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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WEDNESDAY THE 23RD DAY OF JUNE, 2021

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

SUIT NO.: FCT/HC/CV/2531/17

BETWEEN:

ADOLPHUS UDE ORJI ---------- } PLAINTIFF

AND

1. HON. MINISTER FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY } ------ DEFENDANTS

JUDGMENT

On the 27th July, 2017 the Plaintiff Adolphus Ude Orji sued as the lawful Attorney of Peter Joseph Ekandem. He claimed the following Reliefs against the FCT Minister and FCDA:

(1) A Declaration that the action of the Defendants' agents, to wit: the Department of Development Control of demolishing Plaintiff's residential house situate at Plot D59, being along Lagos Street in Phase II, Site 1, at the place known as 2/1 (Two-One) within Kubwa, Abuja under the jurisdiction of this Court, on the 13th day of May, 2005 is unlawful,

wrongful, unwarranted, in serious error, null and void and violates the Plaintiff's proprietary right in respect of the said residential house.

(2) A Declaration that by virtue of the aforegoing declaration, the Plaintiff is entitled to damages by way of compensation for the demolition of the said Plaintiff's residential house.

(3) An Order for payment by the Defendants of the sum of Five Million, Two Hundred and Thirty Thousand Naira (₦5, 230,000.00) only being the value of the residential house and premises as at the time and date of demolition and additional One Million, Six Hundred and Fifty Thousand Naira (₦1, 650,000.00) only being cost of materials and expenses for finishings done in the house.

(4) An Order for the Defendants to further pay the Plaintiff the sum of Five Million Naira (₦5, 000,000.00) for the injury (emotional and otherwise) including the trauma and experience of the demolition which the action of its said agents caused the Plaintiff.

(5) An Order for payment by the Defendants of the sum of Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) only being the value of the plot of land on which the demolished house was built, as per stamp duty paid in connection therewith.

(6) Interest on the first sum of Five Million, Two Hundred and Thirty Thousand Naira (₦5, 230,000.00) only as statutorily provided under

S. 6(2)(b) of the Federal Capital Territory Act CAP 503, 1990 Laws of Nigeria.

(7) Post Judgment interest on the 2nd sum Five Million Naira (₦5, 000,000.00) only at the rate of 10% per annual from the date of the Judgment until final payment is made.

(8) The sum of One Million, Six Hundred and Fifty Thousand Naira (₦1, 650,000.00) only being the cost sundry finishing materials and items purchased by the Plaintiff to enable him and his family pack into the house.

(9) **Cost of this action.**

He attached several documents in support of his Claim. The Defendants were served with the Originating Processes.

The 1st and 2nd Defendants appeared and filed Memorandum of Appearance to defend the Suit. They also filed a Joint Statement of Defence on the 7th February, 2018. In the 12 paragraphs Statement of Defence they submitted that the function of the FCDA – 2nd Defendant, does not extend to allocating land for individuals. That Development Control Department is in charge of Developments in the Federal Capital Territory.

In reply to paragraphs 6 – 14 of the Statement of Claim, the Defendants responded thus: that the Res Plot D59 CAB Zone 07 – 05 never existed as a Plot in the Abuja Mater Plan or the site Plan in Kubwa District. That 1st Defendant is empowered to allocate lands in the FCT. That the Power of Attorney exhibited by Plaintiff transferred no rights or interests to the Plaintiff as the Donor of the right has no transferable right or interest in

the land. That the said Power of Attorney was not registered as envisaged by law. That Development Control Department did not issue or grant any Building Plan approval in respect of the said Res as it is a non-existence Plot. That before any Building Plan approval is granted, there must be AGIS confirmation of the genuineness of the land and by the Urban and Regional Planning Department.

They denied paragraphs 15 – 33 of the Statement of Claim and put the Plaintiff to strictest proof. That Plaintiff is not entitled to Claims as same is frivolous, vexatious, misleading and gold-digging. They urged the Court to dismiss the Suit with substantial cost.

The Defendants did not attend Court to Cross-examine the two (2) Witnesses fielded by the Plaintiff. They were given all ample opportunities to do so. But for over two (2) years after the close of Examination in Chief of the two (2) Plaintiff's Witnesses they refused to come to Court. The Court ensured that they were duly served Hearing Notices accordingly. But they never came to Court. Since the Court cannot wait for them in perpetuity, the Court foreclosed them from Cross-examining the PW1 & PW2. After waiting for them for another year to open their Defence, the Court foreclosed them from opening and close of its case. The Court adjourned for Final Address given them due time and notice to file their Address but they failed and refused to do so.

