

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

**SUIT NO: FCT/HC/CV/1054/2021**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**BETWEEN:**

**MRS. BARBARA U. ADUDA.....CLAIMANT**

**AND**

1. ADAMS INDUSTRIAL LIMITED	}	.....DEFENDANTS
2. MUKTHAR MOHAMMED HARUNA		
3. EDET LOUIS ETIM		

## **JUDGMENT**

The claimant took out this writ of summons under the Undefended List Procedure against the defendant, and whereof the claimant claims as follows:

1. The sum of N5,000,000= (Five Million Naira) owned the claimant, being the unpaid balance of the sum of N30,000,000= (Thirty Million Naira) paid by the claimant to the defendants for the failed contract of sale of Plot No. MF28 (New Plot No. 58052, Cadastral Zone B03 Abuja) at the instance of the defendants.
2. The sum of N5,000,000= (Five Million Naira) owned the claimant, being penalty for the breach of the covenant in the contract of sale agreement of Plot No. MF28 (New Plot No. 58052, Cadastral Zone B03, Abuja) at the instance of the defendants.
3. The sum of N575,000= (Five Hundred and Seventy-Five Thousand Naira only) being agency fees paid to the 3<sup>rd</sup> defendant by the claimant for a failed contract of sale of Plot No. MF28 (New Plot No. 58052 Cadastral Zone B03, Abuja) at the instance of the defendants.
4. 10% Post Judgment interest.

The writ is supported by a Thirty-eight paragraphed affidavit deposed to by the claimant. Attached to the affidavit are the following documents:

1. EXH. "A" which is the contract of sale between Adams Industrial Enterprises Limited and the plaintiff dated the 22<sup>nd</sup> day of June, 2020;
2. EXH. "B" which is the receipt of payment issued by the 1<sup>st</sup> defendant dated the 26<sup>th</sup> June, 2020;
3. EXH. "B2" which is the receipt of payment of the sum of N5,000,000= (Five Million Naira only) issued by the 1<sup>st</sup> defendant to the plaintiff dated the 21<sup>st</sup> July, 2020;
4. EXH. "B3" which is another receipt of payment in the sum of N2,000,000= (Two Million Naira only) issued by the 1<sup>st</sup> defendant to the plaintiff dated the 30<sup>th</sup> July, 2020;
5. EXH. "B4" which is another receipt of payment of the sum of N3,000,000= (Three Million Naira only) issued by the 1<sup>st</sup> defendant to the plaintiff dated 2<sup>nd</sup> day of September, 2020; dated 9<sup>th</sup> March, 2021;
6. EXH. "B5" which a receipt of payment of the sum of N3,000,000= (Three Million Naira only) issued by the 1<sup>st</sup> defendant to the plaintiff dated the 28<sup>th</sup> day of October, 2020;
7. EXH. "B6" which is a transaction receipt of Access Bank sent by Aduda Tanimu Aduda to Haruna Mukhatar Mohammed dated the 7<sup>th</sup> February, 2021, in the sum of N1,000,000=;
8. EXH. "B7" which is transaction receipt of Access Bank in the sum of N1,000,000 = (One Million Naira) sent by Aduda Tanimu Aduda to Haruna Mukhatar Mohammed;
9. EXH. "C" is a whatsapp message;

