

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

DATED THIS TUESDAY 9TH DAY OF JANUARY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/360/2022

BETWEEN:

ROCKBRIDGE SYNERGY LTD..... CLAIMANT/APPLICANT

AND

- 1. KASFAT NIGERIA LIMITED**
- 2. COMMODORE K. M. BUSHI**
- 3. DR. JOSEPH HARUNA KIGBU..... DEFENDANTS/RESPONDENTS**

JUDGEMENT

The claimant filed before this court a writ of summons dated the 7th February, 2022 and file on the same date, alongside the statement of claim where the claimant claims the following

- 1. A declaration that while the 1st defendant is allocated subplots No: 25, No:28, No: 31, No: 32 and No: 35, the 3rd defendant on other hand is allocated subplots No:18, No:20, No:21, No:22 and No:23 respectively carved out of the parent plot 559 Cadastral Zone Boo Kukwaba District, Abuja allocated claimant.**
- 2. A declaration that the 1st & 2nd Defendants jointly and on severally are precluded from resorting to self-help to with invading the plots allocated to 3rd defendant, at the claimant Estate known and described as plot 559, Kukwaba District Abuja and building there upon against the instruction, site Engineering supervision and desire of the claimant.**
- 3. An order directing the 1st & 2nd defendant to forthwith desist from the invasion of any and all of the landed property known and described as subplots No:18, No:20, No:21, No:22 and No:23 which had earlier been allocated to the 3rd defendant by the claimant.**

- 4. An order of this Hon. Court directing the 1st and 2nd defendants to forthwith return to the plots truly allocated to the 1st defendant, which are subplots No: 25, No:28, No: 31, No: 32 and No: 35.**
- 5. A declaration that the 1st defendant whether aided by the 2nd defendant or however, lacks the vires and shall not proceed to develop any subdivided plots land on the parent plot 559 Cadastral Zone Boo Kukwaba District, Abuja Belonging to the claimant without the latter obtaining final updated building permit/approvals from the requisite departments government such as the development Abuja.**
- 6. A declaration that the 1st defendant like any other subscriber at the claimant prospective Estate of plot 559 Kukwaba District, Abuja is obligated to pay the claimant forthwith in fracture file in the sum of N20,000.00 (at N4,000,000 for each of the five plots allocated her (as paid by all other subscribers desirous of owing horses at the claimant said prospective Estate.**
- 7. General damages against the 1st & 2nd defendant only, in the sum of N100,000,00.00 (One Hundred Million Naira) only.**

Attached to the writ of summons is a statement on oath of Hayatudeen Usman 4 pages dated the 7/2/2022, pre-action counselling certificate, statement of claim dated the 4th February, 2022 and list of witness.

Upon service on the 1st & 2nd defendant counsel one Shaibu Baba Ohyoma dated the 16/3/2022, they filed a memorandum of conditional appearance dated the 3rd March, 2022 with the 1st & 2nd defendant's joint statement of defence and 1st defendant's counter claim of two pages dated the 23-3-2022 and a written statement on oath of comrade James MejeKodunmi of 6 pages dated the 4th March, 2022 & list of witnesses to be relied upon and list of documents inclusive marked as annexures A, B, C, D, E, A1, A2, A3, A4 & A5, B1-B5, C1-C5, D1-D5, E1-E5, F1-F2, G1-G2, H1-H2, I1-I2, J1-J2 K1-K2, L and M.

On the 6-04-2022 when the matter came up for mention parties were absent and Daniel Iorker appeared for the claimant while Shaibu Baba Ohyoma appeared for the 1st and 2nd defendant.

The claimant counsel who informed the court that he was unable to effect service on the 3rd Defendant then applied apply for another date. This the defendant counsel did not object to and the matter was adjourned to 25-04-2022 for report of service.

On the 25-4-2022, one Daniel Iorker with Ahmed Mohammed Jobada appeared for the claimant while Shaibu B. Ohyoma appeared for the 1st & 2nd defendant. The claimant counsel who informed the court that all efforts to effect service on the 3rd respondent proved abortive hence applied for another date to enable him file a motion ex parte before the court. This the 1st & 2nd defendant counsel did not object to and the matter was adjourned to the 16-05-2022.

