

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT NYANYA- ABUJA**

**THIS TUESDAY THE 14<sup>TH</sup> DAY OF NOVEMBER, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI**

**SUIT NO: FCT/HC/CV/2222/2023**

**BETWEEN:**

**JOY RAYMOND.....PLAINTIFF**

**AND**

**FATAH OLATUNDE ONIBUDO.....DEFENDANT**

**JUDGMENT**

The claimant by a court summons with Suit No: CV/2222/2023 dated 03/02/2023 filed the same date claims the following reliefs against the defendant.

- 1. A declaration that the claimant is in possession of the property known as Joy Raymond's Compound located opposite Anglican Church, Chika, Phase 2, Airport Road, FCT, Abuja measuring 50 feet by 100 feet.*
- 2. A declaration that the claimant is entitled to enjoy peaceful and quiet possession of the said property.*
- 3. A declaration that the acts of the defendant amount to trespass.*
- 4. An order against the defendant to pay the claimant the sum of N20,000,000.00 (Twenty million naira) only as general damages.*
- 5. An order against the defendant to pay the claimant the sum of N10,000,000.00 (Ten million naira) only as aggravated damages to trespass.*
- 6. An order of perpetual injunction restraining the defendant, his privies or agents from further trespassing into the said place or percol of land.*
- 7. An order that the conduct of the defendant amounts to torture and harassment.*

8. *An order against the defendant to pay the claimant the sum of N10,000,000.00 (Ten million naira) only as general damages for torture.*
9. *An order against the defendant to pay the claimant the sum of N10,000,000.00 (Ten million naira) only as general damages for harassment.*
10. *Payment of N500,000.00 as cost of suit.*
11. *Payment of 10% per annum on the judgment sum against the defendant from date of judgment till full liquidation of same.*

Accompanying the writ is the pre-action counseling certificate dated the 03/02/2023, statement of claim 76 paragraph, claimant witness statement on oath of Joy Raymond of 78 paragraphs, claimant witness statement on oath of Mrs. Philip Ezra of 8 paragraphs dated the 03/02/2023 and attached to the claimant's statement on oath of Joy and phone communication, texts and charts between the defendant email and the claimants emails and irrevocable power of attorney between John Habibu (donor) and Joy Raymond (donee) in respect of the property known as 50 by 100 at Chika village, Airport road Abuja.

The claimant counsel upon the filing of the writ, filed dayside a motion exparte dated the 14/04/2023 for an order of substituted service via the emails of the defendant known as [fatahionibudoharrowhousing@gmail.co.uk](mailto:fatahionibudoharrowhousing@gmail.co.uk) and [fatahi.onibudo@harrowhousing.org.ue](mailto:fatahi.onibudo@harrowhousing.org.ue). The motion was moved dated the 17/04/2023 and the order sought therein was granted and the suit adjourned to 05/06/2023 while all the process regarding this process were served by substituted service on compliance with order 7 (11) (2) of the High Court of the Federal Capital Territory Abuja, (Civil Procedure) Rules, 2018, this rules provides thus:

*“Where service of an originating process is required by this rules or any other enactment and the court is satisfied that prompt service cannot be effected, the court may upon application by the claimant make such order for substituted service as may deem just”.*

11 (2) (e) (1) email or any other

*“Squentrificservice now know or later developed and courier service or any other means convenient to the court”.*

The claimant counsel having complied with the order stated above, the matter commenced with the evidence of PWI on the 16<sup>th</sup> October, 2023.

On this date, the claimant's counsel one S. O Abang was present in court. He informed the court that the defendant have been served with the processes for today's date but not in court and pray the court to proceed with this case.

PWI one Felix Ezra of Airport road, Chika FCT, Abuja testified and told the court that he can remember he file a witness statement on oath and identified same through his name and signature, the said witness statement on oath of Felix Ezra was adopted as his oral testimony before this court.

After the adoption, the matter was adjourned to 09/11/2023 to enable the defendant come forward to cross-examine the claimant witness.

On the 09/11/2023, both counsel to the claimant and the witness PWI were in court while the defendant was absent. The claimant's counsel who applied to the court that on the absence of the defendant applied to foreclose the defendant from cross – examining the PWI.

