

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/1584/2019

DATE: 28TH SEPTEMBER, 2023

BETWEEN:

HOPE ODHULUMA IKIRIKOCLAIMANT

(Suing by his lawful Attorney Chukwuma David Ogbonnaya)

AND

- 1. PARLIAMENTARY HILL ESTATES & PROPERTY LTD**
- 2. PERSONS UNKNOWN.....DEFENDANTS**

APPEARANCE

AdetolaOluleyeEsq for the Claimant.

JUDGMENT

This matter was initiated by a Writ of Summons dated 16th day of October 2020, whereas the Plaintiff Claims the following reliefs against the Defendant thus:-

- a. A declaration of this honourable Court that the reallocation of the Claimant’s plot of land situate and known as 3 bedroom fully detached bungalow, sitting on 500sqm approximately situate and known as Reh Da

Fortress estate, Pyakasa Along airport Road, Abuja, Federal Capital Territory, to the 2nd Defendant, is of no effect, null and void as same is not in compliance with the “Agreement to sell” entered into with the 1st Defendant

- b. A declaration of this Honourable Court that the actions of the 2nd Defendant in building on the 3 bedroom fully detached Bungalow, sitting on 500 sqm approximately situate and known as Re Da Fortress Estate, Pyakasa, Alongairportroad, Abuja, Federal Capital Territory, constitutes an act of trespass to land which is wrongful and illegal.
- c. A declaration that the re-allocation of the Claimant’s plot to the 2nd Defendant is null and void.
- d. A declaration that the Claimant is entitled to the right of exclusive possession against the defendants jointly and severally as per the Claimant’s possessory right to the 3-Bedroom fully detached bungalow, sitting on 500 sqm approximately situate and known as Reh Da Fortress Estate, Pyakasa, Along airport Road, Abuja, Federal Capital Territory
- e. A declaration that the Claimant is the bonafide allottee of the 3-Bedroom fully detached bungalows, sitting on 500 sqm, situate and known as Reh Da Fortress Estate, Pyakasa, Along Airport Road, Abuja, Federal Capital Territory.
- f. An Order of perpetual Injunction Restraining the Defendants jointly and severally, whether acting by themselves or through their agents and privies from entering the allocated housing unit of the Claimant situate and known as 3-Bedroom fully detached bungalows, sitting on 500sqm approximately situate and known as Re Da Fortress Estate, Pyakasa, Along Airport Road, Abuja, Federal Capital Territory
- g. An award of five million naira (N5, 000,000) jointly or severally against the Defendants as cost of the action.

At the next adjourned date the Counsel to the 1st defendant filed a motion for Preliminary Objection challenging the jurisdiction of this Court to hear and entertain this suit. The Application was opposed by the Claimant Counsel but the Court decided to hear and decide on the it before any further action was taken in the interest of justice.

Upon continuation of trial, the claimant counsel notified the Court that the parties were attempting settlement and considering the circumstances of the matter would like a date to report back on the entitlement or to continue the case. The Court obliged the Counsel and the matter was adjourned to 4th day of February, 2022 for report of settlement or hearing of the pending Application.

The Defendant was absent and unrepresented at the next hearing and Claimant Counsel notified the Court that the matter was for hearing of pending Application. The Court pointed out that parties has shown intention to settle matter out of Court at the last trial date while also making reference to the fact that the Application before the Court is one that challenges the jurisdiction of the Honourable Court. In the circumstance, the Court granted the Defendant one last opportunity to move the Application.

The trial continued at the next adjourned date, the Claimant was present but the Defendant was unrepresented. Claimant Counsel informed the Courts that Defendants had made certain offers to Claimant in hopes of settling the matter, as a result of which the Claimant Counsel applied for an adjournment for a report of settlement or continuation of hearing.

At the next hearing, parties notified the Court that they were not successful in reaching an amiable resolution to the issues and as such would like to proceed with the suit and take the pending application. The Court directed the parties to proceed, the Application was taken and arguments delivered by both sides afterwhich a date was agreed upon for the Court to deliver its ruling on the application. The Court at the next adjourned date ruled of the Application dismissing same in the interest of justice.

