

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 9<sup>TH</sup> DAY OF MARCH, 2023.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**  
**SUIT NO: FCT/HC/CV/1220/2014**

**BETWEEN:**

**SENATOR NICHOLAS YAHAYA UGBANE:....CLAIMANT/  
RESPONDENT**

**AND**

**HOUSING ALLIANCE LIMITED:.... DEFENDANT/APPLICANT**

Abdullahi Haruna SAN with R.A. Ugbane and J.O. Ameh for the Claimant.  
Peter O. Ofikwu with Chief Moses Ojo for the Defendant/Applicant.

**JUDGMENT.**

By a Writ of Summons dated 23<sup>rd</sup> day of May, 2014 the Claimant took out this action against the Defendant claiming as follows:

- (a) A declaration that the failure or inability of the Defendant to complete and handover to the Plaintiff all that property situate and known as Congress Court Estate Unit H8, Plot S19, Phase 3 of Dakwo District, Abuja comprising of a Luxury Unit with Guest Chalet by the end of the year 2011 amounts to a breach of contract.
- (b) An order of specific performance directing the Defendant to complete and hand over to the Plaintiff all that property situate and known as Congress Court Estate Unit H8, Plot S19, Phase 3 of Dakwo District Abuja comprising of an uncompleted Luxury Unit with

Guest Chalet within three (3) months from the date of judgment.

**ALTERNATIVE TO PRAYER (b)**

An Order of this Honourable Court directing the Defendant to hand over to the Plaintiff all that property situate and known as Congress Court Estate Unit H8, Plot S19, Phase 3 of Dakwo District Abuja comprising of an uncompleted Luxury Unit with Guest Chalet as it is and all building materials which have been paid for and those on site to the Plaintiff forthwith.

- (c) An order directing the Defendant to execute all title documents covering the said Congress Court Estate Unit H8, Plot S19, Phase 3 of Dakwo District Abuja in favour of the Plaintiff forthwith.
- (d) An order of this Honourable Court directing the Defendant to refund to the Plaintiff the sum of N7,625,000.00 (Seven Million, Six Hundred and Twenty-five Thousand Naira) only, being sums paid in excess of the agreed contract sum of N16,500,000.00 (Sixteen Million, Five Hundred Thousand Naira) only for the construction of the Congress Court Estate Unit H8, Plot S19, Phase 3 of Dakwo District Abuja.
- (e) The sum of N30,000,000.00 (Thirty Million Naira) only being general damages for breach of contract.
- (f) Cost of prosecuting this action.

The case of the Claimant as endorsed on his statement of claim is that sometime in 2004, the Defendant through the office of the then Chairman, Senate Committee on Housing and Urban Development, Senator Ike Ekweremadu, introduced a housing scheme for legislators and brought it to the knowledge

of Senators to enable them subscribe for houses of their choice.

The Claimant averred that out of the houses offered for subscription by the Defendant, he subscribed for the Luxury Unit with Guest House worth N16,500,000.00 and made the first payment stipulated by the Defendant vide an All States Trust Bank cheque in the sum of N4,125,000.00, dated 23-08-2004.

He stated that after sometime, due to slow pace of work, he became demoralised with the handling of the project by the Defendant who despite the first instalment, could not justify the amount paid with the work done. However, that following series of meetings between the representatives of the Defendant and Senators, and visit to the site, his confidence was renewed, leading to him making a further payment of the sum of N10,000,000.00 to the Defendant on 23<sup>rd</sup> of October, 2008 vide a Bank PHB (now Keystone Bank) cheque.

The Claimant further averred that even after making the additional payment, the pace of work still did not pick up as was anticipated. That despite his displeasure with the Defendant's attitude to work, but out of his desire to ensure the completion of his house, he held series of meetings with the Defendant and agreed to allow them complete the building of the house.

The Claimant stated that he subsequently requested that his unit of the house be roofed with tiles instead of the long span aluminium sheets specified in the original bill of quantities by the Defendant, and in consequence, he made another payment of N10,000,000.00 on the 8<sup>th</sup> of April, 2011, to the Defendant, to cover the said roof tiles and the outstanding balance sum of the contract. That he subsequently went to the site and discovered that the work had not even proceeded significantly, and when

he raised his concerns as to the Defendant's attitude to work, the Defendant assured him that the work would be completed before the end of 2011. That he then told them to construct a parapet before roofing the house and they gave him an estimate of N1,496,600.00 which he paid on the 9<sup>th</sup> of June, 2011 vide a Fidelity Bank cheque dated 08/06/2011.

The Claimant averred further, that the Defendant ought to have completed and handed over the house to him by the end of 2011, but that when he visited the site sometime in January, 2012 to appraise the extent of work done on the house, he discovered that work on the house had stopped completely.

He stated that he has paid a total sum of N25,621,600.00 to the Defendant, which sum is N7,625,600.00 in excess of the original agreed sum of N16,500,000.00 for the construction of the house.

