

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

SUIT NO: CV/921/12

DATE: 17/12/2020.

BETWEEN:

OKEZIE MBONU
(SUING ON BEHALF OF FATIMAH KURFI YAKUBU)

**PLAINTIFF/
CLAIMANT**

AND

- | | | |
|--|---|------------------|
| 1. HON. MINISTER OF FEDERAL CAPITAL TERRITORY | } | DEFENDANT |
| 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY | | |
| 3. ISA A. BADAMASI | | |

JUDGMENT

(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)

By a further amended statement of claim, the Plaintiff claims against the Defendants as follows:

1. **A DECLARATION** that, the original allocation granted to the Plaintiff with file No. KT 60193 Plot No. 152, Wuye District (B03) by the 1st defendant is valid, lawful, unencumbered and hence irrevocable.
2. **A DECLARATION** that the Plaintiff in this suit is the rightful and lawful allottee of Plot No. 152 Wuye District (B03).
3. **A DECLARATION** that the Defendants have no legal power to stop the plaintiff from undertaking development projects on the said Plot 152 Wuye District (B03).

4. **AN ORDER** of injunction commanding the 1st and 2nd defendants to release the conveyance of building plan approval made to the Plaintiff on the 10th of May 2012, with immediate effect.

5. **AN ORDER** of perpetual injunction restraining the defendant jointly and severally either by themselves or privies from further disturbing the peaceable possession of the said Plot 152 Wuye District belonging to the Plaintiff.

Upon service of the writ of summons cum statement of claim on the 3 Defendants, only the 3rd defendant filed a statement of defence. The 1st and 2nd Defendant saw no reason to file anything in defence. All the Defendants however engaged the services of Counsel in defence but surprisingly, they filed no process or as would be shown later, abandoned same. So, technically speaking, this case is not defended. Furthermore, the case suffered series of adjournments due to many factors which eventually caused delayed. Chief among the factors is the Tribunal assignment I was engaged in, COVID 19 pandemic, End SARS protests and lack of diligence on the part of Counsel.

This case started in this Court on 22/5/13. It was not until 15/1/14 that the 1st motion for amendment of the statement of claim was moved by the Plaintiff's Counsel Dr. Alex Akunebu. It was granted.

Then on 14/10/14, another motion on notice - M/395/14 asking for a further amendment of statement of claim was moved and granted. On 18/2/15, the Defendants and their Counsel were absent in Court. We adjourned to 17/3/15. On 17/3/15, all the parties and their Counsel were in Court. No progress was however made because the 3rd Defendant's Counsel J. B. Alaci sought for an adjournment to enable them file their own statement of defence. I granted the application and awarded a cost of N5,000.00 (Five Thousand Naira) only against the 3rd Defendant's Counsel in favour of the Plaintiff.

We reconvened in Court on 26/1/16 only for the Defendants and their Counsel to be absent in Court. The Plaintiff could also not proceed with the case because the witness to be called was taking his M.Sc examination at the UNN Nsukka.

On the 9/11/16, it was the same situation and story and we were forced to adjourn to 1/12/16 for hearing.

On 1/12/16, the Plaintiff was in Court but his Counsel was not in Court. The Defendant was not in Court and no legal representation.

Eventually on 14/2/17, we started hearing of the case. PW1 by name OkezieMbonu, an Architect by profession testified on affirmation. He adopted his previously sworn testimony as his evidence-in-chief. Exhibits A, B, C, D, E, F & G were admitted in evidence through him.

Exhibit A - Is the offer of statutory Right of Occupancy dated 16/10/18.

Exhibit B - Is the conveyance of building approval dated 10/5/12.

Exhibit C - Is the withdrawal of building approval dated 12/7/13.

Exhibit D - Is a letter on Letter Headed Paper of A. A. Bashir & Co. dated 14/5/12.

Exhibit E - Is a letter of instruction to prosecute dated 13/11/12.

Exhibit F - Is Abuja Geographic Information System receipt No. 000061906 dated 28/7/10.

Exhibit G - Another receipt No. 000030042.

We adjourned variously on 22/3/17, 2/5/17, 26/10/17, 2/5/17, 26/10/17, 2/5/17, 17/1/18 for the continuation of evidence-in-chief of PW1 which was not to be for multifarious reasons. For

instance on 22/3/17 Plaintiff's Counsel informed the Court that they had problem of getting CTC of some documents from FCDA, while on 2/5/17 there was no light in the Court room and the heat was unbearable for all concerned. On 17/1/18, the PW1 was absent in Court.

So, it was not until 5/2/18 that PW1 concluded his evidence-in-chief. On that day, two more Exhibits i.e. H & I were admitted in evidence.

