

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON MONDAY THE 12<sup>TH</sup> DAY OF SEPTEMBER, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV//2018**

**BETWEEN:**

**EZEH JOSEPHINE CHINEDU           -----           CLAIMANT**

**AND**

**BWARI AREA COUNCIL           -----           DEFENDANT**

## **JUDGMENT**

On the 7<sup>th</sup> day of August, 2018 the Plaintiff filed this Suit.

In the case, Ezech Josephine Chinedu instituted this action against Bwari Area Council claiming the following:

- (1) Payment of Four Million, Seven Hundred and Thirty Six Thousand, Four Hundred Naira (₦4, 736,400.00) as special damages and/or statutory compensation against the Defendant for the irredeemable damages/injuries/losses suffered.**
- (2) Seventy Five Million Naira (₦75, 000,000.00) as General Damages.**

- (3) 6% Interest on the sum in prayer (1) from 27<sup>th</sup> February, 2018 till day Judgment is delivered.**
- (4) 10% Interest on the Judgment sum from the date of Judgment till its final liquidation.**
- (5) Two Hundred Thousand Naira (₦200, 000.00) as cost of the Suit.**
- (6) Omnibus prayer.**

The Defendant was served the Originating Processes and Hearing Notices. They field a Counsel. But after some time the Counsel stopped coming to Court. The Court served the Defendant directly, though continued to serve the said Counsel with Hearing Notice all the days the matter was scheduled. Since Court cannot wait in perpetuity it foreclosed the Defendant based on the application of the Plaintiff Counsel. See the Ruling on the Foreclosure which is deemed as if set out here seriatim. The Court and the Plaintiff/Plaintiff Counsel waited for the Defendant to file Statement of Defence or Final Written Address, it did not do so.. The Plaintiff Counsel filed its Final Written Address. She came to Court to adopt same after it had served the Defendant.

On the said day, a young man and announced appearance for the Defendant. Meanwhile, he has no Notice of Change of Counsel and did not make any application orally to that effect. The Court having nothing to adjourn the case to as there is no evidence to show Counsel on record is no longer in the matter and that there is a Defendant's Statement of Defence, the Court further in a Ruling urged the Plaintiff

Counsel to move and adopt its Final Written Address. The said Ruling of 7<sup>th</sup> July, 2022 referred to and is hereby deemed as if same is set here seriatim. The Plaintiff Counsel adopted the Final Written Address which was duly served on the Defendant. So this Judgment is based on the pleading, evidence and testimony of the PW1, the Plaintiff in this case. It is imperative to state that the Defendant Counsel was in Court the day the PW1 testified. He sought for adjournment for Cross-examination of the PW1, the Court obliged him that. But he never came to Court till date to Cross-examine the said PW1. No reason given. That is the reason upon which the foreclosure was predicated.

It is the case of the Plaintiff that the Defendant refused to compensate the Plaintiff for the goods lost in the fire incident of 25<sup>th</sup> December, 2017. The Defendant also refused to produce details of evidence of insuring the said shop occupied by the Plaintiff which was wrecked by fire incident at Bwari Market on the 25<sup>th</sup> day of December, 2017. The Plaintiff, like several other allottees of the market, lost their goods in the fire incidence and suffered and was subjected to an untold hardship as a result of that fire incidence. She made several abortive attempts through several means to get the Defendant do the needful in the circumstance. Rather than come to her rescue, the Defendant gave the Plaintiff and other victim of the fire incident an ultimatum to vacate the premises – Bwari Market.

To the Plaintiff, the Defendant being the Allocator and Owner of the market ought to have insured the said market against unforeseen natural disasters like fire and flood. But they failed to do so. Hence this Suit was instituted to seek redress.

The Plaintiff called one (1) Witness who testified before the Court and the Defendant's Counsel. She tendered documents marked as **EXH 1 - 5**. The Exhibits are Letter of Allocation, Letter of Demand for Compensation and Insurance Policy if any by the Bwari Market Owners Association, Receipt of Payment of Legal Fees from Peace Ambassador Law Office, Two (2) Receipts for purchase of goods and another Letter of Demand/Pre-Action notification written by the same Peace Ambassador Law Office for and on behalf of the Plaintiff warning the Defendant that she will seek redress in Court if her demands are not met. All these documents, **EXH 1 - 5** were tendered and not challenged and were admitted as Exhibits in the presence of the Defendant's Counsel.