10. EXH. "D1" which is the photograph indicating a video of the weakened pillar on the ground floor;
11. EXH. "D2" is the photocopy of the photograph;
12. EXH. "E1" is a transaction receipt of Guaranty Trust Bank dated 9<sup>th</sup> March, 2021 in the sum of N5,000,000= (Five Million Naira) by Haruna Mukhtar Mohammed to Aduda Tanimu Aduda;
13. EXH. "E2" which is a transaction receipt dated the 10<sup>th</sup> March, 2021 in the sum of N10,000,000= (Ten Million Naira) sent by Haruna Mukhtar Mohammed to Aduda Tanimu Aduda;
14. EXH. "E3" which is a transaction receipt of Guaranty Trust Bank dated the 11<sup>th</sup> March, 2021 in the sum of N10,000,000 = (Ten Million Naira) sent by Haruna Mukhtar Mohammed to Aduda Tanimu Aduda;
15. EXH. "F" which a debit alert dated 29<sup>th</sup> March, 2021 showing the transfer of N575,000= (Five Hundred and Seventy-Five Thousand Naira) dated the 22<sup>nd</sup> June, 2020;
16. EXH. "G" which is a letter written to the M.D of the 1<sup>st</sup> defendant by the solicitor to the plaintiff;
17. EXH. "G1" which is a letter dated 19<sup>th</sup> April, 2021 by the solicitor to the 1<sup>st</sup> defendant to the solicitor of the plaintiff;
18. EXH. "H" which is a whatsapp message.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed their Notice of their Intention to Defend dated the 6<sup>th</sup> day of April, 2021 which is supported by Thirty-Five paragraphed affidavit, and attached to the affidavit are the following documents:

1. A Photostat copy of the ground floor, first floor, second floor;
2. Whatsapp messages dated the 8<sup>th</sup> March, 2021;

3. A letter addressed to the chairman of the 1<sup>st</sup> defendant by the solicitor of the plaintiff.

It is in the affidavit of the claimant that the 1<sup>st</sup> defendant is a limited liability company registered under CAMA and carrying on property business within the jurisdiction of this court. that the 2<sup>nd</sup> defendant is the company's alter ego while the 3<sup>rd</sup> defendant is an agent of the 1<sup>st</sup> and 2<sup>nd</sup> defendants who brokered the failed transaction for the contract of sale of Plot No. MF28 (New Plot No. 58052, Cadastral Zone B03, Abuja). That the claimant entered into a contract of sale for purchase plot No. MF28 (New Plot No. 58052, Cadastral Zone B03, Abuja) on the 22<sup>nd</sup> of June, 2020 with the 1<sup>st</sup> and 2<sup>nd</sup> defendants for the sum of N45, 000,000 = only. That she paid the sum of N30,000,000 = (Thirty Million Naira only) by installment directly to the 2<sup>nd</sup> defendant's account through bank transfers using her husband's account which the 2<sup>nd</sup> defendant duly acknowledged. The receipts of the sum of N28, 000,000 = (Twenty-Eight Million Naira) are attached to the affidavit.

It is stated that the 2<sup>nd</sup> defendant orally acknowledged the receipt of the sum of N1, 000,000 = (One Million Naira) that was transferred to his account on the 7<sup>th</sup> of February, 2021, and another One Million Naira transferred to him on the 8<sup>th</sup> February, 2021 both of which were not acknowledged by the 2<sup>nd</sup> defendant.

The deponent stated that the 2<sup>nd</sup> defendant acknowledged the last payments when he had already sold the house to an unknown person and was looking for a reason to terminate EXH. "A".

The claimant stated that it was provided in the contract of sale that the remaining balance of the purchase shall be paid and or completed not later than 20<sup>th</sup> of January, 2021, and also that the claimant would be

entitled to additional four months period of grace with effect from 20<sup>th</sup> January, 2021 within which period she will conclude the entire payment or transaction and as such, she has up to 20<sup>th</sup> of May, 2021 to complete the purchase price for the house. That the contract provides that any party in default of the terms and conditions contained in the contract of sales shall pay a default penalty fee of N5,000,000 = (Five Million Naira).

It is stated that before the expiration of the period of grace of four months given to her to complete the entire purchase price and acquire the house, the defendants orally and unilaterally terminated the contract of sale and refunded to her the sum of N25,000,000 = out of the N30,000,000 = that she paid to them. That the claimant requested for a written notice terminating the contract of sale from the defendant for her to know the reasons for terminating the contract of sales but none was given to her.

