

**IN THE HIGH COURT 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/757/2021
DELIVERED ON THE 30/04/2024**

BETWEEN:

SEAFLOW INTERNATIONAL INVESTMENT LTD.....CLAIMANT
(Represented by Mr. Chidozie Okolo who sued in a Representative Capacity)

AND

**1. THE HONOURABLE MINISTER, FEDERAL CAPITAL
TERRITORY ADMINISTRATION (FCTA)**
**2. ABUJA METROPOLITANT MANAGEMENT
AGENCY (AMMA) (DEPARTMENT OF PARKS
AND RECREATION)**
3. MRS. ROSE UZOMA
4. MR. PATRICK IDIAGHE

}
}DEFENDANTS

}
} **JOINED BY ORDER OF COURT
DATED 19/09/2022**

JUDGMENT

The Claimant took out a Writ of Summons and Statement of Claim dated the 6/10/2022 against the Defendants and sought for the following reliefs against them jointly and severally, to wit;

- 1) The award of the sum of **₦200,000,000.00** (Two Hundred Million Naira Only) being general damages for the unlawful entry, trespass to park, Plot No **1523c, B06, Mabushi Recreation Park, Abuja, FCT.***

- 2) *The award of the sum of ₦100,000,000.00 (Hundred Million Naira Only) being damages for breach of duty which occasioned loss of anticipate income to the plaintiff.*
- 3) *A declaration voiding the purported allocation of park No. 1523B to the unincorporated O.A.U Enterprises on the grounds of fraud and illegality.*
- 4) *A declaration voiding and nullifying the purported sale by the 1st and 2nd Defendants of Park Plot No. 1523A to the unincorporated O.A.U Enterprise on the grounds of fraud, illegality and breach of the terms and conditions of the Lease Agreement of AMMA.*
- 5) *A declaration that the Plaintiff is the only lawful allottee entitled to the entire 6.03 hectares of the Mabushi Recreation Park, Abuja.*
- 6) *An injunction restraining the 1st and 2nd Defendants or their agents, servants from further acts of trespass on the said part Plot No. 1523C and from further reallocating it.*
- 7) *The sum of ₦2,000,000.00 (Two Million Naira Only) as cost of litigation.*

Upon service of the writ on the Defendants, 3rd and 4th Defendants responded by filing their joint statement of defence on the 25/10/2022. While, the 1st and 2nd Defendants failed and/or neglected to put in an appearance in this case.

The case proceeded into hearing on the 5/10/2023, the Claimant called its sole witness, Chidozie Okolo (Pw1) who adopted his witness statement on oath.

The case of the Claimant as distilled from the witness statement on oath of Pw1 is that, the Claimant applied for an allocation of recreational garden in the Federal Capital Territory from the Director of Parks and Recreation which was granted and Allocation given. That upon the approval of the Application and a Clearance letter issued in respect of this allocation of the park, a voucher was generated demanding bill from the claimant which was duly paid.

It is the case of the Claimant that it started development of the park immediately with perimeter fencing and other items already gathered before they were informed by the 2nd Defendant to hold on as there was a new committee to recertify the entire allocated parks. That while waiting, the Claimant discovered that 3rd Defendant had started encroaching on their park and had even destroyed the perimeter fence and other items assembled for the development.

That further inquiries revealed that 3rd Defendants unlawfully sold the park to 4th Defendant who continued trespassing on the Claimant's park.

The following documents were tendered by Pw1 in evidence, to wit;

- 1) Power of Attorney as Exhibit P1.**
- 2) Letter of allocation as Exhibit P2.**
- 3) Letter of intent as Exhibit P3**
- 4) Clearance letter as Exhibit P4**
- 5) Bill and demand notice/receipt of payment as Exhibit P5.**
- 6) Claimant's letter of complaint as Exhibit P6**
- 7) Letter of request as Exhibit P7**
- 8) Letter to public complaints commission as Exhibit P8**
- 9) Claimant's letter to FCT, Minister as Exhibit P9**

Pw1 was cross examined by learned counsel for the 3rd and 4th Defendants.

