

Joseph Ona & Anor.

— Defendant/Applicant

v.

Allaji Diga Romai Atenda

— Plaintiff/Respondent

(2000) 5 NWLR (Part 656) 244

By

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Introduction

In 1976, the Federal Capital Territory Act hereinafter called "FCT Act" was enacted to establish for Nigeria, a Federal Capital Territory, Abuja. Section 1(3) of the FCT Act provides that as from the commencement of the Act, the areas contained in the Capital Territory shall cease to be a portion of the state concerned and shall henceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Federal Capital Territory shall likewise rest absolutely in the Government of the Federation. Thus, by this Act, the Land Tenure Law which was applicable in all the (Northern) States from which the Federal Capital Territory was carved out ceased to be applicable; also private land holding within the area covered by the Territory ceased. This was the setting when the Land Use Act was enacted and became operative on the 29th March, 1978.

Prior to the enactment of the Land Use Act, land ownership in Nigeria was based on private interests, it was an era dominated by land speculators with their unbridled litigation over title. The Act was enacted to rest all land comprised in the Territory of each state (except land vested in the Federal Government or its agencies) solely in the Governor of the state, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas while similar powers with respect to non-urban areas are conferred on Local Councils.

It is not a surprise that both the Preamble and Section 49(1) of the Land Use Act excludes the application of the Act to the Federal Capital Territory, Abuja. To provide otherwise would have meant that the Land Use Act is inconsistent with the FCT Act. Notwithstanding the provisions of the law, land holding in the Federal Capital Territory has been administered as though the entire territory is subject to the Land Use Act. For example, while the Federal Capital Development Authority, a body established by Section 3(1) of the Federal Capital Territory Act and charged with (among others) the management of moveable and immoveable property within the Territory, issue Certificate of Occupancy (statutory), the six Area Councils issue customary Rights of Occupancy in respect of lands within their areas of Jurisdiction. This was the position until the ruling of Abuja Division of the Court of Appeal on a case stated from the High Court of the Federal Capital Territory that the Land Use Act does not apply to lands within the Federal Capital Territory ipso facto. The distinction between urban and non-urban land created by the Land Use Act is not applicable within the Territory. Hence, only the Federal Capital Development Authority is competent to grant Right of Occupancy in respect of land within the Federal Capital Territory, Abuja.

Facts of the case

The Plaintiff/Respondent, Alhaji Diga Romani Atenda, had instituted this action at the Abuja Judicial Division of the High Court of the Federal Capital Territory against the two Defendants/Applicants, Joseph Ona and Festus Ona. The plaintiff's claim against the two defendants is as follows:

- (a) One million five hundred thousand Naira (N1,500,000.00) damages for trespass to property, harassment, humiliation, defamation, damage to reputation and goodwill.
- (b) Perpetual injunction restraining the defendants by themselves, agents and privies from any further trespass to the property in dispute and the person of the plaintiff.

The defendants filed a memorandum of appearance and thereafter their counsel raised a preliminary objection as to the jurisdiction of the court to entertain the action. The objection was premised on the ground that since the land which formed the subject matter of the plaintiff's claim is situated at opposite Karmo main market central gate, a place not designated as urban area in the Federal Capital Territory, only the Area Courts could have jurisdiction over the subject matter and not the High Court of the Federal Capital Territory where the plaintiff filed the claim. After taking

submissions from learned counsel for the parties, the learned Judge, BUKAR, J. ruled *inter alia*:

"The defendants in their reply admitted that the issue whether Customary Rights of Occupancy exist or not in the Federal Capital Territory, Abuja has been decided before by the Appellate Division of the High Court of the Federal Capital Territory, presided over by two High Court Judges in *Wodi v. Jeshi* (1992) ABJ.L.R Vol. 1 page 75 at 80. In the light of the above decision and in order to avoid conflicting decisions from the same High Court, the matter be referred to the Court of Appeal by way of case stated under section 259(2) of the constitution of the Federal Republic of Nigeria 1979 as amended."

