

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 25
CASE NUMBER:	SUIT NO. FCT/HC/CV/451/2019
DATE:	13/7/2021

BETWEEN:

1. MR. CHIBUIKE EZEOKOLI	}CLAIMANTS
2. MRS. IFEOMA EZEOKOLI		
3. CHINEMELUM NWAKAEZE		

AND

MR. CHUKWUMA NWOSU.....DEFENDANT

APPEARANCES:

Hannatu Bahago Esq for the Defendant

Godwin Attai Esq holding brief of John Ainetor Esq for the Claimant.

John Ainetor Esq for the Claimants.

JUDGMENT

This suit was commenced vide Writ of Summons filed on the 27th day of November 2019, whereof the Claimants claim against the Defendant as follows: -

“(1). A DECLARATION OF THIS HONOURABLE COURT that

the assault, beatings, manhandling, and grievous bodily harm inflicted on the 1st and 2nd Claimants on 17th and 19th May, 2019 is illegal, unlawful and amounts to gross violation of the fundamental human rights to the dignity of persons of the 1st and 2nd Claimants, as enshrined in Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

- (2). A DECLARATION OF THIS HONOURABLE COURT that the forceful eviction of the 1st and 2nd Claimants from the property described as the Boys Quarters at No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II Abuja), and the seizure, confiscation and throwing off of the personal items/properties of the 1st and 3rd Claimants by the Defendant on 12th April 2019, and on 19th May, 2019 is illegal, unlawful and amounts to gross violation of Claimant's fundamental human rights to privacy, peaceful possession of property, as enshrined in Sections 37, 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).**
- (3). A DECLARATION OF THIS HONOURABLE COURT that the Defendant trespassed into the property described as the Boys Quarters at No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II Abuja) on 17th and 19th May, 2017, then occupied by the 1st and 2nd Claimants.**
- (4). AN ORDER OF THIS HONOURABLE COURT awarding the sum of Five Million Naira (N5, 000, 000.00) against the Defendant, in favour of each of the Claimants, as damages for the violation of the Claimants' fundamental human rights to the dignity of their persons, privacy and right to peaceful possession and occupation of property, described as the Boys Quarters at No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Abuja (also known as Plot 626, Cadastral Zone A7,**

Wuse II Abuja), on 17th and 19th May, 2019, as enshrined in Sections 34, 37, 43 and 44 of 1999 Constitution of the Federal Republic of Nigeria (as amended).

- (5). AN ORDER OF THIS HONOURABLE COURT awarding the sum of Ten Million Naira (N10, 000, 000.00) against the Defendant in favour of the 1st and 2nd Claimants, for forceful eviction of the 1st and 2nd Claimants from the property described as the Boys Quarters at No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II Abuja), on 19th May 2019, then occupied by the 1st and 2nd Claimants.**
- (6). AN ORDER OF THIS HONOURABLE COURT awarding the sum of Ten Million Naira (N10, 000, 000.00) against the Defendant, in favour of the 1st and 2nd Claimants, for trespass into the property described as the Boys Quarters at No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II Abuja), on 17th and 19th May, 2019, then occupied by the 1st and 2nd Claimants.**
- (7). AN ORDER OF THIS HONOURABLE COURT restoring the 1st Claimant to the possession of the property described as the Boys Quarters at No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II Abuja).**
- (8). AN ORDER OF THIS HONOURABLE COURT mandating the Defendant to restore the 1st Claimant's personal properties wrongly and forcefully taken away by the Defendant and his agents on 19th May 2019, from the property described as the Boys Quarters at No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II Abuja), (also known as Plot 626, Cadastral Zone A7, Wuse II, Abuja), to wit: Lenovo Laptop A2016a40; Tecno F2 Mobile Phones; Laptop Bag containing**

International Passport A03523606, Bunch of Keys, Inhaler, Internet Modem, SIM Packs (MTN and Glo, Notebooks and Stationery.

- (9). AN ORDER OF THIS HONOURABLE COURT mandating the Defendant to restore the 2nd Claimant's personal properties wrongly and forcefully taken away on 19th May 2019, from the property described as Boys Quarters at No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II Abuja), to wit: Infinix Hot 2 Mobile Phone; Handbag containing the ATM Cards of First Bank, Zenith Bank, Union Bank, and United Bank for Africa (UBA), cash sum of Forty Six Thousand Naira (N46, 000.00), pair of eye glasses, diaries, medications, medium sized Ghana-must-go bag containing clothing and other valuables, file containing documents in respect of water bills, renovation bills, and other utility bills.**
- (10). AN ORDER OF THIS HONOURABLE mandating the Defendant to restore 3rd Claimant's personal properties wrongly and forcefully taken away on 19th May 2019, from the property described as Boys Quarters at No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II Abuja) to wit: Samsung S7 Mobile Phone, Nokia Asha 302 Mobile Phone, Backpack containing Laptop HP 255 G4, 1 TB external hard drive, 250 GB external hard drive, 2 T-shirts and underwear.**
- (11). AN ORDER OF THIS HONOURABLE COURT awarding the sum of One Million Naira (N1, 000, 000.00) against the Defendant as cost of this action**
- (12). SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances of this case.”**

Meanwhile, the Defendant upon being served with the Writ of Summons, filed his Statement of Defence along with a Memorandum of Conditional Appearance on the 24th day of February 2020.

In response, the Claimants further filed a Reply to the Statement of Defence on the 6th day of March 2020.

Trial commenced on 2nd March 2020.

During trial Claimants called a total of four witnesses namely:

- (1). Pw1 (1st Claimant) Chubuike Ezeokoli who testified on 2nd March 2020.
- (2). Pw2 (3rd Claimant) Chinemelum Nwakaeze who also testified on 2nd March 2020.
- (3). Pw3 (2nd Claimant) Mrs. Ifeoma Ezeokoli who testified on 23rd November 2020. And lastly,
- (4). Mr. Hosea Oyah Thomas a subpoenaed witness, also testified on 23rd November 2020.

1st, 2nd and 3rd Claimants all adopted their Witness Statements on Oath. The following documents were also tendered, admitted in evidence and marked as follows: -

- (1). 4 photographs and a Certificate of Compliance pursuant to Section 84 of the Evidence Act 2011 marked Exhibits A1 – A5, and A6 respectively.
- (2). Certified true copy of Court processes in respect of Suit No. CV/1618/19 marked Exhibit B.
- (3). A Court Order of F.C.T High Court Abuja in respect of Suit No. FCT/HC/CV/1618/2019 dated 20th March 2019, stamped, signed and dated 16th July, 2019 marked Exhibit C.
- (4). A Police Report with reference No. CH: 7350/ZW/7/Vol. 2/93, marked Exhibit D.

- (5). Certified true copy of Court processes of the High Court of Anambra State of Nigeria, Awka Judicial Division, and a Certification Receipt in respect of same marked Exhibits D2 and D3 respectively.
- (6). A Medical Report issued by Myles (Specialist) Clinics dated 20th January 2015 marked Exhibit E. While Medical Report issued by Peenok Medical Centre dated July 19, 2019 is marked Exhibit E1.

