

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON THURSDAY, 5TH DAY OF MAY, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2939/2020

BETWEEN

ELION HOMES AND PROPERTIES LIMITED --- CLAIMANT

AND

KYC INTERPROJECT LIMITED --- DEFENDANT

JUDGMENT

The claimant filed this suit on 16/10/2020 in the Undefended List. The claims of the claimant against the defendant are:

1. The sum of N37,000,000.00 being the outstanding sum owed the claimant by the defendant for the piece of land measuring 40,925.51 SQM located at Sabon Lugbe East Extension, Airport Road, Lugbe, FCT-Abuja.
2. An order that the sum of N37,000,000.00 being the outstanding sum owed and due to the claimant by the defendant be paid forthwith into

the LAW SECTOR & PARTNERS Corporate/Client's Account with Guaranty Trust Bank [GT Bank] account number 0119362030.

3. And for such further order[s] that the Court may deem just to make in this circumstance.

Precious Amadi, a secretary in the claimant's company, filed a 31-paragraph affidavit in support of the claim. On 1/3/2021, the defendant filed a notice of intention to defend the suit together with the 4-paragraph affidavit deposed to by James Onoja, a legal practitioner in the law firm of J. O. Okoko & Co., counsel to the defendant. At the hearing of the suit in the undefended list on 9/2/2022, Babatunde Adewusi Esq. adopted the claimant's processes while James Onoja Esq. adopted the defendant's processes.

In her affidavit, Precious Amadi deposed to the following facts:

1. There was a dispute regarding the ownership of the land measuring 40,925.51 square metres located at Sabon Lugbe East Extension, Airport Road, Lugbe, FCT, Abuja between the claimant and the defendant.
2. The dispute was submitted to the Nigeria Police station, FCT Command Abuja for investigation. In the course of investigation, the Police advised the parties to explore amicable settlement.
3. The parties resolved the matter amicably. The claimant agreed with the defendant to divide the disputed land into 2 equal portions

i.e.20,462.755 square metres for each party. This was done vide a Settlement of Dispute Agreement dated 14/8/2019 [Exhibit A] executed by the claimant's representatives and the defendant's representatives.

4. The claimant also withdrew his criminal complaint against the defendant via a letter dated 22/8/2019 [Exhibit B] addressed to the Commissioner of Police, Abuja.
5. After the land was divided into 2 equal halves, the defendant through its executive managing director/representative, Mr. Michael AutaAyuba, declared the intention to acquire the portion of the claimant being 20,462.755 square metres and offered to pay the sum of N45,000,000 in two instalments of N25,000,000 and N20,000,000.
6. The claimant accepted the offer and drew up a Contract of Sale Agreement [Exhibit C] which was executed by both the claimant's representatives and defendant's representatives on 14/8/2019.
7. By the said Agreement, the defendant was supposed to pay the claimant the sum of N25,000,000 immediately upon signing the agreement and pay the balance of N20,000,000 before the expiration of 3 month from the date of the execution of the Contract of Sale Agreement [i.e. 14/8/2019].
8. The defendant immediately moved into the property, cleared same, lodged building blocks on it and began selling to third parties without fulfilling his contractual obligation to the claimant.

9. The defendant only paid the sum of N8,000,000 out of the initial first deposit of N25,000,000 contrary to the terms of the Contract of Sale Agreement. Claimant made several requests through phone calls to Mr. Michael AutaAyuba to pay up what is owed but the defendant failed, refused and neglected to accede to the claimant's request. Mr. Michael AutaAyuba stopped picking the claimant's phone calls.
10. The claimant is willing and ready to hand over all the title documents of the land to the defendant as soon as the money owed is paid in line with the Contract of Sale Agreement.
11. The claimant's solicitors, Babatunde Adewusi Esq. of Law Sector & Partners, wrote a letter of demand dated 29/8/2019 [Exhibit D] to the defendant. The defendant wrote a reply dated 30/8/2019 [Exhibit D1] to the claimant's solicitors.
12. After more than 7 months, the defendant has failed, refused and/or neglected to abide by its promise to pay to the claimant the said outstanding sum of N37,000,000 despite repeated demands. Claimant's solicitors issued a final demand notice dated 19/3/2020 [Exhibit F] to the defendant for the sum of N37,000,000.

