

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/431/2019
DATE: 22ND SEPTEMBER, 2020**

BETWEEN:

OLUWATOYIN HELEN OTEKALU-AJE - CLAIMANT

AND

ATLAS ESTATES LTD (A MEMBER OF KINGFEM GROUP) - DEFENDANT

Parties absent.

Ayodeji Ademola for the Claimant appearing with Igwe Ugochukwu, Tunde Ogundare, T. Fiki Esq., O.J. Adelusi for the Defendant.

Claimant's Counsel – The matter was adjourned for defence or Report of Settlement.

The parties have settled the matter out of court and filed their Terms of Settlement.

We urge the court to enter the Terms of Settlement as consent judgment in this suit.

Defendant's Counsel – The parties have settled out of court and the Terms of Settlement is before the court.

Court – The Terms of Settlement dated 21/9/2020 duly signed by the parties and their respective counsel is hereby adopted as the consent judgment in this suit as follows:

1. That the sum of (N9,500,000.00) Nine Million, Five Hundred Thousand Naira only being the main claim of the Plaintiff shall be paid at three instalments by the Defendant.
2. That the sum of (N3,000,000.00) Three Million Naira only shall be paid on or before 30/10/2020.
3. That the second tranches in the sum of (N3,000,000.00) Three Million Naira only shall be paid on or before 30/12/2020.
4. That the balance in the sum of (N3,500,000.00) Three Million, Five Hundred Thousand Naira only shall be paid on or before 30/1/2021.

(Sgd)
Justice Salisu Garba
(Presiding Judge)
22/09/2020

R U L I N G

This is a suit brought under the Undefended List Procedure wherein the Claimant by his writ of summons claims against the Defendant as follows:

1. The sum of N9,500,000.00 (Nine Million, Five Hundred Thousand Naira) only, being the money deposited by the Claimant for suites O14 and 015 (Ground Floor) God Alone Shopping/Commercial Complex, GA 24/7, Ahmadu Bello Way, Mabushi Abuja, F.C.T.
2. 10% Post-judgment Interest per annum against the Defendant in favour of the Claimant until final liquidation of the judgment sum.

In support of the writ of summons is 16-paragraph affidavit dated 26/11/2019 deposed to by the Claimant. Attached thereto are 9 exhibits.

Upon being served with the originating processes, the Defendant filed a Notice of Intention to Defend dated 13/1/2020 and a 15-paragraph affidavit in support of the Notice of Intention to Defend; the said affidavit is dated 14/1/2020 deposed to by Adegbulu Olusegun the Head of Administration of the Defendant.

It is trite that the Undefended list procedure is adopted when it is perceived that the Defendant could not possibly have any defence to the claim. A suit is maintainable under the

undefended list if it relates to a claim for debt or liquidated money demand. See HAIDO v USMAN (2004) 3 NWLR (Pt 859) 65.

It is also trite that in an action brought under the undefended list procedure, the trial court is required to consider only the evidence contained in the affidavit filed by the Defendant in support of the Notice of Intention to Defend the suit. Once the court comes to the conclusion that the affidavit does not disclose a defence on the merit or a triable issues, the court is to proceed with the hearing of the suit as an undefended and enter judgment accordingly. See HAIDO v USMAN (Supra).

Furthermore, it is settled law that where there is a conflict in the affidavits of parties under the Undefended List Procedure, evidence is the only way by which the conflict can be resolved and it is mandatory to enter the suit on the general cause list. See EBONG v IKPE (2002) 17 NWLR (Pt 797) 504.

In the instant case there is no doubt that there are conflicts in the affidavit of the parties that should be resolved by oral evidence for instance in paragraph 6 of the Claimant's affidavit in support of the writ of summons under the undefended list, it is deposed that the Claimant made a deposit of N10,500,000.00 (Ten Million, Five Hundred Thousand Naira) only but could not continue the transaction because the Defendant could not commence the construction of the property as agreed coupled with the prevailing excruciating economy bedevilling the country; the claimant demanded for the refund of the deposit she made while in paragraph 6 and 7 of the affidavit in support of the Notice of

Intention to Defend it is deposed that in paragraph 2 of the Letter of Offer, it is clearly stated that the Claimant is to make payment of the said sum between 7th January and June 2017 but the Claimant failed, refused and neglected to make the said payment as agreed.

Also in paragraph 12 of the Claimant's affidavit it is deposed that the Defendant has since sold of the two shops earlier offered the Claimant to other buyers who had occupied same and doing business in the shops since early 2017; while in paragraph 12 of the Defendant's affidavit in support of the Notice of Intention to Defend it is deposed that the Claimant has an outstanding sum of N60,000,000.00 (Sixty Million Naira) only to be paid to the defendant so as to entitle her (the Claimant) to take possession of the said suites.

In the circumstance, I hold the considered view that the above conflicts can only be resolved by oral evidence. Accordingly, this suit is hereby transferred to the General Cause List. Parties are ordered to file their respective pleadings. The Claimant is giving 7 days from today to file his statement of claim and accompanying documents while the defendant is also giving 7 days upon service of the Claimant's pleadings to file its statement of defence and accompanying documents.

**JUSTICE SALISU GARBA
(PRESIDING JUDGE)
22/05/2020**

