

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 9TH DAY OF MARCH, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/1450/16

BETWEEN:

OBIKE INDUSTRIES NIGERIA LIMITED:.....CLAIMANT

AND

1. HELEN MATAWAL
2. OPEYEMI ALABI
3. ADESINA ABIOYE
4. HON. MINISTER OF FEDERAL CAPITAL TERRITORY. } :.....**DEFENDANTS**

Anthony Agboolaho for the Claimant.
Jamilu Gindiri for all the Defendants.

JUDGMENT.

By a Writ of Summons dated and filed the 11th day of April, 2016, the Claimant brought this action against the Defendants, claiming against them jointly and severally as follows:

- a) A declaration that the demolition of the Claimant's structures on Plot 1353, Cadastral Zone A02, Wuse 1, Abuja, by the 1st, 2nd and 3rd Defendants, on 17th March, 2016, during the pendency of Suit No. CV/840/16 before FCT High Court No. 14, Apo and without complying with the Urban and Regional Planning law, is arbitrary, ultra vires, whimsical and illegal.
- b) A declaration that the destruction and damage of the Claimant's items, articles, chattels and equipments at Plot

1353, Cadastral Zone A02, Wuse 1, Abuja, by the 1st, 2nd and 3rd Defendants, on 17th March, 2016, was illegal, callous, malicious, oppressive and in bad faith, and in contravention of the Urban and Regional Planning law.

- c) A declaration that the 1st, 2nd and 3rd Defendants acted ultra vires and in abuse of their respective offices in the demolition, destruction and damage of the Claimant's structures, items and equipments on 17th March, 2016, without complying with the Urban and Regional Planning law, and are therefore, liable to the (sic) damages.
- d) A declaration that the action of the Defendants in entering, destroying and demolishing the Claimant's structures, items, articles, chattels and equipments belonging to the Claimant at Plot 1353, Cadastral Zone A02, Wuse 1, Abuja, on 17th March, 2016, is an act of trespass as same was actuated by malice and not bonafide in the execution of their official duties.
- e) The sum of Forty-five Million Naira (N45,000,000.00) only as special damages against the Defendants for the unwarranted and unjustifiable destruction of the Claimant's structures, items, articles, chattels and equipments at Plot 1353, Cadastral Zone A02, Wuse 1, Abuja, by the 1st, 2nd and 3rd Defendants and their team on 17th March, 2016.
- f) The sum of Three Hundred Million Naira (N300,000,000.00) only as exemplary damages against the Defendants for the malicious and illegal demolition and destruction of the Claimant's structures and equipments on 17th March, 2016 without any legal justification, in view of the subsistence of Suit No. CV/840/16 before FCT High Court No. 14, Apo.
- g) The sum of Five Million Naira (N5,000,000.00) only as general damages for trespass.

- h) Interest at the rate of 10% per annum on the judgment sum until the amount is fully liquidated.
- i) The cost of this suit.

The Claimant in her Statement of Claim averred that following the inaction of the Defendants to her various letters of complaint about encroachments on her plot, she instituted a legal action against the relevant persons in Suit No. CV/840/16 before High Court No. 14, Apo. That while the said suit was still pending, and the Court having ordered parties to maintain status quo, the 1st Defendant on Thursday, 17th March, 2016, without cause suddenly entered the Claimant's plot and purportedly served both "stop work" notice and Demolition Notice dated same day, on one of the Claimant's structures.

The Claimant averred that her counsel met the 1st Defendant and informed her further of the pendency of the suit, the subsisting Court Order and the irregularity/illegality of her action, but the 1st Defendant threatened and boasted that she could do whatever she wanted; that she was coming back with caterpillars and bulldozers to demolish and destroy the Claimant's structures and equipment.

The Claimant stated that about 4pm on the same Thursday, 17th March, 2016, the 1st, 2nd and 3rd Defendants, accompanied by heavily armed soldiers of the Nigeria Army, numbering over fifteen (15) and Policemen of same number, stormed the Claimant's garden with caterpillar/bulldozer, and that all entreaties by the Claimant's management and staff for the Defendants to refrain from their clearly unauthorised, illegal and malicious mission failed as the Defendants set about demolishing, damaging and destroying the Claimant's structures and equipment, ostensibly miffed by the Claimant's resort to Court for her rights.

