

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT NYANYA**  
**ON FRIDAY 24th JUNE, 2022**  
**BEFORE HIS LORDSHIP: HON. JUSTICE EDWARD OKPE**

**SUIT NO. FCT/HC/CV/639/2014**

**BETWEEN:**

**MR. SYLVESRTER C. EZIOKWU ..... PLAINTIFF**

**AND**

- 1. FEDERAL MINISTRY OF TRANSPORT**
- 2. FEDERAL CAPITAL TERRITORY AUTHORITY ..... DEFENDANTS**

**JUDGMENT**

This suit was originally commenced against the defendants before my learned brother Hon. Justice O.O. Good Luck sometime in 2014. The matter was transferred to this court on 10/1/22 for trial denovo.

By an amended Writ of summons and Statement of Claim dated 5/3/2020 the Plaintiff seeks for:

- i. **A Declaration** that the failure of the Defendants to serve on the Plaintiff a copy of any valuation of the property, upon which the arbitrary sum paid to the plaintiff as compensation was computed by the defendants before the demolition of the plaintiff property was in bad faith, wrongful and unjustifiable.
- ii. **A Declaration** that the sum of ~~N4~~, **393, 685.00** paid to the plaintiff out of the arbitrary valuation by the defendants is a

gross under value of the plaintiff's property and therefore null and void.

- iii. **An Order** nullifying the purported valuation.
- iv. **An Order** mandating the Defendants to pay the sum of **₦10,606,315.00** being the balance of the current market value of the Plaintiff's property to the plaintiff.
- v. **₦2,000,000.00** (Two Million Naira) cost of the suit.

Filed along with the writ of summons is a statement of claim and witness statement on oath. A final written address was also filed.

The 1<sup>st</sup> defendant filed a statement of defence but failed to participate in the trial.

The 2<sup>nd</sup> defendant filed statement of defence, witness statement on oath and a final written address.

Trial commenced on 23/3/22 with the Plaintiff testifying as PW1. He adopted his witness statements on oath deposed to on 5/3/2020 as his evidence in chief. He tendered exhibits SE-1 and SE-2 and was cross examined only by the 2<sup>nd</sup> defendant's counsel. The plaintiff through PW2 tendered Exhibit SE-3 and was also cross-examined by the 2<sup>nd</sup> defendant's counsel. Matter was adjourned to the 9/5/2022 for the defendants to enter their defence.

On 9/5/22 the 2<sup>nd</sup> defendant testified as DW1 and adopted his witness statement on oath and was cross-examined by the plaintiff's counsel.

The 1st defendant was duly served with the court processes and hearing notices but failed to participate in the trial.

I have carefully read the said written addresses of the counsel for the respective parties and all the processes filed pursuant to the court's

order in this suit. I have also considered the evidence led in this case reference will be made to them as the need arises.

From the evidence so far taken in this matter I am of the view that the issue for determination herein is:

***"Whether the plaintiff has sufficiently proved his case against the Defendants to be entitled to the judgment of this court."***

It is trite law that he who asserts must prove as was captured in Section 131 (1) and (2) of the Evidence Act thus:

***"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist"***

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

See the cases of **NDUUL V. WAYO & CO. (2018) VOL. 285 LRCN 47** and **THE NATIONAL INVESTMENT & PROPERTIES COMPANY LIMITED V. THE THOMSON ORGANIZATION LTD (1969) 1 NMLR 99.**

The plaintiff in this case failed to lead evidence at the trial to support his assertion that he owns the property in dispute which he alleged was demolished by the defendants. See **INTALFIED ENGINEERING V. SALEH & SONS (1992) ABJ.LR.116 AT 118; FEDERAL CAPITAL TERRITORY AUTHORITY V. ALHAJI MUSA NAIBI (1992) ABJ LR 82 AT 92** to the effect that a claim which is merely pleaded but in respect of which no evidence is adduced must be rejected or dismissed by the court.

The plaintiff in his evidence before the court stated that he is the owner of the said property in dispute but did not place before the court any evidence to establish that fact as required of him by the law

more so, that the 2<sup>nd</sup> defendant have strongly challenged his title to the said disputed property when it stated in paragraph 5 of his witness statement on oath that Abuja Municipal Area Council is not Statutorily empowered to allocate land within the Federal Capital Territory as FCT laws does not reorganise Customary Rights of Occupancy and does not issue approval to Area Council allocations for anyone to develop any purported customary land as its mandate is only to grant approvals on Statutory Rights of Occupancy and therefore never granted any such approval to the plaintiff in this case. The plaintiff on its part did not deem it fit to produce or place evidence before the court to prove otherwise.

A plaintiff who cannot establish ownership/title of acclaimed property cannot persuade the court into granting him compensation for the demolition of the said property. As the court cannot act on speculations. The plaintiff does not expect the court to grant him reliefs 1, 2, 3 and 4 based on speculations.

