

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

**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GWAGWALADA – ABUJA**

**DATED THIS WEDNESDAY THE 25<sup>TH</sup> JANUARY, 2023**

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

**SUIT NO: CV/677/2022**

**MOTION NO: M/4701/2022**

**BETWEEN:**

**MRS YOLANDE ADDAH..... PLAINTIFFS/APPLICANT**

**AND**

**MR. ROGER ADDAH..... DEFENDANT**

**JUDGEMENT**

The plaintiff before this court file a writ of summons in accordance to order 2 rule 2 of the FCT. High court civil procedure Rules 2018 dated the 1-3-2022 with suit No: CV/677/2022 claiming the following reliefs against the defendant.

- 1. A declaration that the plaintiff being the lawful wedded wife and mother of the Defendant four (4) children, is entitled to continue to reside in the property lying and situate at House No: 36 Palm Heights Luxury Homes Phase 2, voice of Nigeria Headquarter Road Lugbe, Abuja being her matrimonial home which she contributed to the purchase thereof.**
- 2. An order of this Honourable court stopping the defendant from evicting the plaintiff, his lawfully wedded wife and the mother of his four children, from the property lying and situate at House No: 36 Palm Heights Luxury Homes Phase 2, voice of Nigeria Headquarter**

**Road Lugbe, Abuja being her matrimonial home which she contributed to the purchase thereof.**

- 3. An order of this Honourable court stopping the Defendant from selling or disposing of the property lying and situate at House No: 36 Palm Heights Luxury Homes Phase 2, voice of Nigeria Headquarter Road Lugbe, Abuja in any manner whatsoever, without the written consent of the plaintiff first had and obtained.**
- 4. An order of injunction restraining the defendant whether by himself, agents, servant, proxies, assigns, personal representative, and or however called from ejecting and or attempting to eject the plaintiff and or disturbing her right to reside in the property lying and situate at House No: 36 Palm Heights Luxury Homes Phase 2, voice of Nigeria Headquarter Road Lugbe, Abuja being her matrimonial home, which she contributed to the purchase thereof.**
- 5. An order of injunction restraining the defendant whether by himself, agent servants, proxies, assigns, personal representatives and or however called from selling or disposing of the property lying and situate at House No: 36 Palm Heights Luxury Homes Phase 2, voice of Nigeria Headquarter Road Lugbe, Abuja being her matrimonial home, which she contributed to the purchase thereof.**
- 6. And for such further or other orders this Honourable court may deem fit to make in the circumstance.**

File alongside the is the statement of claim of 6 paragraphs, a written statement on oath of the plaintiff witness of 5 pages of 13 paragraph deposed to by one Mrs YolandeAddah a Ghanian citizen of House No: 36 Palm Heights Luxury Homes Phase 2, Voice of Nigeria Headquarter Road Lugbe, Abuja.

The plaintiff before proceeding to commerce hearing file before this court a motion expert pursuant to order 7 rules 8 & 11 (1)(2)(d) of the High Court of the FCT Abuja Civil Procedure rules 2018 for an order for leave to serve the defendant/Respondent the originating process in the lawsuit the said motion No: M/4701/2022 dated the 22<sup>nd</sup> day of April, 2022 was moved and the order sought therein was granted to the plaintiff to serve the defendant/Respondent the originating process in the lawsuit by pasting same on the

gate or door of the defendant/Respondent residential address at House No: 36 Palm Heights Luxury Homes Phase 2, voice of Nigeria Headquarter Road Lugbe, Abuja. The said order dated the 28/4/2022 and the matter fixed for mention against the 25-4-2022. Upon the service of the processes on the defendant, the 25-05-2022 was fixed for hearing.

On this I wish to state that, the need for substituted service arises because personal service cannot be effected on the defendant, once that is served it brings to the notice of the pendency of this matter to the defendant. See case of Alh. Abdulkadir Abacha V Kunastic Nigeria Ltd (2014) NGCA. 13 proof of service by the bailiff of this court while a certificate of service was file before this court dated the 28/4/2022 and 25-05-2022 and other subsequent proof of service dated the 2-9-2022, 18-10-2022.

It is to be noted that service of court process is a pre-condition to the exercise of jurisdiction by the court. this is basedon the principle of law that a party should know or be aware that there is a suit against him so that he can prepared a defence. See S. G. R.N. v Adewwuna (2003) 10 NWLR (pt.829) 526. This the plaintiff in the instant case has complied with the rules hence the hearing of this case.

