

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON TUESDAY THE 25<sup>TH</sup> DAY OF FEBRUARY, 2020.**  
**BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI**

**SUIT NO. CV/426/2019**

**DOUGLAS AYAM MBONU -----APPLICANT**

**AND**

- 1. THE INSPECTOR GENERAL OF POLICE**
- 2. THE COMMISSIONER OF POLICE,  
FCT COMMAND, ABUJA -----RESPONDENTS**
- 3. HON. MINISTER, FEDERAL CAPITAL TERRITORY**

**JUDGMENT**

This is a Rights Enforcement action commenced against the Respondents pursuant to sections 43, 44 (1) and 46 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Article 14 of the African Charter on Human and Peoples Rights (Ratification and enforcement) Act and Orders 2 and 3 of the Fundamental Human Rights (Enforcement Procedure) Rules. By originating Motion filed on the 25<sup>th</sup> of November, 2019, the applicant prays the following:

1. A DECLARATION that by virtue of the provisions of the section 43 of the Constitution of the Federal Republic of Nigeria, 1999, the Applicant has the fundamental right to own the immovable property known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja, pursuant to the grant and confirmation of the grant of the same to him by the 3<sup>rd</sup> Respondent.

2. A DECLARATION that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents take-over and continued occupation by force of arms of the Applicant's immovable property known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja, is contrary to the provisions of 44 (1) of the Constitution of the Federal Republic of Nigeria, 1999.

3. A DECLARATION that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents take-over and continued occupation by force of arms of the Applicant's immovable property known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja, are not only provocative, oppressive and invidious, but also illegal, unlawful, ultra-vires and unconstitutional.

4. A declaration that the Applicant's statutory Right of Occupancy over the parcel of land known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja, is valid and subsisting.

5. AN ORDER restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents whether by themselves, their agents or privies from further violating or abridging the Applicant's right to own and have access to his immovable property known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja.

6. AN ORDER directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to immediately vacate the Applicant's immovable property known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja.

7. AN ORDER directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay to the Applicant the sum of Fifty Million Naira as General and Exemplary damages.

8. SUCH FURTHER OR CONSEQUENTIAL ORDER(s) as the Honourable Court may deem fit and necessary to make in the circumstances.

The Motion is supported by a statement of facts, a 22 paragraph affidavit in support, a 7 paragraph affidavit of urgency, a written address and annexed are exhibits marked Exhibit A1 – A10 as evidence of facts deposed.

The Applicant raised a sole issue for determination, which is “whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ invasion, take-over and continued occupation of Plot 87 Katampe Extension District, Abuja, do not constitute a gross violation of the Applicant’s right to private property as enshrined in Sections 43 and 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 as well as Article 14 of the African Charter on Human and Peoples’ Rights, and enforceable by this Honourable Court pursuant to the provisions of Section 46 of the Constitution of the Federal Republic of Nigeria, 1999?”. In summary learned counsel submitted that the facts of this case show that, apart from violating the Applicant’s fundamental rights under the 1999 Constitution, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are also in breach of the provisions of Article 14 of the African Charter. Counsel urged the Court to intervene and grant all the reliefs sought by the Applicant, and also make consequential orders as the justice of this case dictates. He relied on **Sections 43, S. 44 (1) and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)** and Article 14 of the African Charter on Human and Peoples

**Rights (Ratification And Enforcement) Act (African Charter)** and cited a number of cases including;

- 1. Adewole v. Jakande (1981) 1 NCLR 262**
- 2. Kanix Ltd v. A.G. Cross River State (2010) LPELR-8202 (CA)**
- 3. Goldmark (Nig.) Ltd v. Ibafo Co. Ltd (2012) LPELR – 9349 (SC)**
- 4. Master v. Mansur (2014) LPELR – 23440 (CA)**
- 5. I.G.P. v. All Nigeria Peoples Party (2008) 12 WRN 65**
- 6. Abacha v. Fawehinmi (2001) 51 WRN 29; (2000) FWLR (Pt. 4) 533**
- 7. Nwangwu v. Duru (2002) 13 WRN 158 etc.**

The 3<sup>rd</sup> Respondents filed a 6 paragraph counter-affidavit deposed to by Saidu Badamasi Abdulkadir, a Legal Assistant in the litigation registry of the legal services of the Federal Capital Territory Administration.

