

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI-ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN  
SUIT NO: CV/633/2019  
MOTION NO: M/509/2021**

**BETWEEN:**

**MRS. HAUWA TSAMIYU IBRAHIM.....CLAIMANT/APPLICANT  
AND**

**MALLAM AHMED MAGUDU.....DEFENDANT/RESPONDENT**

**JUDGMENT**

By the amended originating summons filed on the 24<sup>th</sup> day of March, 2022 the claimant raised three questions for determination, thus:

1. Whether or not in view of and in consideration of sections 5(1) (a), 8, 9(4), 13, 14, 15(a) and 43 (a) & (b) of the Land Use Act, the claimant being adjudged bonafide owner and allottee/statutory holder of land in possession of law consisting of two bedroom bungalow otherwise known as House No. 17A, Kadayan Avenue, Life Camp, Abuja and more particularly as clearly severed, separated and demarcated from the defendant's two bedroom tenement boys quarters otherwise known as Block 18, Room A & B, Kadayan Avenue, Life Camp, Abuja is not under obligation, duty and/or entitled to define the boundaries of the said land consisting of two bedroom bungalows along the beacon lines, from , PB 5242, PB 5243, PB 5653, PB 565, PB 5640, PB 5641, PB 5842, PB 7191, and PB 95842 more particularly as covered by the Certificate of Occupancy No. 59uw-3addz-4e24r-15bc6-10 and file No. NG 30099 granted to her by the Hon. Minister of the Federal Capital Territory, FCT, Abuja?

2. Whether or not by virtue of the provisions of section 5(1)(a), (2) of the Act the defendant's rights of use; possession; occupation (if any without conceding) of any part or whole of the claimant's land consisting of two bedroom bungalow otherwise known as House No. 17A, Kadayan Avenue, Life Camp, Abuja which is clearly served, separated and demarcated from the two bedroom tenement boys quarters of the defendant otherwise known as Block 18, Room A & B, Kadayan Avenue, Life Camp, Abuja with beacon Nos. PB 5927, PB 5242, PB 5243, PB 5653, PB 565, PB 5640, PB 5641, PB 5842, PB 7191, and PB 95842 more particularly as covered by the Certificate of Occupancy No. 59uw-3addz-4e24r-15bc6-10 and file No. NG 30099 have not extinguished?
3. If the answer to question 2 for determination above is in the affirmative, whether or not in view of the provisions of section 5(1) (a) (2) of the Land Use Act, the defendant, apart from bys quarters can validly or legally exercise rights of use; possession of occupation of the whole part of the claimant's land consisting of two bedroom bungalow otherwise known as House No. 17A, Kadayan Avenue, Life Camp, Abuja more particularly as covered by the Certificate of Occupancy No. 59uw-3add-4e24r-15bc6-10 and file No. NG 30099 and as clearly severed; separated and demarcated from the defendant's two bedroom tenement boys quarters otherwise known as Block 18, Room A & B, Kadayan Avenue, Life Camp, Abuja by beacon Nos. PB 5927, PB 5242, PB 5243, PB 5653, PB 565, PB 5640, PB 5641, PB 5842, PB 7191, and PB 95842.

The claimant seeks for the following reliefs:

1. An order of perpetual injunction restraining the defendant, his servants, agents and privies from interfering with the claimant's development on her property or interfering with the claimant's duty of defining her boundary by erecting her fence along the beacon (boundary) lines as demarcated, separated and severed from the defendant's two bedroom tenement boys quarters otherwise known as Block 18, Room A and B Kadayan Avenue, Life Camp, Abuja particularly as demarcated, separated and severed by beacons Nos. PB 5927, PB 5242, PB 5243, PB 5653, PB 565, PB 5640, PB 5641, PB 5842, PB 7191, and PB 95842.
4. An order restraining the defendant from committing further act of trespass on any part of a whole of the claimant's land and/or interfering with the claimant's rights of peaceful possession, quite enjoyment and/or occupation of the land consisting of two bedroom bungalow otherwise known as House No. 17A, Kadayan Avenue, Life Camp, Abuja more particularly as covered by the certificate of occupancy No. 59uw-3add-4e24r-15bc6-10 and file No. NG 30099 and as clearly severed; separated and demarcated from the defendant's two bedroom tenement boys quarters otherwise known as Block 18, Room A & B, Kadayan Avenue, Life Camp, Abuja by beacon Nos. PB 5927, PB 5242, PB 5243, PB 5653, PB 565, PB 5640, PB 5641, PB 5842, PB 7191, and PB 95842.

