

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 27<sup>TH</sup> DAY OF OCTOBER, 2022.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**

**SUIT NO.:-FCT/HC/CV/2557/18**

**BETWEEN:**

**REGISTERED TRUSTEES OF KUJE MAIN  
MARKET TRADERS PROGRESSIVE ASSOCIATION } ..CLAIMANT**

**AND**

**1) THE EXECUTIVE CHAIRMAN,  
KUJE AREA COUNCIL.  
2) ALHAJI MUSA UMAR GEJEREN KURE.  
3) MR. ANIEKWE FRANCIS. } :.....DEFENDANTS**

Francis C. Ani for the Claimant.  
Josiah AyubaGata for the 1<sup>st</sup> Defendant.  
2<sup>nd</sup> and 3<sup>rd</sup> Defendants unrepresented.

**JUDGMENT.**

The Claimants brought this suit against the Defendants vide a Writ of Summons dated and filed the 13<sup>th</sup> day of August, 2018, wherein they claimed as follows;

1. A declaration that the Claimants having been properly registered as incorporated trustees, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have no powers whatsoever to demand that the Claimants should not operate and/or carry on their activities in their registered name.
2. A declaration that the Claimants, having been properly registered as incorporated trustees, the 1<sup>st</sup> Defendant has no power whatsoever to direct that the Claimants should not operate and/or carry on their activities in their registered name.

3. A declaration that the 1<sup>st</sup> Defendant has no powers whatsoever to dissolve the executive committee/leadership of the Claimants, to impose the leadership of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the Claimants and to force members of the Claimant association against their wishes to belong to an association to which they never belonged and do not want to belong to.
4. A declaration that the 1<sup>st</sup> Defendant has no powers to meddle or interfere in the affairs and leadership of the Claimant and in particular, to determine for the Claimants who their leaders and members of their executive committee shall be.
5. A declaration that the decision of the 1<sup>st</sup> Defendant taken on 26 June, 2018 wherein he announced the disbandment of the Claimant association, is null and void.
6. A declaration that the decision of the 1<sup>st</sup> Defendant taken on 26 June, 2018 wherein he announced the dissolution of the executive committee of the Claimants, forced members of the Claimants to become members of Kuje Traders Association against their wishes, and imposed the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as the Chairman and Secretary respectively, on the Claimants, is ultra vires his powers, null, void and of no effect whatsoever.
7. An order of perpetual injunction restraining the 1<sup>st</sup> Defendant from meddling and interfering in the activities, affairs, administration and leadership of the Claimants.
8. An order of perpetual injunction restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from parading themselves as Chairman and Secretary respectively, of the Claimant association.
9. General damages in the sum of N30,000,000.00 (Thirty Million Naira) against the 1<sup>st</sup> Defendant for this unlawful interference in the affairs of the Claimants association and

for the unlawful dissolution of the leadership of the Claimant association.

10. General damages in the sum of N10,000,000.00 (Ten Million Naira) against the 2<sup>nd</sup> Defendant 3<sup>rd</sup> Defendants jointly and severally, for their unlawful disruption of the affairs of the Claimant association and for illegally parading themselves as Chairman and secretary, respectively, of the Claimant association.
11. Cost of this action in the sum of N500,000.00 (Five Hundred Thousand Naira).
12. 21% post judgment interest on the judgment sum from the date of judgment till final liquidation.

The case of the Claimants, as distilled from the statement of claim, is that they were duly registered as an association by the Corporate Affairs Commission on 16<sup>th</sup> March, 2017 and that ever before their incorporation, uptill the time of their incorporation, they have been law abiding, submissive to lawful and constituted authorities.

They averred that their activities include holding monthly meetings at Kuje Main Market where their members own or rent shops as well as carrying out other social responsibility programmes like carrying out sanitation exercise in the market, during which they usually apply to the Nigeria Police, Kuje division, for protection.