A concise summary of the facts of this case that are germane and appropriate for the just resolution of the controversy in this case is as may be distilled from the narrative of the Applicant, as endorsed on the respective affidavits of parties. It is the case of the Applicant that he was allocated Plot 87 Katampe Extension District, Federal Capital Territory, Abuja, measuring approximately 3,001. 19 square metres by the Honourable Minister of the Federal Capital Territory vide a letter dated 17<sup>th</sup> May, 2001 with Ref No: MFCT/LA/AN.5250. That he duly complied with the Recertification policy of the FCTA and was issued AN12763 as his new file for the said plot. That he misplaced the Recertification Acknowledgment originally issued to him, he applied for a certified true copy and was issued with the certified true copy of the Recertification Acknowledgment. That he has made payment for the

ground rents and the certificate of Occupancy of the said plot of land. That the Police wrote to the Federal Capital Territory Administration to ascertain the holder of the Statutory Right of Occupancy over the said parcel of land. That the Federal Capital Territory Administration also wrote the Police confirming that he is the holder of the Statutory Right of Occupancy over the said parcel of land. That in spite of the said letters, Policemen under the 1<sup>st</sup> and 2<sup>nd</sup> Respondents has taken over and are occupying the parcel of land in issue without any colour of right. That the Policemen are working under and acting as instructed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. That the Policemen are preventing him and his workmen from having access into the said parcel of land despite several entreaties. That he has suffered untold hardship, psychological stress and trauma for being denied the use of the plot of land. That his Statutory Right of Occupancy over the said plot of land is valid and subsisting. That his Fundamental Right to own immovable property in the Federal Capital Territory, Abuja, is being violated by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents through the Policemen who have taken over the parcel of land allocated to him by the Federal Capital Territory, Administration.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not file any counter affidavit, although they were served with the originating processes and subsequently with hearing notices. In response to the above affidavit, the 3<sup>rd</sup> Respondents states that the records at the Department of Lands Administration, Federal Capital Territory, Administration, as at date shows that Douglas Ayam Mbonu (the Applicant) is the subsisting title holder of Plot 87 Katampe Extension District, Federal Capital Territory,

Abuja, measuring approximately 3,001. 19 square metres. That sequel to an application by the Applicant herein for a certified true copy of the Recertification Acknowledgment letter and the payment of requisite sum ,the Applicant was issued with the said certified true copy of the Recertification Acknowledgment letter. That upon an application for a legal search Report by Ayo Falore Esq. regarding the legal status of Plot 87 Katampe Extension District, Federal Capital Territory, Abuja, the Department of Land Administration issued a letter dated 27/9/19. Also that in response to the letter dated 5/5/2019 from the Nigeria Police Force, the Department of Land Administration issued letters dated 23/5/19 and 22/8/19 clarifying the status of the subject plot to the effect that Douglas Ayam Mbonu is the subsisting title holder of Plot 87 Katampe Extension District, Federal Capital Territory, Abuja.

I have carefully considered the processes filed in this suit, the submissions of counsel and the affidavit evidence in support, inclusive of the attached exhibits. The court raises two (2) issues for determination in this case, as follows;

1. “Whether upon the facts and circumstances now presented before this honourable court the Applicant is entitled to the grant of his application”.
2. “Whether the plaintiff having proved his case is entitled to General and Exemplary damages”.

As stated earlier the records of the court show that despite having been served with the Originating processes and subsequently hearing notices (the evidence of service was filed in court by the court bailiff) which are

duly stamped received with the official stamp of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents affixed, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have neglected to enter appearance and file pleadings.

