

IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON THE 27TH DAY OF JANUARY 2022
SUIT NO. FCT/HC/CV/491/21

BEFORE HIS LORDSHIP:
HONOURABLE JUSTICE JUDE O. ONWUEGBUZIE - JUDGE

BETWEEN:

NNEKA BENEDICTA ONWUSOR -----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 N9, 400,000.00 (Nine Million Four Hundred Thousand Naira) only 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 to 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 circumstances.

Attached to the application is a 34 paragraphs affidavit with annexures marked as exhibits “A to N”.

1. Exhibit “A” is A Newsletter specifying the details of the different buildings available and a table specifying that there were 9-months and 24-months payment plans available to subscribers.
2. Exhibit “B” is a provisional Letter of allocation of a two bedroom flat (F2021) at the Brains & Hammers affordable Homes, life Camp. Abuja dated 12th May 2016.
3. Exhibit C is a Payment Reminder on the Two bedroom apartment at Brains & Hammers City Life-Camp-Abuja
4. Exhibit D is a payment receipt of money into the account of Brains and Hammer Estate. Brains & Hammers city Abuja in respect of House (F2021) dated 7th day of June, 2017.
5. Exhibit E is a Letter printout from the email address by the Claimant from the Defendant statin that the work is progressing and it is about to reach the finishing stage dated Nov. 1, 2018.
6. Exhibit F is a letter of invitation to inspect unit and progress of work at Brains & Hammers city Life-camp Abuja. Dated 29th November, 2019.
7. Exhibit G are Pictures of this uncompleted building at Brains & Hammers city Life-camp Abuja.

8. Exhibit H is a letter of demand for the delivery of property known as F2021 at Brains & Hammers city Life camp Abuja. Dated the 17th day of July, 2020.
9. Exhibit I is Brains & Hammer's reply to the letter of demand dated the 18th September, 2020.
10. Exhibit J is a letter of demand for the full refund of the sum of N9, 400,000.00 (Nine Million Four Hundred Naira) only. Dated December, 8th 2020.
11. Exhibit K is a letter of demand dated the 17th December, 2020.
12. Exhibit L is a reply by Brains & Hammer to the letter of demand, dated the 13th day of December, 2020.
13. Exhibit M is a letter of demand for the full refund of the sum of N9, 400,000.00 (Nine Million Four Hundred Naira) only. Dated 3rd January, 2021
14. Exhibit N are pictures of fully completed 1-bedroom apartments in the estate.

The Claimant avers that she was given a provisional letter of Allocation which contained terms and conditions and that in the letter of Allocation she was offered House F2021 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, leaned counsel to the Claimant stated that the matter is brought under the undefended list procedure and that the Defendant has been served with the originating process and hearing notice informing them that the matter is slated for hearing, he argued that the defendant has 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 raise a lone issue for determination to wit:

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

For the purpose of clarity, I deem it fit to reproduce order 35 Rule 4 of the Civil Procedure Rule of the FCT High Court 2018 which states:

Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by 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 and many adjournments with several hearing notices on them to see if they could appear or at least file something. 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 under 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 infavour 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 probative value merely because the only evidence before the court is that of the claimant. Even where the evidence is unchallenged and

contradicted 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 exhibits attached 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. And I so hold.

It is hereby ordered that the defendant shall:-

1. Pay the Claimant the sum of N9, 400,000.00 (Nine Million Four Hundred 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.

Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. David Ashaolu with Gloria Apeli for the Claimant.
2. No appearance for the Defendant.