

**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**

<b>COURT CLERKS:</b>	<b>JAMILA OMEKE &amp; ORS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT NO. 24</b>
<b>CASE NUMBER:</b>	<b>SUIT NO. FCT/HC/CV/2110/2019</b>
<b>DATE:</b>	<b>25/5/2022</b>

**BETWEEN:**

PROF U.U. UCHE.....CLAIMANT  
(Suing through his lawful Attorney  
Goalcast Legal Services, Represented by  
EKENE ARUBALEZE ESQ)

**AND**

- |                                       |                 |
|---------------------------------------|-----------------|
| 1. INSPECTOR GENERAL OF POLICE        | } ...DEFENDANTS |
| 2. ATTORNEY GENERAL OF THE FEDERATION |                 |
| 3. SUPOL JOHNBULL MARTINS OKORO (RTD) |                 |

**APPEARANCES:**

C. C. Eze Esq holding brief of Gerald Arubaleze Esq for the Plaintiff.

**JUDGMENT**

The Claimant filed this suit through his lawful Attorney Goalcast Legal Services, represented by EKENE ARUBALEZE ESQ against the Defendants via a Writ of Summons dated and filed on 10<sup>th</sup> day of June 2019 seeking for the following reliefs: -

- (a). An order of Court compelling the Defendants to hand over the following cars; Rav4 2008 Model, Lexus 450 2008 Model and Passat 2005 Model recovered from Mrs. Chinyere Agu Otu by the Defendants on behalf of the Claimant to the Claimant.**
- (b). A declaration that all the items purchased by Mrs. Chinyere Agu Otu from the sum of Two Hundred and Fifty Thousand United States Dollars (\$250, 000.00USD) she stole from the Claimant belongs to the Claimant.**
- (c). Damages in the sum of N10, 000, 000 (Ten Million Naira) only due to the Defendants' failure and or refusal to hand over all the properties recovered from Mrs. Chinyere Agu Otu to the Claimant.**

The Defendants were served with the processes as shown by the proof of service but did not file anything in their defence.

Nevertheless, the case proceeded to full trial on the 27th day of February, 2020, the Claimant opened his case and called one witness, Ekene Arubaleze who testified as Pw1, adopted his Statement on Oath and tendered the following documents in evidence which were admitted and marked as follows:-

- "1. A Power of Attorney given by Professor U.U. Uche (Donor) to Goalcast Legal Services (Donee) dated 21<sup>st</sup> February, 2019 as Exhibit A.**
- 2. A letter addressed to the Inspector General of Police dated 11<sup>th</sup> April, 2019 titled: RE: Report of a case of stealing and professional misconduct by Onyeka Osigwe as Exhibit B.**
- 3. A letter addressed to the Inspector General of Police dated 5<sup>th</sup> March 2019 titled: A request to release to Prof. U.U. Uche 2008 Model Black Rav4 Jeep and item recovered by Supol Johnbull Martins Okoro of IG Monitoring Unit Abuja by Onyeka Osigwe as Exhibit B1."**

At the conclusion of evidence-in-chief of Pw1, the Defendants were not in Court to cross-examine the Pw1 despite several adjournments availing them the opportunity to do so.

From the record, at the hearing of the suit on 18<sup>th</sup> June 2020, one Bisola Bajulaiye Esq with Ashiri Covenant announced appearance for the 2<sup>nd</sup> Defendant and prayed the Court for a short adjournment to enable them put their house in order. The Court obliged them and adjourned the matter to 7<sup>th</sup> July, 2020 for cross-examination.

Since then, they never appeared to cross examine Pw1 nor file anything in their defence. Consequent upon which the learned Counsel to the Claimant applied that their right to cross-examine Pw1 be foreclosed and adjourn the matter for defence. The Court accordingly granted the application as prayed and the matter was adjourned to 18<sup>th</sup> February, 2021 for defence.

The matter was further adjourned to 11<sup>th</sup> May, 2021 for defence. Despite all these adjournments, the Defendants did not appear and there was no correspondence. In that respect, learned Counsel to the Claimant again applied that their right to defence be foreclosed and adjourn the matter for adoption of final Written Address. The application was granted as prayed and the matter was adjourned to 14<sup>th</sup> October, 2021 for adoption of final Written Address.

Addressing the Court on 10<sup>th</sup> February, 2022, learned Counsel to the Claimant adopted their final Written Address and urged the Court to enter judgment for the Claimant.

In the said final Written Address dated the 2<sup>nd</sup> day of December, 2021 and filed same day, learned Counsel to the Claimant raised two issues for determination to wit:-

- “(1). Whether from the totality of the case, the Claimant has successfully proved his case beyond reasonable doubt against the Defendants.**
- (2). Whether the Claimant has made out a case entitling him to the claims sought in the case by the Claimant.”**

I have perused carefully the Writ of Summons, the reliefs sought and the Statement of Claim. I have evaluated the evidence before the Court both the oral testimony of Pw1 and documentary evidence tendered. I have equally studied extensively the final Written Address of the Claimant. Therefore, the issue for determination in my opinion is whether the Claimant has proved his case as required by law to be entitled to the reliefs sought.

Before I dwell on the issue for determination, it is pertinent to state that it is the case of the Claimant on record that the Claimant's case on records is that the housekeeper Mrs. Chinyere Agu Otu sometimes around 2<sup>nd</sup> January, 2016 during her routine early morning chores entered into the Claimant's bedroom and stole the sum of (\$250,000.00USD) as well as other valuables belonging to the Claimant. The matter was reported to the office of the first Defendant inclusive of the Nigerian Security Services and Mrs. Chinyere Agu Otu was apprehended by Interpol at Cotonu, Benin Republic together with other accomplices who were handed over to the Nigeria Police.