It is deposed to the fact that in the course of her relationship with the defendants, she sought and was given the keys of the house to reconstruct the weak pillar in the house which the 2<sup>nd</sup> and 3<sup>rd</sup> defendants supervised its progress. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants then promised to refund the money she spent which was about N180,000.00 (One Hundred and Eighty Thousand Naira), but later became furious that her husband has damaged his house when he made up his mind to terminate the contract and had already sold the house to an unknown person. It is stated further that on the 22<sup>nd</sup> June, 2020, the claimant paid part of the agency fees of N575,000 = to the 3<sup>rd</sup> defendant.

It is stated that the claimant engaged the services of a lawyer, Damian T. Tor Esq of Christus Imperat Attorneys to arbitrate with the possibility of resolving the matter with the defendants amicably since they have refused to see and

respond to her text messages and even pick her and her husband's calls. That following the above, a letter of demand was written by her lawyers to the defendants, asking for full refund of her money and the sum of N5,000,000 = for a breach of contract of sales but the defendants in their response to her lawyer purported that she is the one that terminated EXH. "A", the contract of sale. That the defendant's agent through whatsapp message to her phone in an intimidating manner asked her to concede and accept only N25,000,000 = from the defendants because the 2<sup>nd</sup> defendant is a Fulani man that has connections and that any judge will rule in his favour.

The claimant re-iterated categorically that the defendants are indebted to her in the sum of N5,000,000 = as unpaid balance of the N30,000,000 = advanced for the purchase of the house; N5,000,000 = as penalty for a breach of contract of sales and N575,000 = paid as agency fees for a failed contract. That the defendants do not have defence of her claims and are unwilling to pay this debt except it is commanded by an order of this court.

It is in the counter affidavit that contrary to the misrepresentation and half-truth contained in the claimant's affidavit in support of the writ, the true position of the facts and circumstances is that the 1<sup>st</sup> defendant is the beneficial owner of plot No. MF28, Cadastral Zone BO3, Wuye, Abuja by virtue of Offer of terms of Grand/Conveyance of Approval dated the 15<sup>th</sup> November, 1993 and sequel to this, the 1<sup>st</sup> defendant has erected and completed the development of 15 units of four bedroom terrace duplexes on two suspended floors on the said plot. He said that before commencing development, he applied for and obtained all the necessary building approvals for the said development from the relevant authorities.

It is stated that contrary to the claimant's allegation, he did not know the 3<sup>rd</sup> defendant prior to their transaction leading to this suit and newly meet him when he introduced himself as the agent of the claimant and in all circumstances of this case, the 3<sup>rd</sup> defendant who indicated to him that he has a client that is interested in one of the units on the property and then brought the claimant for as-site inspection. She then indicated that she was interested in House 14.

It is stated that although the contract of sale gave the claimant the latitude to pay the agreed sum of N45,000,000.00 in installments up to 20<sup>th</sup> January, 2021 and an extended four months of grace, the documents of title and possession was to be given to the claimant only after the full payment of the agreed sum of N30,000,000= despite the agreement stipulated that she was to pay up to the total sum by 20<sup>th</sup> January 2021.

The deponent stated that shortly after the claimant made the N30m payment, she went into the premises and broke down the wall separating the kitchen from the dining area in the ground floor, the wall separating the master bedroom from the toilet and bathroom on the 1<sup>st</sup> and 2<sup>nd</sup> floors together with the tiles and altering the structure of the property without notifying or obtaining consent from him. He stated that he said as at the time the claimant broke the walls, the toilet on the first and second floors were already tiled and furnished with all the necessary fittings and fixtures and the claimant removed all the floor and wall tiles in the toilets in the master bedrooms in the first and second floor while breaking down the walls.

The 2<sup>nd</sup> defendant stated that his attention was brought to the destruction of the property in issue when the claimant reported to him that there was a weakened pillar in the

building which was surprising to him as there was none when both he and the claimant were inspecting the property before they decided to buy it. That it was when he got there that he found that the weakened pillar was as a result of the wall she had broken down without his consent.