This matter was mentioned on the 25-06-2022, parties were absent while one C. E. Nwere appears for the plaintiff, who informed the court that the order of this court on substituted service has been effected hence applied that the matter be deemed mention. This the court granted the request and the matter deemed mentioned and adjourned to the 13-9-2022 for hearing with an order to effect hearing Notice on the defendant. On the 13/September, 2022 the same Appearance, C. E. Nwere while the defendant neither appears in person or being represented having been duly served with the hearing notice. The plaintiff who then applied to proceed with the hearing of this case in the absence of the defendant. This prayer was granted.

Here PW1 in his evidence in chief stated thus:

That she is Mrs YolandeAddah that the defendant is his husband, gote married on the 12<sup>th</sup> December, 1992, the said marriage certificate was tendered in evidence as exhibit A.

That she is in court to restrain his husband from selling their matrimonial house. That she is saying this because her husband sold the house in which their children were all leaving in Canada.

That they have 4 children one boy and three girls and all of them are leaving in Canada. That she got a rental apartment for them.

That hear in Abuja they have a house in Lugbe and that whenever they have argument he usually tells her to leave the house.

That when they got married, they all agreed that she will be taken care of feeding and housekeeping expenses and he will be taken care of the house transportation and education of the children. This which she stated that the husband stated well, as the time they were living in Canada, that later she later got a job in Abuja in the year 2006. That she moved herself and the children to Abuja and after two (2) years the husband join her in Abuja.

That before then they were leaving in a rented house, and she used to pay the house rent as her office used to give her money for the house rent and for the children Education. Later they send the children to abroad which she continues paying their Education fee. That she was the one paying the house rent, water and electricity bills etc, equally the children school fees. She went further to state that the institution she works always give her allowance which she used to pay for the children school fee and when the children school fees are deducted, what remains is divided into two.

That in the year 2014 they bought a house and moved from rented house to the house there bought, and in the house she was sharing one room with the girls, while his son one, while he will also have his room, but his son said no that she should have her room while he will share one room with the sisters. That since she got into the house, it is insult or one thing or the other.

In the year 2014, the first son left for America and together they continued paying the children school fees. And the year 2015 the girl also left.

Further, that any time they have a problem he always tells her to leave the house, this he started so when the children were still around and when the children left it became worse.

That whenever she travels he always lock the gate of the house, and usually change the keys or padlock for the garage so that she will not be able to go out with her car or put the keys on the pedastral gate. That he usually tells her that he will not marry for divorce but whatever he wants he should do. And in the year 2016, she discovered that he was having an affair, she then confronted him and he denied and said No. but he used to talk to the girl in the night. One day he told her he was travelling he then pick the girl to travel to another country, usually leave Abuja to Accra.

And during one of the conversation she asked him whether he was travelling and he said yes, that he was travelling. She then told him that she will give something for him to give to his cousin in lome. And when she went to give

him the things she heard him talking with the girl and she then said leave someone husband alone.

Thereafter, he beats her hand and the next day after the beating, he sat her down, that if she wants to stay in the house, she should not module into his affairs and she should leave him alone and if she doesn't want she should either leave and if she wants to stay she should do the house work, after that he locked her out and usually tells her is not her house.

That she knows he is making serious attempt to sale the house in Abuja since he sold the one in Canada.

That she wants the court to restrain him from selling the house in Abuja. That his Husband is the only person that has the keys to the house, and that when ever she travels and come back she usually sees some strange things in the house and for this reasons she is afraid for her security.

After the evidence of PW1, the matter was adjourned for cross-examination to the 18-10-2022.

On the 18-10-2022, both parties were absent in court, the plaintiff counsel informed the court that the respondent despite having been served with hearing notice is not in court neither is he represented, and in the light of the above applied that his right to cross-examination PW1be foreclosed. This was granted and the Respondent foreclosed from cross-examination PW1 and the matter adjourned for defence to the 25-10-2022.

On the 25-10-2022 both parties and their counsel were not in court, and this the court clerk informed the court that he was instructed by the Registrar of the court that the plaintiff counsel called her that he won't be making it to the court. The matter was then adjourned to 8/11/2022 parties not in court one C.E. Nwere was in court for the plaintiff, who informed the court that till date they are still no response from the defendant despite being served with hearing notice, and that this matter is slated for defence.

That considering the facts that the defendant is neither here nor represented, pray the court to foreclose the defendant from defending this case. The application was granted and the matter adjourned for adoption of final written address to the 28-11- 2022.

