

**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 S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/555/2019

DATE: 06/6/2022

BETWEEN:

SULEIMAN ABDULKAREEMCLAIMANT

AND

DANLADI OKUTEPA USMAN.....DEFENDANT

APPEARANCE:

Mary Omoif-egdeyon Esq holding brief of C. C. Agidi Esq for the Claimant.
Defendant absent and unrepresented.

JUDGMENT

The Claimant filed this suit against the Defendant via writ of Summons dated the 10th day of December 2019 and filed same day, seeking for the following reliefs:-

- "1. A Declaration that the Claimant is the lawful owner/allottee of the following Plots of land known as Plot No. 244 within Sabon Lugbe East Layout of about***

2500M² Abuja FCT with reference No MFCT/ZA/AMAC/SLE244 dated 11/3/98, Plot 245 within Sabon Lugbe East Layout of about 1800m² with reference No. MFCT/ZA/AMAC/SLE245 dated 11/3/98 and Plot No. 247 within Sabon Lugbe East Layout of about 2000m² with reference No. MFCT/ZA/AMAC/SLE247 dated 11/3/98 having been allocated at the Plots by Offers of Terms of Grant/Conveyance of Approval from Ministry of Federal Capital Territory through Abuja Municipal Area Council.

- 2. A declaration that the acts of the Defendant in entering into the said Plot NO. 244 within Sabon Lugbe East Layout about 2500m² Abuja FCT with reference NO. MFCT/ZA/AMAC/SLE244 dated 11/3/98, Plot NO. 245 within Sabon Lugbe East Layout of about 188m² with reference NO. MFCT/ZA/AMAC/SLE245 dated 11/3/98 and plot No. 247 within Sabon Lugbe East Layout of about 2000m² with reference NO. MFCT/ZA/AMAC/SLE247 dated 11/3/98 disturbing and stopping the ongoing construction works/building without the authority and consent of the Claimant, amounts to trespass, is illegal and constitutes a violation of rights of the Claimant as guaranteed in the 1999 Constitution (as amended) and the Land use Act 1978.**

- 3. An Order of perpetual injunction, restraining the defendant, her agents, parties or whatever name so called from further interference with the construction work or trespass over the Claimant's interest in Plot NO. 244 within Sabon Lugbe East Layout of about 2500m² Abuja FCT with reference NO.MFCT/ZA/AMAC/SLE244 dated 11/3/98, Plot 245 within Sabon Lugbe East Layout of about 1800m² with reference NO. MFCT/ZA/AMAC/SLE247 dated 11/3/98 and Plot No 247 within Sabon Lugbe East Layout of about 200m² with reference No. MFCT/ZA/AMAC/SLE247 dated 11/3/98.**
- 4. An order for the sum of ₦50,000,000.00 (Fifty Million Naira) for trespass against the Defendant.**
- 5. An Order for sum of ₦20,000,000.00 (Twenty Million Naira) for general damages against the Defendant.**
- 6. The sum ₦2,000,000. Against the Defendants being the cost of prosecution of this case."**

The Defendant was served with the processes as shown by the proof of service. The Defendant upon service, filed only a memorandum of appearance and a Counter Affidavit in opposition to the Claimant's Motion for Judgment. The Court delivered a ruling on the said Motion and ordered the Defendant to file his defence for the matter to be heard on its merit.

The Defendant despite the order of the Court failed and/or neglected to file his defence to the Claimant's case.