The Plaintiff Counsel filed its Final Written Address on 13th January, 2021 and duly served the Defendants they acknowledged receipts of same. They did not file any

Final Address or response to the one served on them by6 the Plaintiff. So the Court had summarized their Statement of Defence above. The Court will now summarize the Final Written Address of the Plaintiff. The Plaintiff supported his Suit with 13 Exhibits, called Witnesses. The PWs were never Cross-examined by Defendant Counsel.

In Plaintiff's Final Address they raised two (2) Issues for determination which are:

(1) Whether from the facts and evidence available before the Court, the Plaintiff has proved his case against the Defendants on preponderance of evidence.

(2) **If Issue No.1 is determined in favour of Plaintiff, whether he is entitled to all the Reliefs sought.**

As already stated, on the 21st March, 2018 the PW1 testified. The Defendant Counsel was in Court and the Court ordered the Plaintiff Counsel to forward the Building Plan to Defendants which they did via letter of 12th April, 2018. On the 30th May, 2018 the Defendant Counsel was not in Court though she suggested the said date. The Court adjourned the case to 16th September, 2018 for Cross-examination of PW2. There were further several adjournments.

On the 12th February, 2020 the matter came up but the Defendant Counsel was not in Court to Cross-examine the PW2. It was further adjourned to 8th April, 2020 and further to 19th October, 2020 and to 2nd December, 2020. Then the Court foreclosed the Defendants from Cross-

examining the PW2. There was further adjournment to 18th January, 2021 for adoption of Final Address. The Defendants did not come to Court or give reason for being absent. On the 2nd of March, 2021 the Plaintiff Counsel adopted its Final Address, hence the case was adjourned for Judgment.

On Issue No.1 whether the Plaintiff has proved his case against the Defendants by preponderance of evidence, he submitted that Plaintiff has discharged the evidential burden by proving the case against the Defendants through the testimonies of the PW1 & PW2 and also through the Exhibits tendered by them. That these evidence was not challenged by the Defendants who only filed a Statement of Defence and attended Court on the 21st of March, 2018. That Plaintiff served them Hearing Notices everyday that the matter is scheduled for Hearing. They referred to the case of:

Okon V. Adigwe
(2011) 15 NWLR (PT. 1270) 373 Paragraph A – B

That the Plaintiff and the Court ensured that the Defendants were given all the ample time and leverage to defend the Suit of the Plaintiff but they refused to show up for trial (Hearing of the Suit and to defend same). That attitude of the Defendants does not show respect to the Court.

That the Plaintiff had proved its case on balance of probability and on preponderance of evidence through the documents tendered and testimonies of PW1 & PW2, and that those evidences had remained unchallenged and uncontroverted. That failure of the Defendants to

Cross-examine the PW1 & PW2 further shows that they have no defence to the case of the Plaintiff and acceptance of those facts. They urged Court to so hold and enter Judgment on behalf and interest of the Plaintiff by accepting those facts/evidences notwithstanding the Statement of defence filed by the Defendants as they did not lead evidence on them. They urged Court to discontinuance Defendants' pleadings as it does not amount to evidence as there is no evidence to support same. That Court should act on the evidence before it and nothing more. They relied on the case of:

Aigoro V. Commissioner for Land and Housing Kwara State
(2012) 11 NWLR (PT. 1310) 130 Paragraph G

The urged Court to resolve the Issue No.1 in favour of Plaintiff.

On Issue No.2 whether the Plaintiff is entitled to all the Reliefs sought, he submitted that he is entitled to all the reliefs sought as he had discharged all the evidential burden on him.

That the demolished property was valued at Five Million, Two Hundred and Thirty Thousand Naira (₦5, 230,000.00) going by evidence of PW1 which is the Estate Surveyor and Evaluation Report tendered through PW1 who is also a Q.S. Beside, the said Reports were not challenged by the Defendants. They urged Court to award all the Reliefs sought since he had proved his case against the Defendants and enter judgment in his favour.

The Defendants were served with all the Originating Processes. They filed a Statement of Defendant but did

not attach any document to support their Defence. They did not Cross-examine the PW1 & PW2. They never came to open their Defence too.

It is imperative to reiterate that the Court ensured that the Defendants were served with Hearing Notice for everyday that this matter came up. They failed to come to Court and never gave any reason for being absent. This Court will summarize the fact as contained in the Statement of Defence.

