

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WEDNESDAY, THE 16TH DAY OF JUNE, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/CV/016/20

MOTION NO:M/10046/20

BETWEEN:

MR. ONOUHA OLIVIA UCHENNA..... APPLICANT

AND

BARRISTER PRINCEWILL EBUBEDIKE.....RESPONDENT

RULING

In this case the Plaintiff Onuoha Olivia Uchenna instituted this Suit against Barr. Princewill Ebubedike claiming the following:

1. A Declaration that he is the bonifide owner of Plot 126A Allocation to open space in Kubwa for commercial purpose allocated to him by AMAC on 15/6/1995.
2. Declaration that he is in excusive possession of the said Res.
3. An order of perpetual injunction restraining Defendant his agents, privies, servants and personal representative from deriving title over the Res from

the defendant or his agents interfering with the Plaintiff's possession of the Res.

4. ~~₦~~10, 000,000.00 (Ten Million Naira) as general Damages.
5. ~~₦~~5, 000,000.00 (Five Million Naira) as cost of this Suit.
6. Omnibus

In order to preserve the Res pending the determination of the Suit the Plaintiff filed a Motion on Notice for Interlocutory Injunction against the Defendant pending the final determination of the Suit. That application was meritorious this Court granted same in a well reasoned Ruling, restraining the Defendant as sought in the motion. The Defendant was notified about the motion and the Ruling also. That Ruling was delivered on the 17/6/2020.

But on the 23/9/2020 the Plaintiff filed a motion for contempt for committal against the Defendant for disobeying the order of this Court. In the said motion the Plaintiff sought for the following Reliefs:

1. AN ORDER of this Honorable Court for ATTACHMENT AND CITATION of the DEFENDANT/RESPONDENT in person of BARR. PRINCEWILL EBUBEDIKE for CONTEMPT OF THIS HONOURABLE COURT PURSUANT TO COMMITAL over his actions and activities entering and destroying the shop and the goods therein of the PLAINTIFF/APPLICANT situate at Plot number 126A, ALLOCATION OF OPEN SPACE IN KUBWA, FCT, Abuja to the extent of setting same ablaze, chased the PLAINTIFF/APPLICANT away with all manner of

dangerous and deadly weapons and erected a dwarf fence round the aforesaid plot 126A in contention before this Honorable Court in severe and abject DISOBEDIANCE TO THE ORDER OF THIS HON.COURT MADE ON THE 17TH DAY OF JUNE,2020 FOR INTERLOCUTORY INJUNCTION restraining the Defendant/Respondent, his privies and persons acting in his name from trespassing and disturbing the peaceful possession of the Plaintiff/Applicant in the said Plot number 126A, ALLOCATION OF OPEN SPACE IN KUBWA FOR COMMERCIAL PURPOSES pending the determination of this Suit.

2. An order of this Honorable Court for ATTACHMENT AND CITATION of one MRS EVELYN PRINCEWILL EBUBEDIKE who to the best knowledge of the PLAINTIFF/APPLICANT is the wife of the DEFENDANT/RESPONDENT FOR CONTEMPT OF THIS HONORABLE COURT PURSUANT TO COMMITAL over her actions and activities and in active collaboration with the Defendant/Respondent her husband entering and destroying the shop and goods therein of the Plaintiff/Applicant situate at plot number 126A, Allocation of Open Space in Kubwa, FCT, Abuja to the extent of setting same ablaze, chased the Plaintiff/Applicant away with all manner of dangerous and deadly weapons and erected a dwarf fence the aforesaid plot 126A in contention before this Honorable Court in severe and abject Disobedience to the Order of this Honorable Court made on the 17th day of June, 2020 for Interlocutory Injunction restraining the Defendant/Respondent, his privies and persons acting in his name from trespassing and disturbing the

peaceful possession of the Plaintiff/Applicant in plot number 126A, Allocation of Open Space in Kubwa for Commercial purposes pending the determination of this Suit.