Claimants and their subpoenaed witness were all duly cross-examined by Defendant's Counsel.

The Defendant testified as Dw1, the sole witness for the Defence, and he tendered a certified true copy of a last will and Testament of Mrs. Patience Nwosu of Ezeabor village Anambra State. The document was admitted in evidence and marked Exhibit F.

Defendant was duly cross-examined by Claimants' Counsel.

Final Written Addresses were filed, exchanged and adopted by both sides on 24th day of June 2021.

Defendant's final Written Address is dated 1st day of March 2021 and filed same day. While Claimants' Final Written Address is dated 19th day of March 2021 filed same day.

In the Defendant's Final Written Address, two issues for determination were formulated by learned Defendant's Counsel Hannatu Bahago to wit:-

- “(1). Have the Claimants led any credible evidence to prove that they were tenants in the property, the subject matter of this suit?”**
- “(2). Have the Claimants proved their case to entitle them to the reliefs sought?”**

On issue one, learned Counsel submitted that to succeed in this suit, the Claimants who principally seek declaratory reliefs must prove first and foremost, that they are tenants in the property. It is therefore submitted that the burden of proof of the facts asserted lies on that person who

wishes the Court to believe in its existence particularly where the assertion is denied.

Learned Counsel relied on the cases of **CHUKWUMA V SHELL PETROLEUM (1993) 4 NWLR (Pt. 289) 512, per Karibi-Whyte, J.S.C. (P. 74), Paras F – G; A.P. LTD V OWODUNNI (1991) LPELR – 213 (SC).**

Submitted moreso that the Claimants have woefully failed to prove that they entered upon premises by reason of a contract with the Defendant who is the owner/landlord of the property. That the Claimants have failed to prove existence of a tenancy or exclusive possession of the premises, payment of rent, the term of the purported tenancy or its nature, Counsel relied on **NPA V EYAMBA & ORS (2014) LPELR – 22726 (CA), Per Otisi, J.C.A, P. 26, B –D.**

Submitted further that failure of the Claimants to prove the essential elements of a contractual tenancy is fatal to their case. That at most what the evidence led by the Claimants proves is that 1st Claimant was a “**bare license**” in the premises and not a tenant. That it is a gratuitous privilege without any consideration to support it. Reliance was placed on the cases of **UMEZURIKE V GEORGE (1973) 3 CCHCJ 62; SMITH V WEST AFRICAN PICTURES LTD (1975) 6 CCHCJ 933; ANIFOWOSHE V SIYANBOLA (1956) SCNLR 1; ODUOLA V AJANAKU (1963) 2 SCNLR 123.** Reference was also made to Defendant’s pleadings and testimony.

Learned Counsel further submitted that evidence of the Claimants also does not fall within the meaning of the second type of license which is a “**licensee**” coupled with a grant of interest, with a definite contractual interest in the land or chattel lying on the land or given interest to enter, enjoy, exploit, prospect precious stones, latent, etc thereon. Reliance was placed on Umezuruike V George (Supra) and Smith V West African Pictures Ltd (Supra). That 1st Claimant also failed to prove the third type which is contractual license for value which is a license not only complied with grant but also supported by valuable consideration. Counsel cited the cases of **NMEREGINI V PORT-HARCOURT MUNICIPAL COUNCIL (1959) SCNLR 140; MOBIL OIL (NIG) LTD V JOHNSON (1961) 1 ALL NLR 93; OLOWOSHILE V AREMU (1978) 1 CCHCJ 79; OKOYE V DUMEZ NIG LTD (1985) 1 NWLR (Pt. 4) 783.**

Submitted that the fact that the property was willed to the Defendant is a common ground by the parties. That the weak contention by the Claimants that there is a law suit challenging the will does not advance the Claimants' case. That even if the will is invalidated, Claimants have the added burden of proving that they are contractual tenants in the premises. Reliance was placed on Sections 131 to 132 and 133 of the Evidence Act 2011.

Submitted moreso that the fundamental requirement of a declaratory relief is to satisfy the Court that the Claimant is entitled in law to the relief claimed. Counsel cited **CHUKWUMA V SHELL PETROLEUM (supra)** in support of the Defendant or weakness in the case of the Defendant should not be relied upon by a Plaintiff/Claimant who seeks a declaratory relief. Counsel cited **OLISA V ASOJO (2002) 1 NWLR (Pt. 747)1; PDP V ABUBAKAR (2007) 3 NWLR (Pt. 1022) 515 at 546-547, Paras, D – A (CA).**

Submitted that in this case Dw1 presented uncontroverted and unchallenged evidence in support of his case and as such the Court must accept it in proof of the issue in question so long as the evidence is credible. Counsel cited **ADELAKUN V ORUKU (2006) ALL FWLR (308) 1360 at 1373; ARCHIBONG V UTIN (2012) LPELR – 7907 (CA).**

On the Defendant's right to ownership of the property pursuant to the will, learned Counsel cited the case of **UWAGBOE & ANOR V ERIYO & ANOR (2017) LPELR – 42512 (CA).**

That even though Pw3 who is the 2nd Claimant asserted that the validity of the will is being challenged in Court, it is submit respectively that the validity of the will is not a subject matter of this suit hence same cannot be entertained by this Honourable Court. That Exhibit F remains valid and subsisting until same is voided by any Court in Nigeria which is not the case in this circumstance.

The Court is urged to resolve issue one in favour of the Defendant.

On issue two, learned Counsel submitted that there is no contention that in an action for assault beatings, manhandling and grievous bodily harm, the Claimants must prove same beyond reasonable doubt being criminal in nature. Counsel relied on the case of **AGBONAVBARE V OGBEBOR (2007) 8 NWLR (Pt.1037) 605, @ 620, D- E, Per Alagoa J.C.A.; and**

OLOOKAN & ANOR V FRSC & ORS (2019) LPELR – 47871 (CA); ENEJI V STATE (2013) LPELR – 20393 (CA); BAKARE V STATE (1987) 1 NWLR (Pt. 1977) 545; UWWAGBOE V STATE (2007) 6 NWLR (Pt. 1031) 606.

That with regards to the pictures i.e. Exhibits A1 – A5 showing alleged bodily harm done to the 1st and 2nd Claimants, no witness has corroborated this evidence except the Claimants themselves. And that there's no credible evidence linking the contents of the pictures to the Defendant. Reliance was placed on the case of **DEBS V CENICO LTD (1986) NWLR (Pt. 32) 846, Per Oputa, J.S.C (P.12, C- D).**

That under examination in chief of Pw4, the subpoenaed witness for the Claimants, stated that it was himself, the Defendant and the 2nd Claimant that were on the premises on April 12. That same proves that 1st and 3rd Claimants were not on the property on that day. That according to Pw4 he did not see what transpired other than the fact that he and only the Defendant were present. That the Claimants have not led evidence to prove that it was indeed the Defendant who personally assaulted them. That the Exhibit before the Court shows that the allegations made against the Defendant by the Claimants to the Police were not true and also are unsubstantiated to warrant further prosecution of the Defendant by the Police.

