

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/71/2019

BETWEEN:

L AND T INTERNATIONAL LIMITED.....CLAIMANT

VS

1. KYC INTER PROJECT LIMITED

2. HON. MINISTER OF THE FEDERAL CAPITAL TERRITORY

.....DEFENDANTS

JUDGMENT

This action is in respect of land at Plot ED1044, off Voice of Nigeria (VON) Road, Sabon Lugbe, Abuja. The Claimant's case is that the said land was purchased from a company known as Jeyngol Nigeria Ltd since 2002, vide a Power of Attorney dated 10/5/2022, vesting them with the equitable interest in the said property. That consequent upon purchased, the Claimant was issued the following documents; Offer of Terms of Grant/Conveyance of Approval dated 11/3/1999 issued to Jeyngol Nigeria Ltd by the 2nd Defendant's Offer of Terms of Grant/Conveyance of Approval dated 19/7/2002 issued to the Claimant by the 2nd Defendant, and acknowledgement of Regularization of Land Titles and documents of FCT Area Council" dated 02/7/2007. That they have been in peaceful

possession of the said property since 2002, until sometime in 2018, when the 1st Defendant with thugs and agents continued to harass and molest workers and agents of the Claimant at the site; thus trespassing on the said plots, hence this action and are seeking for the following reliefs:-

- (1) A Declaration that the repeated entries and forays of the 1st Defendant (Whether by itself, its agents, assigns, privies, servants, officers or any person howsoever called) into Plot ED1044, off Voice of Nigeria(VON) Road, Sabon Lugbe, Abuja without the consent of the Claimant amounts to trespass to land.
- (2) An Order of Perpetual Injunction restraining the 1st Defendant (Whether by itself, its agents, assigns, privies, servants, officers or any person howsoever called) from (further) wrongfully, interfering with the Claimants lawful occupation of Plot ED1044, off Voice of Nigeria(VON) Road, Sabon Lugbe, Abuja.
- (3) An Order compelling the 1st Defendant (Whether by itself, its agents, assigns, privies, servants, officers or any person howsoever called) to pay the sum of ₦50,000,000.00 (Fifty Million Naira) to the Claimant as general damages for trespass to Plot ED1044, off Voice of Nigeria(VON) Road, Sabon Lugbe, Abuja.
- (4) An Order compelling the 1st Defendant (Whether by itself, its agents, assigns, privies, servants, officers or any person howsoever called) to pay the sum of ₦70,000,000.00

(SeventyMillion Naira) to the Claimant as aggravated and exemplary damages for the despicable conduct and recalcitrance of the 1st Defendant.

- (5) An Order compelling the 2nd Defendant to forthwith recognize the Claimant as the sole equitable owner of Plot ED1044, off Voice of Nigeria(VON) Road, Sabon Lugbe, Abuja.

The processes were served on the 1st/2nd Defendants on the 13/3/2020. The 1st Defendant through their counsel Emmanuel Onuoha Esq filed Memorandum of Appearance, rather than file processes in response filed Motion on Notice to set aside the Writ of Summons in the Suit for being irregular. The 2nd Defendant, on the other hand was represented by Betty Umegbulam Esq but did not file Memorandum of Appearance and also did not file any process. The Claimant Counsel also file a Motion on Notice for Interlocutory Injunction. The said Motions were taken and a considered Ruling of court was delivered. After resolving the interlocutory applications, both the 1st/2nd Counsel failed to put up further appearance. The case was thereafter set down for hearing, and on 7/7/2021, the Claimant opened their case and matter adjourned for cross-examination and despite service of hearing notices, both 1st/2nd Defendant failed to appeared in court, and the matter was thereafter adjourned for Adoption of Final Address, consequent upon, Claimant Counsel application. On 16/2/2022 Mary Damilola Odedele Esq, announced appearance for 1st Defendant and prayed for an adjournment on the ground that they were just briefed. In a considered Ruling, the Court allowed the application against the objection

of Claimant Counsel, case adjourned to enable the 1st Defendant Counsel do the needful. At the next adjourned date, both the 1st/2nd Defendant were unrepresented and case adjourned for Adoption of Final Address.

In proof its case, the Claimant called one (1) witness, while the 1st/2nd Defendant failed to defend.

The sole witness, Olaitan Agbeja – PW1 Managing Director of the Claimant testify and adopted his Witness Statement on Oath of 13 Paragraphs sworn on 14/10/2019. In proof of the Claimant's case, a bundle of documents were tendered in evidence as Exhibits "A1" – "A7".

In the Final Written Address of Claimant Counsel settled by Akin Akintan Esq; only one (1) issue was distilled for determination; namely

"Having regards to the totality of the unchallenged evidence adduced before the Honourable Court, whether the Claimant has sufficiently established its case against the 1st Defendant".

First, it is trite law that burden of proof lies with the party who asserts, see Section 131 – 134 of Evidence Act 2011. And the standard of proof in Civil Matter of this nature is on the preponderance of evidence. This court must evaluate the evidence before it to reach a just conclusion either way.