On the 10-05-2022 one Ahmed M. Chubado appeared for the claimant, on this date he moved his motion ex parte for an order of substituted service, the said order was granted and prayed and the matter adjourned to 16/05/2022 for hearing. For any reasons this court did not sit and the matter adjourned to 02-06-2022.

On the 02-06-2022 one Iorker Daniel was in court and one Elvis O. E Jetta holding the brief of one Shaibu Baba Ohyoma for 1st & 2nd defendant.

The claimant counsel told the court that service has been effected on the 3rd defendant and asked for a date to enable them file memo of appearance. This the 1st & 2nd defendant counsel did not object to and the matter was adjourned to 22-06-2022 for hearing. In the course of the adjournment one Chief R. O. Nnah appeared for the 3rd defendant.

On the 22-06-2022 one Iorker Daniel for the claimant and Shaibu Baba Ohyoma for the defendant and one comrade James MejeKodunmi represented the defendant.

On this date the claimant counsel informed the court that they could not be able to proceed reasons being that they have prepared their reply to the statement of defence but their witness is not available to be in court because of ill-health and they have tried to have him signit's but not possible, and for this reason they will not be able to proceed.

This the defence counsel to the 1st & 2nd defendant vehemently opposed the said application reasons being that the claimant was served with the defendant's counter claim since the 1st of march, 2022 by order 18 of the rules of this court and ought to have replied within the second week of March and coming over three and half months later to give this excuses which is also in vacuum because there is nothing to show to the court other than an attempt to delay this matter for reasons known to them and they are left without option but to apply that the claimant be foreclosed so that the defendant can open their case. Or alternatively for the court to open accelerated hearing and grant a cost of N50,000.00.

In response the claimant counsel opposed the application for cost in the interest of justice. That they brought this action and they are interested to prosecute same and in the interest of justice pleaded to the court that the cost should not be awarded. In the ruling this court awarded a cost of N20,000.00 against the claimant and application for fore closure of the claimant made by the defendant counsel was refused while the court ordered for accelerated hearing and the matter was adjourned to 5-07-2022.

On the 5-07-2022 one Iorker Daniel was in court for the claimant and Shaibu Baba Ohyoma for the 1st & 2nd defendants and one Chief R. U. Nnah for the 3rd defendants.

The claimant counsel who informed this court that the third defendants have filed two suits and have served the originating processes as one and looking at the originating processes filed, by the 3rd defendant, in that case the parties in this suit are the same, as the parties in that suit, cause of action is the same, the subject matter and the reliefs sought are all the same or similar and with this development, the reason that the two suits filed by the 3rd defendant and assignment to another court 45 and we have brought an application for the three suits to be consolidated, since the parties are the same. This is to avoid multiplicity of action and also to avoid a situation of conflicting judgement of the courts.

In response the 1st & 2nd defendant counsel opposed to the said application because he is not aware of any suits pending in any court as they have not been served with the processes of any suit anywhere.

The third defendant counsel inform the court, that the 1st and 2nd defendants have been served personally and it is left on the 2nd defendant to communicate with the counsel.

This case was then adjourned to 6-10-2022 to hear from counsel on the letter written to the office the Hon. CJ for consideration of the suit. This case was again adjourned to 6-10-2022.

On the 6-10-2022 counsel to the claimant and that of the 1st & 2nd defendants were all in court and the matter was for the feedback on the letter written to the office of Hon. C J. this the defendant counsel informed the court that to his knowledge there is no feedback but there is a development. That the claimant and the 1st & 2nd defendants have agreed to sheathe their swords, and it is on record that the 3rd defendant have not filed any defence and since this settlement will not affect him on his right in any way, on that note he asked for a short date to enable the parties proceed with the said negotiation with a view to reach a term of settlement to be duly filed before the court. This the claimant counsel also informed the court that parties are in

discussion for possible out of court settlement and asked for a date to file in the terms of settlement and the case was adjourned to 20-10-2022 for adoption of terms of settlement.

On the 20-10-2022 parties were absent, while the defence counsel was present in court.

The 1st and 2nd defendant counsel informed the court that, counsel to the claimant called him that he is having a problem with his car driving down to the court and that the court should dispense with his presence while he reports the position to the Hon. Court.

That today is slated for adoption of terms of settlement and he is happy to report that the parties have agreed on all issues before the court and the terms of settlement is drafted and signed by the defendant.

