

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR  
ON THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023

CASE NO.: FCT/HC/CV/631/2022

BETWEEN:

MR. AYO SIMEON AJAO

... CLAIMANT

AND

1. MR. ABIODUN OGUNMOLA SAMUEL

2. COUNTRY HOME AUTOMOBILE

... DEFENDANTS

## **JUDGMENT**

### **INTRODUCTION:**

The Claimant instituted this suit by Writ of Summons filed at the registry of this Court on 25<sup>th</sup> February, 2022 seeking the following reliefs against the Defendants:

1. The sum of ₦7,950,000.00 (Seven Million, Nine Hundred and Fifty Thousand Naira) as the balance of the cost of the cars which were illegally taken away from the Claimant's car stand.
2. AN ORDER granting 20% interest per annum on the outstanding sum of ₦7,950,000.00 from the date the cars were moved away to the date of judgment.
3. The sum of ₦12,000,000.00 (Twelve Million Naira) as damages for untold psychological trauma, distress and

economy hardship caused by the Defendants refusal to either hand over the cars or pay themonetary value of same.

4. AN ORDER directing the Defendant to immediately pay the Claimant the sum ₦5,000,000.00 (Five Million Naira) being the litigation cost incurred by the Claimant as a result of actions of the Defendants.
5. The sum of ₦5,000,000.00 in general damages for the Defendants' breach of promise to pay within a stipulated time.
6. Post judgment interest on any sum awarded at the rate of 10% monthly from the date of the judgment till any day the judgment sum is fully liquidated.
7. AN ORDER directing the Defendants to immediately pay the judgment sum into an account to be provided by the court pending any further appeal.
8. Any such orders as the court may deem fit to grant in this circumstances.

The Defendantsdid not file any processneither did they make or enter an appearance (either personally or through a Counsel) in court despite being served with hearing notices.

At the hearing of the suit, the Claimant was called as the sole witness and he testified as PW 1. The following documents were tendered and admitted as exhibits:

- a) Vehicle Particulars for 2005 Toyota Corolla INXBR3295Z359464.
- b) Vehicle Particulars for 2007 Toyota Corolla INXBR32672915605.
- c) Vehicle Particulars for 2011 Toyota Camry 4TIBFEK6BU767846.
- d) Vehicle Particulars for 2011 Toyota Camry 4T1BF3EK0BU718383.
- e) Petition against Mr. Abiodun Ogunmola Samuel for the conversion of 4 cars.
- f) Application for the release of Exhibit confirming the One Million Naira payment.
- g) Letter of demand dated 16<sup>th</sup> December,2021 sent to Mr. Abiodun Ogunmola Samuel.

As earlier stated, the Defendants did not make an appearance and the right of the Defendants to cross-examine and defend the suit was fore-closed. The suit was adjourned for adoption of final address.

The Claimant's Counsel filed and adopted his written address and posited two issues for determination as follows;

1. Whether or not the Defendant is liable for the tort of conversion.

2. Whether in view of the evidence and exhibits tendered by the Plaintiff, the Plaintiff has proven his case to tilt the scale of justice in his favor.

### **SUMMARY OF THE FACTS:**

The case of the Claimant is that, the Claimant is a business man who resides and carries out his business within the Federal Capital Territory.

The 1st Defendant is a car-dealer whose address is Alex Ntuk Avenue, PhepGoshen Villa Estate, Pyakasa, FCT- Abuja.

The 2nd Defendant is a car dealership whose registered office address is Federal Housing Auto-Mart, Kubwa Express way, Abuja, also owned by the 1st Defendant.

The Claimant had shared the car-stand with the Defendants without any form of uproar or conflict until 22nd of August, 2020, when the 1st Defendant without proper authorization carted away with four cars belonging to the Claimant under the guise that perspective buyers were to purchase the cars and make payment for the same.

The Defendant, after being accosted agreed to pay the sum of ₦11,650,000 (Eleven Million, Six Hundred and Fifty Thousand Naira) only as the price of the aforementioned cars.

After immense and persistent pressure mounted on the Defendants, the Defendants made a total repayment sum of ₦3,700,000 (Three Million, Seven Hundred Thousand Naira). However, till date, the Defendants have failed, refused and

neglected to pay the Claimant the outstanding sum of ₦7,950,000.00 (Seven million, Nine Hundred and Fifty Thousand Naira) due to the Claimant as the balance for the cars carted away.

