

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL  
TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT HIGH COURT MAITAMA – ABUJA  
BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**  
**COURT NUMBER: HIGH COURT NO. 24**  
**CASE NUMBER: SUIT NO. FCT/HC/CV/2509/2020**  
**DATE: 5<sup>th</sup> JUNE, 2023**

**BETWEEN:**

ELDER JULIUS KUETE.....CLAIMANT/RESPONDENT

**AND**

(1). THE MINISTER OF THE FEDERAL CAPITAL  
TERRITORY  
(2). FEDERAL CAPITAL DEVELOPMENT AUTHORITY  
(3). DEPARTMENT OF DEVELOPMENT CONTROL

} JUDGMENT DEBTORS/  
RESPONDENTS

**APPEARANCES:**

Parties absent

**JUDGMENT**

This Suit was initiated via Writ of Summons dated the 31<sup>st</sup> day of August, 2020 Claiming as follows:-

- a. A declaration that the service of Quit notice on the Claimant by officers of the Defendants without compliance with the Nigeria urban and regional planning Act, Cap, N138 Laws of the Federation of Nigeria 2004, at the instance of persons claiming

ownership of the Claimant's property known as Plot EC 18 situate at Bwari Extension Layout, Bwari, Abuja was illegal and unlawful.

- b. Injunction restraining the Defendants, either by themselves, their agents, servants, officers, or privies whatsoever from further trespassing on the Claimant's property or from ejecting the Claimant without an Order of a Court of record.
- c. Cost of action in the sum of ₦1,000,000.00

In compliance with the orders of the Court, the Claimant filed a motion on notice with motion No M/9434/2020 dated the 31<sup>st</sup> of August, 2020 and filed on the same day. Accompanied by a 16 paragraph Affidavit in support, a written address and the relevant accompanying annexures praying the Court for the following orders:-

1. An order of interlocutory injunction restraining the Defendants/Respondents either by themselves, servants, agents whatsoever called to stop and/or carrying out the planned demolition of the Claimant property known as Plot EC/18 measuring about 1,050 square meters, situate at Bwari Extension Layout, Bwari, Abuja or from ejecting the Claimant pending the determination of the substantive suit.
2. An order of this Honourable Court directing and/or compelling the Defendants/Respondents to stop the demolition of the Claimant property or from ejecting the Claimant without a Court order pending the determination of the substantive suit.
3. And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances.

Upon commencement of this matter on the 5<sup>th</sup> day of October, 2020 the Claimant Counsel notified the Court that the matter was for hearing and the Defendant was absent and unrepresented despite being served and allowed ample time to enter a defence. The Claimant Counsel urged the Court to review its records to confirm proof of service and permit Claimant Counsel to make the Application.

The Claimant Counsel was granted leave to move the motion following the Court confirming the proof of service from the records. The

Application was subsequently granted following a careful review of the evidence placed before the Court and the circumstances as well as the fact that the Application was unopposed following that service had been duly effected on the Defendant. The matter was subsequently adjourned to the 9<sup>th</sup> and 10<sup>th</sup> of November, 2020 for continuation and ordered hearing notice be served on the Defendants.

On the next adjourned date, the Claimant was in Court and duly represented but the Defendants were absent and unrepresented. Claimant Counsel subsequently asked for an adjournment as the lead Counsel handling the Claimant suit was not in Court. The case was adjourned to the 22<sup>nd</sup> day of January, 2021 for hearing. At the next adjourned date both parties were absent and unrepresented, the Court adjourned the case to the 11<sup>th</sup> day of March 2021 for hearing.

The trial in this suit commenced 11<sup>th</sup> of March, 2021 where Claimant was present and represented by N. J. Nuhu Yusuf Esq.

The Learned Claimant's Counsel notified the Court that they had their sole witness in Court and were ready for trial. The Defendants Counsel on the other hand notified the Court it was his first appearance and the case file had been handed to him on short notice, he would like to be granted an adjournment Counsel had not objection following which the Court adjourned the matter to the 1<sup>st</sup> day of June, 2021 for hearing.

