

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

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/3071/2021

BETWEEN:

E.S.V. OLUGBENGA C. ROTIMI.....CLAIMANT

AND

A. GROUP PROPERTIES LIMITED.....DEFENDANT

JUDGMENT

The claimant took out this matter under the undefended list procedure against the defendant via a writ of summons dated the 16th November, 2021 and whereof the claimant claims as follows:

- a. A declaration of this Honourable court that the defendant is in breach of the agreement with the claimant, having refused to pay the claimant the professional fees agreed upon for the valuation of the defendant's plot or land.
- b. An order of this Honourable court directing the defendant to pay to the claimant the sum of N20,000,000.00 (Twenty Million Naira) only as the cost of evaluation of Plots No. 4000,4001, 4002, 4003 and 4005 Cadastral Zone Fo4, Mpape

District Abuja carried out for and on the instruction of the defendant.

- c. The sum of N5,000,000.00 (Five Million Naira) only being damages for breach of contract.
- d. Post judgment interest at the rate of 10% per annum on the judgment sum until the judgment sum is fully liquidated.
- e. The sum of N1,000,000.00 (One Million Naira) being the cost of this action.

The writ is supported by a twenty –three paragraphed affidavit. In response, the defendant filed a notice of intention to defend dated 31st January, 2021 and an affidavit titled “Affidavit to show cause” deposed to by the Administrative manager of the defendant.

It is pertinent at this juncture to determine whether the claim falls within the category of cases that will be dealt with under the undefended procedure, and the following question arose:

Having regards to the principal claim of the claimant, whether it falls within the category of cases that will be dealt with under the undefended list procedure?

Thus, it was held by the Court of Appeal, Ilorin Division in the case of **Onirodunnu V. MUIBC (2017) All FWLR (pt 867) p. 586 at 597; paras. B – G** that in every case of an undefended list claim, a trial court should first and foremost satisfy itself that the claim concerns a claim to recover a debt or liquidated money demand only. If the claim is not so, then it shall not be entertained under an undefended list procedure right from the onset. The primary duty must first be discharged by the trial court in the sense that where a

suit does not satisfy the test that it is proper action to be placed on the undefended list, the suit must automatically be placed under the general cause list for hearing on the merit thereby extinguishing the question of filing notice of intention to defend the action from the onset. In other words, a trial court cannot preempt the defence by skipping the primary duty or determining whether an action is proper one to be placed on the undefended list an exercise which is essentially a judicial decision. In the instant case, it is on the above premise that I have to look at the claims of the claimant.

The relief no. 1 is a declaratory in nature and which is the principal claim, and it behoves upon the claimant to lead evidence in support. See the case of **Unilorin V. Fadipe (2018) All FWLR (pt 960) p. 1381 at 1408; paras. A –B**. See also the case of **Emeka V. Chuba – Ifeazu (2019) All FWLR (pt 974) p. 620 at 655, para. B** where the Supreme Court held that declaratory actions in civil matters require proof on the balance of probability or on the preponderance of evidence. In the instant case, the claimant made the principal claim to be declaratory in nature and as such it cannot be entertained under the undefended list procedure.

The principal claim which is declaratory is enough for this matter to be transferred to the general cause list. See the case of **Fed. Poly, Offa V. UBA Plc (2014) All FWLR (pt 737) pp. 778 – 779; paras. G – B** Per Ogunbiyi JCA (as he then was)

“Incidentally, the law does not make it incumbent on the appellants to exhibit floods of triable issue. In other words, one triable issue is sufficient to warrant a transfer of a

**case from the undefended list procedure to
the general cause list for hearing”**

In the circumstances, I order that this matter be transferred to the general cause list, and parties are advised to file pleadings.

Hon. Judge
Signed
25/4/2022

Appearances:

S. A. Ajayi Esq appeared for the claimant.