

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS MONDAY THE 16TH DAY OF OCTOBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFIA

SUIT NO: FCT/HC/CV/2671/23
FCT/CV/20/2023

BETWEEN:

STEPHEN OMOIGBERALE.....PLAINTIFF

AND

- 1. STEPHEN Y VERONICA**
- 2. UNKNOWN & UNATHORIZED PERSONS.....DEFENDANTS**

JUDGMENT

This judgment is on writ of summons with suit Number CV/ 2671/2023 dated 15th March, 2023 and filed the same date.

The plaintiff claims as follows:

- 1. A declaration that the plaintiff is the bonafide owner of the plots of land known as plot 703 of about 800 sqm located at Chikakore (Byazin) Kubwa- Abuja and he is entitled to quiet enjoyment of same without no interference whatsoever.**
- 2. A declaration that the plaintiff is entitled to possessory right and is in the rightful owner's possession of all the plot of land known as plot 703 of about 800 sqm located at Chikakore (Byazin) Kubwa- Abuja to the exclusion of any person whatsoever.**
- 3. An order of the Honourable court for perpetual injunction restraining the defendants in this suit, their privies, assigns, agents and or whoever persons connected with the defendants from trespassing and further interference on the plaintiff's plot of land**

known as plot 703 of about 800 sqm located at Chikakore (Byazin) Kubwa- Abuja.

4. General damages as assessed by the honourable court.

5. Cost of this suit.

The plaintiff filed a motion exparte with motion No: M/6148/2023 dated an order of substituted service on the 1st and 2nd defendants by means of pasting same on the conspicuous place at plot 703 of about 800 sqm located at Chikakore (Byazin) Kubwa- Abuja this was moved dated the 3-05-2023 and same granted and the matter was adjourned to 16-05-2023.

The writ of summons is accompanied with statement of claim and the witness statement of oath of the plaintiff deposed to by Stephen Omoigberale, certificate of pre-action counselling and some documents as exhibits.

Before commencing hearing, of this suit hearing notice was served on the defendants by substituted means proof of same dated the 12th April, 2023 filed by the court bailiff is in the court file.

The plaintiff also filed a motion exparte for an order of this court to strike out the name of the 1st defendant, a leave to amend the writ of summons, and deeming the amended writ of summons as properly filed and the necessary fees having been paid and leave to serve the amended writ of summons and all other processes on the 1st and 2nd defendant by substituted means, the motion dated 26-04-2023, the motion was moved date the 5-05-2023 and the order sought therein was granted.

On the amended writ of summons, dated 06-4-2023 the plaintiff claims jointly against the defendants as follows:

- 1. A declaration that the plaintiff is the bonafide owner of the plot of land known as plot 703 of about 800 sqm located at Chikakore (Byazin) Kubwa- Abuja and he is entitled to quiet enjoyment of same without any interference whatsoever.**
- 2. A declaration that the plaintiff is entitled to possession of all that plot of land known as plot 703 of about 800 sqm located at Chikakore (Byazin) Kubwa- Abuja to the exclusion of any person whatsoever.**
- 3. An order of the court for perpetual injunction restraining the defendant in this suit, their privies, assigns agents and or whatsoever**

person connected with the defendant from trespassing and further interference on the defendant's plot of land known as plot 703 of about 800 sqm located at Chikakore (Byazin) Kubwa- Abuja.

4. General damages as assessed by the Honourable court.

5. Court of this suit.

Accompanying the writ of summons is the written statement of oath of the plaintiff deposed to by Stephen Omoigberale of 11 paragraph, certificated of pre-action counselling and a receipt of NBA Bar practicing fee.

The plaintiff upon the filing of writ of summons, caused the writ of summons to be served on the defendant by substituted means proof of service dated 22-05-2023, 25-5-2023 and the court having been satisfied that the defendants were duly served with the processes of the court proceeded to hear the plaintiff's claim.

PW1 one Stephen Omoigberale Testified as the plaintiff's witness. In his evidence before the court he recognised his witness statement on oath by his name, signature and picture. The said witness testimony he urges the court to accept it as his evidence in this matter.

