

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT NYANYA
ON TUESDAY 24TH MAY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE EDWARD OKPE

SUIT NO: FCT/HC/CV/587/2021

BETWEEN:

OLULOLA ALABI ----- CLAIMANT

AND

- 1. THE HONOURABLE MINISTER OF THE
FEDERAL CAPITAL TERRITORY**
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY----- DEFENDANTS**

JUDGMENT

The Claimant in this suit on 26/2/2021 caused to be issued a writ of summons against the defendants claiming the reliefs as contained in the statement of claim as follows:

1. **A DECLARATION** that the Claimant is entitled to all the rights and privileges associated with the Right of Occupancy NO. MZTP/LA/2002EK.252 on Plot No. G313, measuring 1000 Square Meters with reference file No. EK40339 (EK252), within Apo layout of FCT Abuja Nigeria dated 5th of November 2002 and duly signed by one W.A.M Shitu Titilola on behalf of the Minister of FCT, and granted to the Claimant, remains valid until properly revoked according to law.
2. **A DECLARATION** that any purported revocation without valid notice of the Claimant's interest on Plot No. G313, measuring 1000 Square meters with reference file No. EK 40339 (EK252), is null and void and without any effect whatsoever.

3. **AN ORDER** directing the 1st and 2nd Defendants to issue to the Claimant, upon payment of appropriate fees, a Statutory Right of Occupancy. A Certificate of Occupancy and other documents of title, vesting in the claimant the legal interest in Plot No. G313, measuring 1000 Square Meters with reference no. EK 40339, within Apo layout of FCT Abuja.
4. **AN ORDER** directing the 1st and 2nd defendants to relocate the claimant to a plot of similar value by considering location, in the event of a proper revocation by the 1st and 2nd defendants.
5. **AND FOR SUCH FURTHER ORDER** or other order as the court may deem fit to make in the circumstance.

The Defendants were duly served with the writ of summons and all the requisite hearing notices throughout the pendency of this action. However, the defendants elected not to defend this action as no process was filed in opposition, and there was no appearances whatsoever on their behalf. The approach adopted by the defendants in my view is within the constitutional right of the defendants not to defend this action. At plenary, the claimant personally testified as PW1 and tendered Exhibits OA 1 - OA 5. The defendants were given ample opportunity to cross-examine PW1, but failed to take advantage of this window of opportunity.

In a related development, the defendants failed/neglected to take advantage of the opportunity to defend claimant's claim after the action was adjourned for defense. The matter was adjourned to 23/3/22 for the defendants to enter their defence, if any. On that day, despite the fact that the defendants were served hearing notice against that day, the defendants never showed up in court to enter their defence. Consequently, upon the plaintiff's counsel application their right to enter defence was foreclosed and the court ordered for the final written addresses of the parties. Pursuant to the order of the court, only the plaintiff filed final written address and same was adopted by his counsel.

I have carefully considered the final written address of the counsel for the plaintiff and all the processes filed in this suit. I have also considered the statement of claim and the evidence led by the plaintiff, and I form the view that the sole issue for determination ought to be set down thus:

"Whether the Plaintiff has been able to prove his claim before this court."

The plaintiff who testified as PW1 gave evidence as contained in paragraphs 5,6,7,8,9,10 and 11 of his Witness Statement on Oath which was not contested by the defendants or any witness called by them.

The Supreme Court in the case of **OBE V. MTN NIG COMMS LTD (2021) 18 NWLR (PT.1809) 415 AT 435** held:

"... In all civil suits, 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 on whom the initial burden lies testified in evidence as PW1 in his witness statement on oath before this court and all his testimonies as contained therein are in tandem with the statement of claim and have not being refuted by the defendants.

In further prove of its case, the plaintiff tendered exhibits OA 1 - OA 5.

The claimant by reliefs 1 and 2 seeks this court for declaratory reliefs. For a party to succeed in the suit of this nature, it is trite that a party who seeks declarative reliefs must strictly prove same. See the case of **NDUUL V. WAYO & CO. (2018) VOL. 285 LRCN 47** 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 rational for this position of the 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. "

In the instant case, there is evidence before the court in the testimony of PW1 that he was granted Statutory Right of Occupancy in respect of the land in dispute in this case via exhibit OA-1 and the defendants revoked same without any prior notice to the plaintiff. Exhibit OA-5 is a letter written by the claimant to the defendants requesting for re-allocation of his revoked plot of land. The defendants never responded to the said letter. The law is settled that a party must respond to a letter written otherwise it will be taken to have admitted the contents of the said letter. See the decision in the case **RAMATON SERVICES LTD V. NEM INS. PLS (2020) 14 NWLR PT.1744 281** where it was held:

".. The Appellant failed to respond to any of the letters written by the Respondent, I agree with learned counsel to the respondent that failure to respond to a business letter which by the nature of its contents requires a response amounts to an admission."