When hearing resumed an adjournment was taken at the instance of the Defendant who suggested a few dates among which the 16th of July 2019. On the adjourned date the Defendant was absent and unrepresented. Claimant counsel proceeded to seek the leave of the Court to move the pending interlocutory Application they had before the Court. The Court granted Leave to the Claimant and he argued out his Application. In ruling on the Application the Court took into account the nature of the adjournment, the time frame since the application was filed and served on the Defendant and the nature and circumstance surrounding the Application been that it was an interlocutory Application seeking to do no more than maintain status quo.

The Court found the Application worthy of merit and granted it as prayed with a modification to prayer one that it will only last till the determination of the substantial suit before the Honourable Court.

On the next hearing date, the Defendant had a change of counsel, now retaining the services of C. A. N. Udechukwu Esq, but the Claimant pointed out the lack of compliance with the necessary due process which meant the new Counsel was not appearing properly before the Court as a result of which the Counsel proceeded to ask the Court for an adjournment to enable them carry out all necessary procedure to ensure they were appearing properly before the Honourable Court. The Court obliged the Application and the matter was adjourned to 15th day of December 2020 for regularisation and hearing of the suit.

At the next adjourned date, the Claimant Counsel notified the Court that they had a pending motion seeking to amend their originating processes before the Court which they would like to proceed with and subsequently proceeded to move in terms and urged the Court to the Application

As prayed. There was no objection from the Defendant and the Application was granted as prayed and the matter adjourned to 10th day of March 2021.

The Defendant was absent at the next hearing, the Claimant stated that the matter was meant to be for hearing of the pending application but in the absence of the Defendant would be seeking for an adjournment in order for hearing to proceed.

Upon the continuation of hearing, the Claimant was represented but the Defendant was absent and unrepresented, they had also filed a statement of defence as well as an application for an extension of time. The Claimant counsel argued that the case had suffered several delays and setbacks at the instance of the Defendant and in the circumstance applied to the Court to strike out the motion and the statement of defence and grant the Claimant permission to open their case.

The Court after careful consideration of its records confirmed hearing notices were issued for the day to the defendant but there was no acknowledgment of same by the Defendant. The Court granted the Defendants another adjournment owing to the fact that no counsel received the said hearing notices in the interest of justice.

At the next adjourned date, the Claimant was present and represented, the Defendant on the other hand was absent and unrepresented. The Claimant counsel in addressing the Court stated that the Defendants had been duly served hearing notices and they have not given any reason for their absence and subject to the Court's convenience was ready to proceed with the matter. The Court confirmed the words of the Claimant Counsel and also pointed out that the records showed Defendants had been duly served hearing notices and had acknowledged receipt of same as a result of which the Court permitted the Claimant to proceed with his case.

The trial continued with Chukwuma David Ogbunaya who testified as PW1 giving his testimony before the Court. He adopted his witness statement on Oath and tendered the following documents in evidence, which were marked and admitted as follows:-

- 1) Photocopy of a power of attorney between Hope Idhulumalkiriko (Donor) and Chukwuma David Ogbonnaya (Donee) dated the 21st Day of January 2019 marked as Exhibit A
- 2) An Original letter of provisional offer of Housing unit in RED DA FORTRESS estate addressed to Hope Idhulumalkiriko dated 9th day of November 2017 marked as Exhibit B
- 3) An original Acceptance letter by Hon (Evan) Hope O. Ikiriko dated 21st November 2017 marked as Exhibit C
- 4) Two Coloured photocopies of receipts issued by DA FORTRESS in the amount of Three hundred and twenty-five thousand naira (N325, 000) only and one issued by Reh Dah Fortress in the amount of five million naira (N5, 000, 000.00) only are marked as Exhibit D and D1 respectively
- 5) An original of agreement to sell A 3 Bedroom Bungalow at Reh Da Fortress estate pyakasa, along Airport Road Anuja, between Parliamentary hill Estates and Property ltd. (Developer/ seller) AND hope Idhulumalkiriko (Buyer) made on the 8th day of November 2017 marked as Exhibit E
- 6) Four (4) photocopies of photographs are marked as Exhibits F, F1, F2 and F3 respectively
- 7) An affidavit of Certification of Documents marked as Exhibit F4.

Afterwards, PW1 notified the Court that he would like the testimony he just delivered to be taken as his evidence in the matter. Following this, the Claimant Counsel expressed that was all for the PW1 and humbly applied for a date for cross-examination and suggested 22nd day of February 2020. The Court adjourned the matter to the 22nd day of February 2020 for Cross Examination of PW1 and directed that hearing notices be served on the Defendants.

The Defendants were absent and unrepresented at the next adjourned date and the Claimantcounsel applied that the Defendants right to cross examination be foreclosed. After careful review of the Court records the Court granted the

application taking into account the proof of service on the Defendant was present and duly acknowledged, the Claimant's Application was granted as prayed and the Defendants right to Cross examination of PW1 was foreclosed and PW1 subsequently discharged. The plaintiff notified the Court that it was done with its case and would like to apply for a date for defence. The matter was further adjourned for defence and the Court directed that Hearing notices be served on the Defendants.

At the Next adjourned date the Plaintiff Counsel in addressing the Court pointed out that the matter was for Defence and the Defendants even though they had been duly served, were absent and unrepresented and no reason given for the absence as had become the norm with the Defence. In light of this Claimant Counsel applied that the Defendants right to defence be foreclosed as equity aids the Vigilant and not the indolent.

The Court reviewed its records from which it discovered that the Defendants had been duly served with notice for the days proceedings and were regardless of the fact absent, unrepresented and had sent no correspondence to the Court regarding same. In view of this the Court granted the Learned Claimant Counsel's application and the Defendants' right to defence was foreclosed. The Learned Claimant Counsel then applied for a date to be given for the adoption of final written addresses and the matter was adjourned to the 9th day of March 2023.

At the next adjourned date parties were absent and the matter was further adjourned to the 8th day of May, 2023 for adoption of final written Addresses.

On the next trial date the Claimant Counsel pointed out that the Defendants in usual fashion were absent and unrepresented, regardless of fact that they were duly served with notices for the day's proceedings. The Learned Claimant Counsel then proceeded to adopt his final written address and urged the Court to hold in favour of the Claimant

The Court adjourned the matter to the 28th day of September, 2023 for judgment.

In the Claimant's final written address, a sole issue for determination was formulated thus:-

Whether the plaintiff has discharged the burden placed upon him by law to be entitled to the grant of all his claims before the Court?

In his opening argument Counsel to the Claimant started by mentioning that the law expects a party who aims to succeed in his case to prove what he asserts. Here Learned Counsel; made reference to **Section 131 (1) & (2) of the Evidence Act 2011** in explaining the requirements for a party to successfully succeed in his claim. Here Counsel also relied on the case of **National Bank of (Nig) Ltd v Deborah Opeola (1994) NWLR part 319 pg 126 at page 139** Per Niki Tobi JCA (as he then was) who provided thus: -

“The general state of the law which rings through the entire length and breadth of our adversary system of adjudication is that the burden in civil cases lies on the party who asserts the affirmative of the issue”

Learned Claimant Counsel further argued that by virtue of the above mentioned the Claimant has the Burden of proving: -

- 1) That he was allocated a plot of land situate and known as 3 bedroom fully detached Bungalow sitting on 500sqm within Red Da Fortress Estate Pyakasa along Airport rd. Abuja- FCT by the Defendants
- 2) That the allocation was unlawfully revoked by the 1st Defendant without serving any revocation notice as stipulated in the agreement between the parties
- 3) That the Claimant is entitled to exclusive possession of the said property having paid all the requisite fees.

The Claimant Counsel further opined that the Claimant has established his claim over the property and in proof of this he has tendered various documents before the Court which include the original allocation letter, original acceptance

letter, receipt of payment of purchase price and other fees. The Claimant Counsel also stated that going by the fact that all the above documents were unchallenged in anyway or form the Court is duty bound to act on same.