3. An Order of this Honorable Court declaring that the Plaintiff/Applicant possesses the aforesaid plot 126A, Allocation of Open Space in Kubwa for commercial purposes still subsists as the order of this Hon. Court made on the 17th day of June, 2020, acknowledging that the Plaintiff/Applicant is in possession and granting an Interlocutory Injunction against the Defendant/Respondent and his privies has not been challenged at the appellate court neither the aforesaid order has been quashed by the appellate court nor set aside by this Hon. Court.

4. An Order of this Hon. Court, reinstating the Plaintiff/Applicant to his possession of plot 126A, Allocation of open space in Kubwa for Commercial purposes which he was forcefully and illegally dispossessed of on the 7th day of July, 2020 in an outright disobedience to the order of interlocutory injunction of this Hon. Court against the Defendant/Respondent and his privies given on the 17th day of June, 2020.

5. Omnibus

The grounds upon which this application is predicated are:

1. The Plaintiff/Applicant has been in possession of plot number 126A, Allocation of Open Space in Kubwa for Commercial Purposes and when the defendant started trespassing to the aforesaid land, he filed this

Suit and application for injunction against the defendant pending the determination of this case.

2. This Hon. Court made on the 17th day of June, 2020 for interlocutory injunction restraining the Defendant/Respondent, his, privies and persons acting in his name from trespassing and disturbing the peaceful possession of the Plaintiff/Applicant in plot number 126A, allocation of open space in Kubwa for commercial purposes pending the determination of this Suit.
3. That the Defendant/Respondent with sole aim of dispossessing the Plaintiff/Applicant his possession of the aforesaid land and in severe and abject disobedience to the Order of this Hon. Court in collaboration with his wife Evelyn Princewill Ebubedike entered the aforesaid land destroying the shop and the goods therein of the plaintiff/Applicant situate at plot number 126A, allocation of open space in Kubwa, FCT, Abuja to the extent of setting same ablaze, chased the Plaintiff/Applicant away with all manner of dangerous and deadly weapons and erected a dwarf fence round the aforesaid plot 126A in contention before this Hon. Court.
4. That the Defendant/respondent having achieved their illegal aim contrary to the order of this Court, the Plaintiff/Applicant has been dispossessed of his possession pending the determination of this case in accordance to the order of this Hon. Court made on the 17th day of June, 2020.

He supported the Motion with an Affidavit of 15 paragraphs. He attached several documents- the Court

order pictures evidence of the demolition allegedly carried out by the Defendant or on his instructions.

In the Written Address the Plaintiff raised four issues for determination which are:

1. Whether this Court has power to attach and cite any person that disobeys its order for contempt pursuant to committal.
2. Where the action of Defendant and his wife amount to such disobedience of the order of Court to warrant Court attaching and citing for contempt to committal.
3. Whether the action of the Defendant by erecting a dwarf fence round the Res amounts to further disobedience to the order of this Court.
4. Whether this Court has power to reinstate the Plaintiff to the possession of the Res after he was forcefully and illegally disposed of the Res of 7/7/20 in outright disobedience of the order of this Court.

On Issue No.1 the Plaintiff submitted that the Court has power to try any person who disobeyed its order for contempt pursuant to committal. They referred to the case of

EBHODAGIE Vs. OKOYE (2000) SC 218

ORDER 47 RULE 10(2) (3) (C) AND RULE 11 FCT HIGH COURT RULES 2018.

On Issue No.2 he submitted that the act of the Defendant and his wife amount to such disobedience to warrant this Court to attach and tried for contempt pursuant to committal. He referred to paragraph 7-10 Affidavit in

support. He also referred to Ord.47 R 2,3(c) and Rule 11 FCT High Court Rules. He also relied on the case of:

OBANDE OBEYE Vs. FIRST BANK PLC (2010) NGSC 11

JOE BEST ESTATE Vs. GRACE NZEGWU (2015) NG CA 6

He equally referred to paragraph 9 of Affidavit in support of motion.

On Issue No.3 he submitted that Defendant building a dwarf fence on the Res is disrespectful and disobedient to the Court as the matter is before the Court and that the principle of lis pendis applies.

