

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA**

**BEFORE HIS LORDSHIPS: HON. JUSTICE K.N OGBONNAYA AND
HON. JUSTICE MUHAMMAD S. IDRIS**

DATE: 25th FEBRUARY, 2022

**FCT/HC/CV/LUG/18/18
APPEAL NO. CVA/281/19**

BETWEEN

BARR. CHIOWA UCHENDU-----

APPELLANT

AND

1.MRS. ROSEMARY ATU

RESPONDENTS

2. MRS. MABLE YAKUBU JOHN }

(JUDGMENT DELIVERED BY HON. JUSTICE M.S IDRIS)

This is an appeal against the judgment delivered by His worship Magistrate Samuel Abuya on the 18th August, 2019 more particularly stated in paragraph 2 of the notice of appeal do hereby appealed against the same to the High Court of the FCT upon the ground set out in paragraph and will at the hearing of the appeal, seek the reliefs' sought in paragraph 4.

And the appeal further states the names and address of the person directly affected by the appeal are set out in paragraph 5.

Part of the decision appealed against.

1. The whole judgment.
2. The decision granting the judgment sum of ₦750,000.00 as judgment sum to the Plaintiff owing to the fact that the Defendant was not heard in the suit despite the fact that he filed an application to be heard

attached is certified copy of the reopening of the case after he was foreclosed.

GROUND OF APPEAL.

GROUND ONE

The learned trial judge erred in law when it proceeded to judgment without taking the Application of the Defendant to be heard and instead proceeded to deliver the judgment of the case as this vitiates the fundamental principles of fair hearing as enshrined in section 36 of the 1999 constitution in section 36 of the 1999 Constitution as amended

PARTICULARS OF ERROR

1. That on the 6th of June, 2019 the case was scheduled for report of settlement even though the Plaintiff had not cross examined the Plaintiff and owing to the fact that the Defendant was not in Court instead of serving a hearing notice on him the case was set down for judgment.
2. That the Defendant on realizing what happened in Court filed a motion and served on the Plaintiff, who also responded in filing a counter affidavit and instead of the trial judge to listen to the said application he proceeded and delivered the judgment on the 8th August, 2019.
3. That the learned Magistrate was meant to reopen the case and hear the Defendant before proceeding to judgment especially where the Defendant filed a motion to be heard and the Plaintiff had filed her counter affidavit.
4. That there was a breach of the fundamental principles of fair hearing as enshrined in section 36 of the 1999 constitution of Nigeria as amended
5. That the Application of the Defendant was copious and if granted could have helped the Defendant also to be heard since he added pictures to show that he built part of the house for which he is entitled.

RELIEFS SOUGHT

The Appellant hereby seek to following reliefs:-

1. AN order setting aside and upturning the judgment of the lower Court delivered on 8th August, 2019. The brief as contain. Same contained a sole issue for determination:-
1. Whether the judgment of the trial Court lacked fair hearing when the trial Court foreclosed the Defendant from being heard and yet refused to reopen the case after the Defendant filed a motion for the case to be reopened along before the judgment .

ARGUMENT ON ISSUE ONE (1)

Whether the judgment of the trial Court lack fair hearing when the trial Court foreclosed the Defendant from being heard and yet refused to reopen the case after the Defendant filed a motion for the case to be reopened long before the judgment was delivered by the trial Court see page 5 paragraphs 31 and page 32 of the record. The defendant was not in Court and even though he had entered appearance the rules and practices of trial is that if a party is not in Court a hearing notice should be served on him for either cross examination and even if the Defendant does not show up for cross examination, he still has a right to open his defence after which the Plaintiff can cross examine the Defendant if any one and their written address are exchanged by the parties. If a party does not show up in Court it is still within his right to be heard by the Court as long as he has something cogent to appear in Court to say his own side of the story as this is in tanden with the general principles of fair hearing. Thus Audi alteran parten which means a judge should hear the two sides of a case before entering judgment see ***EFFION VS THE STATE (1993) 1 13 January 1995 SC***. Where the Court held that issue of fair hearing can be raised for the 1st times ever on appeal. That is the only way to ensure substantial justice as opposed to technical justice see ***EZEKIIL NNEJI VS***

CHIEF NWAKWO (1988) LPELR 2058 SC, the Court must balance the Appellant of its discretionary power to grant or refuse an application to dismiss an appeal for non compliance with the rules of the Court with its duty of giving an appellant the opportunity of obtaining substantial justice by granting him fair hearing in the appeal where that is considered expedient on the face of material before it.

