rather, that Mr. Chris Nwokolo, the Claimant's Partner allocated Plot 1 to the 2nd Defendant and also collected infrastructure fee from the 2nd Defendant in respect of that plot. The 2nd Defendant relied on Exhibit DW6 (Award of letter of Allocation).

From the testimony of PW1 under Cross Examination, it is settled that Mr. Chris Nwokolo has a business relationship with the Claimant. The Claimant has not convincingly refuted or denied

the power of the said Mr. Chris Nwokolo to allocate plots within the estate and to accept infrastructure fee.

It is the contention of the PW1 that plots 10 and 11 were allocated and belong to one Mrs. Adaora Ann Okafor and Mr. Sunny Udeh. The said persons according to the PW1 reported to him that the 1st to 4th Defendants had trespassed on their land.

It is pertinent to mention here that the said Mrs. Adaora Ann Okafor and Mr. Sunday Udeh who the PW1 claimed he allocated and are the owners of plots 10 and 11, never testified before the Court, neither were they parties to this suit.

It is my view that the PW1 all through his testimony before the Court never produced or established with concrete and convincing evidence to show that the 1st to 4th Defendants were never allocated plots 1, 10 and 11. All that the PW1 tendered before the Court are application forms of the 1st to 4th Defendants where they applied for their initial various plots of land in 2011 at Favour Estate, which the PW1 was in collaboration with the NSCDC FCT as at then.

Apart from the 2nd Defendant who tendered Exhibit DW6 as evidence of allocation of Plot 1, neither the Claimant nor the 1st and 4th Defendants have tendered any substantial evidence to back up their claims to the disputed plots 10 and 11. The Claimant failed to tender evidence of allocation of Plot 10 and 11 to Mrs. Adaora Ann Okafor and Mr. Sunday Udeh. He also failed to show evidence to convince the Court that he allocated plots 9, 7, 13 and 12 to the Defendants.

*I will like to rely on the case of **FEDERAL MORTGAGE FINANCE LTD VS HOPE OFFIONG EKPO (2004) 2 NWLR PART 856** cited by the Defendants. In that case, the Court of Appeal (Calabar Division) held that:*

"A Court of law acts only on concrete evidence established..."

Credible Evidence has been defined by your Lordships at the Supreme Court in the case of **EPHRAIM OKOLI DIM VS ISAAC ENEMUO (2009) 10 NWLR PART1149 PAGE 353 AT PAGE 364 RATIO 15** as:

"Credible evidence is evidence that is worthy of belief and must not only proceed from credible source, it must be credible in itself in the sense that it should be natural, reasonable and probable in view of the entire circumstances".

It is pertinent at this stage to examine the claims - which are damages for trespass and injunction. An action for trespass will only avail a person in possession of land. The slightest possession in the Plaintiff enables him to maintain an action for trespass in a situation where the Defendant cannot show a better title. Evidence of possession however slight must be able to establish exclusive possession.

Possession in law for the purpose of an action in trespass must be exclusive because if it is not exclusive, the law will not protect it. Trespass to land is an entry upon land or any direct and immediate interference with the possession of land. The comprehensive way of describing a trespass is to say that the Defendant broke and entered the Plaintiff's land and did damage. Whether or not the act proved is sufficient to establish possession is a question to be decided on the merit of each case. Instances of cultivation of a piece of land, erection of a building or a fence, and even demarcation of land with pegs at its corners have all been held to be evidence of possession.

In the instant case, it is important to consider if from the evidence adduced, the Claimant has established that he had exclusive

possession of Plot 1 as at the time the 2nd Defendant erected a plaza on it, and if he also had exclusive possession of Plot 10 and 11, which the 1st and 4th Defendants are alleged to have trespassed upon. This is important because where the Claimant fails to establish exclusive possession, he cannot succeed in an action for trespass against the Defendants.