That in paragraph 5 of the witness statement on oath he made mention of conveyance of provisional approval which carried in his name. the said conveyance of provisional approval from Bwari Area Council dated the 18/10/2001 with the name Stephen Omoigberale signed by one Ishaq Salihu tendered and admitted in evidence as exhibit Z. the plaintiff took his prayers. The matter was adjourned to 17-05-2023 for cross examination.

On the 17th May, 2023, the plaintiff and his counsel were court in while the defendant were absent. The learned plaintiff counsel then applied to the court to foreclose the defendant from cross-examining PW1. The court granted the plaintiff's oral application and defendants were foreclosed. The matter was then adjourned to 22-5-2023 for defence.

On the 22-05-2023, the plaintiff counsel was in court while the defendants were absent. The plaintiff counsel then applied to re-call the plaintiff witness for further cross-examination. The court ordered the plaintiff counsel to file a motion to the effect and the matter adjourned to 25-05-2023 on the 25-5-2023 and the order sought therein was granted.

PW1 who proceeded with his testimony, that paragraph 7 of the witness statement on oath, he mentioned photograph which he Identified through the

name and his signature and the structures demolished. The pictures showing the trespassing and the certificate of compliance were tendered and admitted in evidence as exhibit (Z) of. The plaintiff then closed it's case.

The plaintiff counsel then applied to the court to foreclose the defendant from defending this suit, reasons being that, the defendants have never shown any appearance in this court despite hearing notices (s) served on them.

This court granted the oral application made by the plaintiff counsel who thenfile and adopted his final written, address on the 22-06-2023.

The plaintiff's final written address was adopted, urging the court to grant the prayers of the plaintiff.

The plaintiff in it's final written address raised a sole issue for determination to wit:

“whether the claimant has credible evidence to prove his case on the balance of probabilities or preponderance of evidence.

In arguing this sole issue, he stated that it is trite law that the burden of proving the existence of any facts lies on him who asserts. Referred to section 131 of the evidence Act, 2011 as amended. And the case of Calabar Central Co-operative thrift & credit society Ltd & 2 ors V BasseyEbungEkpo (2008) 6 NWLR (PT. 1083) PAGE 362 at 371 where the supreme court held that

“the burden of proof is on the party who alleges the affirmative whosoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Further that, it is trite law that he who asserts must prove his assertion by credible evidence and referred the court to the case of University of Jos Dr.C. Ikegwooha (2013) 9 NWLR (pt. 1360 PG. 478 at 497-498 para-F-B, the supreme court thus:

“for a party to be awarded any reliefs by a court of law, that party must be credible and present convincing evidence that he is entitled to the reliefs he seeks.

On this he submitted that, from the totality of the claimant's evidence, that the claimants have discharged the burden of proof based on the preponderance of evidence as required by the law in proof of his case.

He further submitted that the evidence and all exhibits tendered by the claimant is proof of this case, reason being that the defendant never appeared to confront the evidence adduced by the claimant to establish his case before this court.

That it is settled law, that evidence not challenged is deemed admitted and therefore the court can rely on it to enter judgment in favour of the party that adduced the evidence on this he referred the court to the case of Eburnwe V State (2011) LPELR-SC 39/2009, (2011) 7 NWLR 402, the supreme court Stated that.

“the position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial judge, who would ascribe probative value to it.

Okpoko Commodity Bank Ltd V Igwe (2012) LPELR-19943 (CA) held thus:

“where a defendant fails to adduce evidence to put on the other side of the imaginary scale justice, minimum evidence adduced by the plaintiff suffice to prove his case.

The learned plaintiff counsel then submitted that, the defendant failed to adduce any street of evidence to controvert the claimants claim. That as a matter of fact, the defendants refused to cross-examine the claimant’s witness. That if that is not enough, the defendant declined to defend themselves against the claim of the claimant, and this only sends to the court one clear message which is that the defendant has no defence against the claimants claim before the court and he therefore submits that, having regards to this circumstance, the one and only option to the court is to give Judgment in favour of the claimant.

