

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA,

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 19TH MAY, 2023

FCT/HC/ CV/2829/2022

BETWEEN

PATRI VELETHI LIMITED

- PLAINTIFF

(Suing through his Attorney

ATISALAT GLOBAL RESOURCES LIMITED)

AND

KENSYL INTERNATIONAL RESOURCES LTD - DEFENDANT

JUDGMENT

By an amended writ of summons dated 21st December,2022 and filed on 22nd december 2022 same date at the Court's Registry and an amended Statement of Claim dated 21st december, 2022 and filed 22nd december 2022, the Plaintiff claims the following reliefs against the Defendants:-

1. A DECLARATION that the Plaintiff is the rightful owner of Plot No: MF 2069 and MF2070 measuring 3.8 hectares in total and covered by Right of Occupancy No: FCT/MZTP/LA/05/MISC10446 dated 16th

August, 2006 and FCT/MZTP/LA/05/MISC10447 dated 16th August, 2006 lying and situate at Sabon Lugbe East Extension Abuja.

2. A DECLARATION that all the right and interest both legal and equitable of the Plaintiff over Plot No: MF 2069 and MF2070 measuring 3.8 hectares in total and covered by Right of Occupancy No: FCT/MZTP/LA/05/MISC10446 dated 16th August, 2006 and FCT/MZTP/LA/05/MISC10447 dated 16th August, 2006 lying and situate at Sabon Lugbe East Extension Abuja, is valid and subsisting.
3. A DECLARATION that the Defendant's forceful entry on the 9th day of April 2022 into Plaintiff's land known and described as Plot No: MF 2069 and MF2070 measuring 3.8 hectares in total and covered by Right of Occupancy No: FCT/MZTP/LA/05/MISC10446 dated 16th August, 2006 and FCT/MZTP/LA/05/MISC10447 dated 16th August, 2006 lying and situate at Sabon Lugbe East Extension Abuja, using bulldozer to demolish erected fence, titling and uprooting trees thereon constitutes trespass unto Plaintiff's land.
4. An Order of Perpetual Injunction restraining the Defendant, his privies, agents, associates and assigns or any other person acting for, on behalf of the Defendant from further act of trespass on the Plaintiff's land or interfering with Plaintiff's right or interest over Plot No: MF2069 and MF2070 measuring 3.8 hectares and covered by Right of Occupancy No: FCT/MZTP/LA/05/MISC10446 dated 16th August, 2006 and FCT/MZTP/LA/05/MISC10447 dated 16th August, 2006 lying and situate at Sabon Lugbe East Extension Abuja.
5. The sum of N100,000,000.00 (One Hundred Million Naira) only as general damages against the Defendant.

6. The sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) only as special damages being cost for the 2,500 (Two Thousand Five Hundred) pieces of Nine (9) inches blocks each valued at N345.00 (Three Hundred and Forty-Five Naira) including labour and other resources.
7. The sum of N5,000,000.00 (Five Million Naira) only being cost of instituting this action.

The Defendant in this suit were served with the writ of summons and statement of claim. They were further served with Hearing Notices on each day of proceedings but they failed, refused and or neglected to enter appearance or file a defence.

The case of the Plaintiff is that, via an irrevocable power of attorney donated to her by the Donor (Patri Valethi Limited) came unto the land known and described as plot No: MF2069 and MF2070 measuring about 3.8 hectares lying and situate at Lugbe East Extension Layout sometimes in 2013 and had been in possession of same carrying out her estate business, apportioning parts of it to customers and has been enjoying quiet and peaceful possession until the 9th of day of April 2022, when the Defendant in company of some hoodlums brought a bulldozer and ordered the Plaintiff's workers on site to stop work; stating that they have come to take possession of their plots of land known and described as plot No MF 2069 and MF 2070 from adjoining owners. According to the Plaintiff, the Defendant's hoodlums acting on the instruction of the Defendant demolished about 12 to 13 meters of perimeter fence which the Plaintiff constructed with about 2500 blocks.

The Plaintiff avers that immediately he was contacted, being a law abiding citizen, proceeded to Trade More Estate Police Station to lodge a complaint

before he met on his way, a police van conveying one Insp. Likita Adangu Dan and his team of the Special Weapon and Tactics (SWAT) who informed the Plaintiff that they were aware of the matter as being directed by the Honourable Judge, Area Court, Nnanya/Mpape to investigate a direct Criminal Complaint filed against the Plaintiff, but however, stated that they did not authorize the Defendant to effect any demolition of the Plaintiff's property neither is it contained in the Court's order to demolish.