The Claimants averred that a time came that the 2<sup>nd</sup> Defendant who has no shop in Kuje Main Market, and the 3<sup>rd</sup> Defendant who has shop at Block 14, Shop 10, Kuje Main Market, both of whom are not members of the Claimant association, began to use thugs to harass members of the Claimant and to stop them from holding their meetings.

That things came to a head when one of the Claimants' trustees and chairman of the association, Mr. Christopher Chukwu, received a letter dated 21 June, 2018, inviting him to a meeting in the office of the 1<sup>st</sup> Defendant on 26 June, 2018.

They averred that at the said meetings, the 1<sup>st</sup> Defendant, even without listening to the Chairman of the Claimant, or affording him the opportunity to make representations at the meeting, and after listening to the 2<sup>nd</sup> Defendant state his case, directed that the Claimants should not operate anymore in their registered name as he did not give them permission to register the association in that name. That the 1<sup>st</sup> Defendant further announced the disbandment of the Claimant association and its executive committee, together with another association called Kuje Traders Association, which is a registered association for Traders who own or rent shops or kiosks on the street of Kuje. Also, that the 1<sup>st</sup> Defendant announced that both associations shall now be known as Kuje Traders Association, under the chairmanship of the 2<sup>nd</sup> Defendant.

The Claimants averred that being dissatisfied by the decisions and directives made by the 1<sup>st</sup> Defendant, they briefed their solicitors, who wrote a letter to the 1<sup>st</sup> Defendant demanding that he reverse his decisions as he has no powers to take the said decisions. That the 1<sup>st</sup> Defendant, after receiving the Claimants' solicitor's letter, has neither complied with the demands made on him in the letter, nor even responded to the said letter. The Claimants averred that since the 1<sup>st</sup> Defendant announced the disbandment of their association and its executive council and directed that they should not hold meetings again, with a threat to deal with them with the full powers of his office should they go ahead and hold any meetings, coupled with the fact that the 2<sup>nd</sup> Defendant, who does not have shop inside KujeMain Market and is also not a

trader, goes about with thugs harassing and intimidating people with the full knowledge of the 1<sup>st</sup> Defendant, they have not held meetings of the association again. That their inability to hold their meetings owing to the directive and threats issued by the 1<sup>st</sup> Defendant and the notoriously violent disposition of the 2<sup>nd</sup> Defendant, is gravely hurting the business and welfare of members of the Claimant association who benefit from soft grants given from time to time by the association to support the businesses of such traders/members who are certified to be in need of such grants.

The Claimants further averred that their only source of income as an association, is the monthly dues and donations paid by members of the association, and that following the disbandment of the association, the association has not been able to collect these dues and donations, which has in turn, hurt the finances of the association and derailed the execution of projects and other corporate social responsibilities that the association usually embarks upon from time to time. That their members are presently disillusioned as they do not know what has become the fate of the association, which they registered and have nurtured to grow to the point that it was able to meet the needs of its members.

At the hearing of the case, the Chairman of the Claimants, Mr. Christopher Chukwu, gave evidence for the Claimant. Testifying as PW1, he adopted his Witness Statement on Oath wherein he affirmed the averments in the statement of claim. He also tendered the following documents in evidence:

1. Certificate of Incorporation – Exhibit PW1A.
2. Letter of Notification to the Police of the Claimants existence – Exhibit PW1B.
3. Request for Police Protection – Exhibit PW1C.

4. Petition Complaint of Criminal Intimidation (NANATS) – Exhibit PW1D.
5. Petition Complaint of Criminal Intimidation (COP) – Exh. PW1E.
6. Letter of Invitation – Exhibit PW1F.
7. Re: Your Directive Disbanding Kuje Main Market Traders Progressive Association – Exhibit PW1G.
8. DHL Waybill – Exhibit PW1H.
9. Certificate of Compliance – Exhibit PW1J.

Following the failure of the Defendants to attend Court to cross examine the PW1 on the date the matter was adjourned for cross examination, their right to so cross examine the PW1 was foreclosed on the Claimants' application.