**ARGUMENTS:**

The Claimant's Counsel submitted that the Four (4) cars being the subject of the dispute, belong to him and that the Defendants intentionally interfered with his possession and control of the vehicles which caused him damages. Counsel equally averred that he made several attempts to serve the Defendants with the Demand Notice for the payment of ₦7,950,000.00 (Seven Million, Nine Hundred and Fifty Thousand Naira) being the balance of the value of the vehicles taken away by the Defendants, but the Defendant was evasive and refused to receive the said Demand Notice. He further stated that he subsequently served the Defendants with the Demand Notice via Whatsapp and text message.

Counsel equally argued from the stand point that evidence presented by him were unchallenged and uncontroverted by the Defendants and so he was entitled to the reliefs sought by him before the court.

**RESOLUTION:**

I have taken time to review the averments in the pleadings and evidence before the court and hereby distill a sole issue for determination of the suit as follows:

**Whether the Defendant is liable for the tort of conversion, considering the evidence and exhibits presented by the Claimant, and if the Claimant has successfully established his case to tip the scale of evidence in his favor.**

The tort of conversion was so succinctly described by the Court of Appeal in a manner amenable to easy understanding in *Durojaiye Adetoro & Ors V. Ogo Oluwa Trading Co., & Anor* (Supra) @p. 163, thus: "Conversion is the act of wrongfully dealing with goods in a manner which is inconsistent with the owner's rights. In other words, conversion is the wrongful possession or disposition of another's property as if it were one's own. It is an act or series of acts of willful interference without lawful justification with any chattel in a manner inconsistent with another's right whereby that other person is deprived of the use and possession of the chattel."

Now, in law if the claim of the Claimant is one founded simply on 'conversion' then the standard of proof required is simply that of a balance of probabilities or on a preponderance of evidence, no more no less. See Section 133 of the Evidence Act 2011.

The tort of conversion is complete once one person had by his deliberate act dealt with the chattel of another person in a manner inconsistent

with the right of the other person such that the other person is deprived of the use and possession of the chattel.

As accurately positioned by the Claimant's counsel, in **OJINI V. OGO OLUWA MOTORS (NIG.) LTD (1998) 1 NWLR (Pt. 534) 353 @ p. 363**, the Supreme Court reiterated this trite position of law in its proper perspective when it stated inter alia thus:

**"When a person by deliberate act, deals with the chattel of another in a manner inconsistent with the others' right whereby he is deprived of the use and possession thereof, the tort of conversion is committed. To be liable for conversion the defendant need not intend to question or deny the plaintiff's right but it is enough that his conduct on the chattel is inconsistent with the Plaintiff's rights."**

In **OWENA BANK (NIG) LTD V. NSCC (1993) 4 NWLR (Pt. 290) 698 @p. 712**, the Court of Appeal had emphasized inter alia thus: **"It is trite that in conversion, negligence or intention is not relevant. Once the dealing with the chattel of another is in such a circumstance that the true owner is deprived of its use and possession, the tort of conversion is committed - negligence or no negligence."**

For the tort of conversion to be committed, the following ingredients must be present and proved. 1. The goods belong to the Claimant. 2. The goods do not belong to the Defendant. 3. The goods are taken out of the possession of the owner, the Claimant, without lawful justification. 4. The Defendant

must have the intention of exercising permanent or temporary dominion over the goods. 5. There must be specific demand for the goods by the Claimant, the owner. 6. That denial must be followed by an unequivocal act of refusal to surrender the goods by the Defendant to the Claimant. The crux of the tort is that the Defendant must deal with the goods of the Claimant in a manner inconsistent with the Claimant's right of ownership. In view of the fact that ownership is central to the tort, a Claimant who cannot prove ownership cannot succeed in an action on the tort of conversion. Demand is also a vital ingredient. There cannot be conversion until the Claimant formally makes a demand of the goods, followed by a refusal by the Defendant to surrender them. That is when the intention of the Defendant to deny the Claimant's right to ownership of the goods comes to the open.

