

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 12TH DAY OF MARCH, 2021

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

JUDGE

SUIT NO. FCT/HC/BW/CV/110/18

CYPRIAN EZUBELU.....CLAIMANT

AND

BWARI AREA COUNCIL.....DEFENDANT

JUDGMENT

On the 7/8/2018 Cyprian Ezubelu, the Plaintiff in this case Instituted this Action against the Defendant, Bwari Area Council claiming the following reliefs:

1. A Declaration that the Defendant is under statutory obligation to insure Bwari Market together with its shops, stalls and stores therein which are public Buildings as well as the Defendant property against hazard of fire and collapse.
2. Declaration that as an Allottee/Occupier of the allocated burnt stall in Bwari Market which is a Public building as well as the property of the Defendant is entitled to compensation for the loss/damages of his goods in the fire incidence of 25/ 12/17 that gutted the Market and raised down his stall and damaged his goods therein.

3. Declaration that defendant is bound by law to pay him or caused to pay him promptly and adequate compensation for the loss and damage of his goods in the said fire incidence.
4. Immediate payment of N5,693,200.00 as special damage for irredeemable loss/damages and injury he suffered because of the said fire.
5. Declaration that Defendant is negligent in failing to take steps to promptly rebuild the said destroyed stall which is the property of defendant and which negligent act and delay has occasioned loss of earnings on the Claimants whose.....allocation remains valid and correct.
6. An Order directing Defendant to pay him N75,000,000.00 Million as general Damages.
7. Order for Defendant to pay Plaintiff 6% on the unpaid Balance item 5 above from 27/2/2018 till Judgment is delivered.
8. Payment of N200,000.00 thousand by the Defendant being the sum he expended in engaging solicitor for the cost of the rent.
9. Cost of the suit N200,000
10. 10% interest on post Judgment sum from day of Judgment till it is fully liquidated.
11. Injunction restraining the Defendant, its agents, privies servants from unlawfully rejecting the claimant from the said allocated stall and/or from the reallocating the said stall to any other person or using same for any other purpose during the pendency of the Claimant's allocation or tenancy.

The story of the Plaintiff is that he is an allottee/occupier of a stall in Bwari Market which was gutted by fire on 25/12/17. That Defendant who had the property failed, neglected to compensate him for the loss he suffered by the fire incident. He attached 5 documents, letter of allocation of the Stall, Letter of demand for the payment of compensation, Receipts of goods he lost in the fire. Pre- action notice. The Defendant did not file any statement of Defence to challenge this case notwithstanding that they were served with the Originating processes and hearing notices. The defendant only filed a memo of Appearance. On 9/5/19 the Plaintiff opened its case testified as the sole witness. The Defendant was notified and was given time to cross examine the Defendant but they never did. They also did not come to open their Defence. On 20/11/19 the Court foreclosed the Plaintiff from opening and closing its case after it had foreclosed it from cross examining the Defendant. The foreclosure was based on the fact that the plaintiff did not file any Statement of Defence or Counter Claim in this Suit. On 20/11/19 matter was reserved for adoption of Final Addresses to be adopted on 23/1/20.

The Defendant wrote a letter to Court for adjournment. They also filed a Preliminary objection on 20/1/20 two days before adoption of Final addresses. This Court in the interest of Justice adjourned the case further but due to the Covid-19 Pandemic the matter could not come up on several adjourned dates until 15/2/21.

On the said 15/2/21 the Defendant Counsel was not in Court to move their Preliminary Objection. This Court in the interest of fair hearing and Justice deemed as moved

the said Preliminary Objection by Defendant though they were not in Court. The Court also allowed the Plaintiff Counsel who had filed their Counter Affidavit and further Affidavit in challenge of the preliminary objection, to adopt their Counter. Meanwhile the Plaintiff Counsel had filed and served the defendant their Final Address. The Defendant did not file any statement of Defence or counter claim.

In the Final address the Plaintiff Counsel raised 2 issues for Determination which are:

1. Whether the Claimant has proved his case before this Court.
2. Whether from the unchallenged evidence adduced at trial the claimant is entitled to all the Reliefs sought.