However, the plaintiff has informed him that the counsel is out of town for him to sign his own part and that the counsel informed him that he will do so as soon as the lawyers returns. On that note this matter was again adjourned to 9-11-2022 for adoption of terms of settlement and judgement.

On the 9-Novemebr, 2022 this matter was adjourned for adoption of terms of settlement/ hearing. The 1st& 2nd defendant counsel was in court while the claimant and his counsel were not in court. This the defence counsel stated that the matter is adjourned for report of settlement and from all indication the claimant has abandoned the case. That they have drawn the terms of settlement and given to them, but they are not picking their calls anymore. That pursuant to order 32 of the rules of this court pray that the case of the claimant be closed and for the court to hear their counter claim.

On this the court refused the application to close the case of the claimant and still adjourned the matter for report of settlement/hearing.

On the 22-11-2022 the defendant counsel informed this court that the matter is for hearing of their counter claim as the claimant has closed his case, this time the court again adjourned the matter to hear the counter claim of the 1st& 2nd defendant to the 2-12-2022.

On the 2nd December, 2022 Shaibu Ohyoma was representing the 1st& 2nd defendants while the claimant counsel and the 3rd defendant were absent.

The 1st -2nd defendant then applied to the court to close the claimant's case for want of diligent prosecution, they have served hearing notice twice on the claimant in respect of their counter claim. That it is obvious that they are not interested in appearing before the court. He then applied to the court to proceed with his counter claim.

On this the court ordered the 1st & 2nd defendant to proceed with his counter claim. DW1 gave evidence and the matter was adjourned for cross examination to 9-December, 2022.

On the 15th December, 2022 this matter came up for cross-examination to 9-December, 2022.

On the 15th December, 2022 this matter came up for cross examination of DW1 by the claimant and his counsel was not in court despite hearing notice served on them and also the 1st & 2nd defendant counsel applied to the court to foreclose the right of the claimant and the 3rd defendant from cross-examining DW1. This the court granted the oral application and they were foreclosed. The 1st -2nd defendant then closed the case of the 1st -2nd defendant's counter claim.

The 1st to 2nd defence counsel who informed this court that they have filed their written address and seek to adopt same as their argument in this case and urge the court that from the evidence of the counter claim and the relevant authorities and exhibits before the court, the court should grant the prayers of the counter claimant and the matter was adjourned for judgement to the 24-01-2023.

On the 24-01-2023 when this matter came up for judgement, one chief R. O. Nnah appeared for the 3rd defendant while ShaibuOhyoma Baba appeared for the 1st to 2nd defendants. The 3rd defendant who informed the court that they have a motion and intend to move same. This the court obliged them to move the motion the said motion seeks for the following reliefs.

- 1. An order setting aside all the steps taken by the 1st & 2nd defendant in this suit including all Honourable court after the 6th day of October, 2022 same having been taken without hearing notice served on the 3rd defendant.**
- 2. An order of the court setting aside the processes of this Honourable conducted after the 6th day of October, 2022 same having been conducted without hearing notice served on the 3rd defendant/ Applicant.**
- 3. Any order or further orders as this Honourable court may deem in the circumstances.**

The 1st and 2nd defendant counsel on being served with the motion on notice of the 3rd defendant/Applicant, filed a counter affidavit and a written address in support of the motion on notice as the 3rd defendant/Applicant.

Argument was advanced and ruling was reserved to be delivered on the 2/2/2023 for hearing. See Page 45-66 for Ruling.

By this ruling delivered, the matter was adjourned to the 28th day of February, 2023 for hearing.

On the 29th day of February, 2023 the 1st & 2nd defendant counsel was represented by ShaibuOhyoma Baba while 3rd defendant was represented by one J. U. Idoko while the claimant and its counsel were not in court.

J.U. Idoko informed the court that they have a pending motion for an extension of time to file statement of defence and counter claim and hereby asked for a short date to enable them effect service on the claimant. this the 1st & 2nd Defendant counsel did not object, and the matter adjourned to 23-03-2023 for hearing of the motion.

On the 23/March, 2023 when this matter came up for hearing of the motion for extension of time to file the 3rd defendant's statement of defence, the 3rd defendant and his counsel were not in court., equally applied to the claimant and his counsel but the 1st & 2nd defendant and his counsel were in court the 1st and 2nd defendant counsel informed the court that the claimant has not been coming to this court despite hearing notices served on the claimant and yet not in court. That the 3rd defendant counsel was in court on the last sitting and that he called from Enugu and asked that the court obliged him with another date. This the 1st & 2nd defendant counsel did not object and this matter was again adjourned to 23-03-2023 for hearing.