In support of the summons is an affidavit of twenty-three paragraphs deposed to by the claimant, and attached to the affidavit are exhibits and is accompanied by a written address of counsel.

In response, the defendant filed a preliminary objection which was later withdrawn and was struck out, and subsequently the defendant filed a two paragraphed counter affidavit and is accompanied by a written address of counsel.

The claimant in response to the counter affidavit also filed a reply on points of law.

In the affidavit in support, it is stated that the claimant is the owner of the land in possession of two bedroom bungalow described as House No. 17A, Kadayan Avenue, Life Camp, Abuja which is separated and demarcated from the defendant's property; a two bedroom tenement boys quarters described as Block 18, Room A & B Kadayan Avenue, Life Camp, Abuja, and that prior to the sale of House No. 17A, Kadayan Avenue, Life Camp Abuja by the Federal Capital Development Authority, the defendant's property was the boys quarters to House No. 17A and both were alone property/house known as No. 17A, Kadayan Avenue, Life Camp, Abuja.

It is deposed to the fact that sometime in year 2010, the claimant instituted an action against the defendant as well as the Hon. Minister of the Federal Capital Territory and the Adhoc Committee on sale of the Federal Government Houses and defendants in suit No. CV/646/2010 in respect of the property which at the time included the defendant's property and was sold separately to the 1<sup>st</sup> defendant in the said suit by the 2<sup>nd</sup> to 4<sup>th</sup> defendants, and that the court in its judgment delivered on the 4<sup>th</sup> March 2014 declared the claimant as the bonafide allottee/statutory holder of House 17A, Kadayan Avenue, Life Camp, Abuja and that the defendant's property i.e. two bedroom tenement boys quarters is separated, demarcated from the claimant's land with beacon Nos. PB 5927, PB 5242, PB 5243, PB 5653, PB 565, PB 5640, PB 5641, PB 5842, PB 7191, and PB 95842.

It is stated that it is clear from the Certificate of Occupancy of the claimant that the front of her land has two beacons: No. and PB 5242 while at the rear part of her land, there are beacons Nos. PB 7191 and PB 5243 which separated and demarcated her land from that of the defendant as further shown in her Certificate of Occupancy thereby creating a boundary between the claimant's and the defendant's properties, and it is upon this separation and demarcation of the two properties that the Claimant's property was then referred to as House No. 17A, Kadayan Avenue, Life Camp, Abuja while the defendant's property was referred to as the Block 28, Room A & B, Kadayan Avenue, Life Camp, Abuja.

The claimant deposed to the fact that despite the decision of the court which clearly gave the demarcation and separation of the two properties, the defendant has continued to trespass and interfere with her land without her consent or permission, and that the defendant has, on numerous occasions, intimidated, threatened and prevented her from developing her land.

It is further stated that sometime in November, 2017, the defendant willfully and deliberately brought a porter cabin/container constructed for tailoring shop and placed same within her land without any lawful excuse whatsoever. That in March, 2018, the defendant willfully and deliberately pulled down and destroyed the fanciful fence block at the front of her property. Again, on the 20<sup>th</sup> July, 2018 the defendant further planted lemon grass on her land directly opposite the porter cabin/container which is within her property, and that all entreaties made to the defendant and his wife to desist from turning her land into a tailoring business centre and a thoroughfare met with stiff resistance and has now built up his available space thereby turning her land to his own use and occupation without permission and consent, and

it is as a result of these acts that she has lost her right to peaceful possession and quiet enjoyment of her property.