It is stated that he was furious and apprehensive because the damage done to one of the supporting pillars had put the lives of the occupants of House 15, the adjoining house in jeopardy and the damage could lead to a collapse of the building and it would be blamed on the developer as evidence of poor quality at work. That as at the time the claimant entered into the property to carry out the work she did, she did so without consent and without paying fully for the property.

The defendant stated further that he ordered the workers on the site to stop work immediately and instructed the engineer who handled the development to immediately correct and re-instate the property to its original state prior to the damage while he bore the cost of the repairs contrary to the claimant's claim. He then spoke with the claimant and her husband, and her husband in turn sent a text message from his phone apologising for not seeking his permission before breaking down the walls in the property. Despite the apology however, the claimant was said to have insisted on wanted to continue with the allocation of the property which she refused on account of the implication and danger the alteration would cause not just to the house in issue but to the adjoining property; House 15.

That it was an account of this dispute and his insistence that the property has to be maintained in accordance with the approved building plan and design that the claimant elected to terminate the agreement and instructed her



agent to terminate the agreement and request for a refund of her money.

It is the contention of the 2<sup>nd</sup> defendant that the claimant through the 3<sup>rd</sup> defendant, her agent, sent a letter of termination of contract dated the 9<sup>th</sup> of March, 2021 where it was stated clearly that the claimant has accepted to collect N25,000,000.00 less N5,000,000.00 penalty fee as stated in the agreement and it was on that basis that he refunded the sum of N25,000,000 to the claimant by transferring the said sum into an account provided by her agent. That having indicated to forfeit N5,000,000= as penalty in accordance with the sales agreement, she did not further assert or insist on the cost of restating the property to the state it was prior to the damage done by her but the re-instatement of the property to the stage it was prior to the damage. He further stated that he has both a defence and a counter claim against the claimant in this suit and to the best of his knowledge. It will be in the interest of justice to transfer the suit to the general cause list to enable a full trial of the case.

Thus, the purport of the procedure under Undefended List Procedure is to enable the plaintiff obtain summary judgment without trial where the case is patently clear and unassailable, and it is not designed to shut out a defendant who can show that there is a triable issue. See the case of **Amede V. UBA Plc (2018) All FWLR (pt 936) p. 1572 at 1583, paras. A – B.**

The claimant in this suit claims the reliefs arose from contract of sale of a building known as plot with No. MF28, Cadastral Zone BO3, Wuye, Abuja in which an agreement was entered between the plaintiff and the 1<sup>st</sup> defendant. The purchase price was in the sum of N45,000,000.00 (Forty-Five Million Naira) only, and it is in this agreement that the

said money would be paid instalmentally and would also be fully paid not later than 20<sup>th</sup> January, 2021.

It is in the affidavit that the plaintiff has paid the sum of N30,000,000.00 (Thirty Million Naira) leaving the outstanding balance of N15,000,000.00 (Fifteen Million Naira) only. That there is a clause in the agreement that any party to the contract who is in default of the terms and conditions shall pay a default fee of N5,000,000.00 (Five Million Naira) only.

The plaintiff in her affidavit alleged that before the expiration of the grace of four months to complete the payment of the entire purchase price, the defendants orally and unilaterally terminated the contract of sale and the defendants refunded the sum of N25,000,000.00 (Twenty-Five Million Naira only), and she requested for a written notice terminating the contract of sale from the 3<sup>rd</sup> defendant for her to know the reasons for termination of the contract.

The plaintiff in her affidavit also averred that she sought for the key to the building and was given with a view for her to construct a weakened pillar, in which the 2<sup>nd</sup> and 3<sup>rd</sup> defendants supervised the construction of the weak pillar and even the 2<sup>nd</sup> defendant promised to refund the money in the sum of N180,000.00 which was spent but later the defendant became furious that her husband has damaged his house, and he made up his mind to terminate the contract.

