

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 10TH DAY OF JUNE, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/2606/2020

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

1. OLUWAKEMI OMOLABAKE
MOGBOJURI
2. NDAM NANPAK GEORGE

} CLAIMANTS

AND

1. DIRECTORATE OF ROAD
TRAFFIC SERVICES
2. MOSES AYEBE

} DEFENDANTS

J U D G M E N T

The Claimants' Writ of Summons and Statement of Claim is dated 18/08/2020 but filed on the 11th of September, 2020. The Claimants claim is as follows:

(a) A Declaration that the Defendants' act of towing and impounding the Claimants' Toyota Liteace Bus on the 15th day of June 2020 parked in front of the 2nd Claimant's house which is about 45 meters from the main road at Gwarimpa Village, Opposite 2nd Gate, Works and Housing Estate, Gwarimpa, Abuja is unlawful, illegal and abuse of his office.

(b) An Order of Court directing the Defendants to return the Claimants' Toyota Liteace Bus parked in front of the 2nd Claimant's house to the Claimants.

(c) ~~N~~6,000 only as cost of revenue the said bus generates daily from the 15th day of June 2020 till the bus is delivered to the Claimant.

(d) ~~N~~20 Million as general damages.

(e) ~~N~~500,000 as cost of this action.

The Writ of Summons and Statement of Claim were served on the Defendants on the 14th day of October, 2020. The Defendants failed to file a Defence.

On the 24th day of December 2020, the Defendants were further served with a Hearing Notice.

On the 14th of January 2021, the Claimant opened their case and called two witnesses in proof thereof.

The first Claimant's witness is Oluwakemi Omolabake Mogbojuri. She remembers making a Witness Statement on Oath at the Court Registry. She adopts same as her oral evidence.

In the said Witness Statement on Oath, she states that she is the owner of Toyota Liteace Bus with Registration No. GWA 578 YR, Chassis No. JT1WKM30600044349 and Engine No. 5JU015332, a bus her husband bought for his first wife, Bukola Magbogua, which was given to her after her death.

The 2nd Claimant parked the said bus in front of his house which is about 45 meters from the main road at Gwarimpa village, Opposite 2nd Gate, Works & Housing Estate.

The 1st and 2nd Defendants are the Road Traffic Management Agency in the Federal Capital Territory and recovery of the agency respectively.

That on the 15th day of June 2020, the 2nd Claimant parked the bus in front of his house and went out for distribution business where he heard people shouting that they should come out that the Defendants were about towing his bus away.

When 2nd Claimant came out, he told the officers that where he parked was in front of his house and that he was about going out for his business but they refused to listen to him and impounded it till date.

The 2nd Claimant informed her immediately of this development and she asked him to go to their office at Mabushi to enquire why they have to tow the bus.

That it was after three weeks that the 2nd Claimant brought a Traffic offence Notice issued by the 2nd Defendant wherein he was asked to pay ~~N~~50,500 only for illegal parking and towing.

That the daily income from the bus is ~~N~~6,000 only. That the bus is her major source of income. That the act of the Defendants has caused her and family irreparable loss.

She claims as per the Writ of Summons and Statement of Claim. The vehicle particulars are Exhibit A.

Under Cross-Examination, the witness said she is a lawyer and also a business woman.

On a further question, she answered that on 15/06/2020 by 10 a.m. they were distributing some products. That the 2nd Defendant is the Manager with the products.

That the vehicle was not obstructing anything. That the vehicle was in a state of roadworthiness. It was not dumped in a mechanic workshop on the road.

She was not sure that at the time of towing the vehicle, the papers had long expired. She did not run to the office of the VIO to renew the papers few days after the arrest.

The road on which the vehicle was parked and towed was a tarred road. That nobody reached out to her to get the result of the inspection.

The second Claimant's witness is Ndam Nanpak George. He deposed to a Witness Statement on Oath on 11/09/2020. He adopted same as his oral testimony in this suit.

He deposes that he is the Managing Director of the 1st Claimant's company, Betta Business Climate Nigeria Limited. He is the person that used the said bus for the distribution of products for their company. He was also the person who parked the said bus in front of his house when the Defendants came and towed it away.

That on 15/06/2020, he parked the bus in front of his house, opposite 2nd Gate, Hillside Estate, Gwarimpa Village, so as to go out for his distribution business when

he heard people shouting that he should come out that the Defendants were about towing the bus away.

When he came out, he told the officers that where the bus was parked was in front of his house and that he was about to go out with the bus for business but they refused to listen to him. They impounded the vehicle till date.

That he informed the 1st Claimant and he was asked to go their office at Mabushi immediately to enquire why they have to tow the bus.

That he met the 2nd Defendant who said he was not ready to talk to him that day. That after several visits to the Defendants' office, the 2nd Defendant issued to him a

Traffic Offence Notice three weeks after the bus was impounded. He was asked to pay the sum of ~~N~~50,000 only for illegal parking and towing.

He objected to the allegation and said he did not park illegally but in front of his house far away from the road but the 2nd Defendant insisted that he will not release the bus until the money is paid.

That he earned a daily income of ~~N~~6,000 only using the bus for business. That the Defendants' action has caused them irreparable loss.