The Claimant in the present suit tendered before the Court as evidence, the Particulars of the said vehicles accompanied with receipts. The Claimant also tendered the demand letter to the Defendants asking them to pay the balance of ₦7,950,000.00 (Seven million, Nine Hundred and Fifty Thousand Naira), balance of the value of the vehicles taken by the Defendants.

The question now is "has the Claimant adduced sufficient evidence before the Court to be entitled to reliefs arising from conversion"?



To effectively determine the above, I must consider the ingredients for conversion to succeed stated above.

The Court of Appeal in **OKEIHE v.STATE(2019) LPELR-48961(CA)**succinctly stated ownership of a vehicle can be proved when it stated thus:

**"I am of the considered view that the law appears to be clear as to how the ownership of a chattel particularly a motor vehicle can be proved or established when the same is in issue. Production of the vehicle's particulars or purchase receipt is prima facie evidence of ownership. The registration number, engine number and chassis number of a vehicle are usually provided or contained in the particulars of a vehicle. It is also clear from the authorities that ownership of a vehicle can be proved by inference from other facts established before a Court. Hence, it has been held that ownership of a vehicle can be proved to be in a person, by the production of the evidence of its registration in the Register of Motor Vehicle, in the name of the person claiming the vehicle as his in the absence of the vehicle's registration particulars or purchase receipt. See the case of ODEBUNMI V. ABDULLAHI (1997)**

**LPELR-2201 (SC). Likewise, ownership of a vehicle can be inferred from the ipse dixit of the person who claims the same, where the ownership is not in dispute and evidence in relation to the vehicle is captured by the Police in their record in the course of investigation into a crime as was done by this Court in the case of OLUWATOYIN V. STATE (2018) LPELR (CA)."**

In the case at hand, the Claimant tendered as evidence the Particulars of the vehicles including receipts evidencing ownership and the Defendants have not in any way challenged or controverted the ownership of the cars. It is my firm view that the Claimant having produced these documents and in the absence of any evidence to the contrary, has sufficiently proved ownership of the vehicles and satisfied the first requirement as stipulated in **OKEIHE v. STATE (SUPRA)**.

I agree with the submission of Claimant's Counsel that the Defendants deprived the Claimant of the possession and control of the vehicles belonging to him. As I stated earlier, the subject of the dispute being the vehicles belong to the Claimant and it is therefore needless to state that since the Defendants took away the vehicles belonging to the Claimant without his permission and refusing to return them or pay for

them, he has intentionally deprived the Claimant of the vehicles. It can also be deduced from the evidence before me that the Defendant had the intention of exercising permanent or temporary dominion over the vehicles.

The Court of Appeal in explaining what possession means adequately postulated in **STAR FINANCE & PROPERTY LTD. & ANOR v. NDIC (2012) LPELR-8394(CA)** Per **JOHN INYANG OKORO, JCA (Pp 29 - 30 Paras F - B)**

**"Possession means the exercise of dominion over property, the right under which one may exercise control over something to the exclusion of all others. See Oke v. Oke (Supra). Black's Learned Dictionary (supra) at page 1163 defines Possession as follows: - "Having control over a thing with the intent to have and to exercise such control. The detention and control, or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Act or state of possessing."**

It is worthy of note that in Paragraphs 14 and 15 of the Claimant's Statement on Oath he stated thus:

"14. That on several occasions the Claimant made an attempt to contact the defendant and tried delivering his letter of demand for

payment dated 16<sup>th</sup> December, 2021 at the address which was provided by the defendant but the defendant declined to receive the letter.

15. That the aforementioned letter was eventually sent to the defendant via Whatsapp and which the defendant has not acknowledged till date”.

From the foregoing and the evidence before me, it can be gleaned that the Demand Letter dated 16<sup>th</sup> December, 2021 tendered by the Claimant and admitted by the court clearly evinces that the Claimant fulfilled the requirement for service of a Demand Notice to the Defendants.

I see no further reason to reject or doubt the cogent evidence of the Claimant before me, especially considering the fact that the Defendants in this case, despite being served with processes including hearing notices elected to stay away and not challenge or controvert the evidence adduced by the Claimant.

It is well settled that where evidence given by a party in proceedings is not challenged by the adverse party who had the opportunity to do so, the court ought to act positively on the unchallenged evidence before it. See CAMEROON AIRLINES v. OTUTUIZU (2011) LPELR-827(SC).