Exhibit H - Is a letter dated 2/7/12 headed "Re-Application for an Official search on Plot No. 152 File No. KT 60193, Wuye, Cadastral Zone B03.

Exhibit I - Is a legal search report dated 11/7/12

On 22/3/18, the PW1 was cross-examined by Mr. C. K. Agu, Counsel for 3rd Defendant. Under cross-examination, this witness (PW1) said:

"I have knowledge of all the activities with respect to Plot 152 Wuye District, Abuja. Yes, I have seen Exhibit 'C' (Read). We got Exhibit 'C' when we had gone far with our construction on the plot. I am now aware the plot was allocated to 3rd Defendant. Paragraph 14 & 15 of my statement on oath reads.....(Read). I am not Fatima Kurfi Yakubu, the original allottee. The said Fatima Kurfi Yakubu is still alive. I am not aware that the 3rd Defendant has re-certified his interest in plot 152. In Exhibit 'C' I wasn't told to contact the authority and I did. We conducted searches and we discovered no encumbrances on the land. I have a copy of the search Report. It is Exhibit I".

PW1 was not re-examined.

The next witness on that same day of 22/3/18 was one SalihuYabagi Umaru, a staff of Department of Land, FCTA. He lives in Gwarimpa, Abuja. He was brought to Court on a *supeana* and he confirmed that he work in search unit of the land department. Mr. Umaru testified as PW2 on affirmation and simply confirmed that Exhibit I (search Report) emanated from their office. He was not cross-examined nor re-examined.

With the testimony of PW2, the Plaintiff closed their case. We then adjourned for defence.

On 19/11/19, the defence was to start, the Defendants were absent in Court. A cost of N5,000.00 (Five Thousand Naira) only was awarded in favour of the Plaintiff and we adjourned to 28/1/20. On 28/1/20, the Defendants again were absent in Court and upon prove of hearing notice been served upon them, I foreclosed their defence and we adjourned for address.

The gist of the Plaintiff's case is that sometime in 2008, the Plaintiff was issued a statutory Right of Occupancy over Plot No. 152, Wuye District (B03) Abuja, with file No. KT 60193.

That consequent upon the allocation the Plaintiff immediately commenced the development of the said plot, and was at the roofing stage, when the 3rd defendant emerged from nowhere claiming title to the same land.

That as a result of this development the 1st and 2nd defendants withdrew the conveyance of building plan approval earlier issued to the Plaintiff after some little resistance.

The Plaintiff whom at this point had dug a borehole, setup a gateman's house with a permanent security man, who he pays his salary till date and the house having gotten to the roofing stage had no option than to file this action for a declaration of title.

Only the Plaintiff Counsel filed a written address which was adopted by Dr. Alex Akunebu of Counsel to the Plaintiff on 10/11/20 as his argument.

In his written argument, learned Counsel to the Plaintiff submitted two issues for determination to wit:

- (1) Whether the Plaintiff has bonafide title to the property in dispute being a bonafide purchaser for value without notice.
- (2) Whether by the fact that the defendants refused or neglected to enter their defence or has abandoned same and whether by this reason the Court can give judgment based on the reliefs sought by the Plaintiff.

Learned Counsel to the Plaintiff argued the two issues in sequence. On issue 1, he submitted that by virtue of the search Report and the fact of allocation of the Plot to the Plaintiff by 1st and 2nd Defendants, the Plaintiff has valid title to the land. He cited the cases of EZENWA VS. KAREEM (1990) 3 NWLR (PT. 138) 258; KACHALL VS. BANKI (2001) FWLR (PT. 73) 1; ISICHE VS. ALLAGOA (1988) 12 NWLR (PT. 577) 193.

On issue 2, Dr.Akunebu said that by virtue of O₁₁ R₁₋₇ of the Rules of this Court, the Court can enter judgment since the Defendants have not entered any defence. Learned Counsel submitted at paragraph 3.3, page 4 of his address thus:

“We humbly submit with respect to the Honourable Court that the Honourable Court has inherent right to deliver judgment in the matter in favour of the Plaintiff in the event of the Defendant not filing their defence also by virtue of Order 11 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rule 2018, the Courts are in situations where the defendant fails to enter their defence empowered to enter a

summary judgment against them in favour of the Plaintiff.