The matter was adjourned for 1st and 2nd Defendants to cross examine Pw1 and for 1st and 2nd Defendants to open their cases. Despite evidence of service of hearing notices, they were not in court, consequently their right to cross examine and defend the suit was foreclosed on the application of learned counsel for the Claimant. The 3rd and 4th Defendants counsel opted to rest his case on that of the Claimant.

Parties then filed and adopted their respective written addresses to pave way for this judgment.

On their part, learned counsel for the 3rd and 4th Defendants formulated a lone issue for determination to wit;

1) Whether the claimant, both in its pleadings and evidence, disclosed any cause of action against the Defendants which calls for an answer or a response from the 3rd and 4th Defendants.

Learned counsel argued the above issue citing relevant cases and statute in urging the court to dismiss this suit.

On the part of the Claimant, learned counsel for the Claimant equally formulated a lone issue for determination, to wit;

Whether, considering the evidence adduced, the Claimant is not entitled to the reliefs sought in this case.

Learned counsel answered the aforesaid issue in affirmative in urging the court to grant the reliefs sought.

I have gone through the case of the Claimant before me. I shall be brief but succinct in considering the issue before me for the interest of justice and posterity.

It must be borne in mind that the Claimant sought for various reliefs before the court some of the reliefs are declaratory in nature. It is an established position of law that in cases where declaratory reliefs are claimed as in this present case, the claimant must satisfy the court

by cogent and reliable proof of evidence in support of his claim. ***AGBAJE VS. FASHOLA & ORS (2008) 6 NWLR (PT 1082).***

The court has a duty to be satisfied that the claimant's evidence upon assessment is credible and sufficient to sustain the claim. ***SAMESI VS. IGBE & ORS (2011) LPELR 4412.***

It is instructive to state here that, 1st and 2nd Defendants did not defend this suit against them despite the evidence of service of court processes on them and hearing notices.

While the 3rd and 4th Defendants rested their case on that of the Claimant. The purport of a defence counsel resting his case on that of the Claimant in a suit means that, to him, the Claimant has not made out a case for the Defendant to answer or that the Defendant admits the facts of the case as stated by the Claimant. In the alternative he may be saying that the Defendant has a complete answer in law to the Claimant's case. ***OFOMAJA VS. COMMISSIONER FOR EDUCATION & ORS (1995) 8 NWLK (PT. 411).***

To arrive at justice in this case, it is pertinent to state that the kernel of the claimant's case is predicated on trespass into its park, plot no. 1523c, B06 Mabushi Recreation Park Abuja, FCT which the

Claimant alleged was allocated to it by Abuja Metropolitan Management Agency (Department of Park and Recreation).

It must be noted very that the general burden of proof in civil cases lies on that party who would fail if no evidence at all were given on either side i.e. the burden of first proving the existence or non existence of a facts lies on the party against whom the judgment of the court will be given if evidence was not produced on either side. See W.A. *COTTON LTD VS. HARUNA (2008) ALL FLWR (PT 416) 1942 AT PAGE 1955.*

By virtue of Section 135(1) of the Evidence Act, whoever desires any court to give judgment as to a legal right or liability must assert facts upon which same are hinged and prove that those facts exist. *CARDOSO VS. DANIEL & ORS (1986) LPELR 830.*

The Claimant in a bid to discharge the burden placed on it by law called Pw1 and tendered some documents as captured in the preceding part of this judgment.

I shall for the interest of justice scrutinize the documents tendered by the Claimant.

I pause here to state the law as regards the importance of documentary evidence. It has been held by a number of court

decision that documentary evidence is the yardstick or a hanger by which to assess the varacity of oral testimony or its credibility. ***OGBEIDE & ANOR VS. OSIFO (2006) LPELR 627 (CA).***

I must state here that, the court is under obligation to interpret every document accurately not to add to subtract from the content of the document.

I shall therefore, take a look and peruse through the documents tendered in evidence. Exhibit P2 is a Re-application for allocation of a recreation garden in FCT, the said letter was address to Director Park and Recreation FCT, and was signed by Mr. Chidozie Okolo for **Seaflow International Investment Limited** (the Claimant).