In defence of the suit, the 1<sup>st</sup> Defendant filed a statement of defence dated 22<sup>nd</sup> September, 2020 and filed the 23<sup>rd</sup> day of September, 2020.

The 1<sup>st</sup> Defendant denied knowledge of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, stating that they are neither staff nor political appointees of Kuje Area Council, and that the 1<sup>st</sup> Defendant never at any time imposed 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as Chairman and Secretary respectively of the Claimant association.

The 1<sup>st</sup> Defendant averred that the only thing that ordinarily connects the Claimant, other traders associations (including the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants), and the 1<sup>st</sup> Defendant, is levies and taxes imposed by Kuje Area Council, under the relevant laws on traders doing one business or the other within the territory of the council, and nothing more.

It was further averred by the 1<sup>st</sup> Defendant that the Claimant has always ridden on the back of the operation of business permit levy exemption granted it by Kuje Area Council to report suspected unauthorized levies/rate collection in the market to

the 1<sup>st</sup> Defendant through Green House International ventures (believed to be the agent of Kuje Area Council in charge of remodelling the Kuje Main Market), and who had always waded into such matters reported.

It stated that prior to the year 2016/2017 when factional trader associations (including the Claimant) emerged as a result of a fierce leadership tussle, all traders and shop owners (including those who own shops inside Kuje Main Market and in the streets), existed and operated in Kuje Area Council under a single association known as the Kuje branch of the parent body, National Association of Nigerian Traders (NANTS Abuja chapter).

That at the time the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants applied to 1<sup>st</sup> Defendant in January, 2017, for registration as a club/association, and certificate issued to it to operate within the territory of Kuje Area Council for the year, 2017, the Claimant was not in existence and the 1<sup>st</sup> Defendant could not have been picking one side of the various trader associations over the other(s). That when it got to the knowledge of the 1<sup>st</sup> Defendant, that the Claimant, a factional association to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant group, has been created and registered at the Corporate Affairs Commission, the 1<sup>st</sup> Defendant, instructed the H.O.D, Education & Social development, that the recognition earlier given to the traders association of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants vide the year 2017 registration, should not be renewed to avoid being seen as supporting or picking one side over the others in the power/leadership tussle that has rocked the trader associations in Kuje Area Council.

The 1<sup>st</sup> Defendant averred that on 20<sup>th</sup> July, 2017, NANTS-Abuja Chapter, served on it a letter dated 18<sup>th</sup>, July, 2017, drawing its attention to an imminent breach of public peace and threat to life within the Kuje Main Market and its environs. That

the 1<sup>st</sup> Defendant acting swiftly on the said letter, sent a letter to the various factional leaders of the trader associations inviting them for a peace meeting at its office on Tuesday, 8<sup>th</sup> August, 2017.

The 1<sup>st</sup> Defendant stated that at the said meeting, in the spirit of fairness, it gave room to each faction to state their side of the story and that the meeting ended that day on a friendly note with the various factional leaders (including the Claimant's Chairman) orally promising that they would sheathe their swords and ensure they work and coexist together.

The 1<sup>st</sup> Defendant admitted writing a letter dated 21<sup>st</sup> June, 2018 to the Chairman of the Claimants, stating that the meeting to which the Claimants Chairman was invited to was called to find a lasting solution to the continued and unending ruckus and hostility amongst the various factional trade associations over the secession of the Claimant herein and another trader association called Kuje Traders Association in 2017 from the NANTS-Kuje Branch, which was heightened on 20<sup>th</sup> June, 2018, the day Kuje Traders Association allegedly commissioned its purported Secretariat.