The hearing of the matter commenced and the Plaintiff on the 8th day of February, 2022 through her lawful attorney's Managing Director (Alh. Suleiman Umar) testified as Pw1, and tendered the following documents in evidence, to wit:-

- A. Abuja Municipal Offer of Terms & Grant of Conveyance dated 16th August,2006, acknowledgement and receipts admitted as Exhibit 1.
- B. Federal Capital Territory Administration acknowledgment dated 28th January,2009 admitted as Exhibit 2.
- C. Letter from Commissioner of Police Administration dated 29th October,2022 admitted as Exhibit 3.
- D. Payment of Land Compensation Agreement dated 28th August,2013 admitted as Exhibit 4.
- E. AMAC Zonal Planning Department Search Report admitted as Exhibit 5.
- F. Flyers of Atisalat Global Resources Limited admitted as Exhibit 6.
- G. Photographs admitted as Exhibit 7.
- H. Petition from U.J Umoru & Co dated 11th April,2022 addressed to the DIG Area 10, Garki admitted as Exhibit 8.

I. Irrevocable Power of Attorney dated 23rd October,2013 admitted as Exhibit 9.

This Court thereafter on the 22nd of February, 2023 adjourned the matter for cross examination and possible Defence by the Defendant even though the Defendant was served at her last known address at Suite 19A Anon Plaza, Gudu, Abuja with the Plaintiff's originating processes and hearing notices but elected and or neglected to file any defence in this Suit nor had any Legal representation in Court which necessitated the Plaintiff's application to have the Defendant foreclosed, this Court thereafter foreclosed the Defendant and adjourned to 8th March 2023 to enable the Defendant open her Defence.

Consequent upon the above, the Defendant on the 8th of March 2023, still did not attend the Court session nor have a Legal Representation in his stead despite being served with a hearing notice at her last known address via an Order of this Honourable Court. The Court having satisfied itself that hearing notice was indeed served on the Defendant by the bailiff of this Honourable Court and no reason was advanced for the absence of the Defendant, on the application of the Plaintiff, the Court further adjourned the Suit to the 6th of April, 2023 for adoption of final written address.

The Plaintiff in its final address raised three (3) issues for determination to wit:-

- 1. Whether from the Pleadings and totality of evidence before this Honourable Court, the Plaintiff has proved its case to entitle her Judgment.**
- 2. Whether failure of the Defendant to enter appearance and defend this Suit does not amount to admission.**

3. Whether or not the Plaintiff is entitled to all the reliefs sought.

In arguing on issue 1 above, it is the submission of the Plaintiff that it is general and accepted principle of law that, in all civil cases, claims are proved on preponderance of evidence and balance of probabilities. That in determining either the balance of probabilities or preponderance of evidence, the trial Judge is to weigh evidence adduced before the Court, by resolving the imaginary scale of justice. Counsel cited the case of **MOGAJI V ODOFUN (1978) 3-4 SC 91**. The Plaintiff asserts that in desiring to satisfy the requirements of the law to be entitled to Judgment, the Plaintiff's lone witness tendered 9(Nine) exhibits which were unchallenged, direct and credible. That the Plaintiff has not only made out a case of being in possession and entitled to reliefs claimed against the Defendant, but has also by credible evidence established that the Defendant arrogantly trespassed unto the Plaintiff's land, disrupted workers on site and equally destroyed Plaintiff's erected fence with the help of hoodlums and a bulldozer without any lawful justification.

That Plaintiff asserts that from a careful perusal of the Plaintiff's statement of claim, witness deposition and all the Exhibits tendered, it is not in doubt that the Plot of Land known and described as Plot MF 2069 and MF 2070 belongs to the Plaintiff and the Plaintiff has been in peaceful and unperturbed possession of same by virtue of the irrevocable power of attorney donated to her Donor (Patri Valethi Limited) since 2013.

The Plaintiff submits on issue 1 that having been in possession of the land since 2013 without any disturbance before the forceful entry of the Defendant on the land known and described as Plot MF 2069 and MF 2070 measuring 3.8 hectares lying and situate at Lugbe East Extension Layout, Abuja with hoodlums and bulldozer to demolish Plaintiff's erected fence, the Plaintiff is entitled to a cause of action against the Defendant.