In his written address, the counsel to the claimant raised these issues for determination as follows:

- 1. Whether or not this Honourable court is not duty bound to give effect to its own judgment as contained in Exhibit 'A'?**
- 2. Whether or not the claimant does not have the legal right to carry out her statutory duty detouring the boundaries of her land by erecting a perimeter fence along the established beacons lines?**
- 3. Whether or not the defendant's numerous acts of violent and malicious destruction of claimant's property as well as the invasion of same by placing a porter cabin for the purpose of a tailoring work do not amount to willful interference with an trespass to the claimant's property?**

The counsel submitted that this court having declared the claimant as the bonafide owner of the two bedrooms has a duty to give effect to the judgment upon threatening or gross violation of the possessory rights of the claimant to the said property, and the counsel cited the case of **Amori V. Iyanda (2008) 3 NWLR (pt 1074) p. 250 at 284 paras. A-C**. The counsel also submitted that by the depositions of the claimant in her affidavit in support, she has proved the various acts of threat over her property as affirmed in her favour by the judgment of the court. It is submitted further that it is the law that where there is a declaratory judgment in favour of a party establishing his or her title over property, such a party is entitled to approach the court subsequent proceeding to enforce the judgment particularly where the right to affirmed is being threatened or violated as in the instant case. The counsel submitted that based upon the fact the court had earlier affirmed the title of the claimant over the property, the court

then has the duty to grant her claims for possession and trespass and to grant the injunctive reliefs she sought, and he relied on the same case of **Amori V. Iyanda (supra)** where the court was said to have held that a claim for possession and trespass by a party who has proved title to land must be granted.

The counsel submitted that the defendant cannot by stretch of imagination be in possession of the whole or any part of the claimant's land which had already been decreed in her favour and it is impossible for both parties to be in concurrent possession, and that any exercise of possession by the defendant of any part of the claimant's land must be adjudged as trespass, and he cited the case of **Igwe V. Alaka & Ors (2016) LPELR – 40222 (CA)**.

The counsel submitted further that it is the claimant that is duty bound to define the boundaries of her property including fencing it and failure of which she will be liable to pay penalty to the appropriate authorities as the claimant is by law not expected to neglect defining the boundaries of her land as provided as section 13 of the Land Use Act.

The counsel submitted that the defendant has no right or legal justification whatsoever to prevent or restrain or disturb the claimant from carrying out a statutory duty of fencing her land along the beacon lines as indicated in the affidavit in support of the originating summons. The counsel re-iterated that the wrongful act of placing a porter cabin on her land and removing the blocks on the part of her fence amounts to trespass and he urged the court to so hold, and he cited the cases of **Group Captain Ogah & Anor. V. Malam Garba Ali Gidado 2 Ors (2013) LPELR – 20298 (CA)** and **Eweh V. Ozor & Anor. (2016) LPELR – 40830 SC** where the court decided on the meaning of trespass and who would be entitled to seek for redress in such cases.

The counsel submitted that EXH. 'A' and 'C' annexed to the claimant's affidavit have clearly established boundaries of the claimant's land, and as such, the issue of boundaries of the claimant and defendant's respective lands no longer in dispute, and he cited the case of **H.O. V. Abujakar & Ors (2016) LPELR – 141635 (CA)** and postulated that whatever possessory rights (if any) of the whole or any part of the claimant's property occupied by the defendant has been superseded by the title of the claimant as declared in her favour in EXH. 'A' and as such, any interference with any part or the whole of the land constitutes trespass and the defendant will be liable in damages, and he cited the case of **Okemiri V. Chukwueke (2016) LPELR – 40983 (CA)**.

The counsel opined further that since the issue of title has been resolved and in favour of the claimant, it is only the claimant that can maintain an action of trespass in respect of the property already declared to be of the claimant.

The counsel re-iterated as already stated in the affidavit in support that it is clear that the defendant sometimes in March, 2018 violently and maliciously pulled down and destroyed the blocks used for the fanciful fence at the front of the claimant's house, particularly from the fence which is enclosed within the property in issue.

