

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 2ND DAY OF JUNE, 2023

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

JUDGE

SUIT NO.: FCT/HC/CV/1284/2019

BETWEEN:

MR. MBACHUKWU NDUBISI ----- CLAIMANT

AND

ABUJA MUNICIPAL AREA COUNCIL ----- DEFENDANT

JUDGMENT

On the 11th day of March, 2019 Mr. Mbachukwu Ndubisi instituted this action against Abuja Municipal Area Council. The matter was initially assigned to Late Hon. Justice Jude Okeke of the blessed memory. Following the demise of the said Okeke J. the matter was later transferred to my Court on the 11th day of November, 2021.

In the Writ the Claimant claimed the following Reliefs against the Defendant:

- 1. A Declaration that the Claimant has suffered loss as a result of the act of the Defendant by allocating to him Plot 52, 59, 60 and 674 at Apo Technology Village having known that they have no such power to do so.**
- 2. A Declaration that the Claimant is entitled to damages against the Defendant for allocating Plots 52, 59, 60 and 674 to the Claimant when the Defendant has reason to know that he has no power to do so.**
- 3. A Declaration that the Defendant did maliciously led the Claimant to develop Plot 52, 59, 60 & 674 at Apo Technology Village by issuing Permission to Develop dated 25th March, 1999 when it knows or have reasons to know that it has no such power.**
- 4. An Order of the Honourable Court mandating the Defendant to pay to the Claimant the sum of Eleven Million, Two Hundred Thousand Naira (₦11, 200,000.00) only being the open market value of the leasehold interest of the developed property at Plot 52, 59, 60 & 674 which was demolished by the Department of Development Control of FCTA.**

5. An Order of the Court directing the Defendant to pay the Claimant the sum of One Hundred Million Naira (₦100, 000,000.00) general damages for the hardship and trauma the Claimant suffered since the demolition of the houses as a result of the act of the Defendant.

6. An Order of the Court directing the Defendant to pay 25% interest annually on the sum of Eleven Million, Two Hundred Thousand Naira (₦11, 200,000.00) only being the market value of the demolished property from 29th day of August, 2006 when the properties were demolished to the date of Judgment of the Honourable Court.

7. An Order of the Court directing the Defendant to pay 10% post Judgment interest on the Judgment sum from the day of the Judgment until the entire Judgment sum is liquidated.

8. Two Million Naira (₦2, 000,000.00) cost of this Suit.

The Claimant alleged that the Defendant advertised for allocation at Permanent Site for Mechanics at Apo. That based on the advert he applied and Plot 60 & 674 were allocated to him. He also alleged that he later purchased Plot 52 & 59 from one Emeka Chukwu and one Usman

sometime in 1995 and 1998. That they eventually donated Power of Attorney to him. He also alleged that he subsequently applied for Building Plan Approvals and same were granted. He then embarked in development of all the four (4) Plots – Plot 52, 59, 60 and 674. He developed them to mechanic workshops which were valued at **Eleven Million, Two Hundred Thousand Naira (₦11, 200,000.00)** in 2006. The said shops were later demolished by the Department of Development Control of FCTA. That it caused him hardship as he lost all his investment in the said development as a result of the said demolition. The Claimant tendered all the documents referred to above from Allocation paper to the Receipt evidencing payment of Rates to the Defendant. Shattered by the action of the said demolition, he instituted this action against the Defendant, Abuja Municipal Area Council (AMAC) – Allocator of the said Plots of land who he alleged has no power to allocate the Plots in the first place.

The Defendant was served with the Originating Processes. They only filed a Preliminary Objection challenging the Suit which is that there was no Pre-action Certificate. But contrary to that assertion there was actually a Pre-action Certificate which was served along with the Writ.

It is imperative to state that the Defendant never filed a Statement of Defence to the Suit of the Claimant. They never came to Court to move the Preliminary Objection which the Claimant adequately responded to. The Court

ensured that they were served Hearing Notices for everyday the matter was scheduled for Hearing. But the Defendant never came to Court. They never had Counsel representative in Court.

After several adjournments and since the Court cannot wait in perpetuity, the matter was reserved for Definite Hearing on the 7th & 8th days of December, 2022. The Defendant was as usual served with the Hearing Notice. But they did not come to Court. On 7th December, 2022 the Claimant opened its case and testified as PW1. He tendered several documents marked as EXH 1 – 13. The Court admitted all the documents and adjourned the matter for Cross-examination by the Defendant/Defendant Counsel. The Defendant never Cross-examined the PW1. There were several adjournments. The Defendant never filed Statement of Defence. After several adjournments, the Court, upon the application of the Claimant Counsel, foreclosed the Defendant from Cross-examining the PW1. After another adjournment the Court also foreclosed the Defendant from opening and closing its Defence. So as it were, the Suit of the Claimant in this case is unchallenged and facts thereon are not controverted. The Court adjourned the matter for Final Written Address.

The Claimant filed its Final Written Address on the 27th April, 2023. The Defendant was served on 28th April, 2023. But it did not file any Final Written Address or

responded to the Final Written Address of the Claimant. The Court reserved the matter for Judgment.

In the Claimant's Final Written Address he raised an Issue for determination which is:

“Whether the Claimant has proved his case against the Defendant to warrant this Court granting him all the Reliefs vis-à-vis the available evidence before this Court.”

