

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 24TH DAY OF JUNE, 2022

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

JUDGE

SUIT NO.: FCT/HC/BW/CV/322/2020

BETWEEN:

NATOR ATUR

CLAIMANT

AND

EPHRAIM CHEDO

PERSONS UNKNOWN

}

DEFENDANTS

JUDGMENT

On the 9th day of November 2020 the Plaintiff, Nator Atur instituted this action against the Defendants, Ephraim Chedo and Persons Unknown claiming the following Reliefs:

- (1) A Declaration that he is entitled to enjoy exclusive possession of the Plot No. 278 of about 750sqm in Pwampara Layout bye pass which he alleged that the Defendants trespassed on. The Plot is hereafter called the Res.**
- (2) A Declaration that the act of the Defendants by trespassing into the Res amounts to trespass.**

- (3) An Order of Injunction restraining the Defendants, their servants, agents, privies, assigns, predecessors in title or anybody whatsoever acting on its behalf from trespassing, encroaching and or occupying the said Res and from further trespass into the said Res.**
- (4) An Order for the Defendants to pay to the Claimant the sum of Two Hundred Million Naira (₦200, 000,000.00) as General Damages for the trespass.**
- (5) Five Hundred Thousand Naira (₦500, 000.00) as cost of the Suit.**
- (6) Omnibus prayer.**

It is the story of the Claimant that sometime in 2007 he purchased the Res from one Musa Ibrahim who is the original allottee. That there is a Sales Agreement evidencing the sale where he paid the said Musa Ibrahim the sum of Four Hundred and Twenty Thousand Naira (N420, 000.00). That the said Musa Ibrahim handed over the original documents – Offer of Terms of Grant/Conveyance of Provisional Approval dated 19th February, 2007. That Musa Ibrahim also donated a Power of Attorney to him. There was also Deed of Assignment duly executed. That upon the sale, the said Musa Ibrahim handed over Bwari Area Council Departmental Receipt for the purpose of the transaction. That he took possession immediately and effectively occupied the Res by planting and cultivating the land and demarcated and fenced same. That since

then he was in quiet possession until sometime in October 26th, 2020 the Defendants appeared and trespassed into the Res by putting a warning sign and notice in the Res threatening to kill anyone he sees in the Res including the Claimant. That he does not know the Defendants and has no idea where they can be seen or where they reside. So in order to wade off the Defendants/trespassers he instituted this action in order to retain his ownership of the said Res.

Since there is no known address of the Defendants, the Claimant applied for substituted service of the Originating Processes on the Defendants since the attempt at personal service failed. This Court granted that and service was duly effected as ordered by this Court on the 20th of January, 2021. The matter was adjourned to 24th February, 2021. The Defendants were served on the 17th of February, 2021 less than the statutory period required before the Defendants can respond. The matter not being ripe for Hearing, the Court adjourned same to the 3rd of June, 2021 to enable the Defendants respond. There were further adjournments.

On the 8th of November, 2021 the Claimant opened its case. The Defendants were absent and they had no Counsel representation. They did not file any Statement of Defence or Counter-Claim. Since the matter was ripe for Hearing, the Defendants having been served since 17th February, 2021 the Court allowed the Claimant to open its case. He tendered 3 documents which were all admitted in evidence and marked as EXH 1, EXH 2 and EXH 3. The documents are Deed of Assignment, Power of Attorney and Receipt of Bwari Area Council and Provisional Conveyance of Approval. The Court

adjourned the matter to 17th January, 2022 for the Defendants to Cross-examine the Claimants' PW1 who had testified on the 8th of November, 2021.

As at 17th January, 2022 the Defendants had not filed any Statement of Defence in this case. They did not have Counsel representation. Since Court cannot wait for them in perpetuity, it foreclosed them based on the application of the Claimant's Counsel. Since the Defendants have not filed anything, the Court then adjourned for adoption of Final Written Address. The matter was adjourned to 27th April, 2022 in order to give the Defendants enough time to file their Final Written Address and adopt same. But they did not. They were served the Final Written Address filed by the Claimant. They did not file any Reply. The Court ensured that they were served Hearing Notices every time the matter is adjourned. But they failed and refused to exercise their right to be heard and to defend the Suit. They did not file any Counter-Claim too. The Defendants did not even enter appearance in paper or in person.

