

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

ON WEDNESDAY, 4TH DAY OF MAY, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2623/2018

BETWEEN

POLYCARP CHIBUEZE OKORIE

CLAIMANT

AND

1. ENGR. KAYODE ADENIJI

2. KABRIEL GLOBAL CONCEPT LIMITED

}
}

DEFENDANTS

JUDGMENT

The claimant filed this suit on 27/8/2018 in the Undefended List. The claimant filed an amended writ of summonson 14/12/2018 with the leave of the Court [*Coram: Hon. Justice S. E. Aladetoyinbo; now retired*] granted on 11/12/2018. The case was transferred to me by the Hon. Chief Judge vide a Transfer Order dated 11/11/2020.

The claimant claims these reliefs jointly and severally against the defendants:

1. An order of the Honourable Court directing the defendants to pay the claimant the sum of N10,000,000.00 only as refund of monies paid to the

defendants by the claimant for the purchase of a plot of land at Olive Estate which land the defendants have failed to deliver to the claimant.

2. Interest on the N10,000,000.00 only assessed at the Central Bank of Nigeria [CBN] approved Monetary Policy Rate [Official Interest Rate] of 12 per cent per annum from January 2011 till the judgment in this suit.

In the alternative to relief [2], the claimant claims reliefs [3] and [4]

3. The sum of N2,000,000.00 only being the amount agreed as compensation between the claimant and the defendants for depriving the claimant of the use of his money from December 2010 to December 2015; and
4. Interest on the N10,000,000.00 only at the CBN interest rate of 12 per cent per annum from 1st January, 2016 till the judgment in this suit.
5. An order of this Honourable Court directing the defendants to pay interest assessed at 15% per annum on the judgment sum from the date of the judgment till the judgment sum is fully liquidated.
6. The sum of N600,000.00 only being the cost incurred by the claimant as fee paid to his counsel for undertaking this suit.
7. An order of this Honourable Court directing the defendants to comply with the judgment in this suit within seven [7] days of the delivery of the judgment herein.

The claimant filed a 55-paragraph affidavit on 27/8/2018 in support of his claims; attached therewith are Exhibits A-O. On 5/2/2019, the defendants filed a notice of intention to defend the suit together with the 11-paragraph affidavit deposed to by Lukman Saadu, a legal practitioner with Ishola & Sanni Consort, the firm engaged by the defendants.

At the hearing of suit in the undefended list on 8/2/2022, the defendants and their counsel were absent in spite of hearing notice served on them. Godwin N. Chigbu Esq. adopted the claimant's processes. Thereafter, I remarked as follows:

"Judgment is reserved till 3/5/2022. I am mindful of the fact that the defendants filed a notice of intention to defend the suit on 5/2/2019 and an affidavit in support. The Court will consider the defendants' processes before arriving at a decision even though the defendants' counsel is not in Court to adopt the processes."

In support of the principal claim of N10,000,000, claimant stated the following facts in his affidavit:

1. The 1st defendant is an estate developer and the managing director, chief executive and alter ego of the 2nd defendant. The 2nd defendant and Mide Landmark Ventures Limited are limited liability companies owned, managed and used by the 1st defendant to carry on his business as an estate developer.

2. One of the estates developed by the defendants is Olive Estate located at Gwarimpa 1, Abuja with Plot Number 19 covered by Certificate of Occupancy dated 10/11/2005 measuring 1.33 hectares, and issued in the name of Christiana Adetola Makanjuola.
3. Sometime in August 2010, the defendants in their capacity as estate developers put up advertisements through flyers and posters inviting the general public to purchase plots of land in the said Olive Estate. A copy of the advert is Exhibit A.
4. When he met with the 1st defendant, he [1st defendant] confirmed that he was the owner and developer of Olive Estate and that plots for building 5-bedroom semi-detached duplexes were available for sale in the sum of N10,000,000 per plot. After the inspection of the site, he offered to buy and the 1st defendant accepted to sell to him a plot in the estate for building 5-bedroom semi-detached residential duplex in the sum of N10,000,000.
5. He and 1st defendant agreed that he could pay for the plot in instalments and upon completion of payment, he would be given an allocation letter and building plan which would entitle him to start building at his convenience. He paid N2,000,000 by cheque issued on 24/8/2010 in favour of the 2nd defendant.
6. He subsequently paid the balance of N8,000,000.00 to the defendants in 4 instalments between October and December 2010. Upon completion of

payment, the defendants issued him a letter of offer dated 23/12/2010 [Exhibit F] allocating plot 12 in the said estate to him. The 1st defendant showed him the said plot and handed over the site plan and building plan to him.