On the 23rd March, 2023 the case came up for hearing both the claimant and its counsel and the 3rd defendant and his counsel were still absent while the 1st to 2nd defendant was in court. he then informed the court that hearing notice was served on the claimant and yet the claimant is not in court. However, that the 3rd defendant counsel was in court on the last sitting but called from Enugu that the court obliged him with a date and the matter was again adjourned to 20-4-2023.

On the 20th April, 2023 this matter came up for hearing, the 1st and 2nd defendant counsel was in court while both the claimant counsel and the 3rd defendant were still absent on this the 1st and 2nd defendant counsel informed the court that the 3rd defendant counsel sent a text message upon his arriving the court informing him that he was not feeling fine/well, and that he should oblige him a date. On this the case was again adjourned to 09-05-2023 for hearing, with an order that hearing notices be served on the claimant and 3rd defendant.

On the 9th May, 2023 same applies, the claimant were absent in court while the 1st – 2nd defendant and the 3rd defence counsel were in court. He informed the court that they left the court on the last adjourned date to resort to file their processes before the next adjournment date, so that hearing will commenced proper.

But however, they are in court again having prepared all processes for filing, the 3rd defendant was still out of town and it was just yesterday evening that he called to inform him that he had arrived and will be in Abuja on the 10-05-2023 to sign the processes for them to properly file.

In view of this development he asked for another date within the month. This the 1st and 2nd defence, counsel did not object and the matter was adjourned to the 23-05-2023 for hearing on the 4-07-2023 when this matter came up for hearing both parties were absent in court and the matter adjourned to 24-10-2023 for hearing.

On the 2nd November, 2023 when this matter came up for hearing, both the claimant and it's counsel including the 3rd Defendants were absent. The 1st and 2nd defence counsel ShaibuOhyoma Baba, informed the court that both the claimant and the 3rd defendant have ceased coming to court where upon the claim of the 3rd defendant were closed on application of the 1st & 2nd defendant counsel.

That however, on the 23-03-2023, the 3rd defence counsel filed a motion to be granted leave to file their statement of defence and counter claim and the matter that was slated for judgement was put on hold, granted the application of the 3rd defence counsel on the 23-3-2023 to enter his defence or counter claim if any. That since the 23rd day of march 2023 the said 3rd defendant have not filed the said defence they sought before this court.

Furthermore, that on the 24-10-2023 when this matter came up they were not in court having served them hearing notices both the claimant and the 3rd defendant.

In view of the above stated that the court cannot wait perpetually for them, and prayed the court to invoke it's power in accordance to the rules of this court particularly order 21 rule 11 of the rules of this court. That the facts that the 3rd defendant have no pleadings before this court, empowered the court via their application to proceed to judgement as they there have already adopted their final written address in February, they seek to adopt same and pray the court to proceed to judgement in accordance to order 21 rule 11 of this rules of this court to enter judgement in favour of the 1st and 2nd defendant.

The court in it's ruling granted the request of the 1st to 2nd defendant counsel hence I shall proceed to judgement on the counter claim of the 1st & 2nd defendants counter claim against the claimant as follow:

- 1. A declaration that the 1st defendant/counter claimant was allocated subplots No:6, 7, 25, 28, and 31 at the claimants Estate Parent Plot No:559, Cadastral Zone Boo within Kukwaba District Abuja.**

2. **A declaration that the claimant has violated parts of it's contract with the 1st defendant by denying the 1st defendant/counter claimant the possession and enjoyment of subplot No:7.**

3. **An order of performance of this Honourable court directing the claimant to forthwith allocate another subplot at the claimant Estate parent plot No: 559, Cadastral Zone Boo within Kukwaba District Abuja to the 1st defendant/Counter claimant as substitution for subplot No:7.**

4. **The sum of N200,000.000.00 (Two Hundred Million Naira) against the claimant being General damages for the illegal, wrongful and unlawful conducts of the claimant and trauma and embarrassment caused to the 1st defendant/counter claimant by the claimant.**