Mr. Gabriel the IPO recovered unaccounted items save the only registered items by the First Defendant that were recovered from Mrs. Chinyere Agu Otu were Rav 4 2008 Model, Lexus 450 2008 Model and Passat 2005 Model.

The matter was later transferred to the Nigerian Police Force HQ Edet House IGP Monitoring Unit, the further investigation of the case was handed over to the third Defendant who was also handed over the items recovered by the Defendants on behalf of the Claimant which has not been handed over to him till date.

Having pointed out these, let me now consider the issue for determination. It is settled law that the burden of proof lies on the party who asserts. To put it differently, he who asserts must prove with credible and admissible evidence. This position of law was encapsulated in Section 131(1) of the Evidence Act which provides thus:-

***“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.”***

See also the case of **DALA V AYODELE & ORS (2014) LPELR-24621 (CA) (PP. 24-26 Paras D) per WAMBAL J.C.A**, where it was held thus:

***“It is our law that the burden of proof in civil cases lies on the party who asserts the existence or non-existence of a fact to prove what he asserts if he desires the Judgment of the Court. The burden of proof connotes the burden of proof as a matter of law and pleadings, the evidential burden and the burden of establishing the admissibility of evidence. IGBI VS. STATE (2000) 2 SC 67. The evidential burden of introducing evidence to the existence or non-existence of a fact lies on the Plaintiff against whom judgment would be given if no evidence were produced on either side regard being had on the pleadings. It is therefore the Plaintiff who bears the burden of proving what he asserts in his pleadings to entitle him to the judgment of the Court.”***

Similarly, it was held in the case of **MUSTAPHA V. ZARMA & ORS (2018) LPELR-46326 (CA) at Pages 36 – 44 Paras F – D** where it was held by per ABIRU J.C.A. thus:

***“As rightly stated by the lower Court, the legal burden of proof in civil cases is on a Claimant to prove to the satisfaction of the Court the assertions made in the pleadings of the contention upon which he meets his case and he has the onus of proving his case by preponderance of evidence, the refusal of the Defendant to testify cannot alleviate the primary burden on the Claimant.”***

See also the cases of **SOKINO V KPONGBO (2008) 7 NWLR (Pt. 1080) 242, INIAMA V AKPABIO (2008) 17 NWLR (Pt.116) 225.**

In the instant case, the Claimant in proving his case called his witness, Ekene Arubaleze Esq, who testified as PW1, adopted his Witness Statement on Oath and tendered some documents in evidence which were admitted accordingly.

It is therefore on record that the testimony of PW1 remained unchallenged and uncontradicted as PW1 was not cross-examined by the Defendants as pointed out earlier. In other words, the claims and the entire evidence

adduced by the Claimant both oral and documentary are unchallenged. In this regard, I refer to the recent decision of Court of Appeal in the case of **ADEYEMI V. ABIODUN (2021) LPELR-55706 (CA) (PP. 30-31) Paras E, Per Ojo, J.C.A** where the Court held thus:-

***“The law is settled upon an unbroken thread of judicial authorities that where a Defendant fails to file a reply, that is, a Statement of Defence in answer to the claim leveled against him within the time stipulated by the rules of Court, the Claimant is, on an application to that Court, entitled to judgment as per the reliefs claimed. In other words, where (as in the instant appeal) the Defendant appeared in Court but stood aloof by failing to file his defence to the Claimant’s claim and also failed to participate in the proceedings of that Court, the Claimant is, without any iota of doubt, entitled to Judgment and I so hold.”***

Similarly, the Supreme Court held in the case of **ALI V. STATE (2015) LPELR-24711 (SC) (PP. 30 – 31, Para E), Per OGUNBIYI J.S.C.** that:

***“I wish to state at this point that for cross examination to stand its worth, it needed not be extensive before it could be relevant and sufficient provided the crucial facts raised in the evidence in chief are examined and addressed thereon. It is only when a party completely refuses or fails to cross examine a witness that such a party will be deemed to have accepted the testimony of the said witness.”***

To this end, the law is also trite and elementary that in civil cases, the standard of proof is on balance of probabilities. This position of law was reinstated in the case of **CEMENT COMPANY OF NORTHERN NIGERIA PLC V. GIWA & ORS (2017) LPELR-42500 (CA) PP. 20, paras C per OHO, J.C.A** thus:-

***“It would be important to state here that in civil cases the standard of proof is on the preponderance of evidence or a balance of probabilities.”***

Before I conclude, let me say that I have observed that the Defendants did not reply Exhibits B and B1 which were duly received. I will make no further comment on that.

In the final analysis, as stated earlier, the entire evidence adduced by the Claimant in proof of his case before this Honourable Court is unchallenged and/or uncontroverted. In this respect, I refer to the case of **NEWBREED ORGANIZATION LTD V. ESHOMOSELE (2006) 2 SC (Pt. 1) Page 136 at page 150** where it was held thus:-

***“The position of the law is that where an adversary fails to adduce evidence to put on the other side of the imaginary scale of justice, a minimum evidence adduced by the other side would suffice to prove its case...”***

In the light of the above, it is my considered opinion that the Claimant has proved his case on the preponderance of evidence as required by law. I so hold. To that extent, I hereby resolve the issue for determination in favour of the Claimant against the Defendants and enter judgment for the Claimant as per his claims as endorsed on the Writ of Summons save for claim for damages which N5, 000, 000.00 is awarded.

***Signed:***

***Hon. Justice S. U. Bature  
25/5/2022.***