7. He did not commence development immediately because he did not have the money required for such project at that time which fact he discussed with the 1st defendant without any objection from him.
8. Sometime in 2013, he visited the estate and discovered that a house was being erected on the plot earlier shown to him as his plot. He confronted the 1st defendant who informed him that he allocated the said plot to another buyer who was ready to commence immediate construction since he [the claimant] said he was not ready to commence construction. The 1st defendant pleaded with him to accept an alternative plot.
9. The 1st defendant showed him another plot and informed him that part of the plot was on the tarred road and that the road would be closed before the end of 2014. As he was not ready to commence construction and there was no other available plot in the estate, he accepted the alternative plot on the condition that it would be ready for construction before the end of 2014 as promised by the 1st defendant.

10. Till date, the 1st defendant has failed to put him in possession of the plot and the tarred road is yet to be closed despite repeated promises by the 1st defendant.
11. Sometime in 2014, he went to the estate and discovered that a caveat was placed on the estate by Economic and Financial Crimes Commission [EFCC] arising from investigation activities on the land. When he asked the 1st defendant if he had issues with EFCC, he said it was a small issue that was being resolved and that there was nothing to worry about.
12. In 2015, based on his insistence to know what was happening with the matter with EFCC, the 1st defendant informed him that the EFCC investigation was instigated by the husband of the owner of the land [Mr. Makanjuola] who accused him of converting the land and selling same without authority.
13. The 1st defendant insisted that the allegation was false and that he had an agreement with the owner to develop the estate. In order to prove his right to sell the plots, 1st defendant gave him copies of the Memorandum of Understanding [Exhibit H] and the Agreement [Exhibit I], which he executed with the owner of the land using two of his companies.

14. After studying the agreements signed by the defendants with the owner of the land, he discovered that none of them transferred any title to the land to the defendants or gave them authority to sell the land.
15. Based on the discovery that the defendants did not have legal title to the estate land and the fact that he was yet to be put in possession of his plot by the end of 2014 as agreed, he decided to opt out of the agreement with the defendants and demanded for refund of his money.
16. He called the 1st defendant on phone and informed him of the decision, which he accepted. Despite the 1st defendant's promises and his [the claimant] demands and visits to the 1st defendant in his house, the money has remained unpaid till date.

In the defendants' counter affidavit, Lukman Saadu stated that he was informed of the following facts by Engr. Kayode Adeniji [the 1st defendant] at Suleja prison on 25/1/2019, which he verily believed to be true:

1. The defendants entered into a memorandum of understanding and an agreement with the owner of the land to help develop and sell same. The 1st defendant agreed with the owner of the plot to raise money by selling some plots to develop the others. The land was sold by the 1st defendant to the claimant as an agent of the owner and the claimant and his wife were very much aware of this fact.
2. The claimant was expressly required to commence work on the plot within 3 months of the offer. This is clearly stated in the letter of offer.

The attention of the claimant was drawn to the breach of the terms of the offer i.e. the 3 months period within which he was supposed to start building. The claimant admitted that his failure was due to lack of money to build.

3. Thereafter, the claimant chose plot 12 and pleaded with the 1st defendant that he be allocated the plot. The defendants magnanimously allocated plot 12 as a replacement plot to the claimant on the condition that he would build on time, an agreement which the claimant has kept in breach till date.
4. It is the claimant who has failed to put himself in possession and instead continued to plead tolerance for his failure up till 2014 when EFCC placed a caveat on the land due to a petition by the owner that the defendants could not pay him when he expected.
5. The defendants have delivered the claimant's plot to him and same is still available and vacant in the estate till date. There are other buyers who purchased plots in the estate and have built on them. The purported lack of title of the defendants or possession by the claimant is a ruse to cover up his inability to raise fund and develop the plot.
6. The defendants have informed the claimant that they can only refund the N10,000,000 after receiving payment in an on-going sale negotiation [which he is aware of] between them and some potential buyers of the estate. Also, the defendants can only make the payment after satisfying

themselves of who to pay between the claimant and his estranged wife. The claimant's wife met the 1st defendant and claimed to have made the payment. She urged the 1st defendant not to pay the claimant as they are no longer together.