The documents that the Plaintiff is relying on in this case are the documents listed in paragraph 14 of his witness statement on oath. As important as these documents are, the plaintiff never deemed it fit to tender them in evidence. It is settled position of the law that a court is not allowed to act on any document not tendered and admitted in evidence before the court. No court is allowed to go outside the gamut of evidence before it to shop for materials upon which to use to decide a case before it. See the Supreme Court cases of **WASSAH & ORS V. KARA & ORS (2014) LPELR 24212 SC; MATTHEW V. STATE (2019) LPELR-40930 SC AND OPARAJI V. OHANU (1999) LPELR -2747 SC**

I therefore hold that the listed documents which were never tendered in evidence cannot avail the plaintiff in his claim.

The 1<sup>st</sup> defendant did not lead evidence at the trial in support of his pleadings. It is trite law that a claim which is merely pleaded but in

respect of which no evidence is adduced must be rejected or dismissed by the court. See the Supreme Court cases of **A.B.C.TRANSPORT COMPANY LIMITES V. OMOTOYE (2019) VOL 296 LRCN 27; NWADIKE & ORS V. IBEKWE (1987) LPELR-2087 SC** and **FEDERAL CAPITAL TERRITORY AUTHORITY V. ALHAJI MUSA NAIBI (1992) ABJ L R 82 AT 92.**

Under cross examination, PW1 testified thus: "my property my title documents emanated from AMAC and this was corroborated by the evidence of the 2<sup>nd</sup> defendant that the plaintiff's property did not emanate from the 2<sup>nd</sup> defendant.

The 2<sup>nd</sup> defendant denied demolishing the plaintiff's property but nothing is placed before the court by the plaintiff to show that it was actually the 2nd defendant that demolished his property.

Also, under cross-examination, the plaintiff testified that the reason why part of his property was demolished was because it was in a proposed rail line. Having testified that it was a part of the property that was demolished how then can the court grant a compensation for the whole property?

The said evidence of the plaintiff in relation to the ownership of the property in dispute and its demolition by the defendants is 'Ipse dixit' which is defined in Black's Law Dictionary as:

***"Something asserted but not proved."***

**In DEBBS & ORS V. CENICO NIGERIA LTD (1986) NWLR PT. 32 846; (1986) LPELR-934 SC** Oputa JSC stated thus:

***"There can be no question that a 'mere ipse dixit' is an admissible evidence but it is evidence resting on the assertion of the one who made it. Where there is need for further prove 'a mere ipse dixit' may not be enough."***

The Plaintiff by reliefs 1 and 2 seeks this court for declaratory reliefs and it is trite that a party who seeks declarative reliefs must strictly prove same. See the case of **NDUUL V. WAYO & CO.** (*supra*) where the Supreme Court held thus:

*"Where a claimant seeks declarative reliefs, the burden is on him to prove his entitlements to those reliefs on the strength of his own case. A declaratory relief will not be granted, even on admission. The claimant is also not entitled to rely on the weakness of the defence. If any. It has been held that the rationale for this position of law is that a claim for declarative reliefs calls for the exercise of the court's discretionary powers in favour of the claimant. He must therefore place sufficient materials before the court to enable it exercise such discretion in his favour."*

Applying the above principle of law to the case at hand, the plaintiff herein has not proved his entitlement to the reliefs sought on the strength of his own case rather, he is relying on the weakness of the 1<sup>st</sup> defendant in this case. I therefore, hold that the declaratory reliefs have not been proved to the satisfaction of the court notwithstanding the default of the 1<sup>st</sup> defendant in this case.

Recently, the Supreme Court in the case of **OBE V. MTN NIG. COMMS. LTD** (2021) 18 NWLR PT.1809 415 at 436 held:

*"In all civil suit, the onus to prove a particular fact or a case in general is on the party who asserts, since civil suits are determined on the balance of probability and preponderance of evidence, a party who proves his case will obtain judgment based on such preponderance of evidence and balance of probability in his favour..... Thus, he who asserts*

*or claims a relief must prove it by credible evidence and judgment and grant for such claim must be based on legal evidence of strong probative value and weight.”*

The plaintiff's contention is that the plot in issue was allocated to him by AMAC in 1996 and approval for the building plan was given to him on 12/6/96 by the 2<sup>nd</sup> defendant after the payment of the approval fees. And sometime in 2013 his property alongside that of others was demolished by the defendants without serving him a copy of the valuation report. Upon complaint, he was paid the sum of ~~₦4, 393,685.00~~ through an FCMB Bank Cheque against the backdrop of ~~₦15, 000, 00.00~~ as the real value of the property which he ascertained through the valuation of the firm of A.AJAYI PATUNOLA & CO. and has formed the basis of his claim of the sum of ~~₦10, 606, 315.00~~ as the balance of the current market value of the plaintiff's property. The above summarised evidence of the plaintiff are contained in paragraphs 3, 4, 5, 8, 9, 10, 11, 12 and 13 of the witness statement on oath. The plaintiff relied on Exhibit SE I - SE 3 to support his assertions. I have painstakingly and microscopically examined the said Exhibits.