It is stated in the counter affidavit of the defendant that the judgment in suit No. HC/CV/464/2010 was entered in favour of the defendant, and the allegations of the claimant regarding trespass when property were denied and refuted and stated categorically that the defendant did not at any time trespass or interfere with the claimant's land.

The defendant denied the allegations of intimidation, threats or prevention of the claimant from developing her land and also stated that it was the claimant instead that attempted to block or prevent him from enjoying his right of way into the house. He also denied bringing any porter cabin



or container or ship into the land of the claimant or pulling down or destroying any fence in front of or in her property.

It is stated that it is the claimant who is trying to confiscate his house because she has reported the defendant to the police, Abuja Environmental Protection Board, District Court, Wuse and the High Court of the FCT and the result of all the cases turned to be in favour of the defendant. It is stated that the claimant at the moment is interfering with the defendant's right of way and has dig a deep hole in the land without his consent.

In his written address, the counsel to the defendant distilled a sole issue for determination, to wit:

**Whether by virtue of the facts and evidence placed before the court, the claimant proves her case warranting the court to grant the reliefs sought?**

The counsel answered the above issue in the negative and submitted that the burden is on the party who will loose if a fact is not proven, and to prove all the essential elements or his case as provided in section 132 of the Evidence Act. The counsel cited also section 131 of the Evidence Act where it is provided 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.

It is the submission of the counsel that the claimant has claimed that the defendant has committed series of trespass on her land, threatened and intimidated her, but the defendant by the counter affidavit denied the allegations, and that since the allegations of claimant have been denied, the claimant is expected in law to furnish the court with credible evidence that is capable of proving her claims or the allegations, and he cited the case of **R V. Oladpo Oshonbiyi (1974) All NLR 453.**

The counsel submitted that to prove the tort of trespass in law, the plaintiff required to prove to the court that the defendant entered the premises without lawful justification, and he referred to the case of **Omasanya V. Emmanuel (1974) 9 CCHJC 1474 at 1481** and contended that the claimant has failed to prove the necessary factors in her affidavit in support.

The counsel submitted further that the claimant in paragraph 14 alleged that the defendant threatened and intimidated her which are criminal offences that must be proved beyond reasonable doubt as provided for in section 135(1) of the Evidence Act, and that such criminal allegations cannot be proved by affidavit evidence and therefore cannot be sustained via originating summons.

The counsel argued that the claimant having failed to prove her case, the reliefs she sought cannot be sustained or granted and he urged the court to so hold. He drew the attention of the court to EXH. 'A' and submitted that it is not an instrument, and he cited the case of **Rasc Ltd V. Akib (2006) 13 NWLR (pt 997)**, and he urged the court to dismiss the case.

The counsel to the claimant in his reply on points of law argued that there is nowhere in the judgment in suit No. FCT/HC/CV/646/2010 where the court entered judgment for the defendant in respect of House No. 17A Kadanya Avenue, Life Camp Abuja but that rather the claimant was declared the bonafide allottee (statutory holder of the property in issue. He further submitted that EXH. 'A' speaks for itself and the parties are not allowed to explain it, and he cited the case of **Ochigbo V. Simon (2022) LPELR – 57894 (CA)** and **Muhammad V. PDP & Ors (2022) LPELR – 58984 (CA)**. The counsel submitted that the court is also empowered to look into its record to utilize the processes already filed before it and the judgment being referred to is already before the court, and he referred to the case of **Ikeme & Anor V. Sulyman & Ors (2022) LPELR – 58258 (CA)**.

The counsel contended that the facts contained in the counter affidavit are mere denials and the entire questions raised for determination are questions bordering on the interpretation of section 5(1) (a) 2, 8, 9(4), 13, 14, 15(a) and 43(a) & (b) of the Land Use Act. The counsel also argued that the issue raised are of sole construction of the sections thereby making the issues of law and not facts as there is no material dispute of facts in the matter such that would distract the court from interpreting the effects of the above sections of law as sought by the claimant, and cited the case of **Sani V. Kogi state House of Assembly & 2 Ors (2019) LPELR – 46404 SC.**

The counsel opined that the submissions of counsel to the defendant as to issues raised in paragraphs 3.02 – 3.08 are immaterial in the construction and consideration of the effect of the above sections of the Land Use Act. He argued that the claimant did not raise any question as to the criminal liability of the defendant in the originating summons or raised any question for determination in trespass and that the facts (if any) play immaterial role in the determination of the questions raised for the determination in this originating summons.