ON ISSUE NO.2- Whether the unchallenged evidence of Plaintiff is entitled to the Reliefs Sought, they submitted that Court should determine the issue in his favour because of the uncontroverted and unchallenged evidence they have presented before this Court. They referred to the case of:

OBANOR Vs OBANOR (1976) 2 S.C 1

That the Defendant was given all the ample opportunity to cross-examine the PW1, open their case and challenge the case of the Plaintiff or file even a Counter Claim but they failed to do so. They relied on the case of:

OBIEGUE Vs A-G FEDERATION (2014) 5 NWLR (PT.1399) 171(CA)

That by the 5 documents Plaintiff tendered-Exhibits 1-5, the Plaintiff has shown that the Defendant was given

ample opportunity and time and leverage to challenge their case but they did not. That an unchallenged evidence is treated as true and they remained unchallenged and uncontroverted and are ought to be acted upon by the Court. That the Claimant has shown that he is entitled to compensation by way of payment of Damages by the fire incident of 25/12/2017. They referred to the case of:

OKONKWO Vs. OKONKWO (2017) 17 NWLR (PT.565) CA

FCDA Vs. NZELU (2014) 5 NWLR (PT.565) CA

DELTA HOLDING LTD Vs OGORO (2014) 13 NWLR (PT.1425) 590 CA

That the defendant has failed to file any Statement of Defence in challenge of this case. They urged the Court to determine the 2nd issue in his favour and enter Judgment and grant all his Claims.

As stated repeatedly the defendant did not file any defence or Counter Claim so this Judgment is based on the processes filed, the testimony of the PW1 and 5 exhibits tendered which were not challenged.

COURT:

It is the law that uncontroverted and unchallenged facts are deemed admitted more so where the defendant refused to challenge such fact where it was given ample privileges, leverage, time and space to do so.

Again it has been held in plethora of cases it is incumbent on a party to establish its claims with credible evidence and supporting documents were necessary.

That unless and until such plaintiff does so the onus does not shift to the defendant. Again that the Defendant is duty bound to respond once the onus is shifted to Court.

It isthat in this jurisdictional clime that Demurer proceeding was abolished and does not operate in our jurisdiction. That means that any party coming before this Court who was served with the processes filed by Plaintiff who fails to file any Statement of Defence or Counter Claim, that this Court can enter Judgment in favour of the Plaintiff. Again where processes are filed and served on the Defendant and it fails to respond to it. It is said and held that it has nothing to say or respond to the documents given to it. In that case the Court will hold that the case of the Plaintiff is unchallenged. There are myriad of cases on that that this Court will not waste its time to cite them. the Court had adopted the cases cite by the Plaintiff in this case in that regard as if they are set out here seriatim.

The Defendant had filed a Preliminary Objection challenging the jurisdiction of the Court, the competence of the action that proper parties were not before the Court and that the Suit is statute barred having been filed after 90 days since according to it it is a Suit against a Public Officer and therefore caught up by the Public Officers Act. It did not file a single paragraph of statement of defence in defence of the Suit. This Court had in a few moment agothe Suit. Hence this Judgment.

The Defendant were served with all the Originating Processes filed by the Plaintiff but it did not file a Statement of Defence.

Meanwhile the Plaintiff opened its case supported its case with 5 credible documents in support. The Defendant did not challenge any of the documents. They did not cross examine the PW1 who is the Plaintiff and sole witness in this case. The facts in his Oath as presented in the testimony of the PW1 remain unchallenged even as I deliver this Judgment. That is the situation of the Plaintiff and Defendant in this case.

The question before this Court is given the scenario about, bearing in mind that there is no statement of defence in this Suit and the Court have dismissed the Preliminary Objection and stated in its Ruling that it has Jurisdiction to entertain the suit and it is not statute barred and that the case of Plaintiff falls within the exception of S.2(a) Public Officer protection Act, coupled with the fact that there is no Statement of Defence as the Plaintiff case stands unchallenged and uncontroverted, and that demurer proceeding is no longer in vogue and applicable in the Jurisdiction, should this Court grant the Reliefs of Plaintiff or dismiss same.

It is the humble view of this Court that it should without delay enter Judgment in favour of the Plaintiff since there is no Statement of Defence pending before the Court and the Preliminary objection has been dismissed and demurrer no longer in vogue and part of the proceeding/procedure of this Court.