It was further averred by the Claimant, that some members of her management and staff who were taking pictures and video coverage of the demolition and damages by the Defendants, were manhandled by the armed soldiers and policemen, and their cell phones seized on the order of the 3rd Defendant. Also, that the 3rd Defendant further instructed that the pictures and videos of their illegal actions be deleted from the cell phones.

The Claimant averred that the Defendants' action was unauthorized, personal and contrary to the provisions of the Urban and Regional Planning Act, 1992. That the Defendant went about their own frolics, intent at intimidating, suppressing and wielding their perceived powers over the Claimant. Also, that the Defendants acted beyond and outside the scope of their official capacity, authority, duties and powers, and that their actions have caused the Claimant huge financial loss.

The Claimant further averred that she expended over N45,000,000.00 (Forty-five Million Naira) only in purchasing the items and equipments and in developing the structures destroyed by the 1st, 2nd and 3rd Defendants.

She particularised her claim for special damages as follows:

(a) Cost of Marquee Tent and Accessories	N23,922,300.00.
(b) Seats	N4,498,400.00
(c) Tables	N5,280,000.00
(d) Fittings	N940,000.00
(e) Trips of Sand, Stones, Chippings and Transportation	N1,230,000.00
(f) Bags of Cement and transportation	N1,370,000.00
(g) Preparation of Bill of Quantities	N350,000.00
(h) 1000 blocks and transportation	N1,340,000.00
(i) Water supply	N205,000.00
(j) Bricklayers' labour	N455,000.00
(k) Metal doors and accessories	N720,000.00

(l) Wooden doors and accessories	N304,000.00
(m) Window glasses and accessories	N275,000.00
(n) Carpenters' labour	N189,000.00
(o) Iron pillars and beams	N94,500.00
(p) Zinc roofs and accessories	N685,000.00
(q) Planks, prolines and woods	N614,000.00
(r) PVC pipes and accessories	N520,000.00
(s) Plumbings, accessories and labour	N830,000.00
(t) Electricals, fittings and labour	<u>N1,340,000.00</u>
Total	<u>N45,117,000.00</u>

The Claimant opened her case on the 23rd day of October, 2018 with Onyeka Ikenta, testifying on her behalf. In his evidence in chief 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 in proof of the Claimant's case:

1. Letter of complaint dated 27th May, 2015 – Exh PW1A.
2. Letter of complaint dated 2nd October, 2015 – Exh PW1B.
3. Letter of complaint dated 21st December, 2015 – Exh PW1C.
4. CTC of Writ of Summons in CV/840/16 – Exh PW1D.
5. CTC of Court Order.
6. Stop Work & Demolition Notices – Exh PW1F-F2.
7. Bundle of Invoices – Exh. PW1G-G26.

The PW1 was duly cross examined by the Defendants, during which he asserted that the Claimant did not flout the stop work notices as the demolition of the Claimant's structures by the Defendants took place the same day the notices were served.

The Defendants in their defence, filed a Joint Statement of Defence dated 6th December, 2016 and filed on 13th December, 2016 wherein they admitted that the subject Plot

1353 (A02) Wuse 1, Abuja was allocated to the Claimant by the Parks and Recreation Department.

The Defendants however, averred that it was observed that the park along with some adjoining residential plots had encroached into the Green Area reserved as Water Channel for drainage purpose, and that as same was being investigated by the office of the Defendants, all allottees involved in such encroachments/extension within the Green Area, including the Claimant, were advised to desist from carrying out further development in the area pending the resolution of the issue.

The Defendants averred that the Claimant ignored the said advice and went ahead erecting structures haphazardly without approvals, thereby contravening building regulations and constituting nuisance and security risk to the FCT residents in general.

They stated that as a result of the Claimant's continued erection of illegal structures on the site, several enforcement notices were served on her by the Department of Development Control of the Defendants as required by law. That on 17/3/2016, the officials of the Defendant carried out a routine visit to the said park and discovered an illegal construction work which was at three blocks coached above foundation by the Claimant and the attempt to stop the Claimant from carrying out such development proved abortive as a result of serious oppositions and obstructions by the Claimant who mobilised her site workers and hoodlums against the officers of the Defendant, thus preventing them from carrying out their normal routine duty.

The Defendants further averred that apart from cleaning or wiping out all markings on the illegal structures, the Claimant physically harassed and insulted the site officer, Mrs, Helen

Mattawal (1st Defendant) together with the members of her team while carrying out their routine assignment on the site.

