

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON TUESDAY THE 27<sup>TH</sup> DAY OF JUNE, 2023**

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

**JUDGE**

**SUIT NO.: FCT/HC/BW/CV/237/2021**

**BETWEEN:**

**ONUOHA EBERE BENNET**

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**CLAIMANT**

**AND**

**1. MR. MUNURI**

**2. MR. MUSBAU**

**3. PERSON UNKNOWN**

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**DEFENDANTS**

## **JUDGMENT**

In a Writ of Summons filed on the 24<sup>th</sup> August, 2021 part of which was later amended on the 13<sup>th</sup> of July, 2022 the Claimant, Onuoha Ebere Bennet claims the following Reliefs against the Defendants, Mr. Munuri, Mr. Musbau and Person Unknown. The Reliefs are:

- a. A Declaration that the Claimant is entitled to enjoy exclusive possession of Plot No. MF1 Cadastral Zone, Kubwa Ext. III (FCDA SCHEME),**

**Bwari Area Council, FCT Abuja, trespassed by the Defendants.**

- b. A Declaration that the Act of the Defendants by destroying the block fence erected by the Claimant on Plot No. MF1 Cadastral Zone, Kubwa Ext. III (FCDA SCHEME), Bwari Area Council, FCT Abuja amount to trespass.**
- c. An Order of Injunction restraining the Defendants, their servants, agents, privies, assigns, predecessors in title and whosoever acting on their behalf from trespassing, encroaching and or occupying Plot No. MF1 Cadastral Zone, Kubwa Ext. III (FCDA SCHEME), Bwari Area Council, FCT Abuja and from further trespass into the land of the Claimant.**
- d. An Order for the payment of Fifty Million Naira (₦50, 000,000.00) only as General Damages for the trespass against the Defendants.**
- e. Cost of Suit of Five Hundred Thousand Naira (₦500, 000.00) only.**
- f. And for such further Order or other Orders as the Honourable Court may deem fit to make in the circumstances of the case.**

Because personal service failed, the Defendants were served the Process at the Res based on Order of this Court to that effect. They did not file any Statement of Defence or Counter-Claim.

On the 15<sup>th</sup> of February, 2023 the Claimant opened its case and testified as PW1. The Claimant claimed that he bought the land from Jambo Block Industries for the sum of **One Million, Five Hundred Thousand Naira (₦1,500,000.00)**. That Jambo Block Industries was the original allottee. That the said Res was been allotted to him in 2001 by a Conveyance of Provisional Approval dated 15<sup>th</sup> June, 2001 issued by the FCT Minister. That the land was later sold to him via a Sale Agreement and Power of Attorney. He exhibited the Sale Agreement and Power of Attorney donated by Jambo Block Industries. That the Jambo Block Industries handed over to him the Receipt from Bwari Area Council for processing of the document of title.

That upon the purchase of the land he started cultivating it and demarcated same with a dwarf wall. Hence, taken physical occupation of the land. That he had been enjoying quiet possession of the land until sometime in 2015 when the 1<sup>st</sup> – 3<sup>rd</sup> Defendants appeared from nowhere and disputed his quiet enjoyment of the Res. That the whereabouts of the Defendants could not be ascertained as they appeared at odd time and disappeared.

That the original Allottee handed over to him Right of Occupancy with No. FCT/BCTP/LA/MISC/600. It also handed over to him AGIS Regularization Acknowledgment. That the Defendants continued to trespass on the said Res. Hence, he instituted this action to put a stop on the act of trespass by the Defendants.

Upon Hearing, the Claimant tendered Seven (7) documents – Conveyance of Provisional Approval of 15<sup>th</sup> June, 2001, Sale Agreement, Power of Attorney donated to him by Jambo Block Industries, Right of Occupancy, AGIS Regularization, TDP, CAC Form CAC 2.1 CAC 7 and Certificate of Incorporation of the Jambo Block Industries where he claims to be a Director.

The Defendants were served Hearing Notices as ordered by this Court. But they did not enter appearance or have Counsel representation or filed any Statement of Defence nor filed Counter-Claim.

Since the Court could not wait for them in perpetuity, it foreclosed them from Cross-examining the PW1 and further foreclosed them from opening and closing their Defence as they never filed anything. Matter was reserved for Final Written Address.

The Claimant filed its Final Written Address and served same on the Defendants but they did not respond to it and never filed any Final Written Address. Hence, matter was adjourned for Judgment.

In the Final Written Address the Claimant raised and canvassed 2 Issues for determination which are:

- (1) Whether by the uncontroverted evidence, unchallenged, undisputed facts, this Court is not in position to accept it as true.**
- (2) Whether this Court is not entitled to take the evidence of PW1 to be decided in that minimal proved by that standard.**

Taking the 2 Issues together, they submitted that Court cannot wait for the Defendants since they were duly served with the Claimant's Process but they failed to challenge it. That Court can decide the case on minimal proof. That the evidence of PW1 and the documents tendered were not challenged by the Defendants and the facts uncontroverted. That by so doing the Defendants has admitted those facts. They referred to the case of:

**Ikono LGA V. De Beacons Fin & Sec Ltd  
(2002) 4 NWLR (PT. 756) 133 Rat. 5**

That his case is vested on possession and trespass from evidence led before the Court. He also referred to the case of:

**Salami V. Lawal  
(2008) 161 LRCN 1 – 5**

Where Court held that “a person in possession has support and strength in law to protect that thing, subject

to the right of a person who has better proof of title.” He urged the Court to grant his claims.

## **COURT**

In a Suit where the facts are not controverted, those facts are deemed admitted. Moreso, where the person who supposed to controvert same failed, refused and ignored to do so after being given all judicial leverages.

In this case the Defendants were given all the judicial leverages to contradict the fact and defend this Suit but they failed to do so. This Court holds that the Defendants had no Defence to the Suit of the Claimant.

All the Seven (7) documents tendered were not challenged. The Court ensured that the Defendants were served with all the Processes and Hearing Notices were also served on them. They never had Counsel representation. They never entered appearance in person or in paper or by proxy. This Court has no reason not to enter Judgment for the Claimant.

The Court went through all the documents of title from the Allocation to Jambo Block Industries to the CAC Form and Power of Attorney, Receipts and AGIS document etc. They were not challenged.

That being the case and in the absence of any challenge, this Court holds that there is merit in the case of the Claimant.

This Court therefore grants the Reliefs of the Claimant to wit:

- (1) Prayer No. 1 – 3 granted.
- (2) Prayer 4 & 5 NOT granted since the Defendants cannot be traced and their whereabouts unknown. So no damages awarded.
- (3) Claimant to bear the cost of the Suit.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2023 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE