

**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/1023/2023
DELIVERED ON THE 10/11/2025**

BETWEEN:

BESTBUY APPLIANCES NIG LTD.....CLAIMANT

AND

- 1. MINISTER FEDERAL CAPITAL TERRITORY ABUJA**
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY(FCDA)**
- 3. DEVELOPMENT CONTROL**
- 4. TPL MUKTAR GALADIMA USMAN mni.**

}DEFENDANTS

JUDGMENT

This suit was filed by way of a writ of summons dated the 22nd day of December, 2022 and filed on the 6th January, 2023. The writ of summons was accompanied with witness statement on oath, list of Exhibits and statement of claim. The Defendants were duly served with the processes of this Honourable court but never reacted to the writ served on them. The plaintiff claims against the Defendants severally and jointly as follows:

- A. A Declaration that the Claimant has no contractual relationship with the defendant.*
- B. A Declaration that the Defendants have no mandate to recover possession of property.*

C. A Declaration of this Honourable court that the action of the Defendants is unconstitutional and obnoxious and of no effect.

D. An Order of this Honourable court for perpetual injunction restraining the Defendants, its agents, workmen, staff and any other person from further harassing, intimidating and humiliating the Claimant.

As earlier observed, the Defendants despite having been duly served with the processes of this court failed or neglected to respond as required by law as a result of which the plaintiff was invited to prove his case. In a bid to do this the plaintiff called only one witness, Alhaji Abubakar Abdulhameed who adopted his Witness Statement on oath through and whom the following exhibits were tendered and admitted in evidence in favour of the plaintiff's case.

- 1. Lease Agreement Document with Mr. Mathew Olaseni Gansallo dated 5th September, 2020**
- 2. Incorporation documents of Best Buy Appliances Nig. Ltd.**
- 3. New contravention bill and Notice of demolition, video plate record of the invasion of correspondences with the 4th Defendant etc.**
- 4. A copy of the Writ of Summons in suit before Federal Capital Territory High Court 38, sitting in Jikwoyi, Abuja**
- 5. Certificate of compliance with the pictures of the property before the renovations done.**
- 6. Letter written by the 4th Defendant.**
- 7. Flash Drive containing the actions of the Defendants against the Claimant.**

The seven items were marked Exhibits P1 – P7 respectively.

This Honourable court on the 29th day of January, 2025 adjourned the case to enable the Defendants conduct the cross examination of the only

witness for the plaintiff. The Defendants were served with hearing notice to that effect, yet they refused to come to court let alone cross examine the plaintiffs witness, nor were they represented. The court subsequently adjourned the case to the 8th April, 2025 for defence and notwithstanding that the Defendants were served with a hearing notice, they refused to come to court to open their defence. Thereafter the Claimant applied to this Honourable court to foreclose the rights of the Defendants to defend themselves and it was granted. The right of the Defendants to conduct their defence was foreclosed and the case was accordingly adjourned to the 12th day of May, 2025 for adoption of final written addresses by the counsel, which was duly done.

In arguing the case for the Claimant, the learned counsel for the Claimant COLLINS C. AZIH ESQ distilled a lone issue for determination by this Honourable court to wit:

"Whether the Claimant has not proven its case on balance of probability that should warrant this Honourable court granting the claims".

The learned counsel for the Claimant submitted that the evidence of the Claimant through the PW1 is credible, unchallenged, uncontroverted and not marred with inconsistencies and ought to be accepted and acted upon by this court. He further submitted that the document of agreement between the parties is clear and unambiguous and that the parties are bound by their agreements. According to him, a court of law must give strength to the plain and bare words without any hesitation or quibble. He referred to the case of **AMEDE V. UBA (2008) 8 MWLR (Pt. 1090) pg 623 at pages 659 - 660 paras H - B**, and also the case of **OMEGA BANK NIG. PLC V. O.B.C LTD (2005) Pt. 249** where the Supreme court held to the effect that courts of law must recognize the liberty of

the parties to voluntarily enter into a contract and must be enforced by the Courts so as to ensure sanity and voluntariness.