The counsel also contended that the defendant did not raise any issue as to whether or not this action was properly commenced via originating summons and that the disputed facts alleged by the defendant play normal role in this case, and he urged the court to hold that this action is properly constituted as same only raised legal questions for determination which facts have no place or role. The counsel urged the court to hold that facts in this case are not in dispute riotously, and he cited the case of **Inakoju V. Adeleke & ors (2007) LPELR – 1570 (SC).**

The counsel also submitted that the claimant did not call for the interpretation of EXH. 'A' in her amended originating summons as erroneously submitted by the defendant's counsel in his written address, and he urged the court to

discountenance the defendant's counter affidavit and accompanying written address.

Let me adopt the issue formulated by the counsel to the defendant with little modification, thus:

**Whether considering the facts and circumstances of this case, the claimant is entitled to the reliefs sought?**

Thus, the claimant came before the court through originating summons accompanied by an affidavit and sought for the construction and interpretation of some of the provisions of the Land Use Act Cap. L5LFN 2004 and alleging that the defendant had denied her the use and development of her land, had also trespassed, threatened and intimidated her and destroyed her fanciful fence. Usually originating summons is used where the question in controversy for determination, turn on the simple questions of constructions and word not call for pleadings. See the case of **Agbakoba V. INEC (2009) All FWLR (pt 462) p. 1043 at 1072, paras. B-C**. See also the case of **G.E.B Plc V. Odukwu (2009) All FWLR (pt 491) p. 933 at pp. 949-950, paras. G-A** to the effect that in a suit commenced by originating summons it is envisaged that there is no serious dispute as to the facts in the case because what is in dispute is the construction of an enactment or instrument made under any law upon which the plaintiff is basing his right to a declaration or a claim in his favour, where there is a serious dispute as to the facts then a writ of summons must be issued.

Let me consider the provisions of section 5(1) (a), 2, 8, 9(4), 13, 14, 15(a) and 43(a) and (b) of the Land Use Act section 5(1) (a) of the Act provides:

**“(1) It shall be lawful for the Governor in respect of land, whether or not in all Urban are to:**

**(a) Grant statutory rights of occupancy to any person for all purposes”**

By the above quoted provision, it can be inferred that it is lawful and the duty of the Governor or Minister (as in the case of the Federal Capital Territory) to grant statutory rights of occupancy to a person for any purpose.

By the affidavit in support of the originating summons, the claimant stated that she is the owner of and in possession of a two-bedroom bungalow described as House No. 17A, Kadanya Avenue, Life Camp, Abuja which is separated and demarcated from the defendant's property, a two bedroom tenement boys quarters described as Block 18, Room A & B, Kadanya Avenue, Life Camp, Abuja and this she said was confirmed by the High Court of FCT in a suit with No. CV/646/2010 and by the judgment delivered in the 4<sup>th</sup> March, 2014, the claimant was declared as the bonafide allottee and statutory holder of House No. 17A, Kadanya Avenue, Life Camp, Abuja, and the defendant on his counter affidavit did not dispute as to the position of the law that it is lawful for the Minister FCT to grant the claimant a Statutory Right of Occupancy. Therefore, as there is no dispute as to the provisions of section 9(1) (a) of the Land Use Act between the parties, then why should the court be made to interpret and construct the said provision.

The defendant did not dispute the remaining provisions of sections 8, 9(4), 13, 14, 15(a) and 43(a) and (b) of the Land Use Act, rather he denied the fact that he trespassed into the claimant's land, and that he has not intimidated or threatened or even prevented the claimant from developing her land. He also denied bringing any porter cabin or container or shop into the claimant's land and that he did not pull down or destroy any fence in front of or in her property.

