

**IN THE HIGH COURT OF JUSTICE OF THE  
CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/859/2021**

**BETWEEN:**

**AFROTALES NIGERIA LIMITED.....CLAIMANT**

**VS**

**GOOD HOMES DEVELOPMENT COMPANY LIMITED.....DEFENDANT**

**RULING/JUDGMENT**

The Claimant herein by Writ of Summons filed on 19/3/2021 commenced this Suit against the Defendant under the "Undefended List" Procedure and claim as follows;

- (1) An Order of this Honourable Court mandating the Defendant to pay the Claimant the sum of ₦28,500,000.00 (Twenty Eight Million Five Hundred Thousand Naira Only) being the amount paid for a one unit of Three Bedroom Terrace Duplex in Apo Housing Scheme to the Defendant on 11/9/2014.
- (2) An Order mandating the Defendant to pay the sum of ₦5,000,000.00 (Five Million Naira) only as General Damages for breach of contract.

- (3) The sum of ~~₦~~500,000.00 (Five Hundred Thousand Naira) only as the cost of the proceedings.

Accompanying the Writ of Summons is an affidavit of 8 Paragraph with three Exhibits marked Exhibit "A" "B" and "C" deposed to by one Oluwatobi James staff of Claimant Company.

The Defendant was duly served with the Writ of Summons and all other processes of this Suit on 23/7/2021 and responding filed with leave of court their Notice of Intention to Defend along with affidavit in support of Notice of Intention to Defend, the said affidavit is of 19 Paragraphs and deposed to by one Bernard Igbah Admin Officer of Defendant's Company. All of these are in compliance with Order 35 Rule 3 (ii) of the Rules of Court.

From the affidavit evidence before the court, the Claimant stated copiously facts of being offered a one unit Three Bedroom Terrace Duplex in Apo Housing scheme through a Provisional Letter of Allocation dated 11/9/2014 for the sum of ~~₦~~28,500,000.00 (Twenty Eight Million Five Hundred Thousand Naira only) by the Defendant. Claimant had paid the said sum before the Offer of the property and since 2014 till date neither the house paid for nor the money paid to the Defendant for the house has been delivered to the Claimant.

Claimant appointed the law firm of Ikechukwu Uzuegbu & Co as the agent to recover the said sum and has also issued a Letter of Demand to the Defendant through the appointed Law Firm. Claimant strongly believes that the Defendant has no defence whatsoever to the suit.

In proof of her claim, are Exhibits "A" "B" "C".

- (1) Copy of Provision Letter of Allocation dated 11/9/2014 issued to the Claimant – Exhibit "A".
- (2) Copy of cash receipt dated 11/9/2014 issued by Good Homes Development Company Limited acknowledging receipt of Twenty Eight Million Five Thousand Naira (₦28,500,000.00) paid by Afrotales Nigeria Limited – Exhibit "B".
- (3) Copy of Letter of Demand for the refund of ₦28,500,000.00 dated 17/3/2021 issued by Ikechukwu Uzuegbu & Co. to the Managing Director Good Homes Development Limited – Exhibit "C".

On the other hand, contained in Defendant's deposition in her Affidavit in support of Notice to Defend, is that the Defendant Claims not indebted to the Claimant to the sum Claimed, denied making Offer of a one unit Three Bedroom Terrace Duplex Apo Housing Scheme through Provisional Letter of Allocation dated 11/9/2014, but the Federal Government of Nigeria and the Federal Capital Territory Administration initiated Mass Housing Project during the President Goodluck Jonathan's regime and the Defendant commissioned to superintend the project. The Government of President Goodluck "collapsed", the present Government of President Mohammed Buhari refused to continue with the project. Claimant keyed into the project and the money he contributed has been sunk into the Housing Project which the Federal and FCT Administration were going to co-finance.

Stated further that the money contributed by the Claimant has been sunk into the project and his house is there uncompleted much as the money he contributed could do as the project could not be completed because of the refusal of the Federal Government and FCT Administration to fund the project. It is also the deposition of the Defendant that the Defendant is indebted to the Claimant as the little money he paid which cannot complete the type of house he subscribed for has been sunk into the Apo Housing Scheme.

It is further the case of Defendant that she is working tirelessly to raise money from Banks or other financial institution to complete the Housing Project and hand over to the Claimant and other subscribers that the Claimant is aware of these depositions hence has not gone to court before now as the Defendant keep promising to complete the project thinking that the Government will change its mind one day and complete the project, Defendant has good Defence to the Suit and pray the court to transfer the Suit to the General Cause List where evidence will be led and the court visit the locus and see the Housing Project on-going.

Upon a carefully consideration of the affidavit evidence and Exhibits attached, submission of Counsel, the court finds that the sole issue that can be distilled for determination is;

“Whether the Claimant has proved his case to be entitled to judgment under the Undefended List Procedure”.

