

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT JABI**  
**THIS 16<sup>TH</sup> DAY OF JULY, 2021**  
**BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA**

**SUIT NO: /CV/492/2021**

**BETWEEN:**

**ZAINAB SAIDU-----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 19<sup>th</sup> February 2021.

**The Claimant's claims the following reliefs:**

**1. AN ORDER MANDATING** the defendant to refund the claimant, the sum of N15,640,000(Fifteen Million, Six Hundred and Forty Thousand Naira ) only in which the claimant paid to the Defendant for the purchase of a property at the Defendant's Estate.

**2 AN ORDER COMPELLING** the Defendant to pay the plaintiff post judgment interest at the rate of 10% of the entire sum per annum from the date of judgment till the entire judgment sum is fully liquidated .

**3 AN FOR SUCH ORDER OR ORDERS** as this honourable court may deem fit to make in the circumstance.

Filed along with the application is a 36 paragraphs affidavit deposed to by Zainab Sa'idu, with Annexures Marked as Exhibits A to Q

1. Exhibit A is a provisional Letter of allocation of Three Bedroom flat (F3023) from Brains & Hammers to Zainab Sa'idu dated 12<sup>th</sup> May 2016.

2. Exhibit B is a payment Reminder of Three bedroom flat from Brains & Hammers to Zainab Sa'idu dated 14<sup>th</sup> January 2021.

3. Exhibit C is a complete payment receipt of the whole money acknowledge by Brains & Hammers dated 13<sup>th</sup> December 2017.

4. Exhibit D is a letter from Brains &Hammers informing the claimant that the work is in progress dated 14<sup>th</sup> of January 2021

5. Exhibit E is a letter from the defendant informed the claimant that the work is about to reach the finishing stage dated 14<sup>th</sup> January 2021

6. Exhibit F is a letter from the defendant acknowledged that the claimant completed the payment of Three bedroom flat dated 14<sup>th</sup> January 2021.
7. Exhibit G is a letter of purchase of Housing Unit at Brains & Hammers informed the claimant the true position of the project dated 15<sup>th</sup> November 2019.
8. Exhibit H is a letter from Brains & Hammers informed the claimant to come and inspect the project dated 22<sup>nd</sup> November 2019
9. Exhibit I are pictures of the project.
10. Exhibit J is a letter informing the claimant of the true position of the project dated 15<sup>th</sup> January 2020.
11. Exhibit K is a letter of Demand for delivery of property three bedroom flat No F3023 Completed apartments within the Brains Hammers city, dated 17<sup>th</sup> July 2020.
12. Exhibit L is an Acknowledged letter of exhibit K above by the Brains & Hammers dated 18<sup>th</sup> September 2020.
13. Exhibit M is a letter of Demand for the full refund of the sum of N15, 640,000(Fifteen Million, Six Hundred and forty thousand Naira only) dated 8<sup>th</sup> December 2020
14. Exhibit N is an acknowledged letter of exhibit M above wherein Brains and Hammers agreed to refund the money within 6 to 8 weeks to the Claimant dated 17<sup>th</sup> December 2020.

15. Exhibit O is a letter stating that the property would be delivered on or before the second quarter of 2021.dated 15<sup>th</sup> December 2020

16. Exhibit P is a reply to the letter of demand dated January 3<sup>rd</sup> 2021 .

17. Exhibit Q are pictures of the Estate, Brains and Hammers.

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 F3023 a 3 bedroom Apartment for the sum of N15,640,000.00.

She 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. She engaged the services 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 22<sup>nd</sup> 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 neither are they represented in court. He urged the court to enter Judgment in favor 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 or a defence on the merit 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 N15, 640,000.00 (Fifteen Million, Six Hundred and Forty 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 Ashaola for the Claimant,  
Defendant is represented by Abbas Shittu.

**Signed**  
**Hon. Presiding Judge**  
**16<sup>th</sup>/07/2021**

