

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI – YUSUF
DELIVERED ON THE 30TH MARCH, 2021
SUIT NO.FCT/HC/CV/2685/2020**

BETWEEN

VALENTIN AHMAD ASLIM CLAIMANT

AND

MOSES SANNI AGUVA DEFENDANT

JUDGMENT

The instant suit commenced under the undefended list procedure vide Writ of Summons is dated and filed the 21st September, 2020 .The Claimant claims against the Defendant are as follows:-

- 1)The sum of N23, 000, 000.00 (Twenty Three Million Naira Only) being the outstanding balance due the Claimant, by the Defendant for the purchase of four bedroom terrace duplex, at No.3 Valaslim Street, Lighthouse Estate, Lugbe,

Airport Road, Abuja-FCT, and for which the Defendant has refused and or neglected to pay the Claimant, despite repeated demands, the time for payment having elapsed.

2) N1, 500,000.00 (One Million, Five Hundred Thousand Naira only) being legal fees for the prosecution of this suit.

3) Ten percent (10%) Post-Judgment interest from the date of Judgment until the Judgment sum is fully liquidated

The Application is supported by a 17 paragraphed affidavit deposed to by one Anthonia Odo. Attached to the affidavit are exhibits A, B, C, D, E, F and G respectively.

The matter came up for hearing on the 3- 3- 2021, parties were absent, while their counsel were present in court. The application made by the defendant counsel for an adjournment was refused by the court; thus learned counsel for the claimant adopted his application.

The evidence of the claimant is as stated thus:

1. That I am the head marketer of Valaslim Ltd, the Attorney to the Claimant in this suit, and by virtue of which I am conversant with the facts of this case and the fact stated hereinafter.
2. That the Claimant donated a Power of Attorney to Valaslim Limited to prosecute the suite against Mr. Moses Sanni Aguva, Attached and marked as Exhibit 'A', is a copy of the Power of Attorney.
3. That I am aware of the transaction between the Claimant and the Defendant with respect to one of the units of four (4) Bedroom Terrace Duplexes at no. 3, Valaslim Street, Lighthouse Estate, Airport Road, Lugbe Abuja, which was fully built by the Claimant who is the managing Director of Valaslim Limited, which is to be sold to prospective buyers.
4. That I am aware of all the facts of this case as a result of my employment and further information given to me by Mr. Valentin Aslim on the 8th of September, 2020 at about 1:45 Pm, in our office through a phone call, whose information I verily believed to be true as follows:

5. That sometimes in April, 2019 the Defendant approached Mr. Valentin Aslim, the Claimant, and indicated interest to purchase one of the units of four Bedroom Terrace Duplex at No. 3 Valaslim Street, Lighthouse Estate, Airport Road, Lugbe Abuja, although the Defendant stated that he was expecting funds sometimes in September, 2019 that will enable him pay the complete purchase price of ₦26,000,000.00 (Twenty Six Million Naira only) to the Claimant.
6. That the Defendant then pleaded with the Claimant that he had ₦1,125,000.00 (One Million, One Hundred and Twenty Five Thousand Naira only) to pay for nine months' rent for the four Bedrooms Terrace Duplex, and for which before expiration of the nine months, he would have had the complete funds to pay for the house as an outright purchase.
7. That the Claimant and the Defendant in lieu of the sale of the 4-Bedroom Terrace Duplex to the Defendant executed a Tenancy Agreement with a condition that the tenancy will not be renewed based on the prospective sale transaction. Attached and marked as Exhibit 'B' is a copy of the Tenancy Agreement.

8. That prior to the expiration of the tenancy, the Defendant wrote an undertaking as regards the payment for the four (4) Bedroom Terrace Duplex and pleaded for additional time to the 30th of June, 2020, wherein he undertook to pay ₦27,000,000.00 (Twenty Seven Million Naira only) as the additional ₦1,000,000.00 (One Million Naira) is for delaying the payment of the cost of the 4-bedroom to the Claimant. Attached as Exhibits 'C' is a copy of the Undertaking as to the Payment of the money dated 27/12/2019.
9. That the Claimant briefed my employer's former solicitors, Lex Valor to write to Defendant as a reply to the undertaking made by the Defendant, wherein the conditions stated therein were outlined, which stated among other things, the payment of 15% of the total sum of ₦27,000,000.00 (Twenty Seven Million Naira) as a condition precedent to the validation of the sales transaction of the 4 Bedroom Terrace Duplex attached as Exhibits 'D' is RE: undertaking as to the payment of money dated the 6th of January, 2020 by Lex Valor.
10. That the Claimant briefed and had to pay another of his solicitors E.R Opara & Co. the sum of ₦1,500,000.00 (One

Million, Five Hundred Thousand Naira only), to prosecute this suit. Attached as Exhibits 'E' is the payment receipt issued to the Claimant by E.R Opara & Co. to the Claimant.