5. **The sum of N3,000,000.00 (Three Million Naira) against the claimant being the cost of this action.**

On the adopted written address dated 15th December, 2022 three issues were formulated for the determination of the court to wit:

1. **Whether the claimant's statement sought without leading any evidence before the honourable court.**

2. **Whether the 1st Defendant/counter claimant has proved his case/counter claimant, having regard to the evidence before the court to be entitled to the reliefs sought from this honourable court.**

On issue one, it is the submission of the learned counsel to the 1st and 2nd defendant that since the claimant did not lead any evidence to be obliged or acted upon by the honourable court, the claimant cannot expect the honourable court to take the particulars of his claim in his statement of claim for evidence since the particulars of his claim are now only contained in the statement of claim, and the position of the law as stated in Enugu State civil service Commission V Agu Geoffrey (2007) 21 WRN 144 at a50 Ratio 4.15 clear, that averments obtained in pleadings, on which no evidence is adduced are deemed to have been abandoned. Also in the case of Ajikawo V Ansaldo Nigeria Ltd (1991) 2 NWLR (PT. 173) 359 at 375 paragraph C-F has the following:

“pleadings cannot speak on talk in court. This is because they do not have the mouth to speak or talk. They have not the

capacity or power to demonstrate in court. They cannot give the court a precise concise pictorial view of the event pleaded therein beyond this language.

Accordingly, pleadings however brilliantly written, cannot take the place of oral evidence in court in a matter that is contentious and contested in such a situation, pleadings, we helplessly in the case file, waiting anxiously for their owner, through counsel to make the best use of them. And this the owner can do only by oral evidence to awake the apparently dead averment. If the owner, like the owner of any property decides to make use of them, the law deems to make use of them, the law deems them to have been abandoned. The averments are moribund. This is because since the owner has not given life to the pleadings by way of leading evidence in proof of the averments therein, they are as good as not written in the first place. The sentence, the words and the letters, which makes up the pleadings, are dead and completely dead and no evidence or probative value....”

Also in *Dongyadi V Wamako & 3 ors* (2008) 17 NWLR (pt. 116) Page 395 at 405-406, where it was held that, a party who fails to adduce evidence in support of his pleadings is deemed to have abandoned same. In *Thaydee Ventures Ltd V the Hon. Minister of FCT and ors* (2010) 7 NWLR (pt. 1192) 171 at page 204, paragraph D-H it was held that, it is an established principle of law that where pleadings are not supported by evidence, such pleadings go to no issue and are deemed abandoned.

On this, he submitted that the claimant's claims as itemised in the claimant's statement of claim is deemed abandoned the said statement having not been supported by any evidence. The case therefore is bound to fail and urge the court to do hold and resolve the 1st issue in favour. Of the 1st and 2nd defendant.

On this I wish to agree with the learned counsel to the 1st to 2nd defendant as it is the law that pleading is the bedrock upon which evidence is laid to sustain a claim. A part swims or sinks with his pleading. It is trite that matters that are to be relied upon and which form part of the issue in controversy must be pleaded clearly in order to avoid taking the opponent by surprise parties are bound by their pleadings and any fact that emerges from matters that are not pleaded goes to no issue and should be discountenanced. See *Philips V E. O. C. & Ind Co Ltd* (2013) 1 NWLR (pt. 1336) Page 618 (SC) it is also trite that where one party fails or refuses to submit the issue, he has raised in his pleadings for trial, and does not give or call evidence in support thereof the trial court may resolve such

issues against the defaulting party. See *Oluyede V Access Bank* (2015) 17 NWLR (prt. 1489) page. 596.

In view of the emerging facts in this Judgement it is clear and too clear that the claimant indeed filed his statement of claim dated the 4th February, 2022 and has since abandoned same without coming forward to prove what he alleged in his statement. Having failed to avail himself to prove. The alleged claim goes to the fact that he has abandoned the claim as such this court will treat same as having been abandoned. Hence issue one is resolved in favour of the 1st and 2nd Defendant. I so hold.

On issue two

Whether the 1st defendant/counter claimant has proved his case/counter claim, having regard to the evidence to the reliefs sought from this honourable court?

On this it is the 1st and 2nd defendants' argument which he submitted that the following has been established.