That it was as a result of the Claimant's flagrant violation of the Building Regulations and disobedience to all enforcement notices served on her and continued erection of illegal structures even as at 27/06/2016, that necessitated the demolition of such illegal structures by the Department of Development Control.

They stated that the actions they carried out in removing the illegal structures erected by the Claimant was validly done following due process of law.

The Defendants however, abandoned their pleading as they failed to lead evidence thereon. Consequently, their right to defend the suit was foreclosed on Claimant's application.

Learned Claimant's counsel, Anthony Agbonlahor, Esq, subsequently filed final written address wherein he raised a sole issue for determination, namely;

“Whether the Claimant has proven its case as to be entitled to the reliefs contained in the Writ of Summons and Statement of Claim in view of the unchallenged evidence led before the Court?”

Proffering arguments on the issue so raised, learned counsel posited that the Claimant has made out its case with due diligence and tendered documents in proof of its case while the Defendants on their part, did not even pretend to be interest in the case.

He contended that since the Defendants did not put up any defence to the Claimant's suit, that the suit is therefore, deemed to have been unchallenged and uncontroverted.

Placing reliance on **Iyere v. Bendel Feed & Flour Mill Ltd (2009)3 WRN 139 at 175**, he submitted that it is trite law that unchallenged and uncontroverted evidence is deemed admitted.

He further referred to **Abiola v. Alawoye (2007)39 WRN 177 at 197-198** and **Ilorin S.L.G. v. Samad PC Ltd (2008)15 WRN 132 at 146**.

Learned counsel argued that since the Defendants did not deem it necessary to defend the suit that the Claimant's evidence before the Court in the circumstance, is credible, reliable and cogent to entitle her to the reliefs claimed, particularly so, as the Claimant's testimony was not shaken or controverted during cross examination by the Defendants.

Placing further reliance on Section 135 of the Evidence Act and the case of **Orji v. Dorji Testile Mills (Nig) Ltd (2010)5 WRN 32 at 68**, he posited that civil cases are decided on the preponderance of evidence and/or balance of probabilities, and that the only way to arrive at a final decision is by determining on which side the weight of evidence tilts.

He argued that in this case, the weight of evidence vividly tilts in favour of the Claimant as the Claimant has adduced sufficient evidence in support of her case which has not been disputed.

Learned counsel contended that from the photographs of the demolition process tendered, it is evident that the Defendants indeed demolished the structures on the Claimant's property without following the due process as required by the Urban and Regional Planning Act.

He argued that the Defendants stormed the Park of the Claimant on 17th March, 2016 and issued Stop Work and

Demolition notices dated same day and later returned shortly thereafter, with caterpillars and bulldozers to demolish the structures on the Claimant's property, whereas the Nigerian Urban and Regional Planning Act, 2004, in Section 53 and 60 made provisions for service of Stop Work Order and contravention Order, and that under Section 61 of the Urban and Regional Planning Act, 2004 thereof, the only condition for the demolition of a structure is where it is found to be defective as to pose danger or constitute a nuisance to the occupier and the public.

He further argued that whereas the Demolition Notice (Exhibit PW1F2) pasted at the property of the Claimant on 17th March, 2016 and dated same day, gave the Claimant 24 hours to comply; barely few hours after the pasting of the Demolition Notice, the 1st – 3rd Defendants re-assembled at the Claimant's property and carried out the demolition of the structures on the Claimant's park.

He contended that the Defendants in carrying out the said demolition, failed to comply with the mandatory provisions of the Nigerian Urban and Regional Planning Act, as well as acted above and beyond the scope of their official duties.

Relying on **Wudil JP v. Aliyu (2004)14 WRN 127 at 130**, learned counsel submitted that when a statute, rule or constitution provides for how an act is to be done, no other way is permissible in carrying out the act. He contended that the failure of the Defendants to comply with Section 61(2) of the Nigerian Urban and Regional Planning Act, 2004, renders the demolition irregular, null and void, and that the Defendants are liable for the damages caused by their collective actions.

He also referred to **Neka B.B. Manufacturing Co. Ltd v. ACB (2004)15 WRN 1 at 32** on the point that the act of entry into the

Claimant's park by the 1st – 3rd Defendants on 17/3/16 is an act of trespass.