I have considered the claim of the Applicant vis-a-vis the affidavit evidence and Exhibits A1 to A10 namely;

1. A copy of letter 17<sup>th</sup> May, 2001 with Ref No: MFCT/LA/AN. 5250 marked Exhibit A1.
2. A copy of letter 25<sup>th</sup> February, 2019 with file No: AN 12763 marked Exhibit A2
3. A copy of Revenue collector's receipt of FCDA dated 26/02/19 in the sum of N50,000.00 marked Exhibit A3.
4. A Re-Certification and Re-issuance of C-OF-O Acknowledgement of File No: AN 12763 for Douglas Ayam Mbonu marked Exhibit A4
5. A copy of Revenue collector's receipt of FCDA in the sum of N1,422,684.12 marked Exhibit A5.
6. A copy of Revenue collector's receipt of FCDA in the sum of N3,000,000.00 marked Exhibit A6.
7. A copy of FCDA legal search report dated 27/09/19 addressed to Ayo Falore Esq. marked Exhibit A7.
8. A copy of letter from the Director of Lands, AGIS titled "INVESTIGATION ACTIVITIES" dated 5<sup>th</sup> May, 2019 with ref no: CR:3000/FCT/AC/LC/VOL.1/80 marked Exhibit A8.
9. A copy of letter from FCDA to the office of the Assistant Commissioner of Police dated 23<sup>rd</sup> May, 2019 marked Exhibit A9.
10. A copy of letter from FCDA to the Deputy Commissioner of Police dated 22<sup>nd</sup> August, 2019 marked Exhibit A10.

The Applicant has by his supporting affidavit stated that he is the holder of statutory Right of Occupancy over the parcel of land in dispute and attached exhibits in proof. The said averments was admitted by the 3<sup>rd</sup> Respondent who is the Land issuing authority in FCT in paragraphs 5 (c – f) of their counter affidavit.

In all of these, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who were duly served with the processes, failed to file any process in line with the Rules. It is trite that were facts contained in an affidavit remains unchallenged or uncontroverted, the court should act on it. In the case of **SENATOR MOHAMMED MANA v. PEOPLES DEMOCRATIC PARTY (PDP) & ORS (2011) LPELR-19754(CA)**

*"It is the law that a party who intends to oppose an application is required to file an affidavit in opposition challenging the truth of the facts contained in the affidavit in support of the application. And where a Respondent does not file an affidavit in opposition to the facts deposed to in the affidavit in support of the application, then the facts deposed to in the affidavit in support of the application is deemed to be true and unchallenged and the Court is entitled to act upon it. See:- - Akanqbe vs. Abimbola (Supra)"*  
*Per BADA, J.C.A. (P. 35, paras. A-C"*

The court in **SENATOR MOHAMMED MANA v. PEOPLES DEMOCRATIC PARTY (PDP) & ORS (supra)** went further to state that;

*"It is trite law that the party who avers to facts must adduce evidence to establish same. Once issues are joined on any averment in an affidavit in support of originating summons, the*

*plaintiff must lead credible evidence to support such averments in prove of his claim. When he fails to do so his claim cannot succeed. See Omoboriowo v. Ajasin (1984) 1 SC 206 at 207." Per NWODO, J.C.A. (P. 42, paras. C-E)*

In view of all I have said so far, I hereby answer the first question for determination as formulated above, in the affirmative. In other words, the action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, in taking over, and continued occupation by force of arms of the Applicant's immovable property known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja is contrary to the provisions of S. 44 (1) of the Constitution of the Federal Republic of Nigeria, 1999 and is illegal, unlawful, ultra – vires and unconstitutional.

The second question for determination in this proceeding is, whether the plaintiff having proved his case is entitled to General and Exemplary damages. Plaintiff claims against the defendant, An Order directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay to the Applicant the sum of Fifty Million Naira as general and exemplary damages. In *Agbanelo v. Union Bank of Nigeria Plc (2000) 7 NWLR (Pt. 666) 534 at 551 para G* the Supreme Court explained that:

*“Damages are pecuniary compensation, obtainable by success in an action for a wrong which is either a tort or a breach of contract, the compensation being in the form of a lump sum awarded at the time, unconditionally and generally.”*

The Common law of damages in civil actions is founded on the principle expressed in Latin as *restitutio in integrum*, that is to say, restoration of an injured party (as far as money can do it) to the situation which would have prevailed had no injury been sustained. There are different types of damages that the court can award based on differing circumstances. Broadly speaking, we have General damages and special damages. General damages are damages which are implied by law and need not be proved especially as the law presumes them to flow naturally from the wrong complained of. The wrong complained of need not be proved to have resulted in pecuniary loss as a condition for award of monetary compensation. In the case of **TAO AND SONS INDUSTRIES LIMITED V. GOVERNOR OF OYO STATE & ANOR (2010) LPELR-5002(CA)** it was held that;