Reference was also made to 2nd Claimant's evidence during cross examination, on her allegation that Defendant assaulted her and the Medical Report tendered in support.

Learned Counsel also cited the case of **OKAI II V AYIKAI II (1946) 13 WACA 31** in support.

Submitted further that by admission of Pw4, 1st and 3rd Claimants were not on the premises on April 12, therefore same is fatal to the Claimants' case. Counsel cited **AKANINWO V NSIRIM (2008) 9 NWLR (Pt. 1093).**

Submitted, that a licensee cannot maintain an action for trespass against a landlord, and cited the cases of **CHUKWUMA V SPDA (NIG) LTD (1993) LPELR – 864 (SC); NWANA V FCDA & ORS (2004) LPELR – 2102 (SC) Per Tobi JSC. (P. 10, E - G).**

On the credibility and veracity of a witness learned Counsel relied on the case of **ONUOHA & ORS V STATE (1989) LPELR- 2704 (SC) per OPutu, JSC (PP. 14-15, Paras F –A).**

On the unchallenged and uncontroverted evidence of the Defendant Counsel cited the case of **ADA V STATE (2008) SCNJ 288; HON. INAKOJU & ORS V ADELEKE (2007) 1 SCNJ; EBURUKE & ANOR V AFRICAN CONTINENTAL BANK LTD (1995); ADELEKE V IYANDA (2010) 13 NWLR (Pt. 729).**

Submitted that the Claimants have failed to prove their case to be entitled to the reliefs sought. Counsel argued that it is appraisal of evidence and ascription of probative value of such evidence that is the primary duty of the trial Court.

Counsel in support of her arguments also cited the case of **FADARE V A-G OYO STATE (1982) 5 SC 1, 6 -7,** to argue that in this case, no cause of action is disclosed against the Defendant.

In conclusion, learned Counsel urged the Court to resolve issue two in Defendant's favour and dismiss this suit for being vexatious, and gold digging with substantial cost in favour of the Defendant.

Meanwhile, in the Claimants' Final Written Address, two issues for determination were formulated by learned Claimants' Counsel John Ainetor Esq to wit:

“(1). Whether the Claimants have proved their case against the Defendant on the balance of probability and preponderance of evidence, having regards to the facts, circumstances and evidence before the Court”

(2). Whether the Claimants are entitled to the reliefs sought?”

On issue one, learned Counsel submitted that in the instant case the Claimants have proved their case on the balance of probability or preponderance of evidence. That since this is a civil case, they are not required to prove their allegations beyond reasonable doubt. Reliance was placed on the case of **AROWOLO V LOWOKERE (2011) 18 NWLR (Pt.**

1278) 306, Para B (SC) as well as Sections 134, 125 and 126 of the Evidence Act 2011.

Learned Counsel submitted moreso, that Witness Statement on Oath amounts to direct oral evidence on Oath. Counsel referred the Court to the case of **ASSOCIATED BUSINESS COMPANY LTD V NWACHINEMELU & ANOR (2014) LPELR – 24393 (CA), Per Daniel-Kalioo, J.C.A Pages 30-31 Paras D – C.**

Also, that facts admitted need no further proof. Counsel cited the case of **JOLASUN V BAMGBOYE (2010) 18 NWLR (Pt. 1225) 285 at 307, A – B, 311 Para C – D.**

Submitted that evidence adduced shows that Mrs. Patience Nwosu (now deceased) was the owner of the entire property situate at No. 14, Port Novo street, Off Lingu Street, Off Aminu Kano Street, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II, Abuja), comprising a Block of Four (4) Flats, and a Boys Quarters Apartment, of which the Boys Quarters apartment is the res in this suit.

Submitted that the above needs no further proof as same was admitted by both Claimants and Defendant in their pleadings and respective Witness Statement on Oath.

Submitted that Claimants led direct evidence that the 1st Claimant took possession and occupation of the Boys Quarters (res) in the said apartment on the authority of the said Bona fide Owner since 2007, and that the 2nd and 3rd Claimants occasionally occupied and stayed in the said res whenever they were in Abuja. That Claimants have proved that they were in occupation of the res, particularly on the 12th of April, 2019, 17th and 19th of May 2019. In support of the arguments Counsel cited Sections 125 and 126 of the Evidence Act (supra) and the case of **CHUDI VERDICAL CO. LTD V IFESINACHI INDUSTRIES (NIG) LTD & ANOR (2018) LPELR -44701 (SC), Per Eko, JSC, page 44, Para A – B.**

Submitted further that Defendant himself at paragraph 3 of his Statement of Defence and Witness Statement on Oath filed on 24th February 2020, averred that he had been away from the country (Nigeria) for over 40 years and just returned in 2018 weighs in favour of the Claimants' direct evidence. Reference was also made to Defendant's evidence during

cross-examination. That the Defendant is not in a position to personally witness the physical occupation of the res by the Claimants at all material times before 2018, when he eventually returned from the United States of America.

Submitted that the Defendant in the circumstances, cannot dispute or challenge or controvert the authorization or permission granted to the Claimants to occupy the res by the bonafide owner, the deceased.

Reference was also made to the oral evidence of Pw4 on 23rd November 2020 in submitting that same corroborated the evidence of the Claimants that it was in January 2019 that the Defendant started coming into the said property, of which the res was already being occupied by the Claimants.

Counsel urged the Court to hold in favour of the Claimants in this respect that the Claimants herein are not claiming ownership of any property the Defendant is also is not Counter-Claiming ownership in this suit. That what calls for determination is whether the Claimants were in occupation of the res on the 12th April 2019 and 17th and 19th May 2019 and were illegally evicted by the Defendant, having regards to the entire facts and circumstances before the Court as well as documentary evidence before the Court.

That non payment of rents by the Claimants did not in any way invalidate the Claimants bonafide and legal occupation and possession of the res on the said dates having been given same by the legal owner, the deceased, their grandmother, mother or distant family relative, as the deceased was respectfully related with the Claimants.

That on his own admission, Defendant during cross-examination testified that the reason he filed Exhibit B was to get the 1st Claimant to leave the said res and that the 1st and 3rd Claimants were in the res when they allegedly harassed him, even though there was nothing before the Court to show for the harassments.

Submitted moreso that the Defendant abandoned Exhibit B and chose to take the law into his hands by opting to trespass and forcefully evict the Claimants who were in occupation of the res, particularly on 12th April, 2019 and 17th and 19th May, 2019.

Reference was made to the direct oral evidence of the Claimants, as well as Exhibits A1 – A5, as well as Exhibit D a Police Investigation Report.

Submitted further, that absence of any criminal charge against the Defendant in any Court does not disprove the allegation against the Defendant.

Learned Counsel further argued that drafting and filing of criminal charges is not within the control of the Claimants but the Nigerian Police Force, who also have discretion to chose and pick which case to prosecute. Reliance was placed on the case of ***IGBO & ORS V DURUEKE & ORS (2014) LPELR- 22816 (CA) per Ekpe JCA, PO. 19 -20, D – D; FAWEHINMI V IGP & ORS (2002) 7 NWLR (Pt. 767) 671.***

Learned Counsel submitted that Exhibit D confirms and supports the allegations of trespass, forceful eviction and breach of fundamental human rights as alleged by the Claimants against the Defendant, on the balance of probability! That the Defendant who now resides in the res, got the Claimants out of the premises without a valid legal process.