**In IGH RERINIOVO v. S.C.C. NIGERIA LTD & ORS (2013) LPELR-20336(SC) Per JOHN AFOLABI FABIYI, JSC (Pp 17 - 17 Paras B - D), the Supreme Court held;**

**"It is the law that unchallenged evidence which is credible stands and should be accepted and acted upon by the Court. See: Omoregbe v. Lawani (1980) 3-4 SC 108, 117; Fasoro v. Beyioku&Ors. (1988) 2 NWLR (Pt.76) 263, 271; Mogaji v. Cadbury Nig. Ltd. (1972) 297; Okereke v. Ejiofor (1996) 3 NWLR (pt. 434) 90 at 104; Afribank Nig. Plc v. Nwanze (1998) 6 NWLR (pt.553) 283."**

The apex court once again held in **EBEINWE v. STATE(2011) LPELR-985(SC)Per ALOMA MARIAM MUKHTAR, JSC (as he then was) (Pp 11 - 11 Paras C - D)**that:

**"The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by a trial judge, who would in turn ascribe probative value to it. See Okike v. L.P.D.C .2005 15 N.W.L.R part 949 page 471."**

Having gone through the evidence canvassed by the Claimant, it is my view that the Claimant has discharged the burden of proof and evidential burden on him. The evidential burden of proof shifted to the Defendants but they have apparently chosen not to discharge the evidential burden on them and therefore the buck stops with them.

This position of our law by virtue of Sections 131, 132, 133 of the Evidence Act, 2011, which is to the effect that the burden of proving the existence or non-existence of a fact lies firstly

on the party against whom the judgment of the Court would be given if no evidence were produced on either side regard being had to any presumption that may arise on the pleadings.

Also apt on this position is the case of *Maihaja v. Gaidam* (2017) All FWLR (Pt. 917) Pg. 1628 @ 1681, paras F-G wherein the Supreme Court held thus;

**“By the provisions of Section 131(1) of the Evidence Act, 2011, whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, shall prove that those facts exist.”**

However, the evidential burden, on the other hand, may shift from one party to another as the trial progresses according to the balance of evidence given at any particular stage. This burden rests upon the party who would fail if no evidence at all, or no further evidence, as the case may be, was adduced by either side. This is the import of Section 136 of the Evidence Act. Thus, the evidential burden rests initially upon the party bearing the legal burden, but as the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence. See **NWAVU & ORS v. OKOYE & ORS(2008) LPELR-2116(SC)**.

In the case of **IGBA & ORS v. ANGBANDE & ORS(2021) LPELR-53295(CA)**, the Court of Appeal said;

**"I disagree with the Respondents when they submitted that the evidential burden on the Appellants was not discharged, they discharged it and rather, it was the Respondents who failed to shift back the evidential burden."**

As IGBA & ORS v. ANGBANDE & ORS(SUPRA), the Defendants in this present case have failed to shift back the evidential burden to the Claimants and have been found wanting based on evidence before the court.

Therefore, the sole issue is therefore resolved in favour of the Claimant against the Defendants. Accordingly, this case hereby succeeds.

The claims of the Claimant have been established as cogent and credible enough to his case succeed. The sole issue is therefore resolved in favour of the Claimant against the Defendants. Accordingly, this case hereby succeeds.

The Claimant is entitled to the reliefs sought before this Court as follows;

1. An ORDER granting to the Claimant against the Defendants the sum of ₦7,950,000.00 (Seven Million, Nine Hundred and Fifty Thousand Naira) as the balance of the cost of the cars which were illegally taken away from the Claimant's car-stand.

2. AN ORDER granting 20% interest per annum on the outstanding sum of ₦7,950,000.00 from the date the cars were moved away to the date of judgment.
3. The sum of ₦5,000,000.00 in general damages for the Defendants' breach of promise to pay within a stipulated time.
4. An Order that the Defendants shall pay interest on the judgment sum at a rate of 10% per month from the date of the judgment until the judgment sum is paid in full.

Parties shall bear their respective cost.



HON. JUSTICE J. ENOBIE OBANOR  
Judge

Appearances:

For the Claimant; Tolulope Afolabi, Esq.

For the Defendant; No Appearance