On Plot 1, the Claimant has failed to convince the Court that he did not allocate the said plot to the 2nd Defendant. PW1 in his testimony did not deny the power of his business partner, Mr. Chris Nwokolo of Wealth Homes Properties & Services to allocate Plot 1 to the 2nd Defendant. In my opinion, the 2nd Defendant has a better title and possession to Plot 1, than the Claimant. The Claimant therefore cannot claim in trespass and injunction against the 2nd Defendant.

Similarly, the possessory interest of the Claimant on Plots 10 and 11, which he claimed to have allocated to Mrs. Adaora Ann Okafor and Mr. Sunday Udeh, is what I find difficult to fathom. The Claimant's conduct provokes certain questions such as: Where are Mrs. Adaora Ann Okafor and Mr. Sunday Udeh? Is the Claimant suing as an Attorney of Mrs. Adaora Ann Okafor and Sunday Odeh who are purported owners of the said plot? Does the Claimant have any possessory right against the Defendants, having allegedly allocated the said Plots to the said Mrs. Adaora Ann Okafor and Mr. Sunday Udeh?

Trespass to land is a wrongful entry into the land in actual or constructive possession of another, **OLANIYAN V FATOKI [2003] 13 NWLR(pt 837) 273, 286.**

A person who is not in possession cannot sue in trespass, **AKIBU V AZEEZ [2003] 5 NWLR(pt 814) 643, 670.** Thus, trespass is rooted or based on exclusive possession or right to possession, **UNAKAMBA V NZE[2002] 28 WRN 53, 64.**

Being rooted in exclusive possession, all a Plaintiff needs to prove is that he has exclusive possession or that he has the right to such possession of the land in dispute, **OYEBAMIJI V FABIYI (supra) 290; AMAKOR V OBIEFUNA (1974) NMLR 331.**

So inextricably tied to possession is the tort of trespass that a person in possession of land even as a trespasser can sue another person who, thereafter, comes upon the land unless that other is the owner or shows some title which gives him a better right to be on the land, **AROMIRE V AWOYEMI [1972] 2 SC 182; TUMO V MURANA[2000] 12 NWLR (pt 681) 370; EZE V ATASIE[2000] 9 WRN 73, 83.**In other words, a person who has no title over a piece of land, but who is in possession, may, successfully, sue for trespass if an entry was made into the land without his consent, **OLANIYAN V FATOKI (supra) 286; OLOWOLAGBA v Bakare [1998] 3 N W L R (pt 543) 528.**

Against this background, in an action, such as this, where the claim is for trespass, two separate and independent issues must be considered. They are: (a) Whether the Plaintiff established his actual possession of the land; and

(b) Whether the Defendants trespassed on it, **ADEWOLE V DADA [2003] 4 NWLR (pt 810) 369; 378; NWADIOGBU V NNADOZIE[2001] 12 NWLR (pt 727) 315.**

It is the finding of this Court that the Claimant is not in exclusive possession of the Plots in dispute. As such, he is not entitled to the orders for damages for trespass or injunction.

It is also instructive to note that it is only the purported allottees of Plots 10 and 11 who were vested with exclusive possession of the said Plots by virtue of the alleged allocations that can claim in trespass and injunction against the Defendants.

This is however not to say that the Defendants have proved a better title to Plot 10 and 11. In fact, apart from Plot 1 which the 2nd Defendant has shown evidence of allocation, neither the Claimants nor the 1st and 4th Defendants have been able to establish title and exclusive possession of Plots 10 and 11. I so hold!

In fact, the 4th and 5th Defendants abandoned their respective statements of defence and did not appear before this Court to adopt their statement of oath in defence of this matter. That however did not relieve the Claimant of his obligation to prove exclusive possession in order to succeed in his action for trespass against the Defendants.