7. The claimant has been informed that his land is still there and if he desires a refund, he should await the on-going sale effort or sell it himself.
8. The defendants had agreement with, and understanding of, the owner to sell and put the claimant in possession of his plot of land but he failed to take advantage by erecting building on it.

The position of the law is that where the defendant files a notice of intention to defend the suit and an affidavit 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 for it to determine whether or not a triable issue has been made out by the defence.

Where the defendant has raised a triable issue or a defence on the merit, the court will grant him leave to defend the suit and transfer the matter from the undefended list to the general cause list. 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 Skye 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 constitute 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 a suit 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.

In the case of Obitude v. 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. See also U.B.A. Plc. v Jargaba [supra].

From the affidavit evidence of the parties, it is not in dispute that the claimant paid the sum of N10,000,000 to the defendants for a plot of land at Olive Estate. By the defendants' letter dated 23/12/2010, they allocated plot 12 to the claimant.

The claimant stated that following the placement of caveat on the estate by EFCC, the 1st defendant gave him a memorandum of understanding and an agreement which he executed with the owner of the land using two of his companies to prove that he had the right to sell the plots. After studying the two documents, he discovered that none of the agreements transferred title to the land to the defendants or gave them authority to sell the land.

In response to the above, Barrister Lukman Saadu stated that the defendants had a memorandum of understanding and an agreement with the owner of the land to help develop and sell same; and that the 1st defendant agreed with the owner of the plot to raise money by selling some plots to develop the others. This was the basis on which the defendants sold the plot to the claimant and the basis for their insistence that the claimant's plot is still available and vacant in the estate till date.

There is no doubt that the above deposition is the foundation of the defendants' defence. It is therefore necessary to determine whether, from the documents before the Court, the defendants had any agreement with the owner of the land [Mrs. Christiana Adetola Makanjuola] to sell the plots in the estate and in particular, to sell plot 12 or any other plot to the claimant.

Exhibit H attached to claimant's affidavit is the Memorandum of Understanding dated 9/1/2012 between Mrs. Christiana Adetola Makanjuola [as "*client*"] and the 2nd defendant [as "*developer*"]. By Exhibit H, the developer is to develop the land known as Plot 19, Cadastral Zone C02 located at Gwarimpa I, Abuja belonging to the client. For clarity, recitals II, IV & X of the Memorandum of Understanding, which clearly state the purpose of the agreement, read:

- II The client wants to develop the said land and build upon it structure[s] comprising an estate of terraced/detached bungalows and duplexes hereinafter referred to as the project/property and desires the involvement of the developer to actualize the development jointly. The joint development/venture name or brand of the above property shall be determined by both parties.

- IV The developer will undertake the provision of funds, materials, equipment and labour for the building of the specified structure[s] for the property above.

- X That the property shall be built and sold by the developer with the cooperation of the client when completed to interested members of the public at its current market value as will be determined by retained professional valuers of the developer and the client.

Part of the agreement of the parties in Exhibit His that *“upon the completion of the development of the property and having fully defrayed all expenses incurred by the developer in the entire exercise, the net profit realizable from the sales thereof shall be shared between the client and the developer in the proportion to be mutually agreed by the parties.”*

Exhibit I attached to the claimant’s affidavit is the Agreement to sell the said property executed between Mrs. Christiana Adetola Makanjuola [as *“The Seller”*] and Mide Landmark Ventures Ltd. [as *“Prospective Purchaser”*] dated 1/8/2013. By that Agreement, the prospective purchaser agreed to buy the property from the seller for the sum of N235,000,000 payable in 2 instalments, to wit: [i] N117,500,000 to be paid within the period of 3 months from 1/8/2013 to 31/10/2013; and [ii] N117,500,000 to be paid within the period of another 3 months from 1/11/2013 to 31/1/2014.

In clauses 6 & 7 of the Agreement [Exhibit I], the parties further agreed:

6. *That should the prospective purchaser pay up the entire sum as agreed under this instrument, the seller will execute a Deed of Assignment*

transferring the unexpired residue of her interest in the property to the prospective purchaser.

