

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI
THIS 28th DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA
SUIT NO: /CV/1413/2021

BETWEEN:

- 1. TAMARENTARE FRANCIS ALI-BOZI----- CLAIMANTS**
- 2. SWEET OKUNDAYE**

AND

PRIMESOIL 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 the 2nd day of July and filed on the same day. The claimant's claim against the defendant for the following reliefs.

- i. **AN ORDER** directing the Defendant to pay to the claimant a liquidated of **N 2,520,000.00** (Two Million, Five Hundred and Twenty Thousand Naira) being money had and receive as payment for the

- purchase of two hectares of Agricultural farmland situate at kwali Local Government, FCT-Abuja.
- ii. The sum of one Million Naira (**1,000,000.00**) being the solicitors fees paid by the Claimants for this suit.
 - iii. Interest at the rate of Ten percent (10%) per annum on the judgment sum and costs from the date of judgment till the date of final payment of the judgment sum and cost.
In support of the application is a 23 paragraphs affidavit deposed to by one tamarntare francis Ah-Bozi the 1st claimant in the suit annexed to the affidavit are Exhibits Ts 1 to Ts 7.

THE FACTS OF THE CASE

The Claimants avers that they were approached by one Miss Uloma Chukwueze and one Mr Olumide both staffs of Aso savings and Loans Plc. That the staff marketed a purported land scheme in Kwali Area Council of the Federal Capital Territory for commercial purposes which scheme was being financed by the said bank on behalf of the defendant. That they raised funds and made payments of (N1,260,000.00) One Million, Two Hundred and Sixty Thousand Naira for each hectares. That they paid for two hectares and were issued a letter acknowledging receipt of payment despite not being issued with any allocation letter

as agreed. That they were later issued a document with the head “*Agricultural Land Development Programme- Bill for provisional Allocation*”. That by the said document, they were requested to pay an additional sum of N109, 260.00 (One Hundred and Nine Thousand Naira) for an additional portion of land which they did not request for. That all efforts to take physical possession of the land they paid for proved abortive. That it will be in the interest of justice to enter judgment in favour of the Claimants.

Annexed to the application are the following Exhibits

1. Exhibit Ts 1 is a copy of flier /Leaflet by Aso savings and loans
2. Exhibit Ts 2 is a letter of issued by Aso savings acknowledging payment of N1,260,000.00 dated July 26, 2016
3. Exhibit Ts 3 is an Agricultural Land Development program Bill for provisional allocation dated 20/04/2018.
4. Exhibit Ts 4 is latter of demand by the claimants to As savings dated 15th June 2020
5. Exhibit Ts 5 is a letter of demand for allocation and handing over of two hectares of farmland dated 26th May 2021
6. Exhibit Ts 6 is a response from the defendant to the letters of the claimants dated 26th May 2021

7. Exhibit Ts 7 is a receipt from the Law firm of Richard Turner & co.

At the hearing on the 13th October 2021, learned counsel to the claimant stated that the defendant has been served with the originating processes and hearing notice. The defendant has not filed any notice of intention to defend or an affidavit on the merit. Learned counsel 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 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)**

On the issue of Solicitor's fees paid by the Claimant's in this suit, It is trite law that the burden of solicitors fee shall not be passed on the other party. The courts have held that "*it is unethical and affront to public policy to pass the burden of solicitors fee to the other party*" See the case of **GUINNESS NIG PLC V EMMANUEL NWOKE(2000) 15 NWLR (pt 688) 135**

The courts have also held that cost which includes solicitors fees if properly pleaded and proved are usually paid. See **BAUDE V SIMON (2014) ALL FWLR (PT 753) C.A 1878**

In the instant suit, the cost of solicitors' fee has not been proved. Prayer number two is hereby refused.

I have carefully perused the evidence before me, particularly the Affidavit Evidence and the annexures thereof On the strength of these 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 Claimants the sum of N2,520,000.00 (Two Million, Five Hundred and Twenty Thousand Naira only) being money had and received as payment for the purchase of two hectares of agricultural farmland situate at Kwali Local Government, FCT Abuja.

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.

Richard Turner for the Claimant

Defendant is absent and not represented by any counsel.

Judgment delivered in open court.

Signed
Hon. Presiding Judge
28th /10/2021