Counsel further relied on the authority of the Court of Appeal with respect to the ways of establishing title to land in the case of **Usung v. Nyong (2010) 2 NWLR part 1177 pg. 83 at pg. 90** ratio where Per Omokri JCA the Court held thus:

“

- a) by traditional evidence;*
- b) by production of documents of title which are duly authenticated;*
- c) by acts of selling, leasing, renting out all or part of the land, or farming on it or on a portion of it;*
- d) by acts of long possession and enjoyment of the land; and*
- e) by proof of possession of connected or adjacent land and prove a better title to the land”*

The Learned Counsel further relied on the case of **Oyeneyin&Anor v. Akinkugbe&Anor (2010) 1-2 S.C. Pg 1 at Pg 19-20 Para 20-5** concerning the declaration of title.

Learned Claimant Counsel also further argued in support of his case that 1st Defendant had offered the Claimant the property in contention and the Claimant had carried took steps necessary for the successful acquisition of the ownership over the property and has been in possession of the property and had been depicted in the documents tendered in evidence by the Claimant.

Counsel to the Claimant also pointed out that the above point had never been contradicted nor denied by the Defendant even though they were availed ample time and opportunity to do so and by so doing the Defendants are deemed to have admitted the facts in the Claimant’s Statement of Claim. Learned Claimant Counsel also humbly submitted that the Statement of Defence filed by the

Defendant which done out of time and was never regularised admitted the facts as deposed by the Claimant in his Statement of Claimant. To this effect Claimant Counsel referred to the Court of Appeal case of **NWADIOGBU v NNAODOCIE (2001)B12 NWLR Pt 727, pg 315** where the Court held:

“In a land dispute, where there has been an admission of the title of the grantors or vendors, it will suffice if the Claimant pleads the document of grant or sale and produces them at trial”

Claimant Counsel also pointed out that the actions of the 1st Defendant in trying to re allocate the property to unknown persons constituted a breach of the terms of the agreement that existed between the Claimant and 1st Defendant and urged the Honourable Court to hold so.

The learned Claimant Counsel also further argued that the Claimant suffered trespass to his land where the strange person on the instructions of the 1st Defendant proceeded to enter upon the land and began construction even though the Claimant had fenced the land and put a notice on the fence to serve as a warning for the general public.

Finally with respect to cost the Learned Claimant Counsel was of the opinion that the Claimant has established his case enough to be entitled to the relief of cost as pleaded in his Statement of Claim and also further relied on the Authority of **SALBY v OLAOGUN (1991) 14 NWLR PT 637 at Pg 128** where the Court held thus:

“Cost follows events, and a successful party should not be deprived of his costs unless for good reasons. The essence of the cost is to compensate the successful party for part of the loss incurred in litigation...”

Counsel also relied on the Court of Appeal case of **THEOBROS AUTO-LINK LTD v B.I.A.E Co LTD (2013) 2 NWLR Pt 1228 at Pg 337** which flows in the same direction as the Salby case (Supra) in urging the Court to hold in favour of the Claimant as his case remains unchallenged and controverted

Counsel further relied on the authority of the Court of Appeal in the Case of **ADEKOLA v AILARA (2011) All FWLR Pt 572 Pg 1696 at Pg 1705 ratio 14** where the Court held as follows: -

“Where evidence given by a party to any proceedings is not challenged by the opposing party who has the opportunity to do so, it is open to the Court seized of the matter to act on such unchallenged evidence before it”

In his concluding submissions, the Claimant Counsel mentions that the Claimant has discharged the burden placed upon him by law enough to warrant him the grant of the reliefs he sought and that the testimony of the Claimant remains unchallenged by the Defendants. Therefore, he urged the Court to hold in favour of the Claimant.

I have carefully perused the writ of Summons, the statement of Claims and the reliefs sought. I have equally gone through and evaluated the entire evidence adduced before this Honourable Court by the Claimant, both the oral and documentary. In the same vein, I have also studied extensively the final written address before the Court and all attached and accompanying evidence/Document tendered by the Claimant in this matter.

