

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT ABUJA**  
**ON THURSDAY 29TH SEPTEMBER 2022**  
**BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI**  
**SITTING AT COURT NO. 8 MAITAMA – ABUJA**

SUIT NO: FCT/HC/CV/1375/19

**BETWEEN:**

AKHABUEOSAMUDIAMHEN ... .. CLAIMANT

**AND**

CHIBOROGUPETER ... .. DEFENDANT

**JUDGMENT**

By Writ of Summons and Statement of Claim filed to commence the instant suit on 20/03/2019, the Claimant claimed against the Defendant the reliefs set out as follows:

- 1. An order of this Honourable Court awarding the sum of N5,000,000.00 only as general damages for physical***

***assault, embarrassment and humiliation of the Claimant by the Defendant on the 28<sup>th</sup> February, 2018.***

***2. An order of the Honourable Court awarding the sum of ₦350,000.00 only being payment of property destroyed and monies expended on medications and hospital bill as a result of the physical attack on the Claimant by the Defendant on the 28<sup>th</sup> February 2018.***

***3. Interest on the Judgment sum at the rate of 10% from the date of the judgment till the liquidation of the judgment debt.***

***4. The cost of this suit.***

It is borne by records of the Court that the Defendant was duly served with the originating processes in this suit and hearing notices for the scheduled hearing dates. He chose not to file any process in response to the suit; neither did he in any way participate in the proceedings.

The matter proceeded to trial. In proof of his case, the Claimant, **Akhabue Osamudiamhen** testified for himself. He adopted his *Statement on Oath*, deposed to on 20/03/2019, as his evidence – in – chief in support of his case. He further tendered four (4) sets of documents in evidence as exhibits; and in the absence of the Defendant to subject him to any cross-examination, the Claimant was discharged of any further examination in the case. He thereon closed his case.

In view of the Defendant's failure to file a defence to the action, the Court thereafter ordered parties to file and exchange their written final addresses as prescribed by the **Rules** of this Court.

Expectedly, only the Claimant filed a written address. In the said address filed on his behalf on 18/01/2021, by **I. M. Abdullahi, Esq.**, of counsel,

he framed a sole issue for determination in this suit, namely:

***Whether in view of the evidence before this Honourable Court, the Claimant has proved his case to be entitled to the reliefs claimed in his originating process before this Honourable Court.***

In determining this issue which I hereby adopt, I have also carefully considered the totality of the written address of the Claimant's learned counsel; and whenever it is considered necessary in the course of this Judgment, I shall make specific reference to learned counsel's submissions.

As a starting point, it is pertinent to be mindful of the trite position of the law that where an adversary fails to adduce evidence to be placed on the other side of the imaginary scale of justice in an action, the minimum legally admissible evidence adduced by the

other side will suffice to prove his case. Thus, where a Defendant refuses to defend an action, as in the instant case, the trial Court is entitled to proceed to find for the Claimant, in the event that the evidence adduced by him has satisfactorily established his claim as endorsed. See Newbreed Organization Limited Vs. Erhomosele [2006] 5 NWLR (Pt. 974) 499; NEPA Vs. Inemech [2002] 11 NWLR (Pt. 778) 397; Malle Vs. Abubakar [2007] All FWLR (Pt. 360) 1569.

Proceeding on the footing of this basic legal principles therefore, the task the Court is to undertake now is to examine the evidence on record as adduced by the Claimant; and the law applicable thereto, in order to determine whether or not such evidence has satisfied the requirement of proof imposed by the provisions of **Ss. 131** and **132** of the

**Evidence Act** (as amended), to substantiate his claim as endorsed.

### **RESOLUTION OF SOLE ISSUE**

Even though his Statement of Claim is inelegantly drafted and somewhat scant, the case of the Claimant is nevertheless not too difficult to comprehend. He claimed to be a businessman although he failed to disclose the nature of his business at the material time relating to this suit. He claimed that on 28 February, 2018, on or about 11pm, he heard a loud noise on the door of his apartment with someone shouting “Come out. I will kill you!!” Because he was scared, he refused to open his door. The next thing he saw was that the person, who he later found out to be the Defendant, began to tear down the net on his entrance door and window in order to gain entrance to the room. The

Claimant's further testimony, as captured in paragraphs 5 – 16 of his Statement on Oath, is as follows:

***“5. When I Summoned courage to open the door, I saw that it was the Defendant, Chigborogu Peter, Naval Personnel on a military camouflage and holding a military knife with which he tore off the door and window nets.***

***6. The Defendant pushed me into my apartment and started punching me with his fists and kicking me with his legs.***

***7. The Defendant mercilessly and severely beat me, and I was only saved from his hands by my neighbours and passers-by.***

***8. I sustained serious injuries on my whole body as a result of the beatings of the Defendant and I had to seek medical attention.***