Now, having no dispute as to the construction or interpretation of the provisions of the Land Use Act, why should this court be made to construct or interpret such provisions.

Deducing from the facts of this case as deposed in the affidavits of both parties, what is germane is to decide as to the liability of the defendant regarding the trespass he is alleged to have committed and the culpability of the destruction of the fence of the claimant which was alleged, and to this the court so hold.

The judgment of the court of 4<sup>th</sup> day of March, 2014 is clear without any ambiguity to the effect that both parties were successful as it favoured both the claimant and the defendant.

The questions to be determined in the suit are:

- 1. Whether the defendant is liable for trespass; and**
- 2. Whether the defendant is criminally liable for the destruction of the fence of the claimant?**

These issues bother on facts to which the defendant denied. The reliefs sought bother on trespass and injunction. It is the law that where a claim for trespass is coupled with a claim for injunction, the title of the parties to the land is automatically put in issue. See the case of **Oyekan V. Oyewale (2012) All FWLR (pt 623) p. 1992 at 2001 para. C**. See also the case of **Olowoyo V. Ojo (2012) All FWLR (pt 628) p. 865 at 882, paras. B-C**. It is also the law that in order to succeed in action for trespass, a plaintiff must show that he is the owner of the land or that he is in exclusive possession of it. See the case of **Aloedowo V. Ojubutu (2013) All FWLR (pt 692) p. 825 at 1835, paras F-C**. In the instant case, it is the burden upon the claimant to show that she is the owner of the land to which she alleged to have been trespassed by the defendant. See the case of **Adeyemo V. Adeyemo (2011) All FWLR (pt 584) p. 125 at 139, paras. E-F** to the effect that, the claimant in a claim for trespass, must prove the exact area of the land in his possession trespassed upon. In the instant case, it behooves upon the claimant to show the area to which the defendant

trespassed and to show that she is the person in possession of that area.

In discharging the burden of how the area where the defendant is alleged to have trespassed, the claimant has the burden duty to call witnesses, and if necessary to cause the court to visit the scene with a view to ascertain whether the area trespassed belong to her or not, and to see whether the defendant really trespassed into the land. This cannot be decided in affidavit evidence where it is contested by the defendant. See the case of **S.C.C. Nig. Ltd V. George (2019) All FWLR (pt 1022) p. 363 at pp. 374-375, paras. G-B** to the effect that in cases contested in affidavit evidence, the court do not have the opportunity to assess the demeanor of the witnesses and the benefit of having confusing evidence, clarified by cross examination and re-examination is lacking. In the instant suit, it did not have the opportunity of seeing the witnesses and observing their demeanor and also to have the evidence being tested by cross examination in deciding whether the claimant has proved that the land to which the defendant is alleged to have trespassed is her own and that the defendant has really trespassed into that land and to even find t as to the culpability of the defendant as to destruction of the claimant's fence.

Facts are in dispute in this suit, and therefore, the claimant should not have come by way of originating summons. See the case of **Udo V. Essien (2014) All FWLR (pt 749) p. 1186 at 9. 11201, paras. F-G p. 1202, para. D.**

In the circumstances of this suit, the questions asked did not linked flow with the issue at stake, and the questions clashed with the facts in the affidavits to convey the essence of the originating summons, and coupled with the fact that the cause of action is the fact that the defendant is alleged to have trespassed into the land of the claimant and that he is alleged to have destroyed the fence of the claimant to which

the defendant denied doing so, I hold the view that the facts in dispute.

This court has the option either to order that pleadings be filed or that the parties should proper oral evidence, and I have chosen the first option, that the parties should file pleadings. See the case of **Okanja V. Alafin (2018) All FWLR (pt 969) p. 829 at pp. 846 – 847, paras. F-A.**

I therefore order the parties to file pleadings.

Hon. Judge

Signed

7/2/2024

Appearances:

J.U. Otaru Esq appeared for the claimant.

B.A. Wali Esq appeared for the defendant.