He further submitted that there is no evidence from the Defendants that will make this Honourable court refuse to grant the reliefs sought by the Claimants in view of the fact that the Claimant has proved its case on the balance of probability entitling him to judgment of this court.

It will be in the interest of Justice to at this juncture consider the facts and circumstances analysed above in determining the merit of this case by this Honourable court adopting the sole issue distilled by the Claimant for determination by this Honourable court to wit:

"Whether the Claimant has not proven its case on balance of probability that should warrant this Honourable court granting the claims?"

It will equally be in the interest of Justice to peruse some aspects of the evidence of the Claimant particularly the content of paragraphs 6, 9, 14, 16, 17, and 19 of the witness statement on oath of the Claimant. The said paragraphs referred to above are hereby reproduced verbatim to buttress the case of the Claimant as presented before this Honourable court. These are:

6. That the Claimant entered into the property at plot 2561 Panama IBB Boulevard Maitama as a sub - tenant in 2010 with the name A6 Fixtures Nig. Ltd, the name which metamorphosed into BestBuy Appliances Nig. Ltd. The Incorporation Documents are hereby pleaded.

14. "That the Defendants especially the 4th, is fully aware that there is an existence of lease agreement because the Claimant has had several meetings in his office with the Lessor, Mr. Olaseni Gansallo and several correspondences have also been written to

him but it seems that he is determined to forcefully eject the Claimant despite the subsisting lease agreement. I hereby plead the said correspondences.

9. That the Electronic Showroom was therefore more than ten (10) years before the Claimant entered into fifteen (15) years lease agreement with the owner of the property Mr. Mathew Olaseni Gansallo. I hereby plead the lease agreement.

16. That the 3rd and 4th Defendants are hell-bent in using self - help to eject the Claimant despite the pendency of the action over the same property before Hon. Justice N. N. Chineze of the Federal Capital Territory High Court 38, sitting in Jikwoyi, Abuja. I hereby plead the writ of summons.

17. That the Defendants served the Claimant demolition notice on the 21st day of December, 2022 in a property they have been collecting contravention fees since the Claimant entered into the property. I hereby plead the receipts of payments of contravention fees.

19. That the Defendants will stop at nothing if no action is taken by this Honourable court to save the Claimant business and 25 Nigerians feeding from the Supermarket as staff, based on their staff behaviour on the 21st day of December, 2022 when they came to lockup the supermarket unlawfully without any order of court. I hereby plead the video plate recorded on that day".

Also relevant to this judgment are the Exhibits which are the Lease Agreement, Correspondences between the Claimant and the 4th defendant, the writ of summons and the evidence of payment of contravention fees respectively referred to in paragraphs 9, 14, 16, and 17 of the witness statement on oath of the Claimant.

It is clear from the content of the Lease Agreement made on the 5th day of September, 2020 between Mathew Olaseni Oladipo Gansallo and Alhaji Abubakar Abdulhameed that it was "created for a period of firstly one (1) year, secondly four (4) years and lastly ten (10) years (that is to say the Lease Agreement is in three streams of 15years comprising three terms....." This simply implies that even up till this moment that is, the year 2025, the lease agreement is still subsisting, a fact known to the Defendants especially, the 4th defendant. It is also an established fact that the lease Agreement is not between the Claimant and any of the Defendants. Similarly, there is no Power of Attorney displayed as an instrument empowering the Defendants to act in the manner they have acted in this case as if they were contracted as property recovery agents.

Furthermore, the copy of the receipt for the payment of the sum of N500,000.00 (five hundred thousand naira only) for contravention and Notice of demolition are all evidence adduced by the Claimant in proof of his case against the Defendants.

Similarly, the content of the exhibit titled "Writ of summons" allegedly pending before the FCT High No.38, Jikwoyi, Abuja clearly shows all the necessary steps taken by the Claimant to allow the due process of the law to prevail.