The 1<sup>st</sup> Defendant averred that when it saw first-hand the factional leaders' continuous hostility towards one another at the meeting that held on 26 June, 2018, coupled with their failure to keep to their earlier promise at the meeting of 8<sup>th</sup> August, 2017 to go back and co-exist peacefully, the 1<sup>st</sup> Defendant directed a suspension on the activities, and not a ban of the Claimant and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants within the Kuje Main Market in order to abate the nuisance the factional trader associations have posed to residents of Kuje since the secession of the Claimant and Kuje Traders Association from NANTS-Kuje Branch.

The 1<sup>st</sup> Defendant maintained that there was never a time where it disbanded the Claimant and Kuje Traders Association and asked their members to go and register with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' group.

The 1<sup>st</sup> Defendant averred that it did not respond to the Claimant Solicitor's letter, because, aside the fact that the said letter was replete with lies and distortion of what actually transpired during the meeting that held on June, 26, 2018, from the tenor of the letter, it is only a demand by the Claimant's solicitor for a reversal of the purported disbandment and nothing more, as such, same did not by any stretch of imagination, require any response from the 1<sup>st</sup> Defendant.

Furthermore, that even after the meeting of June, 26, 2018 where the 1<sup>st</sup> Defendant was alleged by the Claimants to have disbanded their activities, the Claimant association has always held its meetings notwithstanding and its members till date, still enjoy the operation of business permit levy exemption granted to the Claimants by Kuje Area Council.

One Baba A. DugaMukailu, the Market Manager in the Finance Department of the 1<sup>st</sup> Defendant gave evidence for the 1<sup>st</sup> Defendant. He adopted his witness statement on oath as he testified as DW1, wherein he affirmed the averments in the 1<sup>st</sup> Defendant's Statement of Defence. He also tendered the following documents in evidence:

1. CTC of Departmental Receipts – Exhibit DW1A to A4.
2. General Notice – Exhibit DW1B.
3. CTC of Account Statement – exhibit DW1C to C1.
4. CTC of letter of Application for Appointment – Exhibit DW1D.
5. CTC of Update on Year 2020 Revenue collections – Exh DW1E.

Under cross examination, the DW1 told the Court that he did not know one Alh. AbubakarAlmustaphaZuwaida, who signed the letter, Exhibit PW1F, inviting the PW1 to a meeting at the office of the Chairman of Kuje Area Council on 26/6/2018. He further stated that he was not present at the said meeting.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in this matter filed a memorandum of appearance and a joint statement of defence, but that was about all the steps they took in respect of this case. They failed to take part in the proceedings before the Court notwithstanding due service of hearing notices on them, and thus failed to lead any evidence in support of their joint statement of defence.

Accordingly, the rights of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to defend the suit were foreclosed on the application of the Claimants. Their joint statement of defence, having been abandoned is therefore, discountenanced by this Court.

At the close of evidence, the Claimants and 1<sup>st</sup> Defendant filed and exchanged final written addresses, which they adopted before the Court on the 26<sup>th</sup> day of September, 2022.

In his final written address, the learned counsel for the 1<sup>st</sup> Defendant, Iyede A. Joshua, Esq, raised a sole issue for determination, to wit;

***“Whether on the strength of the pleadings and the evidences (sic) before this Honourable Court, the Claimants are entitled to the reliefs claimed in this suit?”***

Proffering arguments on the issue so raised, learned counsel relied on **Dumez Nig. Ltd v. Nwakhoba (2008) 18 NWLR (Pt.1119) 361** to posit that the burden of proof on a Claimant in establishing declaratory reliefs to the satisfaction of the Court is heavy, and that he has to succeed on the strength of his own

case and not on the weakness of the defendant's case. He contended that the Claimant in this case failed to successfully discharge the burden placed on it, in view of the lack of evidence in support of its claims in the originating process.

Learned counsel argued that the 1<sup>st</sup> Defendant having joined issues with the Claimant as to whether the 1<sup>st</sup> Defendant announced the dissolution of the executives of the Claimant, the disbandment of the Claimant, together with Kuje Traders Association and the issuance of an order stopping the Claimant from using its registered name, that the onus of proving that the 1<sup>st</sup> Defendant actually made the aforesaid announcements, rest squarely on the shoulder of the Claimant.