Reference was also made to Exhibit E2 a Medical Report on the alleged bodily injury or assault caused on the 2nd Claimant by the Defendant.

Moreso, learned Counsel submitted that Exhibits A1 –A5, D and E2 were not challenged, controverted or discredited by the Defendant during cross examination of the Claimants. Reliance was also placed on the oral evidence of the Claimants.

In support of his submission on this point, learned Counsel cited the cases of ***ISITOR V FAKOREDE (2008) 1 NWLR (Pt. 1069) 602, at 621, B –D, and at 628, e; MONKOM V ODILI (2010) 2 NWLR (Pt. 1179) 419 at 445, Paras D – E.***

The Court is urged also not to rely on Exhibit F since it is being contested and challenged at Anambra State High Court. That any weight attached to Exhibit F would be prejudicial to the final determination of the suit in Exhibits D2 and D3 pending before the Anambra State High Court.

Submitted also that during cross examination on 9th February 2021 the Defendant admitted that he had nothing to show in respect of any financial contribution to the development of the said property.

But, that assuming without conceding that the Defendant is the owner of the res in this case, was he entitled or allowed in law to forcefully eject the Claimants who were in bonafide occupation of the res on 12th April 2019, 17th and 19th May, 2019? Learned Counsel humbly answered in the negative. He further cited the case of **NWELE V ODUH (2013) LPELR-21236 (CA) Per Jega, J.C.A, PP. 23 -24, F –B.**

Submitted that the Defendant herein had the option of taking over an empty flat in the premises, or ejecting any other tenant through the legal process and not to disturb the quiet possession and occupation of the Boys Quarters by the Claimants.

That the Defendant, therefore, is not justified to have forcefully ejected the Claimants from the res and cart away their personal items on 19th May 2019 and urged the Court to so hold and resolve this first issue in favour of the Claimants

On issue two, learned Counsel submitted relying on Order 2 Rule 2(1) of the extant Rules of this Court 2018; the case of **IHEME V CHIEF OF DEFENCE STAFF & ORS (2018) LPELR – 45354 (CA)** that by commencing this action via Writ of Summons, the Claimants entitled to enforce their fundamental rights, damages for trespass and forceful eviction, restoration to possession and occupation of the res, as well as restoration of the personal items of the Claimants carted away by the Defendant.

Learned Counsel submitted that the Claimants have adduced enough evidence to prove their claims against the Defendant in this case.

On relief no. 4, it is submitted that Claimants' rights under Sections 34, 37, 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended) were violated in this case as such Claimants are entitled to the said relief. Reliance was placed on the cases of **DENTON-WEST V JACK (2013) 15 NWLR; JIM-JAJA V C.O.P (2013) 6 NWLR (Pt. 1350) 225 at 25A, Para F; IGWE V EZE ANOCHIE (2010)7 NWLR (Pt. 1192) 61.**

On the allegation of trespass in relation to Reliefs 3 and 6, learned Counsel cited the cases of ***INYAM & ORS V EXCHIGAK & ORS (2017) LPELR – 43383 (CA), per Jauro, J.C.A at P. 33, A – E; MBADUAHA V KAMALU (2013) LPELR – 22054 (CA) Per Tsammani, J.C.A at 31 -32, B –C; DAIRO & ORS V THE REGISTERED TRUSTEES OF THE ANGLICAN CHURCH (2002) LPELR-22624 (CA) Aderemi, J.S.C PP. 11-12, D –C.***

On the issue of forceful eviction, in relation to Reliefs 5 and 7, learned Counsel placed reliance on Exhibits A1 - A5, D, C and B and also relied on the case of Nmele V oduh (supra).

On the claims for restoration of their personal properties specifically taken away on 10th May 2019, Counsel referred the Court to evidence of the Claimants as well as Sections 125 and 126 of the Evidence Act (supra), and urged the Court to hold in favour of the Claimants as per Reliefs 8, 9 and 10th on the Writ of Summons.

On the cost of action as per Relief 11, learned Counsel submitted that Claimants are entitled to compensation in cost for this action they had to file to remedy the wrong doings of the Defendant and cited in support the case of ***DANKOLO V REWANE-DANKOLO (2011) 16 NWLR (Pt. 1272) 22 at 55 Para A – C; AYVYA V YORIN (2011) 10 NWLR (Pt. 1254) 135, at 162, Paras A – B (SC); UZODINMA V IZUNASO (NO.2) (2011) 17 NWLR (Pt. 1275) 30, at 79, Para E.***

Learned Counsel submitted that having regards to the facts and circumstances of this case and the evidence adduced, Claimants' case weighs more in the scale of justice than that of the Defendant and urged the Court to grant the reliefs sought.

Counsel further cited the case of ***KARMAME & ANORS V DAN AZUMI & ORS (2011) LPELR-9192 (CA), Per Augie, JSC, at PP. 33 – 34, C – E.***

Learned Counsel urged the Court to discountenance Defendant's Counsel's submission on tenancy which he argues is rather misconceived and argued that in this instance the Court should look at the Writ of Summons and the Reliefs.

In support, Counsel cited the case of ***UWAZURUIKE & ANOR V NWACHUKWU & ANOR (2013) 3 NWLR (Pt. 1342) 503.***

Submitted that Defendant's argument of allowing the 1st Claimant to stay in the res in 2019 for NYSC is completely false. That 1st Claimant had been occupying the res since 2007 when the Defendant was away from Nigeria, in the United States.

On Defendant's assertion that claims of assault, beatings, manhandling and grievous bodily harm are criminal in nature, learned Counsel submitted that the argument is misconceived as the claim borders on the breach of Fundamental Human Rights. Reliance was placed on the case of **ADEBIYI V ADEBIYI & ANOR (2018) LPELR – 45964 (CA)**. Reference was also made to evidence of the Claimants on oath as well as Exhibit D.

Reference was also made to the Defendant's evidence in arguing that his evidence is not credible. Also, that in Exhibit B, Defendant never mentioned the last will and testament of his late mother, and claims ownership of the property from 1980, whereas in his Statement on Oath at paragraph 15, Defendant claims to ownership of the property is vide Exhibit F, the will dated 4th, November, 2016.

That same shows inconsistency of the Defendant who is rather scouting grounds to base his claim to ownership of the property.

Reference was also made to Defendant's Statement on Oath vis-a-vis Exhibits B and D.

Counsel further relied on the cases of **OLATUNJI V WAHEED (2012) 7 NWLR (Part 1298) 24 at 50, para D; AJAYI V STATE (2013) 9 NWLR (Pt. 1360) 589 at Page 610, Para F**.

Finally, learned Counsel urged the Court to grant all the reliefs sought.