At the next adjourned date Claimant was present and represented, Defendants were absent. Matter was further adjourned to 21<sup>st</sup> day of October, 2021 for hearing. At the next adjourned date Claimant was present but unrepresented, Defendant Counsel was present and notified the Court that Claimant's Counsel had called him to request for an adjournment as he was unwell. Matter was further adjourned to 7<sup>th</sup> day of March 2022 for hearing.

Upon the next adjourned date, Claimant was present and represented and Defendants Counsel was present. Claimant's Counsel informed the Court they were ready to proceed as the matter was slated for hearing and the sole witness was in Court. Defendants Counsel alerted the Court

to the fact that they were yet to file a defence but they were ready to proceed. The Court granted the Application.

The trial continued with Elder Julius Kuete who was sole witness who testified as PW1. Adopted his witness statement on Oath and tendered the following documents in evidence, which were marked and admitted as follows:-

1. An irrevocable Power of Attorney donated by Mr. Charles E. Oyeador (Donor) to Pastor Julius Kuete (Donee) dated the 22<sup>nd</sup> day of January, 2003 as Exhibit A.
2. A Bwari Area Council conveyance of provisional Approval dated 18/12/2001 marked as Exhibit B.
3. A photocopy of a letter written by PerebohSanami Esq for KorinaTunyan (SAN) & CO, address to the Director, Department of Development Control Abuja Metropolitan Management Council, NO.2, Zuba Street, Wuse Zone 6, Abuja FCT, dated 18/08/2020 marked as Exhibit C.
4. A Quit Notice dated 13<sup>th</sup> day of August, 2020, marked as Exhibit D.
5. A Demolition Notice dated 28<sup>th</sup> day of August, 2020 marked as Exhibit E.

There was no Cross-Examination by the Defendants. The Claimant Counsel closed their case with the Defendants asking the Court for a day to enter their defence. That matter was subsequently adjourned to 17<sup>th</sup> day of May, 2022 for defence.

On the adjourned date, Claimant was present and also represented but the Defendants were absent and unrepresented. Learned Claimant Counsel pointed out that the Defendants were absent even though the matter was meant to be for defence and they were duly served and also further prayed the Court to foreclose the Defence and also grant a date for adoption of final written address. The court in the interest of justice further adjourned the matter for defence at the instance of the Defendants.

At the next court date Defendants were absent and unrepresented while Claimant was in Court and represented. The Claimant Counsel requested

Defendants to be foreclosed and a dated granted for address following the continuous absence and lack of representation of the Defendants.

After careful perusal of the Court records and taking the submission of the learned Claimant Counsel and proof of several hearing notice served on the Defendants and upon their failure to utilize the opportunity granted them and also the fact that the Defendants throughout the course of trial had not filed any defence, the Claimant Counsel, Application was granted as prayed and Defendants Right of defence was foreclosed. The suit was adjourned for adoption of final written address as stipulated by Order 33 of the Rules of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018.

On the next adjourned date, Claimant's Counsel apologized and sought for an adjournment. Matter was adjourned to the 13<sup>th</sup> day March, 2023 and Court ordered Defendants to be served.

On the 13<sup>th</sup> day of March, 2023 Defendants were absent and unrepresented. The learned Claimant's Counsel notified the Court they were ready to proceed and they had a Motion on notice for extension of time with motion number M/5837/2023 read it was unopposed and humbly applied to move interms. The Honourable Court granted the Application as prayed.

Claimant Counsel adopted their final written address dated 9<sup>th</sup> day of March, 2023 and the matter was adjourned to the 22<sup>nd</sup> day of May, 2023 for Judgment.

In the Claimant's final written address, a sole issue for determination was formulated thus:-

***"Whether the Claimant has proved his case to be entitled to the grant of the reliefs sought."***

It was submitted by the learned Counsel that where the Claimant's evidence remains unchallenged, uncontroverted and undenied, they are deemed to be admitted in claimant's favour. Reference was made to the Court Appeal decision in **DINGYADI V WAMAKO (2008) 17 NWLR**

**(PG) 1116 at 432 PARA E-F** by the Learned Claimant Counsel to further buttress the portal.

Learned Claimant's Counsel submitted that PW1's testimony which was uncontested should be held in favour of Claimant's case and judgment granted in his favour. Reliance was placed upon the case of **P. T. F V INTEGRATED FACILITY MAT SERVICE LTD (2002) 16 NWLR (PT. 794) 586 at 597 paras F-G**. Counsel also further submitted that facts admitted need no further proof while relying on the case of **BUNKE V GOV, RIVERS STATE (2006) NWLR 12 (PT. 995 at 599-600)**.