By Order 35 Rule 3 (1) of the Rules of Court, where a Defendant is served with a Writ under the Undefended List and marked as such, the Defendant

have five (5) clear days to file his Notice of intention to Defend along with an affidavit disclosing a Defence.

It is trite law that where a Defendant files a Notice to Defence along with an Affidavit disclosing a Defence pursuant to Order 35 Rule 3 (1), the duty of the court at that stage is to look at the Affidavit and find if there are triable issues from the facts contained in the said Affidavit. It is not the duty of the court at that stage to determine whether the Defence being put up will ultimately succeed or whether the Defence has been proved or comprehensive. See Trade Bank Plc Vs Spring Finance Ltd (2009) 12 NWLR (PT. 1155) 360 @ 373.

For a Defendant to succeed, he must show that there are triable issues as revealed in the Affidavit accompanying the Notice to Defend. On what may amount to triable issues, the Court of Appeal in the case of Patigi Local Government Vs. I.K. Eleshin-Nla Esq. (2008) All FWLR (PT. 421) 854 @ 875 Para E – G. stated thus, “That the following situations may give rise to the discharge of the burden on the Defendant”

- (a) A difficult point of law has been raised in the Defendant’s Affidavit.
- (b) Dispute as to the facts raised in the Defendant’s Affidavit.
- (c) Dispute as to correct amount owed.
- (d) Where there is a bonafide Defence e.g. (Counter-Claim).

See also Ataguba & Co. Vs Gura Nig Ltd (2005) All FWLR (PT. 256) 219 @ 1223.

In the instant case. Claimant's Case is that, he paid the sum of ₦28,500,000.00 (Twenty Eight Million Five Hundred Thousand Naira) to the Defendant for a property and was issued a Provisional Letter of Allocation and since payment of the amount for the property on 11/9/2014. Defendant has neither delivered the house nor paid back to her money paid for the house. While Defendant contends that he is not indebted to the Claimant as the money received from the Claimant was spent in the development of the property to a level before the Housing Project was stalled since the change of the Government who together with the FCT Administration, but is working tirelessly to raise money from Banks or other financial institution to complete the Housing project and hand over to the Claimant and.

On a critical perusal of the Affidavit evidence, the court finds that there is no dispute as to the facts that money was received by the Defendant for a property which she is yet to deliver to the Claimant even though the Defendant tried to deny being indebted to the Claimant. And tried to justify her delay in delivering on the contract by claiming that she is working tirelessly to raise money from Banks or other financial institutions to complete the Housing Project, the question is, is it justifiable for the Claimant to wait till eternity for the delivery of the property in view of the admission of the Defendant of paucity of funds to deliver the property? I think the continued delay in delivery of the property subject matter must not be allowed to linger till eternity as the Defendant has demonstrated her frustration. I am of the firm view that the Defendant having not being able to dispute the facts of the case made out by the Claimant has been unable

to show sufficient cause necessitating the transfer of the case to the General Cause List.

On the claim for damages, it is trite law that an action under the Undefended List Procedure is strictly for liquidated money demand and cannot extend to a claim for damages. See NIPOST Vs Irkbok (Nig) Ltd (2006) 8 NWLR (PT. 983) 435 @ 440 Ratio 5. Again on the Claim for cost of proceedings, granted that cost follows events the court cannot find sufficient grounds from the facts and circumstance to warrant the grant of an Order for Cost.

The "Undefended List" Procedure is a procedure meant to shorten the hearing of a Suit, where a Defendant has no Defence, hence the Defendant should not merely file his Notice of Intention to Defend for the purpose of delaying the hearing as being done by the Defendant in the instant. See Ataguba & Co. Vs. Gura Nig Ltd (Supra) @ 224 Ratio 8. The Defendant's by her Notice of Intention to Defend, failed to defend in line with any of the defence contemplated as prima-facie defence in the case of Patigi Local Govt. Area Vs I.K Elesin-Nla (Supra).

From all of these and having carefully considered the Affidavit evidence of the Claimant and attached Exhibits the court finds that the Evidence are credible and satisfactory and accordingly enter Judgment in favour of Claimant as follows;

- (1) It is hereby Ordered that Defendant pay the Claimant the sum of ₦28,500,000.00 (Twenty Eight Million Five Hundred Thousand Naira) only being the amount paid for a One unit of Three

Bedroom Terraced Duplex in Apo Housing Scheme to the Defendant on 11/9/2014.

- (2) The Claim against the Defendant for ₦5,000,000.00 (Five Million Naira only) as General damages fails and is hereby refused.
- (3) Claim for the sum of ₦500,000.00 (Five Hundred Thousand Naira only) as cost of the proceedings is hereby refused.

**HON. JUSTICE C.O. AGBAZA**

Presiding Judge

15/9/2022

**APPEARANCE:**

I. E. UZUEGBU ESQ. FOR THE CLAIMANT

K. C. OKPO ESQ. FOR THE DEFENDANT