On Issue No.4 he submitted that this Court has power to reinstate him to repossess the Res. That he still has power to repossess the Res pending the determination of this Court. He relied on the case of:

NEW NIG. NEWSPAPER Vs. ATOYEBI (2013) NG SC 2.

He urged Court to resolve all issues in his favour.

Upon receipt of the motion the Defendant filed a Counter Affidavit of 30 paragraphs which he deposed to in person. He attached some documents marked as Exhibits A-D mainly pictures. In the Written Address he raised 3 issues for determination which are:

1. Whether the Plaintiff and his Privies/Agents are in disobedience of the Court Order of 17/6/2020
2. Whether Injunction lies against a person who is not a party to the suit.
3. Whether the Motion on Notice of the Plaintiff is not incompetent.

On Issue No.1 he submitted that **“it is the position of the PLAINTIFF that demolition was done by Development Control of FCDA which Defendant has no control of his privies/agents also did not get involved in the disobedience of the Court order (if any). The only thing he did when he came back home and after the rain and his house flooded was to report to police who summoned the Plaintiff and his wife to remove the Container/shanty they used in blocking the water channel to punish the Defendant. The wife merely abated the public nuisance created by the Plaintiff upon which notice by the police still refused to abate it”**.

Note:

Going by the above it is very clear starting from the question posed for determination that the Defendant mixed up his position/submission. In one breath he was speaking/submitted in favour of the Plaintiff and in another breath he submitted in his favour. He further submitted that he, the Defendant, reported to the police **“who asked him to remove it himself and he refused, so sufficient notice was given to him to abate the nuisance.”**

Again, in the above, one wonders whether the “he” used, is the Defendant or the Plaintiff one wonders who was asked to remove and who refused and who gave the sufficient notice?

On Issue No.2 whether Injunction lies on the person who is not a party. He submitted that Injunction does not lie against a person who is not a party to a Suit. That the

demolition was done by the Development Control in discharge of their statutory duties and not by him. He referred to the pictures he attached in support of his Counter affidavit EXHIBIT C1&C2 – Picture of the Bulldozer of the Development Control at the Res carrying out demolition at the Res. That 4 other “shanties” were demolished. That means that the demolition was not targeted at the Plaintiff. That Notices were issued to Plaintiff before the Demolition. He referred to the case of:

AZUH Vs. UBA PLC (2014) 11 NWLR (PT.1419) 580@616.

That Development Control was not served the order of the Court in this case. That they were also not a party. That Development Control is not agent or privy of the Defendant. That allegation by Plaintiff that the demolition was done or carried out by the Defendant is a lie. That he had mentioned the name of the Government organ that demolished the Res. That Court order allows parties to be heard before it can unravel the truth in this case. That Court ought to allow oral evidence of the parties as well as those of the third parties in order to determine the real truth in this case. He referred to the case of:

NNAEMEKA & ORS Vs. OZOEMENA & ORS (2016) LPELR (CA) 21-22 PARA E-A

On Issue No.3 whether this motion is incompetent, the Defendant submitted that the proper procedure of contempt is the issuance of FORM 49 for whoever is in contempt to show cause before the Court on the alleged disobedience committed by him. That stating the application by way of Motion on Notice is incompetent.

That the service of the motion on his wife Evelyn Princewill Ebubedike is incompetent as she is not a party to the Suit. That Ord.47 R 10 (3) c FCT High Court Rules as the Rules is subject to the provision of the Sheriff & Civil Process Act. That failure of the Plaintiff to follow the procedure has rendered the motion incompetent. He urged Court to dismiss the Application for being incompetent.

COURT:

The Order or Judgment or any decision made by the Court must be obeyed unless and until set aside or vacated whether such order is convenient, wrongly obtained or what have you. Any disobedience to an Order of Court is a violation of the law and disobedience to the Court. It is an affront to Justice and to the Judicial for its order to be disobeyed, more so by someone who is expected to know and to be an advocate of obedience to law and order. It is an unforgiveable sin for a lawyer/Barrister and solicitor of the Supreme Court of Nigeria to be accused of disobeying the order of Court of competent jurisdiction. All Courts and the polity frown at disobedience to Court Order. Again disobedience to subsisting Court Order will lead to anarchy as far as the issue upon which that order is predicated is concerned, where such disobedience is not checkmated. All Court Orders must be obeyed.