Upon being satisfied that the defendant was served with hearing against the date the 09/11/2023 for cross – examination of PWI this court granted the order for forecloser against the defendant and the matter adjourned to 11/12/2023 for continuation of hearing.

On the 11/12/2023 the claimant's counsel who was in court applied to continue with his second witness, the defendant having been served with hearing notice but not in court.

This court upon being satisfied that the defendant was indeed served with hearing through substituted means order the claimant to proceed with his case.

The claimant's counsel who called in his second witness PW2 by name Joy Raymond of No. 49 C. Rainbow Estabe Airport road, Abuja.

In her evidence she informed the court that she deposed to witness statement on oath, same was identified through her name and signature, the said witness statement o oath which she urge the court to adopt same as her testimony before this court.

Further, that in paragraph 7 of her witness statement on oath made reference to several chats with the defendants and the computer generated of the printout same was indented through her name, her phone number her picture and that the certificate contains her name and her signature.

The claimant's counsel who applied to tender them in evidence. The court granted the request of the claimant's counsel and the following were admitted in evidence.

1. Printed chat marked as Exhibit A (1 – 15).
2. Certificate as Exhibit B.

Furthermore, the claimant's counsel made reference to paragraph 4 where he asked the witness that she made mention of irrevocable power of attorney same which she indentified through her name and signature. Both the power of attorney and the deed of assignment were tendered and admitted in evidence as exhibit C and D respectively.

DWI who pray the court to grant all her claims and the matter was adjourned to 18/01/2024 for cross – examination.

On the 18/01/2024 counsel to the claimant was in court together with PW2. The counsel informed the court that the defendant have been duly served with hearing notice but not in court. In the circumstance urge the court to foreclose the defendant's right to cross – examine the PW2.

Upon being satisfied with the claimant's application for the forecloser of the right of the defendant from cross – examining PW2 this court foreclosed the defendant from cross – examining the PW2 and the claimant's counsel applied formally for close the case of the claimant.

Upon the close of the claimant's case the matter was adjourned for defence with an order that the defendant be served with hearing notice and the matter adjourned to 06/02/2024 for defence with an order that hearing notice be served on the defendant.

On the 25/04/2024 when this suit came up for defence, the defendant was not in court, while the claimant's counsel was in court. On this date the claimant's counsel made an application for the foreclosure of the right of the defendant from defending this suit.

The oral application for the foreclosure made by he claimant's counsel was refused in the interest of justice with an order to the effect that hearing notice on the defendant and the matter was adjourned to 03/06/2024 for defence with an order to effect hearing notice on the defendant.

On the 9<sup>th</sup> July, 2024 this suit came up for defence yet still the defendant was absent. The claimant's counsel for the second time made a similar application

for the foreclosure of the right of the defendant from defending this matter. This oral application was granted in view of the fact this is the second time this matter has been adjourned for defence in the instant of the defendant.

Upon the grant of the order for foreclosure, the claimant's counsel applied to the court to waive his right to address the court in order not to waste the previous time of the court and the matter was adjourned for judgment.

I have carefully gone through all the processes filed before the court and the evidence of the two witnesses for the claimant PW1 and PW2, the sworn affidavit of the two witnesses on oath, the email communication between the claimant and the defendant through the following numbers:

Defendant: +447943189590

Claimant: 08178354722

And all the chats messages especially paragraph 17 – 19 19,8321 and produced below:

Paragraph 17

In the year 2021, the defendant sent several threatening and tortuous chats/messages to the claimant.

Paragraph 18

The defendant use phone number: +447943129590 in sending the claimant several chats/messages.

Paragraph 19

The claimant has used phone numbers: 08095494886, 08184083443, 08073335797 and 08178354222

Paragraph 32

The claimant pleaded the email communication from [joynwadiraymond@yahoo.com](mailto:joynwadiraymond@yahoo.com) to [fatahi.onibross@yarrowhousing.org.uic](mailto:fatahi.onibross@yarrowhousing.org.uic).

As the irrevocable power of attorney between John Hebuke and Joy Raymond in respect of the property known as 50 by 900 at Chika village, Airport road Abuja together with the deed of assignment dated the 13/04/2015.

From the above evidence, emails communication, can it be said that the claimant has proved her case to the satisfaction of this court to be entitled to the claims as stated in this judgment?