Furthermore, that the claimant is the original allottee. The defendant failed to adduce unchallenged credible and direct evidence to prove his case to the satisfaction of this court without any Scintilla of evidence adduce by the defendant to controvert the claimant’s case, the court is only bound to do Justice by giving Judgment in favour of the claimant. That in view of the cited authorities and analysis, we humbly urge this court to enter Judgment infavour of the claimant by granting all the reliefs sought by the claimant. This court having considered the evidence adduced by the claimant as well as the documents admitted by the court for the claimant. The claimants evidence was not challenge nor controverted while the documents tendered fully support the case of the claimant.

I have carefully gone through the submission of the plain tiff counsel, but I wish to state that, a plaintiff cannot assume that he is entitled to automatic judgment just because the other party had not adduced evidence before the trial court. In other words, failure on the part of a defendant to give evidence does not automatically mean that judgment must be given in favour of the plaintiff, who has a duty to prove his case. Where the plaintiff fails to prove his case on the

balance of probability or on preponderance of evidence, his case will be thrown out, notwithstanding the fact that the defendants did not give evidence. A plaintiff who desires a court to enter judgment in his favour must not only file and plead the necessary facts that would sustain his claim, he must lead credible evidence in proof of those facts. Where he fails to lead such credible evidence to prove his averments in his pleadings, the case must fail, the fact that the defendants did not call evidence notwithstanding; this is so because a plaintiff must succeed on the strength of his own case and should not rely on the weakness of the defendant's case except the defendant's case supports his case. The burden of proof is on the plaintiff. The plaintiff must discharge the provisional evidence requirement. See *Azenabor V Bayaro University Kano* (2009) 17 NWLR (PT. 1169) 96 CA.

Having said this, now to the evidence adduced by the plaintiff and the exhibits admitted in evidence before the court as to see whether the plaintiff has discharged the burden placed on it to be entitled to the judgment of this court.

Here in this case PW1 testified before this court and in it's testimony and the witness statement on oath, he stated that, in the conveyance provisional approval from Bwari Area Counsel dated the 15/10/2001 with the name Stephen Omoigberale signed by one Ishaq Salisu. The said conveyance of provisional approval was admitted in evidence as exhibit Z and secondly that in it's paragraph 7 of his witness statement on oath he tendered photocopy showing the trespass by the defendants. The photocopy were also admitted in evidence as exhibit Z2 this are all document admitted in evidence by the plaintiff.

In it's witness statement on oath paragraph 2 he stated that, he is the owner of the plot of land known as plot 703 of about 800 sqm located at Chikakore (Byazin) Kubwa- Abuja. That he was allocated the above described plot of land by the Bwari Area Council sometimes in 2003 via a conveyance of provisional approval and since then he has been in occupation and possession of all that plot of land known as plot 703 of about 800sqm located in the Chikakore (Byazhin) Kubwa Abuja, this he pleaded and was admitted as exhibit. he went further to state that he took steps to develop and fenced the above land against adverse claims and therefore fenced the plot of land.

Further that during the continuance of further improvement of this land, the two defendants sometimes on 20th May, 2017 during the late hours of the said night wilfully entered into the plaintiff's plot of land and destroyed substantially the plaintiff fence and or blocks on the above plot of land. On the said witness statement on oath, he stated that the two defendant acts of trespass is in conveyance and if not restrained by the court will further take steps that are inimical and or cause harm to the workers of the plaintiff, who are monitoring

and developing the said land. That the defendants have no single paper documentation in respect of this land.

This evidence was not challenged nor controverted by the defendant's despite been served with hearing notice(s) dated the 16th May, 2023 (1st Defendant) 17/5/2023 (2nd Defendants), 22/05/2023, 25/5/2023, 22/06/2023 respectively without any response from the defendant. I therefore hold that the claimant evidence on the plot of land known as plot 703 of about 800 sqm located at Chikakore (Byazin) Kubwa- Abuja, has been proved by the claimant as required by law. The defendant's failure to file any memorandum of appearance nor, come forward to defend this suit despite being served by substituted means suffice to say that, the proof of ownership of land can be prima facie proof of possession of the land, if there is no evidence that another person is on possession. See Eze V Obiefunu (1995) 6 NWLR (PT. 404)639. Where title to land is found to reside in the plaintiff the possession of the defendant of the disputed land can only be an adverse possession, an evidence of trespass except the defendant proves that. He or sometimes else has a superior title to the land in dispute. See Wachukwu V Owunwaunne (2011) 14 NWLR (PT.1).

