

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA – ABUJA

THIS MONDAY 8TH MAY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/1652/2022

MOTION NO: FCT/HC/GWD/M/274/2022

BETWEEN:

AHMED BELLO.....CLAIMANT/APPLICANT

AND

UNKNOWN PERSON.....DEFENDANT/RESPONDENT

JUDGMENT

By a writ of summons dated the 17th May, 2022, the claimant claimed the following:

- 1. A declaration that the claimants are the rightful owners of all that pieces of land particularly described as Plot No. E 154 measuring about 1.400m² situated and lying within Karu E Series Layout, Abuja covered by a letter of Offer (CONVEYANCE OF PROVISIONAL APPROVAL) dated the 29th June, 1998 with Ref No. FCT/ZC/AMAC/HR;E154.**
- 2. A perpetual injunction restraining the defendants, their agents, assigns, privies, representatives or whosoever is acting under their instruction**

from encroaching or further encroaching or trespassing and/or forcible taking over the said parcel of land from the claimant.

3. The sum of Ten Million Naira N10,000,000.00) as general damages against the defendants.

4. The sum of Two Hundred and Fifty Thousand Naira (#250,000.00) as cost of this litigation.

The claimant also filed a Certificate of Pre-action counseling, statement of witness on oath of Mr. Bello Ahmed Of 15 paragraphs.

The claimant filed a Motion Exparte for substituted service, with Motion No:FCT/HC/GWD/M/274/2022 dated the 5th July, 20222 with an affidavit and a written address, the said motion for an order for substituted service was moved dated the same day and granted and enrollment signed by the trial judge adjourned to the 14th September, 2022.

On the 14th September, one H.O Mustapha with H.S. Yahaya appeared for the Claimant while no appearance from the side of the Defendant. The claimant counsel who informed the court that they were yet to serve the defendant with the order of this court due to non-communication on their part and applied for another date. The matter was again adjourned to 26-9-2022 for report of service.

On the 26-9-2022 one C.E Umeh and H.S Yahaya appeared for the claimant while the counsel informed the court that the order for substituted service has been complied with and the proof of service is in the court file and applied to move an application Exparte with motion No. M/5827/2022 seeking for an order of interim injunction to restrain the Defendant, his/or agents and others from disposing by way of assignment, outright sales, lease or otherwise transferring or interfering upon Plot No. E154 measuring about 1,400m² and the parties to maintain status Quo ante pending the determination of the Motion of Notice. The motion was moved and the order sought therein was granted and the matter was adjourned to 26-10-2022 for hearing and service was be to effected on the defendant.

On the 26-10-2022 one H.O Mustapha appeared for the claimant, while no appearance for the defendant.

The claimant counsel informed the court that he has a motion on Notice before the court. The said motion with No. 8828/2022 was moved and the prayers therein was granted and the matter was adjourned to 24-11-2022 for hearing.

On the 24-11-2022 one E.O Rabo appeared for the claimant while no appearance for the defendant. The claimant counsel informed the court that she was informed by the bailiff of the court that they were unable to effect service of hearing notice on the defendant. Hence the matter was adjourned to 18-01-2023 for hearing.

On the 18-01-2023 one H.O Mustapha appeared for the claimant while no appearance for the defendant despite hearing notice served on them. The claimant counsel then opened the case for the claimant,

This court summarizing the evidence of PW1 thus;

One Bello Ahmed, lives at Karu FCT a businessman that he made a witness statement on oath, the said statement which he verified same through his signature and his photograph. The said witness on oath was adopted and reference was made to paragraph 15 of the statement of claim, that he made mention of a letter of conveyance where he stated that the letter of conveyance contains his name and date. The same was tendered and administered in evidence as Exhibit A. he then prayed the court to grant all the reliefs sought therein. The matter was then adjourned for cross examination with an order from the court to effect serve of hearing notice on the defendant and the suit was adjourned to 6-3-2023.

On the 6-03-2023, H.O Mustapha appeared for the claimant while no appearance for the defendant. The claimant counsel who then applied to the court to foreclose the right of the defendant from cross examining PW1 and the court to discharge PW1. This court having been satisfied that the defendant was served through the order of substituted means foreclosed the defendant from cross examining PW1. The claimant counsel then closed the case for the claimant and therefore adjourned to 22-3-2023 for Defense.

On the 22-03-2023, H.O Mustapha was in court that he appeared for the claimant and stated that consequent upon the absence of the defendant, applied that the defendant be foreclosed from defending of this suit. The application for an order to foreclose the defence of the defendant was granted.