- 1. That there is a valid allocation of subplot No: 6, 7, 25, 28 & 31 by the Claimant in the claimant Estate to the 1st defendant/counter claimant.**
- 2. That the 1st Defendant paid for the subplots that were duly allocated to it, which it took possession of same, with the exception of subplot No: 7 and did not trespass on any subplot or use any military might whatsoever to trespass on any subplot within the claimant's Estate.**
- 3. That the 1st Defendant could not take possession of subplot No:7 because of rival claim, which the claimant explained that it was a mistake of double allocation from them (the claimant) and promised to allocate another subplot to the 1st Defendant as substitution but has failed to do so.**

On this the learned defence counsel to the 1st & 2nd defendant submitted that, the position of the law is that where evidence given by a party to any proceedings was not challenged by the other party who had opportunity to do so, it is always open to the court to act on such, unchallenged evidence before it. See *Mobil producing Nig Ltd V Monokpo* (No:2) (2001) FWLR (part 78) at 120.

On this I wish to state that, the issue of unchallenged evidence in this suit resolved on the abandonment of the claimant's statement, whereof the 1st and 2nd defendant urged this court to proceed to enter Judgement on it's counter claim in the absence of any evidence adduced thereto either oral or written by the claimant. on this it is trite law that a counter claim enjoys an independent

existence from the main suit from which it is raised. This the failure of a plaintiff claim does not affect the defendants, counter claim and vice-versa. By it's separate and independent nature, notwithstanding, that it is related to the principle claim, a counter- claim is not symbolic or symbiotic. that is why one can exist independent of the other. A withdrawal or failure of the principal action does not necessarily affect or prejudice the existence of the counter claim and vice-versa. Since the judgment in the principal action is not independent on the judgement in the counter-claim, a vice in one cannot destroy the other. See *Ladunni V Wema Bank Ltd* (2011) 4 NWLR (pt. 1236) 44 CA.

Therefore, the onus where there is a counter claim is as much on the defendant in his counter claim, as on the plaintiff in the main claim to establish his counter claim in respect of trespass, title and injunction therein claimed. The onus he must to succeed, discharge, to the satisfaction of the court, and on the evidence brought, as plaintiff in the counter claim must rely on the strength of his case not on the weakness of the case of the plaintiff if this is not discharged, the proper judgement should be against him. See *Tatu V Estate of late Alh. I Adamu* (2015) 13 NWLR (Prt.1476) P. 364. Here in this case, the evidence presented by the respondents showed that the deceased was firmly in possession of the land and exercised acts while on his sick bed up to the week before he died.

On this on the declaratory reliefs sought by the counter- claimant, the counter-claimant pleaded and let evidence to entitle her to the declaration sought.

This bring us to the evidence adduced by DW1. On the 2nd December, 2023 DW1 one comrade James MejeKodunmi Stated in his evidence thus:

That on the 4th March, 2022 he made a statement on oath, the said statement which he recognised same through his signature, same was adopted as it's oral submission. That on the statement on oath, he can identify five (5) allocation letter and (5) irrevocable power of Attorney issued to him in respect of Plots No: 6, 7, 25, 28 & 30 and that reference to paragraph 18, has a receipt of the payment of N250,000.00 for the application form and receipt of 1 Million for the allocation of the said 5 plots. The receipt of payment of N250,000.00 was admitted in evidence as exhibit A. the receipt of payment of N1 Million for the allocation of the plots No: RBS/01/19100273 dated the 9-4-2019 was admitted as exhibit B, letter of allocation from rock bridge, Synergy Ltd Addressed to Kasfat Nig. Ltd Reg. No: RBS/APR/0293/015 dated the 11-June, 2015 was also admitted in evidence as exhibit C in respect of Block Plot No: 25 and that of plot 28 as exhibit C that of plot 31 Reg. No: RBS/APR/0293/015 as exhibit c2 while that of Re-allocation for the purchase of five bedroom detached duplex of our Housing Estate City castle estate plot 300 Kukwaba Abuja dated the 13-02-2018 by Rockbridge Synergy Ltd address to KasfatNig Ltd for plots No: 6 7

City Castle estate admitted as D & D1 respectively of irrevocable power of Attorney donated by Rockbridge Synergy Ltd in favour of Kasfat Nig. Ltd in respect of the following:

1. **Subplot No: 559 admitted as exhibit E.**
2. **Subplot No: 7, of plot 559 admitted as exhibit E1.**

An irrevocable power of Attorney by Rockbridge Synergy Ltd to Kasfat Nig. Ltd dated the 11-6-2015

3 (three number) were admitted in evidence as exhibit F, F1 & F2.