The 1st & 2nd Defendants jointly filed an 12 paragraphs Statement of Defence on the 4th of February, 2018. In it, they submitted that function of the 2nd Defendant, FCDA does not extend to allocating lands to individuals. That Department of Development Control is the body set up by law to control developments within the FCT.

That the Res, Plot D59 CAD Zone 07 – 05 within Kubwa District never existed as a Plot in the Master Plan of Abuja or in the Site Plan of Kubwa District which is hereby pleaded and shall be relied upon.

It is imperative to state here that the Defendants never attached/annexed the said Master Plan and never presented same before this Court during trial of this case. The Defendants went further to state that the 1st Defendant is the empowered authority to allocate land in the FCT. That the Power of Attorney executed on behalf of the Plaintiff transferred no rights/interest to the Plaintiff as the said Donor does not have any transferable right or interest in the land. That the said Power of Attorney was not registered as envisaged by law. Again, that Development Control did not issue or grant Building

Plan Approval in respect of the alleged Plot as it is a non-existent Plot. That because Development Control grant approval for Building Plan, the genuineness and the ownership of the land in question must be confirmed with AGIS and Urban and Regional Planning Department.

That the Plaintiff is not entitled to the Claim in this Suit as such is frivolous, vexatious, misleading and a pure gold-digging adventure. They urged Court to dismiss the Suit with substantial cost.

There were several adjournments to enable the Defendants come to Court to Cross-examine the PW1. But they never did. Several applications by the Plaintiff Counsel to foreclose the Defendants from Cross-examining the PW1 were turned down by this Court in the interest of fair-hearing. But on the 31st of January, 2019 this Court foreclosed the Defendants from Cross-examining the PW1. That is exactly seven (7) months after the PW1 testified in chief. That day matter was adjourned for the Plaintiff Counsel to call their 2nd Witness – PW2.

On the 15th May, 2019 almost one (1) year after the PW1 testified in chief, the Plaintiff called the PW2 to testify because the Court cannot wait for the Defendant in perpetuity. PW2 tendered a document – Evaluation Report by his QS the true assessment of the work and monetary qualification – EXH 13. Matter was adjourned for Cross-examination of PW2 by the Defendants. But they never came to Court. After several adjournments, the Court further, finally foreclosed the Defendants from Cross-examining the PW2 and adjourned the case for

Defence. They never came to Court to defend or challenge this Suit. They did not file any Counter Affidavit too.

On the 2nd December, 2020 more than two (2) years after the start of hearing and more than one year and seven (7) months after the PW2 testified in chief, the Court finally foreclosed the Defendants from opening and closing its case and adjourned for Final Address. Only the Plaintiff Counsel filed his Final Address, the Defendants did not. That is the journey/story of this case.

COURT:

So from the story so far, can it be said that the case of the Plaintiff was not challenged and as such the Court should enter Judgment in Plaintiff's favour and grant all his Reliefs?

Again, given all the 13 documents tendered in this case, some of which the Defendant Counsel objected to when the PW1 testified in chief but the objection was overruled by the Court, can this Court hold that the case of the Plaintiff is unchallenged and that he has proved his case in that the Court should grant him his Reliefs as sought?

It is the humble view of this Court that the Plaintiff had established its case on preponderance of the evidence and that his case was challenged as such since there was a Statement of Defence filed and that in the case of examination of the PW1 the Defendant Counsel had challenged/objected to the admissibility of some of the documents admitted as Exhibits.

Before the Court will go further, it will be proper to highlight some relevant principles of law as has been

held and upheld by our Courts which are relevant and appropriate in the circumstance of this case.

It is the law and had been held in plethora of cases that unchallenged facts are deemed admitted. That is more so where the party who ought to challenge such facts was given ample opportunity to do so but refused to cash on such opportunity. That has been so in this case because the Defendants were given ample opportunity to present their defence in this case but they did not. They did not file any Witness Statement on Oath. They did not attach any document in defence of the case even the Master Plan they pleaded was never attached or presented before this Court.

It has been held in plethora of cases that once there is a proof of service of Hearing Notice on a party and such party failed to be in Court, that the trial Court can proceed with the matter. It means that the absence of a party is presumed to be deliberate as such party has neglected and abandoned his Defence to the action. That is what the Court held in the case of:

Agbabiaka V. FBN PLC
(2020) 6 NWLR (PT. 1719) 97

Okon V. Adigwe
(2011) 15 NWLR (PT. 1270) 373 Paragraph A – B

Such party who fails to be in Court has no right to complain about breach of its right to fair-hearing since he was afforded all opportunity to be heard or to defend the case. That is why it is said that the Court that "the Court does not aid indolent."

