

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU**

**ON WEDNESDAY 15<sup>th</sup> DAY OF DECEMBER, 2021**

**SUIT NO: FCT/HC/CV/940/2021**

**BETWEEN:**

**ANTHONY NWAFOR NNADOZIE ..... APPLICANT.**

**AND**

- |  |   |                                |
|--|---|--------------------------------|
| <p>(1) <b>FEDERAL CAPITAL TERRITORY<br/>ADMINISTRATION</b></p> <p>(2) <b>FEDERAL REPUBLIC OF NIGERIA</b></p> <p>(3) <b>ATTORNEY GENERAL OF NIGERIA</b></p> | } | <p><b>... RESPONDENTS.</b></p> |
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**JUDGMENT**

By what the Applicant called “Notice of Motion”, brought pursuant to Order 1 Rule 2 of the Fundamental Rights Enforcement Rules 2009, Article 16(1) (2) of African Charter on Human and Peoples Right and Section 33 of 1999 Constitution, the Applicant sought for the following reliefs:-

- (A) A declaration that the deceased was entitled to the best state of physical and mental health guaranteed by Article 16 (1) and (2) of African Charter on Human and People’s Right Laws of the Federation of Nigeria 2004.

- (B) A declaration that the deceased was entitled to right to life guaranteed by Section 33 of 1999 Constitution.
- (C) A declaration that the failure of Respondents to provide adequate accommodation and equip public hospitals with medical facilities for diagnosis to protect the health of the deceased and Nigerians when they are sick as required by Article 16 (1) (2) of the African Charter on Human and People's Right Laws of the Federation of Nigeria 2004 is a breach of that right.
- (D) A declaration that failure of the Respondent to save lives through the provision of adequate Medical Facilities and adequate accommodation is illegal and unconstitutional as life as guaranteed under Section 33 of 1999 Constitution and Article 16 (1) and (2) of the African Charter on Human and People's Right Laws of the Federation of Nigeria 2004.
- (E) An order compelling the Respondent to pay the Applicant the sum of One Billion Naira (~~₦~~1Billion) as exemplary damages for the lost of right to life of the deceased.
- (F) An order directing the Respondent to provide adequate accommodation and adequate facilities

to ensure that, Nigerians receive adequate medical attention when they are sick forth worth.

The Notice of Motion is supported by a statement setting out a description of the Applicant the grounds upon which the reliefs are sought, affidavit in support of the motion deposed to by the Applicant and Written Address of his Counsel.

At the hearing on the 30/09/2021, Counsel for both parties adopted their Written Address as their oral submissions and judgment was reserved for today.

I have carefully read and digest the averments in the affidavit of the Applicant, Counter Affidavits of the Respondents, further & better affidavits of the 1<sup>st</sup> Respondents, and further affidavits of the Applicant.

The case of the Applicant as distilled from the affidavit in support of the motion is that he is the husband and next of kin to the deceased (Nnadozie Patience Obiageri) who died at Garki General Hospital on 14/12/2020.

That, the 1<sup>st</sup> Respondent with other private persons are the owners of the General Hospital Garki where the deceased died on 14/12/2020 the 1<sup>st</sup> Respondent is also the agent of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in Nigeria

He averred that the Federal government of Nigeria ratified the African Charter on Human and Peoples in 1981 and enacted the African Charter on Human and Peoples Act in 1983. That millions of Nigerians as well as the deceased die of preventable

diseases in the local hospitals because of lack of adequate medical facilities and accommodation. That contrary to the obligation under the law, the 1<sup>st</sup> Respondent has refused to equip the public hospitals in FCT that, many states that receive less allocation from Federal allocation than the FCT have well equipped hospitals with adequate facilities.

Further, he averred that the deceased had been sick for some time in December 2020 and was going to Garki General Hospital for admission and treatment that the deceased was not given admission because there was no bed space or accommodation to accommodate her.

The Applicant continued to averred that on 8/12/2020 she (the deceased) was issued with an admission card but was not admitted nor provided with a bed space in order to receive adequate attention and medical facilities as in Exhibit "A". He was then advised to go home after given some medication and to come back on 14/12/2020.

That the ailment became serious on 14/12/2020 and she was rushed to Garki Hospital for proper examination and diagnosis on getting to the hospital, the hospital attendant sat the deceased on a sit and she was being examined and diagnosed she slumped, fell from the seat and died instantaneously in that hospital in the presence of the doctor examining her still without admission on bed space.

That after the death of his wife, he demanded for death Certificate which was issued to him as in Exhibit "B" that he was shocked when the medical Certificate was fabricated to the

effect that his wife was given admission on 14/12/2020 and died on 14/12/2020 about 2hours thereafter. That his wife was admitted on 8/12/2020 as shown in Exhibit “A” and not 14/12/2020 as shown in Exhibit B. That it was lack of adequate facility of accommodation and medical facility that led to the death of his wife without proper attention that on the day of 14/12/2020 when the sickness aggravated, they ran helter skelter looking for vehicle that will convey her (the deceased from Toto in Nasarawa State to FCT hospital because she was not given a bed space on the 8/12/2020 before they could get to Garki General Hospital, it took them boarding three different vehicles and the deceased was shouting “I am dying O”

That, had the Respondent provided accommodation on the 8/12/2020 with proper diagnosis and treatment his wife could not have died carelessly the way she died from the hand of the Respondent. Lack of proper diagnosis on the part of the Respondent that caused the death of the deceased as the Respondent was not certain of the cause of death. The death certificate which stated that the cause of death was “CADIAC ARREST” has the “question mark” on the cause of death by the Respondent showing that the actual cause of death was not known.