Relying on **Veepee Ind. Ltd v. Cocoa Ind. Ltd (2008) 13 NWLR (Pt.1105)491 and Agwaramgbo v. Idumogu (2008) 5 NWLR (Pt.1081) 566**, he submitted that the burden of proof is on the party who asserts, which burden is discharged on the balance of probabilities or preponderance of evidence, and that the Claimant cannot rely on the weakness of the case of the defendant. He argued that the failure of the Claimant to either call the executives and/or members of the sister association, Kuje Traders Association, to corroborate its evidence, or to show video or audio recording of the 1<sup>st</sup> Defendant making the purported announcement; or better still, to show documents where the 1<sup>st</sup> Defendant communicated the purported announcement, is fatal to the case of the Claimant, and same cannot be glossed over.

He referred to **Lawal v. Akande(2008)2 NWLR (2008) 2 NWLR (Pt.1126) 453.**

Learned counsel posited that the mere or bare allegation by the Claimant, that the 1<sup>st</sup> Defendant imposed on the Claimant association, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as its Chairman and

Secretary respectively, and also proceeded to announce the dissolution of the executives of the Claimant, the disbandment of the Claimant together with a sister association, Kuje Traders Association, and then ordered the Claimant to stop using its registered name in the meeting that held on the 26<sup>th</sup> of June, 2018, without more, is insufficient and not credible enough to discharge the heavy burden of proof placed on the Claimant.

Relying on **Nwaga v. Reg. Trustees Recreation Club (2004) FWR (Pt.190) 1360**, he posited that the onus is on a Claimant to adduce credible evidence to prove his case before it becomes necessary for the defendant to call evidence to rebut the Claimant's assertion.

He urged the Court to hold that the failure, refusal and/or neglect of the Claimant to provide positive and credible evidence in proof of its claim before the Court, is fatal and that the Claimant cannot be said to have discharged the onus that rests on its shoulders.

Arguing that the failure of the Claimant to file a Reply to controvert or challenge the fresh issues that permeate the entire length and breadth of the 1<sup>st</sup> Defendant's statement of defence in response to the claim of the Claimant, is tantamount to an admission of same by the Claimant; learned counsel urged the Court in conclusion, to dismiss this case of the Claimant for being vexatious, frivolous, and an abuse of Court process.

In response to the Claimant's final written address, the 1<sup>st</sup> Defendant also filed a Reply on Points of Law wherein learned 1<sup>st</sup> Defendant's counsel reiterated that since the Claimant's case is one that borders on declaratory reliefs that the Claimant, as in every claim for declaration, whether for title or not, must satisfy the Court by credible evidence, that it is

entitled to the declaratory reliefs sought. He referred to **Ofoeze v. Ogugua (1996) 6 NWLR (Pt.455)451.**

He posited that the arguments of the Claimant that the 1<sup>st</sup> Defendant has failed to challenged or controvert its claims in this suit under any guise, is of no moment, as it is the law that the Claimant must succeed on the strength of its own case and not on the weakness of the case of the Defendant.

On the Claimant's contention that the failure of the 1<sup>st</sup> Defendant to respond to Exhibit PW1G and to cross examine the PW1, amounts to its case being unchallenged, learned 1<sup>st</sup> Defendant's counsel relied on **Majekodunmi&Ors v. Ogunseye (2017) LPELR-42547 (CA)**, to submit that it is only where a defendant fail to file a defence that the claims of a Claimant are deemed admitted. That upon filing a Statement of Defence by a defendant, issues are said to have been joined.