Learned Claimant Counsel in further urging the court to hold in favour of Claimant, disclosed the need for proof where claims of a Claimant include declaratory reliefs despite the fact that there was admission of the claimant's claims by the Defendants, Claimant still needs to prove his case by oral and documentary evidence. Learned Counsel further mentioned that by virtue of PW1's testimony and documents tendered through him, five documents marked A-E, the Claimant has managed to achieve that. In further establishing his case learned claimant Counsel declared that according to established law, when documentary evidence supports oral evidence, oral evidence becomes more credible. He referred to the case of **ODUTOLA & II ORS V MABOGUNJE & 4 ORS (2013) 1 SC 141**.

Finally, Learned Counsel urged the Court to rule in the Claimant's favour granting the reliefs and any other consequential order(s) the Court deem fit to make.

I have carefully perused the writ of Summons, the statement of Claims and the reliefs sought. I have equally gone through and evaluated the entire evidence adduced before the Court by the Claimant, both oral and documentary. In the same vein, I have also studied extensively the final written address before the Court.

Having considered the issue canvassed and all of the above, I shall raise a sole issue for determination to wit:-

***"Whether the Claimant has proved his case on the balance of probality to be entitled to the reliefs sought."***

Before I dwell on the issue for determination it is germane to state that it is the case of the Claimant briefly, as distilled from the Statement of claim that by an Irrevocable Power of Attorney donated on the 22<sup>nd</sup> January, 2023 by Charles E. Onyeador to him (the Claimant) he is the equitable owner and the one in possession of the Property known as plot EC/18, measuring about 1,050 sqaer metres situate at Bwari extension layout, Bwari Abuja which was granted to the original owner(Charles E. Onyeador) vide a Right of Occupancy granted by Bwari Area Council on the 18<sup>th</sup> December 2001.

That pursuant to the Irrevocable Power of Attorney donated by the owner to the Claimant, the Claimant immediately took steps to develop the property between 2004 and 2005 by building a 4 Bedroom flat with two (2) numbers of one-bedroom Boys Quarters and a Security House.

The Claimant stated that sometimes in August 2020, some persons who refused to reveal their identity to the Claimant trespassed onto the property claiming to be owners of the property and when challenged by the Claimant they vowed to deal with him and threatened to forcefully take possession of the property from him. A few days after the threat, officers of the Defendants, particularly from the department of Development Control apparently instigated by the unknown persons, came to serve a quit notice on the Claimant on the 13<sup>th</sup> day of August, 2020.

The Claimant further stated that consequent upon the service of the quit notice, He immediately consulted his solicitors Karina Tunyan SAN & Co. to write to the 3<sup>rd</sup> Defendant's officer to ascertain under whose authority the said quit notice was served on him, the Defendants further on the 28<sup>th</sup> August, 2020 served a demolition notice on him (the Claimant) which strengthened the fact that the defendants are ready to bring down his property if not restrained by an order of Court.

Having pointed out the case of the Claimant, it is trite law that the burden of proof lies on he who asserts. To put it differently, he who

asserts must prove with credible and admissible Evidence. This position of law is encapsulated in Section 131(1) of the Evidence Act, 2011 as Amended which provides thus: -

***Section 131 Evidence Act 2011: -***

- 1. Whoever desire any Court to give Judgment as to any legal right or obviously defendant on the existence of facts which he asserts must prove that those facts exist.***
- 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.***

See also the case of **OKEKE VS OKEKE (2019) 17 NWLR (PT. 1701) at P 288 PARAS B-E PER UMAR J. C. A** where it was held thus:-

***"Under Section 131 of the Evidence Act 2011 (as amended), the burden of proof lies on the party whose claim will fail if no evidence is adduced. In essence in civil actions, the initial burden of proof lies on the party against whom would be given Judgment if evidence was not produced on either side."***

