

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**

**COURT:28**

**DATE: 7<sup>TH</sup> APRIL, 2022**

**SUIT NO:-FCT/ CV/045/2021**

**BETWEEN**

**BLESSING ONWUMERE**

.....

**CLAIMANT**

**AND**

1. THE NIGERIAN POLICE FORCE }  
2. FEDERAL HOUSING AUTHORITY }

**DEFENDANTS**

**JUDGMENT**

The Claimant took out this action against the Defendants by a writ of summons and statement of claim dated the 12<sup>th</sup> day of January, 2021 and filed on the same day. The Claimant claims against the Defendants as follows:-

1. A declaration that the Claimant is the owner of the land known as Plot 1353, Along 1<sup>st</sup> Avenue, M-Close, Lugbe Estate, Abuja.
2. A declaration that the entry and continued presence on the portion of the land known as Plot No. 1353, along 1<sup>st</sup> Avenue,

M-Close, Lugbe Estate, Abuja belonging to the Claimant by the 1<sup>st</sup> Defendant amounts to trespass.

3. A sum of ₦25, 000, 000 (Twenty-Five Million Naira Only) as general damages for trespass against the Defendants.
4. An Order of perpetual injunction restraining the defendants by themselves, their agents or privies, workmen or otherwise howsoever from further entering into the Claimant's piece of land known as Plot No. 1353, Along 1<sup>st</sup> Avenue, M-Close, Lugbe Estate, Abuja.

The 1<sup>st</sup> Defendant was duly served with the Originating processes in this matter but despite the service and proof of services available to this Court failed to enter appearance nor file defence processes in this matter. The 2<sup>nd</sup> Defendant entered appearance in this matter on the 24<sup>th</sup> day of February 2021.

Hearing into the case commenced on the 12<sup>th</sup> of November 2021 when the Claimant's sole witness Blessing Onwumere gave evidence in Chief and was not cross examined by Counsel to the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant having not filed a statement of defence informed the Court that there was no questions for cross-

examination, solely relying on the evidence of the Claimant's witness adopting and aligning with same. Thereafter, parties were ordered to file and exchange their final written addresses respectively. Final addresses were adopted solely by the Claimant on the 18<sup>th</sup> of March, 2022.

Having regards to the pleadings and evidence of the Claimant in the case, the Claimant respectfully distills a sole issue for determination to wit;

**“Whether the Claimant has made a case against the Defendants to entitle it to the reliefs sought in the Writ of Summons?”**

In arguing the above issue, Counsel relied on the Supreme Court decision in the case of ***ZACHEUS FALEYE & ORS V MR. RASHEED DADA & ORS (2016) LPELR-40297(SC) Per SANUSI, JSC*** that in proving title to land in Nigeria, the following are modes to be considered by the Court:-

1. By traditional evidence
2. By production of documents of title

3. By exercise of numerous and positive acts of ownership extending over a length of time to warrant the inference that the person is the owner
4. By act of long possession and enjoyment of the land and;
5. By proof of possession of adjacent land in the circumstance rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute. With reference to the case of ***IDUNDUN V OKUMAGBA (1976) 9-10 SC 227***. **It should be noted however that proof of any of the above mentioned five modes, is enough to establish title to land.**

Counsel submitted that a Claimant who through any of the above means highlighted in the above case proves titles to any land should succeed. Counsel to the Claimant in furtherance of the above prayer, relied on the title document executed in her favour by Oluwabunmi Adenike Debra Ajayi together with letter of consent issued by the 2<sup>nd</sup> Defendant in favour of the Claimant.

The Claimant also pleaded and tendered the Original Allocation letter from the Federal Housing Authority issued to the initial

allottee, one Victor Mayowa admitted as Exhibit 2, the Consent letter permitting Victor Mayowa to transfer the said property to Olubunmi Adenike Debra Ajayi. The Claimant also pleaded the consent letter from Olubunmi Adenike Debra Ajayi permitting the transfer to her by the 2<sup>nd</sup> Defendant in 2017.

Counsel to the Claimant in proving the identity of the land placed reliance on the allocation letter issued to the first allottee dated 23<sup>rd</sup> May 2012 wherein the size of the land is stated to be 800 square meters and tagged plot No. 1353, along 1<sup>st</sup> Avenue M-close, Lugbe Estate, Abuja. And further stated that in proving the root of title of Claimant, he will be relying on all exhibits tendered.

Counsel drew the attention of the Court to the failure of the 1<sup>st</sup> Defendant despite being served with all the processes in this suit together with Notices for dates of hearing and having not filed any process nor entered appearance as required by the rules of this Court is deemed to have admitted all facts as stated by the Claimant. In buttressing the above fact, the Claimant relied on the Supreme Court's decision in the case of ***OKOEBOR V POLICE COUNCIL & ORS (2003) LPELR-2458(SC) Per***

***NIKI TOBI, JSC (P.22-23, Paragraphs A-D) where the Court had this to say:***

*"The basic principle of law is that where a Defendant fails to file a defence, he will be deemed to have admitted the claim or relief in the statement of claim. But where a paragraph of the statement of claim is notoriously false to the common knowledge of the court, like 10<sup>th</sup> July is Nigeria's Independence anniversary, such a paragraph is not admissible because it is an obvious untruth. A defendant who fails to file a statement of defence cannot in law lead oral evidence because the oral evidence, not pleaded will be to no avail".*

Counsel to the Claimant thereupon submitted that the 1<sup>st</sup> Defendant having not filed its statement of defence nor entered appearance is deemed to have admitted the averments in the statement of claim.

Counsel to the Claimant went further relying on the case of ***OLAIYA V KWARA INVESTMENT PROPERTY DEVELOPMENT CO. LTD (2017) LPELR-45653 (CA)*** that facts deemed admitted by a party who fails to enter appearance or file defence processes need no further proof. That they are taken as established. Admitted facts are the strongest evidence available to the trial Court.

On the second relief sought by the Claimant, on the liability of the 1<sup>st</sup> Defendant for trespass, Counsel to the Claimant submitted that trespass is actionable per se and on who can maintain an action for trespass to land, Counsel relied on the case of ***ADELAJA V FANOIKI & ANOR (1990) LPELR-110(SC)*** where the Court in response to the above stated thus:-

*"I think the law is now settled that every person in exclusive possession of land can bring an action for trespass against any person other than the true owner, or a person with better title in respect of any interference with his possession. This is because exclusive possession gives the*

*person in possession the right to remain in possession and to undisturbed enjoyment of it against every other person except a person who can establish a better title. It is nonetheless a trespass and not a defence that the person in possession appears to have acquired title from the wrong person”.*

Counsel to the Claimant submitted that having led evidence to establish title before the Court which was not challenged in any way together with the fact that her allegation of trespass as contained in paragraphs 10, 11 and 13 of her testimony before this Honourable Court were not controverted by the Defendants, the Court should grant the prayers as sought by the Claimant on the face of the writ against the 1<sup>st</sup> Defendant.

Indeed the records of this Court has it that the Claimant’s counsel filed and adopted his written address as the final submission and urged the Court to enter judgment in its favour. On the other hand, the Defendants did not file final addresses and also did not call any witness in support of his defence.



Be it as it may, its trial law that Claimant's witness statement on oath filed in Court and adopted by the witness is to say the least acceptable if not challenged by the advanced party. See ***ALH. IBRAHIM IDRIS V ANPP (2008) 8 NWLR (Pt. 1088) 97 P.C-B, 153 P. F-G.***

It is equally the law that the evidence burden of proof is first on the party who alleges in the affirmative and in this instant case, the Claimant and he must discharge with credible evidence before the second burden which has on the opposite or adverse party and in this instant case, the Defendant to prove the negative. See the Court of Appeal decision in ***ASIKA V ATUANYA (2008) 17 NWLR (Pt. 1117) 482 at 518-519, P.F-B.*** Thus:-

*"While the first burden is on the party who alleges the affirmative in the pleadings, the second burden, the evidential burden lies on the adverse party to prove the negative.."*

Consequently, the Claimant in the instant case, haven discharged the burden placed on him, therefore the burden has now shifted to the Defendants and as such, the claims of the Claimants before this Court remains unchallenged.

