

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON FRIDAY, THE 15<sup>TH</sup> DAY OF MAY, 2020**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/CV/442/15**

**BETWEEN:**

**BALOGUN JAMES**

**-----**

**PLAINTIFF**

**AND**

**UNKNOWN AND UNAUTHORIZED PERSONS --- DEFENDANTS**

## **JUDGMENT**

On the 11<sup>th</sup> day of December, 2015 James Balogun instituted this action against the unknown and unauthorized persons. He claimed that he is the owner and allottee of a Plot of land known as Plot 180 Kubwa Extention II Relocation Layout, Kubwa within the Bwari Area Council, FCT Abuja. That the allocation was given to him by virtue of conveyance of Provisional Approval dated 27/5/03. He wants this Court to grant a Perpetual Injunction restraining the Defendants severally and jointly by themselves, their agents and privies as well as all those claiming title through them from trespassing and further trespass

on the said Plot 180 (herein after known as the Res). He equally seek for the Court to grant One Hundred million Naira (N100, 000,000.00) as general damages for the trespass committed by the Defendants and for the defacing of the Res. He attached 5 documents which included the evidence of allocation – Conveyance Approval Receipt for various payments, Deed of Assignment and Power of Attorney in support of his claim to ownership.

It is the story of the Plaintiff that the land was sold to him Plaintiff sometime on the 30<sup>th</sup> day of November, 2004 after the allocation was made/granted. That after he fenced the land and had since been enjoying quiet and undisturbed possession. That in 2015 there was an unlawful encroachment and trespass by the Defendants through their illegal activities on the land. Based on the said unlawful trespass he instituted this action against them claiming the Reliefs as already stated in the beginning of this Judgement.

All attempts to effect service personally on the Defendants proved impossible, so the Plaintiff applied for service by substituted means. The Court granted an Order that the Originating Process be served on the Defendants at the Res.

The Defendants were served but they did not enter appearance or responded to the Originating Process served on them.

On the 26<sup>th</sup> day of January, 2017 the Plaintiff moved an application for the Joinder of Nwachukwu Lawrence and Mr. Johnson as one or two Defendants. The Court granted same. They were served with the Processes at the same Res, Plot 180 Kubwa Extension, Relocation Layout Kubwa, FCT Abuja. They did not enter appearance too.

On 11<sup>th</sup> June, 2018 the Plaintiff opened his case and called PW1, the attorney of the Plaintiff who testified in chief. Matter was adjourned to the 17<sup>th</sup> day of September, 2017 for the PW1 to be Cross-examined by the Defendants. The Defendants never came to Court to do so.

On the 8<sup>th</sup> day of November, 2018 the Plaintiff applied that the Defendants be foreclosed. The Court granted same because the same Defendants were served with all Processes and Hearing Notices since 2016 to date but they never entered appearance in paper or flesh and blood. They have no legal representation either. By virtue of the service of the Processes on them they were duly notified about the pendency of the case against them in this Court. They are obviously sleeping on their right. The Court could not wait for them in perpetuity.

So the Court granted an application to foreclose the Defendants from opening and closing their case moved by the Plaintiff Counsel on the 27<sup>th</sup> day of January, 2020.

The Court also adjourned the case for Final Addresses to be adopted on the 12<sup>th</sup> of March, 2020. The Defendants were served with the Hearing Notice as per the subsisting Order of the Court. They were equally served with the Plaintiff's Final Written Address. They never filed any Written Address and never responded to the Plaintiff's Final Written Address served on them.

On the 12<sup>th</sup> day of March, 2020 the Plaintiff adopted his Final Written Address and the matter was adjourned for Judgement.

In the Plaintiff's Final Written Address they raised an Issue for determination which is:

***“Whether from the totality of the evidence of the Plaintiff he is entitled to the Res having not been challenged in any way whatsoever by the Defendants”?***

He submitted that he is entitled to the ownership of the Res going by the totality of the evidence adduced at trial.

That Plaintiff through his Attorney – Lawrence Omoigberale testified that he is the original allottee of the Res by virtue of the Conveyance of Approval dated 27/5/03. That he equally tendered the AGIS Acknowledgement Receipt for processing fees. Technical Drawing Plan (TDP) which shows exact size of the land as well as Letter of Acceptance and Power

of Attorney made by the Plaintiff in favour of his Attorney.

That the Defendants were served and put on Notice to Cross-examine the PW1 and also to open and close their cases but they failed to do so. That the Court foreclosed them subsequently.

That from the totality of the evidence adduced by Plaintiff, the same Plaintiff has proved his case to the satisfaction of the Court and in compliance with the provision of **S. 133 Evidence Act 2011.**

That since the Defendants failed to come to Court and put a defence going by the records of the Court, the case of the Plaintiff stands unchallenged and uncontradicted. So the evidence of the Plaintiff remains and is deemed to be unchallenged and as such the truth. He urged the Court to so hold and grant all the Reliefs sought.