He urged the Court to discountenance the argument of the Claimant and to hold that the 1<sup>st</sup> Defendant by filing its Statement of Defence and leading evidence, has challenged the case of the Claimant, and that in view of the unimpeached and unimpugnevidence of the DW1, the burden of proof did not shift merely because the Claimant made a bare allegation without more, that the 1<sup>st</sup> Defendant, at the meeting that held on the 26<sup>th</sup> of June, 2018, imposed the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as Chairman and Secretary respectively, on the Claimant association, and proceeded to announce the disbandment of the Claimant association together with Kuje Traders Association.

Learned counsel further posited that even if the Court finds that the Claimant's case is unchallenged; that it is not always that judgment is entered in favour of the Claimant when the evidence adduced are unchallenged. That in such a case, the

evidence in support of the Claimant's claim must not only be unchallenged, but that it must be credible, incontrovertible, and must support the Claimant's claim. He referred to **Green Finger Agro Industries Ltd v. Yusufu(2003) 12 NWLR (Pt.835)488, Martchem Industries Nigeria Ltd v. V. M. F. Kent (WA) Ltd (2005) 10 NWLR (Pt.934)645.**

He further urged the Court to hold that the Claimant has failed to discharge the burden of proving its case, and to dismiss the Claimant's case against the 1<sup>st</sup> Defendant for being frivolous, mischievous and lacking in merit, and to award punitive cost against the Claimant.

The learned Claimant's counsel, Francis Chukwudi Ani, Esq, in his own final written address, also raised a sole issue for determination, to wit;

***“Whether the Claimant has proved its case on the balance of probabilities to be entitled to the reliefs sought in this case?”***

Arguing the issue so raised, learned counsel posited to the effect that the only issue in dispute between the Claimant and 1<sup>st</sup> Defendant, is as to what transpired at the meeting of 26 June, 2018, the Defendants being ad idem with the Claimant on other facts of the Claimant's case.

He conceded that on the basis of the provisions of Sections 131, 132 and 133(1) of the Evidence Act, 2011, the legal/initial burden of proof lies on the Claimant to establish its case.

Learned counsel argued to the effect that the Claimant led evidence through PW1 in support of its pleadings, to establish its claims before the Court.

He contended that the only way the Court could be convinced not to rely on the evidence of PW1 to enter judgment for the

Claimant is if the Defendant cross examined the PW1 and discredited him and his evidence, and equally led cogent and admissible evidence on their part which challenged the evidence of PW1 and rendered it inadmissible.

Learned counsel relied on Section 133(2) of the Evidence Act, 2011 to posit that the burden of proof crucially shifted to the 1<sup>st</sup> Defendant, to prove the facts pleaded in paragraphs 28, 29, 30, 32 and 35 of its Statement of Defence regarding what actually transpired and the character/nature of decision taken by the 1<sup>st</sup> Defendant in its office on 26<sup>th</sup> June, 2018.

He argued that the 1<sup>st</sup> Defendant did not adduce any scintilla of evidence in support of the facts it pleaded in paragraphs 28, 29, 30, 31, 32 and 35, and indeed, all other paragraphs of its statement of defence where it disputed the facts pleaded by the Claimant on the decision taken by the 1<sup>st</sup> Defendant in its office on 26<sup>th</sup> June, 2018. That having failed to cross examine the PW1 who gave cogent evidence in support of the Claimant's pleadings, the Defendant also failed to lead evidence in its defence to challenge the evidence of PW1 on the crucial and material facts of this case.

He relied on **Asafa Food Factory v. Alraine (Nig) Ltd (2002) 12 NWLR (Pt.781)553 at 375** to submit that the position of the law where the evidence of a witness in a case is unchallenged and uncontroverted is that the trial Court is bound to accept and act on such evidence.

He contended that in this circumstance there is no contrary evidence to weigh against the unchallenged and uncontroverted evidence of PW1, thus leaving the burden of proof to be discharged on minimal proof. He referred inter alia, to **Military Governor Lagos State v. Adeyiga (2012) 5 NWLR (Pt.1293)291 at 331-332.**

On the 1<sup>st</sup> Defendant's contention that the Claimant failed to tender in evidence, any document, audio or video recording of the 1<sup>st</sup> Defendant's announcement disbanding the Claimant association, learned counsel argued that the Claimant never pleaded that there was a document, audio or video recording of the said announcement. He contended that the Claimant can only prove facts it pleaded in its statement of claim.