Having considered the issue canvassed and all of the above, I shall raise a sole issue for determination to wit:-

“Whether the Claimant has proved his case on the balance of probability, enough to be entitled to the reliefs sought”

Before I dwell on the issue for determination it is germane to state that it is the case of the Claimant briefly, as distilled from the Statement of Claim that the Claimant is a businessman and politician, resident in Abuja who by virtue of a power of attorney dated the 21st day of January 2019 is suing through his lawful attorney, Chukwuma David Ogbonnaya of Wuye District, AMAC. The Claimant states that by virtue of a letter of provisional offer of allocation dated the 9th day of November 2017, the 1st Defendant offered to the Claimant a 3

bedroom fully detached bungalow, sitting on approximately 500sqm, situate and known as Reh Da Fortress Estate, Pyakasa, Along Airport Road, Abuja Federal Capital Territory. The Claimant avers that he accepted the said offer via a letter of acceptance dated the 21st day of November 2017

The Claimant further stated that he paid to the Defendant the sum of N5,000,000.00 (Five Million Naira) only to the defendant for the provisional offer extended to him by the 1st Defendant after which he was issued with a payment receipt of the paid amount. Following this the claimant holds that he was then given possession of the property which at the time was a barren land and he went ahead to erect a fence over the land with a caveat placed on it warning the public which says “the land is not for sale”

That sometime in march 2019, he received a call notifying him that some strange persons had encroached upon his property and had begun digging on the said land in preparation to constructing a building upon it. Following this the Claimant quickly approached the 1st Defendant the following day to inquire as to what was happening and he was informed by the 1st Defendant that it was the one that instructed the 2nd Defendant to build on the said land.

The Claimant then quickly lodged a complaint at the Lugbe Division police station following which the police arrested some people working on the land as well as some workers of the 1st Defendant. The Claimant avers that it was at this point that he first learnt of the fact from the 2nd Defendant that his land was revoked and additionally mentions that he was never served with a revocation notice personally and never acknowledged any said document from the 1st Defendant.

The Claimant further states that he has always kept the 1st Defendant in the loop concerning his development plans of the said land without receiving any complaints and was surprised by the revocation and refusal of the 1st defendant to disclose the Identity of the new allottee. He further mentions that the actions of the 1st Defendant is a breach of the terms of their agreement while the actions

of entering upon and starting construction constitutes trespass to his property and in the process, the Defendants also defaced his property.

Finally, the claimant holds that unless prevented by Court, the Defendants will continue their actions which will affect the rights and title of the Claimant. This is what has led to the Claimant bringing his plea before this Honourable Court with the hopes of getting justice done in the matter.

Having pointed out the case of the Claimant, it is trite law that the burden of proof lies on he who asserts. To put it differently, he who asserts must prove with credible and admissible Evidence, suitable enough to entitle him to the relief which he hopes to get succeed in the Court. This position of law is encapsulated in Section 131(1) of the Evidence Act, 2011 as Amended which provides thus: -

Section 131 Evidence Act 2011: -

- 1. Whoever desire any Court to give Judgment as to any legal right or obviously defendant on the existence of facts which he asserts must prove that those facts exist.*
- 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.*

See also the case of **OKEKE VS OKEKE (2019) 17 NWLR (PT. 1701) at P 288 PARAS B-E** Per Umar J. C. A where it was held thus: -

“Under Section 131 of the Evidence Act 2011 (as amended), the burden of proof lies on the party whose claim will fail if no evidence is adduced. In essence in civil actions, the initial burden of proof lies on the party against whom would be given Judgment if evidence was not produced on either side.”

It is also noteworthy to point out that where one of the parties in a suit refuses or fails to adduce evidence in proof any of the issues that were raised in the pleadings filed in a suit, the trial Court is bound to resolve that issue or issues

against such defaulting party, unless there exists some legal justification that creates room for the contrary.

I would also like to point out that throughout the cause of this suit, the Claimant has led evidence with the intent and purpose of establishing his Claim before this honourable Court and said evidence remained unchallenged and uncontroverted the effect of which amounts to an admission by the Defendants of the Claimants testimony.