On the issue of not completing payment for their plots by the Defendants, the established legal principle is that where there is an agreement for sale of land either under native law and custom or any other mode of sale and for which the purchaser, acting within the terms of the agreement, makes full or part payment of the purchase price to the vendor and is in furtherance thereof put in possession, he has acquired an equitable interest in the property and which interest ranks as high as a legal estate and cannot therefore be overridden by a subsequent legal estate created by the same vendor or his legal representative in favour of another person. This principle was examined in considerable details and applied in **AYINLA v SIJUWOLA (1984) N.S.C.C. 301 at 312.**

For emphasis, it is instructive to note that even if full payment is made, it is when it is coupled with possession that it can be said that the purchaser has acquired an equitable interest in the property.

In **OHIAERI VS. YUSSUF & ORS (2009) LPELR - 2361 (SC)**, the Supreme Court held, on the principle above that:

"The established legal principle is that where there is an agreement for sale of land either under native law and custom or any other mode of sale and for which the purchaser, acting within the terms of the agreement, makes full or part payment of the purchase price to the vendor and is in furtherance thereof put in possession, he has acquired an equitable interest in the property and which interest ranks as high as a legal estate and cannot therefore be overridden by a subsequent legal estate created by the same vendor or his legal representative in favour of another person."

Further, if there is proof that money was paid for land coupled with an entry into possession, it is sufficient to defeat the title of a subsequent purchaser of the legal estate if the possession is continuously maintained. See the case of **T. A. ORASANMI VS. M. O. IDOWU (1959) 4 F.S.C. 40.**

More close to the contention herein is the decision in **SOREMEKUN VS. SHODIPO (1959) LLR. 30** to the effect that if land is sold to a party without executing a formal deed of conveyance, his interest was no more than equitable. Legal estate of the other party would be preferred to it if the party with the equitable interest is not in possession.

All these cases appear to lay emphasis on possession as the bedrock of equitable interest. If it was an equitable interest, if it is coupled with possession it cannot be overridden by a legal estate. See generally, the cases of **OSHODI VS. BALOGUN & ORS 4 W.A.C.A. 1 AT PAGE 6; SULEIMAN & ORS VS. JOHNSON 13 W.A.C.A. 213; REGISTERED TRUSTEES OF MUSLIM MISSION HOSPITAL COMMITTEE VS. OLUWOLE ADEAGBO (1992) 2 N.W.L.R. (PT. 226) 690 AT 706.**

The emphasis is on the payment of the agreed full or part of the purchase price coupled with possession by the purchaser.

Without over-flogging the issue, Exhibit DW6 and part payment of the purchase price of N2,650, 000.00 as well the erection of the plaza on Plot 1 (which is an act of possession), indeed vested equitable interest on the 2ndDefendant.

However, part payment of purchase prices by the 1st, 3rd, and 4thDefendants without taking possession of any plot in the estate did not confer any equitable interest on any plot in them. There is no evidence that any plot in the estate was allocated to the 1st, 3rd, and 4thDefendant.

The Claimant can however claim against the 2ndDefendant for breach of Contract for failing to complete payment of her purchase price even after taking possession of the Plot 1 allocated to her. The 2ndDefendant is hereby ordered to immediately pay the balance due under the MOU between the Claimant and the Defendants dated 20th November 2017 (Exhibit

Looking at the MOU dated 20th November 2017 between the Claimant and the Defendants, I doubt if the Claimant can claim in breach of Contract against the 1st, 3rd, and 4thDefendant for failing to pay the balance of their outstanding purchase price without the Claimant first identifying the Defendant's respective plots.

To this end, it is the finding of this Court that the Claimant must identify and allocate the Plots of the 1st, 3rd, and 4thDefendants as agreed in the MOU within 15 days from the date of this judgment, and the Defendants shall immediately pay their outstanding balance as stated in the MOU.

Failure of either the Claimant or the Defendant to perform their obligations above shall amount to a breach of the agreement.