On the 7<sup>th</sup> of August, 2018 the Defendant was served. It filed no Defence. They filed some applications but abandoned them. There were several adjournments at the instance of the Defendant.

In the Final Written Address the Plaintiff raised an Issue for determination which is”

“Whether the Plaintiff has discharged the evidential burden placed on her to be entitled to her claims as sought in this Suit?”

She answered in the affirmative that she has adduced more than enough evidence to be entitled to her claim by preponderance of evidence which was not discredited and in accordance with the provision of **S. 131 (1) of the Evidence Act 2011.**

That the Plaintiff asserted and proved and discharged the onus imposed on her showing that those facts exists. He referred to the cases of:

**Ojoh V. Kamalu**  
**(2005) LPELR – 2389 (SC)**

**Finger Agro Industrial Enterprise Limited V. Yusuf**  
**(2003) 12 NWLR (PT. 35) 488**

That the Plaintiff had testified and tendered documents to prove their case. That the Defendant did not discredit or challenge the evidence adduced by the Plaintiff. He urged the Court to grant her Reliefs having proven her case.

That the Defendant entered appearance but did not Cross-examine the Plaintiff when she testified. The evidence was not contradicted or controverted. The Defendant has therefore admitted the Plaintiff’s claims having not filed any Statement of Defence and lead evidence at the trial. See the cases of:

**Ege Shipping & Trading Incorporation & Ors V. Tigris International Co-operation  
(1999) 14 NWLR (PT. 673) 70**

**Bauchi State Government V. Gumau & Anor  
(2019) LPELR – 47061 (CA)**

That the Plaintiff is entitled to be compensated by the Defendant as evidence from the detailed argument canvassed in favour of the Plaintiff are as contained in the pleadings coupled with the documentary evidence tendered.

**COURT**

It has been reiterated in the decisions of our Courts that unchallenged, uncontroverted, undebunked and unrebutted facts are deemed admitted. Moreso, when the person who ought to do so was given all the judicial leverages to do so but failed, refused, neglected and ignored to do so. That is exactly the fact of the Defendant in this case. It was served with the Originating Processes filed by the Plaintiff. Its Counsel was in Court the day the PW1 testified and tendered documents. He did not challenge those facts. He did not file any Statement of Defence. He did not Cross-examine the PW1. It never gave any reason for doing so. This Court holds that the claim of the Plaintiff is unchallenged and facts uncontroverted having been established by the testimony, pleading and documents tendered in evidence by the Plaintiff through PW1. Even as I read this Judgment, those facts have been and remain unchallenged. Even when the Defendant presented a

gentleman who announced appearance for it though belatedly and without locus having not filed any Notice of Change of Counsel and Statement of Defence or even Final Written Address. That is why this Court holds that the case of the Plaintiff is unchallenged and the facts upon which the claims are predicated are not just deemed admitted but are all indeed admitted having not been challenged or controverted in any way. Besides, the Defendant has all the judicial leverages to challenge same but failed, neglected, ignored and refused to do so even without reason. The Plaintiff have indeed established and proved its case on the preponderance of her evidence and testimony.

Once a person claims Special Damages, he/she must make sure that the Special Damages is specifically pleaded. This must be followed by particulars of such damages specifically stated and fully pleaded. So to succeed on claim of Special Damages, the Claimant must plead and put in details the particularities of the Special Damage. That is, the property which was damaged. Anything less will make the Court hold that the Claimant is not entitled to such claim of Special Damages.

In this case, the Claimant specifically pleaded Special Damages in both her Witness Statement on Oath and Statement of Claim. She specified all the items that were destroyed in the inferno that gutted the Bwari Market. She itemized them and stated the price and quantity of each of the items in paragraph 59 of her Statement of Claim. In her claim at page 8, 10 & 11 of her Statement of Claim as well

as in paragraph 59 & 60 of her Witness Statement on Oath at page 8. She attached receipt of purchase of the said goods and it was admitted as EXH 4 (a – b).

It is the law that to succeed on a claim of Special Damages, that it is incumbent on the Claimant to state and attach where available evidence of purchase of the goods. The Plaintiff did so in this case and that further makes this Court hold that the Plaintiff established the specifically pleaded Special Damages to those goods. She is therefore entitled to the Special Damages having proved same in this case.

