

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 4TH DAY OF APRIL, 2025

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/3299/2021

BETWEEN:

1. RABI MUSA
2. GODWIN OGU
3. EJIYE OCHEJE
4. GODWIN ABALAKA
(Suing for himself and as the Agent
of the 1st, 2nd and 3rd Claimants)

} CLAIMANTS

AND

1. GWAGWALADA AREA COUNCIL
2. EDWIN ELUKE
3. UNKNOWN PERSONS

} DEFENDANTS

JUDGMENT

On the 29th day of November, 2021, the Claimants, Rabi Musa, Godwin Ogu, Ejiye Ocheje, and Godwin Abalaka filed this action against the Defendants, Gwagwalada Area Council, Edwin Eluke and Unknown Persons.

In this case the Claimants alleged that upon being informed about the allocation of some shops/open space on the ground floor opposite the Zuba Fruit Market, that the 4th Claimant sent the 2nd Defendant to collect the Allocation documents. But the 2nd Defendant went and changed some of the documents of the Claimant with other documents which do not belong to the Claimant. That when the 4th Claimant went to start development of the stalls, they were informed by the officers of Gwagwalada Area Council that the space allocated to them – **No. 06 to 09** were all on the ground floor. That the space/shop was sold to the Edwin Eluke – 2nd Defendant, without the knowledge and consent of the Claimants. That when the Claimants confronted the 2nd Defendant, he threatened to harm them and members of their family if they fail to accept the shops at first floor in the said place as against the ground floor allocated to them by the 1st Defendant.

That they reported the matter at Zuba Police Station. That while the matter was being investigated by the Police, the 3rd Defendant started developing the place, and the 2nd Defendant went to Kubwa Police Station to make report, and then disappeared while the 3rd Defendant continued the construction work. That even after the Gwagwalada Area Council, 1st Defendant marked and issued “Stop Work Order” that the 3rd Defendant continued to build on the space.

Not having another option, the Claimants filed the present Suit seeking the following Reliefs:

1. A Declaration of this Honourable Court that the 2nd & 3rd Defendants are liable to the Claimants for the unlawful changing of the Allocation papers issued to the Claimants by the 1st Defendant and which the 2nd Defendant collected from the 1st Defendant on behalf of the Claimants and sold to the 3rd Defendant without the consent of the Claimants.
2. A Declaration that the entire legal and equitable interest and title to space No. OS-0-06, OS-0-07, OS-0-08, and OS-0-09 issued in the names of Danladi Dangata, Abraham Yebwi, Bala Umar, and Abutu Jnr by the 1st Defendant are validly vested in the 4th Claimant through the other Claimants.
3. An Order of Court directing the 2nd & 3rd Defendants to immediately vacate and hand over possession of the following space mentioned in paragraph two above as same belong to the Claimants.
4. An Order of this Honourable Court directing the 1st Defendant to produce the forms submitted by the Claimants to show shop spaces were actually allocated to the Claimants.
5. An Order of Court restraining the Defendants and their agents from further threatening the lives or properties of the Claimants and that of members of their family.
6. An Order of Perpetual Injunction restraining the 2nd & 3rd Defendants, their assigns, privies, or any other person claiming through them from further developing the space stated in paragraph two of this Statement of Claim as same belongs to the Claimants.
7. An Order of this Honourable Court awarding ₦1, 000,000.00 (One Million Naira) as damages against the 2nd & 3rd Defendants for trespassing on the Claimants' shop spaces, and interest of 7% per annum on the Judgment sum from the date of Judgment until Judgment is satisfied, in favour of the Claimants.

8. And for such further Orders which this Honourable Court may deem fit to make in this Suit.

The Claimant opened their case and called one Witness – the 4th Claimant who testified. The Defendants initially did not come to Court despite that all Process and Hearing Notices were served on them. They were foreclosed. Matter was adjourned for Adoption of Final Written Addresses.

On the day of the Adoption of Final Written Addresses the 1st Defendant surfaced with a Counsel who promised to take up the case. They filed an application – Preliminary Objection, urged Court to allow them by lifting the Foreclosure. The Court did, but awarded cost of **₦100,000.00 (One Hundred Thousand Naira)** against them for wasting the time of Claimants and the Court as well. The Claimants' Counsel filed a Counter Affidavit to the Preliminary Objection, and the matter was adjourned for Defence.

The 1st Defendant's Counsel later withdrew the Preliminary Objection. The 1st Defendant called a Witness – Ashi Ada who was Cross-examined by the Claimants' Counsel. He tendered a document which was admitted and marked as **EXH 5 – Police Report Extract.**

It is imperative to state that the 2nd & 3rd Defendants were equally served all Processes in this Suit. But they never entered appearance in person or had any Counsel representation or filed any Memorandum of Appearance or Statement of Defence or Counter-Claim.

Upon close of the case of the 1st Defendant, the Court granted application for foreclosure of the 2nd & 3rd Defendants, and adjourned the matter for Adoption of Final Written Addresses which was eventually adopted on the 26th day of March, 2025.

The Claimants raised 2 Issues for determination in their Final Written Address which are:

- (1) Whether by the circumstance and evidence laid, the Claimants have proved that the 2nd & 3rd Defendants unlawfully changed the allocation documents issued to the Claimants by the 1st Defendant, and whether the Claimants have been able to establish title to the allocation of 06 – 09 and their case in this Suit?**
- (2) Whether the 1st Defendant has discharged the duty in respect of paragraph 4 of the Writ and Statement of Claim, and if same has been discharged in favour of the Claimants' case?**

They submitted that they have established their case and are entitled to the Reliefs sought. That they did so through the testimony of PW1 and the four (4) documents which they tendered marked as **EXH 1 – EXH 4**. That they were able to prove that the said documents were originally allocated to them for shop No. 06 – 09 on the ground floor. They tendered the documents and why the originals could not be tendered as they were with the 2nd Defendant who refused to release same to them.

That all the facts presented before the Court as well as the documents were all admitted without any challenge. That they were not rebutted by the Defendants. They referred to the cases of:

Ukaegbu V. Nwololo
(2009) 3 NWLR (Pt. 1127) 194

Section 20 of the Evidence Act.

Adumora V. Ajufo
(1998) 3 NWLR (Pt. 80) 1 @ 11 Para D

That by the absence of the 2nd & 3rd Defendants it means that they admitted the case of the Claimants as truth, and are bound by the same.

That the 1st Defendant who had Counsel representation and was Cross-examined, admitted the case of the Claimants, and urged Court to grant the Claimants all their Reliefs. That by the submission of the 1st Defendant – 1DW1 under Cross-examination shows that it has admitted the case of the Claimants as true. That they knew that the case of the Claimant is right, and that the Claimants are entitled to their claims in this case.

That the 1st Defendant, like the 2nd & 3rd Defendants, chose not to Cross-examine the PW1. Hence, they are not disputing the case/claims of the Claimants and the evidence laid by the PW1. They referred to the case of:

Cameroon Airlines V. Otutuizu
(2011) 4 NWLR (Pt. 1238) 512

They urged Court to hold that the Defendants did not dispute the case of the Claimants and the facts therein.

On Issue No. 2, they submitted that they had shown that they allocated the said Plot 06 – 09 to the Claimants. That the 1st Defendant after his testimony urged Court to enter Judgment in favour of the Claimants. That he admitted that the 1st Defendant allocated the Res which is 06 – 09 shops, and not 004 - 013 the Claimants, and that there was never any reallocation of the shops by the 1st Defendant.

That the 1st Defendant admitted paragraph 17 of the Statement of Claim/Oath that the Claimants are entitled to the said **Shop 06 – 09**. They urged Court to enter Judgment in favour of the Claimants as the 1st – 3rd Defendants admitted the Claimants' claim. They relied on the case of:

INEC V. Oshiomole

(2009) 4 NWLR (Pt. 1132) 607 @ 662

That since the 1st Defendant's case supports the case of the Claimants as shown in the Final Written Address, the Claimants has nothing to respond to it.

They urged Court to enter Judgment in their favour and grant all their Reliefs as sought.

The 1st Defendant called a Witness – Ashi Ada. They confirmed that the Claimants were issued the four (4) shops – 06 – 09, and that the 2nd Defendant who was authorized by the Claimants to collect the Allocation letter

collected same but shortchanged the Claimants and claimed that the Claimants were allocated some shops which are in a less strategic place – FF M 04, 05, 012 & 013, which are located upstairs and which are also less attractive and cheaper compared to the 06 – 09 shops which are located downstairs.

In the Final Written Address the 1st Defendant raised a sole Issue for determination which is:

“Whether the Claimants are entitled to their Reliefs in this case.”

They answered in the Affirmative, stating that the Claimants are entitled to their Reliefs in this case. That they support the case of the Claimants with their credible and admissible evidence. They referred to **S. 131 (1) & S. 153 of the Evidence Act, 2011**, and the case of:

Zenon Petro & Gas Nig. Ltd V. Emsee Shipping Line Ltd (2021) 1 NWLR (Pt. 1758) 553 CA

That the Claimant had discharged the burden of proof in this case through the testimony of PW1 and the **EXH 1 – 5** tendered. They referred to the case of:

Plateau Inv. & Property Dev. Co. Ltd V. Philip Ebhota & 5 Ors (2001) 1 NWLR (Pt. 705) 495

That the Claimants are the original Allottees of the said shop 06 – 09 and that there was no time it was changed or reallocated to anyone else by the 1st Defendant. They referred to **Para 3 (e) of their Statement of Defence**. That

the allocations were in the names of **Danladi Dangata, Abraham Yebwi, Bala Umar, and Abutu Jrn** respectively.

That in their Endorsement Register shows that Mr. Eluke – 2nd Defendant collected the said Allocation papers for and on behalf of the Claimants.

That 1DW1 testified that **Shops FF-M-04, FF-M-05, FF-M-012 and FF-M-013** were never allocated to the Claimants. That **EXH 5** – Police Report equally confirmed that fact and it also shows that the passport photos of the said persons were attached to the Allocation Letters.

That by law all those uncontroverted evidence of the Claimants are legally admissible and credible. They referred to the cases of:

Trade Bank V. Chiami
(2003) 13 NWLR (Pt. 836) 158 @ 220

Thompson V. Akingbehim
(2021) 16 NWLR (Pt. 1802) 283 SC

INEC V. Ray
(2004) 14 NWLR (Pt. 892) 92 @ 131

They urged Court to hold that the 1st Defendant did not controvert the evidence of the Claimants and did not deny the facts and the said claims.

That the 2nd – 3rd Defendants never came to Court or filed any Defence. Hence, they had admitted the claims of the Claimants.

That the Court should exonerate the 1st Defendant and not allow it to be caught up on the wall of prayer No. 7. They urged the Court to uphold the Reliefs of the Claimants and hold that they are entitled to their Reliefs.

COURT

This Court has summarized the case of the Claimants and the evidence before me in this case. It is the humble view of this Court that the case of the Claimants was not challenged and the facts therein not controverted. Again, the 1st Defendant in his testimony and by the **EXH 5** tendered, confirmed the claim of the Claimants that the allocation given to the Claimants were for Shop 06 – 09. That the 2nd Defendant was authorized to collect the Letter of Allocation on behalf of the Claimants. That the 1st Defendant never changed or reallocated the said shop 06 – 09 to anyone else or to the 3rd Defendant. That the 3rd Defendant claim to the Res is false, and any other transaction on the Res, Shop 06 – 09, was done in error and falsehood. That the Claimants are entitled to their Reliefs having established their claim.

This Court holds that the Claimants discharged the onus asserted and proved their case, and are entitled to all their Reliefs. The case of the 1st Defendant supported the case of the Claimants too. So this Court holds.

The Claimants alleged that they authorized the 2nd Defendant to collect the Allocation paper for and on their behalf. They supported that by tendering **EXH 1** which is the Letter of Authorization. That letter was dated 12th July,

2019. It was not controverted. The said letters were written by the Claimants.

The Claimants equally tendered the fake Allocation Letter which the 2nd Defendant purportedly claimed to be allocated to the Claimants but which the 1st Defendant denied stating that they never changed the allocation of Shop 06 – 09 given to the Claimants. The allocation were for **Shops FF-M-04, FF-M-05, FF-M-012 and FF-M-013**, tendered as **EXH 2**. They equally tendered the Allocation of 06 – 09 which is the property authentic and confirmed allocation issued to them by the 1st Defendant. The 1st Defendant confirmed the said allocation too in their Statement of Defence and the testimony of 1DW1. The documents were tendered as **EXH 3**.

As alleged the Claimants made a formal report to the Police – DP Station at Zuba on the 16th of August, 2021, when they laid complaint to the Police on the 2nd Defendant's refusal to deliver the original Allocation Letters/papers to the Claimants after they discovered that the 2nd Defendant had tampered with the said Allocation papers. That document was tendered as **EXH 4**. The facts as contained in the Oath and the evidence of PW1, and confirmed in the evidence and testimony of the 1DW1. The 2nd & 3rd Defendants did not controvert those facts.