Now, I have carefully gone through the Statement of Claim, the Claimants' Witness Statement on Oath and the Defendant's Statement of Defence and Witness Statement on Oath as well as Claimants' Reply to the Statement of Defence.

I have equally considered the entire evidence adduced by the parties at trial including the documentary evidence. I've extensively studied the final Written Addresses filed. Therefore, in my humble view the issue for determination can be summed up thus:-

“Whether the Claimants herein have established their case against the Defendant, on the preponderance of evidence or balance of probabilities to be entitled to the reliefs sought?”

Sections 131(1)(2), 132, and 133 of the Evidence Act 2011 provide thus-

131(1). Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2). When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

132. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

133. In civil cases the burden of proving existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

See also the case of ***ACTION ALLIANCE & ORS V INEC (2019) LPELR-49364 (CA)***.

USMAN & ANOR V ZAILANI (2021) LPELR – 52691 (CA)

On burden of proof in civil cases, the Court has held in the case of ***EQUITORIAL TRUST BANK LTD V AGADA (2016) LPELR-40792 (CA) per Georgewill, J.C.A, (PP: 33 -36, Paras F -D)***, as follows:-

“...It is now well accepted as settled law that the onus of introducing evidence, otherwise referred to as the evidential burden, lies on each of the parties to lead evidence in support of all positive assertions made by such a party and not either admitted or not effectively denied or traversed by the other party. This is so because in law, generally, the onus of proof is

on the party who asserts the positive and not on the party who asserts the negative. The law is and has always been: he who asserts must prove...”

From the averments contained in the Statement of Claim, it is clear that 1st, Claimant is a son to the 2nd Claimant, a nephew to the Defendant, and a grandson to one late Mrs. Patience Nwosu (hereinafter referred to as the “Deceased”).

Further averred is that 2nd Claimant is sister to the Defendant and daughter to the Deceased.

While 3rd Claimant is a distant family relative of the 1st and 2nd Claimants.

Therefore, it is averred further that the Defendant is Uncle to the 1st Claimant, brother to the 2nd Claimant and son to the Deceased.

It is the case of the Claimants as distilled from their Statement of Claim and Witness Statement on Oath that the Deceased who died sometime in October 2018 and was buried in January, 2019, was the owner of the entire property situate at No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Abuja, (also known as Plot 626 Cadastral Zone A7, Wuse II, Abuja) comprising a Block of four (4) flats and a Boys Quarters apartment.

That during her life time, the deceased put in possession and occupation of the 1st Claimant the Boys Quarters at No 14, Port Novo Crescent, Wuse II, Abuja, wherein the 1st Claimant had been staying for over 8 (eight) years since 2007 when he used to spend his holidays there, and thereafter consistently when he left boarding school.

That during the life time of the deceased and to the knowledge of the deceased, the 2nd and 3rd Claimants usually stay with the 1st Claimant. In the said Boys Quarters at No. 14, Port Novo Crescent, Wuse II, Abuja, whenever they are in Abuja.

Claimants further averred that after the death of the deceased sometime in October, 2018 and burial in January 2019, the Defendant started trespassing into the said Boys Quarters, wherein he regularly harassed the 1st Claimant and threatened to dispossess and eject him and the 2nd Claimant from the said apartment.

They further averred that on Friday, 12th April 2019, the 1st and 3rd Claimants were in occupation of the said Boys Quarters at No. 14, Port Novo Crescent, Wuse II, Abuja, while at work 1st Claimant, he received a call from 3rd Claimant, that the Defendant had thrown off the Claimants belongings from the said apartment, and also instructed the security man in the compound, Mr. Hosea, to pack his things and leave the compound.

Claimants further averred that again, on Friday 17th May, 2019, the 1st, 2nd and 3rd Claimants were in occupation of the said Boys Quarters at No. 14, Port Novo Crescent, Wuse II, Abuja, when the Defendant trespassed into the apartment with thugs to assault, beat, manhandle and inflict grievous bodily harm on the Claimants.

That further on Sunday, 19th May, 2019, the Defendant again, trespassed into the apartment with the thugs and assaulted, beat, manhandled, and inflicted grievous bodily harm on the 1st and 2nd Claimants and further forcefully ejected the three (3) from the said Boys Quarters.

That in the said process, the said thugs scattered and threw off the personal items/properties of the Claimants while some of the said personal properties and items were carted away by the Defendant, using a taxi cab he came with, while also forcefully ejecting them.

In paragraphs 14, 15 and 16 thereof, Claimants listed various items and cash said to have been carted away including clothing, other valuables, files containing documents, Phones, Laptop, International Passport, Internet modem, Inhaler etc to name a few.

The Claimants also tendered photographs in evidence in proof of these facts. I refer to Exhibits A1 – A5.

Further averred is that they were rendered homeless by the foregoing acts by the Defendant and also claim that the Defendant has no title whatsoever to the property in question, which belonged to the deceased.

It is also the case of the Claimants by the averments contained in paragraphs 20 – 23 thereof, that while 1st Claimant was still in possession of the said Boys Quarters at No. 14, Port Novo Crescent, Wuse II, Abuja, the Defendant filed a suit against him in Suit No: CV/1618/19, seeking to

eject 1st Claimant through Court process in April 2019. That the suit was eventually struck out for want of diligent prosecution, I refer to Exhibit C.

That the Defendant suddenly decided to take the law into his hands by forcefully harassing and evicting the Claimants from the said property without due process of law while they were in peaceful occupation on 17th and 19th May 2019.

According to the Claimants they reported the foregoing acts to the office of the Assistant Inspector General of Police, AIG Zone 7, Wuse, Abuja, but that his men and officers failed to respond positively and timely to the report, as the Claimants did not have the financial resources to mobilize the said Police Officers to act. The Police report later issued was tendered and admitted in evidence as Exhibit D.

In paragraph 24 thereof, Claimants aver thus: -

“The Claimants aver that the foregoing actions of the Defendant constitutes trespass, breach and violation of the fundamental rights to the dignity of their persons, privacy and right to peaceful possession and occupation of property described as the Boys Quarters at No. 14, Port Novo Crescent, Off Lingu street, Off Aminu Kano Street, Wuse II, Abuja as enshrined in Sections 34, 37, 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).”

They also averred that the foregoing acts of the Defendant has inflicted on them much pain, trauma, agony, mental stress and untold hardship.

Claimants averred that they want justice hence took their time to gather resources, took stock of what they lost and decided to file this suit to capture all their claims.

These facts are clearly captured in the Claimants’ respective Witness Statements on Oath.

Now, let me begin by considering the claim of trespass against the Defendant.

On the meaning of trespass, the Court of Appeal held in the case of **MOHAMMED & ANOR V ABUBAKAR (2017) LPELR- 43429 (CA)**, Per **Abiru, J.C.A**, at **PP. 32 – 33, paras D – C**, as follows: -

“Trespass is a violation of possessory rights; trespass to land is unlawful interference with exclusive possession. The slightest disturbance to the possession of land by a person who cannot show a better right to possession constitutes trespass in law, ECHERE V EZIRIKE (2006) 12 NWLR (Pt. 994) 386, OGBEIDE V OSIFO (2007) 3 NWLR (Pt. 1022) 423.