Therefore this Court is at liberty to accept same as the truth of this matter. See **Oke&Ors v. AIYEDUN (1986) LPELR-2427(SC) at Pp 31-32 Para E-C** where the Apex Court Per Aningolu, JSC held as follows; -

“It is a principle of pleading that, that which is not denied is deemed to have been admitted and at a plaintiff filed a statement of Claim and the Defendant failed or refused to file a statement of defence. In answer thereto he clearly, will be deemed to have admitted the statement of Claim, leaving the trial Court with the authority to peremptorily enter Judgment for the Plaintiff.”

SEE also: **CHIEF SUNDAY OGUNYADE v SOLOMON OLUYEMI OSHUNKEYE & ANOR SC 364 2002.**

At the trial, Chukwuma David Ogbonnaya testified as PW1 and tendered in evidence several documents which were admitted in evidence and from an in-depth assessment of his testimony it is evident that a provisional offer of allocation was extended to the Claimant by the Defendant which the Claimant accepted and made a payment of a specific amount in hopes of acquiring ownership and subsequently was issued a receipt evidencing said payment.

It is also noteworthy to point out that where one of the parties in a suit refuses or fails to adduce evidence in proof any of the issues that were raised in the pleadings filed in a suit, the trial Court is bound to resolve that issue or issues against such defaulting party, unless there exists some legal justification obligating the Court to hold to the contrary.

More so, it should be noted that the crux of the Claimants case is the entry upon his land by unknown persons on the instructions of the 1st Defendant who started building on the said land. Also, the fact that he was informed his property had been revoked in a manner contrary to the terms of agreement that covers the said property, which exists between the parties. The Claimant mentions the above points in his statement of claim particularly in paragraphs 4, 5,6 and 7 of his witness Statement on oath which for ease of reference I shall reproduce same hereunder thus: -

Paragraph 5 reads thus: -

“That the 1st Defendant vide a provisional letter of offer dated 9th day of November 2017, offered the Claimant a 3 bedroom fully detached bungalow, sitting on 500sqm approximately situate and known as Reh Dah Fortress Estate, Pyakasa, Along Airport Road, Abuja, Federal Capital Territory”

Paragraph 6 Reads thus: -

“That the Claimant accepted the offer of allocation via a letter of acceptance dated 21st Day of November 2017”

Paragraph 7 reads thus: -

“That the Claimant paid the sum of Five Million Naira (₦5, 000, 000) for the provisional offer of allocation issued to him by the 1st Defendant, who in turn issued him with payment receipts evidencing the said amount”

The Claimant also further stated in paragraph 8 thus: -

“That the claimant consequent upon the payment of Five million naira (₦5, 000, 000) to the 1st Defendant, he was given an Agreement to sell, to sign”

PW1 also referred to this while delivering his testimony

Now, as earlier mentioned it is very well-established principle of law that he whoever brings forth a claim before a Court must prove that Claim to the established standard in order for such a claim to be successful. In **MRS BETTY DAREGO V. A.G LEVENTIS (NIG.) LTD LER (2015) Y.B NIMBP** **J.C.A** stated in no unclear terms as follows: - *“it is trite law that he who asserts must prove”* the same was the position in **MRS ROSEMARY ONWUSOR v. YAH I MAINA & ORS (2021) LER (CA) 11919** where the Court of Appeal held thus: -

“It is the law that in civil cases, the proof of a case is on the party who asserts a fact. He has to prove the same and the standard of proof is on a preponderance of evidence or on a balance of probability ”

See Also the dictates of VIVOUR RHODES (JSC) in **GBEDU v. ITIE (2020) 3 NWLR (PT. 1710)** Where the Court held thus: -

“Cases are not decided on emotions, sentiments or some misguided consideration. Cases are won on pleaded facts supported by compelling evidences...”