7. *That this Agreement terminates on the 30th April, 2014 and the seller has right to sell the property to any willing purchaser should the prospective purchaser fail to meet his obligation under this Agreement as aforesaid.*

The defendants did not tender any Deed of Assignment transferring the interest of the owner of the property to him or to the 2nd defendant or to Mide Landmark Ventures Ltd. The defendants did not produce any evidence to show that they paid the sum of N235,000,000 to Mrs. Christiana Adetola Makanjuola, the owner of the property, for the purchase of the property. There is also no evidence that the defendants had an agreement and understanding with the owner of the plot to raise money by selling some plots to develop the others as stated in paragraph 5[q] of the counter affidavit.

I have referred to these documents [Exhibits H & I] to show that the defendants did not have the authority of the owner to sell the plot as at 2010 when they collected the total sum of N10,000,000 from the claimant and issued the letter of offer of plot 12 to him dated 23/12/2010. The defendants did not also have authority of the owner of the property after 2010 to sell the plot to the claimant. Thus, there is no basis for the defendants to assert in their counter affidavit that the claimant's plot is still available and vacant in the estate.

In paragraph 21 of his affidavit, the claimant stated that sometime in 2014, he discovered that a caveat was placed on the estate by EFCC arising from investigation activities on the land. The defendants admitted this deposition in paragraph 5[o] of the counter affidavit. The defendants did not adduce any evidence to show that the caveat has been lifted or removed. Again, one wonders the basis for the defendants' assertion that the claimant's plot is still available and vacant in the estate.

In the light of the foregoing, the Court finds as a fact that the defendants have failed to give the claimant possession of the plot he paid for in the said Olive Estate as they have not shown that they had the authority of the owner of the land to sell the plot to the claimant. The fact that the defendants did not have the authority of the owner to sell the plot and the fact that the claimant did/does not have possession of the plot he paid for do not require further investigation by the Court - or further explanation by the claimant - to warrant the transfer of the suit from the undefended list to the general cause list for trial. That being the case, the claimant is entitled to refund of the sum of N10,000,000 which he paid to the defendants.

In paragraph 5[v] of the counter affidavit, the defendants agreed to refund the claimant the sum of N10,000,000 but hinged the refund on two conditions. I shall consider the two conditions anon to determine whether they raise any triable issue or a defence on the merit.

The first is that the said sum can only be refunded when the defendants receive payment in an on-going sale negotiation between them and some potential buyers of the estate. I have already found that the defendants have no title to the estate or authority of the owner to sell the estate. Even if the defendants have title to the estate or authority of the owner to sell the estate, there is no justifiable reason for the refund of N10,000,000 to the claimant to be dependent on the sale of the estate especially as the claimant has no part to play in the said negotiation for the sale of the estate.

The second condition is that the defendants can only make the refund *“after satisfying themselves of who to pay between the Claimant and his estranged wife”*. It is deposed that the claimant’s wife met the 1st defendant and *“claimed to have made the payment”* and urged him not to pay the claimant as they are no longer together. The Court is of the view that this cannot be a justifiable reason for the defendants not to refund the sum of N10,000,000 to the claimant. The simple reason is that the transaction was between the defendants and the claimant and all the payments were made to the defendants by the claimant. The receipts of payment and the letter of offer issued by the defendants were in the name of the claimant alone. In my view, the defendants have no business to dabble into the affairs of the claimant and his wife or any disagreement between them.

The decision of the Court is that the defendants have not raised any triable issue or defence on the merit in their affidavits in respect of the claim of the

principal sum of N10,000,000. The defendants are not entitled to leave to defend the claim for N10,000,000. In exercise of the powers of the Court under Order 35 rule 4 of the Rules of the Court, 2018, I enter judgment for the claimant for the sum of N10,000,000.

I now proceed to consider the claimant's second claim for interest assessed at the Central Bank of Nigeria [CBN] approved Monetary Policy Rate of 12% per annum from January 2011 till judgment.

In paragraphs 45 to 50 of his affidavit, the claimant stated that the defendants have been in possession of his N10,000,000 since 2010 and have been utilizing it for their business and making huge profits. He would have put the said sum into a very profitable venture/investment which would be yielding huge returns for him. He has suffered loss of earnings which he would have made from the money he paid to the defendants. He is entitled to interest from the defendants for the use of his money for 8 years. The CBN approved Monetary Policy Rate is attached to the claimant's affidavit as Exhibit O.