He further relied on Section 209(1) and (3) of the Evidence Act, 2011 to argue that there is no legal requirement for corroborative evidence in this case as such is only required in highly limited/restricted species of criminal cases. That there was thus, no necessity to call the executives or members of Kuje Traders Association to corroborate the evidence's of PW1 as argued by the 1<sup>st</sup> Defendant.

It was further argued by the learned Claimant's counsel, that the 1<sup>st</sup> Defendant's failure to respond to Claimant's demand letter Exhibit PW1G, amounts to a concession to all the issues raised in the said letter. He referred to **Vaswani v. Johnson (2000) 11 NWLR (Pt.679)582 at 588-589.**

He urged the Court to accept and act on the unchallenged evidence of PW1 in this case as he was neither cross examined, nor was contrary evidence adduced by the Defendants to challenge his evidence, especially on what transpired at the meeting of 26 June, 2018.

The crux of the Claimant's case in this suit, is that the 1<sup>st</sup> Defendant disbanded its association and unlawfully imposed the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on them, and that since its disbandment by the 1<sup>st</sup> Defendant, the Claimant's ability to hold meetings and collect dues and donations to pay operation permits for widows and small kiosk traders, were severely hampered.

The issue for consideration in the determination of this suit therefore, is **whether the Claimant has established by credible evidence, its allegation against the Defendants as to be entitled to the reliefs claimed?**

It is the settled position of the law, in claims for declaratory reliefs, that Court does not make declarations of right either on mere admissions or in default of defence without hearing appropriate evidence and being satisfied with such evidence. See **Chief Edmund Akaninwo&Ors v. Chief O.N. Nsorim& 7 Ors (2008) 2 SCNJ 100 at 113-114.**

It is the duty of a Claimant to prove his entitlement to declaratory reliefs on his pleadings and evidence and this burden does not change as declaratory reliefs are not granted on admission or failure of the defendant to call evidence or defend the Claimant's claims. See **NIPOST v. Musa (2013)LPELR-20780 (CA).**

Flowing from the afore stated position of the law, the Claimant in this case, had the onus of proving by credible, cogent and admissible evidence, that its association was disbanded by the 1<sup>st</sup> Defendant and that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were imposed on the Claimant as Chairman and Secretary, respectively.

It is pertinent at this point to examine what it means to disband a thing. According to the Oxford Advanced Learners' Dictionary, 6<sup>th</sup> Edition, at page 329, to disband, means ***“to stop somebody/something from operating as a group; to separate or no longer operates as a group.”***

Considering that the dictionary meaning of the word “disband” as quoted above, is self-explanatory, I will now address my mind to the nature of the Claimant, to determine whether it is

capable of being disbanded, and if so, the manner in which it can be disbanded.

As can be distilled from paragraph 1 of the statement of claim, the Claimant is an Incorporated Trustee, which came into existence on the 16<sup>th</sup> day of March, 2017, following its registration as such by the Corporate Affairs Commission. This fact is established by Exhibit PW1A, the Certificate of Incorporation of the Claimant.

The Claimant, by its incorporation, became a legal personality, having life ascribed to it by law. Therefore, to “disband” the Claimant, would entail to cause it to cease to exist.

How then can the “life” of the Claimant, as a legal entity, be terminated? In other words, how can the Claimant, being a legal person be disbanded or caused to cease to be in existence?