On issue 2, the Plaintiff avers that the Defendant does not have a Defence and equally not interested in defending this suit against her, that the basic principle of law is that where a Defendant fails to file a defence, he is deemed to have admitted the claims or reliefs in the statement of claim. It is the position of the Plaintiff that the law is settled upon an unbroken thread of Judicial authorities that where a Defendant fails to file a reply, that is, a Statement of Defence in answer to the claim leveled against him within stipulated time provided by the rules of Court, the Claimant is, on an application to that Court, entitled to Judgment as per the reliefs claimed. Counsel cited the cases of **OGUNLEYE V AREWA (1959) SCNLR 603, NWADIKE V IBEKWE (1987) 4 NWLR (PT. 67) 718; ABDULLAHI V RAJI (1998) 1 NWLR (PT.534) 481; MOBIL PROD. (NIG) UNLTD V MONOKPO (2002) 3 NWLR (PT. 753) 48.**

The Plaintiff submitted on issue 2 that by virtue of the decision of the Supreme Court in **OKE V AIYEDUN (1986) 4 SC 61**, that it is a principle of pleading that, that which is not denied is deemed to have been admitted and if a Plaintiff filed a statement of claim and the Defendant failed or refused to file a statement of Defence in answer thereto, he clearly will be deemed to have admitted the statement of claim, leaving the trial Court with the authority to peremptorily enter Judgment for the Plaintiff without hearing evidence. The Plaintiff urged this Court to enter Judgment in their favour having satisfactorily proved her case against the Defendant.

On issue 3, the Plaintiff submitted that giving the totality of testimony of the Plaintiff and exhibits tendered, it is crystal clear that the Plaintiff has demonstrated acts of ownership and possession to be entitled to the reliefs sought before this Honourable Court urging the Court to so hold.

The Plaintiff thereafter concluded on all issues that from the totality of evidence and facts presented before this Honourable Court, the ownership

of the said Plot No. MF 2069 and MF 2070 measuring 3.8 hectares lying and situate at Lugbe East Extension Layout Abuja is never in dispute and the Plaintiff has demonstrated acts of ownership by being in lawful possession before the forceful entry/trespass unto same by the Defendant. It is upon the above that the Plaintiff prayed this Court to grant all the reliefs sought in this action.

In view of the settled position of the law as it relates to the facts and substance of this case, the submission of Counsel to the Plaintiff, the issues formulated by the plaintiff can be accommodated under the sole issue formulated by the Court thus:-

“Whether the Plaintiff has proved its claims on a balance of probabilities to entitle it to any or all of the Reliefs sought”.

The above issue is not raised as an alternative to the issues raised by the plaintiff, but the issues canvassed by plaintiff can and shall be cumulatively considered under the above issue. See **SANUSI V AMOYEGUN (1992) 4 NWLR (Pt. 237) 527**. The issue thus raised has in the Court’s considered opinion brought out with sufficient clarity and focus, the pith of the contest which has been brought to Court for adjudication by parties to this action.

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their case. At the conclusion of trial proper, the real issue(s) which the Court would ultimately resolve must be manifestly clear. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of the critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **OVERSEAS CONSTRUCTION LTD v**

CREEK ENTERPRISE LTD & ANOR (1985)3 NWLR (Pt13) 407 at 418, the Supreme Court instructively stated as follows:-

“By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the reliefs he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff’s case collapses and the defendant wins”.

It is therefore guided by the above wise exhortation that I would proceed to determine this case based on the issue I have raised and also consider the evidence and submissions of Counsel.

The Law is trite that civil cases are decided on the balance of probabilities, that is, preponderance of evidence. The Court arrives at this by placing the totality of evidence by parties on an imaginary scale to determine which side’s evidence is heavier and accordingly preponderates. The party whose evidence is heavier succeeds in the case. See **DR. USENI UWAH & ANOR V DR. EDMUNDSON T. AKPABIO & ANOR (2014) 2MJSC (Pt.11) 108 @ 113**. Moreso, the success or failure of the case of the Claimant is predicated first on the nature of his pleadings and secondly the evidence led in support of his averments. In the same vein, the success or failure of the defence of the Defendant is based on the averment in his statement of defence and the evidence led in support thereof. See **RAMONU RUFAL APENA & ANOR V OBA FATAI AILERU & ANOR. (2014) 6-7 MJSC (Pt.11) 184 @ 188**.

In this case, going by the fact that the Defendant never entered appearance in person and had no legal representation throughout the duration of this

Suit and also the fact that the Plaintiff had testified in Court, tendered documents in support and these documents and his testimony were never challenged by the Defendant notwithstanding that the Defendant was duly notified and served with all the Processes in this Court, should this Court enter Judgment in favour of the Plaintiff as his case remains unchallenged? Has the Plaintiff been able to establish his case on preponderance of the evidence in this Suit so much so that this Court should enter in his favour?.