Yes in as much as the case of the Plaintiff remains uncontroverted and unchallenged, the Court will take a brief look at the evidence of the Plaintiff as presented before this Court.

The Plaintiff had alleged that there was a contract between him and the Defendant by the allocation of the stall by Defendant. To support that the Plaintiff tendered the letter of Allocation dated 27/9/99 issued to him by the defendant on annual rent of N.....upon payment of administrative fee of N500.00 in the Letter of allocation which is Exhibit 1 the Defendant stated that

Para v(iii) Letter of Allocation

“that the facility shall remain the property of the Area Council anddespite improvement/commitment thereon on your improvement.

Para xii

This allocation is renewable every 5 years.

It was signed by the Chief Market manager on behalf of the Chairman of the Defendant. By the above it is glaringly clear that there is a contract simple contract by virtue of the said allocation.

Again the 2nd exhibit –letter of 25/1/18 written exactly one month after the fire incidence. That letter was written to the Defendant by Bwari Market owners association in which the Plaintiff is a staunch member complaining about lack of care and laying formal complaint on the fire incidence. In the letter the impliedly as a member of the association requested for the rebuilding of the fire gutted stalls/shops. Lamented

about the hardship and losses he suffered because of the loss of his goods. That the same hardship continued since there was no help coming from the Defendant. In the same letter Exhibit 2 the Plaintiff demanded for the insurance policy if any on the said market and he also lamented that there was no protection –provision of fire hydrants as prepared protection for any such disasters. That letter is in tune with the proceeding permitted by law in that regard. The Plaintiff also exhibited the receipt he paid his solicitor for the prosecution of the matter.

He equally attached receipts for purchase of all the goods he lost in the fire incidence, which he used to back up his claim for special damages. It shows the names of the items and their prices lost in the fire incidence totalling about N5,693.400 which is what he is claiming as special damages. He listed these items both in the Writ and attached the receipt of purchase of the items. This exhibit was presented in the course of testimony of the PW1 and it was not challenged. The documents were tendered and this Court gave the Defendant ample opportunity to challenge same but it did not do so for reasons best known to it.

As law abiding citizen the Plaintiff equally instructed his Counsel to write to the Defendant demanding for the payment of the money from the goods he lost in fire incident. He also through the same letter instructed his Solicitor to serve a Pre-action notice to the Defendant if it fails to meet its demand. That letter was tendered as exhibit E. In the letter he gave the Defendant 31 days within which to refund him for the loss, or face a legal action. The Defendant fail to do also did not refund him

the money for the goods lost. It did not rebuild the stall and it did not disclose the Insurance details if any. Hence this Suit was filed against it. The same Defendant did not file any Statement of Defence in this Suit. As it is there is no challenge to the Suit of the Plaintiff.

Going by the totality of testimony of the Plaintiff and document tendered, it is evidently clear that there is a contract agreement between the parties. There was a breach of that agreement by the Defendant when it fail to fulfil its own side of the obligation in the contract of allocation of land. The Defendant knew that they entered agreement with the Plaintiff. It knew that it was in breach of the contract too. The Plaintiff demanded for the refund which is appropriate in the circumstance of this case but Defendant refused for a reason best known to it. All the procedure followed by the Plaintiff is the right thing to do. His action is permitted because it is in accordance with a procedure permitted by law especially where there is an issue of breach of contract.

Beside he had by attaching the receipt of all the items he lost in the fire, he has by that established his claim for special damages as required by law. By the letter of Pre-Action Notice he had equally put the Defendant in Notice ahead of the action. There was no surprise.

From all indication the Plaintiff had established its case against the Defendant so much that he discharged the onus placed on him and properly shifted same to the Defendant who could not discharge same. Though it was given all the ample opportunity to do so. He deserves the Reliefs Sought.

That is why this Court holds that it should enter Judgment in his favour. So this Court thereof order as follows:

1. Prayers 1,2,3 & 5 granted as prayed.

2. N1.6 Million

.....special damages

That means that Claim No.1 is granted as prayed to that extent only.

N10,000 to be paid as general damages.

No percent interest on the Judgment sum

2.5% interest on the Judgment sum from date of Judgment until final liquidation.

No cost of the sum parties to bear their cost

This is the Judgment of this Court delivered today theday of.....2021 by me

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K.N.OGBONNAYA

HON.JUDGE