On the 10th February, 2022 the Claimant filed his own Final Written Address in which he raised an Issue for determination which is:

“Whether the Claimant has led evidence in this case and proved same by the standard of proof?”

They submitted that where a Defendant fails to challenge the case of the Plaintiff, that the Court should take it and accept that the Plaintiff requires minimal prove of his case.

That in this case, the Defendants did not controvert the case of the Claimant and therefore unchallenged, undisputed and uncontested evidence are deemed admitted. They relied on the case of:

**Ikono LGA V. De Beacon Finance & Security Ltd.
(2002) 4 NWLR (PT. 756) 133 Ratio 5**

That Claimant's case is rooted on possession and trespass from evidence led before the Court. He referred to the case of:

**Salami V. Lawal
(2008) 161 LRCN 1 – 5**

That the Claimant has proved his title by his oral testimony and with the 3 documents he tendered – Deed of Assignment, Conveyance of Provisional Approval and Receipts of Bwari Area Council Land Department. That his evidence was challenged. He referred to the case of:

**Ikono LGA V. De Beacon Finance & Security Ltd
Supra**

They urged Court to grant their Reliefs since the Defendants did not challenge or dispute those facts.

COURT

It is the law that uncontroverted and unchallenged facts need no proof and should be accepted by Court as truth. Again, where facts are unchallenged or uncontroverted or unrebutted by anyone who ought to have challenged those facts, where such person was given all judicial leverages and opportunities to do so, but failed, refused and neglected to do so, the Court

will deem that fact as admitted since they were not challenged.

In this case, the Defendants were served with the Originating Processes as ordered by this Court. They did not file any Statement of Defence. They did not challenge the Statement of Claim too. The Court ensured that they were served with Hearing Notices too. They slept on their right.

The Claimant had testified in chief, waited for months for the Defendants to Cross-examine him but it was an endless wait as the Defendants did not turn-up to do so. Since the Claimant could not wait for the Defendants in perpetuity, he applied for the Court to foreclose the Defendants from Cross-examining him. Based on the omnibus prayer, the Court also in the interest of fair-hearing which is open to all parties and in the interest of justice also, the Court foreclosed the Defendants from Cross-examining, opening and closing their case as they did not file any Statement of Defence. They did not enter appearance too. This means that this Judgment is based only on the evidence of the Claimant in this case.

The Claimant tendered documents of title – Conveyance of Provisional Approval which he claims was given to him by one Musa Ibrahim who he claims is the original Allottee of the Res. He also tendered Power of Attorney and Deed of Assignment in which he claimed he paid Four Hundred and Twenty Thousand Naira (N420,000.00). He also tendered Receipt but he did not state what the Receipt was for. The Claimant did not show any sign of the Defendants that amounted to trespass. He had in paragraph 6 pleaded pictures of the fence that he claimed to have been constructed around the

Res. But he did not frontload or tender the said pictures. He did not establish trespass. This Court does not believe that the Defendants trespassed into the Res.

It is strange that the same Defendants who the Claimant alleged threatened to kill him if they see him in the Res, could not show face again in the Res after the Claimant threatened to call the Police. There is no evidence to show that there was warning notice placed on the Res as claimed by the Claimant. There was no picture of the notice though the Claimant pleaded that, yet he did not present any such photo or frontload same after he had pleaded them in paragraph 6 & 8 of his Statement of Claim and Witness Statement on Oath.

Well, since there is no adverse claim to the Res, this Court will hold that the Claimant had established ownership of the Res. But it is strange that the Claimant claimed to have bought the Res from Musa Ibrahim who by that sale relinquished his legal interest in the land. One wonders why the Claimant did not display any evidence to show that money was paid and received aside from the Deed of Assignment. Since there was no outright of the sale, there was no need for a Power of Attorney to be donated. There ought to be Deed of Sale and Receipt of the sum of Four Hundred and Twenty Thousand Naira (N420, 000.00) which the Claimant claims he paid to the Musa Ibrahim. But there was no Deed of Sale.

All in all, since there is no adverse claim and the Suit is not challenged, this Court holds that the Claimant has established his claim of ownership of the Res and he is entitled to his Reliefs to wit:

Reliefs No 1 & 3 granted.

Since the Claimant did not establish trespass, the Court cannot grant the 2nd Relief sought.

There is no award of Damages and cost of the Suit is NOT awarded. The Claimant should bear the cost of the Suit.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2022 by me.

K.N. OGBONNAYA
HON. JUDGE