He averred that instead of the roofing tiles he requested and paid for, the Defendant went ahead to roof the house with long span aluminium roofing sheets. That this conduct of the Defendant, the apparent lack of progress and total stoppage of work on the site, prompted him to write the Defendant a letter dated 26<sup>th</sup> April, 2012 demanding that the Defendant hand over the house to him as well as what was left of the building materials and a refund of the sum of N9,121,600.00 which was paid over and above the initial cost of N16,500,000.00 for the completion of the house.

The Claimant stated that instead of complying with his demand, the Defendant wrote him a letter stating that handing over the house as it is will be difficult without them completing same, and that the price was to be renegotiated again to guarantee their completion of the house and subsequent handing over. That his subsequent letter to the Defendant

through the law firm of Abdullahi Haruna & Co, requesting that the property be handed over to him, went unanswered.

After this case had sojourned in another Court, it was subsequently transferred to this Court in 2019. Here in this Court, following the Claimant's delay to open his case, this Court was constrained to strike out the case on 11<sup>th</sup> November, 2021.

Subsequently, the case was relisted on the cause list on the Claimant's application, and on the 22<sup>nd</sup> day of March, 2022, the Claimant eventually opened his.

Giving evidence as PW1, the Claimant adopted his witness statement on oath wherein he affirmed all the averments in his statement of claim. He also tendered the following documents in support of his case.

1. Offer letter, subscription Form and Brochure – Exhibit PW1A-A16.
2. Photocopy of cheque of N4,125,000 and its acknowledgment by the Defendant – Exhibit PW1B-B1.
3. Manager's cheque of N10m dated 23/10/08 – Exh PW1C.
4. Manager's cheque of N10m dated 8/4/10 – Exh PW1D.
5. Copy of cheque dated 8/6/11 – Exhibit PW1E.
6. Letter to the Defendant dated 26/4/12 – Exhibit PW1F.
7. Claimant's Solicitor's letter to the Defendant – Exhibit PW1G.

Following the Defendant's absence to cross examine the PW1 at the close of his evidence on 22<sup>nd</sup> March, 2022, the case was further adjourned in the interest of justice, to 16<sup>th</sup> May, 2022 to enable the Defendant attend Court and cross examine the PW1.

On the said 16<sup>th</sup> May, 2022, the Defendant was still absent and unrepresented, notwithstanding due service of hearing notice. Consequently, the Defendant having filed no defence to the suit, her right to cross examine the PW1 and to defend the suit was foreclosed on the Claimant's application.

The Claimant subsequently filed a final written address wherein his learned counsel, Abdullahi Haruna, SAN, raised a sole issue for determination, to wit;

***“Whether from the facts and evidence led, the Claimant is entitled to the reliefs sought from the Court?”***

Proffering arguments on the issue so raised the learned SAN posited that the implication of the Defendant's failure to file a defence or defend the case put forward by the Claimant, is that the Claimant's case is unchallenged.

Relying on **Okoh v. Nigerian Army (2018) All FWLR (Pt.963) 1863 at 1880, Godfrey Ifediora & 2 Ors v. Eugene Okafor & 2 Ors (2019)NWLR (Pt.1698)322 and Adewale Adeleke & 1 Or vs. Mrs. Josephine O. Anike (2006) NWLR (Pt.1004)131 CA**, he posited that where evidence is unchallenged or uncontroverted as in the instant case, the Court is enjoined to rely on such evidence.

He contended that the Defendant has admitted in totality, the case of the Claimant before this Court, and urged the Court to so hold.

Learned SAN further argued that the Defendant having not delivered the Claimant's property to him till date, is in breach of its contract with the Claimant, particularly so, as the Defendant has offered no explanation before this Court as to its refusal to hand over the property to the Claimant.

He referred to **Bimba Agro Livestock Company Limited vs. Land University (2020) NWLR (Pt.1748)465.**

In conclusion , he urged the Court to hold that the Claimant has proved his case successfully against the Defendant to entitle him to his claim against the Defendant.

In the determination of this case, this Court will adopt for consideration, the issue for determination as raised by the Claimant in his final written address, to wit;

***“Whether from the facts and evidence led, the Claimant is entitled to the reliefs sought from the Court?”***

It is pertinent to note that from the onset, that the Defendant herein was afforded ample opportunity to state its case and be heard in this suit, but the Defendant failed to utilize the opportunities afforded it by this Court, even when it was represented by counsel on a number of occasions.

One of such instances where the Defendant was represented in this case, was on 11<sup>th</sup> November, 2021 when the Defendant’s counsel, Peter O. Ofikwu, Esq, on behalf of the Defendant, through the back door, appeared and applied to the Court and had the Claimant’s case struck out on account of the Claimant’s absence as well as his counsel in Court, despite the fact that the Defendant’s counsel had not entered appearance. It is remarkable to note that the Defendant was properly served on 30<sup>th</sup> June, 2014.