In this case, the Defendants entered appearance and failed to open and close their defence. They were served with Hearing Notices for every day the case was scheduled. They waived their right to be heard.

In every civil case, the standard of proof, the onus is on the Plaintiff. Such onus does not shift until he has proved his claim with cogent facts and credible Exhibits on preponderance of the evidence of the Witnesses and on balance of probabilities. That is the decision of the Court in the case of:

Imam V. Sheriff
(2005) 4 NWLR (PT. 914) 180 Paragraph B – F

In this case, the Plaintiff had fulfilled that onus through the testimonies of the two (2) Witnesses and the thirteen (13) documents they tendered in form of documentary evidence, all of which were uncontroverted and unchallenged.

It is the law and it is also trite that failure to Cross-examine a Witness is tacit acceptance of the truth of evidence of such Witness. That is the decision of the Court in the case of:

Emirate Airlines V. Ngonadi (No.2)
(2004) 9 NWLR (PT. 1413) 543 Paragraph C – D

In this case, the Defendants never Cross-examined any of the Plaintiff's Witnesses though they had ample time and opportunity to do so. Failure to do so means that the Defendants accepted the evidence of PW1 and PW2 as the truth. So this Court holds. It means that they have no Defence to those truth/facts and evidence.

Once evidence presented by a party is admissible, relevant, credible, conclusive and unreprobable by evidence of the other party if any, the Court will accept it as credible evidence. That is what the Court decided in the case of:

Julius Berger V. Ogundehin
(2014) 2 NWLR (PT. 1391) 414 Paragraph C – E

In this case, the evidence of the two (2) Plaintiff's Witnesses met all the above principles. Where evidence given by a party is not contradicted by admissible evidence, the Court is duty bound to accept and act on it. More so when such evidence is not challenged under Cross-examination and controverted by other evidence. See the following cases:

Isitor V. Fakarode
(2008) 1 NWLR (PT. 1069) 621

NBA V. Ekemezie
(2008) 12 NWLR (PT. 1100) 330

SPDC Limited V. Esowe
(2008) 4 NWLR (T. 1076)88 Paragraph D – E

Magaji V. Nigeria Army
(2008) 8NWLR (PT. 1089) 393

Iniama V. Akpabia
(2007) 17 NWLR (PT.1116) 303

In this case, the Plaintiff's evidences were not contradicted by the Defendants. The said evidences were never controverted under Cross-examination and not challenged too.

It is also the principle of law that where a party fails to lead/adduce evidence in support of averments, in support of pleadings, it is deemed that such party has abandoned his pleadings. That means that such party has admitted any allegation(s) made against him by the other party; more so when the allegation are made in the Statement of Claims. That is what the Court held in the following cases:

Dingyadi V. Wamako
(2008) 17 NWLR (PT.1116) 442 @ 443

Abubakar V. Joseph
(2008) 1 NWLR (PT.1104) 357

Saidu V. Abubakar
(2008) 12 NWLR (PT.1100) 260

Ajikande V. Yusuf
(2008) 2 NWLR (PT.1071) 326 Paragraph A – F

It is also the law that pleading do not constitute evidence, as pleadings must be presented before the Court and supported by evidence of the Witnesses and tested under the furnace of the Cross-examination before it can have value. Again, once there is no evidence in support of a party's pleading, the Court will hold that there is no support for the pleading. The Court will not recognize such pleading. The Court will hold that such pleading does not exist or that it has been abandoned. The Court only acts on facts and evidence before it and not on any abandoned fact(s) in form of pleadings.

In this case, there were pleadings in the Statement of Defence filed by the Defendants but they were never

supported by any evidence. They were never presented before this Court by the Defendants during the trial of this case. There was no evidence to support the said pleading. There was no document attached to the Statement of Defence. There was no Witness Statement on Oath filed by the Defendants. The documents pleaded were never attached, presented or uploaded. There was no evidence led by the Defendants to support their pleadings. Those pleadings were abandoned. So this Court holds.

Once the Plaintiff has been able to establish his Claim through the credible and cogent testimonies of his Witnesses and tendered documents in support of such Claims, the Court is duty bound to hold that such Plaintiff had established its case and as such will enter Judgment in its favour and hold that such Plaintiff is entitled to its Claims. In such a case, the Court will hold that the Plaintiff has established its case and has discharged the evidential burden/onus placed on him. This is more so where such evidence was nit challenged or controverted.

