

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU

SUIT NO. FCT/HC/CV/218/2022

DATE: 06 – 02 -2024

BETWEEN:

EZEH O. MARTINSCLAIMANT

AND

- 1. **ABDULLAHI JIBRIN**
 - 2. **THE NIGERIAN POLICE FORCE**
 - 3. **INSPECTOR GENERAL OF POLICE**
- } DEFENDANTS

Appearance:

C.S.Ugwu Esq with L.N.Dingba Esq, holding the brief of I.A. Chidi Esq, for the Claimant.

Seidu Alfa Esq for the 1st Defendant.

2nd and 3rd Defendants not represented

JUDGMENT

By a writ of Summons and statement of Claim, dated 1/11/2022, the Claimant Mr. Ezeh O. Martins claims the following against the Defendants.

- a. A Declaration that the Claimant is a bonafide purchaser with notice.

- b. A declaration that the detention of the Claimants Car by the 2nd and 3rd Defendants is illegal, null and void.
- C. A declaration that there is privity of contract between the Claimant and the 1st Defendant.
- d. An order directing the 2nd and 3rd Defendants to release the Claimant's Car to him having established that it is not a stolen vehicle.
- e. An award of N15, 000, 000. 00 as general damages against the Defendants.

Upon service on the Defendants the 1st Defendant filed a Statement of Defence dated 27/01/2023. The 2nd and 3rd Defendants did not however cause any appearance to be entered on their behalf and did not respond in any way to the claims of the Claimant.

On the 19/04/2023, the matter proceeded into hearing with the Claimant calling the Claimant as PW1.

PW1 adopted his Witness Statement on Oath dated 1/11/2022 as his testimony in this case. In the Witness Statement on Oath Claimant testified thus:

That he is the Claimant, and he is conversant with all the facts relating to the claims.

That he is a trained Architect and a businessman.

That he is into several businesses like construction, real estate and transportation.

That the 1st Defendant is a Car dealer whose office is located at inside old Chelsea Hotel plot 389, Muhammad Buhari way, Central Business District Garki, Abuja.

That the 1st Defendant carries out his business under the name and style of Ubandoma Auto Mobile, which is an association of car dealers within the car mart located at inside old Chelsea Hotel 389, Muhammad Buhari way, Central Business District, Abuja, within the jurisdiction of this Honourable Court.

That the 2nd Defendant is constitutionally responsible for crime prevention, detection, and maintaining law and order across the

length and breadth of Nigeria including the FCT, which is within the jurisdiction of this Court.

That the 3rd Defendant is the most senior ranking officer of the 2nd Defendant and carries out the constitutional duties of the 2nd Defendant.

That he went to the 1st Defendant's office at inside old Chelsea Hotel Plot 389, Muhammad Buhari Way, Central Business District, Garki Abuja, to purchase a car.

That the office of the 1st Defendant is an open car market, with several model of cars displayed for sale to the general public.

That other car dealers confirmed to him that the 1st Defendant, is a registered member of their association and thus, approved to sell cars within their car mart.

That both the Chairman and secretary of the car dealers association confirmed that all cars displayed/parked at their car mart, are free from all encumbrances.

That based on the assurances from the car dealers association and the 1st Defendant, he made up his mind and settled for a Black Toyota Corolla (used).

That he negotiated the price of the car with the 1st Defendant and they both agreed at N3, 400, 000. 00 (Three Million, Four Hundred Thousand Naira).

That upon agreement of the purchase price, the 1st Defendant sent him a personal account number to make the payment for the black Toyota Corolla.

That he effected the payment for the car and paid the purchase price through bank transfer to the 1st Defendant's account.

That upon confirmation of the said payment by the 1st Defendant, the 1st Defendant informed the Chairman and Secretary of their car dealers association, who issued him with a payment receipt.

That he was informed by the Chairman and Secretary of the association that, it is their usual custom of trade, for them to issue receipt for any car bought in their car mart.

That the only reason why he bought the Toyota Corolla was for strictly transportation business, precisely Uber & Bolt ride.

That the car was to serve as an alternative source of income for him, which will be generating an average of N30, 000.00 (Thirty

Thousand Naira) on a weekly basis and N120, 000. 00 (One Hundred and Twenty Thousand Naira) monthly.

That upon delivery of the said car, he proceeded to the Vehicle Inspection Office, to register the car.

That he successfully registered the car and his details were taken.

That he took the car for servicing and other maintenance preparatory for inspection by Uber/Bolt Office.

That the car was insured comprehensively against liabilities and third party claims.

That on the 8th of September 2022, he got a call from some officers of the 2nd Defendant who said they were calling from Wuse Zone 3, Police station Abuja.

That the officers asked about the exact place where he was, and he told them.

That he had no reason to lie because he had no skeleton in my cupboard.

That the officers of the 2nd and 3rd Defendants came to the exact spot where he was at Wuse Zone 7, Abuja on the said date.

That he was invited to the station by the officers of the 1st and 2nd Defendants.

That on reaching the Police Station, he was informed by the IPO (Investigation Police Officer) that there was a complaint over the car he bought from the 1st Defendant.