**9. I spent N146,000.00 (One Hundred and Forty-Six Thousand Naira) on my medication and hospital bills as a result of the attack on me by the Defendant.**

**10. That the Defendant destroyed my gold necklace worth N50,000.00 (Fifty Thousand Naira) in the course of beating me.**

**11. That the Defendant destroyed An Itel Mobile phone worth the sum of N23,000.00 (Twenty-Three Thousand Naira Only).**

**12. That the Defendant destroyed the following properties of mine:**

**a) An LG Colour TV worth the sum of N27,000.00 (Twenty-Seven Thousand Naira Only).**

**b) A standing fan worth the sum of N14,000.00 (Fourteen Thousand Naira Only).**



- c) An electricity stabilizer worth the sum of N25,000.00 (Twenty-Five Thousand Naira Only).**
- d) A TV stand worth the sum of N5,500.00 (Five Thousand and Five Hundred Naira Only).**
- e) A DVD player that costs N6,500.00 (Six Thousand, Five Hundred Only).**

**13. I immediately reported the incident at the Naval Police Office of the Mogadishu Cantonment Abuja where my statement was taken and asked by the officer in charge, one Captain Zubairu that the matter will be looked into.**

**14. I waited for an action to be taken against the Defendant by the Nigerian Navy to no avail which precipitated me briefing my solicitors, Messrs Path Solicitors.**

**15. My solicitors, Messrs. Path Solicitors, wrote a demand for an action to the Nigerian Navy on the**

*attack on me by the Defendant on the 30<sup>th</sup> May 2018.*

*16. The Nigerian Navy failed or neglected to take any action against the Defendant till date.”*

To further support his case, the Claimant tendered in evidence as **Exhibit C1**, original receipt of purchase of the properties he listed in paragraph 12 of his Statement on Oath. The Claimant further tendered as **Exhibit C1A**, receipt of purchase of the Itel mobile phone he made reference to in paragraph 12 of his Statement on Oath. For the gold necklace he made reference to in paragraph 10 of the Statement on Oath, the Claimant tendered the receipt of purchase in evidence as **Exhibit C1B**.

In order to support his claim of having spent the sum of **₦146,000.00** as hospital bill upon being treated from injuries he allegedly suffered from the beating

he received at the hand of the Defendant, the Claimant tendered in evidence as **Exhibit C2, Claims Form** issued to him on 13<sup>th</sup> March, 2018, by **God's Grace Foundation Health Centre**, Lugbe, Zone 8, Abuja, which disclosed that he was attended to by a doctor and was charged the sum of **₦146,000.00** for hospital treatment.

The Claimant further tendered as **Exhibit C3**, letter of petition said to have been written on his behalf by his Solicitor against the Defendant to the Provost Marshall, Nigeria Navy Headquarters, Abuja, together with the evidence of courier delivery.

The Claimant also tendered in evidence as **Exhibits C4** and **C4A** respectively, pictorial evidence of the alleged damage to his door, window and some properties in his room, alleged to have been damaged by the Defendant.

Now, could it be said that the uncontroverted evidence adduced by the Claimant is credible enough to entitle him to his claim before the Court?

Assault and battery is defined in the authority of Taiwo vs Ademuwagun [2014] LPELR- 41110(CA), where the Court, adopting the definition of the learned authors of Clerk & Lindsell on Torts, held as follows:

***“Assault” is nothing more than a type of trespass to person. Para. 15-01 on pages 877 - 878 deals with “Trespass to the person” and it is stated thereat thus:***

***“The fundamental principle, plain and incontestable, is that every person's body is inviolate. Interference, however slight with a person's elementary civil right to security of the person, and self-determination in relation to his own body constitutes trespass to the person. Trespass to the person may take three forms, assault, battery and false imprisonment. “An assault***

***is an act which causes another person to apprehend the infliction of immediate, unlawful force on his person". A battery is the actual infliction of unlawful force on another person..."***

The evidence of the Claimant with regards to the bodily injury allegedly inflicted on him by the Defendant is clearly in tandem with the definition ascribed in law to physical assault.

Again, the standard of proof of the allegation of assault was equally reaffirmed by the Court of Appeal in *Esi Vs. CNPCP/BGP International & Anor.* [2014] LPELR-22807(CA), where it was held by **Ogunwumiju, JCA** (now **JSC**), as follows:

***"I am amazed that the learned trial judge has allowed the argument of learned Respondent's counsel to becloud him to forget that assault can be both a civil and criminal wrong. Assault is a civil tort for which the aggrieved person is entitled to***

***damages. Proof in civil matters is on a balance of probabilities. Assault or battery in civil matters involves inflicting some degree of force on a person negligently or intentionally. In this case, the Appellant's claim that the 2nd Respondent pushed him out of his office and ordered mobile policemen to push him out of the camp. There is no evidence on record to contradict that statement of the Appellant. He claimed that by the act of the Respondents, he felt degraded, dehumanized and insulted in the presence of the other contractors. In this case, since none of the Respondents' witnesses denied what occurred, the Appellant need only adduce minimal evidence which must be accepted by this court. See Egbunike & Anor. V. African Continental Bank Ltd. (1993) 2 NWLR Pt. 375 Pg. 34; Buraimoh v. Bamgbose (1989) 3 NWLR Pt. 109 Pg. 352."***

In the instant case, could it be said that the uncorroborated testimony of the Claimant alone that

the Defendant assaulted him on 28 February, 2018, is sufficient to prove his claim before this Court; despite the unchallenged nature of such testimony?

