

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON FRIDAY 8<sup>TH</sup> JANUARY, 2021**

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

**JUDGE**

**SUIT NO.: FCT/HC/CV/45/19**

**BETWEEN:**

**OX GLOBAL LIMITED**

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**PLAINTIFF**

**AND**

**BWARI AREA COUNCIL**

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**RESPONDENT**

## **JUDGMENT**

On the 1<sup>st</sup> of February, 2019 Ox Global instituted this action against Bwari Area Council claiming the following Reliefs:

- (1) An Order that action of the Defendant's agent by confiscating the Plaintiff's B.B. Standing Fan and Tiger Generating Set from her office without Order of Court is illegal, unlawful and contrary to the CFRN 1999.

- (2) An Order for Defendant to pay Forty Eight Thousand Naira (~~₦~~48, 000.00) - to Plaintiff as Special Damages for their illegal act in violating the Plaintiff's business by the said confiscation.
- (3) General Damages/Compensation of Fifty Million Naira (~~₦~~50, 000,000.00) for the said illegal action.
- (4) An Order of Injunction restraining the Defendant, their agents, privies and representatives from interfering and further interfering and disrupting the Plaintiff's lawful business operation.
- (5) Payment of One Million Naira (~~₦~~1, 000,000.00) as cost of the Suit.

The Defendants were served the Originating Process on the 7<sup>th</sup> of October, 2019. They were equally served Hearing Notices for every day this matter was scheduled to be heard. But they never filed any Process, Statement of Defence to challenge the Suit of the Plaintiff. So as it is, the Suit remains unchallenged even as I deliver this Judgment. The Defendants were served Hearing Notices which they acknowledged on the following days: 7/10/19, 17/1/20, 17/3/20 and 24/6/20.

They did not file any Defence, Memorandum of Appearance conditionally or unconditionally. They have no Counsel/Legal representation too.

Since the Court cannot wait for the Defendant in perpetuity, on the 20<sup>th</sup> of January, 2020 the Court allowed the Plaintiff to open its case. It called one (1) Witness – PW1 who tendered 7 documents marked as EXH 1 – EXH 7. The Court adjourned the matter for Cross-examination of the PW1 to be held on the 19<sup>th</sup> of March, 2020. The Defendant was served. There were further adjournments too. On the 2<sup>nd</sup> of July, 2020 when the matter came up the Defendants were not in Court, having not filed anything and having not entered appearance the Court granted an application for foreclosure of the Defendant from cross-examining the PW1 and adjourned the case to the 8<sup>th</sup> day of October, 2020 for Defendant to open its Defence in this case.

That day the Defendants were not in Court. They have not also entered appearance or filed any document to challenge the Suit. So the Court suo motu foreclosed the Defendant from opening and closing its Defence. The Court then adjourned the matter for Final Address to be adopted on the 10<sup>th</sup> of December, 2020.

On the said 10<sup>th</sup> of October, 2020 the Plaintiff was in Court but the Defendants were not withstanding

that they were duly served with Hearing Notice showing that the matter is for Final Addresses. The Defendant was equally served with the Final Address filed by the Plaintiff. But they did respond to it. The Court allowed the Plaintiff Counsel to adopt their Final Address and it reserved the matter for Judgment which is now being delivered.

In their Final Written Address the Plaintiff raised an Issue for determination which is:

“Whether the Plaintiff has proved her case to be entitled to the Reliefs sought taking into consideration of all the facts and evidence adduced before the Court.”

They submit that the Reliefs are declaratory, injunctive and including damages. That they have proved their case on the preponderance of evidence as adduced by the PW1 being a civil case and not beyond reasonable doubt. They referred to S. 131 Evidence Act 2011 as amended.

That through the evidence and testimony of PW1 especially by exhibit 2, 4, 5 & 6, they have proved that the Plaintiff's store at Plot 39 Hamza Abdullahi, OAGF Otis Kubwa, Abuja FCT was actually invaded by the Defendant and their agents on the 30<sup>th</sup> of August, 2019. That the Plaintiff's B & B Standing Fan and Generating Set were confiscated by the Defendant's Agent without

any Order of Court of competent jurisdiction. They urged the Court to so hold.

That the Plaintiff's case is unchallenged by Defendant. That all evidence adduced by Plaintiff were unchallenged by Defendant despite all opportunity given to Defendant to do so. They referred the Court to the case of:

**Nigeria Bottling Company Limited V. Ubani (2004) 7 WRN 1 @ 47**

They urged the Court to so hold and act on the said unchallenged evidence of the Plaintiff on record before the Court.

They further submitted that through the evidence of PW1 and Exhibit 6 – the Receipt of Purchase of the said Standing Fan and the Tiger Generating Set, Plaintiff established the purchase prices of the said items in the sum of Forty Eight Thousand Naira (N48, 000.00).

They also submitted that since the Plaintiff had pleaded Special Damages with distinct particularity and proved same as the law requires, it is for the Court to act strictly on those led facts presented before the Court and accept same as establishing the amount claimed justifying same amount. They relied on the decision of the Court in the case of:

**Union Bank (Nigeria) PLC V. Ajabule  
(2012) 7 WRN 1 @ 16 Lines 5 – 20**

They further submitted that the Plaintiff in paragraph 10 of Statement of Claim avers that the Defendant's Agents confiscated the said items and have tendered the Confiscation Form and the Purchase Receipts through PW1 Statement on Oath at paragraph 11 and have tendered same as EXH 5 & 6 respectively.