Concluding, he averred that unless the reliefs herein are granted the Respondent will continue to neglect the health sector to the detriment of the majority of Nigerians.

Learned Counsel for the Applicant formulated two issues for the determination of this Court in their Written Address. To wit

- (a) Whether the Respondents owed the deceased a duty to best state of physical and mental health and the same was breached resulting to the loss of right to life of the deceased?
- (b) Whether where the duty is breached by the Respondent, the Applicant is entitled to the compensation and damages sought?

Learned Counsel for the Applicant argued the above issues succinctly in urging the Court to grant this application.

In response, the Respondent filed an 11 paragraph Counter Affidavit deposed to by one Saidu B. Abdulkadir and a Written Address of their Counsel. In the Counter Affidavit, it was averred that paragraph 3 of the affidavit of the Applicant is true to the extent that the 1<sup>st</sup> Respondent went into Public Private Partnership (PPP) Agreement with NISA Premier Hospital where in Garki Hospital was concessioned to the former to manage and operate. That paragraphs 7-25 of the Applicants affidavit are not true and are denied. That Garki Hospital is equipped with modern health facilities and highly skilled professionals. That the deceased went to Garki Hospital on the morning of 8/12/2020 to complain of general body pains, weakness and inability to sleep at night and headache. A diagnosis of hypertension was made and she was given some laboratory blood work to do. She was reassured and given tablets.

She was to return the next day for review with the results of her laboratory work and for her blood pressure monitor. The

deceased came back the next day of 9/12/2020 and was attended to by Doctor. The review of her laboratory results showed 3-4 tests were high. The full blood count was normal except for the mild anemia. Also blood pressure was normal due to the effect of the medication given the previous day.

It was also noticed that she had not taken her diabetic medication for 2 months and not consistent with her blood pressure medicines.

She was advised and counseled on the need to take her medications as at when due. She was sent for more investigation and given more medications for the Diabetes and asked to stop the Moduretic and Amlodiphine while her blood pressure was being monitored and was then instructed to report back to the hospital on the following day 10/12/2021 for review of her test result and further treatment.

That the patient did not turn up on 10/12/2021 as instructed. On 14/12/2021 the patient was rushed to the Accident and Emergency section and collapsed before seeing a Doctor. She was unresponsive even after cardiopulmonary resuscitation. She was then certified clinically dead.

That the hospital exhibited diligence, professionalism and utmost care in handling the patient. The patient's death was not as a result of her not being admitted in the hospital but refusal and or neglect to adhere to medical advice.

Further, he averred that the claim of the Applicant are frivolous, vexatious and an attempt at gold digging and should therefore be

struck out with substantial costs. Learned Counsel for the 1<sup>st</sup> Respondent formulated 3 issues for determination of this Honourable Court to wit:

- (1) Whether the 3<sup>rd</sup> Respondent as constituted in this suit is a juristic personality capable of being sued.
- (2) Whether the subject matter of this suit as presently constituted is justifiable in view of Section 6 (b) (c) of the 1999 Constitution.
- (3) Whether the Applicant has proved his case and entitled to all the reliefs claimed.

Learned Counsel for the 1<sup>st</sup> respondent relied on all the paragraphs of the affidavit and adopted his Written Address as his Oral Argument in support of the Counter Affidavit and argued succinctly in urging the Court to strike out the claims of the Applicant.

In response to the 1<sup>st</sup> Respondent Counter Affidavit Counsel for the Applicant filed a 2 paragraphs further affidavit one Exhibit and Written Address of Counsel

Further the 1<sup>st</sup> Respondent filed a further and better Counter Affidavit of 7 paragraphs and attached copies of results of the various laboratory tests carried out on the deceased patient as exhibits.

In further response to the Applicant application, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent filed a Counter Affidavit of 4 paragraphs deposed to



by Elizabeth Egboja and Written Address of Counsel. In the affidavit it was averred by the deponent that, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents denies all the allegations as contained in paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 to 28 of the Applicants affidavit. That the Applicant admitted in his paragraphs 9, 12 and 14 that the deceased was treated and not neglected by the Respondents. That the Certificate of Death stated that the deceased was admitted on 14/12/2020 and not 8/12/2020 as erroneously understood and stated by the Applicant. The deceased was only issued with a hospital card on 8/12/2020.

Further, the Deponent states that deceased Registration/Opening Card states that the deceased is an outpatient and not admitted patient (GOPD). The Applicant delayed and was negligent in taking the deceased to the hospital for prompt treatment. The Applicant did not take the deceased to the hospital on time and this resulted in her death therefore cannot hold the Respondents vicariously liable for his commission or omission.

The Deponent continue to aver that paragraph 25 of the Applicant's affidavit offends the provision of Evidence Act. Learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents urge the Court to dismiss the application of the Applicant Counsel then formulated a lone issue for determination to wit:-

“Whether by the probalance of Evidence the Applicant is entitled to the reliefs sought in this suit against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.”