The Claimants' second witness tendered Exhibit B – a document titled: Traffic Offence Analysis No. 46122 and

Exhibit C which is a booklet of Invoice of Betta Business Climate Nig. Ltd.

Under Cross-Examination by the Defendants' Counsel, the witness answered that on 15/06/2020, he was in his house in Gwarimpa, opposite Works and Housing.

He was not in N11 Road where an accident happened. That the Director of Road Transport came and arrested his vehicle where it was parked. He was not in the vehicle when the vehicle was towed.

To a further question, he answered that he is not aware of any ministerial order. That the vehicle was not abandoned. That he used it to service his customers.

He was not invited. He does not have an expired vehicle particulars. He did not renew his papers on 15/07/2020.

To a question, he said they pay him ~~N~~10,000 – ~~N~~12,000 daily. He confirmed that in paragraph 11, he said they pay him ~~N~~6,000 daily.

The above is the case of the Claimants.

The Defendants failed, neglected and or refused to file Defence despite actively taken part in the hearing. They failed to enter their Defence.

There is a Notice of Preliminary Objection filed by the 1st Defendant dated 10/03/2023 but filed on 25/05/2023. It has no Motion number.

The 1st Defendant did not move the said Motion. It is incompetent. It is accordingly struck out.

The Claimants' Final Written Address is dated 5/04/2023 and filed the same date. Learned Counsel contends that the Claimants have shown by evidence both oral and documentary that the Defendants towed their Toyota Liteace Bus parked in front of the 2nd Claimant's house which is about 45 meters away from the main road for no just cause.

That the Defendants did not deny any of the averments contained in the Statement of Claim. That unchallenged and uncontroverted evidence is deemed admitted and must be taken as true.

That on the balance of probability, the Claimants have proved their case and are entitled to the reliefs sought.

On the second issue, he argues that the Claimants have proved by evidence that their vehicle was towed. That it was a commercial bus which generates Six Thousand Naira daily. That Exhibit C is the proof.

That this piece of evidence is also not challenged. He finally urges the Court to grant the reliefs sought.

I have read the evidence as summarised. The Claimants' Written Address adopted by Counsel as his oral argument is summarised above.

The issue for determination in my humble view is: **Whether on the preponderance of evidence, the Claimants have discharged the onus of proof placed on them to entitle them to the reliefs sought.**

I have carefully outlined the evidence of PW1 and PW2. Exhibit A is the Vehicle Particulars and Certificate of Insurance.

A party who seeks judgment in his favour is required by law to produce adequate credible evidence in support of his pleading.

It is the law that unchallenged oral evidence of a party establishing his claim has been held to be sufficient proof.

The Claimants parked their vehicle in front of 2nd Claimant's house far away from the main road.

The Defendants impounded the vehicle for no just cause and towed it to their office. Weeks later they were served with Exhibit B, which is Traffic Offence Analysis No. 46122.

The Defendants deliberately did not put any date on Exhibit B in order to cover up the fact that the Exhibit B was a makeup.

The said vehicle is still in the custody of the Defendants. The Defendants failed to file a Defence and or give evidence.

The evidence of the Claimants is uncontroverted. The Defendants have by law admitted the Statement of Claim.

However, in relief C, the Claimants pray that the Defendants pay the sum of ~~N~~6,000 only per day as cost of revenue the said bus would have generated. It is special damages.

A claim in the nature of special damages to succeed must be proved strictly. The Court is not entitled to make its own estimate on such claims.

Special damages must be specifically pleaded and particularised in a manner clear enough to enable the Defendants know the origin or nature of the special damages being claimed.

I have taken note of paragraph 11 of the Claim. The particulars supplied did not include when the loss of income started.

I have also taken a cursory look at Exhibit C, it does not show that the Claimants was losing ~~N~~6,000 per day or was using ~~N~~6,000 as cost of transportation in the absence of the bus.

In the circumstance, the relief C fails. It is not proved.

On the other hand, general damages are those damages which the law implies in every breach and every violation of a legal right. It is the loss which flows naturally from the Defendants' act.

In the opinion of a reasonable person, the Claimants have suffered loss. Consequently, reliefs (a), (b) and (d) succeed.

Judgment is entered in favour of the Claimants against the Defendants as follows:

- (a) A Declaration that the Defendants' act of towing and impounding the Claimants' Toyota Liteace Bus on the 15th of June 2020 parked in front of 2nd Claimant's house is unlawful, illegal and an abuse of office.

(b) The Defendants are hereby ordered to return the Claimants' Toyota Liteace Bus No. GWA 578 YR to the Claimants forthwith.

(c) ~~N~~10,000,000.00 (Ten Million Naira) as general damages in favour of the Claimants against the Defendants.

(d) ~~N~~500,000.00 (Five Hundred Thousand Naira) as cost of the action.

HON. JUSTICE U. P. KEKEMEKE, ACIArb (UK), FICMC
(HON. JUDGE)
10/06/2024

1st Claimant present.

2nd Claimant absent.

1st and 2nd Defendants absent.

M. O. Iduh, Esq. for the Claimants.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

10/06/2024