He submitted that he has by his testimony and evidence before this Court discharged the burden of proof imposed on him and as such he is entitled to the fruits of his labour. That the Defendant has not denied that and the Court gave the Defendant ample time to defend itself but it refused and neglected to do so. That his credible evidence was not challenged and as such the Court has no option than to give Judgment in his favour. They referred to the case of:

Interdrill Nigeria Limited V. UBA PLC (2017) FWLR (PT. 904) 1177 @ 1203 where the Court held that when evidence of a Plaintiff is unchallenged the Plaintiff is entitle to Judgment.

It is important to state that in this case the case of the Claimant is unchallenged by the Defendant though he was given all the judicial leverages to do so but it refused, neglected and ignored to do so. That the Defendant has no iota of Defence to this Suit. That it can be inferred

that the Defendant has no prima facie Defence and has admitted the claim of the Claimant. That it is trite that facts admitted need no further proof. He referred to the case of:

**Adehwe Aweto V. Federal Republic of Nigeria
(2015) ELC 2420 SC**

That the Claimant testified as PW1 and he tendered documents to support all his claims. That the documents were all admitted in evidence and were never challenged or controverted by the Defendant. He urged Court to so hold and grant all his claims with substantial cost against the Defendant.

COURT

Going by the decision of the Supreme Court in the case of:

**Nishizawa Limited V. Jeth Wani
(1984) 12 SC 234**

and the case of:

Interdrill Nigeria Limited V. UBA PLC Supra

facts admitted need no proof. That was also decided in the case of:

**Adehwe Aweto V. Federal Republic of Nigeria
(2015) ELC 2420 SC** where the Apex Court held thus:

“the law is settled beyond any enforcement that admitted facts requires no further proof.”

In this case the Claimant's case is not challenged. He testified as PW1 and tendered documents. He tendered Allocation paper issued to him by the Defendant. He also tendered Allocation paper issued to Usman and Emeka Chukwu from who he purchased the other 2 Plots of land. This duo the Powers of Attorney donated to him. Those Powers of Attorney were tendered in evidence and were not challenged.

He submitted that he embarked on development of those Plots of land into Mechanic Workshops. That before he constructed he obtained Approval for the Building Plan. He attached the signed approved Building Plan and showed Letter of Approval. These Exhibits were never challenged. He tendered document evidencing Demand for Payment of Revenue by the Defendant. He equally, as a law abiding citizen, duly paid the Revenue for all the shops for several years. He exhibited Receipts issued to him by the Defendant evidencing what was paid to the Defendant and also the year. He also exhibited a document which is the Permission to Develop the said Plots issued to him by the Defendant on the 25th March, 1999. In the said letter the Development wrote:

“I am directed to inform you that permission has been granted to you to develop the open space

No. 60 allocated to you in accordance with the specific Building Plan.”

The Defendant gave the Building Plan. The same Approval was given for No. 52, 59, 60 & 674.

The Defendant as a law abiding citizen developed the said open spaces to the said specification. He attached the pictures of the constructed mechanic workshops which were done as per approved specification and plan given by the Defendant. Those shops were also occupied. The Claimant also exhibited the Valuation Report on all the 4 numbers shops. That valuation was done by a qualified Q.S – Agbama Victor & Associate NIESV Reg No: A.2032.

By the Q.S Valuation Report the buildings were valued at **Eleven Million, Two Hundred Thousand Naira (₦11, 200,000.00)** as at 2006. That Valuation Report was done on the 10th of April, 2006. He tendered the Report and it was not challenged by the Defendant.

The Claimant also exhibited the Building Plan which was approved and signed. He also attached Judgment of Court in Suit No: CV/109/2007 between Mbachukwu V. Minister, Federal Capital Territory and Federal Capital Development Authority (FCDA) in which the Court held that the present Defendant ought to be and should be a party and not the Defendants in that case. All these documents were in their original form. The said documents were not challenged by the Defendant in this Suit.

As stated earlier the Defendant was served, duly notified and given all judicial leverages but they failed, ignored and neglected to put up Defence. Even the Preliminary Objection they filed, they did not come to Court to move same. This Court looked into the said abandoned Preliminary Objection and hold that it lacks merit because the Claimant disclosed cause of action against the Defendant. He also filed and served the Defendant Pre-action Counseling Certificate. The Court dismissed the Preliminary Objection based on the above and the fact that the Defendant never filed a single paragraph of Statement of Defence, bearing in mind that Demurer Proceeding does not exist in the jurisdictional clime of this Court since 2004. He who alleges must prove. The Claimant alleged and has proven his case in this Suit. From all indication the Claimant has established his case on the preponderance of the evidence it presented before this Court. He is therefore entitled to his claim and the Reliefs sought to wit:

Prayer 1, 2 and 3 granted as prayed.

Prayer 4 granted also as prayed.

Prayer 5, the Defendant is to pay to the Claimant the sum of One Million Naira (N1, 000,000.00) as damages for the hardship and trauma suffered because of the demolition.

Prayer 6, the Defendant should pay to the Claimant 3% interest annually on the said sum of Eleven Million, Two

Hundred Thousand Naira (N11, 200,000.00) from 29th August, 2006 till date of this Judgment.

Prayer 7, the Defendant to pay 2% interest on the Judgment sum from date of Judgment until its final liquidation.

Prayer 8 NOT granted.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2023 by me.

K.N. OGBONNAYA
HON. JUDGE