Similarly it was held in the case of **NSEFIK VS MUNA (2007) 10 NWLR (PT. 10) 502 at 514, PARAS D-F that:-**

***"The burden of proof rests with the party who asserts the positive and not on one who affirms the negative. The maxim he who asserts must prove operates thus: That a man cannot be expected to prove a negative assertion. The latin saying sums up the matter as follows;-incumbit probation qui dicit non quinegat cum per rerumnaturam factum negantis probation nulle sit, which means the proof lies upon him who affirms not him who denies. Since, by the nature of things, he who denies a fact cannot produce any proof."***

At the Trial, the Claimant, Elder Julius Kuete testified as PW1 and tendered in Evidence Several Documents which were admitted and from the totality of the testimony of PW1 vis-à-vis the documentary evidence it becomes clear that an Irrevocable power of attorney was donated to the Claimant from Charles E. Onyeador over a Property known as plot EC/18 measuring about 1, 050 square metres situate at Bwari Extension Layout, Bwari Abuja. Which was granted to Charles E Onyeador(the Original owner) vide a Right of Occupancy by Bwari Area Council.

However what appears to be in dispute is that the same persons who refused to reveal their identity trespassed on the Claimants property claiming to be owners of said property and when challenged vowed to deal with the Claimant.

Furthermore, few days after the encounter, a Quit Notice and Demolition Notice were served on the Claimant, by officers of the 3rd Defendant particularly from the Department of Development Control.

Moreso, it should be noted that the crux of the Claimants case is the service of the Quit Notice on the Claimant by Officers of the Defendants without Compliance to the Nigerian Urban and Reginal Planning Act as illegal and unlawful and as well as restraining the Defendants either by themselves, their agents, servants, officers or privies whatsoever from further trespassing on the Claimants property or from ejecting the Claimant without an order of a Court of record

The Claimant avers in paragraph 7 of his witness Statement on oath which for ease of reference I shall reproduce same hereunder thus:-

Paragraph 7 reads thus:

***"That by an irrevocable Power of Attorney donated on the 22<sup>nd</sup> January, 2023 by Charles E. Onyeador in favour of me I am the equitable owner and the one in possession of the property known as Plot EC/18 measuring about 1,050 square metres, situate at Bwari Extension layout, Bwari, Abuja which was granted to the original owner (Charles E***

***Onyeador) vide a Right of Occupancy granted by Bwari Area Council on the 18<sup>th</sup> December, 2021 ."***

Consequently, PW1 testified in his evidence in Chief interalia thus: -

***"In Paragraph 5 of the witness statement on Oath, I made mention of two documents, irrevocable power of Attorney and a Right of Occupancy"***

As stated earlier, He who asserts must prove with credible and admissible evidence. Therefore the onus is on the Claimant to lead evidence to prove its averment particularly that of paragraph 7 quoted above.

From the totality of evidence led by the Claimant, it is my humble opinion that the Claimant did lead Evidence to prove His averment in Paragraph 7 of his witness statement on oath. In this respect, See the case of **GBEDU v. ITIE (2020) 3 NWLR (PT. 1710) Per Rhodes Vivour JSC Pg 129 Par. E-G** where it was held thus:

***"Cases are not decided on emotions, sentiments or some misguided consideration. Cases are won on pleaded facts supported by compelling evidences..."***

Moreso, from the evidence before the Court, the Claimant tendered Exhibits A' and b' Irrevocable Power of Attorney and Bwari area council conveyance of provisional approval respectively) in establishing his title to Plot EC/18, measuring about 1, 050 square metres situate at BwariExtension Layout, Bwari Abuja.

To that extent it is trite law that Documents speak for themselves. In support of this I refer to the case of **AIKI v. IDOWU (2006) 9 NWLR (PT. 948) 47 at 65 Par A-C** where it was held thus: -

***"Documents when tendered and admitted in court are like words uttered and do speak for themselves. They are even more reliable and authentic than words from the vocal cord of man because they are neither transient nor subject to distortion and misinterpretation but remain permanent and indelible through the ages"***

It is a well-established principle of law that with respect to civil cases the burden of proof or rebuttal of issues arising in the course of proceedings may shift from the Plaintiff to the Defendant and vice-versa.