By my assessment of the evidence on record, it seems to me that there is a fundamental gaping hole that the Claimant failed to fill in order to properly cement his testimony. It is not the case of the Claimant that he was assaulted by an unknown attacker or that he was robbed by an armed robber. As such, it was incumbent on him to give evidence as to the form of relationship that existed between him and the Defendant prior to the occurrence of the incident, that could have precipitated the attack. The impression given by the Claimant, from his account of the incident, is that the Defendant came from nowhere to attack him in his house without any reason whatsoever, thereby making his testimony vague and less believable; even in the absence of any denial. In

my view, the Claimant's evidence did not follow the natural or expected sequence that would have made his story credible.

The Claimant testified in paragraph 7 of his Statement on Oath that he was severely beaten by the Defendant and that it took the intervention of neighbours and passers-by for him to be saved from the hands of the Defendant. The case of the Claimant would have been more credible if he had invited one of such neighbours to testify as to what he/she witnessed on the date in question.

I have again examined **Exhibit C3**, the letter purportedly written by the Claimant's Solicitors to the Defendant's supposed employers, to protest the alleged attack. Nowhere in the document did the relationship between the two parties was made clear. The letter went further to paint the picture of a



robbery attack rather than a case of assault. More importantly, the Claimant failed to lead conclusive proof as to the true identity of the Defendant. The fact that he was alleged to have wore military camouflage and held a military knife, as alleged, is not conclusive proof that the Defendant is a Naval personnel, as alleged. I so hold.

As such, in the absence of evidence of the missing link as to the relationship between the Claimant and the alleged attacker from which the Court would have been afforded the opportunity of an inference as to the reason behind the alleged assault, has rendered the totality of the Claimant's case incredible. I so hold.

Going further, I note that the Claimant equally tendered in evidence as **Exhibit C2** a document that contains three sub-heads captioned – “**Claims Form**”, “**Clinical Information**” and “**Treatment.**” The

column for the “**Name of Doctor in Charge of Case**” has the name of one “**Dr. Wisdom**” written in long hand across the same. The document was equally stamped and signed.

In my view, the only person that could have given credible evidence relating to this essential documentary evidence was the maker or the said doctor, who is stated thereon to have attended to the Claimant. In the absence of the said doctor, the Court would ascribe no credibility whatsoever to this document whose content seems crucial to the case of the Claimant. I so hold.

The position of the law with respect to uncontroverted or unchallenged evidence was reiterated by the Court of Appeal in Archibong vs Utin [2012] LPELR-7907(CA), where it was held, per **Garba, JCA** (now **JSC**) as follows:

***“It is not the law that the Court must at all times accept and use unchallenged and uncontroverted evidence, hook, line and sinker, to, as a matter of course, enter judgment for a party giving the evidence. The Court still has the duty to assess such evidence along with the claim made in respect of which it was given and be satisfied of its credibility and sufficiency to sustain the claim, in law. In the case of Adalakun vs Oruku [2006] All FWLR (Pt. 308) 1360 at 1373, it was held that:- “The proposition that when evidence is uncontroverted and unchallenged, it must be accepted in proof of the issue in contest is applied only when the evidence itself is credible.” See also IFEANYICHUKWU CO. LTD. V. AKHIGBE (1999) 11 NWLR (625) 1; IYERE V. B.F.E.M. LTD. (2008) 18 NWLR (1119) 300 at 341-2; INIAMA V. AKPABIO (2008) 17 NWLR (1116) 225.”***

In the final analysis, the conclusion of this Court is that even though the Claimant's testimony is uncontroverted, the totality of the testimony is not satisfactory enough to establish the credibility of the Claimant's case. Having therefore failed to properly establish his case of physical assault against the Defendant, the Claimant's claim for damages must equally fail.

The overall result is that the instant suit is unmeritorious. It shall be and it is hereby accordingly dismissed.

**OLUKAYODE A. ADENIYI**  
**(Hon. Judge)**  
**29/09/2022**

**Legal representation:**

**K. O. Abdulkareem, Esq. (with O. O. Oyeniran (Miss)) –**  
*for the Claimant*

Defendant unrepresented