By the provisions of Section 128(1) of the Evidence Act, 2011, no evidence may be given of a document except the document itself. Its contents cannot be contradicted or altered or added to or varied by oral evidence. In line with this, the court is to construe it based on its contents or what are written on it. See the case of **M.T.N. (NIG) COMMUNICATIONS LTD V. C-SOKA (NIG) LTD (2018) LPELR - 44423 (CA)**

By the contents of the 3 exhibits, the court cannot safely grant the plaintiff the reliefs sought herein.

The main exhibit that the plaintiff is relying on to ask the court for compensation is exhibit SE 3. Exhibit SE 3 is a valuation report on the

disputed property by one J. AJAYI PATUNOLA & CO. which was single headedly ordered by the plaintiff without the defendants.

Generally, the doctrine of privity of contract stipulates that it is only parties to a contract that have right to sue and be sued to enforce the rights and obligations arising from the contract. **DUNLOP PNEUMATIC TYRE CO. LTD VS. SELFRIDGE & CO LTD (1915) AC 845; CHUBA IKPEAZU VS. AFRICAN CONTINENTAL BANK (1965) NMLR 374; SHUWA VS. CHAD BASIN AUTHORITY (1991) 7 NWLR PT. 205 AT 250.**

There is no privity of contract between the plaintiff and the defendants in consulting the estate valuer and cannot not bound by the outcome of the agreement between the plaintiff and the estate valuer.

Therefore, the plaintiff in this case cannot ask the court to enforce the said exhibit SE 3 on the defendants nor can he bind the defendants to the document who were not privy to the document.

Also, the 2<sup>nd</sup> defendant have clearly stated in paragraph 8 of its witness statement on oath that they did not order any payment of compensation to the plaintiff and I agree with the 2<sup>nd</sup> defendant because Exhibit SE 2 which is the evidence of the payment did not emanate from the 2<sup>nd</sup> defendant as the name on the cheque is one Alfa Alhassan and Company. I strongly hold in this judgment that the submissions of the plaintiff's counsel in paragraph 4.3 of its written address is law misconceived and wrongly applied because there is no privity of contract between the plaintiff and the defendants.

The plaintiff's counsel made a heavy weather that the 1<sup>st</sup> defendant did not challenge the evidence of the plaintiff. Festinately, evidence even if unchallenged or contradicted still has to be evaluated by the court to see if it is credible enough to sustain the claim. See **OGUNDIPE VS. A-G KWARA (1993) 2 NWLR 313 588; NEKA B.B.B. MANUFACTURING CO. LTD**



**VS. A.C.B. LTD (2004) 15 WRN 1 AT 27 AND BUHARI VS. OBASANJO (2005) 8 MJSC 1 AT 268** as stated by Oguntade JCA (as he then was) in **HARUNA V. SALAU (1998) 7 NWLR PT. 559 653 at 659** thus:

*"The argument that because the plaintiff's evidence was unchallenged, judgment should be given in his favour is patently unsound. It is trite that the evidence given by a plaintiff even if unchallenged may still be insufficient to sustain the claim made by the plaintiff. "*

See also **UWAJE V. MADUEMEZIA (2015) LPELR 24543 1 AT 25-26.**

Therefore, this court still has the duty to evaluate the evidence adduced by the plaintiff to see if it established and proved his claim for declaration of title sought herein.

The plaintiff's counsel in paragraph 4.1 of the written address submitted that the plaintiff evidence before the court was unchallenged and therefore entitled to the reliefs sought. I do not agree with this submission of the plaintiff's counsel in the light of the decision of the court of Appeal in **HARUNA VS. SALAU (supra)** earlier referred to herein. In addition, despite the fact that the defence in this case was weak, the plaintiff cannot benefit from the grace of unchallenged evidence since he has not also proved his case on preponderance of evidence as required of him by the law to entitle him to the claims sought. The 2<sup>nd</sup> defendant did challenge the evidence of the plaintiff it is the 1<sup>st</sup> defendant that failed to participate in the trial despite filing a statement of defence and that does not automatically entitle the plaintiff to the judgment of this court especially where the plaintiff has failed to discharge the burden on him to prove his case.

In addition, the Plaintiff by reliefs 3 and 4 on the statement of claim seeks from this court an Order nullifying the valuation and mandating the defendants to pay him the sum of N10, 606,315.00. The big question is: How can the court nullify a document (valuation) which is not before the court? Like I stated earlier in this judgment, the court cannot speculate or imagine a Valuation in other to nullify same when the plaintiff who would have benefited from this piece of evidence did not deem it fit to place it before the court. He who seeks equity must first be seen to have done equity. Reliefs 3 and 4 of the plaintiff is vague and nebulous and cannot be granted by this court.

In view of the foregoing and for all I have stated earlier in this judgment, I am of the firm view, based on the evidence adduced at the trial that the plaintiff has not discharged the onus placed on him in this case. The plaintiff was unable to do that in this case and he must therefore fail in his action. Therefore, the plaintiff's action against the defendants fails and it is accordingly dismissed.

**Appearances:**

-----  
**HON. JUSTICE EDWARD OKPE**  
**(JUDGE)**  
**24/6/22**