

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 17th FEBRUARY, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: FCT/HC/CV/1375/2021

BETWEEN:

IBRAHIM GARBA ----- CLAIMANT

AND

1.MILKLAND HOMES LTD

2.KHALID BALA ISA

3.KHADIJAT KHALID

4.AMINA KHALID SHEHU

-----DEFENDANTS

JUDGMENT

This is a matter commenced by a writ of summons under the undefended list procedure dated 30th June 2021 and filed on the first of July 2021. The suit is brought pursuant to order 35 of the high court civil procedure Rules of the federal Capital Territory Abuja 2018. Wherein the claimant claims against the defendants as follows:

1. An award of the sum of N16,200,000.00(sixteen million, Two Hundred thousand Naira Only)only being liquidated money demand the defendant owe the claimant for purchase **four Bedroom Terrace Duplex** known and described as **Block C 3 Flat 3 at Marcus Poli Estate, Abuja, FCT.**

2. **An award of 10%** interest per annum on the judgment sum from the date of judgment till same is fully liquidated.

In support of the writ of summons is a 16 paragraphs affidavit deposed to by one Ibrahim Garba the claimant this suit and Exhibits A,B,B1,B2,C,C1,D,E,F,G,H,and H1 respectively.

The claimant avers that sometimes in November 12th 2019, he entered into a contract with the defendants for purchase of four Bedrooms Terrace Duplex at Marcus Poli Estate Abuja FCT known and described as Block C3 Flat 3. That vide a letter of allocation for the purchase of four Bedroom Terrace Duplex the Defendant agreed to sell Black C3 Flat 3 at the Marcus Poli Estate Abuja for the sum of N45,000,000.00(Forty Five Million Naira)only when duly completed. That upon the condition that the claimant should pay initial sum of N15, 000, 000, 00 (Fifteen Million Naira) to enable the Defendants complete the building which was at carcass level as at the time of payment. The claimant avers that he made the payment of the sum of N15,000,000.00 to the defendants. That apart from the sum of N15,000,000.00 the defendants demanded that he pay the sum of N1,700,000.00 (One Million Seven Hundred Thousand Naira Only) for infrastructure and perimeter fence fees for the said Block C3 Flat 3 at Marcus Poli Estate. The claimant avers that he paid the sum of N1, 200,000.00 (One Million Two Hundred Thousand Naira) Only for the infrastructure and perimeter fence fees making a total sum of N16,200,000.00 (Sixteen Million Two Hundred Thousand Naira Only). The claimant avers that after some months the Defendants engaged him in endless promises to pay back the claimant's money without honouring the promises of

selling the building to the claimant, that the defendants have sold the building to another buyer and they do not want to pay the N16, 200,000.00 (Sixteen Million Two Hundred Thousand Naira Only) they received from the claimant who engaged his solicitor to make a demand of the said monies from the defendants. That the defendants failed to pay back the monies despite the letter of demand served on them.

The following are the list of Exhibits annexed in support of the application.

1. Exhibit A is an allocation letter dated 12/11/2019
2. Exhibits B,B1 and B2 are photographs of the said Block C3 Flat 3
3. Exhibit C is an acknowledgment letter for the payment of N15,000,000.00 (Fifteen Million Naira) dated 16/9/2020
4. Exhibit C1 is a payment receipt dated 26/10/2020
5. Exhibit D is a letter of request for payment for infrastructure dated 23/10/2020
6. Exhibit E and F are receipt of payment for the infrastructure and perimeter fence dated 26/10/2020
7. Exhibit G is demand letter dated 10/05/2021
8. Exhibit H and H1 are print out copy of whatsapp messages

Upon service of the writ of summons and other accompanying processes on the defendant, the defendant filed a Memorandum of Appearance dated 29th November 2021, and no other processes was filed along the Memorandum of Appearance, no notice of intention to defend or an affidavit disclosing a defence on the merit.

At the hearing on the 1st day of December 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 other than a memorandum of Appearance. 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:

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 ParasD-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.

Consequently, **it is hereby ordered as follows:**

1. The defendant is hereby ordered to pay the Claimant the sum of N16,200,000.00(sixteen million, Two Hundred thousand Naira Only)only being liquidated money demand the defendant owe the claimant for the purchase of four Bedroom Terrace Duplex known and described as Block C 3 Flat 3 at Marcus Poli Estate, Abuja, FCT.
2. 10% interest per annum on the judgment sum from the date of judgment till same is fully liquidated.
3. No cost is awarded.

Appearances:

Parties absent

Prosper Udeagha for the Claimant holden brief for Celestine Nwaogu

Defendant is absent, not represented by any counsel.
Judgment is read in open court.

Signed
Presiding Hon Judge
17/02/2022