

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

DATED THIS TUESDAY 12TH MARCH, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/GWD/CV/82/2023

BETWEEN:

**THE REGISTERED TRUSTEES OF CHRIST
APOSTOLIC CHURCH (WOSEM).....CLAIMANT/APPLICANT**

AND

PERSONS UNKNOWN.....DEFENDANTS/RESPONDENTS

JUDGEMENT

The claimant/applicant came by way of an originating summon for possession pursuant to order 2 rule 3(1) and 60 of the High court of FCT, Abuja civil Procedure Rule 2018 and under the inherent Jurisdiction of this court.

Attached to the originating summon for possession is an affidavit in support of originating summons of 4 paragraphs deposed to by one Florence.F.Arrmu of Ephraim chambers, of A12 & A30 Abraham plaza, 6AE Ekukinam street Utako District Abuja.

Accompanying the affidavit are exhibit marked exhibits CAC1 being power of attorney given in respect of plot No. 10A situate and lying within Kuje road 1 layout Gwagwalada Abuja by AllhajiSule A.Oladijeto Christ Apostolic church Oke/bukunwosem Revival center Gwagwalada and exhibits CAC2 being certificate of occupancy customary ofAlhaji. Sule A. Oladije. With No FCT/GAC/RCA/KW/140

The claimant first came to this court for a motion ex parte for substituted service on the defendant. The said motion ex parte for an order of substituted service was moved dated the 20/06/2023 and the order sought therein was granted and the enrolment was pasted on the building by the clerk of this court, proof of service filed in the court file with a sworn affidavit or certificate of service in accordance with order 5 rule 16 (1) and 16(3) and a hearing notice.

Now in to the reference to the order 60 of the High court of the FCT Abuja civil Procedure rules 2018, it provides thus:

60(1) The order shall not apply where the person in occupation of land is

- a. **A tenant or**
- b. **A tenant holding over after termination of his tenancy or**
- c. **A licensed owner or person entitled to possession or**
- d. **A person who had the consent of the predecessor of title of the person who is entitled to possession**

60(2) where a person claims possession of land which he alleges is occupied solely by a person not listed in sub-rule 1 above proceedings may be brought by the originating summons in accordance with the provisions of this order

60(3) provides

The claimant shall file in support of the originating summons an affidavit stating

- a. **His interest in the land**
- b. **The circumstances in which the land has been occupied without license or consent and in which his claim to possession arises and**
- c. **That he does not know the name of any person occupying the land who is not named in the summons.**

In compliance with the order stated above, the claimant/applicant filed an affidavit in support of originating summons of 4 paragraph especially paragraph 3(d) of the claimant/applicant affidavit which stated thus:

“Presently there are individuals/squatters on the plot, without the claimant consent or approval, and the existence and presence of the illegal occupiers is posing a great threat and challenge to the possessory right of the claimant to the plot.”

Sub 3(e) the defendants are unidentified individuals who have jointly and severally been represented by some agents, servants, and goons with the intent to disrupt the peaceable enjoyment of the enclosure rights of the claimant/applicant to and over the plot above listed.

Sub 3(g) the claimant/ applicant does not know the name of any of the persons illegally occupying the plots.

Accompanying the affidavit especially exhibit CAC1 being the power of Attorney given in respect of plot No 10 A situate and lying within Kuje Rd 1 layout Gwagwalada Abujaby AllhajiSule A.Oladije to Christ Apostolic church Oke/bukunwosem Revival center Gwagwalada(Donne) prepared by S.U. Agidiyagba& 10 Offor &Ulley chambers suitCT phase I commercial Avenue opp. FMWH, near water board tank, Gwagwalada Abuja dated 28/7/2006 exhibits CAC2 being certificate of occupancy customary ofAlhaji. Sule A. Oladije. With No FCT/GAC/RCA/KW/140 bearing Alh Saka A. Olajide with the surveyor plan attached.

On this it is the submission of the learned counsel to the claimant/ applicant that it is trite law, that this court cannot give judgment against a person not made a party before it. See Oyeyemi v Owoeye (2017) 12NWCR (PT1580)364 AT 401-402.

Thus the Claimant/Applicant replying in paragraphs 3 of the affidavit in support does not know the names of the illegal occupants of his landed property hence. The use of their names and person's unknown see order 13 rules 9 which provides thus

Where in land matters a claimant is unable to identify the person against who he claims, he may subject to the rules of this court describe such a person as a "person unknown"

Also, the claimant/ applicant also put across the particulars of frustration as

- 1. Prior to the institution of this suit, the defendants, through various agents, servants and goons have caused stoppage of works on the plots under the pretense that the claimant is a trespasser to her own property.**
- 2. Till date the defendant has not shown or proved any superior titles to that of the claimant over the plot under references.**

On this I wish to state thus, that a claim for trespass, to land is rooted in exclusive possession, all a plaintiff needs to prove is that he has exclusive possession or he has the right to such possession of the land in dispute. But once a defendant claims to be the owner of the land in dispute, title to it is put in issue and in order to succeed the plaintiff must show a better title than the defendant. Therefore, to evict the defendants from the land the plaintiff must show a title better than the defendants see *Ugoji v Onukogu* (2005) All NWCR(PT271)66 at 68-69.

The claimant/Applicant in this instant suit exhibited CAC 1 & CAC2, which was not challenged or controverted by person's unknown.

In this suit the Defendant neither filed pleading to counterman the case of the claimant and neither did he lead evidence to challenge or contradict the affidavit of the claimant. The net effect of the failure for file pleadings or counter affidavit is that the case of claimant stands unchallenged and are deemed admitted and established. See *Consolidated Resounds LTD V Abofar ventures (Nig.) LTD* (2007)6NWCR (PT1030)221, *Okoebor v Police council* (2003) 12 NWCR (PT834) 444. The supreme court stated that:

The basic principle of law is that where a Defendant fails to file a defence, he will be deemed to have admitted to 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 10th of July is Nigerian independence anniversary such a paragraph is inadmissible because of the obvious untruth. Per *Abiru J.C.A* (PG 54-55 para a-a).

It is also trite that, a plaintiff will succeed on the strength of his case and not on the weakness of the defence. That the plaintiff has the onerous duty to prove his case notwithstanding the default of pleading by the Defence from the record or this suit, the evidence of the claimant was never challenged or controverted throughout the length and breadth of the case, hold therefore that the claimant is entitled to the judgment of this Honorable court because there is nothing to put on the side of the imaginary scale of justice to counter balance the case of the claimant. I add again any evidence/fact not challenged or controverted is deemed to be the true and correct and the court is obliged to so hold. See

Nanted water Treatment Nig. LTD v PTF (2007) 3NWCR Pg. 4330 at 4344. On this therefore, this court has a duty to act on unchallenged evidence of a party to

the case provided that such evidence of fact is credible. See Bolanle v Abeke (2007) 3 NWCR PG. 5037 at 5039 where the supreme court held thus

“Where evidence of a party to a case is not challenged or debunked by the opposite party which had the opportunity to do so. The trial court or tribunal seised of the proceedings ought to accept and act on it.

In summation therefore, I hold that judgment is given in favor of the claimant against the Defendant (unknown) and hereby order them to vacate possession of plot 10A within Kuje Road, 1 Layout to the claimant.

This is my judgment.

.....

Hon Justice A. Y. Shafa

Appearance:

1. Tela Alabi with Florence F.Aremu for the Claimant/Applicant.
2. Defendant not in Court.