He submitted further that from all the evidence adduced by the Claimant before the Court, the Claimant has established by cogent and credible evidence that it is entitled to all reliefs sought.

He urged the Court to enter judgment for the Claimant, the Defendants having admitted the Claimant's claims by failing to lead any evidence in defence of the suit and the Claimant having also proved its case by preponderance of evidence.

It is a trite position of the law that civil cases are proved on preponderance of evidence, which means the evidence adduced by one side outweighing that adduced by the other side. See **Ayorinde & Ors v. Sogunro & Ors (2012)LPELR-7808(SC).**

Where however, the defendant offers no evidence in defence as in this case, the law is that the onus of proof is discharged on minimal proof. See **Skypower Airwaves Ltd v. Olima (2005) LPELR-7548(CA).**

In the determination of this case therefore, the relevant question to consider is: **whether the Claimant has sufficiently proved by the evidence adduced before this Court, its entitlement to the reliefs claimed?**

As a preliminary, it is pertinent to state at this onset that the law is settled that a Court is entitled to look at the content of its file or records and refer to it in the consideration of any matter before it. See **Agbareh v. Mimra (2008)2 NWLR (Pt.1071)378 at 411.**

In this connection, even though the Defendants abandoned their joint Statement of Defence by failing to adopt and lead

evidence on same; this Court is nevertheless entitled to look at and refer to same in the determination of this suit.

Looking at the said joint Statement of Defence filed on 13/12/2016; the averments in paragraphs 4, 6 and 7 thereof show an admission by the Defendants that the Plot, the subject matter of this suit, was indeed allocated to the Claimant by the relevant Department under the 4th Defendant and that the Claimant was in possession of same.

Also, paragraphs 17, 18 and 19 of the said joint Statement of Defence are admission that the Defendants indeed, demolished the Claimant's structures in the said Plot 1353, Cad. Zone A02, Wuse 1, Abuja as asserted by the Claimant.

In the circumstances, the law remains that facts admitted, need no further proof. See **Chukwu & Ors v. Akpelu (2013)LPELR-21864(SC)**.

Accordingly, the fact of allocation of Plot 1353, Cad. Zone A02, Wuse 1, Abuja to the Claimant and the Claimant being in possession of same, having been admitted by the Defendants, the same is not in issue in this suit and thus, needs no proof.

The critical question is: **whether the demolition of the Claimant's structures followed due process of law?**

Section 61(1) of the Nigerian Urban and Regional Planning Act, 2004, gives the Department of Development Control power to serve demolition notice on a developer where a structure erected by the developer is found to be defective as to pose danger or constitute nuisance to the occupier and the public.

Section 62 of the Act provides that: ***"After the expiration of the time specified in the notice served under subsection (1) of Section 61 of this Act, the Control Department shall***

take such necessary action to effect the demolition of the defective structure.”

It is crystal clear from Section 62 of the Nigerian Urban and Regional Planning Act, 2004, that demolition of a defective structure, would be effected, only “after the expiration of the time specified in the notice served” on the developer under subsection (1) of Section 61 of the Act. From the evidence adduced before this Court, the Demolition Notice, Exhibit PW1F1 was served on the Claimant on 17th March, 2016, giving the Claimant 24 hours to comply with a purported Quit Notice or have her developments demolished.

Also, by Exhibit PWF2 also served on the Claimant on 17th March, 2016, the Claimant was given 7 days to comply with a purported Quit Notice or have her development demolished.

There is nothing before this Court to show that any Quit Notice was served on the Claimant by the Defendants or the Department of Development Control. What is more; from the uncontroverted evidence adduced by the Claimant in this case, the 1st -3rd Defendants proceeded to effect the demolition of the Claimant’s structures on the same day the Demolition Notices were served on the Claimant without waiting for the expiration of the time specified in the said notices. That clearly, is a contravention of Section 62 of the Nigerian Urban and Regional Planning Act, 2004.

Furthermore, by Exhibits PW1D and PW1E, the Claimant established that a suit was pending in respect of the subject plot, involving the Claimant and the 4th Defendant herein, and in which an injunctive order was made against all the parties before the 1st – 3rd Defendants who are employees of a parastatal under the 4th Defendant, stepped in and demolished

the Claimant's structures in apparent disregard for both the law and the Courts.