See also the decisions in the cases of **O.G.E.F.Z.A V. OSANAKPO (2019) 6 NWLR PT. 1668 244; TILLEY GYADO V. ACCESS BANK (2019) 6 NWLR PT. 1169 399; MEKWUNYE V. IMOUKHUEDE (2019) 14 NWLR PT.1690 439 AND EDE V. ACCESS BANK (2020) 4 NWLR PT.1715 417.**

The net effect of the forgoing decisions in the light of the facts and circumstances of this case is that the defendants have admitted that the claimant is the rightful and title holder of Right of Occupancy No. MZPT/LA/2002/EK.252 and that the defendants revoked same without notice to the claimant.

I agree that the defendants who failed to defend the suit against them are deemed in law to have admitted the case of the plaintiff as stated in his statement of claim. But reliefs 1 and 2 are declaratory in nature. To be entitled to same plaintiff must prove his entitlement to same as shown in his statement of claim based on relevant admissible evidence even if they are admitted. See **UZODINMA V. IHEDIOHA (2020) 5 NWLR PT. 1718 529** wherein the Supreme Court held:

"In a claim for declaratory reliefs, the claimant, must succeed on the strength of his case and not on the weakness of the

defendant's case. The claimant would not be entitled to judgment even on admission. In discharging the burden of proof on him, the claimant must first prove the existence or none existence of what he asserted by relevant, admissible and credible evidence. Once the burden is discharge, the onus is on the party against whom judgment would have been given if no further evidence is adduced.
"

PW1 (the plaintiff) testified on oath, and his testimony was supported by documentary evidence, Exhibits OA 1 -OA 5. See the case of **BAC ELECTRICAL CO. LTD V. ADESINA (2020) 14 NWLR PT. 548 AT 565** where it was held:

"... When documentary evidence supports oral evidence, such oral evidence becomes more credible. This premised on the position of the law that documentary evidence serves as hanger from which to assess oral testimony."

The oral and documentary evidence of the plaintiff has not been contradicted by the defendants. The defendants were given every opportunity to enable them place their own side of the story before the court but they chose not to utilize it. In the circumstances, I am satisfied that the plaintiff has established its entitlement to the declarative reliefs sought against the defendants.

It is settled law that a court of law when faced with unchallenged or uncontroverted evidence, is entitled to believe such evidence and to give it full weight and value. I therefore agree with the unchallenged and uncontroverted evidence of the plaintiff that he is the rightful owner of the land in dispute and that the defendants revoked same without due notice to him. See the cases of **NATIONAL INSURANCE CORPORATION OF NIGERIA (NICON) V. POWER AND INUDRTIAL ENGINEERING CO. LTD (1986) 1 NWLR PT.14 1 AT 27** and **DANLADI V. TARABA STATE HOUSE OF ASSEMBLY (2015) ALL FWLR PT.804 AT PAGE 2024 PARTICULARLY AT 2036 PARAGRAPH H.**

Therefore, plaintiff's evidence summarised above is not contradicted and same is accepted by this court as the naked truth. See **OWENA MASS TRANSPORT CO. LTD V. OKONOGBO (2018) LPELR 45221; OKEREKE**

V. STATE (2016) LPELR; IJEBU ODE LG V. ADEDEJI (1991) LPELR - SC; CHIEF SUNDAY OGUNYADE V. SOLOMON OLUYEMI ISHUNKEYE & ANOR (2007) 7 SC PT.11 60 and ODULAJA V. HADDA (1973) 11 SC 357

In the light of the above, I am satisfied that there is merit in the claims of the plaintiff. Consequently, I make the following orders:

1. It is hereby declared that the Claimant is entitled to all the rights and privileges associated with the Right of Occupancy NO. MZTP/LA/2002EK.252 on Plot No. G313, measuring 1000 Square Meters with reference file No. EK40339 (EK252), within Apo layout of FCT Abuja Nigeria dated 5th of November 2002 and duly signed by one W.A.M Shitu Titilola on behalf of the Minister of FCT, and granted to the Claimant, remains valid until properly revoked according to law.
2. It is hereby declared that any purported revocation without valid notice of the Claimant's interest on Plot No. G313, measuring 1000 Square meters with reference file No. EK 40339 (EK252), is null and void and without any effect whatsoever.
3. An Order is hereby made directing the 1st and 2nd Defendants to issue to the Claimant, upon payment of appropriate fees, a Statutory Right of Occupancy. A Certificate of Occupancy and other documents of title, vesting in the claimant the legal interest in Plot No. G313, measuring 1000 Square Meters with reference no. EK 40339, within Apo layout of FCT Abuja.
4. An Order is hereby made directing the 1st and 2nd defendants to relocate the claimant to a plot of similar value by considering location, in the event of a proper revocation by the 1st and 2nd defendants.

Appearances:

HON. JUSTICE EDWARD OKPE
(JUDGE)
24/5/22