The Claimant has tendered before this Honourable Court documents which have been marked as Exhibits A, B, C, D, D1, and E respectively in establishing his claim to the property known as Claimant a 3 bedroom fully detached bungalow, sitting on 500sqm approximately situate and known as Reh Dah Fortress Estate, Pyakasa, Along Airport Road, Abuja, Federal Capital Territory

To that extent it is trite law that Documents speak for themselves. To this effect I refer to the case of **AIKI V. IDOWU (2006) 9 NWLR (Pt.984)** per Alagoa, J.C.A. stated thus: *“Documents when tendered and admitted in court are like words uttered and do speak for themselves.”*

Also, in the case of **ATANDA V. IFELAGHA(2003) 17 NWLR 849** the Court of Appeal, per Onnoghen, (J.C.A as he then was) held as follows: *“...when a document is duly pleaded, tendered and admitted in evidence, the document becomes the best evidence of its contents and therefore speaks for itself.”*

It was also explained by the Supreme Court PerOputa JSC in **AJIDE v. KELANI (1985) 3 NWLR (Pt 12) 248 at 290** where the Court held as follows: -

“Every document tendered by a party in a case must be tendered with some evidence in view. The document may be tendered to advance and further strengthen the case of the party who tendered it or to adversely weaken or destroy the case of the adversary”

Having stated the above I would further reiterate that in Civil cases the burden of proof or rebuttal of issues arising in the course of proceedings may shift from the Plaintiff to the Defendant and vice-versa, that is the preponderance of evidence.

See the case of **TROAGBARA V UFOMADU (2009) LPELR-1538 (SC)** where the Supreme Court held as follows: -

“In Civil case, the like of the one under consideration, on the burden of proof on the pleadings, the rule is that the burden of proof rests on the party (Whether Plaintiff or Defendant) who substantially asserts the affirmative of the issue. When it is said that onus of proof shifts from Plaintiff to Defendant and vice-versa from time to time as the case progresses, it means no more than burden of proof may shift depending on how the scale of evidence preponderates....”

After careful review of the evidence adduced by the Claimant, both oral and documentary which has remained uncontested and uncontroverted by the Defendants, who did not cross-examine the witness and did not enter a defence even though they had the opportunity do so results in an admission of the Claimant's, Claims as endorsed in the Writ of Summons. The Apex Court in **IGHRERINIOVO v. S.C.C. NIGERIA LTD & ORS (2013) LPELR-20336(SC)** held thus: -

“It is the law that unchallenged evidence which is credible stands and should be accepted and acted upon by the Court”

With respect to not cross examining a witness the same Supreme Court in **GAJI & ORS V PAYE (2003) LPELR-1300 (SC) Per Dictates of EDOZIE JSC held at P20, paras E-D** held thus:-

“It has been said that the effect of failure to cross-examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence of a witness.”

Same was the position in **OLA V THE STATE (2018) LPELR-44983 (SC)**

The Claimant in this suit has led evidence which is unchallenged and uncontroverted. Therefore, the effect is that the Defendants here admitted Claimant’s Claims as endorsed on the writ of summons. In light of this, the Court is at liberty to accept Claimant’s evidence as the truth of the matter. To this end the law is settled that civil cases are decided upon the preponderance of evidence and the balance of probability as above discussed with authorities relied upon.

In the instant case, on the strength of Claimant’s evidence I am satisfied that the Claimant has proved his case on the preponderance of evidence to be entitled to the reliefs sought.

On the Claimant’s claim for ₦5,000,000.00 jointly or severally as cost of this suit, the Claimant prayed for it on the face of his writ and pleaded same even though he did not attach any documentary evidence in proof of same but the Court has taken judicial notice that he has incurred expenses in engaging the services of a legal Practitioner to prosecute his case and it is settled law that a successful party is to be indemnified for cost of litigation. **SEE NAUDE & ORS v. SIMERU (2013) LPELR-20491 (CA) Pg. 24-28 at Para A.**

Therefore, the sole issue for determination is hereby resolved in favour of the Claimant against the Defendants, I so hold.

Consequently, Judgment is hereby entered in favour of the Claimant against the Defendants as endorsed on the Writ of Summons save for Claim (g) I award the sum of ₦500,000.00 as cost of this action since Claimant did not tender in evidence receipt for professional fees to prove that the sum of ₦5, 000,000 was paid as cost of this action.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

28/09/ 2023