Going by EXH 1, it puts no one in doubt that the Plaintiff was legally and legitimately allocated the shop. It means that she did not force her way into the Res. She did not get into the Res by hook or crook. As shown in **EXH A – Letter of Allocation**, it was issued to the Plaintiff by the Defendant' Department of Finance and Supply on the **26<sup>th</sup> August, 2014** in her own name. The Allocation was for the sale of provisions. She did not reallocate, transfer or sign the allocation to any other person. She paid her Charges/Admin Fees as well as monthly Rented Fees as at when due. She did not carry out any other business aside from sell of provision in the said Open Store. See the receipts for the purchase of goods which were destroyed, she attached as **EXH D1 – D2** and also as listed in the attached document on the Letter of Demand.

It is not in doubt that the store No. 103 at Bwari Market was destroyed by the said fire incidence. The Letter of



Demand of **25<sup>th</sup> January, 2018** refers. So also the Letter of 23<sup>rd</sup> February, **2018 – EXH E**. From all indication, the Plaintiff abided by the terms and condition of the Allocation. Unfortunately, she lost her goods in the inferno.

As a law abiding citizen she reached out to the Allocator of the shop which is the Defendant in this case through **EXH B – Letter of 25<sup>th</sup> January, 2018** barely a month after the fire incident through the umbrella “Body of Shop Owners” to which she is a strong financially up to date member. In the letter, she, like other affected members of the Association as shown in **EXH B** where the members stated thus:

**“We have added the mandate of our members to write to you (the Chairman of the Defendant) as follow ....”**

By the above, the Plaintiff is covered by the said letter of 25<sup>th</sup> January, 2018 – **EXH B**. In the letter, she by proxy voiced out her grievances and utter displeasure. She also expressed her expectation and demand too. Like other members, she demanded for compensation as shown in the letter at paragraph 3.0 (c).

**“We hereby remind you that duty calls on .... Bwari Area Council ... to do the needful .... So as to process the compensation and support we and the traders deserve.”**

The above need no further elucidation. Again, in the last paragraph of the said **EXH B**, the Plaintiff demanded for

the disclosure of the details of the Insurance Policy for the said stalls and shops destroyed by fire.

**“We ... demand from you ... Bwari Area Council the immediate disclosure and release of the details and particulars of the Insurance Firm and Policy(ies) within which the said shops and stalls are insured.**

The above showed clearly that there was demand for the details of the Insurance Policy on the store and stalls one of which was allocated to the Plaintiff and which was destroyed by the inferno along with the goods of the Plaintiff as shown in the Receipts evidencing purchase of the goods and as listed in the document attached to the letter of 23<sup>rd</sup> February, 2018 which is another Letter of Demand by the Plaintiff and other traders who lost their wares in the fire incident. See **EXH E – Letter of 23<sup>rd</sup> February, 2018**. From the face of the EXH E, the Defendant received the letter on the 27<sup>th</sup> day of February, 2018 going by evidence of the stamp from the office of the Defendant.

In the said **EXH E**, the Plaintiff demanded for the payment of the sum of Four Million, Seven Hundred and Sixty Three Thousand, Four Hundred Naira (N4, 763, 400.00) as compensation and Insurance Benefit for the damages/loss of her goods on the 25<sup>th</sup> December, 2016 fire incident at the Bwari Market. It was also a Pre-action Notice.

From the letter, she had stated that renewed her allocation of the shop barely 2 years before the fire incident.

Meanwhile, the renewal is every 5 years. This shows that as at the time of the fire, the Plaintiff was up to date with her allocation having renewed same barely 2 years before and as such her allocation is still very valid and subsisting. Her action is proper and she is right in seeking this redress in Court.

Again, she demanded for payment of Special Damages and Statutory Compensation against the Defendant for the irredeemable damage/injury/loss suffered by the Plaintiff and General Damages too. She attached documents to establish that claim. The document is **EXH 4** – 2 Receipts evidencing the purchase of goods which were destroyed in the inferno. Those receipts put no one in doubt about her claim.

It is the law that any claim of Special Damages must be pleaded and material evidence tendered. The Plaintiff did that in this case. Those documents were served on the Defendant and they did not challenge same.