It is cardinal principles of law in our legal system that he who asserts must prove with credible and admissible evidence. The Evidence Act 2011 (as amended) has encapsulated thus:

Section 131(1) provides:-

*“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”.*

It is in evidence that the whole Exhibits tendered in Court were not challenged in cross examination by the Defendant. To this end therefore, it is trite law that the Court is bound to accept them and admit them in evidence.

Having pointed out all this facts, it is clear that the Defendants did not file a statement of defence nor produced a single witness to testify on its behalf. Therefore it goes to show that it has no defence at all; in challenging the Claimant’s claims in the circumstances.

To this end, it is my informed view that the Claimants haven proved its claims against the Defendant is entitled to Judgment on those claims as follows:-

1. It is declared that the Claimant is the owner of the land known as Plot 1353, Along 1<sup>st</sup> Avenue, M-close, Lugbe Estate, Abuja.
2. It is declared that the entry and continued presence on the portion of land known as Plot No. 1353, Along 1<sup>st</sup> Avenue, M-close, Lugbe Estate, Abuja belonging to the Claimant by the 1<sup>st</sup> Defendant amounts to trespass.
3. An Order of Perpetual injunction restraining the 1<sup>st</sup> Defendant by themselves, their servants, agents or privies, workmen or otherwise howsoever from further entering into the Claimant's piece of land known as Plot No. 1353, Along 1<sup>st</sup> Avenue, M-close, Lugbe Estate, Abuja.
4. The sum of N500, 000.00 (Five Hundred Thousand Naira Only) as general damages for trespass against the 1<sup>st</sup> Defendant.

In conclusion from the evidence adduced in the cause of this trial throughout it is pertinent to note that in civil cases the burden of proof rest on the party who asserts the burden will shift to the

Defendant once the Plaintiff discharges his burden. In this case 1<sup>st</sup> Defendant referred to Court ***INTERCONTINTAL BANK VS BRIFANA LTD SUIT NO. SC/67/2004*** civil suit are determined on preponderance of evidence and balance of probability. He who asserts must proof in order to succeed in his claim. See ***ISEOGBEKUN VS ADELAKAN SUIT NO SC/93/2003***. Also cited in (2013) 2 NWLR P.14 from the evidence in this trial even though the 1<sup>st</sup> Defendant refused to do the needful by filing his defence or even put appearance it still remain the position of the law who he asserts must proof see section 135 of the Evidence Act. See also ***A.G RIVERS STATE VS A.G BAYESA cited in (2013) 3 NWLR (PT 123) OKUBULE VS OYAGBULA (1990) 4 NWLR (PT 144) P. 723 ODUKWE VS OGUNBIYI (1998) 8 NWLR (pt 561) p. 335 OSAWARA VS EZERUKE (1978) 6 -7 SC P. 335***. I completely and absolutely relied on the evidence by the Claimants Counsel witness. The evidence was graphically adduced therefore the opportunity in line with Fundamental Right of hearing which was accorded to the 1<sup>st</sup> Defendant severely throughout this trial. Nevertheless the 1<sup>st</sup> Defendant failed to do the needful. It is on this basis the Court deem it just to enter judgment in favour of the Claimant against the Defendant. The

judgment was not only given on the weak of the 1<sup>st</sup> Defendant's case but same was entered based on the evidence adduced by the Claimant and the exhibit tendered throughout the trial. I so hold.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**  
**7/4/2022**

Appearance

O. S Adebisi:- Appearing with me is P.A Okwechime for the  
Claimant.

A.U Ojimba:- For the 2<sup>nd</sup> Respondent.

**Sign**  
**Judge**  
**7/4/2022**