Now to the claims 1 and 2 of on this it is the evidence of the PWI one Joy Raymond in its statement of claim paragraph 3, 4 and 5 as produced below:

#### Paragraph 3

The claimant avers that on the 13<sup>th</sup> day of April, 2015, the claimant bought a piece of land measuring 50 by 100 at Chika village opposite Anglican Church, Chika Phase 2, Airport road, FCT Abuja from one John Habuku who donated an irrevocable power of attorney to the claimant and executed a deed of assignment to the claimant dated 13<sup>th</sup> April, 2024 duly stamped.

#### Paragraph 4

The claimant avers that, that she developed the said piece of land by building some rented apartment on it.

#### Paragraph 5

The claimant avers that, the said property is now known as Joy Raymonds Compound, opposite Anglican Church Chika, Phase 2, Airport road FCT, Abuja.

A close perusal of the power of attorney and the deed of assignment, it is clear that, the parties are John Habuku (Donor) and Joy Raymond (Donee) in respect of the property known as 50 by 100 at Chika village, Airport road, Abuja same signed and sealed dated the 10/04/2015. While the deed of assignment was dated 13/04/2015. Same appear in paragraph 4 of the claimant's witness statement on oath of Joy Raymond. These two documents have been pleaded and no counter by the opposing party who has the opportunity have been served with all the processes including hearing notice.

Notwithstanding, the above paragraph 12 the state of claim is to the effect that the claimant based on their love relationship and the defendant's promise, the defendant later transferred the sum of N680,000.00 (Six hundred and eighty thousand naira) to the claimant's account for the claimant to develop her piece of land at Chika, Airport road, FCT Abuja. The claimant also in paragraph 13 of the statement of claim stated that, the claimant avers that she promised giving the defendant the first rent she would collect from her property which the claimant did.

The question here is on the issue of the owner of the property and not who developed the said property. And from what I have said it is the claimant who bought the said land, evidenced by power of attorney and deed of assignment.

Hence I hold that the ownership of the land is indeed the claimant by the power of attorney and the deed of assignment.

I hold therefore that the claimant having established that she is indeed the owner of the said land by the production of the power of attorney and the deed of assignment hold that the claimant is entitled to reliefs 1, 2 and 3.

On the issue of reliefs/claim three (3) there is no evidence by this court that the defendant trespassed into the property apart from what was stated in paragraph 4 of the statement of claim. I reproduce below:

***“The claimant avers that when their relationship later hit the rock, the defendant (via whatsapp messages/chats) sometimes in year 2018 started asking the claimant to give up ownership of the said property to him and that if the claimant fails to give up ownership of the said property to him he, the defendant will either eliminate or real violent with the claimant”***

Also in paragraphs 47, 48, 49 and the statement of claim reproduced below:

Paragraph 47

The claimant avers that on 16<sup>th</sup> August, 2021 and on 17<sup>th</sup> August, 2021 that the defendant sent some 6 thugs to the said property and the defendant's thug threatened the claimant to vacate and handover the said property to the defendant or face the wrath of the defendant.

Paragraph 48

The claimant avers that on 16<sup>th</sup> August, 2021, at about 4pm she was called by her staff Mr. Ezekiel Reginald Ugochukwu and also called on phone by one Mr. Philip Ezra to come to her property that some men are looking for her.

Paragraph 49

The claimant avers that when she arrived her property, she met the said thugs who said they were sent by the defendant to tell the claimant to vacate the property and hand over the said property to the defendant or face the wrath of the defendant.

The question is can the statement in paragraph 14, 47 48 and 49 amount to trespass in the eyes of the law?

Trespass is defined to means an unlawful act committed against the person or property of another especially wrongful entry on another real property. While general trespass to land or premises is unauthorized and unlawful entry upon the land in possession of another person or a direct and immediate interference with another person possession of the land. See Zenith Bank Plc V Ekereuwem (2022) 4 NWLR (Pt 1290) P 207 (CA), Fagonwa V Adibi (2004) 17 NWLR (Pt 903) 544.

In view of the above I hold that the claimant is equally entitled to claim 3. I so hold.

On claim 4 and 5 being an order against the defendant to pay the claimant the sum of N20, 000,000.00 (Twenty million naira) as general damages and the sum of N10, 000,000.00 (Ten million naira) as aggravated damages for trespass.

On this I wish to state that, the purpose of an award of damages is to compensate the plaintiff for damages, injury or loss suffered. And the guiding principles in the award of damages is restitutio in integrum; That is, a party who has been indemnified by the act which is in issue must be put in the position in which he would have been if he had not suffered the damages which is in issue. See Thosfa Vs U.B.C Ltd (1994) 4 nwlr (pt 336) 1.

It is also to be noted that, general damages are damages that the law presumes and they flow from the type of wrong complained about by the victim. They are compensatory damages for harm that result from the wrong for which a party has been sued, that the harm is reasonably expected and need not be alleged or approved. See Odiba Vs Azege (1998) G NWLR (Pt. 566) 370; Agunwa Vs Onukwe (1962) 2 SCNLR 275.

A careful perusal of the pledged facts and the evidence of the claimant's witness can it be said that the claimant is entitled to general damages for trespass. On this I say no. there is no cogent evidence pleaded before this court that will warrant this court to award general damages for trespass or aggravated damages for trespass claimed by the claimant. I so hold. Hence claim 4 and 5 is not grantable by this court.

On claim 6 being an order of perpetual injunction restraining the defendant his privies or agents from further trespassing into the said piece or parcel of

land. This head of claim is grantable in view of paragraph 15 of the statement of claim reproduced below.

***“The claimant avers that about December, 2017, the defendant used one Sergeant Ben of FCT Police Command with phone number: 08032865209 and another Police officer Danlade Zakari with phone number: 07038292610 and invited the claimant requesting she give up ownership of the said property to the defendant or refund the gift the defendant give her during their love relationship of about 3 years. The said police officers detained the claimant from 10<sup>th</sup> January, 2019 to 15<sup>th</sup> January, 2019”.***

Also paragraph 16 of the same statement of claim:

***“The claimant avers that, the defendant later used the police and again arrest and detained the claimant on 28<sup>th</sup> October, 2019”.***

Paragraph 17:

***“In the year 2021, the defendant sent several threatening and turtors chats/messages to the claimant”.***

Based on the above hold that the claimant is entitled to claim 6. I so hold.

On claim 7 and 8 being claims based on the conduct of the defendant which the claimant claims to amount to torture and harassment claim for general damages for torture.

A careful perusal of the said paragraph, i hold that the claimant is entitled to damages. On this I will award the sum of N1 million only against the defendant.

On the payment of N500, 000.00 as cost against the defendant.

On this I wish to state that, on award of cost this is solely at the discretion of the trial court. In awarding the costs, the court will look at the costs incurred in the prosecution of the action and award costs accordingly.

See Thepros Auto – line Ltd Vs B. I. A. E Co. Ltd (2013) 2 NWLR (Pt. 1338) P 337 (CA).

It is trite law that cost follows event and a successful party should not be deprived of his cost unless for good reasons. The essence of cost is to compensate the successful party for part of the loss incurred on litigation. It is

not meant to be a business to a successful party and not to be awarded on sentiments. See *EroVsTinubu* (2012) 8 NWLR (Pt 1301) P. 104 (CA).

In view of the foregoing, I shall award N300,000.00 (Three hundred thousand naira) as costs against the defendant.

On the last claim of 10% per anum on the judgment sum against the defendant from the date of judgment till full liquidation of same. On this I wish to state that this head of claim is not grantable under this suit as it is not a monetary claim by the claimant. Hence not grantable.

In the final analysis, I hold that the claimant has proved it's case against the defendant as required by law since as it is the position of the law that where the defendant fails to present evidence on the plaintiff, the defendant is deemed to have admitted the facts presented by the plaintiff. See *OlugedeVs Access Bank Plc* (2015) 17 NWLR Pt 1489 P. 596.

In view of the foregoing, I will give judgment to the claimant on the following claims.

Claims 1, 2, 6 while claim 3, 4 & 5 is hereby refused. Claim 7, 8, I award the sum of N1million (One million naira) only, claim 10 I award the sum of N300,000.00(Three hundred thousand naira) only.

This is my judgment.

.....  
**Hon Justice A. Y. Shafa**

**Appearance:**

1. DebieBassey holding the brief of S. O. Agbey for the plaintiff.