*My Lord, it has show very clear that for over 8 years since the institution of this case that the 1st and 2nd Defendants have not found it pertinent to file a defence to the suit, even though they are aware of the pendency of this suit, that patently demonstrates their lack of ability to defend the suit. It is the duty of the Honourable Court to apply the rules of Court which is binding on all parties. See **MAJA V. SAMOURIS (2002) FWLR (PT. 98) P. P 822 - 827 AT PP.836 - 837 PARAS H - B.***

*On the 3rd Defendant who filed a defence but rather chose to abandon it, the conduct again smacks of lack of interest to defend the case and it is trite law that, **"the absence of evidence to support statement of defence, the pleadings of the appellants is abandoned, defence is deemed abandoned for all time."***

He finally urged me to enter judgment for the Plaintiff. Dr.Akunebu cited also the cases of **MILGOV LAGOS VS. ADEYIGA (2012) 5 NWLR (PT. 1293) 291; OKECHUKWU VS. OKAFOR (1961) 2 SCNR 3691.**

In my view, there is one issue for determination in this case. And that is;

"Whether the Plaintiff has proved his Case as to entitle him to all the reliefs sought"

At this juncture and before I proceed further, I must stress that the conduct of all the learned Counsel to the Defendants in this case left much to be desired. I can name them here. On 10/7/13, Mr. E. A. Sampa appeared for the 1st and 2nd Defendant and H. E. Leononard appeared for 3rd Defendant. On 30/10/13, Mba J. C. Esq. appeared for 1st and 2nd Defendant while Miss UmahOnuchi appeared for 3rd Defendant. On 15/1/14, one Fashanu Kayode Esq. appeared for 3rd Defendant. On 14/10/14 Mba J. C. appeared for 1st and 2nd Defendant while C. S. Ona held the brief of O. J. Aboje for 3rd Defendant. On 17/3/15, J. B. AlaciEsq. appeared for 3rd Defendant while Mba J. C. appeared for 1st and 2nd Defendant.

The appearance of these multiple Counsel for the 1st, 2nd and 3rd Defendant on 17/3/15 was the last time any of them appeared in Court. Mba J. C. Esq for 1st and 2nd Defendant filed a memorandum of conditional appearance but no statement of defence. And fizzle out of the proceedings unceremoniously mid-way. O. J. Aboje for the 3rd Defendant, filed a Notice of Change of Counsel which enabled him to take over the defence of the 3rd Defendant for the former Counsel - A. A. Bashir Esq. Mr. Aboje filed a statement of defence but bowed out later without leading any witness or tendering any document in defence. The statement of defence of 3rd Defendant was simply abandoned.

All these defence Counsel never communicated to the Court the reasons for their numerous absence in Court. Assuming, and this is my mere conjecture, that their briefs were not perfected, which is not unlikely, I think they should have taken the path of honour by filing Notices of withdraw in Court.

Be all the above as it may, what is the merit of the Plaintiff's case? Is he entitled to all the reliefs he now claims from this Court?

In venturing an answer to the above germane question, I averted to the total circumstances of this case. O₂₁ R₆ R₉ and O₁₁ R₅₍₂₎ of the FCT High Court Civil Procedure Rules 2018 are most appropriate to be applied to this one sided case. The invocation of any of those

provisions would in my view meet the justice of this case. For instance O₁₁ R₅₍₂₎ of the Rules applicable in this Court provides;

“(1).....
.....

(2) Where it appears to the Court that the Defendant has no good defence, the Court may enter judgment for a claimant”

The above provision is under the summary judgment sections of the Rules of this Court. Infact, the learned Counsel to the Plaintiff – Dr.Akunebu actually book steps to obtain summary judgment pursuant to this O₁₁ R₅₍₂₎ when he filed a Motion on Notice – M/4919/2020 dated 3rd February, 2020 and filed same date. But the learned Counsel on 13/2/20 withdrew the motion upon good counselling and in the interest of justice. The Motion was then struck out. I considered it a good decision because it extended more opportunities to the Defendants to defend this case. However, the Defendants remain non-chalant and still stayed away from the proceedings.

Now, let me refer to O₂₁ R₆ of the Rules of this Court. It provides;

“In an action for the recovery of land, if the Defendant makes default as mentioned in Rule 1, the claimant my apply for a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land with costs”.

O₂₁ R₉ reads;

“In all actions other than those in the preceding rules of this Order, if the

Defendant makes default in filing a defence, the claimant may apply to the Court for judgment, and such judgment shall be given upon the statement of claim as the Court shall consider the claimant to be entitled to”.

All the above provisions of O₁₁ and O₂₁ are very clear. They admit of only a literal rule of interpretation.

As I have shown in this case, the 1st and 2nd Defendants i.e. the Minister of the Federal Capital Territory and the Federal Capital Development Authority never appeared for once. They filed no statement(s) of defence albeit they had legal representation at some point in the proceeding. The Counsel who represented them at some time filed no processes.

The 3rd Defendant – Isa A. Badamasi, filed a statement of defence but abandoned same by failing to call evidence in proof of the pleadings.