### **COURT:**

Once a party has been duly notified about the pendency of a Suit against it in a Court of competent jurisdiction and that party failed to enter appearance and respond to the Processes served on it in form of Statement of Defence and where necessary Counter-Claim in challenge of the Suit of the Plaintiff, it is said that such party has no defence, is sleeping on his right and that the case of the Plaintiff is unchallenged and uncontroverted. That is the decision of the Court in the following cases:

**Ndulue V. Ojiako**  
**(2013) 53 NSCQR (PT.2) 26 @ 40**

**Imema V. Robinson**  
**(1979) 3 – 4 SC 1**

Once that is the case, the Court must, before coming out with its final decision, critically evaluate the case and evidence of the Plaintiff.

This means that the Court does not swallow hook line and sinker the facts and evidence of the Plaintiff. The Court is bound to ensure that justice is done judicially and judiciously.

It is also incumbent on the Plaintiff in such situation to ensure that he proves his case on preponderance of evidence by the facts and testimony of his Witness which must be credible and cogent and where available and necessary with good documentary evidence tendered before the Court in the course of the trial. Where the Plaintiff fails to do so, the Court will hold that he has not proved and established his case and Judgement will never be entered in his favour notwithstanding that the Defendants failed to defend the case. So to earn Judgement in his favour it must be based on the merit of his case whether his case was challenged or controverted or not. But where he had done otherwise, by establishing and proving his case, the court is bound to enter Judgement in his favour. That is what the Court held in the case of:

## **Ndulue V. Ojiako Supra**

In this case the Court ensured that the Defendants were duly served. Initially they were unknown and unauthorized but the Court granted the application by the Plaintiff for Joinder of Mr. Johnson and Mr. Nwachukwu Lawrence in Motion M/BW/169/16, as Defendant. They were served with all the Processes at the Res as per Order of the Court.

The PW1, the Attorney of the Plaintiff, testified that by EXH 1, the Power of Attorney was executed in his favour by the Plaintiff. The document is dated 30/11/04. He also tendered Receipts for Processing Fees and Technical Drawing Plan showing the size and location of the Res. So also he tendered the Acknowledgement Receipt from AGIS for Regularization too and the Acceptance for Conveyance of Approval – EXH 6.

The PW1 also tendered the Deed of Assignment. He tendered all the 8 documents which were never challenged or inspected because the Defendants were never in Court and no reason given though they were served with Hearing Notice and Processes.

Going by the detailed analysis of these documents, this Court has no reason not to admit them and attach the appropriate weight to them. The documents no doubt establish and show that the Plaintiff is entitled to the Res. There is no adverse claim on the Res.

After due analysis the question before this Court is:  
from the above analysis of all the documents tendered by the PW1 which were not in any way challenged or controverted or contradicted and given the fact that there is no adverse claim to the Res by any one, can it be said that the Plaintiff has been able to prove his case on the preponderance of evidence in that this Court has no reason not to grant the Reliefs sought by him, particularly so, going by the plethora of case in our Court on such situation?

It is my humble view that the Plaintiff has established and proved his case on preponderance of evidence by the testimony of PW1, the 8 documents tendered all of which were uncontroverted, unchallenged and uncontradicted by the Defendants. Again there is no adverse claim to the Res by the Defendants or anyone else.

It is trite that where a fact/case is not contradicted such are deemed admitted. They having not controverted the claim and evidence of Plaintiff are deemed to have admitted same.

Again it has been held in several cases that any official act or judicial act which has been shown to have been done substantially in a regular way following the process and procedure of law as laid down is presumed to be valid. That is the decision of the Court in the case of:

**Ezechukwu V. Onwuka**



**(2016) 65 NSCQR 601 @ 643**

The Court had earlier in the case of:

**Fannami V. Bukar & ors**

**(2004) FWLR (PT. 198) 1210 @ 1214**

stated so.

This Court have ensured that the Defendants were duly given all the time and space to exercise their right to fair-hearing in this case by ensuring that they were served with Originating Processes and Hearing Notices as at when due.

All the action of the Court in the trial of this case is valid and presumed to be valid having followed the due process of the law.

That being the case, this Court therefore holds that the Plaintiff having proved his case by the testimony and documents tendered by the PW1 deserved the Judgement of this Court to be entered in his favour.

The Plaintiff's case is meritorious. He is entitled to the Res. The Court therefore grants the Reliefs to wit:

- (1) *The Plaintiff is the Bonafide Allottee of the Res. He is also entitled to undisturbed possession of the Res.*
  
- (2) *The Defendants, their agents, privies, assigns, successor in title, their executors, administrators and anyone claiming through*

*them are hereby restrained from trespassing on the Res perpetually.*

*(3) The Defendants are also to pay the sum of Fifty Thousand Naira (N50, 000.00) to the Plaintiff for the said act of trespass committed on the Res.*

This is the Judgement of this Court.

Delivered today the \_\_\_\_ day of \_\_\_\_\_ 2020 by me.

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**K.N. OGBONNAYA**  
**HON. JUDGE**