That the person who imported the car he bought, wrote a complaint to the Police that the agent he gave the car to, only remitted part of the purchase price paid by the 1st Defendant, before the said 1st Defendant sold the car to him.

That he was taken aback because he did not transact with the Complainant and as such had no business with the Complainant.

That he was given a statement sheet to make a statement.

That he made a statement, stating clearly where and how much he got the car and tendered the receipts and documents he was issued.

That the 1st Defendant and the Complainant admitted that the issue surrounding the purchase of the car, had nothing to do with a stolen vehicle but a case of a disclosed agent, not remitting monies paid to him to his principal.

That to his surprise, the 2nd Defendant informed him that they will detain the car pending when they find the agent who is owing the alleged Complainant.

That all attempts at making the 2nd Defendant see reasons with him, fell on deaf ears.

That there was no link whatsoever between him and the alleged Complainant and its agents.

That the 2nd Defendant admitted that the car was not a stolen vehicle.

That the 2nd Defendant suggested that he should assist them in tracking the alleged Complainant's agent, who did not transact or make contact with him.

That the sole aim of purchasing the said vehicle from the 1st Defendant, is to generate revenue.

That base on his Uber/bolt arrangement, the said vehicle will generate N30, 000. 00 (Thirty Thousand Naira) weekly, which will translate to N120, 000. 00 (One Hundred and Twenty Thousand Naira) monthly.

That since the detention of the said vehicle, for which he invested his life savings, he have not been able to make any money.

That life has been difficult for him and his family following the action of the 2nd Defendant.

That he is a bonafide purchaser without notice and thus, can't suffer for the sins of another person.

That he remain gravely exasperated, aggravated and disturbed over the actions of the 1st and 2nd Defendants.

That this Honourable Court should grant all the reliefs as contained in the statement of Claim.

The following documents were tendered and admitted through the PW1.

1. Bank Statement as Exhibit P1.

2. *Receipt by the Chairman and Secretary of the Car dealers Association as Exhibit P2.*
3. *Particulars of the purchased Car as Exhibit P3*
4. *The Insurance Certificate as Exhibit P4.*

Under Cross Examination by Counsel for the 1st Defendant, PW1 stated it was conferred to him that the 1st Defendant is a Registered Car dealer by their Chairman and Secretary. The 1st Defendant is not responsible for the Detention of his vehicle. The 2nd and 3rd Defendants told him that they are holding the Car until they get the agent of the Nominal Complaint.

The matter was then adjourned for Cross Examination of PW1 by the 2nd and 3rd Defendant.

At the next date, the 2nd and 3rd Defendants were absent and not represented even though they were duly served. The Court upon application by the Claimant foreclosed their right to Cross Examine the PW1 and PW1 was discharged and the case of the Claimant was closed.

Consequently, matter was adjourned to 8/06/2023 for Defence. On that day The 1st Defendant was called to testify on his behalf as DW1. DW1 adopted his Witness Statement on Oath dated 27/06/2023 as his testimony in this case. In the Witness Statement, DW1 testified thus:

That he is the 1st Defendant in this Suit and by virtue of his position, he is conversant with the facts of this case.

That he admit paragraph 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 33 of the statement of claim.

That he is not in position to deny or admit paragraph 1, 2, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, of the Statement of Claim as such facts are within the knowledge of the Claimant.

That he in specific respond to paragraphs 28, 29, 30, 31, 32 and 33, of the Statement of Claim states as follows;

That he was invited by the 2nd and 3rd Defendants where he maintained in his statement how one Makolo brought the Toyota Corolla Car to their Car stand for sale and upon the sale the proceed of sale was transferred to the said Makolo.

That Makolo was also invited by the 2nd and 3rd Defendants where he states in his statement that he bought the Toyota Corolla Car from one Kazeem Adeola and the bank statement evidencing the payment was giving to the 2nd and 3rd Defendants and that the Complaint to the 2nd and 3rd Defendant was against Kazeem Adeola as the agent to the Complainant. Notice is hereby given to the 2nd and 3rd Defendant to produce the evidence of payment to Kazeem Adeola produced by Makolo.

That he does not know when the complainant gave the Toyota Corolla Car to his agent and not in a position to know whether there was full or part payment of the purchased price of the Car and does not know or have any transaction with the agent or complainant to the 2nd and 3rd Defendant.

That he did not instructed the 2nd and 3rd Defendants to detain the Toyota Corolla Car subject matter of this Suit and as such not liable to the gravely exasperated, aggravated and disturbed state of the claimant and not liable to any damages.

That the issue of the Toyota Corolla Car is premised on defaulted balance payment by the agent of the complainant as alleged by the complainant.

That the Toyota Corolla Car was not a stolen Car and the report to the 2nd and 3rd Defendants was issue of defaulted balance payment by the agent of the complainant as alleged by the complainant.

That he is not liable to pay any damages to the Claimant as a bonafide seller without notice.