In this case, the Plaintiff had established its case through the evidence of the two (2) Witnesses – PW1 & PW2 and especially through the thirteen (13) documents presented which they tendered as Exhibits. The PW2 had through the Valuation Report from a qualified Registered Estate Surveyor shown and established the value of the demolished property which was valued at Five Million, Two Hundred and Thirty Thousand Naira (₦5, 230,000.00) as shown in **EXH 13.** That evidence was never challenged by the Defendants.

Also where a Plaintiff had established that Damages suffered which is as a result of action or inaction of the Defendant, such Plaintiff is entitled to be paid compensation for such damages. Such compensation is to act as deterrence to the Defendant. Again, it is also as a punishment to the Defendant for his conduct in inflicting pains/harm on the Plaintiff. The quantification of the amount to be paid as compensation is done by the Court after due consideration of the whole circumstance of the case before it. That is the decision of the Court in the case of:

British Airways V. Atoyebi
(2014) 13 NWLR (PT. 1424) 286 Paragraph B – C

In this case, the Plaintiff has established and also shown the damages suffered as a result of the demolition of the Res by the Defendants who never served him any Notice or gave him any warning. The Defendants did not deny those facts. He deserves to be compensated for that suffering. So this Court holds.

In this case, the Plaintiff had established possession of the Res through the title documents he presented before this Court starting from the Irrevocable Power of Attorney **(EXH 1)** made in his favour by Peter Joseph Ekandem on the 10th of October, 1996.

Again, he presented before this Court the Conveyance of Provisional Approval given to him by the same Peter Joseph Ekandem. He also presented Conveyance of Approval for Development Plan issued by the 1st Defendant to Peter Joseph Ekandem dated 17th July, 1998. He as well tendered the Settlement of Building

Plan Approval issued by the 2nd Defendant on behalf of the 1st Defendant over the said Plot 07 – 05. That letter was dated 17th July, 1998. He attached the Receipt of Payment of the said Building Approval evidencing payment of the Building Plan. The payment was made on the 23rd of July, 1998. That is six (6) days after the approval and settlement of the Building Plan was made. The Valuation Report – EXH 13 was done by a qualified Surveyor. Each of the pages of the Report was duly stamped and signed by the Surveyor.

He equally attached the Letters of Complaint about the demolition of the Res. These letters were duly received and acknowledged by the Defendants who stamped same. The Defendants received the letter on the 29th of July, 2005. He also attached acknowledgement copy of the Letter for Compensation for the demolished Res dated 16th March, 2009. Again, the Defendants received and acknowledged the receipt of that letter on 10th of March, 2009. He also attached the Letter of Complaint written to the President and copied to the 1st & 2nd Defendants, who received same on the 16th of June, 2005. The Director Development Control also received same. He attached receipt of the stamp duty evidence of tax paid. Because most of the original documents were lost during the demolition, he presented photocopies. He had presented the Police Extracts; the Affidavit sworn about the missing of the original documents and the newspaper publication – Daily Trust of 26th April, 2017 when he listed the missing land documents of the Res. All these were never challenged by the Defendants.

So from the totality of the testimonies of the PW1 & PW2 as well as the thirteen (13) documents tendered which were not controverted or challenged. It is evidently clear that the Plaintiff has established his case. The Defendants did not challenge same. He had also by EXH 13 established that he had suffered. He deserves the Judgment of this Court. This Court therefore hold that the case of the Plaintiff is meritorious and he deserves the Judgement of this Court in his favour.

Again, he is entitled to be compensated for the damages he suffered as a result of the demolition of the Res by the Defendants. *This Court therefore Order as follows:*

Reliefs No. 1 & 2 granted.

Relief No. 3 granted except the One Million, Six Hundred and Fifty Thousand Naira (₦1, 650,000.00) as contained in the Relief No.3 is not granted because the Plaintiff did not tender receipt or specifically plead the furnishing.

The Defendants are to pay to the Plaintiff the sum of ₦1.5 Million as damages for the trauma Plaintiff suffered as a result of the demolition.

Defendants are also to pay to the Plaintiff ₦2.5 Million being the value of the land on which the demolished house was built as per the stamp duty paid.

Defendants are to pay to the Plaintiff 3% Interest on the said value of the house demolished.

Defendants are also to pay to the Plaintiff 2.5% per annum on the Judgment sum from the date of Judgment till it is finally liquidated.

Ten Thousand Naira (₦10, 000.00) awarded as cost of the Suit.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2021 by me.

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K.N. OGBONNAYA

HON. JUDGE