This court is of the view that from the available evidence before this court which were never challenged or contradicted in any way by the Defendants, the Claimant has clearly complied with sections 131(1) and 132 of the Evidence Act, 2011. Which provides as follows: 131(1) of the Evidence Act, 2011:

"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". Similarly, S.132 of the Evidence Act 201 further states that "the burden of proof in a

suit or proceeding lies on that person who would fail if no evidence at all were given on either side".

Thus, the burden of proof lies on the Claimant and can only oscillate to the Defendants if the Claimant had proved its claims.

The totality of the evidence before this Honourable court remained unchallenged, uncontradicted and uncontroverted and is therefore credible. This is because of the total failure of the Defendants to respond to any of the processes of this court served on them not even a legal representation before the court. The Defendant failed/neglected to file any defence and did not call or cross examine the Claimants witness. In fact, there was no attendance in court by any of the Defendants, let alone proffer any evidence against the evidence of the Claimants. This Honourable court has no reason not to believe and act on the only available evidence of the Claimant. Thus, in the case of **ALHAJI FATAL ALANI MATANMI & 2 ORS V. VICTORIA DADA & 1 OR (2013) 7 NWLR (Pt. 1353) pg 319 at pg 324 Ratio 7** the Supreme court held that:

"An unchallenged evidence is deemed to be correct and can be acted upon by the court".

This court is therefore bound to believe and act upon the exhibits, referred to in the sworn statement of the Claimant. These exhibits include the lease Agreement which is still subsisting, the Notice of demolition and the receipts for the payment of contravention.

It is equally important to refer to the content of paragraph 17 of the sworn statement of the Claimant which shows that they were served with a demolition notice on the 21st day of December, 2022 and in fact threatened to demolish the property and notice of demolition is also one

of the exhibits referred to in the statement of claim. In the words of the Claimant in paragraph 16 of the witness statement on oath,

"the 3rd and 4th Defendants are all hell - bent in using self-help to eject the Claimant despite the pendency of the action over the same property before Hon. Justice N. N. Chineze of Federal Capital Territory high court 38, sitting in Jikwoyi, Abuja".

However, the law does not recognise the use of force or self-help in a situation of this nature, rather the law is in support of due process. Thus, in the case of **REGISTERED TRUSTEES, APOSTOLIC CHURCH V. OLUWOLEMI (1990) 6 NWLR (Pt. 158) at pg 514** the Supreme court held that:

"Once parties have turned their dispute over to the courts for determination, the right to resort to self-help ends. So, it is not permissible for one of the parties to take a step during the pendency of the suit which may have the effect of foisting upon the court a situation of complete helplessness or which may give the impression that the court is being used as a mere subterfuge, to tie the hand of one party while the other party helps himself extrajudicially. Both parties are expected to await the result of the litigation and the appropriate order of court before acting further".

Furthermore, the idea of the Defendants threatening the Claimant with a demolition notice is not enough for them to proceed with the demolition of the property in question. The demolition of any property in the Federal Capital Territory, Abuja by the 1st, 2nd and 3rd Defendants is governed by law. Thus, to actualize any demolition of property the provision of sections 47, 48, 61, and 62 of the Urban and Regional Planning Act, 1992 must be complied with. These sections/provisions have to do with the Claimants being given reasonable time, adequate

compensation having been paid and must be relocated to another site before demolition can legally be effected. Infact, apart from the demolition notice served on the Claimant, no tangible reason was given as to why the said property is to be demolished after the Claimant has spent over fifty million naira (50,000,000.00) putting the supermarket in its present state. The provision of sections 61(1) and 50 of the Urban and Regional Planning Act provides as follows:

Section 61(1) provides:

"The control department shall have the Power to serve on a developer a demolition notice if a structure erected by the developer is found to be defective as to pose danger or constitute a nuisance to the occupier and the public".

The law does not stop there but further states that:

"An enforcement notice served under section 48 of this Act, by the control department shall (a) be in writing and communicated to the developer (b) state the reasons for the proposed action of the control department and (c) consider any representation made by a developer or on behalf of a developer".

Needless to observe at this stage that the failure of the Defendants to file their defence or participate in the proceedings that led to the present judgment is a confirmation that the Defendants, apart from serving the Claimants with demolition Notice refused or did not comply with the requirement of the law on effecting any demolition exercise enumerated above.