On the 28-11-2022, Barrister C. E. Nwere, adopted his final written address and urge this court to grant the prayers that have set out.

In the final written address two issues were detailed for determination to wit

- a. Whether the defendant has the right to sell jointly- owned property without the express agreement of the co-owner (the plaintiff)
- b. whether the defendant can evict the plaintiff from their matrimonial home for any reason.

On the first issue, it is the argument of the counsel that a woman married under the marriage act (Cap M6, LFN 2004) enjoys equal rights of the family assets acquired during the marriage and must be involved in their disposal during or after the marriage.

That section 9 of the violence against persons (prohibition Act) 2015 provides in part as follows:

A person who forcefully evicts his or her spouse from the home or refuse him or her acces commits an offence.

On this he cited the following cases:

1. Backhouse V Back house (1978) 1 ALL ER 1158.
2. Nixon V Nixon (1964) 1 WLR 1676
3. Coller V Coller (1964) ALLR 188.

In all this cases, the court held that the contribution of the wife does not necessary have to be direct, substantial or financial. The moral support of the wife, catering for the needs of the man, and children and managing the home has been held to have money's worth.

That by the forgoing, it does not matter that the plaintiff never gave the defendant physical cash as contribution towards the purchase of their matrimonial home, the fact that they were married under the Act and the plaintiff took up a major part of the home expenses which enabled the defendant to save up and buy said property, the plaintiff is a joint owner. This he referred to the case of Osuji V Ekeocha (2009) 6-7 (pt. 1) 91- this court will not regard this case as a reference point as the lawreport was not cited as such this court cannot perform magic.

Also referred this court to the case of Adesanya V Odosina (unreported 1994 HCS/87/94 where the court held that where joint ownership is certain, each party has a right of ownership in the property. It was also held that as long as the respondent in the case is not the sole owner, he needed to obtain the consent of his co-owner to legally and properly sell or transfer ownership in such a property to a third party.

Finally submitted that, since the plaintiff and the defendant are properly married according to the Act, the property which was acquired in the course of their

marriage which was aimed at providing shelter for the family (their matrimonial home is clearly a joint property owned by both the plaintiff and the defendant as co-owner, therefore submitted further that the defendant has no right to dispose-off the said property without express consent first before obtained from the plaintiff.

That the defendant neither rebutted nor adduced evidence to rebut the plaintiff's claim of the agreement which they had as regard financial responsibility. In the light of this urge the court to regard this fact as admitted since it is trite law, that uncontradicted and uncontroverted facts are deemed as admitted, cited the case of Obo & 1 or V Obo (2001) FWLR(pt. 47) 1004, where the court held as follows.

“--- the next effect of the failure to file pleadings or to lead evidence in that the case of the plaintiff in her pleadings and testimonies stand unchallenged and are deemed admitted and establish”

A careful perusal of the claim of the plaintiff, a-f, the evidence adduced together with the exhibits tendered and admitted, and the written address together with cases cited, I shall consider this case based on the two issues, so formulated matched it out with the claim of the plaintiff based on the evidence of PW1.

The issue as stated which I will take them one after the other.

On the 1<sup>st</sup> issue whether the defendant has the right to sell a jointly-owned property without express agreement of the co-owner the plaintiff)

On this wish to state that, the married Act of 1990 Chapter, 218 CFN states.

**“The married woman under the Act enjoys equal right to the family assets acquired during the marriage and the disposal during or after the marriage-----”**

On this I believe these are three issue at stake.

- i. The status of the existing marriage with the husband.**
- ii. Her correct possession of the property?**
- iii. The ownership of the sole legal right to the property.**

On the first issue being the status of the existing marriage with the husband. Here it is the evidence of PW1, where she stated that, the defendant is her husband, got married on the 11<sup>th</sup> December, 1992 where she tendered exhibit A where in the said marriage they have 4 (four) children one boy and three girls and all of them leaving in Canada.

From the above evidence of PW1, it is clear that both parties are still husband and wife.

On the second issue being her correct possession of the property?

It is in her evidence, that they both lived at Lugbe in FCT, Abuja, and that when they got marriage, the defendant agreed that she will be taken care of feeding, and housekeeping expenses. That before there were living in a rented house, and she used to pay the house rent as her office used to give her money for the house rent and for the children Education and later send the children abroad which she continues paying their education fee. That she was the one paying the house rent.