It is defined as an unauthorized and direct breach of the boundaries of another’s land. No intent to commit trespass is required so long as the act resulting in the trespass is required so long as the act resulting in the trespass is violation and the resulting trespass is direct and immediate. It does not depend on the intention of the trespasser, nor can he plead ignorance as to the true owner or that he thought the land belonged to him. It is enough that the right of the owner or person in exclusive possession was invaded....”

Furthermore, in the case of **OSHIBANJO V ODUNLAMI & ANOR (2015) LPELR – 25863 (CA)** the Court of Appeal held as follows: -

“A party on a parcel of land who claims ownership of the land is a trespasser if he lacks title to the land” per Ndukwe – Anyanwu, JCA at P. 28, Paras C –D.”

It is the submission of Claimants’ Counsel in the Written Address among others that the Defendant had indeed trespassed on the said Boys Quarters since he does not have a better title than the Claimants.

I have looked at the authorities cited by Counsel in that regard and I too commend the decision of the Supreme Court decision cited by Claimants’ Counsel in the case of **DAIRO & ORS V THE REGISTERED TRUSTEES OF THE ANGELICAN CHURCH (2002) LPELR- 11634 (CA) per Aderemi, JSC at P. 11-12, paras D – C**, where the Court of Appeal held as follows: -

“Trespass to land is actionable at the instance of a person in possession of the land. The purpose of the action is to seek a

redress for the violation of a possessory right. Though title may be in issue in a claim for damages for trespass, title is not a necessary issue to be determined in every claim in trespass. This is so because a person in possession can sue for trespass even if he is neither the owner of the land nor a privy to the owner. Exclusive possession of the land gives the person in such possession the right to retain it and to an undisturbed possession of it against all wrong doers except a person who can establish a better title.”

It therefore follows, that for the Claimants to succeed in proving trespass in this case, they in addition to proving exclusive possession they must also show that they have a better title in that regard.

From the facts of this case earlier reproduced Claimants were put in possession of the said Boys Quarters by the deceased during her life time. Upon her death, however, the Defendant herein tried to evict them from the said Boys Quarters.

Under cross examination Pw1 (1st Claimant) admitted that it was out of love and affection that his grandmother the deceased allowed him to stay in the said property and that he was aware that there is a document presented as her will. But, still under cross examination, stated that he was not aware the deceased had a will, because he doesn't know how legitimate the document is.

He also testified that he was not aware that the deceased gave her property to the Defendant, until his things were thrown out of the said property.

When asked if the deceased had at any time transferred her interest, ownership or title before her death? Pw1 stated that he was not aware of it, but that the deceased in 2007 personally gave him the keys to the property the first time he went there with his mom.

According to Pw2 during cross examination, he was also permitted by the deceased to stay in the property in question and that he was aware that the deceased handed over the property to the 1st and 2nd Claimants to oversee the property and also to stay in the Boys Quarters. As she was old, they collected rent since she couldn't cope with it. But when asked if he had any

document to prove it, he said no. He also added that he was not aware that the deceased had a written will.

According to Pw3 (2nd Claimant) during cross-examination she was not aware of any will left by her mother. But, later during the same cross-examination Pw3 was asked if her mother willed the property to her brother and she replied:

“Yes, the will here said so”.

She was asked further if at that date any Court had invalidated the said will. Pw3 replied: -

“Not to my knowledge. But, the matter is still before the Court.”

Pw3, however denied that her mother had willed properties to her under the will which she enjoys, she also stated that the Defendant is not the real owner of the property.

Now, although learned Claimants’ Counsel has urged the Court not to consider Exhibit F, the will in question tendered by the Defendant as it may be prejudicial to the case in Anambra State, it is my view that even though the will is not the issue before the Court, both sides have presented evidence which one way or the other connects the issues in this case to the will in question.

In addition to Exhibit F, the Claimants have also tendered in evidence two Medical Reports on the deceased i.e Exhibits E and E1.

However, in my humble view, these two Exhibits i.e Exhibits E and E1 are no doubt directly related to the issue of validity or otherwise of the will of the deceased which is now subject of a suit before the High Court in Anambra State as seen in Exhibits D2 and D3.

However, there’s the contention herein as to whether or not the Defendant is the owner of No. 14, Port Novo Crescent, Wuse 2, Abuja subject matter of this suit which has direct bearing on this suit.

Now Sections 1, 5 and 7 of the Evidence Act 2011, provide thus: -

- “1. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereafter declared to be relevant, and of no others...”**
- 5. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction are relevant.**
- 7(a). Facts necessary to explain or introduce a fact in issue or relevant fact; or**
- (b). Which support or rebut an inference suggested by a fact in issue or relevant fact; or**
- (c). Which establish the identity of anything or person whose identity is relevant; or (d) which fix the time or place at which any fact in issue or relevant fact happened; or**
- (d). Which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.”**

Therefore, the said will i.e Exhibit F, is connected with the facts in this case, hence relevant and the Court has a duty to consider it. I so hold.

Going back to the issue of trespass, although the Claimants have proved that they were in possession of the said Boys Quarters as at the time they were ejected from the property, it is my considered opinion that they have not shown a better title to the said property, nor exclusive possession to same.

Now, in the Defendant’s Statement of Defence, he avers in paragraph 6 thereof that he allowed the 1st Claimant periodically to stay in the Boys Quarters of his premises (No. 14, Port Novo Crescent, Wuse 2, Abuja), as

a way of assisting him carryout his mandatory national assignment as a Corps member serving in Abuja.

Defendant also averred in the Statement of Defence that although the land was allocated to his late mother in (1983), but when Defendant's mother was at the verge of selling the land, he periodically sent money from the USA for the development of the property to avoid sale of the property.

Defendant avers in paragraphs 15 – 25 as follows: -

- “(15). On the 25th day of April 2019, Late Patience Okwundu Nwosu's children travelled down to the Probate Office Awka, Anambra State for the purpose of reading of their mother's will.***
- (16). The will dated the 4th day of November 2016 was read in the presence of all the children of Late Patience Okwundu Nwosu wherein Defendant was named and solely given ownership of the property together with the appurtenances known and situate at No. 14 Port Novo Street or Plot 626 Zone A7, Wuse II, Abuja.***
- (17). Sometime in February 2019, Defendant came to Abuja and discovered that 1st Claimant had unlawfully broken into a reserved room in the Boys Quarters in the premises, where Defendant normally stay whenever he was in Abuja and in which he had kept some personal belongings.***
- (18). The Defendant also noticed that he had tampered with the locks in room as well as some other rooms in the premises.***
- (19). All efforts to amicably resolve the matter fell on deaf ears but Defendant firmly informed 1st Claimant he did not have his permission to stay in the place.***
- (20). The 1st Claimant with the help of one Raphael Nwakeze continued to harass and intimidate the Defendant.***