Once a party in a Suit refuses to obey the order of Injunction given by a Court such party is said to be in contempt of the Court order. See the case of:

OGUNLANA Vs. DADA (2010) 1 NWLR (PT 1176) 534

Once such order is in a civil case, it is to be a civil contempt.

In this case the Plaintiff is claiming possession and ownership of the Res which is an open space which he alleged was allocated to him by AMAC sometime on 15/6/1995. He had alleged that the Defendant has been trespassing on the land. He then filed the Suit to stop the trespass in order to protect the Res pending the determination of the Suit in the main. He filed a motion for interlocutory injunction to restrain the Defendant from trespassing or interfering with the Res. "PENDING THE DETERMINATION OF THE SUIT". (emphases mine)

He had supported same with Affidavit. The Defendant file a Counter Affidavit challenging same motion. This Court in its well reasoned Ruling made order restraining the Defendant and any of their agents from interfering with the Res pending the determination of the Suit in the main. The Defendant was aware of that Order as they were in Court on the day the Order was made.

The Plaintiff filed the present motion seeking among other things an order of this Court for attachment and citation of the Defendant- Barr. Princewill Ebubedike for contempt of the Order of this Court pursuant to committal for entering and destroying the shop and goods of the Plaintiff and setting same ablaze, chasing the Plaintiff away and "ERECTING A DWARF FENCE ROUND THE RES" which is in total disobedience to the order of this Court made on 17/6/20.

The Plaintiff also wanted the Court to order and declare that his possession of the Res is still subsists

notwithstanding the trespass and demolition and trespass by Defendant since the order of Court is still subsisting. He equally want Court reinstate him into possession of the Res. He attached the Order of Court and pictures evidencing the demolition and the erection of the fence. He is not claiming any money as to the destroyed goods but that the status quo be maintained pending the determination of the main suit as per the order of the Court which is still subsisting. **Please note** that the Plaintiff applied that prayer No.3 or reinstatement be expunged and this Court granted same.

It is evidently clear that the main purpose of the motion upon which the order was predicated and made was for the preservation of the Res, which is the open space and not the destruction of the goods or containers on the Res as far as the order sought by the Plaintiff is concerned. The Defendant was aware of the said order and he was served a copy of the order and had a representation in Court and also filed a Counter affidavit in challenge of the motion.

Plaintiff had attached picture showing the demolished containers and goods in the Res. The picture also shows the Defendant's wife parading in the Res in what looks clearly like a jubilation dance. Defendant own attached pictures shows that too and confirmed that his wife was in the Res at that time parading around and actually touching and aiding the demolition.

The picture of the parameter fence is very clear and the Defendant did not deny that he erected the fence. The picture attached by him confirmed that the fence was newly constructed as the Plaintiff had alleged and further

corroborated and supported the Plaintiff's claim that the fence was newly constructed after the Court's order was given and in total disobedience of the Court Order. In the length and breadth of the Counter Affidavit the Defendant never denied erecting the said fence. That means that he accepted that fact as truth. Be it known that unchallenged facts are deemed admitted by the party who ought to have challenged same but failed to do so. This Court holds that the Defendant agreed and confirmed that he erected the said dwarf wall as alleged by the Plaintiff. By so doing he disobeyed the Order of this Court which orders parties to stay clear and maintain status quo pending the determination of the main Suit. By that disobedience he is in contempt of the said order of the Court made on the 17/6/20. So this Court holds.

The question of whether the demolition was done with or without notice is not before this Court. To start with the Defendant has no business to go all the way to find out if the demolition was done with or without notice in the first place. He knows that the open space –the Res was already an issue of dispute before this Court. He has not challenged the order of the Court. He did not Appeal against same and he knows that there is no order vacating the order of the Court and there is no pending entered appeal challenging the order.