It is my humble view that the Plaintiff has successfully established its cause through the testimony of Plaintiff's sole Witness and the Exhibits tendered in support which were not challenged by the Defendant and this Court should enter Judgment as appropriate. To start with, in every case where there is allegation or dispute is predicated on land and ownership to land, the Court bases its findings mostly on analysis of documents presented by the person who claim ownership as well as the person against whom ownership is claimed. So where both parties presented documents and where there is allegation of trespass, the Court always believes that whoever has title documents that is older in time is the person the Court will hold to be the owner of the land.

Again, in a dispute predicated or based on ownership to land where the Plaintiff seeks for declaration or even Injunctive Order of the Court. It is incumbent on such Plaintiff to prove the identity of land. That is the decision of the Court in the case of: ***NTOE ANSA V. ARCHIBONG ISHIE (2005) 22 NSCQR PAGE 793 RATIO 4***. The Plaintiff must identify the Res with such clarity, precision and accuracy in order to earn the Reliefs sought. Where a Plaintiff fails to do so, making the Court to forage into foliage of unnecessary vantage in an attempt to know what or identify the where and how of the Res and ownership thereto, the Court will hold that there is inconsistency in the story of the Plaintiff and will naturally refuse to grant

the reliefs sought. It is incumbent on a Plaintiff to succinctly identify the land to which he claims ownership and to be able also to present before the Court the documents of title on which his claim of ownership to the Res is anchored. Anything outside this means that the claim to ownership is fraught with inconsistency. Where that is the case, the claim to ownership is said to be fundamentally defective. In every case for declaration of title to land, the onus lies on the Plaintiff to prove that he is the owner or bonafide owner of the land. This is done by the document presented and through the testimony of his Witness. It has been laid down in our jurisprudence through the various decision of our Court that in a claim for declaration of title, the Plaintiff is duly bound to prove his case with credible oral and documentary evidence, such Plaintiff must at all times heavily rely on the strength of such evidence except when the weakness of the Defendant's case strengthens and support his case. So where the Plaintiff only relies on the weakness of the Defendant's case to prove his case, his case is bound to fail. That is the decision of the Court as laid down as far back as 1935 in the case of: **KODILINYE V. MBANEFO ODU (1935) 2 WACA 336**. It has also been reiterated and re-echoed in the case of: **UGOJI V. ONUKOGU (2005) 22 NSCQR 715 @ 717 RATIO 2** Where in any matter there is allegation of trespass to land and the Plaintiff wants a declaration and an order to displace the trespasser, such Plaintiff must ensure that he has a title that is superior to that of the Defendant trespasser. Where the Plaintiff fails to do so, the alleged trespasser shall continue to keep possession of the land as a trespasser. This means that it is incumbent on the Plaintiff to establish the act of trespass by showing that he has a superior title to the Res, by presenting those documents before the Court in proof of his title. Once the Plaintiff is able to do so, the onus shifts to the Defendant. If the Defendant fails to show that he also has a more superior title, the Court will hold that the Plaintiff is the true owner of the land and will naturally grant

all the reliefs sought as the case may be. That is the decision in the case of: **PIUS ANAKOR V. BENEDICTA OBIEFUNA (1991) 3 SC 67**. Every claim on land is based or rooted in exclusive possession, for a Plaintiff to succeed, he must prove that he has the right to possession of the land or he must establish that he has actual possession of the land in dispute before the trespass by the Defendant.

Once a Plaintiff has successfully proved title through any of these ingredients or ways to establish his title to the land, the Court will have no option than to grant the request as to ownership of such land and all the declaration sought in the Suit. That is the decision in the case of: **EBE UKA & ORS V. IROLO & ORS (2005) 11 NSCQR 307 @ 310 RATIO 3**. When there is unchallenged evidence orally made through testimony of a Witness, and in writing through documents tendered, the Court will hold such oral and documentary evidence as the truth and hold that all facts stated therein as admitted. That is the decision of the Court in the case of: **ODUBEKO V. FOWLER (SUPRA) @ PAGE 195 PARA 35 – 40**.