Exhibit P3 is a letter of intent to develop, manage and operate designated park site in the FCT. The said letter was issued by Abuja Metropolitan Management Agency to the Managing Director of Seaflow International Investment Ltd.

In the said **Exhibit P3** the park no. was stated as **1523c B06**, Mabushi Recreational park and the plot size is 1.19 hectares.

For the avoidance of doubt the said **Exhibit P3** has the following conditions;

- i) That this letter of intent is to enable you commence negotiation with your financier and immediate site preparation.**
- ii) That you submit a detailed technical design proposal for approval within twenty one (21) days from this date.**
- iii) That the lease agreement shall be given to you upon approval of your detailed technical design proposal and payment of all necessary fees.**
- iv) That the park be developed and completed according to the approved technical proposal within one (1) year from the date of approval.**

The question here is, did the Claimant comply with the above conditions precedent to obtain a lease Agreement?

The Claimant stated in paragraph 2 of the statement of claim that on the 18/3/2007, a Power of Attorney was donated to Mr. Chidozie Okolo (Pw1) appointing him as their lawful attorney and in paragraph 8, Claimant stated that the said (Pw1) applied for the subject matter and was granted. That the Claimant commenced arrangement with their financier for the immediate development, it was advised by the 1st and 2nd Defendants to hold on.

These assertions were never contradicted throughout the trial of this case. The law is clear when averments are not contradicted, the

court must consider same as true and act on same unless they are obviously absurd and unbelievable.

Similarly in evidence is **Exhibit P5** which is clearance letter. For clarity purposes, part of the letter reads;

“the committee on revalidation/recertification of parks in the FCT having examined your title documents and payments hereby issue this letter of clearance to confirm that your allocation is authentic, you are by this letter advised to complete your arrears of outstanding payment (if any) within one month from the date of receipt of this letter.”

From the above, it is obvious that the 1st and 2nd Defendants are in tacit agreement that the subject matter was allocated to the Claimant.

It is also instructive to state that **Exhibit P6** (Refusal to show me my site **1523C B06** Mabushi after 1 year of subdivision by Mr. Alnafati of parks and Recreation (Surveyor GSM **0806961431**) and Mr. Jafaru of Development Control, A Surveyor GSM **08050468443**).

The said letter was served on the 1st and 2nd Defendants without any response.

Indeed, a trial court has a duty to rely on un-contradicted and unchallenged evidence, facts not disputed are taken as established and therefore need no further proof. ***ELEWA VS. GUFFANTO (NIG) PLC (2017) 2 NWLR (PT. 1549) 248 AT PARA. F-G.***

The position of the 3rd and 4th Defendants that the case of the claimant is mere academic is unavailing and not supported by law or facts. I so hold.

From the evidence before the court, it is clear that the Claimant has proved its case on the balance of probability to be entitled to judgment. Consequently judgment is hereby entered in favour of the Claimant as follows:-

- 1) The award of the sum of **₦10,000,000.00** (Ten Million Naira Only) being general damages for the unlawful entry, trespass to park, Plot No **1523c, B06**, Mabushi Recreation Park, Abuja, FCT is hereby granted
- 2) **I hereby** award the sum of **₦5,000,000.00** (Five Million Naira) Only against the Defendants being damages for breach of duty which occasioned loss of anticipated income to the claimant.
- 3) **I hereby declared** that any allocation of park No. **1523c B06** to the Unincorporated O.A.U Enterprises is void and illegal.

- 4) **The Court hereby** nullify the purported sale of park No. **1523A** to Unincorporated O.A.U Enterprises on ground of breach of the terms and conditions of the Lease Agreement of AMMA.
- 5) An injunction restraining the 1st and 2nd Defendants or their agents, servants from further acts of trespass on the said Plot No. **1523C** and from further reallocating it. **Is hereby granted.**

No award as to cost.

**SIGNED:
HON. JUDGE
30/04/2023.**

Appearance:

The Claimant is represented by Chidozie Okolo. Our Counsel is indisposed
Defendants are not represented.