It is the primary obligation of every Court to hear and determine issues in controversy before it and as presented to it by litigants the Court cannot suo motu formulate a case for the parties. Hence the principle of fair hearing not only demands but also dictates, that the parties to a case must be heard on the case formulated and presented by them. It is only then that the concept of fair hearing will have a real meaning. Thus, it implies that both sides be giving an opportunity to present their respective cases and that each side is entitled to know that a case is being made against it and be given an opportunity to reply thereto see **OLUGBENG DANIEL VS FRN (2014)8 NWLR (pt 1410 PAGE 570 Q 575**. It was held that a hearing cannot be said to be fair if any of the parties is refused hearing or denied the opportunity to be heard or to prepare his case. Any judgment or ruling based on a breach of the Constitution will not be allowed to stand on appeal see **FBN PLC 15 NWLR (pt1216) 7247 Q 303 paragraphs A-H**. Thus, from the above dictum of the appeal Court, a hearing can only be seen to be fair indeed when all parties to the dispute are accorded and adequate opportunity of a fair hearing.

As such if one of the parties is denied an opportunity of hearing (of the matter) cannot in any way be qualified as fair denial of fair hearing is undoubtedly and identical to the well cherished Indomitable principles of natural justice. Appellant also argued that the trial Magistrate did not even give opportunity for a final address, but omitted all the procedures of trial to wit cross examination of the Plaintiff, opening a defence, cross examination of the defence counter claim which the defence had interest in

but he just put it down for judgment, where a Court fails to accord a party to present his final address in contravene of the principle of section 294 (1) of the 1999 Constitution (as amended) as in the instant case, any judgment or decision arrived at thereafter will tantamount to a denial (breach) of the fulfillment right to fair hearing as enshrined in section 36 (1) of the 1999 Constitution and such judgment or decision thereby reached in breach of section 294(1) of the 1999 Constitution as amended is null and void.

Thus, liable to be vitiated (set aside) and better still since it is devoid of fair hearing such be overturned. See ***SALAMI VS ODOGWU (1991) 2 NWLR (pt173) 291.***

Appellant claims against the Respondent the following reliefs:-

1. A declaration of this Court that the judgment of the trial Court was faulty and defective by not adhering to the principles of elementary principle of fair hearing.
2. A declaration that the writ of attachment which was made carrying away the property of the Defendant and that of his neighbor a business centre was envious since the judgment was lacking in fair hearing.
3. And order of the Court mandating and directing the Respondent/Defendant to house 13 Road 1D,NIA semin—staff quarter opposite AJIS Lugbe which the Respondent carried by way of writ of attachment within 2 days from the hearing of the appeal since the Defendant is still in possession.
4. An order of this Court mandating and directing the Respondent to personally return all the property she took away from the Respondent's shop Appellant's neighbors shop.

A written unreserved apology to be made by the Respondent. Having considered the entire process filed it is held that a hearing of a matter in Court cannot be said to be if any of the parties appearing before it is

refused a hearing or is denied the opportunity to be heard or present his case or call evidence. In the present appeal from the record of the lower Court after the closure of the Respondents case the Appellant was giving the opportunity to cross examine the Respondent witness but same refused to do the needful. The whole idea of the principle of fair hearing presupposes that the fundamental right given a party to prepare his case in a manner so desired without any hindrance. The concept of justice therefore is adjudication and determination of cases ought to take into account the interest of all parties and not that of over the other.

A party and his witness should be heard before his case could be determined in compliance with the principle of Audi alteran parten on fair hearing as provided in constitution.

It is of utmost important the reliefs sought cannot be granted reason being that the record of proceedings of the lower Court have taking care of that A Court cannot make an order in vacuum. The issue argued by the Appellant to my mind borders on jurisdiction because he has said that he contributed towards the building of the subject matter in-dispute the Magistrate does not have jurisdiction to entertain same. Accordingly the appeal is hereby allowed. The case should be assigned to another Court of competent jurisdiction for retrial.

Hon. Justice K.N OGBONNAYA
(Presiding Judge)
25/2/2022

Hon. Justice M.S IDRIS
25/2/2022

APPEARANCE

C.OU Chendo:- Represent himself as the Appellant

Katherine Ogusi:- For the Respondent

Sign
Judge
25/2/2022