The learned Judge then formulated four issues for determination by the Court of Appeal, they are:

- (i) Whether by the combined effect of section 49(1) of the Land Use Act, section 1(3) of the Federal Capital Territory Act and section 261(2) of the constitution of the Federal Republic of Nigeria 1979 as amended, abolished Customary Right of Occupancy in the Federal Capital Territory.
- (ii) Whether there is need to designate specific areas within the Federal Capital Territory as rural or urban areas if answer to question one is positive.
- (iii) What is the status of occupiers or holders of such lands by virtue of section 36(1) of the Land Use Act.
- (iv) Who has Jurisdiction over the lands within the Federal Capital Territory? Is it the Area Courts or the High Courts having regards to the existing laws?

Held (Unanimously)

- (1) In line with the preamble and section 49(1) of the Land Use Act, the Act specifically excludes the application of the provisions of the Act to title to land held by the Federal Government or any agency of the Federal Government as at the commencement of the Act and that such land "shall continue to vest in the Federal Government."

- (2) The question whether the powers conferred on and exercised by the Governor of a state under the Land Use Act being applicable in the Federal Capital Territory will not arise, since it is clear from the objective of the Land Use Act as set out in its Preamble and the specific provisions of section 49(1) of the same Act. The provisions of the said Act are not applicable to title to land held by the Federal Government or any agency of the Federal Government.
- (3) The Customary Right of Occupancy of the original inhabitants of the lands that now constitute the Federal Capital Territory was abolished as from the 4th of February 1976 when the Federal Capital Territory came into force.
- (4) The idea of designating portions of lands in a state as urban or rural areas is a creation of the Land Use Act. Since the Act is inapplicable in the Federal Capital Territory, there is no legal backing at present for compelling the President or his Minister charged with the management of the Federal Capital Territory for making such designations.

Conclusion

This case reveals the unsettled state of land holding within the Federal Capital Territory, Abuja. Presently, land may be acquired in the Federal Capital Territory, Abuja by either of four ways. Firstly, by grant i.e. application may be made to the Federal Capital Development Authority for allocation of land, a successful applicant upon payment of the requisite fees is issued a Certificate of Occupancy (statutory) under the Land Use Act. Secondly, similar applications may be made to the Area Councils pursuant to which a customary right of Occupancy is issued under the hand of the Chairman of the Area Council. Thirdly, one may purchase land from "an indigene" and with the approval of the Chief of the area concerned, the purchaser can apply to the Area Council for a Customary Right of Occupancy. It must be noted that the lands in this category are those not under acquisition by the Federal Capital Development Authority or the Area councils. Fourthly, a prospective landowner may purchase land from an allottee of the Statutory or Customary Right of Occupancy. This is a confirmation that while the law provides for one thing, something exactly opposite is operative in reality.

The confusion revealed by this case underscores the urgent need for a review of the Land Use Act either by way of amendment or a repeal. A repeal will be like throwing away the baby with the birth water because, the socio-economic arguments in favour of the Land Use Act are still tenable, an amendment is preferable. There is no reason why the Land Use

Act should not apply to the Federal Capital Territory. The Territory is virtually administered as a State of the Federation in accordance with Section 299 of the 1999 Constitution. The Act, with relevant modifications could be extended to cover the incidence of land holding within the Territory. This will not derogate from the fact that all lands within the Territory is Federal land. Furthermore, Section 303 and part II, First Schedule recognise the 6 (six) Area Councils within the Territory, to deny them the control and management of available rural land within their Territory (even on behalf of the Federal Government) will amount to denying them of revenue and this is discriminatory in respect of their status vis-a-vis other Local Councils in the Federation. The reality is that there are non-urban areas as against the metropolis within the Federal Capital Territory, Abuja. Until recently there was a good working relationship between the Federal Capital Development Authority and the Area Councils in the allocation of land within the Territory. Each of the six (6) Area Councils has a Zonal land manager who is a staff of the Federal Capital Development Authority. He co-ordinates and supervises the allocation of land by the Area Councils.

Only the National Assembly can save Nigerians from this state of confusion. If the public were to understand this state of confusion, the bubble will burst and the value of land holding within the Territory will drop. Any legislation in this area should ratify the status quo. Even the Federal Capital Development Authority apparently out of ignorance has continued to issue Certificates of Occupancy in accordance with the Land Use Act, which is inapplicable in the Territory. Until the National Assembly come to the rescue, the question remains, which law is applicable to the incidence of land holding in the Federal Capital Territory, Abuja?