So, the Court is faced with only the claim of the Plaintiff and the evidence adduced. I mean the testimonies of PW1 and PW2 and all the documents admitted in evidence i.e. Exhibits A – I. In other words, this case is not complex. And it seems to me that it is because of instances such as this that the draftsmen incorporated O₁₁ and O₂₁ into the adjectival Rules of this Court. The idea is probably not to over-indulge a non-serious Defendant and also to save precious time of the Court.

The general rule is that where a Plaintiff's case is not challenged by a Defendant who had all the opportunity to do so, such a Plaintiff must succeed in his claim. This is because the trial Court has no other case to deal with other than the case stated by the Plaintiff in his statement of claim and evidence.

See OKOEBOR VS. POLICE COUNCIL (2003) 13 NWLR (PT. 834) 444; NWADOUKU VS. OTTI (1961) 5 CNLR).

It is therefore settled law in this country, that where a Plaintiff has filed a statement of claim, making certain averments against a Defendant, it behoves a Defendant wishing to defend the claim to file a statement of defence stating his own side of the story which he intends the Court to believe. In the case of LAGOS STATE WATER CORPORATION V. SAKAMORI CONSTRUCTION (NIG.) LTD (2012) ALL FWLR (PT.632) 1745, 1766, PARAS. D-F, the Court held thus:

“Ordinarily, and in general terms, where a Plaintiff has filed a statement of claim, making certain averments against a Defendant, or where the suit is commenced by an originating summons, he files an affidavit in support of same, it behoves a defendant wishing to defend the claim to file a statement of defence or counter-affidavit as the case may be, stating his own side of the story which he intends the court to believe. Where the defendant failed to file a statement of defence or counter-affidavit, whichever is applicable, it is generally regarded that the defendant had admitted the claim of the Plaintiff.

However, it is not always that judgment is entered in favour of the Plaintiff when the evidence he adduced is unchallenged. In such a case, the evidence in support of the Plaintiff’s claim must not only be unchallenged, it must also be credible, uncontrovertibly so, and must support the claim of the Plaintiff. See GREEN FINGER AGRO-INDUSTRIES LTD VS. YUSUFU (2003) 12 NWLR (PT. 835) 488.

The above principle leads me undoubtedly to the question; is the evidence led by the Plaintiff credible and does it support his claim?

The Plaintiff's claim are principally;

- a. **A DECLARATION** that, the original allocation granted to the Plaintiff with file No. KT 60193 Plot No. 152, Wuye District (B03) by the 1st defendant is valid, lawful, unencumbered and hence irrevocable.
- b. **A DECLARATION** that the Plaintiff in this suit is the rightful and lawful allottee of Plot No. 152 Wuye District (B03).
- c. **A DECLARATION** that the Defendants have no legal power to stop the plaintiff from undertaking development projects on the said Plot 152 Wuye District (B03).
- d. **AN ORDER** of injunction commanding the 1st and 2nd defendants to release the conveyance of building plan approval made to the Plaintiff on the 10th of May 2012, with immediate effect.
- e. **AN ORDER** of perpetual injunction restraining the defendant jointly and severally either by themselves or privies from further disturbing the peaceable possession of the said Plot 152 Wuye District belonging to the Plaintiff.

The (a) and (b) prayers above relates to declaration to title to land. They are 5 ways of proving title to land to wit:

- (1) By traditional evidence
- (2) By production of title documents
- (3) By acts of selling, leasing etc
- (4) By acts of long possession and enjoyment of land

- (5) By proof of possession of connected or adjacent land to the land in dispute.

See USUNG VS. NYONG (2010) 2 NWLR (PT. 1177) 83.

It is my view that by Exhibit A & B which are offer of statutory Right of Occupancy and Conveyance of Building approved dated 16/10/18 and 10/5/12, this Plaintiff has successfully shown to the Court that he has proof of title to land. The names on the two Exhibits are those of the Plaintiffs and no others. This leg of the Plaintiff's prayer is therefore granted.

Prayer (c) is to order a declaration that the Defendant has no power to stop the Plaintiff for undertaking development project on the said Plot. The Defendant has not shown to me in their aggregate why this leg of the prayers should not be granted. Especially in the light of Exhibit B which is the Building Approval approved by the 1st and 2nd Defendants agents and privies. This prayer is therefore granted together with prayer (d) which is invariably linked to it.

The last leg is prayer (e) which is an order of perpetual injunction. This prayer flows freely for the fore gone prayers granted herein before. This order of perpetual injunction restraining the Defendants jointly and severally either by themselves or privies from further disturbing the peaceful possession of the said Plot 152 Wuye District belonging to the Plaintiff is therefore granted. Plaintiff's claim succeeds intoto.

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S. B. Belgore
(Judge) 17/12/2020