In this instant case, the Defendants were duly served, while the 1st Defendant had two (2) counsel appearing and backing out of the trial and the 2nd Defendant though represented did not take any step to defend. The implication of all of these, is that the Defendant are deemed indifferent to this Suit and consequently, the evidence adduced by the Claimant, is

deemed admitted. This position of the law is stated in the case of Muomah Vs Enterprises Bank Ltd (2015) LPELR – 24832 (CA), the court stated thus:-

“The law is settled that where evidence given by a party to any proceedings and was not challenged by the opposite party, who had the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it.....

Unchallenged and uncontroverted evidence ought to be accepted by the court as establishing the facts therein contained”

It is trite law that a Claimant must succeed on the strength of its case and not on the weakness of the defence. See Omoyola Vs Enterprises Bank Ltd (2013) Ali FWLR (PT. 698) 911 @ 939 Para E – H where case stated;

.....Failure on the part of a Defendant to give evidence does not automatically mean that Judgment must be given in favour of a Claimant, who has a duty to prove his case on a balance of probability or preponderance of evidence, the case will be thrown out, notwithstanding the fact that the Defendant did not give evidence”.

Having carefully considered the unchallenged evidence of Claimant and submission of counsel and the judicial authorities cited, the court finds that only one (1) issue calls for determination, which is;

“Whether the Claimant has by his evidence, established his case against the Defendants, to be entitled to the reliefs sought”

In this instant case, the Claimant is seeking declaratory reliefs on Relief 1 and Perpetual Injunction in Relief 2 and damages and aggravated and exemplary damages in Relief 3 and 4 against the 1st Defendant.

Unfortunately, the Claimant is not seeking a declaratory Relief as to title upon which a claim for trespass would be hinged upon, rather merely by Para 5 of their Statement of Claim, stated facts showing root of title vide Exhibits "A1 – A6" without more. Granted that the 1st Defendant did not contend this claim, it leaves the court look at the unchallenged evidence in line with the law, to find if it pass in the instant case, based on the position of the law referred by the court in respect of a Plaintiff relying on its strength not weakness of the Defendant.

On the claim for trespass, the Claimant contends vide Paras 6, 7, 8 and 10 of their Statement of Claim that the 1st Defendants has entered into the Plot with thugs severally to disturb construction work on the Plot.

In a claim for trespass and injunction, the court in the case of *Monkon & Ors Vs Odili* (2009) LPELR – 3927 (CA) court held;

".....In a claim for trespass and injunction, the party that will succeed as between Plaintiff and Defendant is the one that holds a better title to the land in dispute, where a claim for trespass is coupled with a claim for injunction, the title is automatically put in issue where the issue is as to which of the Claimant has a better right to possession or occupation of a piece or parcel of land in dispute, the law will ascribe possession to the person who has better title thereto".

In this instance, the 1st Defendant did not challenge the claim of the Claimant. However, the court has a duty to evaluate the evidence before it, though unchallenged. In this instant, the Claimant in establishing the act of trespass on the Plot stated clearly that the 1st Defendant brought in Hired Thugs to disturb construction work ongoing by the Claimant's workmen. Question, in this age and time of technology, it is expected that in proof of acts of trespass based on destruction of construction works, the Claimant in the court's view ought to support that claim with further proof with documentary evidence. It is not enough to merely state these facts. It is on this basis that this court holds that the Claimant has failed to sufficiently prove this head of claim with evidence to assuage the court to consider its grant.

On the Relief 3, 4, claim for damages and aggravated and exemplary damages, it is the contention of the Claimant, vide Paras 7, 8, 9 and 10 of the witness deposition on Oath, stated that because of the activities of the 1st Defendant agent and thugs, the construction work of the Claimant was impeded upon. Again, the 1st Defendant did not challenge this piece of evidence.

On damages, it is settled law, in the case of EFCC Vs Inuwa & Ors (2014) LPELR – 23597 (CA), that;

“General damages is the kind of damages which the law presumes to be the consequence of the act complained of and unlike special damage, a Claimant for general damage does not need to specifically

plead and specially prove its evidence, it is sufficient if the facts thereof are generally averred”

This court having carefully considered the unchallenged evidence of the Claimant through PW1 and documentary evidence placed before, granted that the Claimant need not specifically prove, the court finds that the Claimant has failed to give sufficient facts that would assuage this court to so grant. In consequence, this Relief 3 and 4 fails and hereby refused.

On the Relief 5, an Order compelling the 2nd Defendant to forthwith recognize the Claimant as the sole equitable owner of the said Plot in dispute.

This court has carefully considered the unchallenged evidence of the PW1 and documentary evidence. Apart from Para 5 of the witness deposition and Para 2 of the Statement of Claim, there is no concrete evidence of any alleged wrongdoing on the part of the 2nd Defendant. The Claimant has not told this court by evidence that the 2nd Defendant, failed and refused to recognize the title of the Claimant in any manner. It is the court's firm view that it clearly shows that there is no cause of action against 2nd Defendant. The Claimant has failed to show any wrongdoing of the 2nd Defendant to warrant this court to make this order as in Relief 5. Accordingly, this Relief 5 fails and is hereby refused.

In conclusion, this court finds that the claim of the Claimant lacks merit and is hereby dismissed.

Signed
HON. JUSTICE O. C. AGBAZA
Presiding Judge
15/9/2022

APPEARANCE:

AKIN AKINTAN ESQ FOR CLAIMANT

NO REPRESENTATION FOR 1ST/2ND DEFENDANTS