After the evidence of DW1, the matter was adjourned for cross-examination and despite hearing notices served on the claimant, they did not cause any appearance to cross-examination DW1, hence the claimant was foreclosed from cross-examining DW1 and the 1st and 2nd defendants close their case and urged the court to grant the reliefs sought in his counter claim.

On this I will refer to section 144 of the evidence, Act provides thus.

“where there is a question as to good faith of a transaction between parties, one of whom stands to the other in a position of active confluence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Section 133(1) of the E. Act, 2011 provide thus:

“in civil cases, the burden of fact proving existence or non-existence of a fact lies on the party against whom the judgement of the court worked be given if no evidence were produced on either side, regard being had to any presumption that may rise on the pleadings.

And section 134 of the same Act provide

“the burden of proof shall be Discharged on the balance of probabilities in all civil proceedings.

The evidence adduced by DW1 during examination in chief was not challenged as the claimant did not make itself available to cross-examine DW1 when called to do so, it is therefore trite law, that where a party in a case either fails to give evidence in his case as disclosed in his pleadings or fails to challenge the evidence of his adversary or opposing party, he is deemed to have accepted the evidence of the opposing party notwithstanding the general traverse. See *Alh. Usman Bua V Bashir Dauda* (2003)13 NWLR (PT.838) 657.

It is also trite law, that where an adversary fails to cross-examine a witness upon a particular matter, the implication is that he accepts the truth of that matter as led in evidence. Where the evidence of a witness is unchallenged under cross-examination, the court is not only taking evidence but is bound to do so provided that such evidence by its very nature is not discreditable.

After all, the noble art of cross-examination constitutes a letter weapon in the hand of the adversary to enable him effect the demolition of the case of the opposing party. See *Iwunze V F.R.N* (2013) 1 NWLR (pt. 1334) Page 119.

It is therefore the submission of the counter claimant that he had led-evidence and relevant evidence (which were neither challenged nor discredited under cross-examination) in proof of her counter claim as to entitle her to the reliefs sought.

On the counter claimant seeking wrongful conduct of the claimant and the trauma and embarrassment caused to the counter claimant by the claimant which are the consequence of the claimant's action. On this he submits that general damages are such as the law will presume to be the direct natural or possible consequence of the act complained of this he referred the court to the case of *Sosan V H. F. P Eng. (Nig) Ltd* (2004)3 NWLR (PT. 861) 546 CA.

On this I wish to state that in the award of general damages, a wide spread power is given to the court comparable to the exercise of discretion of the court. It is enormous for reaching the measure of general damages is awarded to assuage such a loss, which flows naturally from the defendant's act. It suffices if it is general averred. It is presumed to be the direct and probable consequences of that complained of. it is generally incapable of exact calculation. See *EIF Pet (Nig) Ltd V Umah* (2018)10 NWLR (pt. 1628)428. It is also trite law, that on award of damages either special or general is not made on a matter of course, or on speculation or sentiment but on sound and solid legal principles. In other words, it is not made out of sympathy borne out of extraneous consideration but rather on legal evidence of probative value adduced in proof of an actionable wrong or injury. See *A. S. E. S. A Vs Ekwenem* (2009)13 NWLR (PT. 1158)410. SC.

To award damages is purely within the precinct of the trial court. The power to award damages by the trial court is exercised in the circumstance of a jurisdiction estimation of the loss to the victim once of breach of contract has been established.

In this instant suit, the claimant is in breach of contract hence this entitled the counter claimant to claim damages.

In view of the foregoing, I hold that the counter claimant has proved to the satisfaction of this court hence this court will use its discretion to award.

A minimal amount damages of N1,000,000.00 (One Million as general damages in favour of the counter-claimant. so I hold.

On the order of performance directing the claimant to forthwith allocate another subplot at the claimants Estate parent plot No:559 Cadastral Zone Boo within Kukwaba District Abuja, to the 1st Defendant/Counter-claimant as substitution for subplot 7. On this it is the submission of the Counter-claimant that the 1st defendant was allocated subplots No: 6, 7, 25, 28 & 31 of which it immediately took possession with the exception of subplot 7 and has since then been in active and actual possession thereto by exercising possessory rights over the said plots.