See the case of **TROAGBARA V UFOMADU (2009) LPELR-1538 (SC)** where the Court held thus:-

***"In Civil case, the like of the one under consideration, on the burden of proof on the pleadings, the rule is that the burden of proof rests on the party (Whether Plaintiff or Defendant) who substantially asserts the affirmative of the issue. When it is said that onus of proof shifts from Plaintiff to Defendant and vice-versa from time to time as the case progresses, it means no more than burden of proof may shift depending on how the scale of evidence preponderates...." See the case of DAODU V NNPC (1998) 2 NWLR (PT. 538) 355.***

It is trite to note that after careful review of the evidence adduced by the Claimant, both oral and documentary which has remained uncontested and uncontroverted by the Defendants, who did not cross-examine the witness and did not enter a defence even though they had the opportunity do so. Results in an admission of the Claimant's, Claims as endorsed in the Writ of Summons. See the case of **GAJI & ORS V PAYE (2003) LPELR-1300 (SC)** where the Supreme Court Per Dictates of EDOZIE JSC held at P20, paras E-D thus:-

***"It has been said that the effect of failure to cross-examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence of a witness."***

Similarly in the case of **OLA V THE STATE (2018) LPELR-44983 (SC)** the Court held thus:-

***"Where the adversary fails to cross-examine a witness upon a particular matter, the implication is that he accepts the truth of the matter as led in evidence."***

See also the cases of **DIKE & ORS V ADUBA & ANOR (2016) LPELR-41035 (CA); CAMEROON AIRLINES V OTUTUIZU (2011) LPELR-827 (SC); ISAH V THE STATE (2017) LPELR-43472 (SC)** and also the case of **PATRICK OFORLETE V THE STATE (2000) 12 NWLR (PT. 681) 415 at 436 also found at (2000) LPELR-2270 (SC).**

As stated earlier, the Claimant in this suit has led evidence which is unchallenged and uncontroverted. Therefore, the effect is that the Defendants here admitted Claimant's Claims as endorsed on the writ of summons. In light of this, the Court is at liberty to accept Claimant's evidence as the truth of the matter. Refer to **PATRICK OFORLETE V THE STATE** (Supra) on this point.

To this end the law is settled that civil cases are decided upon the preponderance of evidence and the balance of probability. In that regard I refer to the case of **NNADI & ANOR Vs ODIKA & ORS (2017) LPELR 43448 (CA)** per Ogunwumiji at Page 20-21 at Para E-F where it was held that: -

***"It is no doubt that the Standard of proof in civil cases is on preponderance of evidence or balance of probability. After parties to an action have presented their cases to the Court. It is the duty of the Court to place such process of evidence on either side on the imaginary scale and see which side the balance tilts to..."***

See **IROAGBARA V UFOMADU (Supra); NSA & ORS V ENENE & ORS (2015) LPELR-40271 (CA); ONWUERINGO V ADEDAPO (2020) LPELR-52491 (CA).**

In the instant case, on the strength of Claimant's evidence I am satisfied that the Claimant has proved his case on the preponderance of evidence to be entitled to the reliefs sought.

On the Claimant's claim for N1,000,000.00 as cost of action, the Claimant prayed for it on the face of his writ even though he did not attach any documentary evidence in proof of same but the Court has

taken judicial notice that he has incurred expenses in engaging the services of a legal Practitioner to prosecute his case and it is settled law that a successful party is to be indemnified for cost of litigation. **SEE NAUDE & ORS v. SIMERU (2013) LPELR-20491 (CA) Pg. 24-28 at Para A.**

Therefore, the sole issue for determination is hereby resolved in favour of the Claimant against the Defendants, I so hold.

Consequently, Judgment is hereby entered in favour of the Claimant against the Defendants as endorsed on the Writ of Summons save for Claim (c) I award the sum of **₦500,000.00** as cost of this action since Claimant did not tender in evidence receipt for professional fees to prove that the sum of **₦1, 000,000** was paid as cost of this action.

***Signed:***

***Hon. Justice S. U. Bature  
5/6/2023.***