It is in the affidavit that the defendants, instead of N5,000,000 =, and also the sum of N5,000,000.00 for the breach of the contract sale, but refused and neglected to pay.

The plaintiff therefore claimed that the defendant is indebted to her in the sum of N5,000,000 = as unpaid

balance out N30,000,000 = paid, and also another N5,000,000 = as penalty for the breach of the contract.

The plaintiff also claimed the sum of N575,000 = as agency fee for the failed contract.

The defendant in the affidavit accompanying the notice of intention to defend raised these issues:

- a. That the plaintiff broke down the walls separating the kitchen from dining area on the ground floor, the wall separating the master bedroom from the toilet and bathroom on the 1<sup>st</sup> and 2<sup>nd</sup> floors together with the tiles and altering the structure of the property, and this is without his consent;
- b. That the 3<sup>rd</sup> defendant acted as the agent of the plaintiff with respect to the transaction as her commissioned agent and not that of his;
- c. That it was the plaintiff through the 3<sup>rd</sup> defendant who is her agent that terminated the contract and in which the sum of N25,000,000 = was paid and the balance of N5,000,000.00 retained is the penalty fee pursuant to the agreement between the parties.

It is stated that the defendant is desirous of recovering the cost of the re-instatement of the property from the plaintiff by way of special damages.

Now, whether the defendant has made out a defence on the merit to warrant the transfer of this suit to the general cause list?

What the case or the dispute between the two parties are:

- a. Whether the agreement subsists with regards to payment of penalty in the sum of N5,000,000 = having regard to the termination of the agreement by the 3<sup>rd</sup> defendant on behalf of the plaintiff?

- b. Whether or not the 3<sup>rd</sup> defendant is the agent of the plaintiff?
- c. Whether the sum of N575,000= is claimable by the plaintiff from the defendants?

It was held by the Supreme Court in the case of **Amede V. UBA Plc (supra)** that for a claim to be transferred to the general cause list under the undefended list procedure, the defendant must satisfy the court that he had raised triable issues or a defence on the merit or that he has created a doubt in the mind of the judge about the genuineness of the plaintiff's claim. In the instant case, the defendant raised that about outlined issues. See the case of **Uzor V. Daewoo Nig. Ltd (2020) All FWLR (pt 1031) p. 390 at 400, paras. D-E** where the Supreme Court held that the law ascribes the duty to show cause to the defendant under the undefended list procedure, by disclosing that he has a reasonable defence on the merit for the suit to be transferred to the general cause list where a defendant shows that he has a defence or reasonable grounds for setting up a defence, the suit will be transferred to the general cause list to allow the defendant to file defence to the suit. It is immaterial whether or not the defence will succeed, as all the defendants is required to do is depose to facts to support a prima facie defence on the merit. The law does not require a complete defence in showing cause, but a triable issue to allow the suit to proceed to trial. In the instant case, for the fact that the defendant has raised some issues as outlined above which need to be investigated, I am convinced that the defendant has raised some issues that are triable. To my mind, there is a dispute as to the facts which ought to be tried, and there is also a dispute as to the amount due which requires the taking of evidence to determine. See the case of **Ugwu V. Emenogba**

**(2009) All FWLR (pt 499) p. 498 at pp. 507-508, paras. H-B** to the effect that where a defendant can show in his affidavit that he has a defence on the merit, he will be granted leave to defend the suit.

In the circumstances of this, I am inclined to transfer the list from the Undefended List to the general cause list, and same is transferred to the general cause list, and the leave is given to the 1<sup>st</sup> defendant to defend itself accordingly.

Hon. Judge

Signed

14/1/2022

Appearances:

Damian Tor Esq appeared for the claimant.

F.S. Jimba Esq appeared for the 1<sup>st</sup> and 2<sup>nd</sup> defendants.