From the totality of the foregoing, it is my finding, that the Claimant has by preponderance of evidence proved reliefs a - d of her claims.

In her bid to prove her claim for special damages, which the law requires to be specially pleaded and specifically proved (see **Okunade v. Moses (2013)LPELR-20733(CA)**); the Claimant tendered a bundle of involves, Exhibit PW1G-G26. A close examination of the said invoices however, show that same do not have any nexus to either the Claimant or the plot in issue.

The name on the invoices is "Peka Park", as against the name of the Claimant – Obike Industries Nigeria Ltd. Nowhere in the length and breadth of the statement of claim was it averred that the Claimant is also known as or owns "Peka Park".

Also, the address on the said invoices is Wuse Zone 3, whereas the Plot 1353 in issue, from the pleadings before the Court is in Wuse 1.

Flowing from the above therefore, I find no relevance in Exhibit PW1G-G26 to the instant suit. The said exhibit is therefore discountenanced.

I further find in the circumstances, that the Claimant has failed to prove its claim for special damages in relief (e).

In respect of the claim for exemplary damages (relief(f)), the Court of Appeal in **Obinwa v. C.O.P. (2007)11 NWLR (Pt.1045) 411 at 426-427**, held that;

“Exemplary damages will be awarded against a defendant in three instances. These are:

- (a) Where there is an express authorization by statute.**
 - (b) In the case of oppressive, arbitrary or unconstitutional action by the servants of the government.**
 - (c) Where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the Plaintiff.**
- In order to succeed, a Plaintiff must be able to prove any of the three conditions."***

In the instant case, the Claimant has been able to establish that the action of the Defendants is oppressive, arbitrary and in contravention of the relevant laws. In the circumstances, the said claim for exemplary damages succeeds.

Having established that the act of the Defendants in demolishing the structures of the Claimant, was carried out without due process of law, which thereby constituted a wrong against the Claimant, the law therefore, presumes general damages as the direct natural or probable consequence of the said act complained of. See **UBN PLC v. Onuorah & Ors (2007)LPELR-11845(CA).**

Accordingly, the claim for general damages (relief(g)) succeeds.

From the totality of the foregoing, this Court finds for the Claimant, and therefore, judgement is entered for the Claimant as follows;

- a) It is declared that the demolition of the Claimant's structures on Plot 1353, Cadastral Zone A02, Wuse 1, Abuja, by the 1st, 2nd and 3rd Defendants, on 17th March, 2016, during the pendency of Suit No. CV/840/16 before

FCT High Court No. 14, Apo and without complying with the Urban and Regional Planning law, is arbitrary, ultra vires, whimsical and illegal.

- b) It is declared that the destruction and damage of the Claimant's items, articles, chattels and equipments at Plot 1353, Cadastral Zone A02, Wuse 1, Abuja, by the 1st, 2nd and 3rd Defendants, on 17th March, 2016, was illegal, callous, malicious, oppressive and in bad faith, and in contravention of the Urban and Regional Planning law.
- c) It is declared that the 1st, 2nd and 3rd Defendants acted ultra vires and in abuse of their respective offices in the demolition, destruction and damage of the Claimant's structures, items and equipments on 17th March, 2016, without complying with the Urban and Regional Planning law, and are therefore, liable to damages.
- d) It is declared that the action of the Defendants in entering, destroying and demolishing the Claimant's structures, items, articles, chattels and equipments belonging to the Claimant at Plot 1353, Cadastral Zone A02, Wuse 1, Abuja, on 17th March, 2016, is an act of trespass as same was actuated by malice and not bonafide in the execution of their official duties.
- e) Relief (e) fails for want of proof and is accordingly dismissed.
- f) The sum of N50,000,000.00 (Fifty Million Naira) only is awarded as exemplary damages against the Defendants for the malicious and illegal demolition and destruction of the Claimant's structures and equipments on 17th March, 2016 without any legal justification, in view of the subsistence of Suit No. CV/840/16 before FCT High Court No. 14, Apo.
- g) The sum of N1,000,000.00 (One Million Naira) only as general damages for trespass.

- h) Interest at the rate of 10% per annum on the judgment sum until the amount is fully liquidated.
- i) The cost of this suit, assessed at N300,000.00 (Three Hundred Thousand Naira).

HON. JUSTICE A. O. OTALUKA
9/3/2023.