In paragraph 5[cc] & [ff] of the counter affidavit, it is deposed that nobody has been using the claimant's N10,000,000 for business or profit as same was used to purchase a piece of land which is still his till date; and the defendants are not liable to pay any interest or compensation to the claimant.

The claimant's claim under consideration is a claim for pre-judgment interest. The position of the law is that in a claim for pre-judgment interest, the

claimant has the duty to plead and prove his entitlement to the interest and the basis thereof. It may be by statute, or agreement between the parties, or mercantile custom or principle of equity such as breach of fiduciary relationship. See **M & B Electrical Co. Ltd. v. The Government of Cross River State & Ors. [2005] 6 NWLR [Pt. 922] 471**The Court is of the view that there is no evidence on which it can grant pre-judgment interest of 12% per annum especially as there is no agreement between the parties for the payment of interest. The Court also holds that CBN approved Monetary Policy Rate is not applicable to this case.

Let me add that the claimant's assertion that he would have put the said sum of N10,000,000 into a very profitable venture/investment which would be yielding huge returns for him is speculative and, in my opinion, cannot be the basis to grant his claim for interest.

In the alternative relief [3], the claimant claims the sum of N2,000,000 being the amount agreed between him and defendants as compensation for depriving him of the use of his money from December 2010 to December 2015.

In paragraphs 27 & 28 of his affidavit, the claimant stated that in his meeting with the 1st defendant on 19/9/2015, he told the 1st defendant that he would pay him N5,000,000 as compensation in addition to the refund of his N10,000,000 which they have put to their use for 5 years. The 1st defendant

offered to pay him N2,000,000.00 as compensation. He accepted the sum of N2,000,000 offered by the 1st defendant as compensation.

In paragraph 5[t] of the counter affidavit on the other hand, it is deposed that at no time did the 1st defendant agree to pay the sum of N2,000,000 to the claimant as compensation.

The claimant did not adduce any proof of the agreement relied upon for the payment of N2,000,000 as compensation. I am mindful of the fact that in appropriate cases, the Court may transfer the claim of N2,000,000 to the general cause list for trial after granting the claim of N10,000,000. However, I am of the humble opinion that since there is no proof of the agreement for the payment of compensation, a plenary trial will not make any difference. The claim of N2,000,000 as compensation is dismissed.

In respect of the alternative relief [4] for interest on the N10,000,000 at the CBN interest rate of 12% per annum from 1/1/2016 till the date of judgment, I adopt my reasoning and decision on relief [2] that there is no evidence on which the Court can grant pre-judgment interest of 12% per annum.

In relief 5, the claimant claims interest assessed at 15% per annum on the judgment sum from the date of judgment till the date the judgment sum is fully liquidated. This is a claim for post-judgment interest, which is awarded by the Court pursuant to the rules of the Court. See **Berende v. Usman [2005]**

14 NWLR [Pt. 944] 1. Order 39 rule 4 of the Rules of this Court, 2018 provides that the Court has power to grant post-judgment interest “*at a rate not less than 10% per annum to be paid upon any judgment.*” The Court grants post-judgment interest on the judgment sum of N10,000,000 at the rate of 10% per annum from today [4/5/2022] until the judgment sum is liquidated.

The claimant claims in relief 6 the sum of N600,000, which he incurred as fee paid to his counsel for undertaking this suit. In paragraphs 42& 43 of the claimant’s affidavit, he stated that he instructed Godwin N. Chigbu Esq. to institute this suit to recover his money from the defendants. He paid the sum of N600,000 to his counsel as fees for the prosecution of this suit. The payment receipt dated 16/8/2018 is attached to the affidavit as Exhibit N.

Now, the essence of the above claim is to pass on the fee of the claimant’s counsel/solicitor to the defendants to pay. Can a party in litigation pass on his solicitors’ fee to his opponent? In the case of **Guinness Nig. Plc. v. Nwoke [2000] 15 NWLR [Pt. 689] 150**, it was held that it is unethical and an affront to public policy for a litigant to pass on the burden of his solicitor’s fees to his opponent in a suit. Based on this authority, the claim of N600,000 is hereby dismissed.

Conclusion:

I enter judgment for the claimant against the defendants jointly and severally in the sum of N10,000,000. The defendants shall pay interest on the judgment

sum of N10,000,000 at the rate of 10% per annum from today [4/5/2022] until the judgment sum is paid. I award cost of N150,000 to the claimant payable by the defendants.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

No Counsel.