It is imperative to reiterate that undebunked, unchallenged facts and evidence material and otherwise are deemed admitted for as long as they are unchallenged; moreso, when the party who ought to challenge same was given all the judicial leverages to do so. That is exactly what happened in this case. The Court accords all the judicial weight to the said **EXH 4**. A closer look at the dates in the 2 Receipts – 20<sup>th</sup> November, 2017 and 23<sup>rd</sup> November, 2017 shows that those purchase were made before the fire incident. The Plaintiff had demanded that the Defendant

give/furnish her with evidence of Insurance of the market stall/open store in her letter of 23<sup>rd</sup> February, 2018. Till date, the Defendant refused to respond to the letter which it received on the 27<sup>th</sup> February, 2018.

It is the law that:

**“Every Public building SHALL be insured with a registered Insurer against the hazard of fire, earthquake storm and flood, (by the owner of such public building).”  
(Emphasis mine)**

See S. 65 (1) Insurance Act 2013.

In the terms and condition in the Allocation paper, the **Exhibit 1 paragraph 8** indicated that the Defendant is the owner and remain the owner of the store. See Exhibit 1 paragraph viii.

**“The facility shall remain the property of the Area Council despite your improvement.”**

By the provision of S. 65 (1) of the Insurance Act 2013, the Defendant is obligated to insure or ensure that the Building – Open Store was insured against fire storm, flood and the like. In this case, the Plaintiff only demanded to know the Insurer that insured the Building and the presumed that the Building was insured and had demanded details of the Insurance so that she can forward her claims to be processed. She had attached the analysis of her claims and the summarization too as calculated and analyzed.

The document was attached to **EXH 4** as tendered in this case. The calculation does not include the stall. It only covers the goods destroyed in the fire incident.

She has also established that she had suffered great losses as a result of the loss of the open store which was destroyed by fire and was yet to be repaired. Obviously, she had suffered some losses in her earnings and has been out of business too. Meanwhile, her rent was accruing and she has renewed her allocation barely 2 years earlier.

In the said **EXH 4**, she had not only demanded for the insurance details but had demanded that if the Defendant failed to heed to her demand, she will resort to taking legal action. Hence this Suit which had remained unchallenged by the Defendant.

From all the above, it is clear that the Plaintiff established her case. She tendered 5 documents. She testified in Court as PW1. She pleaded the Special Damages and established and backed her claims with documents – receipt evidencing the purchase of the goods destroyed in the fire incident.

It is the law that a party that claims Special Damages must plead same and support same with document/material evidence. The Plaintiff did so in this case. She ensured that the Defendant was served. She demanded to get the details of the Insurance. She wrote through the Association of Members of Stall/Store Owners/Allottees on the 25<sup>th</sup> January, 2018 and 23<sup>rd</sup> February, 2018. All these documents were attached. She ensured that the Defendant

was served. She sued as she showed in the Pre-action Notice served on the Defendant on 27<sup>th</sup> February, 2018. She ensured through her Counsel that the Defendant was served the Originating Processes and Hearing Notices too. The Defendant on their part refused, failed and ignored to defend the Suit. This Court holds therefore that the Suit of the Plaintiff is and remains unchallenged by the Defendant or anyone. She had established her case in the main. She had established and proved the Special Damages. She deserves the Judgment of this Court in her favour. From all indication, her case is meritorious. Again, the injury complained of is continuous as she had ever since the destruction of her wares suffered great financial losses.

Again, she had attached evidence of cost of the payment the legal fees she paid to her lawyer – Two Hundred Thousand Naira (₦200, 000.00) as shown and admitted as **EXH 5**.

This Court therefore grants the claims to wit:

*Prayer 1 granted.*

*Prayer 2: the Defendant to pay the Plaintiff the sum of One Hundred and Fifty Thousand Naira (₦150, 000.00) as General Damages.*

*Prayer 3: the Defendant to pay 3% interest on the sum as claimed in prayer 1 – Four Million, Seven Hundred and Sixty Three Thousand, Four Hundred Naira (₦4, 763, 400.00) only from 27<sup>th</sup> February, 2018 till date of this Judgment.*

*The Defendant is also to pay to the Plaintiff 4% interest on the Judgment sum from date of Judgment till final liquidation.*

*The Plaintiff should bear the cost of her Solicitor's fee.*

**This is the Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2022 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE