

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/4468/2011**

**BETWEEN:**

**ALHAJI BABA HASSAN.....CLAIMANT**

**VS**

**COMMODORE SADDIEQ ABUBAKAR (RTD).....DEFENDANT**

**JUDGMENT**

Consequent upon the Order of Court transferring this Suit earlier brought under the Un defended List vide Writ of Summons dated 4/4/2011, to the General Cause List on the 22/6/2011, the parties filed and exchanged their respective pleadings.

The claim of the Plaintiff against the Defendant are as follows:-

- (1) The sum of ₦55,000,000.00 (Fifty-Five Million Naira) only being the money to be paid by the Defendant to the Plaintiff from the purchase price of the property known and described as Plot 1346 Cadastral Zone AO5, Maitama Extension Layout, Abuja.

- (2) The sum of ₦20,000,000.00 (Twenty Million Naira) being general damages to the Plaintiff for wrongful act of the Defendant.
- (3) The sum of ₦10,000,000.00 (Ten Million Naira) as aggravated or exemplary damages for the malicious, cruel and insolent manner the Defendant treated the Plaintiff after the Defendant's failure to meet his obligation under the sale of land transaction between the parties was established.
- (4) 10% post-judgment interest on the judgment sum from the date of judgment is delivered till same is fully liquidated in accordance with the Rules of Court.
- (5) Substantial cost of this action which is in the sum of ₦5,000,000.00 (Five Million Naira).

The pleadings of the parties are;

- (i) The Plaintiff's Statement of Claim dated 5/7/2011 and filed same day.
- (ii) The Defendant's Statement of Defence dated 4/11/2011 and filed on 16/11/2011.

The Plaintiff's only witness testified as PW1 and adopted his Witness Statement on Oath. In course of his evidence, the PW1 tendered the following documents:-

- (1) Power of Attorney donated by Abubakar Saddieq to Alhaji Baba Hassan dated 22/10/2008 as Exhibit "A".
- (2) Daily Trust publication dated 16/10/2009 Titled "Disclaimer forged and fake land Titles/Document as Exhibit "B<sup>1-2</sup>".
- (3) A Certified True Copy of Re-Certification and Re-Issuance of Certificate of Occupancy acknowledgement as Exhibit "C".
- (4) A Letter dated 22/9/2008 "Re: Instatement of Revoke TitleNo: KT. 1454/KT.11115over Plot 1346 within Maitama (AO5) District, Abuja as Exhibit "D".
- (5) A copy of Bank PHB cheque issued to Abubakar Saddieq dated 22/10/2008 as Exhibit "E1".
- (6) A copy of cheque dated 14/10/2008 issued to Abubakar Saddieq as Exhibit "E2".
- (7) Memorandum of Understanding between Saddieq Abubakar and Alhaji Baba Hassan dated 8/5/2012 as Exhibit "F".

The Defendant filed a Statement of Defence, but led no witness to support the pleadings of the Defendant.

The Plaintiff's evidence through PW1 – Mohammed Ali Baba, was that in 2008, consequent upon an Agreement, the Defendant agreed to sell his property known as plot 1346 Cadastral Zone AO5, Maitama Extension, Layout, Abuja at an agreed price of ₦100,000,000.00 (One Hundred Million

Naira), which the Plaintiff paid. He stated that the documents of title later turned out to be fake and forged.

Consequent upon that the Plaintiff demanded for a refund of the purchase price. However, that based on the plea of the Defendant, a Memorandum of Understanding was executed by the parties wherein it was agreed that the Defendant should refund the sum of ₦55,000,000.00 (Fifty-Five Million Naira) only instead of the ₦100,000,000.00 (One Hundred Million Naira). That the Defendant still failed to pay, hence this Suit.

The case suffered several adjournments consequent upon attempts to settle, but upon the failure of the parties to settle, the case was adjourned severally for the Defendant to cross-examine the PW1, but the Defendant failed to take advantage of the court's indulgence and the Defendant was foreclosed from cross-examining and case adjourned for defence. Again the Defendant failed to call any witness to support their pleadings and also failed to take further steps in the matter, It is settled law that pleading cannot be equated to evidence and where a party failed to lead evidence in support of their pleadings, where there is sufficient opportunity to do so, on that failure, that party is deemed to have admitted those facts. In this instant case, the Defendant having failed to lead evidence, it is deemed to be abandoned and rest his case on the Claimant, the court is therefore bound to act on the facts as presented to court, however, subject to credibility to be determined by the court. See *Kaydee Ventures Ltd Vs Hon. Minister of FCT & 2ors* (2010) ALL FWLR (PT. 519) Pg. 1079 at 1103 Para C – E. Consequent upon application of Plaintiff Counsel, the case was adjourned for filing and adoption of Final Written Addresses on 24/1/2022.

At the close of evidence, the parties filed their respective Written Address, but only the Claimant Counsel was in court on 24/1/2022 to adopt their Final Written Address, the Defendant though filed their address failed to adopt, this court will in line with the Rules, Order 33 Rule 4, deem the said Final Written Address of the Defendant as adopted. However, in course of this judgment the court will touch upon the implication of the Defendant's failure to defend this Suit.

In the Final Written Address of the Plaintiff, settled by Suleiman Yakubu Esq, two (2) issues were formulated for determination;

- (1) Whether in the absence of any defence, whatsoever from the Defendant, the Defendant can be said, have admitted all the allegations of facts contained in the Statement of Claims and the evidence led by PW1.
- (2) Whether the Plaintiff is entitled to the reliefs claimed.

In the Written Address of the Defendant, settled by A.A. Mohammed Esq two (2) issues were formulated for determination;

- (1) Whether the Plaintiff could be said to be entitled to the reliefs sought.
- (2) Whether having pleaded fraud this matter can still be adjudged a civil matter.

Having carefully considered the pleadings, the testimonial and documentary evidence as well as the submission of counsel, it is the findings of court that only one (1) issue calls for determination, which is;

“Whether from the totality of the evidence adduced, the Plaintiff can be said to have proved his case and therefore entitled to the reliefs sought”

This sole issue encapsulates all the issues submitted by both counsel for determination in their respective written submission.

The settled position of the law in our adversarial legal jurisprudence, is that the burden of proof first lies on a party who asserts to state of affairs and seek the court’s favourable finding or declaration in that regard to lead credible evidence in proof of its lest to fails. The burden of proof, however, is not state as it shifts from party to party until the issue in contention is resolved. See Section 131 – 133 of the Evidence Act, 2011. Also C.O.P Vs Oguntayo (1993) LPELR – 886 (SC)

Firstly, in this instance case, it is noted that the Defendant was served with both the Writ of Summons, under the “Undefended List”and consequent upon the transfer to the General Cause List, where also served with the Writ of Summons, and subsequently filed a Statement of Defence, but in course of the trial, though represented by counsel, failed to lead evidence in support of their pleadings. It is settled law that pleadings do not translate into evidence. In the case of National Power Authority (NEPA) Vs Malam Mohammed Lawal (2010) LPELR-4577. The court held that “ The Plaintiff must lead credible evidence in proof of the averments in the pleadings, where there is no evidence to back up the pleadings, such averments are deemed abandoned and cannot take the place of evidence in court”. See also case of Oshafunmi & Ors Vs Adepoju & Ors (2014)

LPELR – 23073 (CA), also stated that “It is a firmly established principle of judicial adjudication that pleadings do not amount and cannot constitute evidence and for averment or pleadings to be useful, evidence must be led on them. Where a party fails to adduce evidence in support of his pleadings, he is deemed to have abandoned the pleadings.... Thus any pleadings not back by evidence goes to no issue and should be disregarded by the court’ Per Abiru JCA. PP. 61 – 62. Para B – A.

In the light of the above cited authorities, this court will deem the pleadings of the Defendant as abandoned and not be considered in this instant case.

That notwithstanding, it is the principle of law that a Claimant must succeed on the strength of his case and not on the weakness of the Defence. Failure on the part of a Defendant to lead evidence does not automatically mean that judgment must be given in favour of a Plaintiff who has a duty to prove his case. Where a Plaintiff fails to prove his case on a balance of probability or preponderance of evidence, his case will be thrown out notwithstanding the facts the Defendant did not give evidence” See *O moyola Vs Enterprises Bank Ltd* (2013) ALL FWLR (PT698) 911 @ 933 Para E – H.

In this instant case, it was agreed by the parties vide Exhibit “F” – Memorandum of Understanding for refund of ₦55,000,000.00 (Fifty – Five Million Naira) only in lieu of the full payment of ₦100,000,000.00 (One Hundred Million Naira) only paid for the sale Defendant’s property described as Plot 1346 Cadastral Zone AO5, Maitama Extension layout,

Abuja. Pursuant to the Agreement to sale –Exhibit “A” was executed in favour of the Claimant and also Exhibit “E1 – E2” was tendered in proof of payment of the said sum for the property. This pieces of facts was stated in the evidence of the PW1 for the Claimant. This court has stated the position of the law where a Defendant who had all the opportunity to defend but failed to do so. In consequence, the court finds that the evidence of the Claimant in this instance was never challenged, rather remained uncontroverted. In the case of Naisr Vs Civil Service Commission, Kano State (2010) ALL FWLR (PT.515) @ Pg 205 Para E. The court stated thus;

“Evidence that are relevant to the matter in controversy that have not been challenged or debunked remain good and credible evidence that may be used in the just determination of a dispute ”

Having carefully considered the totality of the unchallenged evidence of the Claimant in this instant suit, it is the findings of this court that the Claimant has been able to establish a case against the Defendant.

Now to the Reliefs;

On Relief (a) Claim for the sum of ₦55,000,000.00 (Fifty-Five Million Naira) only to be paid to the Claimant by the Defendant. Having found from the unchallenged evidence and Exhibit in favour of the Claimant, the Claimant is entitled to the relief.

On Relief (b) Claim of ₦20,000,000.00 (Twenty Million Naira as general damages to the Claimant. On award of general damages, the grant is at



the discretion of the court, which must be exercised judicially and judiciously. It covers losses which are not capable of exact qualification. Though it need not and should not be specially pleaded, however, it is law that some evidence of such damages is required. See case of Taylor Vs Oghenevo (2012) ALL FWLR (PT. 610) 1358 @ 1362; Julius Berger (Nig) Plc Vs Ogundehin (2013) ALL FWLR (PT.676) 497 @ 502. In this instance case, the Claimant did not lead any evidence of damages suffered or any loss in proof. I therefore hold that this relief does not enure in favour of the Claimant, therefore not entitled.

On Relief c, Claim for the sum of ₦10,000,000.00 (Ten Million Naira) only, Based on the reasoning in Relief (b) above, this relief fails and the Claimant is not entitled.

On Relief (d) 10% post-judgment interest on the judgment sum from the date of judgment is delivered till same is fully liquidated. Pursuant to Order 39 Rule 4 of the Rules of Court, consequent upon the grant of the Relief (a), the Claimant is entitled to the payment of 10% interest on the judgment sum from the date of judgment until final liquidation.

On Relief (e), Claim for cost of ₦5,000,000.00 (Five Million Naira) only. The award of cost is at the discretion of the court. See Egbuto Vs Mbangwu (2008) ALL FWLR (PT. 429) 569 @ 594 Para A – B. In circumstances, I shall exercise that discretion in favour of the Claimant.

From all of these, and having found merit in the claim of the Claimant, Judgment is entered as follows:-

- (1) Relief (a) is granted as prayed.
- (2) Relief (b) is hereby refused.
- (3) Relief (c) is also refused.
- (4) Relief (d), 10% interest per annum of the judgment sum from the date of Judgment until same is fully liquidated.
- (5) On Relief (e), sum of ₦1,000,000.00 (One Million Naira) only is awarded as cost to the Claimant.

This is the Judgment of the court.

**HON. JUSTICE O.C. AGBAZA**

(Presiding Judge)

29/4/2022

**Appearance**

SULEIMAN YAKUBU WITH EZENWERE A. OKAFOR, ESQ BILKIS S.  
GAMBARI FOR THE CLAIMANT

NO APPEARANCE FOR THE DEFENDANT.

