

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA

ON THE 12TH DAY OF MARCH, 2024

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

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

MOTION NO. M/13899/2023

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

1. OLUWAKEMI OMOLABAKE MOGBOJURI	}	CLAIMANTS/
2. NDAM NANPAK GEORGE	}	RESPONDENTS

AND

1. DIRECTORATE OF ROAD TRAFFIC SERVICE	}	DEFENDANTS/
2. MOSES AYEBE	}	APPLICANTS

RULING

The Defendants/Applicants' application dated 5/10/2023 is for an Order

- (1) Setting aside the Order of this Court foreclosing them.
- (2) And for such Order or further Orders as the Court may deem fit to make in the circumstances.

Learned Counsel relied on the grounds upon which the application is made.

He further relied on his 8-paragraph Affidavit. He deposed that on the 12th day of May, 2023 he filed a Conditional Memorandum of Appearance alongside other processes and same were served on the Claimants.

That after the adjourned date the Defendant was not served any Hearing Notice. That he approached the Registry and discovered the Order of foreclosure.

The Claimants responded by filing a Counter Affidavit deposed to by Clement Weweh. In the said Counter Affidavit he said that on 5/07/2022 both parties were in Court and Claimants closed its case and the matter adjourned for Defence.

On the adjourned date, the Defendants and Defence Counsel were absent. The Court still adjourned, yet the Defendants were not in Court. They were subsequently foreclosed on 21/03/2023.

The Defendants have not filed any processes. That it is in the interest of justice to dismiss the application.

I have equally read the Addresses of Counsel. The issue for determination is whether the Defendants' application has any merit.

This suit was initiated on 11/09/2020. The Defendants were served with the Writ of Summons and Statement of Claim on the 14/10/2020. They were served with Hearing Notices on 24/12/2020 and 6/10/2021.

On the 14/01/2021 when trial commenced, Defendants' Counsel, Baba O. Samuel appeared for the Defendants.

The PW1 gave evidence for the Claimant. The Defendants' Counsel, Baba O. Samuel applied for a date to cross-examine the witness. The Court granted his request and the case adjourned for Cross-Examination and possible continuation of Hearing.

On the next date of adjournment was the JUSUN Strike. Parties were absent.

On the next date of adjournment, i.e. 7/10/2021, one N. O. Abdullahi held brief of Samuel Baba Opaluwa for 1st & 2nd Defendants.

He told this Court that they received the Hearing Notice of the Court the previous day. He asked for a further date to cross-examine the PW1 because his principal was on leave.

On 16/12/2021, the adjourned date, the Defence Counsel, Samuel Baba cross-examined the witness and the case adjourned for continuation.

The PW2 gave evidence on 5/07/2022 and was cross-examined by Defence Counsel. On this day, the Claimants closed its case and the case adjourned to 22/11/2022 for Defence.

On 22/11/2022, neither Defendants nor Defence Counsel was in Court. The Claimants' Counsel told the Court that Defendants' Counsel called him to inform him that he was bereaved. He lost his father in-law and the burial coincided with the Defence. The Court empathetically adjourned to 21/03/2023 for Defence.

On 21/03/2023, neither the Defendants nor Counsel was present. The Court noticed on that day that the Defendants did not file a Defence and their right to defend the action was foreclosed:

Were the Defendants given fair hearing? It is a Yes.

They were aware of the dates for hearing. They decided to stay away.

They were given all the opportunities, participated in the proceedings but failed to file a Defence, which they ought to have filed since 2020 and today is 2023.

It is apparent they don't have a Defence. The application is such that does not deserve a sympathetic consideration. It is an empty application.

No reasons were given why the Order to set aside the foreclosure should be granted. It is one of the gimmicks of time wasting.

The application in my humble view lacks merit and it dismissed.

HON. JUSTICE U. P. KEKEMEKE

(HON. JUDGE)

12/03/2024

Claimants present.

Defendants absent.

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

S. O. Baba, Esq. for the 1st & 2nd Defendants.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
12/03/2024