11. That the Defendant rather made a deposit of ₦4,000,000.00 (Four Million Naira only) on the 5th of March, 2020, instead of ₦4,050,000.00 (Four Million Fifty Thousand Naira); which represents 15% of ₦27,000,000.00 (Twenty Seven million Naira only), and thereafter the Claimant prepared a payment receipt dated the 6th of March, 2020 for the Defendant.

Attached as Exhibits 'F' is the payment receipt in favour of the Defendant dated the 6th of March, 2020.

12. That the Claimant equally forwarded a copy of the prepared property Sale Agreement by him to the Defendant, which the latter has not returned the copy sent to him for execution after the payment of the ₦4,000,000.00 (Four Million Naira only). Attached as Exhibits 'G' is a copy of the Property Sales Agreement dated the 6th of March, 2020.

13. That since the deposit of ₦4,000,000.00 (Four Million naira only) by the Defendant and with a promise to pay the balance of ₦23,000,000.00 (Twenty Three Million only) for the 4 Bedrooms Terrace Duplex at No. 3, Valaslim Street,

Lighthouse Estate, Lugbe, the Defendant has failed and or neglected to pay the balance despite repeated demands by the Claimant and his Solicitors.

14. That the Defendant has no defence to this suit.
15. That it will be in the interest of justice to grant my reliefs as it appears on the statement of claim.
16. That I depose to this Affidavit, conscientiously believing its content to be true and correct to the best of my knowledge and information and in accordance with the Oaths Act.

Learned Counsel for the Claimant adopted his process and relied on all the paragraphs of the affidavit as well as the exhibits attached thereto particularly the exhibit C. He further submits that the Defendant has not filed any notice of intention to defend the suit and urged the court to enter judgment for the claimant.

It is of note that the aim of a cause placed under the undefended list is to ensure Justice to a plaintiff, where there is obviously no defence to his claim and prevent the grave injustice that might occur through a protracted and ultimately frivolous litigation.

See **EDU SHELL VS TRUSTEES (NIG) LTD (2002) 5 NWLR PART 760 P. 277**. The Court must be satisfied that there are good grounds for believing that there is no defence to the claim before entering the suit in the undefended list.

See Order 35 Rule (3) (1) High Court Rule 2018 states

- (1) Where a party served with the writ delivers to registrar, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an Affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.

The defendant in this case failed and or neglected to comply with Order 35 (3) R 1 of the HCR 2018. Where an action filed under the undefended list procedure and the Defendant wishes to defend the action, the option he has is to file a notice of intention to defend and an affidavit disclosing merits. It therefore shows that the defendant has no defence to the action of the claimant.

The object of the rules relating to actions on the undefended list is to ensure quick dispatch of certain types of cases, such as those involving debts or liquidated money claims. The defendant having failed to challenge or controvert the evidence of the claimant, I am left with no other choice than to enter judgment in favour of the claimant. On the issue of the legal fees claimed by the claimant, there is no evidence before the court that the defendant agreed with the claimant to pay #1,500,000.00 as legal fees; this is not contained in any of the exhibit attached to the affidavit in support; therefore same cannot be imposed on the defendant. The relief 2 hereby fails.

Accordingly, judgment is entered for the claimant against the defendant thus:

1. The defendant is to pay the sum of #23,000,000.00 (Twenty three million naira only) being the outstanding balance due to the claimant for the purchase of a four bedroom terrace duplex, at No. 3 Valaslim Street, Lighthouse Estate, Lugbe Airport Road, Abuja – FCT.
2. Cost of suit assessed at #20,000.00

**ASMAU AKANBI YUSUF
(HON. JUDGE)**

APPEARANCES:

Eunice E. Achoba (Mrs.) for the Claimant.

Defendant absent