Upon the order of foreclosure of right of the defendant to defend this action, the claimant counsel applied that the court proceed to enter judgment and applied to waive the right of the defendant to file the defendant final written address. This was granted and the matter was adjourned for judgment.

Before I proceed to go into the merit of this case, i shall address the issue of the position of the law where the defendant did not appear in court nor filed its statement of defence and service of processes of the court.

On this order 10(2) of the High Court of FCT, Abuja Civil Procedure Rules 2018 provides thus;

“where any defendant fails to appear, the claimant may proceed upon proof of service of the originating processes under the appropriate provision of these rules.”

This section as stated above emphasizes on proof of service.

It is trite law that evidence of proof of service is conclusive where the bailiff deposes to an affidavit to that effect. An affidavit of service deposed to by the person effecting the service, setting out the acts, place, mode and date of service and describing the process of document served shall be prima facie proof of the matter stated on the endorsement or affidavit see: Estate of Late Chief H IsIdesi V Ecodne (Nig) LTD (2016)12 NWLR (PT 1527) and SCRODAR & LO V MAYOR & Co (NIG) LTD (1989)2 NWLR (PT 101).

A closeperusal of the processes before the court, it is clear that the claimant has complied with the laid down rules as one can see from the court file an affidavit of service sworn to by the court bailiff stating the date and the mode of service on the defendant. Despite all service on the defendant, he fail to make itself available to defend this action.

Having said so, the next issue is burden of proof which the claimant has to discharge before the court. it is trite that a party who is claiming a relief from the court generally has the burden of proving the facts existence upon which he is basing the grant of his claim.

The legal burden of proof is that burden which the law places upon a person who would have judgment delivered against him, if no evidence was lead in the pleadings before the court, such as where the presumption of law operates in favor of the plaintiff/claimant. He is expected to adduce cogent and convincing evidence in proof of this case. See OKOYE v NWANKWO (2014) 15 NWLR PT (429)93 and the case of PRESENTATION NATIONAL HIGH SCHOOL v OGBEBOR (2018) LPEAR. 44784.

The general rule is that a plaintiff should succeed on the strength of his own case. by virtue of sections 131(1), 132,133(1) and 136 of the Evidence Act 2011, generally the burden of establishing a case is on the plaintiff who asserts the existence of a certain fact. He must discharge the burden by adducing cogent and credible evidence to prove same. In discharging the burden of proof in a civil case, the plaintiff must prove the existence or non-existence of what he asserts by relevant, admissible and credible evidence. Once the burden is discharged the onus of proof shifts to the adverse party. See ANDREWS v I.N.E.C (2018) 9 NWLR (PT.1625) 5780

The plaintiff cannot assume that he is entitled to automatic judgment just because the other party had not adduced evidence before the court. In other words, failure on the part of the defendant to give evidence does not automatically mean that judgment must be given in favor of the plaintiff who has duty to prove his case. Where the plaintiff fails to prove his case on the balance of probability or on preponderance of evidence his case will be thrown out notwithstanding the fact that the defendant did not give evidence.

Therefore, a plaintiff who desires a court to enter judgment in his favor must not only file and plead the necessary facts that would sustain his claim, he must lead credible evidence in proof of those facts. Where he fails to lead such credible evidence to prove his averments in his pleadings, the case must fail, the fact that the defendant did not call evidence notwithstanding. This is so because a plaintiff must succeed on the strength of his own case and should not rely on the weakness of the defendant's case except the defendant's case supports his case.

The burden of proof is on the plaintiff; the plaintiff must discharge the minimal evidential requirement. See *AZENABOR v BAYERO UNIVERSITY KANO* (2009) 17 NWLR (PT.1169) 96 CA.

Now to the case of the plaintiff before the court, the claimant in its statement on oath stated in paragraph 5-15 where I will reproduce same here. Paragraph 5:

“That I am the rightful owner and the original allottee of all that piece of land particularly described as plot No: E 154 measuring about 1,400m² situated and lying within Karu E Series Layout Abuja covered by a letter of Offer (CONVEYANCE OF PROVISIONAL APPROVAL)dated the 29th June, 1998, with Ref No. FCT/ZC/AMAC/KR E154.

Paragraph 6:

That I have been in exclusive possession and have remained in possession of the land encumbrance or adverse claim from any third party from the time grant until the year 2021.

Paragraph 7:

That the Defendant only recently started encroaching or trespassing into the land in the year 2021 and every attempt to identify who the defendants are has yielded no result.