That in the year 2014, they bought a house and moved from rented house to the house they built and in the house she was sharing one room with the girls, while his son one, and later the son said no, she should have her room while he will share one room with the sisters. That any time they have problem he always tells her to leave the house, this he stated when the children were still around and whenever she travels he always lock the gate of the house and usually change the padlock keys for the garage so that she will not be able to go out with her car.

From the above evidence of PW1, it seems that they both have joint ownership of the property (by virtue of the fact that they both contributed to the ownership of the property and therefore equal right to it.

Having established that both have joint ownership of the property in question the husband cannot legally evict her or dispose off the property without her consent. Therefore, the husband the defendant have no right to sale off the property without the plaintiff consent nor threaten to evict her or locking the keys or changing the padlock of the house, as I stated earlier that the marriage Act of 1990, Chapter 218 LFN gave the married woman under the Act enjoys rights to the family assets acquired during the marriage and to be involved in their disposal during after the marriage-----”

The evidence of PW1, was not rebutted by the defendant despite service of hearing notice(s), in view of the absence of the defendant to rebut or adduce evidence of the plaintiff claims. It is the law that uncontradicted and uncontroverted facts are deemed as admitted.

That testimony of the plaintiff, was not disparaged or discredited under cross-examination by the defendant, her evidence was in terms of her case on the pleadings and her case was directed strictly at the issues raised. The defendant neither filed pleadings to countermand the case of the plaintiff and neither did

he lead evidence to challenge or contradict the testimony of the plaintiff. The next effect of the failure to file pleading or to lead evidence is that the case of the plaintiff in her pleading and in her testimony stand unchallenged and are deemed admitted and established. See consolidated Resource Ltd Vs Abofar Ventures (Nig) Ltd (2007) 6 NWLR (PT 1030) 221, Oladipo V Moba Local Governemtn Area (2010) 5 NWLR (PT. 1186) 177. In Okoebor V Police Council (2003) 12 NWLR (PT.834) 444

The supreme court stated that:

**“the basic principle of law is that where defendant fails to file a defence, 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 of the court, like 10<sup>th</sup> of July is Nigerian’s independence anniversary, such a paragraph is inadmissible because of the obvious untruth. Per Abiru JCA page 54-55 paragraph G-H’**

It is also trite law, andthat the general rule that although the defendant called no evidence at the trial still that would not be sufficient for the courts to find for the plaintiff. The plaintiff were still duty bound to established her claim by credible evidence. It is not the general rule that whenever the evidence tendered by the plaintiff is unchallenged or uncontradicted, the plaintiff is entitled to judgement. see NwogoObia& ors Vs AgwuNjoku& ors (1990) 3 NWLR (PT. 140) 570. The law in my view settled that where evidence given by a party to any proceedings were not challenged by the opposite party who had the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it O.dulaja V Haddad (1973) 1SC.35, Nigerian maritime service Ltd V Akaji Bello Afolabi (1978) 2SC.19.

In view of the above I shall accept the evidence of PW1, having been unchallenged or uncontradicted by the defendant.

Hence I shall give judgement to the plaintiff based on the evidence adduced before this court and the exhibits tendered.

Judgement is hereby entered for the plaintiff against the defendant as follows:

- 1. The defendant hereby stopped from evicting the plaintiff his lawful wedded wife and the mother of his four children from the property lying and situated at House No: 36 Palm Heights Luxury Homes**

**Phase 2, voice of Nigeria Headquarter Road Lugbe, Abuja being her matrimonial home which she contributed to the purchase thereof.**

- 2. The defendant is hereby ordered to stop selling or disposing of the property lying and situate at House No: 36 Palm Heights Luxury Homes Phase 2, voice of Nigeria Headquarter Road Lugbe, Abuja in any manner whatsoever, without the written consent of the plaintiff first had and obtained.**
- 3. The defendant is hereby restrained whether by himself, agents, servants, proxies, assigns, personal representative, and or however called from ejecting and or attempting to eject the plaintiff and or disturbing her right to reside in the property lying and situate at House No: 36 Palm Heights Luxury Homes Phase 2, voice of Nigeria Headquarter Road Lugbe, Abuja.**
- 4. It is hereby ordered that, the defendant is restrained whether by himself, agents, servants, proxies, assigns, personal representative, and or however called from selling or disposing of the property lying and situates at house No: 36 Palm Heights Luxury Homes Phase 2, voice of Nigeria Headquarter Road Lugbe, Abuja being the plaintiff's matrimonial home which she contributed to the purchase thereof.**

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**HON. JUSTICE ALIYU Y. SHAFI**

**APPEARANCE:**

- 1. C. E. Nwere for the plaintiff.**