It is trite law that once infringement of the right to possession of party is established, the remedy of a grant of injunction would naturally follow.

In view of the forgoing, the failure of the defendants to put forward defence in this case, will be the success of the plaintiff's claim- more also that this suit is brought under the High Court civil procedure Rules 2018, thus

Order 37(14)(2) provides thus

“where the trial cannot commence on a date fixed for trial due to the absence of the defendant hearing shall continue and may be concluded without further notice to the defendant.

This is exactly what happened in this suit.

In fulfilment of the requirement of the law, evidence is therefore required to lead evidence in proof of his claim.

In fulfilment of this requirement, the plaintiff lead evidence in support of his claims which has not been contested, challenged or controverted.

The law is trite that where evidence is unchallenged or uncontroverted and manifestly credible, a reasonable court or tribunal is at liberty to accept it and indeed act on it. See Ikwuka V Anachura (1996)1 NWLR (PT. 424) 355 at 366. I am therefore prepared to accept the evidence of the plaintiff, I answered claims 1, 2, & 3 in favour of the plaintiff as the evidence and the exhibits tendered in support were not question, contested or challenge. There is nothing

placed before the court to deprive the plaintiff of the grant of the declaration that is sought in reliefs 1 & 2 and an order of perpetual injunction restraining the defendant in this suit, from trespassing and further interference on the plaintiff plot of land know as plot 703 of about 800 sqm located at Chikakore (Byazin) Kubwa- Abuja.

On the 4th claim being General damages on this I wish to state that the purpose of an award of damage is to compensate the plaintiff for damages or loss suffered. And the guiding principle in the award of damages is restitution in integrum, that is a party who has been damnified by the act which is in issue must be put in the position in which he would have been if he had not suffered the damages which is in issue. See *Kusfa V UBC Ltd* (1994) 4 NWLR (pt. 336) 1.

General damages claimed by the plaintiff, are damages that the law presumes and the flow from the type of wrong compliance about by the plaintiff. They are compensatory damages for harm that results from the wrong for which a party has sued that the harm is reasonable expected and need not be alleged or proved. See *Mekwunye V Emirates Airlines* (2019) 9 NWLR (PT. 1577) 191 SC. In this case, the plaintiff in it's evidence before the court asserts that, the defendants went and destroyed the fence of the land, and to buttress his assertion tendered exhibit (Z2) being the photograph showing the extend of the demolition of the fence in evidence.

Based on the forgoing I hold that the plaintiff is entitled to damages. I shall award the sum of N200,000.00 as damages against the defendant jointly. As per the cost of this suit the law is that the claim should have been specifically proven before it can be awarded. It is not clear whether the sum claimed is legal fees paid by the plaintiff to his counsel or as a 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 Action or solicitors fees are in the realm of special damages which must be specifically pleaded and strictly proven. In the instant case, the appellant did not specially and specifically plead the details of the amount of money expended

by it in the prosecution of the litigation the trial; court. It also did not adduce any evidence in proof of this, the nonspecific claim has been abandoned. The appellant is therefore not entitled to be awarded any amount as general damages and or cost of the action in the trial court.”

And the court of Appeal, Benin Division held also that

“it is unethical and an affront to public policy for a litigant to pass on the burden of his solicitors fees to his opponent in suit. See Guinness (Nig) Plc V Nwoke (2000) 15 NWLR (PT. 689) 140 at 150 paragraph C Per Ibiyeye Jen.

In the light of the above, I hold that whatever “cost of prosecuting this action stands for it is not grantable by this court as no such claim was proved before me.

The claim is dismissed.

In the final analysis, it is the Judgment of this court that the plaintiff has proved it’s case.

I therefore grant the following reliefs accordingly, I grant reliefs 1, 2, & 3, on relief No: 4 I award N200,000.00 as damages. Relief 5 is hereby refused.

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Hon. Justice A. Y. Shafa

Appearance:

1. Usman Babagana for the Claimant.
2. Defendant not in court.