Coming home to our jurisdictional sphere in the FCT, in any action pending before our Court within the FCT, if a Defendant who was duly served with the Originating Processes fails to file a response or makes a default in filing Defence, the Claimant in that case may, if he so wish, apply to Court to enter Judgment as sought. Such Judgment must be based on the claim of the Plaintiff and not on any other claim outside that. The Court will not swallow hook line and sinker the fact but must have a critical analysis of those facts and evidence before it can enter such Judgment and grant the reliefs sought by the Claimant according to the merit of the case. In the instant case, the Defendant did not enter appearance let alone file any Defence in challenge of the Suit of the Plaintiff. This means that the claim of the Plaintiff is uncontroverted. The said claim remains unchallenged and all

the facts in the case of the Plaintiff are deemed admitted. All these documents were not challenged. The facts heralding them were not also challenged by the Defendant. The Court ensured that the Defendant was given ample time to challenge the case of the Plaintiff – by ensuring that Hearing Notices were served on the Defendant.

It is also pertinent to note that even in instances where the Defendant refuses or neglects to enter his Defence, the Plaintiff still has the onus of proving and establishing title to the Land in question therefore relying on the strength of his case rather than the lapse of the Defendant.

From all indications, the Plaintiff had established his claims to the ownership of Plot No: MF 2069 and MF2070 measuring 3.8 hectares in total and covered by Right of Occupancy No: FCT/MZTP/LA/05/MISC10446 dated 16th August, 2006 and FCT/MZTP/LA/05/MISC10447 dated 16th August, 2006 lying and situate at Sabon Lugbe East Extension Abuja which is the Res in this Suit through his witness testimony and exhibits tendered in evidence before this Court.

On the Plaintiff's prayers on special damages, the Law remains that special damages must not only be specially pleaded but also strictly proved before a party can be entitled to the grant of same. See ***SALEH V BANK OF THE NORTH LTD (2006) LPELR-2991 (SC)***. Further to the above, in ***SPDC V AKPOMUDJE & ORS (2008) LPELR-46105(CA)***, the Court re-emphasizing the above stated thus:-

"The Law is that special damages must be specifically pleaded and particularized".

In the instant case, the Plaintiff has failed to specifically plead and strictly prove the particulars of the special damages he prayed in this application. The Plaintiff's prayer for the grant of special damages accordingly fails.

This Court therefore has no reason not to grant other claims/reliefs of the Plaintiff since his case is meritorious but however with some variations. This Court therefore enters Judgment in favour of the Plaintiff and grants its reliefs to wit:

1. It is hereby DECLARED that the Plaintiff is the rightful owner of Plot No: MF 2069 and MF2070 measuring 3.8 hectares in total and covered by Right of Occupancy No: FCT/MZTP/LA/05/MISC10446 dated 16th August, 2006 and FCT/MZTP/LA/05/MISC10447 dated 16th August, 2006 lying and situate at Sabon Lugbe East Extension Abuja.
2. It is further DECLARED that all the right and interest both legal and equitable of the Plaintiff over Plot No: MF 2069 and MF2070 measuring 3.8 hectares in total and covered by Right of Occupancy No: FCT/MZTP/LA/05/MISC10446 dated 16th August, 2006 and FCT/MZTP/LA/05/MISC10447 dated 16th August, 2006 lying and situate at Sabon Lugbe East Extension Abuja, is valid and subsisting.
3. It is DECLARED that the Defendant's forceful entry on the 9th day of April 2022 into Plaintiff's land known and described as Plot No: MF 2069 and MF2070 measuring 3.8 hectares in total and covered by Right of Occupancy No: FCT/MZTP/LA/05/MISC10446 dated 16th August, 2006 and FCT/MZTP/LA/05/MISC10447 dated 16th August, 2006 lying and situate at Sabon Lugbe East Extension Abuja, using bulldozer to demolish erected fence, titling and uprooting trees thereon constitutes trespass unto the Plaintiff's land.
4. An Order of Perpetual Injunction is hereby given, restraining the Defendant, his privies, agents, associates and assigns or any other person acting for, on behalf of the Defendant from further act of trespass on the Plaintiff's land or interfering with Plaintiff's right or

interest over Plot No: MF2069 and MF2070 measuring 3.8 hectares and covered by Right of Occupancy No: FCT/MZTP/LA/05/MISC10446 dated 16th August, 2006 and FCT/MZTP/LA/05/MISC10447 dated 16th August, 2006 lying and situate at Sabon Lugbe East Extension Abuja.

5. The sum of N2,000,000.00 (Two Million Naira) only as general damages against the Defendant.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearing

Umoru jibrin:- Appearing with O.S Bolaji for the Plaintiff