The Court of Appeal, in **Zain Nigeria Ltd v. Ilorin (2012)LPELR-9249 (CA)**, provided the answer to the above question, where the Court, with reference to the judgment of the Supreme Court in **Nigeria Nurses Association & Anor v. Attorney-General of the Federation & Ors (1981) 11-12 SC 1 at 12**, stated thus:

***“... a registered Trade Union is a legal person and the birth and death of such a legal person or artificial personality/entity is determined not by nature but by law.***

***... since such artificial persons came into existence by legal will and fiat, they must necessarily exist only at the pleasure of the law and their extinction or death, is called dissolution.”***

It is thus, clear from the above trite position of the law, that for the Claimant to be disbanded, or caused to cease to exist, it must be dissolved through a process laid down by the law in that regard.

On who may dissolve an Incorporated Trustee and how same may be done, Section 608(1) of the Companies and Allied Matters Act, 2004, provides that:

***“A Corporate body formed under this Act, may be dissolved by the Court on a petition brought for that purpose by –***

- a) The governing body or council; or**
- b) One or more trustees; or**
- c) Members of the association constituting not less than 50 per cent of the total membership;**
- Or**
- d) The commission.”**

Going through the pieces of evidence/documents tendered by the Claimant, there is nothing to show that any of the above stipulated steps was taken in respect of the Claimant herein. Accordingly, it is my finding, and I so hold, that based on the evidence adduced before this Court, the Claimant was not dissolved or disbanded as alleged by the Claimant.

It is my further finding, and I so hold, that the Defendants not being members of the Claimant association, does not have the powers to, and as such, could not have dissolved or disbanded the Claimant.

The next pertinent question, is **whether the 1<sup>st</sup> Defendant took any step, purporting to dissolve or disband the Claimant association as alleged by the Claimant?**

The Claimant tendered in evidence, Exhibit PW1F, as proof that the 1<sup>st</sup> Defendant invited Christopher Chukwu, the PW1 to a meeting in its office on 26<sup>th</sup> June, 2018.

Exhibit PW1F, on the face of it, was clearly not addressed to the Claimant. It was addressed to the PW1 as a person and not in his capacity as the Chairman or member of the Board of Trustees of the Claimant. This Court, therefore, cannot in the absence of any concrete or tangible evidence, infer or presume that the outcome of the said meeting, has any bearing with the 1<sup>st</sup> Defendant disbanding the Claimant.

There is also nothing in the Claimant's pleading and evidence adduced before this Court, showing, or even suggesting that the Claimant attempted to hold its meeting (since it is still fully in existence), but was prevented from so doing by the Defendants. Claimant has not proffered any documentary evidence showing disbandment from the 1<sup>st</sup> Defendant.

The Claimant has thus not satisfied this Court by credible, cogent evidence that it was disbanded by the 1<sup>st</sup> Defendant, thereby preventing it from holding its meeting to raise funds to support its members.

With particular reference to the reliefs sought by the Claimant in this suit, vis-à-vis the foregoing analysis and findings of this Court, this Court finds that only reliefs 1-4 of the Claimant's claim succeed.

Reliefs 5-12 fail for want of proof.

Accordingly, judgment is entered for the Claimant in part as follows:

1. It is declared that the Claimants having been properly registered as incorporated trustees, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have no powers whatsoever to demand that

the Claimants should not operate and/or carry on their activities in their registered name.

2. It is declared that the Claimants, having been properly registered as incorporated trustees, the 1<sup>st</sup> Defendant has no power whatsoever to direct that the Claimants should not operate and/or carry on their activities in their registered name.
3. It is declared that the 1<sup>st</sup> Defendant has no powers whatsoever to dissolve the executive committee/leadership of the Claimants, to impose the leadership of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the Claimants and to force members of the Claimant association against their wishes to belong to an association to which they never belonged and do not want to belong to.
4. It is declared that the 1<sup>st</sup> Defendant has no powers to meddle or interfere in the affairs and leadership of the Claimant and in particular, to determine for the Claimants who their leaders and members of their executive committee shall be.

Relief 5-12 are hereby dismissed for want of proof.

**HON. JUSTICE A. O. OTALUKA**  
**27/10/2022.**