The Defendant going to Development Control to inquire about the legality or otherwise of the Demolition shows that he had ulterior motive and that he has an already concluded plans to continue his trespass on the Res-open space in total disobedience to the subsisting order

of this Court. He had a premeditated intension to disobey the Court Order. That is why his wife quickly danced in jubilation immediately after they demolished the Res and the Defendant quickly erected the perimeter dwarf fence in the Res in total disobedience of the same subsisting order of this Court which he is aware of. The action of the Defendant is a contempt of the order of this Court. So this Court boldly holds.

The fact that there were other containers belonging to other persons as the Defendant claims does not exonerate him from the allegation of contempt made against him. He knows that his action is contemptuous and a violation of order made by a Court of competent Jurisdiction in a Suit where he, as a lawyer is a party.

It is most unfortunate that a learned gentleman of the Bar like him should act in the manner that he had acted by disobeying the order of this Court when he, as an experienced gentleman of the Bar, is supposed to be the person who should ensure that Order of Court is obeyed by all and sundry.

The attempt by Counsel to the Defendant to anchor on technical defence to justify his action cannot save Defendant.

It is a shame that the Defendant should meddle so low in this regard.

I wonder why he is such in a hurry to occupy and take over a piece of land which is in contention in Court in a matter where he is accused of trespass and in which the Court had in his presence and with his knowledge given

a restraining order pending the determination of the Suit. The action of the Defendant is an affront on the judiciary. The action is condemnable. It is unfortunate and very unprofessional that the same Barrister Defendant could not inform, educate and instruct his wife to stay clear of the Res pending the final determination of the Suit. He knows what the law is. He is aware of the implication of his action yet he decided to turn blind eye to his wife's action and then turn around to claim that she was there at the Res using her bare hands to clear the debris from the Res which he claims was suddenly obstructing his house which suddenly flooded after the demolition of the Res. It is unfortunate.

This Court does not believe the Defendant's statement that he was informed about the demolition and that he asked his nearest neighbours to take pictures for him. If actually he did so, it means that he had an inkling about the demolition long before that day. After all, he went back to ask the Development Control whether the demolition was done with or without Notice. His claim and the doctored pictures he attached to show that the Development Control did the demolition cannot stand. One wonders why he did not attach a copy of evidence of service of Notice of demolition he claimed was served on the Plaintiff before the actual demolition.

Why is he interested in the Notice given and getting pictures of Demolition when his house or property is not what was demolished. The simple reason is because he was hell bent on violating the order of this Court. He did not deny the allegation that his wife said that Plaintiff can go to hell with their nonsense Court order.

It is no secret that whosoever disobeys the order of Court whether as a party to a Suit or a passerby is held to be in contempt of Court. After all ignorance of the law is no excuse. After all his wife knows about the pendency of this Suit. She knows and is also aware of the existence of the Court order notwithstanding that she is not a party to the Suit. She is in disobedience of the order of this Court. So this Court holds.

It is not the business of the Defendant to state that there were other persons whose containers were equally demolished. It is not for him also to state who and who the Plaintiff should have joined as party or to point out those who ought to be joined by Plaintiff. After all he as a party – (Defendant) has a right to apply for a joinder if he feels that he is not the only culprit or that he was wrongly joined. Failure of Plaintiff to join those persons which the Defendant is clinging on does not make the Defendant not to be in contempt of Court in this case.

His action is contemptuous. He has violated the Order of this Court as the Plaintiff has stated. I so hold.

This Court believes that the Defendant carried out the demolition. This Court does not believe that the Development Control carried out the said demolition as Defendant claims. To start, with everyone knows that given the period when the so called demolition took place that was at the pick of lock down. No FCT Agency would have ordered or carried out demolition of premises legally then. The whole demolition saga must have been privately organized by the Defendant as he was not able to show that the Development control actually served notice and did the demolition. Why didn't his neighbours

show the bulldozer in action but only showed tyres when they took picture of the demolition for him that day?

The motion by the Plaintiff is meritorious. This Court therefore grants the two orders as prayed.

This is the Ruling of this Court.

Delivered today the day of
2021 by me.

K.N.OGBONNAYA
HON.JUDGE