On the Claim against the 5th Defendant for a refund of the sum of N170,000.00 being the advance payment made by the claimant's attorney to the 5th Defendant for the designing of a plaza and delivering to the claimant's attorney a complete working drawing, stamped and registered with the Architect Registration Council of Nigeria (ARC) and which drawing was to be of the standard required by the department of Development Control of the Federal Capital Development Authority, and which the 5th Defendant failed to perform, it is instructive to note that the 5th Defendant abandoned his statement of Defence and failed to appear before the Court to adopt his depositions in defence of the claim against him.

The law is trite that failure of a Defendant to adduce evidence in proof of the statement of defence filed renders it abandoned. The statement of defence is liable to be struck out. The effect, in my opinion, is that the 5th Defendant is deemed to have filed no defence at all to the suit. See *FCDA v. Alhaji Musa Naibi* (1990) 3 NWLR (Pt. 138) 270 at 281; *Aprofim Engineering Construction Nigeria Limited v. Sidov Ltd* (2008) LPELR-12895(CA). The 5th Defendant's statement of defence is therefore deemed abandoned.

The allegation against the 5th Defendant squarely borders on a transaction between the 5th Defendant and the PW1 to the exclusion of any other person. It follows that the evidence given by the DW1 and the DW2 regarding the transaction or relationship between the 5th Defendant and the PW1 is a mere hearsay which this honourable Court cannot countenance.

The failure of the 5th Defendant to adopt his statement on oath so as to prove the averments in the Defendants' joint statement of defence in defence of the allegation made by the claimant against the 5th Defendant means that the part of the statement

of defence where defence was offered against the allegation of the claimant against the 5th Defendant has been abandoned. This submission is in sinc with the decision of the Court in the case of **MAISAMARI BIT BIT & ANOR. VS. NGAI SARKIN KUDU & ORS. (2021)LPELR-55267 (CA), P. 22, paras. B-D** where the Court of Appeal per Tobi JCA held that:

"The law is that pleading not backed by evidence is abandoned and evidence without pleadings comes to no issue"

It follows from the above decision that the evidence led by the claimant in proof of relief G is sufficient to satisfy this honourable Court to grant the said relief.

Consequently, the 5th Defendant is hereby ordered to refund the sum of N170,000.00 being the advance payment made by the claimant's attorney to the 5th Defendant for the designing of a plaza and delivering to the claimant's attorney a complete working drawing, stamped and registered with the Architect Registration Council of Nigeria (ARC) and which drawing was to be of the standard required by the department of Development Control of the Federal Capital Development Authority. I so order!

Having resolved that the Claimant could not establish with sufficient evidence, the allegation of trespass against the 1st to 4th Defendants, his Claim therefore fails in part. Reliefs A, D, E, H, I and J are hereby refused.

Reliefs C succeeds only to the extent that the 1st and 4th Defendants were not allotted Plots 10 and 11. However, the 2nd Defendant holds an equitable title over Plot 1, and is hereby ordered to pay the balance of the purchase price immediately.

The Claimant is hereby ordered to identify the plots of the 1st, 3rd and 4th Defendants, as well as the remaining one plot due to the 2nd Defendant as agreed in the MOU dated 20th November 2017.

Reliefs B and F appears to be the same and one relief, and is hereby granted in favour of the Claimant. Consequently, the Defendants are hereby ordered to pay to the Plaintiff's Attorney, a balance of N2, 450, 000.00 being the balance of the purchase price of the respective plots due to the Defendant. This however must be preceded by an identification of the Plots of the 1st, 3rd and 4th Defendants by the Claimant.

Having resolved the substantive claim, we now turn attention to the Defendant's counter claim. Relief 1 of the Counter Claim succeeds only to the extent that the 2nd Defendant was allotted plot 1. All the other declarations sought in relief 1 of the Counter Claim are hereby refused, as there is no credible evidence of allocation of plots to the 1st, 3rd and 4th Defendants.

Furthermore, reliefs 2 to 8 of the Defendant's counter claim are hereby refused.

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HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Obinna Ugwu:- Appearing with C.PMadu for the Claimant.

P.EOssai:- Appearing with Martha Ibekwe for the Defendant.