Also, the Claimants further established their case through the single Exhibit tendered by the 1st Defendant through 1DW1. That document is CTC of the Police Investigation Report from the Nigeria Police Area Command, Kubwa,

Abuja. That document is dated 20th September, 2024. That document was marked as **EXH 5**. From the findings of the Police in that Report it confirmed that the 2nd Defendant who was authorized by **EXH 1** to collect the Letter of Allocation did so, but according to the Police Report, conclusion and recommendation. In EXH 5 it reads thus:

“It is evident that Mr. Edwin Eluke fraudulently and dishonestly gave a wrong and different Allocation Letter to Godwin Agbalaka and as such he should be prosecuted for Criminal Breach of Trust and Cheating.”

The details of **EXH 5** as well as the conclusion of the Police Report further showed that the claims of the Claimants against the Defendants especially the 2nd & 3rd Defendants are true. It shows that the case of the Claimants is well established and same were not controverted or challenged.

It is the law and had been held in plethora of cases that uncontroverted evidence are deemed admitted. It is also same that where a party is given all leverages, judicially speaking, to have its say or defend a Suit but failed to do so that all facts so raised in such a case are deemed admitted and they stand uncontroverted. Again, it has also been held by Court that burden of proof is on the party who has asserted, and that it is incumbent on such party, usually the Plaintiff, to satisfy the Court with credible and relevant evidence to be entitled to his/her claims. That is what the Court held in the case of:

**Zenon Petro & Gas Nig. Ltd V. Emsee Shipping Line Ltd
supra**

See also the provision of **S. 133 (1) of the Evidence Act, 2011**, where it is provided that burden of proving the existence of a fact lies on the party who will loose if no evidence is produced. See also the cases of:

Thompson V. Akingbehim supra

INEC V. Ray

(2004) 14 NWLR (Pt. 892) 92 @ 131 Para F – H where the Court decided and held that it is a well known fact and law that unchallenged piece of evidence ought to be accepted by the Court. where that is the case it means that the facts in issue in that case are proved and not controverted as far as the evidence given in that case is concerned.

So where the Defendant(s) did not deny or admit such facts it means that they equally did not deny its correctness or existence. Therefore, the failure and refusal to challenge, controvert or rebut such facts means they have admitted them as true and correct. See the case of:

Waziri V. Ali

(2009) 4 NWLR (Pt. 1130) 178 @ 216

In this case the facts raised by the Claimants were not controverted or challenged by the Defendants. Again, all the evidence of the Claimants are direct to the issues in dispute. The said evidence are not in any way discredited by the Defendants especially the 1st Defendant under Cross-examination, as the Defendants never opted to Cross-examine the PW1. Hence, the said evidence is credible and reliable in the establishment of the case of the

Claimants. They are therefore accepted by this Court, same having not been controverted. See the case of:

Mtsov V. Adeke

(2005) All FWLR (Pt. 287) 872 @ 887

The Claimants equally ensured that the Defendants were duly served with the Originating Processes and Hearing Notices. It is the duty which the Claimant is bound to perform, and in this case the Claimants performed that duty. Hence, the Defendants were in the know and were duly served the Processes in this Suit. Court refers to the case of:

Dagash V. Bulama

(2004) 14 NWLR (Pt. 892) 114 @ 233

The Claimants also ensured that principle of Fair Hearing was eschewed, and that the Defendants were given all chance to defend the Suit, but the 2nd & 3rd Defendants failed to do so. See **S. 36 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) and the case of:

UTHMB V. Nnoli

(1994) 8 NWLR (Pt. 363) 8

The 2nd & 3rd Defendants having failed to exercise their rights to be heard have no one to blame and cannot complain. This Court gave them all the necessary time, judicially speaking, to defend the Suit, but they refused to do so. See the cases of:

Okike V. L.P.D.C

(2005) 15 NWLR (Pt. 949) 471

M.D.P.T V. Okonkwo

(2001) 7 NWLR (Pt. 711) 206

From the above, the Claimants have established and proved their case with the credible evidence before this Court. They deserve the Judgment in their favour as their case is meritorious. This Court enters Judgment in their favour and grants their Reliefs to wit:

Reliefs 1 to 6 granted as prayed without any delay.

On Relief 7, the 2nd and 3rd Defendants are to pay to the Claimants the sum of ₦100, 000.00 (One Hundred Thousand Naira) as damages, and to pay 5% interest per annum on the Judgment sum from date of Judgment until final liquidation of the Judgment sum.

This is the Judgment of this Court.

Delivered today the _____ day of _____ 2025 by me.

K.N. OGBONNAYA

HON. JUDGE

APPEARANCE:

CLAIMANTS' COUNSEL:

PROSPER AKUBUE, ESQ.

1ST DEFENDANT'S COUNSEL: CHRISTIAN KELECHI UDEOYIBO, ESQ.