In the counter affidavit, Barrister James Onoja stated the following facts based on the information he received from Engineer Michael AyubaAuta, the group managing director of the defendant, on 28/2/2021, which he verily believed to be true:

1. There was never a time when the defendant and the claimant agreed to divide the land in dispute in this suit in two equal halves of 20,462.755 square metres. The defendant never authorized anybody to sign Exhibit A attached to the claimant's affidavit on its behalf. The said Exhibit A did not state the name of the defendant's representatives.
2. Defendant was not aware whether the claimant lodged a complaint against it with the Police and whether it withdrew the said complaint.
3. The defendant admits that it paid the claimant the sum of N8,000,000.
4. The claimant ought to hand over to the defendant the title documents relating to the land as the defendant has paid the claimant in full for the land and is not owing the claimant any outstanding sum.
5. The defendant has a defence to the suit as it is not indebted to the claimant.

The position of the law is that where the defendant files a notice of intention to defend and an affidavit in a suit under the undefended list procedure, the duty of the court is to examine the affidavits of the parties to determine whether the defendant's affidavit has raised a triable issue or a defence on the merit. In **U.B.A. Plc. v Jargaba**[2007] 11 NWLR [Pt. 1045] 247, it was held that the decision as to whether or not a defence under the undefended list procedure discloses a triable issue does not depend so much on the discretion of the court. Rather, it involves the evaluation of the affidavit evidence before

the court to determine whether or not a triable issue has been made out by the defence.

Where the defendant's affidavit has raised a defence on the merit or a triable issue, the court will grant him leave to defend the suit and transfer the matter from the undefended list to the general cause list for plenary trial. Where, however, the defendant's affidavit did not raise a triable issue or a defence on the merit, the court may proceed to enter judgment in favour of the claimant. See Order 35 rules 3 & 4 of the Rules of the Court, 2018.

In Skyye Bank v. Giwa [2017] LPELR-43358 [CA], it was held that in a matter under the undefended list, a triable issue is said to be raised when it precludes the court from entering judgment after considering the affidavit in support of the notice of intention to defend the suit.

As to what constitutes a "triable issue" or defence on the merit, it was held in Frank Muobuke v. Nwigwe (2000) 1 NWLR (Pt. 642), 620 that a triable issue is an uncontroverted material allegation contained in the affidavit in support of notice of intention to defend an action filed in the undefended list. Such material allegation requires further investigation by the court to unearth the veracity or otherwise of the same. Such must portray a strong defence which cannot and should not be given a wave of the back-hand. See also Government of Gombe State & Anor. v. Saleh [2017] LPELR-43142 [CA].

Also, in the case of Obitudev.Onyesom Community Bank Ltd.[2014] 9 NWLR [Pt. 1472]352, it was held that a defendant's affidavit in support of notice of intention to defend raises a triable issue where the affidavit is such that the plaintiff will be required to explain certain matters with regard to his claim or where the affidavit throws a doubt on the plaintiff's claim.

The claimant's claim is predicated on Settlement Agreement dated 14/8/2019 [Exhibit A] and the Contract of Sale Agreement also dated 14/8/2019 [Exhibit C] executed by the parties. Both Exhibits A & C stated the fact that the parties had a dispute over the ownership of land measuring 40,925.51 square metres located at Sabon LugbeEast Extension, Lugbe, Abuja and the fact that in an amicable settlement of the dispute, the parties agreed to divide the disputed land into 2 equal parts with the result that each of them will have 20,462.755 square metres.

By the Contract of Sale Agreement [Exhibit C], the claimant [as vendor] agreed to sell its portion of the land measuring 20,462.755 to the defendant [as purchaser] for the sum of N45,000,000. As stated in clause 5 of Exhibit C, the parties agreed that the sum of N45,000,000 shall be paid in 2 instalments of N25,000,000 *"to be paid at the time of executing this contract of sale agreement"* and N20,000,000 to be paid *"within Three Months after the payment of the 1st tranche of payment."* The claimant's case is that the defendant has moved into the said property and has only paid N8,000,000 leaving a balance of N37,000,000.

In paragraph 3[iii] of the defendant's affidavit, paragraphs 4, 5 & 6 of the claimant's affidavit were admitted. These paragraphs stated that: [i] there was a dispute between the parties over the ownership of the said land at Sabon Lugbe East Extension, Lugbe, Abuja measuring 40,925.51 square metres; [ii] the dispute was submitted to the Police for investigation; and [iii] in the course of investigation, the Police advised the parties to explore amicable settlement.