Under Cross Examination by Counsel for the Claimant, DW1 stated that he is a registered Car dealer holding the position of Secretary. He has been on the trade for almost 10 years. He was invited by the 2nd and 3rd Defendants on the transaction between him and the Claimant concerning The Car he sold to him. He sold the Car to the Claimant at the sum of N3.4m. It is not a stolen car. The car is still with the police.

The matter was then adjourned to 11/07/2023 for Cross Examination of DW1 by the 2nd and 3rd Defendants. The 2nd and 3rd Defendants were not present in Court and upon application,

their right to Cross Examine DW1 was foreclosed and matter was adjourned to 10/10/2023 for the Defence of the 2nd and 3rd Defendants. Again on the 10/10/2023, the 2nd and 3rd Defendants, even though duly served hearing notice, did not appear to open their defence, upon application their right was foreclosed and matter was adjourned to 27/11/2023 for adoption of Final Written Address.

On the 27/11/2023 the 1st Defendant and the Claimant took turn to adopt their Final Written Addresses with the 2nd and 3rd Defendants not responding to the invitation to file theirs. Matter was then adjourned to today for Judgment.

In the final written address of the 1st Defendant, Counsel submitted two issues for determination, to wit:

- 1. Whether the 1st Defendant has performed his side of the contract?*

2. Whether the 1st Defendant was responsible for the impoundment of the Black Corolla Car by the 2nd and 3rd Defendants?

Learned Counsel argued the issues with the aid of decided cases in urging the Court to exonerate the 1st Defendant from all the Claimants claims.

In the Final Written Address of the Claimant, two issues were distilled for determination, to wit:

- 1. Whether the 2nd and 3rd Defendants are justified under law, to deprive the Claimant of the use of his Car.***
- 2. Whether from the evidence led and the circumstances surrounding the transaction, the Claimant is entitled to the reliefs sought in his Claims.***

Learned Counsel argued the issues citing relevant authorities in urging the Court to grant his claims against the 2nd and 3rd Defendants.

I have carefully considered all the evidence adduced and Exhibits tendered before the Court and the arguments of Counsel.

It is my considered view that the issue, whether the Claimant has made out a case to entitle him to the reliefs Sought, is up for determination.

In civil cases, the burden of proof is on the party who asserts a fact to prove same. Indeed, he who asserts must prove and the standard of proof is on the preponderances of evidence and balance of probabilities. See *ISHOLA V. ISHOLA* (2015) ALL FWLR (PART 779) AT PAGE 1136 PARAGRAPH 314 and see Section 131 – 133 of the Evidence Act, 2011.

It is pertinent to note that reliefs a – c claimed by the Claimant are declaratory in nature thereby predicating the success of other reliefs on their success. It is an established position of the Law that in case where declaratory reliefs are claimed as in the instant case. The Claimant must satisfy the Court by cogent and reliable proof of evidence in support of his claim. *AGBAJE V. FASHOLA & ORS* (2008) 6 NWLR (PART 1082). Indeed judicial pronouncements are ad-idem that declaratory reliefs are

never granted based on a admission or on defect of filing defence.

To arrive at justice in this case, it pertinent to state here that the Kernal of the Claimants case is predicated on the wrongful impoundment of his black Corolla Car by the 2nd and 3rd Defendants. In prove of his case Claimant by oral and documentary evidence led evidence as to how he met the 1st Defendant in a Car sales stand and how he enter into a transaction for the purchase of the vehicle in question. He purchased the vehicle and was given receipt by the 1st Defendants office signed by the Chairman and Secretary of the Car dealers association. He duly Registered the vehicle and procured insurance cover. All these facts were evidence by Exhibits P1 – P4 (That is the purchase receipts, particulars and Insurance certificate respectively).

These facts were also corroborated by the 1st Defendant in his pleadings and written statement on Oath. Later then of the 2nd and 3rd Defendants accosted the Claimant with allegation that the subject vehicle was a subject of investigation. It is obvious to me that without any basis.

The Claimant is not alleging any wrong or complicity by the 1st Defendant in the actions of the 2nd and 3rd Defendants and as stated in his prayer in the Final Written Address he seek reliefs 4 and 5 against the 2nd and 3rd Defendants only.

As earlier stated at the preceding part of this judgment the 2nd and 3rd Defendants did not enter appearance nor file a defence. The case of the Claimant is therefore unchallenged. In all I am satisfied that by the preponderance of evidence the Claimant has satisfied the Court that the 2nd and 3rd Defendant have and are still holding into the subject vehicle wrongly, without justification and are therefore liable to Claims of the Claimant. Accordingly I hereby enter Judgment for the Claimant in these terms.

Reliefs a, b, c, d and e are granted as prayed i.e.

- a. A Declaration that the Claimant is a bonafide purchaser with notice, is granted.
- b. A declaration that the detention of the Claimants Car by the 2nd and 3rd Defendants is illegal, null and void, is granted.

- C. A declaration that there is privity of contract between the Claimant and the 1st Defendant, is granted.
- d. An order directing the 2nd and 3rd Defendants to release the Claimant's Car to him having established that it is not a stolen vehicle, is granted.
- e. An award of N15, 000, 000. 00 as general damages against the Defendants, is granted.

Signed
Hon. Judge
6/02/2024.