Nevertheless, the case proceeded to full trial on 15th day of July 2021 the Claimant opened his case testified for himself as PW1, the sole witness. He adopted his witness statement on Oath filed on 10th December, 2019 and tendered the following documents:- evidence which were admitted and marked as follows:-

- "(1) Photocopy of a National Identity slip issued by the National Identity Management System (NIMC) Federal Republic of Nigeria (NINS) National Identification Number slip of Suleiman Abdulkareem is marked Exhibit A.***
- (2) A Bundle of Two receipts dated 30/11/98 and 18 of December, 98, along with Right of Occupancy, Right of Rent and fees and offer of terms of Grant/conveyance of Approval are hereby marked Exhibits B1, B2, B3, B4 and B5 Respectively.***
- (3) A bundle of 3 Receipts dated 16/7/98, and one Receipt dated 11/11/98 along with Right of Occupancy Rent and fees and offer of terms of grant /conveyance of Approval are marked Exhibits B6, B7, B8, B,9, B10, and B11 respectively.***
- (4) A bundle of two Receipts dated 23/6/98 and 15/10/98, along with Right of Occupancy, Right of Occupancy Rent and fees and an offer of Terms of Grant/conveyance of Approval are marked Exhibits B12,B13, B14, B15 B16 and B17 Respectively."***

At the conclusion of the evidence in chief of PW1, the Defendant was not in Court to Cross-examine the witness and the matter was adjourned for same.

On the next adjourned date which was 09/11/2021, the Defendant was not in Court to Cross-Examine the PW1. Therefore, Claimant's Counsel applied that the Defendant's right of Cross-Examination be fore-closed. The Application was accordingly granted by the Court as the matter was adjourned for defence.

When the matter came-up for defence on 31/01/2022, neither the Defendant nor his Counsel was in Court as no any correspondence to explain their absence. Consequently, the Claimant's Counsel again applied that the Defendant's right for defence be foreclosed in line with order 32 Rule 12 of the Rules of this Court and adjourned the matter for adoption of written address. The court granted the Application as prayed after reviewing its record.

Addressing the Court on 15/03/2022 Learned Counsel to the Claimant, C. C. Agidi Esq adopted their written address dated 9/2/2022 and filed on 10/2/2022 and urged the Court to enter Judgment in favour of the Claimant

In the said written address, Learned Counsel to the Claimant formulated a lone issue for determination to wit:-

"Whether the Clamant has proved his case on the preponderance of the evidence to be entitled to the reliefs sought."

In arguing the issue Counsel stated that in civil cases the burden of proof is on the claimant and that the burden is discharged on the balance of probability. Reference was made to Section 134 of the Evidence Act the case of **SAKATI V BAKO & ANOR (2015) LPELR-24739 (SC) and Exhibits B1 to B16.**

On different ways to title to land can be proved, Counsel cited the case of **IDUNDON V OKUMAGBA (1978) 10 SC 277.**

Consequently, Counsel stated that proof of title to land in the Federal Capital Territory is by Production of document of grant issued by the Honourable Minister of the Federal Capital Territory or any body on his behalf, showing that there has been a valid grant to the person by the Honourable Minister of the Federal Capital Territory Abuja. In his respect Counsel Cited the cases of **MUDOU V MADU (2006) 6 NWLR (PT. 1083) 269: ONA V ATENDA (2005) 5 NWLR (PT. 656) 244 at 267.**

Paras C-D

Furthermore, Counsel stated that the Claimant was never Cross-Examined and submitted that it is trite that failure to cross-examine a witness on a particular issue amounts to admission. Reliance was placed on the case of **AMADI V NWOSU (1992) LPELR-442 (SC).**

Therefore, Counsel submitted that in line with Sections 131, 133 and 134 of the Evidence Act, the Claimant has proved his case and urged the Court to so hold.

Finally, Counsel submitted that there is nothing more left for this Court to do than to grant the reliefs of the Claimant as there is no challenge to the case of the Claimant. He referred the Court to the cases of **YUSUF V.**

ILORI (2007) LPELR-5137 (CA); OKOYE & ORS V. NWANKWO (2004) LPELR-23172 (SC).

As such Counsel urged the Court to grant the reliefs of the Claimant.

I have carefully perused the writ of Summons the statement of Claim and the reliefs sought. I have evaluated the evidence before the Court both the oral testimony of pw1 and documentary evidence tendered. I have gone through the written address of the Claimant, it is therefore my humble view that the issue for determination is whether the Claimant has proved his case on the balance of probability to be entitled to the relief sought.

