

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 19<sup>TH</sup> DAY OF JUNE, 2024

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

SUIT NO. FCT/HC/CV/95/2019

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

SULEIMAN ABDULFATAI .....        ..... ... CLAIMANT

AND

1. EDWIN APRA	}	... DEFENDANTS
2. GABRIEL APRA		
3. GRACE UKETA		
4. SUNDAY (The current Tenant of the room in dispute)		

**J U D G M E N T**

The Claimant's Writ of Summons and Statement of Claim is dated the 22<sup>nd</sup> day of October, 2019. The Claimant herein claims against the Defendants as follows:

(1) A Declaration that the Claimant is the lawful Attorney of Joshua Oladipo with exclusive right and interest over the room known as Block 77, Room 1, Area F, Nyanya, Abuja by virtue of the Power of Attorney dated 4/04/2017.

(2) A Declaration that the Defendants have no right or legal interest in the land or vires to enter possession for any purpose whatsoever.

- (3) An Order of Court declaring the actions of the Defendants in refusing to deliver possession of the property to the Claimant as illegal and constituting an act of trespass.
- (4) An Order directing the immediate eviction of the 4<sup>th</sup> Defendant or any other person that may be occupying the room.
- (5) A Perpetual Injunction restraining the Defendants, their agents, servants and or privies and assigns or anybody claiming through them howsoever called from further trespassing into the Claimant's room or in any manner whatsoever.

(6) An Order of Court compelling the Defendants to give account of rent collected therefrom from April 2017 until possession is given up.

(7) ~~N~~1 Million as general damages for unlawful trespass.

The Writ of Summons and Statement of Claim was served on the Defendants. The Defendants entered appearance vide Aliyu M. Abdulhameed on 8/12/2021.

Learned Defence Counsel promised to regularise his appearance. He consequently filed a Motion for extension of time dated 4/10/2022 which he abandoned.

The Claimant opened his case and gave evidence for himself. He is Suleiman Abdulfatai, a businessman. He lives in Block 64, Area F, Nyanya. He remembers making a deposition on oath. He adopts same as his oral evidence.

In the said Written Deposition, he said the 1<sup>st</sup> Defendant is a Police Officer. The 2<sup>nd</sup> Defendant is a blood brother of the

1<sup>st</sup> Defendant. The 3<sup>rd</sup> Defendant is a Police Officer and a blood sister to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The 4<sup>th</sup> Defendant is the tenant of Block 77, Area F, Room 17, Nyanya, Abuja, the subject matter of this suit put in the

room by the 1<sup>st</sup> – 3<sup>rd</sup> Defendants by force of arms being Police personnel.

That the room was originally sold to Mr. Oladipo Joshua Ode on behalf of the Federal Government by the Adhoc Committee on Sale of FGN Houses in the FCT on 2/02/2006.

That he bought the said room from Mr. Ogah Ajayi Timothy for ₦350,000 and he deposited the agreed sum into his bank account. He also paid agency fee of ₦17,500.

That a Power of Attorney was executed between him and the original allottee, Mr. Oladipo Joshua Ode on the 4/04/2017.

The tenant who was in occupation refused to vacate at the expiration of his tenancy. That the Defendants are collecting rent from the premises despite his objection.

That they collected N160,000 as at the time of instituting this action. That the Defendants have failed to yield up possession.

The PW1 tendered Exhibits A – A3:

- (1) Copy of receipt of Adhoc Committee on the Sale of FGN Houses.

(2) Irrevocable Power of Attorney between Joshua Oladipo Ode and Suleiman Abdulfatai.

(3) Deposit Slip of GTB dated 4/04/2017.

The Defendants' Counsel failed or neglected to cross-examine the PW1 or enter their defence. They were subsequently foreclosed.

The Claimant's Counsel adopted his Final Written Address dated 13/11/2023. He posited a lone issue for determination, which is: *Whether from the facts and circumstances and evidence before the Court, the Claimant is entitled to the reliefs sought against the Defendants.*



Learned Counsel submits that the failure of the Defendants to file any defence amounts to an admission. That facts not disputed are taken as admitted and or established.

That from the available evidence, the Claimant has fulfilled the requirement of proving his case on the preponderance of evidence.

Learned Counsel refers to paragraphs 7 -12 of the Statement of Claim and paragraphs 6-11 of the Claimant's Witness Statement on Oath, which are not challenged and Exhibits A – A3.

He finally urges the Court to grant the reliefs sought.

The issue for determination is as posited by Claimant's Counsel. It is, **whether from the facts and circumstances of this case, the Claimant is entitled to the reliefs sought.**

The Claimant seeks a declaration that he has exclusive right or interest on the property known and described as Block 77, Room 1, Area F, Nyanya, Abuja.

(2) An Order of eviction which is tantamount to recovery of possession.

It is an age-long principle of law that he who asserts must prove. Proof is on the preponderance of evidence and balance of probability.

The Defendants were served but they failed to file a Statement of Defence neither did they give testimony in defence.

The Defendants therefore did not controvert the Claimant's claim. They are deemed admitted.

In ALHAJI ISAH T. SOKWO vs. JOSEPH DAKU KPONGBO & 3 ORS (2008) 7 NWLR (PT. 1086) 342 at 344, the Court held:

*"It behoves on a party to give testimony in support of his pleadings, if he wants to succeed in his case."*

It is a cardinal principle of law that he who asserts must prove his case with credible and unchallenged evidence.

In civil cases, a party who wishes to succeed in obtaining judgment in his favour must adduce such credible evidence, for such cases are decided on the preponderance of evidence and balance of probability.

It is also trite that whenever on an issue, evidence comes from one side and it is unchallenged and uncontradicted, it ought normally to be accepted on the principle that there is nothing to be put on the other side of the balance unless it is of such quality that no reasonable tribunal should have believed it.

On the issue of eviction or recovery of premises as captured by relief (iv) of the Claim, the appropriate law is the Recovery of Premises Act Cap 544.

By Section 19 of the Act, the Claimant shall prove the following:

- (a) of the Defendants still neglecting or refusing to deliver up the premises
- (b) of the yearly rent of the premises
- (c) of the holding
- (d) of the expiration or other determination of the tenancy with the time and manner thereof
- (e) of the title of the landlord, if the title has accrued since the letting of the premises, and

(f)service of the Summons, if the Defendant does not appear thereto.

A party must succeed on the strength of his case.

There is no evidence of the yearly rent if any or the rent per month.

Neither is there evidence of the expiration or other determination of the tenancy with the time and manner thereof. In other words, Notice to Quit was not served on the tenant/Notice to Tenant of Owner's Intention to Recover Possession.

In the circumstance of this case, the Claimant has not proved his entitlement to relief (iii), (iv), (v), (vi) and (vii).

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

- (i) It is hereby declared that the Claimant is the lawful attorney of Joshua Oladipo with sufficient and exclusive right and interest over the room known as Block 77, Room 1, Area F, Nyanya, Abuja by virtue of the Power of Attorney dated 4/04/2017.
- (ii) That the Defendants have no right or legal interest on the land or vires to enter possession for any purpose whatsoever.

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HON. JUSTICE U. P. KEKEMEKE, ACIArb (UK), FICMC  
(HON. JUDGE)

19/06/2024



Claimant present.

E. G. Shuaibu, Esq. for the Claimant.

**COURT:** Judgment delivered.

(Signed)

**HON. JUDGE**

19/06/2024