Paragraph 8:

That I made efforts to know the defendant and possibly their addresses, but all to no avail.

Paragraph 9:

That I reported the matter to the police and an investigation was caused into the matter to determine whether my claim to ownership and possession was genuine.

Paragraph 10:

That the police asked me to submit my title document to enable them write to the issuing authority which is FCDA to determine how genuine it is

Paragraph 11:

That I submitted my title document and the police wrote to the department of Land, FCTA and they wrote back to the police on the document submitted by me.

Paragraph 12:

That the report from the department of lands showed that the land belongs to me.

Paragraph 13:

That the defendant has continued to encroach and trespass into my land despite this fact and would abate their trespass.

Paragraph 14:

That I have in my possession the original title document and a CTC of the report by the Federal Capital Territory Administration Department of Land administration letter dated the 16th February, 2022 addressed to the deputy Inspector General of Police Force Command Investigation Department, force Headquarters, Abuja

The police investigation reports dated the 16th February, 2022 from FCTA Department of Land administration addressed to DIG Force communal investigation Department, titled, Re-investigation activities plot No. E154 Karu E-series Layout Karu Abuja Reads:

I am refers to your letter on the above subject reference CR/3000/X/FHQ/ABJ/ADM/T6/VPL.254/195 dated 14th December, 2021.

I am further directed to inform you that information gathered from land records revealed that Plot No. E154 measuring about 1,400m² within Karu FHA by NIA Quarters layout AMAC, is on the list of allocation forwarded by AMAC Zonal Planning Office to the Department with the name BELLO AHMED.

Signed

TPL Marwan Yazid (AD/ planning)

For Director Lands.

This letter which the claimant pleaded in paragraph 3 of the statement of claim and paragraph 15(h) of the statement of claim and also pleaded in paragraph 5 of the statement of witness on oath of Mr. Bello Ahmed.

The above evidence which was not challenged nor controverted by the defendant, it is true that, where an affidavit is filed, deposing to certain material facts and the other party does not file a counter affidavit to dispute the fact, the facts deposed to in the affidavit would be deemed unchallenged and undisputed.

As stated, the defendant (unknown) neither filed pleadings to counter the case of the claimant and neither did he lead evidence to challenge or contravert the testimony of the claimant. The net effect of the failure to file pleadings or to lead evidence is that, the case of the claimant in her pleadings and in her testimony stand unchallenged and are deemed admitted and established. See Consolidated Resources LTD v Abofar Ventures (NIG) LTD (2007) 6 NWLR (PT 1030) 221, Oladipo v Moba Local Government Area (2010) 5 NWLR (PT. 1186) 177 and the case of Olhoebor V Police Council (2003) 12 NWLR (PT. 834) 444 the Supreme Court stated that:

“The basic principle of law is that where a defendant fails to file a defense, he will be deemed to have admitted the claim or relief in the statement of claim, except of course a paragraph of the statement of claim is notoriously false to the common knowledge the court, like 10th of July is Nigeria’s Independence anniversary, such a paragraph is inadmissible because of the obvious untruth” Per Abiru JCA. (PP.5455) par. G-H

In this case, the claim is one seeking for declaratory relief, the claimant is therefore required to lead evidence in proof of his claim. In fulfillment of this requirement, the claimant led evidence in support of the pleadings which has not been contested, challenged or controverted. I am therefore prepared to accept the evidence of the claimant. The evidence and exhibit tendered in support were not challenged or

contested. There is nothing placed before the court to deprive the claimant of the grant of the declaration that;

- 1. The claimants are the rightful owners of all that pieces of land particularly described as Plot No. E 154 measuring about 1.400m² situated and lying within Karu E Series Layout, Abuja covered by a letter of Offer (CONVEYANCE OF PROVISIONAL APPROVAL) dated the 29th June, 1998 with Ref No. FCT/ZC/AMAC/HR; E154.**

I so hold.

- 2. Perpetual injunction restraining the defendants, their agents, assigns, privies, representatives or whosoever is acting under their instruction from encroaching or further encroaching or trespassing and/or forcible taking over the said parcel of land from the claimant.**

In the final analysis, it is the judgment of the court that the claimant has proved his case. I therefore grant the following reliefs accordingly.

I grant relief 1 & 2. Relief 3 & 4 are refused as there is nothing placed before the court to award same in favor of the claimant.

This is my judgment.

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HON. JUSTICE A. Y. SHAFI

APPEARANCE:

1. H. O. Mustapha for the Claimant.