Thus, in determining whether the Claimant has proved his claim against the Defendants which will entitle him to the reliefs sought in this suit regard must be made to the fact that it is the duty of the Claimant in every Civil proceedings to adduce admissible evidence to establish his

case failing which he cannot be entitled to the reliefs sought. This Honourable court has earlier referred to the provision of **section 131(1) and 132 of the Evidence Act, 2011**. The importance/relevance of these provisions has been restated in the case of **CORPORATE AFFAIRS COMMISSION V. UZOMAH IBEGBULEM**(carrying Legal Practice under the name and style **UZOMAH IBEGBULEM & CO (2019) 3 Abuja Appeals Quarterly Reports page 70 at pg 75 Ratio 6** where the Court of Appeal held that:

"Pursuant to sections 131 - 134 of the Evidence Act, 2011, the initial onus of proof in a case rest on the Claimant to lead or introduce credible, cogent or believable evidence in line with his statement of claim to enable him sustain the case he laid against the defendant. The onus of proof which is on the balance of probability oscillates between the Claimant and the defendant and will not shift until the Claimant has established prima facie case against the defendant, which if the defendant does not rebut will give the Claimant an edge over the defendant. The burden or onus of proof can be discharged on either side on balance of probability".

In Ratio 7 of the above cited case of **CAC V. UZOMAH IBEGBULEM** (Supra) it was further held that:

"Civil cases are determined on preponderance of evidence and balance of probabilities and so he who asserts a fact must prove that fact with credible evidence that is relevant to the matter in controversy, not evidence that is irrelevant and inconsequential to the success of the claim".

In the same vein, the law does not expect a Claimant to rely on the weakness of the case of the Defendant as a proof of his claim. It is his duty to prove his claim as required by the law. Thus, in the case of

ATANDA V. AJANI (1989) 3 NWLR (Pt. 111) pg 511 at pgs 533 - 534 paras H - A, it was held that:

"A party must prove its case on the strength of its own evidence and not rely on the weakness of the opponents case".

In the present matter, the Defendant failed to provide essential particulars such as would enable this Honourable court cast a doubt in the case of the plaintiff. Moreover, no witness other than the Claimants was presented by the Defendants who also failed to file the necessary processes before this Honourable court. This clearly shows that the Claimant is not relying on the weakness of the defendant as a result of their failure to participate in the proceedings that led to the present judgment.

In the light of the unchallenged and uncontroverted overwhelming evidence led in proof of the case of the Claimants, the Claimants are entitled to the reliefs claimed. The position of the law is that unchallenged and uncontroverted evidence, as in this case, must be accepted as proof of the fact it seeks to establish. This was the reasoning of the court in the case of **ADDU V. STATE (2011) ALL FWLR (Pt. 566) pg 583 at pg 594 paragraphs D - E**.

On the whole, I am satisfied that there is overwhelming and credible evidence coupled with the various exhibits presented by the Claimants that the Claimant is entitled to the reliefs sought from this Honourable court. It is also clear from the available evidence before the court that there is merit in this case particularly that there is nothing before this court from the Defendants that would have cast doubt in the mind of the court. This case is meritorious and the Claimants are entitled to the judgment of this court which is hereby entered in favour of the Claimant against the Defendants. This Honourable court hereby makes the

following orders and declaration against the Defendants jointly and severally that:

- (a) It is hereby declared that the Claimant has no contractual relationship with the Defendants.**
- (b) It is also declared that the Defendants have no mandate to recover possession of the property in question.**
- (c) It is also the declaration of this Honourable court that the action of the Defendants is unconstitutional and obnoxious and of no effect.**
- (d) An order of perpetual injunction is hereby made restraining the Defendants, its agents, workmen, staff and any other person from further harassing, intimidating and humiliating the Claimant.**

**SIGNED:
HON. JUDGE
10/11/2024.**

APPEARANCES:

*Collins C. Azih, Esq, for the Claimant
Defendants are not represented*