The Defendant apparently did not want this matter to be heard, hence its preference for the matter to be struck out rather than entering an appearance and filing a defence.

Upon relisting of the suit, the case of the Claimant was eventually heard undefended and his evidence uncontroverted by the Defendant because the Defendant failed to enter appearance and defence.

It is the trite position of the law that civil cases are decided on the preponderance of evidence or the balance of probabilities. See **Ezemba v. Ibeneme & Anor (2004) LPELR-1205(SC)**.

The onus of proof is however, discharged on minimal proof where, as in the instant case, a defendant offers no evidence whatsoever in defence. This is because the evidence before the Court in such a situation, goes on one way, with no set of facts or evidence on the opposite side weighing against the side of the Claimant's imaginary scale. See **Skypower Airways Ltd v. Olima (2005)LPELR-7548(CA)**.

The Claimant in this case has duly established each of his claims before this Court by the pieces of documentary evidence tendered, which all remain uncontroverted and uncontradicted.

Going through the pieces of evidence as adduced by the Claimant before this Court, to wit; Exhibit PW1A, Offer Letter, with Application of the Claimant for 5 Bedroom Mansion, Brochure with the plan of the house, Exhibits PW1B, PW1C, PW1D and PW1E – evidence of payment for the property; Exhibit PW1B in particular, having attached to it the letter of acknowledgement by the Defendant, signed by Gregory Ozegbe, Chairman/CEO of the Defendant, and Exhibits PW1 F & G, being demand letters from the Claimant to the Defendant requesting the handing over of the property and duly received by the Defendant; I am satisfied that the Claimant duly paid for the housing unit which he applied for from the Defendant. There is however, no evidence that the house has been



handed over to the Claimant since the last payment made in respect of the house on 8<sup>th</sup> June, 2011 as per Exhibit PW1E.

In **Afribank Nigeria Ltd v. Moslad Enterprises Ltd & Anor (2007)LPELR-5126(CA)**, the Court of Appeal, per Akaahs, JCA, held that:

***“Where a defendant does not produce evidence or testify or call witnesses in support of his defence, slight or minimum evidence which can discharge the onus of proof would be required to ground the Plaintiff’s claim.”***

That is what the Claimant has done in this case.

Also, in **Asafa Foods Factory Ltd v. Alraine Nigeria Ltd & Anor (2002)LPELR-570(SC)**, the Apex Court, per Iguh JSC held that:

***“Where evidence given by a party to a proceeding was not challenged by the other side who had the opportunity to do so, it is always open to the Court seised of the matter to act on such unchallenged evidence before it.”***

Given the credible evidence adduced by the Claimant, which is unchallenged and uncontroverted, it is my finding that the Claimant’s case succeeds wholly.

With respect to relief (d), evidence was clearly given in establishing that the Claimant overpaid the Defendant the sum of N25,621,600.00 as against the sum of N16,500,000.00 the original price of the house, which therefore has excess of N7,625,600.00. Reference to paragraphs 6,8,11,12 and 14 of the Statement of Claim and paragraphs 7,9,12,13 and 15 of the Claimant’s Witness Statement on Oath clearly shows where

this amount was pleaded. This piece of evidence was not controverted. Thus, the Court believes it and holds the Defendant liable.

The sole issue for determination is therefore resolved in favour of the Claimant and accordingly, judgment is entered for the Claimant as follows:

- (a) It is declared that the failure or inability of the Defendant to complete and handover to the Claimant all that property situate and known as Congress Court Estate Unit H8, Plot S19, Phase 3 of Dakwo District Abuja comprising of a Luxury Unit with Guest Chalet by the end of the year 2011, amounts to a breach of contract.
- (b) An order is made directing the Defendant to hand over to the Claimant all that property situate and known as Congress Court Estate Unit H8, Plot S19, Phase 3 of Dakwo District Abuja comprising of an uncompleted Luxury Unit with Guest Chalet as it is and all building materials which have been paid for and those on site to the Claimant.
- (c) The Defendant is ordered to execute all title documents covering the said Congress Court Estate Unit H8, Plot S19, Phase 3 of Dakwo District Abuja in favour of the Claimant forthwith/immediately.
- (d) The Defendant is ordered to refund to the Claimant the sum of N7,625,000.00 (Seven Million, Six Hundred and Twenty-five Thousand Naira) only, being sums paid in excess of the agreed contract sum of N16,500,000.00 (Sixteen Million, Five Hundred Thousand Naira) only for the construction of the Congress Court Estate Unit H8, Plot S19, Phase 3 of Dakwo District Abuja.

- (e) The sum of N20,000,000.00 (Twenty Million Naira) is awarded against the Defendant as general damages for breach of contract.
- (f) Cost of action assessed at N1,000,000.00 (One Million Naira).

**HON. JUSTICE A. O. OTALUKA**  
**9/3/2023.**