- (21). ***As a result of 1st Claimant's persistent continuing to harass and intimidate tenants in possession of some flats in the premises, the Defendant lodged a complaint against him to the Police.***
- (22). ***As a result of attack on the Defendant by 1st Claimant and some persons he brought to the premises as well as using Police to arrest and detain Defendant, he instituted an action for the Enforcement of his Fundamental Rights in the High Court of FCT in Suit No. CV/1618/19.***
- (23). ***The 2nd Claimant who travelled down to Abuja, caused the Police to detain the Defendant and some of his tenants as a result of a spurious petition she caused to be written to the Police claiming that Defendant invaded the property with the aid of thugs.***
- (24). ***In the petition to the Assistant Inspector General of Police at Wuse Zone 7, Abuja, 2nd Claimant portrayed the Defendant as a total stranger who brought in thugs to attack them and throw them out of the property.***
- (25). ***The Police investigated the matter and discovered that Claimants' allegations were unfounded and that they had no legal claim to the property."***

Further in paragraphs 28 – 32, Defendant further avers as follows

- “(28). The Defendant is the rightful owner of the property located at No. 14 Port Novo Street or Plot 626 Zone A7 Wuse II, Abuja.***
- (29). ***Despite reading of the will which showed that Late Patience Okundu Nwosu had left the building the subject matter of this suit to the Defendant, the 2nd Claimant contained to falsely claim she had been in possession of the property***

- (30). ***By a letter dated May 8, 2019, by which the 2nd Claimant requested for Police security at the property, she falsely claimed she had been enjoying quiet and undisturbed possession of the property, until her quiet possession was disturbed by the Defendant who invaded the compound and chased her away.***
- (31). ***In the letter dated May 8, 2019, 2nd Claimant also falsely alleged that the Defendant, was threatening to invade the property with “dreaded cultists and unleash mayhem on them***
- (32) ***The Police also found all these allegations to be spurious and threatened to prosecute her for giving false information to the Police.”***

However, Claimants denied all the averments in their Reply to Defendant’s Statement of Defence and put the Defendant to strict proof.

Well I have carefully looked at Exhibit F, which is said to be a certified true copy of the last will and Testament of Mrs. Patience Nwosu of Ezeabor Village Oko Orumba North LGA of Anambra State.

The will in page 1 thereof reads in Part as follows: -

“I hereby APPOINT my daughter, Mrs. Ifeoma Ezeokoli and my first son Mr. Chukwuma Nwosu both of Ezeabor Village Oko Orumba North LGA Anambra State to be the EXECUTORS AND TRUSTEES OF this WILL. I hereby charge them to peacefully and completely execute this will to the letter.”

Further provides: -

“I give my leasehold property together with the house(s) erected therein and appurtenances, thereto situate at and known as No. 14, Port Novo Street or Plot 626 Zone A7, Wuse II, Abuja, Federal Capital Territory of Nigeria to my son, Chukwuma Nwosu absolutely.”

Under cross examination on this issue the Defendant testifying as Dw1, admitted that the will in question is being contested in Anambra State High Court.

However, when reference was made to him about his averments in paragraph 27 of his Witness Statement on Oath, as to whether his claim of ownership of the property is derived from the will, Dw1, the Defendant stated that it gave him a legal right but he also build it.

Now, although the witness was unable to show evidence that he had built the property in question, he is able to present Exhibit F the last will and Testament of His Late mother, the deceased which clearly shows that the said property that is No. 14, Port Novo Street, Wuse 2 Abuja was bequeathed to him.

Therefore, since no Court has invalidated the said will as at date, it remains valid and as such Defendant having shown a better title to the said property could not have trespassed on his own property. I so hold.

Let me now consider the remaining claims of the Claimants which include allegation of forceful eviction from the property i.e. Boys Quarters at No. 14 Port Novo Street, Wuse II Abuja and violation of their fundamental rights by the Defendant in consequence thereof.

I've had time to consider these claims as well as both the oral and documentary evidence presented.

It is observed that in addition to Exhibit i.e A1 – A5, the photographs tendered, the Claimants also presented Exhibit D a Police Report wherein the Defendant is listed as the 1st Suspect along with one Onovo Ikechukwu, Onwuka Henry, Nafiu Mohammed and Samuel Allah on allegations bordering on criminal intimidation, threat to life and giving false information reported at AIG's office, Zone 7 Police Headquarters, Wuse Zone 3 Abuja by 1st and 2nd Claimants.

The concluding part of the report stated that the maker was still being investigated as other fleeing suspects were at large.

Likewise, Exhibit E2, a Medical Report issued by Asokoro District Hospital in the Federal Capital Territory dated 2nd of July, 2019 was made with

reference to Ifeoma Ezeokoli the 2nd Claimant herein where she alleged that she had been assaulted by her brother with swelling of the left index finger and the cubital fossa.

Now, From the Witness Statement on oath and Statement of Claim of the Claimants as well as evidence of the Defendant under cross-examination, on the day of the alleged assault, 2nd Claimant was in Abuja. However the Police Report did not conclusively state that the Defendant had assaulted the 2nd Claimant or the other Claimants.

The subpoenaed witness Mr. Hosea Oyah who testified as Pw4, was able to give the Court some account of what transpired between him and the Defendant on the 12th day of April 2019. Where, he informed the Court that the Defendant asked him and tenants living in the property to vacate the premises. He testified that on that fateful day, the Defendant went to the property and asked Pw4 to give him the padlock of the premises. But, he refused and later on the advice of one of the tenants, Pw4 said he gave the Defendant the keys.

In his evidence -in-chief Pw4 further states as follows: -

“What happened is Mr. Chukwuma and those two men he came with packed out all of Mr. Chubuiké’s items outside the gate. So that day people was passing, gathered there to see what was going on. Meanwhile, it was a “torture for me because I had never experienced such before.”

The above account of what transpired between the Defendant and Pw4 clearly corroborates the position or claims of the Claimants that they were forcefully evicted from the premises on the 12th day of April 2019.

Now, although as stated earlier the Police Report did not incriminate the Defendant or substantiate the claims by the Claimants that they were assaulted, beaten, manhandled and suffered grievous bodily harm in relation to the 1st and 2nd Claimants on Sunday 19th May, 2019, they have shown by Exhibits A1 – A5 that they were forcefully ejected from the property i.e. Boys Quarter at No. 14, Port Novo Street, Wuse II, Abuja on the same day. In consequence, their dignity was stripped, and they suffered hardship and also by throwing

and scattering their personal items/properties and same being carted away by the Defendant using a taxi cab he came with has no doubt violated the fundamental rights of the Claimants.

In this respect, let me refer to the case of ***NIGERIA CUSTOMS SERVICE BOARD V MOHAMMED (2015) LPELR- 25935, where the Court of Appeal held at PP. 37 -40, Para D – B, Per Abiru JCA*** as follows:

“Section 34 of the 1999 Constitution reads: “Every Individual is entitled to respect for the dignity of his person, accordingly: a person shall not be subjected to torture or to inhuman or degrading treatment; (b), no person shall be held in slavery or servitude; and (c), no person shall be required to perform forced labour or compulsory labour...”