*“General damages have also been held to be such as the law would presume to be the direct, natural or probable consequence of the act complained of. The court could make an award of general damages even if it cannot point out any measure of assessment except what it can hold in the opinion of a reasonable man. See: Joseph V. Abubakar (2002) 5 NWLR (759) 185 @ 207 p - E."PER KEKERE-EKUN, J.C.A (Pp. 14-15, paras. G-B)".*

We also have exemplary and aggravated damages, which is one of what the Applicant has claimed in this proceeding. Aggravated and exemplary damages, is more or less punitive in outlook and intended to act as a sort of ‘retributive’ sanction. They may also be awarded where statute provides. Like special damages, exemplary and aggravated

damages must be strictly proved, by showing that the defendant's reprehensible conduct has caused the Plaintiff to suffer some injury, which is quantifiable in money's worth. See, *Rookes v Barnard* (1964) AC 1129. *Eliochin (Nigeria) Ltd v. Mbadiwe*[1986] 1 NWLR, p. 47. The Court of Appeal in *ZENITH BANK PLC & ANOR V. EKEREUWEM & ANOR* (2011) LPELR-5121(CA) laid down Function of exemplary damages and circumstances in which they can be awarded as follows;

*“Exemplary damages, also known as punitive damages, are intended to punish and deter blame worthy conduct and thereby prevent the occurrence of the same act in future.*

*The circumstances in which exemplary damages may be awarded as well laid out by Tobi, JCA (as he then was) in the case of Onagoruwa vs. I.G.P (1991) 5 NWLR (pt. 193) 593 at 647 - 648 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 defendants' conduct had been calculated by the him to make a profit for himself exceed the compensation might well the compensation payable to the plaintiff.*

*In order to succeed, a plaintiff must be able to prove any of these conditions. He needs not prove all the three conditions to succeed. Once any of the three conditions is proved, a court of law will award exemplary damages”.*

Despite that we have found as a fact that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's act was illegal, the court will not award exemplary damages as the law guards against double compensation. Hence the prayer for exemplary damages is hereby not granted.

I am of the view that the sum of N5,000,000 (Five Million Naira Only) as general damages be paid by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to the Applicant for untold hardship, psychological stress and trauma for being denied the use of the plot of land.

In view of all the forgoing, judgment is hereby entered for the Applicant as follows:

1. It is hereby declared that by virtue of the provisions of section 43 of the Constitution of the Federal Republic of Nigeria, 1999, the Applicant has the fundamental right to own the immovable property known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja, pursuant to the grant and confirmation of the grant of the same to him by the 3<sup>rd</sup> Respondent.
2. It is hereby declared that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' take-over and continued occupation by force of arms of the Applicant's immovable property known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja, is contrary to the provisions of S.44 (1) of the Constitution of the Federal Republic of Nigeria, 1999, are not only provocative, oppressive and invidious, but also illegal, unlawful, ultra-vires and unconstitutional.
3. It is hereby declared that the Applicant's statutory Right of Occupancy over the parcel of land known as Plot 87 Katampe

Extension District, Federal Capital Territory, Abuja, is valid and subsisting.

4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents whether by themselves, their agents or privies are hereby restrained from further violating or abridging the Applicant's right to own and have access to his immovable property known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja.
5. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are hereby ordered to immediately vacate the Applicant immovable property known as Plot 87 Katampe Extension District, Federal Capital Territory, Abuja.
6. Consequent upon the above, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly are hereby ordered to pay to the Applicant general damages assessed to be in the sum of N5,000,000.00 (Five Million Naira) only.

**. Parties: Absent**

**Appearances: M. U. Okeke for the Applicant. Ayuba J. Gwantu for the 3<sup>rd</sup> Respondent, holding the brief of C. J. Oliobi.**

**HON. JUSTICE M. OSHO-ADEBIYI  
JUDGE  
25<sup>TH</sup> FEBRUARY, 2020**