Furthermore, that the 1st defendant could not take possession of subplot 7 because of rival claims which the claimant explained that it was a mistake of double allocation from them (the claimant)and promised to allocate another subplot, to the 1st defendant as substitution but has failed to do so. These evidence which were not challenged by the claimant. It is therefore, trite law that where evidence given by a party to any proceeding were not challenged by the other party who had opportunity to do so, it is always open to the court to act on such.

Unchallenged evidence before it. See Mobil Producing Nig Ltd V Monokpo No.2 (2001) FWLR. (pt.728) at 1210.

In view of the above hold that, the counter claimant is entitled to the claim order of performance, hence/direct the claimant to forthwith, allocate a subplot at the claimant Estate parent plot No: 559 Cadastral Zone Abuja to the 1st Defendant/counter-claimant as substitution for subplot 7. I so hold.

On the last claim of the sum of N3,000,000.00 (Three Million Naira) against the claimant being the cost of this action. On this last claim as the counter-claimant, on cost, it is trite law that cost follows event/ but the event that led to the claim of cost must be justified in accordance with the law. The law is that the claim should have been specifically proven before it can be awarded.

The cost as claimed by the counsel to the Counter-Claimant is not clear whether the sum claimed is legal fee paid by the counter-claimant to his counsel or as fee paid to court or out of pocket expenses.

In Divine Ideas Ltd V Umoru (2007) All FWLR (PT.380) at 1509 paragraph A-D. the court of appeal Abuja Division held thus:

“cost of actions or Solicitors fees are in the realm of special damages, which must be specifically pleaded and strictly proved.

In the instant case, the appellant did not specially and specifically plead the details of the amount expended by it in the prosecution of the litigation in the trial court.

It also did not adduce any evidence in proof of this non-specific claim that has been abandoned. The appellant is therefore not entitled to be awarded any amount of general damages and or cost of action in the trial court.

By order 56(11) of the FCT High Court Civil procedure rules, 20218, it provides thus:

“the court in exercising his discretion as to cost shall take into account any offer or contribution made by any of the parties, payment into court and the amount of such payment”

It is trite law, that award of cost is solely at the discretion of the trial court to award cost. And in awarding the cost, the court will look at the cost incurred in the prosecution of the action and award costs accordingly.

This award must be done judiciously and judicially. See Theobros Auto-link Ltd V B. I. A. E. Co Ltd (2013) 2 NWLR (pt. 1338) Page 337 (CA). therefore, the essence of cost is to compensate the successful party/ or part of the loss incurred in litigation cost cannot cure all the financial loss sustained in the litigation. It is not meant to be a bonus to a successful party, and not to be awarded on sentiments.

A careful perusal of the processes filed, the amount paid, the time spent in the prosecution of this matter, the days of adjournment I think the counter claimant deserves to be awarded cost against the claimant. in view of the foregoing, I shall award the sum of N500,000.00 as cost in favour of the counter-claimant I so hold.

In the final analysis of this, i hold that the counter-claimant has proved his counter-claim against the claimant accordingly I make the following orders.

- 1. A declaration that the 1st defendant/counter claimant was allocated subplots No:6, 7, 25, 28, and 31 at the claimants Estate Parent Plot No:559, Cadastral Zone Boo within Kukwaba District Abuja.**
- 2. A declaration that the claimant has violated parts of it’s contract with the 1st defendant by denying the 1st defendant/Counter claimant the possession and enjoyment of subplot No:7.**
- 3. I direct the claimant’s to forthwith allocate another subplot at the claimant Estate Parent Plot No:559 Cadastral Zone Boo within**

Kukwaba District Abuja to the 1st Defendant/Counter claimant as substitution for subplot. No:7.

- 4. The sum of One Million Naira(N1,000,000.00) is awarded against the claimant for the illegal, wrongful and unlawful conduct and trauma and embarrassment caused to the 1st Defendant/counter-claimant by the claimant.**
- 5. The sum of N500,000.00 is awarded as cost against the claimant.**

This is my Judgement.

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

Appearance:

1. Shaibu Baba Ohyoma for the 1st and 2nd Defendants.
2. J. U. Idoko for the 3rd defendant.
3. Claimant Counsel absent.