It is germane to begin by stating that it is the case of the Claimant as distilled from the statement of Claim that he is the beneficial owner of Plots of lands of about 2500m² and 1800m² being Plot No. 244 with reference No. MFCT/ZA/AMAC/SLE244 dated 11/3/98, Plot 245 with reference NO. MFCT/ZA/AMAC/SLE245 dated 11/3/98 Plot No. 247 with reference No. MFCT/ZA/AMAC/SLE247 dated 11/3/98 all within Sabon Lugbe East Layout Abuja FCT. That the said Plots were all allocated to him by offers of Terms of Grant/Conveyance of Approval from the Ministry of Federal Capital Territory through Abuja Municipal Area Council. That at no time had the Claimant sold any of the three properties nor transferred his interest to any person including the Defendant since the allocation.

Having stated these and coming back to the issue for determination, it is settled law that the burden of proof lies on the party who asserts. In other words he who asserts must prove with credible and admissible evidence. See Section 131(1) of the Evidence Act. It was held in the case of

MUSTAPHA V. ZARMA & ORS (2018) LPELR-46326 (CA) at pages 36-44 paras F-D that:-

"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 assertion 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 **DALA V AYODELE & ORS (2014) LPELR-24621 (CA) (PP 24-26, PARAS D); SOKOTO V KPONGBO (2008) 7 NWLR (PT. 1080) 242.**

In the instant case, the Claimant in a bid to discharge the burden of proof, testified for himself as PW1, adopted his statement on Oath and tendered some documents in Evidence which were admitted accordingly.

As pointed out earlier, the Defendant neglected and/or refused to file any defence to the Claimant's Claim. The Claim of the Claimant before the Court remained 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 it was 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."

It is worthy of note that PW1 was not cross-examined by the Defendant from the record of the Court. Therefore the law is settled that the evidence or testimony of PW1 and the Exhibits tendered are deemed accepted by the Defendant. This position of law was re-echoed by the Supreme Court in the case of **ALI V STATE (2015) LPELR-24711 (SC) (PP. 30-31, PARA E), Per UGUNBIYI, J.S.C** where it was held 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."

At this juncture, it is important to state that the law is trite that in Civil cases, the standard of proof required by law is balance of probability or preponderance of Evidence. On this premise, I refer to the case of **CEMENT COMPANY OF NORTHERN NIGERIA PLC V. GIWA 7 ORS (2017) LPELR-42500 (CA) PP. 20 PARAS C Per OHO J.C.A** where it was held 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."

Similarly, the law is settled that the Claimant must succeed on the strength of its case not on the weakness of defence. This was reinstated in the case

EXPLO-TEC NIG. LTD & ANOR V OBANLA & ORS (2017 LPELR-42693 (CA) PP. 14 PARAS D) where it was held that:-

"The onus of proof lies on the Plaintiff and he must succeed on the strength of his own case and not on the weakness of the defence except where the case for the defence supports the plaintiff's case."

However, as stated supra, the entire evidence adduced by the Claimant in proof of his case before this Honourable Court is unchallenged and/or uncontroverted. In that respect, I refer to the case of **NEWBREED ORGANIZATION LTD V. ESHOMOSELE (2006) 2 SC (PT. 1) page 136, at 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 view of the foregoing, I am of the considered opinion that the Claimant has proved his case as required by law on the balance of probability. I so hold. To that extent I hereby without hesitation resolve the sole issue for determination in favour of the Claimant against the Defendant and enter judgment for the Claimant and grant reliefs 1, 2 and 3 as claimed. On relief No. 4 I award the sum of **₦10,000,000.00 (Ten Million Naira only)** as damages for trespass. On relief No. 5, I award the sum of **₦5,000,000.00 (Five Million Naira only)** as general damages. And lastly on relief No. 6, **₦500,000.00 (Five Hundred Thousand Naira)** is awarded as cost of prosecuting this case.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

6/06/2022.