

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS 16th DAY OF JULY, 2021

BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA

SUIT NO:/CV/486/2021

BETWEEN:

LINDA OMOSEFE AROGUNDADE-----CLAIMANT

AND

BRAINS & HAMMERS LIMITED-----DEFENDANT

JUDGMENT

This is a matter commenced by writ of Summons under the undefended list brought pursuant to Order 35 of the High court Civil Procedure Rules 2018 the said application is dated and filed on the 19th February 2021.

The Claimant's claims the following reliefs:

1. **AN ORDER MANDATING** the defendant to refund to the claimant the sum of N 10, 810,000.00 (Ten Million Eight Hundred and Ten Thousand Naira) only which the claimant paid to the defendant for the purchase of a property at the defendant's Estate

2. **AN ORDER OF COMPELLING** the Defendant to pay to the plaintiff post judgment till the entire judgment sum is fully liquidated.
3. **AN FOR SUCH ORDER OR ORDERS** as the honourable court may deem fit to make in the circumstances.

Attached to the application is a 35 paragraphs Affidavit with annexures marked as exhibits A to O.

1. Exhibit A. is a Provisional Letter of allocation of a two bedroom flat (F2018) at the Brains & Hammers Affordable Homes, life Camp, Abuja dated 12th May 2016.
2. Exhibit B. is a payment receipt of money into the account of Brains and Hammer Estate, Brains and Hammers city Abuja in respect of House (F2018) dated 1st day of February 2018.
3. EXHIBIT C1. is a Letter printed from the email address by the claimant from defendant state that the work is progressing and it is about to reach the finishing stage date 2nd December 2020.
4. Exhibit C2. is print out pictures of houses with the name of Brains & Hammers.
5. Exhibit D. is a Letter printed from email address stated that the work is about to complete and the house will be delivered to you within 2019 with the name of Brains & Hammers dated 2nd December 2020.
6. Exhibit E. is an E mail correspondence from Brains and Hammers dated 19th September 2019.

7. Exhibit F. is a letter of Purchase of housing unit at Brains and Hammers city address to Linda Omosefe Arogundade Abuja. Dated November 19th 2019.
8. Exhibit G is a letter of Invitation to inspect unit and progress of work at Brains and Hammers City Life-Camp Abuja. Dated 29th November, 2019.
9. Exhibit H is an Email sent by Linda Arogundade in Response to Flash Sale mail by Brains and Hammers dated the 1st December 2020.
10. Exhibit I is a letter of demand for the delivery of property known as F2018 at Brains and Hammers city Life camp Abuja. Dated 5th November 2020.
11. Exhibit J is Brains and Hammers reply to the letter of demand dated the 15th December 2020.
12. Exhibit K is a letter of demand for the full refund of the sum of N10,810,000 Ten Million Eight Hundred and Ten Thousand Naira only. Dated December 8th 2020.
13. Exhibit L is a letter of demand dated the 17th December 2020.
14. Exhibit M is a reply by Brains and hammer to the letters of demand, dated the 15th December 2020.
15. Exhibit N is a letter of demand for the full refund of the sum of N10, 810,000. Ten Million Eight Hundred and Ten Thousand Naira only. Dated 3rd January 2021
16. Exhibit O are pictures of the Estate.

The claimant avers that she was given a provisional letter of Allocation which contained terms and conditions and

that on the letter of Allocation she was offered House F2018 a 2 bedroom Apartment for the sum of N10,810,000.00 she further avers that she had made payment for the said apartment and a receipt was issued by the defendant. The claimant further avers that the defendant did not deliver up possession of the property she paid for after complete payment was made. And that she engaged the service of a legal practitioner who wrote a letter of demand asking for a refund. On the whole the refusal to refund even after promises to do so necessitated the instant suit.

At the hearing on the 22nd day of June 2021, learned counsel to the claimant stated that the matter is brought under the undefended list procedure and that the defendant have been served with the Originating process and hearing notice informing them that the matter is slated for hearing, he argued that the defendant have failed to file any process not even a notice of intention to defend nor a defence on the merit neither are they represented in court. He urged the court to enter Judgment in favour of the claimant.

From the evidence before me, this suit raises a lone issue for determination to wit:

1. WHETHER THE CLAIMANT HAS PROVED HIS CASE TO BE ENTITLED TO THE RELIEFS SOUGHT AGAINST THE DEFENDANT

For the suppose of clarity, I deem it fit to reproduce Order 35 rule 4 of the Civil Procedure Rules of the FCT High Court 2018 which states:

“ Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by the rule 3(1) or is not given leave to defend by the Court the suit shall be heard as an undefended suit and judgment given accordingly.”

On the lone issue above, the Courts have sufficiently expounded on what amounts to the Claimant proving his case to be entitled to reliefs sought. In the instant case the defendant failed to file any notice of intention to defend neither are they represented by counsel despite the service of Court processes on them. However it is the Law that the Court is entitled even in an undefended case to be satisfied that the evidence adduced is credible and sufficient to sustain the claim See the case of **AYOKE Vs BELLO (1992) 1 NWLR (PT 218) 387.**

In the case of **EJASCO GLOBAL INVESTMENT LTD VS INIM (2015) LPELR** the court of Appeal held that:

“In proceedings brought on the undefended list procedure, the duty of the trial court on the return date is

to evaluate the affidavit evidence and determine if the Defendant who has filed a Notice of intention to defend supported by an affidavit that condescends upon particulars in response to the plaintiff's case. If the trial court is of the view that the defendant has disclosed triable issues, the matter would be transferred to the general cause list for hearing. If no real defence has been disclosed, the matter will be heard on the undefended list and judgment entered in favour of the claimant”.

Also in the case of **AREWA TEXTILES PLC Vs FINETEX LTD (2003) 7 NWLR (PT 819) 322 AT 341 Paras D-9 Per Salami JCA as he then was** held:

“That the Claimant will not be entitled to judgment merely because the defendant abandoned its defence by failing to lead evidence in Support thereof. The Court would only be bound to accept unchallenged, uncontroverted and unrebutted evidence of the Claimant, if it were cogent and credible. The Court would not accept a piece of evidence which is not material and of no probabtive value merely because the only evidence before the Court is that of the Claimant. Even where the evidence is unchallenged and uncontradicted the trial Court has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim”

See the case of **GONZEE (NIG) LTD VS NIGERIAN EDUCATIONAL RESEARCH AND DEVELOPMENT COUNCIL (2005) 13 NWLR (PT. 943)**

I have carefully perused the evidence before me, particularly the Affidavit Evidence and the annexures thereof, On the strength of the legal Authorities cited above

it is my considered legal opinion that the claimant has proved its case against the defendant.

IT IS HEREBY ORDERED THAT THE DEFENDANT SHALL:-

1. Pay the Claimant the sum of N10,810,000.00 (Ten Million, Eight Hundred and Ten Thousand Naira only) which the claimant paid the defendant for the purchase of a property at the defendant's Estate.
2. 10% Interest on the judgment sum from the date of judgment to the date of final liquidation of the judgment sum.
3. No cost is awarded.

Appearances: Parties absent.

David Ashaolu for the Claimant

Abbas Shittu for the defendant

Signed
Hon. Presiding Judge
16th/07/2021