That it is the law that where a party has successfully pleaded and had given particulars of Special Damages, such party is entitled to the grant of the Reliefs and payment of Special Damages. They referred to the case of:

**Nigeria Bottling Company Limited V. Ubani  
(2014) 7 WRN 1 @ 31 lines 15 - 25**

That in this case the Plaintiff had successfully pleaded and had tendered the said documents as evidence, they are therefore entitled to award of the claim of Special Damages. They urged the Court to so hold.

The Plaintiff submitted further that they are also entitled to General Damages for the illegal act of the Defendant for the loss and inconveniences the Plaintiff had suffered by the action of the

Defendant and their Agent. They referred to the case of:

**Union Bank (Nigeria) PLC V. Ajabule  
(2012) 7 WRN 1 @ 19 – 20 Lines 45 – 50**

That the Plaintiff had in paragraph 7 – 12 showed the degree of intimidation, embarrassment, inhuman treatment and grievous loss it suffered as a result of the unlawful action of the Defendant and its agents. That in paragraph 13 of the same Statement of Claim Plaintiff had shown that it visited the office of the Defendant on 4 different occasions for the release of the said confiscated items but was subjected to payment of Fifty Thousand Naira (₦50, 000.00) before the items could be released. That in paragraph 14 & 15 of the Plaintiff's Statement of Claim the Plaintiff showed that its business had suffered gross loss, set back and is still suffering till date as a result of the said confiscation since 30<sup>th</sup> August, 2018. That the Plaintiff established these facts through the testimony of PW1 as shown in paragraph 9 – 16 of the Statement on Oath of the PW1.

That the Plaintiff's case is unchallenged by Defendant. That it is settled law that where evidence before Court is unchallenged by a party who ought to challenge same and who had been given ample opportunity to do so but failed and

refused to do so, the Court ought to hold that such evidence is unchallenged and remains unchallenged. They referred to the case of:

**Cameroon Airlines Limited V. Otutuizu**

They further submitted that Plaintiff has by its evidence and Exhibits before this Court presented by PW1 it has suffered because of the barbaric act of the Defendant. That the evidence were still unchallenged and that Plaintiff was given ample opportunity to so challenge same but it failed to do so. That Plaintiff is therefore entitled to the Reliefs sought – Award of Damage and Declaratory Orders by this Court. That the General Damages is to deter the Defendant from doing so. They referred to the case of:

**Union Bank (Nigeria) PLC V. Ajabule Supra**

They urged the Court to grant all their Reliefs as sought.

**COURT**

In any matter where the Plaintiff's case is established with evidence and Exhibit and where the said evidence are not challenged by the Defendant who was given all opportunity to do so but failed, the Court normally holds that the established case of the Plaintiff is unchallenged,



uncontroverted and unrebutted. That is the Court's decision in the case of:

**Cameroon Airlines Limited V. Otutuizu Supra**

Again once a party had established its case showing that it had suffered some losses as a result of the action of the Defendant, such party is entitled to be paid General Damages by the party who had through its action which is usually unlawful, caused the loss. That Relief is to deter the Defendant from the unlawful act. That is the Court's decision in the case of:

**Union Bank (Nigeria) PLC V. Ajabule Supra**

In any case where there is a claim for Special Damages, it is incumbent on the Plaintiff to establish with vivid clarity and credible material or documentary evidence as the case may be and with clear particularity the said Special Damages. Unless the Plaintiff does that after pleading same, the Court cannot grant the Relief of Special Damages. That is the decision of the Court in the case of:

**Nigeria Bottling Company PLC V. Ubani**

Once the Plaintiff have satisfied that as required by the law the Court has no reason not to grant the Relief as sought. More so where such Claims are not challenged.

In this case the case of the Plaintiff is unchallenged by the Defendant. The Defendant was given ample opportunities to challenge the Plaintiff's case but they did not even as I read this Judgment. The Plaintiff had established its case with cogent and water tight facts and testimony of the PW1 together with the 7 documents tendered. They have by the presentation of the Receipts for the Purchase of the two (2) items in issue – Fan and Generator as well as the Confiscation Form issued to it by the Defendant, established with particularity the Special Damages. They are therefore entitled to the payment of Special Damages of Forty Eight Million Naira (~~₦~~48, 000.00) as claimed.

The Plaintiff had also through those credible evidence and Exhibits established that it had suffered great loss in its business because of the action of the Defendant. The Plaintiff is therefore entitled to the payment of General Damages to deter the Defendant from such illegal action. So this Court hold.

Having established its case as stated above the Plaintiff is entitled to the Declaratory Reliefs as sought. So this Court hold.

In the final analysis, the Court hereby orders as follows:

- (1) That the action of the Defendant in confiscating the 2 items – Standing Fan and Tiger Generator is illegal, unlawful and contrary to the Plaintiff's constitutional Right to own moveable property.*
- (2) Defendant should pay to Plaintiff the sum of Forty Eight Thousand Naira (₦48, 000.00) as Special Damages for the said confiscation.*
- (3) The Defendant shall also pay to Plaintiff the sum of One Hundred Thousand Naira (₦100, 000.00) as General Damages.*
- (4) The Defendants are hereby ordered to release the said seized items.*

**This is the Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2021 by me.**

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**K.N. OGBONNAYA  
HON. JUDGE**