In paragraph 3[v] & [vii] of the counter affidavit, it was deposed that there was never a time the defendant and the claimant agreed to divide the land in dispute into 2 equal halves of 20,462.755 square metres; and that it did not authorize anybody to sign Exhibit A [i.e. the Settlement Agreement] as Exhibit A did not state the names of the defendant's representatives. In paragraph 3[x] thereof, the defendant admitted that it paid N8,000,000 to the claimant and in paragraph 3[xiii], the defendant stated that it *"has paid the claimant in full for the land and is not owing the claimant any outstanding sum in respect of the same."*

It is noteworthy that the defendant denied that there was an agreement for the disputed land to be shared between it and the claimant in equal halves and denied knowledge of the Settlement Agreement. However, the defendant stated that it has paid the claimant in full for the land. The defendant did not disclose the land in respect of which it paid N8,000,000,000 to the claimant.

I now turn to the Contract of Sale Agreement dated 14/8/2019 [Exhibit C] on which the claimant's claim of N37,000,000 is based. In paragraphs 10 & 11 of the claimant's affidavit, Precious Amadi stated:

10. *After the land was divided into two equal halves, the defendant through its executive managing director/representative, Mr. Michael AutaAyuba, declared the intention to acquire the portion of the claimant being the 50% of the disputed property [being 20,462.755 SQM] as well as offered to pay the sum of N45,000,000 [...] only in two instalments of 25 million Naira and 20 million Naira respectively.*
11. *The claimant accepted the offer and drew up a contract of sale agreement which was executed by both the claimant's and defendant's representatives on the 14th of August, 2019. A copy of the Contract of Sale Agreement dated the 14th day of August is hereby attached and marked Exhibit C.*

What was the defendant's response to the above depositions? In paragraph 3[ix] of the counter affidavit, the defendant stated thus:

That the defendant denies paragraphs 10-14 of the claimant's affidavit in support of its Writ of Summons for judgment under the Undefended List Procedure and puts the claimant to the strictest proof of the same.

The position of the law is that a general traverse is no traverse and the effect is that the defendant admits the facts stated therein. See **Zenith Bank v.**

Okeke [2020] LPELR-50798 [CA]. Put differently, a general traverse is insufficient to meet an important and specific allegation or fact. See the case of P.D.Hallmark Contractors [Nig.] Ltd. & Anor. v. Gomwalk [2015] LPELR-24462 [CA]. So, the deposition in paragraph 3[ix] of the counter affidavit is not a denial of the fact that the parties executed a Contract of Sale Agreement [Exhibit C] in respect of the claimant's half of the disputed land measuring 20,462.755 square metres for the purchase price of N45,000,000.

The claimant's solicitor's letter dated 29/8/2019 [Exhibit D] demanded from the defendant the payment of the sum of N25,000,000, which was the first instalment of the purchase price for the land. In the defendant's reply dated 30/8/2019 [Exhibit D1], it did not dispute the existence of the Contract of Sale Agreement and its obligation to pay the purchase price. The defendant only pointed out that it had paid N8,000,000 to the claimant.

In the light of the evaluation of the affidavit evidence of the parties, can it be said that the defendant has raised a triable issue or a defence on the merit to warrant the transfer of this suit from the undefended list to the general cause list for plenary trial?

In U.B.A. Plc. v Jargaba [supra], it was held that a defendant's affidavit must condescend upon particulars and should, as far as possible, deal specifically with the plaintiff's claim and affidavit and state clearly and concisely what the defence is. A mere denial of the plaintiff's claim, or of liability of

indebtedness to the plaintiff, or a vague allegation of fraud against the plaintiff, without more, is devoid of evidential value and does not suffice as facts which will, at least, throw doubt on the plaintiff's claim. For a case to be transferred from the undefended list to the general cause list, there must be a defence on the merit. The defence must not be half-hearted defence or a flimsy, fanciful, sham, frivolous or caricature defence raised to prolong the case or play for time.

In the instant case, the depositions in the defendant's affidavit are mere denials of the facts on which the claimant's claim is founded. Incidentally, the facts denied have earlier been admitted by the defendant in its letter dated 30/8/2019, Exhibit D1. The Court holds the considered opinion that the defence which the defendant tried to put forward in its affidavit in support of the notice of intention to defend the suit is not a defence on the merit and has not raised any triable issue. The defence is a sham, frivolous or caricature defence raised to prolong the case and play for time.

The decision of the Court is that there is no basis for it to grant leave to the defendant to defend the suit. Since the purchase price for the claimant's said property measuring 20,462.755 square metres purchased by the defendant is N45,000,000 as stated in the Contract of Sale Agreement [Exhibit C] and the defendant has paid N8,000,000, the claimant is entitled to its claim of N37,000,000.

Thereby enter judgment for the claimant against the defendant in the sum of N37,000,000. I award cost of N300,000 to the claimant payable by defendant.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

1. Stanley Maduabuchi for the claimant; holding the brief of Babatunde Adewusi Esq.
2. James Onoja Esq. for the defendant.