Thus, any action which inflicts intense pain to the body or mind of a person or any act of physical cruelty which endangers the life or health of a person or creates a well founded apprehension of such danger or an act done in such manner as to bring a person to public ridicule, disgrace, dishonour or contempt comes within the provision of Section 34(1)(a) of the 1999 Constitution...”

Therefore, the Defendant by his actions in this case clearly took the law into his own hands by forcefully ejecting the Claimants from the property in question. It does not matter whether he owns the property, even if the Claimants were tenants in the property talk less of family, he had no right to forcefully eject them in a manner not permitted by law. A manner which was no doubt inhumane and degrading to say the least.

In doing so, privacy of the Claimants was also breached. I refer to Section 37 of the 1999 Constitution (as amended).

See also the case of ***NWALI V EBSTEC & ORS (2014) LPELR – 23682 (CA)***.

Likewise, the Claimants herein have the right to own property and also right not to have same compulsorily taken possession of. This is clearly guaranteed under Sections 43 and 44(1) of the CFRN (supra).

On the interpretation of Section 44(1) of the CFRN 1999 (as amended) the Supreme Court in the case of **SALEH V MONGUNO & ORS (2006) LPELR- 2992, held, per Oguntade J.S.C.** as follows: -

“...Section 44(1) of the 1999 Constitution which provides: “44(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law.....

The implication of the above provision is that no property of a citizen shall be taken from him except in compliance with the due process of law...”

Therefore, the act of compulsorily taking possession of the Claimants' properties by the Defendant as averred by Claimants in their Statement of Claim as well as respective Witness Statements on Oath has clearly violated Claimants' rights enshrined under Section 44(1) of the Constitution 1999 (as amended) I so hold.

I must say here that I've thoroughly considered the defence of the Defendant in particular with regards to the 1st Claimant where he alleges that 1st Claimant had tampered with the locks in his room as well as other rooms in the premises. And that all efforts to amicably resolve the issue fell on deaf ears but Defendant informed the 1st Claimant he did not have his permission to stay in the property. I refer to paragraphs 18 and 19 of the Defendant's Statement of Defence. He also averred that Claimant constantly harassed him.

With regards to the 2nd Claimant, it is the Defendant's contention that she has continually falsely claimed she had been in possession of the property despite reading of the will, and the fact that she lives in Okoh Anambra State where she has been a staff of Federal Polytechnic Okoh Anambra State for three decades. And that 3rd Claimant is a mere friend to the 1st Claimant and is neither a tenant nor has he ever been permitted by the Defendant to lawfully occupy any of the rooms in the premises subject matter of this suit.

Indeed, from even the evidence presented not only by the Defendant but the Claimants themselves, the Defendant had tried albeit unsuccessfully to remove them from the said property.

And by his own admission under cross examination, the Defendant admitted that the reason he filed a suit i.e Suit No. CV/1618/19 before the FCT High Court for enforcement of his fundamental rights against the 1st Claimant was in a bid to get 1st Claimant to leave the property.

Further, Exhibit C is another attempt by the Defendant to try and get the 1st Claimant to leave the property but all to no avail as the suit was consequently struck out for want of diligence.

Yet, again I must say that the Claimants themselves did not make things easy for the Defendant even when the will was read and its contents brought to their notice, they continued to occupy the said Boys Quarters of No. 14 Port Novo Street, Wuse 2, Abuja.

They did not need anyone to tell them the Defendant wanted them to leave the property particularly when there were two attempts to forcefully evict them on the 12th of April and the 17th of May 2019. Still, from their own averments they were still occupying the said property up till the 19th day of May 2019, when issues got out of hand culminating in this suit.

Now, although the 2nd Claimant has a right to contest the will in question, it is noteworthy to point out that in this case both 2nd Claimant and the Defendant had filed cases before various Courts all in relation to this case. Despite that, 1st, 2nd and 3rd Claimants refused to leave the said property. This has no doubt contributed to the disharmony bitterness and acrimony between the parties in this suit.

Now, although I've considered the arguments of learned Defendant's Counsel on the issue of tenancy, it is my humble view that tenancy does not arise here in any way especially when 1st and 2nd Claimants were clearly put in possession there by the deceased by virtue of being a grandson and daughter respectively.

It is most unfortunate that the 2nd Claimant and the Defendant being brother and sister and educated people, (the Defendant being a retired scientist who lived in the United States for forty 40 years the 2nd Claimant a civil

servant) could not see a way out of the quagmire and reach an amicable settlement as blood relations. I must say that this is not what their dear mother would have wanted. Also the Defendant should not have taken the law into his hands.

Having said that, it is my considered opinion from the reasons given earlier that the fundamental rights of the Claimants were clearly breached in this case by the Defendant. As such they have proved their case on the balance of probabilities. I so hold.

On this please see the case of ***ABDULLAHI V SULEIMAN & ORS (2011) LPELR-9219 (CA); NYANGANJII V ASHA (2016) LPELR – 43011 (CA)***

Therefore, in the circumstances, the sole issue for determination is hereby resolved partly in favour of the Claimants as such they are entitled to award of damages. Consequently, it is hereby declared and ordered as follows: -

- (1). The forceful eviction of the Claimants by the Defendant from the property described as Boys Quarters of ***No. 14 Port Novo Street, Wuse 2, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II Abuja)*** on the 17th and 19th of May, 2019 is illegal, unlawful and amounts to gross violation of the fundamental rights to the dignity of the 1st and 2nd Claimants as enshrined in Section 34 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended).
- (2). The forceful eviction of the 1st and 2nd Claimants from the property described as the Boys Quarters at ***No. 14, Port Novo Street, Off Lingu Street, Off Aminu Kano Street, Wuse 2, Abuja (also known as Plot 626, Cadastral Zone A7, Wuse II Abuja)*** and the seizure, confiscation and throwing off of the personal items/properties of the 1st and 2nd Claimants by the Defendant on 12th April 2019 and on 19th May 2019, is illegal, unlawful, and amounts to gross violation of Claimants' Fundamental Human Rights to privacy, peaceful possession of property, as enshrined in Sections 37, 43 and 44 of the 1999 Constitution, Federal Republic of Nigeria (as amended).
- (3). The Defendant is hereby mandated to restore to the 1st Claimant, 2nd Claimant and 3rd Claimant respectively all their personal properties wrongfully and forcefully taken away by the Defendant and his agents on the 19th of May, 2019 i.e All items listed in Reliefs Nos. 8, 9 and 10 of the Claimants' Writ of Summons.

- (4). It would not be in the interest of justice to grant Relief No. 7 in view of the prevailing circumstances, therefore Relief No. 7 is hereby refused and dismissed.
- (5). Reliefs Nos. 3 and 6 equally fail and are hereby dismissed.
- (6). Finally, on Reliefs Nos. 4 and 5, the sum of **N2, 000, 000.00 (Two Million Naira)** is hereby awarded as damages collectively in favour of all the three Claimants, for the violation of the Claimants' Fundamental Human Rights as enshrined under Sections 34, 37, 43 and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- (7). Parties shall bear their respective costs.

Signed:

Hon. Justice Samirah Umar Bature
13/7/2021